Conflicts – Between Domestic and Indigenous Legal Systems?

In *Beaver v Hill*, 2017 ONSC 7245 (available here) the applicant sought custody, spousal support and child support. All relevant facts happened in Ontario.

In response, the respondent asserted that the "inherent right of the Haudenosaunee and the Six Nations to govern themselves includes the right to have inter and intra-familial disputes decided through Haudenosaunee governance processes and protocols and according to Haudenosaunee laws".

This took the court in some very interesting directions. It held "One of the novel issues that this case raises is whether general conflict of laws jurisdiction principles are also relevant on a more 'micro-level,' to an intra-provincial jurisdiction dispute between two Ontario citizens. In my view, these principles remain relevant in this case, even though the dispute has arisen at the intra-provincial level. Although the Respondent is not alleging that the Haudenosaunee or the Six Nations constitute a sovereign nation or other type of territorial entity within Ontario, his jurisdictional challenge is based on an alleged right to be governed by a complete system of dispute resolution, adjudicative processes and laws for handling Family Law matters that is independent of Ontario's court system, processes and laws. This broad claim has raised basic preliminary issues about the appropriate forum for decision-making and the applicable laws. These are precisely the types of disputes that conflict of laws principles are intended to address." (para 53)

I think the reaction to this analysis will be mixed. It seems possible that a court could have held exactly the opposite: that conflict of laws principles have nothing at all to do with the objections raised by the respondent. Instead, some form of public or constitutional law analysis is required to determine whether the respondent's objections to Ontario jurisdiction and law are valid. But I also understand that some scholars have suggested an approach that accords with the court's: that private international law principles can be used to address conflicts within one jurisdiction between the domestic legal system and indigenous legal systems or approaches. See for example Sara L. Seck, "Treaties and The Emancipatory Potential of International Law" in Michael Coyle and John Borrows,

eds, *The Right Relationship: Reimagining the Implementation of Historical Treaties* (Toronto: University of Toronto Press, 2017).