



# ***FIRST NATIONS JOURNEYS OF JUSTICE***

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***BUILDING BRIDGES OF UNDERSTANDING  
BETWEEN NATIONS***

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***GRADE SEVEN***



# **FIRST NATIONS JOURNEYS OF JUSTICE**

A Curriculum for Kindergarten to Grade Seven

## **BUILDING BRIDGES OF UNDERSTANDING BETWEEN NATIONS**

*With the vision of building bridges between the First Nations and Canadian systems of law, this education program honours orality—a traditional approach to education among First Nations of British Columbia—and teaches concepts and practices of justice from the perspective of First Nations' ways of knowing.*

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### **GRADE SEVEN**

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## SISIUTŁ: THE SCALES OF JUSTICE

by Gordon Hill, Kwakwaka'wakw

*The Sisiutł (a Kwak'waka word roughly pronounced SEE-see-yoolth) is a mythological figure of great power. It is a two-headed sea serpent, traditionally depicted with two heads extending from a central body and head. Sisiutł was said to guard the entrances to the homes of supernatural beings, and was so used as a motif painted on the fronts of bighouses for protection.*

The Sisiutł is a fitting symbol for the concept of justice, and in particular the scales of justice which have been incorporated into this design. The feather, the symbol central to the circle, is also another important symbol of truth and justice. Sisiutł is always presented in balance, the two extending heads of equal length and size; the scales of justice are also balanced, representing equality. Equality also means balance, and one of the main teachings that First Nations have provided to the world is that without balance, there is no harmony for the earth, for its peoples, or for society. The Sisiutł is also a very powerful creature, and must be treated with respect. This is symbolic of the power of justice, and the respect that must be shown for justice. Finally, the body of Sisiutł is covered in scales for its protection; justice is also meant to serve and protect society.







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# TEACHER'S GUIDE - INTRODUCTION

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## THE FOUNDATIONS OF A JUSTICE CURRICULUM

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From an educational perspective, the goals of a justice curriculum are twofold:

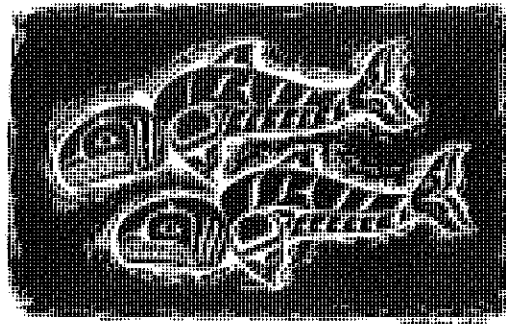
First, we must teach students **concepts of justice**. The concepts of justice that we have identified as being important to First Nations and non-First Nations are sharing, reciprocity, cooperation, respect, rights, the importance of caregivers, harmony, interdependence, honour, and balance.

Second, these justice concepts must be articulated in such a way that they are **practical and useable** by students. How do these concepts translate into people's lives? We have identified four areas within which students can apply these concepts to their real world, and these are:

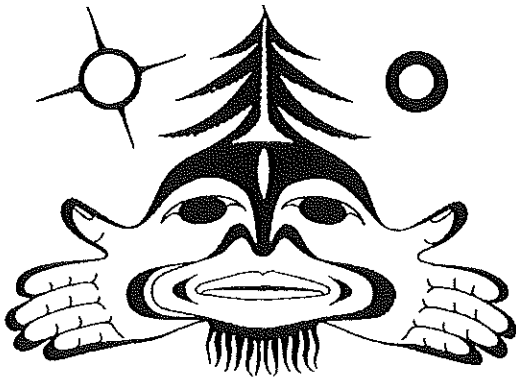
- being safe,
- being responsible,
- being fair, and
- getting along.

For example, among many First Nations the concept of sharing is directly related to the justice concept of responsibility. In a sharing community, no one goes without. It is the community's responsibility to provide for its members. Another example might be that cooperation is the basis of conflict resolution, or getting along.

All of the activities in the curriculum contain at least one element of these four fundamental justice themes. To highlight this in a visual way, a different graphic image for each of these four themes appears at the beginning of each lesson in the textbook. This way, teachers will know at a glance which justice themes that particular lesson focuses on.



For the theme of **getting along**, we have used an image of two salmon swimming together by Gordon Hill, a Kwakwaka'wakw artist. The salmon represents the primary food source for many First Nations of B.C. The community of the salmon reflects the communities of people who must get along together in their everyday lives. Cooperation must happen within a community in order for that community to survive.

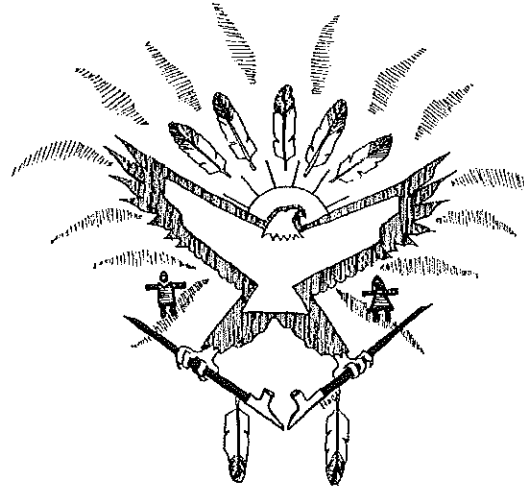


Jeff McNeil-Bobb, a Sto:lo artist, designed the image for the theme of **being safe**. The sun, the moon, and the cedar tree provide everything that we need in life. The hands welcome you in, symbolizing the safety and warmth of people who care about one another.



For **being responsible**, the Carrier Sekani Tribal Council has provided an image of a pictograph of a bear. This is used to illustrate responsibility, because pictographs are used as a sign of respect for animals that give themselves as food. This is being responsible since it shows this respect, which ensures that the animals will keep coming back. Bernie McQuary, a Carrier Elder, tells us that one of the rules of being Carrier is to "Respect all animals at all times."

Ron Hall, an Okanagan artist, provided the image to illustrate **being fair**. The seven feathers in this image represent the seven Bands of the Okanagan Nation. Eagle is a messenger who represents strength and guidance. The pipes are used by Okanagan people in seeking higher powers and sacredness. The bars leading from the



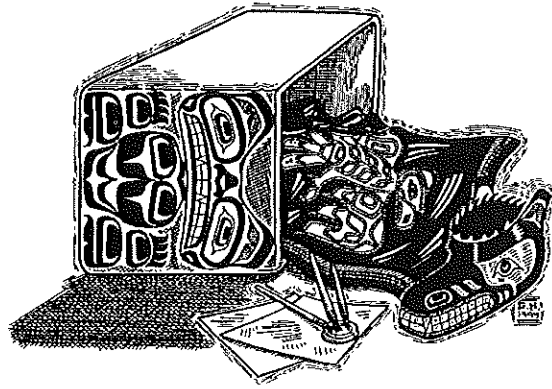
main symbols represent the different paths of life we must follow. The two human figures are the equality of male and female. All of these are important considerations in the concept of fairness. As a group of people walking the path of life, we need to recognize the different paths individuals may walk. In troubled times we encounter difficulties, and often the question of what is fair arises. In these difficulties, we may be hard on each other, in our quest for fairness. So, it is in these times that we need to reach to our higher power for strength, guidance, and wisdom to make decisions that are fair for everyone. We must not only think of ourselves, but of the feelings of others. And we must always remember, no matter what, tomorrow will bring a new day.

These images illustrate the concepts of justice that we wish to impart to students.

## CURRICULUM FORMAT

Each grade contains three separate units, which should be done in order, as concepts and stories previously introduced are often reviewed in the later units. Each unit has an overview which explains the major focus of the lessons, along with the goals of the unit and additional information required for teaching it.

Each lesson has its own objectives and core activities. Often there are *Extension Activities*, which are additional activities that further understanding of the objectives. Teachers are advised to read over the entire unit before beginning it in order to see what activities you feel may be appropriate for your class. The time given for the completion of the lesson is for the core activities only. *Extension Activities* will take additional time. You



should also be flexible in the core activities as well, since they may take more or less time than that indicated, depending on the teacher and the class.

Finally, although the lessons provide several ideas for activities, we encourage all teachers to be creative, and adapt them to suit the requirements and capabilities of your own particular class.

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# PHILOSOPHICAL RATIONALE

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## WHY A FIRST NATIONS JUSTICE CURRICULUM?

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In order to survive in the twentieth century, we must really come to grips with the White man's culture and with White man's ways. We must stop lamenting the past. The White man has many good things. Borrow. Master and apply his technologies. Discover and define the harmonies between the two general Cultures, between the basic values of the Indian Way and those of Western Civilization—and, thereby forge a new and stronger sense of identity. To be fully Indian today, we must become bilingual and bicultural. We have never had to do this before. But, in so doing, we will survive as Indian People, true to our past. We have always survived. Our history tells us so.

*(Louis Crier, Cree, Alberta.)*

The teacher, even though having adult roles and responsibilities, is also a student. Indeed, for an enquiry process to work the teacher needs to see his or her responsibility as being a co-learner. A certain humbleness, like water, is a useful thing; a sense of exploration into possibly new and unfamiliar territory, a willingness to see things in a new light, to make new connections. These qualities are all essential responses to the words of Elder Louis Crier and the other Elders and leaders you are about to hear. In this opening we have attempted to recreate the thoughts, feelings and spirit that have taken us through the research for this curriculum.

In the spirit of the focus on oral traditions in this curriculum, we suggest you read the following dialogue aloud and find yourself involved in this journey.

### DIALOGUE WITH THE ANCESTORS

The young people, all teachers and curriculum developers, walked with the wise ones, the wise ones of many voices and many faces. Their work had taken them on a journey with a purpose, one that required much searching, again and again, re-searching. They were looking for questions, looking for answers.

My people's memory reaches into the beginning of all things. If the very old will remember the very young will listen.

*(Chief Dan George, Burrard, North Vancouver.)*

The wise ones knew from many years of listening what lay in the young people's hearts. Yet it was important to hear the thoughts out loud, for the wind to hear.

"We are struggling to develop what we call a curriculum, a tool for teaching the young about the laws of what often seems like two worlds."

For thousands of years I have spoken the language of the land and listened to its many voices. I took what I needed and found there was plenty for everyone. The rivers were clear and thick with life, the air was pure and gave way to the thrashing of countless wings. On land a profusion of creatures abounded. I walked tall and proud knowing the resourcefulness of my people, feeling the resourcefulness of all beings. I measured the day by the sun's journey across the sky. The passing of the year was told by the return of the salmon or the birds pairing off to nest. Between the first camp fire and the last of each day I searched for food, made shelter, clothing, weapons, and always found time for prayer.

*(Chief Dan George.)*

"So, First Nations peoples lived as part of all creation, in harmony with the land, air and waters. They learned lessons from nature. How were these lessons passed on through time, from generation to generation?" the young people asked.

*Our peoples lived with the guidance of chiefs. We knew to whom we belonged, we knew all our relations. We knew our names, we lived our power.*

The young teachers stopped and gazed into a pool of water. Reflections greeted them. "We have heard you say many things."

*That is good.*

"Each person must know where they belong, their place in the world. And it is through encounters, actual living experiences, with the land, with animals

and with people that..." They stopped and saw again the faces in the pool, many faces behind and many faces younger, some still unborn, within: "...that one finds oneself."

*For many years our Nations grew strong. Like these cedars their roots were strong and true and rooted in the earth.*

In the course of my lifetime I have lived in two distinct cultures. I was born into a culture that lived in communal houses. My grandfather's house was eighty feet long. In houses like these, throughout the tribe, people learned to live with one another; learned to respect the rights of one another. And children shared the thoughts of the adult world and found themselves surrounded by aunts and cousins who loved them and did not threaten them. My father was born in such a house and learned from infancy how to love people and be at home with them.

*(Chief Dan George.)*

"This means then, that people looked after one another and needed each other to survive. They knew who they were and what was expected of them. Each person had a role and a responsibility." They thought about how important that was in their work together.

*Each person had a way of knowing their place within the circle of life. Each person learned that he or she had many gifts from the Creator and that one must make the most of these gifts for the good of the whole Nation. We learn from the Creator that a community is only as strong as its weakest member.*

## Philosophical Rationale

"You speak of a wheel of life and of the whole Nation. We are trying to develop a holistic curriculum."

*Yes. Each act of creation has many parts to it. We know this. The Creator put us all here together on one earth, not on many tiny earths, just one. And in each thing that we do there are many thoughts and feelings. And this is very important; there can be many choices about our actions.*

"So, we have freedom to choose what we do."

*This is why as humans we must live by laws, not laws to make us less but laws that help us serve our higher purpose. We marvel at how the creatures live together, how the earth has a balance. Each creature lives out its life's purpose in accord with the Creator's will. There is little choice for a tree or a bear. They must live and grow within the laws of nature. So must we, but we have to learn these laws for ourselves. We hold within us the gifts of all nature. We can be like a tree and root ourselves to the ground, and we can soar in our thought and feelings like the mightiest of eagles. But if we are only eagle-like we are of no use in our roles on earth, and if we are only rooted then we cannot fly to our highest challenges. We must develop all our gifts. That is our true nature.*

"This is what we mean by holism then. Seeing the whole wheel of life withing ourselves."

*And seeing ourselves within the whole wheel of life; recognizing kinship with the land, animals, people and spirit.*

"That sounds like quite a task, a lot of hard work."

*Yes, it is a lifetime's work, and beyond a lifetime. You see, everything works within circles, even time. Past and future can meet in each present moment. That is why we honour our ancestors in many ways, for there is never truly a death, only a change of energy. This we know. To us the number four is very important. The four seasons, four directions, four families of nature, four nations of the salmon people, four races of humankind. And the four elements of human wholeness; the human doing, feeling, thinking, and being.*

The young teachers puzzled about this in the context of creating a law curriculum. They asked: "But are laws not creations only of mental thought? In our Canadian legal system, laws may just seem to be thought up and written down. How can laws and law-making be spiritual, physical or emotional?"

Each of these aspects contributes to the wholesomeness of the next. If you are happy and healthy in your physical self, you can love yourself. People were taught to keep in shape, eat the right foods, and respect their bodies, not hurting them in any way. The people knew that this gave the best chance for the rest of your wheel to work. Because the native people knew this, every one of their rituals, customs, and traditions complemented each other and were enhanced by this holistic approach to life.

*(Chief Councillor Leonard George, Burrard, North Vancouver.)*

"Where did these practices originate and how were they developed?"

Directions for these practices came from the Creator and from the human leaders and teachers, and the practices were all simple. The simplicity prevented a myriad of complications within the body and spirit. Activities included running, fasting, meditation, singing, dancing, sweatlodge participation, pipe ceremonies, and cold water baths. One tried to stay in balance with the environment by rising when the sun came up, working and playing in the day, and resting when the sun went down.

*(Leonard George.)*

The teachers thought out loud: "And so these prescribed practices gave an order to individual and community life, and of course even today we speak of law and order together. So it seems that the first need for understanding and practising laws is for a healthy body. We know as teachers how our whole ability to learn rests upon a healthy body. It is most evident in young children that their physical nature takes them into experiences to think and feel and reflect upon."

The tried and true rituals of the past assisted in maintaining health. They helped us to express our pain, sorrow, anger, or whatever. When we sing, we cannot help but sing with what we are

feeling. It will be expressed and, once expressed, it will not burden us any longer and we will be relieved of that negative. We are not meant to hold all our feelings inside; we have a great need to express in order to stay whole. *(Leonard George.)*

The young teachers remembered back to times, each in their own way, when they had participated in rituals and activities in which they had had balanced feelings, and the body felt strong and healthy. Those were the times that the powers of thinking were strongest. And they knew, as teachers and parents, that there was a certain path of development that children take. They first learn through movement and through the body, and most pain and joy is felt bodily. Then, children begin to recognize hurt and happy feelings, and in later childhood they can more easily separate themselves from their own feelings and think about others, about consequences, and about situations outside their own experiences.

*If one is healthy physically and emotionally one also tends to be in good health mentally. The mind is unlimited in potential.*

The holy people also taught that there are three levels of thinking and communicating. There is the conscious level, where we use our will deliberately to direct our thoughts and actions. There is the unconscious level, where we are aware of what we are doing but perhaps not aware that we chose to do it. The third level is the subconscious—this is the level few people ever become familiar with because it requires intense meditation



and listening over long periods of time before you start to consciously receive the messages from this level. The holy people said the answers to life are in the second and third levels of our minds, and they spent the majority of their lives trying to reach those levels because it is believed that this is where God talks to us.

*(Leonard George.)*

"So, this then means that the mind, body and emotions were all in the service of this level of mystery, of the spirit. And if the laws come from the knowledge of the Creator, then a spiritual aspect to the curriculum is very important."

Without spirituality there really isn't anything else. To me, spirituality means believing in who you are, what you are, and practising everything that you've been taught by your elders—how to fish, how to hunt, how to preserve those fish, how to pick the berries, use the berries and traditional foods. That's all part of spirituality, because if you don't have spirituality then you don't have those things. Without spirituality what do you have? You are an empty shell. You're alive, but you're—almost like a vegetable. You're moving, your heart is ticking, but you're not really doing anything that is part of you. But if you have that spirituality, then you understand why you do the things you do every day.

*(Past Chief Councillor Ruby Dunstan, Nla'ka'pamux, Lytton.)*

The young teachers suddenly felt very thankful. This walk with the voices of the ancestors, and those who understood, had brought them closer to understanding the way forward and the meaning of this curriculum. Their insight into the reasons for the work provided the will to produce the best possible work.

And this is of course what you are doing for the children. You are helping them seek out meaning and reason that lies within all things, to sense their own power and to develop the will to do what is right. If a young person has a problem, often times the elder gives them a story. The story does not give them all the answers. It shows them the way. A story has many levels to think about. Each person who hears a story feels and thinks for themselves. In the old days stories were told many times over. That's how the people learned to listen. The stories are often teachings that tell about the way to live. The stories teach how to survive as human beings and how to respect, share and care for one another.

*(Thoughts of Tillie Gutierrez, Sto:lo, Chilliwack.)*

The curriculum developers smiled happily. "We are hoping that our work, in some small way, will help people not only to understand themselves, but also understand and live harmoniously in the changing world they are growing into."

In a collective society the structure of the society is based on love. We have great love for our children, for our grandparents. In this society there is no tolerance for selfishness, boastfulness, deceit or vanity, but there is a generous amount of forgiveness. Holistic healing thrives on the generosity of the mind, body, spirit and emotions. These four components must all work in harmony; each is dependent on the other. Love is in the centre of this mentality. It feeds only positiveness to all four. It is ready to forgive all ills, it is ready to plant new life through forgiveness, and it is ever so patient in acquiring and maintaining balance in a person. It may take time, but healing will come if the individual is ready to embrace it. The face of the Creator is painted on every leaf, it is carved in every rock and stone. It is our privilege to look for his face.

*(Thoughts of Murdena Marshall, Miqmaq, Nova Scotia.)*

To young people my grandparents always said, "You'll do all right if your hands are both full to overflowing." One hand could be filled with knowledge of the White man and the other could be filled with the knowledge of your ancestors. You could study the ancestors, but without a deep feeling of communication with them it would be surface learning and surface talking. Once you have gone into yourself and have learnt very deeply, appreciate it, and relate to it very well, everything will come very easily. They always said that if you have the tools of your ancestors and you have the tools of the White man, his speech, his knowledge, his ways, his courts, his government, you'll be able to deal with a lot of things at his level. When your hands are both full with the knowledge of both sides, you'll grow up to be a great speaker, great organizer, great doer, and a helper of your people.

*(Ellen White, Project Elder, Nanaimo.)*

## **HOLISM: PRINCIPLE INTO PRACTICE**

A curriculum such as ours is commonly referred to as a *law-related* curriculum. At the heart of a holistic curriculum is the study of the individual, the individual's gradually expanding spheres into other domains, such as family, community, and nation, and the dynamics of relationships between the individual and these other domains. Both traditional and modern educational practices demand that a First Nations approach include individual and collective relationships with the natural

world. Knowledge of self, others, and nature, as this knowledge relates to law, is essentially concerned with the juxtaposition and balancing of individual *rights, roles, and responsibilities*.

If our goal is to promote healthy individuals, then we must educate the whole person. We must also study and develop understandings about the whole person. In both the process of learning and the content of that learning, we must take a holistic perspective.

## OUR PHYSICAL SELF

We are born into a physical world with the gifts of our physical senses. It is plain to see that a growing child explores the world in a 'whole body' fashion. The work of the child is play. The more a child can experience and gain understanding in a physical way, the more readily he or she can develop ways of thinking and feeling about the world. For a young child, the natural and what we might term the *supernatural*, or the *spiritual*, are not so separate. In this way we are not only concerned with physical development for its own sake, but also with what is often called *psychomotor development*. Just as the Elders state that a child learns from encounters, educators such as Piaget, Steiner and Montessori believe that the child learns by acting on, within, and from his or her environment. This phrase might serve as the key for understanding the domain of psychomotor development.

One basis of this curriculum is the understanding that children move primarily in order to explore, comprehend, and adapt to their world, thereby gradually increasing control over themselves and their environment. This is particularly relevant to law-related education, for it is through physical activity that children discover *why and how things work, or don't work*. They discover through concrete experience that *laws are embedded in their daily activities and environments*. Therefore, particularly in the primary grades, many concepts are explored through experiences in and out of the classroom, and will extend understanding into family and community activities. Understanding the rules involved in such things as cooking and eating, crafts, games, dressing appropriately, playing music, writing a

story, riding a bike, shopping, participating in cultural ceremonies and traditions, interacting with Elders, friends, family and strangers, camping, building a fire, and gathering and growing foodstuffs, are all part of understanding laws.

In addition to direct experience, many activities involve role plays and simulations. These are forms of acting out situations, characters, and emotions. In the higher grades, students will take part in both scripted and non-scripted mock trials.

## OUR EMOTIONAL SELF

As stated above by Chief Leonard George, we all have a primary human instinct to express our feelings. First Nations peoples have always had the belief that an appropriate expression of emotions adds to the quality of life for individuals and communities. This curriculum provides many opportunities for teachers to explore with their students the expression and nature of feelings. The emphasis is on the experience of emotions within real, day-to-day situations. The students will have many chances to react to situations that they may find themselves in. The importance of recognizing the impact and consequences of emotions will lead to the ability to express oneself appropriately.

The validation and integration of the students' own cultural practices, values and environments will help build their sense of self-worth and self-esteem. The curriculum also focuses on the ideas of uniqueness and differences. The concepts and practices of *caring, sharing, and respect* for self, others, and nature are fundamental to a further understanding of law-related concepts and practices. Traditional First Nations values, such as helping one

another, will be encouraged in cooperative activities.

Children are no different from adults in responding more respectfully and carefully to things they identify with, and things that appeal to their innate sense of aesthetics. Therefore, this curriculum strives to involve children in a sense of co-creation and ownership, and in providing artistic and pleasing activities.

Oral traditions play a crucial role in nurturing the emotional strength and balance of a child. Through the active process of listening, the students respond with the full spectrum of human emotions, developing empathy and understanding. This emotional involvement, with endless possibilities for characters and events, broadens their horizons. Hearing stories from their own cultures and others strengthens the respect for different heritages.

### OUR THINKING SELF

The ability to think clearly, to assess all aspects of a situation, to weigh the pros and cons, to form judgements, and to make appropriate decisions, are just some of the mental skills needed by an individual to take an active role in society. Our ever more complex, information-based societies require a myriad of skills involving decoding, memory, extrapolation, sequencing, and a host of other mental functions.

Traditional life has always honoured clarity of thought, and the superb oratory skills displayed from time immemorial are ample evidence of this. However, this emphasis on oratory does not come from one-sided intellect. Elders often express the relationship between speech and ceremony

in a spiritual way, such as *thinking with the heart*. Indeed, there are many stories that illuminate the follies of one-track thinking.

Trickster characters such as Raven and Coyote often provide good examples of too much thinking for one's own good. Their tricky thinking often backfires!

Yet the experience of knowledge is our treasured birthright. This curriculum consciously sets out to provide students with not only the knowledge of law, but with the ongoing survival skills characteristic of their forefathers. Suggested activities provide wide scope for comparing, analyzing, reasoning, predicting, and applying students' mental faculties to both real life situations, and real life simulations.

### OUR SPIRITUAL SELF

Implicit in First Nations laws is the acceptance of a Creator, which is acknowledged by the Assembly of First Nations as part of its protocol statement:

*We the Original peoples of this Land know the Creator put us here. The Creator gave us Laws that govern all our relationships to live in harmony with nature and mankind. The Laws of the Creator defined our rights and responsibilities.*

In this curriculum, we have chosen to designate the Creator as 'he,' using a gender-neutral pronoun. The Creator was also referred to as 'he' by Elders in the stories we collected. However, if you feel uncomfortable with this in your classroom, by all means use 'she,' or any other suitable designation you know of.

First Nations peoples have always known that all life, including human life, is more than the sum of its parts. They have always acknowledged in their thinking, feeling, and doing that there is a state of being that gives meaning and order to life.

This curriculum honours our *spiritual nature*. The goal is to provide opportunities for students to, as Ruby Dunstan states, "understand why you do the things you do every day." The holistic study of the ideas and practices of law is an ideal context for students and teachers to explore important questions of life. The search for the reason and meaning that lie behind natural and cultural phenomena can be a very practical one.

A common fundamental of spiritual knowledge is the reality of *interrelatedness*, meaning that life is a web of connections. This has always been known by First Nations peoples. Traditional laws grew out of this understanding. Thus, individuals acknowledged the rights of, and their responsibility towards animals, people, the land, and kin.

It is difficult to talk about physical, emotional, mental, and spiritual aspects and activities as separate entities, for in practice they are interrelated in the whole person, as well as within the community. This curriculum follows a child's growing through a sense of dependence, through interdependence, to the desire for independence.

The involvement of all aspects of the family and community that impact on a child's life is important to the process of learning. Therefore, we encourage a partnership approach between home, school, and the wider community.

## **DEVELOPING THE SKILLS OF INTERRELATEDNESS**

Contemporary teaching methods have often only focused on the facts. There has been a bias towards intellectual skills, and this has continued to foster mechanistic worldviews.

A traditional, holistic education fosters interrelatedness. Students are encouraged to *observe, listen, and practise*.

In all traditional societies, storytelling has been used to enhance these skills. Stories act as a bridge between the child's experience and abstract concepts. It is the metaphoric nature of stories that produces the response of, "Ah, it's like that!" Metaphors place the concept within the realm of concrete experience, the real world of the child. In this curriculum, metaphors can be examples from the child's life or range of knowledge. In an interrelated approach, students are encouraged to actualize their own metaphors by bringing life experiences into the classroom.

One objective is to facilitate the skilful and holistic use of story in the child's life, using a wide range of story types. A good story, told in a living way, can be a very powerful, concrete experience for the child.

A metaphorical way of teaching is holistic. It constantly focuses on recognizing and understanding patterns and general principles which give meaning to specific facts. Each new unit, concept or theme is no longer viewed as an isolated set of information, but an opportunity to make connections.

## SOURCE OF LAWS

The ownership of territory is a marriage of the Chief and the land. Each Chief has an ancestor who encountered and acknowledged the life of the land. From such encounters come power. The land, the plants, the animals and the people all have spirit—they all must be shown respect. That is the basis of our law.

*(Gitksan and Wet'suwet'en Chiefs.)*

The major agencies of social control are morals, religion, and law. In the beginning of law, these are not differentiated. Even in so advanced a civilization as that of the Greek city-state, the same word is used to mean religious rites, ethical custom, the traditional course of adjusting relations, the legislation of the city, and all these looked on as a whole, as we should say, including all these agencies of social control under one term which we now translate law.

*(Roscoe Pound, contemporary philosopher of law.)*

This curriculum looks at the source of laws and how these laws become part of human society. In First Nations, many laws are derived from human interaction with the natural environment: notions of respect, value, and responsibility, for example, may be seen as deriving from First Nations resource management. The quote from the Gitksan and Wet'suwet'en Chiefs above provides an insight into how laws are derived from the land; the one from Roscoe Pound shows one source of Canadian laws

from a time when law in the Western sense was much more openly related to other aspects of society.

Laws from any society are based upon needs perceived by that particular society. Because of this, the reason for a law should be apparent to anyone coming from that society. If it is not apparent, either the law is out-dated and no longer relates to current understandings, or the person encountering the law does not understand the aspect of society to which the law applies. Being familiar with "The Law," whether it is derived from First Nations or the Canadian legal system, requires an understanding of the *source* of the laws, which will in turn allow an individual to grasp the *reason* for such laws.

In this curriculum, laws are not simply taught: through activities included in the different teaching units, an understanding of law will stem from experience, either real or simulated, of the application of laws. Laws need to be understood, and that understanding will come from the acknowledgement of a need for the law because of certain circumstances. For example, many B.C. First Nations use feasting and ceremony to validate rights to, among other things, hunting territories. These rights are announced to all present to validate them, so that those claiming rights will have witnesses to their ownership. In Canadian law, if one wishes to buy a house or tract of land, the house is purchased and a deed is given to the new owner, validating his or her right to own the house and the land upon which it rests. The deed is like a witness in a feast. Both of these legal transactions have a specific need—to prove ownership. These two examples

## Philosophical Rationale

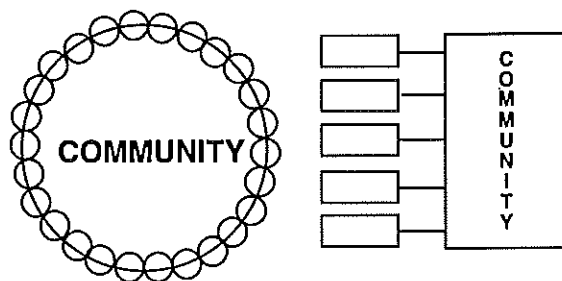
come from different legal systems. Demonstrating the similarities and distinctions between, and validity of both oral and written documentation is an important part of this understanding. The juxtaposition of these different forms of documentation strengthens the students' knowledge of both.

One must also remember that, although it appears that the curriculum makes a distinction only between First Nations and Canadian systems of law, it is very important to understand that among First Nations there are many different forms of traditional government. For example, some First Nations, especially along the British Columbia coast, had highly stratified societies with a system of hereditary chieftainship. Other societies had little or no social stratification, and some leaders might be chosen for a particular skill that they had, for example in hunting or spiritual domains. There were also various other types of traditional systems of government that fall somewhere between these two examples. Because of these differences, every society has different forms of protocol, norms, and ways of initiating social interaction. One curriculum cannot cover the entire region of British Columbia, and so each community is encouraged to investigate within its own area the forms that traditional government took. Research into these could provide the basis for major projects at the intermediate levels.

Canadian laws are also derived from a long history, being a culmination and continuous reform of laws from ancient Babylon, The Ten Commandments, Greek and Roman law, and British law. Within this long history there have been many changes.

Some laws are rooted in an era in which there was little separation between Church and State, something that we take for granted now. For example, the law against Sunday shopping, which no longer exists in British Columbia but does in many other provinces, goes back to the Bible where it is stated that the Sabbath is a day of rest. This law is based on a very old Judeo-Christian ethic.

So we can see that, although at first glance notions of justice from the point of view of First Nations and the Canadian legal systems seem miles apart, there really are many parallels between them. Why do they seem to be so far apart? One reason might be that the Canadian legal system has been separated from the rest of normal, everyday living, and much of how it works cannot be understood by the average person. As exemplified by the opening quote of Roscoe Pound, law has become so far removed from everyday living that we need a lawyer to represent us in a court of law, someone who understands how the system works. On the other hand, among First Nations traditional laws remain a part of everyday life. According to Judge Douglas Campbell, the difference between First Nations and northern European systems of justice can be illustrated graphically:



Rather than having justice as part of the internal structure of the community, as in First Nations societies, communities in northern European culture created external structures to carry out the work that needed to be done in the area of justice. Thus, the system of justice is *external* to the community, rather than *internal*. This is the model that was imported to Canada. Respect must be shown for both systems, and our task, the theme of the curriculum, is to build bridges of understanding between the two.

An attempt is made to explore these differences in the curriculum in order to bridge this perceived gulf between the two systems. This will show that, rather than being at odds with each other, the two systems can co-exist in harmony because of shared basic values of fairness, responsibility, safety, and cooperation. In a

more practical sense, the curriculum can play a part in the empowerment all people - First Nations and non-First Nations students and communities - to survive in an ever-changing world by becoming familiar with both systems, and realizing the value of and similarities between both.

I'd advise young people to complete their education in this system that we're facing now and to speak to our elders. That would make a solid foundation for them, and then they could reach out a little bit further. They would have their roots, which are solid, deep, and strong as well as a White education. I think that is what I would tell young people.

*(Chief Alan Wilson, Haida, Masset.)*

## **INDIAN CONTROL OF INDIAN EDUCATION**

We must reclaim our right to direct the education of our children. Based on two education principles recognized in Canadian society, Parental Responsibility and Local Control of Education, Indian parents seek participation and partnership with the Federal Government, whose legal responsibility for Indian education is set by the treaties and the Indian Act.

First Nations declare their jurisdiction over the education of their people. Each First Nation will define a philosophy of education that is culturally appropriate for their own people. Each First Nation will determine the resources needed for

quality education as defined by the First Nation.

First Nations education is a holistic approach that incorporates a deep respect for the natural world with the physical, moral, spiritual, and intellectual development of the individual. First Nations language and cultural values are taught and enhanced through education. The education process actively involves the parents.

*(Assembly of First Nations.)*

These quotes, and those that follow, are from the *Assembly of First Nations*, previously known as the *National Indian*



*Brotherhood*. A document put out by this organization in 1972, the *Indian Control of Indian Education* policy paper, provided the first comprehensive educational statement by First Nations peoples from across the country to reassert their role in the education process.

