

# KITIMAHKINAWOW EKWA KITIMAHKISIN: PITY AND COMPASSION IN CREE LAW

NIGEL BAKER-GRENIER\*

## ABSTRACT

*In Nêhiyawêwin (Plains Cree language), kitimahkinawaw translates as “to take pity on someone”. Kitimahkinawaw describes the quality of a person’s actions when they show kindness, pity, and compassion towards others. Cree law includes a responsibility to treat others with kitimahkinawaw, which encompasses a duty to care for the elderly, poor, homeless, and sick. Further, it requires us to treat people who are harmful with fairness and compassion. The purpose of kitimahkinawaw is to mitigate suffering, especially the struggles experienced by marginalized people. Kitimahkisin means “a pitiful person”. Kitimahkisin includes a recognition that we are dependent upon pakwataskamik (the land), Kisemanito (Creator), and each other for our sustenance. Each person has a gift and we have a responsibility to use these gifts to benefit society, for we are all kitimahkisin. The author argues that kitimahkinawaw and kitimahkisin are legal principles within the Cree legal order which guide relationships between the many animate beings within Cree epistemology. The author draws upon âtayôhkêwin (stories), Nêhiyawêwin, and Indigenous legal theory to illustrate the complexities and nuances within the principles of kitimahkinawow and kitimahkisin. Kitimahkinawow and kitimahkisin are living laws which obtain meaning through the practice of caring for the poor and marginalized.*

## INTRODUCTION

My name is Mînasin which means ‘good’ or ‘nice’ in Ininiwmowin, the n-dialect of Cree. I received this name from Nohkom (my grandmother), whose name is Maskawisewiskwew, which means “strong woman”. I also carry the name Okimâw-

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kiseyiniw-kihiw (old man eagle) which I received in the matotisân (Sweat Lodge).<sup>1</sup> My family's heritage is a mixture of Cree, Gitksan, and European.

The purpose of this paper is to reflect on the concepts of kitimahkinawow and kitimahkisin in Cree law. In Nêhiyawêwin (Plains Cree language), kitimahkinawow means "to take pity on someone."<sup>2</sup> Kitimahkinawow describes the quality of a person's actions when they show kindness, pity, and compassion towards others. Cree law includes a responsibility to treat others with kitimahkinawow, which encompasses a duty to care for the elderly, poor, homeless, and sick. Further, it requires one to treat people who are harmful with fairness and compassion. The purpose of kitimahkinawow is to mitigate suffering, especially the struggles experienced by marginalized people.

Kitimahkisin means "to be pitiful".<sup>3</sup> Kitimahkisin recognizes that we are dependent upon pakwataskamik (the land), Kisemanito (our Creator), and each other for sustenance. Each person has a gift, and we have a responsibility to use these gifts to benefit society, for we are all kitimahkisin. Kitimahkinawow and kitimahkisin are Cree legal principles which guide relationships between the animate beings in Cree epistemology.

The methodology for this project will braid together âtayôhkêwin (stories), Nêhiyawêwin, and Indigenous legal theory. First, I will recount the âtayôhkêwin of Âpakosîs, Omikiy-mihkwâkan, and Wekimagansah passed down to me from elders in my family. I will analyze the âtayôhkêwin as a primary source of law to reflect on the implicit legal principles of kitimahkinawow and kitimahkisin. I have chosen to use âtayôhkêwin from communities to which I am connected through kinship. I have also consulted with mentors in my family about their interpretations to respect the relational nature of Cree law. Second, I will reflect upon the implicit legal meanings carried in Nêhiyawêwin words as described to me by elders in my community. Third, I will draw upon Indigenous legal theory to generate a discussion about how kitimahkinawow and kitimahkisin relate to other aspects of Cree law. Overall, the threads of âtayôhkêwin, Nêhiyawêwin, and Indigenous legal theory will come together to illustrate the complexities and nuances of the principles of kitimahkinawow and kitimahkisin. A recurring theme is that kitimahkinawow and kitimahkisin are living laws which obtain meaning through the practice of caring for the poor and marginalized. This paper is the first publication devoted to the analysis of the legal principles of kitimahkinawow and kitimahkisin. It aims to contribute to the revitalization of Cree law, bridge connections between Indigenous Nations, and foster greater cross-cultural understanding with the non-Indigenous community.

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<sup>1</sup> The matotisân is a ceremony used by Cree people to pray. The ceremony takes place in a lodge, made from saplings bent to form a dome and covered with blankets. In the center of the lodge is a pit, where hot rocks are placed and water is splashed on them to create steam.

<sup>2</sup> Spelling and translation by Lawrence Trottier.

<sup>3</sup> Spelling and translation by Lawrence Trottier.

## I. METHODOLOGY

There are three important questions to ask oneself when outlining a methodology for researching Indigenous law. First, what is the relationship between the researcher and the Indigenous knowledge system that they are studying? I will begin by locating my positionality as a Cree researcher and identifying the relationships that have played a key role in the intergenerational transfer of knowledge within my family. Second, what sources will the project draw upon when developing a conception of Indigenous laws? I will describe the methodology used in the project, which braids together âtayôhkêwin, Nêhiyawêwin, and Indigenous legal theory. Third, what analytical framework will the project use to identify and examine Indigenous laws? I will review the methodologies employed by prominent scholars in Indigenous legal theory and compare them to the approach used in this project.

### A. Relational Knowledge

This project of reflecting upon Cree law is positioned within a lifelong process of kiskeyihtamowin, which is the pursuit of experience, learning, and knowledge. Margaret Kovach reflects upon kiskeyihtamowin as the basis for a Cree research methodology:

[M]ethodology based on Nehiyaw Kiskeyihtamowin is a relational methodology. As such, though I speak of knowledges (e.g. values, language) it should be assumed that I understand these knowledges to be nested, created, and re-created within the context of relationships with other living beings... these elements [of kiskeyihtamowin] are fluid and interact with each other in a weblike formation. Each value represents a strand in a web that is integrated and interdependent upon the other strands.<sup>4</sup>

Kiskeyihtamowin is relational;<sup>5</sup> my education with respect to Cree practices, narratives, language, law, and spirituality is deeply interconnected with the relationships I hold. In this project, I draw upon âtayôhkêwin, Nêhiyawêwin words, and laws that were passed down to me through the intergenerational transfer of knowledge in my community. Two elders have played an integral role in my pursuit of kiskeyihtamowin.

My earliest connection to Cree culture comes from my Nohkom (grandmother). When I was five years old, I spent weekends with my grandparents. Nohkom would put me to bed by patting me on the back and telling me stories. The stories captured my imagination, and I would fall asleep with the imagery vividly unfolding in my head. One

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<sup>4</sup> Margaret Elizabeth Kovach, *Searching for Arrowheads: An Inquiry into Approaches to Indigenous Research using a Tribal Methodology with a Nehiyaw Kiskeyihtamowin Worldview* (PHD Thesis, University of Victoria Interdisciplinary Studies, 2006) [unpublished] at 20-21.

<sup>5</sup> *Ibid.*

of the stories Nohkom taught me was the history of our family. We are Mushkegowuk Ininiwuk (Swampy Cree people) and members of the Weenusk First Nation. Our traditional territory lies along Weenusk Sipi (Groundhog River) in northern Ontario, which drains into Hudson Bay. During the fur trade, a large flood destroyed our community. My family decided to leave Weenusk and rebuild near York Factory in search of economic opportunity. After the fur trade, my family migrated to Gillam, Manitoba, where my grandmother was raised by her grandparents. Thanks to her grandparents, she avoided the residential school system and grew up on the land speaking Cree as a first language.

While my childhood connection to Cree knowledge was shaped by Nohkom, my primary teacher as an adult is my osisimâw (father-in-law) Lawrence Trottier. Lawrence is Paskwâwiyiniw (Plains Cree) from Onion Lake, Saskatchewan. He is a renowned grass dancer who has dedicated his life to pow-wows. In his youth, Lawrence was chosen by the elders in his community to be the caretaker of their oral history and sweat lodge ceremony. Lawrence is fluent in Nêhiyawêwin (Plains Cree), his first language, and remains active in the Cree community. He survived the residential school system and was employed within Canada's criminal law system as a cultural worker in prisons. I learned from Lawrence during family visits and by travelling with him throughout Alberta and Saskatchewan along the pow-wow trail. Lawrence is a spontaneous teacher who shares memories of his own teachings and stories that he heard as a youth. My most vivid memory of Lawrence is walking through the tall grass at Onion Lake as he shared the place names, history, and personal memories imbued in the landscape.

My relationships with Nohkom and Lawrence are the foundation of my process of kiskeyihtamowin about Cree law. Accordingly, the stories, Cree words, and teachings that they shared with me form an integral part of the research methodology for this paper.

