

A Journey to ReconciliAction

Calls to Action Report

This document was developed on the traditional territories of the Six Nations of the Grand River and the Mississauga's of the Credit River. We acknowledge and honour the ancestors of those on whose traditional lands we are located. We strive to work collaboratively to keep the importance of our shared history, friendship and future relationships in our minds and hearts.

Prepared by:



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Disclaimer and Limitations

This report recognizes and respects the diversity of Indigenous cultures that exist across Canada. This report does not condone nor adopt a pan-Indigenous approach to Indigenous laws and traditions. This report focuses primarily on laws and traditions from the Anishinaabe, Haudenosaunee and Métis as they are currently the most highly represented populations in the City of Hamilton.

We view this report as a living document. We acknowledge that it is not perfect. It is a point in time attempt to capture our position on Reconciliation. It will change as our knowledge base increases and our thinking evolves internally and in response to the broader community. It is very much a starting point but will serve as our touchstone as we move forward. We also do not see the recommendations as a mere checklist. Rather, the report is an opportunity to reflect on organizational structures, services, communities and projects. The recommendations advanced are centred on the structure of the Hamilton Community Legal Clinic as a non-profit organization with a set of policies and procedures already in place.

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Introductions

The Hamilton Community Legal Clinic (HCLC) is a non-profit community legal clinic serving low income residents of Hamilton. In addition to providing individual poverty law services including legal advice and referrals and legal representation, the Clinic is involved in public legal education, community development and law reform.

In 2013, the HCLC established YÉN:TENE (Mohawk for “you and I will go there together”), an Indigenous justice initiative that strives to build relationships between the Clinic and the Indigenous community. YÉN:TENE is guided by an Indigenous Advisory Committee comprised of members of the Indigenous community and friends and allies. The Indigenous Justice Coordinator (IJC) acts as knowledge keeper and liaison between the Indigenous community and the HCLC. The IJC ensures that the HCLC provides culturally competent services to Indigenous clients. As a front-line staff member of the Clinic, the IJC plays a critical role in connecting Indigenous clients to the services they need.

On May 15, 2014 HCLC was formally welcomed by Hamilton’s Indigenous community at a ceremony during the “Celebration of Growth”, an annual community social. As part of the Welcoming Ceremony, we were deeply honoured to be gifted an eagle feather. This feather is under the care of our Executive Director Hugh Tye and our IJC Lyndon George. The feather is available, as needed, by those who use our services.

A territorial acknowledgement (TA) is made at the start of all HCLC Board of Directors meetings as well as at all public meetings held at the Clinic or sponsored by the Clinic in the community. We follow the TA set out on the cover page of this report. The TA is a critical part of the decolonization of our organization. It ensures that we ground our actions in the understanding that we occupy stolen lands.

Our efforts to build relationships of trust are based on collaborations. We work with the Professional Aboriginal Advocacy and Networking Group, Sisters In Spirit, Indigenous youth, the City of Hamilton and other networks, partners and community members to carry out social justice events and gatherings to educate and effect change. It is important for members of Clinic staff and Board to have a consistent presence in the community and to engage as allies and friends. We also welcome members of the Indigenous community into our Clinic and at events we sponsor as part of the reconciliation process.

The purpose of this report is to highlight the Truth and Reconciliation Commission's Calls to Action that apply to the Hamilton Community Legal Clinic (HCLC) and provide recommendations on how the Clinic may incorporate the Calls to Action into its policies, procedures and practices. The recommendations provide a thoughtful path to support the Clinic's decolonization process.

Acknowledgments

This report is largely the result of the incredible work of summer students Nicholas Baxter and Jessie Doreen. Nicholas and Jessie interviewed key informants connected to the Clinic and conducted a small community consultation. The input they gathered, together with a thorough analysis of operational policies and procedures and background research, inform this report and its recommendations. Their contribution to the continued Indigenization of the Clinic is invaluable. We are deeply appreciative of their commitment to this process.

This report would not have been possible without the support of the Hamilton Community Legal Clinic's staff, Board and Indigenous Advisory Committee. We would like to specifically thank Lyndon George, Cat Cayuga, Sandi Bell and Hugh Tye. Each provided critical assistance throughout this process. Also we are indebted to Board members Sophie Adair, Lil Acevedo and John Mills, and to Advisory Committee member Tara Williams, for their generous commitment to editing the working document.

We would also like to thank every individual, both the Indigenous and non-Indigenous peoples, who participated in our community engagement initiatives. Each person, by bringing their unique voice to our community engagement sessions, has been an instrumental component in this project. We want this report to be your voice for change.

Part I: Framework for Reconciliation

What is the Truth and Reconciliation Commission?

In December 2015, the Truth and Reconciliation Commission (TRC) issued its Final Report on the legacy of Residential Schools in Canada. The TRC Final Report is a six-volume document that captures the genocide that Indigenous peoples endured in Canada since the first European settlers arrived on Turtle Island. The Report details how the Canadian government intended to assimilate Indigenous peoples into Western culture and religion by taking children out of their homes and stripping them of their the Indigenous identity and culture. In 1867, the Government of Canada approved the residential school model of education. The last residential school finally closed in 1996.

Stories of physical, emotional and sexual abuse are common throughout the Final Report. In residential schools, children were commonly punished for practicing their culture and rarely received affection from adults. Children were taught that their Indigenous identity was not of any value to society. The consequence of these schools is a legacy of intergenerational trauma. Many survivors of the residential school system had families of their own, however they did not have the skills or traditional teachings to pass on to their children. Intergenerational trauma is particularly problematic for Indigenous peoples because their way of life is tied to the land, communities and teachings. Without those connections, many Indigenous peoples could not sustain themselves on the land as they had for centuries. Thus, Indigenous peoples were forced to

move off their traditional land to urban communities, where it is easier to assimilate into Western culture.

The Final Report states that the problems created by the residential school system are systemic.ⁱ There is not just one solution that can fix the irreparable damage. The TRC believes what is needed is Reconciliation, an “ongoing process of establishing and maintaining respectful relationships.”ⁱⁱ The TRC created 94 Calls to Action that will guide reconciliation efforts across Canada.

Reconciliation can have different meanings depending on the context in which the word is used. While Reconciliation in a broad sense refers to the relationship between Indigenous Peoples and Canada in general, one must consider what this means on a more narrow, individual level. Those impacted by intergenerational trauma must go through a process of individual Reconciliation;ⁱⁱⁱ a process whereby an individual comes to the understand how they have been personally impacted by the residential school system. Through that process an individual can begin the healing journey. Organizations must adopt the TRC Calls to Action from an understanding that not all Indigenous peoples feel the same about Reconciliation. Some believe Reconciliation is simply another tool of the colonial state to appease Indigenous interests.

We recognize that the Reconciliation process is just as important for non-Indigenous peoples who must individually consider what it means to them on a

personal level and how they will build a positive relationship with the Indigenous community to support the healing process. Those who work and volunteer with the Clinic must make an individual commitment to mitigating the effects of imposed cultural genocide and intergenerational trauma. The process of decolonizing is an arduous journey that requires in-depth reflections and discussion to reverse a mindset that has been ingrained for over a century and a half. As a non-Indigenous organization it is important to practice Reconciliation by correcting the systemic issues that Indigenous peoples face everyday.^{iv}

Correcting these systemic issues begins with implementing the Truth and Reconciliation Calls to Action. The TRC Final Report is a gift from the survivors and intergenerational survivors of the residential school system. Those who have experienced trauma from the residential school system relived their horrific experiences for the TRC Final Report. Canada must learn from the survivors' deeply personal stories to ensure nothing like the residential school system can happen again. We must ask ourselves, how do we repay such precious gifts?^v

At its roots, the Truth and Reconciliation Commission's Calls to Action are the beginning of a new era in human rights, justice and organizational governance structure. They provide the starting point for breaking down the systemic barriers that continue to suppress Indigenous peoples. However, that does not suggest a plain language approach to interpreting the Calls to Action is sufficient. The Calls to Action require a broad, meaningful interpretation in order to create the positive changes intended by the TRC Commissioners. This means

that we should avoid reading them narrowly, but instead look behind the words to the spirit of the recommendations and the historical injustice they are trying to redress. It means moving forward with a good heart and mind.

Framework of Reconciliation

The TRC report expressly states that the road to Reconciliation requires action.^{vi} Recommendations 43, 44, and 92 call on Indigenous organizations and allies in Canada to adopt the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* as a framework to facilitate the Reconciliation process. *UNDRIP* is an international instrument ratified by the United Nations in September 2007 and endorsed by the Canadian federal government on May 10, 2016. *UNDRIP* recognizes and enumerates the pre-existing, unassailable collective and individual rights of Indigenous peoples around the world.^{vii} These enumerated rights merely represent the minimum standards that should exist within domestic laws and policies.^{viii} While *UNDRIP* is not a binding document in Canada, the government's endorsement in 2016 suggests that it will act in accordance with the provisions and principles within. Further, the Canadian Courts have used such declarations in their interpretation of domestic law, so as to hold the Canadian government accountable for their international obligations.^{ix}

The TRC's approbation of the *UNDRIP* as the framework for Reconciliation in Canada suggests that this report must not only adopt the Calls

to Action but also the *UNDRIP*. Following the Canadian government's endorsement, it is now clear that *UNDRIP* will be fundamental to the ongoing Reconciliation efforts. *UNDRIP* demands change from how the previous Canadian governments have interacted with Indigenous peoples. The focus should now be about developing an environment that breaks down the Western-colonial system in Canada, a system that does not respect or adhere to Indigenous culture. *UNDRIP* is recognition that Indigenous laws and traditions must be incorporated into an organization's structure to create a barrier-free environment for workers and clients.

Recommendation #1: The Hamilton Community Legal Clinic Board shall pass a motion to adopt the TRC's Calls to Action and the *United Nations Declaration of Rights of Indigenous People* as its reconciliation framework.

Indigenous Legal Traditions

Traditional laws governed Indigenous communities centuries before Western-colonial laws were imposed upon Indigenous peoples. Indigenous legal traditions governed how the First Nations, Métis and Inuit communities established social order prior to the arrival of colonial settlers.^x However, Indigenous law continues to be considered inferior to Canadian law. This report argues that Indigenous laws are reconcilable with current organizational structures. Identifying these consistencies and implementing Indigenous laws is critical to the Reconciliation process. In Canadian law, the doctrine of discovery and savagery thesis were used as tools by the settlers to deny the existence of Indigenous laws.

The doctrine of discovery proposes that Canada, prior to European settlement, was *terra nullius*, “barren and deserted.”^{xi} Indigenous peoples were not considered as people with pre-existing rights and governing structures when European settlers landed on this soil. The doctrine of discovery presumes that the possession of land is not defined by who is on the land first, but how the land is used.^{xii} First Nations were considered “savages” and, from the European perspective, had not been using land to its fullest potential.^{xiii} Therefore, Western laws were imposed on Indigenous people to perpetuate European beliefs about religion, social order and land use. These beliefs are largely antithetical to the central tenets of Indigenous peoples’ culture and legal traditions. For example, the Anishinaabe, at the time of European contact, had no conception of the

accumulation of wealth.^{xiv} Their customs and practices required one to take only what was necessary for survival.^{xv}

Further, the doctrine of reception, an extension of *terra nullius*, proposes that Indigenous people did not possess laws prior to colonialism.^{xvi} Settlers thought that spreading the Western law was a source of civility that would improve the livelihood of Indigenous people.^{xvii} For example, the *Indian Act*^{xviii} imposed arbitrary changes to the governing structures of Indigenous communities. It imposed Western-democratic principles into communities that neither wanted nor needed change. When the Canadian government did not recognize the authority of hereditary chiefs or clan mothers, communities were forced to adopt Canadian electoral processes which ran counter to their traditional governance laws.

Many Indigenous legal traditions have been lost because of Canada's assimilative policies and injection of Western values.^{xix} The Canadian government's destruction of Indigenous communities, languages and land have all contributed to the loss of many traditional laws. In Haudenosaunee traditions women held highly powerful positions within their communities but European settlers at that time did not treat women as equals. The *Indian Act*^{xx} prevented Indigenous women from holding office on Band Councils and forced them to revoke their status if they married a non-Indigenous man.^{xxi} European views have contaminated the most basic social norms within Indigenous communities,

resulting in an erosion of Indigenous laws, traditions, principles, customs and applications.

