



***“Developing Indigenous Resources:
Building Indigenous Economies”***

FINAL REPORT

**Indigenous Bar Association
16th Annual Fall Conference
Calgary – October 14-17, 2004**

INDIGENOUS BAR ASSOCIATION 16TH ANNUAL CONFERENCE

"Developing Indigenous Resources -
Building Indigenous Economies"

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INTRODUCTION & ACKNOWLEDGEMENTS

The Indigenous Bar Association's 16th Annual Fall Conference ***Developing Indigenous Resources: Building Indigenous Economies*** was held October 15-16, 2004 in Calgary, Alberta. This year's conference once again brought together Indigenous lawyers, judges, academics, law students, community leaders, community members, members of the non-Aboriginal bar, and governmental officials from various jurisdictions, to discuss various concepts and practices that focus on the development of Indigenous Economies through the use and fostering of Indigenous resources. Through this conference, the Indigenous Bar Association brought together many of the key players on the national and international front to provide new insights and strategies.

The conference was held at Fairmount Palliser Hotel in Calgary. On-site recording of the conference's main plenary sessions took place and the main thrust of these discussions is included in this report.

We would like to acknowledge all those that have helped to make this conference a success. There are certain individuals that have provided an exceptional effort including:

The Conference Planning Committee comprised of Dianne Corbiere, Judy Daniels, Deborah Hanly, Brian Calliou, Brad Enge, Nicole Richmond and Mark Stevenson.

We take this opportunity to also acknowledge Fred Eagle Tail, a respected Elder from Tsuu T'ina First Nation for his thoughts and prayers that greatly contributed to the conference.

We would also like to acknowledge the many keynote speakers and presenters who shared thought provoking and challenging remarks and papers with conference participants. A special acknowledgement goes to **Germaine Langan**, the IBA Conference Coordinator, Hillary Thatcher, and the many student and member volunteers who made this conference a great success.

Finally, the Indigenous Bar Association would like to take this opportunity to once again acknowledge the sponsors of the 16th Annual Fall Conference for their generosity and support:

- **Syncrude Canada Ltd.**
- **Walsh Wilkins Creighton**
- **Law Commission of Canada**
- **Western Economic Diversification**
- **Indian & Northern Affairs Canada**

National Secretariat Against Hate and Racism in Canada (NSAHEC)

The NSAHRC is a unique organization in Canada. Involving Aboriginal peoples and diverse ethno-racial and faith-based communities and regions of Canada, the NSAHRC is committed to developing a national common effort between Aboriginal and non-Aboriginal groups under the leadership of the Aboriginal community to combat hate and racism in Canada.

As a follow-up to the successful conference coordinated by the Indigenous Bar Association (IBA) and the Quebec Native Women (QNW), the NSAHRC comprises representatives from organizations across Canada which has taken strong actions to combat hate and racism locally and nationally.

The NSAHRC's purpose is to coordinate activities involving its members toward the identification and elimination of hate and racism in Canada. Specifically, the NSAHRC will engage in actions to combat hate and racism through:

- **Communications and Information Sharing Activities** that include using e-mail, websites, hotlinks and list-serves to support information-sharing, identifying upcoming issues and coordinating advocacy activities of NSAHRC members.
- **Education and Training** for organizations involved in developing and implementing strategies to combat hate and racism.

- **Advocacy and Coalition Building** to develop common actions and a national strategy that can be shared by organizations within the NSAHRC and across Canada, and assist organizations in getting to know each other, eg., their histories, issues, challenges, needs and approaches to seeking solutions.
- **Identification and Communicating Current Issues and Best Practices** that will provide access to contemporary model strategies to combat hate and racism.
- **Setting up a Network** to identify and develop working relations amongst a network of organizations to further advance actions to challenge hate and racism across Canada and within specific communities
- **Future Conferences** to provide opportunities to build on the first conference and the work of the IBA, QNW and the NSAHRC regarding strategies, knowledge and tools to successfully combat hate and racism in Canada.

