

How threats from the US highlight our history of colonization in Canada
LawCast BC podcast
Law Society of British Columbia

Vinnie Yuen:

Welcome to LawCast BC, a podcast produced by the Law Society of British Columbia. The Law Society regulates lawyers in BC. Our mandate is to protect the public. I'm Vinnie Yuen, host and producer.

When President Donald Trump threatened to make Canada the 51st state, many Canadians felt angry and they felt betrayed. There was a sense of renewed patriotism among us. A lot of Canadians started buying local or avoiding travel to the US altogether. These feelings of anger and betrayal are understandable. One Indigenous organization has pointed out that this feeling can help us reflect on our own country's history of colonization, saying that there are similarities between how we feel now to how Indigenous peoples have experienced and continue to experience colonization in Canada. Today, we've invited Lyson Rivest, a consultant, trainer and speaker with Indigenous Corporate Training Incorporated. She's come to talk about how these feelings can help us empathize with Indigenous peoples and how we could use this as motivation to learn about the history of our country amidst all of the challenges that our country is facing. Lyson also gives really helpful advice for lawyers on how to work more effectively with Indigenous peoples. Here's our discussion.

Thank you so much for coming onto our podcast Lyson. Could you tell us a little bit about what inspired you to get involved as an ally in this area of work?

Lyson Rivest:

Absolutely. Thanks for having me on this podcast. So my name is Lyson, I'm a trainer at Indigenous Corporate Training. My background so far has been working for a little over a decade in the federal public service in Indigenous relations. My educational background

is actually in international development. Throughout my undergrad, I was part of the coop program and got an internship at what was back then called INAC and now is CIRNAC, Crown-Indigenous Relations and Northern Affairs Canada. That's really when I discovered a whole world of possibilities but also realized that a lot of the issues and challenges that I had been learning about in my bachelor in international development were issues that Indigenous communities were facing here in this country in that more needed to be done to resolve injustices and really work towards reconciliation with Indigenous peoples.

Vinnie Yuen:

Thank you so much for telling us a little bit about yourself. As we were looking at the Indigenous Corporate Training website, we saw a blog post that draws a really compelling parallel between Canada's reaction to President Trump's comments about making Canada the 51st state and drawing that parallel with the history of colonization of Indigenous people and their lands. Could you elaborate on this analogy a little bit?

Lyson Rivest:

First I need to give credit to my colleague Laura who actually had the idea for this blog post and it's a blog post that has resonated with a large part of our audience. It takes really difficult feelings that many Canadians are feeling these days with the tensions in the Canada and United States' relationship and uses this to help build empathy. In our trainings at Indigenous Corporate Training, we really focus on being soft on people and hard on problems and what that means is we don't want to make people feel uncomfortable or guilty for having a settler background and perhaps even some of their ancestors being part of assimilation efforts in the country. What we do want to do is encourage people to build empathy for how Indigenous peoples and communities might be feeling which is the root of a lot of the tensions that we see sometimes in Crown-Indigenous relations or settler-Indigenous relations in Canada. So the blog post really takes current events and takes something like colonization, that tends to be a very abstract concept for many Canadians, and translates it into something that is very concrete and current.

Vinnie Yuen:

Amidst all of this political background and current events, why is it so crucial for Canadians to recognize and empathize with this experience of colonization?

Lyson Rivest:

So too few people I think in Canada know that colonization and nation building and expansion in Canada have always been very intertwined. A big push for signing the numbered treaties which cover most of Ontario and the Prairies in Canada was actually expansionism from the newly independent United States. That's, it's actually fear, potential fears of annexation that pushed the government authorities at the time to seek to secure access to land that was, at the time, really occupied mostly by Indigenous people, there was not a lot of English settlements throughout the territories. So throughout time, large nation building, if you will, projects, or large industrial and commercial development projects, especially in the natural resources areas, have been a catalyst for tensions in Crown-Indigenous relations. And that's not a coincidence. The push for such large projects from a purely practical point of view, changes the power imbalances or disrupts the power imbalances that are typical in Crown-Indigenous relations. We've seen that throughout history.

