

**INDIGENOUS BAR ASSOCIATION IN CANADA**

**10TH ANNUAL CONFERENCE:  
Traditional Values, Laws and Governance  
Summary Report**

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## Traditional Values

### **Cultural Values**

#### **Nin Thomas—Maori, New Zealand**

By way of background, Maori are the indigenous inhabitants of Aotearoa (New Zealand), which is a small South Pacific nation. The traditional values of the Maori people form the building blocks for the ethical principles, which in turn underpin the traditional laws of pre-European Maori society. At the outset, I want to issue a caveat, that these values have been impacted by Western values but despite attempts to totally assimilate Maori values into the Western social structures, we have maintained our social values to a surprisingly strong degree.

On the point of culture, I would just like to read from one of our elders,

“Culture may be defined simply as the way of life adopted by a society. In Maori terms, culture is that complex whole of beliefs attitudes, values, morals, customs, knowledge, acquired, evolved and transmitted by society as guiding principles by which its members might responds to the needs dictated by life and their environment. Culture is the most powerful medium in the patterning processes of the individual. Whilst socio-cultural elements are subject to change, within this flux remains a corpus of basic convictions about reality and life. This corpus provides the thread of continuity which integrates and holds together the social fabric of a culture.”

I have three traditional values that I would like to speak on because I think they are the basis of Maori society and I think of many societies. The first is spirituality. The second is inter-relatedness. The third is the balance that results from the first two. In terms of spirituality, Maori's values arise from a world-view that hold that all things arise from an original world source. Hence, when the call went out to our spiritual grandfather, we are sure that there is something out there. In Maori stories this entity is sometimes referred to as Eo, but it should not be confused with a single godlike creature. If God exists, or Gods exist, they are everywhere. Many of our creation stories tell of an ongoing process in which various processes succeeded each other until eventually material form emerged formed to clothe the spiritual being it housed and the production from that of many different types of spiritual being. Physical beings are linked by their spiritual essences.

That leads to the second of the traditional values, the idea of relatedness that is very strong in Maori society. We are linked to each other inseparably. All of us contain part of the spiritual essence of being and the temporal form of being which may take a different form. This idea extends beyond human relationships to encompass other forms of life, the birds, the trees who are the children of Tani, the winds of Tafimartai the seas of Tungaroa and the earth is my mother Papa Tunagu. She is Pap Tunagu the primordial parent who together with Denga Nua Etunai combined to form the substance of physical being. They are the parents of the Atua who together look after the various aspects of the created world.

Within this construct the human individual exists as part of a collective. The human individual, again made up of various aspects; the Tinana, the physical body, the Wadua, whose job it is to look after the Tinana throughout its being, spiritual aspect of being, there is the Modi, the life essence, the Nacre, the seat of our emotions which is where our true humanity rests and there is the Hinanaro, our mental faculties that accesses the knowledge of the cosmos, and generally lets us know through dreams and through flashes of intuition. This world exists in a very delicate balance. Human genealogy stretches back to the cosmos and beyond and is linked to all other things. It is a single stream, which bears us forward and backward. It provides a pathway, which we can travel and visit our ancestors and they can travel to visit us. It allows us to collapse time, it allows us to move forward and it allows us to move backwards. To Maori people ancestry was everything. It was the measure of a person and the basis of all entitlements, which accrued to that person during their lifetime. This delicate state of balance had to be maintained if humans were to

co-exist peacefully with the rest of creation. Each domain had its own deities, which were responsible for and held authority over their own domain.

From these three traditional values emerged the traditional principles of Mana Tupuu and Modi. These are principles that were derived from the existence and importance of Warua or spirituality. The first is Mana, Mana is based on the notion that inherent in all things is personal authority, dignity and power. This power may be used to develop and influence relationships with others. The second is Tupuu, Tupuu is based on the notion that inherent in all things is personal sanctity which is to be upheld and respected when relating to other people and with other aspects of existence. It is the basis of all relationships of a property nature within Maori society.

The third principle is Modi, which is based on the notion that all things have a life force which enable those things to exist, they have an identity of their own and this life force is with them until it ceases to exist. Therefore at death the Modi departs. The life force of humans is tied to their resources and that is why when introducing myself and saying who I am I must tell you who I am related to in terms of my landmark ancestry.

The next principle I want to raise is the notion of kinship, individuals exist as part of the collective as well as being entirely of themselves. The relationships between people are reciprocal ones and should be kept in a balanced fashion. The same thing applies between humans and other aspects of existence. There are notions of linkages, processes and structural frameworks based around lineage that organized Maori society. Using those principles, Maori society created a framework of cultural norms for day to day behaviour. From the Notion of Mana we get the principles of how leadership should be exercised. To be a leader in Maori society was to put yourself below your people.

