

Gender Inside Indigenous Law Toolkit



Indigenous Law Research Unit, Faculty of Law, University of Victoria



INDIGENOUS LAW
RESEARCH UNIT
AT THE
UNIVERSITY OF VICTORIA

Acknowledgements

The *Gender Inside Indigenous Law Toolkit* and its corresponding *Inside Indigenous Law Toolkit* are part of the Indigenous Law Research Unit's Gender Project, which was funded by the Law Foundation of British Columbia and received additional support from the Swift Foundation.

The *Gender Inside Indigenous Law Toolkit* was created by Darcy Lindberg and Jessica Asch, and edited by Darcy Lindberg, Jessica Asch, and Yvette Sellars for the Indigenous Law Research Unit (ILRU). The authors adapted or adopted work from other ILRU projects created or written by Val Napoleon, Hadley Friedland, Emily Snyder, Kris Statnyk, Lindsay Borrows, and Natalia Sudeyko. The authors thank them for their work.

The authors thank Val Napoleon and Rebecca Johnson for their insight, direction and support through this project. They also acknowledge the seminal work of Val Napoleon, John Borrows, Hadley Friedland and Emily Snyder. The work of this project is possible because of their vision and years of scholarship in the field of Indigenous law and Indigenous legal theory. Finally, they thank Yvette Sellars for her helpful suggestions and thoughtful editing and formatting, Jeff Nicholls for video filming and editing support, Val Napoleon for the use of her Kokum Raven Series images, and Ian Crawford for the use of his photographs, which he took at different ILRU workshops and learning circles.



Kokum Raven Series: Artist Statement

Indigenous law is in the world and there are many ways to learn about it, teach it, and to represent it. The way I have chosen here is with the raven – a trickster for some Indigenous peoples. She can teach us by being a trouble maker and by upsetting the log jams of unquestioned assumptions. She can also teach us with love, patience, and a wicked sense of humor. She can create spaces for conversations and questions – that is her job as a trickster and a feminist so that nothing is taken for granted and all interpretations are laid bare.

~ Val Napoleon

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Introduction and Background



The Indigenous Law Research Unit

The Indigenous Law Research Unit (ILRU) is a dedicated research unit at the University of Victoria's Faculty of Law committed to the recovery and renaissance of Indigenous laws. We partner with and support work by Indigenous peoples and communities to ascertain and articulate their own legal principles and processes, in order to effectively respond to today's complex challenges. We also provide education, training, and ongoing guidance to communities and professionals engaging with Indigenous laws, and develop world-class theoretical and substantive Indigenous legal educational materials and academic resources.

Through our work, we bring together Indigenous law practitioners and diverse thinkers to share challenges and solutions, identify critical issues and advance best practices in accessing, understanding, and applying Indigenous laws today. The ILRU team develops and

employs innovative methods for engaging with the full scope of Indigenous laws, including:

- Social (human to human, gender and equality, human rights, fairness, violence and vulnerability, and harms and injuries),
- Economic (Indigenous law and economies),
- Environmental (land, water, non-human life forms), and
- Political (governance, citizenship, inter-community and inter-societal relations, institutional forms, legitimacy and accountability).

The existence and ongoing meaningful presence of living Indigenous legal traditions in many Indigenous people's lives and communities is a fundamental premise [underlying ILRU's work]. Still, it would be misleading to suggest that all Indigenous laws are completely intact, employed formally or even in conscious or explicit use. We are not suggesting that here. Rather, when we talk about Indigenous legal traditions at this point in history we are necessarily talking about an undertaking that requires not just articulation and recognition, but also mindful, intentional acts of recovery and revitalization.

– Friedland and Napoleon, "Gathering the Threads."ⁱ

We believe Indigenous laws need to be taken seriously as laws and Indigenous legal research must be conducted with

the highest standards of rigor and transparency. We want to recover Indigenous laws' capacity to be publically applied, critically evaluated, openly debated, and adapted or changed as needed.



Our goal is to create sites of respectful dialogue and collaboration to reinvigorate communities of Indigenous legal practice locally and globally. Our vision is for Indigenous laws to be living and in use on the ground, and to be researched, taught and theorized about just as other great legal traditions of the world are. Revitalizing Indigenous laws, legal institutions, and their legal processes is essential to re-building healthy Indigenous citizenries in self-governing, lawful communities. Creating more respectful and symmetrical relationships across legal traditions is a necessary part of building and maintaining robust reconciliation within and between peoples, now and for future generations.

Gender Project Background

Through the ILRU's on-the-ground engagement with Indigenous communities and Indigenous law, it has become evident that there is need for tools that can help people in communities practically navigate local questions of gender and sexuality. Through our work, we have heard serious concerns about articulating, head on, relations of power, gender stereotyping and essentialization, constraining gender roles, fairness, and equality, as well as overt oppressions experienced in the form of sexualized and intimate partner violence.

The *Gender Inside Indigenous Law Toolkit* and its accompanying *Gender Inside Indigenous Law Toolkit* were with these critical issues in mind. The overarching goals of the toolkit and casebook are to promote access to justice surrounding gender issues and identify and address legal needs around these concerns within Indigenous law in Indigenous communities. The objectives of the text and the lessons that follow are to support and strengthen healthy communities, create productive legal processes for inclusive discussions and debate, and help create spaces for voices that are often silenced in communities.

There is an exciting resurgence of Indigenous law in communities, and there is no turning back from the force of this direction. However, for Indigenous women and girls, there are complex issues that are hard to talk about given

the dynamics within certain communities. This toolkit is about exploring ways to engage in these discussions in proactive and positive ways.

About the Gender Inside Indigenous Law Toolkit

This toolkit is designed to provide facilitators in post-secondary, youth and community teaching positions with some basic background, lessons and activities to generate helpful and challenging discussion on the topic of Indigenous law, and critical issues around gender.

We have designed this toolkit as modules that can build on one another or be used as stand-alone topics with lessons and activities. The thread through all of the units is the use of story as a vehicle for engaging with Indigenous law and critical issues relating to gender in Indigenous law. Unit One is an Introduction to Indigenous law and looking at stories as sources of law. Unit Two introduces participants to using the case brief method as a tool to engage with Indigenous laws in stories. This is a method employed by the Indigenous Law Research Unit for its community-based research projects. Unit Three focuses on

the topic of Indigenous laws and gender, and introduces another method that people can use to draw out some of critical questions relating to gender within stories that may not be explicitly stated. Units Four and Five look at specific issues: Unit Four engages with gender dynamics, power, and authority and Unit Five looks at violence, oppression and the law. Finally, Unit Six focuses on transforming systems of oppression.



Starting Assumptions

Prepared by Darcy Lindberg

When we look up to the sky on a clear night for constellations, I sometimes think, ‘what if all the stars mattered?’ When we think of the laws we commonly see being used in Canada, we have been taught to search for legal meaning based on the Canadian law, yet in the background lies seemingly infinite stories, characters and teachings outlined by Indigenous peoples in their legal traditions. Indigenous people have relied upon their specific legal orders to maintain good relations with each other, to settle disputes, to set out obligations with each other, and to interact with other nations around them.

Many mainstream educational materials suggest the stereotype of Indigenous peoples as lawless prior to European contact. This false idea still goes unquestioned, or worse, is implicitly taught to students today. We have all developed certain assumptions and associations with the concept of law that can make it hard to understand that law existed in Indigenous societies prior to European contact and the arrival of European style police force, legislature and judicial system. Historically, these stereotypes and assumptions played out tragically in real life.ⁱⁱ

These assumptions have influenced the perpetuation of violence against Indigenous women and girls and their everyday experiences of gendered oppression. Negative assumptions on the lawlessness of Indigenous communities has allowed for Indigenous women and girls to be perceived as particularly vulnerable and easy targets for oppressive practices or outright violence. Further, these assumptions have obscured the mechanisms within communities to resolve disputes and to protect community members from violence.

***Assumptions** are the notions or thoughts we have about the world that we take for granted and do not usually talk about. Sometimes we have to look underneath and behind our assumptions to figure out why we think and do certain things. Only by unpacking assumptions do they become transparent and they have to be visible in order to challenge and change them. They are only powerful if they are secret and kept invisible.*

What if all the stars mattered? Not only does this toolkit draw Indigenous laws to the foreground, but also brings our attention to the role of women and girls within these laws. Whether caused by the colonization of Indigenous people, or continue to be present in the legal practices of Indigenous communities, patriarchal and oppressive practices are examined by these tools. Re-constellating Indigenous legal practices includes a thorough critical view of the gender dynamics of these practices, and in this sense, we are trying to make all of the stars matter.

Unit One: What is Indigenous Law?

Indigenous Law – What are We Talking About?ⁱⁱⁱ

What is law? In its simplest understanding, law is found in the ways we solve problems, make decisions, create safety, and maintain or repair relationships. When discussing what law is, we often recognize it in our daily lives as something that is written in acts, codes, or regulations and enforced by judges and police. While this understanding of law is correct, we believe that it is only one form that law can take. Different approaches to solving problems, making decisions, creating safety, and maintaining or repairing relationships also exist.



We start with the belief that forms of law also existed, and continue to exist, in Indigenous communities. However, with the absence of courts and written texts, the expression of Indigenous law is not the same as Canadian law. Instead, Indigenous law can be found in stories and in interactions among people and

their environment as they responded to harms, injuries, and disputes. For example, within these responses, Indigenous law is expressed in principles, procedures, obligations and rights that communities have used, upheld and passed on for thousands of years. This was not just about obeying certain individuals or following certain rules. It was about people thinking through principles and acting on their obligations to one another. This still goes on today in different ways.

Law is something that people do – and it has to be practical and useful to life – otherwise, why bother?
– Val Napoleon^{iv}

We believe that Indigenous laws and their approaches to problem solving, making decisions, creating safety, and maintaining or repairing relationships are still capable of thriving and serving the needs of communities. Indigenous laws are enduring and resilient, despite the colonial and historical efforts to minimize the role of Indigenous laws in communities and its treatment as something other than law. An important question is how these laws can best thrive and serve the needs of Indigenous communities today.

What Is Indigenous Law? A Small Discussion

Val Napoleon (ILRU Director and Academic Lead)

Law is not tidy. It is not contained by the boundaries of modern states nor generated solely by the work of public officials Nor is law lonely. It is frequently found overlapping or interacting with other instances of law. Yet somehow, despite this messiness and multiplicity, law still can, or at least claims to be able to, create obligations Despite its plurality, law still has or at least claims some kind of authority.¹

The only alternative to lawful societies is unlawful societies. Indigenous societies were lawful. It is time for the conversations to move from the why of Indigenous law (whether Indigenous societies had law and why it matters) to the how of Indigenous law so that the work of law may be done by and within Indigenous communities, between Indigenous communities, and between Indigenous societies and the state (and settler society).

Through the ages, the question of ‘what is law?’ has preoccupied people from all walks of life – legal scholars, activists, legal practitioners, community members, students, politicians, and government officials. Law libraries are full of law texts of every description and the judiciary generates seemingly endless volumes of legal decisions touching every facet of life and death. We all hold expectations for what law is and what it should do in our world and beyond. These ideas about law can be positive or negative, prescriptive or normative, and they reflect a range of political perspectives. For example, one school of thought, that of law and economics, takes the position that the role of law and its institutions should be minimized to allow the economic market to make the necessary determinations about social ordering. In contrast, some newer scholarship seeks to decentre the market as sole determinant and factor in unaccounted environmental costs and collateral ecological damage. In the end though, law is a human endeavor. It is an active collaborative and public process, and is never insulated from the larger social and political forces around it. Rather, law can be understood as being formed by and forming those constant social, economic, and political dynamics. And, since law is fundamentally collaborative, it operates through public legal institutions which for Canada emanates from a state centre (vertical and from the top down) operating through the judiciary, law enforcement, and government. These are some of the conditions that make Canadian law and its legalities² possible.

All of these law debates are live in the broader society and all of these complexities apply equally within Indigenous societies and their corresponding legal traditions.³ For the most

¹ Nicole N. Roughan, *Authorities: Conflicts, Cooperation, and Transnational Legal Theory* (New York: Oxford University Press, 2013) at 1.

² See generally, Kirsten Rundle, *Forms Liberate: Reclaiming the Jurisprudence of Lon L Fuller* (Oxford, UK: Hart Publishing, 2012).

³ Legal traditions are deeply rooted and comprise “historically conditioned attitudes about the nature of law, role of law in the society and the polity, about the proper organization and operation of the legal system, and about the ways law is or should be made, applied, studied, perfected, and taught”. J.H. Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford: Stanford University Press, 1985) at 1.

part, Indigenous societies⁴ were non-state without formal centralized authorities or a separate delegated class of legal professionals. Instead, law and legal authorities are decentralized, operating through horizontal (from the bottom-up) public legal institutions. In each Indigenous society, citizens organized in various ways were, and are, responsible for the maintenance of their legal order. For example, in Cree society, there are four decision-making groups, and their role and authority depends on the type of legal decision required: the family, medicine people, elders, and the whole community.⁵ Another example is Gitksan society where law operates through the matrilineal kinship units of extended families and overarching clans.

Indigenous peoples were and are reasonable and reasoning peoples, and law is one of the ways we govern ourselves. It is law that enables large groups of people to collectively manage themselves “against a backdrop of deep-seated normative disagreement” and to fashion “collective positions out of the welter of disagreement”.⁶ Law is an intellectual process, not a thing, and it is something that people actually do. Indigenous peoples apply law to manage all aspects of political, economic, and social life including harvesting fish and game, accessing and distributing resources, managing lands and waters. Indigenous law is not perfect nor does it have to be, but it works well enough and has endured through time. No system of law ever lives up to all of its aspirations, but a people’s collective aspirations provide direction, order, standards and ethics, and the power of hope. As with all law, Indigenous law contains thinking processes and intellectual resources, and it changes to live in each generation.

While law is societally determined and therefore unique, the problems law must deal with are universal. Every society deals with human violence and vulnerabilities, and with all the mundane and general messiness of collective life. At its most basic level, law is collaborative problem-solving and decision-making through public institutions with legal processes of reason and deliberation. Indigenous laws and legal orders are comprehensive in scope and depth, and require legitimacy and coherence just as Canadian law does. The

⁴ Indigenous societies share a history, land base, language, social and political orders, and law (see RCAP 1996 generally). Historically, each Indigenous society’s territory was the area they could defend both physically and legally according to their Indigenous legal orders. Colonial reserve boundaries created by the *Indian Act*, which divided and grouped Indigenous peoples into bands, and cut across the Indigenous legal orders. This division of Indigenous peoples and lands has undermined the efficacy of the larger legal orders and the application of Indigenous laws. For example, Tsimshian society is divided into seven bands with a number of small reserves. Many Tsimshian people live off reserve. The Tsimshian legal order operates along kinship lines across the territory. In Tsimshian society, the legal obligations for dealing with a Tsimshian person’s injuries are with his or her father’s extended family or House. Members of the father’s House can live anywhere, on or off reserve. If only the band membership is considered in the case of an injury to a Tsimshian band member, then all the other Tsimshian people, either living on other reserves or off reserve, that have obligations in the kinship system are excluded from fulfilling their responsibilities. The Tsimshian legal order extends throughout Tsimshian territory and cannot work if its orientation is only at the band level.

