



**“Making Aboriginal Policy: A Conference Ten Years after the Final Report of the  
Royal Commission on Aboriginal Peoples”**

**INDIGENOUS BAR ASSOCIATION IN CANADA  
18TH ANNUAL FALL CONFERENCE October 19-21, 2006 ▪ Bessborough Hotel ▪  
Saskatoon, SK  
FINAL SUMMARY REPORT**

**This Final Summary Report is not to be reproduced without permission.**

---

## **Acknowledgements**

---

The Indigenous Bar Association in Canada wishes to acknowledge the support of the following organizations which provided funding in support of this conference and IBA Student Day:

*Conference Sponsors Corporate Gifts*  
*Indian and Northern Affairs Canada*  
*Law Foundation of Saskatchewan*  
*College of Law, University of Saskatchewan*  
*Saskatchewan Justice and the Attorney General*  
*Law Society of Saskatchewan*  
*Assembly of First Nations*  
*Saskatchewan First Nations and Métis Relations*  
*Canada Law Book*  
*Law Society of British Columbia*  
*Canadian Bar Association*  
*Parlee McLaws LLP*

We would like to acknowledge and show appreciation for the Elders who made such important contributions to these events including Maria Campbell and Danny Musqua. Many thanks go to the judges, leaders, academics, lawyers, students, etc. who served as session chairs, plenary presenters, panel presenters, and workshop facilitators in the conference and who participated in Student Day. The quality of presenters at the conference is testament to the outstanding members of the IBA membership. We are very fortunate in being able to draw largely from our membership in ensuring conference delegates have exposure to some of the brightest and best minds on the various issues discussed at our conference.

Many thanks as well to our Conference Facilitator, Cheryl Troupe, and the students who worked with Cheryl in recording the conference workshops. Thanks and recognition also go to our Conference Coordinator, IBA Administrator Germaine Langan, and to the members of the Conference Planning Committee, which included myself, Paul Chartrand and Margaret Froh.

Finally, the Indigenous Bar Association wishes to express its gratitude to the University of Saskatchewan, College of Law for inviting us to this gathering and for the warm hospitality which they showed to us.

**Jeffery Hewitt Conference Chair & President, Indigenous Bar Association  
December 2006**

*“Making Aboriginal Policy: A Conference Ten Years after the  
Final Report of the Royal Commission on Aboriginal Peoples”*

---

## Table of Contents

---

### Introduction

#### I. Opening Keynote Address

Paul Chartrand "From the RCAP to the Future: Aboriginal Policy in Canada"

##### a) Plenary Presentations

- i) "RCAP's National Vision" - Alan C. Cairns
- ii) "RCAP's 'Nation-to-Nation' Visions" - Bob Watts
- iii) "Federal Response to RCAP" - Scott Serson

#### II. Aboriginal Institutions

##### a) Plenary Presentations

- i) "RCAP and the role of the provinces and territories in Aboriginal Policy" – David Hawkes & Bradford W. Morse,
- ii) "RCAP's Influence on the Courts" - Chief Justice Allan Lutfy, David Stack, Michael McCrossa

##### b) Workshops

- i) RCAP's Research Legacy - Marlene Brant Castellano & David Hawkes
- ii) RCAP's Influence on development of international standards - Armand McKenzie
- iii) Provincial Policy Commissions: Manitoba and Saskatchewan – Wendy Whitecloud, Paul Chartrand, Mr. Justice Murray Sinclair, Willie Littlechild
- iv) Indian Residential Schools Policy: Assessing RCAP & current initiatives - Kenneth B. Young

#### III. Keynote Address - Judge Mary Ellen Turpel-Lafond - "The Many Faces of Reconciliation: Aboriginal Rights, Jurisprudence, Theory and Practice"

##### a) Panel Discussion: "Public Inquiries and Aboriginal People"

- i) Peter Russell, Professor Emeritus, University of Toronto; Policy Side of Ipperwash "Public Inquiries and Aboriginal People" – a Summary of Dialogue
- ii) Frances Abele, School of Public Policy and Administration, Carleton University

##### b) Workshops – Public Inquiries and Aboriginal People

- i) Expert Witness Preparation - Donald E. Worme
- ii) RCAP and Urban Issues - Sylvia Maracle
- iii) Aboriginal Policy Development: Who Participates and How - Marilyn Poitras & John Whyte
- iv) Matrimonial Real Property - Candace Metalic, AFN
- v) Matrimonial Property – Holly King, Steve Francis, Matt Robinson, Indian and Northern Affairs Canada
- vi) Stolen Sisters – Beverley Jacobs, Native Women's Association of Canada

