



Winter Newsletter

March 2006



IBA NEWSLETTER WINTER EDITION — MARCH 2006

# Indigenous Bar Association

## President's Message

By Jeffery Hewitt, IBA  
President

**D**ear Members:  
Welcome to the Winter Newsletter of the IBA. I hope you like the new look of the newsletter and I know that there are even more exciting changes coming in future editions.

This is the first opportunity I have had to address the members of the IBA since our last gathering in October, 2005 in Mnjikaning First Nation. The board and I have been busy meeting monthly since October planning our next events and continuing to promote the IBA, our members and our objectives in many venues.

Indeed, this past November the IBA made submissions to a sub-committee of the federal government on federal judicial appointments, which are available on our website. The submissions continued to assert to the federal government that the IBA remains committed to promoting more judicial appointments from the Aboriginal bar at all levels of courts in Canada – including the Su-

preme Court of Canada. As we now know, the replacement of retired Justice Major from the Supreme Court was not an Aboriginal jurist but appellate and other court vacancies will continue to come and the IBA must continue to be vigilant in promoting Aboriginal jurists to these courts to continue to entrench of our customs and traditions and give recognition to our founding partner status in confederation.

As I have come to understand it, the winter months are a time to contemplate the lessons we have learned this these past seasons and how we will use them to enrich ourselves going forward. Winter is also the time we follow the bear deep into the cave to ground ourselves in the earth again and dream of our future. So it is then that winter presents the perfect time for a first ever retreat of the board of directors and the Indigenous Peoples' Counsel. We are all very excited to meet in Calgary in early March to work together on dreaming a five-year workplan and vision for the IBA. This is an important initiative that I trust will render its value many-fold for the IBA in the years to come. The board will begin working on the plan as directed through the wisdom of

the IPCs and present highlights to you in our Spring edition of our newsletter with the full version to come in our Annual Report this Autumn.

Enjoy this edition of the IBA newsletter and many thanks to the Membership and Outreach Committee for working on this and to those of you who have made your contributions. Thanks also to the many members who have been working with the board, committees and me to ensure the IBA continues to be the strong, professional, Aboriginal organization that it is.

Yours truly,

*Jeffery Hewitt*

*President*

### IBA BOARD OF DIRECTORS 2005-2006

Jeffery Hewitt, President  
Judy Daniels, Vice-President  
Kathleen Lickers, Treasurer  
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Brian Calliou, Member-At-Large  
Denise Lightning, Member-At-Large  
Lee Schmidt, Member-At-Large  
Koren Lightning-Earle, Western Student Rep  
Emma Taylor, Eastern Student Rep  
.....  
Germaine Langan—IBA Administrator

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The IBA is seeking feedback from Indigenous law graduates and law students on how we can improve our programs and services.

### MEMBERSHIP SURVEY

**Complete survey and enter to win!**

Complete a survey and enter your name to win a \$300 credit against your 2006 IBA conference fees. For more information visit our website at: [www.indigenousbar.ca](http://www.indigenousbar.ca)

# Annual IBA Fall Conference a Great Success

The 17th Annual IBA Fall Conference, "Exercising Indigenous Jurisdiction over Collective Rights" was, by all accounts, a great success. The conference was held October 21-22, 2005 at the Chippewas of Rama Mnjikaning First Nation in Ontario, and showcased the outstanding talent of the IBA membership.

The four main plenary sessions of the conference focused on: Report Card on Collective Rights and Jurisdiction; Aboriginal Institutions; Challenges to Exercising Indigenous Jurisdiction; and Economic Development.

The opening keynote address from Roberta Jamieson, I.P.C. entitled "Collective Rights, Collection Action, Exercising Our Jurisdiction: Making It Happen" set the tone for the conference. Roberta challenged conference participants to take action in revitalizing our collectives and asserting our collective rights.

The IBA celebrated its membership at the Banquet and Awards Ceremony on October 21st. First Nations leaders including Rama Mnjikaning Chief Sharon Stinson Henry, Ontario Regional Chief Angus Toulouse and AFN National Chief Phil Fontaine addressed the delegates and guests speaking to some of the challenges and successes in asserting Indigenous jurisdiction over collective rights. A Commemoration DVD presentation was made at the Banquet to acknowledge and celebrate the lives of IBA members who passed on recently.

## James Sakej Youngblood Henderson Receives I.P.C. Designation

The Banquet ended with a celebration of our newest member of the Indigenous Peoples' Counsel or I.P.C. — James Sakej Youngblood Henderson. The Smoke Trail Drum offered an Honour Song in recogni-

tion of Sakej and his outstanding work serving Indigenous Peoples.

## IBA Student Day 2005

IBA Student Day was held at the Rama Mnjikaning Community Hall on October 20th and brought together approximately 40 Indigenous law students from across Canada. There was strong participation from senior members of the IBA, community leaders and elders at Student Day where students and presenters engaged in dialogue on a variety of issues including how students can serve Indigenous communities, how to respect Indigenous legal traditions, opportunities in law and policy in Canada and internationally, and various programs available to law students across Canada. ■

Left to right: IPCs Dave Nahwegahbow, Roberta Jamieson, Paul Chartrand, Delia Opekokew, IBA President Dianne Corbiere, and James Sakej Youngblood Henderson, I.P.C. Recipient 2005 (Photo: D. Corbiere)



### IBA Winter Newsletter March 2006

**Co-Editors:** Catherine Moreau  
& Margaret Froh

#### Contributors:

Brian Calliou  
Judy Daniels  
Signa Daum Shanks  
Koren Lightning-Earle

Jeffery Hewitt  
Deborah Hanly  
Charles Smith  
Emma Taylor  
Jean Teillet

**Next issue:** Spring—May 2006

To submit an article for consideration for publication please contact:

[mfroh@indigenousbar.ca](mailto:mfroh@indigenousbar.ca)

# NAA Awards Recognize Bernd Christmas and James Sakej Youngblood Henderson

By Deborah Hanly

James (Sakej) Youngblood Henderson and Bernd Christmas are household names in Indigenous legal circles and in the broader legal community. Members of the IBA were not surprised when the National Aboriginal Achievement Awards (NAAA) awarded Sakej and Bernd with the 2006 Award for Law and Justice, and the 2006 Award for Business and Commerce respectively. Both recipients have been long-time contributors to the IBA, sharing their personal and professional histories in plenary sessions, workshops, over dinner or coffee. Both men are busy but accessible to other Indigenous lawyers.

## **Bernd Christmas—Business & Commerce NAAF Award 2006**

As I reviewed Bernd's impressive list of credentials and well-known accomplishments -- the first Mi'kmaw to graduate from law school, the CEO of the phenomenally successful Membertou Nation business constellation -- I would like to share some of Bernd's lesser-known but equally impressive contributions to the Indigenous legal community.

I first met Bernd in May 1988 at the Programme of Legal Studies for Native Peoples in Saskatoon, aka, "the summer program" for its alumni/survivors. Bernd

was, at that time, Executive Director of the Toronto Friendship Centre and having distinguished himself in that position, he was ready step-up his contribution to the larger Aboriginal community and to his people. Bernd and I were enrolled at different law schools in Toronto and the schools had a history of intense competition which pre-dated our attendance. Despite pressure from both law school communities to extend that competition to the Aboriginal law student body, Bernd co-operated with me to bring in speakers like Judge Murray Sinclair (as he then was) and MP - Ethel Blondin-Andrew to speak to Aboriginal law students at both schools in neutral locations. He saw the "bigger picture" then as he does now.

The local, national and international acclaim that has followed Bernd in his short legal career is a testament to his energy and creativity. He doesn't think outside the box -- he lives outside the box! The following excerpts from the National Aboriginal Achievement Awards website demonstrate why Bernd was chosen to receive the Business & Commerce award:

"In 1995, at the request of Chief Terrance Paul, Bernd gave up his lucrative and promising career as an elite corporate lawyer to return home to assume the leading business role for his

Mi'kmaw community of Membertou. A decade later, the results of that decision have been dramatic.