The principle of respect for others was the basis of setting the limits between people and people and resources. Resources were allocated to certain individuals, families and their descendants. The only type of alienation was the giving of gifts conditionally. Breaches of personal property had both physical and temporal sanctions. Modi had to be protected, if it was damaged it must be repaired. If it was damaged beyond repair then the community, the individual, the resource must die.

Reciprocal obligations of caring existed between kin and balance must be found when those obligations were not met. No actions are without consequences in a kinship-based society. One is linked to one's responsibilities and back to the rest of the world. These principles exist with Maori society in very pure form. The things that face Maori society and particularly Maori lawyers, is how we provide for this balance within our own lives and our own interactions with our people. Probably the greatest temptation of Maori lawyers is how to stop themselves from making use of the knowledge to declare war in a court room of their own people and try to justify it in terms of the fact that "I am a lawyer".

### **Chief Justice Robert Yazzie—Navajo, USA**

First of all, we know what values are laws. The Western world seems to have forgotten that. What is a "value"? It is the community's sense of right and wrong. It is the way we do things. They make laws in Ottawa. They make laws in Victoria. What do those people know about the values the First People of Canada hold? We need to get away from the Western legal thinking, because it throws us off. In Western legal thinking, you find out what the problem happens to be and then you find the rule to apply it.

In Navajo peacemaking, people with a problem go to a respected community leader to help them work it out. We also call the process "talking things out". When you have a dispute, you need to close the gap created by a conflict. In peacemaking, there is an initial phase for people to get their feelings out. There is also room for relatives in the process. They usually come in to support their relative, but we find that have relatives present can make a change. For example, there was one peacemaking involving family violence and alcohol, and the man denied being either abusive.

The man's sister sat next to him, and she dealt with his excuses by telling him exactly what of your problem, the action you produce is not satisfactory to me or your parents, we love you but your actions are not what we want.

In Navajo peacemaking, traditions often come out when the peacemaker uses our journey and creation narratives to deal with a problem. The experiences related in our journey and creation narratives are very human. The narratives tell of every kind of human problem, how it was resolved, and what happens to people when they don't do things right. They are our knowledge. Only we know what it means and how to use it in everyday life. In Navajo peacemaking, Navajos still use their ancient remembered wisdom to teach so that people can solve their own problems.

In Navajo peacemaking we use prayer to teach and to soften hard hearts. We use venting so people can express how they *feel* about what happened. Our peacemakers use Navajo traditions to teach.

One of the biggest mistakes people make about First Nations' law is that it is either a "rule" or it is a "custom". What is a "rule"? It is a statement of right or wrong or do or don't by someone in authority, isn't it? A "custom" is a practice; they way people *do* things, isn't it? Students of traditional indigenous law are often so busy going around look for rules and customs that they miss the point - indigenous law is about *respect* and *relationships*.

None of us can look for models outside our own hearts, minds, souls, families, and communities. Many First Nations share the same kind of values. I think we all honor and cherish relationships, respect, speaking in a good way, prayer, humility, and all the other values we think of as being uniquely indigenous knowledge. We may express those things in different ways; by the way we all hold those values.

So let's not get too intellectual about the words "values" and "tradition". They're not hard to find. They're in your hearts and they're in the collective consciousness of your communities. We just need to build our sense of community by applying what we have from the mind the heart and the spirit. To bring them out to use as law.

#### **Elder Mary Louie – Okanagan, BC**

It is important to know who you are and who your people are. To know your ways is important, to help your people is important. Remember what it is you are studying; remember your purpose in your walk and the goals that you may have set for yourself and how to help one another with respect. Each person is special with the gifts that you have. Learn your medicines, because that is your survival, and remember your foods Take time for yourself as well, don't allow your work to become your boss and take time for your ceremonies. Remember who you are and where you come from.

#### ***Professional Ethics***

#### **Judge Marion Buller-Bennett – Cree, BC**

Ethics are personal and intimate thing. Based on beliefs about of what's right or wrong. There are four relevant important lessons because of three important words: All my relations. The lessons are based on four words: honesty, courage, faithfulness; and my heart.

Honesty is to be honest to yourself and others. To be honest about your own limitations, strengths and weaknesses and to be honest to others as well. If you tell the truth you have nothing to fear.

Courage to do what you think is right. To have the courage to tell the truth even though it is not particularly popular. Not only to have the courage to say what's right but the courage to do it, to live it and to practice. In terms of being a lawyer, to make a difficult argument or to challenge the status quo or to be creative. Courage is one of the most important attributes that a lawyer can have.

To be faithful to your own beliefs whatever they are. To thine own self be true. If you really believe in something stick with it. It isn't always easy, its easier to follow the status quo, but it not only important to believe your beliefs but to live by them and practice them even in the face of opposition. It's important to have an open mind and not be unbending. It's that truthfulness and faithfulness that sets us apart from other lawyers. Sometimes you have to make tough choices. Sometimes when make tough decision you have to seek the guidance of others like elders.