## **B. Sources of Cree Law**

There are a variety of potential sources to draw upon when researching Indigenous law, including historical documents, ethnographic research, oral narratives, ceremonies, songs, dances, interviews, and secondary literary sources. Darcy Lindberg uses the metaphor of braiding hair to illustrate the process through which a scholar's methodology interweaves different sources of Indigenous law culminating in a single robust analysis.<sup>6</sup> Lindberg states that, "There is a teaching in my family that your hair is your history, each strand is one of your stories that have helped you to get along in the world. To gather your hair together is to collect your stories and bind them together."<sup>7</sup> This project will

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<sup>6</sup> Darcy Lindberg, *kihcitwâw kikway meskocipayiwîn (sacred changes): Transforming Gendered Protocols in Cree Ceremonies through Cree Law* (LLM Thesis, University of Victoria Faculty of Law, 2017) [unpublished] at 16-19 [D Lindberg, *Gendered Protocols*].

<sup>7</sup> *Ibid* at 17-18.

braid together Cree oral narratives, Cree language, and Indigenous legal theory using Darcy Lindberg's metaphor of braiding hair.

The first strand of the metaphorical braid is the oral narrative. Terms used to describe narratives in Nêhiyawêwin include âtayôhkêwin and âcimowin.<sup>8</sup> Âtayôhkêwin refers to sacred stories or legends in which "no one here ever saw the people in the story; nobody knows how far back [the story took place]."<sup>9</sup> These stories are seasonal and should only be told in wintertime. Âtayôhkêwin are characterized by a time when supernatural elements were more visible than they are today and when animals spoke and interacted freely with each other in a manner that is reserved for humans today. Âcimowin refers to stories that occurred in recent times, including news events, personal recollections, and historical accounts.

Richard Preston interprets the two types of stories as existing on a continuum for the natural and supernatural world overlap in Cree epistemology.<sup>10</sup> Categorizing Cree narratives into a dichotomy leads to the misconception that âtayôhkêwin are make-believe while âcimowin are literal and true. This misconception trivializes âtayôhkêwin, which are the core of Cree epistemology and play a foundational role in the identity of Cree people. If one does not approach the knowledge contained within âtayôhkêwin with manâtisiwin (respect), they will not be receptive to the internal transformation of heart and mind that the stories bring. As a result, they will not learn.

Within the Cree community, âtayôhkêwin and âcimowin are primary sources of law. Some sources explicitly record the resolution of historical disputes and act as precedents to guide contemporary legal reasoning.<sup>11</sup> Other sources contain implicit legal norms which shape the behavior and statements of the beings present within the story.<sup>12</sup> Stories are vehicles that offer snapshots into the totality of Indigenous epistemologies. This project will draw upon âtayôhkêwin as primary sources, which Cree elders have shared with me. I will tell such stories as I recall learning them.

There are risks associated with relying on Indigenous stories as a source of legal principles. Hadley Friedland identifies some of these risks, including indeterminacy and the lack of interpretive limits.<sup>13</sup> Âtayôhkêwin convey law implicitly, meaning that they could be interpreted in endless ways. Consequently, one might reach an interpretation

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<sup>8</sup> Richard J Preston, *Cree Narrative: Expressing the Personal Meanings of Events*, 2nd ed (Montreal: McGill University Press, 2002) at 254-57.

<sup>9</sup> *Ibid* at 254.

<sup>10</sup> *Ibid* at 255.

<sup>11</sup> See e.g. the University of Victoria's Indigenous Research Unit has published a report which analyzes collections of Cree stories pertaining to historical disputes and discusses the characteristics of legitimate decision making and dispute resolution processes: Hadley Friedland, *The AJR Project Cree Legal Traditions Report* (May 2014), online: <[http://indigenousbar.ca/indigenouslaw/wp-content/uploads/2012/12/cree\\_summary.pdf](http://indigenousbar.ca/indigenouslaw/wp-content/uploads/2012/12/cree_summary.pdf)> [AJR].

<sup>12</sup> The three Cree narratives analyzed in this paper fall under this description.

<sup>13</sup> Hadley Friedland, "Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws" (2012) 11:1 *Indigenous Law Journal* at 21-22 [H Friedland, "Reflective Frameworks"].

that is both irrelevant and inconsistent with the views held by the Indigenous community. To avoid such risks, Darcy Lindberg reminds us to consider the “hidden politics in legal theorizing and the power of something being determined as law.”<sup>14</sup> These politics occur within Cree communities as members promote their own personal perceptions and interpretations of law. However, dialogue on a diversity of legal concepts is a healthy sign of a vigorous legal system. Friedland recommends that scholars be “reflexive about their position in power dynamics and structures, to recognize the cultural foundations of knowledge and to acknowledge their own biases when engaging with Indigenous legal traditions.”<sup>15</sup> To avoid distortions and misunderstandings, the scholar must engage in a relationship with the Indigenous community whose laws they are discussing. Ideally, this would occur through a partnership with an Indigenous community or organization, or through interviews with knowledgeable community members who can discuss the laws, norms, and legal reasoning present within narratives. Unfortunately, due to the restrictive timeframe of this project, a partnership or formal interview process with an Indigenous community organization is not possible. As a result, I will rely upon my positionality as a Cree person, the teachings I have received from Cree elders, and informal conversations with family members to provide both context and accountability to my interpretation of âtayôhkêwin.

The second strand of the metaphorical braid is Nêhiyawêwin, which means Plains Cree language.<sup>16</sup> Nohkom taught me that each culture has its own language, which is a gift from Kisemanito (our Creator). Nêhiyawêwin is a sacred and unique gift to the Cree people which connects us to our Creator and our ancestors. It is a vehicle that enables us to access and express the collective body of teachings, concepts, and meanings that our society has accumulated through its existence. Leanne Simpson states:

Indigenous languages carry rich meanings, theory and philosophies within their structures. Our languages house our teachings and bring the practice of those teachings to life in our daily existence. The process of speaking Nishnaabemowin, then, inherently communicates certain values and philosophies that are important to Nishnaabeg being.<sup>17</sup>

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<sup>14</sup> D Lindberg, *Gendered Protocols*, *supra* note 6 at 48.

<sup>15</sup> H Friedland, “Reflective Frameworks”, *supra* note 13 at 22.

<sup>16</sup> For consistency and simplicity, I have expressed Cree concepts using words in Nêhiyawêwin, the Plains Cree dialect, throughout this paper. I have chosen not to do a comparative analysis of related words in Ininiwimowin, the Swampy Cree dialect. I referred to the Cree Dictionary for the spelling of most Nêhiyawêwin words, *Nehiyaw Masinahikan Online Cree Dictionary*, online:

<<http://www.creedictionary.com>>. Some of the Nêhiyawêwin words in this paper do not appear in the Cree Dictionary because I obtained orally during conversations with Lawrence Trottier. For these words, I use Lawrence’s spelling and reference him in a footnote. I have compiled all Nêhiyawêwin words in an appendix at the end of this paper to assist the reader.

<sup>17</sup> Leanne Simpson, *Dancing On Our Turtle’s Back: Stories of Nishnaabeg Re-creation, Resurgence and a New Emergence* (Winnipeg: Arbeiter Ring Publishing, 2011) at 49.

Simpson's words remind us that language is a practice which takes dedication to learn and use. I did not have the blessing of learning Nêhiyawêwin as a first language; however, I strive to regain this knowledge through practice. Janice Makosis affirms the urgency of language revitalization in Cree society and contextualizes it within broader processes of Indigenous resurgence:

We are living through a period of time where it is critical for us to affirm our presence through the utilization of our own indigenous languages where a decolonized reality can be sought, in an effort to breathe life and meaning into concepts such as self- determination, sovereignty and self-government.<sup>18</sup>

Language is an integral source of Cree law because it provides a vocabulary of words which inhere legal meaning. Further, language offers a flexible structure through which this vocabulary can be configured to address any problem or legal issue. Darcy Lindberg conceptualizes an interrelationship of Nêhiyawêwin and law as the "language of our relations", and stipulates:

I am using language in a broad (and perhaps too florid) sense, as I am not speaking of specific words, phrases and etymology, but am thinking of the system of relationships that occurs in nehiyaw piimatisiwin. There are Cree social norms that belong in a system altogether different than those found in Canadian societies. To some entering this system is like walking into a foreign space with a different dialect. It is a language to itself.<sup>19</sup>

Due to the important nature of language in Cree law, I will reflect upon the implicit legal meanings carried in Nêhiyawêwin words throughout this project. Similar to the risks associated with using stories to interpret Cree Law, there is risk of indeterminacy when interpreting Cree words and legal concepts. Indigenous communities are diverse and hold divergent viewpoints around language and law which can impact the interpretations of words in Nêhiyawêwin. Cree is the most spoken Indigenous language in Canada and over 83,000 people speak it as a first language, representing several dialects and numerous communities.<sup>20</sup> As a result, pursuing a single, authoritative interpretation runs the risk of silencing legitimate viewpoints from within Cree communities. To mitigate the risk of

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<sup>18</sup> Janice Alison Makosis, *nehiyaw iskwew kiskinowâtasinahikewina – paminisowin namôya tipeyimisowin: Cree Women Learning Self Determination Through the Sacred Teachings of the Creator* (MA Thesis, University of Victoria, 2008) [unpublished] at 24.