Since 1995, he has helped bring Membertou First Nation go from a one million dollar deficit with an operating budget of six million dollars to a current operating budget of sixty-five million dollars. With the support of his Chief and Council,

*(Continued on page 5)*



NAAA Recipient Bernd Christmas – 2006 Award for Business and Commerce (Photo: Membertou First Nation)

## **INDIGENOUS BAR ASSOCIATION LAW STUDENT SCHOLARSHIP**

Established in Memory of Ronald Peigan

### **2005 Recipient—Nicole Richmond**

The IBA Law Student Scholarship was awarded in October 2005 to 3rd year University of Toronto law student, Nicole Richmond. Nicole is a former Eastern Student Representative of the IBA Board (2004/05), a co-editor of the Indigenous Law Journal at the University of Toronto, and is a member of the Pic River First Nation, Ontario.

The IBA Law Student Scholarship Foundation is a non-profit charitable foundation established by the IBA in support of scholarships for Indigenous law students in Canada. The Foundation administers an annual scholarship award of \$2,000 to be presented to an Indigenous law students that best demonstrates financial need, academic merit and commitment to Indigenous legal matters.

To be eligible, candidates must be an Aboriginal/Indigenous law students currently enrolled in an accredited law school, having demonstrated an interest in serving the Indigenous community and the Creator with honour and integrity.

The Foundation welcomes donations in support of the Scholarship.

For more information visit the IBA website at: [www.indigenousbar.ca](http://www.indigenousbar.ca)

# U of T Honours Darlene Johnston & Jean Teillet as “Trailblazers in the Legal Profession”

The University of Toronto Faculty of Law is celebrating International Women’s Day, March 8th, 2006 by unveiling a permanent photo exhibit celebrating 19 remarkable women graduates who are being recognized and honoured as “Trailblazers in the Legal Profession”.

Among the 19 being honoured by U of T are IBA members **Professor Darlene Johnston** and **Jean Teillet**. Both have previously been recognized as “outstanding alumni” for their work advancing the interests of Indigenous Peoples. Please join us in congratulating Darlene and Jean on this further recognition of their excellence in serving as Trailblazers in the Legal Profession. ■

## Tribute to Outstanding IBA Members

The IBA is pleased to begin offering quarterly newsletters, issued during each of the four seasons of the year. Each newsletter will have a theme of sorts, and will offer readers some insight into the outstanding work of members of the IBA, some of the key initiatives we are currently involved in, and some information regarding contemporary legal issues that are of importance to our communities.

As this issue was coming together, the outstanding achievements, skill and dedication of our membership became a focus for the newsletter. The IBA is rich with talent, from our most senior and experienced I.P.C. to our future generations represented by the law students.

This issue is offered in tribute to the many outstanding IBA members — past and present — who have served their communities so well and blazed trails for those to come.

## Kawaskimhon: Speaking With Knowledge Aboriginal Rights Moot 2006

Indigenous and non-Indigenous law students from across Canada participated in **Kawaskimhon 2006** on March 3&4, 2006 in Toronto. Osgoode Hall Law School hosted the 11th annual National Aboriginal Rights Moot which brought together teams of students from 12 law schools from across Canada on a fact pattern concerning a labour dispute at a casino on an Ontario First Nation.

Elder Vern Harper provided support and guidance throughout the process. The Moot was facilitated by four Indigenous lawyers: Ward LaForme, Kathleen Lickers, Kimberly Murray and Jeffery Hewitt. Students worked together in a consensus building process toward resolution.

The Moot proved again to be an excellent and culturally appropriate opportunity for Indigenous law students to further develop their advocacy skills and knowledge. Watch for more Moot coverage in the Spring Newsletter.

## 18th Annual IBA Fall Conference

### “Aboriginal Perspectives: RCAP 10-years later and other Institutional Administrative Responses to Aboriginal Issues”

2006 marks the 10th anniversary of the release of the Royal Commission on Aboriginal Peoples Report.

How far have we come in restoring justice to the relationship between Aboriginal and non-Aboriginal people in Canada?

**October 19-21, 2006—Saskatoon, SK**

In partnership with the University of Saskatchewan Faculty of Law

For more information please visit our website at:  
[www.indigenousbar.ca](http://www.indigenousbar.ca)

**The Fall Conference will include:**

- **A Report Card on RCAP implementation**
- **Exploration of what can be accomplished through the use of public inquiries**
- **Practical guides to advancing the interests of Indigenous People through inquests, commissions and inquiries**

Indigenous lawyers and law students — complete a survey and enter to win \$300 towards your conference fees!



# NAA Awards Recognize Bernd Christmas and James Sakej Youngblood Henderson

*(Continued from page 3)*

Bernd has set an impressive precedent, signing significant business arrangements with companies such as Lockheed Martin, Sodexho Canada, SNC-Lavalin, Grant Thornton, and Clearwater Fine Foods.

Throughout this process, Bernd made national news when he was instrumental in obtaining certification by the International Standards Organization (ISO) for Membertou, the first native community to obtain this status. He has also devoted much of his time to working with other First Nation communities interested in obtaining ISO certification.

Bernd currently serves as a Board member of the CBC Radio Canada, the Canadian Unity Council and the Canadian Aboriginal Minority Supplier Council. He has served on the National Aboriginal Economic Development Board, the Governor General's Leadership Conference Executive Committee, the Metropolitan Halifax Chamber of Commerce, the Canadian Council for Aboriginal Business and the Prime Minister's External Advisory Committee on Smart Regulation.

A graduate of the Osgoode Hall Law School in Toronto, Bernd has been recognized as one of Atlantic Canada's Top 50 CEOs."

Congratulations Bernd!

## **James (Sakej) Youngblood Henderson—Law & Justice NAAF Award 2006**

James (Sakej) Youngblood Henderson's extraordinary contributions to First Nations through legal scholarship and advocacy are again, well known by our readers, particularly since the IBA recognized and honoured Sakej in October 2005 with his induction into the Indigenous Peoples' Council of the IBA. The National Aboriginal Achievement Foundation (NAAF) added its award for achievement in Law and Justice to Sakej's growing tributes.

More recent graduates of the Programme of Legal Studies for Native Peoples know Sakej as the Director of the Native Law Centre, at the University of Saskatchewan

at Saskatoon. By his own account, Sakej's greatest accomplishments are his marriage and his children. The IBA and the community at large have benefited from his many other remarkable accomplishments:

"With an astute wisdom backed by extensive traditional teachings and legal expertise, James (Sakej) Youngblood Henderson is determined to see that Indigenous ways of life are suitably represented in society.

He earned a Doctorate of Jurisprudence at the world-class Harvard Law School. His work reflects his belief that Indigenous peoples need to find and rightfully take their place in all institutions to ensure their voices, aspirations, and wisdom are heard. He has placed these perspectives in his 8 books, 24 book chapters, 27 articles in refereed journals, 42 papers and abstracts in conference proceedings and 34 technical reports.

During the constitutional process (1978-1993) in Canada, he served as a constitutional advisor for the Miskwam nation and the NIB-Assembly of First Nations that affirmed Aboriginal and Treaty Rights. He has been involved in the development of these constitutional rights in courts, legislative, and policy frameworks.

In addition, he was a key theorist and part of the drafting team on the Indigenous Declaration of the Rights of Indigenous Peoples and the Indigenous Declaration on the Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples. He has been an Advisor to the Minister of Foreign Affairs and International Trade, a member of the Canadian Commission to UNESCO, the International Commission of Jurists, and the UN Commission on Human Rights.

His work has not gone unnoticed. The 1974 winner of the Charles Warren Civil Rights Award from the Harvard Law School, the 1999 Harvard University Alumni Achievement Award, Native American Academy, and the Indigenous Peoples' Counsel 2005.

Sakej has taught at the most prestigious universities in North America. Under his

direction the Native Law Centre of Canada at the University of Saskatchewan was established and quickly became a world-renowned legal research and legal studies centre." (NAAF website)



NAAA Recipient James (Sakej) Youngblood Henderson – 2006 Award for Law and Justice (Photo: Candace Wilde, NAAF)

Reflecting on the honour bestowed upon him by the NAAF, Sakej commented that: "It is difficult to reconcile the Achievement Award with the third world conditions and despair that most of our people are living in and we are actively seeking to change. Yes, as lawyers we have achieved more than any other generation, but justice still eludes us. This is a long, hard goal. The endless inquiries into death of First Nations peoples, illustrate the failure of the Canadian justice system to provide justice for First Nations people. While I appreciate the national jury's recognition for being part of these difficult achievements in law and justice, however, being singled out from my legal colleagues is unsettling, especially since I know how other Aboriginal lawyers have contributed to the achievements and daily seek to achieve justice for their clients."