#### IV. National Policy Visions

##### a) A Vision or Strategy? Plenary Presentations - Tony Belcourt, Patrick Brazeau, Bev Jacobs

##### b) Workshops

- i) Understanding Truth and Reconciliation - Penny Andrews, Dwight Newman
- ii) Using Evidence Effectively: A View from the Bench - Judge L. (Tony) Mandamin
- iii) RCAP's Recognition Agenda: Aboriginal and Public Policy Responses - Bob Groves
- iv) RCAP and a Treaty Vision: Open Forum for Workshop Participants - Judge David Arnot and Dennis Callihoo

### Conclusion

*"Making Aboriginal Policy: A Conference Ten Years after the Final Report of the Royal Commission on Aboriginal Peoples"*

---

## **Preamble**

---

The following report records in summary the presentations and workshop outcomes from the Indigenous Bar Association's 18th Annual Fall Conference held at Saskatoon, Saskatchewan, on October 19-21, 2006.

---

## **Introduction**

---

The Indigenous Bar Association (IBA) held their 18th Annual Fall Conference at Saskatoon, Saskatchewan, on October 19-21, 2006. IBA Student Day was held at Wanuskewin Heritage Park on October 19, 2006 and brought together Indigenous law students from across Canada to meet and speak with Indigenous Elders, leaders, academics and lawyers on a host of issues relevant to the study and practice of law.

IBA Student Day was tremendously successful with approximately 40 Indigenous students from across Canada in attendance, and strong participation from senior members of the Indigenous bar, community leaders and Elders. Indigenous students heard from community leaders about how law students can serve Indigenous communities; from Elder Walter Linklater about how to respect Indigenous legal traditions; from practitioners about the various opportunities in law and policy in Canada and internationally; and about various programs and initiatives available to law students in Canada. IBA Student Day received strong support from law firms and government offices, which contributed to its great success.

The Annual Conference theme was "Making Aboriginal Policy: A Conference Ten Years after the Final Report of the Royal Commission on Aboriginal Peoples." The four plenary sessions included keynote addresses, panel presentations and discussions on the conference theme. In addition there were three corresponding workshop sessions with concurrent workshops offered in breakout rooms over the day and half of the conference, supporting discussion from the plenary and panel presentations and expanding on specific dialogue. When timing allowed, there was a question and answer period following the panellist/key note addresses. Participants also had an opportunity to dialogue among themselves and with presenters more thoroughly within the breakout sessions.

Three questions were consistently asked in each workshop session to record the discussion and presentation given. The questions were generic in nature to fit with all workshop sessions:

*What are some of the critical challenges that need to be addressed?*

*What are some key successes worth noting?*

*What are our key messages from this workshop?*

Workshop sessions were recorded by law student volunteers. Summaries for the workshops were framed around the questions noted above and the highlights were recorded in the flipchart notes.

*"Making Aboriginal Policy: A Conference Ten Years after the  
Final Report of the Royal Commission on Aboriginal Peoples"*

---

**Opening Address - Paul Chartrand, I.P.C.; College of Law, University of Saskatchewan and Former Commissioner, RCAP**

---

The conference began with a keynote address entitled “From the RCAP to the Future: Aboriginal Policy in Canada” from Paul Chartrand, I.P.C. The opening keynote address formed the foundation for dialogue throughout the conference.

Mr. Chartrand addressed the question, *‘how are we, as Aboriginal peoples, to live in 20 years?’* This question must be looked at in two distinct but entwined aspects - in an economic sense and in a distinct peoples sense. By describing the Commissioners journey to 96 places, listening to 206 interveners and speaking with 1032 Aboriginal groups in 172 interview days, Mr. Chartrand described the foundations by which RCAP was created. The focus of the report was on a nation-to-nation vision. The Commission addressed the standards necessary for effective government, namely legitimacy, power and resources.

Mr. Chartrand spoke of the sad accounting of Canada domestically with regard to not implementing the recommendations of the RCAP. He spoke of Canada’s short-term approach and the policy of Canada to place Aboriginal issues at the bottom of the priority list. Since 1998, this approach has led to criticism of Canada internationally. Mr. Chartrand spoke of the hurdles that Aboriginal peoples and organizations face presently and in the future. The governments of Canada spend all their efforts stamping out fires and do not address the underlying issues. Racism, the Elders suggest, can only be resolved through education. Additionally, Canada is based on the understanding that all citizens are equal and Aboriginal peoples with distinct communities that are constitutionally recognized create a ‘sub-state’ that does not fit into that vision. Finally, the recognized rights are based on an understanding that farmers are better than hunters. This has led to language by the courts that describes ‘harvesting rights’ and thereby limits Aboriginal hunting rights.

