
SEVEN GIFTS: REVITALIZING LIVING LAWS THROUGH INDIGENOUS LEGAL PRACTICE*

by John Borrows[†]

CONTENTS

Maajitaadaa (An Introduction)	3
Dibaajimowin (A Story)	4
Niizhwaaswi Miigiwewinan (Seven Gifts)	7
I Nitam-Miigiwewin: Gii'igoshimo (Gift One: Vision)	8
II Niizho-Miigiwewin: Gikinoo'amaage Akiing (Gift Two: Land)	9
III Niso-Miigiwewin: Anishinaabemowin (Gift Three: Language)	9
IV Niiyo-Miigiwewin: Dibaakonigewigamig (Gift Four: Tribal Courts)	10
V Naano-Miigiwewin: Anishinaabe Izhitwaawinan (Gift Five: Customs)	11
VI Ningodwaaso-Miigiwewin: Chi-Inaakonigewinan (Gift Six: Constitutions)	12
VII Niizhwaaso-Miigewewin: Anishinaabe Inaakonigewigamig (Gift Seven: Indigenous Legal Education)	13

Boozhoo nindinawemaaganidoog. Nigig indoodem. Kecedonce nindizhinikaaz. Neyaashiinigiiming indoonjibaa. Niminwendam ayaawaan omaa noongom. Miigwech bi-ezhaayeg noongom. Niwii-dazhindaan chi-inaakonigewin. Anishinaabe izhitwaawinan gaye.

I am very grateful for the opportunity to be with you today. I am grateful to be amongst friends. I am thankful to have so many supportive colleagues with us and to know that I am amongst my Elders. Justice Harry LaForme taught me at Osgoode Hall Law School when I was a doctoral student there in the early '90s. I am also very grateful for the introductions we received from the Elders, the Chief, and representatives of the Métis Nation.

I am thankful we live in a beautiful world. Standing in this room this morning, looking out over the water and seeing Nanaboozhoo, the Sleeping Giant, is a reminder of the power of this place. It was also great to be in the Fort William First Nation's sugar bush yesterday, nestled between those two escarpments, as the light snow fell on us. It was a reminder of the beauty of the stories that can swirl around us this time of year.

* This article is based upon a talk by John Borrows, "Anishinaabe Law and Constitutionalism" (Paper delivered at the Aboriginal Law Student Conference, Bora Laskin Faculty of Law, Lakehead University, 7 November 2014) [unpublished].

[†] BA, MA, JD, LL.M., PhD, LL.D. Borrows is a member of the Chippewas of the Nawash First Nation and is the Canada Research Chair in Indigenous Law at the University of Victoria Faculty of Law.

MAAJITAADAA (AN INTRODUCTION)

Today, I want to talk about being practice-ready lawyers. I also want to talk about professional responsibility. My hope is that we see law as something that we practice here and now. We should not wait until we graduate from law school to develop professional responsibility. We saw an example of good ethical behaviour yesterday when we were in the sugar bush, as Damien¹ and his friends from the reserve taught us, fed us, and showed us hospitality. They did so much good in a very short time. They illustrated how we can be responsible lawyers. They showed us how we can practice law in a community setting. Their example of wise stewardship over the land demonstrated that law is about regulating our own behaviour in a good way. It's about how we manage our affairs responsibly and with a good heart. This knowledge, that law is lived and practiced relationally, should help us see professional responsibility in a new light.

A well-functioning legal system is built through good living. The Anishinaabe call this *mino-bimaadiziwin*.² The truth of this statement is demonstrated in other countries where good living is not present. There are many examples in the world where large numbers of people are not living well. This diminishes the rule of law. We can observe many countries where wide swaths of society live in poverty and turn away from ethical living. Of course, when people's lives are materially degraded this does not automatically lead to disorder. People without much money and few resources can live happy, peaceful, and well-ordered lives. Rich people and nations also engage in widespread unprincipled behaviour. Chaos results when social belonging is compromised by unethical behaviour. When people fail to live principled, decent lives, black letter law will not generally generate peace, order and good governance. It is not enough to have well-designed laws sitting on the books. Something more has to happen. The broader culture, and most especially lawyers' culture, must cultivate the internalization of ethical behaviour. Law is ultimately planted within us, and we can do more to develop this ethos before we work with our first client post-law school.