Thank you Sakej for your work and know that your colleagues in the IBA are with you in the search for justice for Indigenous People in Canada. ■

# International Committee Report

By **Brian Calliou**

The IBA International Committee held its first committee meeting in December 2005, which was attended by Brian Calliou (Chair), Kathleen Lickers, Lee Schmidt, Paul Chartrand, IPC, Sharon Manyfingers-Venne, John Hill and Aaju Peters.

The Committee reviewed the Terms of Reference which focus on issues at the international level. This includes international law developments concerning Indigenous Peoples and establishing links with Indigenous lawyers from other countries.

Kathleen Lickers updated the Committee on the International Lawyers Association

(ILA) Conference, which is scheduled to occur in Toronto from June 5-8, 2006. The IBA will host a half-day session on Indigenous Issues at the ILA conference.

The Committee decided that they will seek to establish more formal links with various international organizations that deal with Indigenous issues. Paul Chartrand, I.P.C., will be attending some international events throughout the year and will be discussing potential links with international jurists.

The Committee considered the role of the IBA in providing services and advice to Indigenous communities, as well as the IBA assisting in developing international standards from an Indigenous perspective. The Committee also considered the IBA's

advocacy role related to Canada's failure to follow international agreements and standards with respect to its treatment of Indigenous Peoples. Finally, the Committee will seek to establish links with the University of Arizona Indigenous Peoples Law & Policy Program, and the Inuit Circumpolar Conference.

The IBA International Committee will be establishing a work plan over the coming months and welcomes input of interested IBA members. ■

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For more information please contact Brian Calliou, Chair, IBA International Committee at [bcalliou@indigenoubar.ca](mailto:bcalliou@indigenoubar.ca)

## IBA STUDENT DAY 2006—SASKATOON, OCTOBER 19, 2006

IBA's Student Day 2006 will be held October 19, 2006 in Saskatoon. Any inquiries or ideas relating to Student Day can be directed to the Student Representatives of the IBA Board of Directors: Koren ([klightning-earle@indigenoubar.ca](mailto:klightning-earle@indigenoubar.ca)) or Emma ([etaylor@indigenoubar.ca](mailto:etaylor@indigenoubar.ca)).

# Membership & Outreach Committee Report

By **Judy Daniels**

The IBA Membership and Outreach Committee has newly revised Terms of Reference which now include two new areas of responsibility. The Committee's mandate has been expanded to include outreach to our members and potential members as well as responsibility for the quarterly newsletter.

The Committee will plan for and actively recruit and welcome new members to the IBA. It will also seek feedback from the membership on how the IBA can improve in serving our membership and Indigenous communities more generally.

The Newsletter will be issued quarterly, and as a result, we will be continuously seeking content contributions from our membership. We strongly encourage our members to send us case comments, legal news, photos and articles of interest. The Newsletter will allow us to improve our

communication with members, potential members, the legal community and the general public. The Committee is responsible for development of the Newsletter which is ultimately approved by the Board for publication. We will distribute the Newsletter by email and will post it to our website.

Finally, the Committee has been working to develop a survey of Indigenous law graduates and law students which will provide vital feedback to the IBA on our programs and services.

We will be promoting the survey by way of email and would encourage all members to forward the survey to as many Indigenous law graduates and law students that they know. Your feedback is important to us.

Indigenous law graduates and current law students who submit a completed survey will have their names entered into a draw

for a \$300 credit towards their 2006 conference fees.

The survey will provide us with important information related to membership development and retention, membership dues, and, among other things, provide valuable feedback on Board accountability.

Data collected will be analyzed and used to develop a work plan for membership development and retention, which will then be submitted to the IBA Board of Directors for approval. ■

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For more information please contact Judy Daniels, Chair, IBA Membership & Outreach Committee at [jdaniels@indigenoubar.ca](mailto:jdaniels@indigenoubar.ca)

# Eastern & Western Student Rep Reports

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Boozhoo! Aaptoogizhgokwe ndizhni-kaaz. Ngig ndodem, Wshkiigomaang ndoonjibaa. Hello! My name is Emma Taylor. My Anishnaabe name is Aaptoogizhgokwe, which means Middle of the Day woman. I am member of the Otter clan from Curve Lake First Nation in Ontario. This year I began my first year of law school at the University of Toronto after completing a Bachelor of Public Affairs and Policy Management at Carleton University. I am delighted to be the 2005-2006 Eastern Student Representative for the Indigenous Bar Association!

I was asked to contribute an article for this newsletter that spoke to either my experience at the IBA's annual conference or the issues facing Aboriginal law students today. Hopefully, I can do both.

In October 2005, I travelled to Mnjikaning First Nation (along with most of the University of Toronto Native Law

Student Association) to attend the 17<sup>th</sup> annual IBA conference. Student Day provided an excellent opportunity to meet with other Aboriginal law students from across Canada. From discussions with these students, it became clear that there are many common issues and problems faced by Aboriginal students regardless of which law school they attend.

There is a stated need to foster the recruitment and retention of First Nations, Inuit and Métis students in the study of law, especially at Queen's and McGill University. Students would also like to see more Indigenous content in law school curriculum and an increase in the number of Aboriginal faculty members. Perhaps the issue most germane to this column is that there were questions about the appropriate role for the IBA in addressing these concerns.

The most resounding message that I

took away from the conference came from a fellow student, Dawnis Kennedy. She said simply that she was there to "learn how to be useful." That is what I hope to achieve as an Aboriginal law student, and more importantly as the IBA Eastern Student Representative; I hope to be useful. Since the conference, whether in the monthly Board of Directors meetings, as a member of the Membership and Outreach Committee, or in corresponding with fellow students, I have been working to better understand and define the IBA's role for Aboriginal law students. I encourage students to continue discussing their issues, ideas and concerns with me. Together we can work to increase the effectiveness of the IBA, not only for current students, but also with future generations in mind.

G'chi Miigwech!

Emma Taylor ■

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Tansi,

My name Koren Lightning-Earle and I am your Western Student Representative for this year. I am from the Samson Cree Nation, which is located at Hobbema, Alberta, and I am currently completing my second year of law school at the University of Alberta. Now you must be asking yourself a few questions, like who is this western student rep and what is she all about?

Let me tell you my story.

I have been on quite an education journey before ending up in law school. Throughout my life I have always planned on pursuing a career in a field that would benefit my community the most. I began my post-secondary education by pursuing a degree in Recreation and Leisure Studies after completing High School. After completing my Bachelor of Arts Degree in Recreation and Leisure studies, I taught physical education in High School for two years. I yearned to return to school, and thus began a degree in sociology. While completing this degree I realized how much I loved sociology and the themes associated with it. When I completed my

Bachelor of Arts (Special) I knew I must continue on to grad school. I wanted to take a path that would prove the greatest challenge to myself but would also have the greatest impact on my community. Then came law school and my life today. Law has always been on my mind and so law school naturally seemed to be my next step to take.

So far my time as the Western Student Rep has been very enjoyable. The western students are represented at almost all the schools in the west. We have student members at University of Winnipeg, University of Saskatchewan, University of Alberta, University of British Columbia and the University of Victoria. As the western student rep, I participate in monthly conference calls with the IBA board and I attempt to keep all of the western students informed of anything that might be of interest to them.

The biggest success so far has been the 2006 Summer Employment for Aboriginal Law Students Pilot Project initiated by the Alberta Law Society. The purpose of the pilot project was: (i) to allow law firms and the legal profession to gain greater insight into Aboriginal culture and issues; (ii) to provide an opportunity

for Aboriginal law students early in their legal career to obtain work experience in a law firm; and (iii) to foster opportunities for ongoing relationships to develop between the Aboriginal students and practicing lawyers. I spoke with Patrick Graydon from Fraser Milner Casgrain LLP, who is assisting in carrying out the project, and he stated that his firm alone had received 15 applications for participation in this project. The students welcomed this project and it will be interesting to see how many obtain employment through the project.