---

**I. REPORT CARD Presentations - Royal Commission on Aboriginal Peoples (Chair Judge Mary Ellen Turpel-Lafond)**

---

**a) Plenary Presentations (Day One Morning Session)****i) “RCAP’s National Vision” - Alan C. Cairns, author of “Citizens Plus”**

- RCAP is a document of Aboriginal Nationalism
- RCAP use of nation is useful and problematic
- Nation, in RCAP addresses 3 themes: Aboriginal people belong to nations and are not standard Canadian citizens, Relations should be nation to nation, and Canada is a Multi-national federation
- RCAP indicates the import of Aboriginal nations but states these ‘Nations’ do not exist

*“Making Aboriginal Policy: A Conference Ten Years after the Final Report of the Royal Commission on Aboriginal Peoples”*

- RCAP definition of nation would only allow “60 nations from the over 600 autonomous bands.” Therefore close to 600 bands would need to be “removed”
- Consolidation and aggregation to meet the number of nations stated by RCAP would not be feasible
- The concept of nation that the Commission advanced is not a reality, the idea of consolidation problematic and therefore the goal of nationhood espoused unattainable

**ii) RCAP’s ‘Nation-to-Nation’ Visions” - Bob Watts, Chief of Staff Assembly of First Nations (AFN)**

- *Campbell et al v. AG BC/AG Cda & Nisga'a Nation et al 2000 BCSC 1123*, J.A. Williamson recognized the purpose of ss. 91 & 92 of the Constitution Act was not to split powers but to bring unity
- Further, the British Crown could only give what was theirs to give and Aboriginal lands and rights were not theirs to give
- AFN is working on a “Report Card of RCAP”. Canada is not getting very good marks. Failing in areas of health, homes and other basic needs for Aboriginal people
- Concept of Complementaries suggests a whole is made up of many parts. To work together as a whole there must be respect for not just law but also concepts, values and traditions.

**iii) “Federal Response to RCAP” - Scott Serson, Federal response to RCAP**

- A brief review of the objectives of Gathering Strength was provided.
- Four components of Gathering Strength that must be addressed:
  - Restructure relations between Aboriginal and Non-Aboriginal Apology and new commitment,
  - Strengthen Aboriginal Government: Capacity building, Development of resource centers;
  - Treaty oriented self-government; Treaty Commissioners; and Review comprehensive claims.
- Develop new fiscal relations, Transfer payments rather than payouts, Support community and economy, Housing policy, Aboriginal Head Start, Welfare reform; and Access to lands and resources.
- Gathering Strength would have been a good first step to meaningful change.
- Gathering Strength became an end onto itself which meant it fell far short of the mark.

---

## **II. ABORIGINAL INSTITUTIONS**

**(Chair L. (Tony) Mandamin, Alberta Provincial Court Judge)**

---

### **a) Plenary Presentations (Day One Afternoon Session)**

#### **i) “RCAP and the role of the provinces and territories in Aboriginal Policy” - David Hawkes, RCAP Co-director of Research, Bradford W. Morse, Faculty of Law, University of Ottawa**

- Provinces and Territories did not come actively forward in making submissions to the Commissioners
- BC Ministry of Education and Alberta were the only ones with submission
- Unable to find a formal response from any provincial or territorial governments; informal statements were for the federal government should do something with it so thrust to include provincial and territorial governments not picked up.
- Commissioners made some recommendations along the way and in Volume 5 made 115 pages related to all parties.
- Section 1.16.1 federal, provincial and territorial governments with Aboriginal peoples of Canada to build renewal of the relationship.
- Section 2.2.9 recommendation directly to provincial & territorial governments in meeting treaty implementation processes and renewal and new treaties.
- Formal reviews of the RCAP report: 1. Saskatchewan (Métis & Off-reserve First Nations Strategy & Commission on FN and Métis People and Justice Reform) did decide to negotiate self-government agreements through the existing policies in Canada. Vol. 1 of report referenced qualified support of some of the recommendations.
- GNWT – released report in 1997 grouped by recommendations not supported; recommendations being considered; and recommendations supported.
- They were willing to work in support of some of the recommendations such as development of Nunavut etc.
- Not all provinces or territories reflected RCAP report in subsequent policy. Some did look at it, but not all.
- Why so little response?: viewed as federal commission so no need to respond; seen as s. 91(24) federal issue so not their place to respond; no political benefit to respond; little pressure from Aboriginal organizations to act; and no pressure from general public.
- There is no conclusion at this point still a work in progress.

