The Ten Commandments of A Better Relationship

Ten Commandments for Partnering with First Nations in order to Co-implement the United Nations Declaration on the Rights of Indigenous Peoples

By Sara Mainville

1. Thou shall not covet Indigenous Land

Indigenous land ownership is very misunderstood by Canadians. It is largely because "ownership" in the Anglo-Christian sense is not an Indigenous concept. It does not mean that we had less rights and responsibilities vis-a-vis our land. We held a collective type of ownership that respected "labour" and family or clan rights but also balanced with responsibilities for "all of our relations" including other families and kin in times of scarcity. We also had a responsibility to our other relatives, animals, plants, the water, etc.

Anishinaabe oral tradition informs us that we did once live in cities of many thousands of people, but it was not sustainable. We were told to scatter and to protect our Mother the Earth and be responsible for the ecosystems we lived in, the water was sacred and the water sources were to be protected. We knew you were coming and we were given rules not to share "the shiny stuff" with you because you would then gather us in large populations and we would become unsustainable once more.

Indigenous Land is all of Canada. We have agreed to share much of it, and we continue to honour our sacred treaties. We know through the two-row wampum understanding that we allowed British settlers here, in this shared territory, to live in the territory but to not overtake our Indigenous societies, customs, laws and traditions. We have a diversity of laws, customs and traditions so even these few paragraphs do not adequately reflect every Nation's understanding of Aboriginal title or "lands and title" laws and principles.

For this new relationship to be a true mutual and historic reconciliation, returning land and territory to the care and control of Indigenous peoples is a crucial event and turning point.

See articles 10, 20, 23, 26-30, 32, 36-37.

2. We are Spiritual People and this Land is Sacred to Us, Canadians must recognize this spiritual connection and understand that all life is to be protected.

This unrest we feel in Canada did not start with Idle No More. The undoing of environmental protections and threats to the sustainability of waters and territories meant to support us, all of us, is an affront to our relationship. At most gatherings, we start with our connection to our Mother Earth, our spiritual reality as people placed in this land by a Creator. We did not create an economy that transforms living beings into otherness. We have special ceremonies for such taking of life and transformations, we recognize the gifts given.

Environmental law must be strengthened in Canada, particularly in the provinces and territories. These regional governments in Canada have much work to do to strengthen their relationships with Indigenous governing authorities, who have laws, customs and traditions that respect our relationship with Mother Earth and all beings we share space with.

See articles 7-9, 11-13, 15, 24-26, 29 and 31.

3. Substantive Equality requires more, the impoverishment of Indigenous Peoples in Canada is caused by continuing racial discrimination in Canada and must be remedied today.

In the past there are many regrettable policies and laws that undermined Indigenous societies and made them "have-nots" in Canada. The underlying problem is that Canadians feel that Indigenous peoples are simply a minority population with special issues and stakeholder concerns. Indigenous peoples are resource, water, and land governors in Canada. The taking of resource wealth by Canada without Indigenous peoples' consent and participation in wealth sharing is fundamentally what is wrong with the relationship today.

As Indigenous societies, the lists of grievances against the Crown are long. Apologies conditional on blank slates is

not the appropriate path forward. Substantive equality requires "equality of outcomes" in the education, health, and social investments in First Nation communities and there is a very large gap indeed. A very discrete and important resource benefit sharing discussion is needed between Governments in Canada with "claimed" or real resource-related management and resource exploitation jurisdictions to create more formal and respectful fiscal relationships between Indigenous peoples in Canada and the Crown governments.

See articles 2, 4, 17, 21, and 23.

4. Thou shall be a good neighbour to Indigenous peoples which means requesting their free, prior and informed consent before impacting their collective livelihood, culture, and sense of security in their world.

No one goes into someone's home and really makes themselves at home, if they are respectful people. Even when you live in the vicinity or earshot of others in your own apartment, as a respectful person and a good neighbour – you understand the need to quietly enjoy your home for the good of all. This is part of maturing and healthier relationships.

As neighbours, sharing some land in common then we know the importance of respecting the original owner's prior and permanent uses of that land they agreed to share. Justifiable infringement does not live in the world of mature, healthy relationships between neighbours, especially new neighbours now sharing the land of the original owners.

Free, prior and informed consent respects the original owners' place on those shared lands having permanent uses for the land and waters that has been the connection of the people to their lands, ancestors, and history (as well as education of their youth) since time immemorial. These permanent uses are core to Indigenous identity and spirituality – of who they are as peoples. The responsibility that Indigenous peoples feel to their ancestral lands and the stewardship of those lands should not be devalued, it is priceless, and also is very meaningful to Indigenous groups when First Nations are capable of fulfilling this responsibility in real and significant ways.

See articles 8, 10, 26-27, 29, and 32.

5. Canada should reflect Indigenous peoples within their Governments, government processes, and within mainstream culture in order to further reconciliation.

