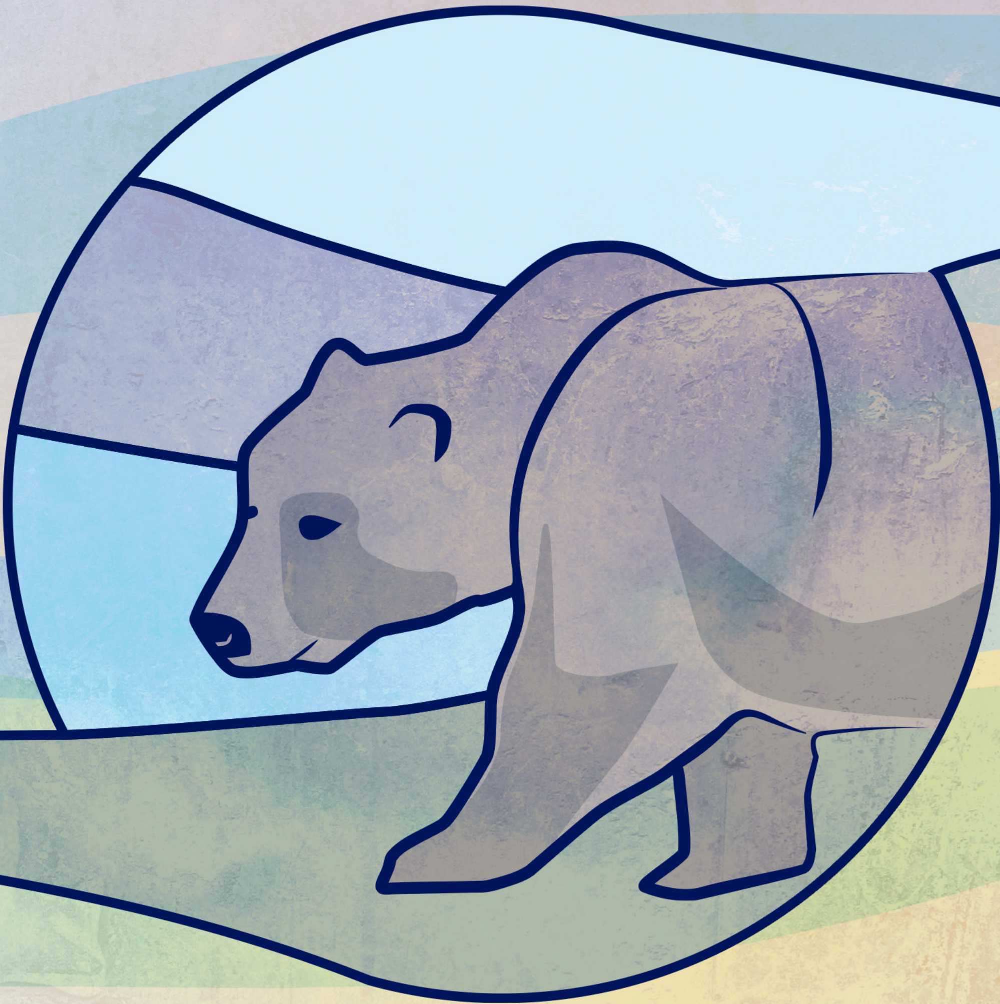
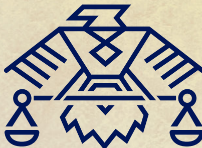
INDIGENOUS BAR ASSOCIATION IN CANADA 2022-2023

Annual Report





INDIGENOUS BAR ASSOCIATION | ASSOCIATION DU BARREAU AUTOCHTONE

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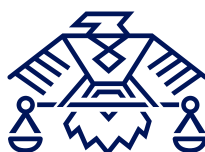

INDIGENOUS BAR ASSOCIATION | ASSOCIATION DU BARREAU AUTOCHTONE

PRESIDENT'S MESSAGE

Drew Lafond

Tansi kakiyaw nitisanihk ekwa nitotemak

I am deeply honored to address you as the President of the Indigenous Bar Association in Canada (the "IBA"). As we gather at the Rama First Nation this year, I want to emphasize a critical aspect of exercising the right to self-determination and protecting and advancing the rights of Indigenous peoples in Canada – the imperative to build capacity within our respective communities and organizations, including within the IBA.

Capacity building is at the heart of our ability to drive lasting change and secure a brighter future for Indigenous peoples across Canada. It is a commitment to empowerment, resilience, and self-determination, and it is central to the IBA's vision for stronger, more vibrant Indigenous nations.

Over the years, we have made significant strides in building the IBA up to serve as a voice for Indigenous peoples in Canada. Our members have assumed roles as key decision-makers across the country, while creating supports and networks to ensure that any progress within our communities honours and furthers our languages and cultural heritage. Our ability to address the pressing issues facing our communities, whether in the areas of justice reform, economic development, education, child and family services or critical infrastructure, hinges on our capacity to mobilize resources, develop leadership and strengthen our networks.

In the coming year, we will continue to place a strong emphasis on capacity building within the IBA. We will work to expand educational opportunities, provide training and undertake research, and create mentorship opportunities within the IBA. We will foster collaboration with partners who share our commitment to the advancement of Indigenous interests in Canada.

Since the inception of the IBA, the selfless and generous donations of time, resources and shared efforts of the IBA's members have enabled the IBA to deliver on its goals and vision. I am ceaselessly amazed and inspired by our members' accomplishments, and am humbled by the hard work that awaits us.

I pray and hope that we can continue to build a resilient, flourishing, respectful and collaborative community within the IBA to effectively promote and support the growth and prosperity of Indigenous nations in Canada.

Kinanaskomitinanaw

Ekosi,

Drew Lafond

TREASURER'S MESSAGE

Laura Sharp

Shé:kon IBA Members,

My first year as treasurer has flown by. Over the course of the year, the board and I have focused on improving the IBA's financial governance and financial position. As the organization has continued to grow, our financial needs have changed. This led to the IBA moving our accounts to RBC in June 2022, adding extra checks and balances for transaction approval, and implementing a financial policy.

As the IBA is a non-profit organization, the core functions of the IBA are funded entirely through membership and conferences fees, sponsorship monies and portions of grant agreements set aside for administrative support and supplies. Our largest expense each year is the conference, and as an organization, we continue to strive to ensure the conference remains affordable for attendees. Other large expenses include the salary for the IBA's newly appointed executive director; payments to contractors for administrative services, bookkeeping and website updates; and disbursements related to court interventions.

This year, the IBA has been successful in obtaining substantial grant funds. This has significantly stabilized our financial position, but like the IBA's other grant funds, have a limited time frame during which the grant work must be completed, and funds must be spent. Moving forward, the IBA will be looking for sources of stable core funding, to reduce our dependence on grants.

This year, the IBA also received the largest ever number of conference sponsorships. We are so grateful to this year's sponsors – many of whom continue to support the conference year after year. Sponsorship monies fund many of the conference extras – like the President's Reception and this year's hospitality suites. The conference programme contains a full list of sponsors – please give the folks associated with the sponsors a warm thank you when you see them.

Over the past several years, the IBA has strived to meet the increased requests for input and involvement, both from our members, from government and from other organizations and businesses. In addition to conference organization, press releases and media commentary, the IBA has been involved in senate and house committee hearings, court interventions, and grant work related to citizenship, the Indigenous Justice Strategy and anti-racism. The majority of this work has been facilitated by or completed by the Board of Directors on a pro bono basis. As a board, we have completed approximately 2000 pro bono hours. This year, as we say goodbye to Anne Chalmers, who has been a rock of the organization for decades, and welcome Racquel Fraser as executive director and Danika Lightning as administrative support, we are looking forward to increasing the IBA's capacity, including financial capacity, to meet the needs of the organization. I am so proud of the work completed to date and am confident in the IBA's ability to fulfill our mandate going forward: recognition and support of our own laws; promote legal and social justice for Indigenous Peoples; foster awareness of legal issues affecting Indigenous Peoples and to provide a space for Indigenous lawyers to gather and exchange ideas.

A full financial update will be provided at the Annual General Meeting. In the meantime, suffice it to say that it we'll have the zhooniyaa for another year, and our year over year financial position has significantly improved.

Nia:wen,
Laura Sharp

BOARD OF DIRECTORS

Drew Lafond, President

Laura Sharp, Treasurer

Lori Mishibinijima, Asst. Vice President

Tamara Pearl, Member-at-Large

Jocelyn Formsma, Member-at-Large

Alexandria Winterburn, Vice President

Samantha Craig-Curnow, Secretary

Zac Thiffault, Member-at-Large

Alain Bartleman, Member-at-Large

Casey Caines, Student Representative

Brendan Schatti, Student Representative

2022 - 2023

INDIGENOUS PEOPLES' COUNSEL

The **Indigenous Peoples' Counsel** designation (IPC) is awarded each year to an Indigenous lawyer in recognition of outstanding achievements in the practice of law. In particular, the IPC 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 IPC award is presented each year at the IBA's Annual Fall Conference.

