



# INDIGENOUS BAR ASSOCIATION NEWSLETTER

## Summer 2003 Edition

**Contributors for this Issue:** Marg Brown, Brian Calliou, Professor Gordon Christie, Dennis James, Don McIntyre, Celeste McKay, Mark Stevenson, Jodie-Lynn Waddilove, and Margaret Froh (Issue Editor)

**Visit our website:**  
[www.indigenousbar.ca](http://www.indigenousbar.ca)

### ***INDIGENOUS RIGHTS, GLOBALIZATION AND FEDERALISM*** **15TH ANNUAL FALL CONFERENCE – VANCOUVER - OCTOBER 16-17, 2003**

The 15th Annual Fall Conference of the Indigenous Bar Association, Indigenous Rights, Globalization and Federalism, will be held at Vancouver's Crown Plaza George Hotel this October. The conference promises an outstanding line-up of speakers and an interesting mix of legal and political issues arising in both domestic and international settings.

Participants will explore Indigenous rights in both the international and the domestic context on day one of the conference. Discussions will focus on how Indigenous rights initiatives in international forums have implications for domestic law and how domestic law is linked to international standards. Particular attention will be paid to protecting Indigenous cultural knowledge, and the impact of globalization on Indigenous cultural knowledge.

On the second day of the conference participants will explore the exercise of Indigenous Rights within a federal context, with particular attention to recent Supreme Court of Canada decisions and decisions related to the duty to consult. We will also explore federalism, and the need to make greater space for Indigenous rights.

#### **OCTOBER 15 – PRE-CONFERENCE WORKSHOPS FOR INDIGENOUS LAWYERS AND LAW STUDENTS**

Indigenous lawyers and law students are invited to participate in the October 15th pre-conference day, which will offer workshops on:

- < Indigenous Lawyers and Legal Ethics: Developing Ethical Supports for Indigenous Lawyers and Law Students
- < Matrimonial Property Rights on Reserve
- < IBA Student Day Workshops

Visit the IBA website for details: [www.indigenousbar.ca](http://www.indigenousbar.ca)

#### **CALLING ALL PLSNP ALUMNI!**

#### **Come Celebrate 30 Years of the Saskatchewan Pre-Law Program!**

Check out class photos from 1973 to 2003

**Program of Legal Studies for Native People  
30<sup>th</sup> Anniversary Reception 4 to 6 PM  
Friday, October 17, 2003  
Crowne Georgia Hotel Vancouver**

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## MÉTIS PEOPLE IN THE 21<sup>ST</sup> CENTURY CONFERENCE

**MÉTIS CONFERENCE A HUGE SUCCESS!** This conference was presented jointly by the Indigenous Peoples Justice Initiative at the University of Saskatchewan and the Indigenous Bar Association of Canada, and brought together, for cooperative, formal and informal discussion and debate, eminent scholars from various disciplines, policy analysts, authors, artists, senior government officials, and Métis people with specialized knowledge. The conference provided an unprecedented multidisciplinary forum for discussion and debate, and possibilities of collaborative research, about the place of the Métis people in Canada in the 21st century. One of the highlights of the conference was an extraordinary gala dinner showcasing Métis culture with art, music and clothing shows and displays. The Saskatchewan Law Review and the Native Studies Review plan to publish the papers presented at the conference. Stay tuned for a detailed conference report!

### **R. v. POWLEY LANDMARK MÉTIS RIGHTS DECISION!**

On Friday, September 19, 2003 the Supreme Court of Canada released its decision in *R. v. Powley*; the first ever SCC decision on Métis Aboriginal rights under s.35 of the Constitution Act, 1982. For coverage of this landmark decision visit the MNO and MNC websites at:

<http://www.metisnation.org/> Métis Nation Ontario

<http://www.metisnation.ca/> Métis National Council

### **PLSNP CELEBRATES IT'S 30<sup>TH</sup> ANNIVERSARY!**

**By Marg Brown** The Program of Legal Studies for Native People (PLSNP) has been offered every summer since 1973 at the University of Saskatchewan. The PLSNP is offered to Aboriginal students who have been referred to it by Canadian law schools. The PLSNP began with the purpose of increasing the number of Aboriginal people in the legal profession and it has gone a long way to improving the situation over the past 30 years. It has been instrumental in increasing the number of Aboriginal law graduates in Canada from about 5 in 1973 to over 800 today! However there is still a long way to go.

Based on numbers recently released by Stats Can, we calculate that if Aboriginal people were proportionately represented in the legal profession there would be at least 2,500 Aboriginal lawyers practicing law in Canada. However, since many Aboriginal law graduates do not go into the practice of law there is still a considerable deficiency in the number of practicing Aboriginal lawyers. We estimate that no more than 500 of Canada's Aboriginal law graduates are in practice.

## **IBA LAW STUDENT SCHOLARSHIP**

**Established in Memory of Ronal Peigan**

### **STUDENT APPLICATION**

#### **DEADLINE:**

**SEPTEMBER 30, 2003**

The IBA Law Student Scholarship Foundation was established in support of scholarships supporting Indigenous law students in Canada. The Foundation will administer an annual scholarship award of \$1,000 to be presented to an Indigenous law student that best demonstrates financial need, academic merit and commitment to Indigenous legal matters.

To be eligible, candidates must be an Aboriginal/Indigenous law student currently enrolled in 2<sup>nd</sup> or 3<sup>rd</sup> year of their legal studies, having demonstrated an interest in serving the Indigenous community and the Creator with honour and integrity. Applications must be accompanied by recommendations from two IBA members.

## **Help Support Our Students!**

### **DONATE TO THE IBA LAW STUDENT SCHOLARSHIP FOUNDATION AND SUPPORT INDIGENOUS LAW STUDENTS!**

Please make your cheques payable to the *Indigenous Bar Association Law Student Scholarship Foundation* and mail to:

Bonnie Missens, Barrister & Solicitor  
Semagamis, Worme, Missens  
300-203 Pakham Avenue  
Saskatoon, SK S7N 4K5

**Some things never change...others do.** Marg Brown is still on hand to welcome students, help them with their problems, listen to their stories and add to their repertoire of jokes. The PLSNP is still 8 weeks long and is taught by lawyers and law professors who are hired only for the duration of the program. Much has changed though. The location of the office changed from the house on Cumberland to the office wing of the University of Saskatchewan's Diefenbaker Centre in the mid-80's. At one time every student who was referred to the program received funding to attend, but student funding is a constant struggle today.