⁵ Hadley Friedland, *Cree Legal Traditions Report* (2014) Accessing Justice and Reconciliation Project, <http://indigenousbar.ca/indigenoulaw/>.

⁶ Jeremy Webber, “Naturalism and Agency in the Living Law” in Marc Hertogh, ed., *Living Law: Reconsidering Eugen Ehrlich*, Oñati International Series in Law and Society (Portland, OR: Hart, 2009) 201 at 202. Webber defines a normative order as “a natural dimension of any human interaction, generated through the day-to-day business of human life, perhaps even definitional of the existence of society” (at 201).

legitimacy and efficacy of any stable legal system requires the collective capacity to decide the substance of law as well as its: (1) ascertainment (agreement of what law is); (2) change (how law is changed and why), and (3) application of law (when law is broken and appropriate legal response).⁷ And to draw on the words of Indigenous tribal judge, Matthew Fletcher, Indigenous law must be accessed, understood and applied.

Law exists in memory, organized as public legal precedent (e.g., oral histories, stories, etc.), so that it can be applied in the everyday thereby creating new precedents for future legal problem solving. There are a number of sources of Indigenous law. For example, John Borrows argues that Indigenous societies have at least five sources of law: sacred, deliberative, custom, positive, and natural.⁸ Another source of law is human interaction and general patterns of how we treat one another over time.⁹ Borrows cautions against treating these sources as separate or artificially watertight because, in actuality, “Indigenous legal traditions usually involve the interaction of two or more . . . sources”.¹⁰ Lawful practice requires interpretive choices about precedent on a pragmatic case-by-case basis, drawing from legal memory and precedent. It is through this sustained engagement with law that people create the necessary intellectual space to critically examine norms, power, and assumptions – a healthy exercise of agency and citizenship so integral to healthy societies.

So what are the conditions that will make Indigenous law and its legalities possible and coherent today? What will enable Indigenous peoples to restore Indigenous lawfulness? Given Canadian colonial history,

[T]he ground of Indigenous law is uneven—Indigenous law exists, it has not gone anywhere—and we saw this, but there are also serious gaps where some Indigenous law have been undermined, distorted, or lost. Given this, simply arguing for the recognition of Indigenous law is inadequate because we cannot just assume that there are complete and intact legal orders that can spring to life through recognition. This means that engagement with Indigenous law must move to thoughtful rebuilding, and this generates two questions: (1) What are the terms for this thoughtful rebuilding process with communities? and (2) What are the intellectual processes in each Indigenous society that historically enabled people to deal with and account for change?¹¹

Indigenous law is concerned with the same human concerns as Canadian law including community safety, fairness, and accountability. These were common themes shared across multiple Indigenous legal orders as evidenced in the research completed by the Indigenous

⁷ H.L.A. Hart, *Concept of Law* 2nd ed. (New York: Oxford University Press, 1994).

⁸ John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 23.

⁹ Val Napoleon, “Thinking About Indigenous Legal Orders” (revised) in Colleen Shepard & Kirsten Anker, eds., *Dialogues on Human Rights and Legal Pluralism*, 2012 Springer Press’ Seriesm, *Ius Gentium: Comparative Perspectives on Law and Justice*.

¹⁰ *Ibid.* at 55.

¹¹ Hadley Friedland and Val Napoleon, “Gathering the Threads: Indigenous Legal Methodology” (2015) 1:1 *Lakehead Law Journal* 16.

Law Research Unit (ILRU) directed by Val Napoleon.¹² The ILRU employs Hadley Friedland's Indigenous legal methodologies¹³ for the substantive articulation and restatement of Indigenous law: (1) developing community-specific research questions; (2) analyzing oral history/story/case; (3) creating a synthesized body of law around the research topic; and (4) applying and critical evaluating the implementation results.¹⁴ The research question determines what is learned from the analysis and how the law and legal processes are set out. Key within this methodology are the dual requirements for transparency of reasoning and interpretive processes, and the consistent citing of sources be they interviews, discussion groups, or oral and written stories. Everyone has to be able to go to the same sources to determine their own interpretations in order to foster respectful debate and inclusive engagement. These methodologies result in a synthesized law report that sets out the: (1) legal processes of determining the appropriate authoritative decision-makers and how to respond to the legal problem; (2) appropriate legal responses or resolution; (3) legal obligations; (4) substantive and procedural rights; and (5) legal principles. This articulation and restatement of Indigenous law facilitates an internal view of Indigenous law that enables its argumentation and practice in the real world. An Indigenous law resurgence will make a symmetrical relationship possible with Canadian law – leaving behind the colonial asymmetry which denied and disregarded Indigenous legal traditions.

Law is a distinct form of governance and is essential to social order in all societies.¹⁵ In its best form, the enterprise of law centres on human beings as interpretive agents who are capable of purposive action, and who are deserving of dignity. According to Kirsten Rundle, the legal processes themselves are constituted and enlivened by the ways in which agents participate within them; basically, human agency is essential to law's efficacy and legitimacy.¹⁶ For Indigenous law, we must integrate individual human agency with relational, collective agency operating through contemporary public forms and legal institutions that are informed by historic institutions and law.



¹² *Ibid.*

¹³ In 2015, Hadley Friedland developed a second Indigenous legal methodology for ILRU lands and resources research.

¹⁴ Friedland and Napoleon, *Gathering the Threads*. Also see Val Napoleon and Hadley Friedland, *Roots to Renaissance*, "From Roots to Renaissance", in Markus Dubber, ed., *Oxford Handbook of Criminal Law* (Oxford: Oxford University Press, 2015).

¹⁵ Rundle, *supra* note 2 at 99.

¹⁶ Friedland and Napoleon, *supra* note 11.

Reframing Questions About Indigenous Laws^v

The legacy of undermining Indigenous legal orders in Canada has impacted not just the way we think about Indigenous laws, but also how we imagine putting them into practice. Hadley Friedland explains that we may have to shift our thinking and perspectives so we can do the necessary intellectual work with Indigenous legal traditions. This will help us move from a philosophical view of Indigenous law to a practical one:^{vi}

The first shift in thinking is in our assumptions. This helps us move past stereotypes and other harmful thinking that has undermined Indigenous law and Indigenous people and communities:

1. **Reasoning and Reasonable:** Start with the premise that Indigenous peoples were and are reasoning people with reasonable social and legal orders.

2. **Present Tense:** Use present tense to talk about and consider Indigenous law. This helps us ensure we do not think about Indigenous peoples as part of history or relegate Indigenous peoples to the past.

3. **Particular:** Think about Indigenous laws as holding particular responses to universal human issues. For example, countries all around the world have different laws about how people from outside their borders can visit or live in their countries (these are called

immigration laws in many legal traditions). All nations face this same issue (people want to visit or move to their countries), but they do not have the same immigration laws to address that issue. Some have restrictive laws that do not allow many visitors or new immigrants. Some have laws that allow immigrants from some countries and not others. Some may have laws that allow only people with certain skills.

The second important shift is a shift in questions. This is critical to move from questions that generalize Indigenous laws to questions that draw out specific principles or processes within them. Moving away from generalizations allows the law to be more accessible, understandable and, ultimately, usable.

The key shifts in questions include:

FROM:	TO:
<i>What is aboriginal justice?</i>	<i>What are the legal concepts and categories within this legal tradition?</i>
<i>What are cultural values?</i>	<i>What are the legal principles?</i>
<i>What are the “culturally appropriate” or “traditional” dispute resolution forms?</i>	<i>What are the legitimate procedures for collective decision-making?</i>
OVERALL SHIFT:	
<i>What are the rules? What are the answers?</i>	<i>What are the legal principles and legal processes for reasoning through issues?</i>

Responding to Common Questions^{vii}

Many aspects of this material will be new for facilitators and participants. It may be uncomfortable for people to engage in discussions of law, Indigenous law, or gender when they do not feel they are experts on these topics. We also recognize that some people have difficulties overcoming some of the assumptions that inform their understanding of Indigenous law. This may prevent them from seriously considering it as law.



We value classroom harmony. We also value new topics that contain difficult, though important, issues that may bring unpredictable discussions. We believe this is where true learning happens - in what is new and uncomfortable. We

encourage facilitators to look through all these materials to help them gain new insights so they can help participants grapple with previously unknown ideas. This toolkit is intended to prepare people to seriously engage with gender issues within Indigenous laws, not to make anyone feel bad that they do not have deeper knowledge on the subject.

Even with this preparation, we know there are questions that arise when people first engage with Indigenous laws. We have provided answers to some frequently asked questions to prepare facilitators to discuss these questions in a constructive way and also enable them to address some of the assumptions embedded in them.

Law is not fruit: it is not something waiting to be plucked from branches, nor can it be "preserved"

*- Friedland and Napoleon
in "Gathering the Threads"*

What happens when Indigenous peoples disagree over their laws?

Law in any tradition is founded on differences of opinions. Law is often ambiguous, or unclear, and open to interpretation. It is wrong to allow the ambiguity of law to shut off Indigenous peoples from participating in legal discussions about their own laws. From our perspective, disagreements about Indigenous laws do not detract from them. Instead, these disagreements enhance vitality of those laws.



How do decentralized legal orders work?

Indigenous legal orders are often described as decentralized. This means there is no one person or body of people in power that make all decisions, nor is there a centralized legal institution like the justice system in Canadian law. Decentralized legal orders are a more dialogical, relational or localized way of decision-making. This enhances their ability to respond to specific situations. Decentralized does not mean without order. While Indigenous people might use their laws (in limited ways) in relation to Chief-and-Council structures, these structures are state (Canadian) imposed and are constrained by state policies.

What happens when non-Indigenous peoples disagree with Indigenous laws?

Indigenous laws often seem very different from Canadian laws. Those who are unfamiliar with Indigenous law are fearful they are based solely on spirituality, ancient custom, or some other underlying philosophy they wholly disagree with. They may wonder how we

can hold Indigenous law accountable to fundamental human rights and international law. We believe Indigenous law should be subject to as much scrutiny as any other form of law and should not be exempt from the system of checks and balances that are in place on an international scale.

At the same time, we must be cautious not to perpetuate notions that have been so destructive to the practice and recognition of Indigenous laws. Often, people base their views on Indigenous law on untrue assumptions that are rooted in colonial understandings about Indigenous peoples.

Some commonly held beliefs about Indigenous laws are:

Indigenous people were and are lawless. Indigenous societies were not advanced enough or evolved enough to have laws.

Indigenous laws are only custom. Indigenous peoples were simple and had habits, not real ways of governing through law.

Indigenous laws are sacred. Indigenous law is not about dealing with real issues or problems, so it is not useful today. The world is too complicated for Indigenous law, which is only about spiritual beliefs.

It is important to challenge and counter those common colonial beliefs.

Are elders in charge of Indigenous legal orders?

Elders are often important authority figures in many Indigenous societies and bring important insights about the law. However, elders are not the only decision makers in Indigenous communities. For example, in Cree law, medicine people, family members, and the broader community might make decisions relating to a specific problem. This list of decision makers would be different for any legal order.

Although it is important to be respectful of all people, not all elders believe the same thing. People often say that they cannot question elders. We believe, however, that people should be able to raise questions, and engage in respectful debate in *all* legal orders.

Legal Interpretation: *To seek the intended meaning or meanings of a law, a story or other expressions of law. People will likely draw different meanings and will have different approaches to finding meaning. For law to apply collectively, it has to be interpreted collectively to include diversity and different opinions. It is not just one person's idea about the law.*

Is it harmful to engage with Indigenous law if you are an outsider?

The main resources ILRU uses to work with Indigenous law are stories or oral narratives. People outside a legal

tradition often feel stuck because of worries that they will do some harm by engaging with stories from a different legal tradition. This is often a concern for people with settler backgrounds, but also for people from different Indigenous legal traditions (for example, a Cree person might raise this concern when reading a Secwepemc story).



Looking at stories as law, from our perspective, is respectful because it involves thinking about the decisions and responses within them as ways of understanding a legal tradition. The process of working with stories helps people take Indigenous law seriously as law - it leaves space for legal interpretation, debate and deliberation, and provides insights to help people see tangible solutions for addressing contemporary problems. These stories, like the law, are resilient and can withstand serious, sustained engagement.

Can you tell me, in just a few sentences, what Indigenous laws are?

When people ask this question, they often seem to be assuming that Indigenous laws are simple and can be easily summarized,

or that law is only about rules and institutions and that once a person knows these, they can recognize the law. Indigenous laws, just like Canadian laws, are complex, and both laws involve thinking, debate, and legal reasoning – they are not just rules. It is important to emphasize that we are referring to Indigenous peoples’ own legal orders, traditions, and modes of governance. It is unfair to expect that Indigenous law can be fully explained in a few sentences.

Indigenous peoples are diverse and their laws flow from many sources. Understanding their communities’ legal foundations can lead to a better understanding of their contemporary potential, including how they might be recognized, interpreted, enforced and implemented.

*– John Borrows,
Canada’s Indigenous Constitution^{viii}*

We encourage facilitators to push participants to think about some of their questions about Indigenous laws, and ask them if they would pose the same questions about Canadian law. For example, is it reasonable to ask someone to explain Canadian law in a few sentences? It would be impossible to answer the question in a way that could provide anything close to an adequate understanding of the complexity of Canadian law. This is also true when people ask that question of Indigenous laws.

Finally, it is important to clarify that there is more than one Indigenous legal

tradition. There are many different Indigenous legal traditions and orders across Canada and we should not assume that they are the same. When facilitators can, and when it makes sense, they should talk about specific legal orders (e.g., Cree law, Métis law, Inuit law) as well as the full range of laws within those orders (e.g. Cree family law, Inuit environmental law, Secwepemc harms law).

What happens when Indigenous laws are written down, and adapted?

Laws change over time. It has happened with Canadian law, and has happened with Indigenous law. For example, capital punishment was abolished for murder in Canada in 1976, women were declared persons under Canadian law in 1929 and in 1960, laws were changed so First Nations could vote in Canadian elections without losing their treaty status. The purpose of law is to help us respond to the current world. If it cannot change, it is irrelevant. Much work needs to be done to ensure Indigenous laws can function in today’s world, without compromising their validity.



Why do we need to talk about gender? Don't Indigenous peoples need to decolonize and revitalize their legal orders first, and then they will be able to return to harmonious gender relations?

This question idealizes and romanticizes pre-contact gender relations, which is a stereotype that is not useful for actually addressing gendered conflict. This question also treats law as though it never changes, rather than as something that people interpret in the present. We cannot address the dynamics of gendered oppression if we do not talk about them. Taking an approach that is attentive to questions about gender and power necessitates asking how sexism plays out in decolonization^{ix} and revitalization of law. When people say that sexism should not be talked about, or that it is an irrelevant issue, we should ask why they are making this claim and who benefits from an approach that leaves gender questions out of the analysis.^x

***Gender dynamics** are the ways in which people of different gender combinations interact or behave differently in society.*

***Gender oppression** is oppression associated with gender dynamics, norms and relations.*

When you talk about Indigenous laws, are you referring to sentencing circles?