### **BACKGROUND TO INDIAN CONTROL OF INDIAN EDUCATION**

Historically, the education system of First Nations was characterized by community involvement in showing the appropriate roles to its younger members. The responsibility for education was carried out by the extended family, clan or band which prepared young people for adulthood. This guidance allowed young people to actualize their emotional, social, physical, intellectual and spiritual competencies and potentials. In other words, the process of informal education brought the whole community together to assist in the upbringing of its young people.

Later, the actions of both the federal government and religious orders within Canada worked to disintegrate First Nations families. The goal of the religious orders was to transform First Nations people into "civilized" and "christianized" members of society. Educational institutions such as the residential schools negated the culture and language of its students: parental responsibility and local community control were non-existent.

Toward the end of the 1950s, the federal government ceased operations of some residential schools and established day-schools on some First Nations reserves. These schools were operated by various religious groups, and the school curriculum was limited to religious instruction, the basics of reading and math, and tasks for

men and women around the home. After these day-schools were built, the government provided for the integration of First Nations children into provincial schools. This forced some First Nations students to attend school off their reserves, with some living with non-First Nations families in urban areas. The federal Department of Indian and Northern Affairs controlled all education matters for First Nations peoples. The integration policy did not allow for parent participation in the decision-making process.

Then, some First Nations leaders from across Canada began action to publicize their concerns about the unjust treatment of their people. Following this, a Standing Committee on Indian Affairs released a number of research findings about the state of First Nations education in Canada. Verna Kirkness provides us with a list of these findings which include the following: a high drop-out rate among students; high unemployment rates on reserves; a subtractive school curriculum which lacked content relevant to First Nations students; a lack of recognition for First Nations contributions to the history of Canada; a lack of cross-cultural training for teachers; a perceived age-grade retardation among First Nations students which was actually due to the irrelevant curriculum and the language factor; and a lack of communication between officials and parents about the transfer of their children to provincial schools.

The federal government continued to make policy for First Nations people, and in 1969 the Liberal government proposed what has been termed the "White Paper." The main focus of this document was the elimination of the special status of First Nations people. In response to this the *National Indian*

*Brotherhood* devised an education statement made in consultation with First Nations across the country, which became the *Indian Control of Indian Education* policy paper given official recognition by the federal government.

Two significant principles arise out of the document: parental responsibility and local control, which includes community involvement. The document states:

*The National Indian Brotherhood is confident that it expresses the will of the people it represents when it adopts a policy based on two fundamental principles of education in a democratic country, i.e.:*

- *parental responsibility, and*
- *local control.*

This document recognizes that in order for First Nations control of education to be feasible, there must be support and guidance from parents and others in First Nations communities.

#### **PARENTAL RESPONSIBILITY**

*We want education to provide the setting in which our children can develop the fundamental attitudes and values which have an honoured place in Indian tradition and culture. The values which we want to pass on to our children, values which make our people a great race, are not written in any book. They are found in our history, in our legends and in the culture. We believe that if an Indian child is fully aware of the important Indian values he will have reason to be proud of our race and of himself as an Indian.*

Parental involvement is deemed essential when viewing the past practice of First Nations children being taken away from their parents to be raised in the residential schools. First Nations parents have the educational goal of preparing their children for life in modern society while building on cultural identity.

Both these principles exist in Canadian society and now First Nations parents are affirming their right to partake in the educational process, including the setting of educational goals. The *Indian Control of Indian Education* policy goes further to state that only the parents of First Nations students know what values they want taught to their children. In order for parents' responsibility to be a reality in the educational process, this document maintains that the federal government has to support this partnership.

#### **LOCAL CONTROL OF EDUCATION**

*We do not regard the educational process as an "either or" operation. We must have the freedom to choose among many options and alternatives. Decisions on specific issues can be made only in the context of local control of education. We uphold the right of the Indian Bands to make these specific decisions and to exercise their full responsibility in providing the best possible education for our children.*

Local control of education means that First Nations communities have the right to determine the educational goals and outcomes for their children. Only in this way will First Nations communities begin to effect change in their children's education. The following are important

## *Philosophical Rationale*

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aspects of local control: making decisions in the area of teacher training, having a say in the building of school facilities, and defining the school curriculum. The responsibility for all these areas of concern requires local control that respects the culture, values, philosophy and above all the visions of a community.

Today, more than twenty years after this policy document, many First Nations are implementing their own programs and administering their own educational systems. In British Columbia, there are many band-controlled schools funded mainly by Indian and Northern Affairs. In these schools, the provincial B.C. core curriculum is followed, along with a cultural curriculum.

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# **FAMILY & COMMUNITY INVOLVEMENT:**

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## **PARTNERSHIPS IN BUILDING BRIDGES BETWEEN NATIONS**

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*A curriculum is not an archaic, inert vehicle for transmitting knowledge. It is a precise instrument which can and should be shaped to exact specifications for a particular purpose. It can be changed and it can be improved. Using curriculum as a means to achieve their educational goals, Indian parents want to develop a program which will maintain balance and relevancy between academic/skill subject and Indian cultural subjects.*

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### **INTRODUCTION**

This section of the Teachers' Guide has been developed:

- a) to address the issue of the need for parent and community participation in First Nations schools in historical and modern perspectives;
- b) to suggest possible reasons for a lack of community involvement in schools, and present some strategies for identifying why a lack of involvement may exist; and
- c) to discuss ways of achieving involvement.

Also provided is a Volunteer Handbook as a model to be used by schools to enlist the support of parents and community members in the activities of this curriculum and therefore in the school itself. Perhaps the implementation of this curriculum will encourage all those involved to initiate alternative teaching methods in their schools, methods based on First Nations teaching styles with relevant content. Hopefully in this way families and community members will not feel alienated by the school system, and will play an active role in the total education of their children.

### **WHY DO SCHOOLS NEED COMMUNITY INVOLVEMENT?**

It is well recognized among educators that one crucial aspect to the acceptance and smooth operation of a program, particularly within a school with a high First Nations population, is community involvement. For example, Seabird Island Community School, located in southern British Columbia in Sto:lo territory, states in its policy manual:

*The development of the individual child is seen as a partnership between home, school, and community. The Board will seek to ensure that communication between home and school is open, honest and positive, and that appropriate opportunities are provided for participation by parents and the whole community in the education process. We believe that the ultimate responsibility for education belongs to the parent, child and community. The school curriculum will therefore reflect those teachings and values as determined by them.*

While all schools recognize the benefits of community and parent participation, the

situation for schools with a high First Nations population is somewhat different, due to different backgrounds, histories, and traditional forms of pedagogy.

### **FIRST NATIONS IN CANADA**

Within the area which is now called Canada, it is estimated that there were at least fifty linguistic groups prior to European contact. Within these groups there were several different cultural groups, with great variations among them. For example, some kinship systems were reckoned matrilineally (through the mother's family), others patrilineally (through the father's family), still others bilaterally (through both mother's and father's families). There were settled farming communities, settled fishing communities, communities that had a seasonal round based on hunting, fishing, and gathering of plant foods, and various combinations of all these subsistence strategies. It is evident that First Nations societies in what is now Canada did and continue to practise very different lifestyles based on their own histories and environments. These differences must be taken into account in any educational program involving First Nations.

### **FIRST NATIONS CONTACTS WITH EUROPEANS**

'European contact' usually designates the time that Europeans first came to this continent for purposes of exploration, fishing, and acquiring furs for European and Asian markets in the sixteenth century. However, there was prior contact on the east coast with Scandinavians around AD 1000. As well, there were many different 'contact' times within what is now called

Canada after the sixteenth century depending upon the area. First Nations in the eastern part of Canada experienced contact and European settlement hundreds of years before those in the west. Thus, to speak of 'contact' as being an isolated point in time is misleading. Different communities have been affected at various times and in various ways by Eurocanadian cultures, so the histories of particular communities must be examined in their own right. We must not repeat the mistakes of the past by subsuming all First Nations in Canada under one system.

With European settlement came the European system of schooling, which for the most part was imposed indiscriminately upon all First Nations peoples, on the one hand without regard for cultural differences that existed between the varied Nations, and on the other with the express intent of acculturating First Nations people according to European standards. No consideration was given to the ill effects that a foreign system of education might have on the learners and their communities. Ultimately, the Eurocanadian goal of assimilation was not achieved, and therefore all the efforts that had gone into trying to 'educate' and 'civilize' First Nations people were seen as a failure. No thought was given to traditional instructional methods.

### **TRADITIONAL FIRST NATIONS EDUCATION**

According to Joseph Couture, there are six characteristics of traditional First Nations values that must be considered in education programs:

1. Native cultures are dynamic, adaptive, and adapting, not limited to the past.

2. These cultures are authentic and valid, inherently creative, capable of distinctive and sophisticated human development and expression, and therefore they can invent structural forms and institutions as needed to assure and strengthen group/individual survival.
3. Native life-ways are rooted in a perception of the inter-connectedness between all natural things, all forms of life.
4. There is a characteristic sense of community, of "The People," a collective or communal sense that contrasts sharply with western individualism and institutional forms based on private ownership.
5. The current Native situation presents a wide spectrum of variation and diversity of Native behaviour and attitude, of history, and of social and political systems.
6. Modern Native behaviour includes responses to highly specialized relationships with the dominant Canadian society, to a greater extent than any other Canadian group.

These values are inherent to First Nations cultures, and their traditional education methods employ example and storytelling to pass these values on to the next generation. Because of this, family involvement in education is very important, since parental pride and approval motivates the child to learn.

Related to family involvement in the total education of the child are other factors important to traditional First Nations education, such as local control and

curriculum relevance. These aspects of education cannot be realized without community involvement. These factors play major roles in this curriculum.

Local control is part of traditional First Nations education. The Eurocanadian model imposed upon First Nations is centralized, which does not work because there are so many different First Nations in Canada. This curriculum should not be viewed as being imposed from the 'outside': it is a flexible model that was developed in conjunction with different First Nations communities. The idea is to use it within your particular community according to local criteria. In this way, the curriculum will be locally controlled.

Similarly, curriculum relevance will be achieved by this flexibility. Curriculum themes and activities should respond to real life situations. We encourage educators to attempt to incorporate what is going on around them in the community into the classroom, through field trips, role playing, open discussions, and other activities centred around timely issues.

Another important factor in First Nations education is language. There are many different First Nations language groups in B.C. Although this curriculum is not a language program, we encourage teachers and community members to use the local language in the classroom to tell stories and in everyday activities where possible. The amount and complexity of the First Nations language used in the classroom will depend on the fluency of the teacher and students.

We also encourage you to integrate the activities in the curriculum into such areas as cultural and social studies, First Nations language teaching, art, drama, or any area that the school, teachers, parents,

community members, and students feel would be appropriate.

### **THE NEED FOR FAMILY AND COMMUNITY INVOLVEMENT**

Family and community involvement will greatly enhance this curriculum for several reasons:

1. There is a need to resource the knowledge that Elders and others have of traditional stories and society, including how traditional government institutions operated, and continue to operate today.
2. There is a need for families and community members to become involved so that the students will feel that the knowledge being imparted to them about their traditional society and mainstream Canadian law is important and relevant to their lives.

Community involvement will mean that not only the students learn: all family and community members will share their knowledge of traditional aspects of their own society with each other, and will learn more about Canadian law. Some people will not have had the opportunity in their education to learn about First Nations societies, and many will not have had experience with the Canadian system of law. In this respect, the aim is not only to educate the students, but the whole community, through this sharing of knowledge.

### **HOW CAN WE IDENTIFY REASONS FOR LACK OF PARENT AND COMMUNITY PARTICIPATION IN THE SCHOOL?**

If one examines the historical relationship between First Nations and non-First Nations peoples in Canada in regards to education, some of the reasons for the lack of interaction between families and schools become apparent. These ideas can be used as guidelines for identifying those that are relevant in your community. Practical suggestions for communicating with families in order to understand how they feel about this curriculum and the school follow.

### **POSSIBLE REASONS FOR LACK OF INVOLVEMENT**

1. Many family and community members may have had negative experiences in their own schooling. For example, some First Nations people may have attended a residential school where they were taken from their homes, or they may have been integrated into a provincial school where they felt alienated and 'different' from most other students. Often the curriculum would have been irrelevant to their lives.
2. Family members may not understand the school curriculum or the reason for it. It is important to let them know about it.
3. Family members may feel uncomfortable with the school if they do not speak English very well or at all, especially if the majority of the staff are from different cultures. Every school should have resource people who can

communicate with family members when necessary.

4. Family members may simply feel they don't have the time to participate in the school, especially if they work full time. Different types of family groupings also need to be taken into consideration, such as single-parent families, and those in which grandparents, aunts and uncles, or other relatives are the principle caregivers. We need to understand that people lead demanding lives.

### **POSSIBLE STRATEGIES FOR DETERMINING REASONS FOR LACK OF INVOLVEMENT**

1. **Questionnaires.**

These can be sent home with students, and should be accompanied by information about this curriculum.

2. **Home Visits.**

These work especially well, but are more feasible within smaller communities than in urban centres. During the visits, questionnaires can be given orally, and the family members' feelings about the curriculum and the school can be discussed.

3. **Bingo.**

This game is especially popular in many First Nations communities. The school could put one on, and have a break midway in the evening to discuss the curriculum. This should be followed by a question period, and time to fill out a questionnaire. Those who have trouble with English could be helped by their friends. The school could also offer babysitting by hiring some local youths so that more people could attend.

4. **School Open-house.**

All community members could be invited for a tour of the school and an introduction to this curriculum. As incentives, a raffle could be held, and a presentation could be made of dances, songs, crafts, etc. Again, there should be a question period, and those attending could be asked to fill out a questionnaire. This could be offered in the evening or on a weekend so that most people can come.

5. **Parent-teacher Workshops.**

These are helpful to have family members and teachers speak together openly about the school, the students, and the community. A workshop is a wonderful way to have people feel more comfortable with each other and with the school. The workshop for this curriculum could focus on family members' feelings about traditional First Nations ways and values they would like their children to learn, and what they would like their children to know about the Canadian justice system.

These are some suggestions for introducing the curriculum to the community, and getting some feedback as to how people feel about it. Special effort should be taken to inform community Elders of all events, and encourage them to attend.



**FOLLOW-UP**

Notes should be taken down by facilitators of comments and suggestions made orally, and information received on questionnaires should be organized. Follow-up is important: those who participated should be called, visited, or sent home a note thanking them for their input. Subsequent meetings and gatherings should specifically address issues raised by parents and community members.

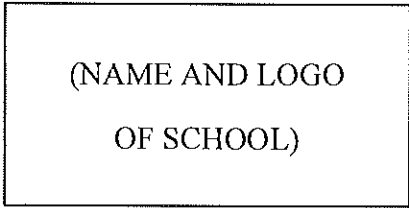
**WHAT CAN WE DO TO PROMOTE PARENT AND COMMUNITY INVOLVEMENT IN THE CURRICULUM, AND THEREFORE IN THE SCHOOL?**

The actual process of determining problems of family and community involvement in the school is the first step in involvement. Following this there must be an on-going commitment to inviting people to participate in activities. We would also encourage schools to set up Parent/Community Member Advisory and Policy Committees, if they have not already done so, that meet regularly to discuss and monitor the school's curricula. We want to ensure that this curriculum will have positive effects upon the students, teachers, and community.

## ***EXAMPLES OF HOME - SCHOOL CORRESPONDENCE\****

\* Remember that these are just examples. Communication with the community must follow guidelines of what is acceptable in your particular community. For example, questions may have to be re-worded to be not so direct if this makes people uncomfortable.

*(Initial notice to homes)*



***WELCOME TO  
FIRST NATIONS JOURNEYS OF JUSTICE***

This year, our school will be implementing the First Nations Journeys of Justice curriculum. This is a curriculum that uses traditional First Nations stories in order to teach your children about traditional values and laws, and also teaches about Canadian law.

We will be holding an informal get-together to discuss this curriculum with all members of the community on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. in the school gym. Please plan to attend. If you cannot attend, you may contact the school for more information. Refreshments will be served. Babysitting will be provided. There will also be a *(language)*-speaking interpreter.

This is a community-based curriculum and we want it to be controlled by you: family and community members. You have a say. Please tell your friends and relatives about it.

Hope to see you there!

*(TEACHER/CULTURAL COORDINATOR/PRINCIPAL/  
PARENT ADVISORY MEMBER)*

*(To be sent home, filled out during home visit, or distributed at community gathering)*

(NAME AND LOGO OF SCHOOL)
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Dear Family and Community Members:

We would really appreciate it if you could answer the following questions for us so that we can find out how you feel about the school and the First Nations Journeys of Justice curriculum. You may ask someone to help you if you wish.

How do you feel about the school? \_\_\_\_\_

If you have kids who go to the school, do they like it? \_\_\_\_\_

Is there something in particular you like or don't like about the school?

\_\_\_\_\_

What was the school like that you went to? \_\_\_\_\_

Do you know about First Nations Journeys of Justice? If so, what have you heard?

\_\_\_\_\_

Would you like to know more? \_\_\_\_\_

Any other comments? \_\_\_\_\_

\_\_\_\_\_

name:

Thank-you for taking the time to answer these questions. You can send it back with your child, or bring it to the School Open-House on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

*(TEACHER/CULTURAL COORDINATOR/PRINCIPAL/  
PARENT ADVISORY MEMBER)*

(NAME AND LOGO  
OF SCHOOL)

## ***OPEN HOUSE***

All members of the community are invited to a tour of the school on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

There will be a discussion of the First Nations Journeys of Justice curriculum, so bring all your questions and your expertise! We need them!

***Also:***

A traditional dance presentation by the students

***And:***

Raffle for great prizes!

***DON'T MISS IT!!***

(NAME AND LOGO  
OF SCHOOL)

## **LET US KNOW WHAT YOU KNOW.**

Dear Family and Community Members:

The school needs to know what you know, anything at all, about traditional First Nations culture, or the Canadian justice system, because we need volunteers to work with us in the First Nations Journeys of Justice curriculum. We also need people to help out with role plays, field trips, and cultural days and evenings we will be putting on from time to time throughout the year.

If you can work with us one hour a week, one hour a month, or just a couple of times a year, we would really appreciate your involvement. Remember, this is a curriculum that should be relevant to our community, and you have a say in how it is run. Besides, what better way is there to get to know the school and become a real part of it?

Do you know any traditional stories? \_\_\_\_\_

Do you speak (*language*) at all? \_\_\_\_\_

Does your work involve anything to do with law? \_\_\_\_\_

Would you be willing to be a volunteer at the school? \_\_\_\_\_

What kinds of things would you like to do at the school? \_\_\_\_\_

If you decide you would like to become involved, we will give you a Volunteer Handbook explaining the kinds of things we're looking for. But we're flexible, and open to suggestions! So let us know.

Thank you for caring about your school.

*(TEACHER/CULTURAL COORDINATOR/PRINCIPAL/  
PARENT ADVISORY MEMBER)*



(NAME AND LOGO  
OF SCHOOL)

**FIRST NATIONS JOURNEYS OF  
JUSTICE**

***VOLUNTEER  
HANDBOOK***





## Family & Community Involvement

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Welcome to *First Nations Journeys of Justice*. Thank you for agreeing to be a Volunteer. First, let us tell you a little more about the curriculum. Here is its mission statement:

*With the vision of building bridges between the First Nations and Canadian systems of law, this project honours orality—a traditional approach to education among First Nations of British Columbia—and teaches concepts and practices of justice from the perspective of First Nations ways of knowing.*

The school needs Volunteers like you to help it achieve its goals. More specifically, we need people to:

- be part of a parent advisory council
- tell traditional stories to the students
- suggest field trips within our community that we can relate to what we are teaching in the classroom
- come on field trips to guide students and answer questions
- help out at community gatherings put on at the school (like open-houses and bingos)
- let other community members know about the curriculum
- encourage others to participate
- **tell us what you think we should be doing and suggest ways of doing it.**

This last thing is probably the most important, because the curriculum is **community-based**. Here are some reasons why family and community involvement are necessary:

1. There is a need to resource the knowledge that Elders and others have of traditional stories and society, including how traditional government institutions operated, and continue to operate today.
2. There is a need for families and community members to become involved so that the students will feel that the knowledge being imparted to them about their traditional society and mainstream Canadian law is important and relevant to their lives.
3. Community involvement will mean that not only the students learn: all family and community members will share their knowledge of traditional aspects of their own society with each other, and will learn more about Canadian law. Some people will not have had the opportunity in their education to learn about First Nations societies, and many will not have had experience with the Canadian system of law. In this respect, the aim is not only to educate the students, but the whole community, through this sharing of knowledge.

***WHY SHOULD I BE A VOLUNTEER IN THE SCHOOL?***

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The only way that communities can gain control of their children's education is through community participation. The more the community participates in the school, the more it will have a say in what goes on there, and what the children are being taught.

***WHAT BENEFITS WILL I GET FROM BEING A VOLUNTEER?***

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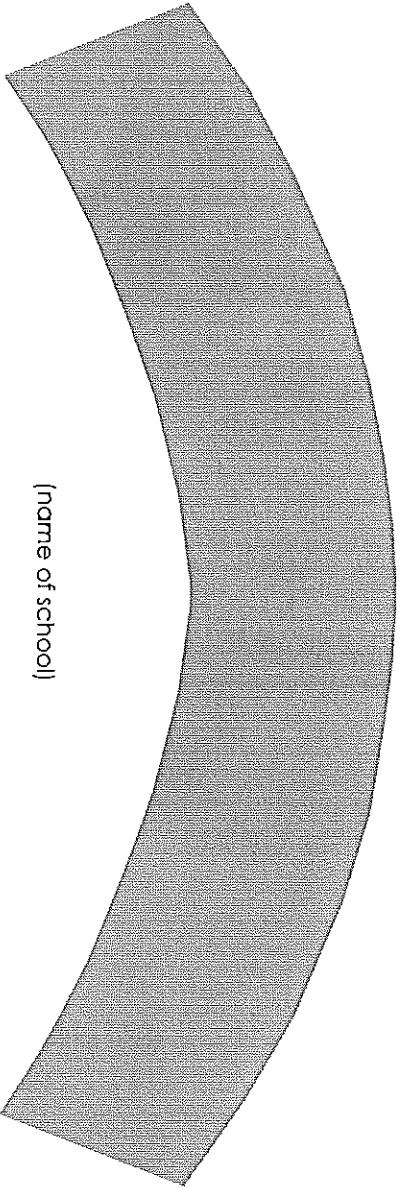
1. You will be a participant in all social gatherings put on by the school.
2. There will be special events for volunteers, and you will receive special recognition by having your name posted in the school and by receiving a certificate (see next page for sample).
3. You will have the satisfaction of knowing that you made a difference in the school and in the children's education.
4. Your children will be getting the kind of education you want them to have.

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**BEING A VOLUNTEER MEANS SO MUCH.**

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Please keep in contact with \_\_\_\_\_ at (*phone number*), who will be coordinating volunteers.



(name of school)

## FIRST NATIONS JOURNEYS OF JUSTICE

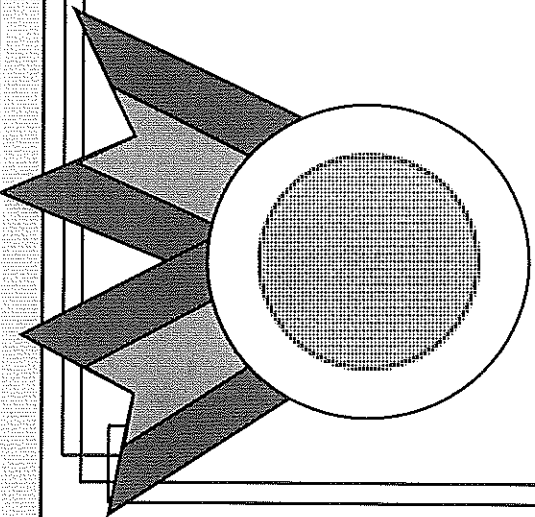
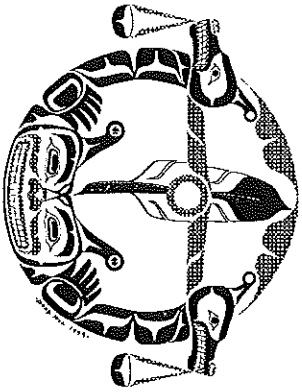
*This is to acknowledge the contribution that*

*has made to the school and community by acting as a Volunteer in the school*

*for the past year. Your commitment to the school has been greatly appreciated.*

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
CULTURAL COORDINATOR



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## **STORYGUIDE: BEGINNING THE JOURNEY**

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*In the old ways practised by many tribes, a person who is so inclined and capable on occasion sits and tells stories. The stories are woven of elements that illuminate the ritual tradition of the storyteller's people, make pertinent points to some listener who is about to make a mistake or who has some difficulty to resolve, and hold the listeners' attention so that they can experience a sense of belonging to a sturdy and strong tradition. (P. Allen)*

*As with any generation  
the oral tradition depends upon each person  
listening and remembering a portion  
and it is together-  
all of us remembering what we have heard together-  
that creates the whole story  
the long story of the people.*

(Leslie Marmon Silko)

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### **INTRODUCTION**

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In all communities, there are many different roles to be played by different individuals and groups of people. The same is true with stories. Different types of stories fulfil different roles and purposes.

In this curriculum, we have used many types of stories, and have attempted to use them appropriately. We encourage teachers to work with the full spectrum of oral tradition available to them. We have provided maps on pages 53 to 58 so that you may locate the area from which each story comes. Photocopy them for students where you feel this is appropriate, and use

the larger map of B.C. to locate these areas within the entire province.

Within the different cultural areas of B.C., each First Nation has developed its own particular traditions and protocols around stories and storytelling. There are distinct regulations concerning the way stories are to be told for teaching and learning purposes. The stories range from sacred to historical; from stories that teach the social, political, and cultural ways of the people, to personal life experiences and testimonials. And some are for pure fun. Some are owned by individuals, clans and families. Others are in the public domain,

available for anyone to tell. When using a story, the context, how the story came to the teller, how it is used and told, and how the listeners react, are as important as the story itself.



*Jo-ann Archibald*

### **WHAT IS STORYWORK?**

This term is used to describe the ways of working with First Nations stories. Just as there are different types of stories, there are different ways of using/working with stories. We recommend that you contact your local Education Coordinator, Cultural Centre, or Friendship Centre to find out who practises the oral tradition of storytelling or who is involved in local cultural curriculum development.

Establishing a working relationship with local First Nations community members, on the oral traditions, is essential. Here we share our experiences of the storywork approach, to exemplify some pertinent issues. But remember, this is just the beginning of a journey. Storytelling is an art that must be developed.

### **THE STORYWORK APPROACH**

The curriculum team contacted various First Nations people throughout B.C. to get recommended names of storytellers and to elicit participation for the project. We began with those tribal councils, cultural centres, and individuals who initially supported the project. The assistance of the project's Advisory Committee members was invaluable.

The curriculum team discussed the types of themes and concepts that were needed and agreed upon the regional areas each would visit. Each person contacted the storytellers to make arrangements for a visit. Sometimes, the staff member visited a community and attending meetings arranged by a local contact person to request participation. After an explanation of the project, individual storytellers gave their consent to participate. The principles that we advocated include:

1. The individual storyteller maintains copyright to his or her story. The story has been "loaned" to the Law Courts Education Society for this curriculum project.
2. The individual storyteller verified the printed version of their story and was consulted on how the story was used in the curriculum.

The storytelling sessions were tape recorded and later transcribed. The curriculum team used the tapes and transcripts to select stories for the lessons. Often the storyteller would share the important teachings that they wanted highlighted in the story. This was very helpful to the curriculum researchers, since

they often were not familiar with the cultural ways of the individual storytellers.

Some of the stories used had also been previously printed in books and archival material. We sought permission of the authors or publishers. Many of the First Nations communities have published their stories for curricular use. Archival material should be verified by the cultural community from where the story was taken. This type of material is problematic because of the lack of verification by the early anthropologists and linguists; however, many First Nations find that these stories help trigger memories of stories thought to be lost or forgotten.

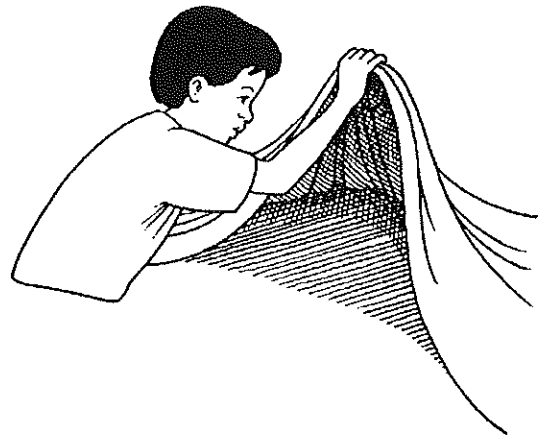
### **TYPES OF STORIES USED IN THE CURRICULUM**

Traditional and life experience stories form the basis of the storywork approach. These two forms of the oral tradition continue to be practised widely amongst many First Nations groups. The storytellers who use traditional stories recall hearing stories when they were little children. Some of those stories are presented in this curriculum. They contain foundational teachings which make one think about one's behaviour and which "tickle" the mind's imagination and intellect.

The life experience stories are just as powerful. Often those who share life experience stories do not consider

themselves "storytellers." However, when they share a life experience story, they too have an important message to tell.

Uncovering the layers of meaning embedded in traditional and life experience stories is a challenging process for both the storyteller and the story listener. Stories need to be heard over and over again, throughout one's life. Sometimes, the listener is expected to hear the story, and



then to go away and think about its meaning. Sometimes, the listener and storyteller engage in talk about the meanings that come from the story. The important point is that an inter-dependent relationship is established between the storyteller (teacher), listener (student) and the story (cultural ways and teachings).

### **TEACHER'S STORYTELLING VIDEO**

The purposes of this video are to:

- a) provide more information about particular stories used in the curriculum;
- b) share considerations about teaching approaches and cultural protocol for First Nations stories;

- c) act as a catalyst for teachers and community members wanting to engage in First Nations storywork.

In this video, Ellen White, Jeff McNeil-Bobb, and Frank Brown talk with Jo-ann Archibald about First Nations storywork. Each one highlights either traditional or life experience stories. The video is intended primarily for teacher and community implementation use. However, the individual stories may be appropriate for student use.

The types of questions and notions raised are ones that you may engage in with local storytellers. An important tradition amongst many First Nations is to share what one has learned with others. The information and ideas are presented with that intent. Enjoy!



**SOME COMMON APPROACHES TO USING STORIES**

Throughout the units, there are suggested activities for teaching and learning with the stories. Presented here are suggestions which may be used with almost any story. Please check with local First Nations educators about the appropriateness of any teaching or learning approach that you wish to use. The suggestions here are not repeatedly listed with each lesson or unit, so you may wish to periodically consult

this part of the storyguide for new ideas on approaches to storytelling.

1. Often the stories were and still are told with no explanation. It is expected that the listeners will go away and think about the story and any meanings that may surface. You may want to do this; however, students need to become familiar with this expectation.

2. A talking circle may be used to discuss aspects or to share individual understandings of the story. Sitting in a circle is symbolic of the notion that all are equal and that what is said is respected. Some basic questions may be asked in relation to the concepts of the unit lesson, but the purpose of these questions is not to check comprehension. It is expected that children and adults

may not understand all of a story. That is all right. With discussion and active engagement in the story's aspects, understandings may increase.

3. Role playing and having fun with the story is advocated. Through role play, empathy with characters and situations is experienced.

4. Stories need to be told and "felt" over and over again. We have repeated

some stories in various grade levels, to show that a story can have different applications and understandings.

## THE FEATURES OF STORYTELLING

There are a number of fundamental characteristics of storytelling that relate to law education:

### Listening

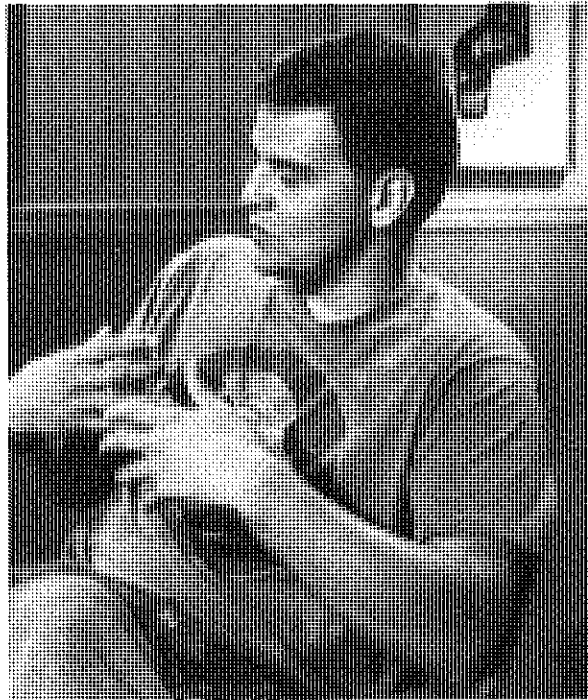
The ability to listen well and to hear all there is to hear has always been highly regarded by First Nations peoples. From an early age, children are required to still their voice and activity to pay attention. This art of listening is recognized as a central objective of education. Listening to stories trains this ability to listen.

Lushootseed Elder

Vi Hilbert says, "Listening is the central skill taught through storytelling. Children learn over time how to listen for the meaning being conveyed, and for their own meaning." As in the story "A Gift from the Creator," the Elders teach that the Creator has given us two ears and one mouth in order that we may listen twice as much as we speak. The ability to hear what others have to say, and to hear the teachings of the natural world, is crucial in understanding

social parameters, in forming judgments, in taking the appropriate action, and in respecting and honouring others.

