

Engaging Indigenous Legal Knowledge in Canadian Legal Institutions: Four Stories, Four Teachings, Four Tips, and Four Lessons about Indigenous Peoples in the Legal Academy

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ON THE 50TH VOLUME anniversary of this publication, I think about what I wish I knew — what I wish law schools knew — about Indigenous laws and legal traditions. I think about how we think, how we aggregate, disseminate, reconcile, and distinguish things as legal thinkers.

When I got my first solo apartment in my first year of law school, two of my friends from high school carried my grandfather's (*nimosom*, in our language) legal texts to my home. My grandmother's second husband was a Native law-court worker. Afraid and in awe of the books and what they represented, afraid of what law school would be, of failure, of not failing, and of the responsibility that brought hundreds of pounds of books from northern Alberta to the Saskatchewan prairie, I (or someone who loved me) carried those books every time I moved. Only rarely did I even glance at them. Law school means books and reading, of course. But those books represented the idea that anything you needed to know, even if you never needed to know it, was written down some place. As I understood, I had been given those books by the only law professional in my family or community. Embedded in that understanding was The Idea: if I could just read everything, I would understand Canadian law. To be clear: I read everything. I was one of the law students who could not discern important from unimportant, Canadian legal relevance from knowledge or facts

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deemed irrelevant. Collective annotative notes would not work for me. No study group would want me. I read everything assigned in law school, but Canadian law would not stick in my head. It would not reverberate, allow for the collapsing of principles, or the application of rules. Canadian law would not live in me.

In my last year of law school, before moving to the United States to study for a master's degree, I got rid of the law books. Hundreds of Criminal Case Reporters, Western Law Reporter, and Dominion Law Reporters. Forgive me, I do not know remember where they went. They were heavy and burdensome. And they weighed a lot, too.

We teach those cases and those laws like they are everything we need to know. They are not everything we need to know.

On this 50th anniversary, I take the occasion to think about what we need to know. 50 years ago, one of my grandfathers—a residential school survivor—was not able to legally vote in all jurisdictions in Canada (if he chose to; if he recognized Canadian nationhood). Forty years ago, my grandmother cleaned the Friendship Centre. 40 years later, I am a professor at a law school. And I am no expert in Indigenous law. You likely are not either. We need to really think about how to be the best educators, when we know too little about Indigenous laws and legal traditions.

This is not every Indigenous person's story. This is not every Indigenous woman's story. This is not every *Nehiyaw* (Cree) person's story. This is not every Kelly Lake Cree Nation citizen's story. It is one person's perception, acknowledgement, and advice. And, that one person might be completely wrong. Excellence in the realm of Indigenous Knowledge requires that we extend our networks and build our relationships beyond one or two thinkers or people. If you read only one book on law, you would have excellence limited to that book. If you engage the knowledge of one Indigenous person, you have limited your access to Indigenous Knowledge to one source. You must deeply engage with Indigenous Knowledge—with Indigenous laws and legal traditions—in order to have even mere facility with it. Our laws and teachings are strong enough to withstand scrutiny. You need to know how to find them, how to engage with them, and how to meaningfully analyze them.

Story 1

In 2017–18 (I have habituated the education calendar so quickly), I felt disconnected from land, family, and my people. It is not a new feeling. This time, however, it feels longer term and I do not have the community

network in place that is enriched by, and reciprocally enriches in, the flow of responsibilities between myself and community. In my second year of living on Algonquin territory it has felt hard for me to connect with people, land, and ideas formulated in a complex legal understanding and grounded in an Algonquin spiritual and legal tradition. Moving to non-*Nehiyaw* lands of course presents non-*Nehiyaw* language, culture, jurisdictions, governance, and legal traditions.

Halfway through the year I received a coveted invitation to be a Fellow at a Toronto-based university. There, with its constant movement and multiple expressions of Indigenous community, I was better able to understand what obligations we have as Indigenous peoples living on other Indigenous Nations' territories. While I was there, one of the groups I worked with had made a deliberate decision not to follow the institutional practice of reciting the land acknowledgement.