Indigenous laws still exist and remain distinct, “despite the impact of colonialism.”^{xxii} Some may argue that Indigenous laws lack the intelligibility, accessibility and applicability required to be acceptable in Canadian society. However, Indigenous laws when put in the appropriate context can be applicable within Western society. Many Indigenous communities have responded by writing laws in stories, books, codes, statutes or constitutions. By making Indigenous law more accessible to Canada, Indigenous law scholars and knowledge keepers are developing new and exciting ways to make them more understandable and applicable to all Canadians.

Indigenous laws, traditions, principles, customs and applications can be found in the stories passed on through Indigenous communities.^{xxiii} Unfortunately, since Indigenous stories are often oral, the residential school system prevented many such stories from being passed down to the younger generation. Wisdom/knowledge keepers, have been essential to retaining these stories within their respective communities and sharing them with the younger generations.^{xxiv}

It is important that the recommendations recognize the people who live in their community and acknowledge, respect and incorporate the specific legal traditions of those Indigenous peoples.

Recommendation #2 The Clinic shall continue to honour Indigenous laws, traditions, principles, customs and applications as an influential guide for the development/revision of its policies, procedures and practices, moving forward with a good mind.

Connecting with Indigenous Communities:

What We Heard

We held four community consultation sessions featuring invited participants from within the City of Hamilton. These sessions were critical to identifying the issues that Indigenous communities consider important. It was critical for us to gather feedback from all age groups because the Calls to Action impact people differently. We were happy to be able to complete the circle.^{xxv}

Prior to holding these sessions we wanted a foundation to begin our discussion on Reconciliation. During an event hosted by the Professional Indigenous Advocacy Network called “Our Voices, Our Truth,” we distributed a simple survey asking individuals to identify whether they were Indigenous or non-Indigenous and asked “what does Reconciliation mean to you?”

Our first community engagement was with the youth at the SHAE Program (Strengthening Hamilton Indigenous Education) run by the Hamilton Regional Indian Centre. The SHAE Program offers continuing education for Indigenous youth in a culturally appropriate learning environment. The students at the SHAE Program demonstrated a strong understanding of the issues affecting urban

Indigenous youth in Hamilton. We first provided a brief presentation on the TRC and *UNDRIP* to supplement materials we had provided to the students in advance. We then had the students engage in the process of dotmocracy^{xxvi} and group discussion. Finally, we had the students travel to a local park and take pictures that represented what Reconciliation means to them. The pictures were developed and used by the students to make posters about their own journey towards Reconciliation.

We also held an idea exchange consisting of Indigenous community members, a few staff members from the HCLC and representatives from Indigenous organizations across Hamilton. To facilitate this exchange, we completed a brief presentation on the TRC and *UNDRIP*. After the presentation, we organized an ice-breaker so participants would be more comfortable with each other. We then collaborated with the entire group through a brainstorming exercise using a graphic facilitation.

For our third session, we attended a program at Niwasa (Indigenous Head Start Program) called Cooking Kitchen to collect information from community members, particularly the parents. We completed a presentation on the TRC and *UNDRIP* and used a tree facilitation model. The tree model is a symbol of growth and actual change. We had the participants write their responses on paper leaves.

Finally, for our final community consultation we attended the Life Long Care Program at the Hamilton Regional Indian Centre. We completed a presentation on the TRC and *UNDRIP* and followed with a facilitation technique that combined the tree and brainstorming methods.

Overall, the community engagement sessions allowed us to focus on the issues that were pertinent to the HCLC. We covered a number of topics, ranging from self-identification to language preservation. We thank all of the participants and hope this report adequately captures their ideas and creates change for their future.

Part II: Recommendations

Language

Language is the root of all communication. It is the key to identity, culture, understanding and community. It can inform one's worldviews and shape the relationships around them. Many Indigenous peoples were beaten, raped and tortured with the intent of taking their language, culture and identity. In fact, Prime Minister J. A. MacDonald is quoted as saying, that the intention of Residential Schools was to "kill the Indian in the child."^{xxvii}

Indigenous languages were the first languages spoken on Turtle Island, but historically have been neither acknowledged nor protected in Canada. Indigenous people were excluded from the discussion and creation of the *British North America Act*,^{xxviii} and therefore Indigenous languages are not constitutionally protected like English and French.

Calls to Action 13 to 16 and *UNDRIP* 13(1) and 15(1) advocate for the protection and promotion of Indigenous language and culture in Canada. This is important because Indigenous languages connect people to who they are and their use opens new streams of ideas by allowing people to express thoughts that do not come through the same way in English and French. For example, certain words in the Mohawk language cannot be translated into English thereby leaving out part of the traditional meaning of a story or concept if told in English or French.

English and French, as the official languages of Canada, have overshadowed the numerous Indigenous languages across Canada; many of these languages are endangered or worse. Research conducted by Verna J. Kirkness of the University of British Columbia found there was once more than 60 Indigenous languages spoken in Canada.^{xxxix} Of those 60, eight are extinct, 13 are on the verge of extinction and 23 are endangered.^{xxx} Further, there has been a steep decline in the fluency of Indigenous languages. A study completed in 1986 found that in 1951, Indigenous languages were the first languages of 87.4% of Indigenous peoples. By 1986, 51% of adults and 71% of children did not speak an Indigenous language.^{xxxi} This dramatic change demonstrates the influence residential schools have had on Indigenous languages in Canada.

In 1998, the Assembly of First Nations called upon the Canadian government to recognize a national state of emergency regarding Indigenous languages.^{xxxii} By 2011, research found only 14.5% of Indigenous peoples spoke an Indigenous language as a first language.^{xxxiii}

The loss of Indigenous languages has had a significant impact on Indigenous culture and identity. Without Indigenous languages, Indigenous peoples lose a significant connection to their community. The promotion of Indigenous languages can have multiple benefits for non-Indigenous Canadians as well. It allows them to understand that there is a shared history in Canada which can develop respect for and recognition of Indigenous cultures and traditions.^{xxxiv} Non-Indigenous organizations, like the HCLC, have an obligation to

promote Indigenous languages within the broader community. Although the HCLC can provide translation services in over 200 languages, it does not offer services or written public legal education in Indigenous languages. Without promoting Indigenous languages within the community, Indigenous languages and culture will continue to be endangered.

