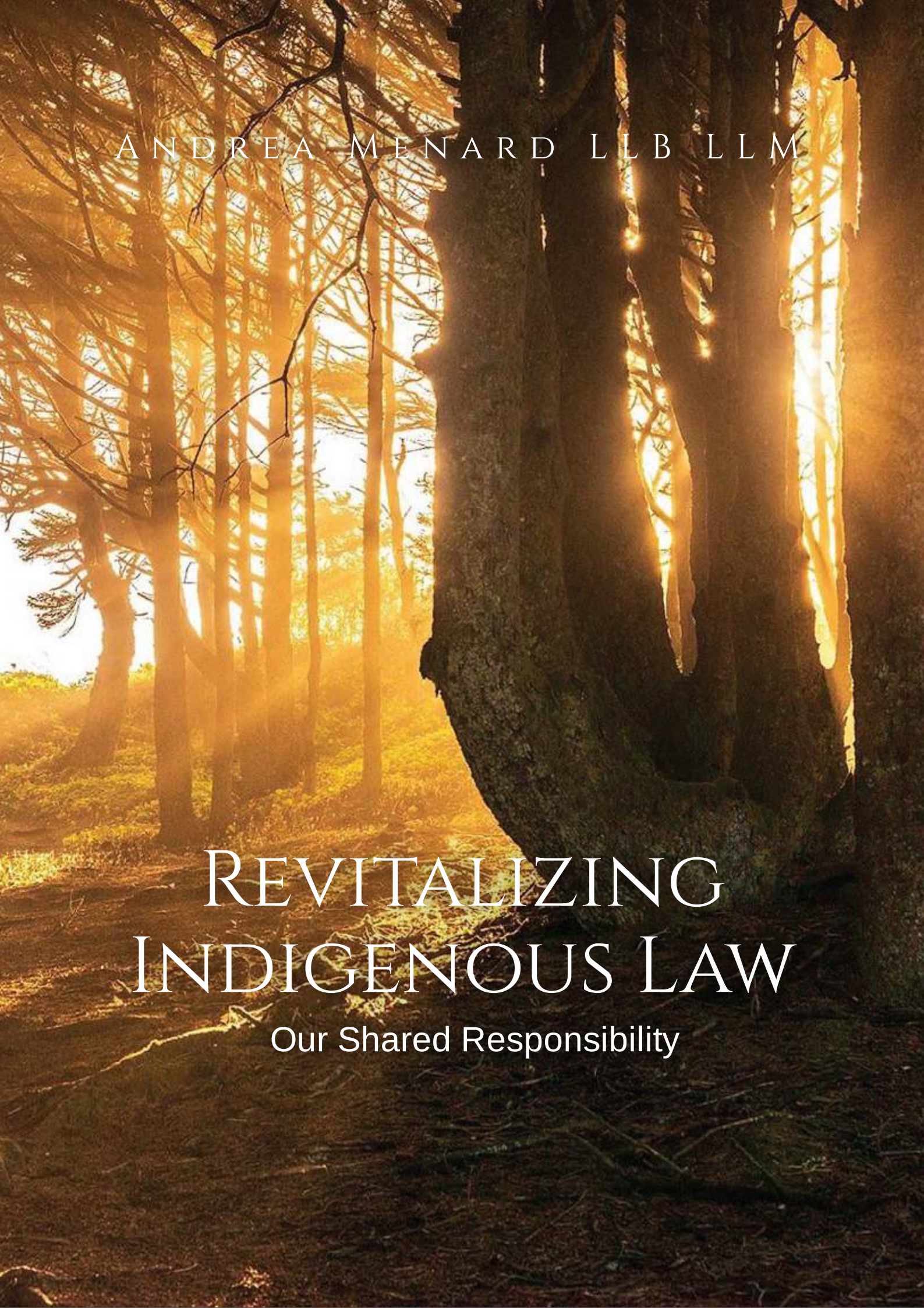

Andrea Menard LLB LLM

Revitalizing Indigenous Law

Our Shared Responsibility

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Acknowledgements

The dedication and inspiration that Val Napoleon, Hadley Friedland, Darcy Lindberg, and John Borrows have brought to their respective fields have paved the way for meaningful discussions on a wide range of topics. Their research and insights have deeply influenced my own understanding and have formed a substantial part of the foundation upon which this work is built.

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My gratitude extends to Helen Flamand, a remarkable individual whose teachings have made a significant impact on my journey. Her strength, wisdom, and perseverance inspire great respect and admiration. Her contributions to my learning have been immense, and I am deeply grateful for the lessons she has imparted.

This work is not just a testament to my endeavours but is deeply intertwined with the wisdom and teachings of these amazing individuals. I thank them from the bottom of my heart for their immense contribution and for the role they have played in shaping this journey.

About the Author

Andrea Menard LLB, LLM, PhD student, [she/they/Δ·ᓴᐊ·° wiyawâw] is Métis from the abolished Red River Settlement on Treaty 1 and North Dakota area (Métis family names are: Bruneau, Carrière, Landry, Champagne). Andrea also has settler origins and is English, French and Scottish. She is a white-coded Indigenous person, and a Métis Nation of Alberta citizen. She is the Top 5 Most Influential Lawyer of 2023, in CIO Times.

As a Lead Educational Developer at the University of Alberta's Centre for Teaching and Learning and Office of the Vice Provost, she is entrusted with the critical task of transforming and Indigenizing academic spaces by applying Indigenous ethics, teachings, practises and laws. Drawing from over 25 years of experience working with Indigenous Nations across Treaties 4, 6, 7, 8, and 10, the Métis Nation of Alberta, the Métis Settlements, the T'exelc Nation, and the Northern Secwēpemc te Qelmūcw on unceded lands in British Columbia, as well as her own lived experiences as a Métis person living between two worlds, she guides other professionals towards how to build relationships with local Indigenous communities and how to Indigenize and decolonize decision making, pedagogies and practice.

In her role as a part-time lecturer at the University of Calgary's Faculty of Law, Menard crafted a course, titled "Reconciliation and Lawyers," that is based on Indigenization and decolonization principles. This course provides an in-depth exploration of how to practice law by integrating both Indigenous and common law principles. It critically examines the existing legal system and presents ways to decolonize it by employing Indigenous principles.

At Osgoode Hall Law School, Menard contributes to the co-creation and instruction of a Master of Laws course in the Professional LLM in Dispute Resolution program, "In Search of Reconciliation Through Dispute Resolution." This transformative course encourages advanced-level students to incorporate Indigenous legal traditions and values into the core of dispute resolution methodologies. In this way, it cultivates a deep appreciation for the importance of Indigenous laws and the potential for reconciliation through alternative conflict resolution strategies.

Andrea also designed “The Path (Alberta)- Your Journey Through Indigenous Canada” with NVision Insight Group Inc. which is a mandatory online Indigenous cultural competency course for all lawyers across Alberta through the Law Society of Alberta.

Menard made the Top 25 Most Influential Lawyers, 2022 in Canadian Lawyer Magazine.

How to Approach and Use This Guidebook

Indigenous Peoples have indeed been practicing their unique systems of law since time immemorial. These legal traditions, each distinct to its specific cultural context, encompass a wide range of societal regulations, ethical codes, governance systems, and oversight mechanisms. They have been refined and passed down through generations, providing a robust, sustainable framework for societal organization and conflict resolution.

The recognition of Indigenous law as a distinct field of practice, however, remains a subject of ongoing discussion and debate. Many legal systems around the world have historically privileged western legal traditions, often marginalizing or outright ignoring Indigenous legal traditions. This unfortunate oversight undermines the depth and richness of Indigenous Peoples' legal knowledge and experience.

In recent years, there has been a growing movement towards acknowledging the value and validity of Indigenous law. This has sparked discussions around how to categorize Indigenous law, how to integrate it into existing legal systems, and how to respect and preserve its unique cultural context.

These debates are dealing with complex issues, including the nature of regulatory norms within Indigenous law, the ethical codes it promotes, the structure and function of its governance systems, and the role and operation of oversight entities. Each of these topics presents both challenges and opportunities for enhancing the recognition and application of Indigenous law.

As we continue to engage in these discussions, it is crucial to involve Indigenous Peoples and respect their wisdom and perspectives. Only then can we hope to construct a more inclusive, respectful, and holistic understanding of law that acknowledges the rich diversity of legal traditions worldwide.