**Current Program Structure.** The program's content and format has changed significantly over the years. It has been offered in three different formats over its 30-year history. The first approach (1973-84) simulated law school for eight weeks. The second (1985-93) emphasized skills in a survey course that covered from 3 to 5 of the courses in standard first year curriculum. The detailed skills approach of the PLSNP was developed in the late 80's as a result of a grant from the Law School Admissions Council. The current approach (since 1994) offers first year Property Law course in its entirety, with emphasis on the skills needed to succeed in law school. The course is divided into 3 subject areas: personal property, real property, and Aboriginal title. Each week students spend 15 hours of in-class instruction in addition to attending tutorials, writing seminars and other sessions. Most Canadian law schools recognize the Property Law course offered by the PLSNP for credit.

The PLSNP is seen as a model both nationally and internationally. We receive many requests for information on the course and our skills teaching philosophy from Aboriginal schools, undergraduate programs, transition programs and law schools. The current skills approach is being considered as a model for Indigenous pre-law programs in Australia.

**Challenges.** While the PLSNP is effective it is expensive and the direct costs of the program are borne completely by the students. The tuition fee for the program includes the cost of required casebooks, but does not include recommended books, supplies, travel, or room and board. The current tuition fee is \$2,150 – the fee has been frozen since 1994 when a modest \$20 was imposed. Funding for Aboriginal students and communities is not increasing and therefore all efforts are made to avoid an increase in tuition. However, this leaves major funding issues for the program. The current fee is prohibitive for some students. The low tuition fee and lack of program funding means that many desired activities such as staff training, outreach, advertising are kept at a minimum. The favourable student-teacher ratio that was in place in the 80's is not possible given the financial restraints. Alternative funding sources are being explored. In spite of all these challenges, the PLSNP continues to offer a vital and excellent program.

We welcome our alumni to visit us in Saskatoon. Help us to celebrate our 30<sup>th</sup> anniversary by contacting us with an update. Finally, we encourage you all to visit our PLSNP guest book on-line at [www.usask.ca/nativelaw/](http://www.usask.ca/nativelaw/)

## PRESIDENT'S MESSAGE By Mark Stevenson

**D**ear Members: I am writing to update you on some Indigenous Bar Association (IBA) activities over the last year.

### Métis Rights Conference -June 2003, Saskatoon

Many congratulations to Professor Paul Chartrand, IPC who organized an outstanding and groundbreaking conference in Saskatoon addressing a number of Métis issues, including the question of Métis and section 91(24) as well as Métis rights and provincial jurisdiction. The IBA was proud to co-sponsor the conference, which included a host of Métis scholars and practitioners. It has been many years since a conference of this magnitude has been held on Métis legal issues and all who attended offered words of praise and congratulations. The conference was a joint effort between the University of Saskatchewan's Indigenous Peoples Justice Initiative and the Indigenous Bar Association.

### 14<sup>th</sup> Annual Fall 2002 Conference –October 2002 Toronto

As many of you will know, the IBA annual conference in Toronto was a success, due mostly to the work of Margaret Froh and Jeff Hewitt. Congratulations also to the students for organizing a thoughtful series of workshops. I think a majority of participants found the discussions on the development of a Code of Conduct for Indigenous Lawyers both insightful and inspiring. It was a good opportunity for our younger members to hear from the more seasoned lawyers about their trials and tribulations when working for Indigenous communities. Also, as many of you will know, Paul Chartrand was recognized as the Indigenous People's Counsel (IPC) for his outstanding work with the Métis communities. It was an emotional ceremony and Paul

dignity and grace, in accepting the award, was an honour to all of us. Jodie-Lynn Waddilove was awarded the Law Student Scholarship of \$1,000.

The current IBA Board consists of: Brian Calliou, Margaret Froh, Linda Locke, Bonnie Missens, Jodie-Lynn Waddilove, Don McIntyre and myself.

### **Indigenous Bar Association Law Student Scholarship Foundation**

Following the direction received from the annual meeting, a separate scholarship foundation was established to hold funds already raised and to raise further funds for Indigenous law students. Larry Chartrand is the director of the Foundation and for those of you thinking of making donations, a charitable tax number has been applied for. For more information about the Foundation, please contact Larry Chartrand at [lchartra@uottawa.ca](mailto:lchartra@uottawa.ca), or phone (613) 562-5800 x3314.

### **Governance, Self-Government and Legal Pluralism Conference – April 23-24, Hull**

The Indigenous Bar Association, along with the Assembly of First Nations and the Law Commission of Canada was very successful in hosting this conference, which explored principles and practical challenges for self-government within Canadian legal pluralism. The conference explored First Nations legal traditions, the debates respecting public governments and section 35 governments, the challenges for all governments to address the accountability agenda and the examining of specific models. The Honourable Justice Ian Binnie and Paul Chartrand I.P.C. were among the luminaries. Invited speakers included the Auditor General of Canada as well as the Clerk to the Privy Council. The conference was held on April 23 and 24<sup>th</sup> at the Hilton Lac Leamy, in Hull, Quebec. Robert Kennedy Junior gave the keynote address at the conference banquet. Stay tuned for a more detailed conference report.

### **Indigenous Lawyers Directory**

We have finally started to collect the information for a national Indigenous Lawyers Directory. The intent of the project is to contact every Indigenous person who has graduated from law school and to develop a database. There will also be a section that will focus on our members and outline their areas of practice etc. Hopefully our members will be able to use it as both a networking and marketing tool. Hillary Thatcher is coordinating the data collection, and she can be reached by email at [hillary@aboriginallaw.ca](mailto:hillary@aboriginallaw.ca). I am asking for your cooperation on this and hoping you will be able to provide Hillary with not only your information, but the names and contact numbers of other Indigenous lawyers, either practicing or non-practicing so that we can make this project work.

There has been quite a bit on our plate over the last year, and I have been very pleased to see so many of you participating in these activities. I hope to see you at our 15<sup>th</sup> annual fall conference in Vancouver in October.