Listening also plays a major role in many of the processes and practices of the Canadian legal system. Giving and receiving evidence, providing witnesses, legal representation, and the roles of both jury and the judiciary are all related to the act of listening.



*Frank Brown*

Moreover, in a world dominated by voice and ear rather than pen and paper, the interface of listening and memory is crucial. In cultures where history, law, and knowledge crucial to survival are handed down orally, great importance is placed on developing and maintaining strong faculties of memory.

### Repetition

The Elders also

teach that it is not enough to hear things once. Repetition is very important. Stories are traditionally thought of as teachings that need to be digested and mused upon over time. Children were required to listen to long stories and other forms of oratory that were repeated many times. The ability to accurately recall and recreate the history and teachings of the people is highly regarded; storytellers and historians are held in high esteem, and are given authority



in many matters. Just as people who work in the justice system must consult the written annals of law for clarification of precedence, in other words, how a similar case was decided, First Nations people draw guidance from their oral tradition, and from those who hold this sacred knowledge in memory.

### **THE USE OF STORIES**

Storytelling is not the domain of only the highly accomplished. Elders state that storytelling and the stories themselves are the birthright of the people. The right of a culture to know its own history is acknowledged by First Nations. Until recently, this history has not been acknowledged by the mainstream Canadian justice system. Thus, the affirmation and usage of First Nations ways of knowing in a justice curriculum is very relevant today in the endeavour that Canadians are now making to bridge the gap between the different systems of law.

Central to a justice curriculum is the study of the balancing between the rights and responsibilities of individuals and groups. Oral tradition can serve as a continual object lesson in learning about the ideas of INDIVIDUAL, SOCIETY, RIGHTS, and RESPONSIBILITIES.

Storytelling honours and respects the individual and the group. Many Elders teach that one should not simply accept the outward meaning of a story as an absolute given. A story often has many levels of meaning to it that are revealed to the listener at different stages of life, when the time is right. A story works primarily with the intuitive and subconscious levels of

intelligence. The Elders say that the Creator has given each of us a brilliant mind. Oral traditions are often told to impart essential teachings and rules that we must learn for ourselves as we proceed with our lives.

When a story is told, there is a sense of community listening. The storyteller is asking the listeners for their trust and willingness to follow the story wherever it may take them. The shared images and feelings can be very intense and moving. For all these reasons the teller has a very serious responsibility. He or she must endeavour to tell the stories with the greatest honesty and care. It is also the responsibility of the listener to listen honestly, openly and respectfully. Children soon learn the special joys of honouring a storytelling. They readily experience the warm bond of listening that develops in a community of listeners, and realize their essential role in helping the story be reborn each time it is told.

Often an Elder might tell a story in response to a particular problem or event. In this capacity, stories and their teachings are imparted as a preventative program, so that young people grow up knowing and understanding the practices and protocols of their own people and others. The stories often contain teachings about laws and time-honoured ways of survival, offering guidance and understanding.

Stories are essential to healthy emotional development. It is well understood that stories provide a safe vessel within which one may experience and appropriately express a wide range of feelings. Listening to the trials and tribulations of the

characters, and then role playing and representing the stories through other activities such as drawing and painting, allows the students to investigate the range of possibilities of a story's teachings.

These personal expressions of the story also allow students to subjectively play out hidden facets of their own natures. The teacher who regularly uses storytelling has a tremendous opportunity to create a safe and secure environment for sharing and exploring feelings.

### STUDENT SKILLS

There are many ways that storytelling can enhance a child's overall abilities and self-esteem.

#### Memory skills:

Since First Nations traditions and laws were oral and kept in memory, a person's ability to hold vast amounts of information in memory was systematically developed. Rather than being a purely mental or intellectual aptitude, this is a cultural and spiritual feature of First Nations. The cycle of listening to and later recalling and representing a story is powerful training in memory skills. *To know something by heart* not only implies that something will be remembered, it is a personal commitment to keep that knowledge and impart it to others when the keeper of the knowledge feels it is appropriate.

If memory is seen as literally *re-membering*, as in putting back together, it has a highly creative and empowering function. This is metaphorically demonstrated in "The Creator and the Flea" story. Many of the skills needed to be legally literate in today's society are similar to those developed in story-based memory

training. These include the abilities to sequence, classify, predict outcomes, comprehend cause and effect, identify characters' roles and influences, and make fair judgments.

#### Research skills:

In exploring stories, there are numerous opportunities for students to conduct both oral and literary research. Discovering stories and story sources, researching story parallels and variants, and finding out more about characters and cultural and geographic backgrounds, can all be practised throughout the elementary grades. Stories can also be used to motivate fact finding about subjects brought forth in the story.

#### Reading Skills:

Telling and retelling stories can help children to read with greater comprehension and recall. The frequent telling and retelling of stories internalizes a sense of story structure and develops a heightened ability to follow story lines. Teachers can make available the texts of stories the children have heard. Written texts gain the potential to come alive when children hear stories told. Children become excited about finding stories to retell and to serve as inspiration for their own creative story-making.

There will also be many opportunities for teachers to help students explore the connection between oral and written texts. In this curriculum, there are some activities designed to explore the characteristics of both oral and written law. An understanding of the importance of the written word in contemporary legal

systems is another factor that motivates the development of strong reading skills.

**Oral Communication skills:**

Many children who are thought of as reluctant to speak in normal classroom situations blossom when able to integrate their intuitive and imaginative gifts with speech. Storytelling unites visual and spatial perceptions with language. Storytelling also provides an opportunity for children to enliven and colour their speech while utilizing their organizational gifts. Clear, engaging speech is a desirable gift in First Nations oratory as well as within the Canadian legal system.

**Writing skills:**

The activities in the curriculum encourage children to write creatively. Many assignments ask for written responses to the stories and other information that the students are given. Children often write in a narrative style, as if they are speaking directly on paper. If they are encouraged to share their written work with classmates and family members, their natural style of writing will be validated. Teachers can also focus on the whole matrix of rules and conventions of grammar, and the role and responsibility of communication in both oral and written forms.

**Social skills:**

The ability to listen, concentrate, and make decisions are all enhanced through storytelling. A sense of individual worth is built as children learn to listen to each other while learning the skills of engaging an audience. A strong feeling of community also arises as children embark on magical story journeys together. Storytelling

engenders a feeling of shared experience and bonding. Often there will be empathy with the characters and events of a story.

**Imagination:**

Storytelling strengthens the imaginative *muscles*. Through the use of metaphor, children learn to imagine possible outcomes. Stories become a concrete bridge between the children's real life experiences and an unlimited world of potentials. Different perspectives of their own lives can be viewed as they hear their own joys and dilemmas reflected in countless characters and events. In this way, the children can relate to issues without feeling personally spotlighted.

**DEVELOPING STORYTELLING SKILLS AND CONFIDENCE**

Storytelling is part of a lifestyle. Storytellers become gifted through listening carefully and by training certain faculties.

Use the following story "The Creator and the Flea" as a model for the exercises which follow. The words in brackets within the story are suggestions to enliven and personalize the story and, where appropriate, encourage active participation. Often there are also indications in the text itself that give the image that wants to come alive. You will probably want to add more gestures yourself. Afterwards, you may use any story you wish for the exercises.

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## **THE CREATOR AND THE FLEA**

AS TOLD BY ELLEN WHITE, NANAIMO ELDER

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This story is about the Creator and the Flea, and the lesson we receive from them.

The story begins. The Creator was so great, he was a very special person (*spread your arms in a wide gesture*). He could take a human form, with long flowing hair and holding a long staff (*indicate on your own body the hair and staff*). He had five souls. If he was needed somewhere else, all he had to do was clutch his chest and bring his right hand forward (*do this*), and there in his hand would be a soft little ball of fluff, like feathers (*hold out your open hand and look at it, then look at your audience*), and he would blow it away (*do this*). That was his extra soul, so he could appear whenever he was needed (*look around and indicate places in the room with your hands*).

This one time he was attending a gathering in the hills with all his other people, but they were animals. The larger animals were helping the smaller ones. And they were going to gather food for the coming event, for everyone who needed food.

While he was speaking, turning his head about, he heard crying: "Huh, huh," and whimpering: "Sob, sob." It was sad, very very sad (*make your voice low and sad*). It was his right ear that was hearing it. For you see, his two ears (*point to them at the same time*) could hear different things. His right ear could tune into things a long way away (*stretch this out*), good for long distance hearing. His left ear heard things up real close (*in a lower voice*). So he turned a little bit to tune his right ear in (*cup your hand beside your right ear*). Very clearly there he heard that very sad sobbing, just so sad (*sad voice*).

So he said, "I am still needed here, but I must appear there also, where the sadness comes from." And he clutched his chest, and he drew his hand out, and he blew, and there was this little fluff. It was gone (*look around*), reappearing miles away on the hillside, and there was water way down below (*look down as if you are very high up, and indicate the expanse of water with your hands*).

And all these animals were running. They were going hunting for food for the evening meal. The larger ones were helping the smaller ones, the smaller ones begging for rides, and the bigger ones saying (*using a big-sounding voice*), "Come ride on my back. I am big enough. Come little brother, little sister." The bigger ones were directing their little brothers and sisters, the animals that were going into the water, such as seal, lady seal and otter. Otter was very good at diving deep for the sea urchins. Some were going for the mussels that clung to the rocks and were bringing them up. If any little pieces broke they would eat them, yes, they cannot waste any. But all the rest of the food they gathered was taken to the gathering place, where it was all shared out equally (*pretend you are making little piles with your hands*). Some animals brought along roots that they had dug for their vegetables, and some were getting meat.

The Creator was very happy to find that they were all still using one common sound, one dialect, one language, you might say, and yet they were also using the unsounded communication. They were looking at each other and sending messages to each other through the air (*hand through the air*). And the air was so smart, it carried their thoughts from one brain to another. They were nodding, laughing, talking, but these little white lights of communication were travelling and flashing back and forth.

## Storyguide: *Beginning the Journey*

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But when the Creator turned around a little bit, and tuned in the sadness, it came in very, very clearly, very close to him: "Sob, sob, hhh-sob, sob." So he followed the sound, and when he got there, he saw Snail Lady sitting there in front of this pitiful sight.

But Snail Lady was saying (*what you think a caring snail would sound like*), "Oh, my dear brother, I love you so very much. I am big enough. I want to carry you. Why don't you get on my back?" She was talking to this pitiful little Flea.

He was so small (*small-sounding voice*), but he was dragging these little legs. He replied, in a scared, sorry little voice, "Stay away from me! Don't you come close to me. Every time you come close to me, your slime gets all over these things I am dragging, just look at them. And look at my feet! They are bleeding again, and the bones are showing."

But he was touching his knees. He thought they were his feet. It was his knees that were bleeding and the bones were actually sticking out. Those long things he was carrying along on the ground were his legs, and his feet. But he wasn't using them. He didn't know they belonged to him, and he said, "I even tried to get rid of them, but I can't." The poor thing just kept dragging these things along.

The Creator went closer to Snail Lady and Flea and said (*in the Creator's voice*), "Oh my son, what have I done, what haven't I done?" looking straight at little Flea. "We must try and work together so that you can become whole. My son, you don't know all of you."

But little Flea squealed, "I know me, but who are they?" he said, looking at his legs and feet (*look at your feet*). The Creator said, "That's all right, my son. We will learn as we go along, we will learn. Each part of you belongs to one side. And all the parts when put together are yours."

Very gently the Creator sent Snail Lady away saying, "Go follow the others, my daughter. Tell them your little brother will be there with them soon."

But Flea replied (*in a voice of self-pity*), "Oh no, I will not. I am going to stay here. I want to die, that is what I want to do. I want to stay here and die." So he looked at the Creator and whined, "You say you are my father, but you are just standing there. Why don't you take me to that water, and hold me under until I am dead, because I want to die!" And he kept repeating, "I want to die, I want to die!"

But the Creator stood firm, and clearly told Flea (*calmly and matter-of-factly*), "My son, I don't take life, I create life. I help life be whole. We must start now. We'll start by doing something about your voice. We'll use that bush over there."

And in a pitiful little voice, Flea asked, "What's wrong with my voice? This is the way I speak all the time. There's nothing wrong with it!"

"No, my son," said the Creator, "that's your feeling 'poor me' voice, your 'I want to die' voice, that's what it is. And your eyes, they need working on too."

"These are my eyes," complained Flea. "They're all right. I can see."

"No, those are your crying eyes. You have cried so much, that you can't see as well as you could."

Flea looked up at the Creator, who looked so large to him (*look up, and make large arm gesture*). "You keep calling me your son, and you're not my father. You're too big and ugly. If I had a father, he wouldn't look like you."

And the Creator said to him, "I am your father, from far away. I am the father that helps to build, and I bring the message of the universe that you are going to be very, very strong, and you are going to be a teacher to others. Now, crawl over to that bush, and pick some of the little buds and leaves. Chew on them and you'll rub the good juices on your eyes."

So Flea started to crawl over to the bush (*crawling gestures while still standing*). Then he stopped. "Why don't you get it for me? You're just standing over there ordering me about. What are you good for anyway?"

"If I got them, then it would be for me. But it isn't for me, my son, it is for you."

So Flea crawled over there, dragging those long legs, talking to himself saying (*in a low voice so the Creator doesn't hear, directly to the audience like an aside*), "Now he comes here ordering me, telling me to go over here, and here I am. I'm just dying. Why doesn't he do it?" He's chattering and thinking all the way over.

But the Creator knows everything little Flea is thinking about. When Flea got to the bush, he picked buds and leaves and began chewing. Suddenly, the saliva liquid in his mouth started flowing because of the saltiness and bitterness of the little bush (*make appropriate facial gestures*). Then, just as the Creator told him, he chewed a little bit and spat the juices into his hands. Then he rubbed his hands over his eyes, and his eyes started feeling instantly so much better (*mimic these actions*).

"Now, my son," said the Creator, "put some in your ears." Flea had as much pus in his ears as he had in his eyes. It was just dripping from all the sand, and everything going in there and infecting it. And all the wetness from his crying had gone into his little ears. So he put some of the medicine in there, and in a moment his ears felt better.

"Father, it feels better."

"That is good, my son. We have to work together. We don't want to stop the good energy flowing now, we won't break it. Now rub your hands together." And little Flea rubbed and rubbed his hands together, up and down, around and around, until his hands were sparkling with energy (*do this, and get the audience to do it too*). "Now," said the Creator, "go over to that plantain and carefully pick some." So, still talking to himself, complaining, Flea dragged himself over. He picked some plantain, but he even moaned about that poor plant.

"Look at this thing! It's so ugly and dirty, and all covered in sand and everything, bugs crawling..."

"Shake it then, shake it well."

So Flea did that, and **surprise**, off dropped the sand, and even the bugs scattered away. Then he put the whole plant in his mouth, so much that his little cheeks were just puffed out (*puff out your cheeks*). And he chewed and chewed again, swallowing some. But he had a lot of juice in his mouth.

"Spit it on your hands now," suggested the Creator. So all this mangled pulp-like mush, he spat it on his hands and rubbed and rubbed.

## Storyguide: *Beginning the Journey*

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"Put it on your bones. Those are your little knees, not your feet. Those long things you've been dragging are your legs. Way over there are your feet. Because you are so small, if you used them the way they are meant to be used, you would be hopping up and down, up and down, and you'd never be left behind. You'd be gone with your relatives."

So Flea started chewing, spat it on his hands, both little hands equally, and he started rubbing that plantain medicine on his sore knees. And it felt *sooo* good (*do this part slowly and show the relief on your face*).

"It's stopped bleeding!" he exclaimed. His voice was already so much better, and stronger. "Father, look! The blood has stopped! It looks so good now!" (*excited voice*).

Next the Creator said, "I want you to speak to them, my son. Yes, those are your legs. Stick them straight out and way over there" (*point to a place in the room*). So the Flea sat up with his legs stretched straight out on the ground. "Now close your eyes, and look at them. Look at them!"

"I can't even see them."

"You will," said the Creator. "You will, when you really want to."

Then Flea started to get to know his little feet. He looked at his knees, then his legs, looking all the way down to his little feet. He started to get to know them. He touched his heels and his little toes and he could feel them. "I can feel them, Father, I can feel them." He got really excited.

"Good, so speak to them."

Flea kept rubbing his legs, and then his knees and hands, making more and more energy (*take some time to do this, and the following gestures*). He closed his eyes and started to speak to his feet. "I want you to be so strong. I want you to hold me up. Please, hold me up. I don't want to be crawling all the time. I want to walk. Be part of me, please, be part of me." So he tried to stand up and he could all right, but after just a little while a-toppling over he goes. "I can't do it, Father," Flea whispered.

"You will," came back the reply.

"But I can feel my legs, I can," said Flea, "and my feet too."

"Yes, my son," said the Creator softly. "Try it again. I think you're not speaking to them quite right."

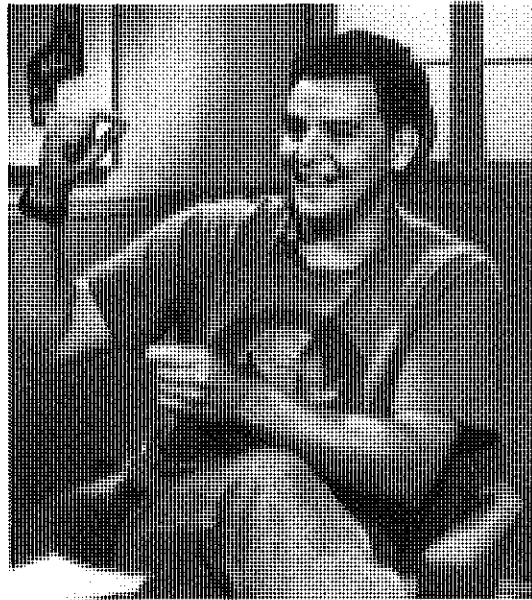
So Flea started again, energizing all the time. "I want you to be a part of me. Please, be part of me." He really spoke clearly to his feet and legs. Then all of a sudden, with real energy he sang out, "Not just part of me, Father, me, all of me, me, me, me!"

And the instant he said that, it brought him back to the beginning, when the Creator had said, "You don't know all of you." But now Flea was whole, just like he had completed a whole circle of discovering himself. He was whole now. He jumped up. "I am me, Father, me, I am all of me." And he jumped up and started to bounce (*very excited and happy*). "Thank you, Father, thank you." Flea was so grateful.

## TRAINING FOR STORYTELLING

What follows is a series of exercises for the teacher to bring storytelling alive in the classroom. These have been developed over a number of years, and tested and tried by numerous teachers. They are inspired by theatrical training exercises and by the wisdom of many traditional storytellers.

These are not techniques for performing stories. They are practical exercises that enable one to get the most out of storytelling, and to reach what Ellen White calls, "the special space storytelling comes from." This is a place of speaking from the heart, and the core of this is finding a personal relationship with the story. You are giving not only the story and its roots, but also part of yourself. In this way, each new telling is as fresh as the day it was born. Gifted storytellers have all worked on their skills.



Frank Brown

### STEP ONE: FINDING THE STORY

For many, this first step of finding the right story is the most difficult. There are many places where stories are found. This curriculum makes use of many story sources, just as your own storywork does and will. Teachers who are exploring storywork find that they begin to listen more intently to other people, including Elders, language and cultural workers, and

other community members. The following steps concentrate on how to respectfully create a personal and lively telling from a story that offers many teaching possibilities, which may or may not be from your own culture.

### Stories are from other people.

If you hear a story and then tell it later, you are continuing the oral tradition. Find out about the background of the story, and if it has ownership rights. Then, if you may tell the story, this information should be included as part of your telling of it.

### Stories are from memories and anecdotes.

True life stories, as children like to call them, are part of oral tradition. They can be as finely crafted as any

other type of story, and these steps can be used to hone the telling of personal stories, your own or others'. Part of the fun of storywork is finding stories to tell.

### Stories are from imagination.

If you are clear on your objectives, created stories have an important role to play. Study the structures of different stories, and weave your own creations around existing story forms. For example, the story "A Gift from the Creator" was written around



some simple teachings. It has a simple structure and uses a cumulative pattern. That story was created specifically for primary children and thus is gentle in tone and encourages participation. The same story could be given more dramatic conflict, older vocabulary and further detail for older children.

**Stories are from written texts.**

In today's world this is the most common source for most people. One must develop skills to be true to the story and yet make it your own. Remember that most stories referred to as myths, legends and folktales found in written form have come from oral tradition. Your challenge is to take them from the flat, black and white page and put them back into the stream of the living story. The 398.2 section in your library is a good place to start finding written stories.

**STEP TWO: PUTTING DOWN THE BONES OF THE STORY**

Now that you have a story to work with it is time to bring it to life.

**Lay down the path of the story.**

This can also be seen as a skeletal framework, summary, or plot outline of the story. This is often difficult for people to do. However, as Ellen White says, "Children and adults tell stories all the time. Our lives are stories."

**Picture yourself 'gossiping.'**

We tend to summarize stories intuitively when they are told in an oral way, particularly with a listener. The foundation for many oral traditions has been the gossip. Unfortunately, gossiping in many

cultures has been badly maligned, and at times misused. However, the word gossip actually comes from the Old English *godsibb*, meaning *the kin of God*. We can use some of the positive features of gossiping to enhance our storytelling practice.

What do you notice when you are gossiping? Excitement, clarity of intention, a clear intuitive sense of what is important to tell in the story, a sense of ownership? Are you leaning forward, capturing your listener's attention? Are you creating an atmosphere of importance, a type of 'sacred space'? These are all important features of good communication: the story is created in the space between the teller and the listener.

**Practice telling a story through gossiping.**

Try to re-create, with the enthusiasm of the gossip, the bony framework of the story. Work with a partner. One is the teller and the other the listener. Begin by standing back to back, and when the teller is ready, he or she turns around and taps the listener's shoulder. As you turn to meet, the teller says, "Guess what I heard?" The listener asks, "What did you hear?" The teller then tells the basic outline of the story, without the details. Start at the beginning, and go through the middle and to the end, but just tell enough to lay down the bones or framework of the story. Don't worry about the details of the story, what is missing, or how good a performance it is. The idea here is to free the conscious mind and give way to the feelings and pictures of the story. Begin by giving yourself a very short time frame in which to tell the story,

between one and two minutes. The story will do the work, and the memory of one event will follow the other.

After telling the story once this way, change roles. The listener now becomes the teller. Use the same story, or a different one if you like.

### **STEP THREE: FLESHING OUT THE STORY**

#### **Return to the source of the story.**

After setting down the framework, review the story and fill in the details. Now you will notice that you are having an inner dialogue with the story. Notice the details, what you missed, and what you need to add. Now you are becoming personally involved with the story.

One way to look at this process is through the metaphor of the salmon. The bones of the salmon are crucial to its existence: it is important that the bones are all present. But you need more than the bones as food. It is the flesh that is eaten. The details that you are now adding to the bones of your story are the flesh.

### **STEP FOUR: GETTING INSIDE THE STORY**

#### **Make the story come alive.**

Most stories are not memorized but remembered and told from the heart. Louise Profeit-LeBlanc, a Tutchone storyteller, says that children are natural storytellers: "Children teach us to have fun with stories. Watch how a child lives out what they are telling about; it is very real for them at that moment." We want to recapture the same authenticity that a

young child naturally and unselfconsciously has. Unfortunately, as adults, many of us have to work towards this in a conscious and practised manner. We have to re-train ourselves.

#### **Create your own story-space.**

For this exercise, create a safe space around you. This could be an imaginary bubble in which you are safe, and which no one can look into. Then begin to tell the story that you have fleshed out to yourself. Turn your inside speaker on, the outer one off. Some people find this more easily done with the eyes closed. Begin to tell it, and make a movement with each word, phrase or image. It is as if you are painting the story all around you. Every part should have some movement. By giving the story away to the space around you, you are internalizing the story more deeply. TRY IT. Then try it again. When you were gossiping the bones, you were speeding things up; now you are adding detail and movement, and slowing things down. Be playful; revel in the feelings and details. Remember:

**THIS IS NOT PERFORMANCE, IT IS TRAINING.**

This exercise can be repeated many times. Details become richer and more defined each time. This is part of the inner work of the storyteller, part of earning the right to tell a special story.

### **STEP FIVE: GIVING BREATH TO THE STORY**

#### **Without breath there is no life.**

Just as all living things, a story breathes from the inside out. It is through all the

sensory images of the story that it breathes. And the stronger the breath of the story, the more the listeners will breathe in, and breathe with, the story. Ellen White says, "Storytellers have to be very responsible. They are setting the pace of breathing. A story is, and has, breath. Storytellers learn to let that happen."

When we get older we have to keep exercising our imaginations. It is easy to rely too much on the words and not experience the life and breath behind and in the words. Try describing something as if it were really there. Sense and communicate everything about it.

**Practice the gibberish exercise.**

The idea here is to experience going beyond the words to the experience, or the breath, of the words. Gibberish is words without meaning, just random sound. With your partner, begin telling your story. Every eight to ten seconds or so, the listener quietly says "change." At this point, the teller suddenly loses his or her normal language. **BUT THE STORY MUST CONTINUE.** The intent is to keep the story going by the teller continuing to see and experience the story through telling the images. Natural vocal inflection and gesture will become more important. The next "change" brings the language back. Keep going for as long as you can.

This is difficult at first but improves dramatically with practice. If gibberish gets in the way, just use one or two simple sounds, or even no sound at all, and just mime the story.

As a precursor to actually working with the story, you might try the same exercise to describe a place or room familiar to you.

Stay with concrete images. These exercises help train the storyteller to get out from behind the words to really see the story, and project the images to others.

**STEP SIX: ADDING DRAMATIC MOVEMENT**

**Getting into the mood of the story.**

Not all storytellers are dramatic, and not all stories require large gestures. However, part of the work of the storyteller is to grasp and convey, as much as possible, the setting, events, and characters within the story. A storyteller is different from an actor in that he or she is responsible for the whole story: the narration and all the characters. It is often a challenge to switch back and forth between roles. Rather than attempting to act out a complete character, we have to get in touch with the essence of each moment. Ellen White talks about this in terms of "reading the energy of the story at each moment." Len George, a Squamish storyteller, tells us: "One of the powers of storytelling is that it deals with all the emotions. You get to feel all these things, and then think about them. Our feelings live in, and can be expressed through, our bodies. First Nations have always practised this." Modern science says much the same about the link between the body and the emotions, for example in "stress-related" diseases. It is important to consciously experience this link of mind and body, and bring these discoveries into your story work.

**Try this body part exercise.**

Stand with two feet planted firmly on the ground. Now, move your centre of awareness to your nose. You are a character who is lead by the nose. Try walking like this. Meet other people. What adjectives and feelings come to mind for you? What kind of character are you? Now try this with your centre of awareness in the jaw and chin. Repeat this several times, each time being led by another part of your body, such as the head, chest, stomach, hips, legs, and feet. Try turning your feet inward. How do you feel? Dramatic, isn't it?

Now as you tell your story, try to locate where in your body you feel that character and that particular moment. What feelings do you

need to access? At first you might feel somewhat awkward, but a little practice will enable you to bring more reality to the story.

**What is the narrator's role?**

Try imagining a crown, or special headdress or headpiece in your hands. Now place this on your head. Stand and then walk with this on your head. How do you move? What does it feel like? This is useful for finding your centre within the storytelling, and the roles in the story. Try placing that imaginary headpiece just in

front of you as you begin a story. It is there for you to wear any time you need. This gives you the feeling of control and benevolent authority that every storyteller needs. Try this exercise for things that the characters in the story might have on as well, to see and feel how they would move.

**STEP SEVEN: FINDING THE VOICE**

**What do the characters sound like?**

Sometimes a storyteller will use different kinds of voices for characters in the story. Finding the right voice comes from having worked and played with the story, in other words, having lived with the story. If you have practised all the preceding steps, or variations of them, you will likely have naturally assumed the appropriate voices. There are also voice and speech exercises that can be practised.

Alliterations are helpful.

Try using different levels of voices. Experiment with vowels and consonants. Do they have different qualities? What do we use to express emotion? What do consonants do? Try exaggerating consonants and observing if the concreteness of imagery and description is enhanced.



*Jo-ann Archibald*

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## **TEACHING STORYTELLING TECHNIQUES TO STUDENTS**

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You may wish to show these techniques to your students after you have mastered them. These exercises have been used very effectively with students of all ages. Naturally they need some adaptation according to age.

Here are some guidelines for demonstrating these techniques to your students.

### **Model the activities.**

It is very important that you become familiar with an exercise before teaching it. Then you can model it any way you feel comfortable with.

### **Stress process.**

Make it very clear to the students that these are steps in a training process, NOT performance. Remind them of Flea in "The Creator and the Flea." First, one must be responsible for one's own learning; and second, they can help each other by being encouraging and supportive. Stress process as success.

### **Allow lots of time.**

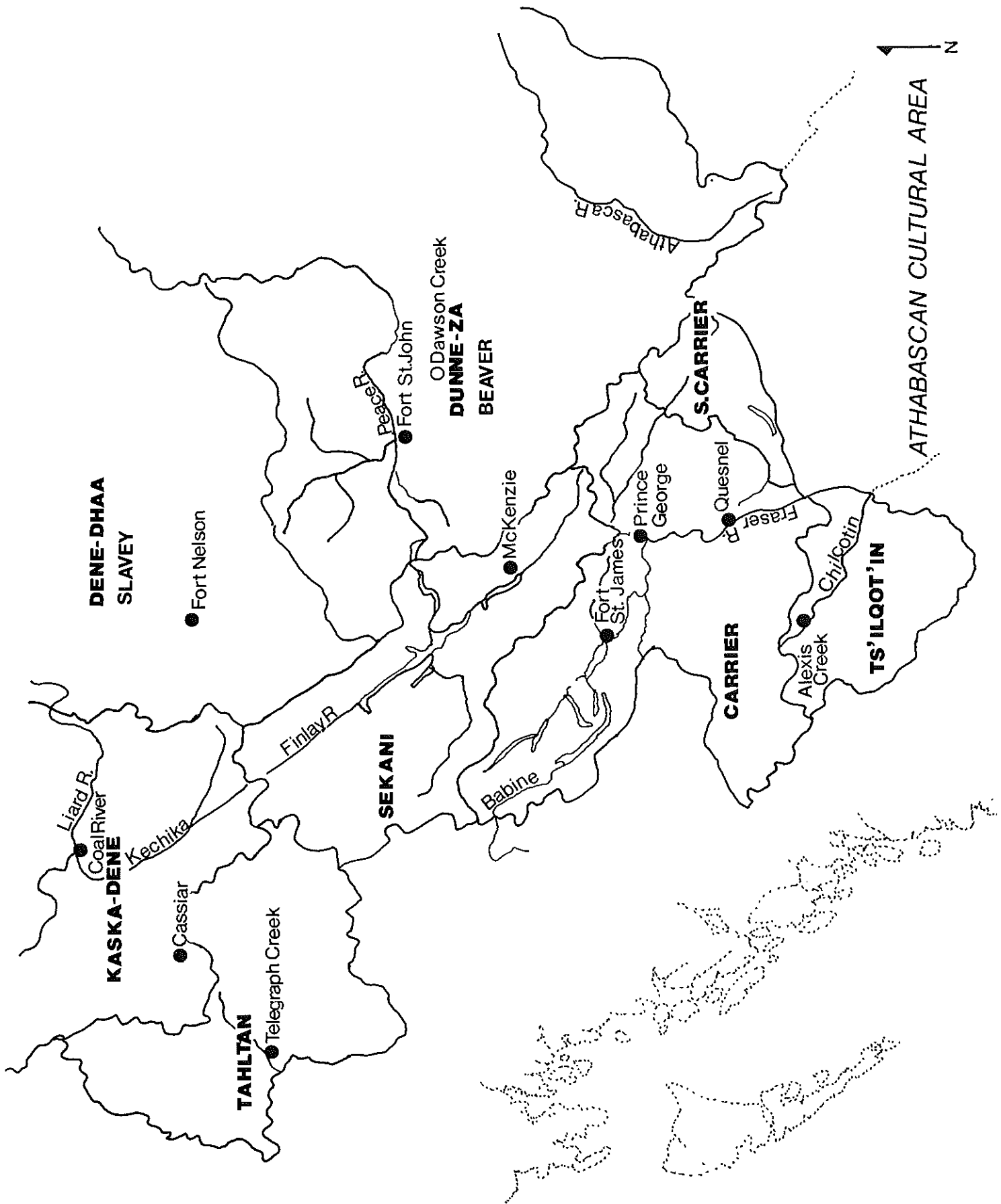
Particularly when these exercises are first introduced, allow lots of time for the students to explore and discover. Encourage them to adapt an exercise if this serves the purpose you have discussed with them.