I am looking forward to planning the student day for the next conference in October, which will take place in Saskatoon, Saskatchewan. If any students or IBA members have any ideas feel free to contact me as I am always open to suggestions. Stay posted for more details on student day. Also, the IBA will be sending out a survey soon, and I encourage everyone to fill it out. It will help us to know what the memberships needs are.

That's all for now on the western front. Hai Hai.

Koren Lightning-Earle ■

# ***R. v. Laviolette: A Summary of the Most Recent Métis Harvesting Rights Case***

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**By Jean Teillet**

Ron Laviolette was charged with fishing without a license in a closed season on Green Lake in northwestern Saskatchewan. He identifies as Métis and has deep ancestral connections to Green Lake. He lives with his wife (who is a status Indian) on Flying Dust Reserve, which is located on the outskirts of Meadow Lake, approximately 55 kilometers southwest of Green Lake. He was ice fishing with two Treaty Indians from Flying Dust. Also fishing nearby was another Treaty Indian from Prince Albert and another Métis from Green Lake. Only Mr. Laviolette was charged.

At the time, Saskatchewan had a policy that Métis must meet the following four criteria in order to exercise their harvesting rights: (1) they must identify as Métis; (2) they must live within the Northern Administration District; (3) they must have a long-standing connection to the community; and (4) they must live a traditional lifestyle.

According to the Crown, Mr. Laviolette did not meet these criteria. He identified as Métis and met the first criteria. However, he lived in Meadow Lake, a community that was, in the Crown's view, not a Métis "community" and within the Northern Administration District. Green Lake was a Métis community and was in the Northern Administration District. However, despite Mr. Laviolette's deep ancestral connection to Green Lake, in the Crown's opinion, he lost his aboriginal fishing rights because he lived 55 kilometers away.

## ***The Meaning of "Métis Community"***

A community can be defined at many levels. Clearly there can be a national, provincial, regional or local community. A community can be defined simply as people with some shared element. The substance of that shared element varies widely. It can be a situation, an interest, lives or values. A community can be defined simply as a group of people that live in the same area. Whatever the shared element, the term 'community' is generally used to describe a sense of collectivity.

Since the *Powley* decision was handed down by the Supreme Court of Canada, identification of a Métis community has become a major issue. In large part this stems from the facts of *Powley* and the tendency of most readers to read only the Supreme Court of Canada judgment and ignore the fact that in issuing its judgment, the Supreme Court upheld the trial judge's findings of fact. The Supreme Court of Canada, in *Powley*, said that it was necessary to determine if a Métis community existed and whether the harvesting took place in a location that was within that community's traditional territory. For the purposes of any given case, it was not necessary to define the limits of the traditional territory of a particular Métis settlement. Nor was it necessary to determine the outer parameters of the larger Métis community.

In *Powley*, it was not necessary for the court to determine whether the Métis community at Sault Ste Marie formed part of a larger Métis people that extended over a wider area such as the Great Lakes. It was not necessary for that case because the Powley/LaSage family had always lived in the environs of Sault Ste Marie and because Steve Powley shot his moose within minutes of Sault Ste Marie. Also, Sault Ste Marie was a fixed settlement and well known, historically, as a Métis settlement. Nevertheless, the Supreme Court of Canada did not limit the right to the settlement of Sault Ste Marie. Instead, they referred to "the environs of Sault Ste Marie", a territory that was left undefined.

What are the "environs of Sault Ste Marie"? In order to ascertain this, one must look at the trial judgment, in which Mr. Justice Vailancourt stated as follows:

The Crown has gone to great pains to narrow the issues in this trial to Sault Ste Marie proper. I find that such a limited regional focus does not provide a reasonable frame of reference when considering the concept of a Métis community at Sault Ste Marie. A more realistic interpretation of Sault Ste Marie for the purposes of considering the Métis identity and existence should encompass the surrounding environs of the town site proper.

The trial judge made reference to communities and areas surrounding Sault Ste Marie including Batchawana, Goulais Bay, Garden River, Bruce Mines, Desbarates, Bar River, St. Joseph's Island, Sugar Island and into Northern Michigan. The area (seen in the map to the left) covers approximately 100 km north and west of Sault Ste Marie.

This then is the area that the Supreme Court of Canada described as the Sault Ste Marie Métis community. While it takes its name from the well-known fixed settlement of Sault Ste Marie, it is a descriptor of an area much larger than the town itself. The Supreme Court noted that despite the displacement of many of the community's members in the aftermath of the 1850 treaties, the Sault Ste Marie Métis community continued. The Court was not troubled by the fact that some Métis may have moved onto (and later off of) Indian Reserves or that other Métis moved into areas outside of the town. The Supreme Court concluded that the trial judge's finding of a

# R. v. Lavolette: A Summary of the Most Recent Métis Harvesting Rights Case

This Map was initially prepared for the Métis Law Summary – 2005. It was not in evidence at trial.

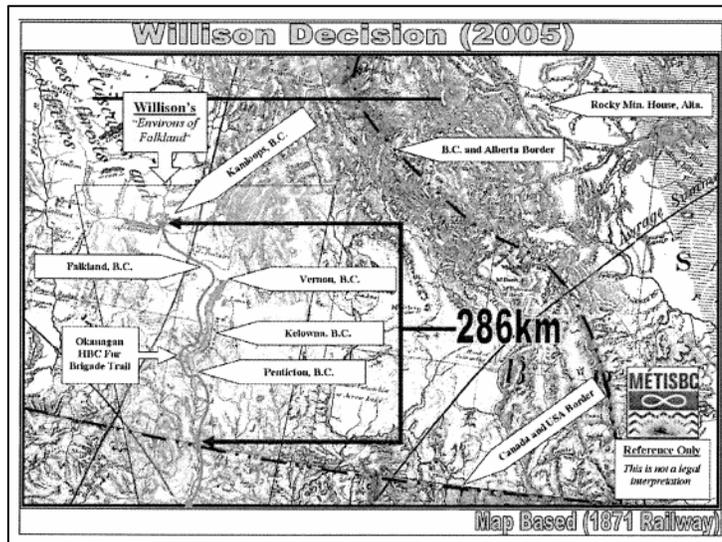
contemporary Métis community in and around Sault Ste. Marie was supported by the evidence and must be upheld.

This larger view of a Métis community has recently been upheld in British Columbia in *R. v. Willison*. In *Willison*, the task was to determine the “environs of Falkland”. The trial judge held that Falkland includes the environs of the Brigade Trail commencing in Fort Kamloops, moving south through the Falkland area itself and then the Okanagan Valley, and continuing south to what is today the US border en route to Fort Okanagan.

“I have given the word [community] a wide and liberal interpretation in a manner which I believe to be consistent with the purposes of s. 35, and the contextual circumstances of the nomadic Métis who lived and worked in the central interior of B.C. prior to European control.” (*Willison*, par. 135)



This Map prepared by the Métis Provisional Council of BC after the trial judgment was handed down. It was not in evidence at trial.



In *Lavolette*, the issue of defining the “Métis community” was the central issue at trial. The Crown argued that the word “community” should be defined according to its understanding of the word. In other words, “community” meant a specific village, town or city and a limited surrounding area (obviously less than 55 km). The trial judge did not accept the Crown’s argument. He found that a Métis community did not necessarily equate to a single fixed settlement, but could encompass a larger regional concept. He accepted the guidance from the Supreme Court of Canada in *R. v. Powley*, that a Métis community is to be defined as a group of Métis with a distinctive collective identity, living together in the same geographic area and sharing a common way of life. The trial judge further agreed with *Powley* in that he found it unnecessary to determine whether the Métis community at issue formed part of a larger Métis people that extends over a wider area. He noted that

other courts (*Powley* and *R. v. Willison*) have held that “community” may include more than one village or town.

