

Indigenous Legal Materials and Libraries: One Canadian Law Library's Experience

Abstract: In this article **Amy Kaufman**, Head Law Librarian at Queen's University, Kingston, Canada, examines what role Canadian law libraries can take in responding to the findings of the Truth and Reconciliation Commission (TRC) Report in 2015, which examined the treatment of Aboriginal people in the country throughout its history, and its Calls to Action.

Keywords: Canada; law libraries; Indigenous Peoples

INTRODUCTION

In Canada, the release of the Truth and Reconciliation Commission (TRC) Report in 2015 prompted many sectors of Canadian society, and many individual Canadians, to re-examine the country's history and relationship with Indigenous Peoples. As the Commission stated in the first volume of its report:

“Canada's residential school system for Aboriginal children was an education system in name only for much of its existence. These residential schools were created for the purpose of separating Aboriginal children from their families, in order to minimize and weaken family ties and cultural linkages, and to indoctrinate children into a new culture – the culture of the legally dominant Euro-Christian Canadian society, led by Canada's first prime minister, Sir John A Macdonald. The schools were in existence for well over 100 years, and many successive generations of children from the same communities and families endured the experience of them. That experience was hidden for most of Canada's history, until Survivors of the system were finally able to find the strength, courage, and support to bring their experiences to light in several thousand court cases that ultimately led to the largest class-action lawsuit in Canada's history.

“The Truth and Reconciliation Commission of Canada was a commission like no other in Canada. Constituted and created by the Indian Residential Schools Settlement Agreement, which settled the class actions, the Commission spent six years travelling to all parts of Canada to hear from Aboriginal people who had been taken from

their families as children, forcibly if necessary, and placed for much of their childhoods in residential schools.”¹

The Report includes 94 Calls to Action “[i]n order to redress the legacy of residential schools and advance the process of Canadian reconciliation[.]”² Calls 25-42 relate to Justice. Two of those calls make it clear that the legal profession and law schools have significant work to do:

“(27) We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal Rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

“(28) We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal Rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.”³

Law libraries have an important role in supporting the work to fulfil these calls to action.

RE-EXAMINING COLLECTION PRACTICES IN LIGHT OF THE TRC CALLS TO ACTION

Prompted by the Truth and Reconciliation Report and Calls to Action, one initiative we have undertaken at the academic law library where I work is to review our collection development policy. We began by thinking about its function. Its internal purpose, we believe, is to help guide decision making on potential purchases, subscriptions, and donation offers. However, the collection development policy also serves the external purpose of communicating what we consider and prioritise for collection acquisitions to a potentially varied audience that includes the university community, members of the public, alumni, donors, colleagues, publishers and regulating bodies (the Faculty of Law's annual accreditation report to the Federation of Law Societies of Canada must include a copy of the library's collection development policy).

Then we looked at our 'legacy' collection development policy, which had been in place, with a few adjustments, for longer than any of the current staff members had worked at the library.⁴ It did not address Indigenous laws and legal orders at all. Our practices had changed, but our guiding document had not. It was time to reimagine it. We did this as a team through rounds of discussion and consultations within the law school and with other law libraries. It was a deliberately slow process with the goal of reaching consensus. We emerged with a five-page document that we hope is simple and clear enough to be useful both internally and externally.

One of the most important changes we made to the policy was to list Indigenous legal orders alongside Canadian law as the two areas we collect to support advanced study, the highest level of collection intensity.⁵

LIBRARY RESOURCES TO SUPPORT RESEARCH INTO INDIGENOUS LAWS AND LEGAL ORDERS

How to put this document outlining our intentions into practice? This is a question we often return to. As people who are not Indigenous and who have been steeped in the common law tradition, we have much to learn about the richness and diversity of Indigenous legal orders, including the many potential sources of law. Fortunately, we have been able to draw from a rich body of literature in this area.

Exploring the work of Val Napoleon, Law Foundation Chair of Indigenous Justice and Governance at the University of Victoria Faculty of Law, has helped us to consider the different concepts of a legal system versus a legal order:

"I use the term 'legal system' to describe state-centred legal systems in which law is managed by legal professionals in legal institutions that are separate from other social and political institutions.

For example, Canada and other nation states have such central legal systems. In contrast, I use the term 'legal order' to describe law that is embedded in non-state social, political, economic, and spiritual institutions. For example, Gitksan, Cree, and Dunne za peoples have legal orders. Indigenous law is a part of and derives from an Indigenous legal order. By distinguishing between legal systems and legal orders, I hope to avoid imposing western legal ideas onto Indigenous societies."⁶

We have found it crucial to keep this distinction in mind when considering what materials in a law library might help support Indigenous legal research. Law libraries also have important questions to consider about how to respectfully and usefully steward Indigenous legal materials. In thinking this through, we have found an article by Hadley Friedland helpful. In 'Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws', Friedland, who is the Academic Director, Principal Investigator, and Co-founder of the Wahkohtowin Law and Governance Lodge, suggests roughly three categories for Indigenous legal resources "based on their general availability":

(1) Resources that require deep knowledge and full cultural immersion.