Respectfully,  
Mark L. Stevenson, IBA President

## **IBA Student Report**

### **By Jodie-Lynn Waddilove & Don McIntyre**

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This year is a time of many firsts and new beginnings. The IBA his changing and students are a large part of that. Students have always been an essential part of what makes the IBA strong. This year we are working toward making the students presence more vital than ever before. The logistics of putting in one article what each Student Representative is doing is challenging. To this end both Reps will introduce themselves and give a brief description of what important events are occurring.

Boozhoo! Aanii! My name is Jodie-Lynn Waddilove. I am a member of the wolf clan and the Munsee-Delaware Nation, in southwestern Ontario. At present, I have just

completed my third and final year at the University of Ottawa. More importantly, in October 2002, I was elected to be your Eastern Student representative for the IBA. It has been my hope that as students we can unify our efforts to strengthen the student network established with the IBA and more importantly, support each other as future Indigenous lawyers. Recently, we have received interest from Inuit law students studying in Iqaluit and Aboriginal law students in Australia. We are attempting to build upon this interest and create strong ties with Indigenous students nationally and internationally. The student listserv, which was created over a year ago, will enable us to stay connected and informed. If you have not already done so, I would

encourage you to sign up. Also we are developing working groups with the student membership to focus our efforts on important issues as were identified at the 2002 Annual IBA Meeting. If you wish to join or have any comments, please do not hesitate to contact me at [jlwaddilove@yahoo.com](mailto:jlwaddilove@yahoo.com)

Boozhoo, My name is Don McIntyre and I am an Ojibway from Tamiskaming Band in Northern Quebec. I just completed my articling at Boughton Law Corporation in Vancouver B.C. and have completed the bar course in B.C. I have been with the IBA since my first year at UBC and was, this year, elected the Western Student Representative. I can be contacted at [dgmccintyre@shaw.ca](mailto:dgmccintyre@shaw.ca).

Starting this year, the membership fee was increased and the major concern I have heard is that with tuition hikes, raising rents and expensive text, the membership fee is too high. We are trying to answer those concerns. The final action is up to all the students. We are looking to arrange (amongst ourselves) a program whereby lawyer members could sponsor students that cannot meet the financial burden of the \$50 student membership. Any students that would like to be a part of this program (either as a volunteer, connecting students with lawyers or as someone who can use the program) please contact a student rep and we will begin to deal with this important issue. We must have your participation to make it work.  
Migwetch and Good Luck with your studies!

### INDIGENOUS LAW STUDENTS! JOIN A NATIONAL NETWORK OF STUDENTS...

We hope that students will be able to make use of the new and improved IBA web site at <http://www.indigenousbar.ca> as an important research tool, and to keep up-to-date on IBA events. We also have developed a list-serve for Indigenous law students from across Canada. The list-serve was created to foster a dialogue of interesting news, events and discussions between Indigenous law students across the country.

If you want to join, send an email to [indigenousbar\\_students@yahoo.com](mailto:indigenousbar_students@yahoo.com)

## BOOK NOOK By Brian Calliou

Three distinguished social scientists have collaborated to author an important and timely study on treaties. Arthur J. Ray, Jim Miller and Frank Tough have recently published their new book *Bounty and Benevolence: A History of Saskatchewan Treaties* (Montreal & Kingston: McGill-Queens University Press, 2000). Although the study is focused on Saskatchewan treaties, its significance and importance is much broader than that area. The study is placed in the broader historical context of First Nations-European settler relations and the "social, economic, and demographic developments" that First Nations were experiencing leading up to the negotiations of the Saskatchewan treaties. The Saskatchewan treaties that the authors explore are the Numbered Treaties 4, 5, 6, 8, and 10. However, they also examine the precedents of the Royal Proclamation, the Robinson Treaties and the Numbered Treaties 1, 2, and 3.

The Office of the Treaty Commissioner for Saskatchewan commissioned this study. A.J. Ray and Frank Tough are both notable historical geographers who have both written extensively on Aboriginal history as has the notable historian, J.R. Miller. In order to provide a deeper understanding of the treaty negotiations that occurred after Confederation, these authors examine the relationship that developed prior to these treaty negotiations between the First Nations and Hudson's Bay Company representatives during the fur trade. The protocol, elaborate trade ceremonies, and the gift giving, all formed expectations by the First Nations that the treaty negotiations had an air of solemnity.

After each treaty area has been discussed in some detail, the authors look at a sampling of problems with the implementation of treaty promises. Issues around continued First Nations' sovereignty, protection of their livelihood, and education are discussed. The difference in interpretation and understandings of key treaty terms are illustrated through this analysis. The authors wrap up with a useful review of the historiography of treaty making in Western Canada. They demonstrate how the traditional story of Canadian treaty-making history was told by individuals who were deeply involved on behalf of the government of Canada, such as Alexander Morris, David Laird, and Duncan Campbell Scott, all of whom wrote of treaty negotiations by stating the Crown was benevolent, generous and all-wise. The authors characterize this as the "tragedy of the interpretation" which was picked up by Canadian historians such as George Stanley and others and became the established historical orthodoxy until at least the 1970s when a new wave of social scientists began to reinterpret the treaties and the treaty process in a critical manner. Ray, Miller and Tough fit their study within this new critical approach and conclude that there are common historical patterns in all treaty-making and that the Crown consistently maintained its position throughout the negotiations that the Queen's representatives would assure First Nations' livelihood, rather than restrict it. They also conclude that the documentary record may allow a detailed discussion of the treaty-making history but that such records do not provide a complete and finished historical version of the understandings and agreements made during the treaty negotiations.

The authors made it clear that they are only examining the written documents and thus have no oral histories as sources. It is a comprehensive account of the written accounts of the treaties and the treaty making process, but the addition of oral historical accounts would certainly have made it a stronger account. The book has thirteen chapters, and is 299 pages long. It has 214 pages of text, extensive endnotes, black and white photos, sketches, maps, bibliography, index and an extensive Appendix that compares the treaty terms. This is an excellent addition to the literature on treaties and it sells for about \$35.00 for the hard cover and for those interested in ordering it, the ISBN number is 0-7735-2023-6.

