

9-7-2009

Shared Path: Bridging Indigenous and Settler Notions of Urban Planning: An Annotated Interview with Carolyn King

Sarah Weinberger

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/jlsp>



Part of the [Law Commons](#)



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License](#).

Citation Information

Weinberger, Sarah. "Shared Path: Bridging Indigenous and Settler Notions of Urban Planning: An Annotated Interview with Carolyn King." *Journal of Law and Social Policy* 27. (): 195-203.

<http://digitalcommons.osgoode.yorku.ca/jlsp/vol27/iss1/9>

This Voices and Perspectives is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in *Journal of Law and Social Policy* by an authorized editor of Osgoode Digital Commons.

Shared Path: Bridging Indigenous and Settler Notions of Urban Planning: An Annotated Interview with Carolyn King

SARAH WEINBERGER*



The mouth of the Humber River, crossed by Lakeshore Boulevard. Toronto, Ontario.

When Carolyn King was the Chief, the Mississaugas of the New Credit First Nation were in the middle of an almost twenty-five year negotiation of what would be one of the largest specific land claim settlements in Canada's history. In 1986, the Mississaugas launched a land claim, alleging that the Crown did not comply with the original terms of the Toronto Purchase, taking more land and paying less money than had been agreed upon 200 years earlier. In 2010, Canada agreed to settle for \$145 million, deeming lands covering much of Toronto, Burlington Bay, and the Toronto Islands as "traditional territory."¹ But the traditional territory in fact covers a much larger swath of Southwestern Ontario, including the municipalities now known as Hamilton, Kitchener, Brantford, Caledonia, Hagersville, Mississauga, and Toronto. Southwestern Ontario,

* This article is written from my perspective as a white, settler, cis-female, queer law student. Where no specific citation is given, this paper is informed from my conversation with Carolyn King on 30 January 2017.

¹ Mike Adler, "Toronto Council, Mississaugas of the New Credit celebrate land-claim settlement," *Inside Toronto* (blog) (10 June 2010), online <insidetoronto.com/news-story/52346-toronto-council-mississaugas-of-the-new-credit-celebrate-land-claim-settlement> [perma.cc/YE5A-H6GY].

Canada's economic driver, is the most emblematic example of the transformative power of colonization on a landscape in Canada. Thus, it is in the Greater Toronto Area (GTA) where Carolyn King focuses much of her work of making visible the vital and continuing presence of Indigenous peoples.²

Carolyn served as the first female Chief of the Mississaugas of the New Credit First Nation from 1997-1999. She has been dedicated to First Nations community development for over twenty-five years as a consultant, teacher, researcher, and planner. She is also a leader and innovator in the area of Indigenous land use planning and is the co-executive director of the Shared Path Consultation Initiative, an organization that focuses on the "intersection of urban planning processes and Aboriginal and treaty rights within Ontario."³

On 30 January 2017, I met with Carolyn to discuss her perspectives on the work to be done to bridge the divide between Indigenous and settler notions of land use planning. The following is a reflection on our conversation of how planning engages and intersects with themes of racialization, access, Indigenous law, and technology. Transcribed segments of our interview are placed in conversation with perspectives from academics from both Indigenous and settler paradigms, and then are supplemented with my own reflections. My aim is not to draw any conclusions or make recommendations for better bridging the divide between Indigenous and settler understandings of land use, but rather to provide an introduction and pose questions related to some of Carolyn's views.

I. SITUATING THE DUTY TO CONSULT IN URBAN SPACES

Aboriginal rights entered a new era in 2014, when the Supreme Court of Canada recognized the existence of underlying Aboriginal title in *Tsilhqot'in*.⁴ The Crown's duty to consult, and where Aboriginal title may exist, to accommodate the interests of Indigenous peoples, has long been recognized as a duty imparted by the Honour the Crown, and protected by section 35 of the *Constitution Act 1982*.⁵ In *Tsilhqot'in*, the Court left little room for interpretation that this duty was owed by both Canada and the provinces through the principle of cooperative federalism.

The duty to consult often arises in relation to resource development on traditional territories in remote rural areas, when development threatens Indigenous rights to the land as protected under treaty, or inherent rights protected under section 35 of the *Constitution*. But the duty to consult is less commonly linked to the relationship that municipalities have with the Indigenous nations on whose land they sit. Libby Porter asks, "what to make of this shift to recognition for Indigenous people who live in cities, and for Indigenous people whose traditional territory is now urban?"⁶ She argues that Indigenous rights remain less visible in urban planning and policy than in fields of natural resource management and environmental planning. This gap

² Wherever possible, I use the term "Indigenous" and "settler" to distinguish between the original inhabitants of what is now Canada, and those who participated in its colonization. Where referring to the Canadian legal or state relations with Indigenous peoples, I use the term "Aboriginal." Terminology in direct quotes is left intact.

³ Carolyn King & Clara MacCallum Fraser, "Taking the Initiative: The Beginnings of the Shared Path Consultation Initiative" (2015), unpublished.

⁴ *Tsilhqot'in Nation v British Columbia* (2014) SCC 44.

⁵ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 35.

⁶ Libby Porter, "Coexistence in Cities: The Challenge of Indigenous Urban Planning in the Twenty-First Century," in Ryan Walker, Ted Jojola & David Natcher, eds, *Reclaiming Indigenous Planning* (Montreal and Kingston: McGill-Queen's UP, 2013) 283 at 284.

was echoed by Carolyn, who returned to the question of access several times over the course of the interview:

And on those rivers, there was always an access point. And that access point got taken up, and misunderstood, and just continued and continued until pretty soon there was no more. And way back in the day they put their fences up and put their dogs on us ... pretty soon you're not going back to fish anymore because it becomes too much.

In Ontario, where nearly all the land is covered by treaty, there is a lack of awareness, visibility, or conversation about the enduring presence of Indigenous rights to urban land. Libby Porter refers to this as a “racially constructed structural silence” in urban planning:

It is a persistently colonial worldview that just does not see an authenticity and legitimacy for Indigenous rights claims in cities because cities are not places where authentic Indigeneity is seen to survive. Urban processes are assumed to have entirely expunged Indigenous interests from the spaces produced by urbanization. But it is only an appearance built on persistent racialized assumptions of appropriate Indigenous ways of being and cultural expressions.⁷

But, as Carolyn describes in the following story, inherent Indigenous rights are presently and persistently being asserted in urban spaces:

We had a fire in '87, at our first powwow. In our traditions, the Mouth of the Credit is an important and significant space for us. So we said, “we are going to have a fire.” And they said, “you can't, this is a public park and there are no open space fires there,” and our elders said, “well, you better figure out because we're having a fire there.” Mayor Hazel McCallion got her troops together and said we needed a fire permit. And we said, “we are not getting a fire permit, and besides that, we are probably going to go fishing. With no licence. What are you going to do? ...”

At a subsequent powwow we went fishing. I said, “we're going to be on the Credit, and we have a right to fish. It's in the Treaty, it's in the settlement.” So we go down there, we take our fishing poles and go right down to the river and we waved over to [the conservation officers] and said, “we're fishing! No licence!” That was in 2005 I think we did that. Then we come back in 2010 and we take our fishing poles and wade right in. The conservation officer, he comes up to me and I say, “Fishing! No licence!” and he says, “well did you catch a fish?” and I said, “no we didn't” and he says, “you know what? It's not against the law to fish, it's against the law to catch a fish.”

Carolyn's story illustrates a present tension in recognition of Aboriginal rights in cities. The ability for the Mississaugas to benefit from their treaty-protected and inherent rights to fish in the Credit River is contingent on the discretion of conservation officers to not enforce municipal by-laws. Carolyn and her community have a relationship with the municipality, and so rules are

⁷ *Ibid* at 302.

relaxed based on that relationship. Carolyn described this relationship-based understanding as being in line with “how things are done” in her community. Ironically, it is these good relations, at the discretion of representatives of governments, that create barriers to solidifying these rights. If community members were charged for fishing in the Credit, there would be an opportunity to assert these rights under the Treaty and section 35 of the *Constitution* and solidify them in court. Carolyn notes:

Now we tell people: “just go out and fish. Get caught, and we’ll go to court.” That’s what we want to do. I want to prove that we can fish here. ... I say to the conservation officer, “You know, we are the Mississaugas. So the goal is to fish, to get caught, to go to court, so we get to prove we have a right to fish here” and he says, “well, no luck today.” It’s interesting, nobody’s been caught and charged.

II. INDIAN 101 AND THE PROBLEM WITH PAN-INDIGENEITY

Carolyn identifies one of the key issues with consultation in the planning process as the lack of understanding or recognition of the difference between Indigenous nations in the area. Painting all Indigenous peoples with the same brush erases histories, experiences, languages, and unique relationships between the Crown and distinct communities. The refusal of cities and provinces to recognize the diversity of Indigenous populations makes for hollow consultation:

The first thing I think people need to know, because we’ve gotten away from it, is to know who they are. When you’re talking to me, you know who you’re talking to. Is it an Inuit, is it a Métis, is it a First Nation? Who is it? I am of New Credit, and Six Nations, I was born and raised on Six Nations but I married into New Credit, and my Grandmother is from New Credit. So I go between both communities well.

Carolyn has been offering a seminar called “Indian 101” to call out this tendency towards pan-Indigeneity and to remind municipalities and the public in general of their treaty obligations. This is particularly important in a region like Southwestern Ontario, which is home to cultures derived from two very distinct languages-bases: The Haudonosaunee (including the Iroquois and Six Nations) and the Anishinaabe. Too often are these distinct cultures and language groups conflated as some variation of the “First Peoples” of Ontario. As Carolyn is a member of both communities, she is particularly well-positioned to teach the nuance that distinguishes them.

Teaching and making visible Indigenous presence in modern-day urban spaces requires Indigenous-led creativity that centres Indigenous ways of knowing and learning. Hirini Matunga writes,

Any attempt to map out conceptual territory must be firmly hitched to analyses of it as a continually evolving practice by Indigenous peoples and communities around the world – in other words, planning by, rather than for these communities. ... [T]he trick for Indigenous planning is to frame itself against the backdrop of a still virulent

racist discourse but not get consumed by it. To do this requires a high degree of creativity, innovation, and reflexivity.⁸

Carolyn has also made steps to increase education through innovations like the Moccasin Identifier project, which seeks to make visible Indigenous histories and presence through the identification of the unique Moccasins worn by different nations throughout Ontario. This project is supported by the Bata Shoe Museum, which has given Carolyn access to their collection of moccasins.⁹ Carolyn described to me the importance of being present with these artifacts, which walked the land with which she and others work to maintain a relationship.

Another initiative is the First Story Toronto,¹⁰ a smartphone application developed in partnership with the Centre for Community Mapping. First Story uses mapping technology to indicate sites of Indigenous cultural and historical relevance in Toronto. These initiatives are just two examples of the capacity for different concepts and tools of land use planning that are being developed by Indigenous peoples in Canada.

III. FIRST STEPS OF RECOGNITION

The ever-increasing use of land recognitions/acknowledgements to open meetings and consultations on its surface appears to be a positive step in the pursuit of establishing good relations. However, Anishinaabe academics like Billy-Ray Belcourt warn of the dangers of education and recognition that is done in a way that centres the comfort of settlers over Indigenous peoples: “[reconciliation] only wants to collect the good public emotions it needs to keep going, to push itself outside of History, to narrate a present bereft of legislated pain.”¹¹

Likewise, Carolyn expresses frustration over the tokenistic participation of the province in Indigenous protocol at planning meetings. She describes a consultation meeting with land use planners, economic developers, and government lawyers:

We need to recognize that we're caught in the system. The land use planning system.

...

Rama was there, they had some speakers in, somebody to open up the ceremony. And they [the planners] act like they don't even want to hear that. They are used to their paper work. Get in there, do their stuff, get moving, and get out. And it even comes out when they come to hear us: their impatience.

