

Re-Learning Reciprocity: Settler Treaty Obligations and the More-Than-Human World

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This article draws on the author's own personal experiences of learning Anishinaabe law in the community of Neyaashinigmiing. It explores the potential treaty obligations of settlers to honour and participate in pre-existing commitments of Indigenous peoples to more-than-human relatives that were entered into prior to European settlement. Non-Indigenous Canadians often struggle to understand their own relationship to Indigenous law and governance. This is perhaps especially true in reference to Indigenous legal obligations to more-than-human relatives, where settlers may perceive land as alienable. This article considers the vision of intersocietal law and sharing the land contained in early treaties, and reflects on the possible legal obligations from settlers to more-than-human relatives that may flow from them. The article concludes by exploring openings and transformative opportunities for settlers to learn to practice greater reciprocity with the more-than-human world with guidance from the Indigenous law and knowledge contained in treaty frameworks.

Cet article s'appuie sur les expériences personnelles de l'auteure dans l'apprentissage du droit Anishinaabe dans la communauté de Neyaashinigmiing. Il explore les obligations de traités potentielles des colons de respecter et participer dans les engagements préexistants des peuples autochtones envers les parents plus qu'humains, qui ont été contractés avant la colonisation européenne. Les Canadiens non autochtones ont souvent du mal à comprendre leur propre relation avec le droit et la gouvernance autochtone. Ceci est peut-être particulièrement vrai en ce qui concerne les obligations juridiques autochtones envers les parents plus qu'humains, où les colons peuvent percevoir la terre comme aliénable. Cet article examine la vision du droit intersociétal et du partage de la terre contenue dans les premiers traités et réfléchit aux obligations juridiques potentielles des colons envers les parents plus qu'humains qui pourraient en découler. L'article conclut en explorant les ouvertures et les possibilités de transformation pour les colons d'apprendre à pratiquer une meilleure réciprocité avec le monde plus qu'humain, en s'inspirant du droit et des connaissances autochtones contenues dans les cadres des traités.

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I. Introduction

In her book *Dancing On Our Turtle's Back*, Nishnaabeg writer Leanne Betasamosake Simpson defines treaties as “sacred agreements between people and nations, and also between people and non humans.”¹ In Canadian law, much of the focus has been on the obligations between humans with only scant attention paid to the sacred agreements between people and non-humans. This is problematic as these two components are entangled and inseparable from one another.² This article explores the implications for settlers regarding serious engagement with the second part of Simpson’s definition and considers the opportunities for deepened relationships with humans and non-humans that this approach to honouring treaties may present.

I first began to engage with this question after listening to Heidi Kiiwetinepinesiik Stark teach law students who attended Anishinaabe law camps, hosted by the Neyaashiinigijing community on Georgian Bay, about the Anishinaabe treaty with the deer.³ Heidi taught the students that Anishinaabe people had at one time experienced a crisis when all of the deer left their territories. When the Anishinaabe realized the deer had gone, they became concerned and sent runners to seek out the deer. When the runners returned, they conveyed that the deer had left the territory because the Anishinaabe were not honouring their bodies and were wasting their meat. The Anishinaabe listened and then deliberated for many days on how to restore the relationship with the deer. As a result, the Anishinaabe pledged that moving forward, they would honour the lives of the deer by taking their lives only when they needed to and not wasting their meat. They further promised to protect the homelands of the deer and the other species that the deer depended on. They also committed to share the meat of the deer with those in need. In exchange for these promises, the deer returned to the territory of the Anishinaabe and resumed sharing the

1 Leanne Simpson, *Dancing On Our Turtle's Back: Stories of Nishnaabeg Re-Creation, Re-Surgence and a New Emergence* (Winnipeg: Arp Books, 2011) at 109.

2 See e.g. *British Columbia v Yahey*, 2021 BCSC 1287 [Yahey]. This case considers whether the cumulative impacts of the (mis)treatments of land and more-than-humans, to such an extent that it impacts an Indigenous nations’ ability to practise its treaty rights of hunting, fishing, and gathering may constitute a treaty infringement.

3 Heidi Kiiwetinepinesiik Stark has also written about the Anishinaabe Treaty with the Deer. See Heidi Stark, “Stories as Law, A Method to Live By” in Chris Anderson & Gina M O’Brien, eds, *Sources and Methods in Indigenous Studies* (London & New York: Routledge, 2016) 249. On Stark’s work on the agreements and responsibilities between the Anishinaabe and the beaver as a form of treaty, see also Heidi Kiiwetinepinesiik Stark “Respect, Responsibility and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada” (2010) 34:2 American Indian Cultural and Research Journal 145.

gifts of their flesh and hides. This sacred exchange of promises between the deer and the Anishinaabe constitutes a treaty, and remains in force today.⁴

After listening to Heidi teach about this treaty, a non-Indigenous law student living on Anishinaabe territory asked if the treaty with the deer would also apply to him. Heidi reflected, and responded that she believed it did. As a settler myself, Heidi's answer was important to me both personally and professionally⁵ because it opened up new possibilities and pathways for learning how to be in a structured relationship with the deer and possibly other species.⁶

In connection with this exchange, this article explores various dimensions of the question of what it might mean for settlers to appropriately enact treaty rights and responsibilities to more-than-humans entered into by Indigenous peoples on their own territories. The article is divided into four sections. First, I explore my own relationship to Anishinaabe law as a settler person of English and Scottish ancestry. Second, I look at intercultural approaches to treaty interpretation for treaties between Indigenous peoples and settlers. Third, I look at questions of subjecthood and who constitutes a citizen, especially in regards to more-than-humans. Lastly, I explore reciprocal obligations in the context of settler relations to more-than-humans.

These questions are important at this juncture in our shared history because it is becoming increasingly difficult to deny, even for those with the least awareness of the health of ecosystems and more-than-human beings around us, that our relationships have broken down and may soon be beyond repair if profound shifts do not occur.⁷ As the Anishinaabe legal scholar John Borrows has observed, in the territories encompassed by what is now known as Canada, questions of ecological repair are inextricably linked to relational repair between Indigenous peoples and non-Indigenous Canadians. He states:

4 *Ibid.*

5 I currently serve as the Executive Director for a BC based non-profit environmental organization that runs advocacy and educational programs around ecosystem health and climate change.