If we look, for example, at the first modern treaty that was signed, the James Bay in Northern Quebec agreement, in the seventies, the Quebec government decided to build the James Bay project, a large hydroelectric project that would, in order to implement it, require flooding a large area in Quebec that is roughly the size of the country of France so that's pretty significant in terms of impact on the environment and the territory which happens to be the territory of Crees and Inuit in the area. Crees and Inuit raised to the government that they needed to be consulted before such a large project affected their lands in that way. The government of Quebec at the time was of the view that they did not need to consult or speak with the Crees and the Inuit so those groups decided to turn themselves towards the courts and sought an injunction and secured an injunction that halted the work for building I believe access roads to the construction project. The legal action is actually what forced both the federal and provincial government to sit down at

the table and negotiate an agreement in good faith clarifying the rights over a specific territory. This resulted in what we now know as the James Bay Northern Quebec Agreement or JBNQA which is known as the first modern treaty to ever be signed in Canada, modern treaty being any treaty signed post 1975 because we stopped signing historic treaties in 1923, we thought we were done, but that wasn't the case. That agreement really paved the way for what we now see in terms of both modern treaties and comprehensive land claims but also self-government.

Vinnie Yuen:

Knowing all of this, how should it inform Indigenous relations going forward as Canada and BC they seem to be ramping up to take on even more large developments?

Lyson Rivest:

I think history has showed us that Indigenous relations is something that we need to invest in and cannot be something that we view as a check boxing exercise. It does not work that way. It includes relationships, it includes difficult conversations and sometimes it does also mean that we have irreconcilable views that may mean amending projects for a plan that could go all the way to canceling a project. It is often a much more productive approach and one that we've seen taken in Manitoba recently, for example, to engage in good faith discussions with Indigenous leaders from the very design phase of a project or legislation.

Now there's also the issue we've seen these days with the proposed fast tracking legislation, both at the provincial and federal levels, seeking to have some, let some projects essentially work around or avoid certain aspects of the regulatory approval process and Indigenous leaders have been very vocal against this. Some people are wondering why that is and that's because historically, to this day, the environmental impact assessment process, which is largely what is being fast tracked or, or set aside for those fast track projects, is the main process through which governments have fulfilled their duty to consult obligations but it's typically through the environmental impact assessment projects process that Indigenous consultation happens. So there is,

understandably, a fear and a concern from Indigenous communities and leaders that doing away with or significantly reducing the impact, the environmental impact assessment process will result in inadequate or lacking Indigenous consultation.

The fast tracking legislation cannot do away with the legal obligation of the duty to consult but I think there is a real risk of perhaps forgetting some of the progress that we have made in engaging early and often with Indigenous leaders when we are facing political emergencies and the priorities for national interest. It's important for both politicians and Canadians to remember that Indigenous groups are crucial for Canada's economy and nationhood to thrive. They are not a hindrance to it. The country will do better by honoring its commitments to and relationship with Indigenous groups.

Vinnie Yuen:

Given such a complex history and a lot of these ongoing challenges, I'm thinking of our listeners here who may be working as lawyers and who may be working with Indigenous clients or communities; what are some common mistakes that they could make and then what are some of the skills and approaches that can help a lawyer work more effectively and more respectfully with Indigenous peoples

Lyson Rivest:

Thank you. I'm glad you asked this question and I'll give you perhaps two common mistakes that lawyers might make in working with Indigenous groups or individuals and then three key approaches and skills that your audience can focus on to better work with Indigenous peoples. So two common mistakes that I see, especially in the legal profession but I would say in the professional world more broadly as well, is a lack of awareness, generally not understanding or not being aware of the history, the political context, even the very complex and different regulatory and legal environment that is on reserve lands in Canada and even in the North, even modern treaty lands have particularities from a legal and regulatory perspective.

