Module #11 Musqueam Law

A. Family Sniw superior to Indian Act Government

In "Module #1 Introduction to Musqueam" we considered snəẇeyəɬ, "good teachings," which may be given an interpretive meaning in English as law. This body of law is primarily based on teachings of antiquity, or sχʷəẏeṁ. The oldest Musqueam memories come from what our elders termed the "sχʷəẏeṁ tem," or "myth days." These memories shape our culture to this day, their origin precedes the Winter Without End, otherwise known as the Wisconsin glaciation, 87,000 years ago.

These laws have been passed down directly through intergenerational lessons for thousands of generations. Some of these lessons are individual lessons, as seen in Module # 2 Musqueam Introduction, others are lessons spoken at transitional ceremonies, marriages, naming's, memorials, and funerals. Some lessons are specific to the training of ritualists for sacred ceremonies.

These laws are followed to maintain the balance of human life with our concept of natural balance. In our law we do not hold ourselves above nature. As we believe our soul can be bound and intertwined with spirits of nature, we do not see nature as separate from human life, and for humans to be healthy in the balance of life we believe our environment must also be healthy.

This philosophy did not have any traction when the Indian Act was written, nor in subsequent amendments to the Indian Act. It is for these reasons that we have maintained our culture and law. It is for these reasons that in our community traditional Musqueam law has precedence over Canadian law. Where our ethics permit us to follow Canadian law we do; but, consistent with our law of continuous transition, Canadian law needs to adapt to both the international expectations of basic human rights, and the environmental crisis.

As the enabling legislation for UNDRIP is advanced the Crown is now obliged to consult with Indigenous communities where our rights are affected. In the past careless errors in colonial and Canadian law have left a mess for future generations to clean up. The Douglas Treaties that do not specify the lands surrendered or the compensation paid comes to mind in this context.

Therefore, changes in the relative importance of traditional Indigenous law, snəẇeyəɬ, and Canadian law must be considered. The only legal identity Musqueam Community has in Canadian law is as an Indian Band under the Indian Act. Our concept of law is deemed "Ultra Vires", in Canadian law. Ultra Vires is a Latin phrase which means "*beyond the powers".* Given this situation it is clear that Indian Bands cannot approve changes implemented through UNDRIP enabling legislation as they are in Canadian law an arm of the federal government.

At Musqueam this means that approvals required to implement UNDRIP must be secured from the family heads who carry their lineages snəẇeyəɬ. It also means that a future form of Indigenous Government must accommodate ancient principles of law fundamental to Indigenous identity.

B. Siyeye Founders' Family Kinship and Musqueam Origin

The Musqueam founders of siyeye are Nolan Charles, Terrance Sparrow and Kwes' Kwestin (Jim Kew). We are all descended from our last great law-giver qiyəplenəxʷ. In line of descent from qiyəplenəxʷ Nolan and Kwes' Kwestin are seven generations removed, and Terrance is eight generations removed. As Nolan's father was the older brother to Kwes' Kwestin's mother Nolan is my older brother in our language, even though he is younger than me. As we do not recognize cousins as a kinship term, and use sibling instead, Terrance is our nephew. Below is an abridged version of an ancient sχʷəẏeṁ, the origin of the name Musqueam.

Musqueam Name Origin

Long ago there was a place called məmqʷém (pronounced Mumquaam). It is somewhat grown in now, but is still a lake. It is small and shallow and cranberries grow there. There is nothing else there, it is just a small lake, like a bog. It is said to be where the sʔi:ɬqəẏ (pronounced seelth – key) lived. sʔi:ɬqəẏ is a word that means monster. The Elders were always warning about this monster. It was impossible for someone to walk near there. As soon as a child grew up he was warned about it.

"Don't be going to that lake back up there. If you are foolish enough to go you won't be able to return. They say if you go near you will get twisted up, and you will die." That's why no one would go there. It was truly a monster. Sometimes when it was evening, nearly dark, you heard a duck if you were walking fairly near. "*Quack, quack, quack*", it was like a mallard, but very loud. That is how you could tell it was not a duck. Those who used to know said they couldn't miss there way and go close. Only those who knew nothing, people from another place, could be mistaken and think it was a real duck. They were the ones that monster managed to kill, those people who were mistaken. But people of that time from here, they couldn't go near. If they heard that sound, like a mallard whenever it was sounding, the only thing they did was get away.