Urban Indigenous youth from the SHAE Program felt disconnected from their culture and language. They felt that society has treated Indigenous culture as peripheral or extra to the English and French languages, particularly in their school curricula. The youth expressed a desire to learn their cultural language but questioned whether there was a benefit. They also said that as long as urban Indigenous organizations continue the status quo of ignoring Indigenous languages many youth will continue to feel that their culture is less respected, desirable or wanted within their community.

Recommendation #3: The Clinic shall advocate for the provision of services in Indigenous languages.

Recommendation #4: The Clinic shall provide written public legal education materials in Indigenous languages.

The idea exchange that was comprised of community members and professional advocates from Indigenous organizations expressed the view that our phone system is an under-utilized tool to engage people around Indigenous languages. They proposed that while someone is on hold, instead of music, the voice messaging system could teach basic words in Indigenous languages.

Recommendation #5: The Clinic shall update the phone system to include an opportunity to learn basic words in Indigenous languages while someone is on hold waiting to speak to staff.

Reclaiming Names

Names, like language, are important to one's self-identity and place within their community. Indigenous people traditionally possess only a single name; one that does not contain a last name. Indigenous names can derive from a several sources depending upon a given culture. For example, they can be spiritual, hereditary, given or clan names.

Through colonization and the perpetuation of Western culture in the *Indian Act*, Indigenous peoples were required to possess a first and a last name. The provincial and federal administrative systems have continued to enforce those policies.

In 2016 the Ontario government, as part of the Reconciliation process, announced it was investing \$20 million over three years into "understanding the residential school system."^{xxxv} Out of this \$20 million, the government is working on waiving the fees required for Indigenous peoples to reclaim their names.^{xxxvi} When this happens, clients and staff can identify themselves with their traditional names.

Non-Indigenous organizations should create processes that allow and encourage Indigenous clients and staff to identify themselves in their traditional

Indigenous name. For clients it would show that organizations, like the HCLC, respect Indigenous cultures and could lead to an increase in self-identification when Indigenous clients access Clinic services. Staff have a right to recognize themselves with their traditional names that were taken away through the residential school system.

Recommendation #6: The Clinic shall support Indigenous clients and staff to identify themselves in their traditional names pursuant to Call to Action 17 and *UNDRIP* Article 13(1).

Public Legal Education

The residential school system imposed Western education values on Indigenous children and youth. This cruel, insensitive system was irreconcilable with Indigenous languages, culture and traditions. Not only has the education system been unjust to Indigenous peoples by referring to them as “savages”, but it disrespected them by excluding them in the history of Canada or anywhere else in the curriculum.

Call to Action 10 requests the federal government to draft new education legislation that will include culturally appropriate curricula for Indigenous youth. Culturally appropriate curricula should not only encompass a full and accurate explanation of Canada’s history but also material that relates to Indigenous identity and heritage. This concept should also be introduced into the Clinic’s framework and policies on advocacy.

The law in Canada has never worked to the benefit of Indigenous peoples.^{xxxvii} As stated earlier, it is a Western system that was imposed on Indigenous peoples because they and their culture were not respected or valued. Additionally, the common law and civil law systems were just different to the traditional laws that governed Indigenous communities. The HCLC’s advocacy initiatives and public legal education activities that involve Indigenous peoples should strive to break the conceptual and real barriers to justice.

Justice is seen differently in some Indigenous cultures. In Anishinaabe language, the word “truth” does not exist. The closest word is w’daeb-wae which in English means “he/she is right/correct/accurate/truthful.”^{xxxviii} Therefore, in Anishinaabe society, truth is defined only by perspective and interpretation.

Interestingly, this understanding of knowledge and truth is applicable to Western concepts of law and justice. The adversarial system is used to find the truth when there is uncertainty within the facts and/or law. Judges interpret the law, yet the law is constantly changing with the evolution of society. Therefore, like the Anishinaabe understanding of truth, Canadian law is also based on perceptions and interpretations that can change over time.

By making these logical connections, the HCLC is contributing to a culturally sensitive and culturally safe discourse on Indigenous legal issues through Public Legal Education. This will illustrate to clients that the Clinic is doing its best to understand their struggles as Indigenous persons in Canada. Public legal education should focus on reconciling Canadian laws with Indigenous laws, traditions, principles, customs and applications in its work as Canadian laws have historically not worked to the benefit of Indigenous peoples.

Recommendation #7 a): The Clinic’s public legal education initiatives for Indigenous peoples shall be culturally sensitive and culturally safe pursuant to Calls to Action 10 and *UNDRIP* articles 13(1) and 13(2),

Recommendation #7 b): The Clinic shall familiarize itself with the inequalities created by the Canadian legal system and honour Indigenous laws, traditions, principles, customs and applications in a respectful, responsible and good way.

The HCLC staff and Board Members will need to be educated on Indigenous issues to be able to advocate for this perspective. Education and training policies and practices are important to ensure that knowledge is dispersed throughout the Clinic and to the community.

Staff education/training policies and practices must balance learning and community interaction. While traditional educational materials such as manuals, modules or presentations are important, they are not enough. Educational events may include, but are not limited to, presentations, powwows, community gatherings or conferences. Such events should focus on enhancing current learning, building new knowledge and strengthening relationships with the Indigenous community. Interaction within the Indigenous community will help staff and Board to better understand and appreciate the resilience of Indigenous cultures. The Benefits of attending and engaging in Indigenous events include helping the community to get to know staff and Board Members and creating feelings of comfort for clients who access clinic services.^{xxxix} The Terms of Reference of the Indigenous Advisory Committee state that it is responsible for increasing the cultural competency of Clinic staff. The Committee shall continue its leadership role in developing and implementing such policies and practices.