6 Stark has also argued that "[treaties] are revered by the Anishinaabe as sacred agreements because they not only brought the Creator and their pre-existing responsibilities and obligations to creation into their relationships with the United States and the Crown, but also brought the United States and the Crown into these relationships with creation." See Heidi Stark "Changing the Treaty Question: Remediating the Right(s) Relationship" in Michael Coyle & John Borrows, eds, *The Right Relationship: Reimagining the Implementation of Historical Treaties* (Toronto: University of Toronto Press, 2017) 248 at 254 [Stark, "Changing the Treaty Question"].

7 On the interconnected threats posed by accelerating rates of extinction, groundwater depletion, glacial melt, and extreme weather, see David Stanway, "World on Brink of Environmental Tipping Points, UN Warns" (25 October, 2023), online: *Reuters* <<https://www.reuters.com/sustainability/cop/world-brink-environmental-tipping-points-un-says-2023-10-25/#:~:text=It%20warned%20that%201%20million,the%20likelihood%20of%20ecosystem%20collapse.>>.

Reconciliation between Indigenous peoples and the Crown requires our collective reconciliation with the earth. Practices of resurgence and reconciliation must sustain the living and earth and our more-than-human relatives for future generations. This will not occur without the simultaneous resurgence of Indigenous laws, governments, economies, education, relations to the living earth, ways of knowing and being, and treaty relationships.⁸

The treaties between settlers and Indigenous peoples set out the terms for living together well on the territories we jointly inhabit. While the treaties were negotiated within an intercultural context and drew on both European and Indigenous legal frameworks, settlers have largely ignored, minimized, and denied Indigenous legal interpretations of the treaties in favour of Eurocentric ones. Though much harm has been done as a result of this unfair and biased approach to interpretation, it is not too late for settlers to begin to learn, with seriousness and humility, about their responsibilities under the intercultural legal frameworks that these treaties provide. There are many dimensions to what this work might look like in terms of both issues and diverse legal orders. I will explore the question of how, and in what ways, settlers might be bound through the treaties to preexisting commitments made by Indigenous peoples to more-than-human beings on their territories, and why honouring these commitments is integrally bound to honouring treaty commitments made by the Crown to Indigenous peoples.⁹ To begin thinking through this question, I will draw on the teachings I received in adulthood in Anishinaabe law, which profoundly impacted my understanding of myself as a citizen and treaty partner.

II. How Learning Anishinaabe Law Changed My Understanding of My Responsibilities

I am a fourth generation Canadian of English and Scottish ancestry. I grew up in the city of Toronto, which is the territory of many nations including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee, and the Wendat. Growing up, I was neither taught to see the active presence of Indigenous legal orders in operation around me nor to understand myself as a settler/immigrant/newcomer to the territory.

My first introduction to Indigenous law came in my early thirties. I was a law student living in Toronto when I had the enormous good fortune to

8 John Borrows, "Earth Bound: Indigenous Resurgence and Environmental Reconciliation" in Michael Asch, John Borrows & James Tully, eds, *Reconciliation and Resurgence: Indigenous-Settler Relations and Earth Teachings* (Toronto: Toronto University Press, 2018) 49 at 69 [Borrows, "Earth Bound"].

9 See *Yabey*, *supra* note 2.

be hired onto a project partially sponsored by the Truth and Reconciliation Commission on articulating Indigenous legal orders addressing harms between community members and between nations.¹⁰ As a component of my work, I lived in the reserve community of Neyaashinigmiing on the shores of Georgian Bay for three months.¹¹ During this time I was billeted, along with my friend and colleague Lindsay Borrows, with an Anishinaabe family (Jean, Joseph, and Jennifer Borrows) who welcomed me with love and kindness. I spent my days in the community learning from a small group of Elders and other knowledgeable people, as well from the lands, waters, and various more-than-human beings on the territory, about the Anishinaabe legal order.¹² At the end of the summer, Lindsay and I coauthored a legal synthesis using the Indigenous Law Research Unit methodology¹³ summarizing what we had learned from Anishinaabe stories, people, and the land itself about Anishinaabe legal processes and procedures for addressing harm.¹⁴

This opportunity to spend time immersed in Anishinaabe law and relationships was unprecedented for me and was ultimately transformative, both personally and professionally. In preparation for the time in the community, Lindsay and I read and “case-briefed” dozens of Anishinaabe stories together.¹⁵ Many of these stories were about specific more-than-human beings from the territory, and contained legal principles and processes for decision-making concerning how to be in good relationship to these beings.

For example, in the story of “The Rabbit and the Roses,”¹⁶ the animals collectively decide to punish the rabbit for over-eating the roses almost to the

10 The project was led by Cree legal scholar, Dr. Val Napoleon, and was jointly sponsored by the Law Foundation of Ontario, the Truth and Reconciliation Commission, and the Indigenous Bar Association.

11 The Chippewas of Nawash Unceded First Nation occupy approximately 15,000 acres on the eastern side of the Saugeen (Bruce) Peninsula in southern Ontario. The reserve is called “Neyaashinigmiing,” which means “a point of land surrounded by water.” Neyaashinigmiing used to be one of the main wintering sites for the Anishinaabe on the Saugeen Peninsula. In 2012 when I lived there, there were approximately 700 people living on the reserve and over 2,000 enrolled members. There are 48km of shoreline that stretch along Georgian Bay. Ancient white rock escarpments with pine and hardwood tower over about 1,500km of the reserve. Frogs, snakes, birds, bears, deer, and beaver are some of the animals that live there. See Hannah Askew & Lindsay Borrows, *Anishinabek Legal Traditions Report, Community Partner: Chippewas of Nawash Unceded First Nation* #27 (2012) at 9, online: <https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Documents_deposes_a_la_Commission/P-265.pdf> [<https://perma.cc/Y5LX-GEUG>].

12 See Hannah Askew, “Learning from Bear Walker: Indigenous Legal Orders and Intercultural Legal Education in Canadian Law Schools” (2016) 33:1 Windsor YB of Access to Justice 29.