#### **ii) “RCAP’s Influence on the Courts”, Chief Justice Allan Lutfy, Federal Court of Canada, David Stack, Saskatchewan Bar, Saskatoon, Commentary: Michael McCrossan, Ph.D. student, Carleton University**

## **David Stack**

- Over the past 10 years RCAP referenced by the Court in over 150 cases. Six areas the Courts have used RCAP include:
- Judicial Discretion (Criminal Justice System) challenge jurors for prejudice  
*Williams* –used for prejudice related to Aboriginal people in report; also over incarceration of Aboriginal peoples.  
*Gladue* and approach taken with respect of sentencing circles much same as the report. Two step process s. 217(e) of the Criminal Code.
- Modification for Oral History: courts to accept oral evidence in appropriate circumstances.  
Delgamuukw SCC cited RCAP report extensively
- Assess Charter Equality cases: s.15 challenges RCAP figured prominently  
Corbiere; Lovelace, Gull Bay
- Respect to Self-Government:  
*Delgamuukw* did not look at self-government but mentioned the report for future reference;  
*Mitchell* used shared sovereignty from the report
- Remedies for negotiations and consultation: duty to consult  
Nunavut re establishing a national park – demands a good faith process; court develop remedies encourage negotiations.
- Define rights of Métis people: role in more recent major cases
- *Powley* and *Blais* rights prior of entrenchment of Canada;
- Labrador noted extent RCAP relied on by the report of the Métis Nation as being culturally unique.
- How to get the report into the court room?
- Each case approach will be different as in evidence, historical background, e.g. Reserve creation, or secondary resource.

## **Chief Justice Lefty**

- Federal Court and more recent initiatives of the Court to be able to respond more effectively to Aboriginal issues.
- Note RCAP said inappropriate place for the resolution of land claims court cumbersome, costly and insensitive way of resolving land and resource issues.  
Court has three initiatives:
  1. Effect dialogue with Aboriginal Bar;
  2. Meaningful judicial education program; and
  3. Hope to develop an approachable court



## **Michael McCrossan**

- *Mitchell* decision where the court merges sovereignty and has the various nations of Canada arriving together as one vessel e.g. Two Row Wampum. One treaty partner can not unilaterally change the treaty to one row.
- *Delgamuukw* quotes passage on oral history; if compare court omits two sentences in the middle of the passage. Need to pay more attention in the manner that the court is invoking RCAP. So that the use of RCAP does not fundamentally alter the Constitution.

## **b) Workshops - Aboriginal Institutions (Day One Afternoon Session)**

- RCAP's Research Legacy- Marlene Brant Castellano, RCAP Co-director of Research, David Hawkes, RCAP Co-director of Research**
- RCAP's Influence on development of international standards - Armand McKenzie, Innu representative at the United Nations**

### **Key Challenges**

- The research legacy of RCAP is composed of: the product; the knowledge created and disseminated; and the research process, the transformation of the way that research was done.
- Issue of who has the authority to speak on behalf of Aboriginal people.
- Who should undertake the research? people outside the community; people who are members of the community itself
- insider may be most knowledgeable, but the outsider may have more insights precisely by coming from outside
- How to make the research valid in both the non-Aboriginal and Aboriginal communities?
- There is a tension between how governance has been imposed under the Indian Act vs. going back to more traditional approaches.

### **Key Successes/Points**

- Research in RCAP was organized in holistic ways, not along traditional research subject areas but rather reflected specific issues like governance, land, social and cultural affairs.
- RCAP couldn't take credit for the work that had had already been going on for decades in nations and communities, but RCAP did highlight what communities had already been doing
- RCAP addressed the need to develop ethical guidelines
- Commissioned Sixty-five short papers to identify where the research was solid and where there were the gaps.
- These papers were followed by two workshops.
- In 1993, after meetings with government and Aboriginal organizations, RCAP produced ethical guidelines and an integrated research plan.
- Formed the Research Advisory Committee which included both academics and Aboriginal people who had some experience in research.

*"Making Aboriginal Policy: A Conference Ten Years after the Final Report of the Royal Commission on Aboriginal Peoples"*

- Communities undertook research, whether alone or in partnership with more traditional researchers.

