

stl'ul nup:

The Significance of Indigenous Laws to Claims Research

National Claims Research Workshop

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Professor Sarah Morales (*Su-taxwiye*)

stl'ul nup: “where we are”



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Place as the Centre of all Relationships



First Ancestor Stories



UNDRIP Art. 34

“Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and ... juridical systems or customs, in accordance with international human rights standards.”

Engaging with Indigenous Laws

1. What is Indigenous Law?
2. What are Sources of Indigenous Law?
3. What are Resources of Engaging with Indigenous Law
4. How do we Apply Indigenous Law to Legal Issues?



Sources of Indigenous Law*

- Sacred
- Natural
- Deliberative
- Positivistic
- Customary



• *John Borrows, *Canada's Indigenous Constitution*

Examples of Resources to Use to Access these Indigenous Laws*

- Elders, families, clans and societies (Borrows)
- Stories, songs practices and customs (Borrows)
- Elders and community knowledge-keepers (Fletcher)
- Narrative, practices, rituals and conventions (Napoleon)
- Dreams, dances, art, land, nature (Justice Within, Indigenous Legal Traditions)
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- Pots, petroglyphs and scrolls in an ancient ceremonial lodge (Borrows)
- Historical descriptive accounts recorded by outsiders (Borrows)
- Witness testimony, trial transcripts (Napoleon)
- Oral histories and collectively owned stories (Napoleon)
- Interviews (Napoleon)
- Published collections of stories (Napoleon)
- Written work by community members, including fiction, stories, poems or legends (Fletcher)

* Hadley Friedland, PowerPoint Presentation: *Reconciliation of Legal Traditions* (Federal Court, Aboriginal Bar Liaison Committee. 2016) at 8.

Questions around Losses?

- How do we determine what is a loss?
 - What is a harm, i.e. a breach of a legal obligation?
 - Who suffers the harm?
 - Who is responsible when a harm occurs?

Questions around Evidence

- Ethnographers and anthropologists? – observed and wrote about the customs, practices and traditions of my Ancestors
- Elders?
- Discernment and Personal reflexivity? – I am a practitioner of Hul'qumi'num law and I add my own voice to this research
- Indigenous legal traditions are living traditions



Remedies and UNDRIP

- UNDRIP Art. 28 sets out the remedies required for the violation of Indigenous peoples' land rights
 - Can include restitution or, when that is not possible, just, fair and equitable compensation for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which has been confiscated, taken, occupied, used or damaged without their free, prior and informed consent
 - Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress

Remedies and Compensation

- Supported by the Inter-American Court of Human Rights (*Yakye Axa* and *Sawhoyamaxa* cases)
 - Court noted that the resolution of such disputes must consider the fact that non-Indigenous interests may often be appropriately addressed through financial compensation
 - Indigenous peoples relationship to land is spiritual and integral to identity and survival and generally irreplaceable

What other forms of Redress may be more Appropriate?

- When title lands “vest” in the title holding nation, what remedies does that make available where title lands continue to be occupied by the Crown and/or third parties?
- Are the only options return of land or compensation?
- Shared jurisdiction
- What is the role of industry revenue sharing?
 - What models are available for this?
- Can equitable principles play a role?
- What forms of redress or remedy does international law contemplate?
- What forms of redress or remedy do Indigenous laws contemplate?