The trial judge looked at the historical evidence presented by the experts at trial, in particular Dr. Tough’s evidence, to the effect that problems would arise if one attempted to define a Métis community as a particular fixed settlement. Dr. Tough testified that the Métis had a sense of community that was larger than any single fixed settlement and transcended geographical distance. Both experts (Dr. Tough and Mr. Thornton) testified that the Métis had a regional consciousness and were highly mobile. The regional unity was a highly established network based on trade and family connections. The experts both testified about fixed settlements that were connected by transportation systems — river routes, cart trails and portages. Constant movement between the fixed settlements allowed the Métis to develop and maintain significant trade and kinship connections in the region and within the larger network of Métis people (the Métis

(Continued on page 12)

# Book Nook

By Brian Calliou

The University of British Columbia Press has published a new book by anthropologist, Richard Daly, entitled **Our Box Was Full: An Ethnography for the Delgamuukw Plaintiffs** (UBC Press, 2005). “Our Box Was Full” refers to the Plaintiffs, the Gitksan and Wetsuwet’ en peoples’ concept of the land as a food box and as a storage box of wealth and history. The subtitle makes it clear that this book is an ethnography of the Plaintiff peoples, more specifically, their strong ties to their lands, how they governed these territories, their institutions, system of production and exchange, proprietorship and dispute settlement mechanisms.

Richard Daly was one of the expert witnesses for the Plaintiffs in the Delgamuukw case, where the Gitksan and Wetsuwet’ en peoples brought a claim for title ownership and jurisdiction over their traditional territories in northern British Columbia. He was invited to spend several years documenting their society, its structures and processes, in order to assist them in proving to the Supreme Court of British Columbia that they were Aboriginal peoples with their own “existing rights” to their territories and systems of self-governance. Ultimately, Daly’s expert opinion evidence and conclusions fell on deaf ears and were rejected by Chief Justice McEachern. Such a disappointing trial judgment led one of the Wetsuwet’ en Chiefs to remark to one of his legal counsel, “Why did the judge ask me questions when he wasn’t listening to anything I had to say?” Daly decided to publish his ethnographic research for the broader public, since he was entrusted by the Elders of the Gitksan and Wetsuwet’ en with their oral histories. This publication will provide an avenue for the Chiefs’ to be heard by a wider audience.

The book has eight chapters and a Preface, with two Forewords, one by legal scholar Professor Michael Jackson, and one by Aboriginal rights litigator, Peter Grant, and an Afterword by Don Ryan, Masgaak. It also includes maps and figures, black and white photographs, extensive endnotes, bibliography and an index.

The book deals with what the Plaintiff First Nations decided to call their “ownership and jurisdiction” over their traditional territories, and Daly states that he was to be one of several “translators” of the Plaintiff’s traditions for the court and the wider society. He states that his “mandate was to provide facts, information, and context for the plaintiff’s demand for the legal recognition of their full-fledged proprietorship, a tradition of self-governance, and their comprehensive knowledge and extensive use of land” in the course of what were their economic pursuits. The book also sets out the problem of enlightening the court so it could comprehend and give legal recognition to a particular Aboriginal way of ownership, use and regulation of traditional lands and natural resources, that is, their land tenure system. It explores the concepts of Gitksan and Wetsuwet’ en social life, based upon reciprocal gift-giving and the potlatch ceremony, production and management of natural resources in a kinship economy, and the social hierarchy that involves limited powers of Chiefs.

This is a terrific book that illustrates the extensive and complex evidence that must be compiled for proving an Aboriginal title claim, and Daly’s analytical framework follows what needs to be proven in an Aboriginal title claim. This book will be useful to any lawyer or legal academic interested in Aboriginal claims, but will also have appeal to a broader public with interest in Native Studies or the history of northern British Columbia. The book has 298 pages of text, not including the Forewords, Preface or Afterword. It is reasonably priced and for those interested in ordering a copy, the ISBN number is 0-7748-1075-0 for the paperback version.

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Purich Publishing, in association with the Centre for Constitutional Studies at the University of Alberta, has recently published a book edited by Toronto lawyer, Kerry Wilkins entitled, **Advancing Aboriginal Claims: Visions/Strategies/Directions** (Purich, 2004). The book is the result of a research project undertaken by the Centre for Constitutional Studies

at the University of Alberta, under the supervision of Aboriginal lawyer, James Guest. Papers were commissioned from eleven distinguished legal scholars, five of whom are Aboriginal.

The book, through a series of different authors, explores whether the Canadian legal system can provide real justice for Aboriginal peoples. The book’s focus is on strategy – “sustained reflection on the choices real Aboriginal peoples and communities face in dealing with a dominant legal and political system developed by others.” The discussion explores how Aboriginal communities can take advantage of the new constitutional amendments to protect Aboriginal and treaty rights; what can realistically be achieved through negotiations with the Crown or private interests; when litigation is the necessary route to take; and, whether courts are even the place to deal with complex cultural and historical issues. The purpose of the book is to initiate rigorous exploration of practical questions relating to Aboriginal communities’ strategic thinking on the legal, political, and philosophical issues they face. Wilkins provides an “Introduction” that sets out the overall theme and purpose of the book and discusses how all the author’s papers fit together.

The book is divided into three parts: Part I: “Validating Aboriginal Experience”, includes three papers from three Aboriginal authors from different cultures, that attempt to communicate to the Anglo-Canadian legal public “what it means to experience the world from within the categories and relationships” of Aboriginal perspectives. Leroy Little Bear (Blackfoot), in his essay, “Aboriginal Paradigms” explores an Aboriginal philosophy that is qualitatively different from the Western European worldview, and discusses the strong, spiritual relationship Aboriginal peoples have to the land and natural resources. Patricia Monture (Mohawk) in her essay, “The Right of Inclusion” explores how gender has often been ignored in Aboriginal rights discourse, that is, that this “disappearance of Aboriginal women” results in the silencing of the experience of Aboriginal women. Thus, she sets out to articulate a

*(Continued on page 11)*

# Book Nook

*(Continued from page 10)*

space for Aboriginal women in these legal struggles. Sakej Henderson (Chickasaw and Cheyenne) in his essay, “Aboriginal Jurisprudence and Rights” explores the window of opportunity that the Supreme Court of Canada has created in its recent section 35 Aboriginal rights cases “to be guided by, the teachings that constitute the pre-existing systems of law and governance” of Aboriginal societies. However, Henderson is nevertheless very critical of the courts and lawyers who have professed to be sensitive to, and yet have generally ignored, Aboriginal jurisprudences, including Aboriginal Elders and law keepers as the true experts.

In Part II: “Substantive Arguments”, three papers explore the dominant Anglo-Canadian legal tradition, which Wilkins argues is necessary to fully understand before any Aboriginal strategic agenda can be complete or fully informed. Legal scholar Russel Barsh, in his essay, “Indigenous Rights and the Lex Loci in British Imperial Law” explores the principle in British Imperial legal history of institutionally respecting the local Indigenous laws, traditions and customs on the lands that came under colonial control. This principle of legal pluralism was originally ignored by the Canadian and Australian states until very recently where the highest courts of both states have begun to pronounce that Aboriginal legal traditions must inform the common law of Aboriginal title and rights. Professor Kent McNeil, in his essay, “Continuity of Aboriginal Rights” explores the legal concept of “continuity” that the Supreme Court of Canada set out as a requirement in proving an Aboriginal right or title claim, that is, that the right proven to exist pre-contact continued post-contact to the present date where it became an issue. McNeil argues that continuity is an alternative way of proof – not an independent requirement, and thus ought not to be a requirement if there is sufficient evidence of the pre-contact practice of the traditional right. Larry Chartrand (Métis), in his essay, “Métis Aboriginal Title in Canada” explores the challenges of proving Métis rights and title and the opportunity for Métis created by the Supreme Court of Canada in the Delgamuukw case, which established that

proof of Métis title was at the moment the Crown asserted sovereignty in a specific area. However, Chartrand sees unfairness for the Métis and a corresponding inequality vis a vis other Aboriginal peoples, and argues for a Métis-specific standard that uses the date of effective Crown control over a specific territory.