Sentencing circles are one form of legal process that some Indigenous communities may (or may not) decide to use to address particular conflicts. Too often people confuse Indigenous law with sentencing circles and restorative justice approaches.

What is a fundamentalist approach to Indigenous law? Is it unfair to describe Indigenous law as fundamentalist?

It is unfair to describe Indigenous law as fundamentalist. However, we can describe some interpretations of Indigenous laws as fundamentalist. A fundamentalist approach to any law (Indigenous, Canadian, or any other law) involves making rigid claims about law, culture, and people. A fundamentalist approach only leaves room for one interpretation of law, as opposed to a deliberative approach in which debate and discussion are vital. Fundamentalist views often claim that there is only one right way of being or doing – for example one way of being Cree, and one way to use Cree law. This understanding limits law, equating it with rules and behaviour, rather than as something that is dynamic, contested, and changing, and something that people think about, interpret, and debate.

Lesson: What is Indigenous Law?

Objectives:

The objectives of this lesson are to draw out what participants already know about law and Indigenous law, broaden their knowledge on what the scope of Indigenous law is and break down some of the embedded assumptions about Indigenous law.

Key Terms:

Law Indigenous Law Institutions
Colonialism Oppression

Activity #1: Pair work warm-up

Ask the participants to turn to their neighbors (two or three in a group) and talk about what comes to mind when they think of the word “law” for two minutes. Ask them to record those thoughts however they would like. After two minutes, ask them to take a few minutes to record their thoughts on what comes to mind when they think about “Indigenous law”.

When they come back to the large group write the answers on a flip chart paper or on a white board (two separate ones for each question). If possible, explain and discuss the differences between:

- Legal ideas, concepts or principles (justice, innocence, reciprocity).
- Specific laws or rules (don't drink and drive).
- People involved in the legal system (judges/lawyers/elders).
- Places where law happens/institutions (courts/potlaches).

Once the sections are on the board – if the focus has been on Canadian law, talk about the applicability of these themes in Indigenous legal traditions.

Discussion questions:

- What legal ideas (justice, for example) in the Indigenous legal traditions do you know? What are these principles?
- What about specific laws or rule?
- What about people? Who are some of the key people that help resolve problems in your community?
- How do people resolve problems in your community or in your legal tradition? Where does this occur?
- Groups of people lived here for thousands of years before now. What was here then?
- When did you first hear about “Indigenous law”?
- Do you recall learning or hearing anything about “Indigenous law” in your schooling? In your community?
- What questions do you have about Indigenous laws?

Notes for facilitator: If there seems to be an imbalance between those who are familiar with Indigenous laws and those that are less familiar, continue with this exercise, calling on the participants who have used Indigenous law examples to contribute to share more about their answers by giving examples.

If all participants seem to be responding well to these questions, post the flip chart paper on the wall as a reminder of the starting place for the participant group and move onto the next activity.

Legal Institutions



Coming up with an answer to the question “what is law” can be a complicated and tricky thing. When we think of Indigenous law, law can come from or exist within a number of places within Indigenous communities, just like in other legal traditions. These places include:

Social/political Institutions:

Formal community leadership like chief and council, elder councils, youth councils, gatherings, feasts, marriages, dances, potlaches, clan houses, kinship/family models, etc.

Economic Institutions:

Band/community offices, gatherings, feasts, marriages, big houses, potlaches, dances, etc.

Spiritual Institutions:

Ceremonies, lodges, dances, potlaches, marriages, etc.

Try to elicit some of these responses from the group.

Broad discussion questions:

- Have you ever considered these to be institutions of law? Why or why not?
- What do you think now?

Activity #2: Identifying law and in *The Making of Wetaskiwin*

Read the story *The Making of Wetaskiwin* that can be found in the accompanying casebook. This can be done either as a whole group out loud, in smaller groups, or individually.

Once the story is complete, come together and ask the following questions of the story:

1. What are areas where ‘law’ is working within the story?
2. What types of decisions are made in the story? What causes these decisions? Who is making these decisions?
3. What are some of the institutions discussed in the story? Do you see similar institutions working today?



Unit Two: Stories and Indigenous Laws

Using Stories as an Avenue to Access Indigenous Laws



Laws within Indigenous communities can be found in a number of different places. Law's location in the cultural, spiritual, social and economic institutions of communities means that there are many different avenues to access Indigenous laws. As many of the legal institutions within Indigenous communities are decentralized, accessing Indigenous legal orders can be a complex and difficult task.

Law is a public process and it is something everyone does. To engage in law, there has to be a collective memory of how people solved legal problems in

the past. This is called legal precedent. The Canadian legal system also has precedent (these are law stories called case law), but it is more restrictive in that it is mainly lawyers and judges who can work directly with law to solve legal problems.

Indigenous peoples had shared public memories or legal precedent, too, but people recorded this precedent in the form of oral histories, stories, songs and other expressions. Historically, these public memories were accessible by everyone because they were not just available to selected people like judges and lawyers. In other words, Indigenous law belonged to everyone and everyone was responsible for it because everyone was taught the oral histories or stories.^{xi}

***Norms** are those things that, at least generally, we believe are right and wrong. They are the commitments we want to live up to and that we want others to live up to. We aspire to our normative commitments even if we do not always succeed in achieving them.*

A key resource, or precedent, for accessing Indigenous law within communities is the stories or oral narratives of a community. From an outside perspective, stories are easier to engage with than other forms of legal precedent, such as dances or songs, which require more inside knowledge of a particular legal order. Stories offer a way

to observe, identify and critically examine norms that we may describe as legal. Stories often include deliberation and decision-making that offer an insight into legal processes within a community.



Although analyzing stories is a way to access the laws of an Indigenous legal tradition, it has limitations as well. Finding *cases* within stories (instances where social decisions, deliberation or action that takes place that we can understand as legal) is not meant to provide a definitive interpretation of a story. It is also not an attempt to remove any contextual background from a story,

particularly within the constellation of narratives and institutions in a particular community. In addition, we know when we use stories transcribed and translated into English by outsiders that we lose some meaning or precision in the legal concepts. We also have to be attentive to the biases or assumptions outsiders may have had when transcribing the stories into English. This is particularly the case when examining questions about gender within stories. This is not just because there may be biases and assumptions embedded in the translation predominantly conducted by men, but because many stories were transcribed prior to the use of gender-neutral language in English. Notwithstanding these limitations, we believe that using stories for legal analysis is a useful process that breathes life into the stories and engages with the law. There is a Cree way of thinking about stories as alive beings with their own society. When we stop using them, they are alone, left to live lonely lives away from us.



Lesson: Reflecting on Stories as Containing Legal Cases



Objective:

The objective of this lesson is to allow participants to start to think about the purpose and importance of stories and storytelling within Indigenous communities. Specifically, it will introduce the idea of law as being found within stories, and provide one method to look for legal principles within stories.

Key Terms:

Narrative/Teaching Conflict
Decision Decision-maker Law
Case brief

Activity #1: Warm up - thinking about Stories

Elicit responses from participants based on the following questions and facilitate a discussion about stories:

- What are some of the stories shared in your family as you grew up? What about in your community?
- What are the characters like in the stories? Who are they?
- How do the stories teach lessons?

- What role do animals play in the stories? Do they speak? Do they make decisions?
- How could the stories contain laws?
- What are the characteristics of legal actions in stories?

Linking Stories and Law^{xii}

Stories are important for the ways they outline and describe legal principles and how they come into play in our daily lives.

By looking at stories, we can see law in the way people:

- Solve problems,
- Resolve conflicts,
- Make decisions as a group,
- Create safety,
- Maintain or repair relationships,
- Act on their responsibilities to each other.

By looking at how these actions occur within stories, we can begin to see law within them. When we look at multiple stories, we can begin to see patterns in the decisions people make in them. These actions do not need to be taken by judges, lawyers, police, nor by elders, chiefs, medicine people or teachers, but everyone in stories acts out law. In some stories, this includes animals and non-human beings.



Activity #2: Reading law in stories

As a group read the Cree story, *Starving Uncle*, found in the accompanying Casebook. After reading, discuss *Starving Uncle* to explore the conflict and decisions made in the story.



Questions for discussion:

- What is the human problem that occurs in the story?
- Who are the decision makers in the story?
- What decisions do they make to resolve the problem?
- What are the consequences of the decision they made?

Note to facilitators: you may decide to go directly to the next lesson, which also uses The Starving Uncle if you feel it is more appropriate for your participants



Lesson: Finding Legal Principles Within Stories



Objectives:

The objective of this lesson is to introduce participants to one method of engaging with Indigenous stories, teachings or narratives: the case brief. This method is used to look for and organize legal principles in stories to make them visible.

Key Terms:

Narrative/Teaching	Case-brief
Issues	Facts
Reasons	Decisions

Case Briefing

The case brief method is used in law schools to teach law students how to analyze Canadian law decisions, or judgments, made by judges. This approach allows legally trained people to draw out the legal principles and reasoning in those decisions. Case briefing is an effective way to organize information and make visible the legal principles within those decisions.

The case brief method can also be used for stories (narratives or teachings) to help people rigorously work with them as legal cases.

Case briefing is only one way of working with Indigenous laws and we encourage you to think about other methods to engage in substantive, practical analyses of Indigenous laws.

A case brief includes pulling out certain information from a decision or story:

Issues: issues are the human problems raised in a story. These are questions you ask a story, for example: “What is the proper response to finding another person in dire need?” or “How do people collectively respond to a catastrophe?” or “How do people maintain a truce?”

Facts: facts are the relevant background information to the issue and lead up to the decision made. Not all facts in a story are relevant to a particular issue.

Resolutions/Decisions: resolutions or decisions answer the issue or question you raised about a story. The decisions should directly answer your question.

Reasons: reasons are why the decision was taken. Sometimes this is said clearly in a story, and sometimes it is unsaid, but it is something you can conclude or infer because of other information in the story. Determining the reasoning is important for drawing out specific principles in law.

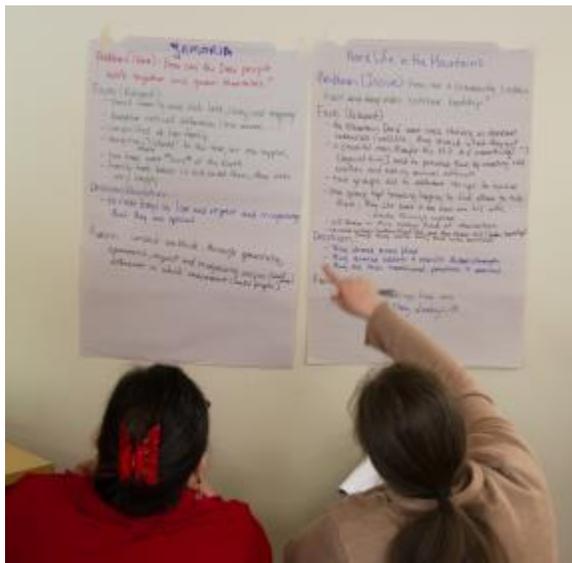
Bracket: brackets are the questions you have about the story, but are not related to the issue you have asked about in your brief.

Activity #1 - Large group: *Starving Uncle*

As a group, read the Cree Story “*Starving Uncle*” in the accompanying casebook. Ask for volunteers to read parts of the story. After, ask the group to identify some human issues that they see. Work with the students until they identify the question (or one similar to): “*how should one respond to finding another person in dire need?*”

The hard part is separating the facts from decisions. The facts should lead up to what people see as the human issue, and the decision should include the processes or answers involved in addressing that issue. Again, as a group, work on determining which facts are relevant to answering the question, and which information is part of the decision.

Then focus on the reason, underscoring that this is the “why” of the story – ask the participants to find both said and unsaid reasons in the story.



Activity #2 – Small group application

In groups of four or five, ask participants to read *Story of Muskrat* or *Wolverene and Fisher* (Secwepemc). Ask participants to case brief the story using the case brief template from Appendix II.

Notes to facilitator: Although sample case briefs are included in the casebook, don't worry what issue the participants settle on for this exercise. You and the participants might have different questions and answers. Push participants to find one issue and move through this exercise. Your role is to help them find questions that are specific enough to draw answers and meaning.

Large group discussion and debrief

Have the groups present the briefs they created. Below we have provided a list of questions to help lead a discussion:

- What did you experience during this briefing exercise?
- How did the main issues/relevant facts/decisions/reasons change?
- What are the decisions in the story that make you feel uncomfortable?
- Does the gender of the characters in the story create different responses to their actions?
- What are some of the bracket thoughts you came up with?
- How would Canadian law deal with this situation?

Depending on your expertise and comfort as the facilitator, you could have more detailed discussions on many issues, for instance, family law, criminal law, policing, or mental health.

Unit Three: Gender and Indigenous Laws

Why Gender and Indigenous Law

Prepared by Emily Snyder^{xiii}



The articulation and practice of all law exist within a social context. For example, in Canadian law we see how racism occurs in the justice system, especially when looking at Indigenous people's experiences with state law. Similarly, sexism, gendered power dynamics, gender norms and stereotypes about gender also play out in law. But sexism is pervasive not only in Canadian society. It is also a major social issue in Indigenous communities. As a result, Indigenous women face gendered oppression from both settler society and face sexism within their communities.^{xiv} For this reason, it is essential to include gender in all discussions about Indigenous law.

***Norms** are ideas about what normal behavior is for people based on perceptions about their gender*

While many Indigenous peoples embrace notions of gender balance, value the domestic work that women typically do, and are sometimes described as matriarchal, we cannot overlook the lived gendered realities that Indigenous women face. We know, for example, that Indigenous women, on average, make less money than Indigenous men,^{xv} and therefore have less economic stability. Indigenous women also experience high rates of gender-based violence, such as domestic violence and sexual assault.^{xvi} We must account for these realities when thinking about Indigenous women's access to, and participation in, both Indigenous laws and Canadian law.

*Given that law is something people do as an active collaborative and public process, law is not insulated from the larger social and political forces around it. We can understand law as being **shaped** by and **contributing** to those constant social and political forces or dynamics.*

There is no question that patriarchal violence and colonial violence operate together and reinforce each other. Western conceptualizations of gender have been imposed on Indigenous peoples through Canadian laws and other attempts at assimilation, such as residential schools. Understanding the ways that gendered oppression is perpetuated through colonial violence

deserves a great deal of attention. Yet, too often, people treat sexism in Indigenous communities as being only a product of colonialism. It is important to recognize the violence and sexism of colonialism, but also to be careful not to think about Indigenous gender relations prior to contact as though things were perfect.^{xvii} Gendered relationships may have looked different prior to contact, and there are distinctions between many Indigenous norms about gender when compared to Western norms. Nevertheless, there still would have been disagreements about gender roles in the past, as there are today. We cannot assume that everyone accepted and conformed to gender roles and that there was no gender-based conflict.