13 For an explanation of Indigenous Law Research Unit methodology, see *ibid*.

14 See Askew & Borrows, *supra* note 11.

15 See Askew, *supra* note 12.

16 Borrows, “Earth Bound”, *supra* note 8 at 25.

point of extinction. However, as the animals are violently beating Rabbit, the rose herself intervenes to tell them that the punishment is too harsh and to stop beating Rabbit, as the community is also to blame for not better safeguarding the well-being of the roses. In the end, it is decided that the roses will have thorns so that they will have better protection in the future.

I will never forget my first few days at Neyaashiinigmiing, wandering along the rocky shores of Georgian Bay and in the pine and hardwood forests up on the escarpment. The area is rich with life, and when I would catch a glimpse of a rabbit, frog, beaver, porcupine, robin, or birch tree, it would instantly evoke the stories that Lindsay and I had read together and I would be reminded of aspects of Anishinaabe law connected to those beings. John Borrows in his teachings at the annual Neyaashiinigmiing law camps has frequently explained that the Anishinaabe legal order is intentionally designed this way, and encourages students to be mindful and attentive to the teachings of all the beings they are surrounded by while on the territory. It is common for him, when teaching outside, to interrupt his own lecture to point out to the students a robin passing by, saying “Look, it’s Pitchi! A flying case.”¹⁷

Similarly, Leanne Betasamosake Simpson explains that it is her belief that “the land, reflected in Nishnaabeg thought and philosophy, compels us towards resurgence in virtually every aspect.”¹⁸ She writes of walking through the bush with her children in springtime and seeing lady’s slipper flowers, and moss, and butterflies, and woodpeckers, and each time being reminded of stories about these beings.¹⁹

For myself, as a settler raised on English fairy tales and other European-derived stories, where the landscapes and beings described were from far away places I had never been to, it was extremely powerful to learn stories from the land I was actually living on, and from beings I was surrounded by.²⁰ Furthermore, it was a revelation to be encouraged to take these beings seriously as teachers, and to regard the Anishinaabe stories about them as aspects of law to be internalized and to guide me in my conduct. Simpson puts it this way:

17 John Borrows lectured at annual Anishinaabe law camps hosted at Neyaashinigmiing from 2015-2019.

18 Simpson, *supra* note 1 at 18.

19 *Ibid.*

20 The ethnobotanist Nancy Turner described experiencing similar feelings to mine when, as an adult, she first began to learn Coast Salish stories (personal conversation with Nancy Turner at the Decolonizing Water Governance Gathering on Gabriola Island, November 2017).

Our Nishnaabeg landscape flourishes with our stories of resistance and resurgence, yet through colonial eyes, the stories are interpreted as quaint anecdotes with ‘rule’ of engagement and consequence, yet through colonial eyes, the stories are interpreted as quaint anecdotes with ‘rules’ of engagement and consequence. Interpreted within our cultural web of non-authoritarian leadership, non-hierarchical ways of being, non-interference and non-essentialism, the stories explain the resistance of my Ancestors and the seeds of resurgence they so carefully saved and planted.²¹

In Anishinaabe law, being in a dynamic relationship with the land and the more-than-human beings that inhabit it means constantly growing and adapting to meet the changing needs of the relationship. This form of legal responsibility requires presence above all else — a person must be consistently attentive to what the living landscape surrounding them is communicating. It also requires a degree of porousness and openness to allow oneself to be transformed by their relationships. As John Borrows teaches, we learn how to live well by giving our attention to the Earth and taking direction from her.²² He points out that the Anishinaabe have a word for teaching and learning, which is “*aki-noomaagewin*.” The word is made up of two roots: *aki* and *noomage*. *Aki* means “Earth,” while *noomage* means “to point towards and take direction from.” So, teaching and learning quite literally mean the lessons we learn from pointing to the Earth.²³

Consistent with this understanding of how we learn about our place in the world and how to conduct our relationships in a responsible way, when I lived at Neyaashinigmiing I was frequently encouraged to spend time out on the land simply listening, watching, and paying attention to the beings around me. One Elder who was also involved in the project, Tony Chegahno, regularly took Lindsay and I to different places on the reserve such as rocky beaches and trails in the woods to listen and learn from the plants, animals, insects, birds, water, and rocks. A joke he never tired of repeating was to ask us to guess what his favourite genre of music was. After a pause he would guffaw and then say, “It’s country music!” By this he meant the sounds of the land itself: the birds, the wind in the trees, the soft hum of insects, and the singing frogs. While framed as a lighthearted joke, I soon came to realize that he was intensely serious. When out on our walks, day or night, he was always listening intently for the activity and communications of the beings around us. Some evenings we went to listen for owls, and to my astonishment, Tony could easily recognize not only different species of owl calls, but was also familiar with the specific

21 Simpson, *supra* note 1 at 18.

22 Borrows, “Earth Bound”, *supra* note 8 at 51.

23 *Ibid* at 66.

personalities of individual owls who he identified by their strategies in making calls at certain times to communicate with potential mates.

What are the implications of this level of presence and attentiveness to the natural world, intentionally and rigorously developed over a lifetime, in accordance with Anishinaabe law? At the time that I first met Tony, and was being newly introduced to Anishinaabe law, I would not have been able to answer this question. I initially saw Tony's love and connection to birds and other living beings as an admirable and unique part of his personality, rather than a manifestation of deep legal training and expertise in Anishinaabe law.

My understanding began to shift two years later when Tony came to visit me several times in downtown Toronto where I was doing my articles. By then Tony had been elected as a band councillor for Neyaashinigmiing and regularly needed to attend Ontario government meetings. Usually, we met on Bay Street and would go for a walk together before getting lunch or coffee. For Tony, each walk was emotionally difficult as he was constantly noticing the extreme degree to which the tall reflective buildings and dearth of trees and plant life were hostile to the birds he loved, and to whom he felt so deeply connected. I knew the depth of Tony's loving connection to birds, and it was painful to witness his dismay and grief at a built environment intended to support only human life. From this, I gradually started to understand that observing the Anishinaabe legal principle of paying attention to the agency, teachings, and needs of the more-than-human beings we share the territories with, as Tony did from boyhood on, would likely result in making entirely different decisions in a wide range of areas from architecture to urban planning and beyond.

