



INDIGENOUS LAW  
RESEARCH UNIT  
AT THE  
UNIVERSITY OF VICTORIA

# REVITALIZING INDIGENOUS LAW AND CHANGING THE LAWSCAPE OF CANADA



**“Indigenous law is the great project of Canada and it is the essential work of our time. It is not for the faint of heart, it is hard work. We need to create meaningful opportunities for Indigenous and non-Indigenous people to critically engage in this work because all our futures depend on it.”**

*Doug S. White III (Kwulasultun) Snuneymuxw First Nation*

# A collaboration between




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# Several years ago, three organizations came together to design and implement one of the most exciting national Indigenous law research projects in Canada.

The organizations are: the Indigenous Law Research Unit (Faculty of Law, University of Victoria), the Indigenous Bar Association, and the Truth and Reconciliation Commission of Canada. This project was called the **Accessing Justice and Reconciliation Project (AJR Project)**.

The overall vision for this project was to honour the internal strengths and resiliencies present in Indigenous societies, including the resources within these societies' own legal traditions.

## **The overall goals of the AJR Project were to:**

- ✦ Better recognize how Indigenous societies used their own legal traditions to successfully deal with harms and conflicts between and within groups, and
- ✦ Identify and articulate legal principles that communities could access and apply today in order to build healthy and strong futures.



INDIGENOUS LAWS  
 FUTURE REASON AND OLD  
 FEMINIST LAUGH YOUNG  
 THEORY CRITICAL  
 NORMS PAST  
 LEGAL ORDERS  
 HARD WORK PLAY

FUN  
 LAW APPLY  
 INDIGENOUS  
 ENGAGEMENT DEBAT  
 AGENCY  
 LAW LEARN  
 FEMINISM  
 RESPECT ANALYSIS

GIRLZZ  
MATTER



VAL NAPOLEON

# Our Approach

Our approach to researching and working with Indigenous law is to treat Indigenous laws seriously as *laws*. This means that the researchers had to work with the same rigor that is required to seriously engage with state laws in Canadian law schools.

The Indigenous Law Research Unit developed an Indigenous law research methodology to draw law from publicly available Indigenous stories and to synthesize these findings into bodies of law within different Indigenous legal orders.<sup>1</sup> For the AJR Project, our student researchers used an adapted “case brief method” to analyze publicly available materials and oral stories within seven partner communities, representing six Indigenous legal orders across Canada.

The researchers presented their work to elders and other knowledgeable people within our partner communities,

who then graciously shared their knowledge, opinions, and stories. This helped researchers to clarify, correct, add to and enrich their initial understandings. These results were synthesized and organized in an analytical framework for accessibility and ease of reference. In the end, seven legal tradition reports on harms and conflicts were produced as a resource for each community.

These valuable legal resources were developed in collaboration with our partner communities, who are now drawing on these to develop their own justice or court processes, child welfare initiatives, and so on. The Indigenous Law Research Unit will also continue to draw on these amazing legal resources to develop Indigenous law teaching materials for the proposed Indigenous Law Degree Program at the University of Victoria and other initiatives.

<sup>1</sup> For these and additional resources, contact the ILRU at [ilru@uvic.ca](mailto:ilru@uvic.ca) or go to: [www.indigenousbar.ca/indigenouslaw/](http://www.indigenousbar.ca/indigenouslaw/)

We know that Indigenous legal traditions have not gone anywhere but they have been undermined by recent colonial history. The ground is uneven. We cannot assume there are fully functioning Indigenous laws around us that will spring to life by mere recognition. Instead what is required is rebuilding Indigenous legal traditions so we need to ask, “What might the terms for this thoughtful rebuilding be?”

Recognition, incorporation, and decentralisation are ways by which a non-state legal order may become part of a pluralized state legal order. All involve questions of: jurisdiction (over territory, issues and persons); authority (who has it, who bestows it, and how); adjudicatory process (procedure); and enforcement of decisions. If a plural legal order is to operate smoothly, all these elements need to be defined clearly – but this is rarely achieved.