Candice Metallic, IPC

David Nahwegahbow, IPC

Delia Opekokew, IPC

Dianne G. Corbiere, IPC

Donald Worme, IPC

Eileen Sasakamoose, IPC

Harry Laforme, IPC

Helen Semaganis, IPC

J. Wilton Littlechild, IPC

James (Sakej) Youngblood-Henderson, IPC

Jean Teillet, IPC

Jeffery Hewitt, IPC

John Borrows, IPC

Leonard S. Mandamin, IPC

Kathleen N. Lickers, IPC

Kimberly Murray, IPC

Mark L. Stevenson, IPC

Mary Ellen Turpel-Lafond, IPC

Murray Sinclair, IPC

Paul L.A.H. Chartrand, IPC

Professor Darlene Johnson, IPC

Roberta Jamieson, IPC

Roger Jones, IPC

Valerie Napoleon, IPC

CASES & LEGISLATION
TO KEEP AN EYE ON*

STILL AWAITING TWO MAJOR SCC DECISIONS

As highlighted in the 2021–22 IBA Annual Report, the Supreme Court of Canada ("SCC") heard two major cases in 2022 that will impact Indigenous peoples and rights. The first case is between the Attorney General of Québec and the Attorney General of Canada, and it will determine the constitutionality of Bill C-92, *An Act respecting First Nations, Inuit and Métis children, youth and families*. It was heard on December 7–8, 2022, and a decision is expected to be rendered soon. The IBA was granted leave to intervene in this case and is grateful to Paul Seaman and the team at Gowling WLG for representing the IBA *pro bono*.

The second case is between Cindy Dickson and the Vuntut Gwitchin First Nation, and in it the Court will decide if and how the *Canadian Charter of Rights and Freedoms* applies to Indigenous laws of an Indigenous government with a self-government agreement and modern-day treaty. The *Dickson* case was heard on February 7, 2023, and a decision is forthcoming.

CANADA'S UNDRIP ACTION PLAN

On June 21, 2023, the federal government released the UN Declaration Act Action Plan ("the Action Plan"), as required by the *United Nations Declaration on the Rights of Indigenous Peoples Act* (S.C. 2021, c.14, or the "Act"). The Act reaffirmed that the United Nations Declaration on the Rights of Indigenous Peoples (the "UN Declaration") is an international human rights instrument with application in Canadian law and set out a framework for how Canada will work to implement the UN Declaration in Canada. As part of this framework, the Act requires that Canada "in consultation and cooperation" with Indigenous Peoples prepare and implement an action plan "to achieve the objectives of the Declaration."

The June 21, 2023 Action Plan represents Canada's first action plan under the Act. It spans from 2023 – 2028. Canada has stated that it is an evergreen document that the federal government is committed to continuing to work on and evolve, in partnership with Indigenous Peoples, over time.

The Action Plan outlines 181 specific measures to uphold and advance the human rights of Indigenous Peoples, to address injustice, and to monitor the implementation of the UN Declaration under the Act. It includes measures applicable to all Indigenous Peoples (e.g. "shared priorities"), as well as specific chapters outlining the

*These case summaries are provided for information and awareness only. They are not intended to and do not represent the views of the IBA, the IBA Board, or any IBA members.

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priorities of First Nations, Inuit, Métis, and Indigenous modern-day treaty signatories.

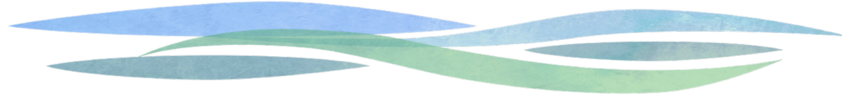
While the Action Plan represents a step forward for the implementation of the Act and the UN Declaration in Canada, there have also been criticisms of it, including that Canada's requirement to develop the plan "in consultation and cooperation" with Indigenous peoples fell short of what was required and necessary. This criticism is founded, in part, on the fact that many Indigenous governments did not have the funding, time, or capacity to actually be engaged in the process. Also, rather than working with rights-holders directly, Canada's consultation seemed to emphasize engagement with national Indigenous organizations or institutions which are not rights-holding Indigenous Nations.

As further outlined below, the IBA was able to provide a report to Canada with a series of recommendations and considerations for the Action Plan, including that working in consultation and cooperation with rights-holding Indigenous Peoples was key to its success and implementation. Going forward, Indigenous Peoples can use the Action Plan as another tool to advance recognition and respect of their rights in Canada, however will also need to hold Canada accountable for the commitments made in the Act and Action Plan so that these promises are not forgotten or ignored.

WATER IN PARLIAMENT

Water in all its forms has been on the minds of Indigenous people, Parliamentarians, and courts alike in 2022 and 2023. In terms of drinking water, in the wake of the repeal of the *Safe Drinking Water for First Nations Act* in June 2022, Canada has begun consultations with First Nations rights holders, First Nations organizations, and Modern Treaty and Self-Governing Nations, to determine the form and content of the new legislation that will replace the repealed Act. Additionally, Indigenous Services Canada ("ISC") worked with the AFN over summer 2022 to inform the development, introduction, and implementation of that new proposed First Nations drinking water and wastewater legislation. In February of 2023, Canada shared a consultation draft of a legislative proposal with First Nations stakeholders for review and feedback.

It was also announced in that same month that the First Nations Drinking Water Settlement claims deadline for individuals, and the acceptance deadline for First Nations, would be extended by one year—First Nations and individuals affected by long-term drinking water advisories which lasted for one year or more between November 20, 1995 and June 20, 2021 now have until March 7, 2024 to submit a claim for compensation.



WATER IN THE COURTS

Water was also a big theme in a recent Aboriginal title case out of British Columbia. Specifically, there is still legal uncertainty as to how Aboriginal title can be made out for groups who lived historically along coastlines. The recent case of *The Nuchatlaht v British Columbia*, 2023 BCSC 804 ["*Nuchatlaht*"] has highlighted the fact that courts and governments have still not established a legal test for title to marine spaces—an issue that has already come to light following *Thomas and Saik'uz First Nation v Rio Tinto Alcan Inc.*, 2022 BCSC 15 and *Chippewas of Nawash Unceded First Nation v Canada (Attorney General)*, 2023 ONCA 565.

The Nuchatlaht v British Columbia, 2023 BCSC 804

In *Nuchatlaht*, the plaintiffs brought a claim for Aboriginal title to a portion of Nootka Island consisting of approximately 201 square kilometers. Notably, the area did not encompass any private lands, Indian reserves, or potential competing claim areas from other First Nations.

The test to make out Aboriginal title comes from *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44 [*Tsilhqot'in*]. The claimant group bears the onus of establishing title by demonstrating: (1) sufficient occupation of the land at the time of assertion of European sovereignty; (2) continuity of occupation where present occupation is relied on; and (3) exclusive historic occupation which is not confined to specific sites, but can extend to tracts of land regularly used for hunting, fishing, or otherwise exploiting resources. Importantly, where present-day occupation is not being relied on to establish historic title, which in this case it is not, step two of the *Tsilhqot'in* test is not necessary. Therefore, all the Nuchatlaht needed to prove was sufficiency and exclusivity of occupation as of 1846, which is the accepted date of European sovereignty in British Columbia.

Another hurdle the Nuchatlaht needed to overcome was whether or not they were the appropriate and proper rights holder such that they even had standing to bring a claim. The evidence showed that the Nuchatlaht historically were broken up into local groups which were headed by local Chiefs who clearly outlined the boundaries of their *hahouthle*, and that the Nuchatlaht people had a heightened concept of ownership and private property. The plaintiff adduced evidence about the identity and location of these local groups in an attempt to fill in the blanks of the total claimed area and show that the Nuchatlaht were present all throughout, however the Court determined that although the Nuchatlaht were the proper historic rights holder to bring the claim, they had not met the burden of establishing title to the totality of the claimed area.

Regarding sufficiency of occupation, the only direct evidence of specific area usage or occupation attributable to the Nuchatlaht was in those villages that the various local groups inhabited. Any evidence that was adduced regarding the culturally modified trees was not sufficient to prove Nuchatlaht use and occupation. The Court stated that evidence of a territorial boundary on its own is not enough to show sufficient occupation, and that there must be proof of a strong presence over the land. The Court agreed that title could be made out in specific sites,

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TO KEEP AN EYE ON

but refused to draw the inference that the whole claim area was used and occupied based on the evidence. Any evidence of the type of use and control called for in *Tsilhqot'in* was absent for most of the Nuchatlaht claim area. As far as the coastal areas, other than the specific settlements, there was no evidence to establish that the rest of the area was used.