I am heartened to know that this law school teaches "Indigenous Legal Traditions" as a required part of your development of professional responsibility. From what I know of Indigenous peoples' laws, they cultivate the sense that law should be within you; law is not just an idea—it is also a personal practice. How you apply what you learn is just as important as what you read in your classrooms. Law is more than an intellectual exercise. It is not merely about developing legal skills. It requires more than doctrinal competency. Lawyers and law students need to obtain something more than theoretical acumen. While we *must* be doctrinally competent, acquire excellent skills, and find ways to mingle theory with practice, we must do much more. Anishinaabe law speaks about applying the seven grandfather/grandmother teachings: we must learn to treat each other with wisdom, respect, love, bravery, truth, humility, and honesty.

¹ See Damien Lee, "Adoption is (not) a Dirty Word: Towards an Adoption-centric Theory of Anishinaabeg Citizenship" (2015) 10:1 First Peoples Child & Fam Rev 86, online: <journals.sfu.ca/fpcfrr/index.php/FPCFR/article/view/242/234>.

² See D'Arcy Rheault, *Anishinaabe Mino-Bimaadiziwin: The Way of a Good Life* (Peterborough: Debwewin Press, 1999).

DIBAAJIMOWIN (A STORY)

Today I will talk about what I've learned about Anishinaabe law in the last few years. My reflections flow from what I learned from teaching at the University of Minnesota Law School for the past five years, before I returned to Victoria. I want to share what I learned by recounting a brief story.³ It's a story about a young boy. He was born in a time of great turmoil and grief. He found there was much confusion and frustration in the world. But it was also a time of beauty and wonder, and the young boy was born into a good family. His mother and father wanted to facilitate his good living, and so, they started to introduce him to the teachers that surrounded him.

The young boy learned how to live well by observing the winds, the waters, the rocks, and the plants. Later, he understood that the birds, the insects and the animals could also teach him lessons. The young boy discovered these things with his parents' guidance; he had many good teachers. The young boy was immersed in the process you heard about yesterday in the Fort William First Nation. Remember what Damien taught us in the sugar bush: the maple trees have been working all through the years, flowing with power, even though people had neglected them. All it took to revitalize Anishinaabe law was the community's decision to tap that energy once again. The trees stood ready to give in the moment the Anishinaabe sought lessons from their use. This young boy and his family learned in a similar way. They studied the earth. They drew analogies from what they observed in the natural world and applied these principles in their lives.

As he grew older, the young boy was introduced to some of the wise ones in the community. He was given human teachers. These wise ones included Elders, along with his aunties and uncles. They helped him to see much good. But, he also noticed all was not well. There were moments of destructiveness. Alcoholism, acquisitiveness, materialism, and greed marked many lives. Raw violence was a part of his community's experience. Yet he learned from this too; not by mimicking it, but by distinguishing it—rejecting it. He saw the harm such violence created. He decided he did not want such dysfunction to be part of his life.

As the young boy grew, his parents helped him to learn from his wider community. After he gained comfort in this setting his parents encouraged him to broaden his scope. Good living requires more than understanding our home communities. He was encouraged to search outside of his community. He was taught that no single place has a monopoly on goodness. So the boy started on small journeys. Incrementally he would venture further as each season passed. He developed a pattern; he would travel outward and then return, always letting his parents know where he was. He walked between worlds. His parents counselled him to seek the wisest and the best teachers. They encouraged him to find a mentor, someone from whom

³. This story is also told in other words on a PBS affiliate radio station in Duluth, Minnesota: WDSE-WRPT - PBS 8 & 31, "Waasa-Inaabidaa: We Look in All Directions, Episode Two, Making Decisions the Right Way," online: WDSE-WRPT - PBS 8 & 31 <www.ojibwe.org/home/episode2.html>. See also Edward Benton-Banai, *The Mishomis Book: The Voice of the Ojibway* (St. Paul: Red School House, 1988). My story is drawn from many sources, including these sources plus those from my daughter in Lindsay Borrows, *Otter's Journeys: Revitalizing Indigenous Languages and Laws*, University of British Columbia Press [forthcoming], the oral teachings of Elder Basil Johnston from my reserve, from Michael Pomedli, *Living with Animals: Ojibwe Spirit Powers* (Toronto: University of Toronto Press, 2014) at 80–93, and from my own experiences. I am of the otter clan (Nigig indoodem) and have long heard and told otter stories.

he could learn by serving. So he watched people come and go. He watched the elements around him. He took to heart what he saw and experienced.