<sup>19</sup> D Lindberg, *Gendered Protocols*, *supra* note 6 at 14-15.

<sup>20</sup> Statistics Canada "Aboriginal Languages in Canada" (last modified 23 July 2018), online: *Statistics Canada* <[www12.statcan.gc.ca/census-recensement/2011/as-sa/98-314-x/98-314-x2011003\\_3-eng.cfm](http://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-314-x/98-314-x2011003_3-eng.cfm)>.

indeterminacy, I will rely upon my positionality as a Cree person and remain faithful to the teachings that I have received from Nohkom and Lawrence to ground my interpretation of Nêhiyawêwin as a source of law.

The third strand of the metaphorical braid is literature in Indigenous legal theory. There is a thriving body of academic writing focusing on Cree laws.<sup>21</sup> There is also rich literature from scholars who theorize other Indigenous legal orders and apply them to address issues facing Indigenous peoples. This project will engage with these resources to generate dialogue on the concepts of kitimahkinawaw and kitimahkisin in Cree law. Tracey Lindberg states:

Engaging in the renewal of Indigenous nations necessitates participating in the further development of an Indigenous critical consciousness and the development of an Indigenous critical legal theory. In order to do either effectively, it is essential that we define the same in an Indigenous framework and base our analysis on a well-defined set of Indigenous philosophies and laws.<sup>22</sup>

Reliance on theories developed by Indigenous authors, rather than conceptualizing the Cree legal order within a framework built by non-Indigenous scholars, is important in reclaiming Indigenous agency. While Indigenous perspectives are diverse, they hold a common experience of colonialism and aspiration towards the ideals of revitalization, resurgence, and decolonization. Indigenous legal theory is richly grounded in place, language, and epistemology. It carries perspectives that form a vibrant community of thinkers and a dialogue of critical ideas which situate this paper.

### C. Analytical Framework

Hadley Friedland describes four prominent analytical frameworks used by scholars to interpret Indigenous law.<sup>23</sup> The first analytical framework is the linguistic

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<sup>21</sup> See Hadley Louise Friedland, *Reclaiming the Language of Law: The Contemporary Articulation and Application of Cree Legal Principles in Canada*, (PhD Thesis, University of Alberta Faculty of Law, 2016) [unpublished] [H Friedland, *Reclaiming*]; Hadley Louise Friedland, *The Wetiko Legal Principles: Cree and Anishnabek Responses to Violence and Victimization* (Toronto: University of Toronto Press, 2018) [H Friedland, *Wetiko*]; Tish Goulet, *Revitalizing Cree Legal Traditions: Cumberland House and Pelican Narrows* (LLM Thesis, University of Manitoba Faculty of Law, 2013) [unpublished]; D Lindberg, *Gendered Protocols* *supra* note 6; Tracey Lindberg, *Critical Indigenous Legal Theory*, (LLD Thesis, University of Ottawa Faculty of Law, 2007) [unpublished] [T Lindberg, *Legal Theory*]; Sylvia McAdam (Saysewahum), *Nationhood Interrupted: Revitalizing Nêhiyaw Legal Systems* (Saskatoon: Purich Publishing Ltd, 2015); Matthew Wildcat, “Wahkohtowin in Action” (2018) 27:1 Constitutional Forum 13.

<sup>22</sup> T Lindberg, *Legal Theory* *supra* note 21 at 9.

<sup>23</sup> H Friedland, “Reflective Frameworks”, *supra* note 13 at 18-26.



method developed by Matthew Fletcher.<sup>24</sup> Fletcher uses HLA Hart's theory of primary and secondary laws as a framework. Primary laws consist of words in an Indigenous language that reflect legal concepts and secondary laws include state laws, for example Canadian law. The second analytical framework is the "sources of law" method developed by John Borrows. Borrows describes five categories of Indigenous law: sacred, natural, customary, deliberative and positivistic.<sup>25</sup> The third analytical framework, which Friedland also attributes to Borrows, is the "single case" method. In this method the researcher conducts a deep analysis of a single narrative which serves as a case study on Indigenous law.<sup>26</sup> The fourth framework is the multi-case analysis developed by Val Napoleon.<sup>27</sup> In this method, the researcher takes published collections of Indigenous narratives and applies a modified case method to create a series of briefs.<sup>28</sup> The researcher subsequently cross-references the briefs to identify trends within Indigenous narratives which are then used to infer a series of principles.<sup>29</sup>

This project uses a holistic methodology that combines the strengths of each of Friedland's four approaches to Indigenous law. Similar to Napoleon's multi-case method, I will analyze three Cree narratives as sources of law. However, my method deviates from Napoleon's multi-case analysis in several significant ways. Firstly, I will only use narratives which I have learned from Cree elders within my family. Napoleon's method was developed with the purpose of allowing outside researchers to analyze Indigenous legal orders without infringing upon the intellectual property rights of privately held or sacred stories.<sup>30</sup> Kiskeyihtamowin is a relational process, thus the intimate relationship between myself and the stories carried by my family make them preferable to published narratives from other communities. The second difference is that I will not be using the case method to analyze individual stories. Napoleon's method was developed to help the researcher in observing a range of legal principles within a random selection of 20-40 stories.<sup>31</sup> However, I have narrowed the scope of this project to three specifically selected Cree narratives which depict the principles of kitimahkinawaw and kitimahkisin. Each story will be provided in full to promote accountability by allowing the reader to draw

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<sup>24</sup> Mathew Fletcher, "Rethinking Customary Law in Tribal Court Jurisprudence" (Paper delivered at Michigan State University College of Law, Indigenous Law and Policy Centre Occasional Paper Series, 2006) at 17, online: <<https://www.law.msu.edu/indigenous/papers/index.html>>; H Friedland "Reflective Frameworks", *supra* note 13 at 18-20.

<sup>25</sup> H Friedland, "Reflective Frameworks", *supra* note 13 at 20-21; D Lindberg, *Gendered Protocols*, *supra*, note 6 at 106.

<sup>26</sup> H Friedland "Reflective Frameworks", *supra* note 13 at 21-23; D Lindberg, *Gendered Protocols*, *supra*, note 6 at 106-07.

<sup>27</sup> H Friedland "Reflective Frameworks", *supra* note 13 at 23-26; Hadley Friedland and Val Napoleon, "Gathering Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions" (2015-16) 1:1 Lakehead Law Journal 16 [Gathering Threads].

<sup>28</sup> H Friedland & Napoleon, *supra* note 27 at 23.

<sup>29</sup> *Ibid* at 27-29.

<sup>30</sup> *Ibid* at 21-22.

<sup>31</sup> *Ibid* at 23.

their own inferences. Afterwards, I will reflect on each narrative with an aim to provide a deeper analysis on the implicit legal principles therein, similar to Borrows' "single case" method. This approach will result in a focused and nuanced analysis of the theme of kitimahkinawaw and kitimahkisin.

I will also assess Nêhiyawêwin to express Cree legal principles by focusing on the inherent legal meaning contained within these words and discussing how these meanings are contextualized through their expression in narrative. The core principles of my analysis are kitimahkinawaw and kitimahkisin which constitute the unifying theme between all three narratives. Additional legal principles, as expressed in Nêhiyawêwin and reflected in the narratives, will also be discussed to demonstrate the broader positionality of kitimahkinawaw and kitimahkisin within the Cree legal order. This approach is similar to Fletcher's linguistic analysis in that both methods look to language as a primary source of law. However, it differs from Fletcher's method because it does not attempt to integrate Cree legal concepts into the Canadian legal order. Rather, it explores the symbiotic relationship between Nêhiyawêwin and âtayôhkêwin to achieve a holistic conception of Cree law.

A potential criticism of this methodology is that by using a pair of Cree legal principles as the criteria for selecting primary sources, the resulting analysis may be biased towards achieving a pre-determined and flawed result. However, such criticism is misguided because the concepts of kitimahkinawaw and kitimahkisin are old principles, which I learned from Cree elders, that guide the conduct of our communities. My project reflects upon this existing principle, to transform it from implicit to explicit. I consulted with Nohkom and Lawrence throughout the research and writing process to ensure that my rendition of Cree narrative and law, along with my analysis, reflected their understanding. I have cited literature on Cree law, where possible, to corroborate my analysis with peer reviewed sources. In sum, my accountability to Nohkom, Lawrence, and the Cree community, along with my immersion in Cree culture and law, are factors that mitigate the risk of a flawed analysis. The goal is not to generate a comprehensive understanding of Cree law, rather to convey a legitimate perspective that is accountable to my community.