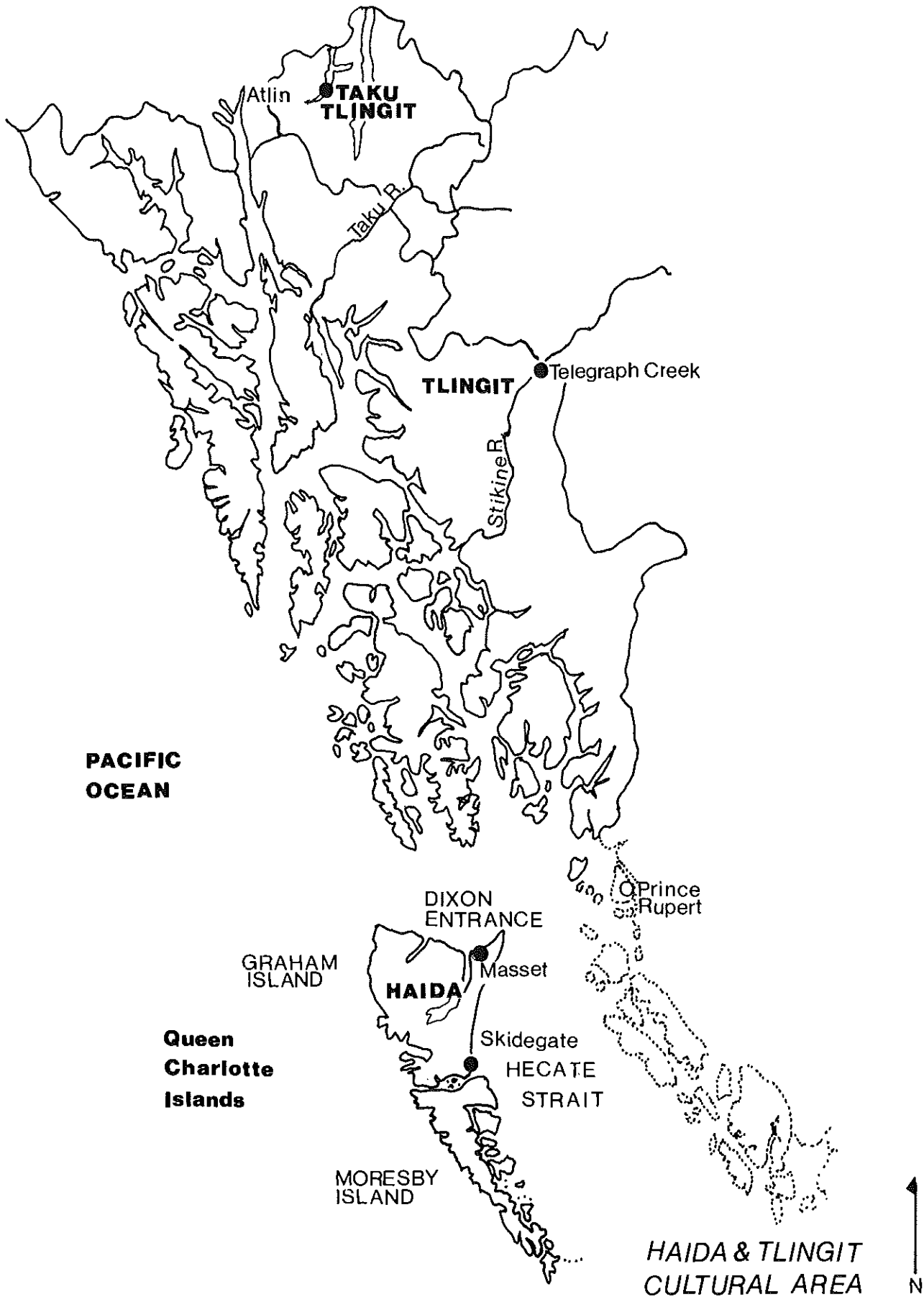
### **Encourage practice.**

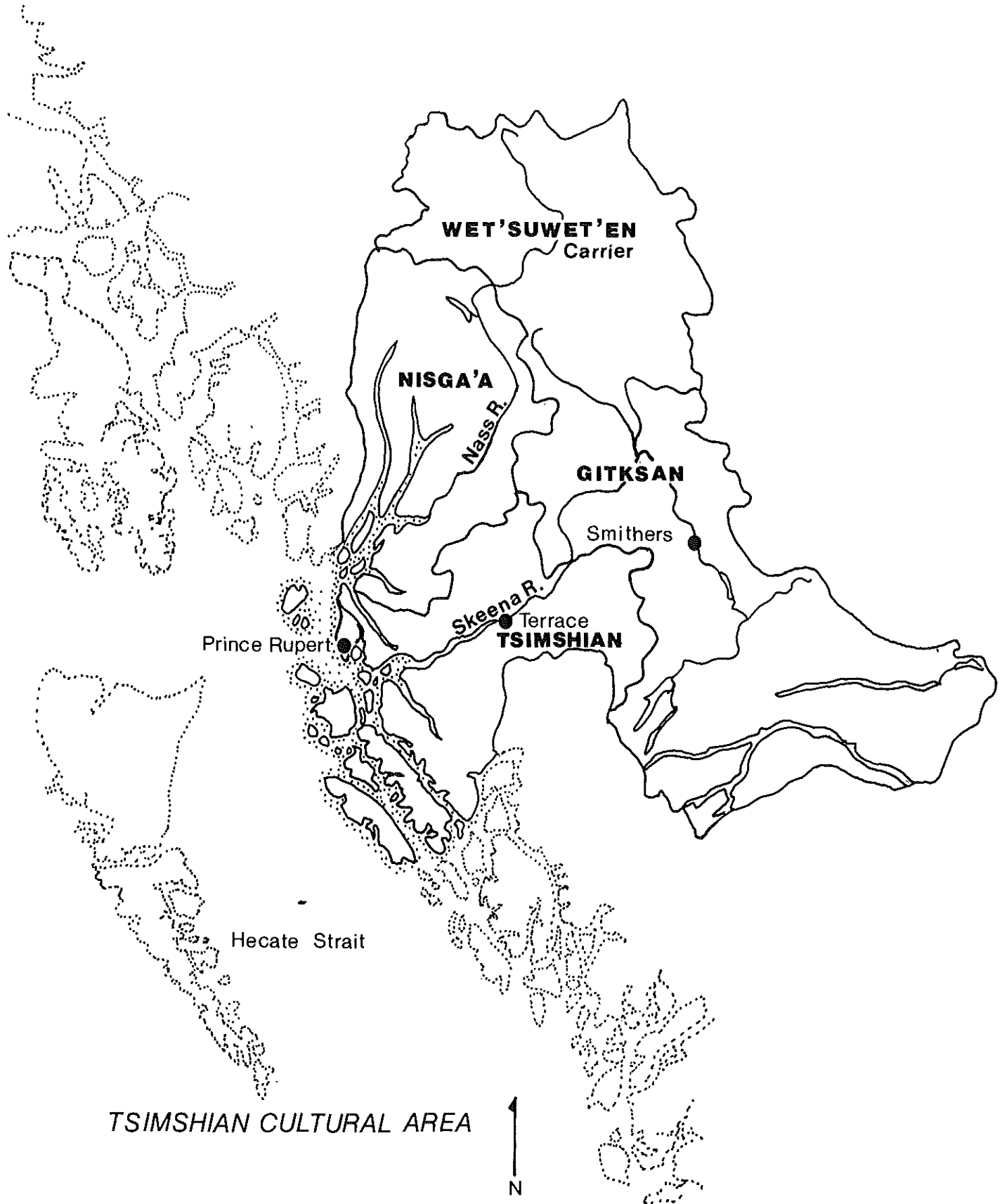
This is crucial. The exercises and the accompanying growth in confidence and skill provide motivation for students to read and learn more stories.

If activities such as these, and others you find and create, are integrated into your school day with some regularity, storywork will soon become part of your classroom. Your class will become a community of stories and storytellers.

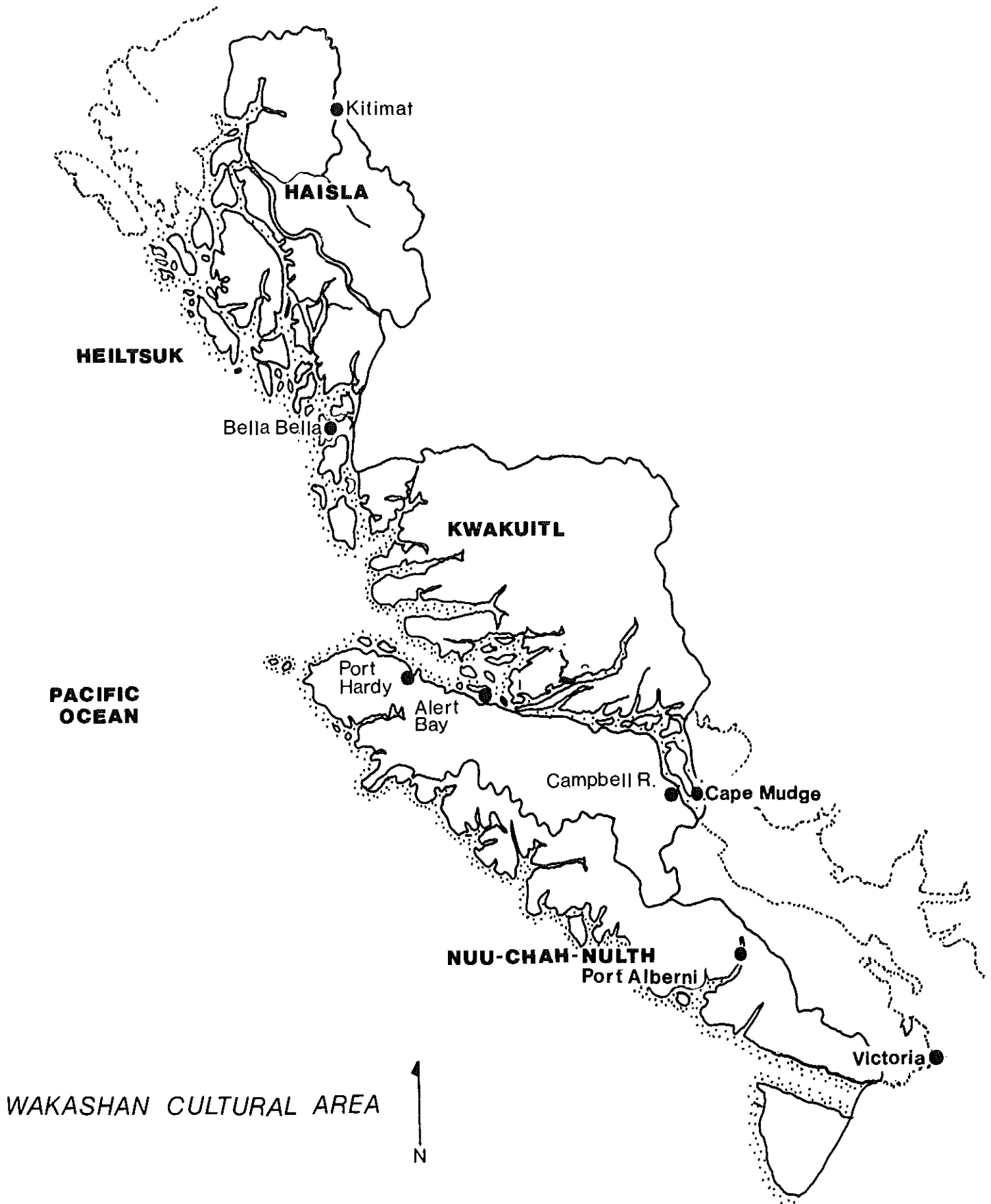
Use this guide in conjunction with the storytelling video, and set off on your own storytelling journey!

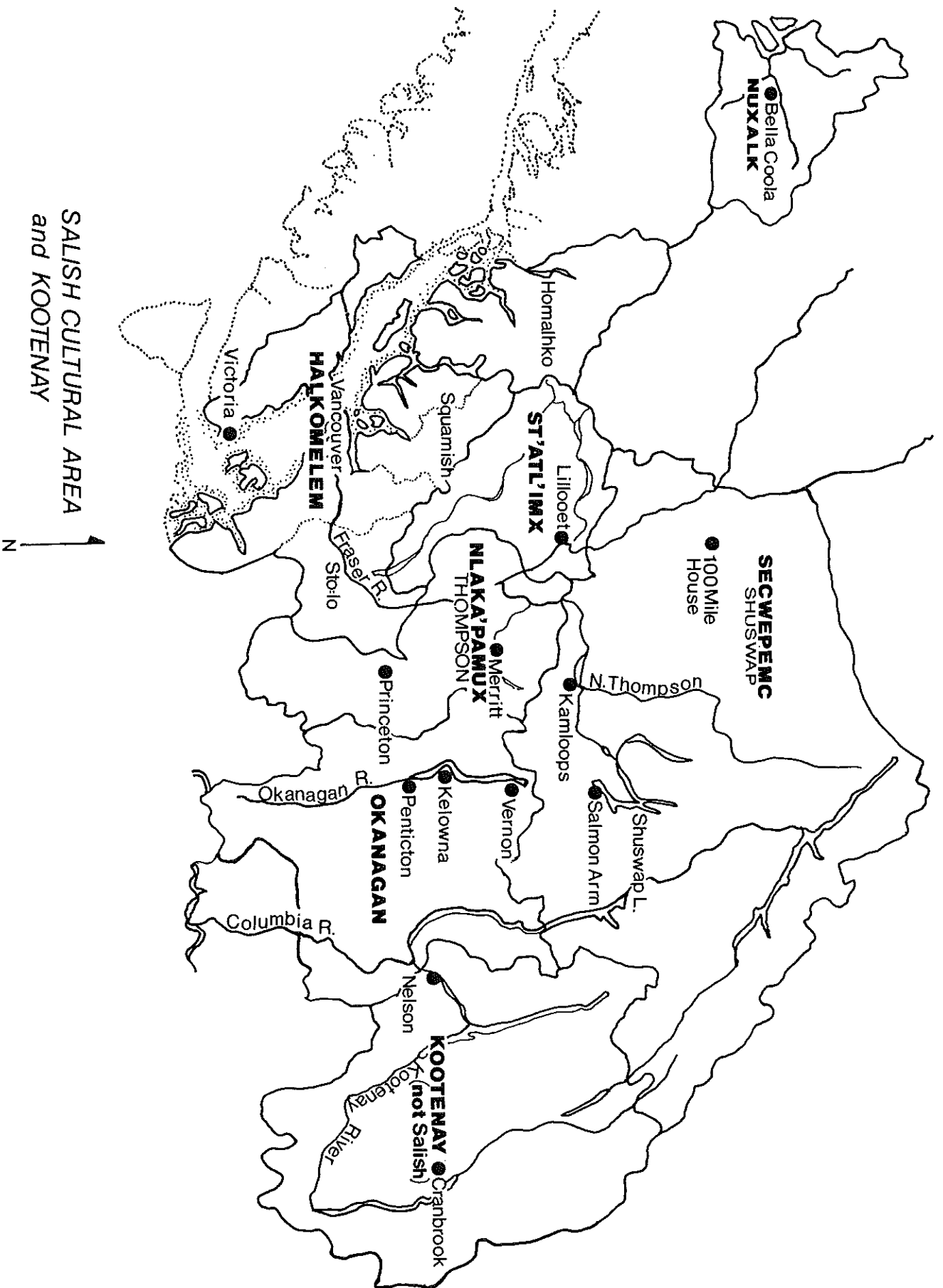




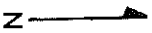






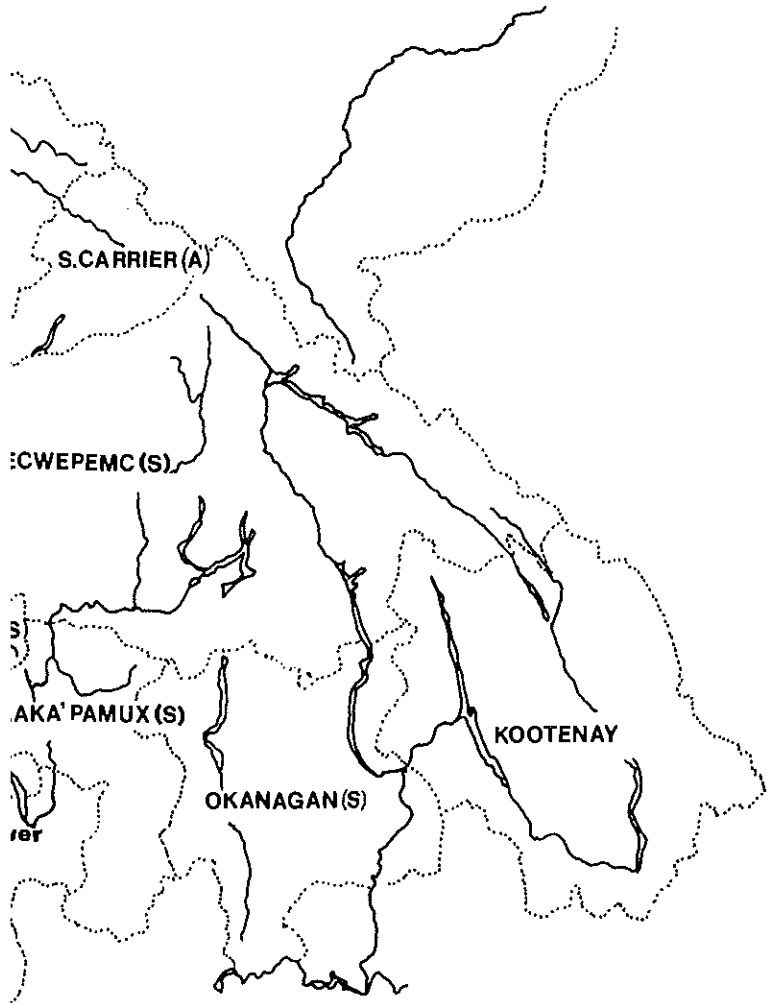


SALISH CULTURAL AREA  
and KOOTENAY





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# **SCOPE AND SEQUENCE**

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## **Kindergarten - "Who Am I?"**

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### **Unit 1 - The Gifts of My Body**

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Lesson One:	From Home to Kindergarten
Lesson Two:	All of Me: A Story Introduction
Lesson Three:	All of Me: Not Alone
Lesson Four:	The Whole Story: All of Flea, All of Me
Lesson Five:	Beginning to be Responsible: Cleaning Up
Lesson Six:	Learning All About Myself: "A Gift from the Creator"
Lesson Seven:	Discovering the Need to Know Ourselves
Lesson Eight:	I Know How!

### **Unit 2 - Rules are for Caring**

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Lesson One:	"The Grandchild Who Melted"
Lesson Two:	"Follow the Rule" Game
Lesson Three:	Caring Rules
Lesson Four:	My Home, My Family, My Rules
Lesson Five:	I Stand Up for School Rules!
Lesson Six:	Singing Our Rules
Lesson Seven:	Our Fingers Know the Rules
Lesson Eight:	Avoiding Accidents: Being Safe

### **Unit 3 - Share, Care, and Fair: The Kindergarten of Justice**

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Lesson One:	"The Mischievous Cubs"
Lesson Two:	Sharing is a Good Thing to Do
Lesson Three:	Is it Fair?
Lesson Four:	Keeping it Fair

**Grade Three - "Looking to the Future"**

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**Unit 1 - Rules and Initiation**

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Lesson One:	I Know the Rules!
Lesson Two:	"Mink and the Sun"
Lesson Three:	Exploring Promises and Agreements
Lesson Four:	Can We Agree?
Lesson Five:	Making Contracts
Lesson Six:	Doing Things the Right Way
Lesson Seven:	Rites of Passage
Lesson Eight:	Laws and Nature

**Unit 2 - Enforcing Rules and Laws**

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Lesson One:	Authority and Responsibility
Lesson Two:	Learning More About the Police
Lesson Three:	Introduction to the Young Offenders Act
Lesson Four:	Tribal Police

**Unit 3 - Justice Careers**

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Lesson One:	Police Officers
Lesson Two:	Fisheries and Conservation Officers
Lesson Three:	Lawyers and Judges
Lesson Four:	Courtworkers
Lesson Five:	Social Workers
Lesson Six:	MPs and MLAs

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## **Grade Four - "What are My Responsibilities?"**

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### **Unit 1 - Introduction to Conflict Resolution**

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Lesson One:	Taking Responsibility for Me
Lesson Two:	Me and You
Lesson Three:	Compromise: The Best Solution
Lesson Four:	Coyote and Grizzly Bear: Dramatizations 1
Lesson Five:	Coming to Agreement: The Dance of Balance
Lesson Six:	Coyote and Grizzly Bear: Dramatizations 2
Lesson Seven:	Defining Conflict Resolution
Lesson Eight:	Peaceful Resolutions
Lesson Nine:	Dealing with Anger

### **Unit 2 - Responsibility Circles and Law-Making**

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Lesson One:	What are Responsibility Circles?
Lesson Two:	How are Laws Made?
Lesson Three:	Classroom 'Laws'
Lesson Four:	Why do We have Rules and Laws?
Lesson Five:	Rights of the Individual: Due Process
Lesson Six:	Band Councils

### **Unit 3 - Youth Councils**

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Lesson One:	Introduction to Youth Councils
Lesson Two:	Running for Office
Lesson Three:	Class Elections
Lesson Four:	Solving Conflicts
Lesson Five:	Special Projects: In Your Community

**Grade Five - "What are the Laws of My Community and Nation?"**

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**Unit 1 - The Beginnings of My Community**

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Lesson One:	Introduction: Creation Story
Lesson Two:	Creation Story: Dramatization
Lesson Three:	Origins and Naming
Lesson Four:	How My Community Works Together
Lesson Five:	People in My Community
Lesson Six:	Why My Community Needs Customs, Rules, and Laws

**Unit 2 - Customs, Rules, and Laws**

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Lesson One:	More on Customs
Lesson Two:	How do Customs become Rules and Laws?
Lesson Three:	Customs to Common Law
Lesson Four:	Changing Law
Lesson Five:	What is Family Law?
Lesson Six:	What is Consumer Law?
Lesson Seven:	Law and Daily Life

**Unit 3 - Breaking the Law**

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Lesson One:	What Happens When You Break the Law?
Lesson Two:	Getting Arrested
Lesson Three:	Introduction to the Courts
Lesson Four:	After Court: Detention Centres
Lesson Five:	Alternatives to Court
Lesson Six:	First Nations Alternatives: An Introduction

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## **Grade Six - "Journeys of Understanding"**

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### **Unit 1 - Understanding the Court System**

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Lesson One:	Why do We Need Courts?
Lesson Two:	Case Scenarios: Resolving Conflicts - Part 1
Lesson Three:	Case Scenarios: Resolving Conflicts - Part 2
Lesson Four:	What is Civil Law?
Lesson Five:	What is Criminal Law?
Lesson Six:	Is it Criminal or Civil?
Lesson Seven:	Courts in British Columbia
Lesson Eight:	Introduction to Mock Trials
Lesson Nine:	Mock Trial: <i>Regina vs. Raven</i>

### **Unit 2 - You and the Law**

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Lesson One:	The Young Offenders Act
Lesson Two:	Roles: People, Institutions, and You
Lesson Three:	The Salmon People's Court: Introduction
Lesson Four:	The Salmon People's Court: Discussion
Lesson Five:	The Salmon People's Court: Preparation
Lesson Six:	The Salmon People's Court: Going to Trial
Lesson Seven:	Case Study: Local Solutions - The Frank Brown Story

### **Unit 3 - First Nations Legal Structures**

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Lesson One:	Introduction to Elders Councils
Lesson Two:	Elders Council Drama Preparation
Lesson Three:	Dramatization of an Elders Council
Lesson Four:	What Works Best?
Lesson Five:	Are there Other Alternatives?



## **Grade Seven - "Journeys of Transformation"**

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### **Unit 1 - How First Nations People Use the Court System**

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Lesson One:	Introduction to Aboriginal Rights
Lesson Two:	Understanding Aboriginal Rights and the Constitution
Lesson Three:	Mock Trial I Introduction: <i>Regina vs. Wells</i> - First Nations and Hunting
Lesson Four:	Mock Trial I Preparation
Lesson Five:	Mock Trial I Performance
Lesson Six:	Mock Trial II Introduction: <i>Regina vs. Finch</i> - First Nations and Fishing
Lesson Seven:	Mock Trial II Preparation
Lesson Eight:	Mock Trial II Performance

### **Unit 2 - Foundations of First Nations Law-Making**

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Lesson One:	Introduction to the British North America Act and the Royal Proclamation of 1763
Lesson Two:	The Reading of the Royal Proclamation of 1763
Lesson Three:	Introduction to the <i>Indian Act</i>
Lesson Four:	What is Status?
Lesson Five:	Case Study: Sandra Lovelace and Bill C-31 - Part 1
Lesson Six:	Case Study: Sandra Lovelace and Bill C-31 - Part 2
Lesson Seven:	Case Study: The Gitksan-Wet'suwet'en Case

### **Unit 3 - Journeys of Justice: Local Initiatives in First Nations Justice**

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Lesson One:	Unlocking Aboriginal Justice: The Gitksan-Wet'suwet'en Nation
Lesson Two:	The Sandy Lake Justice Project
Lesson Three:	The Micmac Diversion Council of Lennox Island
Lesson Four:	The Teslin Tlingit Tribal Justice System
Lesson Five:	Explorations in Justice-Making
Lesson Six:	Justice-Making in Our Communities

# ***GRADE SEVEN LESSONS***

## **GRADE SEVEN: JOURNEYS OF TRANSFORMATION**

### **UNIT ONE: HOW FIRST NATIONS PEOPLE USE THE COURT SYSTEM**

#### **INTRODUCTION:**

This unit builds upon what has been learned at the Grade 6 level about how the court system works. It should only be attempted if the students have already done at least Units One and Two of the Grade Six *Journeys of Justice*. In Grade Six, the students prepare and perform scripted mock trials, in preparation for writing their own mock trials in Grade Seven. It might also be helpful to have your class visit a courthouse and do some courtwatching. Orientation and programs for upper elementary students are available through your regional office of the Law Courts Education Society. Please contact them for more information on what is available in your area.

In the Grade Seven lessons, you and the students will explore the basis of aboriginal rights, and use this information for two mock trials that are related to the issues of hunting and fishing as aboriginal rights.

Each mock trial will take at least three lessons to prepare and perform. Some

classes may need more time. You will need to read through the mock trial materials completely before you introduce them to the class. To aid in constructing these mock trials, use the mock trial reference materials. You may also refer to the two scripted mock trials from Grade Six, *Regina vs. Raven* and *The Salmon People's Court* as guides to preparing the mock trials. Class projects to prepare the trials could include costume making, set design, making or getting props, etc. Contact your regional office of the Law Courts Education Society to see what materials they may be able to lend you, such as judges' robes and sheriffs' uniforms.

In discussions with students, make sure they are aware that First Nations people recognize that they need to have their laws and rights encoded in the mainstream legal system for their protection. This is important in order for First Nations to ensure the continuation of their aboriginal rights. Before laws were written, this was not necessary, but today modern society is governed by written laws.

#### **NUMBER OF LESSONS:** Eight

Lesson One:	Introduction to Aboriginal Rights
Lesson Two:	Understanding Aboriginal Rights and the Constitution
Lesson Three:	Mock Trial I Introduction: <i>Regina vs. Wells</i> - First Nations and Hunting
Lesson Four:	Mock Trial I Preparation

Lesson Five:	Mock Trial I Performance
Lesson Six:	Mock Trial II Introduction: <i>Regina vs. Finch</i> - First Nations and Fishing
Lesson Seven:	Mock Trial II Preparation
Lesson Eight:	Mock Trial II Performance

**EXPECTED DURATION OF UNIT:** Eight weeks (1 lesson per week - may be longer depending upon preparation time for mock trials)

**GOALS:**

1. To briefly introduce the concept of aboriginal rights as contained in the Constitution Act, 1982.
2. To conduct mock trials based on actual cases involving the exercise of aboriginal rights.
3. To allow students to make their own judgments on issues of aboriginal rights.

**INTEGRATED APPLICATIONS:**

- Social Studies
- First Nations Language and Culture
- Visual and Dramatic Arts

**COMMUNITY AND PARENTAL INVOLVEMENT:**

- Parents to come in and help with the mock trial, preparation of costumes, props, etc.
- Local courtworkers and others involved in the legal system could be contacted for their input on roles and procedures of the court.

**MATERIALS AND RESOURCES:**

*Books and Pamphlets*

- *Charter of Rights and Freedoms: A Guide for Canadians*. Provides the sections of the Charter with an easily understandable explanation of what they mean. Copies of the booklet are available through your local Law Courts Education Society regional office.
- Commission on Pacific Fisheries Policy. 1982. *Turning the Tide: A New Policy For Canada's Pacific Fisheries*. A Commission report on fisheries policy as it pertains to the west coast published by the federal Department of Fisheries and Oceans.

- Kuhlen, Daniel J. 1985. *A Layperson's Guide to Treaty Rights in Canada*. University of Saskatchewan Native Law Centre. Gives an outline of treaties in Canada, with explanations.
- Pentney, William F. 1987. *The Aboriginal Rights Provision in the Constitution Act, 1982*. University of Saskatchewan Native Law Centre. Discusses the origins and interpretations of aboriginal rights as contained in the Constitution.
- Sanders, Douglas. 1989. Pre-Existing Rights: The Aboriginal Peoples of Canada. In *The Canadian Charter of Rights and Freedoms*, edited by Gerald-A. Beaudoin and Ed Ratushny. Toronto: Carswell. This chapter, written by a law professor at U.B.C., gives a general overview and interpretations of sections 25 and 35 of the Charter and explains, using court cases, how they affect First Nations people in Canada.

#### *Reference Materials*

- "Terms Used in the Legal System" (*page 217*)
- "Mock Trial Procedure for Criminal Cases" (*page 221*)

#### *Video*

- Teaching video Number Two, Part Two - "For the Sake of Salmon"

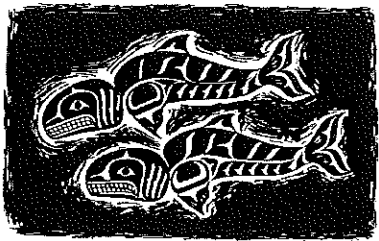
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**Lesson One: INTRODUCTION TO ABORIGINAL RIGHTS**


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**OBJECTIVES:**

1. Students will be able to discuss different terms used to designate First Nations people.
2. Students will understand what aboriginal rights are and how they apply to First Nations today.

**DURATION OF LESSON:** 50 minutes**ACTIVITIES:**

1. Discuss the term "aboriginal" with students. What do they think it means? What are some other terms used to designate aboriginal people? (Indian, First Nations, indigenous, etc.). Explain to the students that the term "aboriginal" today, in Canadian law, includes people who are called "Indians," "Inuit," and "Métis." How do First Nations identify themselves to people they don't know? Some people use the name of their band, or the area they are from, for example "Carrier" or "Nimkish." Ask the students what terms they use or like. Why? Which ones don't they like? Why not? (10 minutes)
2. Ask the students if they feel First Nations are any different from non-First Nations people in Canada. If so, in what ways? Should they have rights different from those of other Canadians? What kinds of rights? Why? (5 minutes)
3. Ask the students if they have ever heard of *aboriginal rights*. If so, what do they think they are? Tell them that aboriginal rights are rights for First Nations people. These are rights that usually have to do with hunting, fishing, or any way that First Nations people have always used land or water to get food. Be sure they understand the concept of aboriginal rights. (5 minutes)
4. Tell the students that Canada has a set of laws called the *Constitution* that makes sure everyone in Canada is treated fairly. The Constitution also talks about aboriginal rights.

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"The Constitution Act and Aboriginal Rights" (*page 73*) is a handout with the sections of the *Constitution* that are relevant to First Nations in Canada. With the students, review in detail the explanations of the sections that deal with aboriginal rights. The language is very difficult, so we have attempted to explain what the sections mean in plainer language. (*20 minutes*)

5. After going over the handout, be sure the students understand that aboriginal rights are not GIVEN to First Nations by anyone, but they are RECOGNIZED. This means that the government is saying that they know those rights are already there, and have always been there. This is because First Nations people have always hunted and fished for a living. Further this comprehension using an analogy such as the following:

1. *Susan has a book. She sees Joe, who has no book. She decides to GIVE him her book.*
2. *Susan sees Joe, who is carrying a book with his name on it. He has always had that book, even before he met Susan. Susan says, "Oh, I see that you have a book, and that it belongs to you." Susan is RECOGNIZING that Joe has the book, and AFFIRMS it with her statement.*

Ask the students to find other examples to explain the difference between *giving* someone something, and *recognizing (or seeing)* that someone already has something.

This is a very simple explanation of a complex issue, but it is important for the students to understand that aboriginal rights are inherent rights, not ones that governments have decided to give. Those rights existed long before Europeans came to this continent. Tell the students that *the Royal Proclamation of 1763* will be discussed in greater detail later in another lesson. (*10 minutes*)

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## THE CONSTITUTION ACT AND ABORIGINAL RIGHTS

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Section 25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

- (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

---

This means that all the rights and freedoms that are guaranteed to Canadians in the Constitution cannot stop First Nations people from having their aboriginal and treaty rights, and any other rights that they might get through land claims agreements. These are agreements made with the government.

**Treaties** are agreements with the government that are mostly about using the land. Most First Nations in B.C. do not have treaties.

The *Royal Proclamation of 1763* was made by the British before Canada became a country. It protects the rights of First Nations people.

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Section 35.

- (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
- (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
- (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

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Number one of this section "recognizes" and "affirms" aboriginal rights. This means that the government is saying they know that aboriginal rights are there.

Number two says who aboriginal people are, according to the government. Not everyone agrees on this.

Number three says that rights from land claims agreements are the same as treaty rights.

Number four makes sure that men and women are treated equally.



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**Lesson Two: UNDERSTANDING ABORIGINAL RIGHTS AND THE CONSTITUTION**

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**OBJECTIVE:**

Students will be able to discuss in lay terms the parts of the Constitution that relate to aboriginal people.

**DURATION OF LESSON:** 40 minutes

**ACTIVITY:**

With reference to Lesson One, review with the students the sections of the Constitution that relate to aboriginal rights. Legal terminology is difficult for most people to understand, especially young people. After reviewing these sections of the Constitution, have the students complete the sheet, "First Nations and The Constitution Act - What Does It Mean?"