The attribute that ties most of us together is a phrase I heard at and IBA conference "always speak from your heart". That takes courage, faithfulness and honesty. There are a lot of difficult questions, the questions of law are very simple, and there is always a rule or case somewhere. The questions of the application of your ethics, your faithfulness to your beliefs are the hardest questions to answer.

**Summation by Willie Littlechild, Q.C. – Cree, Alberta**

The pipe stem represents the forests but it also represents honesty, we are to live our lives as lawyers in the straightest possible way we can. The bowl represents the mountains of which we draw spiritual strength also represents the courage. The feather represents the animals but also represents sharing because they have to die so that we can live. Sweet grass represents Mother Earth but if you light it and put your hand over the smoke you can not feel anything, that represents kindness.

The traditions and the values are in the hearts of our people, they are in our minds, our hearts and in our spirits.

### Keynote Speaker

#### **Ombudsman Roberta Jameison -- Mohawk, Ontario**

We spend a good part of our professional lives surrounded by people of other values and other traditions. We are daily involved in powerful institutions which are not of our making. We meet racism, bias and discrimination in both our personal and professional lives. We are asked to accept that the Canadian legal system is neutral and value free. We need to give each other strength and courage to succeed against all odds. We also need the prayers and advice of our elders that we may remember why we have life, how we are to walk about on this Earth, how we are to conduct ourselves as human beings.

If we are to be true to our origins, we need to apply our experience as indigenous peoples to improve the state of law and the provision of justices not just to ourselves but also to other who find themselves in situations like ours. We must learn to expand our field of vision beyond consciousness of the bias we encounter in established institutions to include the consciousness of the bias which others encounter. We would be shortsighted and in conflict with our traditional values and laws, if we only sought a higher degree of justice for ourselves. We will experience true justices when we have a system that offers equity with regard to race, culture, economic status, disability, age, language, religion and gender.

We are ideally positioned to take leadership in building alliances and promoting change in the justice system. We are well positioned to help the system adjust so that other people who are "different" don't face the racism in the courts that we have faced. We can only make these contributions if we remain true to our indigenous core. If we lose our values and become assimilated into the system, we will have little more to offer than your average Canadian law school graduate. It is our heritage not our race that sets us apart. It is difficult to be true to your values and your people while still being a lawyer.

As Ombudsman, I am conscious of the fact that I am challenging people's assumptions about our people. Every chance I get, I use it to educate people about who we are. I talk about our role in nation-building, our medicines, our system of decision making, where all people have a voice, including women and children. As we work toward the future we must remember the seventh generation from now. We are their ancestors. There is no guarantee that our nations will be alive one hundred years from now, no guarantee there will be a seventh generation. We must live our lives in a way that provides the guarantee. We need each other so that we can find ways to work together more productively.

## Traditional Laws

### ***Protocol***

#### **Chief Gisdaywa, Alfred Joseph – Wet'suwet'en, BC**

In the area of trespass our people had a very strict law. You were punished on the spot. In the feast hall you don't talk about another clan's business or territory or that was a form of trespass: trespass into their affairs. You take care of your own clan, house and territory. You don't want to insult anyone in the feast hall. If a name is handed down in the feast hall. There are three clans that are the witnesses and the fourth is the host. At the end of the handing down of a name the witness clans verify the name and stand up and say that it was a good choice.

If there's have a problem they don't stand up and say there's something wrong. Instead they go quietly through their father clan elder and he will go to the family and tell there was something wrong. When food and resources are handed out at a feast it is announced where it came from, which territory. There was always help from their relatives. In the feast hall if a chief was speaking, the elder ladies sit on the floor every word the speaker gives them, if it was pertaining to the elders and ancestors, the elders nodded that it's the truth.

In band council it is different. They follow the policy of the government and they offend each other. This would never happen in a feast hall. If you have a personal problem you don't bring it to the feast hall you leave it at home. At home I am Alfred Joseph at the feast hall I am Gisdaywa. I have to respect other people. My personal problems are my own not Gisdaywa's..

### ***Roles and Responsibilities***

#### **Patricia Monture-Angus**

The dispossessed people - think about them, the ones we've lost through violent death. Remember our brothers, sisters in cages. Be honest, don't distance yourselves from the privilege of your law degrees. Remember we are related and we need to remember our relations. You can only know yourself, share your own story your own answers. All Native law is, is family law, its the law of relations, the law of caring, of how we fit in. In it is vast complexity it's profoundly simple. The Canadian system of law is based on conflict, it is presumes conflicts and that's why there's law. The Native system doesn't presume conflict. It presumes that we want to be related, we want to get along and we want to respect that.