It is important and vital for the new relationship to include a reflection of Indigenous societies within the Crown Governments, and within Indigenous relationship staff, and within the communication tools utilized by Canada to speak to the general public. Reconciliation requires much more education and self-evaluation than has been experienced to date within Canada. While it is expecting a lot of Indigenous people when they are brought into Government teams to represent the diversity of Indigenous peoples, it is not merely symbolic but, quite helpful to ensure that a "champion" can challenge and interchange across government through policy development. These exchanges may build Indigenous confidence in other governments.

An example of the less than best practice regarding the Federal Regulatory Review discussion paper's use of a stock photograph of a business man with a blonde ponytail on the "seeking your views" underlining the "most important relationship" statement by the Prime Minister of Canada. Offending the peoples in the most important relationship is not putting the Government's best foot forward.

There are glimmers of hope in the various Ministers' office across Government regarding Indigenous representatives. More concerted work is required to ensure that Indigenous representatives have safe space, opportunities to network amongst themselves, and clear expectations about what their role entails. A single individual being introduced by a Minister to 633 Chiefs in Assembly as their key contact is too much to ask of a single Indigenous person no matter what their capacity and expertise is.

See articles 5, 23, 27, 33, and 44.

6. Stop building engagements based on the *Indian Act*, the National Indigenous Organizations are born from the *Indian Act*'s original discriminatory policies, start decolonizing relationships by engaging at the Nation to Nation level.

There are about 700 Indigenous communities or more in Canada. Canadians do not expect there to be direct engagement with every single municipality, but at times this is warranted. Similarly, there is a time where the 700 Indigenous rights-holders must be engaged directly, but mostly, the rights-holders have ***self-determined*** larger collectivities such as Grand Councils, Confederacies, and self-governing Indigenous Nations. The Royal Commission on Aboriginal Peoples proposes that there may be sixty Indigenous Nations in Canada. In fact, RCAP denies that these smaller communities actually hold the right to

self-determination and self-government.

Confederation is hard, as can be attested to by 150 years of Canada's own confederation journey. Regional differences makes it difficult to achieve unanimity about decisions and paths forward for national governments. This is experience held within the Grand Councils and Confederacies and other Indigenous National governments, but it is much worse because of the existence of the *Indian Act*, which has long denied the existence, let alone the co-existence of traditional Indigenous governments.

These are the issues and concerns of First Nations within the *Indian Act* system, trying to remove themselves from these colonial frameworks. Outside of the *Indian Act* are the Métis and Inuit communities and governments. If there are sixty Indigenous Nations, probably more than fifty are collectivities of First Nations. However, because of the common experience of the *Indian Act*, the First Nations have been able to organize nationally within the National Indian Brotherhood/Assembly of First Nations. This does not negate the 50 Indigenous Nations or more that exist in Canada.

Most important relationships require respect and knowledge. Knowledge that the Assembly of First Nations is an organization that coordinates several Federal issues but is not a national government in any sense of the phrase is crucial. Most of the Federal engagements with National Indigenous organizations disrespect this by supporting equal representation for the three National Indigenous organizations. If, for example, the thirteen First Ministers that join the Prime Minister is to be a model of engagement then, the political leadership that would meet with the Prime Minister on the national stage would be: 9 representatives of the First Nations in Canada, 1 representative of the Inuit peoples in Canada, and 3 representatives of the Metis Nation in Canada by population. If by land-based governments, the numbers would likely skew to 3 representatives of Inuit peoples in Canada, 1.5 or 2 representatives of the Metis Nation in Canada and 8.5 or 8 representatives of the First Nations in Canada. This is only offered as a transitional approach given all the commitments made by this Government to change the relationship with Indigenous peoples generally.

Rather than national meetings on Federal priorities as a "one window" approach, the Nation to Nation arrangement requires Federal attention and leadership to meet with the Indigenous Nations across Canada. Expecting diverse and respectful relationships with Canada requires the Crown governments to accept that their relationship is a direct and personal one with the Indigenous Nations, especially within treaties. Indigenous Nations across Canada have largely not confederated and should not be expected to meet with the Prime Minister or any Minister of Canada with one voice.

See articles 3, 4, 18, 19 and 34.

7. Majoritarian demands in Canada will continue to be at odds with Indigenous peoples' way of life, laws, and Aboriginal title rights, therefore, it is important for the Constitutional order of Canada to insulate Indigenous peoples and protect their rights from infringements as well as for the Crown to positively implement treaties. This extra-national concern and important legal protections were promised by the Crown in historic treaties, the Royal Proclamation of 1763 and the Treaty at Niagara in 1764.

Since contact, the Imperial British legal order had kept the authority for Indigenous relationships with itself, as an Imperial power. Both Canada and the United States recognized that local and regional governments were too self-interested in Indigenous lands and territories to hold the that authority and control without a potential loss of territory after a more likely Indigenous conflict and rebellion. Both governments recognized this through their Indigenous treaty-making policies being very much managed by federal government officials.