This changed understanding has led me to make different choices in my own life, from personal changes such as being conscious of the preferences of local pollinators when planting my balcony garden to more structural changes such as spending time advocating for bans on pesticides harmful to insects and other wildlife. At a broader scale, were we to be collectively conscious of and prioritizing the needs of our more-than-human neighbours in urban and rural spaces, deeper transformations of our physical spaces would undoubtedly occur.

III. Under the Treaties, What Obligations Might Settlers Have to Learn and Observe Indigenous Law?

In today's world, it is generally accepted that if a person travels to another country or jurisdiction, they are obligated to follow the laws of that place and

the onus is on them to abide by the law of the place. Early European visitors to Indigenous territories in what is now known as Canada who arrived with the intention of settlement and colonization did not necessarily believe they had an obligation to learn and observe the Indigenous laws of the territory they arrived in. Nonetheless, in the early days of contact, when the balance of power largely lay with Indigenous peoples, European settlers out of necessity frequently did learn at least some Indigenous law and language in order to be able to survive and begin to build a life on Indigenous territories. Most importantly, Indigenous peoples were operating out of their own highly developed legal and governance systems, actively shaping and setting the terms for diverse transactions and agreements.²⁴ Treaty negotiations occurred in an intercultural context, with both European and Indigenous parties bringing forth their own legal practices and assumptions, some which were explicit and some of which were unstated.

For the Anishinaabe, there were five main treaties signed with the British government in the 1800s agreeing to share approximately 200 million hectares with the settlers. These treaties are: Treaty 45 ½ (1836), Treaty 67 (1851), Treaty 72 (1854), Treaty 82 (1857), and Treaty 93 (1861). The first treaty, Treaty 45 ½, opened up 1.5 million hectares of land south of Owen Sound for settlement. As a component of this treaty, it was agreed that the Saugeen Peninsula (where the Neyashinigmiing reserve is located), including the sacred grounds of Manitoulin Island, would remain forever protected for Anishinaabe use. However, the British Crown failed to keep this promise and only 15 years later another treaty, Treaty 67, had to be negotiated.²⁵

Treaty 72 was signed in 1854. At that time, the British Crown told the Anishinaabe that in spite of their previous promises, they were no longer able to protect the peninsula from development. The British told the Anishinaabe that their rights and interests would be better protected if they moved to smaller reserves. As they moved to these reserves, the Anishinaabe believed they would still have access to the larger tracts of lands for their own needs and purposes. The subsequent treaties promised that all proceeds from the lands sold would be put into trusts for the Anishinaabe and their remaining small reserves would be well-protected. However, over time more of these smaller reserves were also taken away and monies from the trust accounts have not been properly accounted for. As a result of these broken promises, the Anishinaabe have been

24 See e.g. John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self Government" in Michael Asch, ed, *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference* (Vancouver: UBC Press, 1997) 155.

25 Stark, "Changing the Treaty Question," *supra* note 6 at 10.

forced to repeatedly go to court to advocate for their treaty rights to be upheld and protected.²⁶

The egregious history of blatant broken promises from settlers towards their Indigenous partners, and the litigation that has ensued from it, is relatively well known, at least in the abstract, by the general Canadian public. However, there is much less understanding of the issues of treaty interpretation that arose as a result of the intercultural context in which the treaties were negotiated, and the profound differences in approaches to relationships to the land between European and Indigenous treaty partners. As the Anishinaabe scholar Aimee Craft has noted, “[in] order to understand the Indigenous perspective on the treaty, the Indigenous laws that formed part of the treaty agreement must be understood and valued.”²⁷ Since settler society has put little effort into learning about and seeking knowledge of Indigenous legal orders, treaty interpretation has been largely Eurocentric at both the settler public and Canadian judicial levels. As non-Indigenous treaty expert and anthropologist Michael Asch argues, the central reason that there is something wrong in the relationship between Indigenous peoples and settler society is that “from the outset, settlers and our governments have predominantly acted as though Indigenous peoples did not live in societies that required our recognition or respect.”²⁸

The area of the most profound contention between Indigenous and European interpretations of the treaties is around ongoing governance of the lands and waters that Indigenous peoples agreed to share for settlement purposes. In a recent article on confederation treaties and reconciliation, Michael Asch focuses on two key issues: firstly, the conditions on the basis of which Indigenous peoples authorized settlers to settle, and secondly, the obligations that settlers promised to fulfil in return. He emphasizes that while most settlers believe that the treaties transferred political authority to settler governments, to his knowledge “there is not one Indigenous political community that agrees that political authority was transferred in whole or in part in the treaties. Instead, the term used is ‘sharing the land’ ... and not to ‘have a share’ ... or ... ‘to cut it into parts.’”²⁹ Asch quotes Chief George Desjarlais’ testimonial to the Royal Commission on Aboriginal Peoples:

26 *Ibid.*

27 Aimee Craft, *Treaty Interpretation: A Tale of Two Stories* (LLM Thesis, University of Victoria, 2011), online: *Canadian Bar Association* <https://www.cba.org/cba/cle/PDF/ABOR11_Craft_Paper.pdf> [perma.cc/SA8A-JZ25].

28 Michael Asch, “Confederation Treaties and Reconciliation: Stepping Back in the Future” in Michael Coyle & John Borrows, eds, *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* (Toronto: University of Toronto Press, 2018) 30.

29 *Ibid* at 35.