We need to confront that contradiction so we can educate our people in a good way about this system that is oppressing our people. I hope that we can start doing this work collectively. So we have a relationship, with the land, the territory and with the people.

#### **Summation by Howard Grant**

Respect, honesty, patience, diplomacy, honour, justice, fairness and a touch of humility, trust. The teachings of your family, your extended family, your community. It gives an egalitarian approach to life that give balance with community and nature. It's holistic.

Our communities are built on this egalitarian approach. If a conflict arises in the community we look at relationship building we look at the cause, we try to find justification for it then we deal with the human being. In the current system, we have a punitive approach, first we incarcerate the individual then we try to repair the human being. It's the opposite approach.

We have to get back in touch with our aboriginal teachings. Recognize there's a need for a parallel education approach. Get back to knowing who you are, it is hard to make that attitudinal change to embrace the change in law to reflect our indigenous values. In order for you to affect change you must understand how it impacts you whole people

## Traditional Laws - continued

### ***Dispute Resolution***

#### **Chief Justice Robert Yazzie – Navajo, USA**

Navajo women say that your right hand has certain stories, especially when trying to bring justice to a solution. Your left hand also has a solution. Interdependence, relying on each other to come up with a result. The ultimate goal of peacemaking is to restore the relationship where it has fallen to pieces. There are 250 peacemakers selected by the community. When they bring a session together their job is not to control the process, their job is to facilitate the people to talk with each other. Talking with each other and being able to express emotion. There is no room for emotion in tribal court. Victim offender dialogue is very useful. Victims need to know what happened to see if there is any remorse. Offenders also need to listen to the pain of the victim to move forward. Overcome denial, any problem can exist in the home. the criminal process can be merged with the peacemaking process at any stage within the criminal process the judge can send them to the peacemaking process. The goal is to open up dialogue between the offender and the victim and their families.

### ***Harmonization***

#### **Grand Chief Mike Mitchell – Mohawk, Ontario/Quebec**

Do we have the aboriginal right to trade with other nations, did we have that right before the European settlers? We brought the questions before the courts. In 1988 we loaded up a truck with groceries, washing machines, etc. and the women drove it across the border and refused to pay duty on it. It took ten years, but last year we won. Rather than negotiate and uphold this aboriginal right the Canadian government appealed. The appeal was held and the aboriginal right was upheld. It is a right that we have the responsibility of implementing. We view our relationship with Canada as allies, In the court we explained how we traded with other nations. In the trial court it recognized the aboriginal right to trade. At the appeal level we were limited to the areas that we provided evidence on.

You have to look at yourself as a member of an Indigenous Nation. The two row Wampum belt is a recognition of the treaty. The Dutch, the English, the French and the Americans all recognized. The ship is your law, your traditions and your practices. In the canoe is our law, our governments, culture and traditions. We will not take anything away from each other, instead we will travel down the river together. The English started to by saying that the King across the saltwater will be your father. We said that would never work, because a father can tell his son what to do, he can punish him. Instead we will be brothers.

#### **Judge Alfred Scow (retired) – Kwicksutaineuk-Ah-Kwaw-Ah-Mish, BC**

Revere the teachings of our ancestors. Make a point to learn those teachings. How to incorporate the teachings of the ancestors into everyday work life to make it meaningful. The *Indian Act* outlawed our ceremonies. It was a very destructive thing to our culture. The ceremonies carried our traditions and values, and mythologies. The mythologies were used to explain our relationship to the cosmos. They were more significant than stories. They dealt with the appropriateness of certain relationships. Fortunately, many were recorded by explorers, missionaries, owners of logging companies, fisheries, government people, and anthropologists. We have a starting point on discovering of what our background is. This is essential to where we go from here. We really must identify our traditions, customs in order for us to regain the pride that our ancestors had. Our forefathers governed themselves, they managed our resources. We always had respect for resources and environment.

In order to harmonize the traditional values with the system we are in now, it is important to know those values. For example, in my territory we relied on canoes to go fishing, trapping, etc. Not everyone had canoes, if one was available he could take that canoe without asking. The canoe did belong to someone but the owner knew that the canoe was available to anyone who needed it

and he knew it would be returned. By the laws I had been taught taking someone else's property without permission was theft. But I knew and everyone else in the community knew that taking someone else's canoe was not theft. So the strict application of laws is not always appropriate.

***Summation***

**Judge Tom Godson – Cree, Alberta**

Recognize the work that needs to be done to recapture the sources of aboriginal laws. The peacemaking concept is impressive, and is useful even in the most serious cases. It takes the court beyond the handing out of penalties but into the realm of healing people.