Recommendation #8 The Clinic shall continue its staff and Board education/training practices and develop a policy that requires staff to participate in Indigenous-based educational opportunities at least semi-annually, pursuant to Calls to Action 27, 57 and 92.

The residential school system has had a severe impact on Indigenous peoples' health across Canada. According to the TRC Final Report, the school system's atrocious educational standards had "led to the chronic unemployment or underemployment, poverty, poor housing, substance abuse, family violence, and ill health that many former students of the schools have suffered as adults."^{xl}

Through its work in poverty law, HCLC will work with clients who may not have the resources to overcome systemic health issues. However, there are many organizations available to assist clients through a culturally appropriate healing process. All staff, particularly front line staff, should have the necessary training and knowledge to identify those in crisis and act appropriately. If staff are not appropriately trained to identify Indigenous peoples who are in crisis, problems can easily escalate for that individual.

Recommendation #9: The Clinic shall ensure staff are trained to identify and react appropriately when clients show signs and symptoms of domestic violence, substance abuse, suicide.

During the community consultation session with members of the Life Long Care Program at the Hamilton Regional Indian Centre many felt as though there

are barriers to effective communication. Many of the participants do not use email or access the internet. Diversification of the HCLC's modes of communication is a topic that arose in all of our community engagement sessions.

Recommendation #10 a): The Clinic shall endeavor to provide information and opportunities to engage in alternative formats, acknowledging that there are barriers to accessing information and technology;

Recommendation #10 b) The Clinic shall print out the TRC Calls to Action and *UNDRIP* with a cover page identifying their significance and have them available in the front lobby of the office.

Employment Practices through Human Rights Lens

On May 24th 2016, the HCLC Board recognized National Aboriginal Day as a paid holiday, pursuant to Call to Action 80. The HCLC believes that National Aboriginal Day is an opportunity to expand awareness on Indigenous issues and promote inclusion. This decision represents the values of HCLC and its commitment to “reconciliAction”. The HCLC encourages both Indigenous and non-Indigenous organizations to consider doing likewise.

The HCLC’s recognition of National Aboriginal Day was more than just a symbolic gesture. It recognizes that the organizational structures of today reflect Canada’s colonial history, not the culture of Indigenous Peoples. The residential school system’s lasting effects continue to create unfair employment practices for Indigenous workers. Calls to Action 7 and *UNDRIP* article 17(1) and (3) address the employment gap between Indigenous and non-Indigenous Canadians. Considering the history of residential schools and the traditions of Indigenous communities, the HCLC has decided to work toward becoming a more accessible workplace for Indigenous peoples.

It is important to remember throughout this section that the capitalist system has been imposed on Indigenous communities that had been largely communal. There was no conception of “mine” or “yours” in Indigenous languages because everything was shared within the community. Therefore, a

genuine process towards Reconciliation requires changes in the most fundamental processes of HCLC's structures.

Recruitment

The TRC Final Report discusses the employment gaps that exist for Indigenous peoples. Many residential schools forced students to work rather than providing the education that was a negotiated treaty promise. By the 1920's, Dr. Scott, the head of the Indian Affairs Department clarified the objective of the schools for Indigenous children, "I want to get rid of the Indian problem... Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question and no Indian Department".^{xli} This sub-standard level of education persists today adversely impacting educational opportunities for Indigenous peoples partly because of the de-centralized nature of the funding and governance structures that school systems both on and off-reserve use.

A Canadian Human Rights Tribunal decision in January 2016 found that the government was providing less educational funding and fewer services for Indigenous youth on-reserve.^{xlii} The Canadian government failed to effectively coordinate with provincial/territorial governments. This created a patchwork educational system that left "service gaps, delays and denials for First Nations children and families."^{xliii}

Indigenous peoples, particularly those on-reserve, are forced to overcome obstacles in attaining employment that no other Canadian individuals are

required to do. Therefore, the HCLC should take more extensive measures within their Workplace and Equity Policy to make employment more accessible, not simply appear more accessible.

Recommendation #11: The Clinic shall advertise job postings for positions at the HCLC through Indigenous networks and spaces.

Job postings should encourage and welcome Indigenous applicants. By encouraging Indigenous applicants, individuals may become more comfortable with the idea of self-identifying. One participant during a community consultation session stated she would be more likely to apply to job postings when there is a clause specifically encouraging Indigenous peoples to apply. The HCLC should promote this type of phraseology among other non-Indigenous organizations.

Recommendation #12: The clinic shall encourage Indigenous applicants to apply in all job postings.

After a job posting is complete, the next step is the interview process. The interview process can be a very serious barrier for Indigenous peoples trying to attain employment. Western culture has espoused that “good” interview skills include: eye contact, confidence, being expressive, an enthusiastic voice, etc. However, these interview standards are not consistent with the norms of many Indigenous communities across Canada. An article commissioned by the National Indigenous Health Organization looks at how medical professionals can provide more culturally competent care for Indigenous women when delivering

babies.^{xliv} The article states that culturally competent healthcare begins with educating staff on Indigenous culture and creating an environment that respects it.^{xlv}

Certain Indigenous cultural norms do not adhere to Western conceptions of “professional behaviour”. In many Indigenous communities, avoiding eye contact and speaking in a soft voice are signs of respect, particularly to those who hold important positions within the community.^{xlvi} One cannot expect Indigenous people who have been raised on-reserve to fully understand or adhere to Western cultural norms.

The traditional interview process is another colonial custom that has been imposed on Indigenous peoples. Interviews are structured in a way that benefits those with Western upbringing. One current interview process uses a graded question scheme. That process may be considered practical for one set of interviewees but may ignore the lived experience of Indigenous applicants. Grading responses to questions in a strict, standardized way perpetuates the residential school system by using Western colonial perspectives on intelligence and knowledge. Community engagement participants noted that standardized testing is a Western practice imposed on Indigenous peoples. This testing system has been used by the Canadian government for over a century as a tool by the to make Indigenous children feel less intelligent than non-Indigenous children.

To prevent the use of standardized testing methods, interview processes should be malleable in a way that accommodates Indigenous peoples yet allows interviewers to assess skills and knowledge. The best way to achieve this balance is to co-operate with the applicant and ask which method they prefer. Ideally, this should be done in advance of the actual interview so the applicant does not feel stigmatized.