We are treaty people. Our nations entered into a treaty relationship with your Crown, the Crown. We did not sell or give up our rights to the land and territories. We agreed to share our custodial responsibility for the land with the Crown. We did not abdicate it to the Crown. We agreed to maintain peace and friendship among ourselves and with the Crown.³⁰

The implications of these differences in understanding are profound, both for the relationship between Indigenous peoples and settlers, and for the land, waters, and the more-than-human beings that share the territories. The question of which understanding should take precedence is too complex to address thoroughly in this article and much has been written about it.³¹ However, as a fundamental principle of fairness, any interpretation of an agreement between two parties must take into account both parties' understanding of the meaning of the agreement. In *R v Marshall*, Justice Binnie and Justice McLachlin (as she then was) of the Supreme Court of Canada found that "the goal of treaty interpretation is to choose from among the various possible interpretations of common intention the one which best reconciles the interests of both parties at the time the treaty was signed."³²

Further, courts have added that since the treaties were not translated in written form into the Indigenous languages in which they were partly negotiated, differences in interpretation should be resolved as much as possible in favour of Indigenous parties. For example, in *R v Badger*, the Court states that:

The treaties were drafted in English by representatives of the Canadian government who, it should be assumed, were familiar with common law doctrines. Yet, the treaties were not translated in written form into the languages of the various Indian nations who were signatories. Even if they had been, it is unlikely that the Indians, who had a history of communicating only orally, would have understood them any differently. As a result, it is well settled that the words in the treaty must not be interpreted in their strict technical sense nor subjected to rigid modern rules of construction. Rather, they must be interpreted in the sense that they would naturally have been understood by the Indians at the time of the signing.³³

Canadian courts have also expanded the directive to weight Indigenous legal interpretations heavily in Aboriginal rights and title cases. For example, in the seminal 1990 Aboriginal rights case *R v Sparrow*, the Supreme Court of Canada

30 Chief George Desjarlais, "Report of the Royal Commission on Aboriginal Peoples" (delivered at Ottawa, Indian and Northern Affairs Canada, 1996).

31 See e.g. Craft, *supra* note 27.

32 *R v Marshall*, [1999] 3 SCR 456 at paras 14, 78.

33 *R v Badger*, [1996] 1 SCR 771 at para 47.

found that “a morally and politically defensible conception of aboriginal rights will incorporate both [aboriginal and non-aboriginal] legal perspectives” and that it is therefore “crucial to be sensitive to the aboriginal perspective itself on the meaning of the rights at stake.”³⁴ More recently, the landmark 2014 Aboriginal title decision *Tsilhqot’in Nation v British Columbia* reiterated that determinations of Aboriginal title “must be approached from the common law perspective and the Aboriginal perspective” and that “[t]he Aboriginal perspective focuses on laws, practices, customs and traditions of the group.”³⁵

On the surface, these directives from Canadian courts represent a fair and balanced approach. However, they depend on the extent to which members of both the judiciary and the bar, as well as members of the settler Canadian public, are willing to invest time, energy, and resources into meaningfully learning about Indigenous legal perspectives.

Indigenous peoples must also be willing to teach about their own legal traditions and must be appropriately compensated for this. In the context of hundreds of years of broken treaty promises, racism, and colonial violence, this is a big ask and it cannot be taken for granted that sensitive knowledge will be automatically shared in the absence of a trusting relationship. In a paper he presented at a continuing legal education conference in Vancouver ten years ago, Former Chief Justice Chief Lance of the BC Court of Appeal coined the phrase “the duty to learn”³⁶ about Indigenous legal orders. He argued that given the well-established obligations and responsibilities of legal professionals to incorporate Indigenous perspectives into Canadian legal advocacy and decision-making, particularly in regards to treaty interpretation³⁷ and Aboriginal rights, it was critical that the Canadian bar undertake seriously and with humility the hard work necessary to begin recognizing and understanding Indigenous legal orders. While there is increasing interest in this project both inside and outside of the legal profession, most settler Canadians remain uneducated both about how to recognize Indigenous law as well as how to navigate their own relationship to it.³⁸

34 *R v Sparrow*, [1990] 1 SCR 1075 at 1112.

35 *Tsilhqot’in Nation v British Columbia*, 2014 SCC 44 at paras 34–35.

36 Justice Lance SG Finch, “The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice” (paper delivered at the Columbia Continuing Legal Education Conference, Vancouver, November 2012), online: *Queen’s Law* <<https://law.queensu.ca/sites/lawwww/files/Finch%20CJ%20Lance%20S.G.%20-%20The%20Duty%20to%20Learn.pdf>> [perma.cc/K3C4-AWTE] at 7.

37 On the renewed interest of Canadians to understand themselves as “treaty people” and consider what this entails, see generally Corey Snelgrove, “Treaty and the Problem of Colonial Reification” (2022) 25:1 *Theory & Event* 98.

38 See e.g. Val Napoleon, “Thinking About Indigenous Legal Orders” in René Provost & Colleen Sheppard, eds, *Dialogues on Human Rights and Legal Pluralism* (New York & London: Springer, 2013) 229;

While there are settler-based views on the principles that should guide treaty interpretation, Indigenous partners to the treaties have their own approaches. In her article on treaty interpretation, for example, Aimee Craft draws on Anishinaabe legal principles to guide treaty interpretation. She writes that:

... the seven teachings or traditional values of the Anishinaabe are wisdom, love, respect, bravery (or courage), honesty, humility and truth. All of these characteristics or ways inform how the Anishinabe govern themselves and illustrate how the Anishinabe approached treaty negotiations. Today in gatherings, deliberations or assemblies, there is a specified code of behaviour. Respect for others and self would require us to sit together, in a spirit of respect, to listen to each other without interruption, to feast together to confirm the relationship that binds us, and to take the time to understand and deliberate.³⁹

Indigenous treaty partners concerned with treaty violation or interpretation have been forced to seek remedies in the Canadian justice system and submit arguments to decision-makers who are overwhelmingly non-Indigenous and have little or no training in Indigenous law. However, due to the work and advocacy of recent and upcoming generations of Indigenous legal professionals, this might change in the future. For example, the newly created National Centre for Indigenous Laws hosted at the University of Victoria campus is already under construction. Once complete it will serve as a resource for the revitalization of Indigenous legal orders nationally. In addition, it will house the world's first joint common law and Indigenous law degree, where graduates complete a four-year degree both in the common law and in a specific body of Indigenous law, such as Cree, Coast Salish, or Anishinaabe law.⁴⁰

IV. What are Our Obligations to Rocks, Trees, Bears, Beavers, and Birds? Reflecting on Who is Understood as an Actor and Who We Share Rights and Obligations with in Intercultural Interpretations of Treaties

In the previous section of the article, I noted that the most critical difference in treaty interpretation between settlers and Indigenous peoples is the question of whether political authority was transferred from Indigenous peoples to settlers under the early treaties. In part, this difference comes down to profoundly

Hannah Askew, "UNDRIP Implementation, Intercultural Learning and Substantive Engagement with Indigenous Legal Orders" (Ottawa: Centre for International Governance and Innovation, 2018) at 85.