International Council on Human Rights, *When Legal Worlds Overlap: Human Rights, State and Non-State Law* (Geneva, Switzerland: ATAR Roto Press, 2009) at vii. [http://www.ichrp.org/files/reports/50/135\\_report\\_en.pdf](http://www.ichrp.org/files/reports/50/135_report_en.pdf)





# What we learned: some key lessons

There are many ways to learn about Indigenous law and there are many sources of law – stories, music, place names, art, dance, land, and human and kinship relations. However the work with Indigenous law is done, we believe it is crucial that the process is rigorous and transparent.

**There is no “one size fits all” approach within or among Indigenous legal traditions.** Instead, there is a wide range of principled legal responses and resolutions to harm and conflict available within each legal tradition.<sup>2</sup>

- ✧ Indigenous legal traditions reveal both consistency and continuity over time, as well as responsiveness and adaptability to changing contexts.<sup>3</sup>
- ✧ We need to be able to understand the range and complexity of Indigenous law in order to reason with and through it today.
- ✧ All law has to be capable of being specific, responsive, and

applicable to the real and messy life of human communities. It needs to be useful or else people will not use it.

- ✧ The meaning behind shared principles and aspirations can only be seen when they are applied to the mundane and to the everyday to actually help to solve problems in real relationships between people.
- ✧ The existence and ongoing meaningful presence of living Indigenous legal traditions in many Indigenous people’s lives and communities is a fundamental premise that underlies our research methodology.
- ✧ Still, it would be misleading to suggest that all Indigenous laws are completely intact or in conscious and explicit use. So when we talk about Indigenous legal traditions at this point in history, we are necessarily talking about a project that requires not just articulation and recognition, but also mindful, intentional acts of recovery and revitalization.<sup>4</sup>

<sup>2</sup>Hadley Friedland, IBA AJR Project Final Report (2014) [unpublished]. <sup>3</sup>Ibid. <sup>4</sup>Ibid.



**Law is not fruit: it is not something waiting to be plucked from branches, nor can it be “preserved”.**

Hadley Friedland and Val Napoleon, “Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions” (2013) [forthcoming].

**I take the thread from the fingers that are weary, and go on with the work.**

Edward Carpenter, “By the Shore” in Theo Dorgan, ed, *A Book of Uncommon Prayer* (Toronto: Penguin Books, 2008) at 107.

**As Indigenous peoples, we are beautiful, and we are messed up.**

John Borrows, (Presentation delivered at the Our Way Conference, University of Saskatchewan, 23 March 2012) [unpublished].

# Some Questions and Challenges

All good work that matters presents challenges and asks many questions. It is no different with Indigenous law.

## Violence and Vulnerability

- ✧ The fundamental ability of any society to deal with the universal issue of human violence and vulnerability is central to its maintenance of peace, order, stability, civility, and overall political governance.<sup>5</sup>
- ✧ All societies experience the universality of the human condition, complete with the corresponding messiness, pain and joy that are generated when human beings live together.
- ✧ Each society has unique collective responses to these universal issues that are expressed through its legal traditions.<sup>6</sup>
- ✧ *This is no different for Indigenous societies.*

## Power and Gender Dynamics

- ✧ There are currencies of power and power dynamics in every community and within every society. The work requires finding ways to support the integrity of the larger political collectivity and the systems of accountability to deal with internal oppressions.
- ✧ It is important to build an Indigenous feminist analysis into each aspect of the work. Sexism is so normalized that it is usually invisible even to those experiencing its weight or harms.<sup>7</sup> How do we make sure that gender and sexism are considered in the substantive articulation of Indigenous law and in all aspects of research and the application of law to real problems?<sup>8</sup>
- ✧ How do we create spaces for respectful debate about hard issues in Indigenous law in our communities?

<sup>5</sup> Val Napoleon and Hadley Friedland, "From Roots to Renaissance", in Markus Dubber, ed, *Oxford Handbook of Criminal Law* (London: Oxford University Press) [forthcoming 2014]. <sup>6</sup> *Ibid.* <sup>7</sup> Emily Snyder, "Indigenous Feminist Legal Theory" (2014) *Canadian Journal of Women and the Law* 26:2. <sup>8</sup> Emily Snyder, Val Napoleon, and John Borrows, "Gender and Violence: Drawing on Indigenous Legal Resources" (2014) [forthcoming].