The NSAHRC reports to the IBA Board of Directors. The specific actions falling under each of these activities will be developed through the collaborative work of the NSAHRC. Supported by the IBA, the NSAHRC recognizes the diverse interests of individuals and organizations in this initiative and will work to ensure inclusive participation of all members. **NSAHRC** met in Calgary on October 14, 2004.

Agenda Items

1. Finalizing the Workplan
2. Confirming final list of members

3. CBA resolution on Aboriginal appointments to the Supreme Court of Canada
4. Environmental Scan
5. Posting information on the website and communications
6. Setting up agenda items for future meeting(s)
7. Other Business

Present

Charles C. Smith, Charles C. Smith Consulting

Michael Kerr, National Anti-Racism Council of Canada

Liz Panighel, Student Commission of Canada

Anita Bromberg, League of Human Rights, B'nai Brith Canada

Dianne Corbiere, Indigenous Bar Association

Margaret Froh, Indigenous Bar Association

Linda Locke, Indigenous Bar Association

Ahmad Ktaech, Canadian Arab Federation

Soni Dasmohapatra, Council of Agencies Serving South Asians

Mannie Dick, Canadian Ethno cultural Council

Sandra Carnegie Douglas, Canadian Race Relations Foundation

Victor Wong, Chinese Canadian National Council

Jinny Thibodeau, Quebec Native Women

For further detail and minutes of the meeting refer to www.indigenousbar.ca

Developing Indigenous Economies

Day 1

Opening Remarks

Brian Calliou:

Good morning everyone and welcome to Calgary and to Treaty 7 territory. I'd like to thank the Treaty 7 First Nations for allowing us to be here in their traditional territories to have this wonderful conference. We are bringing a lot of diverse people together to explore some interesting issues.

My name is Brian Calliou; I am the Vice President of the Indigenous Bar Association. I am from Treaty 8 territory just north of Edmonton, from the Sucker Creek First Nation. I am going to invite up the President, Dianne Corbiere. But first I would just like to make some introductory comments about the conference and what we are looking forward to over the next couple of days. When our planning committee came together we started to explore different issues about what we could do for this conference. Of course our discussion went all over the place but then we started to talk about how resource development, industrial development and the economy as a whole can often negatively impact indigenous peoples. There is a lot of literature on that and we know some of that will be discussed.

The discussion started to move towards how First Nations can play a role in countering negative impacts. There will be discussion of that in this conference. First Nations or Aboriginal people have certain rights. There are human rights that protect indigenous cultures, and Aboriginal rights that are recognized in some of the countries. Here in Canada we have constitutional protection of such rights. We could also explore through discussion, economic rights and other protections. You will notice that through some of the best practices, various models and tools that will be discussed, that actually there are ways to take part. We will discuss some of the barriers and obstacles to indigenous people taking part in the economy or industrial development.

Relationships with governments and industry will be explored. Different agreements such as Impact benefit agreements (IBA's) will be explored. Break out sessions and small group discussions will explore many of the tools and models that will allow us to explore some of those more specific types of issues.

I would like to invite our President of the Indigenous Bar Association forward. Dianne Corbiere is from the Mnjikaning First Nation and Manitoulin Island she is a partner in a First Nation's law firm in Ontario. Dianne received her law degree from the University of Toronto in 1996 and she has been a member of the Ontario bar since 1998. Has researched and written in various forms for law commission and other areas. Also Dianne has been very involved in the Indigenous Bar Association over the years and is now our president.

Dianne Corbiere:

Good morning. It is an honour to be in Treaty 7 territory. I would like to thank the Elders that are here, our honourable IPC members and IBA members for coming to this event. I would also like to thank the planning committee for getting this conference together with a particular reference to Bryan, Judy and Deborah, as you have done a really good job. I am here as President to thank all of our sponsors as they are really important to these events. It is hard to fundraise to get these events together but this year we have some really good sponsors.