### **Key Messages**

- By codifying ethics, there may be less emphasis on training students and individuals to internalize ethical rules.
- Making rules tighter does not necessarily make the researchers more ethical.
- Following RCAP we need to think of what is still missing and what is needed.
- Federalism 2 pillars – federalism and self-rule.
- In response to guidance by Aboriginal people, RCAP focused on self-determination.
- Shared rule must be researched and options determined.
- What binds us as we move forward?
- What are institutions that are needed?
- How are existing institutions to change to incorporate Aboriginal peoples' faces?
- The broader community is interested in understanding Aboriginal peoples knowledge. This can provide hope and point to a new direction.
- Through the RCAP experience and beyond, there has been a transformation in Aboriginal people's view of research.

### **iii) Provincial Policy Commissions: Manitoba and Saskatchewan- Wendy Whitecloud and Paul Chartrand, I.P.C., Manitoba's Aboriginal Justice Implementation (AJI) Commission (2001), Mr. Justice Murray Sinclair, Manitoba Queen's Bench and Manitoba AJI Commission (1991), Willie Littlechild, I.P.C., Saskatchewan Aboriginal Policy Commission (2004)**

- spoke to the roles of each of their own commissions,
- looked at advances in aboriginal-government relations,
- addressed concerns at which speed of change is progressing

### **iv) Indian Residential Schools Policy: Assessing RCAP & current initiatives - Kenneth B. Young, AFN**

#### **Key Challenges**

- Four (4) Residential school survivors per day pass away
- Voluntary process- no one has to take deal
- If even one of nine courts do not approve then deal is dead
- If 5000 former students do not approve then deal is dead
- Many class action lawyers were not taking best interest of their clients
- Two firms receiving \$40 million -Another \$20 million
- Canada has agreed to make ADR more fair and less complicated - Indian Assistance Process (IAP) is 'new' ADR - Survivors receive 100% of their compensation - Student-on-student abuse can be heard - 15% of legal fees covered by Canada - Unique compensations available
- To make claim individual must be alive May 30, 2005

*"Making Aboriginal Policy: A Conference Ten Years after the Final Report of the Royal Commission on Aboriginal Peoples"*

- Government is missing information for many Elders
- One possible solution is affidavits to establish attendance

### **Key Successes/Points**

- Repairs the flawed ADR that re-victimizes people
- Streamlines and therefore ends long court battles
- Lawyers will be paid fees up until May 30, 2005
- Early payment- claimant who was 65 years old on may 30, 2005 will get an \$8,000 down payment
- The average payment will be \$25,000 (Common Experience Payment)
- Canada has agreed to provide as much money as necessary to resolve these claims
- Any surplus will go into Trust to support language and cultural programs
- AFN convinced Canada to accept 100% responsibility
- Truth and Reconciliation Commission has a budget of \$60 million
- Healing Foundation has 5 year endowment of \$125 million

### **Key Messages**

- AFN negotiated on behalf of former students
- Agreement includes Metis and Inuit
- Many former students don't realize the full extent of the way the experience has affected them
- This is a class action and the former students are the class; just like any class action, you can give notice and opt out

---

### **III. Keynote address - The Many Faces of Reconciliation: Aboriginal Rights, Jurisprudence, Theory and Practice”- Judge Mary Ellen Turpel-Lafond, Provincial Court Saskatchewan**

---

Judge Mary Ellen Turpel-Lafond addressed conflicting visions of reconciliation through case law and through the authority of the Royal Commission on Aboriginal Peoples (RCAP). She spoke of the theoretical differences between the case law and RCAP and said that it is important to theorize Aboriginal and treaty rights, not just for Indigenous legal theory but for Canadian legal theory as well. RCAP was about completing the “Circle of Confederation.” RCAP recognized that the First Nations, Inuit and Métis Peoples all have claims to distinct political entities, the accommodation of these entities is a key element of RCAP. The concept of reconciliation is actually at odds with RCAP as through case law it appears evident that Aboriginal people are forced to negotiation under the guise of Crown sovereignty acceptance and extinguishments of rights. Given these considerations what strategic and pragmatic discussions does this require for Aboriginal people to effectively advance these rights? Some of the current case law focuses on treaties and consent being the pillar of the treaty relationship. RCAP raises the same issues.

