IBA Conference Descriptive Report

“Revitalizing Indigenous Laws: Accessing Justice and Reconciliation”

October 17-18, 2012

Report prepared by Renée McBeth, Project Coordinator
# Table of Contents

Introducing the Conference and the “Accessing Justice and Reconciliation” Project .................................. 3
How Do We Productively and Respectfully Engage with Indigenous Legal Traditions? ...................... 4
Research Methodology ........................................................................................................................... 5
Results .................................................................................................................................................. 6
Research Experience and Outcomes ........................................................................................................ 6
  Coast Salish legal traditions .................................................................................................................. 6
  Tsilhqot’in legal traditions ................................................................................................................... 7
  Cree legal traditions ............................................................................................................................ 7
  Anishnaabe legal traditions .................................................................................................................. 8
  Mi’kmaq legal traditions .................................................................................................................... 9
  Northern Secwépemc legal traditions ................................................................................................. 9
  Métis legal traditions .......................................................................................................................... 10
  Inuit legal traditions ........................................................................................................................... 10
Some Critical Questions Moving Forward – Reflections from the Senior Researchers ...................... 11
TRC Perspectives on the Project ............................................................................................................. 12
Reflections from the Academic Lead ..................................................................................................... 12
Keynote Address – Chief Wilton Littlechild, IBA Indigenous Peoples’ Counsel and Commissioner, Truth and Reconciliation Commission of Canada ................................................................. 13
Workshop: Drawing Law from Stories .................................................................................................. 13
Special guest Justice Mandamin .......................................................................................................... 14
Appendix 1: Speaker Biographies ......................................................................................................... 15
  Steering Committee Speaker Bios ....................................................................................................... 15
  Research Team Bios ............................................................................................................................ 15
Appendix 2: Workshop Program ........................................................................................................... 19
IBA Conference Descriptive Report

“Revitalizing Indigenous Laws: Accessing Justice and Reconciliation”

Introducing the Conference and the “Accessing Justice and Reconciliation” Project

On October 17-18, 2012 the Indigenous Bar Association (IBA) hosted a two day workshop focused on the research method, experiences and lessons, and interim outcomes of the “Accessing Justice and Reconciliation” (AJR) project funded by the Law Foundation of Ontario and organized by the IBA, the Faculty of Law at the University of Victoria, and the Truth and Reconciliation Commission of Canada. More than fifty people participated in the two full days comprised of presentations and an interactive workshop on researching and working with Indigenous legal traditions.

Clarence and Barbara Nepinak, local Ojibwa elders, welcomed participants to Treaty One territory and introduced T.J. Spence who offered a traditional welcome through song and his drum. Margaret Froh, Chair of the Accessing Justice and Reconciliation Steering Committee, provided background on the project. The IBA decided to apply for the project funding after a retreat with the IBA’s Indigenous Peoples’ Council, which led to a new vision to take up the task of revitalizing Indigenous Laws. Margaret Froh and Koren Lightening-Earle (IBA President), worked with Kim Murray and Paulette Regan from the Truth and Reconciliation Commission of Canada to prepare a funding application to the Law Foundation of Ontario. Professor Val Napoleon came on board as Academic Lead and notice of the successful application was received in December 2011.

Val Napoleon provided background on the rationale and context for the research project. How we see, understand and work with Indigenous law depends on what we think law is and what our expectations of it are. Law is not separate from us, she explained, it is what we do, and law’s existence depends our serious engagement with it. Indigenous law needs to interact critically with other legal orders and it needs to do so in a way that protects the integrity of each legal order. This project is drawing on the rich intellectual traditions available to Indigenous people for reasoning through legal problems and the issues Indigenous communities are struggling with today. Indigenous law is about citizenship, governance, and tools for challenging power imbalances and interacting with people beyond one’s own society. This work considers law’s legitimacy and authority, how law changes over time, and the ways in which law is about relationships. Professor Napoleon reviewed comments from various American Tribal Judges who have emphasized the need for this work and showed that in Canada there is an increasing acknowledgement of Canada as a multi-juridical country. Professor Napoleon described her belief that this work can and should reinvigorate respectful debate between and within Indigenous communities.

