

Institute for Catastrophic Loss Reduction

Final Report

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Project Title: Indigenous Solutions to COVID-19 and Recognition in Canadian Law

Amount of Grant: \$5000

Grant Year: June 2020 to December 2020

Field Work Dates: July 22, 2020 – July 31, 2020

Report Date: December 1, 2020

1. Purpose of Funded Project

The project had three principal research aims:

1. Document Indigenous solutions to COVID-19 response;
2. Identify gaps, challenges and barriers in provincial and federal support for Indigenous jurisdiction;
3. Assess how existing provincial and federal laws cause or contribute to these challenges.

2. Project Team

Principal Investigators (PI): Dr. Jocelyn Stacey, Assistant Professor, Allard School of Law; Emma Feltes, PhD Candidate, Department of Anthropology

Collaborator: Crystal Verhaeghe, Emoda Design

3. Background to the Project Activities

The PIs were approached by the Tsilhqot'in National Government (TNG), a leader in Indigenous emergency management, which was seeking to document its response to the COVID-19 pandemic. The purpose of the project was to extend on the work of the research team on the 2017 wildfires (a project also supported by the Institute for Catastrophic Loss Reduction). The broad goals of these two projects are to understand the implementation of Tsilhqot'in law and jurisdiction over emergencies and to identify where barriers and gaps lay within the Canadian state that impede recognition of and support for that jurisdiction.

The impetus for this project was that the Nation's prior hard work toward collaborative emergency management in the context of floods and wildfires had not fully translated to the COVID-19 emergency. With provincial and federal agencies having to adapt emergency protocols and procedures for the pandemic, new barriers were created for receiving much needed funding, information and services. Differing objectives of prevention vs management divided the Tsilhqot'in, and other First Nations, from the province's approach to the pandemic. This project sought to understand these rapidly-

unfolding dynamics between the Canadian state and the Tsilhqot'in Nation during the first wave of the pandemic.

4. Research Activities

Project Design and Ethics Approvals:

June 2020: The PIs met with the community project lead, Crystal Verhaeghe, to design the study. The PIs sought and obtained ethics approval to begin interviews. During this period the project team also developed a SSHRC partnership engage grant application to support the bulk of this project. This grant was awarded (in August), in part, thanks to the quick response funding provided by ICLR that launched this project in the spring.

Zoom Interviews with Leadership and Staff:

June - July 2020: Project team members arranged for Zoom interviews with key staff and Tsilhqot'in Chiefs. Tsilhqot'in communities were closed to outside visitors so interviews had to take place virtually. Seven individual interviews and one group interview were conducted during this period. All but one of these interviews were led by the community project lead, whose essential contribution during this period was funded by the ICLR.

5. Preliminary Research Findings

The preliminary research findings identify key successes and challenges drawn from interviews with leadership and staff.

Research finding 1: Tsilhqot'in leaders actively exercised their inherent jurisdiction with respect to their citizens and territory during the COVID-19 pandemic

Tsilhqot'in leaders actively exercised their jurisdiction by: (a) declaring a state of emergency, (b) issuing a coordinated set of COVID-19 bylaws across all six communities which contained restrictions on gatherings, self-isolation requirements and travel restrictions, (c) establishing and staffing checkpoints in all communities to oversee travel restrictions and educate citizens and visitors on COVID-19 requirements, (d) marshalling resources and services and adapting the delivery of those for the remote environment, (e) advocating for their right as a government to receive health data from the province to make informed decisions about COVID-19 measures.

Research finding 2: The Tsilhqot'in National Government's Emergency Operations Centre successfully transitioned to pandemic response and effectively supported communities despite pandemic restrictions.

The TNG Emergency Operations Centre (EOC) has considerable experience with floods, landslides and wildfire. Despite being experienced and relatively well-equipped for an Indigenous Nation, the TNG EOC was not prepared for a pandemic. However, past experience enabled a swift transition to pandemic response. The EOC had to adapt to a remote working environment, not having a large enough physical space where staff could safely meet, and not being able to travel out to the communities for in-person meetings. The EOC had to adapt to supporting the Health Director, who took the lead in pandemic response, and align its emergency response work with Health Director leadership. While the interviews have generated some insight into specific policy revisions that can be made based on experience, overall the EOC managed a highly effective response.

