

Towards reconciliation and a mutually prosperous relationship:

A proposal for a transformative Indigenous Law Program

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August 4, 2017



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Executive summary

Canada and Indigenous peoples are working to build the elements of a nation-to-nation relationship and establish a new era of respect and reconciliation. The Government of Canada and Indigenous peoples expect that, by restoring their relationship and building robust institutions, they will promote effective governance and economic growth.

In particular, Indigenous peoples are increasingly exercising jurisdiction over their lands, resources, and affairs. In doing so, they draw upon their own legal traditions and principles of social order. As communities assume greater rights and responsibilities, they seek to create strong institutions grounded in the communities they serve, run by individuals who have the skills to reason with Canadian law and Indigenous legal traditions. Governments and organizations who interact with Indigenous peoples also need to be able to devise proposals that are adapted to their principles and procedures.

The University of Victoria (UVic) proposes the creation of an unprecedented Indigenous Law Program to respond to these needs. This program will have transformational effects in communities across Canada. It responds to the recommendations of the Truth and Reconciliation Commission and builds on the Government of Canada's commitment to a nation-to-nation relationship. Institutions that recognize and incorporate Indigenous legal traditions will facilitate the full participation of Indigenous peoples, creating a more diverse and accessible economy.

This program will usher in a new era, helping us to realize the Truth and Reconciliation Commission's hope that Indigenous and non-Indigenous peoples should live together in peace and prosperity.

An innovative approach

Two key components comprise the Indigenous Law Program:

1. *A four-year dual-degree program through which students would acquire degrees in both the Common Law (JD) and Indigenous Legal Orders (JID).* It is inspired by the McGill program, which teaches both the Common Law and the Civil Law, with intensive comparison across the traditions.

Students will participate in practical, hands-on learning in field schools and work on Indigenous territories, learning from local knowledge holders and contributing to the operation of Indigenous institutions. As Indigenous legal traditions differ among themselves in their institutions and principles (though there are commonalities), students will be exposed to a representative sample of traditions, acquiring that ability to access and work within different traditions. They will learn to work with those traditions with the rigour, breadth of knowledge, skills, and application that law schools seek to bring to the Common and Civil Law. Graduates will be prepared to translate, manoeuvre, and build institutions.

2. *The Indigenous Legal Lodge – a national forum for critical engagement, debate, learning, public education, and partnership on Indigenous legal traditions and their use, refinement, and reconstruction today.* This would both house the JD/JID degree program and be a gathering place for professional and community education on Indigenous legal traditions, a forum for exploring their contemporary nature and role, and a research institute promoting rigorous engagement Canada-wide with their various institutions and potential development.



Three Research Chairs in Indigenous Law, leading scholars in the principles and institutions of Indigenous legal traditions, would work in the Indigenous Legal Lodge. They would be major contributors to the critical engagement, education, and research forged in the Indigenous Legal Lodge.

Why UVic?

From our long-standing commitment to building a unique relationship and reconciliation with Indigenous Peoples, to the ground-breaking work being done through co-operative education and work-integrated learning, to climate change solutions and leading-edge ocean science, UVic is innovating to enhance Canada's economic and social future. Over the last decade, our Indigenous student population has tripled and UVic has responded with an increased investment in student supports and community connections. UVic has more than a dozen outstanding Indigenous programs – in Indigenous language revitalization (a program of national reach and significance), Indigenous governance, professional programs geared to Indigenous communities (social work, nursing, education, and law), and Indigenous economic development.

Nowhere has this national leadership been more evident than in Law, through the transformative work of John Borrows, Canada Research Chair in Indigenous Law, and Val Napoleon, Law Foundation Chair in Aboriginal Justice and Governance. The Faculty of Law is home to the Indigenous Law Research Unit, established in 2012, which in that time has worked with over 40 communities across Canada to create robust tools, processes, practices, and institutions grounded in Indigenous legal traditions. For example, the Indigenous Law Research Unit recently collaborated with the Shuswap Nation Tribal Council to articulate Secwepemc traditional stories and laws into a guide to assist the Nation in managing their lands. UVic Law's leadership has been manifest in its delivery of the ground-breaking Akitsiraq program (which provided a full JD to a cohort of Inuit students in Iqaluit), its role in creating the National Consortium for Indigenous Economic Development, its pioneering structures of Indigenous student support, and its professional and public education coast to coast to coast.

Expressions of Support

In preparation for the launch of the Indigenous Law Program, UVic's Faculty of Law has also consulted with Indigenous peoples, professional organizations, and governments; conducted a series of pilot projects; and begun to develop curriculum and program design, especially through the Indigenous Law Research Unit.