## Interdependence

- ✧ Indigenous communities do not exist or operate in isolation from non-Indigenous people, the justice system, or the Canadian state generally.
- ✧ Interconnections and interdependence exist at many levels, from the personal to the collective, and it is artificial and impractical to ignore the extent of this reality at this point in time.

## Fundamentalism

- ✧ How do we maintain societal integrity while resisting fundamentalism in this work? One way is to identify and draw on Indigenous intellectual processes and another is to insist on transparency at all levels. But there are other ways and ongoing conversations are necessary to effectively grapple with this and other critical questions.





*Indian*





# Current and Future Work

## **Some current ILRU projects include Indigenous Legal Traditions Curriculum Development:**

- ✦ Coast Salish civil procedure course (Hannah Askew and Elizabeth Zarpa).
- ✦ Indigenous law methodology course (Dr. Val Napoleon, Hadley Friedland, and Dr. Emily Snyder).
- ✦ Research on Indigenous feminist legal pedagogy (Dr. Emily Snyder).
- ✦ Teaching and discussion guides suitable for various groups for Mikomosis and the Wetiko (Lindsay Borrows, Hadley Friedland and Dr. Emily Snyder).

## **Some future ILRU projects include:**

- ✦ Video shorts on critical questions about gender and Indigenous law.
- ✦ A short film on drawing law from stories.
- ✦ Community partnerships, working with and for other Indigenous communities on other areas of Indigenous law, using the Indigenous law methodology developed with this project.
- ✦ A four-year dual Indigenous law degree program where students will receive an Indigenous law degree and a Canadian law degree.

# IBA AJR Project Resources

The IBA AJR Project developed a number of resources that are available online or accessible through the ILRU at the University of Victoria Faculty of Law

**The IBA AJR Project Final Report** – This report provides an overview of the IBA AJR project vision and goals, method, overall themes from our findings, and recommendations for future work with Indigenous legal traditions.

**Seven Legal Tradition Reports** – These ground-breaking reports represent the substantive research results of the project, and contain detailed information about principles, procedures, responses, rights and obligations related to harm and conflict in six Indigenous legal traditions across Canada:

- \* **Two Coast Salish Legal Traditions Reports** (Community Partners: Snuneymuxw First Nation and Tsleil-Waututh First Nation, BC)
- \* **Tsilhqot'in Legal Traditions Report** (Community Partner: Tsilhqot'in National Government, BC)
- \* **Northern Secwepemc Legal Traditions Report** (Community Partner: T'exelcenc Williams Lake Band, BC)
- \* **Cree Legal Traditions Report** (Community Partner: Aseniwuche Winewak Nation, Alberta)

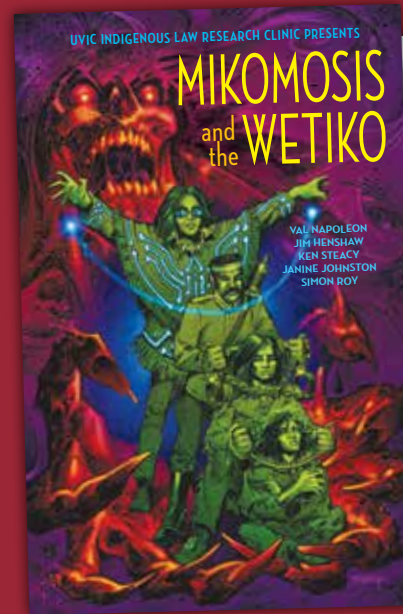
# MIKOMOSIS AND THE WETIKO

## GRAPHIC NARRATIVE AND TEACHING GUIDE

- \* **Anishinabek Legal Traditions Report** (Community Partner: Chippewas of Nawash Unceded First Nation, Cape Croker, Ontario).
- \* **Mi'kmaq Legal Traditions Report** (Community Partner: Mi'kmaq Legal Services Network, Eskasoni, Nova Scotia)

### Three Commissioned Papers

- \* Emily Snyder: Gender and Indigenous Law
- \* Lori Groft and Rebecca Johnson: Journeying North: Reflections on Inuit Stories as Law
- \* Kerry Sloan: A Global Survey of Indigenous Legal Education and Resources



### GRAPHIC NARRATIVE

A gripping story, beautifully illustrated, of how Indigenous (Cree) law was practiced and how it was undermined by Canadian law, and how Cree law triumphed and remains relevant for dealing with issues of harms, conflict and safety in today's communities.