Regarding exclusive occupation, the Court agreed that the Nuchatlaht had a concept of ownership that meets the requirement for a title claim, and that they had demonstrated an intention and capacity to control the land sufficient to ground exclusive occupation, but again, not to the totality of the claimed area.

The Court agreed that there may be areas of sufficient occupation or use over which the plaintiff may be able to establish a claim, but as the claim was not presented in this matter, the plaintiff would need to bring the particulars of a new claim instead, in which they argue for a smaller, piecemeal claim area.

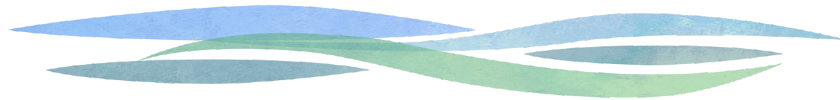
Ultimately, the Nuchatlaht were unsuccessful in meeting the evidentiary burden required to prove their Aboriginal title claim, and therefore the claim was rejected by the Court.

Indigenous groups who may consider Aboriginal title claims in the future will need to consider *Nuchatlaht*, and how to balance the cost of litigation against the necessity of advancing their claim to the fullest possible extent

***Chippewas of Nawash Unceded First Nation v Canada (Attorney General)*, 2023 ONCA 565**

In *Chippewas of Nawash*, the Ontario Court of Appeal largely affirmed the trial judge's decision in the lower court decision on the same issue (see *Saugeen First Nation v The Attorney General of Canada*, 2021 ONSC 4181 [*Saugeen*]). In the *Saugeen*, Justice Matheson refused to grant the appellants, the Saugeen First Nation and the Chippewas of Nawash Unceded First Nation (collectively referred to by the Court as the "SON") Aboriginal title to submerged lands in a large section of Lake Huron and Georgian Bay. Essentially, the trial judge took issue with the boundaries of the SON's title claim, stating that the title claim area was much larger than any SON connection to the submerged land. Additionally, the court found that SON did not satisfy the *Tsilhqot'in* requirement for occupation or exclusivity, including that one of the boundaries of the original claim area was in fact the international boundary between the United States and Canada, and that the SON did not show any historical use of most of the claimed area.

The Ontario Court of Appeal did not find any palpable and overriding error in the trial judge's reasons, but the Court did remit the claim back to the same trial judge for reconsideration as to whether Aboriginal title can be proven to a smaller portion of the original claim area.



Thomas v Rio Tinto Alcan – to be heard by BCCA in 2023–24

Another case to watch is *Thomas and Saik'uz First Nation v Rio Tinto Alcan Inc.,* 2022 BCSC 15, which has been appealed to the British Columbia Court of Appeal. In the lower court, the appellants brought a nuisance claim against Rio Tinto Alcan, related to construction and operation of the Kenney Dam, and the diversion of water from the Nechako watershed, which they state had a severe negative impact on their traditional fishery. Rio Tinto Alcan successfully relied on the defence of statutory authority to avoid liability in nuisance. The case also raised issues regarding Aboriginal title to submerged lands, but the trial judge did not determine the issue, stating that he could not make any findings due to lack of evidence. The First Nation has appealed the dismissal of their nuisance claim.

Four First Nations sought leave to intervene in this appeal, three of which sought to intervene based on public interest standing, to make distinct arguments regarding the assertion of Aboriginal title over submerged lands and its interplay with the public right of navigation. One of the interveners is the Chippewas of Saugeen First Nation and Chippewas of Nawash Unceded First Nation—the same group out of the *Chippewas of Nawash* case discussed above. In *Thomas v Rio Tinto Alcan Inc.*, 2022 BCCA 415, the Chambers judge chose to grant intervener status to three of the First Nations, because in the event that Aboriginal title to submerged lands becomes an issue in the upcoming appeal, it may assist the Court to have more information on possible approaches to the issue.

TREATY INTERPRETATION, LIMITATIONS PERIODS AND TREATY LAND ENTITLEMENT CLAIMS

Canada v Jim Shot Both Sides, 2022 FCA 20 – to be heard at SCC in October 2023

In *Canada v Jim Shot Both Sides*, the Attorney General of Canada appealed a decision from the Federal Court which found in favour of the Blood (Kainai) Tribe out of Treaty 7 territory in southern Alberta. In as early as the 1980s, the Blood Tribe had been claiming that the size of the reserve they received did not accord with what was promised in the treaty. The Federal Court in 2019 agreed that Canada had breached the treaty, but that the breach was discoverable as early as 1971, and therefore, the limitations period had run out. The Federal Court also held that an action for breach of treaty could not have been pursued in court prior to 1982, because treaties were akin to international agreements which had to be ratified before having effect in Canadian law. The Federal Court judge stated that s. 35(1) of the *Constitution Act, 1982* was the ratification; prior to that, no cause of action even existed. The judge held that the statute of limitations on the treaty claim began to run in 1982, which meant that the Blood Tribe had commenced the action before it even existed.

Canada appealed and argued that the cause of action for breach of a treaty right existed before 1982. The Attorney General argued that s. 35(1) did not create a new cause of action, but rather gave constitutional protection to existing treaty rights. The Blood Tribe argued that the judge made no error, and that they should have had no recourse or remedy until 1982. The Blood Tribe also

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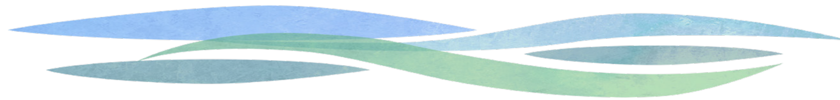
argued, based on the political trust doctrine, that post-1982, Aboriginal rights are not justiciable, and that this should apply to treaty cases as well.

The Federal Court of Appeal allowed the Attorney General's appeal and found many reviewable errors in the Federal Court judge's reasons. Simply put, the appellate court highlighted a long line of jurisprudence in which Canadian courts, including the Supreme Court of Canada, have consistently rejected that Indian treaties were international agreements to which the act of state doctrine would apply, requiring them to be ratified in Canadian law to be recognized. Further, the Federal Court of Appeal pointed out that there is over 120 years of jurisprudence recognizing the enforceability of the commitments made in the numbered treaties, compelled by the honour of the Crown. The Court of Appeal pointed out that s. 35(1) did not create new treaty rights, but rather gave constitutional protection to *existing* treaty rights. Canadian courts provided remedies for breaches of treaty long before the advent of s. 35(1). The Blood Tribe would have had recourse for their treaty land entitlement claim before 1982, and therefore, the limitation period began to run when it was discovered, and the Court agreed all their claims were statute-barred.

The Federal Court of Appeal pointed out that limitations periods have consistently applied to treaty claims regardless of whether they arose before or after 1982, and that this is supported by jurisprudence including *Wewaykum Indian Band v Canada*, 2002 SCC 79, as well as *Canada (Attorney General) v Lameman*, 2008 SCC 14. The Court explained that the policy behind limitation periods is to strike a balance between the defendant's entitlement, after a time, to organize his affairs without fearing suit, and treating the plaintiff fairly with regard to the circumstances. The Court of Appeal stated the Federal Court judge was wrong to determine that limitations periods did not apply—a limitation period is not taking away a constitutionally-protected *right*, but rather barring the particular *remedy* being sought.

Overall, the decision turned on the Court's view that the Federal Court was wrong to suggest that at any point, treaty rights were not enforceable in Canadian courts. They pointed out that the Blood Tribe did not supply a single case in which an action to enforce a treaty commitment was denied on the basis that treaties are not enforceable. The honour of the Crown demands the view that treaties were intended to create enforceable legal obligations, and although in this particular case the result seems unfair to the Blood Tribe, remedying an injustice in this case would create a broader injustice which would require the Court to reject the honour of the Crown altogether.

Finally, the Court invited the Blood Tribe to pursue a specific claim under the *Specific Claims Tribunal Act*, SC 2008, c 22, as limitation periods do not apply to specific claims. The Blood Tribe also chose to appeal this decision to the Supreme Court of Canada. *Jim Shot Both Sides, et al v His Majesty the King* will be heard by Canada's highest court on October 12, 2023. This is a decision to watch for in the upcoming year.



Attorney General of Ontario et al v. Mike Restoule et al.

