Letters from the Law Commission of Canada

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I marked Canada Day this year with a hike along the Jack Pine Trail in Cape Breton Highlands National Park. The trail takes its name from a unique stand of tall Jack Pine trees, their tops stretching up to the sun, whose existence is tied to a dramatic fire in this space in 1921, just over a century ago. It turns out that temperatures over 44 degrees Celsius are required for the release of Jack Pine seedlings from their cones. Today's cones are in waiting mode. An interpretive panel points out to visitors that we are all tied to our history and that living things develop in diverse and surprising ways. Further evidence comes in the form of another plant also ubiquitous along the trail. Sun-bleached and fragile "Reindeer lichen", with an average growth rate of 1 millimeter per year, seems determined to exist over strikingly inhospitable rock surface.

Reindeer lichen

The contrast of the immediacy of change by fire with the slowness of transformation in miniscule increments may be helpful in thinking about the dimension of time in the world of law reform. A month before my holiday hike, I had the honour of moderating a panel at the annual meeting of the Federation of Law Reform Agencies of Canada, hosted this year in Montreal by the Institut québécois de réforme du droit et de la justice. The speakers brought with them a wide range of experiences and responsibilities related to processes and mechanisms of change in law and justice. They shared reflections from the context of directing a provincial human rights commission to leading national law reform, from working with volunteer lawyers to supporting civil servants, from interactions with legislative process to collaboration with advocacy organizations.

In response to my question as moderator about the significance and impact of "time", they offered thought-provoking insights. Patience is key, they acknowledged; long term planning and reflection over extended periods are both necessary and normal, such that one of the toughest challenges is that of avoiding lethargy. Sometimes, however, dynamic and immediate engagement is both justified and necessary; appropriate general reluctance to react quickly should not slide into remaining silent in the face of pressing injustice. In a metaphor coined by Justice Nathalie DesRosiers, past president of the Law Commission of Canada and one of the speakers, like the preparation of a good meal, law reform work often happens on at least three stovetop elements at the same time, each turned to a different heat setting.

One of the things I have heard over and over from participants in our Listen and Learn sessions over this past year is a complaint about the lack of time. Whether professors or politicians, community organizers or legal practitioners, individuals have told us they lacked time to think, read, reflect, ask questions, or join in constructive conversations. Of course there is never enough time. We speak of finding time, making time, using time, keeping time, and marking time. We count time and we count *on* time. We wonder what we would do if we had more time, we marvel – sometimes with true bewilderment – at how time moves so quickly, and we worry when people, places or processes appear to be fixed or frozen in time. Especially in the summer season, we may take time off, carve out holiday time, or enjoy time on vacation – all tied to an embrace of a slower pace and an escape from what can feel like relentless routine.

When people interested and engaged in law and law reform talk about not having sufficient time, they often seem to be regretting the fact that they can't slow down enough to explore adequately the many dimensions crucial to understanding and directing how things are working and what change might be required or look like. It is not easy both to exercise necessary patience and to respond meaningfully to what feels pressing. Perhaps we can learn from the co-existence of the Jack Pines, reliant on fire for long-term survival, with the Reindeer lichen, slowly and patiently adding a millimeter every 365 days. Law reform happens over time in so many ways, some almost invisible and others shockingly apparent. And it relies on a combination of interconnected capacities – to respond to crisis, to adapt to context, to invest in steady development.

Canada officially turned 157 years old this July 1st. The tall Jack Pines that stood at this spot in Cape Breton in 1867 have been replaced by their descendants. The Reindeer lichen has grown about 157 millimeters. They offer very different perspectives on the passage of time in a country home to intertwined legal traditions, all of which contain distinctive mechanisms for change, both fast and slow. As one of the signs found along the trail reminds hikers, evolution is never-ending and necessary: apparent stability along the path doesn't mean that time has stopped or that change isn't happening. With every step, we are invited to appreciate each millimeter of growth and to soak up the sustenance provided by the sun and its warmth.