(page 75). Read over the sheet with the students, and then have them complete it individually. Check to make sure that each student understands what the sections mean. If there is a general lack of understanding, you may need to review again.

(40 minutes)



## FIRST NATIONS AND THE CONSTITUTION ACT: WHAT DOES IT MEAN?

**MATCH THE TWO COLUMNS BY CIRCLING THE CORRECT LETTER:**

### Constitution Act, 1982

Section 25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada.

A      B      C      D      E

Section 35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

A      B      C      D      E

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

A      B      C      D      E

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

A      B      C      D      E

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

A      B      C      D      E

### What it means ...

A. First Nations people have rights that they have always had. They also have rights from agreements they have made. We recognize this.

B. Other rights that are talked about in this Charter cannot stop First Nations people from having aboriginal or treaty rights.

C. Men and women have the same rights.

D. "Aboriginal peoples" in the Act means all Indian, Inuit, and Métis peoples.

E. Rights from land claims agreements are seen in the same way as treaty rights.

## ANSWER KEY: FIRST NATIONS AND THE CONSTITUTION ACT WHAT DOES IT MEAN?

MATCH THE TWO COLUMNS BY CIRCLING THE CORRECT LETTER:

### Constitution Act, 1982

Section 25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada.

A    B   C   D   E

Section 35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

A   B   C   D   E

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

A   B   C    D   E

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

A   B   C   D    E

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

A   B    C   D   E

### What it means ...

A. First Nations people have rights that they have always had. They also have rights from agreements they have made. We recognize this.

B. Other rights that are talked about in this Charter cannot stop First Nations people from having aboriginal or treaty rights.

C. Men and women have the same rights.

D. "Aboriginal peoples" in the Act means all Indian, Inuit, and Métis peoples.

E. Rights from land claims agreements are seen in the same way as treaty rights.

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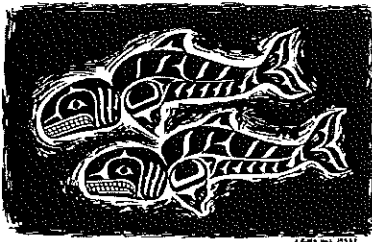
**Lesson Three: MOCK TRIAL I INTRODUCTION:  
REGINA vs. WELLS - FIRST NATIONS AND HUNTING**

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**OBJECTIVES:**

1. Students will learn what some aboriginal rights are.
2. Students will apply their knowledge of aboriginal rights to a mock trial involving hunting.

**DURATION OF LESSON:** 40 minutes

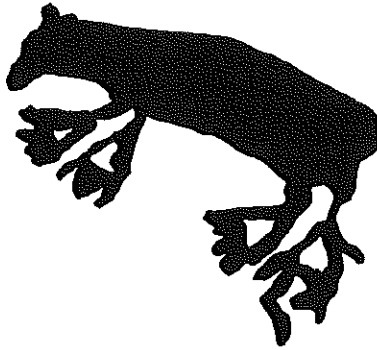
**ACTIVITIES:**

1. Recall discussions from the previous lesson. What are some of the types of aboriginal rights the students think that First Nations people have? Write these on the board. Why are these aboriginal rights? Why do First Nations have these rights, and not other people? Is this fair? Why or why not? Explain that aboriginal rights are different from treaty rights in that aboriginal rights have to do with how people lived before Europeans came here. Treaty rights have been negotiated, but they are often similar to aboriginal rights. (10 minutes)

2. Refer to the mock trial included in this curriculum, entitled *Regina vs. Wells* (pages 129 to 169). Tell the students that this mock trial is based on an actual case from the 1980s, but names and certain details have been changed. Read the "Fact Pattern" page (page 130) with the class, then divide the class into two groups for a debate.

Explain to the students that a debate is a discussion where there are two sides. One side believes one thing, and the other side believes another. In the debate, each side presents its own point of view, and why they feel the way they do.

One group will take the position that Bill Wells should be found guilty, and the other that he shouldn't. Let the group members get together to discuss how they will argue their position, and then have a mini-debate on the issue. (preparation 15 minutes; debate 15 minutes)

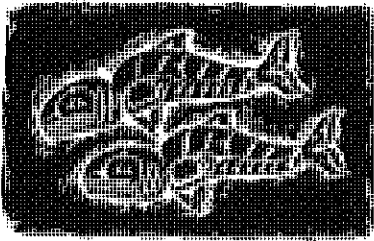
**Lesson Four:****MOCK TRIAL I PREPARATION****OBJECTIVE:**

Students will apply their knowledge of aboriginal rights in the preparation of a mock trial based on hunting.

**DURATION OF LESSON:** 60 minutes

**ACTIVITY:**

Review with the students the sheets on the mock trial *Regina vs. Wells*. You should also refer to "Mock Trial Procedures for Criminal Cases - A Step-by-Step Guide" (page 221), and "Terms Used in the Legal System" (page 217). You may wish to look at the mock trials from Grade Six, *Regina vs. Raven* and *The Salmon People's Court* as examples. Assign roles to students as outlined in the mock trial. Give students some class time to prepare their roles. You may have them complete this as a homework assignment. The students can practise reading their roles in front of parents and other family members at home.

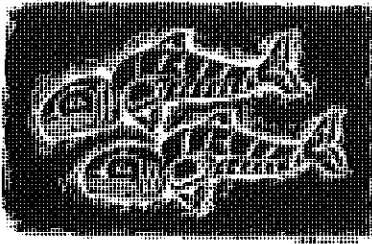


Individual classes vary in the amount of time it takes to prepare a mock trial. This lesson may also take more than one period, and may take several periods if you decide to do props and scenery.

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**Lesson Five:                    MOCK TRIAL I PERFORMANCE**

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**OBJECTIVE:**

Students will perform the mock trial on hunting that they have prepared.

**DURATION OF LESSON:** 60 minutes

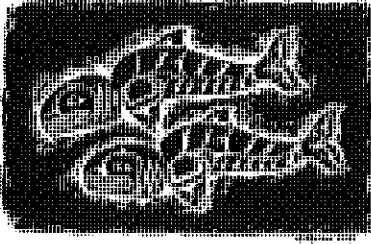
**ACTIVITY:**

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After the preparation of the mock trial on hunting is complete, the students will perform the trial in class.

After the initial "run," you may want to invite other classes to be the audience. The mock trial could also be performed at a school assembly.



**Lesson Six:****MOCK TRIAL II INTRODUCTION:  
REGINA vs. FINCH - FIRST NATIONS AND FISHING****OBJECTIVES:**

1. Students will discuss aboriginal rights as they relate to fishing.
2. Students will view a video about the aboriginal right to fish.
3. Students will use their knowledge of aboriginal rights in a mock trial related to fishing.

**DURATION OF LESSON:** 50 minutes

**ACTIVITIES:**

1. Discuss with the students the issue of aboriginal rights as it relates to fishing. Do they have any ideas about it? Have they heard anything on the news, or from people that they know, about the aboriginal right to fish? (10 minutes)

2. Show the video segment "For the Sake of Salmon." Before showing the video, explain to the students that it is about the aboriginal right to fish. Tell them that county court no longer exists in B.C. It has been replaced by provincial court.

Also, when this video was made, it was illegal for aboriginal people to sell their food fish. This has been challenged in the courts, and was undergoing change at the time this curriculum was in publication. You might want to check with the Aboriginal Fisheries Branch of Fisheries and Oceans for up-to-date information on this subject. (10 minutes)

3. Refer to the mock trial entitled *Regina vs. Finch* (pages 171 to 214). Tell the students that this mock trial is based on the Sparrow case that is mentioned in the video. Names and certain details have been changed for the mock trial. Read the "Introduction - Background" and "Fact Pattern" (pages 172 to 174) pages with the class, then divide the class into two groups for another debate. One group will take the position that Tom Finch should be found guilty, and the other that he shouldn't. Let the group members get together to discuss how they will argue their position, and then have a mini-debate on the issue. (preparation 15 minutes; debate 15 minutes)

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**Lesson Seven: MOCK TRIAL II PREPARATION**

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**OBJECTIVE:**

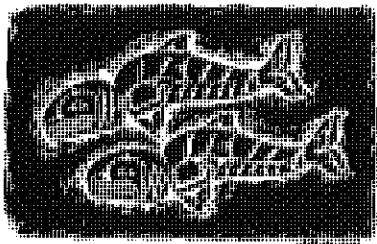
Students will apply their knowledge of aboriginal rights in the preparation of a mock trial based on fishing.

**DURATION OF LESSON:** 60 minutes

**ACTIVITY:**

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Review with the students the mock trial *Regina vs. Finch*, and the sheets "Mock Trial Procedure for Criminal Cases - A Step-by-Step Guide" (page 221), and "Terms Used in the Legal System" (page 217). Assign roles to students as outlined in the mock trial. Give students some class time to prepare their roles. You may have them complete this as a homework assignment. As with the previous mock trial, they can practise their roles in front of family members at home. This lesson may also take more than one period, and may take several periods if you decide to do props and scenery.

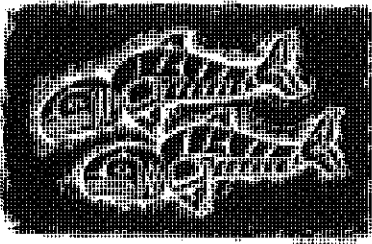




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**Lesson Eight:      MOCK TRIAL II PERFORMANCE**

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**OBJECTIVE:**

Students will perform the mock trial on fishing that they have prepared.

**DURATION OF LESSON:** 60 minutes

**ACTIVITY:**

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After the preparation of the mock trial on fishing is complete, the students will perform the trial in class.

After the initial "run," you may want to invite other classes to be the audience. The mock trial could also be performed at a school assembly.



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## UNIT TWO: FOUNDATIONS OF FIRST NATIONS LAW-MAKING

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**INTRODUCTION:**

This unit provides an historical background to relations between First Nations and non-First Nations people in Canada. Although the first Europeans in North America felt they had a civilization that was superior to the way of life of First Nations, many people, First Nations and non-First Nations alike, feel that historically, relations between First Nations and the British, the major colonial government in Canada, were generally very good. Some people believe that this relationship with Canadian governments has deteriorated over time. Both sides are now attempting to improve this relationship. To understand how things got to where they are today, we need to have an historical perspective. Three historical legal documents are examined: the *British North America Act*, the *Royal Proclamation of 1763*, and the *Indian Act*, all of which affect First Nations people in Canada in one way or another, even today. To illustrate this, case studies have been chosen that deal with different legal interpretations of these documents.

A word of caution: since there are many different points of view on these issues,

some of them may be sensitive ones within your particular community. Be sure to let the students know that there are no right and wrong answers. However, they should know about some things that have happened in the history of relations between First Nations and colonial governments. This curriculum is not designed to favour one view over another. We are attempting to provide objective overviews so that students will be better informed about the issues and may make decisions based on their own good judgment.

In order to prepare for this unit, the teacher should be familiar with these historical documents. Much information is given within the lessons themselves, but you may also want to obtain a copy of the *Indian Act* to be better informed of the various sections. They are available from Supply and Services Canada (*see Materials and Resources section*), or contact your local Law Courts Education Society for assistance in obtaining copies. The Materials and Resources section also lists commentaries on the *British North America Act* and the *Royal Proclamation of 1763* that you may wish to consult.

**NUMBER OF LESSONS:** Seven

- |               |  |
|---------------|--|
| Lesson One:   | Introduction to the <i>British North America Act</i> and the <i>Royal Proclamation of 1763</i> |
| Lesson Two:   | The Reading of the <i>Royal Proclamation of 1763</i>   |
| Lesson Three: | Introduction to the <i>Indian Act</i>  |
| Lesson Four:  | What is Status?  |
| Lesson Five:  | Case Study: Sandra Lovelace and Bill C-31 - Part 1   |

Lesson Six: Case Study: Sandra Lovelace and Bill C-31 - Part 2

Lesson Seven: Case Study: The Gitksan-Wet'suwet'en Case

**EXPECTED DURATION OF UNIT:** 7 weeks (one lesson per week)

**GOALS:**

1. To examine historical documents concerning First Nations people.
2. To understand why these documents were made.
3. To see how these documents affect modern-day First Nations people.
4. To look at studies of legal cases that involved these documents.

**INTEGRATED APPLICATIONS:**

- Social Studies
- Language and Culture
- Visual and Dramatic Arts

**COMMUNITY AND PARENTAL INVOLVEMENT:**

- Interviews with parents and other family members on what it means to them to be First Nations.
- Elders invited to talk to the class about what it means to them to be First Nations.
- Bill C-31 worker or "reinstatee" to talk about changes to the *Indian Act*.
- Elders and other knowledgeable people to talk about traditional stories and people's relationship to the environment.
- Family members to talk about what it means to them to belong to a particular cultural group.
- Non-First Nations speakers to talk about the implications of living in an area with a First Nations government.

**MATERIALS AND RESOURCES:***Books and Pamphlets*

- Bayefsky, Anne F. 1982. "The Human Rights Committee and the Case of Sandra Lovelace," *Canadian Yearbook of International Law* pp. 244-266. A discussion of the Lovelace case and implications for First Nations people, as well as for Canada within the world community.
  
- Department of Justice, Canada. 1975. *The British North America Act, 1867 to 1975*. The text of the B.N.A. Act. Section 91 relates to First Nations people.
  
- Goodfellow, Anne. 1993. "Legislating Equality Among Non-Egalitarian Societies," *Michigan Discussions in Anthropology* 11. In the context of Bill C-31, this article takes an historical look at the *Indian Act* to reveal how non-First Nations values have been imposed on First Nations people in Canada. The author says that this interferes with First Nations' own ways of making decisions in their community, and has forced people into categories by continually redefining who is and is not "Indian."
  
- Groves, Robert and Bradford Morse. 1985. *Bill C-31 and the New Indian Act. Guidebook #1: Applying for Status*. Ottawa: Native Council of Canada. Sets out in plain language the changes that have been made to the *Indian Act* because of Bill C-31, and tells how to go about applying for status under the new legislation.
  
- *Indian Act*. 1989. Minister of Supply and Services Canada. The text of the Act. Copies are available through:
  - Canadian Government Publishing Centre
  - Supply and Services Canada
  - Ottawa, Ontario
  - K1A 0S9
  
- Leslie, John and Ron Maguire (eds.). 1978. *The Historical Development of the Indian Act*. Ottawa: Indian Affairs and Northern Development. This book takes an historical look at changes to the *Indian Act*, with a specific focus on definitions of status and non-status Indians.

- McConnell, W.H. 1977. *Commentary on the British North America Act*. Toronto: Macmillan Co. of Canada Ltd. Discusses implications of the different sections of the B.N.A. Act. Relevant pages for First Nations issues are 222-227, 348-349, and 434-440.
- *Revised Statutes of Canada, 1985*. The original text of *The Royal Proclamation of 1763* is included, with current English usage.
- Whyte, John D. 1974. "The Lavell Case and Equality in Canada," *Queen's Quarterly* 81:1, pp. 28-42. This article discusses the cases of Jeannette Lavell and Yvonne Bedard, two First Nations women who lost Indian status when they married non-Indians.

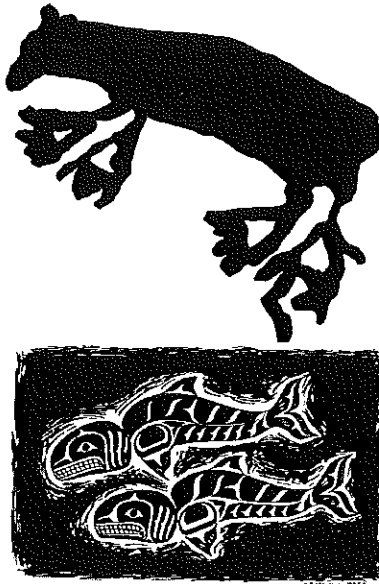
#### *Video*

- Teaching video Number Two, Part Three - "Worldviews and Aboriginal Justice"

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**Lesson One: INTRODUCTION TO THE BRITISH NORTH AMERICA ACT AND THE ROYAL PROCLAMATION OF 1763**


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**OBJECTIVES:**

1. Students will view a video about the different historical worldviews of First Nations and non-First Nations people in Canada.
2. Students will be introduced to how the *British North America Act* and the *Royal Proclamation of 1763* affect First Nations people in Canada.
3. Students will learn of the special relationship that First Nations have with the Canadian government.
4. Students will understand why First Nations people fall under the jurisdiction of federal law rather than provincial law.

**DURATION OF LESSON:** 55 minutes

**ACTIVITIES:**

1. Review the concept of aboriginal rights from unit one with the students. Continue the discussion by asking the students if they know why First Nations have a special relationship with the federal government, one that non-First Nations people do not have. Tell them that this relationship goes back to before the time that Canada became a country in 1867. Then show the video "Worldviews and Aboriginal Justice," which talks about some of the historical issues that concern First Nations and non-First Nations in Canada. This video will be shown again in another lesson when students have learned more about this historical relationship.

*(introduction 5 minutes; video 10 minutes)*

2. After viewing the video, explain to the students that the colonizers back then were mostly British. Therefore, the British government made laws concerning North America, and this is where a legal document called the *British North America Act* comes from.

The B.N.A. Act (as it is called) deals with many things, but what is important for First Nations people is Section 91. This section states what the areas of law-making are for the federal government. Number 24 on the list of federal responsibilities is "Indians, and Lands reserved for the Indians." Explain to the students that laws concerning First Nations in B.C. are always dealt with by the federal government in Ottawa, and not the provincial government in Victoria. This comes from the B.N.A. Act of 1867. It is important for them to know this, and to realize

that even legal documents that were made long ago are still valid today, unless they have been changed or replaced. (15 minutes)

3. After discussing the B.N.A. Act, talk about the *Royal Proclamation of 1763*. About a hundred years before the B.N.A. Act, the British government decided to divide up part of North America, and allow European settlers to have farmland. However, the British government did not want this to disrupt the lives of the original occupants, the First Nations.

After explaining this, read the following to the students. It is part of the *Royal Proclamation of 1763*:

*... And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds. We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies ... do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments ...*

*And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that Purpose first obtained.*

*And, We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements. ...*

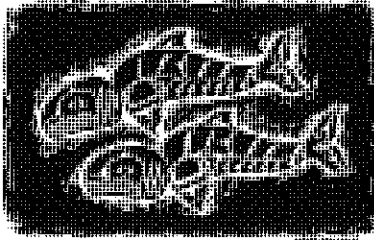
(10 minutes)

4. The text of the Royal Proclamation is difficult to understand. Go over it line by line with the students, and have a class discussion to try to get a general idea of what it means. Then hand out the sheets for the skit "The Reading of the Royal Proclamation" (pages 225 to 230) and go over it in class. Tell the students they will be performing this in the next lesson. (15 minutes)

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**Lesson Two: THE READING OF THE ROYAL PROCLAMATION OF 1763**

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**OBJECTIVES:**

1. Students will gain a greater understanding of the meaning of the *Royal Proclamation of 1763* through the performance of a short skit.
2. Students will be able to discuss their views of the historical relationship between First Nations and the colonial governments in Canada.

**DURATION OF LESSON:** 40 minutes

**ACTIVITIES:**

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1. Perform with the students the skit "The Reading of the Royal Proclamation of 1763." Let the students read it, rather than having them memorize lines. If any of the students know the local language, they can use it in the skit. (30 minutes)

2. After the skit, discuss it with the students. How did the British treat the First Nations people? What did the reader mean by "on a nation-to-nation basis"? Has this type of relationship continued, do you think? How is it different today? Why do you think this happened? What can be done to change this situation? (10 minutes)



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**Lesson Three: INTRODUCTION TO THE INDIAN ACT**


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**OBJECTIVES:**

1. Students will again view a video about the different historical worldviews of First Nations and non-First Nations people in Canada.
2. Students will become aware of the historical development of the *Indian Act*.
3. Students will understand what the *Indian Act* is and how it affects First Nations people.

**DURATION OF LESSON:** 60 minutes**ACTIVITIES:**

1. Ask the class if they are familiar with the *Indian Act*. What is it about? Write the responses on the board. Discuss the students' answers. (10 minutes)
2. Show the video segment "Worldviews and Aboriginal Justice" a second time. Tell the students to pay particular attention to the discussion of the *Indian Act* in the video. (10 minutes)
3. After viewing the video, explain to the class that the *Indian Act* is the federal government's legislation administered by the Department of Indian Affairs and Northern Development. It talks about the rights of status Indians in Canada. It also defines who is and who is not a status Indian in Canada. (Please note that here we are using the term "Indian" because it is a legal term used for First Nations in these documents. If you feel uncomfortable with this term, use whichever one you choose. In this context, you may want to review the discussion in from Unit One, Lesson One about different names for First Nations people).

Tell the students that, through history, the *Indian Act* has changed many times. Some of these changes are about who is and who is not considered to be a status Indian. These changes are outlined in "Status Indians Through History" (pages 92 to 93). Photocopy these and read through the information with the students. (10 minutes)

4. Discuss each of these definitions in detail. Go over the differences and similarities with the students. Make a list on the board of the major components of each one. Make a written copy of it for use in the next lesson. Use the following outline as an example. A blank sheet has been provided for you to copy and write down the different responses from the board (*page 94*). (30 minutes)

1850 Lower Canada	1850 Upper Canada	1869 Enfranchisement	1876 Indian Act
<ul style="list-style-type: none"> <li>• of Indian blood</li> <li>• belongs to tribe</li> <li>• married to Indian</li> <li>• adopted</li> </ul>	<ul style="list-style-type: none"> <li>• Indians</li> <li>• married to an Indian</li> </ul>	<ul style="list-style-type: none"> <li>• one fourth Indian</li> <li>• must be “certified”</li> <li>• woman not married to non-Indian</li> <li>• child of woman not married to non-Indian</li> </ul>	<ul style="list-style-type: none"> <li>• male of Indian blood</li> <li>• belongs to band</li> <li>• child of male member who is legally married</li> <li>• woman married to band member</li> </ul>
etc.	etc.	etc.	etc.

---

## STATUS INDIANS THROUGH HISTORY

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1. In 1876 the first official *Indian Act* became law. Before this, there were other sets of laws concerning First Nations people. In 1850, *An Act for the better protection of the Lands and Property of the Indians in Lower Canada* (which is now Québec) recognized Indians as being:

**First.** *All persons of Indian blood, reputed to belong to the particular Body or Tribe of Indians interested in such lands, and their descendants.*

**Secondly.** *All persons intermarried with any such Indians and residing amongst them, and the descendants of all such persons.*

**Thirdly.** *All persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe, or entitled to be considered as such: And*

**Fourthly.** *All persons adopted in infancy by any such Indians, and residing in the Village or upon the lands of such Tribe or Body of Indians and their descendants.*

2. Another set of laws from 1850, called *An Act for the protection of the Indians in Upper Canada* (which is now Ontario) said simply that Indians were:

*Indians and those who may be intermarried with Indians.*

3. Canada became a country in 1867. In 1869, *An Act for the gradual enfranchisement of Indians* had a "blood quantum proviso," which means that a person had to have a certain amount of Indian "blood" to be considered an Indian:

*In the division among the members of any tribe, band, or body of Indians, of any annuity money, interest money or rents, no person of less than one-fourth Indian blood, born after the passing of this Act, shall be deemed entitled to share in any annuity, interest or rents, after a certificate to that effect is given by the Chief or Chiefs of the band or tribe in Council, and sanctioned by the Superintendent-General of Indian Affairs.*

4. The first *Indian Act* came into effect in 1876. The government tried to put together all the previous legal documents concerning First Nations. According to the *Indian Act*, an Indian was:

**First.** Any male person of Indian blood reputed to belong to a particular band;

**Secondly.** Any child of such person;

**Thirdly.** Any woman who is or was lawfully married to such person.

The following persons could not have Indian status:

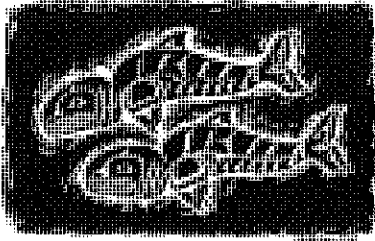
- a) children whose parents were not legally married,
- b) any First Nations person who lived outside of Canada for five years,
- c) First Nations women who married non-First Nations or non-status Indians,
- d) the Métis in Manitoba.

The *Indian Act* of 1876 was the first one to state that First Nations women who married non-First Nations lost Indian status. Their children also were not considered status Indians:

*Provided always that any Indian woman marrying any other than an Indian, shall cease to be an Indian within the meaning of this Act, nor shall the children issue of such marriage be considered as Indians within the meaning of this Act.*

The *Indian Act* today no longer discriminates against women who marry non-status men.



**Lesson Four:****WHAT IS STATUS?****OBJECTIVES:**

1. Students will review historical legislation regarding Indian status.
2. Students will write an essay outlining what they feel should determine Indian status in Canada.

**DURATION OF LESSON:** 40 minutes

**ACTIVITIES:**

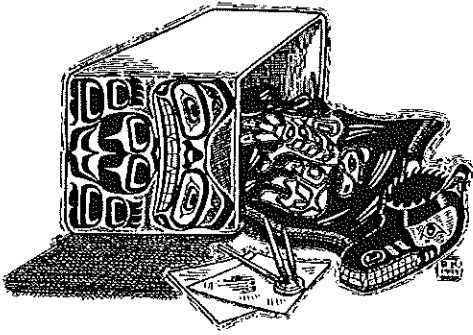
1. Continue the discussion by asking the students what they think are the good points and not so good points of each one of the historical documents that defined who was and who was not a status Indian.

- Why do they think status was taken away from women who married non-status Indians?
- Do they think this is fair? Why or why not?
- Who should get Indian status? Who should not? Who should decide?

(15 minutes)

2. Have the students write a short essay (2-3 pages) on what they think should determine Indian status. Tell them that there are several ways to do this. For example, they could write their own section of the *Indian Act* that designates who is and who is not considered status, or the tribal council or band could devise their own system. When they state what would be the best way to do it, they must give reasons. For example, they might say that if someone belongs to their mother's clan, having status passed on through the father's side doesn't seem right. This has changed since 1985, but before this status was passed on only through the father's line. This issue is discussed in the next lesson.

This essay can be begun in class and completed as a homework assignment. Encourage them to get input from family members on this issue when they take the assignment home. (25 minutes)



*Extension Activity*

Students are given an assignment to investigate within their own families what it means to be a member of their particular cultural group, be it First Nations, English-Canadian, French-Canadian, Chinese, etc. They will write an essay about their findings, to be read aloud and shared with the rest of the class.

*Extension Activity*

Invite Elders or other family members into the class to talk about what it means to them to belong to a particular cultural group.



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**Lesson Five: CASE STUDY: SANDRA LOVELACE  
AND BILL C-31 - Part 1**

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**OBJECTIVE:**

Students will apply some of what they have learned about the *Indian Act* to a case study.

**DURATION OF LESSON:** 40 minutes

**ACTIVITIES:**

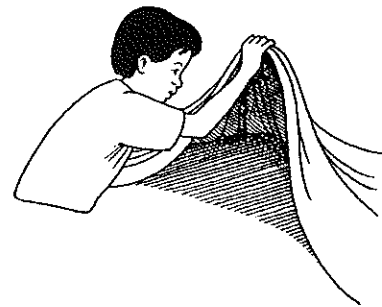
1. Continue the discussion from the previous lessons about who has and who does not have status in Canada. One of the comments that the students probably raised is that it is unfair for women to lose status if they marry someone who is non-status, when this does not happen to men who marry a non-status person.

Photocopy the following handout (*pages 98 to 99*). Read with the students the story about Sandra Lovelace, and how this aspect of the *Indian Act* was changed in 1985.

(25 minutes)

2. Discuss the case study using the following guidelines:

- What happened to Sandra Lovelace?
- Why didn't she take her problem to court?
- Do you think that the *Indian Act* was fair before the changes in 1985? If not, how was it unfair?
- Can you think of any reasons why you think the old *Indian Act* had in it that women who married non-status men lost their status? (For example, in the Canadian system, names and property are usually passed down through the male line.)



Encourage the children to share any personal experiences they or family members have experienced regarding status. (15 minutes)



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## SANDRA LOVELACE AND BILL C-31

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Bill C-31 was a bill that was passed by the Canadian government because it was felt that the *Indian Act* discriminated against First Nations women. Bill C-31 changed the part of the *Indian Act* which stated that when a woman married someone who does not have status, she lost her status. What follows is a brief explanation of how this came about.

Yvonne Bedard, a member of the Iroquois nation, lost her Indian status and Band membership in 1964 when she married a non-Indian. The same thing happened to Jeannette Lavell, a member of the Ottawa nation, in 1970. This would happen any time a woman with Indian status married someone without status, but the reason these particular cases are important is that these two women both went to court to challenge their loss of status. They claimed that Section 12 (1)(b) of the *Indian Act* went against the *Canadian Bill of Rights* because it discriminated against women. Section 12 (1)(b) stated that a woman who is married to a person who is not a status Indian cannot have Indian status. The women's cases went to the Supreme Court of Canada and were both lost.

Sandra Lovelace, a Maliseet living in New Brunswick, married a non-Indian in 1970 and lost her Indian status because of this. In 1977 she decided to take her case to the Human Rights Committee of the United Nations. The United Nations is an organization concerned with international issues. Sandra Lovelace didn't take her case to court, as Yvonne Bedard and Jeannette Lavell had, because she knew that she would not win, just as they hadn't. She told the Human Rights Committee of the United Nations that Section 12 (1)(b) of the *Indian Act*, which took Indian status away from women who married non-Indians, denied her rights under the *International Covenant on Civil and Political Rights*. She said that this section went against three parts of this International Covenant:

Article 23 (1), which is for the protection of the family;

Article 23 (4), which says that husbands and wives must be treated equally in a marriage; and

Article 26, which says that people in minority groups have the right to be part of their culture, practise their religion, and use their language with other members of their community.

The United Nations said that Canada had violated the *International Covenant on Civil and Political Rights* since Sandra Lovelace was being denied her rights to live within her culture by having her status taken away.

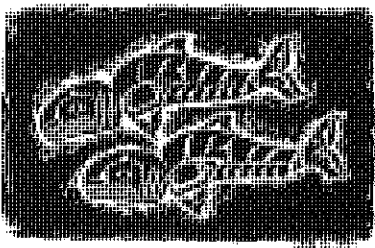
This issue was debated within the Canadian government for several years. Finally, in 1985, Section 12 (1)(b) of the *Indian Act* was changed. The Act is very difficult to read and understand. The *Native Council of Canada*, an organization for First Nations people, published some pamphlets to help people understand the 1985 changes to the Act. One of these pamphlets lists all the people who may have status:

1. People who already had status before 1985;
2. People who should have been registered as status Indians under the *Indian Act* before the changes in 1985, even if by some mistake they had not been registered;
3. Anyone who belongs to a group that was recognized as an Indian Band after 1985;
4. Any woman who lost status by marrying a man who was not a status Indian;
5. Children who lost status when their mother married a man who was not a status Indian;
6. Children who did not have status because both their grandmothers were not status Indians before their marriage;
7. Children who were not given status because their parents were not married, and their father did not have status;
8. Anyone born in 1985 or later, if both parents are entitled to status;
9. Any person who voluntarily *enfranchised* (gave up their Indian status), including wives or children who lost status because of a man's enfranchisement;
10. Anyone who lost status for living outside Canada for more than 5 years before 1951 without consent of an Indian agent;
11. Anyone who lost status by becoming a lawyer, doctor, or minister, or by graduating from university (before 1920, these people would lose status automatically);
12. Anyone whose parents may have status for any reason under the new *Indian Act*, whether their parents are alive or not; and
13. Anyone who has only one parent who may have status under any of the other twelve categories, whether that parent is alive or not.

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**Lesson Six: CASE STUDY: SANDRA LOVELACE  
AND BILL C-31 - Part 2**

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**OBJECTIVES:**

1. Students will understand that there are ways to make changes when these are considered fair and just.
2. Students will create their own versions of parts of the *Indian Act*.

**DURATION OF LESSON:** 50 minutes**ACTIVITIES:**

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1. Recall with the students the case study investigated in the previous lesson. Discuss with them the course of events leading up to the change in the *Indian Act*, which involved some First Nations people who did not want to accept something that they felt was unfair to them.

- Should First Nations people just accept all government policy?
- Is there anything that affects you or someone you know that you feel is unfair for First Nations people?
- How can these kinds of things be changed in a positive manner?

(10 minutes)

2. The following are three sections from the current *Indian Act*. Have each student pick one of them to write about. If you have a copy of the *Indian Act*, you may wish to offer them additional choices. They should choose one that they feel is unfair, and write a short essay on how they would re-write them. They may also decide to write their essay about how they feel these sections of the *Indian Act* ARE fair.

The students must state specifically what kinds of changes should be made, and how it will affect First Nations people. If they decide that the section is fair, they must back this up by stating what might happen if these sections were changed.

Please note that we are not advocating that these are fair or unfair - they are issues that are debated within First Nations communities. We take no position. These examples are to get the students thinking about and expressing their own opinions. (40 minutes)

1. *Section 3. (1) "This Act shall be administered by the Minister, who shall be the superintendent general of Indian affairs."*

The Minister is a member of the government who is chosen by the Prime Minister for this particular job.

- Who do you think should administer the *Indian Act*? Why?
- How could this be done in a fair and just manner for all First Nations people?

2. *Section 20. (1) "No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band."*

This means that land on an Indian reserve cannot be owned by a First Nations person unless this is approved by the band council. The band council must also get permission for this from the government first.

