

## Canadian Indigenous Law – Encouraging Trends

“Indigenous Perspectives” - Monthly Broadcast on HealthyLife.Net

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*First Nations Flags<sup>1</sup>*

### Segment One

Randy Kritkauskyy: Greetings, or may I say Bozho in Potawatomi, to those joining us for today's Indigenous Perspectives show. I'm Randy Kritkauskyy, an enrolled Potawatomi tribal member, and the co-host of Indigenous Perspectives.

Carolyn Schmidt: And I'm Carolyn Schmidt, the other co-host.

Indigenous Perspectives originates from Vermont in the United States, and is located on lands that the Abenaki people call N'dakinna. It's the unceded traditional territory of the Abenaki, who for thousands of years have been stewards of the lands found here and across the border in Québec province in Canada.

Our topic today is governance and nature protection in Canadian First Nations. We welcome Savannah Carr-Wilson, speaking with us today from Victoria, British

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<sup>1</sup> Image source: <https://brewminate.com/canadas-dark-side-indigenous-peoples-and-canadas-150th-celebration/> from *Origins: Current Events in Historical Perspective* (Vol. 11, Issue 3, December 2017); Creative Commons license.

Columbia. Savannah is a Canadian lawyer who has spent the past several years working for Indigenous peoples, supporting them to protect the environment in their traditional territories, and also to address their governance needs. She has a law degree from the University of Victoria in British Columbia. She also has a Master's degree from the European Erasmus Mundus MESPOM programme, in environmental science and policy. So welcome Savannah.

Savannah Carr-Wilson: Great. Thanks so much, Randy and Carolyn for having me on your podcast. And, just before starting, I want to acknowledge that I'm currently speaking to you from the beautiful unceded traditional territories of the Lekwungen peoples known as the Songhees and Esquimalt Nations, which is on the west coast of Canada in what is now known as Victoria, British Columbia.



*British Columbia (BC) is shown in orange on this map; Victoria, the capital city, is located on the Pacific coast, south and west of Vancouver.<sup>2</sup>*

Randy: Thank you. So Savannah, let's start off with your background: how and why you became interested in the issue of tribal governance. Is it related to your background in environmental policy, or did you have to make that bridge?

Savannah: Sure. So I would say my interest in tribal governance and environmental law and policy go hand in hand, and they've evolved together. So maybe I can first

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<sup>2</sup> Image source: <https://wikitravel.org/en/Canada> Creative Commons license

explain my background a little bit. And as part of explaining that, I'll talk about how I became interested in and also came to work on tribal governance and environmental law and policy. So I would say it all really started when I was in law school at the University of Victoria training to be a lawyer, some years ago, because this was when I first had the opportunity to work for an Indigenous government.

So when I was in my second year of law school, I had the chance to participate in an environmental legal clinic at the University of Victoria. And this was a really unique, very, quite cool clinic that paired supervised students with First Nations governments, who were clients.

And we had the opportunity to help them with their environmental legal issues, which sometimes also tied into governance. And I thought I just - there was one sort of interesting example. One of my files was actually to help a First Nations government located in BC's *[British Columbia's]* north, which had a huge amount of fracking for natural gas happening in their territory. Because for some years, fracking has been a big industry in British Columbia. And just to give some sort of color to this situation, this fracking was generating a massive amount of waste water that gets pumped into disposal wells in the ground. And that was happening in this nation's traditional territory. And I remember there was one well, and it had been operating for 50 years. And we came up with the visual that the amount of wastewater that had gone down into that well was equal in volume to 24 towers the size of the former 9-11 World Trade Center towers.

It was a really huge amount of wastewater. So essentially I wrote a research paper for this nation that they then used to advocate for better regulations around wastewater disposal, so advocating for safer disposal of the wastewater. And they were successful; they were able to change, really change, those laws and have better practices taking place in their territory.

So that experience gave me a sense of how meaningful it was to work for Indigenous nations as clients. And also what powerful leaders these governments could be on environmental issues. And that was also one of my first introductions to the rich variety of tribal governance structures that such nations are operating under, in Canada.

So just- just to continue on a bit, and bridge to the other part of my experience: after I got my law degree from the University of Victoria, I wanted to specialize further in environmental law and policy. And that's when I won a scholarship to study my Master of Environmental Science and Policy in the European MESPOM program, which is quite a unique program. It's a Master's degree that's funded by the EU [*European Union*]. And it's jointly taught at several European universities in Hungary and Greece and Sweden and the UK.

And, while I was getting that Master's degree, I took on a project. I researched and wrote a book with a fellow student, called "Total Transition."<sup>3</sup> And it was about the global transition from fossil fuels to renewable, and how this transition would impact workers and communities that depend on fossil fuels for their livelihoods. So as part of that book, again, there was a connection back to working with, or I guess speaking to, Indigenous governments, because we did some research in the [*South Asian*] Indian coal mining belt, but we also went to the Canadian oil sands.

And we had the opportunity to speak to several representatives of First Nations governments there, about how that development was impacting them - both damaging their traditional territories, but also wiping out other forms of livelihood, such as fur trading, which had, you know, been a form of livelihood before, so that there was this dependence on the oil sands for economic opportunities. So kind of a Catch- 22. So I guess that work in my Masters sort of further cemented my interest in working for Indigenous clients and working on environmental issues after my Masters.

Randy: That's a great explanation. I'm going to get you - before we go too far - to back up. You mentioned something in passing that, for certainly non-Canadian listeners and even most Canadian listeners, is a really complicated issue. We talk about tribal governance, and people might have some notion of something like municipal governance or state or provincial governance. But my understanding is that it's a lot more complicated, when you're dealing with Indigenous people, because you have governance structures that were created by the [*established*

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<sup>3</sup> <https://rmbooks.com/book/total-transition/> Total Transition: The Human Side of the Renewable Energy Revolution, by Sandeep Pai and Savannah Carr-Wilson. BC: Rocky Mountain Books, 2018.

*federal Canadian or US] government, and then you have traditional informal governance structures of all kinds. Without taking us too far into the weeds, could you explain a little bit in your own words, your acquaintance with those different structures?*

Savannah: Sure. Well, I think I can give sort of an overarching explanation of what we see in Canada, and also mention a little bit my experience of working with some of those governments. So in Canada - and I would imagine this is also the case in the US as well, although my experience is certainly more in Canada - there's a really wide variety of Indigenous governance structures. And I, yes, I can briefly speak to those that I've worked with. Although I should mention that it's definitely not an exhaustive description of all of the Indigenous governance structures in Canada; there really is a very rich variety of governance structures that have evolved.

But I would say there's - really what I've experienced, there's two main categories. And one is governance structures that were sort of created or shaped by the colonial state - so, the federal and provincial government of Canada. And one of the main structures you see in Canada is something called "Indian Act Bands". And I'll explain what that is. So the Indian Act, it's a piece of Canadian federal law that dates back to the 1800s. And it was one of the main tools that was used to oppress and assimilate Indigenous peoples in Canada for many years. So, for example, that's how the government, through this law, banned things like the Potlatch and suppressed, or made it illegal for First Nations people to practice their culture, back in the 1800s. And, it's changed a lot over the years, but it actually still exists today. There still is an Indian Act, although it's changed and, you know, things like the ban on practicing the Potlatch are no longer in there.

And basically coming back to governance, what this act did is that it said, you know, to an indigenous community, "You cannot follow your traditional structures of governance anymore. You need to follow this colonial governance structure. You need to have a Chief and Council and they're going to be elected, and that's going to be your governance structure, from now on. And you're going to rule over a reserve." I think in the US it's "reservation", but in Canada it's "reserve", which was a very small, like sort of postage stamp piece of the traditional territory that this Indigenous people had before.

So that structure was put in place around the 1800s and it does continue to endure today; many communities still use that structure of having a *[Band]* Chief and Council.

There is another sort of category though, which is, governance structures that are defined by indigenous peoples themselves. And that might involve leaders who are elected, or it might involve leaders who are hereditary where their authority is passed down by descent, or it might involve a mix, because there really is a rich variety.

So just maybe to give two examples to give some color to that. I worked for one indigenous nation in BC *[British Columbia]* that organized itself as a tribal council. It was made up of several communities. So one nation, but several communities, and each of those communities had a chief. All of the chiefs sat on the tribal council and then they elected a tribal chair, who was the - I guess, supreme leader of the nation. And these chiefs were making decisions individually for their communities. but also making big collective decisions for the nation sitting as, as tribal council. So that's one example. And, and of course there's many more examples in the wide variety of how Indigenous peoples govern themselves in Canada.

Carolyn: Thanks. I think that was a useful filling in the background. Now let's shift to the question about how are Indigenous governments in Canada asserting their own laws to protect their people and the environment? Can you comment on what kind of approaches are working well, and also what are some of the roadblocks that you've seen that stand in their way?

Savannah: Definitely. I think that's a really interesting question, because there is a wonderful revitalization of Indigenous law that's occurring in Canada right now. There's actually several organizations and research departments at universities who are working with indigenous communities to affirm their laws which already exist, but sort of go through a process of affirming them. And in some cases, write them down and help apply them in modern ways. So there's kind of a process of revitalizing Indigenous peoples' own laws and also some indigenous governments that are using Western pathways to make laws, to deal with modern concerns like

Covid. So maybe I can give some examples of both. I think we've seen some interesting examples, in BC specifically, recently.

So - one example of an Indigenous government kind of using their own laws and following their own process to make environmental change, I would say - is there was a First Nation in BC that recently did their own environmental assessment of a proposed mine, and that mine was ultimately canceled. And just to give a little bit of background: before you have a major development, like a mine or a hydro dam in Canada, you have to go through an environmental assessment process where different aspects of the project are looked at, before this thing is approved and it's built. So - and I should say for this example, this is just what know is known publicly about this project, I didn't work directly with these clients - so I'm just, mentioning what is sort of publicly out there, but it's a very interesting story.

So I guess to briefly describe it, there was a company, I think it was a Polish company<sup>4</sup>, who wanted to build a really big gold and copper mine near Kamloops, which is a medium sized town in central BC. They [*the mining company*] actually wanted to build it right on the outskirts of the town - which had other issues with it - but also on top of a site of great cultural importance to a First Nation.



*Protests against the KGHM gold and copper mine made the issue visible to the general public<sup>5</sup>*

<sup>4</sup> KGHM Ajax Mining, Inc.

<sup>5</sup> Photo credit: Vancouver Media Coop, <https://vancouver.mediacoop.ca/photo/rising-tide-building-resistance-tour-photo-diary-%E2%80%93/17699> Creative Commons license

And that nation was the Tk'emlúps te Secwepemc [Kamloops Indian Band] - sometimes it's abbreviated as SSN - Nation. So this nation did not think that enough planning was being done about this project, that the government wasn't looking at it carefully enough, this project that was going to destroy their cultural keystone site.

So they did their own - they decided, you know, the government's assessment is not good enough; we're going to do our own indigenous assessment under our own laws. And they did; they had their own review process; they took their own decision, wrote their own report, gave it to the government and the government refused to permit the mine in the end. So quite a cool example of an Indigenous nation following their own governance process, according to their own laws. And then I think like having this powerful impact, right? Of this mine not being built.

Carolyn: Were there - were there other factors that came into play as to why this First Nations group in Kamloops was successful? Was there publicity about the problems that this would pose; would they get different legislators or different other people in on it?



*A hand-drawn map by a member of the Tk'emlúps te Secwepemc [Kamloops Indian Band] shows the river and the important cultural sites<sup>6</sup>*

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<sup>6</sup> Photo credit: Vancouver Media Coop, <https://vancouver.mediacoop.ca/photo/rising-tide-building-resistance-tour-photo-diary-%E2%80%93/17699> Creative Commons license

Savannah: So yes, a great question. I think what helped in part, certainly there was publicity. And part of that was that there was a lot wrong with this project from the start. And there was a couple of competing projects that were very notorious in the province at the time. And you know, perhaps this was the worst of all the options and the easiest to let go of. But as I said, it was a giant mine that was proposed to be built right on the outskirts of one of BC's largest towns. So that's going to have issues with traffic, with noise, with impacting water quality and so on. And also this nation, which had these, you know, very, very legitimate concerns about how it would impact its traditional territory. And, I believe it was going to destroy a lake, a lake of great cultural importance to the nation.

Randy: So this is encouraging news because we often read about Indigenous people being on the losing end of these kinds of things. It's nice to hear that sometimes they're on the winning end. Is there an example you can give us of applying traditional, even unwritten, tribal law and getting it recognized in the mainstream, or is that pushing the envelope too far?

Savannah: Yes, I would even say that this example I just gave, related to the environmental assessment, was a way of applying, sort of more traditional or unwritten laws. I know from what I've read that that was woven into the environmental assessment and, I guess way of looking at the project, and way of doing things when it came to the environmental assessment. For example, I think they need a committee to have experts come before them to tell them about the project; you know, both Western experts and Traditional Ecological Knowledge experts. And I - I believe that there was leadership on the committee - so, community leadership, but there was also family representatives, from each of the major families of each of the major communities that made up this nation. So in a way, this was the nation following their own - their own process. And, and perhaps, although I don't know this directly, their own unwritten laws.

Randy: This is exactly the next topic that we were going to raise. And I think we're going to carry it over to the next segment after the break. And that is the role of Traditional Ecological Knowledge or TEK. We read about it a lot in the mainstream media, a lot in scientific journals. And, you know, it is becoming more and more influential. The public doesn't necessarily understand it. And I would like after the

break for you to explore that with us and help us understand how it dovetails with, and sometimes challenges, mainstream science and policy making. And we'll do that after the break. Thanks a lot.

Savannah: Great.

Carolyn: So we'll be back in a few minutes with Savannah Carr-Wilson from Victoria, British Columbia, Stay tuned.

## **Segment Two**

Carolyn: Welcome back to indigenous perspectives. We're speaking with Savannah Carr-Wilson, and we're just wrapping up some comments on Traditional Ecological Knowledge and how it is used in the Canadian legal context. So over to one of you!

Randy: Savannah, why don't you give us, you know, the sort of wrap up on how that gets involved in the environmental impact assessment. And I'm going to use that to jump off to our next topic.

Savannah: Sounds good. So I would say that that more and more, there is definite interest in incorporating Traditional Ecological Knowledge into the sort of colonial government decision making. Just to give one example, we already talked about environmental assessments, but, you know, for a major project, like a mine, that's going to take into account a lot of Western science, but now the legislation says you also need to take into account Traditional Ecological Knowledge. So it's written down that that needs to be part of what the decision maker is looking at. But I would say it's still a bit of a gray area, how they look at it, how is it really incorporated? And sometimes the nations providing that Traditional Ecological Knowledge might have the feeling it's not really being incorporated into the decision. So I think there's still some room for improvement there.

Carolyn: Thanks.

Randy: So that kind of ambiguity in interpreting the law brings me to my next question, which grows out of my own experience of literally decades of working as an environmental activist in the United States. And I remember coming to the

realization, and it was rather shocking at the time, that the people who show up with clipboards, you know, the enforcement people, are actually involved in an enormous amount of discretion, but they're working with regulations. And the regulations aren't exactly the same as the law. And most people don't understand that.

So I'm hoping that you can help us to comment on how Indigenous people play a role in creating - or not - the laws that affect them, but equally importantly, those regulations that interpret the laws, that tell them how they're going to make their environmental impact assessment. Is the Native American voice there? Is it at the table or is it silent?

Carolyn: Well, you gave Savannah about 10 questions! Savannah just pick and choose with any - any one of them and we'll go from there.

Savannah: Sure, sure. so I think that's - there's a lot to unpack there and that's really fantastic. You know, for a long time in, for example, British Columbia, which is where I work in Canada, so let's say Western Canada environmental law, to use that as an example, it was all about, you know, use the resources, okay? Like develop the country, that, you know is already indigenous peoples' country, but this is Western settlers coming in. Develop the country, use the resources.

So our water laws were all about, you know, use it or lose it. Use that water, or you're going to lose the right to use it. Oil and gas, right? Pump that well, or you're not going to have the right to pump that well anymore. And, there really was very little to - no, let's just say no consultation with Indigenous peoples about these laws that were layered on top of their own laws and were affecting them.

You know, that has changed. Now there are consultation processes for making laws when a new law is made, there's a big consultation process and Indigenous government's voices are heard either in meetings or they can send in, you know, written submissions. So I think now it really is - it is changing, it is changing for the better.

And there's - there's actually some very neat, kind of organic, interrelationships that have developed. So we have, up and down the coast, there's a lot of coastal guardian

programs. And that's where an Indigenous nation has members who are working as guardians. They're going out on boats or they're going out into the forest and they're helping with enforcement. So they're, they're seeing, you know, what laws are being followed, what aren't. Are people getting too close to grizzly bears, that sort of thing. And they're helping to enforce laws. And that's - that's really, I think, it's really helping with enforcement and it's a great source of employment in indigenous communities. And it's just in general, a win-win.

Randy: Those are marvelous examples. I wish I could give you more from this side of the border, but I think Canada is a little more ahead of the curve than we are on this side. Why do you think that is? Has the atmosphere changed in the decade because of the Truth and Reconciliation committee<sup>7</sup> or has it been a longer term development?

Savannah: Yeah, that's a - I mean, that's a really great, that's a really big question. I think there's probably many dimensions to the answer. And as a lawyer, you know, it's sort of like when you have a hammer, everything looks like a nail. So I would give more of a legal answer, which is that the legal landscape has really changed. For example, in 2014 there was a landmark legal case in Canada<sup>8</sup>, but it actually happened in BC, called Tsilhqot'in [*pronounced "silkatine"*].

And it [*Tsilhqot'in*] was a nation who actually I did briefly work for, that won aboriginal title to part of their traditional territory. So they - the court said in a way you own a very large piece of land in the center of BC, you have Aboriginal ownership of that land. And it is a bit more complicated than that; I won't get into the details, but that really, you know, it - it shook the foundations of the relationship between Indigenous peoples and the government in Canada. You know, now we have indigenous peoples who have this ownership, right? And they can pass their own laws. And, you know, it - it changed the power balance. And there's been other court cases like that that have also changed the power balance, bringing us to this different place that we're in today.

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<sup>7</sup> The Truth and Reconciliation Commission, set up in Canada as a national response to news about widespread abuse of Indigenous children in the Canadian residential school system, operated 2008-2015. It not only documented the abuse, it catalyzed national laws in Canada on public education about past systematic mistreatment of Indigenous Canadians and on incorporation of remedies moving forward.

<sup>8</sup> Tsilhqot'in Nation v British Columbia, Supreme Court of Canada, 2014

Randy: Can you stop right there for a moment because you just explained something that I think our listeners have heard many times, but never appreciated before, which is the meaning of unceded territory. On this *[United States]* side of the border, it's a moral claim. But I think if I heard you correctly, and if I remember Canadian law correctly, in Canada, 'unceded' has a new and deeply important political and legal meaning because it literally means the sovereignty isn't *[only]* a moral claim that's nice, it's a real claim. Is that correct?

Savannah: Yes, I would say so. You know, we talk about unceded territory, for example, in our land acknowledgements, right? That the land I'm on is unceded. And that means that the nation whose territory it is, has never - never gave it away. It was, you know, it was in many ways taken from them, if it was taken. But in Canada, there's many different ways that nations are reclaiming their land outside of the reserve. We already talked about the postage stamp that the government said, you know, this is your territory. So *[recent Indigenous land claims now can go]* outside the postage stamp. One of the ways is these big court claims, and they *[people of the Indigenous nations]* can get aboriginal ownership to that land, that unceded land, which is now coming back to their ownership.

And there's other ways too, I won't go into all of them, but there's - we have something called Modern Treaties in Canada. And that's a treaty when an *[Indigenous]* nation *[in the present day]* negotiates with the government where they talk about essentially, what land they're going to own and how they're going to own it.

Randy: This is - this is a huge development. And when one looks at the territory of Canada, we're not talking about postage stamp areas here. We're talking about some rather significant territory, is that correct?

Savannah: Yes, that's correct. I don't recall the exact size of the Tsilhqot'in claim, but it was thousands of *[square]* kilometers, very, very large - very large piece of territory.

Carolyn: Was this land that had a lot of white settlement and, you know, cities and roads and factories and things on it? Or was this land that was basically sparsely populated by the non-Indigenous Canadians?

Savannah: I don't know about that in such detail, but I would say I think it's somewhere in the middle. There certainly was some use in settlements and private ownership, but it wasn't, for example, you know, in the middle of the city of Vancouver, which is our biggest city in BC. And I think when we look at highly populated areas, things get more complex.

Randy: Thanks for making that distinction. This has been really very clarifying.

Carolyn: Thanks a lot. And this is - we need to end Segment Two and we'll be back in just a minute, stay tuned.

### **Segment Three**

Carolyn: Welcome back to segment three of Indigenous Perspectives. We're talking with Savannah Carr-Wilson from Victoria, British Columbia, Canada, working with Indigenous peoples / First Nations on a variety of legal issues.

Savannah, you've also mentioned that some First Nations in British Columbia have been passing "Indian Act bylaws" to put their own COVID related restrictions in place during the pandemic. Can you tell us how they've gone about doing this? Especially, which groups in those First Nations communities have taken the lead on these important health issues?

Savannah: Sure. So this was a really interesting development that we saw happen during Covid. You know, Covid hit and I think all levels of government and also Indigenous governments were quite concerned about how to protect their people from, from COVID transmission and, and perhaps particularly so, some Indigenous governments. Especially those in rural and remote parts of BC [*British Columbia*] had high risk populations with lots of other underlying health conditions, sub-standard housing, and also just a lack of medical facilities. So this was a really, really important issue, for many of these nations. And they wanted to do things like put up road blocks to govern who was coming in and out of reserves, and make rules, right? That if you're not a member and you're not a resident of this community, you can't travel here during Covid, out of a desire to protect the people living in that community, because travel was one of the main vectors of how Covid was spreading, spreading around.

And I think it also came out of a sense that our provincial and federal governments weren't doing enough. So these Indigenous governments wanted to do more. So then, but then, you get to the question of how - how do I, how do we, do this? And to a certain extent, that's the lawyer's question of how do we do this? But it was also the Indigenous governments' question of, what fits for us? Are we going to do this under our own inherent Indigenous laws? But what enforcement measures do we have if someone doesn't agree with the roadblock? What, what do we do? Or are we going to use another tool? And we saw some nations deciding to use another tool, which was, as you've mentioned, this Indian Act bylaw.

Now we already talked a bit about the Indian Act; it's this colonial piece of legislation that's been around a long time and, you know, it created the, the Indian Act Band [*federally recognized Indigenous government by elected Chief and Council*] and it gave that Band certain powers. And one of the really specific things it said they could do was pass these bylaws, which are sort of like minor laws about some really specific topics. And one was contagious disease. So that really, you know, no one thought about Covid when that was being written in the law, but it certainly came to the forefront during Covid. And so we saw several First Nations pass these Indian Act bylaws, essentially about Covid, to put all these travel rules in place in their communities. And I think there was - there was a lot of tensions with that because I think there's a real dislike of the Indian Act, and many nations don't want to be using those bylaws because they're coming from this Western colonial piece of legislation.

But in a way it was like the best tool they had in a pretty limited toolkit. And the reason some nations chose to use it was that it essentially gave some teeth to the rules that they wanted to pass about travel and quarantine, because they could do things like, under legislation, hire their own bylaw enforcement officer, a member of the community whose job it was to go and enforce these rules. And that was a really useful tool. It wasn't perfect though. You know, I think this is perhaps a roadblock or an area for improvement or a difficulty that some of these nations run into is, it's still pretty unclear. You know, if people don't listen to the bylaw officer, how do you enforce this Indian Act by law? It's a bit of a gray area.

Supposedly the federal police, in Canada that's the RCMP or the Royal Canadian Mounted Police [*"Mounties"*] who police a lot of our rural areas, were supposed to help. But in practice they would only do that with a court order. So, you know, I guess in summary, a lot of nations started using this tool because it was available to them even though it was flawed. But we also saw in them using it that there's still a lot of roadblocks to it. It's still a really imperfect tool. But it was a pretty unique and interesting development that happened during Covid.

Carolyn: Were there any differences between the ability or the will of the First Nations people to enforce any Covid-19 travel restrictions against outsiders as opposed to their own tribal members?

Savannah: I think that certainly a lot of the restrictions were aimed at outsiders. Because there was a sensitivity to the fact that if members were traveling, maybe they were doing that for a good reason, right? Like in rural remote areas, you know, members often have to travel down to the big city for medical appointments, or have to travel somewhere else to use a bank, because sometimes these communities are so small, they don't have a bank. Those sorts of things.

So I think the real focus was on non-members and non-residents, really essentially recreational travel, right? Like you don't need to be doing recreational travel to our community right now, while Covid presents such a danger. And there was rules about members, you know, if you do travel, you have to quarantine when you come back, but there was also often supports in place. So if somebody's quarantining, there'd be like a personal community shopper that would make sure that those individuals were getting the food and medicine and whatnot that they needed. There was people to look in on elders. So there was various supports put in place for members there. So there was differentiation.

Randy: I love the explanation you're giving, because it's deeply rooted in Indigenous cultural values. We live across the river, the St Lawrence River, part-time in Montreal [*across the river from*] from the Kahnawake or Mohawk reserve. And they basically shut it down, and they were interviewed constantly on the CBC. And the argument that their governance body gave repeatedly and very eloquently is, "We respect our elders, we're protecting our elders; they are the conveyors and

preservers of our culture.” And I thought it was a really beautiful message, especially since in the mainstream press on a daily basis there were horror stories about people dying in great numbers in elder care facilities, which in some parts of Canada were operated as essentially, you know, warehouses. So I think this was a, as they say, the teachable moment for much of the population. Was that at all the case in your area?

Savannah: Absolutely. I think that's a very eloquent explanation. And for many of these communities, you know, those elders are the last speakers of the language. So beyond the amazing value that that elders have in, in so many different ways, there was also a fear that parts of the culture and the language would disappear if they were to pass away from Covid.

Randy: Thank you for your explanation. This is a very, again, you know, upbeat message for all of us to be hearing. We'll take a break and be back in a moment.

#### **Segment Four**

Carolyn: Welcome back to the fourth segment of Indigenous Perspectives with Savannah Carr-Wilson. Savannah, can you comment further on the activities around the University of Victoria law school and Indigenous-related and Indigenous - focused programs?

Savannah: Sure. I think a little bit earlier in this program I mentioned the wonderful revitalization of indigenous laws that is taking place in *BC [British Columbia]* and in Canada. And I think a lot of that work seems to be happening at the University of Victoria.

So the University of Victoria has an Indigenous legal research unit; it's a program that's been running for a number of years. I haven't worked directly with them, but I know about their work. So a team of researchers in the university, and they're working directly with Indigenous communities on legal revitalization. So they have a methodology that they follow and they work closely with those communities, to say, work on, a section of their laws. And, I think, work with them to hear what their community stories are, or their community legends, and develop those out as a basis for written laws.

For example, say, laws about water. So it would be a whole community process where the researchers would go and meet with the community and in the end, sort of have further developed or reaffirmed, what that community's laws on a particular topic are. So in loose terms, that's their methodology. And I think a very exciting program that they're running. And then I - there was an effort for many years at U Vic to set up a joint Common law / Indigenous law degree.

So when I was in law school, there was only one kind of law degree you could get, and that was the common law. So we learned about provincial and federal laws. But now U Vic has actually launched a joint Common law / Indigenous law degree where I believe it's a mixture of indigenous and non-indigenous students.



*Map of Indigenous linguistic groups of the Pacific coast, on both sides of the Canada-US border<sup>9</sup>*

And I think it takes slightly longer than the common law degree, might be four years. But it's very unique and it's really exciting. So, say in a criminal law class - it's one of your core subjects in law school, everybody takes criminal law- instead of just learning about the criminal code which is our source of criminal law in Canada, you're going to be learning about the criminal code, but you might also be learning Cree criminal law. The Cree are one of Canada's Indigenous peoples. How the Cree

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<sup>9</sup> By Noahedits - Own work, Creative Commons licence CC BY-SA 4.0, <https://commons.wikimedia.org/w/index.php?curid=85182043>

would approach a particular scenario, using their criminal laws. And I think there's probably a whole lot more richness to this program that I can't explain because I haven't been intimately involved in it, but I do think it's really exciting. And it's producing this whole generation of students who are fluent in a sort of Canadian common law and statutory law, but also many different Indigenous laws.