39 Craft, *supra* note 27.

40 For more information, see "National Centre for Indigenous Laws and Fraser Building Renovation", online: *University of Victoria* <<https://www.uvic.ca/campusplanning/current-projects/indigenous-law/index.php>> [perma.cc/P6K3-7MDC].

divergent understandings of the relationship to land in Indigenous and settler thinking. Whereas settlers viewed the land as something that could be bought and sold, Indigenous peoples saw the land as something that could only be shared, and shared under certain conditions that upheld human responsibilities to the land. As the anthropologist Paul Nadasdy argues in his seminal article on property and Aboriginal land claims, the Western concept of property is fundamentally incompatible with many Indigenous peoples' views about proper human-animal/land relations.⁴¹ Given this, many Indigenous leaders and thinkers argue that it would have been impossible for their ancestors to have ceded and signed away land in the manner that settlers assert they did.

Returning to the Treaty of the Deer, as relayed by Heidi Stark, the Anishinaabe made a promise to the deer in that treaty to not only respect and care for them, but also to protect their habitat. I am not Anishinaabe and have only a very limited understanding of Anishinaabe law. However, as I reflect on what I have been taught about the Treaty with the Deer, it seems to me that given their treaty obligations, the Anishinaabe would not have had the right under their own legal framework to alienate and give away the deer's habitat to settlers, even had they wished to so. The Anishinaabe would, however, have had the right within this worldview to share the land with settlers and uphold responsibilities to more-than-human beings on the territory, including the deer.

For settlers who have been raised in a worldview where the land is commodified, and the more-than-human beings who live on the land are regarded as a resource to be exploited rather than as relatives, the shift to seeing more-than-humans as actors who also shape the world through their gifts and choices, and who have relevant needs and rights just as humans do, comes with many challenges. It is a whole new way of seeing and understanding one's place in the world and often requires education and reinforcement. Perhaps most significantly, making this shift needs to be accompanied by a willingness to share more of the earth's abundance with more-than-human relatives and neighbours.

During the time that I lived and worked at Neyaashiinigmiing, I was often invited to interact with plants and animals in ways that were new to me and at first felt strange and uncomfortable to me. One example is the time that Lindsay Borrows, her aunt Norma, and I went to harvest wild leeks in the woods. Norma showed us how to recognize and harvest the leeks, and

41 Paul Nadasdy, "'Property' and Aboriginal Land Claims in the Canadian Subarctic: Some Theoretical Considerations" (2002) 104:1 *American Anthropologist* 247.

encouraged us to ask permission from the leeks before we pulled them from the ground. As we gently filled our baskets, an image of one of the Elders, Carleen Elliot, who was then living at the Maadooki seniors centre on the reserve, came into my mind. She had often expressed to me her love of “country foods” — foods that grew wild on the land — as opposed to cultivated foods purchased at the store. I mentioned out loud to Lindsay and Norma that perhaps we should stop by the seniors centre on our way home and share some of the leeks we were gathering with Carleen. Norma nodded in agreement when I suggested this, and then took me aback when she said, “It was the leeks that told you to do that.” It’s embarrassing to admit, but I initially felt somewhat chagrined when she said this, as I felt that the leeks were being given credit for an idea I had myself. I asked Norma what she meant and she said that the leeks were telling us how they wanted to be used, as part of the permission they were granting us to harvest them.

The experience of Norma reflecting back to me how plants were communicating with me and the agency they carried was repeated in different ways during the course of my time at Neyaashiniigmiing. On another occasion early on in my stay, Lindsay and I went with Tony Chegahno to a stretch of shoreline on the reserve to look for ancient fossils of tiny creatures in the round rocks that covered the beach. Part way through the walk, Tony spotted one and handed it to me. I looked at it and examined the outline of the small animal preserved in the rock. Then I tucked the rock into the pocket of my jacket while we continued along the beach. When we had finished the walk and were about to head to Tony’s car to return home, I suddenly felt that I should put the rock back on the beach before we left. Hoping I would not offend Tony, whom I had only just met and who had “given” me the fossil, I took it out of my pocket and placed it back on the beach amongst the other rocks. As we continued on our way, Tony said to me, “I’m glad you listened to the rock. I wasn’t going to say anything but I never remove the fossils from this place, I view this beach as an ancient graveyard for these animals and they don’t like to be moved.”

The experiences that I had with Norma, Tony, and others at Neyaashiniigmiing who helped me to develop an awareness of the animacy, voices, and agency of the more-than-human beings whose territory I was on, slowly changed the way that I moved through the world and understood my place in it. Once I began to understand that the plants, animals, rocks, and water might be trying to communicate with me, I tried to be more present, more open, and a better listener whenever I was outside. This growing awareness helped me to be more humble and less self-focused as well. As my sense

of the community began to expand to include more-than-human actors as well as humans, I learned to appreciate and credit these actors for what they taught me and how they might be influencing my choices and the trajectory of my days. This shift made me feel more grounded and secure as a human, as I felt less alone, and more embedded in a web of relationships, collectively working to create stability and balance.⁴²

It is important to state that, given the upbringing and education I had as an urban Euro-Canadian child, what I had been taught to “see” and “not see,” and the walls that this created in terms of my relationship with nature, it is highly unlikely that I would have made this shift without the patient encouragement and reflection of the friends I made at Neyaashiinigiing. I was not told by anyone there how to think or act (and had anyone tried to do so, this likely would have created resistance in me), but another way of being was modeled for me and I was invited kindly into it. To the extent that I was able to accept the invitations that were extended to me during my time at Neyaashinigiing, my life was made richer and warmer.

When I think of the treaties signed between the Anishinaabe and my English ancestors in the context of what I was able to learn through the relationships I formed at Neyaashinigiing, I wonder if the Anishinaabe treaty negotiators envisioned a similar process happening with English newcomers and treaty partners as happened with me on the territory: a gradual awakening to new relationships and obligations within the much broader more-than-human community that the Anishinaabe were themselves embedded in.