Community consultation participants voiced concerns about the interview process and its ability to re-traumatize Indigenous persons. These concerns were grounded in the racism and discrimination they have faced through the job application process. It does not matter whether this racism was perceived or real. They found that since the interviewer did not understand their worldviews of respect for traditional knowledge and spirituality, it was difficult to connect with them. It would be helpful to ensure that interview practices are more culturally relevant to Indigenous interviewees. The residential school system, along with a myriad of Canadian laws that stole land, culture, language and traditions such as the ban of powwows and feasts forced Indigenous peoples to hide and even deny their Indigeneity.

Recommendation #13: The Clinic shall create a flexible interview process that is focused on assessing an Indigenous person's qualifications in a culturally competent manner.

Work Policies

The Canadian and Ontario *Human Rights Code*^{xlvii} exists to eliminate discrimination based on the enumerated grounds, including creed. Creed is not specifically defined within the *Code*, however the Tribunal and Courts have recognized it to be synonymous with religion, spirituality or a way of life. As an enumerated ground, organizations cannot discriminate against someone based on creed.

Discrimination based on creed, particularly for some Indigenous communities is problematic. In some cases, Indigenous peoples will not accept employment from a non-Indigenous organization because its policies and procedures fail to adequately accommodate their way of life. In some communities, non-Indigenous organizations will never be able to be fully accommodating because Indigenous traditions are secretive and cannot be shared with someone from outside of the community. The Anishinaabe and Haudenosaunee do practice some traditions that cannot be shared, but largely their traditions can be shared with those outside their community.

In Anishinaabe and Haudenosaunee traditions there are grieving processes in place that dictate community members' roles and responsibilities. In Anishinaabe end of life traditions there are ceremonies and prayers that are used to guide a spirit back to the spirit world.^{xlviii} The ceremonies differ depending upon the specific community an individual is from. Grieving processes, along with healing ceremonies, can take weeks to complete.^{xlix} In Haudenosaunee culture,

when someone dies their spirit must take a journey to the Sky World.ⁱ However, there are forces that try to prevent the deceased's spirit from returning to the Sky World.ⁱⁱ Therefore, to neglect grieving ceremonies can have very serious consequence for the deceased person in Haudenosaunee traditions. Such consequences could mean the deceased must repeat painful tasks that represent misdeeds they have done in their life.ⁱⁱⁱ

The HCLC's current policies on compassionate leave fail to adequately address the needs of Indigenous staff. Within the Collective Agreement and the Personnel Policy, compassionate leave cannot be more than five business days, however there can be an extension through the general leave policy; therefore general leave is at the discretion of the employer and pay is also discretionary. The current scheme used by the HCLC has the potential to be discriminatory against Indigenous peoples.

Indigenous traditions may require Indigenous peoples to leave work to attend events within their community, engage in healing practices or deal with personal emergencies distinct from end of life ceremonies. *UNDRIP* article 25 states that Indigenous peoples' right to maintain and strengthen their spiritual relationships is the result of their responsibilities to future generations as well. Fulfilling these obligations is not only important to Indigenous peoples but to their work at the Clinic. The HCLC, by encouraging diversity, empowers Indigenous staff to bring their culture and way of life with them to work everyday.

In Haudenosaunee culture the longhouse is where clans would reside. Now longhouses are used within ceremonial decision-making processes. Members of a clan have the responsibility to attend longhouse to make decisions that may affect their community at large, honour and nourish their culture and communities. Indigenous staff should feel comfortable requesting paid time-off to be able to participate when called to the longhouse. This participation will enhance Indigenous staff's ability to provide culturally competent services to Indigenous clients. When Indigenous staff who are part of the Haudenosaunee clan are prevented from attending the longhouse, they may feel they are being forced to choose between their work and their community.

In Anishinaabe way of life, a good mind and strong spirit results in providing the best possible service to Indigenous clients. Indigenous staff should have the opportunity to take paid cultural leave in order to nurture the good mind and strong spirit.

Recommendation #14: The Clinic shall review the Personnel Policy and Collective Agreement to ensure that they reflect a broad understanding of Indigenous family structure, cultural practices and the importance of connections to community, land, culture and self.

In many Indigenous communities, restorative justice was used to settle disputes among members of the community. Restorative justice principles should be an option available to ensure that HCLC creates a fair process for both parties

involved in internal complaints processes. Restorative justice practices must be voluntary. They are relationship focused, not outcome driven.

The TRC Final Report provides a list of Indigenous traditions from various communities across Canada that can apply to Reconciliation processes. These traditions are valuable resources of restorative justice principles that can be implemented in the Complaints policy. In particular, the story told by Jean Teillet, a Métis lawyer, provides excellent insight into how it may be applicable.^{liii} Within her story a young girl was bitten by a dog. The authorities killed the dog and placed it in a community freezer that contaminated the caribou inside.^{liv} Métis legal traditions require balances to be restored when harm is done.^{lv} In this story, the Elders asked many questions but decided that no punitive measures were required. The Elders addressed the situation by having those who killed the dog pay compensation to the family and the contaminated caribou had to be replaced by those who placed the dog in the freezer.^{lvi}

Restorative justice is primarily discussed in the area of criminal law, but not often discussed within governance. Restorative justice has been defined in many ways but for the purposes of the HCLC, it is a process of healing and restoring that responds to violations of workplace policies. Restorative justice was practiced by many Indigenous communities to deal with members who were disrupting the social order. For example, in Anishinaabe tradition, the Windigo stories relate to the protection of the group from harm through a restorative justice process.^{lvii}

While the story of the Windigo differs depending on the community, in the *Mayamaking Case*, a member of the community changes into a mad monster that eats the flesh and drinks the blood of community members.^{lviii} Traditionally there is a six step process in dealing with Windigo.

1. Wait, observe and collect data
2. Consult with the community
3. Help
4. If cannot help, then remove from the community
5. Restore those affected
6. Invite everyone to be restored^{lix}

This story exemplifies a restorative justice approach to community violence. Prior to removing the Windigo from the community, the community counsel will consult with affected parties to develop a plan of action to help the Windigo. Community members will reach out to that individual to assist him or her in overcoming their condition. Once the Windigo has been removed from the community, either through helping the afflicted or banishment, community leaders are responsible for restoring affected community members.