#### **a) Panel Discussion: “Public Inquiries and Aboriginal People”**

##### **i) Peter Russell, Professor Emeritus, University of Toronto; Policy Side of Ipperwash “Public Inquiries and Aboriginal People” – a Summary of Dialogue**

###### **Key Points**

- Commissions of Inquiry can be very alienating, Aboriginal people are not very enthused about them
- Two questions in the Ipperwash Commission: What role did the police play in Dudley George’s death; What changes need to be made to prevent these incidents
- Treaties should be taken very seriously
- Political context surrounding Dudley George’s death must taken into consideration
- Evidence focuses on policy and what the government should do in these types of blockade situations; how to improve relations to avoid further incidents
- Much work to be done
- Reformed policy, look to Australia

##### **ii) Frances Abele, School of Public Policy and Administration, Carleton University**

*“Making Aboriginal Policy: A Conference Ten Years after the Final Report of the Royal Commission on Aboriginal Peoples”*

### **Key Points**

- The Royal Commission's role is to shape policy and elaborate on the Constitution of Canada
- RCAP is a gigantic piece of unfinished business and represents a look at how to live together
- Purposes of Commissions; engage parties in a discussion of a problem; legitimize the problem; help us remember what has occurred in the past; they crystallize new paradigms; create permanent impacts on social relations by bringing people together

## **b) Workshops – Public Inquiries and Aboriginal People**

### **i) Expert Witness Preparation - Donald E. Worme, Q.C., Semaganis Worme**

#### **Key Challenges**

- Witnesses need to be prepared for court, may be nervous
- Witnesses should receive information about court processes, role of the parties, burden of proof and how things should unfold
- Must be aware of the rules of evidence as set out in case law and legislation
- Expert Witnesses are permitted to provide opinion evidence

#### **Key Successes/Points**

- When calling a person as an expert witness it is important to meet the four criteria: relevance; necessity of assisting the judge or jury; absence of exclusionary rule; and proper qualification with area of expertise clearly defined
- It is difficult to reconcile this criteria with the Elders and Aboriginal community

#### **Key Messages**

- IBA will be looking at the issue of Indigenous Knowledge and the use of Elders as expert witnesses and will be presenting a paper to the Federal Court.

### **ii) RCAP and Urban Issues - Sylvia Maracle, Ontario Federation of Indian Friendship Centres**

### **iii) Aboriginal Policy Development: Who Participates and How - Marilyn Poitras, University of Saskatchewan, John Whyte, Saskatchewan Institute of Public Policy, University of Regina**

### **Key Challenges**

- Title should be “Where are the Indians?”
- Aboriginal policy comes up whenever there are government issues with non-renewable resources or any other government issues

### **Key Successes/Points**

- Aboriginal people and government should do it together
- When non-government takes on policy that affects Aboriginal people a path is worn to political leaders – political leaders do not always know Aboriginal issues
- Consultation is important, with the people to whom is affected, not the government

### **Key Message**

- It is up to Aboriginal people to make government accountable to get the message to the right people
- Aboriginal people should be part of systemic decisions

## **iv) Matrimonial Real Property, Candice Metallic, Assembly of First Nations**

### **Key Challenges**

- 1986 Since *Derrickson* and *Paul*—nothing done since.
- Government of Canada intends to introduce legislation.
- Notwithstanding AFN wanting to address legislative and non-legislative options.
- Dialogue have not begun, but AFN to partner with regional affiliates proposing two options:
  - Recognition legislating to provide instruments of MRP---recognize jurisdictions. Enact a recognition bill –recognition of jurisdiction on reserve
  - Government to Government jurisdiction between Federal and First Nations. Canada and First Nation can enact legislation solutions subsequently in accordance with political accord. Political accord recognizes and applies FN jurisdiction.
- Still in consultation and there maybe other options these two put forward.
- One session in every region. Partnering with the regions and will give people a budget. Meeting is open to urban but there are not sufficient resources to pay for urban people. Many people who were affected are not on reserve anymore.
- AFN needs more time to get consultation work done. AFN is supposed to start in October however not funds have been allocated to start.
- I is up FN to develop their own codes.

### **Key Successes/Points**

- Sucker Creek in Ontario used by-law in place regard MRP and Federal government does recognize it.
- First Nation Land Management Act has provision for implementation of M.R.P.
- 3rd phase being Jan –Mar 2007-consensus building process and still at table
- Wendy Grant-John appointed to oversee process.

*“Making Aboriginal Policy: A Conference Ten Years after the Final Report of the Royal Commission on Aboriginal Peoples”*

- June 21 2006 – the Minister announced plans to address the issue. Invited AFN and INAC to help address legislative gap.
- AFN developed a process for conducting regional dialogue, not characterized as consultation.