## II. KITIMAHKINAWAW EKWA KITIMAHKISIN

To recap, in Nêhiyawêwin, the word kitimahkinawaw translates as "to take pity on someone".<sup>32</sup> Kitimahkinawaw describes a person's actions when they show kindness, pity, and compassion towards others. In relation, kitimahkisin means "to be pitiful", acknowledging one's pitiable state and their need of compassion or assistance from

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<sup>32</sup> Spelling and translation by Lawrence Trottier.

others.<sup>33</sup> All people have the potential to act with kitimahkinawaw. It is simply a matter of how one chooses to conduct themselves through life. Likewise, all people are kitimahkisin at some point in their life. There is a spiritual component to kitimahkisin, namely, the belief that human beings are all pitiful beings before Kisemanito and are therefore dependent upon our Creator for survival. In addition, there is a natural law element to kitimahkisin specifically, a recognition that people are dependent upon pakwataskamik (the land) for sustenance.

I argue that kitimahkinawaw and kitimahkisin are linguistic terms that reflect two Cree legal principles. To illustrate how kitimahkinawaw and kitimahkisin shaped Cree law in a pre-colonial context, I have looked to the narratives of Âpakosîs, Omikiy-mihkwâkan, and Wekimagansah as sources of law which supplement the meanings of kitimahkinawaw and kitimahkisin. Although kitimahkinawaw and kitimahkisin are not the only legal principles present within these narratives, they are recurrent themes that resurface in each of these oral histories. Each narrative provides a unique set of contextual factors which help illustrate the complexities and nuances within the principles of kitimahkinawaw and kitimahkisin.

#### **A. Âpakosîs as told by Nohkom, Margaret Harris**

There once was an âpakosîs, a little mouse. One day, frog came up to the âpakosîs and said, “It is time for you to complete your vision quest, you will go to the top of that mountain and there you will wait for your vision.” So, the âpakosîs set off on his journey to the top of the mountain, and after a while he heard someone crying in the distance. He approached the source of the crying and found that it was a raven. He asked the raven what was wrong and she said, “I am crying because I am blind and I cannot see.” The âpakosîs said, “I have two eyes, but I only need one to see. Here, have one of my eyes.” The raven took the âpakosîs’s eye and cried out with happiness. “Thank you, I can see now!” The raven flew away and the âpakosîs continued his journey.

After a while, the âpakosîs heard some more crying. He walked over to the source of the noise and there he found a cougar. He asked the cougar, “Why are you crying?” The cougar said, “I am crying because I am blind and I cannot see.” The âpakosîs said, “I have one eye left, I could give it to you but then you would eat me, and I won’t allow that to happen because I must complete my vision quest.” The cougar said, “If you give me your eye, then I will help you to finish your journey.” So after some thought, the little âpakosîs gave his eye to the cougar and the cougar picked up the âpakosîs by the scruff of his neck and carried him to the top of the mountain. He thanked the little âpakosîs and went on his way.

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<sup>33</sup> Spelling and translation by Lawrence Trottier.

The âpakosîs waited at the top of the mountain for a whole day. Then frog came along to see how he was doing. He asked the âpakosîs, “What did you see?” The âpakosîs said, “I didn’t see anything, I’m blind!” The frog said, “I will come back tomorrow, try again.” The next day the frog came back and asked, “What did you see?” Again, the little âpakosîs said, “I cannot see anything, I have no eyes anymore, I am blind.” The frog promised to return. On the third day, the frog asked the âpakosîs, “What did you see?” The âpakosîs said, “I can see you now, because I look with my heart.”

## **B. Compassionate Relationships in Cree Law**

Nohkom always finished her stories by highlighting a lesson she wanted me to learn. She expressed her love by guiding me through the process of reflecting on the layers of meaning contained within the narrative. Each reflection was oriented towards the challenges and growth that I was undergoing at the time she told me the story. It was a deeply personal experience that was grounded in the relationship of storyteller and listener, of grandmother and grandson. When I was young, her guidance was a literal and practical interpretation of story. I remember her saying many times, “The moral of the story of the little âpakosîs is that we must look with our heart and not our eyes.” As I grew older, she would finish the story by asking me what it means to see with one’s heart. We would discuss my reflections and she would guide me towards understanding the metaphors within the narrative. Today, I see how the âtayôhkêwin of âpakosîs illustrates kitimahkinawaw and kitimahkisin through the relationships between the âpakosîs, frog, raven, and cougar. Further, this story provides insight into Cree laws governing interpersonal relationships and one’s relationship with the Creator.

The first relationship established within the narrative is between the âpakosîs and the frog. The âpakosîs implicitly takes the place of a youth, while the frog takes on the role of an elder and a teacher. From the âpakosîs, I learned to listen to my elders even when they request something challenging, for there is a purpose behind the tasks they ask me to perform. The âpakosîs demonstrated ambition and courage when he chose to climb the mountain. The âpakosîs also showed love for the frog when he climbed the mountain at the frog’s request. The âpakosîs’s task was also challenging because it required inner change to be successful. The three days in which the âpakosîs waited at the top of the mountain would have been frustrating and required faith that a vision would come. From the frog, I learned about the value of teaching through experiences and not statements. The role of the frog was to guide the âpakosîs through the process of climbing the mountain. If the frog had simply told the âpakosîs to look with his heart, the lesson would not have had the same impact. I also learned of a teacher’s responsibility to be patient with a student, as climbing the mountain and achieving transformation takes time.

The second relationship in the story is between the âpakosîs and the raven. From the raven, I learned the value of reaching out for help in times of need. The raven

overcame its pride when it asked the little âpakosîs for help. For the raven to receive the help it needed, it first had to possess the tapahteyimowin (humility) required to acknowledge its own kitimahkisin and ask for help. From the âpakosîs, I learned that even a small being can help a larger one. In addition, the âpakosîs taught me about kitimahkinawaw and the relationality of all living beings. It is easy to show kitimahkinawaw with our close family, but it is more challenging to treat strangers with the same level of generosity and love. The âpakosîs shows kitimahkinawaw to the raven, despite them being distinct species and strangers. Lawrence often says, “Everything has a spirit”, which means that we exist in relationship to the spirit of all other beings and owe them obligations as relatives.

The relationality symbolized in the interaction between the âpakosîs and raven illustrates fundamental concepts in Cree law. Sylvia McAdam explains that all of creation adheres to laws called manitow wiyinikewina, meaning “Creator, woven together”.<sup>34</sup> She states, “The weaving describes all creation being bound together having been given laws. These laws are interrelated and numerous; no one presumes to know them all; we are all forever students.”<sup>35</sup> There are four components of manitow wiyinikewina: (i) human laws (ii) earth laws (iii) spiritual laws, and (iv) animal laws which include plants and water.<sup>36</sup> These are not fixed categories, for all of creation is related and shares in pimatisiwin, which is Kisemanito’s gift of life.<sup>37</sup> To honour this gift, we must reciprocate by adhering to manitow wiyinikewina.<sup>38</sup> When humans adhere to manitow wiyinikewina it maintains the world’s balance. When we breach these laws, we invite Kisemanito to restore balance, a process which can bring disastrous consequences upon us. Harold Cardinal and Walter Hilderbrandt state, “breaking these vows can bring about divine retribution with grave consequences.”<sup>39</sup> When the little âpakosîs gave its eye to the raven, it honoured manitow wiyinikewina by showing kindness to another element of creation. This fostered balance in the world by giving raven the eyesight that it would need to survive which showed respect to the gifts of pimatisiwin (life) and pimacihowin (livelihood) from Kisemanito.

The âpakosîs’ gift to the raven also provides insight into Cree laws governing interpersonal behavior. Humans adhere to a subset of Kisemanito’s laws called nehiyaw wiyasiwewina.<sup>40</sup> Some nehiyaw wiyasiwewina simultaneously constitute obligations and

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<sup>34</sup> McAdam, *supra* note 21 at 23.

<sup>35</sup> *Ibid* at 38.

<sup>36</sup> *Ibid*.

<sup>37</sup> *Ibid* at 27.

<sup>38</sup> *Ibid*.

<sup>39</sup> Harold Cardinal and Walter Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream is that Our Peoples Will One Day be Clearly Recognized as Nations* (Calgary: University of Calgary Press, 2000) at 6.

<sup>40</sup> McAdam, *supra* note 21 at 23.

ideals of human behavior like wahkohtowin (kinship), manâtisiwin (respect) and miyohpikinawasowin (good child rearing).<sup>41</sup> Matt Wildcat explains wahkohtowin:

First, it references the act of being related — to your human and other than human relatives. Second, it is a worldview based on the idea that all of existence is animate and full of spirit. Since everything has spirit it means we are connected to the rest of existence and live in a universe defined by relatedness. Third, there are proper ways to conduct and uphold your relationships with your relatives and other aspects of existence. Thus, wahkohtowin also includes the obligations and responsibilities people have to maintain good relationships.<sup>42</sup>

The little âpakosîs' gift of eyesight reflects the law of wahkohtowin because it recognizes the relationality and spirit of the raven, as well as proper conduct towards other living beings.