This case was commenced by the signatory First Nations of the 1850 Robinson-Huron Treaty and Robinson-Superior Treaty (collectively the "Robinson Treaties") in 2014 against Canada and Ontario. In these Robinson Treaties, among other provisions, is a perpetual annuity provision that is to be increased subject to conditions and paid by the Crown to the Anishinaabe.

The case is split into multiple stages. Stages One and Two have been heard by the Ontario Superior Court and Court of Appeal in 2018 ONSC 7701 (stage one); 2020 ONSC 3932 (stage two); and 2021 ONCA 779 (stages one and two appeal were heard together). Stage One involved the interpretation of the Robinson Treaties. Stage Two involved the Crown defences of Crown immunity and limitations. Stage Three was recently heard by the Ontario Superior Court and focused on the issues of remedy, damages, and liability between the Crown (e.g., apportionment between Canada and Ontario). A decision in Stage Three has not yet been released.

In the case the Anishinaabe claim that the annuity payment made by the Crown per the Robinson Treaties are subject to an increase due to inflation and ongoing resource development profits and revenues that the Crown receives from the territories taken in 1850. They also claim that the Robinson Treaties terms obligate the Crown to share these revenues from the land by increasing annuity payments.

Since 1875, the treaties' annuity payments have not been increased and have remained at $4 per person.

In 2018, the Ontario Superior Court of Justice concluded that the Anishinaabe are entitled to a constitutionally protected right under section 35(1) of the *Constitution Act*, 1982, to share in Crown revenues from the taken land via the Robinson Treaties. Therefore, the Crown has a "mandatory and reviewable" obligation to increase these individual annuity payments and the collective annuity to accurately reflect the First Nations' share of economic revenue from the taken land. Ontario appealed the Superior Court decision on the grounds that the trial judge erred in their interpretation of the Robinson Treaties.

In 2021, the Ontario Court of Appeal unanimously held that the Robinson Treaties promises and provisions were neglected by the Crown and upheld the trial decision. The Court of Appeal also commended on potential barriers to the Stage Three negotiations and stated that Crown discretion regarding the increase in annuities, when to implement an increase, and by whom (e.g., Canada and/or Ontario) and in what proportion, can hinder successful remedies.

Stage One and Two appeals will be heard by the Supreme Court of Canada on November 7-9, 2023. The IBA was granted leave to intervene in this case and is grateful to Jason Madden and Alexandria Winterburn and the team at Pape Salter Teillet LLP for representing the IBA *pro bono* before the SCC.

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GLADUE PRINCIPLES & INDIGENOUS VICTIMS

On the criminal law front, it is worth noting that in recent years the courts have started considering the Indigenous status of a victim when crafting a fit sentence for an Indigenous offender, particularly if the victim is an Indigenous female. The *Criminal Code* was amended in 2019 to include s. 718.04, which states:

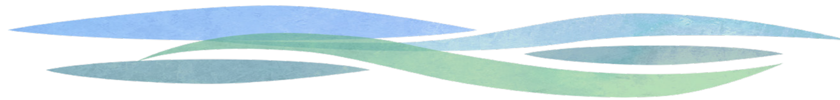
> When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances—including because the person is Aboriginal and female—the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

Further, s. 718.201 has been added to the *Criminal Code*, and it provides a direction to sentencing judges to consider the increased vulnerability of female victims, and Aboriginal female victims in particular, when sentencing for an offence which involves the abuse of an intimate partner.

Both these amendments were the result of Bill C-75 out of the 42nd Parliament, 1st Session, which was passed in 2019. They were designed to address recommendations 5.17 and 5.18 in the *Final Report* of the National Inquiry into Missing and Murdered Indigenous Women and Girls ("MMIWG"), as well as some of the concerns highlighted by the Supreme Court of Canada in *R v Barton*, 2019 SCC 33. The recommendations of the MMIWG report called upon the government to evaluate the impact of *Gladue* principles and s. 718.2(e) of the *Criminal Code* as they related to sentencing equity and violence against Indigenous women and girls. They also called upon the federal government to consider violence against Indigenous women and girls as an aggravating factor in sentencing.

Case law such as *R v Iqalukjuaq*, 2020 NUCJ 15 [*Iqalukjuaq*], has taken this amendment to mean that denunciation and deterrence are foremost considerations when sentencing an Indigenous accused for crimes of a sexual nature committed against an Indigenous female. If denunciation and deterrence are the foremost considerations, this tends to lead to a harsher sentence. In *Iqalukjuaq*, the Court noted that the accused did not commit his sexual assault in a societal vacuum, but rather that physical and sexual violence against women in Nunavut was of epidemic proportions. Although the accused had *Gladue* factors present, consideration of ss. 718.04 and 718.201 served to offset some of those *Gladue* factors in favour of the victim, who was an Indigenous female. In this way, the Court observes that the application of *Gladue* principles has been extended to a specific class of Indigenous victims.

This evinces a trend in Parliament and by the Courts to consider how *Gladue* principles can impact Indigenous communities where both victim and accused have experienced the same or similar historical traumas. Similar reasons can be found in other case law dealing with sexual assault and domestic violence, such as *R v Aklok*, 2020 NUCJ 37, *R c LP*, 2020 QCCA 1239, and *R v Payne*, 2021 NWTTC. Further, in *R v Whitehead*, 2016 SKCA 165, the Saskatchewan Court of Appeal stated the importance of not allowing s. 718.2(e) of the *Criminal Code* to discount the lives of or harms done to Aboriginal victims of crime, their families, and their



communities. It appears that this idea is slowly gaining traction in criminal courts across the country, but particularly within isolated communities and First Nations where both victim and accused are Indigenous.

BILL C-38, *AN ACT TO AMEND THE INDIAN ACT*

On December 14, 2022, Bill C-38, *An Act to amend the Indian Act*, was introduced in Parliament. Bill C-38 is part of the federal government's effort to address the remaining inequities in registration and First Nations membership under the *Indian Act.* Bill C-38 was tabled after concerns were raised following *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c Canada (Procureur general)*, SC 2017, c 25, which left certain inequities unresolved.

The goals of Bill C-38 are to: (1) address the inequity of enfranchisement by ensuring those with a family history of enfranchisement will be treated the same as those without; (2) to enable deregistration by application so those who want their names removed from the Indian Register may do so; (3) to eliminate sex-based inequities in the membership provisions of the *Indian Act* by enabling women who were automatically transferred to their husbands' bands to seek reaffiliation with their natal band; and (4) to further remove some outdated and offensive language from the *Indian Act* as it refers to "mentally incompetent Indians."

It is important to note that Bill C-38 has not yet been passed into law, as it is currently in its second reading in the House of Commons. Any of the proposed changes will not take effect until if and when the Bill has passed. Currently, ISC will accept applications for registration and protests, however they will be held until such time that Bill C-38 receives royal assent or it becomes clear that it will not move forward.

BILL S-13, *AN ACT TO AMEND THE INTERPRETATION ACT AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS*

On June 8, 2023, Bill S-13, *An Act to amend the Interpretation Act and to make related amendments to other Acts* was introduced in the Senate. It is currently in its second reading. If passed, Bill S-13 will amend the federal *Interpretation Act* to provide that Acts of Parliament and regulations are to be construed as upholding the Aboriginal and treaty rights of Indigenous peoples recognized and affirmed by s. 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them. This will help to ensure that all federal laws are consistently interpreted as upholding, and not diminishing, the existing Aboriginal and treaty rights of First Nations, Inuit, and Métis peoples.

Consequently, any of the non-derogation clauses found in federal legislation which previously existed to address this issue will be repealed, as all federal legislation would be interpreted in keeping with the *Interpretation Act*, RSC 1985, c I-21, making the individual non-derogation clauses unnecessary.

It is important to note that these amendments will only affect federal laws, and that provincial interpretation legislation will remain unchanged, regardless of whether it already includes a non-derogation clause to a similar effect or not.

UPDATE
ON THE CHILD AND FAMILY SERVICES REVISED SETTLEMENT AGREEMENT

$23.34 billion compensation was approved by the Canadian Human Rights Tribunal ("CHRT") for First Nations children, families and caregivers impacted by Canada's discriminatory underfunding of the First Nations Child and Family Services Program (the "Program") and a narrow definition of Jordan's Principle.

BACKGROUND

In 2007, the Assembly of First Nations First Nations ("AFN") and the First Nations Child and Family Caring Society ("Caring Society") filed a human rights claim alleging that Canada was discriminating against First Nations children and families by underfunding the Program on reserve, and by its choice to not implement Jordan's Principle.