This guidebook aims to provide an accessible introduction to Indigenous law. By referencing the works of leading academics in the field and providing real-world examples from specific Indigenous legal systems, it offers a window into the rich tapestry of Indigenous legal traditions. The ideas, principles, and practices discussed herein are meant to serve as stepping stones towards a deeper understanding of this complex and multifaceted field.

However, readers should bear in mind that this guidebook does not, and indeed could not, provide a comprehensive catalogue of all activities in the Indigenous law sphere. Indigenous law encompasses a vast array of distinct traditions, each deeply rooted in its unique cultural, historical, and geographic context. Attempting to catalogue these in their entirety would be a monumental task, and any such attempt would inevitably fall short of capturing the full depth and richness of these traditions.

Furthermore, the field of Indigenous law is still in the early stages of being interpreted and understood by mainstream academia and the broader legal community. As such, our understanding of this field is continually evolving, and there is much more to learn and discover.

Therefore, while this guidebook serves as a helpful starting point, it is by no means the end of the journey. Readers should view it as an invitation to further explore this exciting field, to engage in ongoing dialogue and learning, and to contribute to the recognition, respect, and application of Indigenous law.

Terms

'Colonialism" and "colonization" are related terms that describe different aspects of the same historical process, but they have distinct meanings:

1. **Colonialism:** Colonialism refers to the practice, ideology, and system by which a country or group of people exercises political, economic, and cultural control over a foreign territory or people. It involves the establishment, maintenance, and exploitation of colonies for the benefit of the colonizing power. Colonialism encompasses the broader framework and policies that guide the process of colonization.
2. **Colonization:** Colonization specifically refers to the act or process of establishing colonies in foreign territories. It involves the settlement of people from the colonizing country in the newly acquired territory, the imposition of governance and administrative structures, and the economic exploitation of resources. Colonization is the concrete manifestation of colonial policies and actions.

In essence, colonialism is the overarching system or ideology that drives and justifies colonization. Colonialism encompasses the motivations, beliefs, and power dynamics that shape the process of colonization. Colonization, on the other hand, is the tangible outcome of colonialism, representing the physical establishment and expansion of colonies

It's important to note that the terms "colonialism" and "colonization" are often used interchangeably or in conjunction with each other, as they are closely intertwined and interconnected. However, distinguishing between the two allows for a clearer understanding of the motivations, mechanisms, and effects of the historical practice of colonizing foreign territories. Canada is a colonial country that still practices colonization today.

Decolonization:

The process of dismantling colonial ideologies, systems, and structures that perpetuate the oppression and marginalization of Indigenous peoples. Decolonization involves critically examining and challenging the assumptions, beliefs, and practices that have shaped Western institutions and embracing alternative ways of thinking and acting that center Indigenous voices, experiences, and perspectives.

Indigenization:

The process of incorporating Indigenous knowledge, perspectives, and practices into institutions, systems, and structures. Indigenization recognizes the unique cultural, historical, and spiritual contributions of Indigenous peoples and seeks to create a more inclusive and diverse environment that honors and respects Indigenous ways of knowing and being.

Reconciliation:

The ongoing process of building respectful and just relationships between Indigenous and non-Indigenous peoples to address the historical and ongoing impacts of colonization, residential schools, and systemic discrimination. Reconciliation involves recognizing and addressing past and present injustices, fostering healing and understanding, and working together to create a more equitable and inclusive society.

Indigenous Law:

Indigenous law refers to the reasoned principles and processes that Indigenous societies used and still use to govern themselves. In Canada, Indigenous law pre-dates the common and civil law systems, and continues to evolve, adapt and apply to circumstances today. Although Indigenous law, as a broad concept, has become the common way to refer to the diverse Indigenous legal orders across Canada, it is misleading in that it implies there is one singular or universal Indigenous law that applies across different Indigenous nations and communities. In fact, each society's law is distinct and informed by its unique history, territories, and economic, social and political structures and realities. It is more appropriate to refer to a specific society's law, such as Cree law, or Dene law, rather than Indigenous law. As with Canadian law, there are specific areas of law within each Indigenous legal tradition. For example, the Cree legal tradition will have different legal principles and processes to apply to questions respecting lands, harms and injuries, human rights, or children than the common law or civil law tradition.

Aboriginal Law:

Aboriginal law is an area of Canadian law that deals with how Canadian law is applied to Aboriginal Peoples, as defined by s. 35 of the Constitution Act, 1982.43 It is the area of law that deals with Aboriginal Title, Aboriginal Rights and Treaty Rights within Canadian law.

Aboriginal law, to date, has largely drawn upon Canadian law for interpretation. However, it is increasingly acknowledged that Indigenous law has significantly influenced the context, breadth, and implementation of Aboriginal law. The cornerstone of Aboriginal law jurisprudence lies in the Crown's acknowledgement of the pre-existence of organized societies within the present-day borders of Canada.

It is misleading to detach the notion of these pre-existing societies from that of their corresponding legal orders. There is no clear-cut separation between a normative principle and a recognizable law, especially when considering societies that do not base their legal structures on written common law or legislative statutes. Indeed, Canada is, and continues to be, a nation of multiple legal jurisdictions in practice, even if not formally recognized in law.

Both legal scholars and the judiciary have highlighted that Canadian Aboriginal law has evolved as a result of the integration of Indigenous legal traditions and common law over time. As pointed out by Borrows, this amalgamation of legal traditions, seen for instance in the formation of doctrines around title and rights pertinent to Indigenous Peoples, underscores the intercultural essence of Canadian Aboriginal law.

Truth and Reconciliation Commission of Canada (TRC):

The Truth and Reconciliation Commission (TRC) Canada is an official body established in 2008 as part of the Indian Residential Schools Settlement Agreement. The commission was created to investigate and address the historical injustices and human rights abuses inflicted upon Indigenous peoples in Canada through the Indian Residential School system, which operated from (approximately) the 1850s until the late 20th century. The TRC concluded its work in 2015, releasing a final report that included 94 Calls to Action. These calls to action covered a wide range of areas, such as child welfare, education, language and culture, health, and justice, with the aim of guiding Canadian society toward healing, reconciliation, and a more just and equitable future for Indigenous peoples.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP):

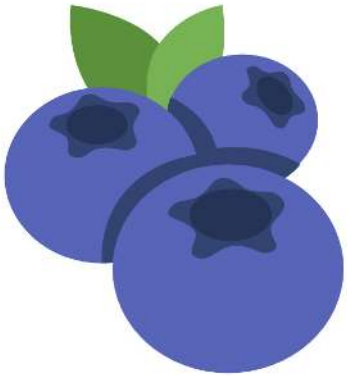
UNDRIP is a comprehensive international human rights instrument adopted by the United Nations General Assembly on September 13, 2007. UNDRIP outlines the rights of Indigenous peoples globally and establishes a universal framework of minimum standards for their survival, dignity, and well-being. UNDRIP contains 46 articles that cover various aspects of Indigenous peoples' rights, including:

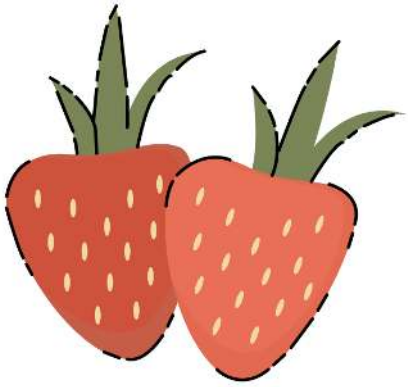
1). The right to self-determination, which includes the right to freely determine their political status and freely pursue their economic, social, and cultural development.
2).The right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions while retaining the right to participate fully in the political, economic, social, and cultural life of the state.
3).The right to be free from discrimination and to have their cultural traditions, customs, and land rights recognized and respected.
4).The right to maintain, protect, and develop the past, present, and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, and technologies.
5).The right to redress for past human rights violations, including forced assimilation and dispossession of their lands, territories, and resources. UNDRIP is a significant milestone in the recognition and protection of the rights of Indigenous peoples worldwide. While not legally binding, it serves as a guiding document for governments and other institutions to develop policies and practices that respect and promote the rights of Indigenous peoples.