People were left to their own process and choice about acknowledgement. I missed the conversation and negotiation where they arrived at their decision. As, I believe, the only Indigenous person in the collective, it struck me as strange that they would make a decision about not acknowledging Indigenous peoples and our relationship with the land they are on when Indigenous peoples were not in the room. If a land acknowledgement falls in the forest....

People were left to their own devices, with some acknowledging their relationship with lands and others not doing so. It left me to wonder about my own recognition and acknowledgement of Algonquin peoples and their lands, on which I am currently living.

Teaching 1

The land acknowledgement is not principally for you. It is for the land. It is for the people of, and responsible for, the land. If it does its work and you do your work, it is a respectful lawful acknowledgement in the legal terms of the peoples who have the responsibility for the land. You do not have to say something you do not believe. Find out what you do believe by writing your own land acknowledgement. Can you acknowledge that the land belongs to the original inhabitants? Can you acknowledge that you benefit from the land at the expense of the Indigenous peoples who remain dis/re/located so you can live on their territory? Can you acknowledge the rights of four legged, winged, gilled beings to the territory?

The Idea is wrong. You cannot learn this by reading it. You need to do it. You need to live the law.

Tip 1

You may be uncomfortable with a land acknowledgement. Good. You should interrogate it, understand why you say it, and have a critique as to why it is not adequate. If you do not agree with the institutional land acknowledgement before you, build something better. Better will often mean with a greater degree of understanding. A greater degree of understanding will require engaging with a broader base of Indigenous Knowledge. Accessing a broader base of Indigenous Knowledge will require developing relationships with Indigenous peoples, families, communities, and Nations. In its most elemental form, I think the acknowledgement allows us to bridge the space until the original people tell us what their legal standard is. Perhaps it is a passport. Perhaps it is a relationship. For now, until we are able to support the renewal, rebuilding, re-education, and decolonization of Indigenous communities and homelands we are breaching passport and traveling on those Indigenous lands illegally.

Lesson 1: Applying the Knowledge

A land acknowledgement is not enough. As a being on territory who extracts and benefits from it, we cannot attend to vocalizing a relationship with the land and the original peoples that we do not have without acknowledging our commitment to learning, doing, undoing, and being more.

In my thinking, the land acknowledgement is like the permission to enter the territory that Sylvia McAdam (Saysewahum) writes of in her work *Nationhood Interrupted: Revitalizing nêhiyaw Legal Systems*.¹ Within it, McAdam (Saysewahum) writes of the practice of her people (*Nehiyaw*) when they rode or walked onto other people's territory. The people wishing to access the territory would place a symbol of their request for permission to enter the other Nation's land. If the symbol was taken (in this case, sticks), then the non-territorial travelers had permission or passport to enter. If the symbol remained, they were not granted permission and could not enter the territory.

I think of this when I think of Colton Boushie and his friends traveling on their own territory. How interloping and passport become perverted through colonization and how Indigenous peoples continue, time after time, to pay the price when a Canadian does not have passport onto the territory but stakes a claim and enforces Canadian justice. Had we done this when Canadians first trespassed on our land, we would have been hung.

1 (Vancouver: UBC Press, 2015).

Learn the permission or passport legal practice on the territory you are on, and engage with the original peoples who hold the knowledge related to it. How do you address your Indigenous legal requirement in a way that is meaningful to the peoples original to that territory? How do you not replicate the violence done with the violence you do? How do you not only do no violence, but build something responsible, reciprocal, respectful, and rejuvenating to Indigenous nationhood and territoriality knowledge?

It is not just the verbalization of it, it is in the doing and undoing: how does this generation of scholars, thinkers, philosophers, and institutional leaders build relations and re-build relationships with the lands and people who hold those lands? Work toward that. We have a tendency to be immobilized by fear, by inundation of the Indigenous community with requests, by our concern that people will see you do not get it. You do not. Probably. The best thing any of us can do is search for the knowledge.