The claim was substantiated in 2016 CHRT 2 when the CHRT ordered Canada to immediately cease its discriminatory conduct, and to pay compensation to eligible First Nations children, parents and caregivers. It further required Canada to pay $40,000 per eligible victim for Canada's "willful and reckless" discrimination of the "worst order".

On December 31, 2021, Canada announced it was working toward a final agreement to resolve the compensation issue. Canada, the AFN, Moushoom/Trout representative plaintiffs reached a settlement agreement for $20 billion on June 30, 2022. This was rejected by the CHRT for being insufficient for the number of victims entitled to compensation.

On April 17, 2023, a Revised Settlement Agreement was reached between the parties for $23.34 billion. On July 26, 2023, the CHRT affirmed that the Revised Settlement Agreement met its previous compensation orders and approved the compensation for First Nations children and families affected by Canada's discrimination under the Program and Jordan's Principle. The Revised Settlement Agreement also calls for an apology from the Prime Minister. Furthermore, the Revised Settlement Agreement created additional classes of individuals eligible to receive compensation:

(1) Removed Child Class
(2) Removed Child Family Class
(3) Essential Services Class
(4) Jordan's Principle Class
(5) Jordan's Principle Family Class
(6) Trout Child Class
(7) Trout Family Class
(8) Kith Child Class
(9) Kith Family Class

In addition, the CHRT stated as follows:

> ... First Nations children ought to be honored for who they are, beautiful, valuable, strong and precious First Nations persons. Governments, leaders and adults in any Nation have the sacred responsibility to honor, protect and value children and youth, not harm them. Complete justice will be achieved when systematic racial 2 discrimination no longer exists. The compensation in this case is only one component. The Tribunal, assisted meaningfully by the parties, has always focused on the need for a complete reform, the elimination of the systematic racial discrimination found and the need to prevent similar practices from arising. This continues to be the Tribunal's focus to see transformation and justice established for generations to come.

NEXT STEPS

The CHRT has confirmed that the Revised Settlement Agreement has met their compensation orders by way of letter-decision, and a written decision is expected in the coming months. Next, it will be brought to the Federal Court this fall for final approval. If approved, the Caring Society and the AFN will establish the claims process and we will see an application process open. As well, the Caring Society and the AFN will continue to advocate for the long-term reform of First Nations Child and Family Services Program and the full implementation of Jordan's Principle.

SUMMARY OF INTERIM REPORT

FROM THE INDEPENDENT SPECIAL INTERLOCUTOR FOR MISSING CHILDREN AND UNMARKED GRAVES & BURIAL SITES ASSOCIATED WITH RESIDENTIAL SCHOOLS

On June 8, 2022, Kimberly Murray was appointed as Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools. In June 2023, her office released an interim report which examines the current Canadian legal framework and identifies significant limitations and gaps that create barriers for Survivors, Indigenous families, and communities as they lead search and recovery efforts to find the missing children and unmarked graves.

Ms. Murray's work has spent significant time meeting with Survivors, their families and Indigenous communities. Her office has hosted four (4) national gatherings on unmarked burials in the last year. She has given many presentations to Indigenous leadership, communities and organizations, and at gatherings focused on search and recovery efforts. She has also served as a liaison in the location of records that provide information on missing loved ones. Ms. Murray continues to meet with government and church representatives and has appeared in person before the Standing Senate Committee on Indigenous Peoples in March 2023. She also made submissions to the UN Expert Mechanisms on the Rights of Indigenous Peoples. Those submissions are available online and accessible via this link.

Further, Ms. Murray's office has established a partnership with Canadian Geographic to develop a publicly available interactive make of discovered, unmarked burial sites.

COMMON CONCERNS

There are 12 areas of common concern, and a total of 48 findings have been made in the following:

1. Access to and destruction of records
2. Access to and protection of sites
3. Complexity and timeline of ground searches
4. Shortcomings of existing investigation processes
5. Affirming Indigenous data sovereignty
6. Challenges of responding to media and public disclosures
7. Increase in the violence of denialism
8. Lack of sufficient, long-term funding
9. Need for indigenous health and wellness supports
10. Repatriation of children
11. Land Back: repatriation of cemetery burial sites
12. Accountability and justice

SUMMARY OF INTERIM REPORT

FROM THE INDEPENDENT SPECIAL INTERLOCUTOR FOR MISSING CHILDREN AND UNMARKED GRAVES & BURIAL SITES ASSOCIATED WITH RESIDENTIAL SCHOOLS

FORCED TRANSFERS OF INDIGENOUS CHILDREN

The search and recovery efforts of Indigenous communities has highlighted the importance of tracing the movement of each child from the time they were taken to a residential school, through to any other institution or location they were moved. These forced transfers of children will provide a fuller picture about their experiences and the conditions leading to their deaths. Other transfers include: foster homes, convents, homes for unwed mothers, orphanages, tuberculosis hospitals, "Indian hospitals", psychiatric institutions, hospitals, federal hostels, and mission or industrial schools.

ONGOING CHALLENGES OF COLLECTING RECORDS

The interim report highlights that a wide variety of documents contain information about missing children and where they may be buried. The records are held by various government departments at all levels of government, churches, universities, medical institutions and other entities. Issues pertaining to privacy laws and access to information have impeded efforts to fully understand the truth about where these missing children are or the location of an unmarked burial.

FOUNDATIONS OF A NEW REPARATIONS FRAMEWORK

Addressing gaps and barriers are crucial to providing accountability and justice for Indigenous peoples in the face of genocide, colonial violence, and mass human rights violations. The interim report outlines ten elements of reparations that will form the basis of the Final Report which will be released in June 2024. These interconnected and necessary elements include:

1. Indigenous laws are vital to creating a framework for reparations
2. International and domestic laws and tribunals
3. Genocide and crimes against humanity laws and processes
4. Truth finding
5. Accountability and justice
6. Repatriation
7. Healing
8. Apology
9. Commemoration
10. Denialism, bystanders and public education

JUSTICE & LAW REFORM

REGARDING THE PETITION TO ABOLISH RULE 67.4 OF LAW SOCIETY OF ALBERTA CODE OF CONDUCT

On February 5, 2023, a Special Meeting of the members of the Law Society of Alberta ("LSA") met to vote on a petition made by 51 LSA members to abolish Rule 67.4 of the Code of Conduct which authorizes the LSA to prescribe continuing professional development ("CPD") to its members. In Alberta, the LSA has undertaken substantial work to update its CPD programming. In doing so, the LSA suspended all CPD requirements with the exception of Indigenous cultural competency training through a program called "The Path", principal training and trust fundamentals training.

The organizers of the petition were cited in the news as denying that systemic discrimination still exists against Indigenous Peoples and accusing the LSA of having a "woke agenda". Further, they stated that they opposed "it because we do not believe the benchers have or should have the power to mandate cultural, political, or ideological education of any kind on Alberta lawyers as a condition of practice."

Three IBA members addressed the nearly 3,500 LSA members at the Special Meeting in opposition to the petition, including Brooks Arcand, Koren Lightning-Earle and Racquel Fraser. Racquel Fraser spoke on behalf of the IBA who voiced unequivocal support for Canadian law societies taking the initiative to promote education and awareness of Indigenous people's history, culture, and justice issues in Canada. The Path represents an important step by the LSA to address the Truth and Reconciliation Commission's Call to Action #27.

She discussed how Indigenous people have made seismic strides in reclaiming their heritage, language, histories and, particularly germane to today's discussion, their own laws. We are at a pivotal time in our history where the revitalization of Indigenous laws, and the necessity of building these laws into the fabric of Canada's constitutional framework, is finally being recognized by the legal profession, in this case, through the LSA.

Further, she noted that the introduction of mandatory continuing legal education was designed in partnership with Indigenous legal experts, is an expression of how far we have come as a profession, and a monumental step forward in implementing the TRC's call to Action #27. More importantly, Indigenous laws, and the histories, cultures and collective experiences in which they are rooted, form a fundamental aspect of the laws of Canada. It is incumbent upon lawyers to familiarize themselves with the foundational elements of our constitution, and the Path is the first, elemental step in understanding how and why Indigenous laws form part of our constitution framework.

The petition was rejected by a vote of 2,609 to 864. We thank all those allies and IBA members for lending their voices to defeat the petition.

NOTABLE ACCOMPLISHMENTS OF INDIGENOUS LAWYERS IN CANADA

DOUG WHITE JOINS PREMIER'S OFFICE AS SPECIAL COUNSEL ON INDIGENOUS RECONCILIATION

November 29, 2022

The IBA congratulates Doug White on his appointment to the British Columbia Premier's Office. A long-time ardent advocate for Indigenous justice issues, Doug's work will advance the interests of Indigenous peoples in British Columbia that will span multiple government industries. He is a member of the Snuneymuxw First Nation.