Randy: Have there been court cases where two bodies of law are in conflict, or where jurisdictions are in conflict?

Savannah: I think certainly there are. I think there's often attempts by lawyers to bring Indigenous laws into the Canadian court process. I'm thinking a little bit about, you know, there was a lot of conflict over the coastal gasoline pipeline in Northern BC [*British Columbia*] and several injunctions related to trying to remove protesters from up there. And I do believe there was an attempt in the court filings to bring in the sort of Indigenous perspective on evidence and so on. And some frustration when that didn't happen the way the lawyers would've liked, and the court sort of more stuck to the Western way of looking at things. So, yes, there are attempts to bring it in, but I don't know that there's really a good integration of Indigenous law into our court system yet.

Randy: You referred to some of the pipeline issues. From just reading in the news, I was intrigued with the fact that many of the protestors were Water Keepers who were traditional tribal chiefs, typically women who were very, very assertive about protecting the land, even though the elected tribal council had in a sense signed off on the pipeline. This brings us back to this issue of different kinds of governance structures. Can you go back to that topic and elaborate a little bit?

Savannah: Sure. This was, I know, a sort of a contentious and much reported on part of the coastal gas link pipeline conflict. If I'm remembering it correctly, there were certain communities - and I think they were Bands - so Indian Act Bands with the Chief and Council - that were supporting or endorsing this project. And then there were other communities composed more of traditional or hereditary leaders who were in opposition. And so there was this question of, well, who is the leadership of this nation? And that's a - it can be a tricky question, because as I explained, with the Indian Act, you had this [*Band*] system imposed on

communities, where you'd have a Chief and Council who are now responsible *[in the Canadian federal government's legal system]* for this very small reserve or piece of land, but then you still have this rich traditional governance structure that exists. So I think today there can be conflict between those two of - perhaps there is that *[Band]* Chief and Council on that reserve, but the nation might see its territory as being much broader, and there might still be traditional hereditary leaders in the community. And it's a difficult issue that can certainly create conflict.

Randy: So would some of the traditional leaders have moral, if we'll call it that, authority over areas that are different from the more limited, reserve lands; is that how it works?

Savannah: Yes. So if you - for example, you might have a - it could be a traditional governance structure, and let's say there's a *[traditional]* leadership and *[that traditional]* leadership would see their territory as being a very, very large area. And then within that area, there's Reserves that the *[Canadian]* government has set aside for Indigenous peoples that are being governed by a *[Band]* Chief and Council. So, very small pieces within that larger traditional territory.

So I think if we could say, where does this conflict come from? It comes in part from the - you know - the colonial government coming in and messing with governance structures and trying to put their idea of a governance structure in place on top of what was already really well developed, traditional governance structures. So that today we have them existing at the same time and - and some degree of conflict for some nations.

Randy: Thank you. That's the clearest explanation of a story that I've seen muddled in the news on this side of the border for two years, and you made it clear to us.

Carolyn: As we wrap it up for today, we thank Savannah Carr- Wilson of British Columbia, Canada, for her insights and experiences on the topic of Indigenous people in Canada, their organizations, and their use of the legal system to protect their environment and their health. So Savannah, migwétch, thank you.

Savannah: Thank you!

Randy: So I hope this broadcast has given you time and space to reconnect with your roots in Mother Earth and with your ancestral roots as well. Before your busy day distracts you from this moment, I encourage you to take a few minutes to reach out and feel the presence of living flora and fauna, and perhaps even that of your ancestors. Allow yourself to touch their presence, capture that moment and hold onto it. And if you will, write to me and let me know about your experience. I can be contacted through my website, at [randykritkausky.com](http://randykritkausky.com) where you can also find transcripts and supplemental materials for all Indigenous Perspectives shows. Migwétch - thank you - for being a listener.

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