One day the boy was out walking by a river. He noticed a “little one” going in and out of the waves. It would climb up the side of the river, to the top of the bank. Then it would slide down the bank into the water. It would repeat this behaviour, up to the top of the bank and back into the water. The young boy saw playfulness. He laughed as the “little one” was in the water; he saw it roll on itself. It would flip, slide, and glide in the stream. This was Nigig: Otter. He saw that Nigig was schooling him, teaching him law.

The boy determined that Nigig would be his mentor. This was who he’d been seeking. He admired how Otter took care of himself and provided for the rest of his kin, but he also appreciated that Nigig took time to play; he saw that life was more than physical sustenance. And so, with this determination, the boy returned to talk to his family. He told his mother and father about what he was learning. He asked permission to follow Otter and they agreed. They said, “Yes, it sounds like you found your teacher, go ahead and follow him.” And so the boy started to spend more time with Otter. At first the boy merely observed. He stood still; he was patient. He didn’t want to disturb Nigig’s routine. As the weeks passed, Nigig reciprocated. He began to pay closer attention to the boy. They developed comfort in one another’s presence. They became a silent part of each other’s lives; they started to make closer relations.

One day, when the boy arrived at the river he found a small fish on the side of the bank. It was at the place where he usually stood. He knew that Nigig must have left the fish for him. The boy reciprocated. He left offerings too. As their relationship developed the two of them began venturing even further afield.

The boy and Otter made their way towards the east and eventually came to a large sea. On the shores of that sea they saw an old woman. She was sitting by a fire; she was very still and very quiet. She was watching the waves roll in from the ocean. Otter and the young boy hid behind a tree and watched what the old woman would do; she was ever so still. The sounds of the winds and the waves were hypnotic. They were entranced by the sound of the elements around them, and they slumbered and fell asleep. When they finally awoke they noticed a bundle was beside them. It was beautifully sewn with beads and flowers and plants and leaves. Beside the bundle were medicines of cedar, sweetgrass, sage, and tobacco. Then they looked up at the old woman. They saw, as she turned herself slightly, that a smile crossed her face. They didn’t quite know what to do, but they eventually took that smile as an invitation. Nevertheless, they watched the old woman a little while longer. They knew they had to be careful with strangers.

When they felt they would be safe they took the bundle and the medicines and they sat beside the old woman. She smiled. She said, “Boozhoo gwiiwizens, boozhoo Nigig. Miiigwech bi-ezhaayeg noongom. I’m glad you’re here. What took you so long? We’ve been waiting for you. We wanted you to visit us. We’re glad you’re here.” With these words, the old woman took a little pinch of tobacco from her pouch. She held it in her left hand, close to her heart. The clutch of tobacco was the size of the earth that the diver pulled up from the waters at the time of creation. After holding it against her heart, the old woman raised her hand with the tobacco in it. She held it up to the sky. After speaking a few words, she lowered that same hand to the earth and said a few more words. When she finished speaking she placed the tobacco in the fire. All three watched as the tobacco was transformed and taken skyward once again, this time as smoke.

When the tobacco had vanished the old woman picked up a drum that was beside her and she started to sing. As she sang, Nigig and the boy recognized it as the Seven Directions song. Then this old woman, in the east, by the ocean, sang to the other directions.

After some time had passed, while she was singing, an old man appeared out of the bush. He came from the south. He walked across the beach and sat down at the southern axis of the fire. The old woman kept singing. After some time, two more Elders appeared: one from the west and another from the north. They were also old women. They too sat beside the fire in the cardinal directions. The old woman kept singing. As she sang they watched tendrils of smoke gather and swirl over the fire. The vapours coalesced. Suddenly another old woman materialized in the smoke. She gradually descended and joined them around the fire. The old woman continued singing. After some time, the earth began shaking. The ground trembled, causing the rocks in the fire to split in two. A small fissure appeared in the earth. As they watched it grow, a hand appeared from under the earth. Soon another was visible, before arms, a head, a torso and legs scrambled out of the seam. An old man pushed himself up out of the ground. He also sat by the fire. The old woman in the east kept singing. A spark cracked at the centre of the fire. From its eruption a seventh old woman appeared. She sat with the others around the fire.

When the old woman finally stopped singing, the boy and Otter looked around them. Seven Elders sat at the fire's edge. They teased one another with familiarity and started to laugh. Their humour was contagious. Before long the boy and Otter were laughing too. They all relaxed into one another's company.