We have Syncrude, Canada Ltd., Walsh Wilkins Creighton, and a longtime sponsor of the IBA, the Law Commission of Canada. We also have sponsorship from Western Economic Diversification, Indian and Northern Affairs, who is also a longtime sponsor of the IBA, and a more recent sponsor that we have been working very closely with, is Department of Canadian Heritage. I'd also like to acknowledge the students scholarship and student sponsors of this event, with a particular mention to the Honorable Judge Gerry Morin. Judge Morin provided a contribution of \$4000 to the student scholarship fund. He has also put out a challenge to other people to try and raise money for students for the reason that as indigenous people, both lawyers and judges and legally trained people and are no different in that respect. Our younger generation is our future and we all have an obligation to try and pave the way so they can come to these events.

Corporate gifts for the conference come from Burlington Resources, Syncrude Canada Ltd., B.P. Canada Energy Company and Imagination Cards Inc. I would also like to thank the people we are working with through the Hate and Racism secretariat. We have some guests here that are from National Anti-Racism Council of Canada, Students Commission of Canada, The League of Human Rights, B'nai Briths Canada, African Canadian Legal Clinic, Canada Arab Foundation, Council of Agencies serving South Asians, Canadian Ethno-cultural Council, Canadian Race Relations Foundation, Chinese Canadian National Council, and the Quebec Native Women's Association. We had a meeting yesterday with these groups and the Indigenous Bar Association and they are very honored guest and we are very thankful they could be here with us and that they are engaging in work with the Indigenous Bar Association. Thank you and have a good conference.

Session 1 – Economic Impacts of Racism

Panel Chair: Mark L Stevenson

I just wanted to also acknowledge that we are on the traditional territory of the Treaty 7 chiefs and in the heart of the Métis homeland. This first panel I think is really important. The panelists are all really well known in their field and you have their information in your kit so I am not going to read it out. I did want to say that several years ago one of our leaders made some highly controversial comments - singling out a particular ethnic community. That generated a lot of thinking amongst many leaders and many members of our own community. Essentially, we had to not only acknowledge and admit that were not only the victims of racism but we have been perpetuating racism and different forms of hate. Also within our communities against other communities and that was a really important point in our thinking and some of you may recall the first one to speak out

wasn't B'nai Brith it wasn't the Canadian Jewish Congress it wasn't the Human Rights Foundation, it wasn't any of those organizations. It was one of our own members. And what happened is that it really generated a movement within our organization to link up with other organizations to do what we can in order to eliminate hate and racism with in communities an between communities. In order to do that you really have to understand what hate and racism is and what the consequences are. So we thought that it would be a good idea to have a panel on the economic impact of racism. So today we have Michelle Williams, Jeffery Hewitt and Charles Smith who will speak to these issues.

Michelle Williams, Director Indigenous Black & Mi'kmaq Program, Dalhousie Law

School, Nova Scotia

My presentation today is designed mainly to identify the origins and sketch the contours of the economic impact of racism and try to explore some of the links between poverty racism and violence. Through the process I hope to highlight the commonalities in histories and current conditions experienced by indigenous peoples, African Canadians and other racialized groups in Canada. In that way I hope to show my thoughts as an ally and as a supporter but certainly not an expert on building indigenous economies because I am here to learn more about those possibilities myself. So the process for preparing for this presentation was particularly important for me as the new director of the Indigenous Black & Mi'kmaq Programme at Dalhousie law school, which seeks to increase representation on Mi'kmaq and Black lawyers in Nova Scotia.