## Governance

### ***Traditional Systems***

#### **Harold Cardinal – Cree, Alberta**

By coming together at events like this we are building critical mass. This type of gathering is where the task lies for First Nation peoples. When we talk about governance for First Nations we are talking about something that does not exist in the present time in the Canadian landscape. The Canadian political community is not yet able to get its mind out of the notion of self-governance. That task falls squarely on the First Nations legal community. But it is not exclusive to the Native legal community. It requires an invitation of our brothers and sisters in other disciplines like sociology, history, politics among others. Because what we are involved in is an exercise of nation building. It requires the best of our minds across the country.

One element that we need to bring into this concept, we must not only have an interdisciplinary concept, we must bring the energy the wisdom and the knowledge of the traditional people and our elders- they are the keepers of our knowledge applying to our particular nations. They will give us the uniqueness that makes our people nations. They will transmit to us in their language the translations, the concepts that we need.

We must be sensitive to the fact that when we begin the task of nation building that we have the deep responsibility to be alert that the institutions we create do not become the institutions that further the oppression and suffering of our people. The elders recognize that the exercise of governance powers is an exercise that requires a lot of caution. In their context there is only one original sovereign and that is the creator. We have to move out of our western-trained legal paradigm and examine how other peoples try to engage in a nation building that conforms to their belief systems.

#### **Alex Deny – Mi'kmaq, Nova Scotia**

The Mi'kmaq Grand Council encompasses five provinces, Nova Scotia, Prince Edward Island, New Brunswick, Newfoundland, and Quebec. We thrived in the fur-bearing world. Every year when we celebrate treaty days, I tell people that they are paying taxes to the wrong government. We were the first nation to recognize the United States. We have always made treaties. The children do not speak the language. In Mi'kmaq language what you say is what it means it can have no other meaning. The governance we need to do is to ensure our survival. Governance is family. People must realize just because we are educated none of us are ever going to be free of death. The white paper is not dead it is being implemented every day.

#### **Daisy Sewid Smith – Kwakwaka'wakw, BC**

How will we govern ourselves? What will our government look like. It is there is you only look. The Kwakwaka'wakw people had a clan system. At the beginning there were four clans and each clan had its own chief. The chiefs all came together and formed the chief's council. The council of clan chiefs that cared for the land and natural resources to ensure the well being of the clan.

Indian Affairs dismantled the clan system and put in their place an elected chief councilor and elected councilors to assist them. That was devastating to our people. Large families can vote a person out and replace them with their own. This kind of dissention will destroy us. We are on a long journey toward sovereignty. We have to learn to respect one another. We are responsible to one another. For us to be a strong nation we must get together. Our ancestors knew that helping one another meant strength.

#### **Ray Harris – Coast Salish, BC**

A government doesn't mean much unless it cares for its people. The customs and traditions are very dear to our people. We come from an oral society where things are passed down by word of mouth. It was also a prevention system, if people brought stories forward of what was happening some sense of embarrassment might come to the family and changes could be made. The

prevention system was so good we never needed an incarceration system. If you really listen the old ways are still here.

### **Summation by Patricia Monture-Angus**

There are many ways to get at that truth or wisdom. We heard about the many values, peace, trust, encouragement, prevention. We heard that our people are standing up and walking, it may take a long time to walk away from 500 years of colonization.

### **Contemporary Situations**

**Harold Robinson – Metis, Alberta** There are eight Metis Settlements with about 6,000 Metis living on the Settlements. The protected land base is about 1.25 millions acres. The governance authority is at the local and collective levels with a co-management of resources. Under the Metis Population Betterment Act lands were set aside for Metis with limited governing authority over harvesting of fur, game and fish but the bulk of authority still lay with the government. The framework for the Settlement governance includes the General Council, Settlement Council, Appeal Tribunal, Alberta Government.

The Settlement Council is making by-laws governing the Settlement area. The General Council makes laws of general application, manages collective funds and hold the lands under letters patent. Paramountcy applies to all Settlement by-laws must comply with General Council Policy. The Appeal Tribunal has statutory authority to hear appeals on Council decisions about land and membership matters.

The Alberta government provides the provincial statutes to create the framework of the Settlement governance. By-law and policies can't contradict the provincial legislation and the Minister had the authority to review Council activities that are in the "public interest".

### **Dr. Larissa Behrendt – Aborigine, Australia**

Colonialism permeates through Australia's law on property. The British based on the concept of *terra nullius* claimed Australia. The issue of sovereignty has not been properly addressed, and in fact, the myth of *terra nullius* continued in Australian law until 1992. Aboriginals traditionally viewed themselves as custodians of the land. Australians take most of their wealth from the property through mining or pastorals. In 1967 there was a referendum to take the colonial control of Aboriginal people away from the states and for the first time gave them the same rights as other Australians including the right to vote.