The seven Elders eventually turned their full attention to the two young visitors. The old woman from the east spoke first:

We've been watching you. We've been waiting for you. We have a gift here. See this bundle—take it. Your parents and Elders have taught you well. The contents of this pouch will help you on your journeys. As you have seen, wisdom is not only found within our communities. It is found all around us. What you have learned, and the gifts in this medicine bag, will help you on your way. But rest assured, it will not be easy. Many people will challenge you. They will provoke you. They will encourage you to ignore or reject what you have learned at home. The gifts in this bundle can help when this happens. Sometimes your opponents will be correct, but sometimes they will deceive you. You need these gifts for balance. They will remind you of the power of goodness as a companion through life.

Each of the Elders taught Nigig and the young boy about the gifts they brought from the seven different directions. They learned of wisdom, respect, love, bravery, truth, humility, and honesty—the grandmother and grandfather teachings. As they taught, the day melted into the evening. Dusk gathered around them and the sun sank into the horizon.

The Elders continued their work. They stoked the fire and prepared food. They began feasting. They feasted the bundle, the feathers, the drums, the songs, and the medicines. They feasted the words spoken that day. After their spirit-helpers were fed, they fed themselves before reclining around the fire. And their teaching continued. As the stars appeared the two young guests were taught more lessons about their territory. No matter where you are, if you look up into the sky, they were told they would see the Elders' stories written across the sky.

In fact, they were told, the sky was part of their territory—the place we came from and the place we would return. As the stories piled on one another, Nigig and the young boy fell asleep under their weight. In sleeping they were taught further gifts. Dreams clarified and deepened their experiences.

When Nigig and the boy awoke, their guests were gone. They were by themselves against the sea. They picked up the bundle with those seven different gifts and they started walking. Through the years they visited the four directions. As they walked and encountered difficulties, they would open these gifts. This gave them strength to meet the world:

To cherish knowledge is to know WISDOM. To know LOVE is to know peace. To honour all of the Creations is to have RESPECT. BRAVERY is to face the foe with integrity. HONESTY in facing a situation is to be brave. HUMILITY is to know yourself as a sacred part of Creation. TRUTH is to know all these things.⁴

These teachings can be accessed by all—if they are actively cultivated by teachers and fellow students. They can generate wise practices and develop professional responsibility. They can help you practice law. As you go into the profession and continue through school these principles can guide your decision-making processes. In so doing you will be learning and applying Anishinaabe law. Wisdom, love, bravery, respect, honesty, humility, and truth can be your standards for making judgments. They can help you be practice-ready lawyers when you graduate because you are already practicing these laws in this setting.

NIIZHWAASWI MIIGIWEWINAN (SEVEN GIFTS)

With this story as a prologue I will now discuss the development of professional responsibility in seven vignettes. While each point is related to my experience and reflections in revitalizing Anishinaabe law, they also have relevance for revitalizing Canadian law more generally. Each reflection further develops my opening point that law is best lived and practiced relationally. When we see law as a verb, not a noun, we understand it is something we do. Law is not an inanimate force that magically works without active human engagement. Learning and practicing law is about action. It is done in communities and in groups, like in the sugar bush or in the story. We need good teachers, and we need good principles to guide us along our journeys.

We never act alone as lawyers, even though we may think this is the case. Every action is enabled or constrained by others. We are part of a legal *system*. Law school graduation and law society accreditation are part of an elaborate group process. The cases we study and the statutes we interpret arise from collective action. The adversarial system is also a cooperative system because it presumes relationality in complex ways.

I am not diminishing the importance of individual agency as we interact in this system; individual agency is vital, essential, key, fundamental, and necessary to the practice of law. But our individual actions are also shaped by others. *We interact—we don't just act*. In law we act in concert with others, in tension with them, or in distinct opposition to them. We are

⁴ Benton-Banai, *supra* note 3 at 64.

entangled with others as lawyers, and this should help us see professional responsibility in a new light.

In considering the revitalization of both Anishinaabe and Canadian law in this light I will discuss seven other opportunities that could be further developed to expand professional responsibility. Remembering that “goodness” is a goal of Anishinaabe law, I hope Canadian legal practitioners might also find ways to advance this as a goal more generally too. Like Otter and the boy, legal practitioners, professors, and students are on learning journeys. Our terrain is varied; it traverses Indigenous and non-Indigenous legal orders. No matter where we travel, we can do more to learn from the natural world, Elders, and the intellectual gifts transferred to us by prior generations. The following seven reflections are small steps in considering how we might more actively regenerate goodness as a focus of legal thought and action.