### TEACHING GUIDE

A comprehensive teaching guide for Mikomosis and the Wetiko geared for legal, academic, post-secondary, community and youth audiences is available for free download at: [www.indigenousbar.ca/indigenoulaw](http://www.indigenousbar.ca/indigenoulaw)

Order from the University of Victoria bookstore or online at [www.uvicbookstore.ca](http://www.uvicbookstore.ca)

# IBA AJR Project Resources (Cont.)

**Three Indigenous law posters** – designed to illustrate key ideas and generate conversations about critical issues.

## **Three academic papers**

- ✦ Val Napoleon and Hadley Friedland, “From Roots to Renaissance”, in Markus Dubber, ed, Oxford Handbook of Criminal Law (London: Oxford University Press) [forthcoming 2014].
- ✦ Hadley Friedland and Val Napoleon, “Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions” [forthcoming 2014].
- ✦ Val Napoleon and Hadley Friedland, “An Inside Job: Engaging with Indigenous Legal Traditions through Stories” in Dale Turner, ed, Oxford Handbook on Governance [forthcoming 2014].

For these and additional resources, contact the ILRU at [ilru@uvic.ca](mailto:ilru@uvic.ca) or go to: [www.indigenousbar.ca/indigenoulaw](http://www.indigenousbar.ca/indigenoulaw)



# People

## Indigenous Law Research Unit



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Award.



**RENÉE MCBETH, BA, MA**

*Project Coordinator*

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AJR project and coordinates other  
ILRU initiatives.

## Indigenous Bar Association

**MARGARET FROH**

*Lawyer practitioner and former  
IBA President*

**KOREN LIGHTNING-EARLE**

*Lawyer practitioner and current  
IBA President*

## Truth and Reconciliation Commission

**PAULETTE REGAN**

*Senior Researcher, former Research Director*

**KIM MURRAY**

*Executive Director*

We have been blessed with amazing students and editors: Jessica Asch, Hannah Askew, Lindsay Borrows, Estella Charleson, Alan Hanna, Maegan Hough, Emily Snyder, Johnny Mack, Aaron Mills, Kerry Sloan, Kris Statnyk, and Elizabeth Zarpa.

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# Final Thoughts

Indigenous legal traditions are about Indigenous citizenry, self-determination, and governance. They contain intellectual resources and tools for public reasoning and deliberation which are necessary today for addressing the internal challenges that contemporary Indigenous communities face.<sup>9</sup>

Interest in serious and sustained engagement with Indigenous legal traditions is building within Canada, across professional, academic, and Indigenous communities. If the momentum is going to be sustained and grow productively, then we need shared frameworks for engaging with Indigenous legal traditions within and across these same Indigenous, professional, and academic communities.

Through the IBA AJR Project and its other current and future projects, the ILRU is committed to developing, working with and teaching promising shared frameworks for this work over the long term.

We believe this kind of serious and sustained engagement will contribute to more respectful and symmetrical relationships between Indigenous and non-Indigenous legal traditions and to the future health and vitality of Indigenous legal traditions and Indigenous societies.<sup>10</sup>

**There is much work to be done, and there is much hope.**

<sup>9</sup> Val Napoleon and Hadley Friedland, "An Inside Job: Engaging with Indigenous Legal Traditions through Stories" in Dale Turner, ed, *Oxford Handbook on Governance* (London: Oxford University Press) [forthcoming 2014].<sup>10</sup> *Ibid.*

# 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 humour. 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*



VAL NAPOLEON

More information and additional resources:  
[www.indigenousbar.ca/indigenoulaw/](http://www.indigenousbar.ca/indigenoulaw/)



**The Law Foundation of Ontario**  
*Building a better foundation for justice in Ontario*

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