

When they do so, it is with the knowledge that the courts still are reluctant to recognize their own traditional means of dispute resolution and law.

Reconciliation will be difficult to achieve until Indigenous peoples' own traditions for uncovering truth and enhancing reconciliation are embraced as an essential part of the ongoing process of truth determination, dispute resolution, and reconciliation. No dialogue about reconciliation can be undertaken without mutual respect as shown through protocols and ceremony. Just as the mace, for example, is essential to a session of Parliament, the presence of the pipe for some Tribes would be necessary to a formal process of reconciliation.

The road to reconciliation also includes a large, liberal, and generous application of the concepts underlying Section 35(1) of Canada's Constitution, so that Aboriginal rights are implemented in a way that facilitates Aboriginal peoples' collective and individual aspirations. The reconciliation vision that lies behind Section 35 should not be seen as a means to subjugate Aboriginal peoples to an absolutely sovereign Crown, but as a means to establish the kind of relationship that should have flourished since Confederation, as was envisioned in the Royal Proclamation of 1763 and the post-Confederation Treaties. That relationship did not flourish because of Canada's failure to live up to that vision and its promises. So long as the vision of reconciliation in Section 35(1) is not being implemented with sufficient strength and vigour, Canadian law will continue to be regarded as deeply adverse to realizing truth and reconciliation for many First Nations, Inuit, and Métis people. To improve Aboriginal peoples' access to justice, changes must occur on at least two fronts: nationally, and within each Aboriginal community.

The *United Nations Declaration on the Rights of Indigenous Peoples* and the UN "Outcome Document" provide a framework and a mechanism to support and improve access to justice for Indigenous peoples in Canada. Under Article 40 of the *Declaration*,

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.⁴⁴

In 2013, the UN Expert Mechanism on the Rights of Indigenous Peoples issued a study, "Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples." It made several key findings that are relevant to Canada. The international study noted that states and Indigenous peoples themselves have a critical role to play in implementing Indigenous peoples' access to justice. Substantive changes are required within the criminal legal system and in relation to Indigenous peoples' rights to their lands, territories, and natural resources; political self-determination; and community well-being.⁴⁵ The study made several key findings and recommendations, including the following: