

Indigenous Peoples and Canadian Justice



PRESENTED BY

The Honourable Lorne Sossin

Court of Appeal for Ontario

In this presentation, Lorne Sossin looks at the relationship between the traditions of civil law, common law and Indigenous law developed through the work of the courts and their recognition of various traditions.

The influence of John Borrows

Judge Sossin states, from the outset, that the relationship imagined and described by Borrows in *Canada's Indigenous Constitution* (CIC) is now coming into being, although more slowly than hoped. He illustrates this new recognition by analyzing the influence of John Borrows' work in some recent cases. For example, CIC was cited by Grammond J. in 2019 in *Whalen v. Fort McMurray No. 468 First Nation*, supporting a terminological shift from Indigenous "custom" to "law". Lorne Sossin also notes an observation by Grammond J. in 2018, in *Pastion v. Dene Tha' First Nation*, which reveals a renewed interest in Indigenous legal traditions. This gives Indigenous peoples an opportunity to develop and maintain their own practices and procedures, institutional structures and, where they exist, judicial systems.

Indigenous legal institutions

Citing a 2012 decision, *Gamblin v. Norway House Cree Nation Band Council*, Lorne Sossin points out that the ability of the First Nations to produce their own laws on governance does not arise from the Indian Act, but from their exercise of an Aboriginal right to make their own laws in the field of governance. The notion of "inherent power" generates tension within the Canadian judicial system because it is not a jurisdictional or delegated authority, but a system that continues to change and evolve from the ground up. Lorne Sossin gives the example of the community of Akwesasne and the Mohawk Council, which has a number of courts and autonomous legislative bodies, including its own Mohawk court. This court of justice is responsible for apply and relaying the values and principles of the community, which are partly resonant with the values of respect, natural justice and equity found in the Canadian justice system, while providing a framework for dispute resolution.

It is likely that we will see a growing number of Indigenous communities adopt their own legal institutions. In this connection, Lorne Sossin commends the initiatives of the Indigenous Law Research Unit at the University of Victoria in supporting the renewal and dissemination of Indigenous laws.

Multijuridism in Canada

Multijuridism is a growing phenomenon in Canada, as reflected in bi-legal programs at McGill University (civil law and common law) and the University of Victoria (common law and Indigenous legal traditions), and also in the compulsory courses on Indigenous law or interactions between Canadian and Indigenous law that are now dispensed by most faculties of law in Canada.

Lorne Sossin ends by recognizing the gap that remains between the ideal outlined by John Borrows in CIC and the reality on the ground. He emphasizes the need to continue to develop an approach to legal training that improves access to and understanding of Indigenous traditions. He also underlines the importance of a dialogue between Indigenous thinkers and practitioners and between civil law and common law on the topics of shared values, methodologies and the possibilities and boundaries of legal pluralism.



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