



# Educating Foresters about Indigenous ~~Issues~~ Rights:

---

## The OPFA Approach

Dr. M.A. (Peggy) Smith

RPF (Retired), Professor Emerita, Faculty of Natural Resources Management,  
Lakehead University, Senior Advisor, National Aboriginal Forestry Association

CIF Alberta Workshop, Indigenous Consultation & Forestry

November 14, 2019, Edmonton



# Why rights and not “issues”?

---

- More than stakeholder participation
- More than economic benefits
- Constitution Act, 1982, section 35—recognizing & affirming Aboriginal & treaty rights
- Inherent rights: Collective rights flowing from original occupation of the land that is now Canada and from social orders created before arrival of Europeans. Right to independence through self-determination regarding governance, land, resources and culture (Henderson & Bell, 2017, Canadian Encyclopedia <https://www.thecanadianencyclopedia.ca/en/article/aboriginal-rights>)
- United Nations Declaration on the Rights of Indigenous Peoples, 2007, 2010 + Truth & Reconciliation Commission, 2015

# SUPREME COURT OF CANADA DECISIONS ON ABORIGINAL & TREATY RIGHTS

Calder (BC)	1973	Recognition of Nisga'a's "Aboriginal title"—a unique ("sui generis") form of land ownership; intent to extinguish rights must be clear & plain
Constitution Act, 1982, s. 35, Aboriginal & treaty rights		
Sparrow (BC)	1990	Clarification of extent of "rights"; s. 35 must be treated liberally; rights must be given meaning today, not frozen or stuck in history
Van der Peet (BC)	1996	Rights based in historic use & must be integral to culture; no right to sell fish
Delgamuuk'w (BC)	1997	Aboriginal title, duty to consult, oral evidence, historic use; "inescapable" economic component; First Nations also have a duty to consult
Marshall (NS)	1999	Right to earn a "moderate living"
Powley (ON)	2003	Métis hunting rights acknowledged; infringed by Ontario hunting legislation; Métis rights post-contact
Haida (BC)	2004	Crown duty to consult, not private sector. Crown can delegate "procedural aspects" of consultation
Taku River Tlingit (BC)	2004	Environmental assessment met duty to consult & honour of the Crown

# SUPREME COURT OF CANADA DECISIONS ON ABORIGINAL & TREATY RIGHTS

Mikisew (AB)	2005	Duty to consult applies to historic & modern treaties, not just in BC where there are no agreements
Sappier, Gray (NB)	2006	Right to cut timber on Crown land for personal use without provincial harvesting licence; to be interpreted flexibly in contemporary context
Marshall, Bernard (NB, NS)	2005	Treaties of 1760-61 conferred right to trade; commercial logging not logical evolution of products traded at time of treaty
Morris (BC)	2006	Provincial laws do not apply when they significantly infringe an Aboriginal or treaty right (right to hunt at night, subject to safety)
Tsilhqot'in (BC)	2014	Recognition of Tsilhqot'in's Aboriginal title based on: 1) sufficient pre-sovereignty occupation; 2) continuous occupation; & 3) exclusive historic occupation.
Grassy Narrows (ON)	2014	Province of Ontario has right to issue forest licences, but also has a duty to consult to avoid infringement of rights
Clyde River (NU)	2017	National Energy Board fails in its duty to consult



# TRC Calls to Action

---

- Implement UNDRIP (43, 44, 92) with recognition of Indigenous Peoples' right to self determination and requirement of free, prior & informed consent (FPIC) before development
- Training of public servants (57) on “the history of Aboriginal peoples, including history & legacy of residential schools, UNDRIP, treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relationships”. Requires skill-based training in intercultural competency, conflict resolution, human rights & anti-racism



# History

---

- 2000s: University forestry schools begin to address Indigenous issues; Lakehead University required course Indigenous Peoples & Natural Resources, 2004
- 2008, 2015, 2018: Canadian Forestry Accreditation Board Academic Standards— Indigenous issues in Standard 7, Planning & Administration, under 7.2 Identify societal factors, governance & regulations in your work, including Indigenous Peoples’ Treaty and other rights, claims, traditions and interests
- 2016: Assoc of BC Forest Professionals—6 “experience modules”, including “BC Forest Professionals Working with Aboriginal Communities”; being revised
- 2017: OPFA Council passes resolution: “That Council provide to the Canadian Federation of Professional Forestry Associations (CFPFA) recommended revisions to competency elements of the 2017 Certification Standards to reflect the need for Indigenous Traditional Knowledge.”



# History (cont'd)

---

- 2018: Committee struck to develop standalone Indigenous standard—Fred Pinto, ED OPFA; Peter Street, President OPFA; Gord King, OPFA Councillor; David Flood, Matechewan First Nation & Wahkohtowin Development; Larry McDermott, Public Member of OPFA Council, Shabot Obaadjiwan First Naion; Louise Simpson, OPFA Registration Manager; Erin Knight, graduate of Lakehead University's Honours Bachelor Environmental Management
- 2018-19: Shared with professional associations, Deans of forestry schools
- May 2019: Draft standalone Indigenous standard presented to OPFA membership at AGM



# The Indigenous Standard—Indigenous Peoples, Lands & Resources: Principle

---

Managing forest resources requires Registered Professional Foresters to understand Aboriginal & treaty rights, as outlined in section 35 of Canada's Constitution Act, how those rights may be affected by forestry operations, how Indigenous knowledge can contribute to sustainable forest management, & the responsibility of RPFs to recognize & affirm Aboriginal & treaty rights & respect Indigenous knowledge systems



# The Indigenous Standard— ”Demonstrable Competencies”

---

1. Demonstrate knowledge of Indigenous Peoples, their worldviews, knowledge, governance (including protocols for engagement), & practices related to lands & resources
2. Describe the nature of Aboriginal & treaty rights, including interpretations of Supreme Court of Canada rulings & Indigenous communities & explain their relevance to forest development, management & conservation
3. Identify how the roles & responsibilities of stakeholders at the local, provincial, federal, international levels & private sector & non-governmental organizations affect Indigenous Peoples’ forest-based rights, including those on Crown & private lands & Indigenous traditional territories



1. Demonstrate knowledge of Indigenous Peoples, their worldviews, knowledge, governance (including protocols for engagement), & practices related to lands & resources

---

- Who are Indigenous Peoples?
- Indigenous Peoples and colonization: history and impacts
- Indigenous worldviews: historical and contemporary
- Importance of Traditional Ecological Knowledge
- Protocols of engagement with Indigenous groups
- Personal and systemic biases in forestry



2. Describe the nature of Aboriginal & treaty rights, including interpretations of Supreme Court of Canada rulings & Indigenous communities & explain their relevance to forest development, management & conservation

---

- Aboriginal and treaty rights: historical and modern definitions
- Nature and definition of Crown's rights and responsibilities
- Evolving concepts and principles of Supreme Court of Canada rulings on Aboriginal and treaty rights
- Recognition of differing interpretations of rulings



### 3. Identify how the roles & responsibilities of stakeholders at the local, provincial, federal, international levels & private sector & non-governmental organizations affect Indigenous Peoples' forest-based rights, including those on Crown & private lands & Indigenous traditional territories

---

- International & domestic initiatives related to Indigenous Peoples & the environment
- Truth & Reconciliation Commission Call to Action 57
- Principles of the duty to consult & accommodate; free, prior and informed consent (FPIC)
- Indigenous Peoples' roles & responsibilities in consultation
- Nature of various agreements, stakeholders & Indigenous Peoples involved & the implications for Aboriginal & treaty rights
- Impacts stemming from development affecting Indigenous Peoples' rights



Bloom's Level	Action Verbs
1. <b>Knowledge:</b> remembering information <i>(The learner first must be made aware of the situation.)</i>	Define label state list match <i>(Rote memory)</i>
2. <b>Comprehension:</b> explaining the meaning of information <i>(The learner must then comprehend the value of information.)</i>	Describe identify paraphrase summarize estimate <i>(Translate to your words)</i>
3. <b>Application:</b> using abstracts in concrete situations <i>(The learner must be able to consider what they have learned in one situation and use it in another different situation.)</i>	Determine chart implement prepare solve use develop <i>(Apply general principle)</i>
4. <b>Analysis:</b> breaking down a whole into component parts <i>(The learner acquires additional information about the situation, and begins to look at the different pieces of information that comprise the whole story.)</i>	Point out differentiate distinguish discriminate compare <i>(Break down into parts)</i>
5. <b>Synthesis:</b> putting parts together to form a new and integrated whole <i>(The learner then develops the skills to assemble that information in new ways, rather than simply reflecting back what they have learned.)</i>	Create design plan organize generate write <i>(Create a whole from parts)</i>
6. <b>Evaluation:</b> making judgements about the merits of ideals, materials or phenomena <i>(The learner is able to judge the information and make decisions for him/herself about its (good or bad) value based on criteria.)</i>	Appraise critique evaluate judge weigh select <i>(Judge according to standards)</i>

---

## Bloom's Taxonomy: Focus on Knowledge & Comprehension



# Concerns raised by membership

---

- Competencies too specific & prescriptive—reduced from 4 to 3, generalized requirements
- Language: Indigenous, Indigenous land & tenure, Indigenous vs Aboriginal & treaty rights—highly political; ensure Indigenous perspective is reflected
- Asking too much of foresters?—consultation about rights is a Crown responsibility; differing world views.  
Ensure RPFs have knowledge of not only Aboriginal & treaty rights, but an ability to understand how to apply them to forest management. Bloom's taxonomy focuses on first two levels—knowledge & comprehension



# Next Steps

---

- Seek approval of OPFA Council
- Wider consultation, especially with Indigenous peoples
- Ensuring resources are available to RPFs to develop their knowledge, e.g. online, open access textbook, review existing training



## Legal Citations

Calder et al. v. Attorney-General of British Columbia, [1973] S.C.R. 313. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5113/index.do>

R. v. Sparrow, [1990] 1 S.C.R. 1075. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/609/index.do>

R. v. Van der Peet, [1996] 2 S.C.R. 507. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1407/index.do>

Delgamuukw v. British Columbia, [1997] 3 S.C.R. 1010. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1569/index.do>

---

R. v. Marshall, [1999] 3 S.C.R. 456. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1739/index.do?r=AAAAAQAlbWFyc2hhbGwB>

R. v. Powley, [2003] 2 S.C.R. 207, 2003 SCC 43. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2076/index.do>

Haida Nation v. British Columbia (Minister of Forests), [2004] 3 S.C.R. 511, 2004 SCC 73. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2189/index.do>

Taku River Tlingit First Nation v. British Columbia (Project Assessment Director), [2004] 3 S.C.R. 550, 2004 SCC 74. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2190/index.do>

Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), [2005] 3 S.C.R. 388, 2005 SCC 69. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2251/index.do>

R. v. Marshall; R. v. Bernard, [2005] 2 S.C.R. 220, 2005 SCC 43. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2276/index.do>

R. v. Sappier; R. v. Gray, [2006] 2 S.C.R. 686, 2006 SCC 54. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2329/index.do>

R. v. Morris, [2006] 2 S.C.R. 915, 2006 SCC 59. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2334/index.do>

Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, [2014] 2 S.C.R. 256. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14246/index.do>

Grassy Narrows First Nation v. Ontario (Natural Resources), 2014 SCC 48, [2014] 2 S.C.R. 447. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14274/index.do>

Clyde River (Hamlet) v. Petroleum Geo-Services Inc., 2017 SCC 40, [2017] 1 S.C.R. 1069 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16743/index.do>