*All law is **gendered**: this means that the way people experience the consequence of the law depends on their gender and sexual orientation.*

It is thus crucial to think about Indigenous laws (and all laws for that matter) as gendered – not just in terms of gender ideals and gender roles in relation to law, but in terms of raising serious questions about the ways that perceptions about gender and gendered power imbalances play out in legal practice.

It is also important to not treat gender as a topic reserved for women – *all* citizens are shaped and impacted (in different

ways) by perceptions about gender. For example, people often think that violence against women is a woman’s issue, but this approach ignores the responsibility of men in challenging and changing this social problem, and overlooks that all gendered citizens should be concerned with violence.



Indigenous feminists make it very clear in their work and activism that sexism and gendered conflict cannot be addressed or dealt with if people do not talk about it. It is vital to discuss how sexism can be perpetuated through Indigenous laws (as with state laws) and also to understand Indigenous laws as important resources for challenging and talking about gendered conflicts.

The Gender Binary

Prepared by Emily Snyder

The gender binary purports that there are only two genders – men and women. It is claimed that these two genders ‘naturally’ stem from two sexed bodies – male bodies and female bodies. Gender can be described as the way that one performs or acts out their sex. Thus, the gender binary dictates that those with male bodies should act ‘like men’ (wear ‘men’s clothes,’ be assertive, be ‘tough,’ etc.) and those with female bodies should act ‘like women’ (wear ‘women’s clothes,’ be ‘ladylike,’ sit with their legs crossed, nurture others). Moreover, it is argued that men and women should only be sexually attracted to people of the ‘opposite’ sex. It is crucial to recognize that both gender and sex are socially constructed – meaning that they are not naturally occurring categories; rather, these ideas are human interpretations about bodies, and how people with certain bodies should behave. This is not to suggest that there are not physical differences between sexed bodies, but these differences are interpreted and these interpretations can be influenced by social and cultural norms. There are more than two ways of enacting gender. There are more than two types of sexed bodies. And sexual attraction certainly exists well beyond heterosexual relationships. Gender and sexuality are fluid and the gender binary can perpetuate oppression when it demands that people have to act in particular ways because of the bodies that they have.



After the video, facilitate a discussion about the video using the following discussion questions, or, alternatively, break the group up into small groups to answer four or five of the questions and report their answers back to the larger group.

Discussion questions after the video:

- Did one or two ideas in the video especially catch your attention? Why?
- Was the conversation in the video different from what you were expecting? If so, how?
- What questions do you have after watching this video? What would you like to hear more about?
- Was there a topic that you thought was missing? Or, is there a topic that you would like to discuss further? How might the inclusion of that topic add to the discussion in the video?
- Was there a topic in the video that you thought was especially important? Why?
- Does this video speak to, or relate to, challenges in your own community?
- What are “essentialisms”? Why do you think people in the videos are concerned about essentialisms?
- What stereotypes exist about indigeneity and gender? About Indigenous people who are queer, two-spirit, trans?
- Who benefits from these stereotypes, and why are they upheld?
- What are the repercussions of these stereotypes?
- Val Napoleon describes Indigenous feminism as a political theory. Maxine Matilpi talks about feminism as something that is active and is “a doing” that is about social transformation. What do you think about these ideas? What is your understanding of Indigenous feminism? Of feminisms?
- What do you think non-Indigenous people can learn from Indigenous feminisms?
- Why do you think it is often so uncomfortable to have critical conversations about gender and sexuality in relation to Indigenous law? Do you think this problem is unique to discussions about Indigenous law?
- What are some of the repercussions of not having these conversations?
- What happens to Indigenous law when certain voices (trans, queer, two-spirit, women’s) are absent or marginalized? What needs to happen for these voices and experiences to be included?
- How can Indigenous legal principles and practices be drawn on to respond to these problems and to challenge oppression?
- Val Napoleon notes that self-government, self-determination, and sovereignty are “women’s issues” (even though they are not typically imagined as such). What are some possible repercussions of erasing women in/from discussions about self-government, self-determination, and sovereignty?
- Val Napoleon talks about a spectrum (with stereotypes on the one end, and missing and murdered women and girls on the other end). In what ways do stereotypes about gender and sexuality contribute to the problem of violence against Indigenous women and girls? What is the relationship between these stereotypes and this violence?

- In what ways do stereotypes about race and indigeneity intersect with gender and sexuality (i.e., stereotypes specifically about Indigenous women and girls, and Indigenous people who are LGBTQ2)?
- What do you think about the grandmother raven paintings? Have you ever heard of Indigenous feminist tricksters before?
- Why are gender and sexuality important topics for reconciliation? What would reconciliation look like if these were not discussed? What would be missed?
- How can stories be engaged with for getting into discussions about Indigenous laws, gender, and sexuality?
- Do you typically imagine yourself as a legal agent and interpreter, as is discussed in the video? How do perceptions about law change when it is understood as a collaborative process interpreted by humans? What space does this open up for inclusivity? For discussions about power?

Remind participants that there are many feminist frameworks and ways that people engage with feminism. For example: radical feminism, liberal feminism, eco-feminism, Marxist feminism, socialist feminism, maternal feminism, feminist legal theory, post-colonial feminism, post-structural feminism, post-modern feminism, queer feminism, critical race feminism, Chicana feminism, black feminism, and importantly to this discussion, Indigenous feminism.

Each of these feminist perspectives is varied and debated, and there are tensions between many of these viewpoints. Despite all of this complexity and plurality of interpretations of feminism, the women's movement and feminist scholarship in Canada have been dominated by white women. There has been increased literature on racism, colonialism, sexuality, and ability in feminist scholarship, however we cannot overlook the ways that privilege and power still operate in feminist scholarship and activism. It is crucial to learn about, and from, feminist frameworks that are anti-oppressive, anti-racist, anti-colonial, and to take up intersectional analysis. Indigenous feminism is an excellent framework for doing this, though again, it is not the only way. Indigenous women (and men) whether they take up this framework or not, have been and continue to be strong activists and dynamic citizens.^{xx}



Gender, Indigenous Law and Working with Stories^{xxi}



Just as it is helpful to think of the mental shifts we have to make to work with Indigenous law as law, there are mental shifts that will help to first see, then change gendered practices. Emily Snyder has expanded Hadley Friedland's approach into the area of gender to both complement Friedland's work and bring in additional questions to ask of stories.

The first set of shifts in thinking is to shift our assumptions – moving past stereotypes about gender and Indigenous law.

1. Gendered conflicts did and do happen

It is necessary to move beyond the extreme stereotypes of Indigenous societies as being either entirely sexist and oppressive, or as having entirely perfect gender relations. Gendered conflicts happen in the present and we should not assume that, in the past, everyone conformed to and accepted gender norms. We should also not assume

that women were respected any more than we should assume that women were subjugated in the past.

2. People are gendered

Often, when people talk about Indigenous law, they do not talk about gender. While people might think this an inclusive, 'gender neutral' approach, it is important to ask them who they are actually imagining when they are talking about Indigenous law. Whose experiences are being used to interpret law? Whose ideas are being included? Too often, discussions about Indigenous law are actually about men's ideas and experiences. People treat men's experiences as universal, as though everyone engages with law in the same way. This is false. Men thus (invisibly) appear as stand-ins for everyone, which pushes women to the periphery.

We need to ask: Whose experiences are being used to interpret law?

3. Indigenous laws can perpetuate gendered oppression and can also challenge it

By being attentive to questions about gender and power, the ways that inequality might operate in Indigenous laws can be challenged. Indigenous laws themselves can be interpreted as important resources for reasoning through and addressing gendered oppression.

4. Conversations about gender and Indigenous law must be practically oriented:

A practical approach values the ideals and aspirations that exist in legal principles, but also recognizes when there is a disjuncture between what is wanted

for a society, and what is actually happening in people’s lives. This practical approach means recognizing that law should be discussed and debated so that it is relevant for addressing today’s challenging circumstances.

The second shift in thinking is about the questions we ask – to move from generalizations to specifics:

FROM:	TO:
What are the ‘traditional’ gender roles in a legal order?	How do gendered power dynamics shape legal interpretations?
What are the cultural values concerning gender?	What are the legal principles concerning gender?
What are the ‘culturally appropriate’ ways for women and men to engage with law?	What assumptions are being made about the ways that gendered subjects engage with law, and why?
OVERALL SHIFT:	
What are the laws about gender?	How are Indigenous laws gendered?
How can Indigenous people rebuild their legal orders – to be as they were in the past – so as to promote gender balance?	In what ways can a deliberative approach to Indigenous law ^{xxii} – which include discussion, debate, dissent and change – help to promote anti-oppressive legal relations for everyone?



Lesson: Moving from Roles to Dynamics

Objectives:

The objectives of this lesson are to develop critical thinking skills and have participants begin to start talking about the difference between gender roles and gender dynamics and thinking about how gendered power dynamics are embedded in the practice and interpretation of law.

Key Terms:

Gender role	Gendered power dynamic	
Gendered	Protocol	Patriarchy
Colonialism	Assimilation	Tradition
Identity	Sexism	Oppression

Activity #1: From roles to dynamics - *Coyote Makes Women Menstruate*

Ask participants to read the short Secwepemc story *Coyote makes women Menstruate*, found in the accompanying casebook, or read it to the class:

Formerly the men menstruated, and not the women. When Coyote was working in the world, putting things to rights, he considered this matter, and said to himself, "It is not right that men should menstruate. It is very inconvenient, for they do all the hunting and most of the travelling. Women stay more at home, and therefore it will be better if they menstruate, and not the men." Whereupon he took some of the menstrual fluid from men, and threw it upon the women, saying, "Henceforth women shall menstruate, and not men."^{xiii}

Ask the participants what they think the story is about – what are the main human issues? What does the story explain about what women and men do? Elicit – women at home, women are mothers, women in the private realm. Men are providers, in the public realm (focusing on roles).

When we consider the questions about the effects of Coyote's decisions on men and women, we see we get more information about the relationships of power between them. By focusing on the questions we ask, we can see a lot more information about some of the harmful assumptions that become embedded in the law.

Either facilitate a large group discussion around these three sets of question. Alternatively, break participants up into two groups to discuss the first two sets of questions. Then have them report back and discuss the third set of questions as a group.

Considering Coyote as a decision maker:

- How was this "making things right" in the world?
- Why do you think he makes the decision he makes?
- What were some other options? [possible answers: not interfere, make menstruation less of an inconvenience, make the men and women switch roles].
- Does it matter that Coyote is a male figure?

Considering the effects of Coyote's actions:

- What do you think some of the consequences are for Coyote's decision?
- How did the decision affect the men?
- How did it affect the women?
- How did it affect their relationships to one another? [possible answers: created an inconvenience for the women, keeps them at home, gives men more mobility, reinforced roles in society, gives a rationale for why women stay at home].

Engaging with gender dynamics and reimagining the story:

- What would this story look like if told from women's perspective?
- If Coyote had not interfered, or made a different decision, how would it have changed interactions between women and men?
- What other endings to the story can you imagine?
- How does menstruation affect a woman's life?
- How would it be different if men menstruated?
- In what ways do ideas of motherhood play out in this story?

Activity #2: Case study – stories and ceremonial protocol

Issues regarding menstruation and ceremonial practice are varied and complex. Ceremonial rules that inhibit participation based on menstruation are an example of an event of oppression that is gendered. In spite of the oppressive nature of these ceremonial rules, there are moments of empowerment within them. The following narrative explores both these moments of empowerment and feelings of oppression due to ceremonial rules on clothing and participation. Such a narrative offers a space for reflection on these rules, protocols and the operation of law.



We are particularly concerned about how conceptions of [historic] gender balance are used to deny sexism in Indigenous communities today. The 'traditional' gender roles that Indigenous women are encouraged to practice are often framed in ways which are restrictive and at odds with today's social context. This is similar to the rhetoric of motherhood raised in discussions on Indigenous women's roles [which] ... mischaracterizes and too narrowly frames Indigenous women's options, choices and contributions within their societies. This is particularly problematic when women's responsibilities and contributions as citizens are only framed in relation to nurturing and caring for the nation. While 'mothering the nation' is espoused as something to take pride in as a highly respect role, [it] ... too often forecloses a multitude of other functions and roles that Indigenous women assume in their societies.

- Emily Snyder, Val Napoleon and John Borrows - "Gender and Violence: Drawing on Indigenous Legal Resources"^{xxiv}

Read the excerpt below as a large group or in groups of four or five participants:

I walked out of there, like a traditional female dancer, swaying in my skirt in the street. I felt very proud to be in a skirt as a Native woman. That's what all that symbolized, and it was really exciting. So I really tried to observe all the practices. And some of it was my determination that this was going to be who I was, and this was what you had to adopt.

It all worked fine until the day that we were supposed to sing at a feast, and lo and behold, I was on my period. And another woman in our singing group was on her period as well. So instead of going into the room and joining the circle, we stood in the middle of the room, and we were standing in the doorway, singing with them. Now already that felt kind of weird. Then we sat outside the feast room, on the floor in the stairwell the rest of the time. I remember the woman I was with didn't see this as a problem. She instructed me, kind of importantly, "Now the women have to bring us food." I felt like saying, "You're being a fool to think this is an empowering thing for us to do, as women, to be sitting in the stairwell outside the feast. And why is it the women have to bring us the food – so there's another bloody job for women to do? Why the hell can't the men bring us food?"

So ever since then, the menstrual taboos as they are practiced right now have struck me as... unsafe. And yet I understand how the power of giving life that it represents is so important to honor.

- Kim Anderson, A Recognition of Being: Reconstructing Native Womanhood^{xxv}

After reading the excerpt, watch the video "ILRU Gender Project: Skirt Short" at:

<https://www.youtube.com/watch?v=pJiceA7HQPg&feature=youtu.be>^{xxvi}

Ask the following questions as a group:

- Are there rules around dress for functions like ceremony or other activities in your community?
- Are these rules separate for men and women?
- What are the effects of these rules?
- What do you think the effects of these rules have on non-cis-gendered people?
- How do gender values (like rules around dress) influence practices within your community, or other communities you see?

- How do these gender values relate to law?
- How would you respond if you were the woman in the excerpt, who was excluded because she was experiencing menstruation during the feast?
- What are other possible responses that the community at the feast could have made?

Additional resources on this topic were created by Natalia Sudeyko for *The Skirt Project*. Materials, including links to a Prezi, academic paper, workshop ideas and lesson plans, and a list of teaching resources are available on Natalia's blog entry at: <https://reconciliationsyllabus.wordpress.com/2016/09/02/the-skirt-project-connecting-gender-religion-and-colonialism/>.

Unit Four: Gender Dynamics, Power, and Authority

Using Stories to Understand Gender Dynamics



Stories are told from certain perspectives – and within them are embedded gendered assumptions about men and women and their roles in society. Sometimes women do not appear at all in stories. What do we make of these stories? How do we find legal principles about women in them when they don't appear or when their voices are heard only in certain settings? How can we draw interpretations about the role of women, particularly in governance and decision-making, from these stories?

