

# The River's Legal Personality: A Branch Growing on Canada's Multi-Juridical Living Tree?

**Andrew Ambers, Indigenous Studies and Political Science.**  
**Supervised by Dr. Christine O'Bonsawin, History and Indigenous Studies.**  
**This research was supported by the Jamie Cassels Undergraduate research Awards, University of Victoria.**

## Introduction:

The 'rights of nature' has become a growing movement in environmental law and policy discourses since the mid-2000s, but has academic roots dating back to 1972 with Christopher Stone's work. The advancements and enactments that have declared the rights of nature, however, lack Indigenous legal assessments despite relying on Indigenous relationships to place. Seeking to fill this gap in the literature, this analysis engages in a test of multi-juridicalism (Borrows, 2010) and draws on precedents across the three legal systems that British Columbians live with: Canadian, Indigenous, and international. In so doing, this interrogation works through three Indigenous legal orders and their storied precedents; the expansion of personhood under Canadian law; Canadian living tree constitutionalism; and section 35(1) rights. In this pursuit, legal personhood is considered as the primary vehicle to declare the rights of nature, though it is not the only or ideal mechanism. The goal of this analysis is to engage in generative, mutually-respective engagements between numerous legal orders to frame a remedy for the imbalanced relationships that British Columbians have with rivers.

## Objective:

The purpose of this project is to braid 'Namgis, Heiltsuk, and WSÁNEĆ, Canadian, and international law to illustrate that declaring the rights of nature could be done in accordance with each system's socio-cultural and doctrinal principles and practices. This draws on both Indigenous legal reasoning and Canadian legal concepts and obligations to demonstrate that this declaration is both a way to approach Aboriginal rights and a way to revitalize and resurge Indigenous legal orders. Through this process, the objective is to create a process that could be enacted to recognize and declare the rights of rivers and other natural actors under Indigenous, Canadian, and international law. Its underlying secondary objective is to confront the current socio-legal framing of living tree constitutionalism, by illustrating that the living tree's current geists obscure a central root of this living tree - Indigenous legal orders

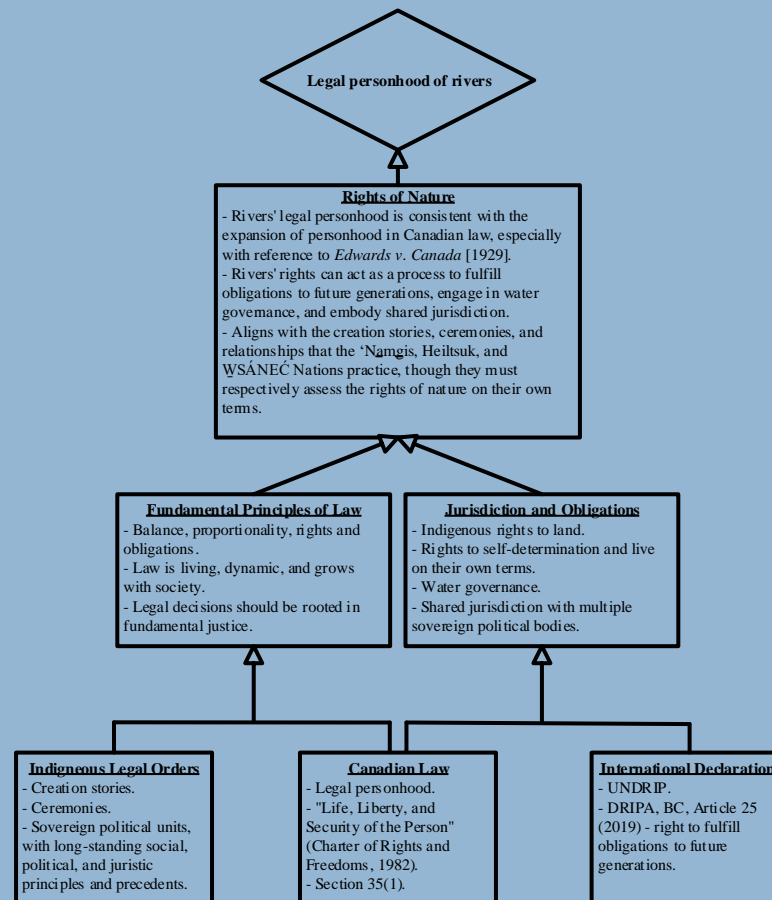
## Methodology:

This analysis builds on existing literature on legal pluralism and adopts an approach that embodies and seeks to realize the multi-juridical reality in Canada (Borrows, 2010). In so doing, this project enacts a methodological approach of *Braiding Legal Orders* (Borrows, et al., 2019), that frames the interplay and interaction of numerous legal systems as important, meaningful, and purposive in advancing law and policy, inter-societal relations, justice, and environmental relations across Turtle Island.

## Living Tree Constitutionalism and Multi-Juridicalism

Living tree constitutionalism has been a central tenet of Canadian judicial interpretations since *Edwards v. Canada* in 1929. *Edwards* [1929] emphasizes that courts cannot and should not interpret legal provisions through a narrow, static analysis. Instead, the law is living, dynamic, and grows with and for society. This conception, however, is incomplete. It leaves Indigenous legal orders unaddressed in its framing. It overlooks and forgets what the roots of this tree consist of, which are not limited to Western foundations. To confront and demystify legal landscapes and living tree constitutionalism, one must grapple with the reality that the roots of this living tree are grounded in a multi-juridical relationship, with Canadian and Indigenous legal foundations forming Canada's pluralistic legal culture. This reality of pluralistic legal systems is not new, nor is it a setback for legal interpretations. Legal analyses and assessments that are grounded in and reflect these roots result in conclusions and outcomes that are rooted in rigour and justice, producing interpretations with more stability and depth.

### A Model of the Multi-Juridical Living Tree



## Takeaways:

- Recognizing the personality of rivers is a long-standing practice by many Indigenous Nations, along with recognizing rivers as living, animate beings with rights and relationships.

- These cultural and legal practices pre-date Crown assertions of sovereignty and the advent of Canadian law. Moreover, these practices are "integral to [each] Nation[s] distinctive culture" (*Van der Peet* [1996]).

- Canadian law has room for growing a new branch of legal practice and it must grow from its multi-juridical roots. This branch must be nurtured and fostered purposively and in accordance with the legal fabric of Canada.

- Socio-cultural and doctrinal practices and tests embedded in each legal system permit the expansion of personhood. This facilitates a basis to declare the legal personality of rivers, and thus, the rights of nature.

- Engaging in Indigenous legal precedents as robust, analytical processes of reason and logic will create a brighter path forward to deal with contemporary challenges that societies are facing.

- No matter how the rights of nature is pursued, through legal personality declarations or Indigenous legal conceptions, the most prudent, rigorous, and stable approach grows from viewing law as growing from a multi-juridical living tree.

## References:

- Borrows, J. (2010). Recognizing a Multi-Juridical Legal Culture. In *Canada's Indigenous Constitution*, (pp. 125-136). Toronto: University of Toronto Press.
- Borrows, J., Chartrand, L., Fitzgerald, O., & Schwartz, R. (Eds.). (2019). *Braiding Legal Orders: Implementing the United Nations Declaration on the Rights of Indigenous Peoples*. Waterloo: Center for International Governance Innovation.
- *Declaration of the Rights of Indigenous Peoples Act*, S.B.C. 2019, c. 44. <https://www.bc laws.gov.bc.ca/civix/document/id/complete/statreg/19044>.
- *Edwards v. Canada (Attorney General)* [1930] A.C. 124 (P.C.).
- Stone, C. (1972). Should Trees Have Standing? – Toward Legal Rights for Natural Objects. *Environmental Legal Rights* 45(450), 450-501.
- *R. v. Van der Peet* [1996], 2 S.C.R. 505. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1407/index.do>.

## Acknowledgements:

I thank the many people who have helped me engage with and understand Indigenous practices and law. I also extend thanks to Dr. Christine O'Bonsawin for her insights and guidance throughout the process of this project.