In 1992 the High Court handed down the *Mabo* case. It recognized Aboriginal rights did exist but it required that continual use must be proven. Many property rights were viewed as lost due to common law implications of dispossession. The media viewed the decision as one of chaos. When non-Aboriginal people were seen as losing property it was considered a tragedy but when Aboriginal people lost property rights it didn't have a human aspect to it. Secondly, when Aboriginal people were seen as getting their property rights recognized they were seen as getting something for nothing, as making strong demands. Thirdly, Aboriginal property rights were seen as threatening non-Aboriginal interests. The two could not co-exist, recognition of Aboriginal property rights lead to chaos. The perceptions are linked directly to the notion of *terra nullius*.

The *Hindmarsh Bridge* case, the plaintiff sought to have a women's sacred site protected from development. This led to the *Hindmarsh Island Bridge Act* that repealed any heritage protection laws of the plaintiff. If an Aboriginal rights get in the way legislate them away. There is no specified constitutional protection of Aboriginal rights. and no matter how many legal gains we make within the courts we cannot uphold them without the political will. Sovereignty, as is used by the Aboriginal people in the political arena it is something quite different than is meant under international law. This demonstrates and impoverishment of the English language within the Western legal structure. It is meant to convey aspirations as broad ranging as the recognition of

past injustices, greater community autonomy, protection of land rights. These are basic and fundamental rights under the Australian constitution.

#### **Summation by Dr. John Borrows – Ojibway, Ontario**

We still have this partiality and incompleteness. Take the time to consider our values, principles and laws as criteria to judge our actions in governance. It is not enough to just have our people involved in governance, it's not enough to have institutions set up and run by us. The very points upon which we are judged must flow from our laws.

#### ***Nation Building***

#### **Dr. Sharon Venne -- Cree, Alberta**

Indigenous peoples have a real legal system, they are given to us by the creators and we are not to change them but instead to live by them. We are the Indigenous peoples from this land. The land is the ultimate discussion, this is Turtle Island with our own territories, our own laws. We must think like that and act like that.

Recently the UN undertook a study of Indigenous peoples and treaties. Some of things to come out of the study that we are subjects of international law. We have the legal persona to enter into internationally binding treaties. In the European legal system the doctrine of discovery was between European nations. It was never meant to legitimize European occupation of our lands. The Canadian jurisprudence has captured the term of discovery and assumed they could claim sovereignty. This is contrary to their own common law systems and contrary to international law. The *Sahara* case of 1972 outlawed the notion of *terra nullius*.

If we are going to build and reconstruct nations we have to capture the language. We have to own the language because we are the owners of the land. As peoples we have to decide our own future. Canada does not want to recognize us as peoples but only as minorities. As minorities, we would have the right to go to school, to health care and cultural identity. It does not mean that you have a right to your government, your land and your self-determination. Canada is pushing our people to be minorities. The language of minorities is creeping into our language, it is very dangerous to the future. What will be left for the children?

Indigenous nations are sovereign nations. We are recognized as such and unless we fully consented to giving up our nationhood we are still nations. We still possess the right to self-government. There has been no loss of sovereignty, there are still governmental systems that can be used. No state apparatus can diminish the treaty making capacity of Indigenous peoples without their consent. We have to look at the elements of what a treaty is. The study concludes that the Indigenous' treaties are real international treaties.

The colonizers try to curtail our rights through their laws. If we want to be considered nations we ought to start acting like nations. To be part of a nation you must live by the laws of the Creator. The Creator gave us the right to make decisions for our future to be self-determining. We have to decolonize ourselves. We have to take control of the language and take control of our future. If we don't, there won't be Indigenous peoples in the future.

#### **Okalik Egeesiak – Inuit, Nunavut**

As Aboriginal peoples we do share some common issues. The Inuit Tapirisat of Canada, the Metis National Council, the Assembly of First Nations and the Congress of Aboriginal Peoples and the Native Women's Association of Canada meet at critical times when there is no other option available. Unity at this level is critical. In light of this however, the Inuit people see them self as different from other Aboriginal peoples. Inuit have relatives of the circumpolar world of the US and Russia.

Nunavut is international news. It will be Canada's newest territory in April 1, 1999 where Inuit will be 80 percent of the population. The Nunavut agreement is based on the following objectives:

- to provide for certainty and clarity of rights to use and ownership of resources and the rights of Inuit to participate in decision making regarding the use, management and conservation of land water and resources including the offshore;
- to provide Inuit with wildlife harvesting rights and provide Inuit with decision making with regard to wildlife harvesting; and
- to provide Inuit with compensation and a means of participating in economic opportunities and to encourage self-reliance and the social and cultural well-being of Inuit.

Signing and implementing are two different things. Despite the provision for Inuit to be consulted on any issues that affect our harvesting rights in national or international forms, that is still to be practiced by the Canadian government.