I NITAM-MIIGIWEWIN: GI’IGOSHIMO (GIFT ONE: VISION)

First, Anishinaabe people have long encouraged active inner reflection after periods of intense instruction as a preparation for further growth. This was apparent in the foregoing story. Principles were identified to guide future action. Other legal traditions encourage reflection through different means. In provincial law societies students often apprentice and write exams after law school. Principles are identified to guide future practice. An important Anishinaabe practice which both follows and precedes active practice is the Vision Quest. This is a four-day reflective period, often accompanied by fasting, which, for interested students, can complement conventional practice-ready preparations like law school, articling, and bar admission tests. Vision Quests have been crudely stereotyped in popular culture. Yet in my own teaching experience they have a role to play for certain students who want to digest what they have learned in school before undertaking other roles.

I am not suggesting law students must go into ceremonial modes prior to practicing law; in fact, I would strongly resist this. At the same time, I hope we can reason by analogy. Maybe we can see reflective processes embodied in Anishinaabe practices as something that could be developed in widely diverse ways in many other settings. This may help law students who desire a period of reflection which is not as frenetic, as marked by experiences in law school and bar admission processes. Again, I am not suggesting that intense testing and high-stakes examinations should be jettisoned. They have an important role to play in legal education. At the same time, I also believe we have not achieved a proper balance in cultivating ethical practices which often require other modes of testing and learning.

In the last year, two Anishinaabe graduate students approached me on their own initiative to learn in this way. They offered tobacco and asked me to help them in their academic, professional, and personal quest to be “good” students. We talked about the preparations involved in getting ready for this reflection. We discussed the seriousness of their purpose. We considered how they would demonstrate their readiness. We examined the responsibilities they would assume as they prepared. We agreed on common goals. As a result, over the last twelve to fourteen months, I guided these students in their preparations. We discussed many Anishinaabe stories; we deepened our work in the Anishinaabe language; we shared old songs, teachings, and principles. We considered what they had learned in legal practice or as students. We discussed the seven grandfather/grandmother teachings. This process had its own kind

of intensity as we met frequently throughout the year. It was a rewarding experience. At the end of our year together, one of the students camped on Mount Tuam, on Salt Spring Island. He received permission from the Elders—traditional and contemporarily concurrent owners of the site—to fast in their territory. He had a very meaningful experience. The other person went to Neyaashiinigiing (Cape Croker), my home reserve. He was placed in a remote site on the edge of the peninsula. He could look out across Georgian Bay and watch the sunrise every day. The abundance of life was at his back within the forest. He also had a meaningful experience out on the land. To reiterate: I hope we can see analogies in these experiences. Other students, with different goals, could find other ways to be guided through contemplative experiential learning processes, if that is their hope. I am merely suggesting that law schools and law societies could do more to cultivate ethical learning, using Anishinaabe law as one modest example.

II NIZHO-MIIGIWEWIN: GIKINOO’AMAAGE AKIING (GIFT TWO: LAND)

Second. Another example of how the revitalization of Anishinaabe law might contain insight for the revitalization of Canadian law comes from my own experience with Osgoode Hall Law School in the past year. I have long dreamed about inviting law students to my reserve to help them see how law cannot ultimately be separated from the land. This past September my dream was realized, as forty-three students and seven professors from Osgoode Hall Law School joined me and my family at Neyaashiinigiing to learn and practice Anishinaabe law. We enjoyed four days on the land, learning Anishinaabe law from the Elders, band councilors, and other professionals in the community. Like Otter and the young boy in the earlier story, students also learned from the earth. They gathered around a fire in the evenings. During the day we went out on the land and waters. We experienced what Anishinaabe people know about law from observations and stories related to the trees, plants, rocks, and animals. My daughter, who herself is a law student, was one of my teaching companions. As we were teaching in the forest a dragonfly circled around the group. Its brilliant colours caught our eye as it flew away. The dragonfly soon returned and landed on my daughter’s vest. It rested on her heart as she was teaching. She taught for ten minutes with this little insect on her jacket. In Anishinaabemowin, the Ojibway language, we call insects *manidoosag*—little spirits. Nature was constantly being drawn upon to illustrate the seven grandmother and grandfather teachings. Students were able to experience a legal tradition that does not rely on written texts to transmit professional responsibility. Law is embodied in the earth, and we helped expose students to another legal literacy as they learned on my reserve. The University of Victoria and the University of British Columbia both have Indigenous land-based experiences for law students. Given our experience at the Fort William First Nation sugar bush yesterday, I encourage you to consider developing an Anishinaabe Law Camp at the Bora Laskin Faculty of Law too.

