

CULTURAL COMPETENCY FOR LAWYERS

PAPER 1.1

The Importance of Welcoming in Indigenous Cultures

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The Importance of Welcoming in Indigenous Cultures

I. Introduction: First Nations in British Columbia

British Columbia is home to many of the Aboriginal languages found in Canada¹. On the Province of British Columbia website there are two different figures for the number of First Nations in the territory claimed by British Columbia. In 2018 the government of British Columbia web site recognizes 198 First Nations in the province². Yet the website still carries a 2016 Ministry of Education report which states that there are 203 First Nations communities and 34 First Nations languages in B.C.³.

This diversity of culture and language is not new. There has been this diversity of culture in this region for many thousands of years. In the many generations that have spanned this time a general protocol has evolved amongst First Nations for visiting and introductions.

In the past, as is the case now, a visit and a meeting were not casual events. A visit would have a purpose; either political, economic or social. Just as modern industrial society has laws that regulate political, economic and social activity; traditional laws of Indigenous societies, in the past and present, also regulate their political, economic and social activity in their communities.

The protocol for visiting originated in a time when Oral History and traditional law regulated society. As a host you would announce your name, lineage and community. As a guest you would acknowledge your hosts authority, and announce your name, lineage and community.

In the past the territorial acknowledgement had the authority of a court document. To a people with an Oral History and no Calendars, the territorial acknowledgement established a memorable event from which to reference the work witnessed during the visit. It is one of the cumulative details that confirmed an agreement or relationship.

For example: If a visitor came to seek “fuller’s earth” necessary to process raw wool for carding and spinning they would arrive, introduce themselves, and over the course of their visit negotiate a purchase price in trade goods for the fuller’s earth they required. The visitors may have done this trip many times. The welcome becomes a part of the record of their many visits.

While the individual negotiating sessions of these many visits may become a blurred memory, they are connected to the memory of the surrounding details, and a person may say: “...*that happened when the visitors came in the big rain, I remember because when we welcomed them we joked about how wet they were, that is the day we agreed on a low price.*” The territorial welcome is a part of the shared relationship between two peoples, and records the jurisdiction of the interaction. In the past, as is the circumstance today, a territorial acknowledgement means that the host knows of the meeting, the participants, the agenda, and the work being done, and confirms the legitimacy of the work through the acknowledgment by the host government. The welcome is part of the proceedings that registers location.

In order to provide a context for an audience of an industrial culture, it seems reasonable to provide cultural details about indigenous peoples. These will probably be unfamiliar to many Canadians, as the Oral History of Indigenous Peoples was outlawed for many years, and ignored for many more.

1 Gessner, Herbert, Parker, Thorburn & Wadsworth, 2014, p. 5

2 <https://www.welcomebc.ca/Choose-B-C/Explore-British-Columbia/B-C-First-Nations-Indigenous-People>

3 <https://www2.gov.bc.ca/assets/gov/education/ways-to-learn/aboriginal-education/aboriginal-languages-irp-review.pdf>

Musqueam: A Case Study

Indigenous culture is an unbroken chain of Oral History many thousands of years old. The Oral History of each community is unique. With the scope of cultural diversity amongst First Nations in the area claimed by British Columbia, it seems advantageous to discuss a representative case study of Indigenous Culture, in order to understand the Importance of welcoming. As I am a Musqueam, I will discuss Musqueam culture. Because Musqueam culture is very different from the Industrial culture of Canada, I will begin by describing something familiar, Musqueam as defined under the Indian Act.

Modern Musqueam under the Indian Act

Musqueam Indian Band has a population of 1,300. Musqueam occupies land under the Indian Act as follows: Musqueam Indian Reserve No. 2, at the mouth of the Fraser River to the north of Sea Island, 190.40 ha., Musqueam Indian Reserve No. 4, to the east of Canoe Passage near Westham Island, 57.30 ha, Sea Island Indian Reserve 3, on the northwest corner of Sea Island, 6.50 ha. Although largely regulated by the Indian Act Musqueam does have a Fish Commission, and is developing a Land Code to take our administration of our lands out of the Indian Act.

Musqueam has also received fee simple lands, to resolve litigation, as a Reconciliation Agreement under the BC Treaty Process; and we have also begun to buy back some of our own lands classified as fee simple land. On our own, and in partnership, Musqueam now has a considerable portfolio comprising several hundred acres of mixed residential and commercial real estate in greater Vancouver.

Musqueam Indian Band is that branch of Musqueam First Nation which is recognized as a legal entity by Canada. For that reason, under Canadian Law, Musqueam is governed by a Chief and Council elected to a four year term under the Indian Act. There are ten councilors and one Chief Councilor elected. Musqueam traditional law has always regulated our community below the surface of the Indian Act. It guides our interpretation of the Indian Act. It regulates our culture ultra vires the Indian Act.

The Suppression of Musqueam Traditional Law by Canada

The Potlatch Ban was implemented in 1885 and lasted until 1951. This law made it illegal for Musqueam to discuss our Oral Histories. From 1951 to 1975 it was once again legal for Musqueam to discuss our Oral Histories; but, as we were not allowed to hire lawyers until 1975, we were unable to link our Oral History and Traditional Law to the Canadian Legal system. From 1975 to 2018 Musqueam has used the Canadian Legal system to argue our rights within the context of Canadian Law.