Story 2

My sister gave her daughter to me. In the way that we do. When she reached one of her first adult milestones, my sister called on me to assume my duties as her other mom. “Talk to your girl, she is driving me crazy!” she wrote to me one day. We knew, in the same way that my aunties took over for my mom, that I was going to take over for my sister. In my auntie work (in our language, we say “little mother,” *keekuhwaysis*) I flew with my niece to set up her home away from her mom and me. Bought her a local phone, a fantastic bed, shoes, and groceries for a spell. I sent bulk condoms to her dorm (presumptive heterosexuality aside, it was a good icebreaker for everyone engaged in or wanting to engage in sexual activity with penises to come to her dorm apartment to get condoms): a “how to survive the first year of college” guide, and a way to let her know that I am her safety net. When she began to hate the second school she was attending (a full ride volleyball scholarship to an American university) my sister was beside herself as she watched her daughter about to give up more than we could hope for. Our nuclear family was split in our childhood, and while we never had quite enough, once divorced, the family was financially poor. Seeing her daughter give up an all-expenses-paid degree, when we paid for our two-year diplomas and four-year degrees, threw my sister off for a while.

The *keekuhwaysis* in me called my niece-daughter. Wrote to her. Got to her personal truth and understanding. Then told my sister: she is coming home. She wants to, she is sound in her logic, and she wants to move back

to Canada. My niece-daughter could not have known then that her mom, my sister, would die before our girl finished her degree. In Canada. In the town they shared. In the house they lived in together. But, she had been called home for a myriad of reasons and I tend to want to believe that she did it so they could know each other as adults.

We sat together day and night as my sister, her mother, lay living. I walked in on her when she was saying goodbye to her mom and she waved me away. She wanted to be alone with her. My eyes fill and spill as I type this because I fear I love them both too much to be of any objective use to them. But, because she gave her to me, I do not want to give my sister's daughter back.

Teaching 2

My sister died less than a month after she was diagnosed. She never left the hospital. I went home for a week, not knowing what she knew: that her days and nights with us were finite. My spirituality and her belief in goodness brought a spirit keeper, knowledge holder, into the room. He gently told my sister to ask for what she wanted. She replied that she had everything. She passed a week later.

We did not have a funeral. A gathering. A ceremony.

We did not observe what colours we could hang up, no one cut their hair, we had no four days and nights to wail, we had no hole in the ground to pretend around. We grew up away from our mother. Who grew up away from her family. And we did not know how to mourn. We knew how to hurt and even unhurt (in what are likely only unhealthy ways). We were childlike in our knowledge and uninformed. Colonization had taken even our capacity to mourn our loss. We were too sad to do anything but feel.

Tip 2:

You are going to have to be a fool for love. You are going to have to ask stupid and hard questions, you are going to have to figure out how to find out what you need to know, without being “extractivist” or opportunist. You may need to do this, and learn to do this meaningfully, because we may be too sad to do anything but feel. You do not get to lead or trample. Just gather the materials for the build so we can do it when well. You need to love Indigenous peoples so much—want your kids to love Indigenous peoples so much—that you commit to finding out what Indigenous laws, traditions, processes, protocols, truths, philosophies, and yes, ways to mourn, are. You need to love law so much that you suspend your disbelief,

decolonize your education, and open your mind to the possibility that colonization is a thing that happened and that you are going to learn it, deconstruct it, replace it, and support the work of Indigenous peoples in our re-build. You are going to need to be a traitor, because allyship is not enough.²

Lesson 2: Applying the Knowledge

There is no shame in asking for what you do not know. Sometimes asking is the only thing *to* do and we have to be able to negotiate the spaces where we can find kindness. Respite. Healing. Often, we try not to “overburden” the knowledge keepers, old ones, Elders, spirits, ceremonialists, tradition holders, philosophers, and support providers. In grief, we were unable to enunciate what we needed. We did not know what we do or how we do it. We are generations now from our understanding and knowledge of how to mourn our people as our people do. We deserve that. We deserve to know this.

In the realm of Indigenous laws and legal orders, I think of it this way: if we do not know the Cree way to mourn, then we probably do not fully know the Cree way to live. And I am going to give up the shame associated with this. This is just how our colonial story turned out. We love our family. We blew up. We moved all over. We stayed connected to varying degrees. And, we do not know how to mourn.