### **Key Messages**

- AFN-results of regional reports and put in final report and National Chief will give direction and mandate of the consensus basis. NWAC, AFN, INAC consensus between all. More info on website. <http://www.afn.ca/article.asp?id=3069>
- NWAC is in favour of amending the Indian Act whereas AFN is not.
- Make sure we understand what First Nations are agreeing to i.e. Pros and cons of the legislation.

## **v) Matrimonial Property – Holly King, Steve Francis, Matt Robinson, INAC**

### **Key Challenges**

- Families are in crisis, Matrimonial Property laws do not apply on reserve
- AFN, INAC and NWAC are all mandated to work together to solve these problems
- Consensus among all three is sought on how to approach/decide Matrimonial Real Property Issues
- How to avoid same problems as Bill C-31?
- Moving very quickly

### **Key Successes/Points**

- INAC is consulting with the Provinces; AFN is holding dialogues with the regions; NWAC is consulting with individuals and communities affected
- IBA has worked in this area in the past and may provide assistance in drafting legislation

### **Key Dialogue Points**

- Solutions should be inclusive of the traditional approaches
- Must return to the natural laws and balance
- Fee simple used to preserve matrimonial property is not a solution
- Application of provincial laws are not solutions
- The whole process is too short and – require proper consultations
- There is a positive duty to consult with the holders of the rights, why hasn't INAC done this?" INAC's response was that they didn't know if they had an obligation to consult and wouldn't know until (if) they got sued.
- Must have resources to follow through with the legislative and non-legislative options to prevent another mess like Bill C-31
- Adequate resources are critical at every stage
- Big power imbalance with the 3 parties, the women are at a disadvantage again
- What draft legislation are you proposing? NWAC is drafting but no-one has seen it.

- INAC suggested that they would ask if they could share the drafting of Memorandum to Cabinet or any legislation that was being considered.
- The IBA has worked on these issues before, why not engage some of the people who have already worked on these issues.

#### vi) **Stolen Sisters – Beverly Jacobs, Native Women’s Association of Canada**

##### **Key Challenges**

- In October 2004, Amnesty International released the *Stolen Sisters Report (Report)*. This report was commissioned partly in response to the fact that over five hundred Aboriginal women have been murdered or gone missing over the past twenty years, according to estimates by the Native Women’s Association of Canada (NWAC).
- Aboriginal women between the ages of 25 and 44 with status under the *Indian Act* are five times more likely than all other women of the same age to die as the result of violence.
- Their fate has not been adequately addressed by Canadian authorities, including the police and the public. Different treatment based on race

##### **Key Successes/Points**

- Amnesty Report has put the issue in the public’s vision. NWAC is working on these issues and bringing more education to the public to help address the problems.
- Communities themselves are working hard at raising awareness in this area ie: walks across the country, protests on Parliament Hill, education in the school systems etc.

##### **Key Messages**

- Colonization, racism, the *Indian Act*, residential schools, laws, policies and regulations that have subjugated Aboriginal women to a lifetime of violence, poverty and degradation have created the crisis for Aboriginal women today. Everyone, the public, leaders, families, women and the men must all work together to address these problems.



---

## **IV. National Policy Visions**

---

### **a) A VISION OR STRATEGY - Plenary Presentations, (Day Two Afternoon Session)**

#### **i) Métis National Council, Tony Belcourt, President, Métis Nation of Ontario**

##### **Key Points**

- The Métis Nation faces discrimination in Canada but are accepted internationally
- The Métis Nation of Ontario has created a registry of Métis people and created community councils – the Métis have come a long way and are getting stronger – acting as a “people”
- RCAP needs to be implemented. These recommendations were valid 20 years ago and will be 20 years ahead. Volume 4 has helped the Métis with relationship building.

#### **ii) Congress of Aboriginal Peoples, Patrick Brazeau, National Chief**

##### **Key Points**

- All people have a right to share in economic bounty
- Aboriginal communities will work together to achieve self government for all Aboriginal people
- Should create a department of Aboriginal Affairs and eradicate INAC
- Create one leader for all Aboriginal people

#### **iii) Native Women’s Association of Canada, Bev Jacobs, President**

##### **Key Points**

- The vision is to bring back balance into the communities and the strategy is getting there
- “Our way of being” has to be included in all of the work we do
- We have been subject to “Eurocentric diffusionism”
- We change this through two row wampum thinking and the Haudenoshonee Constitution
- Must revitalize our natural laws

### **b) Workshops – National Policy Visions**

#### **i) Understanding Truth and Reconciliation - Penny Andrews, Faculty of Law, City University of New York, Commentary: Dwight Newman, Associate Dean, College of Law, University of Saskatchewan**