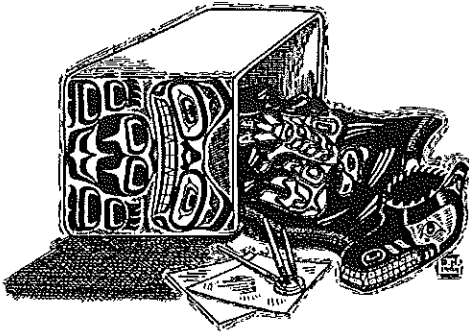
- Who should decide who can and cannot own land?
- Should permission have to go through the band council and the government?

If you think that people should be able to own land privately on a reserve, you must also consider what happens if someone decides to sell their land to a non-First Nations person.

3. *Section 74. (1) "Whenever he deems it advisable for the good government of a band, the Minister may declare by order that after a day to be named therein the council of the band, consisting of a chief and councillors, shall be selected by elections to be held in accordance with this Act."*

This means that chiefs and band councillors must be elected, or chosen by the band members through voting. Again, the Minister has the final responsibility for this.

- What are other ways for people to become leaders?
- What do you think is the best way for people to become leaders? Why?



### *Extension Activity*

Have the students do a project where they interview one or more members of the community about Bill C-31. Ideally, if they know of any people who have applied for status because of this change, they could interview them. They need to prepare for the interview by thinking about and writing appropriate questions, such as:

- Why did you not have status before? How did you feel about that?
- How did you go about applying for status? What steps did you have to take?
- Was it hard? Was it frustrating? Did you have to get help from someone?
- Why is it important for you to have status?

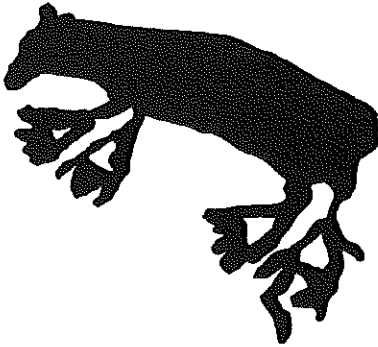
### *Extension Activity*

Many First Nations communities have a Bill C-31 worker to help people apply for status. Ask this person, or a person who has gained status recently, to come in and talk to the class about the procedure and his or her experiences.

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**Lesson Seven: CASE STUDY: THE GITKSAN-WET'SUWET'EN CASE**


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**OBJECTIVE:**

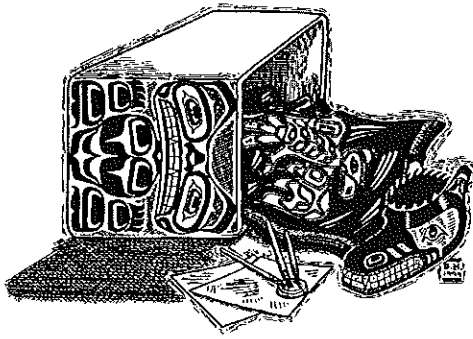
Students will become aware of the major issues of this court case, and will be able to discuss them in relation to what they have learned about aboriginal rights and historical documents.

**DURATION OF LESSON:** 40 minutes

**ACTIVITIES:**

1. Ask the students if they have heard of the Gitksan-Wet'suwet'en case. Discuss what they have heard. Photocopy the handout on the case (*pages 105 to 107*) to provide more information. Read this with the students in class. (*15 minutes*)
  
2. Go over the information about the case by asking the following questions. This should lead into a general discussion with various points of view expressed. (*25 minutes*)
  1. Why did the Gitksan-Wet'suwet'en take the government to court? Do you think it is a good idea for First Nations people to do so? Why or why not?
  
  2. Why do you think the Gitksan-Wet'suwet'en want to control this territory? Why do you think the government wants to control it?
  
  3. What good things came out of the B.C. Supreme Court judgment for First Nations? For the government? How about the appeal?
  
  4. The First Nations used oral tradition (traditional stories) for much of their evidence. Do you think this should be allowed? Why do First Nations not have any written documents from the time before Europeans came here?





### *Extension Activity*

The activity above could form the basis for a structured debate in the class. Using two or more different points of view, divide the class into groups and give them time to prepare what they will say to defend their point of view.

### *Extension Activity*

According to the Gitksan-Wet'suwet'en Chiefs:

*"The ownership of territory is a marriage of the Chief and the land. Each Chief has an ancestor who encountered and acknowledged the life of the land. From such encounters come power. The land, the plants, the animals and the people all have spirit - they all must be shown respect. That is the basis of our law."*

Invite an Elder or other knowledgeable person into the class to talk about the relationship that First Nations people have with the land. Ask them if they have any stories to tell about how the land and environment should be treated.

### *Extension Activity*

Invite members of the non-First Nations community into the class to discuss the implications of people like them living in an area with a First Nations government.

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## THE GITKSAN-WET'SUWET'EN CASE: DELGAMUUKW V. THE QUEEN AND THE ATTORNEY GENERAL OF CANADA

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Between May 1987 and June 1990, there was a trial going on in the B.C. Supreme Court in which the Gitksan and Wet'suwet'en Hereditary Chiefs claimed about 22,000 square miles of territory in west-central British Columbia between the Nass and Skeena Rivers. The First Nations said that the government had no right to allow activities such as logging and mining in territories that they claim belong to them. The First Nations felt that they should be consulted about these matters. All 54 plaintiffs were Gitksan or Wet'suwet'en Chiefs.

The important issues in this case were:

- Who owns the land where the Gitksan and Wet'suwet'en peoples live?
- What is ownership?
- What can be used as evidence in a court of law? The government used written documents, while the First Nations used a great deal of oral history in court.

The government claims that ownership is determined by the Canadian legal system. It is based on written documents from the early colonial period when Europeans began settling in British Columbia, and later. On the other hand, the Gitksan and Wet'suwet'en Chiefs say that:

*the ownership of territory is a marriage of the Chief and the land. Each Chief has an ancestor who encountered and acknowledged the life of the land. From such encounters come power. The land, the plants, the animals and the people all have spirit - they all must be shown respect. That is the basis of our law.*

The Chiefs claim that their people have lived on the land since time immemorial, which means longer than anyone can remember. They say that their documentation of land ownership comes from oral traditions passed on from generation to generation. They tried to explain their cultural views to the judge and other non-First Nations people. They also referred to the *Royal Proclamation of 1763*, which says that no territory may be taken from aboriginal peoples without their consent. So the Chiefs believe that this historical document protects their land, since they have never given their land up or sold it to the government.



The provincial government claims that at the time of *Royal Proclamation of 1763*, the British were not familiar with the area that is now British Columbia. They hadn't come this far west, and most settlement was in the east. The government says that the *Royal Proclamation* should not apply to anyone living in areas that were not known to the British at the time. Laws which were passed by early colonial governments in British Columbia took away the First Nations' right to the land.

For the first time, oral histories of the Gitksan-Wet'suwet'en people were given as evidence in the trial. These are the "Adaawk" or "Kungax" of particular families, which tell of their history.

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### THE JUDGMENT

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The case was dismissed, which means that the judge felt that the case presented by the government was more convincing. One thing that the judge said about the evidence given with oral traditions was that much of it was "of dubious value." There is really no written way to verify oral history. Much of the Gitksan-Wet'suwet'en Chiefs' argument was based upon their oral traditions.

Here are some of the judge's other conclusions in deciding that the Gitksan-Wet'suwet'en do not own the territory which they claim, and no longer have aboriginal rights:

\* **"The Royal Proclamation, 1763** has never applied to or had any force in the Colony or Province of British Columbia or to the Indians living here."

\* "The aboriginal interests ... were rights to live in their villages and to occupy adjacent lands for the purpose of gathering the products of the lands and waters for subsistence and ceremonial purposes."

\* "These aboriginal interests did not include ownership of or jurisdiction over the territory. Those claims of the plaintiffs (the Gitksan-Wet'suwet'en Chiefs) in this action are dismissed."

\* "It is the law that aboriginal rights exist at the 'pleasure of the Crown,' and they may be extinguished whenever the intention of the Crown to do so is clear and plain."

\* "The pre-Confederation colonial enactments ... exhibit a clear and plain intention to extinguish aboriginal interests ..., and the Crown did extinguish

such rights to all the lands of the colony. The plaintiffs' claims for aboriginal rights are accordingly dismissed."

What this means is that the *Royal Proclamation of 1763* does not apply in British Columbia, and that aboriginal rights were extinguished (taken away) by laws made in the province by the colonial governments. However, the judgment also states that the First Nations of this province have a "legal right to use vacant Crown land for aboriginal purposes subject to the general law of the province." This means that they can continue to live in their territory, and use it for such things as hunting and fishing. This is protected by law.

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### THE APPEAL

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Many First Nations in this province were not happy with the judgment. The Gitksan-Wet'suwet'en Chiefs made an appeal. The B.C. Court of Appeal is the highest court in the province. It works differently from other courts. Usually, three judges review the case, and then hear from lawyers from each side. No new evidence is presented. In the Gitksan-Wet'suwet'en case, five judges heard the appeal since the issue was very complicated, and very important.

The B.C. Court of Appeal decided that the Gitksan-Wet'suwet'en's did not have absolute title over their territory, meaning that they do not own it. However, it overturned, or changed Justice McEachern's decision that all aboriginal rights had been extinguished. They said that aboriginal rights exist and are protected by the Canadian Constitution. They couldn't say exactly which rights First Nations people have. These have to be negotiated between the government and First Nations. This process is taking place in the form of treaty negotiations in British Columbia, which began in late 1993 and are ongoing.

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## **UNIT THREE: JOURNEYS OF JUSTICE: LOCAL INITIATIVES IN FIRST NATIONS JUSTICE**

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**INTRODUCTION:**

This unit is based upon a research project by Dana Senini, a member of the Nanaimo First Nation. Dana Senini has a degree in Criminology, and is currently a law student. Her research project, entitled "Aboriginal Community Justice Initiatives," was completed in 1992 with the cooperation of the R.C.M.P. Community and Aboriginal Policing Directorate in Ottawa. This unit draws upon her case studies of four aboriginal community justice initiatives. We highlight the main points of each initiative.

This research is very exciting for First Nations who are looking for alternatives to the Canadian justice system. It outlines justice programs in operation throughout Canada that are making an attempt to incorporate First Nations community values

into the justice system. Another very positive aspect is that all of these programs operate with the cooperation of people within the Canadian justice system. The programs have different degrees of participation from the Canadian justice system. Some of them, such as the Teslin Tlingit Tribal Justice System, work in conjunction with the Canadian justice system, by having Elders and judges sitting together in court. Others, such as Unlocking Aboriginal Justice with the Gitksan-Wet'suwet'en, work separately from the Canadian justice system. The report shows the successes that each project has had, and, more importantly, demonstrates that different types of justice programs work within different communities. There is not one model for success. Each First Nation must decide what type of initiative will work for it.

**NUMBER OF LESSONS:** Six

- |               |  |
|---------------|--|
| Lesson One:   | Unlocking Aboriginal Justice - The Gitksan-Wet'suwet'en Nation |
| Lesson Two:   | The Sandy Lake Justice Project                                 |
| Lesson Three: | The Micmac Diversion Council of Lennox Island                  |
| Lesson Four:  | The Teslin Tlingit Tribal Justice System                       |
| Lesson Five:  | Explorations in Justice-Making                                 |
| Lesson Six:   | Justice-Making in Our Communities                              |

**EXPECTED DURATION OF UNIT:** 6 weeks (one lesson per week)

**GOALS:**

1. To review concepts previously discussed concerning alternatives to the justice system for First Nations people.
2. To introduce First Nations alternative justice initiatives from across Canada.
3. To have the students explore different First Nations responses to crime in their communities.
4. To encourage students to think about justice alternatives that might work in their communities.

**INTEGRATED APPLICATIONS:**

- Social Studies
- First Nations Language and Culture
- Visual and Dramatic Arts

**COMMUNITY AND PARENTAL INVOLVEMENT:**

- Community members who work within the justice system to talk about First Nations justice initiatives.
- Community members involved in some aspect of a local First Nations justice initiative.

**MATERIALS AND RESOURCES:***Books and Pamphlets*

- Department of Justice. 1992. *National Inventory of Aboriginal Justice Programs, Projects and Research*. A comprehensive inventory of justice programs related to First Nations in Canada. Information is listed by province.
- Senini, Dana. *Aboriginal Community Justice Initiatives*. This unpublished paper was prepared for the R.C.M.P. Community and Aboriginal Policing Directorate in Ottawa, and provides information on six justice programs in operation in or near First Nations communities in Canada. Copies of the paper can be obtained from:

R.C.M.P. Headquarters  
Community and Aboriginal Policing Directorate  
Room B-500  
Ottawa, Ontario  
K1A 0R2  
Tel: (613) 993-6221 or (613) 990-9723

- "Terms Used in the Legal System" (*page 217*)

*Video*

- Teaching video Number Two, Part 4 - "Circle of Justice"

*Other Resources*

- Classroom map of Canada

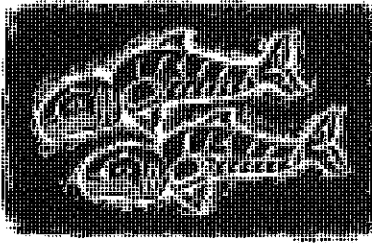
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**Lesson One: UNLOCKING ABORIGINAL JUSTICE -  
THE GITKSAN-WET'SUWET'EN NATION**

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**OBJECTIVES:**

1. Students will view a video that discusses the need for First Nations community justice.
2. Students will become familiar with and discuss an example of a First Nations system of justice.

**DURATION OF LESSON:** 50 minutes**ACTIVITIES:**

1. Tell the students that for the next few weeks they will be looking at how some First Nations are developing their own ways of dealing with issues of justice in their communities. In preparation, show the video "Circle of Justice." In it, First Nations people talk about the need for them to have a say in issues of justice that affect their own people, and their own communities, and the importance of cooperation between First Nations and non-First Nations in developing alternatives to the present justice system.

*(5 minutes for introduction: 15 minutes for video)*

2. After viewing the video, tell the students that different First Nations across Canada are working together with local, provincial, and federal government and policing agencies to try to find a better way to deal with their community members who get in trouble with the law.

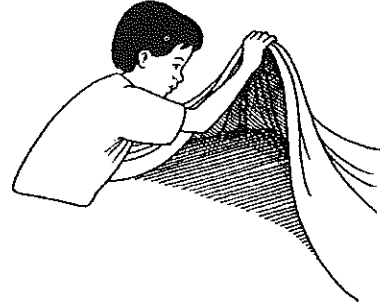
- The first local program that the class will be investigating is called "Unlocking Aboriginal Justice"; it is administered by the Gitksan-Wet'suwet'en in British Columbia.
- The second will be "The Sandy Lake Justice Project" in Ontario.
- The third will be "The Micmac Diversion Council of Lennox Island" in Prince Edward Island.
- The fourth and final one that will be studied is "The Teslin Tlingit Tribal Justice System," in the Yukon.

Using a map of Canada, show the students these places. Ask them if they know any people from these different provinces and territories, or if they have ever visited one of them.  
(10 minutes)

3. Read with the class the information sheets provided here on "Unlocking Aboriginal Justice" (pages 113 to 114). The students may take turns reading parts. (10 minutes)

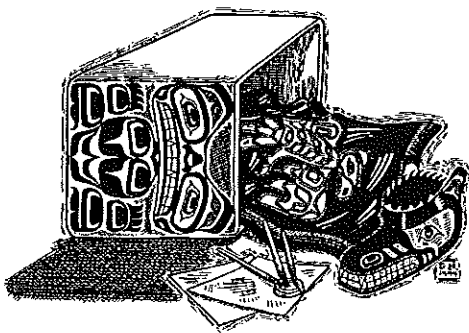
4. After the reading, discuss this aboriginal initiative, with questions such as:

- Where do the Gitksan and Wet'suwet'en live?
- Why did they decide to start this program?
- How is it different from the court system?
- Do you think a program like this is a good one to start? Why?



The students will have various opinions, and each one is equally valid. Explain to the class that "Unlocking Aboriginal Justice" is called a *diversion* program. Some students may be familiar with this from Grade Six. A diversion program is something that people go through rather than going through the court system. This is decided upon by Crown counsel.

If you live in the area where the Unlocking Aboriginal Justice program is in operation, or something similar, have the students discuss what they know about the program, and people involved in it. (10 minutes)



### *Extension Activity*

Invite someone who works within the justice system (police officer, courtworker, judge) to speak to the class about his or her views on First Nations communities taking an active role in the justice system.

If you live in a community where there is a First Nations justice program, arrange to have someone who participates in the program come and talk about it to the class.

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## UNLOCKING ABORIGINAL JUSTICE THE GITKSAN-WET'SUWET'EN NATION

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The *Unlocking Aboriginal Justice* program was started near Hazelton, B.C. in 1990 by the Gitksan-Wet'suwet'en. The two groups together have a population of about 7,000 (5,000 Gitksan and 2,000 Wet'suwet'en).

This program is not a trial process. It is used as an alternative to the court system, called *diversion*. The purpose of the program is to use traditional forms of justice from the community to help people who break the law. In this way, community members can get involved. There are two benefits to this:

1. the people who run the community justice system want to reduce the numbers of community members who break the law. Most people who go through this program do not become "repeat offenders"; and
2. people within the community feel better about it than they do about the regular court system. This is because it follows the traditional system of family and Houses.

The Unlocking Aboriginal Justice program is based on the clan system of chiefs. The clan system is hereditary, which means that it is passed on from generation to generation. Here is how it works:

*When someone breaks a law in the community, the person accused of breaking the law can be referred to the program by either the R.C.M.P., the Crown Attorney's office, social services, probation, the victim's or offender's family, or community workers and House members. The accused person must admit to committing the crime, and be sorry for it. If the offence is very serious, such as murder, it will not be referred to the program. People accused of these serious offences must go through the regular court system.*

*After someone is referred to the program, a program worker contacts the accused and the victim to explain how the program works. The accused and the victim must both agree to participate in the program. If one of them doesn't agree, then the case will go through the regular court system.*

*Then the accused has an interview with a program worker to determine which House he or she belongs to. The House system is the traditional way community members are grouped according to the mother's side of the family.*

*A meeting is held between the offender, his or her family, and the House Chief. They determine what kind of program would be best to rehabilitate the offender. The aim is not to punish the offender, but help him or her to stop breaking the law.*



*There is also a meeting between the victim, his or her family, and their House Chief. This is to determine how the offender can make up for the wrong that has been done to the victim, called compensation. In this meeting, they also discuss the other things that the offender should do in order to rehabilitate him or her.*

*Sometimes the offender will have to hold a shame feast for the victim and his or her House. This can be very expensive, and very emotional for the offender, since he or she will feel shame.*

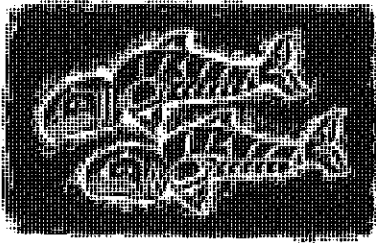
In Gitksan and Wet'suwet'en society, breaking the law is seen as being disrespectful and shameful. The people also feel that being judged by one's own community members is more personal than going through the courts. This may make someone think more seriously about the consequences of breaking the law before they do it. No one wants to be shamed in front of the community.

Through this program, traditional laws and ways of resolving conflicts are being brought back into the community. The Gitksan-Wet'suwet'en Nation feel it is important for them to be responsible for the people in their own community. At the same time, the program works in cooperation with the Canadian justice system, so that everyone respects and recognizes the value of both.

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**Lesson Two: THE SANDY LAKE JUSTICE PROJECT**

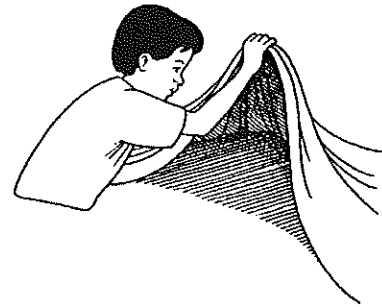

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**OBJECTIVES:**

1. Students will become familiar with and discuss another First Nations system of justice.
2. Students will compare this First Nations system of justice to the one previously introduced.

**DURATION OF LESSON:** 30 minutes**ACTIVITIES:**

1. Tell the students that the class will be continuing with their investigation of First Nations alternatives to the Canadian justice system. Recall with them the Unlocking Aboriginal Justice program of the Gitksan-Wet'suwet'en, noting major points of the program. (5 minutes)
2. Read with the class the information sheets on "The Sandy Lake Justice Project" (pages 116 to 117). (10 minutes)
3. Discuss this project, with questions such as:
  - Where is Sandy Lake?
  - Why did they decide to start this project?
  - How is it different from the regular court system?
  - How is it different from the Gitksan-Wet'suwet'en Unlocking Aboriginal Justice program?



**IMPORTANT:** The students should note that Unlocking Aboriginal Justice works as a *diversion* program. The Sandy Lake Project is quite different. Here, the accused still does go through the court system, but the Elders Council takes part in the court and advises the judge. It is not a diversion program. It is still part of the court system.

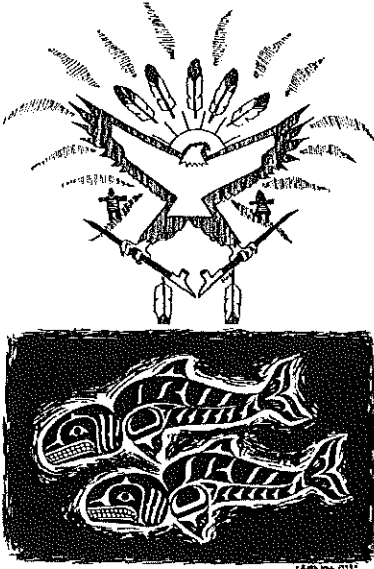
- Do you think a program like this is a good one to start? Why?

(15 minutes)

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**Lesson Three: THE MICMAC DIVERSION COUNCIL OF LENNOX ISLAND**


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**OBJECTIVES:**

1. Students will become familiar with and discuss this First Nations system of justice.
2. Students will compare this First Nations system of justice to ones previously introduced.

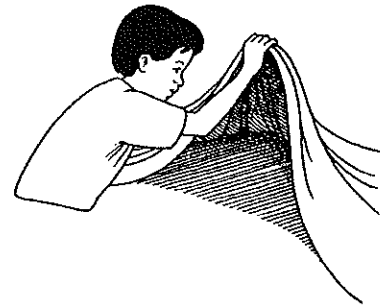
**DURATION OF LESSON:** 35 minutes**ACTIVITIES:**

1. Tell the students that the class will be continuing with their investigation of First Nations alternatives to the Canadian justice system. Recall with them briefly the two previous lessons about the Unlocking Aboriginal Justice program of the Gitksan-Wet'suwet'en, and the Sandy Lake Justice Project, noting major points of each program. *(10 minutes)*

2. Read with the class the information sheets on "The Micmac Diversion Council of Lennox Island" *(pages 119 to 120)*. *(10 minutes)*

3. Ask similar questions to the ones from the two previous lessons, such as:

- Where is Lennox Island?
- Why did they decide to start this project?
- How is it different from the regular court system?
- How is it different from the Gitksan-Wet'suwet'en Unlocking Aboriginal Justice program? (Note here that they are BOTH diversion programs, but they operate differently because the First Nations who administer the program are very different.)
- How is it different from the Sandy Lake Justice Project? (Note here that the Sandy Lake Project is not a diversion program, but works within the court itself.)
- Do you think a program like this is a good one to start? Why?

*(15 minutes)*

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## THE MICMAC DIVERSION COUNCIL OF LENNOX ISLAND

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This Diversion Council began in 1991. There are six members on the Council, and their ages range from 20 to 60 years old. All of them are from the community. Both men and women sit on the Council.

Lennox Island is located off the north coast of Prince Edward Island. About 300 First Nations people live there. The unique thing about this Diversion Council is that it provides programs for people of all ages. This is unique because in the Canadian justice system, children under twelve years old who break the law do not go to court, and do not go through diversion programs.

The Micmac Diversion Council is used mostly when someone from the community has committed an offence for the first time. However, a repeat offender may also go through the program if this seems to be the best way to deal with a problem. Both the offender and the victim must agree to go through the Diversion Council, and the offender must admit to the offence and feel sorry for doing it. The offender must come to the first hearing, and the victim is asked if he or she would like to attend. The police officers involved in the case also come to the hearing. A Micmac prayer is said at the beginning and end of the hearing, and everyone sits in a circle.

When deciding upon the best program for the offender, there must be consensus by Council members, which means they all must agree. The programs are based on the cultural values of the community. Council members want to help offenders with their problems, and help them feel good about being part of their community again.

The local R.C.M.P. (Royal Canadian Mounted Police) plays an important role in the diversion process. They get in touch with the Diversion Council when First Nations people from the community commit offences such as damage to property, theft, public mischief, break and enter, and alcohol-related offences. Members of the R.C.M.P. are also present at the diversion hearings. Council members often ask for the R.C.M.P.'s advice on what kind of program would be best for everyone concerned.

For example, there was a case in 1992 that involved property damage under \$1,000. The adult offender was under the influence of alcohol at the time of the offence. First the Diversion Council met and discussed the case, and then worked together with the R.C.M.P. on the program. They decided that the offender would have to do the following things:

- 1) make six payments of \$25 for a total of \$150 to compensate the victim;
- 2) attend eight Alcoholics Anonymous (A.A.) meetings for two months;
- 3) stop drinking alcohol or taking drugs for at least two months;
- 4) keep the peace and be of good behaviour.

If a person does not do the things that are outlined in the program, he or she will have to go to regular court for sentencing.

Because the Diversion Council and the R.C.M.P. are working together, relations between community members and police officers are described as being good. There is cooperation and trust between First Nations and the police. This is seen as a positive step in bridging the gap between the Canadian and First Nations justice systems.

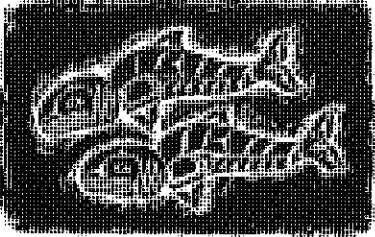
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**Lesson Four: THE TESLIN TLINGIT TRIBAL JUSTICE SYSTEM**

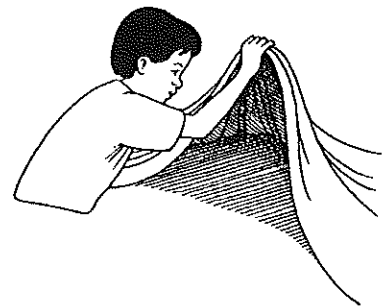

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**OBJECTIVES:**

1. Students will become familiar with and discuss this First Nations system of justice.
2. Students will compare this First Nations system of justice to ones previously introduced.

**DURATION OF LESSON:** 35 minutes**ACTIVITIES:**

1. Tell the students that the class will be continuing with their investigation of First Nations alternatives to the Canadian justice system. Recall with them briefly the three previous lessons about the Unlocking Aboriginal Justice program of the Gitksan-Wet'suwet'en, the Sandy Lake Justice Project, and the Micmac Diversion Council of Lennox Island, noting the major points of each program. *(10 minutes)*
2. Read with the class the information sheets on "The Teslin Tlingit Tribal Justice System" *(pages 122 to 123)*. *(10 minutes)*
3. Ask similar questions to the ones from the three previous lessons, such as:
  - Where is Teslin?
  - Why did they decide to start this project?
  - How is it different from the regular court system?
  - How is it different from the Gitksan-Wet'suwet'en Unlocking Aboriginal Justice program? (Note here again differences between diversion programs and those that work within the court system).
  - How is it different from the Sandy Lake Justice Project? How is it the same?
  - Do you think a program like this is a good one to start? Why?

*(15 minutes)*

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## THE TESLIN TLINGIT TRIBAL JUSTICE SYSTEM

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The Teslin Tlingit live in the southern Yukon not far from the British Columbia border. The Teslin Band has about 700 members. Their Tribal Justice System has been in operation since 1991, and works with the Canadian justice system.

There are five Tlingit clans. A person's clan is determined by the mother's side of the family. One Elder from each clan participates in court proceedings with the circuit court judge. The Elders advise the judge about decisions on sentences, and what they recommend is taken very seriously. They suggest things for the offender that reflect the cultural values of the community.

A few days before the circuit court judge arrives, the cases that will come before the court are discussed by the Elders with other clan members. By doing this, everyone becomes aware of the offender's misbehaviour within the community. Since the Elders will know the offender personally, they decide upon what recommendations to make to the judge. They want to have the best possible outcome for both the offender and the community. All recommendations must be decided upon through consensus. The Clan leaders sit with the judge during the court, and participate directly in court proceedings. In this way, the court is seen as being a part of a community process. The offender is not only before the court - he or she is also before the community.

Members of the community feel that every human being is important. As stated by one Band Council member: *"There is no such thing as a dispensable Tlingit person."* This means that no Tlingit person should be pushed aside. It also shows the great respect shown to everyone within the community, including the offenders.

As part of a sentence, some things that an offender may be told to do include:

- 1) attend a program for treatment of such things as alcohol abuse, sexual abuse, and for anger management;
- 2) perform community service work;
- 3) pay a fine;
- 4) receive counselling from Elders;
- 5) make a public apology.

The reason for the Elders' involvement in the court process is summed up by a community leader:

*Our tribal justice system allows our Elders, who know the offender well, to delve more deeply into the underlying issues of the offender's behavioural problems and then reflect their concerns in the sentence imposed.*

The Elders Council also has the responsibility of educating court workers, lawyers, and the police about Tlingit cultural values. Relations between the R.C.M.P. and the communities of Teslin and Whitehorse are seen to be very good because of this cooperation between those working in the Canadian justice system and the local community.

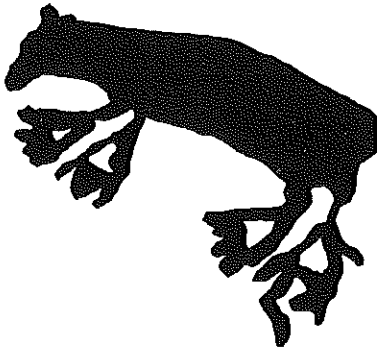
Since the program has been in operation, there has also been much less crime in the community. For example, in 1991, the year the program began, property crime and assaults were down by more than 50 percent, and break-and-enters were down by 75 percent of what they were in 1990. In all, there has been a 35 percent reduction in crime in the area. This is seen to be a result of the work done by the Elders Council, which benefits the entire community.



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**Lesson Five: EXPLORATIONS IN JUSTICE-MAKING**


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**OBJECTIVES:**

1. Students will review the various First Nations justice initiatives introduced in this unit.
2. Students will develop improvised dramas to illustrate how these initiatives operate.

**DURATION OF LESSON:** 60 minutes

**ACTIVITIES:**

1. Divide the class into four groups. Assign one of the First Nations justice initiatives from this unit to each group. The assignment is to develop a drama to illustrate how each one of these works. Tell the students that the drama will be

improvised, which means that they will make it up as they go along. Make sure, however, that they are aware of the time limit for performing the drama. We suggest that you give the groups 20 minutes to prepare and 10 minutes each to perform. Remind them to keep it simple. Detail is not necessary - the important thing is to illustrate how this particular justice initiative works.

In their groups, they need to figure out the following things:

1. *Roles* - there will be different roles for each one. For example, in the Unlocking Aboriginal Justice drama, they will need a R.C.M.P. officer, offender, victim, program worker, and House members. Each group must go through the information sheets and decide who will play what role.
2. *Offence* - each group needs to decide what type of offence will be dealt with in their particular role play, and what the outcome will be (which program to follow or sentence to impose).
3. *Basic outline of the drama* - students should not write out their parts, but should go through the steps of what will happen during their particular drama. They must stick to this outline during the performance. They might want to write out the steps on pieces of paper for each member to refer to. They should go over this in their groups briefly a couple of times before the performance.

## Lesson Six: JUSTICE-MAKING IN OUR COMMUNITIES

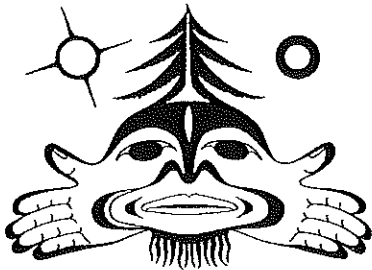


### OBJECTIVE:

Students will use their knowledge of the justice system and First Nations justice initiatives to design a justice system that would work well in their communities.

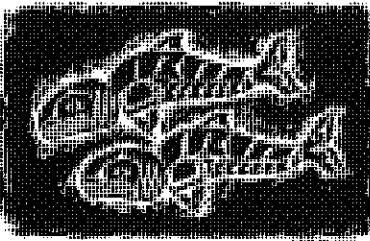
**DURATION:** to be decided by teacher

### ACTIVITIES:



1. Have a class discussion about the dramas that were performed in the previous lesson. Discuss what occurred in relation to the following justice concepts:

1. Why do we need to share and cooperate?
2. How can we resolve conflicts?
3. What are our roles, responsibilities, and rights?
4. How do rules and laws work?



These should be discussed within the context of the values of:

- **the experience** that the students went through while performing the dramas;
- **the honouring** of everyone involved, and of different systems of justice;
- **the recognition** of the interdependence between these values.



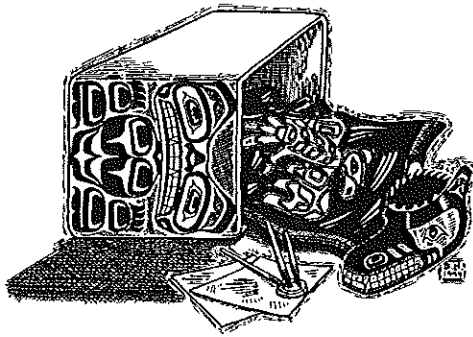
For example, each justice initiative demonstrates sharing and cooperation, because without them these projects could not have even begun.