FORMER JUDGE GERALD MORIN APPOINTED INTO THE ORDER OF CANADA

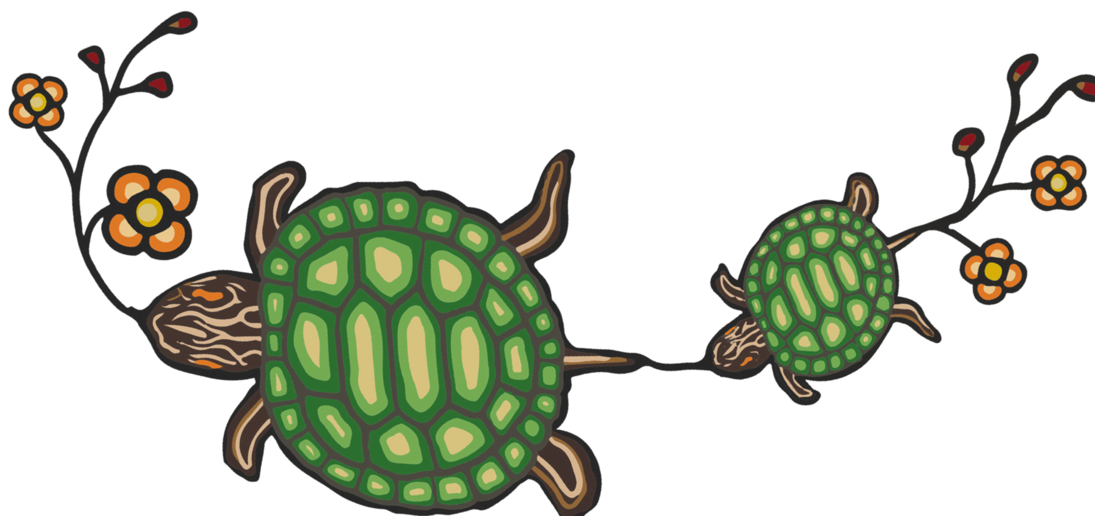
June 21, 2023

Please join us in congratulating Former Judge Gerald Morin who has been selected for induction into the Order of Canada. He was recognized for his transformation of the use of Cree in Canada's judicial system. He is a member of Peter Ballantyne Cree Nation from Cumberland House, Saskatchewan.

USASK LAW GRAD EARNS PRESTIGIOUS ROYAL SOCIETY OF CANADA AWARD

September 25, 2023

The IBA congratulates Darian Lonechild, who graduated from the Juris Doctor degree program in the University of Saskatchewan's (USask) College of Law earlier this year, for receiving the Justice Rosalie Silberman Abella Prize from the Royal Society of Canada (RSC). Darian is a Cree and Saulteaux member of the White Bear First Nation in Treaty 4 Territory.



PARTNERSHIPS & ALLIANCES

STEADY GROWTH

The IBA's partnerships and networks continue to grow considerably. We continue to make significant strides in the IBA's communication and collaboration with organizations, Nations and Indigenous governments to protect the interests of Indigenous People and undertake the work needed to fulfill the objectives of this growing organization. This section outlines a few of the important partnerships that contribute to the success of the IBA and the ongoing performance of its mandate.

RESEARCH ON INDIGENOUS ENGAGEMENT IN RESOURCE DEVELOPMENT PROJECTS

The Indigenous Bar Association has partnered with doctoral candidate Peter Pomart (I.H. Asper School of Business, University of Manitoba). As a qualitative researcher, Pomart aims to provide an Indigenous rights-affirming approach to understanding engagement with Indigenous peoples affected by resource development projects. Existing bodies of management/business literature do not adequately convey the importance of engaging with Indigenous peoples in a manner that fully supports their right to self-determination, participation, and decision-making. Together, we can change that.

We invite IBA members who have experience negotiating and/or advancing the interests of Indigenous peoples affected by resource development projects to participate in this invaluable research.

NEWS RELEASES & MEDIA

THE IBA CONGRATULATES GERALD MORIN & HARRY LAFORME, ORDER OF CANADA

January 31, 2023

Please join the Indigenous Bar Association in Canada in congratulating the Honourable Harry S. LaForme, IPC, O.C., K.C., and the Honourable Gerald M. Morin, O.C., K.C., (JD '87) on receiving the Order of Canada, one of Canada's highest honors.

THE IBA CALLS ON MEMBERS OF THE LAW SOCIETY OF ALBERTA TO SUPPORT INDIGENOUS CULTURAL COMPETENCY EDUCATION

February 2, 2023

The Indigenous Bar Association in Canada fully supports and applauds the Law Society of Alberta's (the "LSA") adoption of mandatory continuing legal education ("CLE") on Indigenous culture, history, and legal issues in Canada. We call on all Indigenous lawyers and allies licensed in Alberta to attend the LSA Special Meeting being held on February 6, 2023, to consider a Petition that seeks to remove this important CLE requirement and that will significantly set back reconciliation among the legal profession in Alberta.

THE LAW SOCIETY OF ALBERTA MEMBERS VOTE IN SUPPORT OF INDIGENOUS CULTURAL COMPETENCY EDUCATION

February 7, 2023

In a statement released on February 2, 2023, the Indigenous Bar Association in Canada called on all IBA members and allies who are members of the Law Society of Alberta (the "LSA") to attend a Special Meeting called to consider a Petition to repeal Rule 67.4 of the Rules of the LSA. Rule 67.4 authorizes the Benchers of the LSA to prescribe and mandate specific Continuing Legal Education, including cultural, political, or ideological education on members as a condition of practice.

THE IBA SUPPORTS ETIENNE ESQUEGA AND CATHERINE RHINELANDER OF THE GOOD GOVERNANCE COALITION FOR LSO BENCHER

March 22, 2023

The Indigenous Bar Association in Canada wishes to express its full support for IBA members Etienne Esquega, an independent bencher candidate and Catherine Rhinelander, a bencher candidate for the Good Governance Coalition, in the Law Society of Ontario's bencher elections.

THE IBA CELEBRATES THE VATICAN'S REPUDIATION OF THE DOCTRINE OF DISCOVERY AND CALLS ON CANADA TO REJECT AND ERADICATE THE DOCTRINE IN CANADIAN LAW

April 12, 2023

The Indigenous Bar Association in Canada celebrates the formal repudiation of the Doctrine of Discovery by the Catholic Church. In a joint statement of the Dicastery for Culture and Education and for Promoting Integral Human Development on the "Doctrine of Discovery" the Vatican formally rejected the doctrine, which emerged under 15th century Papal Bulls of *Romanus Pontifex* (1455) and *Inter Caetera* (1493), that granted the exclusive right to certain nation states (Spain and Portugal) to possess lands that those states had "discovered", irrespective of the fact that Indigenous Peoples occupied and exercised sovereignty over such lands.

THE IBA CONGRATULATES BROOKS ARCAND-PAUL, FORMER IBA VICE PRESIDENT, ON HIS HISTORIC ELECTION TO THE ALBERTA LEGISLATIVE ASSEMBLY

June 15, 2023

The Indigenous Bar Association in Canada proudly extends its heartfelt congratulations to Brooks Arcand-Paul's election to the Alberta Legislative Assembly. Arcand-Paul's election signifies a momentous milestone for Indigenous representative in Canadian politics and a significant step towards advancing the rights and interests of Indigenous communities.

THE IBA CELEBRATES THE APPOINTMENT OF JUSTICE CATHERINE H. RHINELANDER TO THE SUPERIOR COURT OF JUSTICE OF ONTARIO

June 16, 2023

Please join the Indigenous Bar Association in Canada in congratulating IBA member Justice Catherine H. Rhinelander on her recent appointment to the Superior Court of Justice of Ontario. Justice Rhinelander is a member of the Yellowknives Dene First Nation in Treaty #8 territory and the daughter of a residential school survivor. After obtaining her Bachelor of Laws from Dalhousie University, she was called to the Ontario bar in 1993.

