Alternative Dispute Resolution Process for Indigenous People

With Jereme Brooks

Thursday, October 26, 2017
ALTERNATIVE DISPUTE RESOLUTION PROCESSES FOR INDIGENOUS PEOPLE

AKA: STUFF YOU NEED WITH YOUR FAVOURITE UNCLE JER ESQ. – THE UBC EDITION

TIPS & SUGGESTIONS FOR INDIGENOUS PEOPLE AND THE PROFESSIONALS WORKING WITH THEM IN ALTERNATIVE DISPUTE RESOLUTION PROCESSES; SPECIFICALLY IN CHILD PROTECTION AND FAMILY MEDIATION

THIS IS A LONG TITLE
A LITTLE BIT ABOUT ME
THE BIG 3

- Substance Abuse
- Incest/Sexual Assault
- Domestic Violence

All of which become more dangerous in the absence of law.

*Lateral violence becoming more of an issue as these other issues subside*

**Lateral violence** is the shaming, humiliating, damaging, belittling and sometimes violent behavior directed toward a member of a group by other members of the same group (Middleton-Moz, 1999: 116). It is seen most often in oppressed groups who have been rendered helpless to fight back against a powerful oppressor and who eventually turn their anger against each other.
5 TRUTHS IN LIFE

- People will do what they need to do in order to meet their needs
- People do the things they care about
- If people don’t have options provided for them, they create their own
WHAT IS ADR?
(ALTERNATIVE DISPUTE RESOLUTION)

• Simple Answer:
  A tool that allows parties involved in a legal dispute to resolve a matter using a legal context, and
  without a judge making a decision, or a “finding”

• Part of the Legal System in BC & Canada

• Family Disputes:
  Mediation/Arbitration
  Family Justice Counselors
  Parenting Coordination
  *Case Conferences

• Child Protection
  *Mediation
  Family Group Conferences
  Family Case Planning Conferences
7 SO WHY IS ANY OF THIS RELEVANT

Statistics Canada - National Household Survey 2011

<table>
<thead>
<tr>
<th>Living arrangements</th>
<th>Total aboriginal children</th>
<th>First Nations</th>
<th>Inuit children</th>
<th>Metis children</th>
<th>Total non aboriginal children</th>
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<tbody>
<tr>
<td>Total population aged 14 and under in private households</td>
<td>Thousand</td>
<td>Percent</td>
<td>Thousand</td>
<td>Percent</td>
<td>Thousand</td>
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<tr>
<td>Total population aged 14 and under in private households</td>
<td>392.1</td>
<td>100</td>
<td>258.8</td>
<td>100</td>
<td>20.2</td>
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<tr>
<td>Children with both parents (1)</td>
<td>194.6</td>
<td>49.6</td>
<td>116.4</td>
<td>45</td>
<td>12.4</td>
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<tr>
<td>Stepcildren</td>
<td>33.4</td>
<td>8.5</td>
<td>22.4</td>
<td>8.7</td>
<td>1.3</td>
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<tr>
<td>Children of lone parents</td>
<td>134.9</td>
<td>34.4</td>
<td>96</td>
<td>37.1</td>
<td>5.2</td>
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<tr>
<td>Grandchildren in skip-generation family</td>
<td>10.5</td>
<td>2.7</td>
<td>8.5</td>
<td>3.3</td>
<td>0.5</td>
</tr>
<tr>
<td>Foster children</td>
<td>14.2</td>
<td>3.6</td>
<td>11.7</td>
<td>4.5</td>
<td>0.6</td>
</tr>
<tr>
<td>Children living with other relatives (2,3)</td>
<td>4.5</td>
<td>1.2</td>
<td>3.7</td>
<td>1.4</td>
<td>0.2</td>
</tr>
</tbody>
</table>
8 SO WHY IS ANY OF THIS RELEVANT

Statistics Canada - National Household Survey 2011

<table>
<thead>
<tr>
<th>Province or Territory</th>
<th>Aboriginal children</th>
<th>Non-Aboriginal children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>35.4</td>
<td>16.4</td>
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<tr>
<td>N.L.</td>
<td>25.2</td>
<td>15.7</td>
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<tr>
<td>P.E.I.</td>
<td>36.6</td>
<td>9.8</td>
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<tr>
<td>N.S.</td>
<td>25.2</td>
<td>13.2</td>
</tr>
<tr>
<td>N.B.</td>
<td>27.4</td>
<td>18.3</td>
</tr>
<tr>
<td>Que.</td>
<td>51.6</td>
<td>44.3</td>
</tr>
<tr>
<td>Ont.</td>
<td>28.6</td>
<td>7.7</td>
</tr>
<tr>
<td>Man.</td>
<td>31.9</td>
<td>6.6</td>
</tr>
<tr>
<td>Sask.</td>
<td>39.3</td>
<td>8.1</td>
</tr>
<tr>
<td>Alta.</td>
<td>35.5</td>
<td>7.6</td>
</tr>
<tr>
<td>B.C.</td>
<td>32.4</td>
<td>8.0</td>
</tr>
<tr>
<td>Y.T.</td>
<td>42.7</td>
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<tr>
<td>N.W.T.</td>
<td>54.8</td>
<td>13.4</td>
</tr>
<tr>
<td>Nvt.</td>
<td>50.0</td>
<td>13.8</td>
</tr>
</tbody>
</table>

SO WHY IS ANY OF THIS RELEVANT

Aboriginal children 14 and under represented 7% of all children in Canada in 2011

Yet they accounted for 48% of all foster children in the country

MURAT YÜKSELIİR/THE GLOBE AND MAIL
SOURCE: STATISTICS CANADA

1 = 2 children
SO WHY IS ANY OF THIS RELEVANT

• Because...