The outcomes of the research are critical and theoretical analytical frameworks for each of the distinct Indigenous legal traditions considered. For the participants involved at the University of Victoria (UVic), the big picture of the work being done in the AJR project is working towards a proposed four-year combined law degree program, leading to professional degrees in both the common law (Juris Doctor or JD) and Indigenous legal traditions (Juris Indigenarum Doctor or JID). Through and alongside this project, UVic is also establishing an Indigenous Law Research Unit. This unit will continue the research conducted in the AJR project, expanding to different
specific areas of law and continuing to work with communities to critically engage with research questions internal to Indigenous Law.

The AJR project focuses on one specific area of law: inter- and intra-group harms, injuries, and conflicts. The students are working within different legal orders with different legal traditions in communities across Canada, including:

- Tsleil-Waututh Nation (Coast Salish)
- Snuneymuxw First Nation (Coast Salish)
- Tsilhqot'inn National Government (six communities)
- T'xwcele Williams Lake Indian Band (Northern Secwepemc)
- Aseniwuche Winewak Nation (seven small communities)
- Chipewas of Nawash (Cape Croker)
- Mi'kmaq Legal Support Network (five communities)
- Métis people in BC

Representatives from five of the community partners were able to attend the conference in Winnipeg. The community representatives spoke to their experiences with the project and the relationships built with the students in their communities.

*How Do We Productively and Respectfully Engage with Indigenous Legal Traditions?*

AJR Research Coordinator, Hadley Friedland, described the ways in which productive and respectful engagement with Indigenous legal traditions requires, in the first place, a series of shifts in assumptions. The following three assumptions have grounded the AJR research:

1) Indigenous People were and are reasonable and reasoning people.
2) Use present tense to talk about Indigenous law, don’t continue to relegate it to the past.
3) Think about Indigenous laws as a particular societal response to universal human issues.

Another important shift is from making generalizations about Indigenous laws to engaging with the specifics of Indigenous laws. For example, instead of asking “What is aboriginal justice?” one asks, “What are the legal concepts and categories within this legal tradition?” Also, instead of asking, “What are the ‘culturally appropriate’ or ‘traditional’ dispute resolution forms?” one asks, “What are the legitimate procedures for collective decision making?” The overall shift that Friedland emphasised was from the question, “what are the rules?” to, “what are the legal principles and legal processes for reasoning through issues?”

The AJR project is aiming for results that communities can access and make use of in their local organization and governance. Thus, the project needed to seek specific answers to specific questions. The idea of “accessing justice and reconciliation” in the context of historical harms between groups, such as the Indian Residential Schools, and within groups, such as due to the ongoing legacy of the Residential Schools and intergenerational trauma, lead to the following research questions:

- How did/does this Indigenous group respond to harms and conflicts between groups?
- How did/does this Indigenous group respond to harms and injuries between individuals within the group?
Working from these research questions, the AJR researchers pursued two specific research results:

1) Synthesis of legal principles related to responding to inter-group harms and conflicts.
2) Synthesis of legal principles related to responding to intra-group harms and conflicts.

Research Methodology

Beginning in May 2012 with the Intensive Orientation course taught by Val Napoleon and Hadley Friedland in Victoria, BC, the AJR researchers took up this research problem, conducting independent research using publically available resources related to the specific Indigenous societies involved with the project. Friedland provided the following examples of the types of materials used:

- Elders, families, clans and societies (Borrows)
- Stories, songs, practices and customs (Borrows)
- Elders and community knowledge-keepers (Fletcher)
- Narrative, practices, rituals and conventions (Napoleon)
- Land, nature (Justice Within, Indigenous Legal Traditions)
- Language (Fletcher, Borrows)
- Dances, songs, ceremonies (Boisselle)
- Pots, petroglyphs and scrolls in an ancient ceremonial lodge (Borrows)
- Historical descriptive accounts recorded by outsiders (Borrows)
- Witness testimony, trial transcripts from Court cases (Napoleon)
- Oral histories and collectively owned stories (Napoleon)
- People’s personal memories and direct experiences (Napoleon)
- Interviews (Napoleon)
- Published anthropological and historical research (Napoleon; Fletcher)
- Published collections of stories (Napoleon)
- Written work by community members, including fiction, stories, poems or legends (Fletcher)