In a world where urgency of care takes front of the line, it reminds me that our line up in law is often about survival. Murder. Kidnapping and scooping. Medical assault and forced sterilization. Land invasion and enforced claim process. Learning about Indigenous law matters. It is not overstating it to say it is a matter of life and death. Indigenous peoples must matter enough to law practitioners, learners, teachers, and administrators such that our laws, legal orders, and traditions also matter.

Story 3

In 40 degrees Celsius heat of the Saskatchewan summer of 2018, I fasted for a number of days and nights. What happened to me was and is sacred.

2 Sidrah Claus (@SidrahMay) wrote on Twitter: “I don’t want men to be allies. I want you to be traitors. I want you to be traitors to the system that violently holds you up at the expense of women. I want you to betray the silent pact that patriarchy makes with you to have your back so long as you don’t make waves. Revolt.” (27 September 2018 at 10:12), online, *Twitter* <twitter.com/SidrahMay/status/1045345429125304320>. I do not want law educators, administrators, and learners to be allies. I want them to be traitors to the system that violently holds them up at the expense of Indigenous peoples.

There is a part of me that never wants to talk about this. One of my mantras is “Put precious things in safe places.” This is precious and I do not know where it goes once written. Published. E-published.

Fasting is the hardest thing I have ever done. My closest friends heard about the struggle. One thing I keep visiting: I told my family it was inhuman. There is no part of me which dramatizes the experience. And, I chose this. I did not feel sorry for myself. The people who took care of me did so with such love and generosity. There is nothing but positivity to discuss them and their work. And, the ceremony made me inhuman. But, my understanding was that we were to become as close as we could to the spirit world without passing into it. It was, at times, inhuman. I struggled. Not to be human. Not to pass over. Not to let go.

My body failed. Early. My fear and shame reverberated in the lodge I made. There were moments when I cried from the pain and exhaustion. My Canadian and American legal-educated mind wanted to organize my thoughts and prayers. My *Nehiyaw* spirit craved drum, prayers, and kin. Soon into the process, I lost control of my body. Later, I lost control of my mind.

Day three I lay on the ground, watching ants. They were the only thing I could focus on, and between my quiet and my upset, they were bountiful and beautiful. Watching at least four kinds of ants, crossing paths, taking home food to their matriarch. They only touched between species if one was dead. They were related, but had no responsibility for other species unless they were dead. Certainly there would be an interdependence that I could not see or understand. But they literally crossed paths and each other's bodies with nominal recognition.

Teaching 3:

I would like to detail a teaching from the ants about colonization and capture. But, I am not wise enough. What I thought about then was two-fold:

- Useful and meaningful work can be undertaken without a physical, emotional, cultural, or legal toll on any other group. Interdependence does not necessitate violence.
- We have to learn lessons from the dead. But our survival is going to come from the living. I think that some laws are alive. We cannot carry the others around waiting for them to revive. Laws serve a purpose. When the purpose is dead, the law is too.

Tip 3:

You will never love water as much as when you cannot have it.³

Decolonization sometimes requires we remove ourselves from the colony. In fact, when we move from the colony, we are able to see with clarity the role that colonization has in violence. It also allows us to situate and understand our relationships to Indigenous peoples and lands with so much lucidity.

Lesson 3: Applying the Knowledge

I wish law schools knew that “land-based learning” is often best taught on the land the law school is on, on the territory of the people whose land was taken for the law school, and is usefully and meaningfully taught by the people from whom the land was taken. We need to address, unpack, and eradicate the elitism engaged when we bring in “experts” from territories, traditions, and teachings unrelated to the land we are on as learners, teachers, and law schools. That is not to say that we cannot learn from Indigenous peoples in Nations, communities, and territories beyond what we know as borders. It does mean we have to begin to look at the urban landscape upon which law schools sit as Indigenous lands. We cannot continue to ascribe mystical, mythical status to untouched forests and pristine waters away from the urban landscape. Urban lands are treaty lands, too. Cityscapes are Indigenous territories, too. If we continue to construct Indigenous lands and legal orders as “pristine” and “away” we distance ourselves from the reality of Indigenous lives lived in front of us, and laws practised beside us.