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Legal scholar, Douglas C. Harris of the University of British Columbia Faculty of Law has recently published an

interesting and important legal history on the conflict between First Nations and Euro-Canadian users of fish, entitled *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto: University of Toronto Press, 2001). This study is based on graduate work Harris carried out at the Faculty of Law at the University of British Columbia and at Osgoode Hall Law School, York University.

Harris's study of the human conflict over fish in British Columbia at the turn of the twentieth century is a great contribution to the literature on Aboriginal People's access to renewable natural resources. He sets out the concept of legal capture in the first chapter by reviewing traditional "Native Fisheries" and the common law on fisheries and the early fisheries legislation and policies. Harris also utilizes the concept of colonialism, whereby "a distant imperial power and a local settler society" displace

existing systems of control with their own systems for their own benefit. It was as a result of this colonialism that government officials began to impose state laws on the First Nations' fisheries, justifying such imposition by finding an absence of law. Harris refutes the argument that the fisheries were unregulated before the Anglo-Canadian regime. He argues and demonstrates that these fisheries were regulated by the First Nations who had systems with a complex web of entitlements, prohibitions and sanctions that determined what activities were allowed and which were prohibited. His first chapter entitled "Legal Capture" reviews the First Nations fisheries and treaty rights in relation to the various fisheries regulations and developing law.

Harris then moves on in chapters two and three to discuss two case studies - the Babine Lake fishery and the Cowichan River fishery - and illustrates the conflict between these First Nations and the Euro-Canadian settlers over the fish resources. Through these case studies, Harris demonstrates how the forces of colonialism and state laws attempted to restrict First Nations' fisheries and reallocate the resources to the Euro-Canadian users. However, he also shows how the First Nations resisted such impositions such as through arguments for Aboriginal rights in court cases.

Douglas Harris concludes his study with the fourth chapter entitled "Law and Colonialism" in which he discusses the effects of "Anglo-Canadian

## University of Ottawa Aboriginal Legal Services Inaugural Award Dinner By Celeste McKay

The Aboriginal Legal Services Inaugural Award Dinner, held on November 14, 2002 in Ottawa, was a resounding success. The Honourable James Karl Bartleman, Lieutenant Governor of Ontario presented this year's award to Elder William Commanda.

Mr. Commanda is an eighty nine year old Algonquin Elder from Kitigan Zibi Reserve, Quebec. The great grandson of Pakinawatik, the hereditary Algonquin chief who led his people to settle in their traditional hunting and trapping grounds in the Ottawa River area in the mid eighteenth century, Elder Commanda is Keeper of three Wampum Belts of historic importance: the Seven Fires Prophecy Belt about choice, the 1701 Peace Belt about sharing, and the 1793 Jay Treaty Border Treaty Belt about borderlessness. He was acclaimed chief of the Kitigan Zibi Reserve for over nineteen years, as well as a guide, trapper and woodsman, and a birch bark canoe maker and craftsman of international renown. He led the Sunbow Five Walk for Mother Earth, is a respected spokesperson and spiritual leader at national and international gatherings, participates regularly in United Nations peace and spiritual vigils, and is acknowledged internationally for his work in promoting interracial and intercultural harmony, justice, and respect for Mother Earth.

He is the recipient of a Wolf Project Award and a Harmony Award for his efforts to foster racial harmony through the creation of a "Circle of All Nations"; one well received example of this commitment is the annual international "Circle of All Nations" gathering he hosts at his home in Makiwaki every August. He is currently developing a vision to establish a healing and peace building center on Victoria Island, the traditional sacred spiritual meeting grounds of his ancestors, within the national capital region.

Approximately 200 guests were in attendance at the Inaugural Award Dinner. Proceeds from the event will go towards the work of the Aboriginal Legal Services Division of the University of Ottawa Community Legal Clinic, which provides legal services to low-income Aboriginal people living in Ottawa. Watch for the details on the Fall 2003 Award Dinner!

Law" on the fisheries and First Nations law. In this chapter, Harris moves up to the broader, more general, context of law and colonialism in order to situate and reconsider the historical and legal detail of the case studies. In this more theoretical chapter, Harris utilizes the "law as a site of conflict" approach to frame his argument that the colonial settler state in British Columbia used law in order to bring about the transition from local control over the fisheries to central state control, and from communal to private

property rights to the resources, and from reciprocal rights and obligations to market exchange.

This is a significant addition to the literature on resource conflict involving First Nations and is an excellent example of legal history. It is 306 pages long, with 216 pages of text, detailed endnotes, bibliography, index, as well as black and white photos and maps. The cost is reasonable and for those interested in ordering it, the ISBN number is 0-8020-3598-1 for the hard cover version or 0-8020-8453-2 for the soft cover version.

## 14<sup>TH</sup> ANNUAL FALL 2002 CONFERENCE: TORONTO EXECUTIVE SUMMARY OF THE FINAL REPORT

The 14<sup>th</sup> Annual Fall Conference of the Indigenous Bar Association (IBA) *Self-Government: Inherent Rights and Institutional Development* consisted of two conference days: Day One – The Inherent Right of Self-Government, and Day Two – Implementing the Inherent Right of Self-Government, and a pre-conference IBA Student & Practitioner Day.

The IBA Student & Practitioner Day provided a forum for students and lawyers within the IBA membership to discuss issues of importance in the areas of legal education and practice, and to reflect on the creation of an IBA code of ethics or guidelines. Speakers engaged participants on these topics and various information sessions were provided. The day provided an important opportunity for IBA members to meet, to reflect on where we have come from, strengthen our networks, and look to the future.

Throughout the two days of the conference, keynote speakers, plenary presenters, panellists and delegates explored academic theory, jurisprudence, policy and legislative initiatives and Aboriginal community initiatives relating to the inherent right of Aboriginal self-government. Several key themes and recommendations emerged from the conference, including recommendations for the creation of two new institutions addressing governmental accountability to Aboriginal Peoples.

### Royal Commission on Aboriginal Peoples (RCAP)

Presenters throughout the conference referred to the RCAP Report as an important tool for all Canadians in understanding and implementing the inherent right of Aboriginal self-government. The RCAP Report offers a vast amount of information and analysis, including a framework on which government can move forward in reconciling the relationship between Aboriginal Peoples and the rest of Canada, and support Aboriginal self-government. Extreme concern was raised amongst all presenters regarding the failure of the Canadian government to implement the RCAP Report. Aboriginal Peoples were

encouraged to implement the RCAP Report wherever possible, in spite of government inaction.