### **Edward Allen – Nisga'a, BC**

The agreement is not a template, the Nisga'a people have no sense of this document as a template for other nations. It is a story of our journey. It represents the cumulative efforts of our house chiefs and the petitions to the Queen of England to address our land claims. Some of the main features of the agreement is it is treaty and land claims agreement under Section 35 and 25. We will have the right to self-government, fisheries, forestry, capital transfer payments. There are also taxation components of the agreement that will allow us to coordinate taxation authorities with provincial and federal bodies. The preamble describes the thinking behind the document and how it relates to the agreement between the provincial and federal governments. The treaty is constitutionalized under section 25 and 35 of the Constitution. The Agreement exhaustively sets out the Nisga'a section 35 rights, the geographic extent of those rights and the limitations of those rights and the jurisdiction and authority of those rights. Fishing, forestry, self-government, and land.

Instead of litigating for the definition of those rights we will accept them as set out in this Agreement. Federal and provincial laws apply to Nisga'a peoples and lands. However, if there is conflict with Federal, provincial and Nisga'a laws. Nisga'a laws prevails. Where the Agreement is silent on a certain issue. The laws of general application are applied. This Agreement constitutes our final settlement to aboriginal title. There won't be any further questioning of what our rights are under section 35. It is a step in our evolution forward as a people. Nothing in the Agreement changes the Constitution but instead expresses the Aboriginal rights found in the Constitution.

The treaty represents a culmination of a long struggle. This agreement is the Nisga'a treaty for the Nisga'a Nation.

### **Conference Summation by Debra Hanuse**

As professionals and peoples where are we today and where do we go from here. As peoples, we are colonized peoples, we have withstood government laws and policies that have attempted to assimilate us and undermined our traditional governments and structures. We have survived as a people but not without a cost. Many of our languages are on the brink of extinction, we have seen a break down of our social and political structures and some of us have embraced our identities assigned to us by our colonizers. We have heard how we call ourselves bands and have embraced their terminology. We have heard how the band systems have brought dissension and conflict in our communities. The impact on our people is reflected in the statistics. Our people are over represented in the prisons and under represented in Canadian political structures. The standards of living in our communities are the lowest in the country.

As professionals, were trained in the Western legal system. Unlike our legal system, the Western system is adversarial its goal is not in reconciliation or restoring harmony and balance. As professionals we constantly face contradictions between the teachings of our elders and the western legal systems.

Where do we go from here? As lawyers, we are in positions of powers and privilege and therefore we have a responsibility to ensure the continued survival for seven generations and beyond. Our responsibility is to challenge the status quo. If we do not challenge the status quo then we have no more to contribute to the legal system than our non-Aboriginal colleagues. We must promote change because if we don't there is no guarantee there will be a seventh generation. If we accept this responsibility. There are many paths to follow. To resurrect our traditions and our ancient laws we have to educate ourselves. The responsibility lies with ourselves to learn our ways, learn our medicines, learn our languages. In order to know who we are and where we are going we need to know where we came from. We also have to live our traditions and apply our values to our personal and professional lives and all our relationships with others. If we are going to bring about change within the legal system, we have to educate others about who we are and the myth of Canada's two founding nations. We have to promote the establishment of a Native law school where we can train our people not only in Western laws but in our own laws. We can incorporate our values into the work we do. However, there is a caution here, many of our speakers have warned that our traditional laws ought not be codified and the less that we enact Western laws the better. We can bring about change by having our values incorporated into the provincial and federal laws not only for ourselves but for others as well.

As peoples we need to shift the way we think. We have to use the language of nationhood and act like nations. Only then can we realize nationhood. We need to look to our traditions and values. Many peoples have begun the path to nationhood such as the Nisga'a the Metis and the Inuit.

#### ***Indigenous Bar Association Tribute to Judge Alfred Scow by Renee Taylor***

Woth kin na ee, Alfred Scow, is originally from the Kwe Kew Suet Te Nough Tribe and Gilfred Island on the North Coast adjacent to Vancouver Island. When Alfred was young he fished with his father and did not begin a formal education until he entered residential school at the age of nine. He completed his education in Vancouver, first graduation out of Kitsilano High School in 1945 and then entering UBC as an undergraduate immediately thereafter. Alfred worked his way through university supporting himself through fishing but was unable, in some years, to return due to an insufficiency of funds. Nevertheless, Alfred graduated from the UBC Faculty of Law in 1961 and was called to the Bar in 1962. He became the first Indian Lawyer; first Indian Crown prosecutor; private practitioner and first Indian judge in BC. It is important to note that the second Indian to graduate from law school was not until 1971, a third in 1980, 10 in 1992, 14 in 1993 and so on. Alfred was, and remains to this day, a pioneer and inspiration to both First Nations people and others.