Where We Are for Today's Lesson

Levels of Indigenous Learning

Level	Beginner Level 1/Step 1	Intermediate Level 2/Step 2	Advanced Level 3/Step 3
Type	Indigenous Cultural Awareness	Indigenous Engagement	Indigenization
Topics	First Nations, Inuit, Métis History Pre-colonization-Colonization/Treaties/Aboriginal rights & title	Rationale and requirements for Indigenous engagement, duty to consult, Free Prior & Informed Consent	Learning, Unlearning, Relearning/ TRC/UNDRIP/MMIWG2S/Trauma-informed lawyering/Ethical Spaces/Listening/Lens shift/Letting Indigenous Peoples Lead/ Building Good Relationships /Reflection/ Indigenous laws
Delivery	online through "The Path" cultural competency training	Ongoing between you and local Indigenous communities by taking workshops/attending events/learning on your own/creating accountability measures within your area	**You are here for today's lesson**





Showing Up In A Good Way

"Showing up in a good way" is a phrase often used in Indigenous communities, referencing the practice of embodying certain virtues and behaviors that are highly valued in these communities.

For Indigenous peoples, showing up in a good way means displaying respect, humility, humor, self-reflection, and active listening, among other qualities:

Humility: It involves recognizing that we are part of a larger community and ecosystem, and that everyone has something valuable to contribute. It means admitting when we are wrong or when we don't know something, and being open to learning from others.

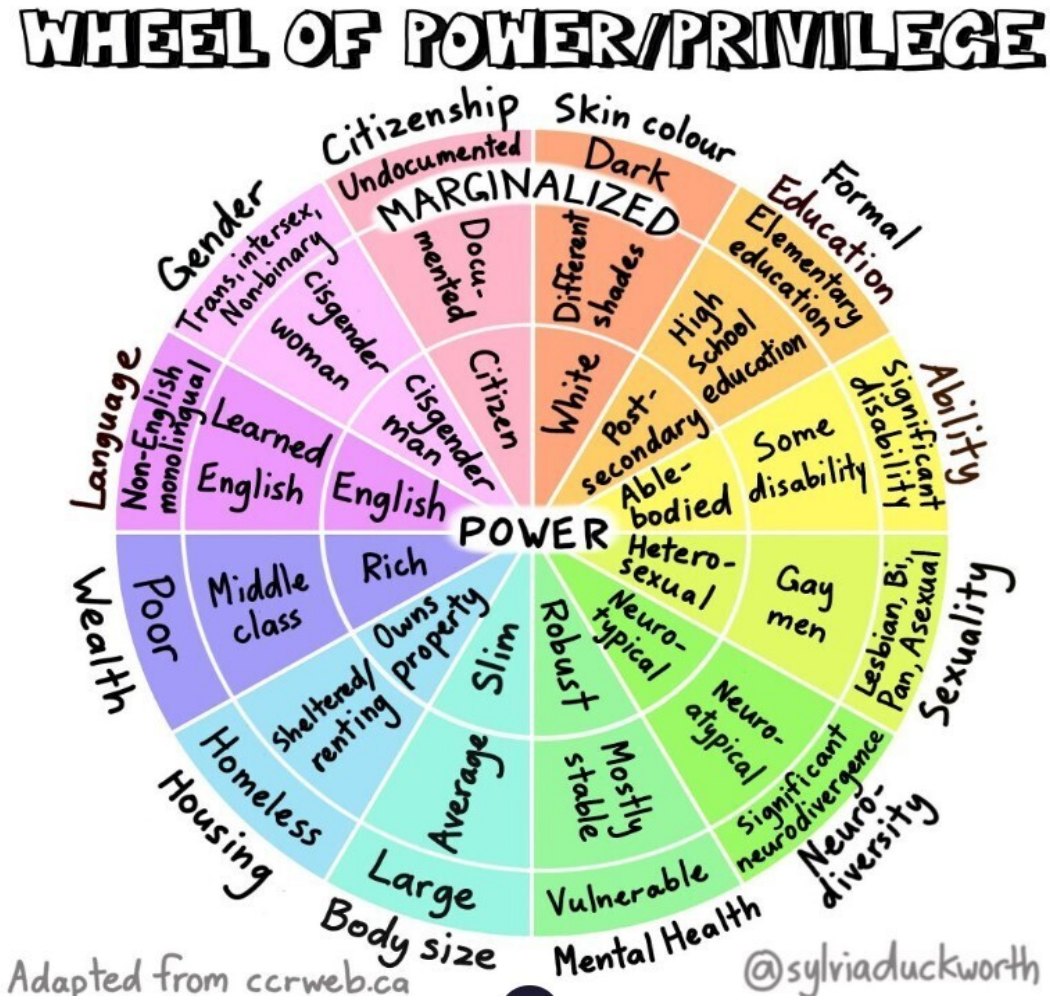
Humour: Humour is a critical tool for resilience, connection, and healing in many Indigenous cultures. Using humor appropriately can break down barriers and create shared spaces of understanding and joy.

Self-reflection: This means being aware of and examining one's actions, thoughts, and feelings, acknowledging one's biases, privileges, and limitations, and working on personal growth and transformation.

Respect: Respect for others, for the land, for tradition, and for the interconnectedness of all things is fundamental. It is about recognizing and valuing the inherent dignity, rights, and contributions of all beings.

Active listening: Active listening involves not only hearing but truly seeking to understand others' perspectives. It's about giving full attention, asking thoughtful questions, and refraining from interrupting or inserting one's own biases or preconceptions into the conversation.

"Showing up in a good way" means bringing these qualities to all interactions and relationships. It's about more than just being present; it's about being present in a manner that supports, respects, and uplifts others and the community as a whole. It encapsulates a way of being and acting that reflects the cultural values, teachings, and traditions of Indigenous peoples.



"Showing up in a good way" also allows us to reflect on how we may come across socially. Nowadays, social location wheels are utilized to identify where we may be, and how we may be perceived by others in society and how we perceive others in society. It is just another tool of self-discovery to use when wanting to show up in a good way and learn how to collaborate with others.

Sylvia Duckworth's Wheel of Power/Privilege organizes the various identities of a person on a wheel with the identities that hold the most power in our society placed at the center, and the identities that hold the least power in our society on the outskirts. The wheel is sectioned off into 12 categories, each marked by their own unique colour. In order of most powerful to least powerful, the text on image reads:

- Citizenship: citizen, documented, undocumented
- Skin colour: white, different shades, dark
- Formal education: post-secondary, high school, elementary
- Ability: able-bodied, some disability, significant disability
- Sexuality: heterosexual; gay men; lesbian, bi, pan, asexual
- Neurodiversity: neurotypical, neuroatypical, significant neurodivergence
- Mental health: robust, mostly stable, vulnerable
- Body size: slim, average, large
- Housing: owns property, sheltered/renting, homeless
- Wealth: rich, middle class, poor
- Language: English, Learned English, non-English monolingual
- Gender: cisgender man; cisgender woman; trans, intersex, nonbinary

The content of the wheel is adapted into the chart below. As you navigate through, consider using the fill tool, highlight tool or bold tool to identify where your own identity falls:

Identity Categories	**Most Power**	**Neither the most powerful nor the least powerful**	**Least Power**
Citizenship	Citizen	Documented	Undocumented
Skin colour	White	Different shades	Dark
Formal Education	Post-Secondary	High school	Elementary
Ability	Able-Bodied	Some disability	Significant disability
Sexuality	Heterosexual	Gay men	Lesbian, bi, pan, asexual
Neurodiversity	Neurotypical	Some neurodivergence	Significant neurodivergence
Mental health	Robust	Mostly stable	Vulnerable
Body size	Slim	Average	Large
Housing	Owns property	Sheltered/renting	Homeless
Wealth	Rich	Middle Class	Poor
Language	English	Learned English	Non-English monolingual
Gender	Cisgender man	Cisgender woman	Trans, intersex, nonbinary

Looking at the cells you've highlighted for yourself, what do you notice? Do most aspects of your identity fall in the most powerful area of the chart? How close or far away from the centre are you? How does your level of power shift as you place yourself in different identity categories? Thinking about your institution, where do students, staff, administrators, and/or faculty reside?

For more information on positionality, intersectionality, social identities, privilege and oppression exercises please visit here.

What is Indigenous Law?