To make the experiences of women in law and governance explicit, we sometimes need to ask different questions. Addressing what human issues appear in a story may not always reveal dynamics among genders. We need additional tools to get at some of the implicit legal principles and norms that influence and shape the law and gender dynamics.

Gender, Governance and Authority: Getting to answers

Emily Snyder has developed an Indigenous feminist legal approach to explore implicit law and legal norms embedded within stories. Her approach is not meant to draw out explicit legal principles. Instead, her questions help reveal important gender dynamics and oppressive practices that are hidden in stories and are also often implicit in the practice and application of law. Some of the key questions from her approach are:

Questions about legal processes: What are the characteristics of legitimate decision-making processes? Who is included? Is this gendered? Who are the authoritative decision makers?

Legal responses and resolutions: What are the responses? Do these responses have different implications for women and men?

Legal rights: What should people and other beings be able to expect from others? Are any of these expectations gendered? Are certain rights overlooked?

General gender dynamics: Are both women and men present in the material? What are they doing or saying? In what contexts do women and men appear?

Lesson: Asking Questions of Stories

Objectives:

The objective of this lesson is to develop critical thinking and analytical skills by teaching participants how to ask questions about who writes and interprets stories. This is done by introducing Emily Snyder's Indigenous Feminist Legal method of asking questions of stories that makes implicit assumptions and stereotypes about women and their status explicit, revealing gender power dynamics in the practice, interpretation and re-telling of law.

Key Terms:

Governance Authority Power
Legal process Legal response
Legal rights Gender dynamics
Sexual violence Intimate partner violence
Vulnerability Oppression Tradition
Empowerment

Activity #1: Asking stories questions about gender

Ask participants to read one of the following stories found in the accompanying casebook:

- *Hu'pken* (Secwepemc),
- *Sna'naz* (Secwepemc),
- *Hairy-Heart People* (Cree),
- *Swan and Soge* (Dane-zaa), or
- *Dog Peed on Arrow* (Dane-zaa).

Organize participants into groups of four or five and ask them to read the story to each other. Instruct each group to assign a reader, or take turns reading.

Ask participants to find a human issue and decision (if they have completed unit one) or summarize the story and explain what it is about to the rest of the group (if they have not completed unit one).

After groups have presented, ask them whether their analysis provides any information about gender dynamics, information about women's roles or status in legitimate decision-making processes and legal responses, or information about women's rights.



Activity #2: Indigenous feminist legal method

In the writing, interpreting and retelling of stories, we need to ask ourselves who is left out. Often stories are not told from the viewpoint of the women in them. The lack of voice from women in a story and its interpretation causes us to ask critical questions about the difference between the portrayal of men and women.



Ask the participants to look at the same story and answer the specific questions outlined above (the Indigenous feminist legal approach), using the template found at Appendix III. Alternatively, work as a large group through one story together and then have participants complete a story in small groups.

You can lead the discussion of the stories in a large group or have participants break into smaller groups. It is important to have the smaller groups report back to the larger group on their discussions.

Additional discussion questions:

- What did you learn about the role of governance and authority of women in the stories?
- Who are the most vulnerable people in the stories? Why are they vulnerable? Does governance or control have any connection with whether a person is vulnerable?
- Where are women empowered in the stories? What does this empowerment rely upon?

Suggestions for using the method to address special topics:

Governance and decision-making (no women appear): *The Story of Porcupine* and *The Making of Wetaskiwin*.

Decision-making about women's lives: *Story of Sna'naz*, *Swan and Soge*, *Coyote Makes Women Menstruate*, *Story of Hu'pken*, *Hairy-Heart People*, *Rolling Head*.

Women's Vulnerability and Oppression: *Hairy-Heart People*, *Dog Who Peed on Arrow/Girl Who Caused Trouble*, *Story of Sna'naz*, *Story of Muskrat*, *Wolverene and Fisher*.

Violence against Women/Intimate Partner Violence: *Hairy-Heart People*, *Rolling Head*, *Story of Muskrat*, *Wolverene and Fisher*, *Dog Who Peed on Arrow/Girl Who Caused Trouble*, *Swan and Soge*.



Lesson: Women's Role in Governance and Decision-Making



Objectives:

The objectives of this lesson are for the participants to apply what they have learned in this unit and others to analyze a contemporary issue relating to gender roles, dynamics and women's power and authority in society.

Key Terms:

Gender dynamic Power Authority
Gender role Governance Law
Legal process Decision-making
Legal rights

Ask the participants about where they see women in their communities – how many are in leadership positions? Many? Why or why not? What are some of the obstacles are there for women entering leadership or governance positions?

Watch this two-minute clip as a group:
<https://www.youtube.com/watch?v=SZSa6cucq4g>^{xxvii}

Discussion questions:

- What are the big obstacles facing Linda Lovejoy from running for president?
- Are these obstacles that men face?
- How is this process gendered?

- What do you think of what the elder is saying that women shouldn't run – that this is a tradition? Is it a valid law? Do you think he is right (why or why not?) Would you challenge him? How would you challenge him?
- When you see a law that is unfair, what would you do to change it?
- In this clip, the elder (man) is saying that the big storms are being caused by women running in the election? What are some other interpretations of the big storms?

After this discussion, tell participants that in the primary, Linda Lovejoy received 35.7% of the vote, with her nearest challenger getting only 16.2% (there were nine candidates – seven men and two women). Then tell them there was a run-off election between the top two candidates, and Linda lost the election 52% to 48%.^{xxviii}

- Does this surprise you? Why or why not?
- This was her second time running – do you think she ran a third time?
- What are some suggestions you might make to a woman who wants to hold a leadership position in your community?
- How would you support her?

*Additional Activity – as a large group or in pairs, ask participants to reflect on *The Making of Wetaskiwin* or *Story of Porcupine* using the method introduced in the lesson "Asking Questions of Stories" to draw out a discussion about women's invisibility in stories involving governance and public legitimate decision-making.*

Unit Five: Violence, Oppression and the Law

Violence Against Women and Girls and the Law through Stories



Despite the abject rates of violence towards women and girls both in Canadian society at-large and within our communities, women and girls are not inherently vulnerable. They are vulnerable because of the spaces that are created around them. For example, in the story *The Hairy-Heart People*, the women are more vulnerable than men to the cannibals because they have been put in positions where they cannot attain the power to kill them, unlike the men. In *Wolverene and Fisher*, a man decides he wants a specific woman as a wife so he stalks her and kidnaps her away from her community. In other stories, such as *Story of Sna'naz*, and *Swan and Soge*, we see examples of women or girls being “given,” or married, to men without any explanation or discussion of the women’s consent or willingness to marry the men. In *Story of Muskrat*, we see the consequences when a violent man doesn’t take no for answer after a woman rejects

his marriage proposal. All of the vulnerabilities to violence within these stories exist not just because there are specific men who commit violence, but also because the society has created and maintained these spaces of vulnerability. By viewing the stories in this way, we can see that these vulnerable spaces are constructed, rather than something that is natural or inherent.

What does the violence against women in these stories have to do with women’s lived realities? The violence in each story can be viewed as a form of “relational vulnerability.” That is, vulnerability of women and girls arises out of their everyday experiences of gendered oppression in the world, which exists as a result of their relationships with others, both within their communities and within the structure of society as a whole.^{xxix} Just as in these stories, we know that there are individual, relational, societal and structural factors that lead to violence and oppression of women and girls, and there are different consequences and responses to gendered violence.^{xxx}



Stories provide a glimpse into legal norms that legitimize gender oppression, such as men’s authority in the public sphere or decisions about women’s private lives. For example, the stories involving the “gifting” of women to marry men shows this decision, often by men, about the lives of women and girls as lawful. Similarly, *Swan and Soge* reflects some of the public forms of reactions against sexual assault we see today, in which questions around consent and the character of women become a focus rather than a sexual assault itself. The stories also reveal whether and how successfully society protects women and girls against violence in their communities.



For example, in *Wolverene and Fisher*, the woman’s vulnerability is exacerbated because she is menstruating and in a corner by herself. This becomes an issue when the community sees that *Wolverene* is stalking her. Nevertheless, the community does not appear to make any attempts to protect her from the dangerous man. Instead, her community responds only to the theft of her

belongings and her eventual kidnapping. This reflects vulnerabilities that women experience in spaces, such as the criminal justice system, which are created by law.

Violence Against Indigenous Women and Girls



The experiences of gendered oppression and colonial oppression create another set of vulnerabilities that only Indigenous women face. We know that the level and significance of violence Indigenous women and girls face has been described as a “national human rights crisis.”^{xxxix} We know that Indigenous women in Canada are nearly three times more likely than non-Indigenous communities to report having experienced a violent crime, whether or not this was perpetrated by a spouse or stranger.^{xxxix} Indigenous women experience more violence and more severe violence and death due to violence at alarming rates – much higher than Canada’s national homicide rate.^{xxxix} Studies suggest that an Indigenous woman is seven times more likely to be a victim of homicide than a non-Indigenous woman.^{xxxix} We also know that there is a greatly disproportionate number of

Indigenous women who have been murdered or among long-term missing-persons cases.^{xxxv} After years of advocacy from Indigenous and women's groups alike, the Government of Canada recently launched an independent national inquiry into missing and murdered Indigenous women and girls to investigate this issue.

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What is important here is that the oppression of and violence against Indigenous women do not arise in a vacuum. The oppression of and violence against Indigenous women and girls are the result of the invisible political, economic, social and legal conditions

within Indigenous communities and within Canada - those everyday practices of sexism and discrimination. It is important to recognize that, just as women aren't inherently vulnerable, these spaces of vulnerability are carved out not just by colonial realities and community realities, but also legal realities. The law is a tool for designing processes and principles to guide community safety and dispute resolution. But their design can leave spaces where harms can continue to happen without legal consequences. So what are those conditions? How do we create them? How do we maintain them? It is important to examine, critically, how legal traditions, and the law, allow this to happen in order to design solutions.



Lesson: Take a Stand

Note to facilitators: As this activity will be engage in active disagreements between participants, great care should be taken in creating an atmosphere of trust and relationship between participants.

Objectives:

The objectives of this lesson are to allow participants to share opinions on an issue related to a decision made in a story, and to reflect on how stories and laws can bring out a number of viewpoints. It will also allow participants to understand the interpretative process of stories and, in turn, laws. Participants will line up on a continuum, where they can place themselves on where they stand on a particular issue. This allows for discussion on an issue that may have a wide range in personal opinions.

Key Terms:

Gendered power dynamics Power
Sexual assault Gender violence Lawful
Intimate partner violence Oppression

Activity #1: Large/Small group read of Dane-Zaa story *Swan and Soge* or *Dog Who Peed on Arrows/The Girl Who Caused Trouble*

As a large group, or in small groups, read either *Swan and Soge* or *Dog Who Peed on Arrows/The Girl Who Caused Trouble* (Dane-zaa) found in the accompanying casebook. Either ask participants to complete a case brief of the story, or discuss the brief completed within the accompanying casebook. It is important

for participants to have a good understanding of the story for Activity #2.



Activity #2: Large group activity

Set up: Find an open space where you can create a straight line that will accommodate all the participants on it. Using string or tape, create the straight line through the middle of the space. Place a “Strongly Agree” and “Strongly Disagree” sign at opposite ends of the straight line.

Contracting: As this activity requires a fair amount of trust of space and relationships, it is important to come up with an agreement on conduct. This should include the need for respect, listening and methods of constructive disagreement.

Asking questions and taking a stand:

Provide a statement to the participants and give them 30 seconds to think of ‘where they stand’ on the continuum. Once they have contemplated the statement, ask them to stand on the line at a place reflective of their opinion. If they stand at the extreme end of the line on either side they are either in complete agreement or disagreement.

Questions for *Swan and Soge*:

- Swan's father punished him (by putting him on the island) for sexual assaulting Soge? Agree or disagree?
- Swan's father punished him (by putting him on the island) for having sexual intercourse with his wife? Agree or disagree?
- Swan's actions (to cause the death of *Soge*) was lawful. Agree or disagree?
- Swan's father's actions (to leave Swan on the island) was lawful. Agree or disagree?
- Swan's decision to cause Soge's death was an appropriate response to her actions? Agree or disagree?

Questions for *Dog Peed on Arrow/Girl Who Caused Trouble* may be:

- The woman should have spoken up about the arrow getting peed on. Agree or disagree?
- The man's decision to kill the dog was an appropriate response to the dog's action. Agree or disagree?
- The man's decision to kill the woman was an appropriate response her actions. Agree or disagree?
- The decision to start a war was lawful. Agree or disagree?
- The woman who left the community to hide broke her legal obligations to her community. Agree or disagree?
- The leaders of the community failed to meet an obligation to protect their community members and families. Agree or disagree?
- The woman who spoke up was responsible for the war. Agree or Disagree?
- The women tell the woman to shut up to protect her from harm. Agree or disagree?

Explaining Positions: Once participants have chosen where they stand on the continuum, ask them to volunteer why they chose to stand where they are. Ensure that only one person speaks at a time – a good tool to use is a talking stone/ball/stick, where only those holding the object can speak. You should make it explicit to the group that they can change positions during the activity – for example if they are convinced by someone else's viewpoint, they can shift up or down the continuum.

Debrief: Debriefing is very important to explore the idea of multiple viewpoints of a story, and law's social process. The point is not to come to a definitive answer to a question posed on the story. Potential debriefing questions include:

- How did this activity make you feel? Was it uncomfortable?
- Did hearing other's viewpoints change yours? What was it like to change your point of view?
- Was it difficult to voice your opinion? What were some of the reasons it was difficult?
- Why did some of you remain silent?
- Was this process 'fair'?
- What significance does listening have on your point of views?
- "Were there any significant divisions based on gender?"
- What are some of the dispute resolution processes you have used in the past? How would those processes aid in resolving the disputes we had in this activity?
- Were these disputes healthy?
- What is the benefit in being able to disagree?

Lesson: Vulnerable Spaces and Violence against Women



Objectives:

The objectives of this activity are to generate discussion among participants about 'vulnerable spaces' and the causes of violence. Although violence can be linked to individual actions and decisions, as a facilitator, your goal is to get the group talking about societal, systemic or legal factors that create locations or situations where this violence can occur or fails to be addressed.

Key Terms:

Gendered power dynamics
Sexual assault lawful
Intimate partner violence Power
Gender Violence Oppression
Systemic violence

Activity #1 – Positions of vulnerability to violence within stories

In groups of four or five, ask participants to look one of the following stories found in the accompanying casebook:

- *The Hairy-Heart People*(Cree)
- *Swan and Soge* (Dane-zaa)
- *Wolverene and Fisher* (Secwepemc)

- *The Story of Sna'naz* (Secwepemc)
- *The Story of Muskrat* (Secwepemc)

Once participants have read the story, have them discuss the following questions:

- What is the vulnerability in this story?
- Who is in charge of creating the space?
- What are the consequences of creating vulnerable people, in this case women?
- Do people resolve the vulnerability in the story?
- How do people resolve it?
- If they don't resolve it, how would you resolve it?
- Who should resolve it?