Conflict resolution is the aim of all these initiatives, including conflicts between people and conflicts that an individual may have within him or herself.

While the way in which the rules and laws work within each initiative is slightly different, each initiative maintains that we must uphold our roles, responsibilities, and rights as people living within a community with others.

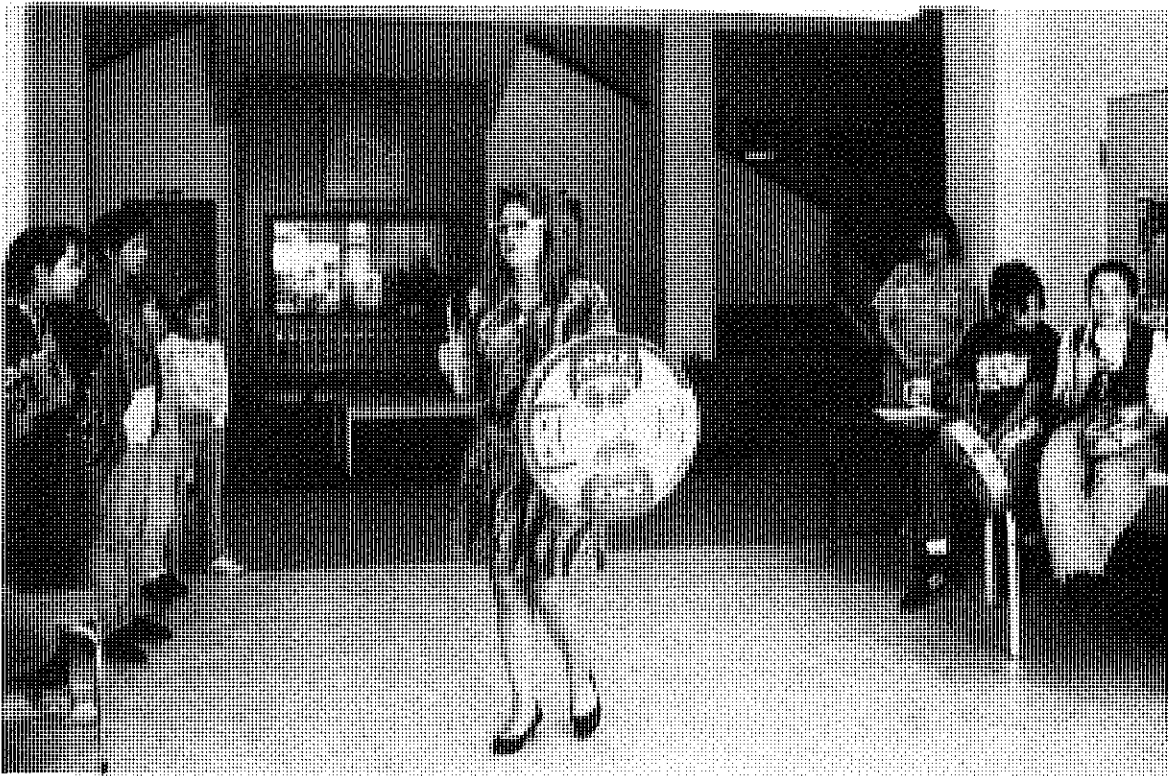
2. The students will do a major project to design a system of justice that would work well in the area in which you live. They could be similar to ones studied in this unit, or very different. Each student's justice system must incorporate the ideas that were discussed in Activity 1.

The teacher should decide whether this project should be done in groups or individually, and how much time the students will need to complete it. We suggest that the projects combine written and visual material, i.e. writing a description of how the system would work, and preparing some drawings to illustrate what it would look like. Encourage students to speak to family members and other people in the community for ideas.



### *Extension Activity*

Divide the class into groups. Have each group choose one of the justice systems from the major projects to perform in a manner of their own choosing (i.e. improvised or scripted).





# ***SUPPORT MATERIALS***

## ***MOCK TRIALS***



***MOCK TRIAL ON HUNTING:  
REGINA vs. WELLS\****

\*A mock trial prepared by Gayla Reid for the Law Courts Education Society of B.C.  
and adapted for *First Nations Journeys of Justice*

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## FACT PATTERN

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Bill Wells, a First Nations person, is accused of unlawfully hunting moose by night near 500 Mile House, B.C.

The Crown alleges that Bill Wells was hunting near midnight. He was using a rifle and had a light to dazzle the animal.

The British Columbia Wildlife Act says it is an offence to hunt with a light at any time. It also says that it is an offence to hunt without reasonable consideration for the safety of others.

The Crown will introduce evidence to prove the charges.

The Defence will introduce evidence to prove that Bill Wells has a right to hunt in the area, because his people have been hunting there from time immemorial.

- Should Bill Wells be convicted of an offence under the Wildlife Act?

*OR*

- Does he have the right to hunt at any time and by any method because he is a First Nations person?

*Note: This charge is **not** one which is serious enough to be dealt with in Supreme Court. Normally charges like these would be dealt with in Provincial Court. There is no jury in Provincial Court.*

*For the purposes of the mock trial, however, we have decided to hear the case in Supreme Court, where a jury can decide whether or not Bill Wells is guilty of the charges.*

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## INDICTMENT

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**Her Majesty the Queen**

**against**

**Bill Wells**

Bill Wells stand charged:

Count one: That on the 18th day of October, A.D. (*year*), at or near 500 Mile House in the Province of British Columbia, you did hunt with the aid of a light, contrary to Section 27 of the British Columbia Wildlife Act.

Count two: That on the 18th day of October, A.D. (*year*), at or near 500 Mile House in the Province of British Columbia, you did hunt without reasonable consideration for the lives, safety and property of other persons, contrary to Section 29 of the British Columbia Wildlife Act.

### **Possible Penalties**

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1. Hunting with a light, contrary to Section 27: for a first offence a person is liable to a fine of not more than \$10,000 and not less than \$200 or to a term of imprisonment not exceeding 6 months, or both.
2. Dangerous hunting, without reasonable consideration for the lives, safety and property of others, contrary to Section 29: for a first offence a person is liable to a fine of not more than \$5,000 or to a term of imprisonment not exceeding 6 months, or both.



## **Exhibits**

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For this mock trial there are four exhibits:

1. Photographs of the moose found in Bill Wells' possession.
2. Rifle found in Bill Wells' possession.
3. Hand-held flashlight found in Bill Wells' possession.
4. Map of the Rapid Creek area, south of 500 Mile House, where Bill Wells was hunting.

The first three exhibits will be introduced by Crown Counsel. Defence Counsel will introduce the fourth exhibit.

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## TRIAL PROCEDURE

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1. The case starts with the sheriff calling: "**Order in court. All rise.**" Everyone stands. The judge enters and takes his or her seat. Everyone sits down.
2. The court clerk calls the case, "**Regina versus Wells.**"
3. The Crown and Defence Counsel **introduce** themselves to the judge.
4. The court clerk reads out the **indictment** and asks Bill Wells, "**How do you plead?**"
5. Bill Wells answers, "**Not guilty, Your Honour.**"
6. The Crown makes an **opening statement** to the jury.
7. The Crown calls its first witness, the Conservation Officer.
8. The Defence cross-examines the Conservation Officer.
9. The Crown calls its second witness, the sports hunter.
10. The Defence cross-examines the sports hunter.
11. The Crown calls its third witness, a Regional Wildlife Branch Supervisor.
12. The Defence cross-examines the Regional Wildlife Branch Supervisor.
13. One Crown Counsel rises and says, "**That concludes the Crown's case, Your Honour.**"
14. The Defence begins by making a short **opening statement** to the jury.

15. The Defence calls its first witness, the accused.
16. The Crown Counsel cross-examines the accused.
17. The Defence calls its second witness, a member of the same Band as Bill Wells.
18. The Crown Counsel cross-examines this Band member.
19. The Defence calls its third witness, the professor.
20. The Crown Counsel cross-examines the professor.
21. The Defence Counsel makes a **closing statement** to the jury.
22. The Crown Counsel makes a **closing statement** to the jury.
23. The judge instructs the jury.
24. The jury leaves to decide a **verdict**.
25. The jury returns.
26. The Court Clerk asks the jury for the verdict.
27. The foreperson gives the jury's verdict.
28. The judge tells the accused he is free to go if the verdict is "not guilty." If the verdict is guilty, the judge asks the Crown Counsel and the Defence Counsel to **speak to sentence**. The judge then **sentences** the accused.
29. The Court Clerk says "**Order in Court.**" Everyone stands. The judge leaves and the trial is over.

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## DIRECT EXAMINATION AND CROSS-EXAMINATION FOR CROWN AND DEFENCE LAWYERS

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**Direct examination** is the first line of questioning and is conducted by the counsel who called the witness to the stand. If a witness is a witness for the Crown, then the Crown Counsel conducts the direct examination. If a witness is called for the defence, then the Defence Counsel conducts the direct examination.

The purpose of direct examination is to allow the witness to tell his or her story so that this evidence is before the court. For example, questions such as, "Where were you on the night of July 21st?" or, "What did you see?" or, "Tell the court what happened," are usually asked during direct examination.

**Cross-examination** is the second line of questioning. It is conducted by the other counsel. Defence Counsel cross-examines Crown witnesses, and Crown Counsel cross-examines defence witnesses.

The purpose of cross-examination is to test the story which a witness told in direct examination. Is it true? Are there inconsistencies in the story? Is the witness' memory of past events as clear as it seems to be?

These are things that Crown Counsel and Defence Counsel lawyers should think about when they are making up questions for the witnesses.

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## **CROWN COUNSEL - WHAT YOU NEED TO DO**

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*Two students should be chosen to work together as Crown Counsel lawyers.*

You and another student are going to be Crown Counsel in this mock trial. This means that you are going to be lawyers who work for the government. Your job is to organize and present all the evidence the government has gathered against Bill Wells.

To prepare yourself for the role, read all the role sheets of the people who will be called as witnesses. Also read the suggestions for your opening and closing statements.

Write out a list of questions you want to ask each of your witnesses so that their evidence will come out during the trial.

### **Dividing the Work**

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You and your partner will divide the work. In this trial, there are nine tasks for the Crown Counsel, so each of you can take turns. After each task we suggest which lawyer should do it.

1. Opening statement to the jury. This is a short statement that tells the jury what you plan to prove and what witnesses you are going to call. (*Crown Counsel #1*)
2. Questioning Crown witness #1. (*Crown Counsel #2*)
3. Questioning Crown witness #2. (*Crown Counsel #1*)
4. Questioning Crown witness #3. (*Crown Counsel #2*)
5. Cross-examining Defence witness #1. (*Crown Counsel #1*)

6. Cross-examining Defence witness #2. (*Crown Counsel #2*)
7. Cross-examining Defence witness #3. (*Crown Counsel #1*)
8. Closing statement to the jury. This is a short statement telling the jury what the most important evidence is and why it is clear that Bill Wells is "guilty beyond a reasonable doubt." (*Crown Counsel #2*)
9. Speaking to Sentence, if necessary. This means that if Bill Wells is found guilty, you need to state what sentence he should receive and why. (*Crown Counsel #1*)

The section on **Trial Procedure** tells you when each task should be done (*p. 133-134*).

### **Crown Counsel: Preparing Questions for Your Witnesses**

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1. Read the suggested outlines for the opening statements for you and for Defence Counsel so you will know what you and the Defence are each trying to prove.
2. Look at the Crown witness role sheets and make up a list of questions. It is important to think about the **who, what, when, where, and why** of the incident.
  - a) Prepare some questions to show the jury **who** your witness is.
  - b) Prepare some questions to show the jury **what** your witness saw or heard and **when**. Make sure it is clear **where** your witness was, **how** it happened and **why** it happened.

c) When you have finished making your lists of questions, check to see that they are in the right order and that you haven't missed anything. The questions should make it easy for the jury to understand what your case is.

### **Crown Counsel:            Preparing Questions for the Defence Witnesses**

---

After the Defence Counsel has finished questioning each Defence witness, it will be your turn to ask that witness questions. This is called **cross-examining** a witness. You do not want to ask the same questions that the Defence Counsel asked. Your job is to point out to the jury how you feel that the story of the Defence witnesses is weak.

1. Read the role sheets for the Defence witnesses.
2. Think of some difficult questions you can ask each Defence witness. Try to think of about four or five questions for each one. Practise these questions on your partner to see if they work.

### **Meeting With the Defence Counsel**

---

Since this is a mock trial, it is a good idea to meet with the Defence Counsel to go over what each side is going to present as evidence. This does not happen in a real trial, but in a mock trial you need to make sure everything is going to run smoothly.

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## Crown Counsel - During the Trial

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1. Each of you playing Crown Counsel introduce yourself to the judge like this:

**"May it please Your Honour, \_\_\_\_\_ (your name) appearing for the Crown."**

2. When you call a witness, you say:

**"Your Honour, the Crown wishes to call \_\_\_\_\_ (name of Crown witness) to the stand."**

3. When you are finished questioning a witness, you say:

**"No further questions, Your Honour."**

### 4. Speaking to Sentence

If the accused is found guilty on either count, you will speak to sentence. Either Crown Counsel #1 or Crown Counsel #2 could do this.

Speaking to sentence means that you will tell the judge what kind of sentence you think the accused should receive, and give your reasons.

If Bill Wells is found guilty of hunting with a light, your reasons for sentencing would be about conservation of the moose. If everyone did this, then too many moose would be killed, and there would not be enough for everyone.

If he is found guilty of hunting without reasonable consideration for the safety of others, your reasons would be about being safe when hunting. If a hunter is not careful, he might kill or injure someone else who is in the woods.

To prepare for speaking to sentence, read the page on **Possible Penalties** (p. 131) to see what the possible sentences can be. Tell the judge what you think the sentence should be, based upon all the information presented in the trial.



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## Crown's Case Presented by Crown Counsel: Opening Statement

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Here are some ideas for you develop in your own way:

1. The accused was charged on two counts:
  - i. hunting with a light
  - ii. hunting with a rifle at night
  
2. Both of these charges were laid because of things that allegedly (supposedly) happened when the accused was hunting around midnight on the 18th of October last year.

**NOTE:** *You may not say that a crime actually happened before it has been proven in court. In Canadian courts, the accused must always be considered innocent before being proven guilty. Lawyers use the term "allegedly" before they say something happened because it has not been proven yet (and may never be).*

3. Your two witnesses will try to help prove both charges (i.e., that both of these things actually happened).
  
4. The first witness, the Conservation Officer, will identify photographs of the moose which Bill Wells had in his possession. He will also testify that this moose was one which had been freshly killed.
  
5. The hunting rifle and the light will be produced as exhibits in court, and the Conservation Officer will identify them as the ones which Bill Wells also had in his possession.
  
6. The second witness, a sports hunter, will show that he saw and heard Bill Wells hunting, and that he was camping close enough to be hurt or killed by the rifle shots.
  
7. The third witness, a regional supervisor from the Wildlife Branch, will explain the reasons for not allowing hunters to

use lights for hunting. He will also explain that hunting by night is prohibited because it endangers the safety of others.

### **Crown's Case Presented by Crown Counsel: Closing Argument**

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When you are preparing your closing argument in this mock trial, you can adapt the following ideas.

The first two witnesses have shown the court that the accused was hunting unlawfully and has committed two offences under the Wildlife Act.

The third witness has shown how the Wildlife Act has the purposes of conserving wildlife and protecting wildlife as a resource. By hunting at night with a light, the accused was violating (going against) the Act.

Bill Wells used a powerful light, which was not fair to the animal. It is an offence under the Wildlife Act to use a light to hunt at any time. It has been made an offence in order to preserve wildlife.

The first witness, the Conservation Officer, identified the light as the one he found in Bill Wells' possession. The second witness testified that he saw the light being used on the night in question.

The second witness, the sports hunter, heard the first rifle shots at approximately 11:45 p.m. He heard the second rifle shots shortly after that.

The accused was on Crown land, and was hunting at night. He was clearly a threat to other people who might be in the area. In particular, he posed a threat to the Crown's second witness, the sports hunter who was camped nearby.

The range of the accused's rifle is close to three miles and the second witness was camped two miles away. It is clear that the accused was hunting without reasonable consideration for the safety of others.

Although the accused does have the aboriginal right to hunt for food, that right does not permit him to ignore the Wildlife Act.

Your witnesses have proven that Bill Wells is guilty beyond a reasonable doubt on both counts.

For the first one, he was hunting with a light, which is against Section 27 of the Wildlife Act. For the second one, he was hunting without reasonable care for the lives, safety and property of other persons, contrary to Section 29 of the Wildlife Act.

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## DEFENCE COUNSEL - WHAT YOU NEED TO DO

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*Two students should be chosen to work together as Defence Counsel lawyers.*

You are going to be the Defence Counsel in this trial. This means that you and another student are going to be lawyers who defend Bill Wells. Your job is to present the facts to show that Bill Wells was lawfully hunting because he has the aboriginal right to do so, since he is First Nations.

You will want to make it clear to the jury that the Crown Counsel lawyers have not taken this important right fully into account.

Read the stories of all the witnesses so you have a good idea of what they will be saying. Also read the suggestions for your opening and closing statements.

Before the trial, write out a list of questions to ask each of your witnesses so that all their evidence comes out during the trial.

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### Defence Counsel - Dividing the Work

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You and your partner will divide the work. In this trial, there are nine tasks for the Defence Counsel, so each of you will take turns. After each task we suggest which lawyer should do it.

1. Opening statement to the jury. This is a short statement to the jury. It gives them an outline of your case, and tells them which witnesses you are going to call. (*Defence Counsel #1*)
2. Cross-examining Crown witness #1. (*Defence Counsel #2*)

3. Cross-examining Crown witness #2. (*Defence Counsel #1*)
4. Cross-examining Crown witness #3. (*Defence Counsel #2*)
5. Questioning Defence witness #1. (*Defence Counsel #1*)
6. Questioning Defence witness #2. (*Defence Counsel #2*)
7. Questioning Defence witness #3. (*Defence Counsel #1*)
8. Closing statement to the jury. This is a short statement telling the jury what the most important evidence is and why it is clear that Bill Wells should not be convicted of unlawfully hunting. (*Defence Counsel #2*)
9. Speaking to sentence, if necessary. This means that if your client Bill Wells is found guilty, you must try to get as light a sentence for him as possible. You need to state your reasons for why you think he should not get a harsh sentence. (*Defence Counsel #1*)

The section on **Trial Procedure** (p. 133-134) tells you when each task should be done.

### **Defence Counsel: Preparing Questions for Your Witnesses**

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1. Read the opening statement sheets for yourself and for the Crown so you know what the major arguments will be.
2. Look at the Defence witness sheets and make up a list of questions. It is important to think about the **who, what, when, where, and why** of the incident.
  - a) Prepare some questions to show the jury **who** your witness is.

b) Prepare some questions to show the jury **what** your witnesses did or saw or heard and **when**. Make sure it is clear **where** your witness was, **how** it happened or **why** it happened.

c) When you have finished making your list, check to see that they are in the right order and that you haven't missed anything. The questions should make it easy for the jury to understand what you want to prove.

### **Defence Counsel: Preparing Questions for the Crown Witnesses**

---

After the Crown Counsel has finished questioning each Crown witness, it will be your turn to ask that witness questions. This is called cross-examining a witness. You do not want to ask the same questions that the Crown Counsel has asked. Your job is to point out to the jury how you feel the story of the Crown witnesses is weak.

1. Read the role sheets for the Crown witnesses.
2. Think of some difficult questions you can ask each Crown witness. Try to think of about four or five questions. Practise these questions on your partner to see if they work.

### **Meeting With the Crown Counsel**

---

Since this is a mock trial, it is a good idea to meet with the Crown Counsel to go over what each side is going to present as evidence. This does not happen in a real trial, but in a mock trial you need to make sure that everything will run smoothly.

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## Defence Counsel - During the Trial

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1. Each of you playing Defence Counsel introduce yourself to the judge like this:

**"May it please your Honour, \_\_\_\_\_ (your name) appearing for the Defence."**

2. When you call a witness, you say:

**"Your Honour, the Defence wishes to call \_\_\_\_\_ (name of Defence witness) to the stand."**

3. When you are finished questioning a witness, you say:

**"No further questions, Your Honour."**

### 4. Speaking to Sentence

If the jury finds that Bill Wells is guilty on either count, you will speak to sentence for him. Either Defence Counsel #1 or #2 can do this.

Speaking to sentence means that you will tell the judge all the reasons why Bill Wells should be given the lightest possible penalty.

If you speak to sentence, you can stress that Bill Wells was hunting for food. His family needs his skills to make sure that they get enough to eat.

He is responsible for his immediate family as well as a large extended family (you can describe the extended family).

Because there are so many people dependent upon him and his hunting skills, Bill Wells should not be given any kind of jail term. If the judge says Bill Wells should pay a fine, it should be very low, and should be payable over a long period of time, because Bill Wells does not always work for wages since he hunts to supply his family with food. (Bill Wells might do some

seasonal work; you and the person who is playing Bill Wells can figure out what that should be.)

Bill Wells has never before been convicted of any offence under the Wildlife Act, and he has been hunting all his life. He has always been a skilled, responsible and effective hunter. In view of this fact, Bill Wells should at most get a suspended sentence.

To prepare for speaking to sentence, read the page on **Possible Penalties** (p. 131) to see what the possible sentences could be.

### **Defence Case Presented by Defence Counsel: Opening Statement**

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When you are preparing your opening statement as Defence Counsel in this mock trial, you can adapt the following ideas.

1. Bill Wells was lawfully hunting because as a First Nations person he has the right to do so. This aboriginal right is protected by section 35(1) of the Constitution Act, 1982.
2. Your first witness will be the accused, Bill Wells. Bill Wells is a very experienced hunter who learned to hunt as a child. He hunts for food, not for sport. He hunts to support his extended family. As a hunter, Bill Wells has never once caused any injury to another person. He knows the area where he was hunting like the palm of his hand. It is his community's traditional hunting territory. Because of all this, to allege that his hunting methods are carried out without reasonable consideration for the lives of others is absurd.
3. Your second witness will be a member of the same community as Bill Wells. She will describe the community's traditions and culture. Hunting is the centre of the community's economy. It is of absolute importance to its



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## ROLE SHEET FOR CROWN WITNESS #1

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### Mike Martz, Conservation Officer

You are going to play the role of the Conservation Officer in the mock trial. The Conservation Officer's name is Mike Martz.

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*Mike Martz is a Conservation Officer with the B.C. Wildlife Branch. He is the officer in charge of the \_\_\_\_\_ (number) sub-district in the province of British Columbia. He has been a Conservation Officer for \_\_\_\_\_ years.*

*On October 19, (year), Mike Martz was on duty as a Conservation Officer in his office at 500 Mile House.*

*At approximately 9:05 a.m. that morning, he received a phone call from his old friend, Jeff Hyde. Jeff Hyde reported to him that the accused, Bill Wells, had been hunting near Rapid Creek the night before, using a light. Jeff had been in the Rapid Creek area, camping in the back of his pick-up.*

*Mike Martz drove out to Rapid Creek, which is a few miles south of 500 Mile House. He walked into where Bill Wells was camping and found him cutting up a moose.*

*Mike Martz, as an experienced Conservation Officer, could tell by the condition of the animal that it had been recently killed.*

*At the camp Mike Martz also found the rifle, ammunition, and a powerful hand-held flashlight. The rifle is a centre-fire rifle, which is most effective within 200 to 250 yards. However, it is capable of causing damage up to a distance of two to three miles.*

*Mike Martz seized the moose, the light and the rifle. He has photographs of the moose, which Crown Counsel will use as*

*Exhibit #1. The light and rifle will be produced by Crown Counsel as Exhibits #2 and #3.*

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This is your basic story.

When you are giving evidence, Crown Counsel will ask you to identify Bill Wells. He will be sitting in the courtroom. You will point to him and describe what he is wearing.

You will also be asked to look at the photographs of the moose, and identify them as the ones you took at the camp on the morning of October 19. You will also identify the light and the rifle as the ones you found at Bill Wells' camp.

When you are preparing what you are going to say, you and Crown Counsel can add some more details to this story to make it more realistic. Remember to work out the details with Crown Counsel beforehand. You should not add new information when you are on the witness stand.

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## ROLE SHEET FOR CROWN WITNESS #3

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### **Donny Raymond, Regional Wildlife Branch Supervisor**

In this mock trial you are going to play the role of Donny Raymond, Regional Supervisor, B.C. Wildlife Branch.

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*Donny Raymond will explain that the Wildlife Act is meant to help conserve wild game animals as a resource. It also sets out safety standards so that hunters will not endanger themselves and others.*

*The Wildlife Branch is responsible for making sure there is enough moose. It is also responsible for providing hunting opportunities and opportunities for people to view the moose.*

*Hunting with a light poses a threat to the conservation of the wildlife. It gives the hunter an unfair advantage over the animals. When an animal looks into a bright light, it acts as if it is stunned. It cannot see anything except the light and it will not step back into the darkness beyond the beam.*

*In the past hunting with a light was prohibited only at night. But this was changed so that hunting at any time with a light is now prohibited. This change was made because hunters were using lights at dawn and dusk. Too many animals were being shot in this way. The resource was being threatened.*

*Hunting by night with a rifle is obviously dangerous hunting, and it is prohibited under the Wildlife Act. A hunter has no way of knowing who may be out there in the dark.*

*When it comes to hunting, First Nations people have special rights and privileges. But the aboriginal right to hunt has to take into account two other major concerns: the safety of the public and the need to maintain proper conservation measures.*

This is the main outline of your story. You may want to add some details to make it more realistic. Remember to work out the details with Crown Counsel beforehand. You should not add new information when you are on the witness stand.

Defence Counsel will cross-examine. The Defence will want to know more about the policies of the Wildlife Branch. Did the people who prepared the policy consult with First Nations people? Did the policy-makers take into account the fact that First Nations people who hunt for food have the aboriginal right to do so, and so should not be considered in the same way as sports hunters?

Is there any record of First Nations people hunting for food who caused danger to the safety of sports hunters, or to each other, or to the public?

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## ROLE SHEET FOR DEFENCE WITNESS #2

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**Alice Moore, \_\_\_\_\_ Band Member**

In this mock trial you are going to play Alice Moore.

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*Alice Moore is a member of the \_\_\_\_\_ Band.*

*She has taken a special interest in the history of her people as it has been handed down by the Elders.*

*Alice Moore has been called by the Defence so she can describe to the court what the traditions of her people are.*

---

Alice Moore and the Defence Counsel can decide what to mention as evidence. The purpose of this evidence will be to paint a picture of **the history and culture of the people**, and how it has survived for thousands of years.

You may wish to talk about the **ceremonies**, describing why they are held, how often, how many people come to them, and the importance of the moose to those ceremonies.

You may also want to describe the hunting. The Defence Counsel will ask you to mark Rapid Creek on a map (Exhibit #4) to explain that this area has always belonged to your people.

You may want to finish your evidence about the hunting practices by talking about **traditional habits of conservation**, stressing that conservation has always been part of the people's relationship with animals.

You may wish to describe your people's knowledge about the environment, the geography and weather patterns of the area, and the habits of the moose.

You may want to describe what happens to the moose after it is killed, describing how it is smoked, or salted, or frozen, and how the hides are tanned and treated.

You may wish to describe how your people **understand the importance of the extended family**, and how people feel responsible for their kin. Bill Wells was hunting for his extended family, not just for his immediate household.

3. You will keep the exhibits, such as the photographs of the moose, the rifle, the flashlight, and the map of Rapid Creek.

4. When the jury has returned a **verdict** and all the jurors are seated in the jury box, you should stand up and say:

**"Foreperson, what is the jury's verdict (on the first count/on the second count)?"**

After the foreperson answers, turn to the judge and say:

**"Your honour, the verdict of the jury (on the first count/on the second count) is \_\_\_\_\_."**

You may then sit down.

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## ROLE SHEET FOR THE JURY MEMBERS

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As a member of the jury, it will be your job to listen to all the evidence presented by the Crown and Defence lawyers and then decide what you believe. You will make the final decision.

In making the decision in this case you have two important things to consider:

1. An accused person is always considered to be **innocent** of a crime until he or she has been **proven guilty** in court. It is the job of the Crown Counsel to prove that the accused broke the law. The Crown must prove that the accused person is "guilty beyond a reasonable doubt" on each of the two separate counts:

1. **hunting with a light**
2. **dangerous hunting**

You must be sure of your verdict. If you have a doubt and you can give a reason for it, then the accused must be found not guilty.

2. In this case the Crown is arguing that the accused committed two offences under the Wildlife Act. But the Defence is arguing that the Wildlife Act should not apply to First Nations people who hunt for food in their traditional territories. It should only apply to other hunters. The Defence says that the aboriginal right to hunt must include the right to decide the method of hunting.

You have to decide which line of argument you agree with, and you have to be able to give some reasons for your decision.

In a real trial, everyone on the jury would have to agree for you to get a guilty verdict. All of you would have to say that the accused was either guilty or not guilty. To save time in



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## ROLE SHEET FOR THE JUDGE

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In this case the defendant, Bill Wells, a member of the \_\_\_\_\_ Band, is charged with two offences under the B.C. Wildlife Act:

1. hunting with a light, contrary to section 27.
2. hunting without reasonable consideration for the lives, safety and property of other persons, contrary to section 29

He was hunting at night with a light within range of at least one other person.

The Crown has argued that Bill Wells was hunting unlawfully, and that the reasons for these B.C. Wildlife Act regulations are to protect the resource and protect other people. The Crown has argued that the accused broke the law by hunting with a light without consideration for the safety of others, and that wildlife officials have the right to make regulations to conserve the resource and protect the public.

The defendant, Bill Wells, admits that he was hunting at night with a light. However, he claims that he is **exercising an existing aboriginal right** to hunt. His defence is that section 35(1) of the Constitution Act, 1982, gives him the aboriginal right to hunt. You as the judge should go over this section (in Lesson One).

The Defence has argued that First Nations people have the aboriginal right to hunt for food on their territories. The Defence has also argued that the regulations of the B.C. Wildlife Act interfere with the aboriginal right to hunt, which is a constitutional right.

As the judge, you can ask the witnesses questions during the trial if things are not clear. It is important for you to understand all the facts and issues.

If the jury finds Bill Wells "not guilty," then you must tell him that he is free to go. If the jury finds him "guilty," you must decide on a sentence. When deciding a sentence, you must take the following things into account:

1. how serious the offence is
2. the background of Bill Wells. Has he ever broken the law before? What are his obligations to his family?
3. the Crown's and Defence's **speaking to sentence** statements



***MOCK TRIAL ON FISHING:  
REGINA vs. FINCH\****

\*A mock trial prepared by Gayla Reid for the Law Courts Education Society of B.C.  
and adapted for *First Nations Journeys of Justice*

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## FACT PATTERN

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Tom Finch, a First Nations person, is accused of unlawfully fishing in Eagle Passage, which is part of the Simon River. This is a charge under the federal Fisheries Act.

On May 18, (*year*), a Fisheries Officer found Tom Finch fishing with a 45 fathom net. The Band's food fishing licence said that you could only use a net that was 25 fathoms long.

Crown Counsel will introduce evidence to prove the charge.

Defence Counsel will introduce evidence to prove that Tom Finch has a right to fish in Eagle Passage because it is part of his Band's traditional fishing grounds. His people have been fishing there from time immemorial. He has an aboriginal right to fish there that goes beyond the Fisheries Act.

- Should Tom Finch be convicted of an offence under the Fisheries Act?

*OR*

- Does he have the aboriginal right to fish with a longer net?

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## INDICTMENT

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**Her Majesty the Queen**

**against**

**Thomas Finch**

Thomas Finch stand charged:

That on the 18th day of May, A.D. (*year*), in the Canadian Fisheries Waters of the Simon River, at Eagle Pass, in the Municipality of \_\_\_\_\_ in the Province of British Columbia, you did use a drift net longer than 25 fathoms and thereby committed an offence under Section 61 of the Fisheries Act.

### **Possible penalties**

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Section 61 of the Fisheries Act states that the penalty for going against any section of the Act, which has no other specified penalty, is a \$5,000 fine, or 12 months' imprisonment, or both.

### **Exhibits**

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For this mock trial there are four exhibits:

1. The fishing licence issued to the Band by Crown witness #1, a Fisheries Officer.
2. The photograph of Tom Finch's catch of fish taken by Crown witness #3, a Fisheries Officer.
3. The photograph of Tom Finch's drift net taken by Crown witness #3.
4. Tom Finch's fishing net seized by the Fisheries Officer.

All these exhibits will be introduced by Crown Counsel.

Crown Counsel and the Defence Counsel to **speak to sentence**. The judge then **sentences** the accused.

31. The Court Clerk says "**Order in Court.**" Everyone stands. The judge leaves and the trial is over.

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## DIRECT EXAMINATION AND CROSS-EXAMINATION FOR CROWN AND DEFENCE LAWYERS

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**Direct examination** is the first line of questioning and is conducted by the counsel who called the witness to the stand. If a witness is a witness for the Crown, then the Crown Counsel conducts the direct examination. If a witness is called for the defence, then the Defence Counsel conducts the direct examination.

The purpose of direct examination is to allow the witness to tell his or her story so that this evidence is before the court. For example, questions such as, "Where were you on the night of July 21st? or, "What did you see?" or, "Tell the court what happened," are usually asked during direct examination.

**Cross-examination** is the second line of questioning. It is conducted by the other counsel. Defence Counsel cross-examines Crown witnesses, and Crown Counsel cross-examines defence witnesses.