THE IBA CONGRATULATES THE INDEPENDENT ADVISORY BOARD MEMBERS FOR SUPREME COURT OF CANADA APPOINTMENTS

August 12, 2023

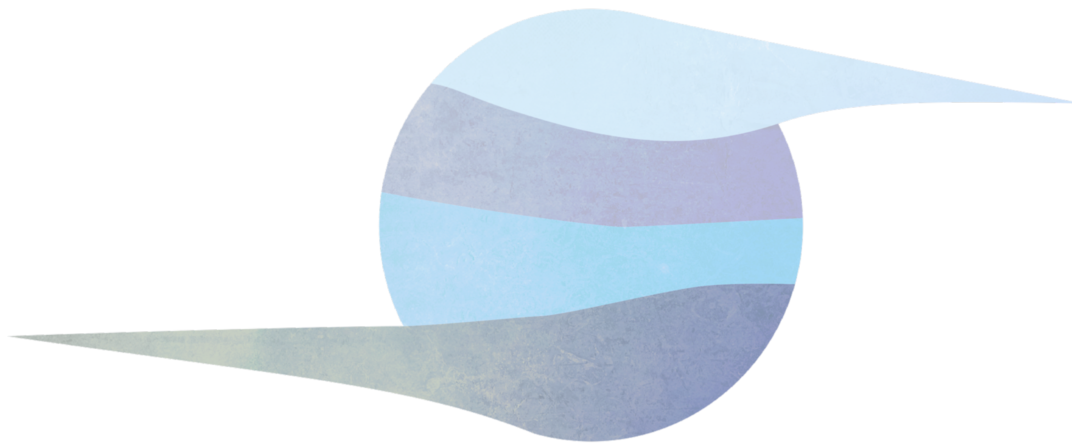
The Indigenous Bar Association in Canada congratulates the eight appointees to the Independent Advisory Board who are responsible for identifying candidates to fill the Supreme Court of Canada vacancy created by the retirement of Justice Russell Brown.

NEWS RELEASES & MEDIA

THE IBA ANNOUNCES THE APPOINTMENT OF RACQUEL FRASER AS EXECUTIVE DIRECTOR

August 30, 2023

The Indigenous Bar Association in Canada announces the appointment of Racquel Fraser as Executive Director, effective July 17, 2023. Racquel is a member of Ahtahkakoop Cree Nation and a lawyer with over a decade of experience in serving Indigenous governments and Indigenous organizations. She cares deeply about advancing the well-being and prosperity of Indigenous people and brings with her a wealth of knowledge.



ABOUT THE ARTIST

*The IBA is grateful to **Lese Skidmore** for allowing us to feature her beautiful artwork in this annual report.*

Lese Skidmore is a First Nations woman of Anishinaabe and German decent from Roseau River First Nation. At the heart of her 20-year media career is a deep sense of care for Indigenous people, knowledges, cultures and rights. Lese strives towards social justice by creating media to guide Indigenous people towards asserting their agency, and knowledge about their rights, as they navigate oppressive systems. For the last twenty years, Lese has been an editor, producer, director and graphic designer at BearPaw Media and Education. She is currently the Legal Education Media Producer. Lese has directed and produced documentaries, docu-dramas, short dramas and animations. Recently (Re) claiming Indian Status, produced by Lese, won the CTV Audience Choice Award for Documentary Short and received Special Mention as Best Alberta Documentary Short at the 2020 Calgary International Film Festival. In 2014, Lese and her co-producers/co-writers won Best Comedy and Best Writing for Just Cause 2 at the Alberta Film and Television Awards. Her work has also been nominated and screened at Alberta Film and Television Awards, Dreamspeakers Film Festival, Yorkton Film Festival and American Indian Film Festival.

*We are also grateful to **Storm Angeconeb** for her artistic contributions to the IBA, including the woodland style artwork used in this report and throughout our website.*

IBA GOVERNANCE

IBA MEMBERSHIP COMMITTEE REPORT

Background / Overview

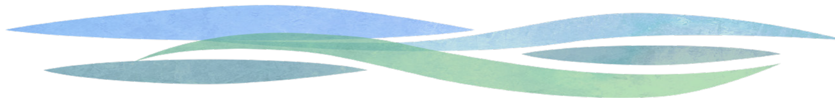
The IBA Membership Committee (the "Committee") was created in 2017 to assist the IBA Board by providing options and recommendations for how to respond to membership applications. In 2019, the Committee was established as a permanent committee to address membership inquiries on an ongoing basis, provide advice to the Board, and work towards the completion of a final report. Based on the feedback received, the Committee prepared its Final Membership Committee Report in 2022.

Importantly, supporting the self-determination of Indigenous Peoples was a foundational theme and guiding principle that informed the Committee in its work and in the development of its Final Report and recommendations. Self-determination is largely considered a fundamental right that is grounded in the identities of Indigenous Peoples as distinct, independent, and sovereign nations. The Committee recognized that it is not its place, or the IBA's, to determine who is and who is not a member of an Indigenous People or community. That right is held by Indigenous Peoples themselves. The Committee's Final Report and recommendations attempt to assist the IBA in respecting the choices of Indigenous Peoples and communities as part of determining who falls within the IBA membership categories.

The Committee made various recommendations as part of its Final Report, two of which are reproduced below as they relate to the work of the committee this past year:

a) The Board adopt, as a matter of policy, that "Indian, Inuit and Métis peoples" (e.g. those already falling within the term "Indigenous" as defined in the By-Laws) be admitted as members of the IBA where their Indigenous People, Nation, or community is outside of Canada but falls within North America (e.g. those lands/areas that, absent colonial boundaries, fall within these nations traditional territory).

b) The Board adopt, as a matter of policy, that self-identification alone is not sufficient to ground membership in the IBA and accordingly, that applicants who are unable to identify the "Indigenous Nation" and "Heritage" sections of the application form not be admitted for membership.



Recent Developments - Updated IBA Membership Application Form & Draft Verifications / Appointments Policy

The Membership Committee has developed an Updated IBA Membership Application Form (the "Updated Application Form") that the Board proposes be adopted at the 2023 AGM and used for all membership applications and renewals following its adoption.

The Updated Application Form is informed by the work and 2022 Final Report of the Membership Committee. It provides updated guidance on how the IBA Board is interpreting the "Indigenous" requirement in the By-Laws, and introduced three new components to what was previously included in the IBA's membership form:

i) Requests a reference (e.g., registrar or community member or other person) to verify what the applicant has identified for "Indigenous community or nation."

ii) Allows for the applicant to submit additional information, if required, to explain any unique circumstances affecting their application or ability to provide references etc.

iii) Provides an updated declaration that applicants are required to swear/affirm that includes providing their consent for the Board to contact references and verify the information provided around "Indigeneity".

This verification work will likely be undertaken by the Membership Committee, who will then provide a recommendation to the Board (who, pursuant to the IBA By-Laws, have the responsibility for making IBA membership decisions).

The IBA Membership Committee has also developed a draft Appointment and Verification Policy to respond to the 2022 AGM resolution to develop such a policy and approach for verifying Indigenous identity for key IBA roles or positions. Specifically, the Policy addresses three areas:

i) Appointments of IBA members to the Board;

ii) Appointments of other individuals to represent the IBA in various forums (e.g., court interventions, senate or committee hearings, media interviews, etc.); and

iii) Appointments of IPCs.

On the first and second areas (appointments to the Board and appointments to represent the IBA in various forms), the policy is aligned with implementing the broader work of the Committee on IBA membership and requiring that for all Board members or other appointments the individual must have completed the Updated Application Form and sworn/affirmed the updated declaration of Indigenous identity.

On the third area (appointments of IPC's), the policy outlines that, as a matter of longstanding practice, the decision to award or appoint an individual as an IPC is decided by the IPC's themselves. The policy outlines a number of potential considerations for IPC appointments that are aligned with what the Board is proposing in other areas, for the IPC's consideration.

The Committee thanks the Board and the entire membership of the IBA for your trust and support. It has been an honour to assist the IBA as it charts the path forward on this important work.

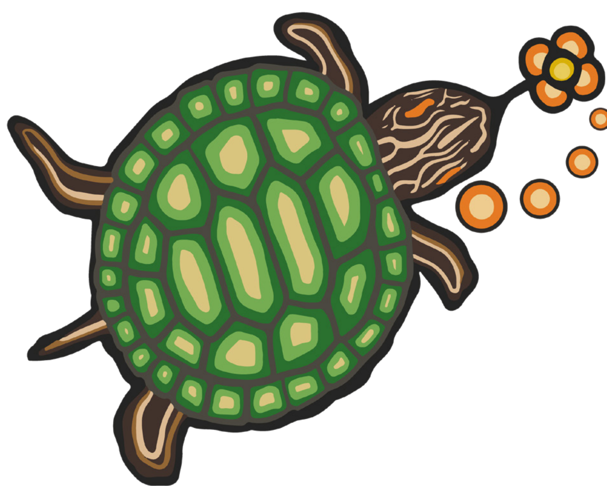
IBA Code of Conduct (Draft)

At the 2022 IBA Annual General Meeting, the membership approved of the following motion: "*[Whereas the AGM] recommend[s] to the IBA board of directors to develop a code of conduct to bring forward to next year's AGM for consideration by members*."

