

Ye'yumnuts: Experiential and Land- Based Learning

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Starting Point – An Obligation

- **Former Chief Justice Beverley McLachlin** has called for “all members of the judiciary” to have access to education and materials about Indigenous legal traditions. The Chief Justice framed her call as a critical, national “access to justice” measure, which must necessarily mean having concepts of Indigenous justice and the legal processes of achieving justice at the “Canadian justice table” – Keynote Address (delivered at the Canadian Institute for the Administration of Justice 2015 Annual Conference, Aboriginal Peoples and Law: ‘We Are All Here to Stay’, Saskatoon, 16 October 2015) [unpublished].
- **TRC Calls to Action 27, 28 & 42** – “We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.”

Period of Resurgence* & the Questions it Raises

- Engaging with Indigenous Laws as LAWS
- Identifying, articulating and implement Indigenous legal principles
- Questions of jurisdiction, harmonization, conflicts of law, resources, enforcement



* Napoleon and Friedland, *Oxford Handbook of Criminal Law* (2014)

Challenges to Incorporating Indigenous Knowledge and Traditions

- Need to take this reality into account, to “make space” for Indigenous ways of knowing and being, raises big questions for educators, i.e. *How?*

- Challenges*
 - Intelligibility
 - Accessibility
 - Equality
 - Applicability
 - Legitimacy



* Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2012)

Indigenous Legal Education in Law Schools

- Mandatory courses
- "Streams"
- Dual Law Degree (JID/JD)

UVic JID/JD Degree

- Joint degree program in Canadian Common Law (JD) and Indigenous Legal Orders (JID)
- First program of its kind – combines intensive study of Canadian Common Law with intensive engagement with Indigenous laws
- The JD/JID will develop the skills needed to practice within Canadian common law, with Indigenous legal orders, and at the interface between them
- Program Structure
 - First & Second year - Intersocietal lens: comparing common law with one or more Indigenous legal traditions
 - Upper year - Mandatory course in Coast Salish Laws & Languages, legal ethics, and intersocietal study of administrative and business law
 - Field Courses – full term in 3rd and 4th year immersed in community-led field schools

The desire to find and apply [Indigenous] law is there but what is missing is the method.

- Justice Matthew Fletcher (2007: 43)

Coast Salish
Field School:
Ye'yumnuts



Ye'yumnuts:
Cowichan
Field School
as an Example
of Land-Based
Learning

- Learning objectives related to Indigenous legal orders
- Learning objectives related to community-based/engaged work
- Learning objectives related to contemporary practice of Aboriginal law
- Learning objectives related to inter-legality/transsystemic legal issues
- Learning objectives related to skills development

Community- embedded/ Land-based Learning

- Being in place and thinking critically about the relationship between land and law, i.e. sacred law, natural law, positivistic law, customary law
- NOT learning outside
- Creation/Constitutional narratives
- Knowledge holders
- Place names
- Customary practices



Next Steps – Duty to Learn and Duty to Act*

- *“The Court’s judgment in Delgamuukw concluded with the words, ‘Let us face it, we are all here to stay.’ True enough: but if in the face of this reality we are to find space for multiple legal orders to co-exist, and if we are ultimately to achieve an equal reconciliation, we must recognize that to stay must also be to learn”* – **late Chief Justice Finch** (BCCA – former)
- *“The affirmation of the applicability of UNDRIP to British Columbia and Canadian law and the government’s commitment to its implementation requires all elements of the state to engage with and implement its principles. Thus, in a concrete way through this new legislation, a duty to act has been layered on top of our duty to learn.”* – **Chief Justice Bauman** (BCCA)
- *“When I’m sitting here all by myself, I often wonder who is going to carry all this work for us – To make things right. You’ve got a name and you’re the one that’s going to do this kind of work ... Somebody’s got to be there to help her. Help our people with this kind of work because we need it.”* – **Cowichan Elder Angus Smith**

• Lance S.G. Finch, “The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice” (Paper deliver at the Indigenous Legal Orders and the Common Law CLE BC, November 2012), [unpublished].

• Chief Justice Robert Bauman, “A Duty to Act” (Remarks delivered at the 2021 Annual Conference: Indigenous Peoples and the Law, CIAJ, November 2021) [unpublished].

Student Reflections

Rose - Highlight

Thorn - Challenge

Bud - Potential