V. The Potential Role of Treaties in Helping Settlers Relearn Reciprocity with More-than-human Beings

While I believe that settlers have much to learn from Indigenous individuals and communities about mutual obligation and reciprocity with the more-than-human world, in no way do I suggest that Indigenous peoples are “natural environmentalists,” as this romanticizing trope arguably does as much damage by dehumanizing and limiting Indigenous peoples as overtly negative racial stereotyping does. As John Borrows reminds us:

42 I am conscious of the way in which the agency of all living beings is rapidly being circumscribed by the effects of climate change. However, this discussion is beyond the scope of this article. I intend to address this further in a subsequent paper.

Indigenous peoples can be as destructive as other societies on earth — we are part of humanity, not outside of it. Caring for the earth is hard work; it does not always come naturally. Humans must consume to survive. Accordingly, we must strive to attenuate our impacts. It is not easy to respect all forms of life. Even in small numbers, humans can place great stress on ecosystems...we must acknowledge that Indigenous peoples are not necessarily environmentally sound by the mere virtue of their existence. As Indigenous peoples, we are not blameless. Our lands and waters can also be spoiled even where we have small degrees of stewardship and control. It is not enough to be Indigenous and inherit an ethic of care. These teachings must be acted on by each generation.⁴³

When I applied to law school, it was with the intention of becoming an environmental lawyer and using my law degree to promote biodiversity, address climate change, and generally promote ecological health. However, like many of my peers with similar goals, I quickly discovered that Canadian environmental law was designed to facilitate the efficient extraction of natural resources, primarily for export to other places, rather than to ensure long-term healthy and sustainable abundance of the land.⁴⁴ While new pieces of legislation have been introduced over time in an effort to blunt some of the worst effects of a rapacious extractive natural resource economy, they have not been sufficient to prevent the rapid decline and even extinction of many species.⁴⁵

A key difference that I observed in my dual legal training in Canadian and Anishinaabe law through the immersive teachings I received at Neyaashinigiing is that while Anishinaabe law assumes long-term relationships with other species based in reciprocity, Canadian law assumes no such long-term relationship and does not conceive of an explicit need for a meaningful framework for reciprocity between human and more-than-human beings. The early Canadian economy was based on the rapid extraction and export of natural resources, like timber, fur, and minerals, for use in the metropole. British and French colonizers overseeing this process had only shallow roots in the territories they were extracting resources from, and were concerned with short-term economic benefits rather than building long-term sustainable relationships with the land. Canada's legal framework for regulating the environment is derived from this economic model, and unfortunately continues to op-

43 Bud Napoleon & Hannah Askew, "The Caribou Are Our Four-legged Cousins" (27 June, 2019), online: *Centre for International Governance Innovation* <<https://www.cigionline.org/articles/caribou-are-our-four-legged-cousins/>> [perma.cc/QW5U-UWU2].

44 For more on this trajectory, see David R Boyd, *Unnatural Law: Rethinking Canadian Environmental Law and Policy* (Vancouver: UBC Press, 2003).

45 See for example Jared Hobbs, *Species at Risk Recovery in BC: An Audit of Federal and Provincial Actions* (Vancouver: Sierra Club BC & Wilderness Committee, 2022).

erate largely in accordance with this mindset. For example, much of Canada's environmental legislation is divided up according to specific resources like minerals, forests, or water. These laws are focused on regulating use and extraction of the resource with little to no focus on reciprocity with the resource and insufficient regard to ensuring sustainability of the resource over the long term.

Subsequent to my graduation from law school and call to the bar, I worked in a number of Indigenous communities across Canada. I was often inspired to see the many practical ways that people were encouraged from childhood to see and understand themselves as inextricably connected to their own territories and the more-than-human beings that lived there. For example, while working on a project for the Xeni Gwet'in and Yunesit'in communities of the Tsilhqoq't'in Nation, my colleague Linda Williams shared with me that it was a common practice for mothers who gave birth to daughters to bury the placenta beneath a berry bush and to encourage daughters to revisit that bush to gather berries from it as they grew up. She also shared that as babies outgrew their infant headboards, parents would hang them in the branches of a young tree that would grow with the child, and which the child could visit as they matured into adulthood.⁴⁶

Many such practises are intentionally designed to keep Indigenous members of a nation connected to and in relationship with their own territories throughout their lifespan. As John Borrows observes:

Indigenous peoples do not generally feel separated from their territories. When something harms the land, they feel it. When Canadian environments are degraded, somewhere in Canada an Indigenous nation experiences this as destruction of their own homelands. Indigenous peoples have emotional, personal, social and economic investments in their traditional lands, even though they may have been alienated to other parties.⁴⁷

The ongoing disconnection that a majority of settlers continue to feel from the territories they live on, and their lack of education and practice around reciprocity with other-than-human beings, frequently cause great pain and harm both to the land itself and to Indigenous peoples from that territory. A small anecdote that illustrates this phenomenon was shared by the Dane-Zaa/Nehiyaw poet Helen Knott on her public Facebook page a few years ago. As a member of Treaty 8, Helen was then residing on her people's territory in North-Eastern BC, which is one of the most industry impacted

46 Personal conversation with Linda Williams of Yunesit'in in July 2016.

47 Borrows, "Earth Bound", *supra* note 8 at 59.

areas in Canada. She recalled sitting in a coffee shop in Fort St. John, and hearing a conversation between two settler workers who had been contracted to work in the oil fields, with ongoing cyclical schedules coming into work intensively and make money and then returning to their homes outside the territory. Knott described the hurt and pain she felt when she heard the workers joke about how glad they would be to “leave this xxxx-hole” and go back home with their paycheque once the job was done. To know that settlers are involved in a project desecrating the territory for profit with no sense of reciprocity, gratitude, or long-term investment in the place is a pain that many Indigenous peoples have experienced over and over again since the inception of the colonial project in what is now known as Canada.