It is interesting that the creation of that program 15 years ago was strongly endorsed by the Royal Commission on the Donald Marshall Jr. conviction. The Commission was set up to investigate the circumstances surrounding a young Mi'kmaq man who was wrongly convicted of murdering a young black Nova Scotia man. At the time the population of the Mi'kmaq nation and the black population were about the same in terms of numbers. The commissioner said and (this is in 1989) that "as a group those Natives and Blacks are poor less educated, more dependent on social assistance, more likely to be unemployed and when employed more likely to work in low paid menial jobs than there white counterparts. We know that Blacks and Natives are disproportionately represented in our penitentiaries and prisons but almost totally absent from the public life of the province. Now the language is a little dated, but I think it does sort of sum up some of the commonalities that we have experienced as communities in terms of the economic impact of racism. What it doesn't capture however is the resistance, the spirit and the vitality of indigenous peoples, African Canadians and others who have continually fought colonialism, racial oppression and domination.

Jeffery Hewitt, General Counsel, Chippewas of Mnjikaning First Nation

I would like to acknowledge Treaty 7 for having us as guest in their territory today and to Elder EagleTail for his song this morning. I don't mind telling you that I was a little bit nervous about saying what I am about to say, so it was helpful for me to hear what Elder Eagletail was offering in his prayer and his song. When I was first asked to talk today about economics and racism I was quite reluctant and for reason of which where simple. I went into law instead of economics because there was no math involved. With respect

to racism there was so much to start that I didn't know where to begin and that as much as our experiences can be universal so too can they be very individual.

But as I thought more about it and talked more about it, it became clear that there are volumes of information to say and write on the intersection of economics and racism. Although I'm not going to cover it all this morning I will make an attempt. But there is a theme that I will be talking about and rather than have economics and racism, it became clear that maybe what we need to be focusing on is the economics of racism. It became apparent to me that there is a particular place for the members of the Indigenous Bar to consider at this intersection and right now continue with the traffic metaphor, the light can be flashing yellow for us which often means proceed with caution and for others it means go like heck to beat the red and I mean that sometimes both literally and figuratively. I'm going to briefly talk about the historical context driven by racist views of Aboriginal peoples that has left us often outside the economic mainstream and perhaps that hasn't been entirely such a bad thing and I'm going to talk about the law and the courts and how some of the legal decisions that have been made reflect the economic realities of Aboriginal peoples and at the same time reinforce stereotypes.

Charles C. Smith, Charles C. Smith Consulting

I want to start with a couple of comments relating to the previous speakers. Jeffrey's comments about what are we going to do to stop this and Michelle's comment, quoting Thurgood Marshall, "do what is right and let the law catch up later". I remember in my young years looking at Martin Luther King Jr. who decided to have a protest in Chicago about housing when many others in the Black community in the States felt that it was a wrong move to make because it violated the law. And Martin Luther King's comment was the law violates the rights of people. And he held the protest, the media came, and the law changed afterward. It is important for us to keep in mind these individuals who have taken these challenges whether it is Mahatma Gandhi, and one of his favorite quotes that was raised a number of times. One of the things that he was asked was what he thought about Western civilization. He said, "I think it would be a good idea".

So if you look at these things it is important for us to challenge the shackles that have been placed upon us by individuals of European background whose only effort here, as we see it, has been one of enslavement, colonization, and unjust enrichment. We can call it whatever we want but at the end of the day it has been this notion that they think they are better than we are and they enforce this notion with this sense of right wherever they come. And so the question for us is how do we protest that? How do we build upon the resilience of our peoples over the centuries saying that this is wrong and how do we basically work together to ensure that this is changed. Like Michelle, I too have converted from the dark side, have worked in bureaucracies for years and years and have seen the struggles of organizations trying to deal with what they call "managing" diversity to now working from the other side to looking at what diversity is and the rights that institutions think they have in terms of trying to manage us in a mold that they are comfortable with.

I'm going to try to be brief because I am talking about a process that is underway, which is the National Secretariat on Hate and Racism Canada which established the leadership position of the Indigenous Bar Association and come back to this notion of the IBA taking this leadership because it is critical within this movement in Canada

around racism that leadership come from within the Aboriginal community. That is an essential point that I think everyone would agree with and the notion is how then to work with communities of colour to establish that and to get allies and support and to begin to identify commonalities and differences so that we can begin to work together to challenge racism in Canada and its impact upon our communities.