The third relationship in the story is between the âpakosîs and the cougar. The little âpakosîs gave the cougar his eye even though this act made him defenseless against the predator. Nohkom told me, “to look with your heart means seeing the best in people, not only their flaws.” The âpakosîs' act took tremendous trust, courage, sacrifice, and empathy. This teaching has both challenged and supported me in interactions with family members and individuals in the community who act in violent or oppressive ways. Reflecting on this teaching has revealed the systemic factors that lead to harmful behavior, such as the intergenerational impacts of abuse, residential schools, and colonial violence. Just as the cougar did not choose to be a predator, we did not choose to inherit our positionality within colonialism. This understanding helps me to treat harmful people with kitimahkinawaw instead of hate, retribution, or resentment. This understanding helps me to see people who act violently as kitimahkisin instead of evil. True kitimahkinawaw takes more than understanding, it requires action. Just like the âpakosîs could not learn a deeper truth until it had given away both its eyes, we cannot fully understand the tapwewin (truth) in Cree laws and narratives until we act upon them.<sup>43</sup>

Acting with kitimahkinawaw is a draining process. Hadley Friedland describes “compassion fatigue” that she faced living in an Indigenous community with high levels of death and suicide:

At times I felt as if I were drowning, and would search for language – boundaries, limits, goals, compassion fatigue... The pain was there, in the lives of people who

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<sup>41</sup> Muskeg Lake Cree Nation, “nêhiyaw wiyasowêwina (Cree Law)” (28 January 2021), online: <<https://perma.cc/B6MJ-LY2M>>.

<sup>42</sup> Goulet, *supra* note 21 at 16-17; Wildcat, *supra* note 21 at 14.

<sup>43</sup> Tapwewin is the word for “truth” in Nêhiyawêwin. It can also be used to describe natural/sacred law.

mattered deeply to me. No matter how I chose to act in response, I could not stop their suffering from touching me. To live in relation is to be rich, and to live in relation is to be permeable.<sup>44</sup>

Suffering and kitimahkinawaw exist in a reciprocal relationship. In a utopian world without suffering, there would be no obligation to treat others with kitimahkinawaw because everyone would be self-sufficient. I lack the wisdom to understand why there is suffering in this world, yet it is an experience that transcends time. It is also apparent that suffering is not distributed equally among living beings.

One purpose of kitimahkinawaw is to mitigate imbalances in suffering in which a being that is thriving will take on a portion of the suffering belonging to a being that is in great pain. In this way, the collective may bear the burden of suffering that would be intolerable for an individual to carry on their own. Darcy Lindberg discusses the collective responsibility to bear the burden of suffering in the context of matotisân:

Choosing to carry a right also means a choice to carry a corresponding obligation. Those who have encountered particularly hard sweats understand this notion clearly; while there is an immense privilege that the lodge brings, there also is suffering. A right of participation is not merely the disadvantage of those who can't participation [*sic*] – but rather is a disadvantage to a community as whole, as it affects or disrupts the carrying of the burden of ceremony.<sup>45</sup>

Just like the matotisân, our wahkohtowin is both a right and a burden. Our relationality binds us to both the richness and suffering of our communities. To show kitimahkinawaw towards someone who is suffering is a way of recognizing the value of that individual to society and the unique gifts they carry. The world is a richer place because of the beings that inhabit it, including those who are in a state of kitimahkisin, and the loss of any one of those beings is a loss to the collective.

The reciprocal relationship between kitimahkinawaw and kitimahkisin also plays a role in the process of transformation. Tsimshian scholar Patricia Vickers states that “The act of transforming disrespect to compassion, understanding, and right intention is the same today as it was in the times of the birth of Adaawk (oral history). Transformation is a spiritual, supernatural act that is born out of necessity.”<sup>46</sup> In the story, the little âpakosîs, raven, and cougar all endure periods of suffering and blindness. On its own, each animal is unable to end its suffering because it is kitimahkisin. However, this blindness is

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<sup>44</sup> H Friedland, *Reclaiming*, *supra* note 21 at 154.

<sup>45</sup> D Lindberg, *Gendered Protocols*, *supra* note 6 at 11.

<sup>46</sup> Patricia Vickers, *Ayaawx (Ts'msyen ancestral law): The Power of Transformation* (PhD Thesis, University of Victoria Faculty of Interdisciplinary Studies, 2008) [unpublished] at 152.

transient and plays a role within the larger process of transformation. By the end of the narrative, the three animals have completed their transformations, regained their sight, and acquired the qualities of wisdom and compassion in the process. In Indigenous communities, the intergenerational violence and losses that we continue to endure can appear endless, resulting in a pervasive feeling of hopelessness. The story of the little âpakosîs reminds us that our suffering will eventually end and that we will emerge transformed. Showing kitimahkinawaw to others who are in a state of suffering is essential because of our pitiful nature. Furthermore, the process of giving and receiving compassion facilitates a deeper transformation for both parties.

To show kitimahkinawaw does not mean to condone violence or turn a blind eye. An incorrect understanding of kitimahkinawaw as the unconditional tolerance of a person's acts, no matter how harmful, would enable destructive behavior to perpetuate. Rather, it means to take steps to disrupt and prevent violence using an approach that affords manâtisiwin (respect) to both perpetrators and victims. The web of relations expressed in wahkohtowin means that destructive behavior can cause damage extending through all of creation. Thus, the concept of kitimahkinawaw within this context requires us to consider the wellbeing of creation as a collective. Despite its nature as a predator, the cougar honours its promise and carries the âpakosîs to the top of the mountain, symbolizing that we all have a choice on how to respond to the situations we find ourselves in.

Nehiyaw wiyasiwewina (human laws) regulate the range of permissible and impermissible choices a person can make. Nehiyaw wiyasiwewina include prohibitions on harmful behavior. For example, pâstâhowin (“stepping over” or “shattering”) refers to transgressions against other human beings.<sup>47</sup> Murder, stealing, disrespect, and sexual assault are just a few examples of pâstâhowin. Ohcinewin refers to transgressions against anything other than a human being,<sup>48</sup> including polluting the land, overharvesting resources, and disrespecting animals. When people breach nehiyaw wiyasiwewina, there are Cree institutions and ceremonies that hold us accountable through processes such as dispute resolution.<sup>49</sup> When faced with intergenerational systems of trauma and violence perpetuated by colonialism, Cree people have a responsibility to break these cycles under nehiyaw wiyasiwewina.

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<sup>47</sup> McAdam translates pâstâhowin as stepping over, referring to crossing a line and committing wrongful behaviour: McAdam, *supra*, note 21 at 43; Lawrence Trottier describes pâstâhowin as shattering, meaning that it shatters the integrity of oneself or another human being by committing wrongful behavior. Both translations reflect the same concept in different ways; Goulet, *supra*, note 21 at 19.

<sup>48</sup> McAdam, *supra* note 21 at 44; Goulet, *supra* note 21 at 19.

<sup>49</sup> AJR, *supra* note 11 at 4–18.



Val Napoleon and Hadley Friedland look to Cree stories which depict wihtikiw, meaning a person who has gone insane or turned to cannibalism, to determine how nehiyaw wiyasiwewina responds to violence and harmful behavior.<sup>50</sup> They state:

Like analogous criminal law concepts, the wetiko legal concept or category grappled with the “ordinariness of human monstrosity.” It triggered particular obligations, legitimate collective reasoning processes and legal principles for determining an appropriate response to human violence and harm in particular circumstances.<sup>51</sup>

Friedland conducts an in-depth analysis of the principles, obligations, and rights expressed within the wihtikiw legal concept and applies these to the problem of child victimization.<sup>52</sup> The wihtikiw legal concept illustrates the relationship between kitimahkinawaw and violence. It supports an understanding of kitimahkinawaw that includes a pursuit of collective wellbeing, manâtisiwin towards victims and harmful individuals, and enforcement of nehiyaw wiyasiwewina.

### **C. Omikiy-mihkwâkan *As Told to Me by a Plains Cree Elder*<sup>53</sup>**

There was a young boy from a poor family. He had no parents or family, except for his grandmother. The other children called him Omikiy-mihkwâkan, meaning Scar-face or Scab-face, because he was ugly. One day he went to water his grandmother’s horse. They were poor, so she only had one old horse. He went early so that no-one would see him and make fun of him. He saw the chief’s daughter bathing in the creek. Omikiy-mihkwâkan walked back along the path until he was out of sight to give her privacy and waited for her to finish. She saw him sitting next to the path on her way back to the village and he looked away. She ridiculed him for being a creep and watching her bathe. She told him that she would not marry him in a million years because he was so ugly. He watered his grandmother’s horse and returned home in shame.