##### **Key Challenges**

- Histories of South Africa and Canada are different

*“Making Aboriginal Policy: A Conference Ten Years after the Final Report of the Royal Commission on Aboriginal Peoples”*

- The TRC looked at modern apartheid not colonization, framed in terms of race not culture

### **Key Successes/Points**

- The TRC is a positive model nevertheless
- Restorative justice was adopted and became a revolutionary process that created a visionary constitutional framework on equality

### **Key messages**

- Reconciliation needs to be about peace and justice
- The courts continue to reconcile from a dominant perspective without acknowledging pre-existing laws, traditions and cultures
- This means thinking of how to fit into a dominant culture rather than a consideration of equals

## **ii) Using Evidence Effectively: A View from the Bench - Judge L. (Tony) Mandamin, Provincial Court of Alberta**

- Used a strategic approach when he was counsel

### **Key Challenges**

- Provision of other information to support Elders testimony

### **Key Successes/Points**

- Being aware of concepts and provide evidence to help resolve any issues

### **Key Messages**

- Has had the opportunity to accept expert opinion evidence from community members; conduct an inquiry into prescription overdoses; look at community issues with input from the community on the process and results. An Aboriginal lawyer was engaged to work with the community. The Gladue case provided the opportunity to hear important evidence for sentencing

## **iii) RCAP's Recognition Agenda: Aboriginal and Public Policy Responses - Bob Groves**

### **Key challenges**

- Gathering Strength was the only response the federal government had to RCAP

### **Key Successes/Points**

- There are two theories of recognition, the Constituent Theory and the Declaratory Model
- Federal government should establish the policies then all parties would be valued in building recognition.

*"Making Aboriginal Policy: A Conference Ten Years after the Final Report of the Royal Commission on Aboriginal Peoples"*

## **Key Messages**

- A National Framework should be developed to implement RCAP

### **iv) RCAP and a Treaty Vision: Open Forum for Workshop Participants Moderators: Judge David Arnot, Treaty Commissioner for Saskatchewan; and Dennis Callihoo**

## **Key Challenges**

- The OTC was created in 1997, and it had a mandate to determine the meaning of treaties in a contemporary context.
- We were instructed to bring a common understanding between Canada and the FSIN and we brought that in document form *Treaties and the Road to Reconciliation*.
- Engaged in this interest based discussion and thus agreed to 14 principles for negotiation
- Our mandate on the exploratory treaty table focused on a number of key issues, and we done that for the most part. There are three more reports due and March 2007 is the end of the mandate, and it's hoped that Canada and the FSIN will create a new mandate to extend this relationship.
- Canada doesn't have a policy, just a policy vacuum.
- RCAP was very strong and clear about its recommendation about the education of treaties;
- We've done that through the use of elders, spiritual elders, communication elders, and philosophy elders.
- A kit is actually an anti-racism education-kit because racism is a foremost issue affecting First Nations and it's affecting the spirit and intent of the treaties.
- The RCAP recommended that education about treaties start in the classroom, and we have started with that step.

## **Key Successes/Points**

- Treaty 6 cuts a wide swath through central Alberta
- Treaty is important, and in this part of the world, it's fundamental. The emphasis on treaty was started on the Prairie Treaty Alliance. Erik Tootoosis had spoken of putting all of these treaty groups together, and it's central to treaty advocacy. This causes some political dualities with the AFN

## **Key Messages**

- There's a large picture in the boardroom where they worked regarding the treaty, and so you would look upon this treaty and think to yourself, what is treaty? It's the lives of those people...their language, their entire way of life. When First Nations people say "treaty," it's loaded and it means many things with a depthness and richness of colour to it.

*"Making Aboriginal Policy: A Conference Ten Years after the  
Final Report of the Royal Commission on Aboriginal Peoples"*

---

## **Conclusion**

---

This year's conference hosted nearly 40 presenters. It provided individual speakers, plenary discussions, an open to the public address and 17 separate workshops. The conference brought together the past and the present to address the future of Aboriginal in the context of the RCAP report. Presenters described how the report was formed, including the struggles and joys. They shared concerns that were brought to the forefront and were at the inception. They addressed how the report has been received; the successes and the failures. Finally, the participants described their visions for the future, learning from our past.

One of the overriding themes was that Aboriginals must be heard. The IBA has a voice that is being heard and recognized. We are part of the equation that RCAP recognized and indicated must be addressed. As a legally trained voice within Aboriginal communities, we act as guardians for the ideas of Aboriginal peoples. RCAP provides a road map.