It was quite a while that it was there in what was then a lake before it left, according to what the old people said. It left its den to come down to the shore. It was in plain view. There were quite a few people who had a chance to see it as it came along. It was being watched by people who had known about it for a long time. *"It's a monster. A monster, you folks. Move away. Don't let it catch you*." So the people remined that way. The people divided so as to make a path for the monster called the sʔi:ɬqəẏ. It continued on to the big river (Fraser River). Where it went became the course of a stream. Everything that it passed over, grass ferns, everything died as the monster passed by.

There were many people who saw it with their own eyes. They had a good view. It had two heads together as it was dragging itself along. The middle of the monster was like a big storage basket. It was steaming, this is what is called the stomach, where everything which that monster swallows goes. Then the old people where saying, that is why this creek (Musqueam Creek) is very crooked. It is the path the monster followed when it left. When the next year came, then plants grew at what had been the place where it had passed when it went along, that monster that was called a sʔi:ɬqəẏ. That was a different plant. The people called it məθkʷəý. When it was another year, next year, then that plant məθkʷəý spread out when it grew. But it was not like any other plant. The old people did not step on it. It was thought to be sacred. It bloomed like any other plant. It grew from the droppings of the the sʔi:ɬqəẏ. It is what fell that plant we call məθkʷəý, which came to be growing plentifully all over. So that is why the people of long ago named this place where we are məθkʷəý.

In English this plant is called the Pink Fawn Lily. It no longer grows at Musqueam. It can be found now at higher elevations in the local mountains.

C. All People are One Family means equal protection under our law

Article 27 of the United Nations Declaration on the Rights of Indigenous Peoples commits that states shall give due recognition to Aboriginal land tenure. Section 28 states that Indigenous people have the right of redress for alienated lands through just and fair restitution. Fair value for alienated Musqueam Lands can be calculated from Municipal tax roles, and these lands are assessed at approximately one trillion dollars.

Canada cannot pay the fair price for these alienated lands and under Musqueam Law the return of these lands cannot harm our relatives in our territory. Canada and Musqueam must create an agreement to co-manage Musqueam Lands which would legitimize both current and future Canadian use of Musqueam Lands. This could be accomplished by replacing the Crown Land registry with a Musqueam Land Registry, which would return alienated lands to Musqueam. Negotiating Constitutional Agreement on the new Registry would be the final step.

The final agreement must be fair to all peoples and must leave future generations free of the colonial legacy of racism, theft, and genocide. By this I mean that Canadians must be free of the colonial legacy too. I spoke at the University of British Columbia School of Community Research and Planning a couple of years ago. During a breakout session on the Indian Act a white Canadian said to me;

"I knew nothing of this, until it was dropped on my lap. My parents' generation had the responsibility to do something about this, and they did nothing. If I can't do anything about this, then the mess will land on the laps of my children, and they will wonder why I did nothing, and what kind of a person I really was."

Musqueam law holds that all people are from one family, that we are all fundamentally equal. Implementation of UNDRIP requires consideration of Indigenous law. Musqueam law requires that we consider the well being of our siyeye, our kin.

UNDRIP requires due recognition of Indigenous Law, Tradition and Culture, which requires the maintenance of a human balance with nature. Future co-management agreements under UNDRIP must accept Indigenous Environmental Law derived from Indigenous spiritual obligations to the earth.

In the recent Wet'suwet'en land dispute over the Coastal Gas link pipeline the Canadian Court directed that consultation must be with the Traditional Indigenous Government. It was not enough that the Indian Band governments elected under the Indian Act had been consulted.

Canada, British Columbia, and Indian Bands under the Indian Act must work to end suppression of Traditional Indigenous Law and Government. Indian Band governments are an extension of the Crown, and the fiduciary duty of the Crown applies to Indian Band governments, as it has been established by Legislation, and as Band governments are responsible to the Crown, from whom they receive their legal status and their bulk of funding.

Indigenous Peoples must have the right to benefit from their ownership of their lands. The Musqueam founders of siyeye have undertaken this venture as a commercial business; but, also to give an Indigenous voice to the Construction Sector. Building on previous Reconciliation and Impact Benefit Agreements Musqueam members have been working in the Construction sector for about ten years now. Heavy Construction and contracting are part of our future, and through siyeye we have a voice in the sector.

D. Land not for sale, but can be shared through land registry change

Our land is sacred. We have seen the mountains emerge from their swaddling blankets of ice and snow, when they were young and born out of their mothers, the glaciers. We were old when the

cedar tree came begging for a home. We did not buy and sell land then. We will not sell our land now.