The students were trained in a method of engaging with and analysing law found in the stories. Napoleon and Friedland have developed an adapted common-law methodology over years of academic and community work, which has shown to have several specific advantages. It:

- Utilizes skills that law students have already acquired
- Provides a framework for ongoing applications in communities
- People of many ages are able to use this method
- The method is teachable
- Synthesizing a variety of resources creates space for ongoing research, analysis and debate (i.e. results do not rely on the legitimacy of any single resource or assertion)

Friedland outlined the six phases of the research project as follows:

- Phase 1: Intensive Orientation – Exploring the Project, the Method and the Critical Questions

1 Friedland, 2012.
• Phase 2: Initial Analysis – Analysis of publically available resources using the method
• Phase 3: Community Based Research – Interviews and conversations with Elders and others
• Phase 4: Integrated Analysis and Synthesis
• Phase 5: Community Presentations – Space for feedback and follow-up questions
• Phase 6: Developing Community and Academic Resources

Results

Friedland explained that the presentations at the conference would primarily highlight the research progress at phase four (analysis and synthesis). She described the “case brief” aspect of the research method, wherein the researcher identifies within a story the main human problem, the most important facts surrounding the issue, what is decided (how is the issue resolved), and the reasons behind the decision or resolution. At times there are questions that remain unexplained, which should be identified and “bracketed”.

An analytical framework is developed on the basis of many case briefs. Frameworks developed for the different specific Indigenous legal traditions are meant to organize information in an accessible and understandable way, particularly so that it can be applied by communities. These frameworks are not about giving authority or expertise to the researchers, but they allow information to be summarized somewhat like an “outline” that would be prepared by students in Canadian law schools or a legal memo in legal practice.

A framework highlights the legal processes entailed in legitimate decision-making processes and the procedural steps involved in determining a response or action. The framework also outlines what principles govern appropriate legal responses and resolutions to issues. Legal obligations and legal rights are identified, with substantive and procedural rights distinguished from one another. Finally, the researchers point out any general underlying principles or recurrent themes in the stories that are not already highlighted in the other sections of the analytical framework. Students were required to look for patterns in law and as well as dissimilarities.

Research Experience and Outcomes

Coast Salish legal traditions

Estella Charlson, a law student researcher working on Coast Salish legal traditions, shared a Coast Salish story called “The Wolf and the Wren” and then presented an example case brief of this story. Charlson discussed the way in which legal principles might not be obvious in one story, but in reading many stories and talking to the elders, legal principles become clear (for example, a principle of reciprocity in Coast Salish law). Charlson also discussed tensions between certain collective and individual rights and freedoms, as well as between obligations that community members are meant to fulfill and the simultaneous importance of the ability to choose for oneself. Flushing out the complexities of Indigenous laws is characteristic of an internal approach to Indigenous law, whereas

---

2 Friedland and Napoleon, 2012.
external approaches tend to generalize and avoid principles that are overlapping or in tension with one another. Charleson provided an example of an important complexity regarding the Coast Salish principle “protect mother eartloh.” This is not enough in itself, she explained, there is much more to it, involving specific rights and obligations, requirements as to what kind of impact one can and should have on the earth.

Drawing from the analytical framework she developed from the Coast Salish stories and her interviews in Snuneymuxw, Charleson outlined the legitimate decision-makers as elders, family and leaders, including chiefs, head/elder of the family, women and those who are trained or experts.

Tsilhqot'in legal traditions

Alan Hanna described some of the responses and resolutions to legal situations in the Tsilhqot'in Nation. He was honoured to do this work, he said, and in working with Indigenous legal traditions, he is beginning to understand that the Canadian laws are not the only laws of this land. Hanna emphasized that the experts on Tsilhqot'in law were and are those that shared their knowledge with him.

Hanna described several ways in which the work and life experiences he had during his time in Tsilhqot'in communities led into each other. In the first place, much of the interview work took place outside of the interviews themselves, buying gifts and preparing feasts and lunches with his partner before each interview. Food was made available to all onlookers and many children filed through during the interviews. These “non-academic” aspects of working in the communities were critically important.

Hanna emphasized the key role of the Community Coordinator, Cherlyn Stump, as she negotiated complex logistical and diplomatic considerations in order to set up interviews in large communities and among people with busy schedules. He felt welcomed and accepted by the communities and believes that in their work they were able to find some representation of the entire nation. Cherlyn Stump’s mother provided translation for some of the interviews.

Another way the academic work led into the personal and emotional was in regard to learning in particular context. Such as when standing at a sacred site while an elder offers a prayer. He said that this type of learning entails a spiritual and emotional connection, “when the ancestors decide it’s time for real learning to begin.” A new understanding emerges in this context that can get flattened by words and one challenge is to consider how this work might look in a classroom.

Hanna also raised questions about learning across societies and in different languages. Anthropologist Clifford Gertz has written about symbols and signs that may be known only in a particular community. Hanna challenged us to consider the question, but to not let that be an excuse to stop engaging across cultures. He believes it is possible for people across cultures to engage in meaningful dialogue that allows a measure of shared learning and understanding.

Cree legal traditions

Kris Statnyk discussed his research on Cree legal responses to inter- and intra-group harms, pointing out the relationship of the responses to other aspects of the legal synthesis, such as the corresponding legal obligations. He emphasized that these procedures are not based on static principles (i.e. all harms do not implicate every procedure). However, by looking at the routine
principles that inform the procedures, one can begin to see why certain procedures would be used in particular contexts.

Statnyk talked about the relationship building that happened during his work and friendships he will carry forward through life. He welcomed Ken and Alice Moberly, representatives from Aseniwuche Winewak Nation, where he conducted his interviews and talked about the significance of the highly personal experiences he had in the community – time he spent fishing, eating, playing with kids, scraping hides and making drums. He concluded by emphasizing that, in engaging with laws in this way, as law students and for himself as an Indigenous person, we are making space for Indigenous Law. And as we do the work, it is gaining momentum. That is, the work we are doing is showing how relevant and alive Indigenous Laws are in everyday life. Finally, Kris observed that the rigor and critical thinking required for this work did not prevent people from recognizing and experiencing the spiritual aspects of Indigenous law.

---

**Anishnaabe legal traditions**

Hannah Askew said that her experience with the AJR project profoundly changed her understanding of law forever, and for the better. Her research on Anishnaabe law was informed by three sources of information. The first was books. She worked with AJR Senior Researcher, Lindsay Borrows, among piles of books of stories, which she continued to go through all summer and which they often read out loud to each other. The next critically important source was people. In Cape Croker, Chippewas of Nawash Unceded First Nation, Askew and Borrows had the opportunity to speak about the stories directly with elders and others knowledgeable about Indigenous Law. Basil Johnston, a widely published Anishnaabe story teller told them he has over 600 stories in his head. In reading Johnston’s writing as well as spending time with him in the community, the work with the published materials lead directly into the interviews. Learning the stories is, an elder taught Askew, “the work of the winter.” The work is an active process of sharing and engaging with the stories in dynamic conversations with elders, full of laughter and questions.

The third source of information available to them in their research on Anishnaabe law was directly connected to the land. Askew went to Cape Croker twice for about two months in total, and spent a great deal of time on the land with Borrows, a member of the Chippewas of Nawash First Nation, and their community coordinator, Tony Chegahno, an ecologist and elder of the Chippewas of Nawash First Nation. Chegahno took them out every day, at all times of day, to listen to the owls calling, and for walks on the beach and around the local territory. They learned from the land in a way that reinforced what they had been learning in the stories they read.