Session 2: Impacts of Resource Development on Indigenous Peoples and the Need for Human Rights, Aboriginal Rights and Economic Rights to Protect Indigenous Peoples

Panel Chair: Judge Marion Buller Bennett

It is my pleasure to be here and to see everyone. Our first speaker is professor Nigel Bankes. The topic this morning is impacts of resource developments on indigenous peoples and the need for Aboriginal rights and economic rights to protect indigenous people

Nigel Banks, Professor, University of Calgary

I will begin by acknowledging that I live in Treaty 7 territory and I thank Elder Eagletail for his song and prayer this morning. You also have a paper in the materials, there are a few glitches, but you can refer to that for more references.

Let me begin by saying what's the issue, what am I talking about? I begin by saying that we have major Natural Resource projects that actually have significant impacts on traditional territories and culture of indigenous peoples. I have put up three examples, but I suspect that everyone in this room can think of many more. The projects that I have listed here are: the tar sands development in the Athabasca River, some international examples, Texaco oil and gas operations in Equator, this litigation is worth looking at, and the third example, the Grand Coolie dam build on the Columbia river, built in the 1940s with the support of both federal governments on either side of the boarder. One of the things that the dam did was to cut off the salmon to the entire upper Columbia River system, which affected the culture of the tribes in the upper Columbia River. This is the factual matrix if you like.

David Nahwegahbow, I.P.C., Chair, Forest Stewardship Council

The conference theme is economics, economic foundations. These are important. When we talk about economics and Aboriginal people, we think about forestry and mining and pipelines, and tar sands, etc. I am not going to talk about these things; rather I am going to talk about traditional economy. This is a very important aspect for indigenous communities. Historically and in remote communities, traditional economies play an important role. Hunting, fishing, trapping and gathering are very significant and important to Aboriginal communities. The impacts that indigenous peoples have suffered are really instructive with regard to the other resource sectors that were mentioned earlier. My presentation will use a case study approach and will focus specifically on the domestic situation in Canada.

Session 3: Barriers and Obstacles to Indigenous Peoples' Participation in Economic Development

Panel Chair: Donald Worme QC, Semagamis, Worme, Missens

The discussions will focus on some of the barriers that indigenous peoples face with respect developing economies.

Harold Robinson, Lawyer

I am going to talk about some of the barriers. Has anyone here ever read Pogo from the '80s? One of his famous lines is: "I've met the enemy and the enemy is us". Part of that is true when we talk about barriers to economic development. We look at what we can do to attract partnerships and investment, the first thing we need to do is to look at ourselves. We need to determine what we can do better and where our shortcomings are and put together a plan to move forward. The thesis that I will focus on today is that economic development is about striking a balance between good governance, sound revenue sources, good timing/luck and commitment to executing on hard choices. I have simplified this down to the three T's: tools, timing and attitude.

Art Manuel, Indigenous Network on Economies and Trade

I would like to begin by recognizing the people who use the land in traditional ways. This is important in terms of traditions and values. The direct link to the land is where indigenous law comes from. It is important to realize that the dichotomy in Canada, and one of the obstacles for indigenous economies to flourish, is the exclusive jurisdiction that the federal and provincial governments exercise under section 91 and 92 of the Canadian Constitution. In the economic growth that develops under that and the market forces that they legislate, it is pretty clear when you hear environmentalists and scientists like Dr. David Suzuki, that the world is in very serious shape. The historical relationship between Europeans and Native people was in relation to economics. Economic growth and market forces have been the tools to solve all problems. We know that this doesn't work because we don't have enough to produce these quantities. Indigenous peoples play a very important role in bringing this world back in balance.