Formal complaints filed pursuant to the Anti-Violence in the Workplace Procedure, Workplace Equity Policy and Anti-Harassment/Anti-Sexual Harassment /Anti-Discrimination Policy are handled by the Equality Committee. The Equality Committee is comprised of three Board members and the Executive Director of the HCLC who work together to keep the board informed, examine the

complaint, investigate the circumstances (if appropriate), recommend resolutions, and maintain communication with the HCLC Board. The TRC Final Report has highlighted the vulnerability of Indigenous peoples with regard to violence, harassment and discrimination.^{lx} The *UNDRIP* in article 21(1) calls for the elimination of occupational discrimination. It is important that those who sit on the Equality Committee are knowledgeable about Indigenous issues.

Recommendation #15: The Clinic shall ensure training on Indigenous issues for Board members.

Health

Anishinaabe, Haudenosaunee and Métis have their own traditional healing practices. Traditional healers within their communities use medicines and ceremony to treat ailments physically, psychologically, emotionally and spiritually.^{lxi} Modern medicine has been built on Western colonial understandings of science. Modern medicine cannot address the emotional or spiritual needs of Indigenous peoples. There is a large misunderstanding from non-Indigenous organizations that sicknesses can be articulated under specific and consistent sets of criteria.^{lxii} Traditional health practices of Indigenous communities do not conform to the boundaries of scientific medicine.

Call to Action 18, 20 and 22 and *UNDRIP* article 24(1) address the traditional health practices of Indigenous peoples. These documents call on the governments and health-care systems to recognize traditional healing practices, as well as ensure there is a right of access to Indigenous health services.

The HCLC's Collective Agreement and Personnel Policy state that after five sick days the Executive Director can request from the employee a certificate of illness filled out by a medical doctor from the employee. Medical doctors that do not have expertise in the emotional or spiritual health of Indigenous peoples will be unable to fill out a certificate of illness for Indigenous people suffering from those issues. Indigenous workers suffering from a spiritual or emotional illness

may seek treatment from a traditional healer. Therefore, the Executive Director should be able to accept sick notes from traditional healers.

Recommendation #16: The Clinic shall give the Executive Director direction to accept sick notes from Indigenous/alternative healers.

Conclusion

The damage caused by the residential school system and intergenerational trauma will not simply evaporate over time. Significant change is required to overcome the pain the Canadian state has inflicted on Indigenous communities. The most important of these changes exists in Recommendations #1 and #2 of this report. It will require the Hamilton Community Legal Clinic to be accountable for these changes and pursue justice through traditional Indigenous principles.

It is easy to become complacent with the status quo, but Indigenous issues will not change unless action is taken on a systemic level. This report is just the first step for the Hamilton Community Legal Clinic's journey to adopting the Calls to Action and the *United Nations Declaration on the Rights of Indigenous Peoples*. An undertaking as important as this deserves more time, thought and reflection. However, these 16 recommendations are a starting point for an ongoing Reconciliation process.

Appendix A:

Recommendations for Reconciliation

1. The Hamilton Community Legal Clinic Board shall pass a motion to adopt the TRC's Calls to Action and the United Nations Declaration of Rights of Indigenous People as its reconciliation framework.
2. The Clinic shall continue to honour Indigenous laws, traditions, principles, customs and applications as an influential guide for the development/revision of its policies, procedures and practices, moving forward with a good mind.
3. The Clinic shall advocate for the provision of services in Indigenous languages.
4. The Clinic shall provide written public legal education materials in Indigenous languages.
5. The Clinic shall update the phone system to include an opportunity to learn basic words in Indigenous languages while someone is on hold waiting to speak to staff.
6. The Clinic shall support Indigenous clients and staff to identify themselves in their traditional names pursuant to Call to Action 17 and UNDRIP Article 13(1).

7. a) The Clinic's public legal education initiatives for Indigenous peoples shall be culturally sensitive and culturally safe pursuant to Calls to Action 10 and UNDRIP articles 13(1) and 13(2),

b) The Clinic shall familiarize itself with the inequalities created by the Canadian legal system and honour Indigenous laws, traditions, principles, customs and applications in a respectful, responsible and good way.
8. The Clinic shall continue its staff and Board education/training practices and develop a policy that requires staff to participate in Indigenous-based educational opportunities at least semi-annually, pursuant to Calls to Action 27, 57 and 92.
9. The Clinic shall ensure staff are trained to identify and react appropriately when clients show signs and symptoms of domestic violence, substance abuse, suicide.
10. a) The Clinic shall endeavor to provide information and opportunities to engage in alternative formats, acknowledging that there are barriers to accessing information and technology;

b) The Clinic shall print out the TRC Calls to Action and UNDRIP with a cover page identifying their significance and have them available in the front lobby of the office.

11. The Clinic shall advertise job postings for positions at the HCLC through Indigenous networks and spaces.
12. The Clinic shall encourage Indigenous applicants to apply in all job postings.
13. The Clinic shall create a flexible interview process that is focused on assessing an Indigenous person's qualifications in a culturally competent manner.
14. The Clinic shall review the Personnel Policy and Collective Agreement to ensure that they reflect a broad understanding of Indigenous family structure, cultural practices and the importance of connections to community, land, culture and self.
15. The Clinic shall ensure training on Indigenous issues for Board members.
16. The Clinic shall give the Executive Director direction to accept sick notes from Indigenous/alternative healers.