Illustration by Aftab Erfan (Whole Picture Thinking) June 2016. Drawn for the "Indigenous Laws for Resource Stewardship: A Gathering of Nations" by TNC Canada in collaboration with Indigenous Law Research Unit UVic, Faculty of Law, West Coast Environmental Law, Mandell Pinder LLP, Coastal Stewardship Network (Coastal First Nations-Great Bear Initiative) and the Central Coast Indigenous Resource Alliance

Infographic of Indigenous Law Research Unit at the University of Victoria, Faculty of Law (ILRU) methodology with resources found here

It's important to remember that Indigenous laws and legal systems existed prior to the formation of Canada and the Canadian legal system, and have withstood centuries of efforts to devalue and undermine them. Colonial ideologies, policies, and laws have promoted misconceptions about Indigenous peoples and their laws.

In Canada, the doctrine of discovery and the notion of *terra nullius* (the belief that the land was unclaimed before European sovereignty was asserted) were employed as justifications for occupying Indigenous territories in Canada and globally. This set the stage for a narrative that portrayed Indigenous people as 'uncivilized' and hence lawless. In 2014, in *Tsilhqot'in Nation* v. *British Columbia* the Supreme Court of Canada affirmed that Canada was not *terra nullius* and that the doctrine of *terra nullius* should not have been applied. Despite this, the enduring practice of "the original, unjust assertion of sovereignty seamlessly persists in the language woven through colonial law".

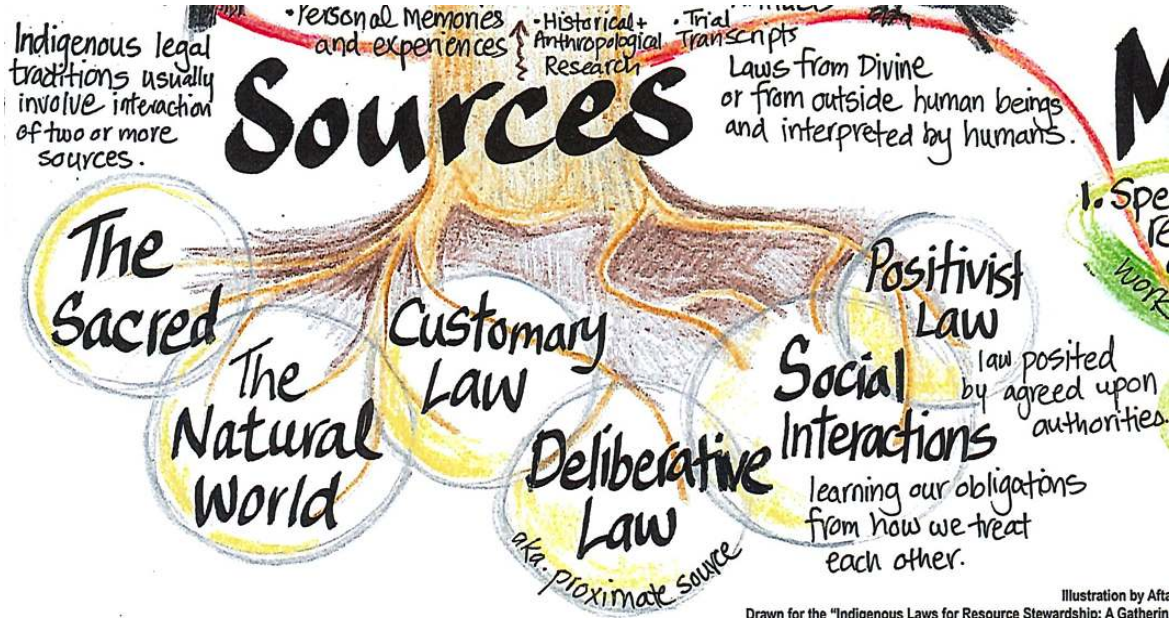
Due to the legacy of colonialism, Indigenous law may not always be immediately noticeable or fully operational today. Harmful and false stereotypes about Indigenous lawlessness, often rooted in racism, continue to exist. However, we are currently witnessing a period of Indigenous legal revitalization, where Indigenous nations and communities are making dedicated efforts to re-establish, express, exercise, and enforce their own laws either alongside or in place of the imposed Canadian laws.

In this guidebook, we'll explore the sources and resources of Indigenous law, the significance of its revitalization, and differentiate Indigenous law from Aboriginal law. Furthermore, we will examine the ethical obligations Canadians have in terms of interacting with Indigenous laws.

Due to the vast diversity of Indigenous legal systems and laws, I won't discuss Indigenous law as a unified body of law, similar to how one might do with "real estate law" or "wills and estates law". Instead, I will pull from the Truth and Reconciliation Commission's Final Report and 94 Calls to Action, the United Nations Declaration on the Rights of Indigenous Peoples, and the Missing and Murdered Indigenous Women, Girls and 2 Spirit Final Report and 231 Calls for Justice and state Canadians have a *duty to learn* Indigenous laws.

As previously mentioned, many legal experts and scholars have stressed that Indigenous and Canadian law have never functioned entirely in isolation, even though Canadian law has remained the more dominant. Additionally, it is acknowledged that legal pluralism - the coexistence of two or more legal systems or orders in the same societal context - has consistently been a characteristic Canadian society with Indigenous law, civil law and common law.

Sources of Indigenous Law



Every law originates from a place or several places of authority, including those within Indigenous legal traditions. The foundations, or sources, of Indigenous law are "...intertwined with the social, historical, political, biological, economic, and spiritual circumstances" of various Indigenous peoples and communities.

As highlighted by John Borrows, there are multiple sources of Indigenous law, and "Indigenous peoples have diverse theories about what gives law its obligatory power." This is also true for similar theoretical questions within other legal traditions. Borrows further notes that "Canada could be described as a jurisdictionally pluralistic nation as it relies on multiple sources of law to maintain order."

Borrows outlines **five sources of Indigenous law**. These sources are not isolated, nor do they function independently; as "...Indigenous legal traditions typically involve the interplay of two or more...sources...In practice, it would indeed be challenging to disentangle them from one another." The **five sources** are as follows:

1.Sacred teachings,
2.Naturalistic observations,
3.Positivistic proclamations,
4.Deliberative practices, and
5.Local and national customs.

Firstly, **sacred law** originates from ancient teachings, creation stories, and foundational understandings about creation and the Creator "that have withstood the test of time." As Borrows highlights, spiritual principles are part of almost all global legal traditions, including Canadian law, which references religion in the preamble to its Constitution. While it's undeniable that the sacred forms a source of Indigenous law, it's crucial to note that not all Indigenous law falls under the category of sacred. This is a significant distinction since laws deemed sacred are often perceived as inviolable or immutable. This viewpoint inherently risks minimizing human beings to merely rule-following legal participants, rather than encouraging and normalizing legal actors who bear the responsibility of interpreting, debating, reasoning, and applying the law.

The second source of law, **natural law**, pertains to law derived from the observations of the natural world, including analogies and legal reasoning derived from the interactions of animals and other non-human life.

The third source of law, **deliberative law**, is "formed through processes of persuasion, deliberation, council, and discussion." Borrows refers to the debates, interpretations, and discussions that people engage in as the "immediate source of law," as opposed to natural or sacred sources that might form the "backdrop" to those conversations.

The fourth source of Indigenous law is **positivistic law**. This includes "the proclamations, rules, regulations, codes, teachings, and axioms" that people recognize as governing or influencing their behavior.

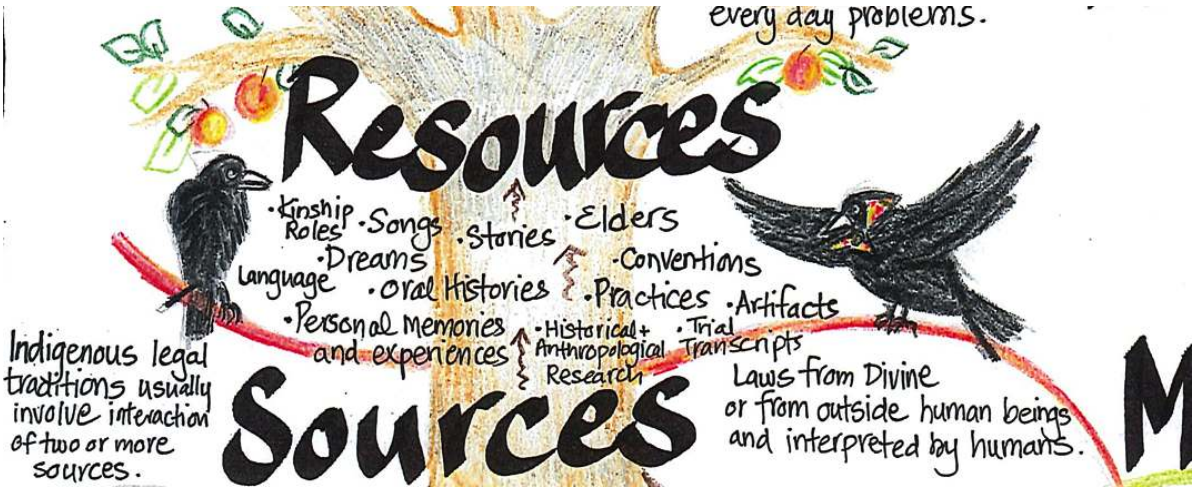
Lastly, Borrows identifies **customary law** as a source, which pertains to the "practices developed through repetitive patterns of social interaction that are considered binding on those who partake in them."