Individual Indigenous communities and land-based rights are further erased in planning policy in Ontario, where even the distinct relationship that Indigenous peoples have with the

⁸ Hirini Matunga, “Theorizing Indigenous Planning” in Ryan Walker, Ted Jojola & David Natcher, eds, *Reclaiming Indigenous Planning* (Montreal and Kingston: McGill-Queen’s UP, 2013) 3 at 3.

⁹ For more detail about the project, see Carolyn King for the Architectural Conservancy Ontario, 3 May 2017, online <www.youtube.com/watch?v=Trd5-JXIwmo>.

¹⁰ For a fuller description of this initiative and of the app see *First Story Toronto*, online: <firststoryblog.wordpress.com/aboutfirststory/> [perma.cc/B6LP-W2YX].

¹¹ Billy-Ray Belcourt, “The day of the TRC Final Report: On being in this world without wanting it,” *Rabble* (15 December 2015), online: <rabble.ca/news/2015/12/day-trc-final-report-on-being-this-world-without-wanting-it?utm_content=buffer9d362&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer> [perma.cc/H2BQ-5C34].

Crown is reduced and categorized as another “stakeholder,” subsumed into the descriptor “public body,” akin to a municipality or committee. This language is widely used in planning legislation in Ontario, including in the *Planning Act*, the *Greenbelt Act*, the *Places to Grow Act*, the *Niagara Escarpment Planning and Development Act*, and the *Oak Ridges Moraine Conservation Act*.¹² Porter identifies this failure of recognition and continuing legislated erasure of Indigenous identities in planning:

The use of “public bodies” as a term of reference for First Nations failed to recognize and identify the distinct spaces and relationships that diverse First Nations occupy within the Canadian landscape because it “fails to appreciate their unique status as original land owners of country that was wrestled from them by the modern colonial state.”¹³

Carolyn discussed the importance of grounding planning consultation in Indigenous law and protocol, and identified the continued de-legitimization of Indigenous law and governance practice. Where others find the incorporation of ceremonial elements into education and planning spaces as a positive step, she sees it as a further opportunity to dismiss Indigenous law:

When a native person does drumming or singing or smudging, it's novel. "Isn't that cute that they do that." They don't see our ways as grounded in law and governance, even though it is. They don't understand it. It's a way of living and believing as well. And so until we get there, it's always going to be sort of a one-off. So when I do my Indian 101, I call it "Chapter and Verse of the Law" so I don't do sweetgrass, and I don't smudge and do all of that. I'll do that myself but I won't make them do that. It's so sweet that we do that, right? But you know what? It's the law. It's what we're supposed to do.

The de-legitimization of Indigenous law is discussed by Richard Howitt, who notes that land management systems, whether explicit or implicit, perpetuate colonial objectives: “Even if it is unintentional, these management systems easily erase, and at best constrain, the rights created by pre-existing and persistent Indigenous systems of law. They typically privilege management plans that restrict Indigenous peoples’ access to, control over, and benefit from their traditional territories and resources.”¹⁴ Carolyn described the importance of centering Indigenous decision-making protocol in negotiation with the Crown:

There has been so much in the way using the western system. On our side, we left so much behind when we are not using our ways to do things. Usually I have my wampum belts with me, I just set them out. So there's what we call, "the documents."

¹² *Planning Act*, RSO 1990, c P13; *Greenbelt Act*, SO 2005, c1; *Places to Grow Act*, SO 2005, c13; *Niagara Escarpment Planning and Development Act*, RSO 1990, c N2; *Oak Ridges Moraine Conservation Act*, SO 2001, c31.

¹³ Fraser McLeod et al, “Finding Common Ground: A Critical Review of Land Use and Resource Management Policies in Ontario, Canada and their Intersection with First Nations” (2015) 6:1 Intl Indigenous Pol’y J 1 at 9, citing Libby Porter, “Planning in (post)colonial settings: challenges for theory and practice” (2006) 7:4 Planning Theory & Practice 383 at 389.

¹⁴ Richard Howitt et al “Capacity Deficits at Cultural Interfaces of Land and Sea Governance” in Ryan Walker, Ted Jojola & David Natcher, eds, *Reclaiming Indigenous Planning* (McGill-Queen’s UP, 2013) 313 at 314.