### Models for Self-Government

Presenters reflected on various existing models of self-government, including negotiations, litigation, and the unilateral exercise of authority by Aboriginal Peoples, and discussed various examples of each.

Challenges continue to exist in the negotiation process, and presenters throughout the conference expressed grave concern and outrage at the recent announcement by the Minister of Indian Affairs that the government was contemplating unilateral withdrawal from some 30 negotiation tables across Canada, a move which presenters believed would amount to bad faith on the part of the government.

Litigation similarly presented challenges due to the costs and time delays associated. While the Canadian Courts have been making advances with respect to the Aboriginal and treaty rights, presenters raised concerns about the failure of government to implement the Courts' decisions. While these decisions should assist in guiding the negotiation process, government negotiators tends to take narrow and restrictive views of the decisions, negotiating the interpretation of judicial decisions rather than allowing decisions to guide negotiations.

Perhaps the most promising of the existing models, is the unilateral exercise of authority by Aboriginal Peoples currently being exercised across the country. A framework supporting this exercise was offered based on two principles: the requirement for a peaceful coexistence between Aboriginal Peoples and non-Aboriginal peoples; and, the need to share the use of, the protection for, and the benefits from land and resources within the respective territories of Aboriginal Peoples and Nations.

### Legislative Initiatives

Presenters analyzed the proposed *First Nations Governance Act* (FNGA), currently known as Bill C-7, and commented on both the process and substance of the bill. Indeed presenters throughout the conference commented on the bill with overwhelming condemnation of this most recent government legislative initiative. The federal government's approach to Aboriginal self-government appears paradoxical, giving rise to a poor policy environment within government. Presenters rejected the purely delegated legislative model, challenging both the substance of the bill and the failure of the government to meaningfully consult with First Nations. The refusal of the government to implement or take guidance from the RCAP Report and the Penner Report in developing the bill was criticized. Concerns were raised that while principles such as accountability and transparency are positive and are aspired to by Aboriginal Peoples, the bill does not address either, failing to provide the tools necessary to affect responsible government and attributing a higher level of accountability to First Nations than the government itself adheres to. Ultimately, the failure of the government to adequately consult as mandated by the Constitution and the Courts challenges its legitimacy to legislate.

### Supporting Self-Government

Presenters contemplated examples of contemporary American Aboriginal governance initiatives as well as Canadian initiatives, and reflected on the tendency of Canadian Courts to adopt early American Aboriginal jurisprudence despite the complete irrelevancy it has in light of the unique Canadian history with respect to Aboriginal Peoples.

Self-government models and processes must promote the building of capacity within Aboriginal nations, based on principles that reflect the core elements of modern Aboriginal self-government. The Saskatchewan Treaty Governance Process offers a treaty based process focussed on principles of good governance and the tools required for governance based on the treaty relationship.

The American Aboriginal experience of building capacity for governance through the creation of Aboriginal gaming ventures was offered for consideration.

### Institutional Support

Presenters reflected on the lack of governmental institutional support for Aboriginal self-government, from the failure of government to adequately consult in considering the creation of new institutions, to the failure of government to implement either the Penner or RCAP reports. In implementing the inherent right of Aboriginal

self-government, Aboriginal Peoples require significant institutional support. Unfortunately, the government is failing to implement with respect to Aboriginal self-government, which presents challenges for Aboriginal Peoples in exercising their inherent right.

Some tools exist to support self-government, such as taxation, however much more is needed. Aboriginal Peoples are encouraged to move forward and implement the recommendations from the Royal Commission wherever possible to move forward in exercising the inherent right.

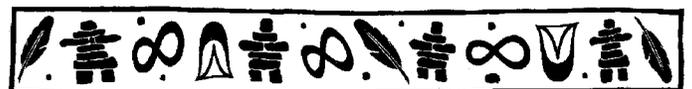
The creation of governmental institutions by the federal government will require consultation with Aboriginal Peoples, and possibly Aboriginal Peoples' consent.

There are challenges for First Nations creating governance institutions. As one presenter noted, theorists state federalism itself is an institution that is aimed at the dispersal of power and the protection of more flexibility for the people, but in the case of First Nations the problem at present is not the dispersal of power but rather the absence of power.

Much discussion at the conference focussed on issues of accountability, which is an essential element of good governance. Ultimately, when looking at institutions required to support Aboriginal Peoples, we must address the need for accountability from the federal government to Aboriginal Peoples. Despite the presence of s.35 of the *Constitution Act* 1982, and the fiduciary relationship between Aboriginal Peoples and Canada, the federal government has failed to create institutions that would encourage governmental accountability to Aboriginal Peoples. The existing institutions available to Aboriginal Peoples do not address their needs.

What is required to ensure accountability of government is a commission such as an Ombudsman, broadly mandated to address concerns that Aboriginal Peoples have, either collectively or individually, with the actions of government interfering with their enjoyment of their Aboriginal or treaty rights, legislative rights, or human rights.

A complementary or parallel institution is also required to ensure enforcement, such as an appeals tribunal.



### Upcoming IBA Conferences...

***HATE & RACISM CONFERENCE – March 2004 – Montréal***

***INTERNATIONAL INDIGENOUS LAW CONFERENCE – October 2004***

## IBA Secretary's Report By Brian Calliou

Happy Summer to all IBA members! The Board of the IBA has been very busy since the AGM last October. Here is an update on most of the Board's activities.

