Introduction

Language gains breath in story.
Law lives through story.
And where does story not exist?
Onizhishitoon.†

Creation stories have fascinated and guided people since the world was formed.1 These stories tell of beginnings. Where do you come from? Is it the same for me? For them? I begin this book with an Anishinaabe creation story.2 It teaches its listeners and participants about Anishinaabemowin (the Anishinaabe language) and kinwezhiwewin (guided ways of decision making/law). One translation of Anishinaabe is “good being.”3 An Anishinaabe creation story teaches a way of being. Though the Anishinaabe traditionally lived around the Great Lakes region4 and are connected by common ancestors, anyone who is striving to be a good person can learn from our language, law, and creation story.5 This account blends several of the many versions of the Anishinaabe creation story. It is debwe – truth in so far as I know it.

Maajitaadaa.‡

Before the Seven Fires of Creation, there was darkness.6 There was emptiness. There was a cold and deafening silence. Mewinzha aabiding.§ After an indefinite period – I cannot say one day or one time because there was no time – in the midst of the dark, a sound trembled out, low and rumbling in the distance. This sound was the first moment of creation. So we see it was not light that marked the beginning of creation; nor was it the word. This story of new beginnings started with the arrival of sound. It

† “To create something good.”
‡ “Let us begin.”
§ “Once upon a time, long ago.”
is also understood that there must have been something old there, resting in the darkness, to hear the sound. If not, we would not have this story. What or who it was, we do not know. Some say it was Gizhe-Manido, the Great Mystery, that gave us this story. Others think it was the trickster, Nanabozho. Maybe it was both, or neither. So, we see that new beginnings are transformations of the old. *Watch for the circles.*

That sound that trembled out long, long ago sparked creation. After the first sound ended, a void of silence returned to the space. Eventually, the sound came again, louder and closer. This cycle repeated itself many times.

...  
*Sound.*  
...

*Sound.*  
...

Finally a thunderous crack permeated the darkness and spread out to the eternities. A flash of light sparked, illuminating the space. The sound took form. It was shaking, a shimmering noise, like seeds in a gourd. Like music. Maybe the sounds were the thoughts of Gizhe-Manido. Whatever it was, it was different—a *feeling* sound. The feeling sound was the First Thought. Abandoning its dormancy, the First Thought spread to vast reaches of the unknown. Many thoughts emerged from this First Thought, but they spread into the unknown because the only force that was present (resting in the darkness) to receive this story saw no point in holding everything alone. A place needed to exist to send all of these thoughts.

The creation of land followed in the next fires of creation.

As thought-sounds formed, they grew in circles, filling the empty void, and teaching spirits how to form life. There was a rhythm at their centres. It was the heartbeat. This gave the thought-sounds their feeling quality. When Anishinaabemowin eventually developed, the centrality of the heart-throb remained.

*De.*

*De* means both “heartbeat” and “centre.” De is at our core. Even at the beginning, at the time of creation, thought, sound, and heart were combined. *Madewe* means “sound.” *Midewewin* is an “Anishinaabe spiritual society.” *Dewe'igan* means “drum.” *Ishkode* means “fire.” *Dodem* means “clan.” *Odenaniw* means “his/her tongue.”
The heart is centred in each of these words. *Do*, for example, in addition to the morpheme *de*, is found in the word *dodem*, the Anishinaabe word signalling kinship. Do refers to nourishment. *Dodoshim* is “breast.” The breast nourishes and gives life to the young. One’s *dodem*, usually an animal, is a nurturer with life-giving properties. The de shows how our relations can centre our hearts while the do nourishes us. Humans and nonhumans are part of the same community and, as such, we have mutual obligations to sustain one another.

Remember that the First Thought, born from a sound in the dark, was the First Fire of Creation. From there, the sound turned into language, and we began to understand where we came from and where we are going.

*Ninoondawaag awiïyag ekidowaad ...* Sometime after the creation of the earth, it flooded. This is the part of the story where humans enter.

The creation of plants, animals, and elements predates humans. Creation is an ongoing process, and the fire is kindled by stories, like this one. I tell you this story with an important medium of creation: sounds, words, language. You may be thinking, *Sounds? But this is written.* Symbols conjure sounds, and sounds conjure symbols.