The first category of resources would appear to require something close to full immersion in a specific culture to access. This category would include resources such as specific terms in a language, dreams, dances, art, beadwork, pots, petroglyphs, scrolls, songs, natural landscapes, ceremonies, feasts, formal customs and protocols.

(2) Resources that require some community connection.

The second category of resources would likely require some familiarity with or connection to a particular cultural community to access. These resources include stories, communally owned oral traditions, information from knowledgeable community and family members, including elders, as well as personal knowledge and memories.

(3) Resources that are publicly available.

The third category of resources requires the least amount of connection to a particular culture or community to access, as it involves publicly available, published resources. This category would include written work, including academic work, and works of fiction by community members, descriptive academic work by outsiders to the community, published court cases, trial transcripts involving Indigenous issues and litigant arguments in tribal court settings.⁷

We see ourselves as working potentially with that third category of Indigenous legal materials. We pay



This is an image of the artwork in the lobby of the Queen's University Faculty of Law, 'Words that are lasting' by Hannah Claus – more information here: <https://law.queensu.ca/news/Words-that-are-lasting-Queens-Law-unveils-Indigenous-artwork>. Photograph courtesy of Greg Black

attention to Friedland's caution that "publicly available published resources may raise serious questions of bias and legitimacy. However, they may be the amplest or even the only source of historical legal knowledge for particular purposes available for some Indigenous communities and legal scholars. ... [L]egal scholars must consider the specific challenges of particular resources, but must also find legitimate ways to work with the non-ideal to advance an important practical task in the present."⁸

FREELY AVAILABLE RESOURCES FOR LEARNING

We need and want to increase our knowledge – and consult with Indigenous scholars, students and community members – in order to develop a collection to support research into Indigenous laws and legal orders in a meaningful, respectful and useful way. Here are some freely available resources that we have found particularly helpful to get started:

- **Final Report of the Truth and Reconciliation Commission of Canada**
The six-volume report is freely available online.⁹
- **Indigenous Canada**
This is a 12-lesson MOOC from the University of Alberta: "From an Indigenous perspective, this course

explores complex experiences Indigenous peoples face today from a historical and critical perspective highlighting national and local Indigenous-settler relations."¹⁰

- **Home on Native Land**
This is a self-guided course of videos and lessons: "Let's be fair. Most of us didn't learn this stuff in history class. In a lighthearted, conversational and occasionally very funny series of videos, we'll take a tour through the laws of this land we call Canada, and discover the good, the bad and the ugly about Indigenous-settler relationships."¹¹
- **Whoseland**
This is an interactive map. It "can be used for learning about the territory your home or business is situated on, finding information for a land acknowledgement, and learning about the treaties and agreements signed across Canada".¹²

WORKING WITH VENDORS TO MAXIMISE YOUR CHANCE OF SEEING MATERIAL RELATED TO INDIGENOUS LAWS AND LEGAL ORDERS

If you use a vendor for collection development, you can work with them to ensure you are receiving notifications

of publications that may be related to Indigenous laws and legal orders. Here are two strategies we have used:

1. Search their titles for everything that is catalogued in Library of Congress' KI classification (Law of Indigenous Peoples) even if your library doesn't use Library of Congress Classification. A word of caution: this is a relatively new schedule, so both vendors and law libraries are still getting comfortable with it and may not yet be using it to its fullest extent.¹³
2. Talk with your vendor representative about how to expand your selection / slip profile to include anything that might be related to Indigenous laws and legal orders. It may mean deliberately going outside solely law-related subject headings. We have very broad parameters that our representatives from both YBP / GOBI and Alma / Rialto helped us craft.

VISIT WEBSITES OF INDIGENOUS-FOCUSED PRESSES AND INDIGENOUS-OWNED DISTRIBUTORS

Using vendors' systems for collection development can be convenient, but they may not include smaller publishers. There are Indigenous or Indigenous-focused presses from which we order directly on a regular basis. We have created a Libguide that highlights some of these presses.¹⁴

There is also GoodMinds, which deserves its own mention. GoodMinds is a First Nations family-owned distributor of First Nations, Métis, and Inuit Books.¹⁵ You can search, browse and filter their extensive holdings by topic (such as "Justice and Law"), learn more about the authors of the materials, and sign up for their newsletters. Ordering directly from them supports the excellent work that we rely on.