In Part III, “Practical Consequences and Choices”, four essays explore the consequences and choices regarding litigation versus negotiations and the impact of Aboriginal rights jurisprudence on Aboriginal relationships with the land and resources. Political Scientist Christopher Manfredi, in his essay, “Fear, Hope and Misunderstanding” explores the political events that occurred in the fallout of the Marshall treaty fishing rights decision. He argues that the Court may not be competent “to deal with complex, multifaceted issues of social policy”, that the judges do not have the ‘capacity to make constructive, well-considered policy, and that there needs to be some reflection of “the consequences of the regime of rights-based judicial review that resulted from the constitutional amendments of 1982.” Law Professor Leonard Rotman, in his essay, “Let us Face It , We Are All Here To Stay”, explores whether negotiation is a better strategy than litigation, especially since Governments generally refuse to negotiate, or if they do, take hard-line positions until they are compelled to do so by successful litigation. However, he sees litigation as increasingly problematic as Aboriginal peoples’ victories tend to be watered down and real justice from the Courts is uncertain. Gordon Christie (Inuvialuit), in his essay, “Aboriginal Resource Rights After Delgamuukw and Marshall” reflects upon and explores the current climate in Canada on Aboriginal and treaty rights jurisprudence and the practical consequences on Aboriginal peoples’ rights to access and use natural resources. He is critical of the current trend of decisions that seem to ensure that any Aboriginal resource rights will not interfere with the non-Aboriginal land use and resource exploitation. Political Scientist Gurston Dacks, in his essay, “First Nations–Crown Relations in British Columbia in the Post-Delgamuukw Era” explores the political-legal climate in British Columbia after the Delga-

muukw decision and argues that negotiations at the Treaty Process may be at an impasse because the Supreme Court of Canada in its discussion of Aboriginal title, pronounced the principle of exclusive interest in land, which has been interpreted by First Nations as an increase in the economic value of their traditional lands, while the Provincial Government has been intransigent and refuses to settle with greater costs. This has created, according to Dacks, a need for interim measures or a consultation process to deal with day-to-day issues, which also may result in increased stakes in the mainstream economy and cooperative management of natural resources. In his “Conclusion”, Kerry Wilkins explores the reasons why Aboriginal peoples “are going to have to resort, as prudently and as smartly as they can, to litigation to preserve what they have or what they believe is theirs.” He still sees negotiated settlements as the preferred way to go, yet concedes that the Governments show little inclination to negotiate unless compelled to do so by court decisions. Further, he argues that Governments have legitimacy to give in to settlements once the “Queen’s own courts” have made a pronouncement, and judicial decisions can sometimes help clarify what the law requires of Governments. He also shares some of his strategic lessons from this review of the Anglo-Canadian jurisprudential landscape, including tips on how to present a claim before the courts that can help these judges with their “(often uninformed) preconceptions” to better understand and accept arguments that the Aboriginal or treaty rights at issue are worthy of respect and legal protection.

This is an excellent collection of essays for the practitioner of Aboriginal law, but would also be very useful to legal scholars and those interested in Native Studies generally. It is a great addition to the literature. It is 320 pages in length, including a useful index, and has extensive endnotes for each chapter. This book is reasonably priced and, for those interested in ordering it, the ISBN number is 1-895830-24-9. ■

# R. v. Laviolette: A Summary

(Continued from page 9)

Nation).

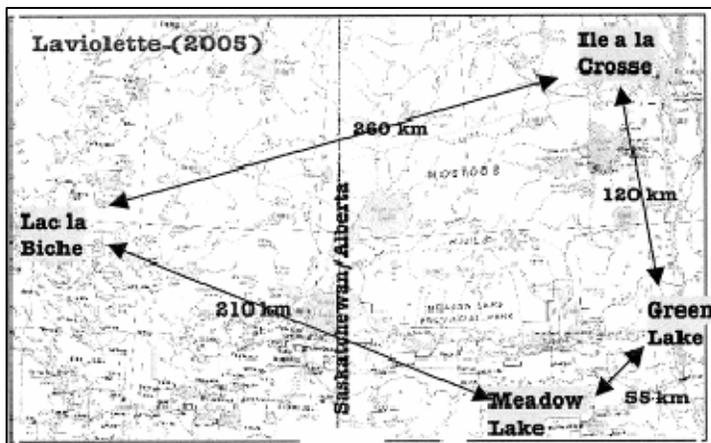
The evidence in this case specifically pointed to a regional network in a triangle in and around the fixed settlements of Lac La Biche, Ile a la Crosse and Green Lake. There were strong kinship and trade ties between these settlements over time. There were also many other settlements within and around the triangle and along the transportation routes that connected them. The region was important generally because it was the access route between the Rupertsland and the Mackenzie District.

The evidence showed that while these fixed settlements were important historic Métis settlements, the Métis were highly mobile. They moved often and traveled far and wide for food, trapping and work. They moved frequently between the fixed settlements and between the settlements within a given region.

The trial judge found that there was sufficient demographic information, proof of shared customs, traditions and collective identity to support the existence of a regional historic rights bearing Métis community, which he identified as Northwest Saskatchewan.

The trial judge identified the “Métis community” in this case as Northwest Saskatchewan -generally as the triangle of fixed communities of Green Lake, Ile a la Crosse and Lac la Biche, including all of the settlements within and around the triangle — including Meadow Lake. The trial judge found that the Métis community had existed in Northwest Saskatchewan since at least 1820.

The Historic Métis Rights-Bearing Community in *Laviolette*. Distances are approximate. This map was prepared for the Métis Law Summary-2005 and was not in evidence at trial.



The Historic Métis Rights-Bearing Community in *Laviolette*. Distances are approximate. This map was prepared for the Métis Law Summary-2005 and was not in evidence at trial.

The judge listed settlements that form part of the kinship connections and the Métis community — Ile a la Crosse, Buffalo Narrows, Beauval, Jackfish Lake, Jans Bay, Pinehouse, Patuanak, Tumor Lake, Victoire, St. George’s Hill, Michel Village, Duck Lake, La Loche, Keely Lake, Canoe Lake, Smooth Stone, Kikino (Alberta), Dore Lake, Lac la Biche and Red River Settlement (Manitoba).

## *Effective Control*

In *Powley*, the relevant time for determining the existence of a Métis right is the date of “effective control”. The “effective control” test is supposed to reflect a time when Crown activity has

the effect of changing the traditional lifestyle and economy of the Métis in the area. In *Laviolette*, the date of effective control was found to be 1912, the time when the government established townships and a new land system.

## *Proof of Connection to the Métis Community*

Another issue that arose in *Laviolette* was the sufficiency of evidence required to prove a connection to the Métis community. The Crown argued that the defendant had to show something more than involvement in the traditional and ongoing Métis cultural activities of fishing and hunting for food, such as involvement in Métis dances, singing or other cultural activities. The judge rejected this and was satisfied that the evidence of hunting and fishing for food showed the defendant’s involvement in Métis cultural activities, which was sufficient to meet the test in *Powley*.

The Crown did not argue extinguishment, infringement or justification.

The trial judge concluded that Mr. Laviolette, as a member of the Métis community of Northwest Saskatchewan, has a right to fish for food within that Métis community’s traditional territory.

(Continued on page 13)

# National Secretariat Against Hate & Racism

By Charles Smith

The NSAHRC has had quite a year of activities. With its diverse membership and regular monthly meetings, the NSAHRC has moved forward collectively to adopt positions on:

- the appointment of Aboriginal peoples to all courts, including the Supreme Court of Canada;
- racial profiling in domestic law enforcement and at the points of entry to Canada;
- the collection of race-based statistics in education and other public services.

We have also completed a report on the highly successful March, 2004 conference and have had a documentary done on it as well. With funding from the Law Commission of Canada and the Court Challenges Program, we recently held a symposium on October 23, 2005 as part of the IBA's annual meeting.

This is quite a range of activities for such a newly-formed organization. While the NSAHRC has adopted the positions noted above, it has mostly concentrated on promoting the appointment

of Aboriginal peoples to the courts. This resulted in many of the organizations associated with the NSAHRC to write letters of support encouraging the Justice Minister to take such action. One area where this support was very evident was at the annual meeting of the Canadian Bar Association (CBA) where NSAHRC members joined with IBA members to push for adoption of a resolution supporting this position. The CBA overwhelmingly supported this position and will communicate its support for it to the Justice Minister as well.