III NISO-MIIGIWEWIN: ANISHINAABEMOWIN (GIFT THREE: LANGUAGE)

Third. There is value in learning, or being exposed to, an Indigenous language in developing professional responsibility as future lawyers. Practice-ready lawyers who aim to

live good lives understand that making decisions for future clients requires an appreciation of different points of view. Language encodes worldviews. For the last three or so years, I have run an Anishinaabe language table at the University of Victoria. I teach four law classes in Minnesota from September to December, which compresses my full-year load into one semester. I return to Victoria in late December and run an Anishinaabe language table on the West Coast with my friend and colleague Heidi Stark. Last Tuesday, we had twenty people attend, both Anishinaabe and from other communities. Participants come from all walks of life. None of us speak an Indigenous language as our first language; in fact, we “butcher” the language. We constantly laugh at our mistakes, and in laughing, we learn the language. My mother says “if you’re not laughing, you’re not learning the language.” Aside from our lessons, sometimes we sing drum songs in Anishinaabemowin, and at other times we feast and enjoy food with one another. At the end we usually take fifteen minutes (sometimes it becomes forty-five minutes) where we tell stories: old stories, new stories, and speculative stories about our futures. In that setting we are practicing Anishinaabe law. We are using the principles found in the stories, language and teachings to help us live better lives and make better decisions. Of course, the revitalization of Canadian law does not require law students to learn Indigenous languages—there are many fine traditions that could be studied through different languages at each law school across the country. At the same time, Indigenous languages record the local ecology of our country. They can provide additional insight about the character of the natural world we live in.

IV NIIYO-MIIGIWEWIN: DIBAAKONIGEWIGAMIG (GIFT FOUR: TRIBAL COURTS)

Fourth. It is important to learn from, and with, local First Nations in our territories as we attend law school and work to become practice-ready lawyers. Working in Minnesota has been an amazing experience for me. As you may know, just across the border, not far from Thunder Bay, there are many Anishinaabe nations, some with huge reservations. Leech Lake, Red Lake, Grand Portage, White Earth, and Nett Lake are relatively close by. One of the things that I most enjoyed about teaching in Minnesota was learning about their tribal courts. They try to connect their values with the land, language, and stories. They do this through the categories of administrative law, property law, tort, and contract, etc. I recently read a case from Nottawaseppi Huron Band of the Potawatomi.⁵ This is an Anishinaabe community in Michigan which had an election dispute. Their tribe has statutes, regulations, and a constitutional provision that deals with elections, and they have an administrative tribunal that works through challenges in election disputes. The tribal court decision cited many legal principles familiar to anyone who studied election law in the United States. At the same time, there was an important difference: the court kept returning to the principle of *mino-bimaadiziwin*—good living. They identified this principle as a key in trying to resolve the election dispute. These are not perfect institutions because some of them still have a very assimilatory reach, and some of them are frankly “too Western” to be persuasive to their people. But in other instances, tribal courts decide cases which strike a better balance between legal systems in a very helpful way.

⁵ *Nathaniel W Spurr v NHBP Tribal Council, Plante Moran LLP & Tribal Election Board* (21 February 2012), 12-005APP (Huron Potawatomi Tribal Court), online: NHBP Tribal Court <nhbpi.org/wp-content/uploads/2012/12/12-005APP-Opinion-of-SC-in-Spurr-v-TC-et-al1.pdf>.

To give you an example of how and why tribal courts are not perfect, I recall one case which concerned a judge who was in a car accident and made a fraudulent insurance claim.⁶ He affirmed his accident occurred while he was on tribal business when it was clear he was on his own personal errand. He was charged by the tribal police, and had to answer to this charge in tribal court. He argued there is no such thing as the crime of attempted fraud in Anishinaabe law. The tribal court rejected his argument. Although it is true that Anishinaabe people did not use that exact word in historical terms, there were good reasons to consider it Anishinaabe law today. The tribe had adopted and adapted a statute from Michigan concerning attempted fraud, and through their own sovereign authority the tribe used that term. The tribal court also recounted a trickster story from the past that illustrated analogies to attempted fraud. Our old stories tell us it is wrong to take something that is not yours and misrepresent your interests in the process. The court cited and applied this historical legal story. The court's trickster story tells of deceitfulness and deception and "burning oneself" when a person does wrong. So while this case shows tribal courts are not perfect, the decision also demonstrates that they have ways to deal with their challenges. There are lessons for us in the Canadian context as we find innovation and creativity as part of our journey towards living better lives. There are many gifts waiting to be accessed in this process.