At the time of the flood, there were many nonhuman animals – *makwag* (bears), *waabozog* (rabbits), *amikwag* (beavers), *migiziwag* (bald eagles), *nigigwag* (otters), *mikinaakwag* (snapping turtles), and others. They all lived in the water. After a time, they grew tired of swimming and longed for the sustenance and spirit of Mother Earth that had been buried in the flood.

The animals gathered in a council to determine how to bring back the land. Kichi Waaboz, the Great Hare, was *ogimaa* (steward/leader/chief) of the animals and ensured each animal was present at the council. When they were ready to start the meeting, he spoke.

“*Nindinawemaaganidog.* We find ourselves tired and in need of our mother. We have lived too long without her now. We are fortunate to have the beneath-water world, the water world, and the sky world, but we are missing balance from the land world. These four realms are sacred and have been designed by Gizhe-Manido for our well-being. How can we bring our mother back to us?”

† “I hear people say ...”
‡ “All of my relations.”

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The animals pondered this question.

Mikinaak spoke, “Nindinawemaaganidog. I will sacrifice myself. Someone must dive deep into the water world and obtain some grains of earth far below us. Place these grains on my back, and they will grow. The earth will soon cover me, and you will use me as an island. Eventually I will be a great land mass – Mikinaak Mnis, or Turtle Island.”

The animals agreed and were hopeful. First, Amik dove deep. He was gone for several hours, and the animals began to worry. When he resurfaced, gasping for breath, he opened his paws: nothing.

Nigig dove next. She went deep into the water with powerful strides. She too resurfaced with nothing to show.

Several days later, all the animals known for their diving abilities had attempted to obtain some earth. Each had failed. Then the little waazhashk (muskrat) volunteered. The animals were skeptical but allowed him to dive. He was their last hope. Giiizis (sun) and dibik-giiizis (night sun) cycled through the sky many times. The animals scanned the seas for his return. The waters were deep and cold. Waves crashed from horizon to horizon. Then Migizi spotted a break in the currents. The animals looked closer. Waazhashk had floated to the water’s surface. They brought him to the turtle. Waazhashk did not move. He was still, paws clenched. Kichi Waaboz opened Waazhashk’s closed paws one by one.

Empty.
Empty.
Empty.

All the animals looked anxiously at the fourth paw. Wazhashk twitched. With his last ounce of strength he opened his paw. The animals gasped as they saw the small knot of earth. Having spent himself in the effort, Wazhashk died.

The animals mourned his loss with rejoicing honour. Wazhashk had succeeded. He had brought life-giving soil from the depths. With sacred gratitude, they placed the earth on Mikinaak’s back. The earth sighed and grew with each breath. The animals began their new life on Turtle Island: North America.

The animals grew strong and happy. A great mountain had grown where Wazhashk was buried.12 There were large hunting grounds and beautiful waters, plentiful with food. But despite the animals’ general well-being, they felt that something was missing – what, they did not know. They knew
only that they felt longing, just as they had longed for the land world after the flood. Kichi Waaboz, who was in charge of propagating creations of the earth, went around the Great Lakes to ensure the animals’ needs were fulfilled. He began a fast to fulfill his obligations. He took the asemaa (tobacco) for an offering and pushed through the pine curtains. Beyond this green veil was the woods, the place to ask Gizhe-Manido what was needed.

When Kichi Waaboz’s dreams ended, he left the woods. At the edge of the forest, he found singular corpses of the owaaazisii (bullhead), ajijaak (crane), an’aaawenh (pintail duck), makwa (bear), and mooz (moose). Kichi Waaboz summoned the powers of the manidowag (spirits). From these corpses arose the first humans. We come from the animals, and we share our sounds, our hearts. Dodem.
CHAPTER I • BAEZHIG PAHBAMAHDEEWIN

Place Where the Land Narrows

Neyaashiinigmiing

The figure of the otter, the family dodem, signed by the author’s great-great-great-grandfather, Peter Keledonce Jones.
OTTER FLOATED ON HER BACK under the night sky. The rolling waves gently lifted and lowered her before finding land, where they curled, foamed, and spread themselves thin to explore the crevices of the rocky shore. The Anishinaabeg who share the territory with her call it Neyaashiinigmiing – the place where the land narrows.† When you learn a name, you learn a place. In the days when people travelled mostly by birchbark canoe, this land was a portage point between different bays. Everyone on the reserve and surrounding towns now owns cars and travels on roads. While new infrastructure changed the physical importance of the land as an access point to hard-to-reach areas, the land still holds that gift philosophically. Healers, teachers, painters, writers, peacemakers, builders, and seekers often find that Neyaashiinigmiing provides a shortcut into otherwise unseen spaces.

Surrounding the bay, towering grey-faced escarpments emerge from the earth. They tell shadowed stories under dibik-giizis, the night sun. Cedars, lichen, and mosses grow from fractures in the escarpments’ sheer rock walls.¹ These mashkiiwag (medicines, literally strength from the earth), were not silenced by lack of soil or piercing of fierce winds. They have withstood seasons of ice, snow, rock fall, drought, and searing summer heat. They have endured the thunderbird’s wrath and the foolishness of greedy men.² The tops of the escarpments are shorelines of an ancient shallow tropical sea.³ Their history is told through antediluvian whispers of fossils resting atop the bluffs: crinoid stems, brachiopods, giigoonhyag (fish), and mishi-pizheu (water lynx). Where erosion has cut deeper into the soft limestone base, waanzhan (caves) have formed.

Waanzhan are ancient ceremonial centres. Otter loves the relationship between waanzhan and bawaazhigan (dreams or visions).⁴ She often retreats to the sacred caves to find understanding in her waking and sleeping worlds. Just last night she had visited the caves. Inside, the cool air had mingled with her warm breath, creating puffs of smoke. Muted dripping sounds swirled around her, and the water formed into a glassy pool. The reflection had showed her the past, her current location, and her next destination.

water and rock, her face blended with a stone canvas wall splashed with red ochre teachings. Otter marvelled at the language of landscape as she heard the escarpment voices whisper: nindinawemaaganag, all of our relations.

On this particular night, Otter had followed these voices to a bay. A short distance from where the water met the rocks, the Joneses’ old log cabin rested amidst the cedars on the shores of the reserve.

Knock, knock, knock, knock.
Shing-chik-kitcha-shooosh.

The brass knocker met the old hardwood door. The gourd-chime suspended from the roof’s low overhang awoke with a quaking, shimmering sound. The shaking sounds echoed through the cedars to where Otter wrestled a fish in the bay.

“Biindigen!”† Arlene’s voice called from inside the cabin.

Her son, Joseph, opened the door. As he ushered his daughter Jane in ahead of him, his steady, gentle voice responded enthusiastically: “Aanii N’gashi, aanish ezhi-bimaadzian?”‡

Otter abandoned her fish and slid out of the water. The Joneses, her dodem relatives, were an active family on the reserve. On quiet evenings, Otter listened and watched them through the paisley curtain–lined window with dangling lines of crystal beads. The conversations were richest when the different generations came together. Joseph lived four hours south, in Toronto, with his wife and children. He was a law professor at one of the universities there. It was Thanksgiving break, and during the holidays Joseph often brought his youngest daughter, Jane, home to visit before her classes at university resumed. She was immersed in her own writing project about Anishinaabe language and law and had barely looked up from her books the entire break.

Otter watched the three generations settle on large suede sofas inside the cabin. The cushions were flat and the fabric threadbare from visits over the years. Reading materials were piled everywhere. To make space for it all, the books and papers were creatively incorporated into the home decor. A stack of National Geographic magazines dating back to 1968 acted as a mini table for a bouquet of faded pink fabric roses, and a pile of The Economist was balanced under the coffee table to compensate for mismatched

† “Come in!”
‡ “Hi, Mom. How are you?”
table leg lengths. Every so often, Arlene or another relative would retrieve a book from the makeshift decor and replace it with another. Pictures on the cream-coloured walls chronicled the family’s life and reminded them of the presence of their ancestors. There were also earth-tone oil paintings of Spain, Vancouver, and some forlorn, time-forgotten South Pacific island beach. Bottles of pills and a blood pressure monitor, complete with a large blue cuff, rested next to Arlene’s arm. Otter settled onto a rock pile between a patch of pines, with a clear view through the window.

“N’okomis, miigwechwe giizhgot!”† Jane said.

Arlene smiled at her granddaughter. “Happy Thanksgiving to you too, Jane. Good thing Columbus wasn’t looking for Turkey when he came here, eh? Then we’d all be a bunch of turkeys instead of Indians.”

Jane shook her head at N’okomis’s corny joke. When they started down these paths, no one could restrain themselves. These kinds of jokes were contagious. Jane fired back, “He probably should have been looking for Hungary.”

The conversation deteriorated for ten minutes while each family member outdid the other in search of the weakest joke. When they had filled their cups with swamp tea,‡ they settled into the quiet, comfortable sounds of the evening. Gulls called over the waves of the lake, and wind rustled the poplar and birch leaves just outside the window. Jane took a small pouch of asemaa from her pocket and placed it on the side table near her grandmother.

“I have some questions for you, N’okomis. You’re always good at helping me think through things. I’m trying to understand the relationship between revitalizing our language and our traditional laws. People always talk about how important it is to keep our laws and language alive, but I don’t really know what that means. How did they end up near death, and how do we revitalize them? What does it matter to other Canadians or to immigrants that we speak our languages and revitalize our laws?”

Jane looked at N’okomis, who had her usual appearance of accessing memories and knowledge buried somewhere deep inside. Some of the memories prodded by Jane’s question were tightly tied by trauma.

“Holay!”§ You sound like a Jones for sure, Jane. It’s amazing how the generations carry family attributes forward. Let’s start with your first question.

† “Grandma, happy Thanksgiving!”
‡ A contemporary and common expression of astonishment in many Indigenous communities.

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Why have our language and laws struggled so much to survive? I first moved here, to the reserve, when I was five years old. Dad was a stuntman Indian in Hollywood back in the thirties, so I was born down there. You remember those stories, eh? Everyone struggled during the Depression. Poverty was everywhere. Even the white people got a taste of what it can be like living on an Indian reserve. Dad was paid ten dollars every time he fell off a horse. I’ve always wondered what the cowboy earned.

“Even though Dad spoke Anishinaabe, my first language was English. That’s what Mother and the other kids in California spoke. When Dad moved back here, to the reserve, I was only four. It was 1941. The other kids all spoke Anishinaabe. I was confused and couldn’t understand them. No one ever asked me if I wanted to move to Canada! Of course I came to learn that this has always been my home, and there is nowhere else I’d rather be now. Our land may have been given away through misinterpreted treaties, but we were pushed up to the most beautiful part of Ontario. Now I understand why I was angry when I first moved to Neyaashiinigmiing. Here, I was labelled a half-breed, and in California I was called an Indian. I didn’t fit in anywhere. Then, when I was eleven, I was forced, with my two younger siblings, to go to residential school. I ran away though, before they could send me.”

Residential schools had been set up across Canada, about 130 in total by the time the last one closed in 1996. Jane knew this was difficult for N’okomis to talk about. Residential schools sat heavy in the stories at home. She listened to family members’ stories and to those of other people around the reserve, in addition to reading stories in the history books about residential schools. Everyone’s stories were slightly different. She noticed that as she drew closer to people over the years, the gained trust carried even more intimately painful details with the stories’ retellings.

The three schools most attended by people from Neyaashiinigmiing were Spanish River, Shingwauk, and Muncey. To travel to Spanish, sometimes the young kids would get in a small boat and take off from Neyaashiinsing. When Jane’s great-great-great-grandparents Margaret McLeod and Peter Kegezdonce Jones‡ lived there in the 1850s, the children would fish freely from canoes. They could catch what they needed and

† Shingwauk means “white pine tree.” The residential school was located in Sault Ste. Marie, Ontario.
‡ Kegedonce means “orator.”
release those fish that were not yet ready to be taken, according to their environmental laws. Ella Penn and Charles Kegeedonce (CK) Jones were the next generation. They fished too but did so according to the colonial Indian Act, under the supervision of the appointed Indian agent. As England’s language and laws came into the territory, Anishinaabe laws and language were submerged.