After the small group discussion, facilitate a large group discussion about vulnerabilities and link the individual, relational, systemic, legal, or community factors that contribute to violence against women. It is okay to connect the stories to lived experiences in communities, but caution participants to be general and not specific to particular people or cases. The focus should be on locating particular structures, systems or norms in communities that either create or fail to address vulnerabilities to violence.



Activity #2 – Addressing vulnerable spaces and vulnerable realities

After the group discussion, ask the participants to get back into their groups to talk about how they would address the individual, relational, systemic, community, and/or legal factors that led to the vulnerability or the creation of the vulnerable space.



Give participants fifteen minutes to create a set of recommendations to a decision-maker about how to change the vulnerable reality. Ensure that they include themselves as a participant in at least one of the recommendations.

Some of the questions to lead the discussion could be:

- How do people address that vulnerability – what are the strengths to address it?
- What structures are in place that allow these unsafe things to still exist?
- What are some ideas you have to resolve it?
- Who are some of the people who should be involved in resolving it? What roles should they play? What role should you play?

Additional Activities:

Activity One – ask participants to re-write the endings of the stories they have read.

Activity Two – in small groups or a large group, ask participants to come up with one or two issues that impact their communities and use the discussion questions to facilitate the conversation (*consider whether this is appropriate, as this activity requires an amount of familiarity and trust among participants*)

Activity Three – in small groups or a large group, ask participants to read one or more of the following stories: *Hairy-Heart People, Dog Who Peed on Arrow/Girl Who Caused Trouble, Story of Sna'naz, Story of Muskrat, Wolverine and Fisher, Rolling Head, or Swan and Soge.*

There are two approaches to this activity:

1. Ask participants to use the template in Appendix III and apply the tool introduced in the lesson “Asking Questions of Stories” to draw out discussions about vulnerabilities and violence against women and girls in the stories.
2. Ask participants to use the template in Appendix II and apply the tool introduced in the lesson “Finding Legal Principles within Stories”. Ask participants to focus on one of these two questions: “What are the consequences of creating vulnerable people, in this case women and girls?” or “What is the response when a vulnerable member of your community is harmed or is in harm’s way?”

Unit Six: Transforming Systems of Oppression

Addressing Oppressive Conceptualizations and Uses of Gender and Tradition



When we talk about Indigenous laws, we often encounter idealistic conceptions of gender link to practices described as traditional.^{xxxvii} Often gender, sex, and identity are described in static terms. These conversations have created myths about gender dynamics in traditional practices that serve to continue oppressive practices towards Indigenous women and girls.

Some of these myths are:

Oppressive Myth: The ability of women to be life-givers is central to their role in communities

In some instances, women are often identified as 'life-givers' or 'life-bearers' in discussions around 'traditional' gender dynamics. Though the use of this language can often be well intentioned, it limits people to roles they cannot or may not

want to fulfill. Linking a woman's identity and motherhood can be harmful, as they may not be able to live up to preconceived conceptions of what 'womanhood' should look like. Further, linking womanhood to motherhood is harmful for those who do not identify in the hetero-genders of male or female. This can be extremely harmful to a person's sense of belonging to a group and community.

Describing women as life-givers also allows oppressive practices to continue in relation to Indigenous laws. "Traditional"-role-defining can enable people to withhold positions of power, control, authority or strength away from women. If the position of women is narrowed on the basis of tradition, it can be extremely difficult for them to overcome such barriers due to the respect tradition is often given within Indigenous communities.



Oppressive Myth: Indigenous communities were free from oppressive gender dynamics prior to colonization:

As Val Napoleon, Emily Snyder and John Borrows have stated:

...one of the more powerful discourses that is deployed in conversations about gender is the assertion that Indigenous societies had...perfectly balanced gender roles prior to contact. The notion here is that Indigenous men and women each had their roles, and that these were equally valued, and they were complementary. In this discourse, Indigenous women are talked about as being respected and highly regarded participatory members of society. Here, colonialism brought gendered violence and imposed European gender roles that devalued Indigenous women.

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Of course, this idealized conception of Indigenous communities prior to

European contact is false. As with all societies, power imbalances and oppressive practices occurred within Indigenous communities before European contact, and continue today. Colonialism has had a great impact on the perpetuation of violence against women. However, if we do not look critically at the practices in our communities, we miss significant opportunities to address oppressive practices within Indigenous community practices and laws.

Oppressive Myth – A return to historic gender roles will provide a solution to the violence faced by Indigenous women and girls.^{xxxix}

Linked to the mistaken belief that oppression was non-existent in pre-contact societies, there are also discussions that a return to these traditional practices will resolve issues of violence. This is based on the idealistic thought that all Indigenous societies were balanced, and that everyone followed the laws. This is of course false. The highly developed forms of retributive and rehabilitative justice that many Indigenous legal orders practice is evidence that law-breaking was an issue, and that all legal orders have had to deal with. Further viewing a return to historic gender dynamics as a solution opens the door for women to be blamed for violence because of a refusal or reluctance to return to these roles.^{xl} Further, a return to these roles may mean a return to certain avenues that allow violence against women and girls to persist. One

of the benefits of the decentralized nature of many Indigenous legal orders is that it provides the ability for laws to change and adapt more easily than rigid centralized legal systems. As living things, Indigenous laws must adapt to survive. A return to older gender dynamics would paralyze the growth of these laws.



Oppressive Myth - Traditional practices, including ceremonies, cannot be criticized or called to respond to oppressive practices:

There is a way that conversations on oppression brought on by cultural or ceremonial practices can be shut down. It is sometimes argued that critical conversations cannot happen because they question what some people hold as 'sacred' or 'spiritual'. While it is important to respect and understand conceptions of what is sacred, framing these conversations as off-limits allows these practices to continue without accountability.

Women and girls can be prohibited from participating in ceremonial or cultural practices for a number of reasons. Some practices require specific clothing - like skirts or dresses - to be worn during them. In others, they may be prohibited from participating when they are experiencing menstruation. Finally, in some communities they may not be allowed to engage in activities (such as drumming, for example) that men are allowed to do. These limitations and prohibitions raise important questions on authority and who decides sets the rules and procedures that guide ceremonial practice. They also bring about important questions on how these views also influence views on community leadership.

Finally, the ability to engage in discussions on these limitations and prohibitions is a good way to gauge the health of a legal system. Law, in any community or society, is always living and growing. By limiting or shutting down conversation on the potential for oppressive ceremonial practices, we stop the growth and revitalization of Indigenous laws themselves.



Lesson: Reimagining Stories, Transforming Law

Objectives:

The objective of this lesson is to allow participants to start to think about adapting, retelling and reimagining stories. This is especially significant for the lessons and legal teachings in stories that we want to change, that no longer hold value for the way we live together, and for the way treat each other. With a specific focus on transforming the way gender is displayed and plays a part of the stories, creative transformation of these stories allows us to imagine changes to oppressive practices.

Key Terms:

Gendered power dynamics
Sexual assault Intimate partner violence
Lawful Power Gender violence
Oppression Systemic violence

Pre-Activity: Reimagining *Rolling Head*
Nehiyaw (Cree) storytellers and knowledge keepers have been transforming Cree laws through the transformation and progression of traditional stories. This includes stories that display oppressive practices towards women and girls. One story that is shared by Anishinaabe and Cree people, *Rolling Head*, provides an example of this transformation.

The plot of *Rolling Head* is as follows:

A man leaves his wife each day to go hunt. When he returns he begins to see that she has not completed her tasks for the day (beading, hide cleaning, etc).

He asks his two boys where their mother goes each day and they tell him she disappears for the whole day in the forest.

The man makes a plan to follow his wife. He finds that she goes to a log in the forest, and thumps the log where snakes appear. The snakes are her lovers and she appears cursed.

The man plans to kill the snake. He sends his wife away to collect some meat and goes to the log and kills the snakes. He then takes them home and makes a soup out of the snakes.

The man feeds his wife the soup. When she finds out what the soup is made from, she is distraught and furious. She off to the log and discovers her husband is telling her the truth.

While she is away, the father tells his sons to run and gives them medicine to use if she chases him. The boys run.

The woman comes back and they fight. Her husband cuts her head off, but she is able to kill him anyway.

Her head rolls after her children, as they flee from her. She is able to keep up with them even as they use the medicine that their father has left them.

Eventually, her head is carried away by a river and is no longer a threat.^{xli}

The story of *Rolling Head* is very uncomfortable for its treatment of the wife in the story. Not only does she suffer a violent death for her actions, she is also subjected to further excruciating indignities by being tricked into eating her lovers and by the removal of her children from her.



When we look at this story as a source to determine Cree or Anishinaabe law, it still provides uncomfortable questions. We must ask who are the decision makers in the story? What is the punishment for actions, and is it consistent and just? Are there implications in the story that are different for men and women? What are the expectations on women in the story? Is it the same as for men?

When we look at the story in this way, we can begin to see a disproportionate power dynamic within it. As stories (like laws) are continuously growing, further retelling can address these issues. One story teller, through her poetry, has done just that. Louise Halfe's book of poetry, *The Crooked Good* is centered around the *Rolling Head* story. In her retelling of the

story, Halfe relates the atrocity of the punishment of the story, of a woman who is forced to live without her children. Further, she relates *Rolling Head* to both the earth/land, as well as to the sweat lodge ceremony. In doing so, she is pointing to the essentiality of *Rolling Head*.

Activity #1 - Large group: story retelling/reimagining

Chose a story and tell it to the group. Stories to consider, found in the accompanying casebook, include:

- *Rolling Head* (Cree)
- *Swan and Soge* (Dane-zaa)
- *Wolverene and Fisher* (Secwepemc)
- *Dog Peed on Arrow* (Dane-zaa)

Ask these questions of the stories:

- What are the decisions made in the story?
- Who is making these decisions?
- Whose voices do we hear in the story?
- Are the expectations for women different than men?
- Are women given the same authority?

Activity #2 - Small Group Activity

In smaller groups, ask the participants to think about how they would change the story. Have participants rewrite the story to correct harmful gender dynamics and stereotypes.



Lesson: Reimagining Characters in Stories



Objectives:

The objective of this lesson is to allow participants to continue to think about adapting, retelling and reimagining stories. This activity allows participants to flip the genders of the characters in stories. Debriefing how this flip affects the story (or doesn't), or affects how we view the story (or doesn't) will allow participants to explore hidden assumptions on gender. It also will allow participants to understand that stories can change, and the benefits of the adaptability of stories.

Key Terms:

Gender role Intimate partner violence
Power Oppression Violence
Gender power dynamics

Activity: Story Retelling/Reimagining

Chose a story and tell it to the group. Stories to consider, found in the accompanying casebook, include:

- *Rolling Head* (Cree)
- *Hairy-Heart People* (Cree)
- *Swan and Soge* (Dane-zaa)

- *Dog Peed on Arrow/Girl Who Caused Trouble* (Dane-zaa)
- *Story of Muskrat* (Secwepemc)
- *Wolverene and Fisher* (Secwepemc)
- *Story of Sna'naz* (Secwepemc)

Retell the story by changing the gender of the main character or main characters in the story. Give the participants the freedom to change the story how they wish in relation to this change in the gender dynamics.

Debrief:

Ask the following questions of the stories:

- Did changing the gender of the character(s) make a difference in the story?
- Did you look at the roles of the characters differently in relation to their gender?
Are the expectations for women different than men in the story?
- Are women given the same authority in the story than men are?



Conclusion



As you have worked through the activities in this toolkit, it is our hope that your greater awareness has led to different and even difficult questions about Indigenous laws and gender. These activities reflect one avenue that allows access to laws. There are many more access points to Indigenous legal orders and the conversations about them – including participation in community practices such as gatherings, events, ceremonies, arts, and public decision making processes. Law also can be accessed through conversations over tea with community members, leaders and elders. Regardless of the access point, questions of gender are a necessary part of our discussions on all law, including Indigenous law.

As you explore Indigenous law, law's gendered nature, and law's effect on the safety of women and girls, you will also be confronted with the complexity of Indigenous legal orders. Just as there is no commonality that binds all Indigenous

peoples, Indigenous legal orders and their specific issues of gender, sexuality and security just as varied as well. The next steps are deeper discussions about singular legal orders. Although this toolkit explores stories from three Indigenous legal orders (*Cree*, *Dane-zaa*, and *Secwepemc*), a deep study of the gendered nature of one legal order will further illuminate paths where nation-specific law addresses gendered and sexualized violence. It will also allow for critical pathways for transformation of nation-specific legal traditions that facilitate or fail to address gendered and sexualized violence. The national inquiry into the murdered and missing Indigenous women and girls reminds us (as always) that a deep, multiple and serious examination of Indigenous law is needed. Although the heft of such work may be daunting, nation-specific concepts of gender, sexuality, sexualized violence, security, justice and feminisms will reveal the complexities of law and gender within the relations between Indigenous communities. Then we can move into this work recognizing the beautiful patchwork of relations that Indigenous communities are.



Appendix I- Glossary

Case Briefing	A way of writing out and organizing the main issues, facts, responses, reasoning and principles in a story for the purpose of legal analysis. This method is commonly used in law school to analyze cases however it is also useful for thinking about stories.
Cis-Gendered	A person whose gender self-identity matches the sex that they were assigned at birth.
Colonialism	Colonialism refers to the establishment of a colony in one territory by political entity from another territory. Refers to both the formal and informal methods (behaviors, ideologies, institutions, policies, and economies) that maintain the subjugation or exploitation of Indigenous Peoples, lands, and resources. ^{xlii}
Colonial Violence	Colonial violence is then any kind of violence that creates or maintains the colonial state or settlers' power and dominance, or avenges the loss of their power.
Cree	The Cree are one of the largest groups of Indigenous people in North America, and stretch across most of Canada. Plains Cree live along the Rocky Mountains in what is known as Northern British Columbia.
Dane-zaa	The Dane-zaa are an Indigenous people whose territory is around the Peace River in both Alberta and British Columbia.
Decentralized legal tradition	Not one person or body of people in power that make all of the decisions, nor is there a centralized legal institution like the justice system in Canadian law.
Decolonization	Decolonization refers to the process of undoing colonialism. It can include actions such as learning and teaching indigenous languages, implementing self-governance of nations or communities, and designing programs, services, and education models from Indigenous perspectives. It can also include the equally important but more abstract process of working to understand the impacts of colonialism on Indigenous cultures and critically evaluating their beliefs, traditions, and practices.
Essentialism	Essentialism is the reduction of something complex to a fundamental essence which is fixed, natural, and unchanging. For example, by describing women as inherently good parents, one reduces women's identity to motherhood. This is problematic because it suggests that women who are not good parents or who do not want to be mothers are not truly women - they cannot claim this identity if they lack its fundamental quality.
Feminism	Feminism is a range of political movements, ideologies, and social movements that share a common goal: to define, establish, and achieve political, economic, personal, and social rights for women.
Feminist	A person who supports or identifies with feminism.
Fundamentalism	The tendency to interpret law, dogmas and ideologies in a strict and literal way that is based on exact wording.