Story 4

Almost half my life ago I adopted a sister. In our way,⁴ I gave her an offering and took responsibility for her. In the place where I worked, she drove me to the interview, I brought her to gatherings, introduced her

3 This is true, but it is not my tip for you.

4 In my legal practice, I have stopped having casual conversations about “the way we do things.” It is not for fear of absconding or appropriating. It is because part of doing things in our way is learning the practice or the legal process. The legal process engages the legal practice or protocol, the engagement with means of knowledge exchange (differing from acquisition) and the legal mechanisms and legal performance. It is the latter which concerns me in its duplication or lack of earnest engagement with Indigenous Knowledge. Performance without practice, protocol, process—provides an impression of Indigenous law. It is like a photograph without knowledge of the moment, subject or subjectivities.

to colleagues, and tried to share the experience of my first tenured position with her. At a Christmas party there, a university administrator approached us and said “Oh, is this your ‘sister?’” and laughed unkindly. My sister had taken a position at the university working for me and we had to write an email (at a senior academic’s advice) that we were not genetically related. It was all Canadian institutional academia pro forma as far as we were concerned. We worked hard, and disagreed, but worked well together and built beautiful within the institution. “Sisterhood” in our framing was outside of the institutional understanding. It did make it difficult to review each other’s performance at times (and we moved back and forth as each other’s bosses, colleagues, and employees) but we did so as sisters who worked together respectfully.

Our obligation, as we understood it, was to Indigenous peoples, to our Indigenous colleagues as relatives and friends, and to each other as sisters.

To contextualize this further, as *Nehiyaw* and Michif peoples, we understood our commitment to be the emancipation, advancement, and development of *Nehiyaw* education, languages, and peoples as required by *Nehiyaw* and Michif laws. As rooted in *Nehiyaw* territoriality. As bound to Michif legal standards. We also found that there could be some notion of pan-Indigeneity engaged in on the territory in order to ground, develop or round out the original peoples’ teachings

Two years ago I moved to Algonquin territory. My heart remains firmly in *Nehiyaw* and Metis lands, and my struggle is to consistently and constantly find ways to be engaged with and fully supportive of (elevating and getting out of the way of) Algonquin and Anishinaabe peoples while living and travelling principally and primarily on their territories. This is not talk. My reciprocal role has me committed to participation in organizations which support women and children, developing fundraising for the development of an urban lodge, and placing offerings in and on the water and lands Algonquin peoples are entrusted with as relatives.

Last night, I took my sister to the airport. We reminded each other we are sisters. Kin. Responsible. Besties. And, I cried because she took our shared, the familiar, understanding of our law and lawful obligations to our territories. Because she gets to have the confidence of knowing the right thing to do or how to find the right thing to do. And I do not. In this land. Not mine. Not my people. Still obliging and related through affinity and affection, requiring me to learn the Algonquin and Anishinaabe lawful standards and regulations, process and substantive law in order to be law abiding.

Teaching 4

This year, I have watched as several non-Indigenous allies listed their specialization as “Aboriginal” or “Indigenous” law experts, have seen a few non-Indigenous allies slip in a detail or two of expanded Indigenous familial ties and applied for or received Indigenous expert positions, and I have seen entire Nations reconstructed and developed in places where ancestry has been determined for lifetimes. Indigeneity, somehow perceived as relevant, career-building, and monetizing, is being invented and reinvented.

It fills me with anger. It is okay—I do not apologize for the anger—it gets things done. So much of what we let slip under the intellectual property rug is either self-serving, or good intent applied badly, that it makes me uncomfortable to talk about it. But we need to have a frank and open conversation in law schools about intellectual occupation and law school complicity in territorial invasion.

It is more than this, though. The responsibility of the law school, of Canadian law, of Canadians as *relatives*, needs to be researched, studied, and understood. It needs to be done for several reasons. We need to have thoughtful conversations about relatives, the obligations and responsibilities of kin, and the laws of Indigenous kinship. Our learners are going to need to know not just Canadian and international human rights and employment law, but Indigenous laws of kinship as they relate to family, extended family, land and strangers, our more-than-human relatives. With our learners, we are going to need to know Indigenous law not as a study in conflicts of law (although, that will be part of our teachings), we need to know it as comparative law, jurisdiction sharing law, and binding law.