### IBA Board and Executive

The IBA Board Members had a meeting in Toronto on November 23 and 24th, 2002. The Board elected its Executive for this term. President is Mark Stevenson; Vice- President is Margaret Froh; Secretary is Brian Calliou; and Treasurer is Bonnie Missens. All positions were by acclamation. The Board met again in Banff on February 14 and 15<sup>th</sup>, 2003 and June 20 and 21 in Saskatoon, with substantial agendas to contemplate. Some of these activities are detailed below. IBA President Mark Stevenson, along with Vice-President Margaret Froh, attended an Equity and Diversity Conference hosted by the Law Society of Upper Canada in Toronto in November, 2002 entitled *"Promoting Dialogue, Creating Change: Equity and Diversity in the Canadian Legal Profession."*

### Committees

The Board decided that in order to be effective, we would have to be more of a working Board, and that the best way to carry this out was for each Board member to participate in Committees to carry out the work that needs to be done. These Committees include: Home Committee; International Committee; Membership Committee; Ethics Committee; and Justice Committee. Committee Chairs will be the driving force for each Committee and each Committee is drafting a mandate as well as work plans with some of the priorities set out. A written progress report from each Committee Chair will be given at each Board meeting. Two possible new Committees were discussed: a Student Committee, and a Women's Committee. Draft resolutions and background materials for the proposed Committees will be brought forward to the membership to consider at the next AGM. Members who are interested in serving on any of the Committees are encouraged to contact the chairs of each committee. For more information visit the website.

### IBA Initiatives

It was felt by the Board that the two most important priorities for this year are finding a home for the IBA; and increasing our membership. However, a variety of activities/issues of the IBA have been identified and discussed by the Board as requiring some thought or action:

Home for the IBA	Ombudsman and Aboriginal Court	IBA Survey of Indigenous Lawyers and Law Students	Creation of a National Directory
Membership Development	Judicial Appointments	Developing Relationships with CBA and Other Organizations	Government Liaison Strategy
Communications Strategy/Network	Law Firm Audits		Private Sector Strategy
Ethical Code/Statement of Principles	Follow Up on Reports such as the Law Society of British Columbia's Report on Barriers for Aboriginal Lawyers and Law Students	Developing an IBA Communique	Creation of a Fundraising Foundation
Lawyers Assistance Program		Partnerships on Specific Projects Such as the LCC	Scholarships
			Mentorship Program

### Policy Development

The Board discussed the need for IBA policies to guide various IBA activities. The Board noted the need for transparency and accountability for the IBA and the following policies were identified as necessary: Communication Policy; Fiscal Management Policy; Conflict of Interest Policy; Dispute Resolution Policy; and Constitution/By-Laws Amendments Policy. Certain Board members have undertaken to begin draft policies for review by the Board of each of these policy areas.

### Communications

The IBA website has recently been significantly renovated with many improvements made. These improvements will continue to be made. The IBA Newsletter was also identified as an important mechanism to communicate to our membership. The Board has determined to continually improve the Newsletter and to ensure it is consistently published. The Newsletter will come out twice a year. The Board encourages IBA members to send in case comments; articles or opinion pieces; updates on legislation; updates on activities; and possibly profiles of judges, lawyers and students. This will help make the IBA Newsletter more interesting to our membership.

## THE INTENSIVE PROGRAM IN ABORIGINAL LANDS, RESOURCES, AND GOVERNMENTS

The Intensive Program in Aboriginal Lands, Resources and Governments is a clinical legal education program run by Osgoode Hall Law School since 1994. The program takes in third year law students from common law faculties across Canada and provides them with an opportunity to focus their last semester of studies on Aboriginal law, in a mixed classroom and internship structure.

During the summer and fall preceding the winter semester students work with the Director of the program in arranging a placement situation. This internship can be with a law firm, an Aboriginal community, a non-governmental organization, a government organization, a tribal council, an environmental law organization, and any other body doing work in the area of Aboriginal law. Students spend the first few weeks of January in Toronto deepening their understanding of the complex issues in Aboriginal law and developing their basic lawyering skills. Students then spend a seven-week period of work and study with their placement sponsor. At the conclusion of their placement students return to Toronto for several weeks, during which time they critically reflect on, and discuss, their collective experiences, and make a class presentation based on their internship experience. They also begin to prepare several major research papers, assessment of which makes up the bulk of their letter grade for the semester (the placement itself is graded on a pass/fail basis).

Over the last few years we have begun placing students outside Canada, in countries also currently grappling with legal issues involving indigenous peoples. We have had students placed with the Land Claims Court in Johannesburg, South Africa, an international indigenous organization in the United States, and with a group promoting education on Indigenous land issues in Botswana. This year (2003) we have students in both Australia and New Zealand, (jurisdictions with developing situations of great interest to the legal community in Canada), the United States, and in Costa Rica.

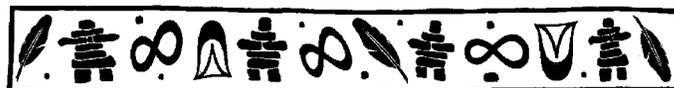
The response in the past to the program from sponsoring organizations has been overwhelmingly positive. We cover travel and accommodation costs for the students, and ask only that the sponsoring organization be willing to provide an enriching educational experience for the law student. The costs to the sponsoring organization are minimal. In exchange for ensuring the proper structure to support a law student is provided, the sponsor enjoys the services of an enthusiastic and hard-working law student for seven weeks. We expect the student to be put to (hard) work, but that as much as possible they be exposed to as many facets of the work of the organization as is feasible. Being able to attend meetings, for example, or to travel to communities to interact with the people served by the organization, are the sorts of things we hope can be arranged.

Students interesting in participating in next year's program should apply as soon as possible. The ideal number of participants is 15, and as the program is open to law students across Canada, this number will undoubtedly be reached by April. Late applications will be considered as space permits. Application forms can be accessed through the Osgoode Hall website, and can either be downloaded, printed out, filled out and mailed in, or simply completely and returned electronically. The website also provides more information about the program, and contact information should there be any questions. The website can be accessed either by going to the Osgoode Hall main page and clicking on 'Aboriginal Intensive Program' in the 'related sites' drop-down menu, or by typing in the following address in a web browser: <http://osgoode.yorku.ca/quickplace/shinimai/main.nsf>

Further information can also be obtained by calling or writing the Director of the program:

Professor Gordon Christie  
Osgoode Hall Law School  
4700 Keele St.  
Toronto, ON M3J 1P3

Phone 416-736-5120  
[gchristie@osgoode.yorku.ca](mailto:gchristie@osgoode.yorku.ca)





## LAWYERS ASSISTANCE PROGRAM

I.L.A.A. OCTOBER 17 – 19, 2003 VICTORIA, B.C.

You are invited to attend the 29TH Annual Meeting of I.L.A.A.