Given that Canada can not compensate Musqueam at fair value for our alienated lands, and given that our land is not for sale, the only way to comply with the United Nations Declaration on the Rights of Indigenous Peoples Article 28 is to return the land to Musqueam. At present in Canada land is entered into the Crown Land Registry, and most private homes are held in the Provincial land registry. Lands in the territories and Indian Reserves and other lands are held through a federal land registry. Indian Reserves are held in the federal Indian Land Registry.

COMPLIANCE WITH UNDRIP

Compliance with the United Nations Declaration on the Rights of Indigenous peoples is in a sense a test of Canadian integrity. Not a national test. A personal test of individual integrity. If you do not deal with reconciliation by international standards of law then the issue will remain unresolved, then the next generation will have legitimate questions about your integrity.

Setting up a new registry is cheaper then paying fair value for the land. There are options to replace the Crown registry with a Musqueam land registry without disrupting Fee Simple title. Here are three options worth consideration:

1) The Crown might return all Musqueam lands, and then similar to what was deemed just more than one hundred years ago in Hong Kong, the Crown could lease the lands back for a set period of time to ensure continuity of fee simple title to lands in the Crown Land Registry. This option is not bad, but it is sort of kicking the problem down the road.

2) The Crown pays homage to Musqueam in order to hold land in Crown registry. This option does not see a lease payment or purchase of alienated lands. Instead, this option builds on the feudal precedence that is at the heart of a Monarchy and in Canadian law replaces the Crown with the siem as the senior authority in the Hierarchy of Musqueam territory.

   Right now, the Queen holds the Duchy of Lancaster and the Duchy of Normandy and the Ile of Mann as feudal fiefs. At one time the Dukes of Normandy were English Kings who held the Duchy of Normandy and other feudal fiefdoms from the French King. This option is consistent with British law, and the accommodation of Indigenous Rights would not be legislated in the same legal framework as now exists, so much as it would be more in the nature of constitutional reform. Yet it still sort of kicks the can down the road, as the entry into Canadian Confederation by Musqueam would not be required, and there would still be a dominant Industrial Culture exploiting Indigenous lands.

3) The third option I propose for consideration is that Canada become a Republic and abolish the Monarchy. The Constitution would require an amendment to remove the Crown and the Crown could be replaced by a covenant with First Nations that would reshape the constitution and accommodate an overhaul of the entire Land Registry system. This option does not kick the can down the road as do options two and three. It also opens the door to incorporation of traditional Indigenous laws and values into the reformed Canadian Constitution.

E. ENVIRONMENTAL CHANGES TO LAW THROUGH RECOGNITION OF INDIGENOUS LAW

In Module #10 Section d. the Law of Mother Earth, Bolivia was mentioned as evidence of Indigenous values incorporated into an Industrial state. In October 2020 the Earth Law Center, International Rivers and the Cyrus R. Vance Center for International Justice said that at least 14 countries have

Rights of nature laws, allowing residents to sue over harm on behalf of lakes and reefs. In these countries the environment has effectively won the legal right to exist and flourish.

Given that implementation of UNDRIP probably requires constitutional reform, and that the environmental clock is ticking, this ought to be regarded as an opportunity to implement environmental laws consistent with Indigenous laws in a way that will benefit everyone.

In a web article of November 4, 2021 published by National Public Radio, an American organization, the following information was shared:

> *"The urgency of cutting emissions is even greater than previously thought if the world is to avoid a rise in average global temperatures that is greater than 1.5 degrees Celsius (2.7 degrees Fahrenheit) above preindustrial levels. That was the goal set by the 2015 Paris climate agreement and pursued by countries currently gathered for a major United Nations climate summit in Glasgow, Scotland.*
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> *The Global Carbon Budget is compiled with input from dozens of researchers around the world. It monitors the amount of carbon dioxide (CO2) that humans put out and how much room is left for such emissions to stay within the 1.5 C limit.*
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> *When the first report was issued in 2015, scientists projected that Earth had a 20-year time horizon before emissions would result in warming above the set limit by the end of the century. But the output of greenhouse gases has risen even faster than expected, with half of that budget expended in just the past six years.*
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> *At current levels of emissions, there's a 50% chance that a rise in temperatures of 1.5 C by the end of this century will be locked in by 2033. With no reductions, more dire scenarios are equally likely — with a 1.7 degrees C increase inevitable by 2042 and a 2 degrees C jump unavoidable by 2054.*
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> *Global average temperatures over the past 150 years have risen about 1.1 degrees C (or about 2 degrees F), intensifying wildfires, floods and hurricanes worldwide."*