Endnotes

- ⁱ Truth and Reconciliation Commission, “Canada’s Residential Schools: The Legacy.” (2015, Montreal: McGill-Queen’s University Press) at 242. [TRC, “Legacy”]
- ⁱⁱ Truth and Reconciliation Commission, “Canada’s Residential Schools: Reconciliation.” (2015, Montreal: McGill-Queen’s University Press) at 11. [TRC, “Reconciliation”]
- ⁱⁱⁱ *Ibid.*
- ^{iv} *Ibid.*, 17.
- ^v In Métis tradition, gift giving is a significant part of nation to nation relationships. The principle of reciprocity meant there was an exchange for the mutual benefit of each party. Since, the survivors and intergenerational survivors provided their stories, it is Canada’s obligation to provide something in exchange. Lawrence J Barkwell et al, “The Origins of Métis Customary Law: With Discussion of Métis Legal Traditions” <http://www.Métismuseum.ca/media/db/07232> at 15.
- ^{vi} TRC, “Reconciliation”, *supra* note 2 at 7.
- ^{vii} *United Nations Declaration on the Rights of Indigenous People*, GA Res 61/295, sixty-first session, Supp No 53, UN Doc A/61/53 (2008) 4. [UNDRIP]
- ^{viii} *UNDRIP*, *supra* note 7 at Article 43.
- ^{ix} *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 29.
- ^x Law Commission of Canada, *Justice Within: Indigenous Legal Traditions* (Discussion Paper 2006 at 3. [LCC, “Justice Within”]
- ^{xi} John Barrows, *Canada’s Indigenous Constitution* (Toronto: University of Toronto press, 2010) at 17. [Barrows, “Constitution”]
- ^{xii} *Ibid* at 18.
- ^{xiii} *Ibid* at 44.
- ^{xiv} Darren Courchene, “Anishinaabe Dibendaagoziwin (Ownership) and Ganawenindiwin (Protection)” in Camille Collision et al, eds, *Indigenous Notions of Ownership and Libraries, Archives and Museums* (Austin: De Gruyter Saur, 2016) 40 at 53.
- ^{xv} *Ibid.*
- ^{xvi} J E Cote, “The Reception of English Law”(1977) 15: 1 *Alta L Rev* at 35.
- ^{xvii} Tom Flanagan, *First Nations? Second Thoughts, 2nd ed* (Montreal: McGill-Queen’s University Press, 2012) at 44.
- ^{xviii} RCS, 1985, c 1-5.
- ^{xix} LCC, *Justice Within*, *supra* note 10 at 6
- ^{xx} *Ibid* at 11.
- ^{xxi} *Ibid* at 11-12
- ^{xxii} *Ibid* at 8
- ^{xxiii} Hannah Askew and Lindsay Borrows, *Accessing Justice and Reconciliation: Anishinabek Legal Summary*, online: http://indigenousbar.ca/indigenoulaw/wp-content/uploads/2012/12/anishinabek_summary.pdf at 4. [Askew, *Accessing Justice*]
- ^{xxiv} LCC, *Justice Within*, *supra* note 10 at 11.

^{xxv}In Anishinaabe culture, the circle is depicted in the medicine wheel. The medicine wheel is separated into four directions. Each direction represents different stages of a person's life throughout their journey. At each stage, the person must overcome obstacles to make it to the next stage. These obstacles form the basis of an individual's ideas, worldviews and opinions.

^{xxvi} Dotmocracy is a facilitation technique whereby a number of questions and responses will be posted on chart paper around a room. The participants are then handed a number of dot stickers. The participants must then walk around the room and place dots under the specific responses that resonate with them. There were no restrictions as to how many dots a student could place underneath a specific response.

^{xxvii} Truth and Reconciliation, 2012, p. 12

^{xxviii} 1867, 30-31 Vict, c-3 (UK)

^{xxix} Verna J Kirkness, "The Critical State of Indigenous Languages in Canada" (1992) 22:1 *Canadian Journal of Native Education* at 95.

^{xxx} *Ibid.*

^{xxxi} *Ibid.*

^{xxxii} TRC, "The Legacy", *supra* note 1 at 112.

^{xxxiii} *Ibid*

^{xxxiv} *Ibid* at 127.

^{xxxv} Government of Ontario, "The Journey Together: Ontario's Commitment to Reconciliation with Indigenous Peoples," online: <https://www.ontario.ca/page/journey-together-ontarios-commitment-reconciliation-indigenous-peoples>

^{xxxvi} *Ibid*

^{xxxvii} TRC, "The Legacy", *supra* note 1 at 8-9.

^{xxxviii} Wayne Roan and Earle Waugh, "Nature's Law: Rights of Interpretation," (2004) online:

http://wayback.archiveit.org/2217/20101208172550/http://www.albertasource.ca/natureslaws/culture/constitutional_rights_interpretation.html

^{xxxix} It is extremely important to be invited into an Indigenous event. It is not acceptable to the community to show up without an extended invitation.

^{xl} TRC, "The Legacy", *supra* note 1 at 5.

^{xli} in Truth and Reconciliation Report, 2012, p. 12

^{xlii} *First Nations Child and Family Caring Society of Canada v Canada (Minister of Indian Affairs and Northern Development)*, 2016 CHRT 2.

^{xliii} *Ibid.*

^{xliv} June Birch et al. "Culturally Competent Care for Indigenous Women: A Case for Culturally Competent Care for Indigenous Women Giving Birth in Hospital Settings," (2009) *Journal of Indigenous Health* at 24.

^{xlvi} *Ibid* at 25.

^{xlvi} *Ibid* at 27.

^{xlvi} RSO 1990, c H 19.

^{xlviii} Ian Anderson, "Indigenous Perspectives on Death and Dying" (presentation)

Continuing Education program in End-of-Life Care, online:

<http://www.cpd.utoronto.ca/endoflife/Slides/PPT%20Indigenous%20Perspectives.pdf>

^{xlix} *Ibid*

^l *Ibid*

^{li} *Ibid*

^{lii} *Ibid*

^{liii} TRC, “Reconciliation”, *supra* note 2 at 63

^{liv} *Ibid* at 63-64.

^{lv} *Ibid.*

^{lvi} *Ibid.*

^{lvii} Borrows, *Constitution*, *supra* note 11 at 81-82

^{lviii} *Ibid*

^{lix} *Ibid*

^{lx} TRC, “The Legacy”, *supra* note 1 at 228.

^{lxi} Michael Kanentakeron Mitchell, “The Haudenosaunee Code of Behaviour for Traditional Medicine Healers,” (2006: National Indigenous Health Organization) online: <http://www.naho.ca/documents/naho/publications/codeofBehaviour.pdf> at 5

^{lxii} *Ibid*