Askew explained how the learning experience worked along with the research methodology, and encouraged the conference participants to keep in mind the learning context when they hear about the Indigenous legal principles. Askew elaborated by offering two teachings from elders in Cape Croker. The first statement was from Borrows’ grandmother (with whom they had been staying). She said: “teach them the principles and they will govern themselves.” The second statement was from another elder, Carlene Elliot, who said: “laws are for the lawless.” The latter statement, as Askew understood it, was referring to the laws on the books, which are needed when people are not being taught the principles, which Borrows’ grandmother referred to in the first statement.
Mi’kmaq legal traditions

Lindsay Borrows spoke to her experience working with Mi’kmaq law and the Mi’kmaq Legal Support Network in Eskasoni. She reflected on crossing cultures as she sat in a Catholic church on Potlotek/Chapel Island and looked at pictures of Christian saints beside wampam and heard prayers said in Mi’kmaq. She also talked about the various checks and balances that made Mi’kmaq legal procedures work. She discussed procedures of evidence gathering and identified several key decision-makers. Kji-Keptin and Keptins were responsible for dealing with inter-community harms. Grandmothers have the greatest say in the matrilineal society; however, one of the Grand Council members pointed out that the current grand council was all men, or perhaps one woman, and wondered why they were moving away from the teachings of the women that have helped them for so long.

Legal responses in Mi’kmaq law include taking responsibility for actions, providing services, healing support and rehabilitation for the victim, listening and understanding the impact on the victim, and talking circles about the harm done. There is no obligation for the victim to forgive or reconcile. Many of the legal responses, including victim support and talking circles, are used by Mi’kmaq Legal Support Network, which sent two representatives to the conference (Paula Marshall, Executive Director Esksoni Office, and Laureen Paul, Cape Breton Customary Law Case Worker).

Another important note here is that Lindsay was, at the time of the conference, attending first year law at the University of Toronto, and she credited her work with Anishinaabe and Mi’kmaq law as preparing her for the rigors of legal analysis and synthesis that Canadian law requires.

Northern Secwepemc legal traditions

Alan Hanna thanked Rick Gilbert and Jamie Thomas who helped arrange his community meetings and interviews in the Northern Secwepemc community T’exelc (at Williams Lake), noting that the history of colonialism and academic researchers appropriating knowledge in a problematic way has contributed to a general scepticism of research. As an anthropologist, Al spent quite a bit of time thinking about problems of essentialism and researchers who present themselves as experts. He is both conscious of this concern and deeply grateful to the Elders and other community members in T’exelc for their willingness to share.

Al explained his understanding of the procedural steps in Northern Secwepemc law leading to resolution of harms. The appropriate figure to consult with was first the family and extended family, especially parents or family representatives. In all situations that extended beyond the family, the Chief was the central authority figure for addressing harms impacting the community as a whole.

In the stories Al read, the formal procedural steps for intra-community harm were not evident to him, but a clear process was evident in the interviews he conducted with Elders. The process begins with the person who was harmed who goes first to their family. The family hears what happened and decides the course of action. If the family decides it is appropriate, the person who committed the harm is brought to the Chief who continues with information gathering – the person harmed and
witnesses explain what happened, and the person who committed the harm also has a chance to explain his/her actions. With the help of Elders, counsellors or heads of families, the Chief determines a resolution to be carried out by the community.

Al explained a set of basic principles and structure underlying Secwepemc law, which entail protection, peace and stability through discipline. These principles are supported by other principles, including community safety (protection from harm), peace, proportionality, reintegration, deterrence and reciprocity. Finally, Al provided further explanation of legal principles and legal responses through an example in the story of The Coyote and the Fox.

Métis legal traditions

Kerry Sloan described a range of sources that informed her legal synthesis for Métis legal traditions. She emphasized that her use of the word “traditional” expressly refers to the fact that these laws have been used since the founding of the Métis Nation and are still used today. One of Sloan’s three main sources of Métis law was the publication Past Reflects the Present: The Metis Elders’ Conference, which resulted from a previous research project synthesizing Métis law from written texts and The Métis Elders’ Conference of 1991. Sloan also focused on two Métis legal codes: 1) The Law of the Hunt 1840 and 2) the Laws of St. Laurent (documented 1873-75). Finally, she looked at 27 recently published Métis stories. One published source of information included a synthesis of Métis law. Sloan told conference participants that she was not suggesting that we merge the law from stories, written codes and elders, but instead proposed that we consider the image of the braid, gaining an understanding of the multiplicity of Métis law by looking at the three strands together.