Gender	Gender is the range of characteristics pertaining to, and differentiating between, masculinity and femininity.
Gender Binary	The classification of sex and gender into two distinct, opposite and disconnected forms of masculine and feminine.
Gender Dynamic	The way in which people of various gender combinations interact with each other, and are treated or behave differently in society.
Gender Oppression	Oppression associated with the gender dynamics, norms and relations.
Gender Role	A gender role is a set of societal norms dictating the types of behaviours which are generally considered acceptable, appropriate, or desirable for people based on their actual or perceived sex or sexuality. Gender roles are usually centered on conceptions of femininity and masculinity.
Gendered	The experience of someone based on their gender. For example, Indigenous women have different experiences than Indigenous men because they are women. For example, they have the experience of sexual violence. Similarly, a transgender person will have different experiences than non-transgender people. Experiences based on gender and gender stereotypes create negative consequences for women and transgender people. This creates gender disparities in society.
Heterosexual	Heterosexuality is romantic attraction, sexual attraction or sexual behavior between persons of the opposite sex or gender.
Indigenous	The term “Indigenous” is used around the world to refer to peoples and cultures that existed in a particular territory prior to colonization. In Canada, “Indigenous peoples” includes First Nations, Inuit, and Metis communities, and is often a term used when referring to state policies (the Canadian government uses this term, in addition to “Indian”). ‘Indigenous,’ ‘Aboriginal,’ and ‘First Nation’ each have specific connotations and cannot always be used interchangeably.
Indigenous Feminism	A branch of feminist theory to address the marginalization of Indigenous women (i.e. as women within their own nation/within the larger nation, and being Indigenous) that fosters more harmonious living among everyone. In practice, Indigenous feminists advocate not just equality with men, but with the decolonization of Indigenous men and women.
Indigenous Legal Tradition	Legal traditions are deeply rooted and comprise “historically conditioned attitudes about the nature of law, role of law in the society and the polity, about the proper organization and operation of the legal system, and about the ways laws is or should be made, applied, studied, perfected, and taught”. ^{xliii}
Intimate Partner Violence	Physical violence, sexual violence, stalking and psychological aggression (including coercive acts) by a current or former intimate partner.

Law	A way of responding to human problems. Law often involves contestation and is related to the management of both individuals and large groups. Too often law is thought of as just rules and we encourage people engaging with this toolkit and with Indigenous laws more generally in a way that also pays attention to legal actors, legal process, and legal debates and interpretations.
LGBTQ2	Refers to people who identify as lesbian, gay, bisexual, transgender, queer/questioning or two-spirited.
Legal Order	The system of authority for regulating disputes and making decisions. Any legal order could consist of several legal traditions. Includes the legal principles, dispute resolution systems and governance processes that pertain to a legal tradition.
Legal Precedent	A principle or rule established in a previous legal case that is used to decide subsequent cases with similar issues or facts.
Legal Principle	A principle that has been settled as a ‘truth’ that can help interpret laws and rules and their applications.
Legal Traditions	The scope of law, including legal principles, dispute resolution systems and governance processes that pertain to a particular people, community or nation.
Non-Cis-Gendered	A person whose gender self-identity does not matches the sex that they were assigned at birth. Trans gender.
Oppression	When a person or group in a position of power controls the less powerful in cruel and unfair ways.
Patriarchy	Patriarchy is a social system in which men are the primary holders of power, through holding positions of political and moral authority and controlling property.
Patriarchal Violence	Patriarchal violence is then any kind of violence that creates or maintains men’s power and dominance, or avenges the loss of their power. Male dominance seems to be upheld primarily through violent means.
Power	Power is the ability to influence another person and get them to do something they may not want to do.
Power Dynamics	The way in which power is inequality distributed with some people having greater control over sources of power than others. Gender, age, class, race, and the law all create divisions of power that are shared unequally between people and among groups.
Protocol	A protocol is a term that is often used instead of practice or process to describe how people are supposed to carry out law.
Public/Private Sphere	Gendered spheres that the social world divided into. The private sphere is the stereotypically feminine world of household, family, and unpaid domestic labor while the public sphere is the stereotypically masculine world of politics and paid employment.
Secwepemc	The Secwepemc are the Indigenous Peoples who inhabit the south central interior of British Columbia. The territory of the Secwepemc

	extends from the Columbia River Valley on the east slope of the Rocky Mountains to the Fraser River on the west and from the upper Fraser River in the north to the Arrow Lakes in the south. ^{xliv}
Settler	Is a member or citizen of a society that occupies the lands of another existing or prior occupant under the settlement thesis of colonial policy. ^{xlv}
Sexism	Sexism or gender discrimination is prejudice or discrimination based on a person's sex or gender.
Sexuality	The whole way a person goes about expressing themselves as a sexual being. It describes how important sexual expression is in a person's life, how one chooses to express that sexuality, and any preference one may have towards the type of sexual partner they choose. ^{xlvi}
Sexualized Violence	Sexualized violence is an act of power and control that is expressed in a sexual way. It is not limited to sexual assault (i.e. unwanted sexual contact), but includes cultural norms of gender roles and expectations where anyone who steps outside of the "gender boxes" of men and women, that is to say people who do not conform to gender stereotypes are potentially subject to violence. ^{xlvii}
Socially Constructed	Social construction is a term used to describe how ideas about concepts are culturally determined, rather than inherent, innate, or inevitable. An example of a socially constructed idea might be that men are "naturally" violent or women are "naturally" nurturing, when social constructionists would argue that men and women are in fact conditioned to behave in these stereotypical ways. Social construction can also be applied to other areas, such as ideas about race and ethnicity.
Stereotype	A widely held, but fixed and oversimplified image or idea of a particular type of person or thing. Stereotypes are harmful, preconceived notions, such as racist, sexist, or homophobic views of people.
Trans-gender	A person whose gender self-identity does not matches the sex that they were assigned at birth. Trans gender.
Two Spirited	Two spirit is a term which was chosen at the 1994 Annual Native American Gay and Lesbian Gathering in Winnipeg to describe a wide range of gender and/or sexual identities in Indigenous communities. Two spirit may be used to describe an Indigenous person who identifies as possessing both male and female spirits; however, it can also be used to describe an Indigenous individual who identifies as gay, lesbian, bisexual, non-binary, transgender, or queer. Additionally, two spirit can encompass other gender and sexual identities which have historically been recognized in various Indigenous communities, but for which there are no equivalent English terms.
Violence	The intentional use of physical force or power, threatened or actual, against oneself, another person or against a group or community, that results in, or has a high likelihood of resulting in, injury, death, psychological harm, maldevelopment or deprivation. ^{xlviii}

Appendix II – Case Brief Template

Case Brief Template
Story:
Source:
Problem (Issue): <i>What is the main human problem that the story focuses on?</i>
Facts (Relevant): <i>What facts matter?</i>
Decision/Resolution: <i>What is decided or how is the issue resolved?</i>
Reason: <i>What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?</i>
Bracket: <i>What do you need to bracket for yourself in the case? What outstanding questions do you have?</i>

Appendix III – Indigenous Legal Feminist Analysis Template

Indigenous Legal Feminist Analysis Template

Story:

Source:

Questions about legal processes: *What are the characteristics of legitimate decision-making processes? Who is included? Is this gendered? Who are the authoritative decision makers?*

Legal responses and resolutions: *What are the responses? Do these responses have different implications for women and men?*

Legal rights: *What should people and other beings be able to expect from others? Are any of these expectations gendered? Are certain rights overlooked?*

General gender dynamics: *Are both women and men present in the material? What are they doing or saying? In what contexts do women and men appear?*

Appendix IV – Sources and Resources

The following resources are recommended for those interested in learning more about this and other approaches to engaging with Indigenous legal traditions, gender and Indigenous feminism:

Indigenous Law Research Unit Sources and Resources

Hadley Friedland, Jessica Asch and Val Napoleon, “A Toolkit for On-Reserve Matrimonial Real Property Dispute Resolution (Indigenous Law Research Unit/Centre of Excellence for Matrimonial Real Property, 2015), online at: <http://coemrp.ca/wp-content/uploads/2015/12/on-reserve-matrimonial-real-property-dispute-resolution-toolkit.pdf>.

McBeth, Renée. *Revitalizing Indigenous Laws: Accessing Justice and Reconciliation*. A report prepared for the Indigenous Law Research Unit, Indigenous Bar Association, Truth and Reconciliation Commission of Canada (2013). Available online at <http://indigenousbar.ca/indigenoulaw/wpcontent/uploads/2013/04/RM-Final-Descriptive-report-Oct-2012-Lawsconf.pdf>

Napoleon, Val. “What is Indigenous Law: A Short Discussion” (2015) [unpublished, on file with the Indigenous Law Research Unit].

Napoleon, Val, Jim Henshaw, Ken Steacy, Janine Johnston, and Simon Roy. *Mikomosis and the Wetiko* (Indigenous Law Research Unit, 2013).

Sloan, Kerry. *A Global Survey of Legal Education and Research*. A report prepared for the Indigenous Law Research Unit, Indigenous Bar Association, Truth and Reconciliation Commission of Canada, 2013. Available online at <http://indigenousbar.ca/indigenoulaw/wp-content/uploads/2013/04/KLSWorld-Indigenous-Legal-Education-Complete.pdf>

Snyder, Emily. *Gender and Indigenous Law*. A report prepared for the Indigenous Law Research Unit, Indigenous Bar Association, Truth and Reconciliation Commission of Canada, 13 March 2013. Available at <http://indigenousbar.ca/indigenoulaw/wp-content/uploads/2013/04/Gen-der-and-Indigenous-Law-report-March-31-2013-ESnyder1.pdf>.

Snyder, Emily. *Indigenous Law Video on Demand Discussion Guide*, A Guide Created for the Indigenous Law Research Unit (2015). Available online at: <https://www.uvic.ca/law/assets/docs/Discussion%20Guide%20-%20Indigenous%20Law%20Video%20On%20Demand.pdf>.

Snyder, Emily, Lindsay Borrows, Val Napoleon and Hadley Friedland. *Mikomosis and the Wetiko: A Teaching Guide for Youth, Community and Post-Secondary Educators*

(2014). Available online at: <http://www.indigenousbar.ca/indigenoulaw/wp-content/uploads/2013/04/Mikomosis>.

Statnyk, Kris. "Indigenous Law - What Are We Talking About?" Written for the Indigenous Law Research Unit (2013).

Sudeyko, Natalia. *The Skirt Project*. Prepared for the Indigenous Law Research Unit and the Religion Diversity Project (2016). Consolidated materials, including links to the short video, Prezi, academic paper *Clothing the Collective*, and series of workshop ideas and lesson plans (Talking Skirts and Creating Conversations), and annotated list of teaching resources are available on Natalia Sudeko's blog entry at <https://reconciliationsyllabus.wordpress.com/2016/09/02/the-skirt-project-connecting-gender-religion-and-colonialism/>.

ILRU Gender Project: Skirt Short. A video prepared by Natalia Sudeko and Jeff Nicholls for the Indigenous Law Research Unit and the Religion Diversity Project (2016). Available online at: <https://www.youtube.com/watch?v=pJiceA7HQPg&feature=youtu.be>.

Indigenous Law Video on Demand: Indigenous law, gender and sexuality. Created by Kamala, Todd Emily Snyder and Renee McBeth. (2015). Available online at: <http://www.uvic.ca/law/about/indigenous/indigenoulawresearchunit/>

Academic Sources and Resources

Altamirano-Jiménez, Isabel. "Nunavut: Whose Homeland, Whose Voices?" in Patricia A. Monture & Patricia D. McGuire, eds, *First Voices: An Aboriginal Women's Reader* (Toronto: Inanna Publications, 2009) 143.

Anderson, Kim. *A Recognition of Being: Reconstructing Native Womanhood* (Toronto: Second Story Press, 2000).

Austin, Raymond D. *Navaho Courts and Navaho Common Law: A Tradition of Tribal Self Governance* (Minneapolis: University of Minnesota Press, 2009).

Barker, Joanne. "Gender, Sovereignty, Rights: Native Women's Activism against Social Inequality and Violence in Canada" (2008) 60:2 *American Quarterly* 259.

Black, CF. *The Land is the Source of the Law: A Dialogic Encounter with Indigenous Jurisprudence* (New York: Routledge, 2011).

Borrows, John. "Physical Philosophy: Mobility and the Future of Indigenous Rights" in Benjamin J Richardson, Shin Imai & Kent McNeil, eds, *Indigenous Peoples and the Law: Comparative and Critical Perspectives* (Oregon: Hart Publishing, 2009).

- Borrows, John. *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010).
- Borrows, John. *Drawing Out Law* (Toronto: University of Toronto Press, 2010).
- Borrows, John "(Ab)Originalism and Canada's Constitution" (2012) 58 Supreme Court Law Review 351.
- Christie, Gordon. "Indigenous Legal Theory: Some Initial Considerations." In Benjamin J Richardson, Shin Imai & Kent McNeil, eds. *Indigenous Peoples and the Law: Comparative and Critical Perspectives* (Oregon: Hart Publishing, 2009) 195.
- Craft, Aimée. *Breathing Life into the Stone Fort Treaty: An Anishinabe Understanding of Treaty One* (Saskatoon: Purich Publishing, 2013).
- Fletcher, Matthew. "Rethinking the Role of Custom in Tribal Court Jurisprudence" (2007-2008) 13 Michigan Journal of Race and Law 57.
- Friedland, Hadley. "Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws" (2013) 11:2 Indigenous Law Journal 1.
- Friedland, Hadley & Val Napoleon. "Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions" (2015) 1:1 Lakehead Law Journal 16.
- Green, Joyce. ed. *Making Space for Indigenous Feminism* (Winnipeg: Fernwood, 2007).
- Green, Joyce. "Taking Account of Aboriginal Feminism" In Joyce Green, ed, *Making Space for Indigenous Feminism* (Winnipeg: Fernwood Publishing, 2007).
- Ladner, Kiera. "Gendering Decolonisation, Decolonising Gender" (2009) 13 Australian Indigenous Law Review 62.
- McNamara, Luke. "The Locus of Decision-Making Authority in Circle Sentencing: The Significance of Criteria and Guideline" (2000) 18 Windsor Yearbook of Access to Justice 60.
- Napoleon, Val. "Aboriginal Discourse: Gender, Identity and Community." In Benjamin J Richardson, Shin Imai & Kent McNeil, eds. *Indigenous Peoples and the Law: Comparative and Critical Perspectives* (Oregon: Hart Publishing, 2009).
- Napoleon, Val. "My Grandmothers' Skin." In Shari Graydon, ed. *I Feel Great about My Hands: And Other Unexpected Joys of Aging* (Vancouver: Douglas & McIntyre, 2011).

Napoleon, Val. "Thinking About Indigenous Legal Orders." In René Provost & Colleen Sheppard, eds. *Dialogues on Human Rights and Legal Pluralism* (New York: Springer, 2013).