Borrows stresses that customary law, while often the "label most people would likely assign to Indigenous law if they were unfamiliar with the intricacies of these societies' social organization," is also a source of binding authority in common law, civil law, and international law also recognize customary law. Therefore, labelling all Indigenous law as customary is not only imprecise and incomplete, but often diminishes the validity and authority of Indigenous legal traditions, especially when compared to Canadian or other state law.

Val Napoleon points out **social interaction** as another source of law. By "social interaction," it is meant the collective manners in which people institutionalize law through their sustained social, economic, and political engagements within their own communities and with individuals from other communities.

Additionally, Alan Hanna highlights **relationality** as a source of Indigenous law. This refers to the manners in which Indigenous legal institutions, like kinship or familial structures, "govern and sustain interactions with others (both human and non-human) and the types of behaviour that people can anticipate and depend upon from others."

Legal Resources for Indigenous Law



Separate from the sources of law are legal resources, which refer to the sites where one seeks to discover, learn, teach, and interpret the law. In Canadian law, these might consist of legal texts, critical commentaries, summaries, or scholarly journal articles. Indigenous legal traditions utilize a variety of legal resources, including language, land, stories, place names, songs, art, protocol, dreams, deliberative practice, elders, oral histories, conventions, artifacts, trial transcripts, or other secondary materials.

An individual's capability to engage with Indigenous legal resources is contingent upon their existing knowledge, cultural immersion, community connection, and proficiency with different methods of interaction for those particular resources. As Hadley Friedland notes, some resources demand "profound knowledge and full cultural immersion," such as dances, art, ceremonies, and specific linguistic terms. Other resources that require "some community connection" might encompass stories and information from knowledgeable community members. Publicly-available resources, like academic work, fiction, and trial transcripts, necessitate "the least amount of connection to a particular culture or community to access" and are the most readily accessible to researchers.

Most practitioners involved in the revitalization of Indigenous law utilize a multitude of Indigenous legal resources, and cooperate with individuals possessing the knowledge to access those significant Indigenous legal resources that are acquired through cultural immersion and community connections.

The Importance of Learning and Revitalizing Indigenous Law

"Lands and waters where indigenous governments have the primary role in protecting and conserving ecosystems through Indigenous laws, governance, and knowledge systems."

Indigenous Circle of Experts (ICE)

Photo courtesy of: Dene Tha First Nation, Treaty 8

Canada is a multi-juridical nation, comprised of various Indigenous legal traditions along with common and civil law. Federal Court Justice Sébastien Grammond in *Pastion* v. *Dene Tha' First Nation* emphasized that Indigenous legal traditions are an integral part of Canada's legal fabric. They constitute a portion of the nation's law. More than fifteen years ago, Chief Justice McLachlin of the Supreme Court of Canada proposed that "aboriginal interests and customary laws were assumed to survive the assertion of sovereignty."

However, as previously stated, Indigenous law has been marginalized and undermined since the time of colonial contact. Consequently, Canadian law has predominantly dictated how law is taught, understood, and implemented in Canada.

The release of the Truth and Reconciliation Commission of Canada's (TRC) final report and its 94 Calls to Action in 2015 has partly stimulated a shift in the legal profession. The Report and Calls to Action build upon earlier recommendations from reports such as the Aboriginal Justice Inquiry of Manitoba and the Royal Commission on Aboriginal Peoples. These are further reinforced by the subsequent Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

However, an increasing number of Indigenous communities are proactively striving to redefine, express, and apply Indigenous law, both for their internal governance purposes and in conversation with Canadian law.

It can either be "stand alone" or hybrid depending on the context. The hybrid way is where it can be woven into current common law systems and can effect ways for the better, like Indigenous Courts in Alberta, or the new Restorative Justice Pilot Project that launched in April 2022 for both the Provincial Court and the King's Bench Court to consider. It can also be seen in individual practises whether it be a lawyer fulfilling the Truth and Reconciliation's Call to Action, properly conducting the duty to consult and forming relationships with Indigenous nations, or incorporating Sharing Circles into any decision making process.

According to the Summary of the Final TRC Report, it is essential to recognize Indigenous peoples as having the responsibility, authority, and ability to resolve their disputes by forming laws within their communities.

The TRC defines reconciliation as an ongoing process of forming and maintaining respectful relationships, which includes the revitalization of Indigenous law and legal traditions. It is crucial that all Canadians understand how traditional First Nations, Inuit, and Métis methods of resolving conflicts, repairing harm, and restoring relationships can contribute to the reconciliation process.

In 2016, Canada enacted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), marking a significant milestone in the recognition and affirmation of Indigenous Peoples' inherent human rights. This pioneering international agreement upholds the basic human rights of Indigenous peoples, but also addresses specific, culturally significant rights, including self-determination, language, equality, and land ownership.

The enactment of the 2016 UNDRIP and the 2021 *UNDRIP Act* represents an initial step in a potentially long journey to harmonize Canada's legal systems with the standards outlined therein. Chief Willie Littlechild from Maskwacis, Treaty 6, a Cree lawyer, Indigenous leader and international advocate of Indigenous Peoples' rights, noted that this harmonization process will not only rectify legal disparities but also contribute to fostering a healthier relationship between the Canadian government and Indigenous Peoples.

The foundation of UNDRIP rests on several critical principles enshrined in its numerous articles. Here are some examples:

Article 1 underscores the overarching principle that Indigenous Peoples, whether collectively or individually, are entitled to all human rights and fundamental freedoms as recognized by global conventions like the Charter of the United Nations and the Universal Declaration of Human Rights. It embeds this principle in international human rights law, thereby affirming Indigenous Peoples' rights on a global scale.

Article 2 further guarantees the freedom and equality of Indigenous Peoples and individuals, insisting on their right to be free from any discrimination, especially discrimination based on their indigenous origin or identity. This provision strengthens their protections and ensures fair treatment in line with all other individuals and peoples.

The right to self-determination forms the bedrock of **Article 3**. This right encompasses Indigenous Peoples' freedom to define their political status and pursue their economic, social, and cultural development independently. This provision respects the distinct governance structures of Indigenous Peoples and acknowledges their sovereignty.

Article 4 extends the right to self-determination, emphasizing Indigenous Peoples' right to self-government and autonomy, especially in matters relating to their internal and local affairs. It also ensures their freedom to finance their autonomous functions, hence acknowledging and respecting their capacity to self-govern.

Article 5 safeguards Indigenous Peoples' right to maintain, strengthen, and develop their unique political, legal, economic, social, and cultural institutions. It also confirms their right to fully participate in the political, economic, social, and cultural life of the State if they so choose.

Article 6 ensures every indigenous individual's right to a nationality, recognizing the critical importance of belonging and identity to every person's well-being.

Article 7 further solidifies this by acknowledging Indigenous individuals' rights to life, physical and mental integrity, liberty, and security. Moreover, it affirms the collective right of Indigenous Peoples to live in freedom, peace, and security as distinct peoples, and they shall not be subjected to any form of violence, including acts of genocide or the forcible removal of children from one group to another.

For more information on the 2016 UNDRIP Articles, please visit here.

UNDRIP Act:

On June 21, 2021, the *United Nations Declaration on the Rights of Indigenous Peoples Act* received Royal Assent and became law. The Act requires the development of an action plan to implement the declaration within two years of its adoption (so today, June 21, 2023 is the day!) The implementation of the *United Nations Declaration on the Rights of Indigenous Peoples Act* in Canada signifies a collaborative approach between Indigenous communities, industry, and government. It aims to solidify relations between the Canadian Government and Indigenous Peoples, and ensures that Indigenous rights are thoughtfully incorporated into the evaluation and revision of federal laws that impact these rights.