The only way that we can settle the land right now, is with the government's documents. And all the ways that they decide; the whole process of settlement. But there is also the First Nations side, and so, a lot of that - and it's not the only way - is in the wampum belts. There is another way to make agreements and understandings. And ways of doing things that say that we are going to be in agreement about these things. And we've moved away from that. I think, and now, everything only falls under the documents.

IV. MARKING THE CARRYING PLACE TRAIL



The Shared Path: A "Story Circle" created by plaques relating the story of the historic portage between Lake Simcoe and Lake Ontario.

For the past several years, Carolyn has been consulting on the Shared Path initiative, consisting of historic plaques, parks, gardens and interpretive walks along the Humber river.

The Carrying Place Trail, from Toronto, Lake Ontario up to Lake Simcoe. That was the route for everybody to travel back and forth. It's time to have some significant stuff there, new names, access points, wouldn't it be great to go back and fish.

We go there for ceremony. We go there for supporting the groups that want to recognize our existence, who live there. We dedicated a park, and put up a stone, and put our symbol there ... Now the city wants to make the street safe, which means they are going to cut through the trail. We just got it within the last ten years. ... Now,

even the citizens who fought to have the park dedicated, their work is thrown away because the city needs to make the street safer, better, whatever... you have to come here, and you have to protest.

After our interview, I visited the mouth of the Humber river and the terminus of the Carrying Place Trail. The juxtaposition of the river flowing into the lake, crisscrossed by two highways with cars running perpendicular to the flow of the water is a stark visual reminder of the pressures of urban planning that continue to be perpetuated against Indigenous interests and relationships with water and the land. The interpretation design has fallen into disrepair, and many plaques are missing from their stands, or show signs of wear and graffiti.

The interpretive plaques, presented in “story circles” at various points along the trail, are offered in English, French, and Ojibwe. But it is clear that this story is not being told by Indigenous voices. One plaque described the origin of the name “Carrying Place Trail,” noting,

[f]or perhaps thousands of years before modern highways, overland trails connected the lower and upper Great Lakes. One of those trails began near here, at the mouth of the Humber River. The trail’s Aboriginal names are forgotten, but early Europeans called it “le Passage de Toronto” and the “Toronto Carrying Place.”¹⁵

Even in an attempt to recognize a literal and figurative shared path, the Indigenous presence is undermined and relegated to a past that does not map onto Toronto as it is today. By asserting that the “trail’s Aboriginal names are forgotten,” the storytelling silences enduring Indigenous relationships with this river. Carolyn reflects on the frustrations of being tokenized and written off in efforts to Indigenousize urban spaces and education initiatives, and what she wants to see done differently in the future:

Access, redesigns, putting our designs up, trails, information about us, interpretation that includes us and does not write us off in the first statement. That’s one of my pet peeves, the tourism books that say, this was the home of the early people, in the first paragraph they write us off, they say that we were there but we are already dead. They should re-write the tourism package and include us, talk about where we are, where people can go and find our stuff, and tell them to come and visit us. Because we are still here.

In terms of Indigenous planning priorities, Carolyn’s recommendations can be summarized as threefold: first, planning for increased access points, especially to water, so that the Mississaugas can participate in the rights protected under treaty; secondly, promotion of public education about the shared histories of distinct Indigenous peoples in Canada that ground treaty relationships; and finally, visual representation of ongoing and enduring Indigenous presence in cities, including interpretation, Indigenous naming, and Indigenous symbols and art being centered in urban spaces.

Carolyn identified several sites of tension in bridging the gap between Indigenous and settler visions of planning. A common thread throughout our conversation was not an unwillingness to come to the table, but rather to expand ideas of what counts as “planning” to

¹⁵ “Toronto Carrying Place” (2011) *Toronto’s Historic Plaques*, online: <www.torontohistory.org/Pages/Toronto_Carrying.html> [perma.cc/37QT-ZF8X].

encompass and legitimize Indigenous land use priorities. Requiring that municipalities include meaningful consultation in their planning processes, including engaging Indigenous decision-making protocols, is a much-needed next step in actualizing section 35 of the *Constitution*.