Over the last year, three of the IBA Board members have worked to develop a draft "IBA Code of Conduct" document, that pursuant to the above quoted resolution, will be shared at this year's AGM for consideration by the members. The draft Code of Conduct is intended to help ensure that the IBA is a safe place of support, meaningful dialogue, and respectful debate for Indigenous legal scholars, practitioners, and Indigenous allies. Specifically, it recognizes that "as we enter a multi-juridical future, this requires an elevated level of intersocietal professionalism" and sets out a list of shared understanding and values as well as a list of expectations around conduct towards one another.

Rather than identifying a specific set of expectations (e.g., upholding the 7 Anishinaabe Grandfather Teachings, for example), it outlines broader themes of respectful engagement (e.g., be honest and kind, treat each other with respect and courtesy, etc.) and asks that members uphold these in ways that align with each of their respective Indigenous teachings, which may differ from Indigenous Nation to Nation or community to community.

The Board of Directors would like to thank the members that contributed to the draft Code, including specifically Samantha Craig-Curnow, Jocelyn Formsma, and Tamara Pearl.



UNDRIP ACTION PLAN REPORT

Over the years, the IBA and IBA members have done considerable work on promoting awareness and education on the UN Declaration as a tool for advancing reconciliation and promoting human rights for Indigenous Nations, communities, and individuals within Canada. For example, in 2011, the IBA produced the "Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples – An Introductory Handbook", in 2020 the IBA provided submissions and appeared before the Senate on Bill C-15 (*An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*), and in 2022, the IBA hosted a joint webinar with the Canadian Council of International Lawyers on considerations for implementing the UN Declaration in Canada.

Most recently, in May 2023, the IBA was able to provide submissions to Canada about Canada's Action Plan to implement the UN Declaration in Canada. The IBA's submissions highlighted the importance of implementing the UN Declaration in consultation and cooperation with Indigenous Peoples and noted that fulfilling this commitment is foundational to the success of the Act and Action Plan. The IBA specifically stated that this "necessitates direct, ongoing, and robust engagement with rights-holding Indigenous Nations and Peoples within Canada as it is their rights and interests at issue" and adopted supporting Indigenous self-determination as key principle for implementing the UN Declaration.

With that said, the IBA's submissions drew of the expertise of UN Declaration experts – many of whom are IBA members and Indigenous Peoples Counsel – to provide a series of recommendations and considerations for Canada around the following themes:

i) Furthering Indigenous Peoples' Own Laws: Opportunities and Examples from the United States Indigenous Tribes Experience

ii) Implementing the UN Declaration and Article 44 on Indigenous Women and Girls

iii) The Right to Participate in Decision-Making and Free, Prior and Informed Consent

iv) The UN Declaration Promotes the Economic, Social, and Cultural Well-Being of Indigenous Peoples

v) Review of Intellectual Property Laws, Law Reform, and the UN Declaration

vi) Implementing the UN Declaration and Considerations for Canada's Review of Laws

vii) Measures to Monitor, Oversee, Provide Remedies and Other Accountability Matters with respect to Implementation

UNDRIP ACTION PLAN REPORT

The important work to implement the UN Declaration within Canada is only just beginning.

Canada's Act and Action Plan represent a significant step forward and present opportunities for Indigenous Peoples to advance the recognition and respect of their fundamental rights and freedoms that are necessary to the survival and dignity of all Indigenous Peoples. The IBA's submissions highlighted that it will be important that as this work moves ahead that it be done in direct consultation and cooperation with Indigenous Peoples' whose rights and responsibilities under the UN Declaration are engaged. Also, it will be important that Canada work with Indigenous Peoples to implement effective mechanisms for securing their free, prior and informed consent.

Provincial and territorial governments will necessarily need to be a part of this work given their constitutional areas of authority, that overlap with the rights of Indigenous Peoples set out in the UN Declaration regarding their traditionally owned and occupied lands, resources, and territories (among others).

The IBA Board would like to thank all contributors to the submissions, including specifically: Merle Alexander, Brenda Gunn, Dr. Val Napoleon, Angela Riley, Risa Schwartz, and Alexandria Winterburn.

IN MEMORIAM
JAMES K. BARTLEMAN

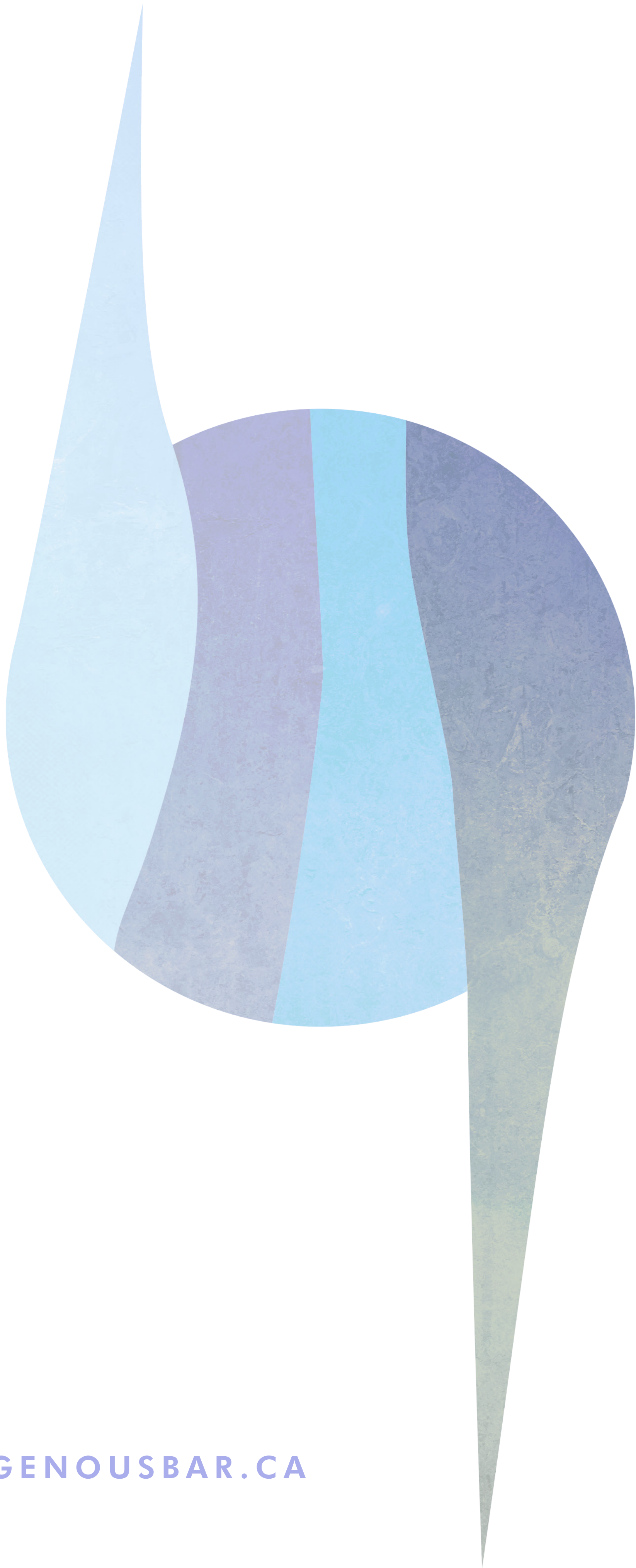
The IBA pays tribute to and remembers the late James K. Bartleman as a champion of social justice and an esteemed public servant and diplomat. Mr. Bartleman was a member of the Chippewas of Rama First Nation and was the first Indigenous Lieutenant Governor of Ontario.

Mr. Bartleman's distinguished diplomatic career spans 35 years, where he was a trusted political advisor and even served as Ambassador of Canada to Cuba, Israel, the North Atlantic Treaty Organization, and the European Union. In addition, he served as High Commissioner to South Africa and Australia. As a result of his hard work and public service, Mr. Bartleman received thirteen honorary degrees, and he received numerous public distinctions, including the Order of Canada and the Order of Ontario.

His contributions did not stop with his public service and diplomacy. Mr. Bartleman was also an ardent advocate of mental health and anti-racism, Mr. Bartleman also devoted much of his time to empowering the youth and promoting literacy in our young people.

Mr. Bartleman was also a storyteller who authored five non-fiction books and three novels. His fiction work served as a "good tool to not only entertain but also to transmit this message of social justice, of empathy, of compassion and also awareness for First Nations and culture". He leaves behind a truly inspirational legacy.

James K. Bartleman leaves his wife, Marie-Jeanne, his daughter, Anne-Pascale Bartleman, and two sons Laurent and Alain. Alain currently serves on the IBA's Board of Directors.



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