Crown commitments during historic treaty-making included this important guarantee. Unfortunately, courts do not have the evidence of this in front of them in order to make appropriate rulings about these important treaty relationships. This is a political imperative of the Executive of government to prioritize and recommit to regarding the protection of the treaty relationships. In one treaty, Treaty #3, the "Queen's Government's ear" was promised to the Anishinaabe Nation as a reply the Grand Chief's assertion that he would "hunt down" anyone who breached Treaty #3.

The relationship with the Queen or King was part of the commitment made by treaty negotiators in the nineteenth century, for example. Personal accountability, which is important to Indigenous peoples because neglect of responsibilities have consequences, was a key commitment to Indigenous Nations in settling any grievances that would arise in the future.

See articles 8, 11-13, 15-16, 21, 26, 31 and 40.

8. Good relationship require more clarity for First Nations in Canada about Indigenous laws, rights and responsibilities. First Nation's rights as "exemptions" or "grey areas" of the law breeds contempt for our rights and manifests beliefs about illegitimacy. Laws require an educational component and Canada should promote compli-

ance with First Nations law making and respecting Indigenous jurisdictions.

All societies require law to create peace, order and good government. Prior to contact, Indigenous societies unquestionably had laws and law-making authority. With treaty-making, it was presumed that Indigenous leadership, as representatives of their people and governments, had the ability to negotiate and agree to treaties.

Since the *Indian Act*, a great governance gap has been created in First Nations. This is because of the overarching power and control Ministers of Indian Affairs and their Indian Agents had over reserve life across Canada.

Because of the division of powers, and the section 91(24) powers of the federal government of Canada, First Nation reserves have been impacted only recently by provincial laws and authority. Because of the long-held belief that the national government would protect treaty relationships and section 91(24) being read purposively in the *Constitution Act, 1867* – many treaty peoples believe that provincial incursion into First Nation lives is both illegitimate and illegal. Certainly, the fight that defeated the 1969 White Paper is held in our collective memory as a battle worth fighting again and again.

First Nations now actively use the phrase "cover the field" in terms of their own jurisdiction being an important process of self-determination. The exercise of inherent jurisdiction is a priority area on Indigenous political agendas across Canada. Multiple experiments from the dispossession and assimilation eras of our past relationship need to be turfed out of government policy and law. A certain tool for creating better ways forward is making space for Indigenous jurisdiction and the proper education of Canadians, generally, about the vitality and importance of First Nation laws, customs and traditions.

See articles 9, 14, 20, 26, 36 and 45.

9. Invest in relationships in a real and substantial way and respect that most of the financial mess that must be cleaned up was by government design to create unsustainable communities and disorderly governance.

One must use a lot of imagination to see First Nation communities in the future as the vision of prosperity, harmony and growth. Sustainable First Nation communities require respect for Indigenous forms of land tenure, that included measures to balance out development with regeneration and healing.

As much as First Nations are sick and tired of refrains such as "this is so complex" and "let's work pragmatically and incrementally" after 150 years of colonialism – it should be very apparent to all parties that long overdue government investment in First Nation communities is the best way forward to getting that "big ship" (in the two-row wampum analogy) away from capsizing "our canoe" in terms of governance and sustainable economies. In crude terms, "show me the money", is a likely response to all the good words and talk that this federal government has said, *actions speak louder than words.*

"Nothing about us, without us" is another common phrase shared by Indigenous leadership. To reflect the right to self-determination being held by Indigenous Nations, it will be important to partner in revitalizing and (re)organizing communities in the way they decide is the best way forward. There is both internal First Nation work to do, and internal federal government work to do, but for the relationship to work – we must consult one another about our own internal limitations and capacity issues. We must be truly honest with one another, as treaty relatives.

See articles 4, 5, 11, 14-15, 28, 35 and 43.

10. Mutual, Cooperative and Joint Decision-Making are the keys to relationship success.

And the truth of these ten commandments is that it is **the Parties in the relationship that sets the principles and the rules**. Don't take the opinion of one Indigenous leader, or lawyer, or Elder as the federal government's marching orders on any one subject. This is the most important commandment of them all.

RCAP discusses principles with the word "mutual" in front of them. As a population of people who have been overpromised by past colonial governments who have very much under-performed over 150 years or more, words have their baggage and their sharp edges and "reconciliation" holds less promise to Indigenous peoples than to Canadian governments. If actions speak louder than words, more and more forums for cooperation, and more and more legislative provisions for joint decision-making, may push the momentum forward towards a stronger relationship with Indigenous peoples, their Nations and governments.

UNDRIP set the minimum standards for this stronger relationship and we must find good ways together, as partners, to go beyond these standards in our relationship of co-existence.

See articles 1, 3, 5, 6, 14, 17, 22, 24, 33, 38-43, and 46.