His resume is exhaustive: he has been, in addition to the foregoing, a mediator, commissioner, chairperson of numerous governmental review committees, researcher, business agenda and elected member to a host of academic and civic bodies. Alfred has fully engaged himself in the struggle to improve the legal, social, economic and political conditions of First Nations people. He has never sat on his laurels, despite the fact that he has received prestigious awards, such as an Aboriginal Achievement Award, and Honorary Doctor of Law, the Centennial Medal of Canada, and the Great Trekker Award from his Alma Mater in recognition of outstanding service to UBC and the community. As well, the CBC film "Native Son" is a documentary of his life and accomplishments. But if I were to simply detail formal recognition, I would quite frankly be doing a disservice to the man I know.

Alfred and I come from the same nation. I am, please forgive me Woth Ki Na Ee, considerably younger than Alfred. I knew him by reputation long before we actually met. Alfred's father, Bill, was my first employer. Bill told me a lot about his son, of whom he was very proud, but it was not until the late 1980's that I actually met Alfred while I was a student at UBC. Later, when I began to practice law, I had the great privilege -- and I admit, a fair bit of trepidation -- when I first appeared as counsel in his court. I was honoured and humbled by the interest he took in mentoring the early part of my career. Gi La Kyas La Alfred.

To exemplify Alfred's generosity, I want to read from a letter that Alfred wrote to various First Nation lawyers on January 30, 1998:

"The newspaper coverage of events dealing with First Nations people and issues is often very negative. A recent example is the publicity regarding the agreement in principle between the Nisgas, and the Provincial and Federal Governments. An older example was the reaction to the Supreme Court of Canada's decision in the Sparrow case dealing with aboriginal rights to fish for food. A lone area of concern is "Indians" exemption from taxation as provided by Section 87 of the *Indian Act*. The views given by the newspapers are either clearly biased or based upon misconceptions about First Nations people and our rights. There are many more examples that I will not attempt to enumerate here. But before I move on to tell you about my purpose in writing to you, there is one area which may have special concern to some of you and that deals with misinterpretation of the laws including decisions of the Supreme Court of Canada.

The publicity is providing the general public with misleading information about our people and our rights as well as our aspirations. Some of the talk shows on radio and the news coverage on radio compounds the misinformation and could encourage or create misunderstandings about us. Neither the Provincial Government nor the Federal Government appear to be doing anything to correct this problem.

Our challenge is to undertake this enormous task ourselves. Over a year ago I met with a former assistant editor who believed that the editors of newspapers would be receptive to publishing on a regular basis factual articles on different aspects of First Nations people such as our history, traditions, customs, values, lives on reserves and in urban areas, The *Indian Act*, Treaties in Canada and BC, the *Charter of Rights and Freedoms*, the *British North America Act*, Court Decisions of the Supreme Court of Canada and Court Decisions in other countries as well as relevant statutes dealing with aboriginal or indigenous peoples. These articles should be short, as well as factual, of perhaps 300 to 500 words. We know that there have been many good books written about First Nations people such as *A Long and Terrible Shadow* by Thomas Berger and there have been many studies, the most recent by the Royal Commission on aboriginal peoples and numerous papers by academic as well as statistical studies by Canada census. Many of the writing and reports likely have not been read by many of the Canadian or British Columbia people. It is my hope that short articles will focus on certain parts and that many of them will inform the general public and hopefully the voters who will then make informed decisions on whether or not to support our goals to become self-sufficient, self-governing partners in the present and future development of our country

I am inviting everyone interested to write at least one factual article on some aspect of the First Nations or aboriginal issues to counteract the negative publicity. If you find my letter too broad, perhaps you can make suggestions on how the subject matter can be divided into identifiable areas. Maybe they can be enumerated and divided into manageable components such as unemployment, health, education, self-government resources...and so on.

Yours in brotherhood unity,

Alfred J. Scow "

For me to say that Alfred is a great man would be an understatement. English words do not always convey the depth of feeling. Instead I shall place Alfred within the cultural framework that has shaped his life and his humanity. Alfred has three crests among our people: The Si Si Ulth - two headed serpent; the Magh Ki Nough - or whale and Kwin Kwa - the Thunderbird. Today on behalf the Indigenous Bar Association I am honoured to present Alfred with one of his crests, the thunderbird. To quote from the book "Kwakiutl Legends", a collection of stories by Chief James Wallas:

"The Thunderbird is a legendary, eagle-like bird, so big it could pick up whales in its claws. It told the ancestors of the people, "You will know I am around when you head the thunder; it is the sound of my wings flapping. You will know I am around when you see the lightning coming from my blinking eyes. If you hear me during rough weather, the weather will change for the better. If you hear me during fair weather it will change for the worse."

The Thunderbird can guide, the Thunderbird can predict, the Thunderbird is wise as is Alfred.