Jerome Berthelette, Department of the Auditor General, Canada

I would like to accomplish two goals in the presentation today. First I would like to talk to you about the Office of the Auditor General and second is to talk to you about a study we did on economic development and First Nations Communities institutional arrangements. We are an independent audit office serving parliament and the well being of Canadians. There are 5 offices across Canada. We conduct independent audits and studies to provide object information, advice and assurances to Parliament, government and Canadians. We promote accountable government and ethical and effective public service, good governance, sustainable development and a protection of Canada's legacy and heritage. You might wonder how it is that the office is interested in Aboriginal

issues. Our Auditor General, Sheila Fraser was appointed to her 10-year term as the Auditor General. Upon her appointment, she made Aboriginal issues one of 5 focus areas of priority that she wants to address in her 10-year term.

SESSION 4: Indigenous Peoples: Developing Our Own Economies

Panel Chair: Delia Opekokew, I.P.C.

Bernd Christmas, CEO Membertou First Nation

What I would like to propose is that I run through a few slides that the Membertou Marketing department has prepared to give you an insight to what can happen if you utilize your legal background. I should tell you that Membertou has had a long history with the courts over a number of years. Most recently we have dealt with the *Simon* case on hunting and more recently was the Marshall decision. Both of these decisions and court cases that are coming out of the Atlantic are based on an economic premise. As Arthur Manuel indicated, this is our land and everything starts from that position. Unfortunately, in negotiations, it is positional negotiating, but that is the way the world works. It is our land so that is how we start off. The key to this whole thing is to, when the time is necessary, utilize the court system, when the time is not necessary, utilize the system that is in place. Keeping in mind who we are as a Mi'kmaq community. With that in mind, I would like to tell you a story of Membertou, who we are, and where we are going.

John Hill, Lawyer, Regina, Saskatchewan

We want to talk about economic development and enhancing our economies. I am not going to talk about the moral aspects of gaming. This is not the forum for those discussions. I will talk about gaming as a form of economic development. In Saskatchewan we have a unique situation because there is a profit sharing arrangement between the Federation of Saskatchewan Indians Nations (FSIN) and the Government of Saskatchewan. Unlike other provinces, where there is Indian gaming, the gaming is operated by one community and they themselves make the profit. In Saskatchewan there is a collective approach. The FSIN is comprised of 74 First Nations in Saskatchewan and negotiated the gaming agreement on behalf of all the First Nations that it represents. In 1994, an agreement was signed, whereby the FSIN would share 25% net proceeds from the casinos. In 1995 a second agreement was signed that would allow the FSIN would operate 4 casinos and benefit and share 50% of the net proceeds from the casinos.

Eugene Creighton, Walsh, Wilkins, Creighton LLP, Calgary, Alberta

Welcome to Blackfoot Territory. It is a pleasure to speak at this conference. I want to take a different twist in my presentation. I am a member of the Blood Tribe, and a member of the Blackfoot Confederacy. I spent 9 years in residential school. Blackfoot is my first language. This doesn't explain that I've been a member of the Alberta Bar for 18

years. There are great opportunities for young lawyers to get involved, but it is important to never forget who you are and where you come from. I come from the largest reserve in Canada, 547 square miles. The main industry is agriculture and livestock. You might think that this is the way to go. There are different idiosyncrasies to every size of reserve: all the administration, legal entities, and business entities. The whole administration operates on \$120 Million budget. Even with all this industry, we have a huge unemployment rate. The surrounding community is not fond of us and it is difficult to do business. We tend to concentrate on ventures on reserve. Other ventures and other activities have been pursued. We have constructed highways, dams and other construction projects. I must impress that unemployment is still high. Our community is trying to encourage our people to go to school. The tribe does everything to hire our own people. After having said, never forget who you are and where you are from, I want to really impress that we identify ourselves by focusing on who we are and where we are from. It is the non-Indian person who identifies him or herself by their profession. It is important that you take your learnings and if you come back to your community, work in the culture and traditions of your people.

Day 2: Saturday October 16th, 2004

SESSION 5: Building Relations: The Role of Governments, Industry and Financial Institutions in Assisting Indigenous Peoples to Participate in Economic Development

Panel Chair: Judge Tony Mandamin

The topic of this panel is certainly fascinating: building relations and the role of governments, industry and financial institutions. A great deal of my time was spent in this area of practice of a lawyer. This panel has representation from government, Industry and financial institutions.

Dan Brant, CEO, National Aboriginal Capital Corporation Association

The National Aboriginal Capital Corporation Association (NACCA) has been around for about 12 years and is an association of about 58 Aboriginal community owned, community operated lending institutions. The institutions were initially capitalized by Aboriginal Business Canada and they provide business loans to the Aboriginal business community. This organization has made some tremendous successes. We are in a 'watch' right now, because within the next month the network will surpass \$1 Billion dollars in loans. The loan loss ratio that they have been able to achieve is about 5%. It's been a huge success story within the Aboriginal community and has been building a quiet foundation of economic development.

My role today is to provide a voice for Aboriginal business financing and its fundamental role in Aboriginal economic development. At NACCA we are in middle of transformative change. We began with a network of individually operated Aboriginal Financial Institutions, which eventually lead to a national association of Aboriginal lending institutions, which then lead to playing a more recognized and lead role in Aboriginal economic development. Our network is seeking recognition for the vital role that we play and the capacity that we have developed over the past two decades. With the recognition of this capacity will come the imperative to fully expand our diverse activities to better meet the needs of Aboriginal economies as a whole.

Nora Flett, Syncrude Canada

One of the good things about working for a company like Syncrude is that they have had a long-term commitment to building relationships with the Aboriginal community. Having positive working relationships with the Aboriginal community is very important: we thought it was important 30 years ago and we still feel it is very important today.

Usually I talk about our other commitments, but today I am going to talk about business development. We are located in Fort McMurray, the largest oil sand deposit in Canada. We have more oil in our oil sands deposit than Saudi Arabia. The Aboriginal community has been very important to us for many years. We work with the Mikisew Cree, the Athabaska Chippewyan, the Chipewyan Prairie First Nation, Fort McMurray 468 First

Nation, and many surrounding Métis communities and the general Aboriginal population of Fort McMurray. We have the largest Aboriginal workforce in Canada. Since 1992 we have spent over 700 Million with Aboriginal business. We are committed to ensuring that our Aboriginal stakeholders share in profits of the oil sands industry. We do this through our Aboriginal development program and our commitment of Aboriginal employment. We developed our commitments in consultation with the Aboriginal stakeholders: they told us what was important and how they wanted to participate.

Marc Brooks, Director General, Economic Development Branch, INAC

What should government do to assist Aboriginal people to participate in the economy? I know a lot of business people and community leaders who would say it is really simple: "get out of our way". This is probably not a bad way to look at it, if one was to be utopian about it. The government is one of the least important pieces of the puzzle. We have communities, leadership, various partnerships, institutions, and others that are extremely important in shaping the future.

What should the role of government be? There are important roles for the government. We can be facilitators, we can be the broker. We should be providing some support for capacity and institutional development support. I think that there is a legitimate role to play. We want to provide access to markets, international and domestic markets, access to land, access to resources. However, in terms of the government's role, the government is very large, macro roles for which we are responsible for: security, sovereignty, monetary and fiscal policy, environment and providing good governance

SESSION 6: Legal Tools and Models to Develop Indigenous Economies

- A. Good Governance and Capacity Building – Brian Calliou, Director, Aboriginal Leadership and Management, Banff Centre
- B. Establishing Laws, Regulations and Policies – Ed Allen, CEO Nisga'a
- C. Joint Ventures, Partnerships and Corporations – Tracy Fleck, Lawyer
- D. Taxation Issues – Deborah Hanly, lawyer, Denise Lightning, Lawyer Alberta