A central objective of the *UNDRIP Act* is to bolster Indigenous Peoples' exercise of their right to self-determination. The *UNDRIP Act* acknowledges the persistent and detrimental effects of systemic racism and discrimination that Indigenous Peoples encounter regularly. In response, it obliges the Canadian Government to work alongside Indigenous Peoples in developing an action plan, encompassing measures to rectify injustices, mitigate bias, and eradicate all forms of violence and discrimination directed towards Indigenous People.

As the *UNDRIP Act* is progressively implemented, it is expected to promote a deeper understanding and respect for Indigenous cultures, leading to the growth of more robust and healthier Indigenous communities. In turn, this contributes to both Indigenous and broader Canadian economic expansion. This translates into job opportunities and benefits for all, coupled with the safeguarding of our environment - land, air, and water. Ultimately, the *UNDRIP Act* implementation seeks to construct a more prosperous future and an improved Canada for everyone.

For more information on the *UNDRIP Act*, please visit here.

The Ethics of Engaging with Indigenous Laws: 7 Grandfather Teachings

The Seven Grandfather Teachings are a set of guiding principles that have been passed down through generations by the Anishnaabe Nations. These teachings include Wisdom, Love, Respect, Bravery, Honesty, Humility, and Truth, and offer a powerful foundation for ethical lawyering and decolonizing legal practices and systems. These teachings can be applied in legal practice to gain a deeper understanding and respect towards the differences in approaching problems, unlearn current approaches, and develop newer, more thoughtful, and creative solutions.

The relevance of the Seven Grandfather Teachings for ethical lawyering and decolonizing legal practices and systems cannot be overstated. These teachings are rooted in Indigenous ways of knowing and can provide a framework for a more respectful, collaborative, and relationship-based approach to legal work that is grounded in the principles of reconciliation. By incorporating these teachings into their work as a guide, legal professionals and leaders can work towards decolonizing legal practices and systems, and work towards achieving justice for all people, particularly for Indigenous communities who have been historically oppressed.

In her article "Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence," Pooja Parmar explores the limitations of cultural competence as a response to the Truth and Reconciliation Commission (TRC) Calls to Action 27 and 28.

Parmar argues that while cultural competence is often driven by genuine commitments to reconciliation within the legal profession in Canada, an uncritical embrace of the concept is inadequate and might even prove to be counterproductive despite best intentions.

Parmar suggests that a limited and deficient conception of cultural competence is unlikely to assist lawyers in representing Indigenous clients better or change Indigenous peoples' experience with the legal system more broadly. She contends that the TRC Calls to Action demand a response that centres accountability, and that the legal profession must recognize Calls 27 and 28 as a unique opportunity to innovate and lead by rethinking legal education, competence, and ethical lawyering in a multi-juridical space such as Canada.

The TRC Calls to Action 27 and 28 call upon lawyers and judges to become more educated on Indigenous laws and legal traditions, as well as the history and ongoing legacy of residential schools. Cultural competence, as currently understood, places the burden of responsibility for understanding and respecting Indigenous peoples and their legal traditions on individual lawyers and judges. Parmar argues that this approach is insufficient because it places too much emphasis on individual responsibility and fails to address systemic issues within the legal profession and the broader society.

Parmar suggests that the legal profession must move beyond cultural competence and embrace a broader understanding of accountability that considers the role of lawyers and judges in perpetuating systemic oppression against Indigenous peoples.

Parmar also suggests that the legal profession must recognize the importance of translation in promoting reconciliation between Indigenous and non-Indigenous legal systems. Translation involves not only translating legal documents and language but also translating cultural values and norms. Lawyers must be able to effectively communicate with Indigenous clients and understand the unique legal traditions and customs that underpin their cases.

Parmar's article highlights the limitations of cultural competence as a response to the TRC Calls to Action 27 and 28. She suggests that the legal profession must recognize the importance of accountability and move beyond cultural competence by rethinking legal education and ethical lawyering.

Lawyers must become more familiar with Indigenous legal traditions and history, and understand the role of systemic oppression in perpetuating injustice against Indigenous peoples. By embracing a more comprehensive and nuanced approach to reconciliation, the legal profession can play a crucial role in promoting justice and healing for Indigenous peoples in Canada.

Applying the Anishnaabe Seven Grandfather teachings to Parmar's article "Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence" can provide insight into how we can work towards reconciliation:

Wisdom: Parmar's article emphasizes the importance of legal education in promoting reconciliation. By recognizing the limitations of cultural competence and embracing a more comprehensive approach to legal education, lawyers and judges can become more familiar with Indigenous legal traditions and history, and better understand the unique legal contexts of Indigenous peoples and their clients.

Love: The TRC Calls to Action demand a response that centers accountability and promotes justice and healing for Indigenous peoples. Parmar suggests that the legal profession can play a crucial role in promoting reconciliation by rethinking legal education and ethical lawyering.

Respect: Parmar argues that a limited and deficient conception of cultural competence is unlikely to assist lawyers in representing Indigenous clients better or change Indigenous peoples' experience with the legal system more broadly. By embracing a more comprehensive and nuanced approach to reconciliation, lawyers can demonstrate respect for Indigenous legal traditions and the unique legal contexts of Indigenous clients.

Bravery: Reconciliation requires bravery and a willingness to confront difficult truths about the history and ongoing legacy of colonization in Canada. Parmar suggests that the legal profession must recognize the role of systemic oppression in perpetuating injustice against Indigenous peoples and work towards accountability and justice.

Honesty: Parmar's article is an honest critique of the limitations of cultural competence and a call for a more comprehensive approach to reconciliation. By recognizing the limitations of current approaches and embracing a more honest and nuanced approach to reconciliation, the legal profession can play a more meaningful role in promoting justice and healing for Indigenous peoples.

Humility: Parmar's article emphasizes the importance of humility in promoting reconciliation. By recognizing the limitations of current approaches and embracing a more comprehensive and nuanced approach to reconciliation, lawyers and judges can demonstrate humility and a willingness to learn from Indigenous legal traditions and history.

Truth: Parmar's article is a call for truth and accountability in the legal profession. By recognizing the history and ongoing legacy of colonization in Canada, and the role of lawyers and judges in perpetuating systemic oppression against Indigenous peoples, the legal profession can work towards promoting justice and healing for Indigenous peoples.

In conclusion, the Seven Grandfather Teachings provide a powerful foundation for ethical lawyering and decolonizing legal practices and systems. Incorporating these principles into legal work can lead to a deeper understanding and respect towards the differences in approaching problems and developing skills needed to unlearn current approaches and develop more thoughtful and creative solutions.

For more information please visit my blog at: www.indigenousconnect.org

Darcy Lindberg, a Cree legal scholar hailing originally from Wetaskiwin in the Treaty 6 area, asserts that 'witaskewin' is a Plains Cree treaty-making principle which translates to "living on the land together." It's recognized as a Cree legal concept and is perceived as a 'living' entity, not something fixed or static. Lawyer, TRC Commissioner, and Chief Willie Littlechild from Maskwacis, Treaty 6, further elaborates that 'witaskewin' is a Plains Cree term for 'reconciliation.' Littlechild articulates its meaning as, 'This is how we are going to live on the land together as two nations side by side.'