My current professional role is serving as the Executive Director of Sierra Club BC, the oldest settler environmental organization in British Columbia. From this vantage point, it appears to me that there is an opportunity for settlers to begin to see differently. Perhaps, they can begin to practice more reciprocal ways of interacting with more-than-human beings, taking guidance from Indigenous law and knowledge from the territories where it is occurring. The insupportable nature of the current model settler economic and cultural practices is rapidly becoming apparent to more and more people. At my organization, as wildfire seasons intensify and people have to evacuate their homes and struggle to breathe from smoke, or are impacted by flooding and atmospheric rivers, they are calling us in increasing numbers asking, “What has gone wrong? What is happening to the forests? And is there anything that I and my family can do to help make things better?” Settlers who for the past few generations have felt insulated from the consequences of their lack of reciprocity are now feeling more vulnerable.

The philosopher James Tully explains that Haida people have a saying that reminds them of the tipping-point feature inherent in all living systems: “The world is as sharp as the edge of a knife.” Haida artist Robert Davidson shares:

Naani told me that wherever we walk, we’re walking on the knife’s edge. The world is as sharp as the edge of a knife is a Haida expression. The knife’s edge is just on the ground, and if we are not careful, we will fall off: that’s how Naani said it. It guides you on how to live your life. I see the knife’s edge as the present moment.⁴⁸

Based on my own experiences of learning Anishinaabe law at Neyaashinigmiing, even tiny first-steps can ultimately lead to major shifts in the way that we see

48 Borrows, “Earth Bound”, *supra* note 8 at 100.

things and show up in our relationships. One exercise we have been using at Sierra Club BC is to take our supporters on quiet forest walks and ask them to reflect on four questions as they walk. One, of all the more-than-human beings you see around you, how many do you know by name? Two, of the beings that you see around you, do you know what gifts they share? Three, of the beings that you see, what do you know about the gifts that they bring? Four, what can you give back to these beings, in reciprocity for the gifts that they share?⁴⁹

Engagement with these four questions can have a profound impact on those who ask them. It is not uncommon for some settler participants to be in tears by the end of the walk, partly because of the pain of recognizing the level of disconnection they exist in (i.e. recognizing so few of the beings and knowing so little about them and their gifts and needs) and partly because they are moved at being invited back into reciprocal connection with these beings. We often receive the feedback that moving back into reciprocity with the other-than-human-world, even in very small ways, is an antidote to feelings of fear and anxiety over the unfolding ecological crisis we are experiencing. Perhaps people intuitively sense the truth of what the Potawatami scientist Robin Wall Kimmerer has observed:

Reciprocity — returning the gift — is not just good manners; it is how the biophysical world works. Balance in ecological systems arises from negative feedback loops, from cycles of giving and taking. Reciprocity among parts of the living earth produces equilibrium, in which life as we know it can flourish.⁵⁰

While intending to step back into reciprocity with other beings is a powerful first-step, to do so with little knowledge or sensitivity of the character and needs of those beings risks inadvertently causing more harm. For this reason, Indigenous law and ecological knowledge based on millennia of being in relationship with these beings needs to guide the process of reconnection. One starting place to explore the restoration of reciprocity towards other-than-human beings in mainstream Canadian society is to learn from the agreements that Indigenous peoples have with certain beings, such as the Anishinaabe Treaty with the Deer discussed in the beginning of this piece, and seek to understand if the obligations likewise apply to settlers. As Heidi Stark notes, “[t]he people suffered when the deer left, after they had failed their obligations ... Anishinaabe life is precarious.”⁵¹ Similar to what the Anishinaabe learnt after failing their

49 Variations on these questions were developed over time by Charlene George, Flossie Baker, and Hannah Askew on Coast Salish territories, and by John Borrows and Flossie Baker on Secwepemc territory at a mindfulness retreat in 2022.

50 Napoleon & Askew, *supra* note 43.

51 Stark, *supra* note 3.

obligations to the deer, settler Canadians are likewise beginning to experience the consequence of a failure to practice care and reciprocity.

The treaties and Indigenous legal orders that they were built out of spanning across what is now Canada are far too numerous and diverse to canvass in this short article. However, I have attempted to demonstrate that they offer a possible source and starting place for settler Canadians to begin stepping into responsible and respectful relationships, both with Indigenous people and with the land and resources that Indigenous peoples generously agreed to share at the time of the signing of the treaties. While the egregious settler history of disrespect, violence, and broken promises that surrounds many of these treaties cannot be undone, there remains an opportunity to do better moving forward.

VI. Conclusion

The teachings and stories I received from both human and more-than-human teachers while living at Neyaashinigmiing led me to ask new and different questions about how to be in the world. These new questions centered on relationships and expanded the circles to which I felt accountable. These questions involved subjecthood, and included specific questions about who qualifies as a citizen, to whom we owe mutual responsibility, and how we learn about the needs of other species and start to practice better reciprocity. Later in my career, as I moved into a leadership role of a major settler environmental organization, I brought these questions with me and they influenced the kinds of initiatives I undertook there and the pathways of change I considered. Perhaps most significantly, these questions shifted my perception that “nature” and other species were fundamentally different from humans and in need of our protection. I now see them as beings we share mutual dependence with and who, just like ourselves as humans, are actively shaping the world around them with their actions and choices.

As I learned more about Anishinaabe commitments to others, I began to wonder what my own commitments were as a settler person living on Indigenous territory, and relatedly, how this might connect to my treaty obligations. Aimee Craft has wisely observed that, “[e]very single being depends on water ... settler Canadians must also consider how they build a relationship with water.”⁵² It is my intention to continue to develop my relations with more-

52 Social Sciences and Humanities Research Council of Canada, Newsletter, “Sustainable Water Governance and Indigenous Law” (2017), online: *Decolonizing Water* <https://decolonizingwater.ca/wp-content/uploads/2022/03/DW_Newsletter_2016-2017_PSS_v7.pdf> [perma.cc/82W6-WJ77].

than-human beings, to learn from willing Indigenous friends, colleagues, and teachers about how to do this in a good way, and to encourage other settlers into this work of rebuilding reciprocity. The treaties were intended to create a foundation for sharing the land together, and while settlers have failed in many ways to live up to these expectations in a good way, the relationships are ongoing and there remains much life to cherish around us. The treaties, especially when approached and understood through the lens of Indigenous legal orders, provide a rich framework for re-establishing reciprocity in respectful and sensitive ways.

