



WOMEN'S WORLD SUMMIT 2011

Human Rights, Gender Equality and First Nations Governance

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Indigenous Bar Association
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FIRST NATIONS LES PREMIÈRES NATIONS



TRAITÉS TRAITÉS

(Detailed text describing the treaties and their significance)



CREE MEDICINE WHEEL

Winter Season
Eldership. Place of achievement, reflection, deep connection to spirituality and understand of life

Direction of the North color is white for the White Nation. Spirit animal put there by my teaching is the White Calf. Buffalo Woman brought to Native people the sacred Pipe and a way of prayers. Therefore we say it is the place of knowledge and wisdom. The place of freedom and selfishness. The place of eldership. We also place the element of Fire in that direction.

Spring Season Time of planting, birth and first or second chance. connection to the physical is in this place

Direction of the East color is yellow for the Yellow Nation. Spirit Animal put there by my teaching is the Eagle. The Sun rises in that direction. It is a new day. The beginning of new things. The Eagle brings focus and flies high in the sky. So we say we are walking close to Creator when we are honored with an Eagle Feather as it brings words to him. The Eagle gives us the ability to stay focussed on our tasks at hand. We also place the element of Air in that direction.

Fall Season
Time of harvesting, adulthood and deeper emotional understanding

Direction of the West Color is black for the Black Nation. Spirit animal placed there by my teachings is the brown medicine bear. We say it is the place of deep introspection and reflection. The sun sets in that direction. We ask for ability to go deep within to do the healing necessary. We place the element of Water in that direction.

Summer Season
Time of growth, adolescence, juvenile/development of mental capacities

Direction of the South color is red for the Red Nation. The animal placed there by my teachings is that of the Jumping mouse. The mouse multiplies and works hard. Therefore the lessons of family, hard work, integrity, honesty and truth. We also place the element of Earth in that direction.

Section 67, Canadian Human Rights Act

- Allowed for discrimination in favour of Aboriginal governments
- Repealed via Bill C-21; effective June 2011
- First Nation people and governments directly subject to the CHRA