Omikiy-mihkwâkan packed his things and left home. He walked for four days,<sup>54</sup> travelling across the prairie and up a mountain, until his hunger and exhaustion forced

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<sup>50</sup> Val Napoleon and Hadley Friedland, “Indigenous Legal Traditions: Roots to Renaissance,” in Markus Dubber, ed, *Oxford Handbook of Criminal Law* (London: Oxford University, 2016); H Friedland, *Wetiko*, *supra* note 21 at 74-108.

<sup>51</sup> Napoleon & H Friedland, *supra* note 50 at 4-5.

<sup>52</sup> Friedland, *Wetiko*, *supra* note 22 at 74-108.

<sup>53</sup> When I asked the elder whether it was appropriate to share this story in a journal, he encouraged me to do so. However, he asked to remain anonymous stating, ‘if you are writing this article then you should feel confident to share the story under your own name.’ This story comes from the Plains Cree.

<sup>54</sup> The number four is significant within Cree epistemology and is reflected in the concept of the medicine wheel. There are many teachings illustrated with the medicine wheel including the four stages of life, the four directions, the four seasons, and the four aspects of ones being.

him to stop and rest. He heard a small voice speaking to him, but he could not see anyone around. He realized that a little ant was speaking to him, “Hey, you, I’m talking to you! Follow me.” Omikiy-mihkwâkan followed the ant and saw it crawl into a crack in the mountain. When Omikiy-mihkwâkan stepped into the crack, he found an expansive place inside the mountain. A boy, of similar age, greeted him and said, “come with me,” leading him to an elegant house. The young man introduced Omikiy-mihkwâkan to his parents. All three of them were strikingly beautiful and wealthy. They adopted Omikiy-mihkwâkan as their son. The woman healed his face with medicine. The man gave him a knife, a spear, and a buffalo robe. He told Omikiy-mihkwâkan that he would never be injured in battle so long as he wore the robe and that no arrow could pierce it. Only when the last hair had fallen off the soft and luxurious robe would its supernatural power diminish. The boy taught Omikiy-mihkwâkan the stories and teachings that his parents had passed on to him. After four days, the son took Omikiy-mihkwâkan to a lake that was as clear as a mirror. Omikiy-mihkwâkan did not recognize his reflection, for he looked just as handsome as the boy. The boy gave Omikiy-mihkwâkan a fine horse and told him that it was time to return home. He warned him not to marry the Chief’s daughter.

When Omikiy-mihkwâkan reached his home, his family hosted a feast. They had thought he was dead, yet he had returned home. At the feast, the Chief asked Omikiy-mihkwâkan to sit next to him but he refused and sat with his family instead. The Chief’s daughter tried to flirt with him but he was not interested. He lived to be a great warrior and his family became wealthy.

#### **D. Compassion for Marginalized People in Cree Law**

The story of Omikiy-mihkwâkan grapples with two important concepts in Cree law, *pâstâmwîn* and *wahkohtowîn*. It also illustrates how *Kisemanito* communicates natural law through signs in nature and affirms our individual responsibilities under *kitimahkinawaw* to care for the poor and marginalized. The narrative of Omikiy-mihkwâkan begins with an example of *pâstâmwîn*, which “‘refers to what someone said which led to something undesirable happening’... this law is broken when one utters threats, gossip, or profanity.”<sup>55</sup> The central principle of *pâstâmwîn* is that words have consequences. Negative words are prohibited because of the harm they cause. The children in the community commit *pâstâmwîn* when they mock Omikiy-mihkwâkan and give him a demeaning nickname. The Chief’s daughter commits *pâstâmwîn* when she berates Omikiy-mihkwâkan during their encounter on the trail. These words cause considerable harm to Omikiy-mihkwâkan’s self-esteem and drive him to isolate from his community in search of relief. Omikiy-mihkwâkan’s tactic of isolation is a conflict resolution strategy and a remedy under Cree law, typically used to separate harmful

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<sup>55</sup> McAdam, *supra* note 21 at 43.

individuals from society.<sup>56</sup> In Omikiy-mihkwâkan's story, this tactic is used for the inverse purpose of isolating a vulnerable individual from a harmful society. Omikiy-mihkwâkan is kitimahkisin because of the suffering he endures from his peers, however the people who demean Omikiy-mihkwâkan are also pitiful, their bullying infers that they are caught up in an unhealthy and negative perspective. As a general principle, Omikiy-mihkwâkan's story reveals that it is wrong to discriminate against people or mock them for their differences. It also teaches tolerance towards all people, regardless of differences such as age, race, sex, or class.

The second appearance of Cree law in the narrative is Omikiy-mihkwâkan's act of watering his grandmother's horse. On an immediate level, this honours the law of wahkohtowin, for it is an example of Omikiy-mihkwâkan caring for his relative. However, it also illustrates a societal responsibility to care for the elderly as a component of Omikiy-mihkwâkan. We have a duty to care for our elders, the poor, the homeless, and the sick with compassion and pity, for they are not able to care for themselves.

The third lesson in Omikiy-mihkwâkan's narrative is to listen to the signs which Kisemanito leaves in nature. In Omikiy-mihkwâkan's story, an ant speaks to him and gives him directions on how to find assistance in his time of need. The ant is a sign from Kisemanito which communicates manitow wiyinikewina (Kisemanito's laws) through natural elements. When we observe the world with perception and respect, we can see and understand these truths. Omikiy-mihkwâkan's narrative adds a layer to this process by demonstrating the reciprocal nature of manitow wiyinikewina. While we observe Kisemanito, our Creator is also watching down on us. The supernatural world is inseparable from the tangible world and it will take pity on us if we follow manitow wiyinikewina. The supernatural beings in the mountain observe Omikiy-mihkwâkan's suffering and they take kitimahkinawaw on him. In Nêhiyawêwin, one would describe Omikiy-mihkwâkan as kanaweymihkosik, meaning that "he is looked after by spiritual forces".

The fourth lesson in Omikiy-mihkwâkan's story is that each person has a gift to offer. In the narrative, Omikiy-mihkwâkan receives legendary gifts including unconquerable weapons, a healed face, and wisdom. Most of our gifts are more modest than these but we each have something to contribute. At the end of Omikiy-mihkwâkan's story, his family hosts a feast and he refuses to sit with the Chief, choosing to sit amongst the poor instead. This symbolizes that we should use our gifts to benefit the kitimahkisin people in our society, not just to pursue power, prestige, and wealth. Omikiy-mihkwâkan reflects the Cree value of tapahteyimowin, meaning humility, when he chooses to sit among the poor.<sup>57</sup>

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<sup>56</sup> Friedland Wetiko, *supra* note 21 at 89-90.

<sup>57</sup> Spelling and translation of tapahteyimowin by Lawrence Trottier.

The teachings from the story of Omikiy-mihkwâkan reveal insights into the concepts of kitimahkinawaw and kitimahkisin. It demonstrates the importance of tolerance by showing the harm and suffering that Omikiy-mihkwâkan experienced when his community failed to fulfill its obligation to act with kitimahkinawaw. It also shows an individual and societal responsibility to care for the marginalized in our society as a component of kitimahkinawaw. Omikiy-mihkwâkan's story serves as a reminder that we are all kitimahkisin before Kisemanito, who is watching over us and will take pity on us if we follow manitow wiyinikewina. Finally, Omikiy-mihkwâkan leads by example, teaching us that we should act with kitimahkinawaw by using our gifts to benefit the kitimahkisin people in our society instead of becoming trapped in self-centered pursuits.

#### **E. *Wekimagansah As Told by Nohkom, Margaret Harris***

There was a Chief who had nîsôhskwewew (two wives), one who was his favorite and one was a wekimagansah, meaning a young wife who slept by the door. One day the nîsôhskwewew were packing wood and the wekimagansah's strap kept breaking.<sup>58</sup> She told the favorite wife to go ahead without her. After the older wife left, the wekimagansah heard someone singing. She saw a rock sitting on a buffalo hide. The rock spoke to her and told her to pick it up and take it with her. The rock said it had strong medicine and that it would bring the buffalo back, for at that time they were few in numbers. Although she hesitated, the wekimagansah picked the rock up and put it in her bag.

That night, the wekimagansah dreamt the rock had spoken to her again and said to call all the people, give them a message and tell them to tie their mîkiwahpa (lodges/tipis) down tight.<sup>59</sup> If they listened, the buffalo would come back. She wondered how anyone would believe her, so she went to the favorite wife. The older wife said that she had better be right and asked their husband to call all the people for a meeting. The wekimagansah spoke her message. She told all the people to sit in a circle and said, "Take the rock and bless yourself in the four directions." She told them what the rock had said about tying their mîkiwahpa down tight for the buffalo to return. She also told them that a great buffalo would come and although they were hungry, they were not to touch it. Some of the Chiefs of high status would not believe her because she was a wekimagansah of lower class.