V NAANO-MIIGIWEWIN: ANISHINAABE IZHITWAAWINAN (GIFT FIVE: CUSTOMS)

Fifth. My experience with tribal courts prompted me to wonder why we do not have Anishinaabe dispute resolution procedures in Canada today. Anishinaabe people are divided by an artificial US/Canadian border—what we used to call the medicine line. Our insights need to travel across these false borders. I believe Anishinaabe and other Indigenous legal systems should be part of the fabric of decision-making in formal adjudicative processes. As I experienced in the United States, there is a significant place for Indigenous law in legal practice. It adds value and it adds values. It could help revitalize both Indigenous and Canadian law as it focusses on good living. This past summer I've been talking with lawyers in Ontario about how such an initiative might be started. We discussed how an adjudicative structure could be created which operates by consent, if parties acceded to the forum's voluntary jurisdiction. This is what often happens in commercial settings and there is no reason why this might not develop in an Indigenous context. Of course, more formal recognition of Indigenous adjudicative forums would be preferable, but we cannot wait for official avenues for recognition to materialize. It might take decades for this to occur.

In our discussions, we have considered the staffing of Indigenous peacemaking or chambers-like bodies. We have talked about judges, Elders, lawyers, clerks, and administrators, all using Anishinaabe analogies. We have also spoken about these roles in an Anishinaabe-specific context using our own language and conceptual frameworks. No one in our group wants to create tribal forums in the image of Western courts. At the same time, there is much to learn by way of analogy.

⁶ *Ryan L Champagne v Little River Band of Indians* (June 2007), 06-178-AP (Little River Band of Indians Court of Appeal), online: <<https://rezjudicata.files.wordpress.com/2008/01/lrb-v-champagne-final-opinion.doc>>. See also Matthew LM Fletcher, *American Indian Tribal Law* (New York: Aspen Publishers, 2011) at 405–12.

Of course, once an Anishinaabe adjudicative forum is available, we would have to invite people to bring their disputes to this forum. It would also be necessary to consider how the decisions of this forum would relate to provincial and superior courts. As mentioned, as an initial matter, participation by “disputants” would occur on a willing basis. Acting by consent is consistent with broader Anishinaabe legal traditions (though coercion also has precedent within our system). Voluntariness has its drawbacks but it also has its advantages. Forums can be run in a manner which makes consent more meaningful. I can imagine disputants agreeing to abide by Anishinaabe ethical and procedural principles by oath. They could pledge this in their statements of fact, claim, and defense. Love, wisdom, respect, bravery, honesty, humility, and truth could form the touchstones of this process. Drums and song could animate such gatherings at their start. Elders might offer their counsel and words as a sign of respect for the participants. Results could be woven into wampum, set to song, or recorded in detailed contractual language if that was the parties’ wish. In some instance the decisions would parallel the broader system and in others they would be quite distinct. The context of each dispute would dictate how each matter unfolds. Furthermore, decisions could be written, which would create a formal record of what Anishinaabe law requires in particular disputes. A case law record could be formed. These judgments could be publically available on websites and in books. They could be accessible to others for study and further insight about the practice of Indigenous law in specific contexts. Like the Anishinaabe, other Indigenous communities could engage in their own terms, with their own laws, in creating or revitalizing dispute resolution systems.

VI NINGODWAASO-MIIGIWEWIN: CHI- INAAKONIGEWINAN (GIFT SIX: CONSTITUTIONS)

Sixth. In the last few years I have seen Anishinaabe communities work towards the development of their own constitutions. There are over thirty Anishinaabe communities in Ontario that are contemplating or have implemented a written constitution. These constitutions identify heads of power with very broad authorities. They deal with issues like language, culture, remedies, jurisdiction, rights, freedoms, and governance. They empower communities to make decisions in regard to issues like wildlife, conservation, education, housing, economic development, membership, and child welfare. The list of jurisdictional powers is extensive and related to matters which directly impact the health and welfare of communities.