Join in with the recovery community of you peers. Members from around the world will be there for an extremely enjoyable and valuable experience of fellowship.

The main site is The Empress Hotel.

The weekend will be filled with meetings, social events, opportunities to hang out with other like-minded people and plenty of stories.

Mark these dates in your calendar. This is a unique opportunity to attend this extraordinary meeting.

**For more information, contact LAP at 604-685-2171 or Toll Free 1-888-685-2171**

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The Lawyers Assistance Program Society of B.C. is an independent organization of members of the legal community (lawyers, judges, families and support staff). We provide peer support and referral services to help people deal with personal problems, including, alcohol and drug dependence, stress, anxiety, and depression. We are volunteers and staff committed to providing confidential, compassionate, and knowledgeable outreach, support and education. We seek to foster collegiality among our peers and to promote health and well being in our community.

There are several ways to be involved with the LAP.

1. Ask for assistance for yourself.
2. Attend one of our "Healthy Living" Seminars or one of our ongoing support groups.
3. Volunteer to help others.
4. Call in and let us know if you observe another member who may be in distress.

Each call we receive is treated as confidential. I treat each communication as having solicitor/client confidentiality.

You can reach us at: 1-888-685-2171 or 604-685-2171 or by email at [derekl@lapbc.com](mailto:derekl@lapbc.com). Visit our website at [www.lapbc.com](http://www.lapbc.com)

Many provinces have LAP's, here are a list of numbers at which they can be reached:

### Alberta LAP Assist Program

Rick Gilborn  
403.260.1576  
Andy Crooks  
403.265.5489  
Holly Turner  
780.495.4315

Tel: 416-241-7983  
Toll Free: 1-877-576-6227  
email: <mailto:leota@sympatico.ca>

John Starzynski  
OBAP Volunteer Executive  
Director  
Tel: 1-877-584-6227  
email: [mailto:starzy@inforamp.net](mailto:mailto:starzy@inforamp.net)

Francais ATS: 1-800-263-8035  
(personnes malentendantes)

### Nova Scotia

Toll Free in Nova Scotia: 1-866-299-1299  
<http://www.nsbs.ns.ca/notices/lap.htm>

### Saskatchewan LAP

Regina: 306-757-6130  
Saskatoon: 306-978-4466  
Toll Free: 1-800-780-5256

### Quebec

Montréal: 286-0831  
Extérieur (sans frais): 1 800 74PAMBA  
(1 800 747-2622)

### Newfoundland LAP

Newfoundland and Labrador: 709-754-3007  
Toll Free: 1-800-563-9133

### Manitoba LAP

Winnipeg: 204-786-8880  
Toll Free: 1-800-590-5553  
Deaf Access Line: 204-775-0586

### New Brunswick LAP

English: 1-800-268-5211  
English TDD: 1-800-363-6270  
(hearing impaired)  
Francais: 1-800-363-3872

### Lawyers Professional Assistance Conference (LPAC)

416-694-9927  
24hr Helpline 1.800.667-5722  
[adrian@lpac.ca](mailto:adrian@lpac.ca)

### Ontario LAP

Leota Embelton  
Program Manager

## TUITION FEES RISE AT CANADIAN LAW SCHOOLS: IMPACTS ON ABORIGINAL PEOPLES

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### *ROTHIO> TATIES SPECIAL BULLETIN ON TUITION FEE INCREASES*

As you may already know, tuition fees are rising in universities across Canada and in particular, in 'professional programs' such as law and medicine. While medicine students have felt the crush of high tuition fees for the past several years, law students are facing a dramatic rise in tuition at this time. The University of Toronto Faculty of Law appears to be at the lead of this movement of increasing tuition fees, with law schools across Ontario and indeed across Canada following. Though the extent to which law schools are increasing tuition varies, one thing seems quite certain, Aboriginal people seeking a law school education will be facing ever increasing tuition costs at most Canadian law schools.

In Ontario there has been a loud cry from lawyers and law students against the tuition fee increases, and concerns have been voiced that raising tuition will have a negative impact on the diversity of the student body in law schools, and a negative impact on the types of choices that graduates will make given their increased debt loads. The fear is that less Aboriginal people will apply to law school, as well as less people from various other under-represented communities. And those that do will have less choice on graduation – i.e. they will have to choose the highest paying jobs due to their high debt load and will not be able to consider other lower paying jobs such as public interest jobs. This would mean fewer sole practitioners, fewer legal clinic lawyers, and fewer lawyers for community organizations or governmental bodies. Ultimately resulting in a negative change in the face of the legal profession – a legal profession that is less diverse and that does not address all the needs of the public.

#### **Will Law School Become Inaccessible for Aboriginal People?**

The University of Toronto recently approved an increase in its law school tuition to \$16,000 per year per student. They plan to increase it by \$2,000 per year to eventually reach \$22,000 a year by 2006. This followed a study that the University Provost's Office released that concluded that increasing tuition at the Faculty of Law would not make law school less accessible to students from lower-income backgrounds, and that it would not reduce career choices of students.

Furthermore, the study concluded that the small numbers and fluctuation of the data for Aboriginal students made it difficult to reach conclusions, however, it states, "there is no pattern that accessibility is declining" for Aboriginal students. Many have challenged the methodology and the results of the Provost's study. For more information on the critiques, visit the CBA website and view their submissions at: <http://www.cba.org/CBA/Home.asp>

Rothio> taties is very concerned that other law schools will follow suit and that tuition fees will rise astronomically in law schools across the country. This would mark the beginning of a very dangerous trend that will result in creating yet further barriers for Aboriginal people entering law.

#### **Input from the Aboriginal Legal Community**

In preparing to address these issues and the impact that they will have on Aboriginal Peoples accessing legal education and accessing appropriate legal services, we seek input from Aboriginal lawyers and law students, as well as students who are interested in or contemplating entering law school. We also seek input from Aboriginal communities and their leaders who will have to wrestle with the increased costs of legal education for their members.

What concerns do you have about the increasing tuition fees? Do you think it will create a barrier for Aboriginal people seeking a legal education? If so, how should such barriers be addressed? Has it already impacted on you or others that you know? What impact do you see it having on Aboriginal people accessing legal services?