Indigenous Peoples from Nations across Canada have expressed their support for the program. This support culminated in a resolution moved by First Nations in BC and Ontario and passed by the Assembly of First Nation at their 2017 Annual General Assembly, which urges the Government of Canada to, *“fund the establishment of the University of Victoria's Indigenous Legal Lodge as a foundation for understanding, researching, and deliberating upon the nature of Indigenous legal systems and their continued use today”*. BC Assembly of First Nations Acting Chief Maureen Chapman has stated, *“This transformative initiative will be the first of its kind in the world, and will bring many critical voices together to engage with Indigenous legal traditions. This is an important step towards achieving reconciliation, and the BC Assembly of First Nations urges you to fund the JD/JID program and recognize this as a meaningful opportunity to implement the Truth and Reconciliation Commission's Calls to Action.”*



The proposed Indigenous Law Program enjoys the support of law schools and universities across the country including Osgoode Hall, University of Toronto, Lakehead University, Thompson Rivers University, and McGill University. Indeed, the public engagement dimension of this program would be conducted in collaboration with these and other law schools. Corporate and non-governmental organizations have spoken in favour of the program, including the Union of BC Municipalities and the Business Council of BC.

The Government of Canada's role

The Indigenous Legal Lodge and JD/JID program would require funding for capital costs, operating costs, research costs, and student financial support. UVic is engaging with the Government of BC to support their commitment to implementing the recommendations of the Truth and Reconciliation Commission and the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The core costs of the JD/JID program would be covered by per-student funding from the Government of BC in the amount of \$1.8 million per year.

UVic proposes that the Government of Canada undertake to support the research, outreach, and educational facilities of the Indigenous Legal Lodge. Commencing in 2018-19, the Government of Canada would contribute to an iconic and culturally appropriate facility to house the JD/JID program and gather communities, citizens, professionals, and researchers to engage deeply with Indigenous legal traditions through outreach activities, public education, and professional development programming. The up-front capital costs would be \$20,100,000; the cost of the public-engagement programming for the first seven years would be \$6,687,000; for a total of \$26,787,000. At least one-third (\$8,500,000) will be provided by our private-sector partners.

Total Government of Canada Contribution: \$18.29 million

The Government of Canada would share the costs of the Indigenous Law Program with a group of visionary investors who believe in a better future for Canada and Indigenous peoples. It has proposals before potential private donors for contributions to the Indigenous Legal Lodge. It also plans to allocate Canada Research Chairs and foundation funding to assist the research dimension of this initiative.

Outcomes: Strengthening competition and participation in our economy

The JD/JID program and Indigenous Legal Lodge will have Canada-wide impacts:

- *It will train the next generation of professionals in the skills necessary to support Indigenous governance, the duty to consult, and inclusive economic growth, furnishing the legal infrastructure of the nation-to-nation relationship.* Combined expertise in Canadian law and Indigenous legal traditions is necessary if we are to create land management codes that conform to Indigenous peoples' sense of who holds stewardship over what lands, through what institutions, with what rights and obligations. It is necessary if Indigenous peoples are to generate appropriate business structures that create rights and obligations within communities while allowing for innovation and effective action.



It is necessary if Indigenous peoples are to create child protection regimes that uphold their responsibilities to children, protect them from harm, and provide means of effective intervention, all in a manner that reflects the people's understanding of familial structure and obligations. It has immediate relevance to many of the great challenges of our time, including how to implement UNDRIP, how to address overlapping claims, how to discharge the fiduciary obligation of the Crown, and how to operationalize the duty to consult.

Above all, it is necessary if we are to realize the promise of the Ten Principles respecting the Government of Canada's relationship with Indigenous Peoples, set out by the Minister of Justice.

- *It directly answers the call of the Truth and Reconciliation Commission. Specifically Call to Action 50 which states that, "we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada."*

It will help us all to achieve the objectives identified in a long succession of Aboriginal justice inquiries and by the Royal Commission on Aboriginal Peoples. It responds to the broader hope of a relationship negotiated between Indigenous and non-Indigenous peoples. As highlighted by Prime Minister Justin Trudeau in his mandate letters, no relationship is more important, and is at the centre of the work of the federal government in the coming years.

- *It establishes a space for advancing the research and practice of Indigenous legal traditions across the country and internationally.* The Indigenous Legal Lodge would be an engine for engagement with Indigenous reconciliation in universities and communities throughout Canada. It will play host to conferences, dialogues, research, and partnerships for both students and visitors and will project those workshops and that engagement into communities, public education, and professional development Canada-wide. In this, it will complement UVic's National Consortium for Indigenous Economic Development, which brings together leaders in Indigenous communities, business, and government to foster Indigenous communities' economic success and contribute to the national economy.

Reconciliation and mutually prosperous relationship

The University of Victoria is requesting one-time investment of \$18.29 million to build an Indigenous Legal Lodge, a national forum which would house the JD/JID degree program and be a gathering place for professional and community education on Indigenous legal traditions. It will mobilize key players and bring them together to address the most fundamental challenges and opportunities facing us.

This will be part of an unprecedented and transformative initiative – the first of its kind in the world – raising Canada's engagement with Indigenous legal traditions to a new level and making it a global leader for these innovative practices. Reconciliation is intrinsically linked to a renewed fiscal relationship, which recognizes the rights and traditions of Indigenous peoples, including their right to self-determination and self-government. This program brings forth the knowledge and experience to guide a new era of economic partnership and resource development, with mutual investment, strong growth, and shared prosperity for Canada and Indigenous peoples.