Sloan provided a summary of her legal synthesis from the three sources, and in each case identified which source of law that particular aspect of the synthesis came from. She identified procedural rights, such as the right to be warned, the right to dispute allegations and defend oneself, and that evidence was required to prove who did the harm. Procedural steps involved consulting elders, informing the community of the harm and determining restitution. Legal responses and resolutions included compensation, punishment, banishment and pardon. Sloan outlined the legal obligations, including sharing and not wasting resources, looking after widows and the poor, respecting Elders and intervening in cases of harm. Finally she described the underlying principles drawn from the three sources of law, which were respect for self and others (including animals), sharing, honesty, fairness, personal and family honour, healing, flexible interpretation of law and equality.

Inuit legal traditions

Professor Gordon Christie from the University of British Columbia and the AJR Steering Committee presented some reflections on the project, proposing that there is nothing more important than this work going on in the legal community today. He outlined three points on the work that has been done and where he sees it going. First, he said, doing this work is not just finding and recording, but also interpreting and sifting, processes which rest on other norms found within a framework. The framework for this project is one approach among many and other approaches should also be considered moving forward. Second, he highlighted the importance of acknowledging the violence of colonialism and that violence was also done to the stories. As a result the stories

need to be nurtured in order to function as they used to, raising people up from children to adults in ways that are good. Third, he emphasized that there are major differences between Indigenous and Western legal traditions that cannot be reduced to content. Western traditions tend to prioritize the intellectual; however, in studying Indigenous laws, when the stories function as they should, we find a balance with the spiritual, emotional and physical that is connected to the way of living provided by the stories. The intellectual aspects of Indigenous law have been ignored and so right now it is important to bring those traditions to the surface, but these aspects need to be put in their correct place with respect to the other dimensions of Indigenous law.

Reflecting on the over 400 page synthesis of Inuit law prepared by Lori Groft, Professor Christie elaborated on his reflections about the interpretive process, and showed how in attempting to synthesize, we can at times privilege the intellectual and need to be attentive to the community and cosmological setting that gives the stories meaning. We must keep these reflections in mind when we consider using stories to teach in the classroom and be sure that our work is community driven, not overly intellectualized or analogized to the Western legal system. In this sense we might think about how the stories could be used in educational programs from a very early age, teaching children so that they are raised to see that the stories are often exceptional circumstances and mostly examples of what we should not do.

Some Critical Questions Moving Forward – Reflections from the Senior Researchers

Language is an important critical question moving forward, said AJR Senior Researcher Lindsay Borrows. We will need to think seriously about the questions raised by those who ask if it is possible to teach and think about Indigenous laws in English. In her research in Eskasoni, Borrows was not always able to understand the Mi’kmaq way of speaking. She believes that respectful research of outsiders can be beneficial. Still, it should not be the only resource and it is best placed alongside the teaching and research of community members and those that speak the language. In response to some people who say the Mi’kmaq have lost their stories, she says this is not true. They cannot live without their stories; they may just be in different forms than previously thought. The stories can operate in various ways and the strength in Mi’kmaq communities is the strong constitutional feeling.

Aaron Mills, AJR Senior Researcher, began his reflections by considering the research process, which required students to read huge amounts of research and then extract legal principles. The analytical framework has generated excitement – not just about the results, but also about the process. The broader impact of this work is the development of the field of Indigenous law, with results that can be immediately useful to communities. Considerations that he proposes going forward include concerns around translation, at a level of understanding and at a systemic level. He considered what is at stake in applying an adapted common law methodology that proposes Indigenous stories might be analogous to case law. The method creates space for meaningful dialogue and for building bridges between cultures. Still, more work is yet to be done and Mills suggests an ongoing discussion around bridge-building as well as stepping back to the starting assumptions to flush them out with the full vigor used for the rest of the project. Elements of these discussions have begun. Overall, this work makes it clear that Indigenous laws are very much alive.
TRC Perspectives on the Project

Dr. Paulette Regan, AJR Steering Committee member, offered comments on the project from her perspective as Senior Researcher for the Truth and Reconciliation Commission of Canada. She thanked the research team for their great work, the Indigenous Bar Association and the University of Victoria Faculty of Law for their collaboration with the TRC, and the Ontario Law Foundation for its funding support. In the context of the history and legacy of the residential school system, explained Dr. Regan, restoring and revitalizing Indigenous legal orders is essential to justice and reconciliation. The use of Indigenous legal traditions will strengthen access to justice in Indigenous communities on their own terms. The community-based research projects have revealed the tremendous diversity and richness of Indigenous law that exists across the country. The research lays new groundwork for understanding how Indigenous legal orders can contribute to justice and reconciliation within Indigenous communities and between Indigenous and non-Indigenous Canadians.