Napoleon, Val & Hadley Friedland. "An Inside Job: Engaging with Indigenous Legal Traditions through Stories," *McGill Law Review* (forthcoming 2016).

Napoleon, Val & Hadley Friedland. "From Roots to Renaissance." In Markus Dubber, ed. *Oxford Handbook of Criminal Law* (Oxford: Oxford University Press, 2015).

Richland, Justin B. *Arguing with Tradition: The Language of Law in Hopi Tribal Court* (Chicago: University of Chicago Press, 2008).

Ross, Rupert. *Returning to the Teachings: Exploring Aboriginal Justice* (Toronto: Penguin, 1996).

Sekaquaptewa, Pat. "Key Concepts in the Finding, Definition and Consideration of Custom Law in Tribal Lawmaking" (2007-2008) 32 *American Indian Law Review* 319.

Snyder, Emily. "Indigenous Feminist Legal Theory" (2014) *Canadian Journal of Women and the Law* 26:2.

Snyder, Emily, Napoleon, Val; Borrows, John. (2015). Gender and Violence: Drawing on Indigenous Legal Resources. *UBC Law Review*, 48(2).

St. Denis, Verna. "Feminism is for Everybody: Aboriginal Women, Feminism and Diversity" in Joyce Green, ed, *Making Space for Indigenous Feminism* (Winnipeg Fernwood Publishing, 2007).

Wilson, Waziyatawin Angela Michael Yellow Bird and Angela Cavender Wilson, eds. *For Indigenous Eyes Only*. (Santa Fe: School of American Research Press, 2007).

Governmental and Non-Governmental Sources and Resources

Kabir, Nalia. "Violence against Women as 'Relational' Vulnerability: Engendering the Sustainable Human Development Agenda." (UNDP Human Development Report Office, 2014). Available online at http://hdr.undp.org/sites/default/files/kabeer_hdr14.pdf.

O'Donnell, Vivian and Susan Wallace. *Women in Canada: A Gender-based Statistical Report: First Nations, Inuit and Métis Women* (Statistics Canada, 2011). Available online at: www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.pdf.

Aboriginal Affairs and Northern Development Canada. "Aboriginal Women in the Canadian Economy: The Links Between Education, Employment and Income" (fact sheet,

2012). Available online at: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/ai_res_aborig_econ_pdf_1331068532699_eng.pdf.

Amnesty International. "No More Stolen Sisters: The Need For A Comprehensive Response to Discrimination and Violence Against Indigenous Women in Canada." (London: 2009) Available online: <http://www.amnesty.ca/sites/default/files/amr200122009enstolensistersupdate.pdf>).

Amnesty International. *Violence Against Indigenous Women and Girls in Canada: A Summary of Amnesty International's Concerns And Call To Action* (2014). Available online at: https://www.amnesty.ca/sites/amnesty/files/iwfa_submission_amnesty_international_february_2014_-_final.pdf.

Government of Canada. *National Inquiry into Missing and Murdered Indigenous Women and Girls*. Website: <https://www.aadnc-aandc.gc.ca/eng/1448633299414/1448633350146>.

Law Commission of Canada. *Justice Within: Indigenous Legal Traditions*. DVD (Ottawa: Minister of Supply and Services Canada, 2006).

Options for Sexual Health. *Sexuality* Available online at: <http://www.optionsforsexualhealth.org/sexual-health/sexuality>.

Secwepemculecw: Land of the Shuswap. *The Land of the Secwepemc*. Available online at: <http://www.landoftheshuswap.com/land.html>

Truth and Reconciliation Commission of Canada. Website at: <http://www.trc.ca/websites/trcinstitution/index.php?p=3>.

Victoria Sexual Assault Centre. *Sexualized Violence*. Available online at: <http://vsac.ca/sexualized-violence/>.

World Health Organization. *World Report on Violence and Health* (Geneva, 2002).

Journalism Sources and Resources

Donovan, Bill. "Lovejoy First, Shelley Second." *Navajo Times* (Aug 5 2010). Available online at: <http://www.navajotimes.com/politics/election2010/080510primary.php>

Donovan, Bill. "Lovejoy landslide fails to appear." *Navajo Times* (November 3, 2010). Available online at: <http://navajotimes.com/news/2010/1110/110310wrap>.

Reynolds, Rob. "Navajo could see female president/," *Al Jazeera English* (October 30, 2010), available online at: <https://www.youtube.com/watch?v=SZSa6cucq4g>.

Theses and Dissertations

Friedland, Hadley. *The Wetiko (Windigo) Legal Principles: Responding to Harmful People in Cree, Anishinabek and Saulteaux Societies – Past, Present and Future Uses, with a Focus on Contemporary Violence and Child Victimization Concerns* (LLM thesis, University of Alberta, 2009).

Lindberg, Tracey. *Critical Indigenous Legal Theory*, (PhD dissertation, University of Ottawa, 2007).

Napoleon, Val. *Gitksan Legal Order, Law, and Legal Theory* (PhD dissertation, University of Victoria, 2009).

Snyder, Emily. *Representations of Women in Cree Legal Educational Resources: An Indigenous Feminist Theoretical Analysis* (PhD dissertation, University of Alberta, 2014).

Oral Narrative Resources

Adelson, Naomi. *'Being Alive Well': Health and the Politics of Cree Well-Being* (Toronto: University of Toronto Press, 2000).

Brightman, Robert A. *Ācaḏōhkīwina and ācimōwina: Traditional Narratives of the Rock Cree Indians* (Regina: Canadian Plains Research Center, 2007).

Halfe, Louise Bernice. *The Crooked Good: Sky Dancer*. (Regina: Coteau Books, 2007).

Ray, Carl and James Stevens. *Sacred Legends of the Sandy Lake Cree* (Toronto: McClelland and Stewart, 1971).

Ridington, Robin and Jillian Ridington, *Where the Happiness Dwells: A History of the Danezaa First Nations*. (Vancouver: UBC Press, 2013).

Teit, James. "The Shuswap" in Franz Boas, ed. *The Jesup North Pacific Expedition: Memoir of the American Museum of Natural History*. Vol II, Part IV (Leiden: EJ Brill/ New York: GE Stechert, 1909).

Endnotes

- ⁱ Hadley Friedland & Val Napoleon, “Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions” (2015) 1:1 *Lakehead Law Journal* 17.
- ⁱⁱ Adapted from a piece written by Hadley Friedland for *Mikomosis and the Wetiko: A Teaching Guide for Youth, Community and Post-Secondary Educators* (2014), at 10-11, available online at: [http://www.indigenousbar.ca/indigenoulaw/wp-content/uploads/2013/04/Mikomosis \[Mikomosis Teaching Guide\]](http://www.indigenousbar.ca/indigenoulaw/wp-content/uploads/2013/04/Mikomosis[Mikomosis Teaching Guide]).
- ⁱⁱⁱ Adapted from a piece written by Kris Statnyk, “Indigenous Law – What Are We Talking About?” (2013).
- ^{iv} Val Napoleon, *Ayook: Gitksan Legal Order, Law and Legal Theory*. Faculty of Law, University of Victoria Ph.D. Dissertation 2009 [unpublished, on file with the author] at 312.
- ^v Adapted from a piece written by Lindsay Borrows and Emily Snyder for *Mikomosis Teaching Guide* at 18-19.
- ^{vi} This information about Friedland’s work can be found on the AJR website at <http://indigenousbar.ca/indigenoulaw/project-documents/>, and is also discussed in more detail in the following article: Hadley Friedland, “Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws” (2013) 11:2 *Indigenous Law Journal* 1.
- ^{vii} Adapted from a piece written by Lindsay Borrows and Emily Snyder for *Mikomosis Teaching Guide* at 20-24.
- ^{viii} John Borrows, *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010).
- ^{ix} Kiera Ladner, “Gendering Decolonisation, Decolonising Gender” (2009) 13 *Australian Indigenous Law Review* 62.
- ^x These questions are central to indigenous feminist politics. See for example, the important work done in the following collection: Joyce Green, ed, *Making Space for Indigenous Feminism* (Winnipeg: Fernwood, 2007).
- ^{xi} Hadley Friedland, Jessica Asch and Val Napoleon, *A Toolkit for On-Reserve Matrimonial Real Property Dispute Resolution*, (Indigenous Law Research Unit/Centre for Excellence for Matrimonial Real Property, 2015) at 67.
- ^{xii} Adapted from a lesson created by Hadley Friedland on Stories and Law in *Mikomosis Teaching Guide* at 33-34.
- ^{xiii} Adapted from a piece written by Emily Snyder for *Mikomosis Teaching Guide* at 14-16. This information is based on Snyder’s dissertation (Emily Snyder, *Representations of Women in Cree Legal Educational Resources: An Indigenous Feminist Legal Theoretical Analysis* [PhD dissertation, University of Alberta, 2014]) and can also be found in a report on gender and Indigenous laws, at: <http://indigenousbar.ca/indigenoulaw/wp-content/uploads/2013/04/Gender-and-Indigenous-Law-report-March-31>.
- ^{xiv} See Joyce Green, ed, *Making Space for Indigenous Feminism* (Winnipeg: Fernwood, 2007).
- ^{xv} Aboriginal Affairs and Northern Development Canada, “Aboriginal Women in the Canadian Economy: The Links Between Education, Employment and Income” (2012, online: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/ai_res_aborig_econ_pdf_1331068532699_eng.pdf) at page 1.
- ^{xvi} See Amnesty International, “No More Stolen Sisters: The Need For A Comprehensive Response to Discrimination and Violence Against Indigenous Women in Canada” (London, 2009, online: <http://www.amnesty.ca/sites/default/files/amr200122009enstolensistersupdate.pdf>).
- ^{xvii} Joanne Barker maintains that “[t]he important conceptual challenge in understanding the impact of these ideologies [of patriarchy and heterosexism] on Indian peoples is refusing a social evolutionary framework in which pristine, utopian Indian societies degenerate into tragically contaminated ones” (Joanne Barker, “Gender, Sovereignty, Rights: Native Women’s Activism against Social Inequality and Violence in Canada” [2008] 60:2 *American Quarterly* 259 at page 262).
- ^{xviii} Adapted from Emily Snyder, *Indigenous Law Video on Demand Discussion Guide*, A Guide Created for the Indigenous Law Research Unit (2015), at 13-14, available online at: <https://www.uvic.ca/law/assets/docs/Discussion%20Guide%20-%20Indigenous%20Law%20Video%20On%20Demand.pdf>.
- ^{xix} *Indigenous Law Video on Demand: Indigenous law, gender and sexuality*, created by Kamala, Todd Emily Snyder and Renee McBeth. (2015), available online at: <http://www.uvic.ca/law/about/indigenous/indigenoulawresearchunit/>
- ^{xx} Adapted from a piece written by Emily Snyder for *Mikomosis Teaching Guide* at 45.
- ^{xxi} This information about Friedland’s work can be found on the AJR website at <http://indigenousbar.ca/indigenoulaw/project-documents/>, and is also discussed in more detail in the

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- following article: Hadley Friedland, "Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws" (2013) 11:2 Indigenous Law Journal 1.
- xxii John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at page 35.
- xxiii James Teit, "The Shuswap" in Franz Boas, ed. *The Jesup North Pacific Expedition: Memoir of the American Museum of Natural History*. Vol II, Part IV (Leiden: EJ Brill/ New York: GE Stechert, 1909) at 626-627.
- xxiv Emily Snyder, Val Napoleon and John Borrows, *Gender and Violence*, U.B.C. L. Rev. 593 (2015) at 611. [Gender and Violence]
- xxv Kim Anderson, *A Recognition of Being: Reconstructing Native Womanhood* (2000) Second Story Press: Toronto, at 265-66.
- xxvi *ILRU Gender Project: Skirt Short*. A video prepared by Natalia Sudeko and Jeff Nicholls for the Indigenous Law Research Unit and the Religion Diversity Project (2016). Available online at: <https://www.youtube.com/watch?v=pjiceA7HQPg&feature=youtu.be>.
- xxvii Rob Reynolds, "Navajo could see female president." *Al Jazeera English* (October 30, 2010). Online at: <https://www.youtube.com/watch?v=SZSa6cucq4g>.
- xxviii Bill Donovan, "Lovejoy First, Shelley Second," *Navajo Times* (Aug 5 2010), available online at: <http://www.navajotimes.com/politics/election2010/080510primary.php>; Bill, Donovan, "Lovejoy landslide fails to appear," *Navajo Times* (November 3, 2010), available online at: <http://navajotimes.com/news/2010/1110/110310wrap>.
- xxix Nalia Kabir, "Violence against Women as 'Relational' Vulnerability: Engendering the Sustainable Human Development Agenda" (UNDP Human Development Report Office, 2014), available online at http://hdr.undp.org/sites/default/files/kabeer_hdr14.pdf.
- xxx *Ibid*
- xxxi Amnesty International, *Violence Against Indigenous Women and Girls in Canada: A Summary of Amnesty International's Concerns And Call To Action* (2014), available online at: https://www.amnesty.ca/sites/amnesty/files/iwfa_submission_amnesty_international_february_2014_-_final.pdf [Amnesty Call to Action].
- xxxii *ibid*.
- xxxiii *ibid*.
- xxxiv Vivian O'Donnell and Susan Wallace, *Women in Canada: A Gender-based Statistical Report: First Nations, Inuit and Métis Women* (Statistics Canada, 2011), www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.pdf.
- xxxv *Amnesty Call to Action*.
- xxxvi Government of Canada. *National Inquiry into Missing and Murdered Indigenous Women and Girls*. Website: <https://www.aadnc-aandc.gc.ca/eng/1448633299414/1448633350146>.
- xxxvii *Gender and Violence* at 608.
- xxxviii *Ibid* at 608.
- xxxix *Ibid* at 615.
- xl *Ibid* at 615.
- xli "The Legend of the Rolling Head," in Carl Ray and James Stevens, *Sacred Legends of the Sandy Lake Cree* (Toronto: McClelland and Stewart, 1971) at 48.
- xlii *For Indigenous Eyes Only*, eds. Waziyatawin Angela Wilson, Michael Yellow Bird and Angela Cavender Wilson (Santa Fe: School of American Research Press, 2007).
- xliiii Val Napoleon, "Thinking about Indigenous Legal Orders," in René Provost & Colleen Sheppard, eds. *Dialogues on Human Rights and Legal Pluralism* (New York: Springer, 2013) at 2.
- xliv Secwepemculecw: Land of the Shuswap, *The Land of the Secwepemc*, available online at: <http://www.landoftheshuswap.com/land.html>
- xlv Alan Hanna, doctoral student in Law and Society, Faculty of Law, University of Victoria. Personal communication, 13 October 2016.
- xlvi Options for Sexual Health, *Sexuality*, available online at: <http://www.optionsforsexualhealth.org/sexual-health/sexuality>.
- xlvii Victoria Sexual Assault Centre, *Sexualized Violence*, available online at: <http://vsac.ca/sexualized-violence/>
- xlviii World Health Organization, *World Report on Violence and Health*, (Geneva, 2002) at 5.