Some guiding tenets of Indigenous ethics *locally* to share with you are as follows:

ĊV·Δ·ᐣ tâpwewin, embodying the pursuit of truth as a constant,

ᑕᐸᑊᑌᓀᒥᓯᐊ·ᐣ tapahtêyimisowi, representing humility,

ᐊ·ᑊᑯᑊᑐΔ·ᐣ wahkohtowin, emphasizing the interrelation of all beings,

ᒥᔾ Ȧ·ᑎᑊᑐΔ·ᐣ miyo-wîcêhtowin, fostering harmony in our communal existence, and

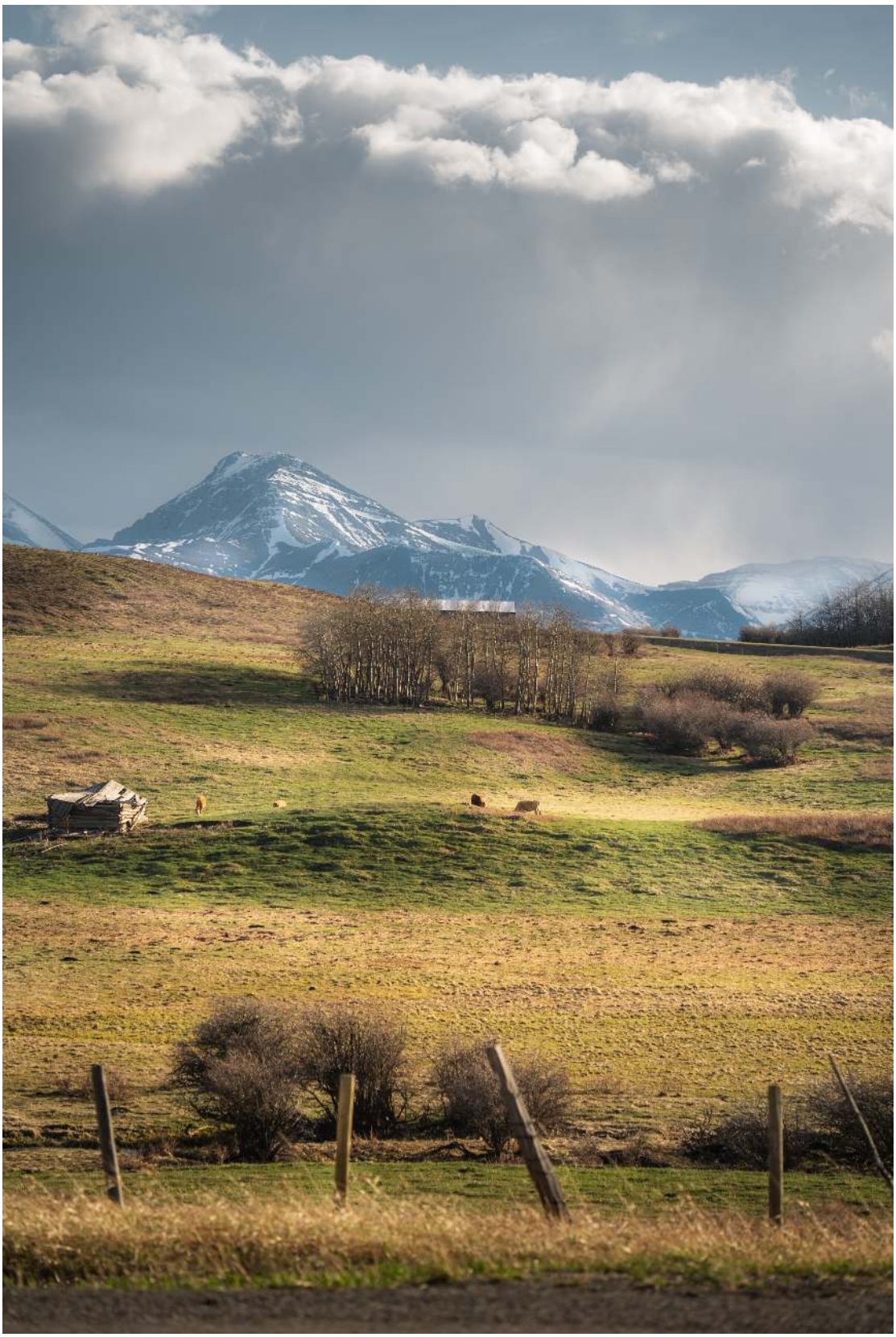
Δ·Cᐟᕿ9Δ·ᐣ witaskewin, advocating for cohabitation with the land.

Reflection

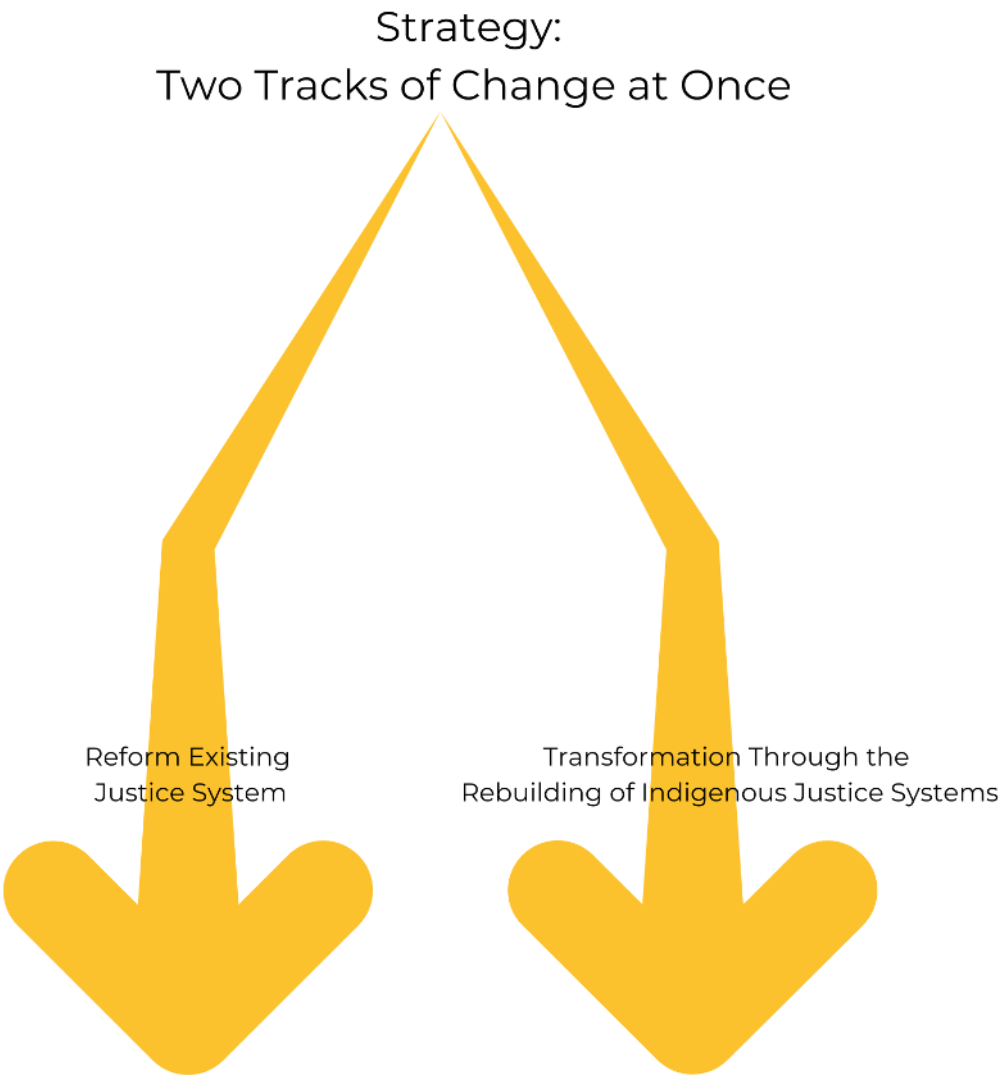
Indigenous communities are known to operate under specific ethical principles. These include the 7 Grandfather Teachings prevalent in Anishnaabe and Cree nations, as well as in other Indigenous communities. Locally, Indigenous communities also observe the Cree tenets of tâpwewin, tapahtêyimisowi, wahkohtowin, miyo-wîcêhtowin, and witaskewin. These ethical guidelines are not exclusive to professionals, but are inclusive to the entire community.

Do you adhere to similar ethical principles in your personal or professional life? If so, could you describe them? In what ways are these principles similar or different from Indigenous ethics?

Moving Forward



A new Indigenous justice strategy must concurrently focus on dual pathways for change: (1) Implementing reforms within the current justice system, and (2) Fostering transformation by reconstructing Indigenous justice systems.



Alongside the dual tracks of change of reformation and transformation, an innovative justice strategy in Alberta must encompass the following foundational principles:

Principle 1: The strategy must endorse an all-encompassing, wholistic, and integrative approach, tackling every form of engagement between Indigenous individuals and communities and the justice system.

Principle 2: The strategy should actively work towards establishing circumstances in which Indigenous individuals and communities no longer disproportionately encounter or are affected by the justice system.

Principle 3: The strategy must strive for a complete reversal of the current scenario, where Indigenous individuals, families, and communities are excessively represented in all stages of justice system interactions, yet insufficiently represented as influential participants within the system.