As that action was underway, the NSAHRC held a symposium to examine the Criminal Code of Canada's section on hate in the context of the Charter of Rights and Freedoms equality provisions. We invited three outstanding individuals to present papers on this theme. These are: Don Worme, Q.C., David Matas, legal counsel for B'nai Brith Canada/League for Human Rights and Amina Sherazee, University of Toronto Faculty of Law. They presented papers at the October 23 symposium and their papers were critiqued by a response panel that included: Uzma Shakir, Executive Director Council of Agencies Serving South Asians; and Anita Bromberg, League for Human Rights, B'nai Brith Canada.

This symposium was an open forum for both NSAHRC and IBA members as well as invited guests to attend. A report on the symposium will be issued in the near future.

In addition to all of the above, the NSAHRC is planning to continue its work and is pursuing funding from a variety of sources. We have submitted a three-year action plan to enable us to build on our past activities and to support productive relations between Aboriginal leadership and the anti-racist, faith-based movements in Canada. ■

Information on the NSAHRC can be found on the IBA's website ([www.indigenousbar.ca](http://www.indigenousbar.ca)).



## R. v. Laviolette: A Summary

(Continued from page 12)

The Crown did not appeal.

The Crown has given notice that it will extend its recognition of a Métis right to harvest for food to include Meadow Lake and that it intends to review its policies in future.

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### ENDNOTES

- R. v. Laviolette* 2005 SKPC 70
- Jean Teillet is a lawyer called to the bar in Ontario, NWT, BC and Manitoba. She was lead counsel for the defendant in *Powley* at all levels of court; co-counsel for the defendant in *Laviolette*; and is counsel for the defendant in *Willison* at the upcoming BCSC appeal (December 2005). A version of this *Laviolette* summary appears in the *Métis Law Summary (2005)* which is written by Jean Teillet, updated annually and published on the Pape Salter Teillet website at [www.pstlaw.ca/resources](http://www.pstlaw.ca/resources).
- R. v. Powley* [1998] O.J. No. 5310 (P.Ct.) at par. 68-70.
- R. v. Powley* [1999] 1 C.N.L.R. 153 (Ont. Prov Ct.); aff'd [2000] O.J. No. 99 (Ont. S.C.J.); aff'd [2001] O.J. No. 607 (Ont. C.A.); aff'd (2003) SCC 43.
- R. v. Willison* [2005] B.C.J No. 924 (BC Prov Ct.) ■

# Where in the World are Indigenous Lawyers?

By **Judy Daniels**

Welcome to the IBA Newsletter's newest column! This column will provide a venue for us to keep tabs on each other and share our news. So please send information for the column. I can be reached at: [jdaniels@indigenousbar.ca](mailto:jdaniels@indigenousbar.ca)

**Carolyn Buffalo**, a U of Alberta grad, was recently elected to the Council at the Montana Cree Nation.

**Jody-Lynn Waddilove** was the IBA Eastern IBA Student rep for 2000-2003; she is now an Associate at Maurice Law in Calgary, Alberta. Maurice Law is a small boutique law firm specializing in Aboriginal and treaty litigation on behalf of First Nations. Jodi-Lynn was called to the Alberta Bar in a ceremony held on Tsuu T'ina Nation land on March 3rd, 2006. Judge Tony Mandamin presided over the ceremony.

**Joyce Lynn Pelletier** has been appointed as a provincial judge to the Ontario Court of Justice, sitting in Thunder Bay. Justice Pelletier is the former executive director

of the Dilico Ojibway Child and Family Services in Thunder Bay.

Did you know that in 2004, there were 78 Aboriginal Lawyers in the Federal Public Service or 2.9% of lawyers in the FPS that were Aboriginal? And there's more:

**Ed Allan** – CEO, Nisga'a Nation, B.C.

**Grace Auger** - Legal Aid Alberta at Siksika Nation, AB

**Apryl Babcock** - Justice Canada – Edmonton, AB

**Joanne Bury** – Justice Canada – Halifax, NS

**Dennis Callihoo** – In-house Legal Counsel Yellowhead Tribal Council – Enoch Cree Nation, AB

**Troy Chalifoux** – DIAND Edmonton, AB

**Shannon Cumming** – In-house Legal Counsel – NWTMN Negotiations Secretariat – Fort Smith, NT

**Tina Dion** – Blakes, Cassels, Graydon,

Vancouver, BC

**Charlene Doolittle** –Dept of Justice – GNWT – Yellowknife, NT

**Martin Goldney** –Dept of Justice – GNWT – Yellowknife, NT

**Trish Kumpf** – Manager, Ministry of Children and Family Development, B.C. Gov't, Victoria, BC

**Chris LaFleur** – Justice Canada – Saskatoon, SK

**Joan Mercredi** – Private Practice – Fort Smith, NT

**Bertha Rabesca-Zoe** –Pape Salter Teillet – Rae, NT

**Eileen Sasakamoose** – In-house Legal Counsel Alexis First Nation, AB

**Art Tralenberg** – Private Practice – Wetaskiwin, AB

**Brian Wigger** – DIAND Edmonton

**Jack Williams** –Field Law – Yellowknife, NT

Until next time. JD ■

## IMPORTANT NOTICES : NEW DEADLINES

### INDIGENOUS PEOPLES' COUNSEL (I.P.C.)

The Indigenous Peoples' Counsel designation (I.P.C.) is awarded each year to an Indigenous lawyer in recognition of outstanding achievements in the practice of law. In particular, the I.P.C. award takes into account the manner in which the individual pursues the goals and objectives of the IBA and serves his or her community and the Creator with honour and integrity.

The person selected for the designation of I.P.C. for the year 2006 will be announced at the Annual Conference Banquet in Saskatoon, Saskatchewan in October 2006.

The deadline for nominations for the I.P.C. is **Friday, June 30th, 2006** at 5:00 pm Eastern Daylight Time.

Please submit nominations to:

**Germaine Langan, IBA Administrator**  
PO Box 218  
#2708 - 438 Seymour Street  
Vancouver, BC V6B 6H4  
Tel: (604) 951-8807  
Fax: (604) 951-8806

### IBA Law Student Scholarship Notice

One scholarship is awarded annually by the Indigenous Bar Association Law Student Scholarship Foundation.

A Scholarship of \$2,000 will be presented each year to an Indigenous law student that best demonstrates financial need, academic merit and commitment to Indigenous legal matters.

In order to be considered for an IBA Law Student Scholarship, an applicant must:

- be an Indigenous law student (i.e. First Nations, Métis or Inuit) currently enrolled in law school who, at a minimum, has substantially completed their first year of legal studies; and
- have demonstrated interest in serving the Indigenous community and the Creator with honour and integrity

Application Deadline: **June 1, 2006**  
For more information visit the [website](#)

# Member Highlight: Signa Daum Shanks

## By Signa Daum Shanks

I'm doing a Ph.D. in history at the University of Western Ontario. After completing some graduate studies in law, I found that one of the most influential phrases coming out of a court was written by Chief Justice McLachlin in *Mitchell v. M.N.R.*. In this decision, she concluded that the case before her included a "paucity of evidence" (para. 53) about a community's insistence that the economic activity of "trade" was part of a culture's constitutional status. For those of you less familiar with this litigation, it involved a Mohawk Grand Chief challenging fees charged by Canada Customs to him when he brought goods into Canada from the United States. The Grand Chief contended that he and his community regularly traded in this area, and that the goods purchases in the United States were necessary for gift exchanges with other First Nation communities in Canada. The goods, the process of obtaining these goods, and the trade of them with other indigenous communities, were argued as ways that Chief Mitchell's community enforces its s.35 rights. I believe that trade *is* one of the ways a society enforces its fundamental characteristics, so I was very disappointed in the Chief Justice's conclusions. But as I learned more about the history presented in the case's argument, I was not particularly surprised that she formed the conclusion she did.

So if this case is important to me, what am I doing about my concern? I'm from Saskatchewan, and I did an M.A. in history before going to Osgoode Hall. With the help of some really super people, I've decided to write about history in my home province as a means of understanding why some modern legal problems are around today. Before I went to Western, an uncle of mine was not clear about why I was studying what. On Boxing Day, 2004 he sighed, "I don't understand why lawyers in Toronto have been teaching you how to write about the history of Indians in Saskatchewan." After he made that observation, I got a lot of clarity about how a doctoral project would best work for me. Now that I'm at Western, I think my project makes a lot

more sense to him!