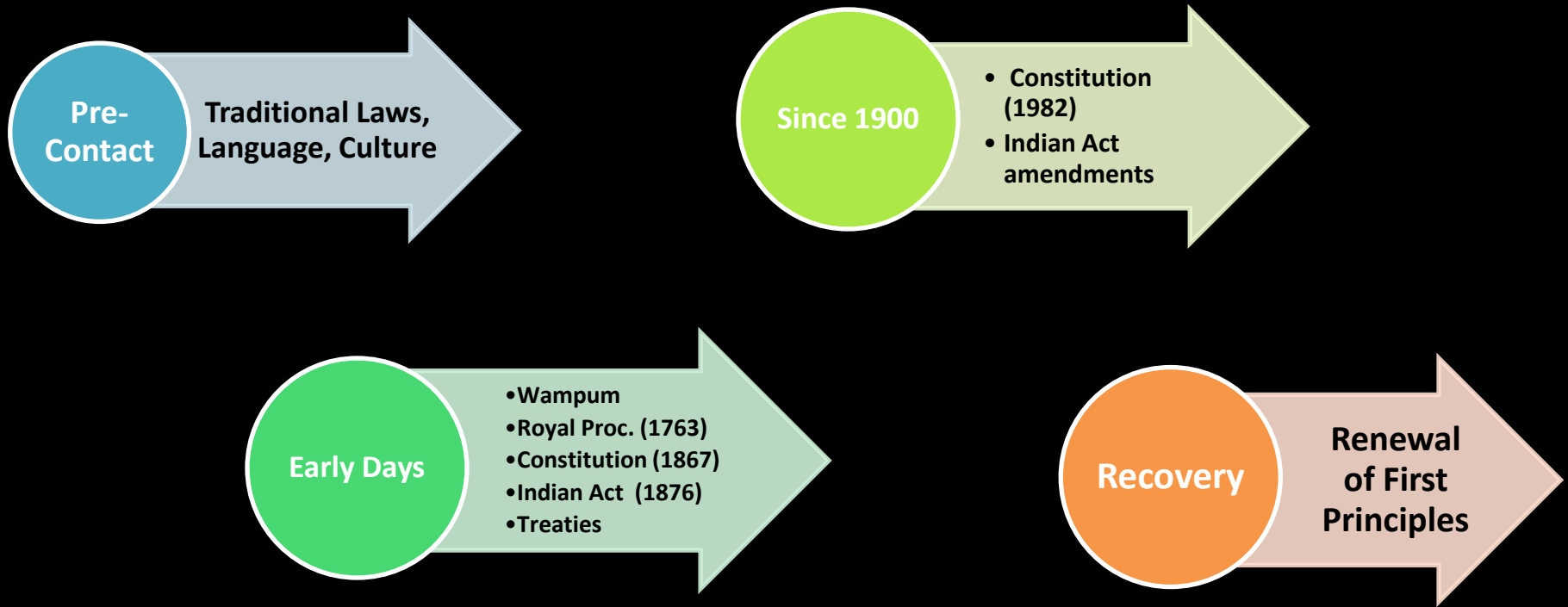
INDIGENOUS LEGAL TRADITIONS AND

CUSTOMARY LAWS

COLLECTIVE v. INDIVIDUAL RIGHTS

GENDER EQUALITY

Over 200 Years in Two-Minutes



INDIGENOUS LEGAL TRADITIONS AND CUSTOMARY LAWS

- Traditional laws or customs are those things passed down, and arising from the pre-existing culture and customs of Aboriginal peoples
- Aboriginal rights are based in Indigenous legal customs and traditions
- Indigenous legal traditions are inextricably intertwined with present-day Indigenous customs, practices, and traditions which are now recognized and affirmed in s.35 of the Canadian Constitution
- Where different traditions operate within a state such as Canada there is “legal pluralism” – Canada’s includes common law, civil law and Indigenous legal traditions

DELIBERATIVE LAW

TWO ROW WAMPUM BELT – THE KASWENTAH

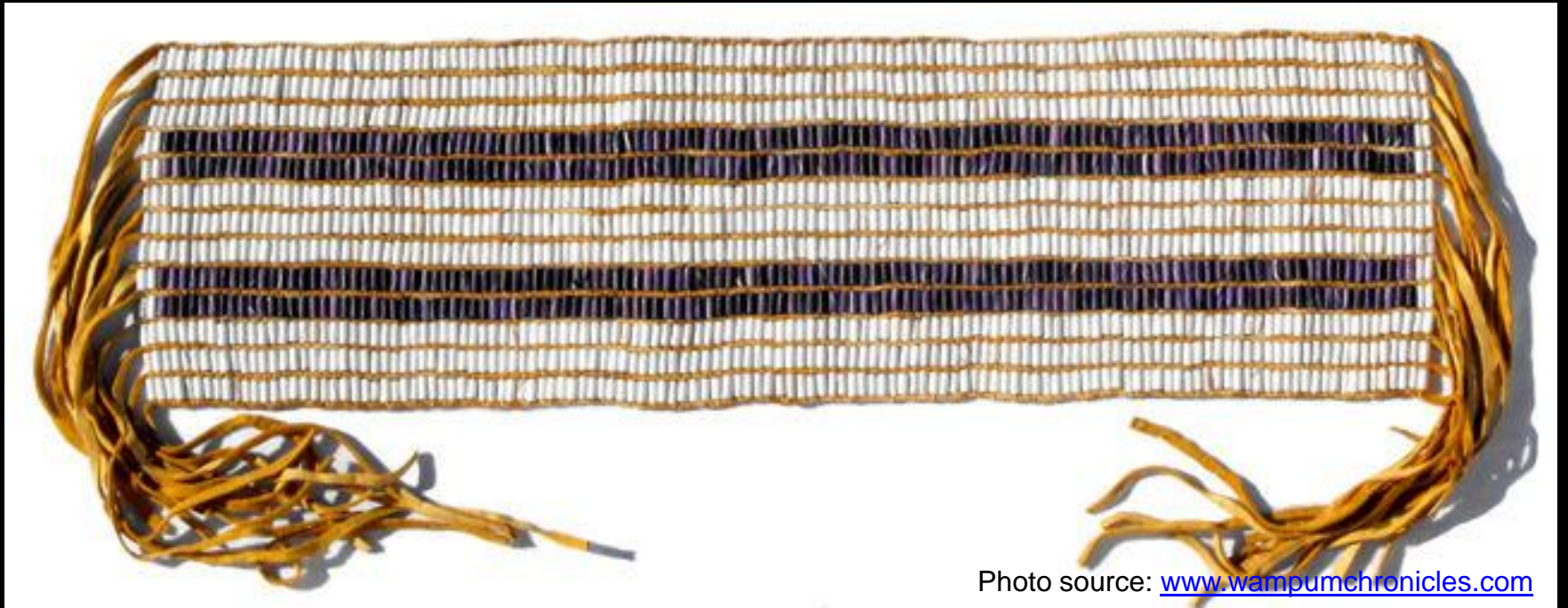
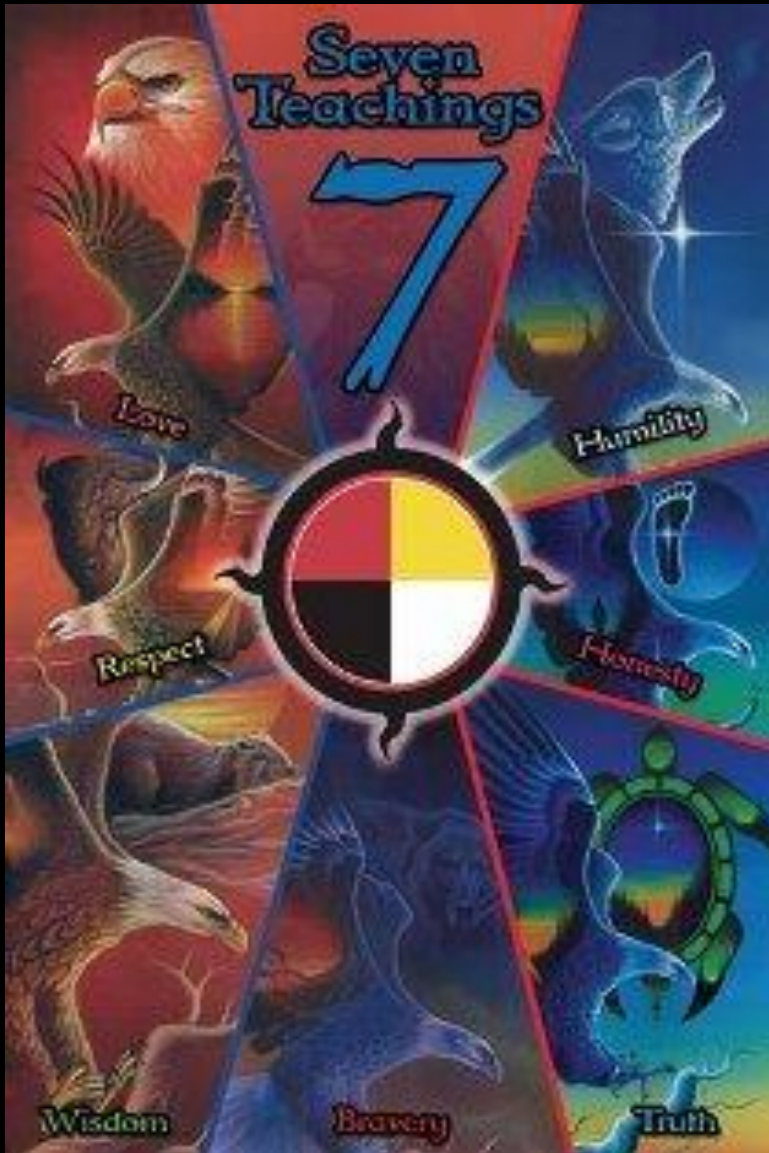