WORK WITH INDIGENOUS LAW STUDENTS AND FACULTY MEMBERS

We have been very fortunate to have had the advice of Indigenous faculty members and law students on Indigenous legal materials to acquire and highlight. For instance, an Indigenous law student created the page on Haudenosaunee Laws¹⁶ on the library's Aboriginal Law and Indigenous Laws Libguide.¹⁷ They selected the titles, some of which we needed to purchase, and then gave us summaries for each one, and suggested the order in which the books should be listed. They did not want to be publicly credited, but we are very grateful.

CONCLUSION

In thinking about libraries and Indigenous laws and legal orders, we need to remember that there are many ways that law can be expressed and shared that go far beyond what might be contained in or available through a library. Professor John Borrows observes: "While Indigenous peoples have been no strangers to recording their laws on paper throughout the past century, many Indigenous societies prefer to express their legal principles through oral traditions to maintain flexibility and relevance amidst changing circumstances."¹⁸ Our academic library has been text-based and focused on supporting research into common law and civil law since its inception; at this time, its resources are only one small part of what could be useful to those engaging with Indigenous laws and legal orders. In the library, we have much to learn about how we can support research and teaching in those areas. Acknowledging that "Indigenous knowledges have traditionally been silenced by dominant knowledge organisation systems and practices," we are exploring how, in our own small way within our law library, we can "purposefully protect, respectfully care for, and support the recognition of these ways of knowing."¹⁹

Endnotes

¹ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015) at v, <https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Executive_Summary_English_Web.pdf>

² *Ibid* at 319.

³ *Ibid* at 323.

⁴ You can find versions of our former policy on the Wayback Machine: <<https://web.archive.org/web/20211028035141/https://library.queensu.ca/research/collections/law/>>

⁵ Queen's University Law Library, Collection Development Strategy (last revised April 2024), <https://assets.library.queensu.ca/Law_Library_Collection_Development_Strategy_2024.pdf>

⁶ Val Napoleon, "Thinking about Indigenous Legal Orders" in René Provost and Colleen Sheppard, eds, *Dialogues on Human Rights and Legal Pluralism* (Dordrecht: Springer, 2013) 229 at 231. Emphasis added, footnote omitted. See also Val Napoleon and Hadley Friedland, "An Inside Job: Engaging with Indigenous Legal Traditions through Stories" (2016) 61:4 McGill Law Journal 725, <<https://lawjournal.mcgill.ca/article/an-inside-job-engaging-with-indigenous-legal-traditions-through-stories/>>

⁷ Hadley Friedland, "Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws" (2012) 11:1 Indigenous Law Journal 1 at 11-12, <<https://jps.library.utoronto.ca/index.php/ilj/article/view/27628/20360>>

⁸ *Ibid* at 12-13.

⁹ National Centre for Truth and Reconciliation, *Reports*, <<https://nctr.ca/records/reports/#trc-reports>>

¹⁰ University of Alberta, Faculty of Native Studies, *Indigenous Canada*, <www.ualberta.ca/admissions-programs/online-courses/indigenous-canada/index.html>

¹¹ RAVEN, *Home on Native Land*, <<https://homeonnativeland.com/courses/home-on-native-land/>>

¹² BOLD Realities, TakingITGlobal, and Canadian Roots Exchange, <www.whose.land/en/about>

¹³ You can get a sense of the schedule here: <https://loc.gov/aba/publications/Archived-LCC2021/LCC_KI-KIL2021TEXT.pdf>

¹⁴ <<https://guides.library.queensu.ca/indigenous-and-indigenous-focused-presses>>

¹⁵ <<https://goodminds.com/>>

¹⁶ <<https://guides.library.queensu.ca/Aboriginal-and-Indigenous-law/haudenosaunee>>

¹⁷ <<https://guides.library.queensu.ca/Aboriginal-and-Indigenous-law>>

¹⁸ John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 56.

¹⁹ Camille Callison, Ann Ludbrook, Victoria Owen, and Kim Nayer, "Engaging Respectfully with Indigenous Knowledge: Copyright, Customary Law, and Cultural Memory Institutions in Canada" (2021) 5:1 *KULA: Knowledge Creation, Dissemination, and Preservation Studies* 1 at 11, <<https://kula.uvic.ca/index.php/kula/article/view/146/274>>

Biography

Amy Kaufman is the Head Law Librarian at Queen's University in Kingston, Canada. Trained as both a librarian and lawyer, more recently she completed a master's degree in the History of the Book at the School of Advanced Study (University of London). This discipline has provided interesting new ways to look at legal materials and collections. Read more about Amy on her ORCID profile <https://orcid.org/0000-0003-0988-2348>