This is the Indigenous legal normative. We do ourselves, our institutions, and our learners a disservice when we do not research, learn, teach, disseminate, and interrogate all the legal orders operating in the territories we live on and from which we receive benefit.⁵

5 Like Canadian legal scholars must be educated in complex legal knowledge and also be recognized by known scholars and institutions, Indigenous legal scholars need to study Indigenous laws with and be recognized by Elders, knowledge keepers, the leading thinkers, knowledge holders, our communities, and the Indigenous legal community in order to exist as teachers. Expertise is seldom rightfully claimed but collectively known. Teaching Indigenous laws and legal orders is not tweaking your syllabus or including select cases. It is a lived endeavour undertaken with intellectual rigour and commitment.

Tip 4:

Decolonization can be learned. Indigenous laws can be learned. These are intellectually challenging and are also cultural shifts. They require commitment, dedication, Indigenous partnering, and Indigenous teaching. They also require a budgetary, institutional, and organizational commitment. You can unlearn without money. You can learn without money. You can achieve excellence without money. To administer, regularize, and engage the Indigenous legal normative, investment (cultural, personal, and fiscal) is required.

Lesson 4

When we moved onto Algonquin lands, I knew I had some lawful compatibility and linguistic comparative grounding that could serve as a spring board. What I did not know: that if I am not accurately and respectfully facilitating Algonquin and Anishinaabe legal orders, processes, and protocols in my work space, I too am colonizing and doing violence. Part of me theoretically understood this. Part of me did not understand the practical implications. It is my job on this territory to get out of the way. The rightful Indigenous legal knowledge holders are here and my western credentials make me the more easily supportable hire. But, I know less than they do about their land and territory. I know little about the laws engaged and being followed on their land. It is not that I can only teach on my own territory, or in *Nehiyawak* territory, or in Algonquin language speaking territory. It is that it is my duty to acknowledge, facilitate, and support the resurgence of Algonquin laws in Algonquin spaces.

It is not my job to learn their law, language, land, and territory in order to replace them. It is my job to fight for their rightful space, terrain, intellectual traditions, and renewal. In many cases, I have privilege that allows me to get into spaces, conversations, funding agreements, positions, and jobs which can directly benefit their citizens. If I enter into these on their territory, my job is not to be representative, but to get them in the room. Make sure the room is theirs. Make sure I understand and am working toward their goals as the original peoples. Work at ensuring they are provided for, funded, and getting the jobs. Getting scholarships. My job is not to guide this or take up the space. My exchange is not to benefit my career from doing the work that is necessitated in de-colonial non-violent resurgence. My commitment has to be directed by the people who have lived here since time began and my benefit cannot be greater than my

dedicated energy, time, and resources. You cannot be representative. You can be responsible.

If only by marriage, by sisterhood, by auntyhood, by extended kinship, I am legally obliged to find and follow their laws. These findings cannot enrich me monetarily; they may sometimes serve to oblige me in a familial way. My goal is to put more in than I take out as I learn these laws. My goal is to not take anything else from the people whose land I am on. My goal is to develop kind reciprocal relations with the community that allows us on their land, in order to reconcile my existence on their territory with their allowable visitors. Learning how to exist as a relative who does no harm and builds beautiful on the original peoples' instruction and who does not take their space are, I think, my legal obligations.

Conclusion

On the 50th volume anniversary of this publication, I think about what I wish I knew—what I wish law schools knew—about Indigenous laws and legal traditions. My hope is that we stop thinking of Indigenous laws and legal traditions as things to be studied, learned, and extracted. My hope is that Western institutions think about what their obligation is to the peoples and beings on whose land they are located. We must be at the point where we enact and meet reciprocal obligations because we are relatives (cousins, cousins by marriage, partners by choice, relations through Treaty ceremony). If we are to live well as relations, we will have to know each other's laws, language, and legal language. Instead of updates on Canadian Aboriginal Law, we will see updates on Indigenous Legal Knowledge exchanges, discussions of First Peoples lawful authorities, jurisdictions, and autonomy.

BONUS TIP: Stop talking about Indigenous peoples and lands. Come and talk to, spend time with Indigenous peoples and lands. Urban or rural. Knowledge keepers.