• If you are Indigenous in Canada you are statistically more likely to be involved in Child Protection (whether you’re a good parent or not)

• If you are an Indigenous Parent in Canada, you are more likely to be a Single Parent

• If you reside with someone in what we call a “Common Law” marriage, you’re still subject to the provisions within the Family Law Act of BC, whether you signed a piece of paper saying you’re married or not. (If you signed the paper, you’re also subject to the Divorce Act of Canada)

• If you have children, regardless of how the child was created, and you are a parent/guardian of the child you are also subject to the provisions set out in the Child Family and Community Service Act of BC (CFCSA)
BECAUSE OF THIS...

- Whether you want to or not, whether you think it’s fair or not, if you have a child you have a legal obligation to support that child financially.

- If you co-reside with someone, they now have communal property rights, including to things like pensions and property, and

- Any and all concerns about your parenting and/or care of your children that are reported to the Ministry for Children and Family Development. If they find a concern listed or alluded to in Section 13 of the CFCSA, then you will have to work with a social worker (and probably others) to resolve the concerns, and if you decide you don’t want to you may have your children removed.
WHAT THAT MEANS

- If you live in BC you are subject to the legal systems and relevant legislations whether you want to be or not.
RELATION TO INDIGENOUS COMMUNITIES

• Stats show lesser engagement, for many reasons
  • Justified mistrust and general lack of belief/faith in system
  • Lack of access to resources if they wanted to participate
  • No acknowledgement of jurisdiction
  • Lack of understanding and explanation of process
  • Service providers creating barriers to service
  • Service providers not understanding or recognizing needs for this group
  • Fear of consequences related to compliance both from the structure they’re engaging with and the reactions from the communities they reside in.
  • For many there is just no good way to voluntarily engage with the system
PLUS...

- The system is limited. The legal system is not a justice system
- The system is not designed to work with this population
  - Guidelines not usually recognizing of cultural context
  - Process limitations are not consistent with recognized standards for treatment of issues
  - Standards may not always reflect community context
  - Some issues just not reflected at all
SO WHAT DO WE DO?

1. Acceptance
   - Service providers
     • Accept that your indigenous clients are reasonably going to have issues working within these family systems
   - Clients
     • Accept that there are actually laws that exist for a good reason, even when they’re flawed. And if you live where they apply, and you do what they apply to then you are subject to those laws.

Not everything is about should
2. Engagement

• Service providers
  • Get to know your clients, spend time with them, make time for them and allow them to move at their pace as much as you can. Make it easy to engage and remember that they are entitled to their reasonable mistrust of you.

• Clients
  • Engage with the workers and professionals on your file, and give them a chance. You may well have the same goal, but if you don’t develop a relationship you may not discover that you’re on the same team.

If people don’t know you, people can’t speak effectively for or with you.
3. Ask Questions

- **Service providers**
  - Remember that there is more context to the issues you’re working with than you can find in a textbook or policy manual. Ask good questions so that you really understand, and avoid making it into an interrogation.

- **Clients**
  - Don’t assume that they are aware of what you don’t know. They may be more than willing to be helpful if they know what they need to tell you, and avoid making it into an interrogation.

  There are no stupid questions
4. Remember you don’t know them
   • Service providers
     • Clients are more than the notes in a client file, there’s context, background and circumstance that you may not be aware of
   • Clients
     • Workers and Professionals are not just a job title. Remember they have feelings, and that they have worth. They’re often there because they must be, not by choice and not because of their actions.

Respect is not earned
5. Remember what you’re there for
   • Service Providers
     • You are there to meet a certain objective. Stay in the lines as best you can and remember that you can’t get there alone
   • Clients
     • You’re there to either meet an obligation or show that you’ve met it. The longer that doesn’t happen, the longer you’re there

Paid by the hour
SO WHAT DO WE DO

6. Consider who’s going to live with the result
   - Service Providers
     - Decisions and policies tend to have greater and more lasting results than we anticipate at the time. Make sure, to the best of your ability, that the impact of your actions are what you intend them to be.
   - Clients
     - Everything you do impacts everyone around you. That principled stand? Make sure everyone values that principle as much as you do, don’t reach the finish line alone.

Make sure the juice is worth the squeeze
7. Listen and listen well

- **Service Providers**
  - Listen to your client objectively and make sure you’ve asked good questions. Give them time and understand they will only participate to the level that they’re encouraged to do so.

- **Clients**
  - Listen objectively and without emotion. Listen to the content of their statement without attaching motive. This works with former spouses as well.

Waiting to respond isn’t listening
8. Respond appropriately

• Service Providers
  • You don’t need to do anyone any favours, you don’t need to make a point, you don’t need to show your strength. You’re there to help, so respond to the needs.

• Clients
  • Clients often benefit from removing (as best they can) the emotions of the matter. If we respond to the content of the discussion, and not react to the emotion of the situation we better position ourselves to make good decisions.

Don’t be good, be cool – being cool gets you places that being good doesn’t
9. Care about what you actually care about
   • Service Providers
     • Focus on the stuff that matters, if it's safety focus on safety. Don’t be distracted or go on fishing trips, focus on the stuff that matters, the stuff you care about, the stuff that would actually prevent you from reaching an agreement.
   • Clients
     • Don’t let spite or history get in the way of common sense

There’s a difference between preference and necessity
10. Show respect

• This is for everyone
• Remember that one day you’re going to need to explain what you did and why you did it the way you did it.
• Disrespecting someone is never okay, for any reason.
• You cannot heal a community, assist a family, or affect positive change for a person by disrespecting them.

Everyone belongs in the four directions
QUESTIONS