Photo source: www.wampumchronicles.com

SACRED LAW

SEVEN GRANDFATHER TEACHINGS / CEREMONIES



NATURAL LAW

LAW FROM OBSERVATIONS OF THE NATURAL WORLD



POSITIVISTIC LAW

CLAN MOTHERS



Loreene Henry, Cayuga Nation Artist

CUSTOMARY LAW

LAW FORMED THROUGH CUSTOMS AND TRADITIONS



INDIGENOUS LEGAL TRADITIONS AND CUSTOMARY LAWS

- Complex nature of Indigenous law
- Indigenous legal traditions usually involve interaction of two or more of the sources (e.g. Treaties as both Sacred Law and Deliberative Law)
- Indigenous legal traditions are living systems of law; they are contemporary, not static; they live in our language, our culture and traditions
- Indigenous law is something that is lived – it is not recorded in books – to understand it you must experience it

COLLECTIVE v. INDIVIDUAL RIGHTS

- Bill C-21 calls for a “*balancing of individual rights and interests against collective rights and interests*”
- Critical aspect of the interpretive clause
- Calls for balancing or reconciliation of Indigenous traditions and values with Western values
- Valuing of these different traditions and values

GENDER EQUALITY

- Bill C-21 calls for giving “*due regard to Indigenous legal traditions and customary laws... to the extent that they are consistent with the principle of gender equality*”
- “Gender Equality” as the limitation to the application of Indigenous legal traditions and the balancing of collective and individual rights

Whose principle of gender equality?

GENDER EQUALITY

- Gender inequality is about racial inequality
- Cannot separate gender discrimination from legacies of colonialism and racism
- Family violence in Aboriginal communities needs to be addressed within the broader context of institutionalized violence against all Aboriginal peoples, regardless of gender
- Many Indigenous women are uncomfortable with many of the assumptions that concepts like feminism and gender equality are based on

Aboriginal Women's Roundtable on Gender Equality

(Status of Women Report, 2000)

GENDER EQUALITY



- What does gender equality mean in the context of Indigenous traditions and values?
- Responsibilities of women and men
- Dangers of imposing Western assumptions

The Promise and the Challenge

The Promise: Further recognition of Indigenous legal traditions within the Canadian legal system

The Challenges:

- Capacity of the CHRC, the Canadian Human Rights Tribunal and the Courts regarding Indigenous legal traditions and customary law
- Required investment of resources to learn Indigenous laws in order to consider and apply them
- Willingness of decision makers to be respectful, flexible and creative – in particular the CHRT given the CHRT Chair's recent decision to dismiss the AFN and National First Nation Child & Family Caring Society human rights complaint
- Indigenous law through a Western lens -- our laws taken out of our hands
- Impact on sovereignty and Indigenous legal traditions



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thank you

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hai, hai

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