The purpose of cross-examination is to test the story which a witness told in direct examination. Is it true? Are there inconsistencies in the story? Is the witness' memory of past events as clear as it seems to be?

These are things that Crown Counsel and Defence Counsel lawyers should think about when they are making up questions for the witnesses.



- c) When you have finished making your lists of questions, check to see that they are in the right order and that you haven't missed anything. The questions should make it easy for the jury to understand what your case is.

### **Crown Counsel: Preparing Questions for the Defence Witnesses**

---

After the Defence Counsel has finished questioning each Defence witness, it will be your turn to ask that witness questions. This is called **cross-examining** a witness. You do not want to ask the same questions that the Defence Counsel asked. Your job is to point out to the jury how you feel that the story of the Defence witnesses is weak.

1. Read the role sheets for the Defence witnesses.
2. Think of some difficult questions you can ask each Defence witness. Try to think of about four or five questions for each one. Practise these questions on your partner to see if they work.

### **Meeting With the Defence Counsel**

---

Since this is a mock trial, it is a good idea to meet with the Defence Counsel to go over what each side is going to present as evidence. This does not happen in a real trial, but in a mock trial you need to make sure everything is going to run smoothly.

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## Crown Counsel - During the Trial

---

1. Each of you playing Crown Counsel introduce yourself to the judge like this:

**"May it please Your Honour, \_\_\_\_\_ (your name) appearing for the Crown."**

2. When you call a witness, you say:

**"Your Honour, the Crown wishes to call \_\_\_\_\_ (name of Crown witness) to the stand."**

3. When you are finished questioning a witness, you say:

**"No further questions, Your Honour."**

### 4. Speaking to Sentence

If the accused is found guilty on either count, you will speak to sentence. Either Crown Counsel lawyer #1 or lawyer #2 could do this.

Speaking to sentence means that you will tell the judge what kind of sentence you think the accused should receive, and give your reasons.

If Tom Finch is found guilty of fishing with a net that is too long, your reasons for sentencing would be about conservation of the fishery. If everyone did this, then too many fish would be caught, and there would not be enough for everyone.

To prepare for speaking to sentence, read the page on **Penalties** (p. 175) to see what the possible sentences can be. Tell the judge what you think the sentence should be, based upon all the information presented in the trial.

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## **Crown's Case Presented by Crown Counsel: Opening Statement**

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When you are preparing your opening statement as Crown Counsel in this mock trial, you can adapt the following ideas.

1. The accused was fishing unlawfully and has therefore committed an offence under the Fisheries Act.
2. The purpose of the Fisheries Act is to manage and protect the fishery resource.
3. The Fisheries Officer who issued the licence to the Band will appear as the Crown's first witness. He has authority under the Act to issue that licence. The licence allows Band members to food fish with 25 fathom nets.
4. The second Crown witness is the Band administrator. He is called to establish the identity of Tom Finch.
5. The third Crown witness is another Fisheries Officer. He will testify that he saw Tom Finch fishing with a 45 fathom net.
6. The Crown's last witness is a biologist from the Department of Fisheries. This specialist will talk about why the maximum length of the nets was changed from 45 to 25 fathoms. He will testify that 25 fathoms was thought to be long enough for the \_\_\_\_\_ Band to get all the food fish they needed. He will explain that the reason for the decision was conservation of the fisheries resource.
7. Your main argument in the case is the fact that the way Tom Finch was fishing is against the law because it was contrary to regulations in the Fisheries Act. The reason these regulations were changed was for proper management and conservation of the fisheries resource.

## **Crown's Case Presented by Crown Counsel: Closing Argument**

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Here are some ideas for you to develop in your own way:

1. The accused, a member of the \_\_\_\_\_ Band, was charged under section 61 of the Fisheries Act. He was fishing with a drift net that was longer than what is allowed by the Band's food fishing licence. Your witnesses have proved this.
2. The first Fisheries Officer established that the \_\_\_\_\_ Band had received the food fishing licence which said how long the nets could be.
3. The Band administrator established who Tom Finch is.
4. The second Fisheries Officer established that the accused had been fishing with a net longer than what is allowed in the regulations.
5. Your expert witness (this means he or she is a specialist in something) from the Fisheries Department has proved that the purpose of the regulation is for the conservation of the fish.
6. This expert witness also showed that the reason for only allowing nets that are 25 fathoms or less is for the proper management and conservation of the fish.

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## DEFENCE COUNSEL - WHAT YOU NEED TO DO

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*Two students should be chosen to work together as Defence Counsel lawyers.*

You are going to be the Defence Counsel in this trial. This means that you are going to be lawyers who defend Tom Finch. Your job is to present the facts to show that Tom Finch was lawfully fishing because he has the aboriginal right to do so, since he is First Nations.

You will want to make it clear to the jury that the Crown Counsel has not taken this important right fully into account.

Read the stories of all the witnesses so you have a good idea of what they will be saying. Also read the suggestions for your opening and closing statements.

Before the trial, write out a list of questions to ask each of your witnesses so that all their evidence comes out during the trial.

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### Defence Counsel - Dividing the work

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You and your partner will divide the work. In this trial, there are ten tasks for the Defence Counsel, so each of you will take turns. After each task we suggest which lawyer should do it.

1. Opening statement to the jury. This is a short statement to the jury. It gives them an outline of your case, and tells them which witnesses you are going to call. (*Defence Counsel #1*)
2. Cross-examining Crown witness #1. (*Defence Counsel #2*)

3. Cross-examining Crown witness #2. (*Defence Counsel #1*)
4. Cross-examining Crown witness #3. (*Defence Counsel #2*)
5. Cross-examining Crown witness #4. (*Defence Counsel #1*)
6. Questioning Defence witness #1. (*Defence Counsel #2*)
7. Questioning Defence witness #2. (*Defence Counsel #1*)
8. Questioning Defence witness #3. (*Defence Counsel #2*)
9. Closing statement to the jury. This is a short statement telling the jury what the most important evidence is and why it is clear that Tom Finch should not be convicted of unlawfully fishing. (*Defence Counsel #1*)
10. Speaking to sentence, if necessary. (*Defence Counsel #2*)

The section on **Trial Procedure** (pp. 176-178) tells you when each task should be done.

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## Defence Counsel - Preparing Questions for Your Witnesses

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1. Read the opening statement sheets for yourself and for the Crown so you know what the major arguments will be.
  
2. Look at the Defence witness sheets and make up a list of questions. It is important to think about the **who, what, when, where, and why** of the incident.
  - a) Prepare some questions to show the jury **who** your witness is.
  
  - b) Prepare some questions to show the jury **what** your witnesses did or saw or heard and **when**. Make sure it is clear **where** your witness was, **how** it happened or **why** it happened.
  
  - c) When you have finished making your list, check to see that they are in the right order and that you haven't missed anything. The questions should make it easy for the jury to understand what you want to prove.

## **Defence Counsel - Preparing Questions for the Crown Witnesses**

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After the Crown Counsel has finished questioning each Crown witness, it will be your turn to ask that witness questions. This is called cross-examining a witness. You do not want to ask the same questions that the Crown Counsel has asked. Your job is to point out to the jury how you feel the story of the Crown witnesses is weak.

1. Read the role sheets for the Crown witnesses.
2. Think of some difficult questions you can ask each Crown witness. Try to think of about four or five questions. Practise these questions on your partner to see if they work.

## **Meeting With the Crown Counsel**

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Since this is a mock trial, it is a good idea to meet with the Crown Counsel to go over what each side is going to present as evidence. This does not happen in a real trial, but in a mock trial you need to make sure that everything will run smoothly.



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## Defence Counsel - During the Trial

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1. Each of you playing Defence Counsel introduce yourself to the judge like this:

**"May it please your Honour, \_\_\_\_\_ (your name) appearing for the Defence."**

2. When you call a witness, you say:

**"Your Honour, the Defence wishes to call \_\_\_\_\_ (name of Defence witness) to the stand."**

3. When you are finished questioning a witness, you say:

**"No further questions, Your Honour."**

### 4. Speaking to Sentence

If the jury finds that Tom Finch is guilty, you will speak to sentence for him. Either Defence lawyer #1 or #2 can do this.

Speaking to sentence means that you will tell the judge all the reasons why Tom Finch should be given the lightest possible penalty.

If you speak to sentence, you can stress that Tom Finch was fishing for food. His family needs his skills to make sure that they get enough to eat.

He is responsible for his immediate family as well as a large extended family (you can describe the extended family).

Because there are so many people dependent upon him and his fishing, Tom Finch should not be given any kind of jail term. If the judge says Tom Finch should pay a fine, it should be very low, and should be payable over a long period of time, because he only does seasonal work when he is not fishing.

Fish is the most important food to Tom Finch's community. There are several different ceremonies that are centred on

fishing, especially salmon fishing. It is also the food served at other types of ceremonies.

Large amounts of salmon are needed since it is dried, smoked, and canned for use when fresh salmon is not available. Tom Finch's community has been catching salmon in large quantities and preserving it for future use since time immemorial.

Tom Finch has never before been convicted of any offence under the Fisheries Act, and he has been fishing all his life. He has always been a skilled and responsible fisherman. Tom Finch should at most get a suspended sentence.

To prepare for speaking to sentence, read the page on **Penalties** (p. 175) to see what the possible sentences could be.

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## **Defence Case Presented by Defence Counsel - Opening Statement**

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When you are preparing your opening statement as Defence Counsel in this mock trial, you can adapt the following ideas.

1. Tom Finch was lawfully fishing because as a First Nations person he has the right to do so. This aboriginal right is protected by section 35(1) of the Constitution Act, 1982.
2. The 25 fathom nets are not long enough to meet the Band's food fishing needs. The licence which says that people can only fish with this size net interferes with the aboriginal right to fish for food, social, and ceremonial purposes. Your witnesses will talk about this aboriginal right to fish, and how important fishing is to the community.
3. The first Defence witness is the accused, Tom Finch. He will explain why he was fishing with a 45 fathom net. He will also explain that he has the aboriginal right to fish in Eagle Passage because his people have fished there from time immemorial (which means longer than anyone can remember).
4. The second witness is a Band member who has done a study of the culture and history of her community. She will explain how important fishing is to her people, and how history shows that her community has the aboriginal right to fish.
5. The third witness is a fish management consultant. He will explain that aboriginal fishing practices are not harmful to the conservation of the fish. In his expert opinion, it is the commercial fishing vessels offshore who threaten the fishery resource.

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## Defence Case Presented by Defence Counsel- Closing Arguments

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Here are some ideas for you to develop in your own way:

1. The testimony of your witnesses has shown that your case rests on the defence of aboriginal rights. Aboriginal people have the right to live on their lands as their ancestors lived. This legal right comes from the people's historic occupation and possession of their lands.
2. The accused was fishing in territory where his ancestors have fished from time immemorial. Your first and second witnesses showed this. Tom Finch was simply using his aboriginal right to fish for food, social and ceremonial purposes.
3. The maximum net length of 25 fathoms interferes with his aboriginal right to fish. The way someone fishes is an important part of the right to fish. If First Nations have the aboriginal right to fish, then it follows that **the right to regulate the method of fishing must also be kept by the First Nations people**. It is up to them to decide what length net to use.
4. Your first and second witnesses explained that the Band is not opposed to consultation with the fisheries authorities. But if they cannot agree on something, the final decision must stay with the Band.
5. As your third witness has pointed out, changing the net length from 45 to 25 fathoms has not helped in conservation of the resource. The Band's catch is very small, compared to what commercial and sports fishermen catch. It also costs more to fish with a smaller net because you have to fish more often and for a longer time.

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## ROLE SHEET FOR CROWN WITNESS #1

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### **Louis Onisi, Fisheries Officer**

You are going to play the role of a Fisheries Officer in the mock trial. The Fisheries Officer's name is Louis Onisi.

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*Louis Onisi is a Fisheries Officer with the Department of Fisheries and Oceans. He is the officer in charge of the # \_\_\_\_\_ (number) sub-district in the province of British Columbia. He has been a Fisheries Officer for \_\_\_\_\_ years.*

*On March 10, (year), Louis Onisi was on duty as a Fisheries Officer. He issued a food fishing licence to the \_\_\_\_\_ Band of \_\_\_\_\_ (address), British Columbia on that date.*

*To issue the licence, he went to the \_\_\_\_\_ Band offices at \_\_\_\_\_ o'clock (time). He asked to see George Brossard, who is a Band administrator. He gave the licence to George Brossard.*

*He has a copy of the licence.*

---

This is your basic story. You are called as a Crown witness to prove that the licence was issued to the Band. Your copy of the licence will become Exhibit #1.

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## ROLE SHEET FOR CROWN WITNESS #2

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### **George Brossard, Band Administrator**

You are going to play the role of George Brossard, a Band administrator.

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*George Brossard is the Band administrator of the \_\_\_\_\_ Band. He has held that position for \_\_\_\_\_ years.*

*As a Band administrator George Brossard is in charge of the operations of the \_\_\_\_\_ Band. One of his responsibilities is to maintain a list of Band members.*

*George Brossard knows that the accused Tom Finch is registered on the Band list as a member. He was registered as a member on \_\_\_\_\_ (date). His membership number is \_\_\_\_\_.*

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This is your basic story. The Crown will call you as their second witness in order to prove the identity of the accused, Tom Finch.

The Defence will cross-examine and bring out more facts.

The Defence may ask you if Tom Finch comes from a long line of fishermen.

You can make up a story about Tom Finch. How long have you known him? Did you know his father? His other relations? Were they fishermen too?

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## ROLE SHEET FOR CROWN WITNESS #3

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### **Ron Spatski, Fisheries Officer**

You are going to play the role of Fisheries Officer Ron Spatski in the mock trial. Ron Spatski is the Fisheries Officer who caught Tom Finch fishing unlawfully.

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*Ron Spatski has been a Fisheries Officer for \_\_\_\_\_ years.*

*On May 18, (year) Ron Spatski was on duty as captain of the Fisheries patrol boat, Sea Urchin. The boat was patrolling the Simon River.*

*At approximately 2:30 p.m. Ron Spatski's boat approached Eagle Passage, and saw the accused's boat. The boat's name is Bright Water.*

*Ron Spatski recognized the accused in the vessel. At the stern of the vessel he saw a drift net in the water. His first impression was that the length of the net was longer than the regular size. When he measured the net it was 45 fathoms in length.*

*You may have a photograph of Tom Finch's catch, and of the net. You may even want to bring the net to court with you. These would be used as exhibits. You can discuss this with Crown Counsel.*

---

In the witness stand Crown Counsel will ask you to point out the accused, Tom Finch. You point to him and describe what he is wearing.

Crown Counsel will show you a map of the Simon River, with Eagle Passage marked on it. Crown Counsel will ask you to mark the spot on it where you saw Tom Finch aboard the boat, Bright Water, with the drift net in the water. You will

mark the spot with a #1 and put your initials, RS, beside it. The map will then become Exhibit 2.

Then Defence Counsel will cross-examine you. The Defence will want to know more about what your job on the patrol boat involves. What kinds of things do you do?

Your job includes counting the number of boats that are fishing. It also includes counting the fish. You don't count all the fish. You take a sub-sample. From that sub-sample you estimate the total number of fish.



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**ROLE SHEET FOR CROWN WITNESS #4**

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**Luke Choron, Regional Supervisor, Department of Fisheries and Oceans**

In this mock trial you are going to play the role of Luke Choron, Regional Supervisor, Department of Fisheries and Oceans.

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*Luke Choron will explain that aboriginal food fishing in the Simon River is second in importance only to conservation.*

*His department wants the Bands to have a fishing period that is long enough for them to catch enough fish to meet each family's reasonable fish food needs.*

*People from his department have asked different Bands on various occasions to tell them how many fish they need. Luke Choron has never received an answer to that request. He thinks that the Bands don't want to be pinned down to a number.*

*The \_\_\_\_\_ Band has been getting a far greater catch of food fish than the other Bands in the Simon River. The Fisheries Department is worried that the other Bands around the Simon River will begin to demand equal catches. In his opinion, this would create a severe conservation problem.*

*For these reasons the Fisheries Department made the decision that the number of fish caught by the \_\_\_\_\_ Band had to be closer to the number of fish caught by other Bands.*

*When the net length was changed from 45 fathoms to 25 fathoms, the catch went down. This meant that more fish were able to spawn.*

That's the outline of Luke Choron's story.

After you have given your evidence as Luke Choron, the Defence Counsel will cross-examine. The Defence will focus on what Luke understands by the term "family's reasonable fish food needs."

Luke will say that family fish food needs means for the "immediate family" in the personal household (Mom and Dad, two kids, and perhaps one or two grandparents).

Luke doesn't know much about the other Bands on the Simon River. Luke is convinced, however, that if the \_\_\_\_\_ Band is catching a certain number of fish, then all the other Bands will demand to catch the same number too.

Luke Choron thinks that in the past is there were so many fish the First Nations people didn't have to worry about how many they took. Conservation was not an issue for them.

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## ROLE SHEET FOR DEFENCE WITNESS #1

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### Tom Finch

You are playing Tom Finch in this mock trial. Tom Finch is a member of the \_\_\_\_\_ Band, from \_\_\_\_\_ (town or city) in the province of British Columbia.

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*Tom Finch comes from a long line of fishermen in his community. He owns the boat, Bright Water, and he fishes for food for his extended family.*

*His extended family includes his wife and her parents, his parents, his children, and some elderly aunts and uncles. His wife and the other women in his family prepare much of the fish he catches by drying, smoking, and canning it for use when the fish are not available.*

*Tom Finch also has obligations to provide fish for guests when a member of his extended family holds a community feast. This usually happens two or three times a year. The feasts may have hundreds of people.*

*On May 18 Tom Finch was fishing in the waters known as Eagle Passage, in the Simon River. The Eagle Passage is part of his people's traditional fishing grounds. His people have been fishing in Eagle Passage from time immemorial.*

---

The rest of the story is up to you. You can explain, in your own words, why fishing is important to your community.

You may want to stress that, from time immemorial, your people have taken what they needed from the river, but no more.

You may want to talk about the attitude in your community to conservation of the fish.

---

You could mention, for example that they are just as concerned about conservation as the Department of Fisheries is. In fact, your people are more concerned, because they are dependent upon the fish for survival.

You may or may not want to go into details about the length of the net. If you do, here are some ideas:

The 25 fathom net is not suitable for catching the food fish you need.

With a 25 fathom net, you have to be constantly towing, and that costs money. The majority of the people that are food fishing are on welfare. They have barely enough dollars to provide one to two tankfuls of gas.

There is a problem with holding the net in a proper position. A 45 fathom net will balance the boat. With a 25 fathom net, the wind will pick up the boat and almost reverse it. So there's the wear and tear on the gear because you have to be towing. And with this short net, you lose fish to the bottom of the river bed.

The Band realizes that with a 25 fathom net, you can't meet the reasonable food fish needs of the community.

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## ROLE SHEET FOR DEFENCE WITNESS #2

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**Jean Cook, \_\_\_\_\_ Band member.**

In this mock trial you are going to play Jean Cook, a member of the \_\_\_\_\_ Band.

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*Jean Cook has taken a special interest in the history of her people as it has been handed down by the Elders.*

*Jean Cook has been called by the Defence so she can describe to the court what the traditions of her people are.*

---

You and the Defence Counsel can decide what you are going to mention as evidence. The purpose of your evidence will be to paint a picture of **your history and culture**, and how it has survived for thousands of years.

You may wish to talk about the **ceremonies**, describing why they are held, how often, how many people come to them, and the importance of the food fish to those ceremonies.

You may also wish to describe the **fishing**. You may want to stress that your people have always had the territorial right to the part of the river around Eagle Passage. The Defence Counsel will ask you to mark the map (Exhibit 2) to explain that this area has always belonged to your people.

You may wish to stress that fishing with nets has been a part of your people's culture for centuries.

You may want to finish your evidence about the fishing practices by talking about the community's **traditional habits of conservation**, stressing that conservation has always been part of the people's relationship with the fish.

You may wish to describe your people's knowledge of the environment, the geography, weather patterns, cycles of the tides and the flow of the river, and the habits of the fish.

Your people's claim to fishing rights in Eagle Passage is based on the fact that your people have been fishing for food there from time immemorial. They know more about its food fish need than the Department of Fisheries does. For thousands of years they have been able to take care of community needs and to make sure that the fish kept coming back. The importance of this is shown by the First Salmon Ceremony where great respect is shown for the fish.

You may wish to describe how your Band **understands the extended family** and how your people feel responsible for all members of their family, not just those that live with them. In your community, those people who cannot take care of themselves are taken care of by other family members. No one ever goes hungry.

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## ROLE SHEET FOR DEFENCE WITNESS #3

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### **Jim Carlson, Fish Management Consultant**

You are going to play Jim Carlson, one of Canada's experts on fish management.

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*You have been called as a Defence witness to show that limiting the length of the net to 25 fathoms is not a useful way to conserve the fish.*

*You have written many journal articles and books about the management of salmon. Recently you published a study which proved that the numbers of salmon in the Simon River have been going down. We all need to have enough fish getting all the way up the river to the spawning grounds, so that we will have fish for the future.*

*So conservation is important, but the Department of Fisheries is going about it in the wrong way.*

*In the last ten years there has been much more sport fishing and commercial fishing off the coast of British Columbia, especially near the mouth of the Simon River. The fish off the coast are part of the Simon River stocks. Since large catches are made off the coast, fewer fish are going up the Simon River to spawn.*

*There has been no major regulation of the outside fishing groups. If the sport and commercial fisheries off the coast had been controlled, that would have left a lot more fish to spawn.*

*Instead of going after the \_\_\_\_\_ Band's food fishing, the Department of Fisheries should be going after the larger fisheries off the coast.*

*The share of the catch that goes to the Bands up and down the Simon River is in fact very small indeed. For example, in British Columbia commercial fishing accounts for 94% of the catch. Sports fishing takes 3%, and the aboriginal fishery only 3%.*

*There is a conservation issue here. But to try to deal with it by making the \_\_\_\_\_ Band use a shorter drift net is not the answer.*



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## ROLE SHEET FOR THE COURT CLERK

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The court clerk is the assistant to the judge in the trial. Look at the section **Trial Procedure** (pp. 176-178) to see what you have to do and when you have to do it.

The court clerk in this trial has four main things to do:

1. You read the **indictment** at the beginning of the trial. After the judge has been seated, stand up and say in a clear voice:

**This Supreme Court is now in session. You** \_\_\_\_\_ (name of the accused), **stand charged** (now read the Indictment on page 175).

When you have finished reading the indictment, you ask Tom Finch:

**How do you plead?**

2. It is also your job to **swear in** the witnesses. You can use a Bible for this. When the witness enters the witness box, and is still standing, take the Bible and hand it to the witness, saying:

**"Take the Bible in your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?"** After the witness has said, "Yes," say to him or her: **"State your name."**

The witness may wish to **affirm** rather than swear on the Bible. Crown Counsel should let you know of this before the trial begins. To have a witness affirm, you say:

**"Do you affirm to tell the truth, the whole truth and nothing but the truth?"** After the witness has said, "Yes," say to him or her, **"State your name."**

3. You will keep the exhibits, such as the map of Eagle Passage, the licence issued by the Fisheries Department, the photographs, and the net.

4. When the jury has returned a **verdict** and all the jurors are seated in the jury box, you should stand up and say:

**"Foreperson, what is the jury's verdict?"**

After the foreperson answers, turn to the judge and say:

**"Your honour, the verdict of the jury is \_\_\_\_\_."**

You may then sit down.

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## ROLE OF THE SHERIFFS

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In our trial we need two or three sheriffs. Sheriffs are not police officers, but they are responsible for protecting the judge, jury and other court workers during the trial.

**Sheriff #1** - You are the sheriff who takes care of the accused person. It is your job to sit beside the accused during the trial and to stand beside the accused when he is in the witness box.

**Sheriff #2** - You are the sheriff who sits beside the judge. It is your job to lead the jury out of the courtroom to decide the verdict, and to lead them in again when they have reached a decision.

**Sheriff #3** - You are the sheriff who protects the judge. When everyone but the judge has assembled in the courtroom you will enter and say: "**Order in court. All rise.**"

The judge will then enter the courtroom and the trial will begin.

When the jury leaves to decide on a verdict, you repeat the "**Order in court.**" You say it again when the jury comes back into the courtroom to give the decision.

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## ROLE SHEET FOR THE JUDGE

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In this case the defendant, Tom Finch, a member of the \_\_\_\_\_ Band, is charged with an offence under section 61(1) of the Fisheries Act. The offence is fishing with a drift net that is longer than that which is permitted by the Band's fishing licence. The licence says that the net cannot be any longer than 25 fathoms. Tom Finch was fishing with a drift net that was 45 fathoms in length.

The Crown has argued that Tom Finch was fishing unlawfully, and that the reason for the Fisheries Act regulations is to conserve the resource. The Crown has argued that the accused broke the law by having a net longer than allowed, and that fisheries officials have the right to make regulations for conservation.

The defendant, Tom Finch, admits that he was fishing with a net longer than 25 fathoms. However, he claims that he is **exercising an existing aboriginal right** to fish. His defence is that section 35(1) of the Constitution Act, 1982, gives him the aboriginal right to fish. You as the judge should go over this section (in Lesson One).

The Defence has argued that the Band has the aboriginal right to take fish for food, social and ceremonial purposes. The Defence has also argued that the regulations of the Fisheries Act interfere with the aboriginal right to fish, which is a constitutional right.

As the judge, you can ask the witnesses questions during the trial if things are not clear. It is important for you to understand all the facts and issues.

If the jury finds Tom Finch "not guilty," then you must tell him that he is free to go. If the jury finds him "guilty," you must decide on a sentence. When deciding a sentence, you must take the following things into account:

11. **Regina** - Latin for "queen." The name used in criminal trials to show that the government is taking someone to trial for allegedly breaking the law.
12. **Crown Counsel** - the lawyer who works for the government and presents information to try to prove that an accused person has broken a criminal law.
13. **Defence Counsel** - the lawyer for the accused person who presents information to show that the accused person is not guilty of breaking a criminal law.
14. **Witness** - a person who gives information during the trial.
15. **Evidence** - the information presented by the lawyers during a trial (using witnesses, exhibits, etc.) which will be used to decide if someone is guilty or not guilty of breaking a law.
16. **Testimony** - the statement during a trial made by a witness who is under oath to tell the truth.
17. **Exhibit** - an object that the lawyers will present during the trial as part of their evidence.
18. **Direct examination** - the questions lawyers ask their own witnesses in order to present their side of the case.
19. **Cross-examination** - the questions lawyers ask a witness for the other side in order to show weaknesses in the witness's testimony and obtain further useful information.
20. **Sentence** - the punishment that a judge orders after an accused person is found guilty. The judge considers both the seriousness of the crime and the effect of the punishment.

# ***MOCK TRIAL REFERENCE MATERIALS***

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## DEFINITIONS

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**Accused** - the person whom the government claims has broken one of our criminal laws.

**Alternative measures** - these are programs that Crown Counsel may decide would be good for a young offender to go to, rather than having him or her go to court. Some examples are community service, education courses, counselling, and recreation programs (called "Diversion" for adults).

**Charge** - a complaint brought by the government against someone who has allegedly (supposedly) broken the law.

**Civil court** - the court where cases of civil law are heard.

**Civil law** - the area of law involving individuals who have disagreements or disputes with each other (e.g. divorce, or injuries from a car accident).

**Crime** - an act that is in violation of the Criminal Code.

**Criminal law** - the area of law involving charges against individuals for breaking one of the laws of society (e.g. theft or murder).

**Cross-examination** - the questions lawyers ask a witness for the other side in order to show weaknesses in the witness's testimony and get more information.

**Crown counsel** - lawyers who work for the government in criminal cases.

**Defendant** - the person or group against whom a complaint is filed in a civil case. In criminal cases, the person or group who has been accused of a crime (see "Accused").

**Direct examination** - the questions lawyers ask their own witnesses in order to present their side of the case.

**Diversion** - programs that may be followed instead of going to court (for examples, see "Alternative measures" above).

**Evidence** - the information presented by the lawyers during a trial (using witnesses, exhibits, etc.) which will be used to decide if someone is guilty or not guilty of breaking the law.

**Exhibit** - an object, such as a weapon, a piece of clothing, or a photograph, that lawyers will present during a trial as part of their evidence.

**Fundamental justice** - the concept that everyone has a right to be heard and treated fairly, without bias, in any legal proceedings.

**Guilty beyond a reasonable doubt** - the belief that an accused person cannot be found guilty if the judge or the jury has any doubts for which they can give good reasons.

**Indictment** - the formal document in a trial that describes what law has allegedly been broken by the accused person.

**Innocent until proven guilty** - the belief that every accused person is not guilty of breaking the law until he or she is proven guilty (called "presumption of innocence").

**Plaintiff** - the person or group who files a complaint against someone in a civil case. In criminal cases, the government is considered the plaintiff (i.e. *Regina*).

**Pre-trial enquiry** - a report done by a youth worker on the background and personal life of a young offender.

**Regina** - Latin for "queen." The name used in criminal trials to show that the government is taking someone to trial for allegedly breaking the law.



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## ROLES

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Judge

Court Clerk

Court Reporter (Supreme Court) or  
Court Recorder (Provincial Court)

Deputy Sheriff

Crown Counsel

Defence Counsel

Jury

Witnesses

Accused

Public Gallery

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## STEPS IN THE TRIAL PROCESS

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1. The case starts with the deputy sheriff calling: "Order in court. All rise." Everyone stands. The judge enters and takes his or her seat. Everyone sits down.
2. The court clerk calls the case.
3. The Crown and Defence counsels introduce themselves to the judge.
4. The court clerk reads out the indictment and asks the accused, "How do you plead?"
5. The accused answers, "Not guilty."
6. The Crown makes an opening statement to the jury.
7. The Crown calls and questions its first witness.
8. The Defence cross-examines the first Crown witness.
9. The Crown calls and questions its second witness.
10. The Defence cross-examines the second Crown witness.
11. If there are more Crown witnesses, each one is called and questioned by the Crown, then cross-examined by the Defence.
12. When all Crown witnesses have been called and cross-examined, one Crown counsel rises and says, "That concludes the Crown's case, Your Honour."
13. The Defence begins by making an opening statement to the jury.
14. The Defence calls and questions its first witness.

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## What You Will Need

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- costumes:*
- British military-like costumes, for example coats with big collars and lots of buttons, and long narrow hats with feathers. The students can make up their own costumes with things from home and around the classroom. This part of the lesson can be integrated into an art activity.
  - Traditional dress from your area, for example moccasins, button blankets, etc. The students can bring these from home, or make copies that look like them if this is appropriate.
- props:*
- long pieces of paper rolled up into scrolls; items that might be found in a First Nations encampment or house in the 1700s, for example wood for a fire (you can pretend one is burning), leather bags, wooden boxes, baskets, etc.

## The Scene:

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We are in what is now British Columbia in 1763. There are some British people who come to talk to some First Nations people in your area (the British actually did not know about this part of the continent in 1763, but we'll pretend they did). The British spokesperson will read the Royal Proclamation to the First Nations people, and there will be an interpreter to translate it into the local language, and into what is understandable English today.



### **The Roles:**

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Divide the class in half, one half being the British, and the other half the First Nations community. Choose one person from the community to be the interpreter, and one person from the "British" to read the Royal Proclamation.

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**The Action:**

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*(The First Nations people are in their community performing some tasks, for example cooking over the fire, carving wood, etc. The British enter the scene.)*

**British reader:** Hello, good people. I have come to read the Royal Proclamation from King George of England to you. Can anyone here speak English?

**Interpreter** *(walks up to British):*

Yes, I understand English. I will translate what you have to say to my people. But first you must meet us all, and come eat with us.

*(The interpreter takes the British group around to meet all the people in the community. Then everyone sits down and eats. After the meal is over, the British reader stands up and faces the community. The interpreter stands beside him or her.)*

**British reader:** Hear ye, hear ye. I will now read from the Royal Proclamation of King George of this year, 1763. *(Unrolls the scroll.)*  
"And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds."

**Interpreter:** The King of England says that when European colonies are set up here, this should not bother the First Nations people in any way. The First Nations people will continue to live on the land and use it for themselves. Settlers can only use land that the British government has bought from the First Nations people.

**British reader:** "We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments."

**Interpreter:** He says that no European government official can give anybody permission to settle on or use land in any way if this land is not part of their colony. This means that they cannot come on our land and use it, unless we agree to sell it to them.

**British reader:** "And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that Purpose first obtained."

**Interpreter:** On top of all that, if anyone wants to buy some land from the First Nations to settle on or whatever else, they cannot just go to the people and ask them. They have to get special permission to do this from the King.

**British reader:** And, We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements."

**Interpreter:** This is really good! If anyone has settled on land that has not been purchased from the First Nations of the area, they'd better get their butts out of there pronto!

*(Everyone laughs. The British reader turns and thanks the interpreter. Then the reader turns back to the people.)*

**British reader:** So you see, we really do love this land of yours; it is very beautiful. We also realize that First Nations people have been here for a very, very long time. We would like to share this land with you, but on a nation-to-nation basis. Your nations are as strong and dignified as our nation, and we respect you for that. Let's hope that we can live in peace and harmony, and that this type of relationship will continue forever.

# CERTIFICATE OF COMPLETION

FIRST NATIONS JOURNEYS OF JUSTICE



\_\_\_\_\_

HAS COMPLETED THE GRADE SEVEN PROGRAM OF THE  
FIRST NATIONS JOURNEYS OF JUSTICE CURRICULUM

School: \_\_\_\_\_  
Teacher: \_\_\_\_\_  
Year: \_\_\_\_\_





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