SESSION 7: Legal Tools and Models to Develop Indigenous Economies

- A. Oil and Gas – John Dempsey, Indian Oil and Gas Canada
- B. Forestry - David Nahwegahbow, I.P.C., Chair, Forest Stewardship Council
- C. Tourism – Dawn Madahbee, Director, Northern Ontario Native Tourism Association

D. International Trade and Cross Border Issues – Wilma Jacknife, Lawyer

SESSION 8: Impact Benefit Agreements

Panel Chair Judge Gerald Morin

This session is a process of agreements for building indigenous economies, consultation and impact benefit agreements. All of you will agree that when you look at the scope of consultation and the impact, it is always very important. Looking all types of agreements, there are issues and concerns of the communities. When you look at impact benefit agreements, one has to appreciate why, where and how these things will be decided.

Letha MacLachan, Lawyer, Alberta,

I would like to set a bit of groundwork. I would like to say that my experience is grounded and rooted in the Northwest Territories. I don't have a lot of experience with the Indian Act or Reserves. One of the major themes of the message that I would like to put out about impact benefit agreements is that it is a term with many different meanings to many different people. One of the first and most important things that you have to do is clarify what the parties around the table that is negotiating one of these agreements: what is it that they mean? I.B.A. can mean impact benefit agreement, it can mean participation agreement and it can mean benefit agreements. Each of those terms takes on a different meaning depending on the geographic area that you find yourself, the nature of the resource development or development activity that the agreement activity is attached to. Depending on the nature of the meaning of the agreement, it will give rise to different expectations of the parties around the table. In essence, an I.B.A. agreement is a private contractual agreement. It can be bilateral, or multilateral.

Neil Reddekopp, Aboriginal Affairs, Alberta Government

I haven't been that involved in impact benefit agreements until about a year ago when I became a negotiator for Alberta. Certainty is one of the basic goals of our planning. If you are going to invest money, time and energy or credibility into something, we want as many variables as possible that might cause us future troubles, to be controlled. Imagine the anxiety over uncontrolled variables if you are going to sink billions in a multi decade project. The goal for industry is to put in place systems such that future developments in certain areas won't derail projects. Environmental impacts will always be an issue, but systems to identify, evaluate and mitigate environmental concerns have been developed over the years. In contrast, it would be hopelessly optimistic to suggest that the same progress has been made to even a promising start with regard to Aboriginal and Treaty rights issues, infringement, justification, and consultation. Today I will discuss one way of achieving long-term certainty. This is an agreement whereby in return for prescribed benefits, First Nations agree not to assert that resource development constitutes an unjustified infringement of their Treaty rights. I will review the basic elements, examples and precedents, requirements, legality, relationship between this type of agreement and the crown's duty to consult and finally, the circumstances when this type of agreement might be appropriate.

Ron Maurice, Lawyer, Calgary, Alberta

I want to mention that there is a brief discussion paper that was prepared on the duty to consult and impact benefit agreements. I will cover the origins of the duty to consult, when is the duty triggered, who owes the duty and what is the extent of the duty, remedies for breach and a discussion of impact benefit agreements.

On the origin of the duty to consult: one must look at sec. 35 (1) of the Constitution Act. That section affirms and recognizes Aboriginal and Treaty rights; the *Guerin* and *Sparrow* decisions of the Supreme Court of Canada, which recognize the fiduciary relationship of the Crown with Aboriginal Peoples; and the Honour of the Crown, as set out in the *Sparrow* decision, essentially sets out that the Crown has a duty to avoid or impair as minimally as possible Aboriginal or Treaty rights that could be affected. In every case where there is a prima facie infringement of an Aboriginal and Treaty right there is a duty to consult. The question is where does that duty lie on the spectrum from mere consultation to the other end of the spectrum, which is consent.