Calgary Indigenous Court

Case Studies

Borrows notes in his book, "Canada's Indigenous Constitution" that “[t]here are compelling arguments that Indigenous traditions could be strengthened by their separation from and interaction with the principles and approaches that are found in Canada’s other legal traditions.” However, he also cautions that “Indigenous legal traditions, like all legal traditions, require a translation process to properly understand them, though one must be careful that such translations do not always flow one way, to the benefit of the dominant systems.”

Many more Indigenous communities are increasingly taking up intentional efforts to re-state, articulate and apply Indigenous law for their own internal governance purposes, to speak to Canadian law, and interact with Canadian law in different contexts. The following are a few examples of that recent activity taking place in British Columbia:

The Witness Blanket

In 2019, an agreement was forged between Carey Newman (Hayalthkin'geme), a celebrated Kwakwaka'wakw/Coast Salish artist and master carver, and the Canadian Museum for Human Rights. The ceremony, held at Kumugwe, the K'omoks Bighouse, acknowledged both Canadian contract law and the legal orders of the Kwakwaka'wakw Big House. These were utilised to define and respect the rules and laws that would oversee the housing and stewardship of Newman's artwork, "The Witness Blanket," at the Museum.

"The Witness Blanket" is a massive multimedia installation, spanning 3 metres in height and 12 metres in width, which took several years to complete. It incorporates objects and narrative representations from Survivors of the residential school era (1870s–1990s) gathered from across Canada.

From the Kwakwaka'wakw viewpoint, "The Witness Blanket" is a living art piece, intertwining the vitality and spirit of every story and object it encapsulates. As per protocol, witnesses, gifting, and feasting are necessary to initiate an agreement for its shared responsibility and care. An agreement under Kwakwaka'wakw law also mandated periodic re-assessment and renewal of the commitments and relationship between the parties.

The ceremony at the K'omoks Bighouse, with museum representatives in attendance, marked a historical moment - the first time a federal Crown Corporation recognized a legally binding agreement via Indigenous laws. This occurred 68 years following the lifting of the Indian Act potlatch ban by the Canadian government. The ceremony fulfilled not only the requisites for a binding Canadian contract, but also the requirements of witnessing, gifting, and feasting as dictated by Kwakwaka'wakw law.

Dáduqvḷá qn̓txv Ğviḷásaxˇ — Heiltsuk Tribal Council

Following the incident where the tugboat Nathan E. Stewart spilled 110,000 litres of diesel fuel into the territorial waters of the Haíłzaqv (Heiltsuk) in 2016, the Heiltsuk Tribal Council invoked their own legal framework, known as Ğviḷás. They led an autonomous investigation into the matter, issuing a comprehensive report titled Dáduqvḷá qn̓txv Ğviḷásaxˇ. This report presented a legal evaluation of the incident according to Haíłzaqv (Heiltsuk) law.

Generated by a council of selected legal decision-makers, the report elucidated the legal framework, identified the offenses and violations, assessed the harm done, and proposed potential consequences or remedies. The legal conclusions drawn from this report have played a significant role in shaping the continuing interaction between the government at all levels and the private entities involved in repairing the environmental catastrophe.

This instance showcases the broad applicability of Indigenous law, spanning various fields of Canadian law such as constitutional, environmental, tort, contract, international, and Aboriginal law. The legal scrutiny within the report, employing Haíłzaqv law, is currently guiding the Haíłzaqv Nation's legal proceedings in Canadian courts against the oil shipping company, as well as Canada and British Columbia.

Nłeʔképmx and Syilx Laws of Water and Watershed Governance

In March 2018, a Memorandum of Understanding was signed by five Nicola Chiefs (representing the Upper Nicola Band, Lower Nicola Band, Coldwater Indian Band, Nooaitch Indian Band, and Shackan Indian Band) and the Province of British Columbia. This document committed them to jointly managing the waters throughout the Nicola Watershed, with both Indigenous (Nłeʔképmx and syilx) and provincial law guiding their actions. This project stands on a mutual pledge to uphold the United Nations Declaration on the Rights of Indigenous Peoples. As part of this extensive co-governance initiative, the five communities are striving to express the legal principles and procedures from both legal traditions that will guide their communities in the usage, preservation, and addressing of water-related challenges.

Tsleil Waututh — Kinder Morgan/TMX Expansion Project

The Tsleil-Waututh Nation (TWN) has regularly implemented its own laws to evaluate and scrutinize projects proposed in its territory. In their analysis of the suggested expansion of the TMX pipeline, TWN concluded that the associated risks were too great and hence, the project had to be dismissed.

In 2015, TWN released an in-depth, 90-page review of the proposal that incorporated assessments of environmental, socio-cultural, and economic aspects, thoroughly explaining why the pipeline expansion plans were incompatible with Tsleil-Waututh law. The evaluation was informed by consultations with scientific experts, custodians of knowledge, and community members.

As part of the National Energy Board's (NEB) hearing procedures, TWN submitted their assessment in their capacity as a jurisdiction. However, despite the substantial evidence presented by TWN, and notwithstanding further resistance from numerous Indigenous nations who saw their own laws and jurisdictions further threatened by the pipeline, the NEB greenlit the expansion project.

Is there anything in Alberta?

Although Indigenous Courts have been established across Alberta, these are still inherently tied to the common law justice system, albeit with integrated Indigenous healing components. One notable initiative is the Honourable Beverley Browne wîyasôw iskweêw Restorative Justice Committee Pilot Project, which seeks restorative justice remedies as opposed to punitive measures.

Both the Kainai Nation in Treaty 7 and Bigstone Cree Nation on Treaties 6 and 8 have comprehensive Indigenous Restorative Justice Programs, considered to be practical applications of Indigenous law principles.

However, it's important to note that as of now, Canada has only one Tribal Court with Indigenous jurisdiction for minor offenses.

Nevertheless, Indigenous Legal Orders and justice in British Columbia are paving the way in this field. The BC First Nations Justice Council in British Columbia is making significant strides in expanding legal aid and support services for Indigenous peoples across the province. Furthermore, they are committed to the revitalization of Indigenous Legal Orders. It is our hope that Alberta will follow suit and establish a similar framework in the near future.

How to Apply the Indigenous Perspective In Your Life

All professionals, and indeed all Canadians who live and work on these lands and make decisions that influence and affect others, often identify issues that span multiple areas of expertise, even if they don't specialize in those specific fields. They should, in a similar vein, foster an awareness of the existence and potential relevance of Indigenous perspectives in various scenarios. For example, while an issue may initially seem to concern a specific domain, a closer inspection might reveal that it intersects with Indigenous knowledge related to land, water, or other elements.

Upon identifying a potential issue, individuals need to determine whether they have the ability to conduct further research to address the matter effectively. Alternatively, they might need to consult with experts in the field or other organizations familiar with Indigenous perspectives.

Recognizing issues within the realm of Indigenous perspectives requires individuals to consider "all the surrounding institutional facts, not just the immediate case facts" when examining the issues at hand. This process may necessitate taking into account not only the facts as presented, but also the historical, social, political, cultural, or other circumstances that may have given rise to the current situation.

Reflection

In which aspects of your personal and professional life have you not yet contemplated the Indigenous perspective?

MEEGWICH, MAARSI, HIY HIY, ᐊᐣ ᐦᐃᐊᐣ

Revitalizing Indigenous law is not a task confined to lawyers, scholars, or policymakers. Rather, it is an endeavour that calls on each one of us. All Canadians who live and work on these lands, who make decisions that influence and affect others, have a part to play.

So, on this Indigenous Peoples Day 2023, let us take up this task together. Let's begin to educate ourselves about the Indigenous laws of the lands where we live and work. Let's understand how these laws intersect with our professional, personal, and community lives. Let's recognize that in every decision we make, we have an opportunity to honor the Indigenous knowledge that springs from this land.

This is not just about preserving the past; it's about shaping a more inclusive, respectful, and sustainable future. A future that acknowledges all voices, respects all perspectives, and upholds justice for all. This future is not only possible; it's necessary. And it begins with each one of us, right here, recognizing our shared responsibility.

Today, we call you to action. Seek knowledge. Listen to Indigenous voices, let them lead. Learn from Indigenous wisdom. Engage in respectful dialogues. And together, let's breathe new life into the rich tradition of Indigenous law. Because the path towards a more inclusive future is a journey we all must undertake, together.

Happy Indigenous Peoples Day!