N’okomis’s generation had a different experience yet again. The children boarded their boats but not to fish. When they came home as young adults, their lives were far removed from the fish. In the foreign waters of residential school they had caught tuberculosis, scarlet fever, and pox, and they were prey to malnutrition and physical, emotional, and sexual abuse. A lot was also released. Family relationships were lost, drenched by black-robed storms, and Indigenous cultures, freedoms, laws, and languages were deluged by residential schools. Fortunately, resistance prevented the old ways from being entirely swamped. Some even say that they benefitted from residential schools. For some kids who came from broken families before they went to residential school, their catch-and-release experiences were delicious to them because they did not know anything different.

Jane’s thoughts were interrupted by Arlene. “That one will be too big for you, Joseph. It’s meant for my Atlas arms. The smaller one is under the couch.”

Joseph rummaged around and found the smaller blue cuff, attached it to the blood pressure monitor, and wrapped it around his arm. He squeezed the black pump to tighten the cuff. He would not be able to talk while he waited for his blood pressure reading to be taken, so Jane decided to offer some of her thoughts aloud.

“It’s strange to me that when Europeans first came to Turtle Island, they actually focused on learning our language in order to communicate with us, to convert us to Christianity, and to gain economic advantages in trade. If they didn’t abide by our laws, there would be consequences for them. When residential schools were started in the mid-nineteenth century, missionaries not only stopped speaking Indigenous languages but they also forced the Indigenous children to learn English or French. The government supported and influenced the churches’ assimilatory policies. I think this shows that people have long known that language and law are fundamental to the perpetuation of a people.

“I remember reading an 1895 Department of Indian Affairs’ report that predicted, ‘So long as he keeps his native tongue, so long will he remain a
community apart.’¹⁸ This disturbed me at first. It’s not a very nice story to hear about ourselves, that we’re a community apart because we aren’t fluent in their European language. But despite the prediction, I think we actually have kept our native tongue.¹⁹ We still have many of our ceremonies, language courses are taught, and people follow our laws when they’re out on the land and in homes. I hear our tongue when people share stories with one another. The department’s prediction was wrong. We are not a community apart. They imagined they would create us in the image of Euro-Canadian society, after their likeness, like Canada was God or something. There may have been many casualties along the way, but there is still so much strength I see. We are different than we used to be, of course, but change isn’t always a bad thing.”

“You know what I always say,” N’okomis held her arms out, palms facing up as if ready to catch the answer.

Jane replied, “Traditions are for living; jam is for preserving.”

N’okomis laughed and proudly reclined in her chair, folding her large, weathered hands together in her lap.

Jane continued, “I remember learning about the Canadian mosaic of diversity in Grade 5. While we made our own mosaics out of glass tiles, Ms. Weber explained that Canada has unique communities. They could be placed together, like the tiles, to create beautiful images. It’s a nice vision, but I often don’t see that in reality. There is too much disparity. Some people say nice things, like Indigenous cultures, languages, and laws have a special role in Canada’s mosaic, and that role is not one of inferiority or superiority.²⁰ It’s equal and different. This difference comes from our historical relationship with this land, in recognition of our pre-existing legal systems and our current political status as First Nations.²¹ We are not just individuals with a different ethnicity living in Canada. This is our country of origin. We cannot be properly regarded as minority groups in Canada. We are nations of peoples that helped to form Canada with treaties, and we received constitutional recognition in sections 91(24) and 35 of our Constitution Acts.²² While legal recognition is still underdeveloped and limited, we have a legal status in Canada that differs from that of other groups because we are constitutionally distinct. There seems to be no persuasive justification for Canada to deny us differential treatment not based on race, but on a political, or cultural, or linguistic basis.”

Jane folded her legs up under her on the couch. Otter shifted her own weight on the rock pile. Noodin (wind) blew through the trees around her.
and the wind carried the scent of a dog. *Kichi-boogidid.*† A husky limped out of the bush and stopped before Otter. The moon was blue in his eyes, the night frost white on his back. An open red slash crawled up his leg and blood dripped down. The husky left just as he came, carried on the wind, this time down to the water. *Rez dogs, nimshishag,*‡ wandered around everywhere at Neyaashiinigmiing. Most of them were friendly, but the occasionally vicious ones made Otter nervous. Suddenly, she had the feeling that she wasn’t the only one watching through the window. She looked around cautiously, then directed her gaze back through the paisley curtains at Joseph. “I’m glad you’re thinking about legal pluralism, Jane,” he was saying. He sometimes couldn’t escape his law professor mode.

“Legal what?” Jane asked.

“Legal pluralism. It refers to the existence of multiple legal systems within one geographic area.”²³ So, in Canada, for example, we have English common law, French civil law, and, of course, many Indigenous legal orders. Your argument, that as Anishinaabe we have special rights within society, is consistent with the idea that states can actually be strengthened by their pluralist legal identity. When people accept the differences of others in balance and respect their stories, harmony is fostered. And when people feel connected to the law and the language through which it is expressed, they are more likely to follow the law. I would assert that most Canadians don’t feel especially connected to the law, whether common or civil, but by and large it is respected as authoritative. By revitalizing Indigenous laws to function in communities, and by infusing Canadian law with Indigenous law, we could revitalize Canadian law as well.”

Jane interjected, “Why would Canadian law need to be revitalized? It’s already so powerful.”

“It’s powerful in some ways, but it’s not really alive in people. If you could talk to people on the street about contract, property, tort, or constitutional law, I don’t think they would have much to say about it. Indigenous law is based in stories. It is written on the land. It is lived in ceremony. The language of Indigenous legal pedagogies could provide a way for Canadians to change their view of dispute resolution and could revitalize the common law as well. For example, in the area of environmental law, experts have said that our greatest challenge in protecting the environment is not our ability

† “A big fart.”
‡ Dog has many names; *animosh* is another common one.
to create sound laws, but it is getting people to follow those laws. In other words, it is more a problem of human values and behaviours than a technical legal challenge. The revitalization of Indigenous law could accompany a revitalization of Canadian law more generally. Functioning Indigenous legal systems means everything to Indigenous peoples and could mean a lot to non-Indigenous Canadians as well.

“Winston Churchill said, ‘Democracy is the worst form of government, except all the others that have been tried.’ I appreciate his point, that we won’t find perfection in our governments, but I’m also certain that he was not familiar with Anishinaabe, Gitxsan, Inuit, or Mi’kmaq legal systems. I don’t think that we should stop looking to other ways of organizing Canada, even if the other systems are not perfect either. They could still offer insights for improvement.”

N’okomis was at the kettle, fixing more swamp tea. They also called it Josh tea – the tea of her father that wrinkled noses in its strength. She said in a teasing tone, “Holay! You two must be the life of all the parties you go to. Too bad Duncan Campbell Scott or any of our other old Indian agents weren’t around to party with you. They’d have a grand ol’ time listening to your ideas. I still haven’t recovered from Scott’s melodramatic poetry that I read over thirty years ago now.”

Otter listened to the teasing comments bounce through the room. Joseph did have a bad case of law professoritis. He tried to inoculate himself by watching SpongeBob SquarePants, but the ailment was strong. Nanabush, the trickster, and N’okomis’s stories helped a little. Old stories take on new life after a fresh telling. They speak differently depending on what the listener is ready to hear. It used to be that the stories were told only in winter around the reserve. Otter remembered that every winter, when snow and stillness settled over the land and darkness drove the people inside earlier each night, the trickster came out to entertain. Like smoke tendrils curling from a low fire, the elders’ stories coiled around the cabin as Nanabush came to visit. Now the people around Neyaashiinigmiing told the stories in each season to keep them strong. Otter admired that about these people; when a need for change was obvious, they adapted their tradition. They did not essentialize themselves with notions of permanently attached feathers or buckskin. Change always occurred with debate, but often resolutions or resting places were found through the hard work of deliberation.

Otter looked around her at the fossils in the rocks she was sitting on. Many would see them as ancient dead creatures, petrified in stone, and might
not hear their voices in the present, living anew in their asini-wigamigwag (rock homes). Sometimes law views Indigenous peoples as if they are fossils – their existence and rights frozen in time, stagnant.28 Years before, Joseph had talked about how the Van der Peet case tried to freeze Aboriginal peoples in an imagined pre-contact culture, while simultaneously pushing them to adapt and assimilate to white Canadian society.29 Otter had seen people fish commercially by firelight in small boats because the government said they could fish only as they had prior to contact – no electricity allowed.30 The right to commercial fishing had not come without a fight. The Jones family, in the Jones-Nadjiwon case, secured commercial fishing rights for the Anishinaabe at Neyaashiinigmiing and for other First Nations across Canada.31 Joseph floated precariously in the midst of this judicially legislated sea, watching communities get tossed around by the court’s waves. Otter directed her attention back through the cabin window. Joseph’s bug was contagious.

Joseph said, “Did I tell either of you about that language protection case I taught recently? I see a relationship between what happened to Anishinaabemowin through government policies and residential school and what happened in Ford v Quebec.32 The case came out the year you were born, Jane, my first year at law school in Toronto – 1988. Several customers had complained that some merchants in Montreal had bilingual store signs, in French and English, and wanted all signs on the shopping strip to be French only. The complainants’ desire for unilingual French signs was supported by the Office québécois de la langue française through court action.33

Jane interjected, “Hold on. Weren’t the merchants concerned that legislating French-only signs could mean that English-only signs might appear in some places for similar reasons?”

“That could have been a concern if the merchants had won their argument,” Joseph replied. “The Supreme Court decided to strike down parts of the provincial Charter of the French language. The Court found that freedom of expression as guaranteed in the Canadian Charter of Rights and Freedoms was violated by French-only signage laws. While the underlying aim of the law to protect the French language was just, the Court could not justify prohibiting other languages.”34

Arlene enjoyed learning these things from her son. Her daughter also had a PhD, but in marriage and family therapy. N’okomis would proudly tell people that she raised a pair-o’-docs (then laugh at her pun). She asked, “If languages can be protected but not at the expense of other languages, does that also mean our constitutional right to freedom of expression was
violated when they sent us to residential school and forced us to stop speaking our languages?"

“You’re right, Mom. Our right to freedom of expression has been violated. But we didn’t have the constitutional right to that protection, or so they said, until 1982, when section 35, recognizing and affirming Aboriginal peoples’ rights, was introduced to the Constitution Act. The section states, ‘The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.’ This statement leaves a lot of room for interpretation. In my opinion, it affirms that our right to speak our languages has been there all along, though the government tried hard to silence us.

“The Calder case, in 1973, first put Aboriginal peoples on the legal landscape in Canada. For the next ten years, a trajectory of cases regarding our rights was underway. As I mentioned, this peaked in 1982, with section 35 of the Constitution Act. However, the government can still infringe on our rights if it can convince the court that infringement is justified. I don’t like that test. Who has constitutional rights that are largely defined for the purposes of infringement? Our constitutional rights are always changing.

“If French and English are constitutionally protected as partners in Confederation, the same should be the case for Indigenous peoples’ languages and laws. That term though, partners in Confederation, is complicated. The Royal Commission on Aboriginal Peoples published a report called Partners in Confederation. The Commission referred repeatedly to the confederal relationship of the Canadian government with Aboriginal peoples, especially since the Royal Proclamation of 1763. The Royal Proclamation was issued after the British claimed victory in the Seven Years War, and it explicitly reserves all lands not ceded to the Crown for the use of the Indigenous peoples and forbids the purchase of those reserved lands except by the Crown. Some people might say we are not, and should not, be partners in Confederation. Treaties were signed in many instances when Europeans came to Canada. This symbolizes a nation-to-nation relationship. But Aboriginal peoples were not consulted on the drafting of the 1867 Constitution that founded Canada. This almost happened again in the mid 1990s. A constitutional amendment package had been negotiated to gain Quebec’s acceptance of the Constitution Act, 1982. It was called the Meech Lake Accord. It failed to be ratified, though, because Aboriginal peoples were not consulted. Elijah Harper, a Cree Canadian, used a filibuster to prevent the accord’s acceptance until Aboriginal peoples had a voice. The Constitution
has never had Aboriginal input. It’s funny, really, how we still consider ourselves Canadian, though I know some Indigenous peoples don’t.