The change in Canadian Policy whereby it has been announced that both Canada and British Columbia intend to implement the United Nations Declaration on the Rights of Indigenous Peoples opens the agenda of the reconciliation dialogue to include consideration of Musqueam's traditional law.

*“United Nations declaration on the Rights of Indigenous Peoples Article 27
States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.”*

The Musqueam you don't know anything about

We speak hə́ŋqəmińə́m̄. Concepts exist in our language with no parallel in Canadian, or other Industrial cultures. We use the International Orthographic system to write our language; and you will notice that unlike English, we do not capitalize our words.

We have a very different kinship system than that used by Canada and Canadians. We believe all humans are related, and have no pronoun in our language that does not mean kin. So you may not be Musqueam; but, if you live in our territory, then you live in a Musqueam community, and you are our kin, and we have kinship obligations to you.

We also believe we have been reincarnated many times, and that we will be reincarnated many times again. We also believe that we can have more than one soul. We can carry a soul that lives and dies with our corporeal body; and we can also carry other souls that may be spirits of nature, or ancestral incarnations.

These spiritual connections come with a price. If you carry a spirit of nature you have obligations to nature. If you carry an ancestral incarnation you have ancestral obligations.

When I was six years old I was given the ancestral name kwes' kwestin. I carry obligations with this name. The first obligation I carry is a common obligation for those with hereditary names; to remember the Oral Histories of my lineage. The second obligation I carry is specific to me: I am to be a bridge between the industrial world and Musqueam's world.

When I was 14 years old I began learning the Oral Histories of my lineage. I was taught that for many, many generations our ancestors lived in what my Elders called in English "The Myth Days". This was the time when we spoke the language of the animal world.

A late occurrence in the myth days was the Winter Without End. This was the time when it grew cold year after year. Even the ocean froze. Things were so bad that this is the time when we had to learn how to smoke fish.

You would know the Winter Without End as the Wisconsin glaciation. Scientists say that this began 80,000 years ago, and ended about 9,000 years ago⁴. Our Elders taught us that when the ice left our ancestors felt it was time to return home, and so we came back here from the south.

Not long after we returned home, our first great teacher came to us from the east. His name was xe:ís. He travelled with his family and servants. He rewarded those who did good deeds, and punished those who did harm to others.

⁴ <https://www.sfu.ca/archaeology/museum/exhibits/virtual-exhibits/glacial-and-post-glacial-archaeology-of-north-america/glaciation-of-north-america.html>

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χe:ís was our first great teacher. The Elders say that before he came we were not quite right; we had no empathy, no compassion, no charity, we couldn't forgive. Some say that he was a god, and that he made us out of what we were before he came; others say he was a man, yet a great shaman.

χe:ís came to us when Tsawwassen was an island. Geologists say that it was an island 9,000 years ago. He came from the east, and to this day we remember where he walked, and where he worked his miracles. It is χe:ís law that we follow to this day.

But; you might ask, how does an Oral History become law? An Oral History becomes Law by defining the optimal standard of social conduct.

Musqueam Traditional Law

All people have in common shared experiences from our distant past. These are far more important than our differences. Yet we respect those differences too.

Musqueam Traditional Law is constituted from various streams of hereditary law known as snew'i'ulth. The Musqueam kinship system is based on equal inheritance from both the male and female family members. Therefore you inherit the snew'i'ulth of both parents. When a new family is created, a new version of hereditary law specific to the children of that union is created.

Differentiation in snew'i'ulth occur when a family line carries spiritual or ancestral obligations specific to their lineage. It is these obligations which create behavioural codes specific to a given family. These family specific codes of behavior do not alter Musqueam Laws of General Application as they apply to a territorial acknowledgement, or Musqueam Welcome.

The aggregate of these various streams of Musqueam Law represents the totality of Musqueam Traditional law. There are common principles that are contained in the various streams of snew'i'ulth. The most common of these principles are evident during transitional ceremonies such as welcomes, funerals, memorials, cleansings, etc.

At these ceremonies these laws are repeated in a public forum in front of hundreds of witnesses. In this way these traditional Musqueam laws have been maintained without interruption, despite the 66 year prohibition under the Canadian Potlatch Ban. As these laws are cited at transitional ceremonies in front of hundreds of witnesses we may regard them as current Musqueam law.

Examples of these Musqueam Laws of General Application would be: all people are related, we have an obligation to protect the well-being of others, and we must respect the property of other people. Common principles of our law are to welcome those who come in peace, to forgive those who wrong us through ignorance, and to help those in need. These laws and legal principles of Musqueam culture are still a part of Musqueam daily life.

When we interact with Canada, we do not abandon our law for Canadian law; we do so by following our law, and where our law permits, we follow Canadian law. It is our sincere hope that we can share our law with Canada and Canadians. The Territorial Acknowledgement is an aspect of our Traditional Law.