I have also directly worked with communities in their own constitution drafting process. My advice has highlighted the fact that written words alone cannot implement a constitution. As noted earlier, law is a verb—an action—and not merely a category identifying authority and responsibility. Anishinaabe people sometimes use the word *chi-inaakonige* to describe laws which organize a community’s governance relationships. “Chi” can mean great or large, and “inaakonige” means to act through making a judgment or deciding to proceed in a certain way. *Chi-inaakonigewin* means that a constitution describes a set of guided actions that are future-oriented, yet take guidance from the past. Actions are fluid and always in motion. Therefore, I have counselled that Anishinaabe constitutional law cannot be compressed into a single idea, nor can it be summarized in a single sentence, paragraph, or document. The writing can be very important; in my view a constitution creates a *framework* for agreement *and* disputation. It provides for orderly and organized ways to agree *and* disagree with one another in the

future. Most Anishinaabe constitutions I have worked with place the seven grandmother and grandfather teachings at their heart; these principles were identified by communities as guiding principles long before my engagement with them.

Another distinctive element of these constitutions is that they are designed to “promote, advance and strengthen the philosophy of *mino-bimaadiziwin*, to live a good life; teach and encourage the use of *Anishinaabemwin* and the practice of *Anishinaabe aadzowin*.”⁷ This is an excerpt from a proposed constitution. As you can see, this clause fits with the theme of this talk. Good living is identified as a constitutional principle to help create ethical Anishinaabe communities. Anishinaabe language is encouraged as a means to facilitate this kind of living. At the same time the provision is not coercive, it is encouraging. The proposed constitution recognizes that citizens have the freedom to do what they want in relation to Anishinaabe tradition, even if the council is charged with encouraging its development. This stance advances Anishinaabe culture while leaving with individuals the freedom to live the life they choose. Law students who are preparing to be practice-ready lawyers might take guidance from this approach. They might likewise actively pick-and-choose from different traditions in their own preparations for self-governance as they internalize values to direct their lives in their legal careers and beyond.

VII NIIZHWAASO-MIIGEWWIN: ANISHINAABE INAAKONIGEWIGAMIG (GIFT SEVEN: INDIGENOUS LEGAL EDUCATION)

Seventh. In concluding this talk, I think back to my experience at the University of Victoria Law School. My colleague Val Napoleon created an Indigenous Law Research Unit (ILRU) to revitalize Indigenous law. Their “vision is to honour the internal strengths and resiliencies present in Indigenous societies and in their legal traditions, and to identify legal principles that may be accessed and applied today—to governance, lands and waters, environment and resources, justice and safety, and building Indigenous economies.”⁸ ILRU has worked with students across the country and from sea to sea to sea. It has also engaged with Indigenous communities widely and helped them further learn and apply their own laws. In conjunction with this Unit, we have also developed an Indigenous Law degree. It has approval from our Faculty Council. It is designed to teach the common law alongside Indigenous people’s law. When it is fully operational a student could receive a joint JD/JID at the end of a four-year period of study. I have written about this elsewhere; the point is that Indigenous law could be more formally recognized in the legal profession if it was taught in law schools. Furthermore, law schools can be a greater resource for Indigenous communities if they took direction from them in developing practical tools that assisted them (when called upon) in the revitalization process.

⁷ *Chippewas of the Thames First Nation Deshkan Ziibiing Anishinaabeg Constitution*, 18 March 2014, Article 2.2, online: Chippewas of the Thames First Nation <cottfn.com/wp-content/uploads/2014/03/COTTfn-Constitution.pdf>.

⁸ See the University of Victoria Faculty of Law’s Indigenous Law Research Unit (ILRU) website, online: University of Victoria Law Indigenous Initiatives <www.uvic.ca/law/about/indigenous/indigenoulawresearchunit/>.

So, I'm about finished. Remember your trip to the Fort William First Nation sugar bush. Remember the young boy, Otter, and the journey. Remember the teachings and the gifts identified in the story. Then, think about your own journey. I have attempted to describe my journey over the past few years. Through the seven vignettes, I have sought to describe some modest areas where both Anishinaabe and Canadian law can be revitalized, and aimed at good living. I hope you hear these as analogies. While they have specific application in the contexts where I work, I hope you regard them as invitations for further innovation in your varied contexts. Perhaps they spark ideas which you will adapt for your own future practice.

I hope you find rich gifts on your journey. I hope you find ideas, principles, and practices which lead to good living. You have a bright future. I am grateful to have raised a few possibilities about how that future might include the application of Indigenous law to your personal and professional lives. Be creative. Live your law.

Miigwech. Thank you for listening.