“Neyaashiinigmiing had, per-capita, more people that fought in the Second World War than did any other reserve across Canada. We should be special partners in Confederation, but there is no founding document that holds our voice. People are probably afraid of the cost of recognizing our foundational rights to self-determination. They may worry that protecting one Indigenous language would open a floodgate to demands that other languages be protected. There are over sixty Indigenous languages organized into ten different language families in Canada.”

Arlene interjected, “I’ve actually thought a lot about our constitutional protection over the years. When I married my husband, Easton, because he was from England, I lost my government-issued status as an Indian. When I was selling real estate in the seventies, I noticed there were four types of people that were prohibited from signing contracts: the mentally ill, minors, inebriates, and Indians. Throughout history, Indians have been called many things, including dependent children of our white father and drunks. I’m glad for our Anishinaabe laws that at least strive to treat us with respect and speak a language of equality. All of us are unique, and our laws should reflect this. Equality does not mean treating everyone exactly the same, but it does require respect.”

Otter felt the air getting colder as the night grew later. The shining anangok† were spread out in the sky above her. She saw equality and inequality in the natural world she lived in. Air, water, and plants only provide enough nourishment for everyone if they are treated respectfully. Otter shared the waterways with humans, beavers, muskrats, bears, fish, snakes, martens, turtles, and other creatures. If the beavers make too many dams, or humans dump their garbage in the water, everyone in the community, human and nonhuman alike, is affected. When beings live by natural laws and use resources, which are themselves animate beings, respectfully – not exploit them – a replenishing cycle develops. Natural laws show that law requires not only rules, but also the extra-legal work of developing good relationships as well. Equality takes work.

Inside the warm cabin, Jane rummaged for some maple biscuits that the neighbours had made. The Joneses were in full philosophical mode now, Anishinaabe style. Joseph often felt that compared to how his family talked

† “stars”
things out at home, the best law school seminars were just pale imitations. He picked up his mother’s thought.

“Miigwech N’gashi.” I agree. Canadian law has recognized that there is a good way and a bad way to treat people differently in efforts to achieve equality. The Jim Crow laws in the American South, the Nuremberg laws in Nazi Germany, and apartheid in South Africa are examples in history where people have been treated differently with disastrous consequences. In Law v Canada, Justice Iacobucci observed that ‘true equality does not necessarily result from identical treatment.’ Going overseas to the South West Africa Case, the International Court of Justice further defined the meaning of discrimination. Judge Tanaka gave a famous dissenting judgment in that case. Let me find it.”

Joseph rummaged through some old newspapers and magazines, picking up small glass jars and wicker baskets that were scattered across the table. The laptop was buried beneath them. “Here it is,” he said. He opened the computer and began to search for the decision. High-speed wireless had been set up in the house in 2010. A few years later, the town next to the reserve got a tower so people could use cell phones. N’okomis was still getting used to all the information readily available to her. When she asked for help getting on the internet, she would say, “Can you beam me up?” For someone who grew up hunting and fishing, the power of computers still had a futuristic feel, and she was excited at the prospects it brought for learning. As a little girl, she had been best friends with her grandfather, CK Jones. He had been born in 1852. It was amazing how much happened in a few generations and how time seemed to connect more than it distanced. She wondered sometimes how her grandfather would feel about everything happening on the reserve now.

Joseph cleared his throat. “I’ll read you Judge Tanaka’s decision. He wrote,

To treat different matters equally in a mechanical way would be as unjust as to treat equal matters differently.

To treat unequal matters differently according to their inequality is not only permitted but also required.

The principle of equality does not mean absolute equality but recognizes relative equality: namely differential treatment proportionate to concrete individual circumstances. Differential treatment must not

† “Thank you, Mom.”

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