In particular, two early successes should be noted. First, the TNG EOC arranged for food delivery to the communities directly with wholesale food distributors. This was an important preventative measure as it meant that community members did not have to travel into major centres to grocery shop. It also addressed food insecurity within the communities. The project will recommend that the nation seek to formalize these mutually-beneficial relationships directly with food distribution companies to ensure that similar support is available in future emergencies.

The second early success was the EOC's management of the flood season. Two Tsilhqot'in communities experienced spring flooding – at the height of the concern about the pandemic spreading to Indigenous communities. What is notable about the flood response was precisely how *unremarkable* it was. These floods were managed competently despite the unfolding pandemic.

Research finding 3: The Tsilhqot'in Nation's right to self-determination has been undermined by the province, particularly when the Nation's goals and priorities differ from those of the province.

One of the major themes that has emerged from this research is that, when an Indigenous community sets different goals or priorities than provincial or federal partners, government-to-government relationships come under significant strain. The Tsilhqot'in Nation experienced two prominent instances of the province retreating from a collaborative approach to emergency management and instead imposing its own unilateral approach.

First, the Tsilhqot'in Nation prioritized preventing the entry of the virus into the community. Preventative measures thus became the primary form of Tsilhqot'in pandemic response. All six communities implemented checkpoints to monitor and regulate entry into the communities to minimize the chance of community exposure and to enforce the Nation's travel restrictions. Despite these measures mirroring Canada's border restrictions, the province refused for months to recognize First Nations checkpoints as a legitimate, reimburseable emergency expense. Our research suggests two potential reasons for this: (i) a provincial goal of *managing* community spread, rather than preventing entry into communities, and (ii) a false equivalency between First Nations and local governments. These two potential explanations fail to recognize the self-determining capacity of the Tsilhqot'in Nation. In Fall 2020, the province reversed its position and will now reimburse these expenses; however, damage to Indigenous jurisdiction has been done. After months of provincial funding barriers with no prospect of future reimbursement, the Nation had to dismantle its checkpoints.

The second unilateral position adopted by the province has been the control of health data. The Tsilhqot'in Nation, alongside other Indigenous leaders, has made reasonable and measured requests for confidential access to COVID-19 data gathered by the province. It has requested this information *as a government* to enable it to act as a self-determining nation to make decisions about how to best address the pandemic in Tsilhqot'in communities. These reasonable requests have been denied, attempts at negotiation have stalled, and now the matter is being addressed by the Privacy Commissioner. The province's approach to data control falls short of its commitments under the *Declaration on the Rights of Indigenous Peoples Act*, and it departs from commitments to the Tsilhqot'in Nation to support the Nation as a true partner in emergency management.

Research finding 4: The Tsilhqot'in Nation's experience of the COVID-19 pandemic has been defined by systemic discrimination and ongoing colonialism.

The Tsilhqot'in Nation's response to the COVID-19 pandemic has been shaped by its experience of colonization and systemic discrimination. The Nation carries with it the trauma of disease spread by settlers in the mid-1800s. The Nation's response to the pandemic has been informed by this history and knowledge. At the same time, the Nation's pandemic response has been constrained by past and current systemic discrimination: ongoing racism in the health care system, which acts as a barrier to seeking testing and treatment for COVID-19; inadequate housing and infrastructure, which makes basic pandemic precautions such as self-isolation impossible; a lack of access to reliable internet, which impedes access to basic supports such as counselling, and a maze of provincial and federal applications and approvals for

obtaining piecemeal and ultimately inadequate funding to meet the nation's needs. This research will distill from this experience a set of comprehensive recommendations for the provincial and federal government for supporting the Tsilhqot'in nation as a partner and a leader in emergency management.