That night the wind blew hard, and a massive white bull walked fearlessly between the mîkiwahpa. Those who listened to the wekimagansah's message stayed inside their mîkiwahpa and in the morning, they found that there were thousands of buffalo. Those who did not listen perished in the storm when their shelter was destroyed.

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<sup>58</sup> Spelling and translation of nîsôhskwewew and wekimagansah by Lawrence Trottier.

<sup>59</sup> Spelling and translation of mîkiwahpa provided by Lawrence Trottier.

## F. Dreaming Law

The story of the wekimagansah provides insight into sources of Cree law. It affirms the principle that Kisemanito speaks to us using signs in the natural world. It reminds us to remain open-minded and perceptive to signs that might occur in unexpected places or ways, such as the metaphor of the talking rock. In Cree epistemology, the rock has a spirit, and the wekimagansah was connected to it through the web of creation described by manitow wiyinikewina. Thus, it was possible that the rock could take an animate form and speak to her. The wekimagansah displayed a gift called mosihowin, meaning intuition or the ability to see signs that prophesize the future.<sup>60</sup> Mosihowin is connected to the Cree concept of natural law, as it is one venue through which people may learn about manitow wiyinikewina.

Another source of law in the story is the protagonist's dream. Dreams are a connection to Kisemanito and our inner selves. Darcy Lindberg states, "Dreams can be legal, but their legality is dependent upon their relation to these other systems of deliberation, and the interpretation that is offered by these deliberative mechanisms."<sup>61</sup> Dreams most often convey law in the form of metaphor, abstraction, or implicit meaning. Usually, it takes deliberation to decipher the legal meaning that inheres within the dream and to interpret how this applies to one's life. This aspect of dreaming is skipped over in the story of the wekimagansah, where the rock speaks to her in explicit and immediately applicable terms. Instead, the conflict focuses on society's disbelief in the wekimagansah's credibility. This scepticism is particularly relevant today at a time when our conception of law is heavily influenced by Canadian legal traditions. In Canadian society, dreams might offer insight into one's psyche, but they have no legal meaning.

Cognitive imperialism describes the process through which colonial ideology and beliefs shape Indigenous epistemologies.<sup>62</sup> In Indigenous legal orders, it leads to distortions where elements that are incongruent with a colonial epistemology appear illogical or simply non-legal. This leads to change within Indigenous legal systems where the incongruent elements are altered or omitted to return coherence to the legal order. Applying this theory to the context of dreaming, cognitive imperialism obscures the ability of Cree people to understand and believe that dreams are a valid source of law. The resurgence of Cree law requires us to re-claim dreaming as a source of law.

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<sup>60</sup> Spelling and translation by Lawrence Trottier.

<sup>61</sup> D Lindberg, *Gendered Protocols*, *supra* note 6 at 3.

<sup>62</sup> Nigel Grenier, "Esdii Wal: Gitxsan Law Grounded in Epistemology" (2018) 76 UT Fac L Rev 64 at 82-86; Marie Battiste, "Maintaining Aboriginal Identity, Language, and Culture in Modern Society" in Marie Battiste, ed, *Reclaiming Indigenous Voice and Vision* (Vancouver: UBC Press, 2000) at 198; Johnny Mack, "Hoquotist: Reorienting Through Storied Practice" in Jeremy Webber, Rebecca Johnson & Hester Lessard, eds, *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community* (Vancouver: UBC Press, 2011) 287 at 291; Simpson, *supra* note 16 at 14-15, 32.

Revitalizing Cree law does not require blind faith that all dreams and mosihowin are legally binding. Rather, it necessitates that we engage in deliberation to interpret the potential legal significance held by dreams and mosihowin. Darcy Lindberg theorizes the steps through which dreams transform from individually witnessed abstract imagery into societally accepted legal principles.<sup>63</sup> The first step is creative reality, wherein people receive instruction, rules, or guidance from a creative source.<sup>64</sup> This knowledge is experiential and is only witnessed by those present at the time and place of the creative source.<sup>65</sup> In the story of the wekimagansah, she experiences creative reality through messages the rock delivers to her in a dream.

The second step in Lindberg's framework is imaginative reality.<sup>66</sup> During this stage, the person or people who witnessed the creative reality communicate to others who then interpret it through deliberative processes.<sup>67</sup> If they are accepted as legitimate, the meaning of the imaginative reality will become binding rules and principles within a legal order.<sup>68</sup> In the story of the wekimagansah, she communicates the messages from her dream by having her husband call a meeting that is attended by everyone in the community. At the meeting, she narrates her experience and then conducts a ceremony where each person uses the rock to bless themselves to the four directions. At this meeting, each member of the community has a chance to interpret her dream and to decide whether they accept or reject it.

It is important to be critical of power, agency, and discrimination in the process of deliberating and establishing dreaming law. Lindberg argues, "Because ceremony is a tool for a creative reality to become an imaginative reality, protocol is all the more important in that it acts as a check on the authority of the process."<sup>69</sup> Lindberg's primary concern is that elements of Cree ceremony have become sexist and a means to reinforce gender inequality in Cree society. Looking at the story of the wekimagansah reveals inequality in both gender and social status. The wekimagansah was not able to call a meeting of her community because she is a woman, and she must ask her husband to do this on her behalf. Further, she is not able to speak directly to her husband, and she must ask the first wife to speak to him on her behalf because she is of low status. And yet, she is the one that Kisemanito chose to deliver an important message to the community. The presence of sexism and discrimination in the story of the wekimagansah does not mean that these attitudes should be emulated as traditions. John Borrows states that, "Indigenous Legal Traditions must continually be reinterpreted and reapplied in order to

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<sup>63</sup> D Lindberg, *Gendered Protocols*, *supra* note 6 at 85-87.

<sup>64</sup> *Ibid* at 86.

<sup>65</sup> *Ibid*.

<sup>66</sup> *Ibid*.

<sup>67</sup> *Ibid*.

<sup>68</sup> *Ibid*.

<sup>69</sup> *Ibid* at 87.

remain relevant amidst changing conditions. Law can become unjust and irrelevant if it is not continually reviewed and revised.”<sup>70</sup> Contemporary Indigenous people should think critically about our traditions and legal systems to identify and shed their discriminatory components. Our critique should reflect the principle of *manâtsiwin*. This means being respectful of the distinct worldview and values that inhere within Indigenous laws and engaging respectfully with members of our communities who have differing opinions. Further, we should identify the ways in which colonialism, sexism, racism, poverty, and other forms of discrimination and inequality manifest today and take action to disrupt them, a process that Indigenous scholars term “resistance”.<sup>71</sup> Tracey Lindberg explains, “Resistant thought is knowing intrinsically the meaning, context, and political ramifications of colonial activity and responding to them in an informed and resilient manner.”<sup>72</sup> In the story, a storm blows away the people who refused to listen to the *wekimagansah* because of their sexist and classist views, providing a metaphor for shedding discrimination from Indigenous and colonial laws alike.

The narrative of the *wekimagansah* teaches that the poor and people who are suffering are the most likely to receive *kitimahkinawaw* from *Kisemanito*. As a society, we are bound to each other through *wahkohtowin* and have an obligation to care for the marginalized with *kitimahkinawaw* and give them a voice. We must listen to their concerns and not to assume that the wealthy and privileged know what the marginalized need. This story is a reminder that *Kisemanito* can speak to anyone, not just a person of social importance. Living in a way that embodies Indigenous laws contributes to their revitalization as living legal orders.<sup>73</sup> Both *Nohkom* and *Lawrence* led by example and reflected the principle of *kitimahkinawaw* in their lives. *Nohkom* founded the Traditional Mothers and Grandmother’s Society, which is an organization based out of Vancouver’s Downtown East-side. *Nohkom* mentored women, some of whom were struggling with poverty, addiction, mental health, abusive relationships, and loss of culture. For these women, the inequity and violence of colonialism are a daily lived reality. *Nohkom* taught the women in Traditional Mothers the *Mushkegowuk* practices that she had learned from her grandparents to give them a sense of identity, self-confidence, and connection to community. Traditional Mothers also hosted a monthly dinner for the homeless. *Lawrence* worked in the Saskatchewan prison system as a counsellor for Indigenous inmates. He drew upon Cree laws and ethics to assist inmates in working through the trauma they had experienced. *Nohkom* and *Lawrence*’s work reflected the principle of *kitimahkinawaw*, transforming it from an abstract concept into a tangible praxis.

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<sup>70</sup> John Borrows, *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 60.

<sup>71</sup> T Lindberg, *Legal Theory*, *supra* note 21 at 11.

<sup>72</sup> *Ibid.*

<sup>73</sup> For more discussion by Indigenous theorists about resurgence see: Glen Sean Coulthard, *Red Skin, White Masks* (Minneapolis: University of Minnesota Press, 2014) at 154-59; Simpson, *supra*, note 16 at 17-18.

For lawyers, there are unique considerations when working with marginalized communities. Lawyers should incorporate a trauma informed approach to their practices. This means, “having a basic understanding of the psychological, neurological, biological, social and spiritual impact that trauma and violence can have on individuals seeking support. Trauma-informed services recognize that the core of any service is genuine, authentic and compassionate relationships.”<sup>74</sup> In addition, lawyers serving Indigenous communities must take the time to educate themselves about the unique circumstances impacting Indigenous people. The Truth and Reconciliation Commission’s twenty-seventh Call to Action demands that lawyers:

receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.<sup>75</sup>

Cree law provides a foundation of principles to guide lawyers working with Indigenous communities. Kitimahkinawaw directs lawyers to foster sincere and compassionate relationships with their clients. It also requires lawyers to develop approaches to practice that are trauma informed, culturally competent, and reflect Indigenous legal principles.

The wekimagansah illustrates the Cree legal concept of ohcinewin, which refers to transgressions against non-human beings.<sup>76</sup> Kisemanito speaks to the people through a rock and the wekimagansah, telling them to tie down their tipis and spare the white bull. Those who heed the wekimagansah’s message receive Kisemanito’s gift of pimacihowin (livelihood) in the form of a herd of bison.<sup>77</sup> Pimacihowin is a gift but it is tied to set of obligations to treat pakwataskamik with respect. In the story of the wekimagansah, the people have an obligation not to hunt the white bull. More broadly, there are obligations in Cree law, such as, take only what you need, share with those who don’t have enough, minimize the suffering of animals when hunting, and offer a gift before taking a life.<sup>78</sup> Those who chose not to listen to the Kisemanito’s warning experience disaster and are destroyed in the storm. This represents divine retribution for failing to uphold the law. Darcy Lindberg states:

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<sup>74</sup> Clinic Community Health Center, “Trauma Informed: The Trauma Toolkit” (2013), online: *Klinik Community Health Center* <[https://trauma-informed.ca/wp-content/uploads/2013/10/Trauma-informed\\_Toolkit.pdf](https://trauma-informed.ca/wp-content/uploads/2013/10/Trauma-informed_Toolkit.pdf)> at 16.

<sup>75</sup> Canada, Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015) at 3.

<sup>76</sup> McAdam, *supra* note 21 at 43-44.

<sup>77</sup> *Ibid* at 64.

<sup>78</sup> D Lindberg, *Gendered Protocols*, *supra* note 6 at 95-97.



Reflecting on these older ways of Cree life, it is easy to understand the necessity of forceful transformations (like the hunt) for survival. Contemplating the necessity of force that occurs through our hunts, I also think about power relations, ideas of consent, and when such transformational acts become violence.<sup>79</sup>

Lindberg's reflection addresses a significant dynamic in Cree thought on kitimahkinawaw. As an element of our kitimahkisin, people are dependent upon pakwataskamik (the land) for our survival. This is a very different power structure than the dominance over nature which characterizes colonial settler thought. It is a Cree belief that animals allow themselves to be caught by pitiful hunters as an act of kitimahkinawaw. Thus, the violence of hunting is both necessary for human survival and consensual in nature because of our kitimahkisin. It is essential that a hunter prays and adheres to manitow wiyinikewina to seek consent from animals and show respect to them. Failure to do so constitutes an ohcinewin that puts our survival at risk.

## CONCLUSION

When considered as a whole, the narratives of the Âpakosîs, Omikiy-mihkwâkan, and the Wekimagansah provide a more fulsome insight into the significance of kitimahkinawaw and kitimahkisin as legal principles. Cree law includes a responsibility to treat others with kitimahkinawaw, to take pity on them and act compassionately. A duty of kitimahkinawaw extends to people outside one's nuclear family and community to include strangers and other species to whom we are all bound through wahkohtowin. Further, a duty of kitimahkinawaw extends to people who are dangerous and harmful. We have a societal responsibility to care for the elderly, poor, homeless, and sick as a component of kitimahkinawaw, for they are unable to care for themselves. The responsibility to act with kitimahkinawaw mitigates the existence of suffering. Accordingly, failing to fulfill one's obligation to act with kitimahkinawaw perpetuates harm and suffering. Finally, Kisemanito is watching over us and will assist us with kitimahkinawaw if we follow manitow wiyinikewina.

Cree law includes an understanding that people are kitimahkisin, meaning that we exist in a pitiable state where we rely upon the kindness and compassion of others to survive. Kitimahkisin includes a recognition that we are dependent upon pakwataskamik, Kisemanito, and each other for our sustenance. As a consequence of our kitimahkisin, we have a responsibility to seek help when we cannot do something on our own. The poor and marginalized are the most likely to receive kitimahkinawaw from Kisemanito or to carry a message to the community on the Creator's behalf. We have an obligation to listen

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<sup>79</sup> *Ibid* at 97.

to what they have to say. Further, we have a set of responsibilities to reciprocate those who help us. For example, we thank Kisemanito and pakwataskamik through prayer and adherence to manitow wiyinikewina. Despite one's kitimahkisin, a small or weak being can take pity on the strong and assist them. Each person has a gift, and we have a responsibility to use these gifts to benefit society, for we are all kitimahkisin.

I encourage the reader to personally reflect on the principles of kitimahkinawaw and kitimahkisin. They are living concepts which obtain meaning through practice. To those who are receptive to their truth, these principles hold transformative potential. It is my hope that through this transformation, the wisdom, prayers, and intentions of our ancestors may come to shape our hearts and minds. It is my further hope that we may shape our relationships to reflect values of kitimahkinawaw and kitimahkisin. Finally, it is my hope that through our actions, we can enact meaningful change in the world around us and transform our suffering.

## APPENDIX A: CREE WORDS

<b>Âcimowin</b>	Stories that took place in recent times.
<b>Âpakosîs</b>	A mouse.
<b>Âtayôhkêwin</b> past.	Sacred stories, oral history from the distant past.
<b>Ininiwmowin</b> Cree.	The n dialect of the Cree language, Swampy Cree.
<b>Kisemanito</b>	Great Spirit, Creator.
<b>Kiskeyihtamowin</b> learning.	The pursuit of experience, knowledge, and learning.
<b>Kitimahkinawaw</b>	To take pity on someone.
<b>Kitimahkisin</b>	To be pitiful.
<b>Manâtisiwin</b>	Respect, politeness, being considerate.
<b>Manitow wiyinikewina</b>	Creator woven together, Creator's laws.
<b>Matotîsân</b>	Sweat lodge ceremony.
<b>Mîkiwahpa</b>	Lodges or tipis, plural.
<b>Mînasin</b> name.	To be 'good' or 'nice,' the author's childhood name.
<b>Miyo-ohpikinawasowin</b>	Good child rearing.
<b>Mosihowin</b>	Intuition or prophesy.
<b>Mushkegowuk Ininiwuk</b>	Swampy Cree people, refers to the people living inland from the Hudson's Bay.
<b>Nehiyaw wiyasiwewina</b>	Human laws.
<b>Nêhiyawêwin</b>	The y dialect of the Cree language, also called Plains Cree.
<b>Nîsôhskwewew</b>	When a man has two wives.

<b>Nohkom</b>	My grandmother, referring to Maskawisewiskwew Margaret Harris.
<b>Okimâw-kiseyiniw-kihiw</b>	“Old man eagle,” the name the author received as an adult.
<b>Ohcinewin</b>	A transgression against a non-human being.
<b>Omikiy-mihkwâkan</b>	“Scarface,” the nickname given to a boy with scars/ scabs on his face in one of the narratives.
<b>Osisimâw</b>	Father in law.
<b>Pakwataskamik</b>	“Wilderness,” the entirety of the land including geography, humans, plants, animals, water, air, etc.
<b>Paskwâwiyniw</b>	Plains Cree person.
<b>Pâstâhowin</b>	“To shatter someone’s life” or “to step over,” a transgression against a human being.
<b>Pâstâmowin</b>	Threats, profanity, gossip.
<b>Pimacihowin</b>	The gift of livelihood.
<b>Pimatisiwin</b>	The gift of life.
<b>Tapahtheyimowin</b>	Humility.
<b>Tapwewin</b>	Truth, natural law.
<b>Wahkohtowin</b>	Kinship, the relationality of all creation.
<b>Weenusk Sipi</b>	‘Ground hog river’ located in northern Ontario in the traditional territory of the Weenusk First Nation.
<b>Wekimagansah</b>	A “young wife,” in the narrative it refers to a second wife who sleeps by the door.
<b>Wihtikiw</b>	One who has gone insane, resorted to cannibalism, and become harmful to society.

## **Winnipeg Ininiwuk**

'People of the murky water,' refers to Cree people living along the coastal areas of the Hudson's Bay.