The north is definitely not an area of just one community or just one nation. But now, the area of northern Saskatchewan is an area facing problems the about conflicting "land claims" and historic treaty rights. While I found an overlapping claim within the history of the *Nisga'a Final Agreement* (that's what my LL.M. thesis is about), the disagreements in Saskatchewan have a particular tone since historic treaties are involved. Moreover, as the region I will be analyzing in Saskatchewan is home to many Métis families, the effects of an overlap increase due to how families are impacted by Bill C-31. Because of these complexities, I'm theorizing that Saskatchewan might be the best place to learn about overlapping claims. To understand how such a struggle might exist today, I've concluded that a piece about the late eighteenth century and early nineteenth century, when non-Aboriginals were around but didn't impose their legal rules in an obvious way, can help us to appreciate why a modern land claim, with a threshold of "exclusive use" is a complicated argument in 2006. By taking 1776 and 1821 as beginning and end dates, I want the historic interaction of Cree, Dene and Métis families with the English and French trading posts to help illustrate why inter-Aboriginal interaction is more than just intercultural socializing. If I can show an era when the British believed they had the official right to impose their laws, and yet did not, does that mean that indigenous laws continued even after newcomers arrived? Does the Northwest's past seem similar to historic international law? And do newcomers accept indigenous laws as juridically superior to European legal norms? I'm hoping my project will help answer these questions.

I am fortunate that the people back home, and especially my family, are very supportive of my project. This past Christmas, I even won my uncle over! The professors at Western include a bunch of Canadianists who write ethno-history, economic history and legal history. My project will also be overseen by a law professor at the University of Brit-

ish Columbia (the absolutely super Gordon Christie) who specializes in s.35 - he's my legalistic filter! While I still get regularly concerned about at some judges' conclusions, such as what appears in the recent decision about Alberta's Samson Cree First Nation, I still have not given up about how historical writing can help solve our modern legal problems. What I can do, by placing myself in two academic circles, is to be more strategic as about what I chose to write. Considering the recent change in our national political landscape, I am particularly convinced that strategic lawyering and strategic historicizing must be part of all our agendas. I'm so thrilled I have found a project which I think helps respond to observations by our Chief Justice in *Mitchell*. ■

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**Editor's Note:** With our new quarterly newsletter we will be highlighting some of our judges, lawyers and scholars in each issue to give readers a sense of the legal advocacy and scholarship that is being done across the country and internationally to advance the interests of Indigenous Peoples.

Signa Daum Shanks is Métis from Saskatoon, SK. She received her LL.B. from Osgoode Hall Law School and her LL.M. from University of Toronto. She is currently pursuing her Doctorate in History at the University of Western .



# First Nation Fax Case Summaries

## Commandant v. Wahta Mohawks

**Band Governance - Council Member - Suing Council – Jurisdiction - Employment - Wrongful Dismissal - Council Member Suing Council – Jurisdiction - Practice - Striking Claim - Request for Declaration - Jurisdiction of Court**

January 5, 2006  
2006 CanLII 66

Ont.S.C.J., Wood J.  
41 paras., 7 pages

Michael R. Swartz, Albert G. Formosa for Plaintiff (“Employee”)

Patrick Schindler for Defendants (“First Nation”)

<http://www.canlii.org/on/cas/onsc/2006/2006onsc10012.html>

### Cases Considered:

*Canadian Pacific Ltd v. Matsqui Indian Band*, [1997] 2 C.N.L.R. 16 (F.C.T.D.); *Montana Band v. Canada*, [1997] F.J.C. No. 1486 (T.D.); *Re Public Service Alliance of Canada and Francis*, [1982] 2 S.C.R. 72

### Statutes Considered:

*Municipal Act (Ont.)*, s. 36(1)(r); *Federal Courts Act*, s. 18(1)(a)

Texts Considered: *The Law of Municipal Corporations*, 2<sup>nd</sup> ed.; *Dictionary of Canadian Law*

Defendant First Nation sought to dismiss Employee’s claim for wrongful dismissal on the grounds that she had since been elected to council and was in effect suing herself and that Employee was seeking a declaration regarding her termination which was not within the Court’s jurisdiction. Employee sought the disclosure of documents.

HELD: First Nation’s motion dismissed, disclosure ordered. A First Nation council should be treated like a municipal council where municipal council members are allowed to sue the municipal council. Employee only has to disclose her suit, which she has done, and refrain from participating in any discussion surrounding the issue. The Court should not dismiss the claim at this early stage simply because it cannot grant one part of the prayer for relief.

## Tsilhqot'in Nation v. British Columbia

**Practice - Interim Costs - Special Costs - Percentage of - When Varied**

January 3, 2006  
2006 BCCA 2

B.C.C.A., Southin, Hall and Thackray JJ.A.  
127 paras, 52 pages

P.S. Rosenberg and D.M. Rosenberg for Respondent

J.L. Ott and C.L. Hook for Appellant A.G. of Canada

J.E. Gouge, Q.C. and J.I. Thayer Counsel for Appellants, H.M.Q. in right of B.C. and Regional Manager, Cariboo Forest Region (“B.C.”)

<http://www.canlii.org/bc/cas/bcca/2006/2006bcca2.html>

### Cases Considered:

*B.C. (Min. of Forests) v. Okanagan Indian Band*, [2003] 3 S.C.R. 371; *Delgamuukw v. B.C.*, [1997] 3 SCR 1010; *R. v. Sparrow*, [1990] 1 SCR 1075

### Statutes Considered:

*Legal Profession Act*, (B.C.), ss. 71, 71(2), 71(3); *British Columbia Supreme Court Rules*, Rules 57, 57(3) Appendix B

First Nation claimed logging rights in certain areas of B.C. and in 2001 received an interim costs order. Crown had received injunctions preventing future logging pending a decision on Aboriginal title. The 2001 award assessed interim costs to be paid at 50% of the special costs. In 2004, after a SCC decision, First Nation successfully varied the order to have Crown pay 100% of the costs minus a 20% holdback. First Nation argued that its law firm was in jeopardy of collapsing if only 50% of the costs were paid. The trial judge made no analysis of the law firm’s financial situation when he varied the order. Crown appealed.

HELD: Appeal allowed. The standard was to award costs at 50% and there was no valid reason to deviate from the norm. The Court will not undergo an extensive evaluation of a law firm when assessing such costs. There was no proper basis for the judge to alter the previous costs order. ■

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**FIRST NATION FAX** is a monthly newsletter that concisely summarizes selected written decisions from Canadian courts that consider Aboriginal issues. For more information, including how to subscribe for a free three month trial subscription, please go to [www.cite-on-site.ca](http://www.cite-on-site.ca) or call Brad Brooks (editor) at 1-888-259-4700.



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P.O. Box 218  
#2708—438 Seymour Street  
Vancouver, BC  
V6B 6H4

Ph: (604) 951-8807  
Fax: (604) 951-8806

Email: [germaine.iba@shaw.ca](mailto:germaine.iba@shaw.ca)

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## VOLUNTEERING WITH THE IBA

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The IBA relies on volunteers to do the things we do. As a non-profit organization without core funding and only one part-time staff person, the IBA functions thanks to thousands of volunteer hours each year. Whether you are an Indigenous law graduate or a current law student, there are many opportunities for members to volunteer with the IBA.

**Committees:**

The work of the IBA occurs largely through the activities of our Board of Directors and our Committees. IBA members are invited to participate.

**Public Speaking:**

We are routinely asked to provide names for potential speakers for law schools, conferences and career fairs. Put your name on a speakers' list.

**Mentoring:**

Newly called Indigenous lawyers, law students or pre-law students who have not yet entered law school often seek the guidance of a mentor.

**Newsletter:**

We are now publishing a quarterly IBA newsletter which will feature articles from members regarding new case law, cutting edge legal and policy initiatives, practice points, etc.

For more information or to volunteer with the IBA, visit our [website](http://www.indigenousbar.ca).

## ACKNOWLEDGEMENTS

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The Indigenous Bar Association wishes to once again acknowledge the many public and private sponsors who have generously donated in support of the IBA throughout 2005. Without this generous support, the IBA would not be able to offer programs such as IBA Student Day or the high quality continuing legal education opportunities to the Indigenous and non-Indigenous legal communities in Canada.

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