***We want to hear your thoughts. We want to hear your stories.***

You can contact Rothio> taties by email c/o Margaret Froh, Aboriginal Issues Coordinator at the Law Society of Upper Canada at [mfroh@lsuc.on.ca](mailto:mfroh@lsuc.on.ca) or by fax at (416) 947-3983. Chi Meegwetch!



### **ROTHIO> TATIES ABORIGINAL ADVISORY GROUP**

A non-profit volunteer organization of Aboriginal lawyers, law students, legal academics, and community members advising various bodies on Aboriginal issues arising in law and the legal profession (pronounced "lo-dee-yo-DA-d'yets" – Mohawk for "continuously working")

## National Aboriginal Lawyers Directory

The Indigenous Bar Association is currently engaged in the first phase of an exciting project, creating a national Aboriginal lawyers directory. We welcome anyone who has a legal education to register with the project to be sure you are included. You can do this by contacting the IBA c/o Hillary Thatcher at [hillary@aboriginallaw.ca](mailto:hillary@aboriginallaw.ca).

Phase two of the project begins in 2004 with the compilation of the directory.  
Phase three will follow with publication and distribution of the directory.

The National Aboriginal Lawyers Directory will provide a detailed database of legally trained Aboriginal people in Canada, including practice areas and contact information. The Directory will be a vital networking and marketing tool for Aboriginal lawyers and others working in law related fields.

Register now!

## Aboriginal Ownership and Management of Resources in Canada: An Analysis of Litigation and Negotiation CBA National Aboriginal Law Section Conference Report By Dennis James

The 2003 CBA - Aboriginal Law Section CLE was convened in April 2003 to address the topic: *Aboriginal Ownership and Management of resources in Canada: An Analysis of Litigation and Negotiation. Getting to Win-Win?* Approximately 100 delegates attended the conference held in Halifax, Nova Scotia in traditional Mi'kmaq Territory. The conference met as the tri-partite treaty negotiating process is to begin in Nova Scotia.

The conference opened with a discussion by Chief Roberta Jamieson, Chief of the Six Nations of the Grand River Territory Bruce Clarke (Counsel to the Native Council of Nova Scotia) on the use and effect of litigation in the advancement of aboriginal and treaty rights. Chief Jamieson reviewed the opportunity for negotiations and the necessary pre-conditions to achieve a successful outcome. She emphasized the need for all parties to understand what is at stake in the process and to ensure that

There were two breakout sessions following the Opening Plenary. Professor Kent McNeil and Wendy McKetteridge (BC Aboriginal Affairs) addressed one session. Professor McNeil addressed some of the fundamental issues facing indigenous land rights and observed how the courts were addressing these issues. Wendy McKetteridge spoke about the BC Government's policy on Consultation. The Hon. Michael Baker, N.S. Minister Responsible for Aboriginal

Affairs, and Dan Christmas (Chair of the Technical Support) addressed a second session on the Nova Scotia Tri-Partite Treaty Negotiating Process.

Brenda Miller, Executive Director of Mi'gmawei Mawiomi Secretariat and former Chief of Restigouche First Nations, made a powerful and poignant luncheon address as the delegates gathered at the Historic Pier 21. She provided a personal account of the struggle by the Mi'kmaq nation over the last thirty years.

The afternoon included two plenary sessions addressing the issue of the fiduciary relationship and whether the Crown's obligations were being met. Peter Grant (counsel in *Delgamuukw*) and Viola Robinson (RCAP Commissioner) examined the extent and source of the fiduciary relationship. This was followed upon by a panel discussion of the question was the fiduciary obligation being met? Professor John McEvoy (U.N.B. Law School), Dr. Dan Paul (former Executive Director of the Confederacy of Mainland Indians), Michael Donovan (Justice Canada) and Professor Leonard Rotman (University of Windsor) participated.

An evening dinner and cultural event was held at Pier 21. Lone Cloud and Sweet Grass Women's Singers permitted

the delegates a further glimpse at the culture and traditions of the Mi'kmaq nation.

Two breakout sessions started the Saturday morning addressed specific resource issues. . In the first instance Eric Christmas, Membertou and Tracy Fleck (Borden Ladner Gervais) examined the development in the oil and gas. Mr. Christmas described the achievements of Membertou in corporate deals related to the offshore and Ms. Fleck presented a paper on *Aboriginal Oil & Gas Interests in Atlantic Canada*. A session on economic partnerships highlighted recently negotiated fishery resource agreements between Wagmatook First Nation and the Barry Group and considered further opportunities.

The final plenary was addressed by Tuma Young, LLM of Eskasoni First Nation and Patti Doyle-Bedwell LLM Chapel Island First Nation and Dalhousie Law School and they explored conditions that had to exist to achieve Win – Win in the future. They highlighted the need to restore the relations between the Mi'kmaq nation and Canada to the mutual respect and trust accorded at the time of the first contact.

Dennis James and Tuma Young both of Patterson Palmer (sponsor) were the conference organizers. Also involved in the planning were: Krista Brookes, Patti Doyle-Bedwell, Trevor Bernard, Doug Brown, Prof. John McEvoy, Peter Grant and Linda Locke. CBA professional staff Heather Nowlan and Chantal Durocher provided excellent support.

## **PROFESSIONAL DUTIES vs. OUR DUTIES & RESPONSIBILITIES AS INDIGENOUS PEOPLE**

**Pre-Conference Day - Indigenous Legal Ethics Workshop  
10 AM to 12 Noon - October 15, 2003 – Vancouver, BC**

Please join us for this important discussion of what makes us different as Indigenous lawyers, and how the IBA can support its members in balancing and respecting our responsibilities as lawyers and as Indigenous people. This workshop will be facilitated by members of the IBA Ethics Committee, and will contribute to the development of IBA ethical guidelines for members.

## **IMPORTANT NOTICE TO IBA MEMBERS**

**The Indigenous Bar Association's  
Annual General Meeting & Elections  
will be held:**

**9:00 AM Saturday, October 18, 2003  
Crowne Plaza Georgia Hotel  
801 West Georgia St.  
Vancouver, BC**



If you have comments about this newsletter, or would like to contribute to future issues of the IBA newsletter, please contact:

Hillary Thatcher  
[hillary@aboriginallaw.ca](mailto:hillary@aboriginallaw.ca)