But when I say lack of awareness, I also mean trauma informed awareness. It is crucial for lawyers to recognize the impacts of residential schools including the intergenerational trauma that we are seeing, the ongoing impacts of colonization on communities, on families, on individuals, on nations as well. This may lead to behaviours that someone might see as silence or hesitation, mistrust of the legal system, those might all be seen as uncooperative behaviours when in fact they're really a rational response to historical harm and trauma that's been caused by the colonial system. Specifically in the legal profession, it's important to recognize that the legal system itself has been a primary tool for colonization in Canada so it only makes sense that Indigenous groups are hesitant or mistrusting of the legal system and by extension the legal profession and lawyers, even though they may be allies. There is a lot of trauma and hurt historically and ingrained in the system.

Now a second common mistake that I see some lawyers make is seeing Indigenous law as a side issue, I don't mean Aboriginal law I mean Indigenous law and Indigenous legal traditions. Many lawyers tend to see those as secondary. This might seem like not a big deal but it is perhaps a subtle but very powerful act of assimilation in itself. It essentially tells Indigenous nations that in order to address their land rights, their rights as nations and as individuals including the rights to self-governance and self-determination, they must play a game where the rules were written by and for settlers, colonizers. So understanding that the legal system itself has been a primary tool for colonization in Canada, one of the most meaningful steps that lawyers can take towards reconciliation is to make every effort to recognize and uphold Indigenous law and Indigenous legal traditions.

Now this may not be an easy thing to do and in fact, it rarely is. It is inherently difficult to reconcile two very different legal systems. But we have seen a number of successful initiatives at perhaps marrying Indigenous law with Aboriginal law and common law more broadly, and I personally think that recognizing and upholding Indigenous laws is one of the most powerful things that lawyers in Canada can do to contribute to

reconciliation with Indigenous peoples and along with that, continuing to pursue cultural competency, cultural awareness and inter-cultural communication and competency. Whenever lawyers with a background other than Indigenous engage with Indigenous peoples, we are engaging in cross-cultural communication. It's important to acknowledge that there are different social norms, different social expectations, different gender expectations at times and continuing to learn really by engaging with Indigenous people, by seeking out Indigenous stories, Indigenous perspectives, can go a long way in building that cross-cultural competency.

Vinnie Yuen:

And on a final note, your company's president, Bob Joseph, has a new book that recently came out and the book is called "21 Things You May Not Know about Indigenous Self-Government" which advocates moving away from the Indian Act. Can you share a little bit about the book and its message and how it connects to some of the themes that we've talked about today?

Lyson Rivest:

Absolutely. After Bob's first book, "21 Things You May Not Know about the Indian Act" and the trainings that we deliver at Indigenous Corporate Training, one of the questions or some of the questions we get most often are why do we still have the Indian Act and can't we just get rid of it? What would that look like and would it work? Very important question. And those are some of the questions that Bob tried to answer with his latest book about Indigenous self-government. It looks at tackling the roots of some of the issues we have discussed around colonization and assimilation efforts and really the dismantling of Indigenous governance systems through time. It advocates for Indigenous communities to move beyond the Indian Act not by repeating attempts like the White Paper in the seventies at simply getting rid of the Indian Act through legislation, but rather encouraging Indigenous communities themselves, when they are ready and in the way that they see fit, to regain greater self-determination through the form of self-government. And this looks very different depending on the community you're in, the traditional legal orders there, the impacts of colonization even and current circumstances.

The book also tries to demystify Indigenous self-government, again building empathy between Indigenous and non-Indigenous Canadians and assuage some fears that we've heard from non-Indigenous Canadians around greater Indigenous self-government.

Vinnie Yuen:

Thank you so much for sharing about the book and for coming on our podcast and we really appreciate your time.

Lyson Rivest:

My pleasure, thank you for having me.

Vinnie Yuen:

Thank you for listening. To stay in the loop about the Law Society's initiatives including initiatives on reconciliation, please visit our website at lawsociety.bc.ca.

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