The public legal education phase of the AJR project will disseminate information and share best practices with Indigenous communities and the broader research community across Canada. The research findings will also make an important contribution to the TRC Final Report. Yet much remains to be done. In the years after the TRC has completed its five-year mandate, the Commission believes that it will be vital to build on this research project, expanding its scope and breadth to involve more communities, legal professionals, and academics as research partners. Ultimately, this research has the potential to change the way we think about justice and reconciliation in Canada.

Reflections from the Academic Lead

Dr. Val Napoleon provided closing comments for the first full day of the conference. First, we need a primer for each of the Indigenous societies that the researchers are working with, to provide context on who the people are, what they are doing, and the logic and aspirations each legal order. Second, we need to develop an overall legal theory for the legal traditions to provide the interpretive bounds for the law we are working with. Third, we need to remember that frameworks are important for expressing difference, and there needs to be critical conversations about them. Disagreements about law do not invalidate, they validate. Law is about disagreement. As Jeremy Webber has written, we reach provisional points of agreement against a constant backdrop of disagreement.

Professor Napoleon distinguished between a thin understanding of law, which see laws as just about rules, and a thick understanding of law that considers all the things that give rise to law including the normative commitments, law makers, legal processes, legal pedagogy, and legal principles. There are many different views on the continuum between the thickest and thinnest views of law. If someone has a thinner conception of law (like some originalist views of law), that does not invalidate a thicker view of law (such as, for example, a living tree view of law). As a source of law, Indigenous languages are complex, as complex as any other language, and they are a source of law, but using any one source of law does not have to silence work with other sources of law.
Keynote Address – Chief Wilton Littlechild, IBA Indigenous Peoples’ Counsel and Commissioner, Truth and Reconciliation Commission of Canada

Following the banquet meal on the evening of October 17th, Chief Wilton (Willie) Littlechild addressed conference participants from his experience as an Indigenous lawyer, a member of the IBA’s Indigenous Peoples’ Counsel, Commissioner of the Truth and Reconciliation Commission of Canada and previously the North American representative to the UN Permanent Forum on Indigenous Issues. Chief Littlechild spoke to the timeliness of this work in the Canadian context and internationally. In his work with the UN, Chief Littlechild recently attended two high level panels on language revitalization and access to justice, including access to customary courts and Indigenous laws. The work being done on access to justice was very much tied to the Declaration on the Rights of Indigenous Peoples and he himself has encouraged a focus on Indigenous laws in this context in the UN. Chief Littlechild recalled when, early in his career, he had brought up the need to remember Indigenous laws and was openly ridiculed. Things are changing and in February 2013, a UN meeting will be held on access to justice and reconciliation. He encouraged the AJR project to make a submission to this meeting. To reignite our laws is so important to Kataka, “the clean land.” Chief Littlechild concluded by saying, this is our way of life, use our words and keep dreaming, he said, this work will improve things and enrich Canada.

Workshop: Drawing Law from Stories

Val Napoleon and Hadley Friedland co-facilitated a Mini-Intensive workshop on the second full day of the conference, “Drawing Law from Stories.” Many stories offer ways to deal with change, face challenges and contain information about law. Once we untie law from the state, Professor Napoleon explained, we are faced with the question, where does law come from? Stories are a form of legal precedent. We can relearn Indigenous law if we are respectful and thoughtful. This work retells the stories in the case brief format, aiming to articulate how people collectively respond to human problems and make decisions.

Friedland and Napoleon led the workshop through the case brief method, dividing participants into small groups and asking each group to read the story assigned to them and then present their case briefs on chart paper to the rest of the groups. After each group had the chance to present, Friedland took suggestions from participants on which legal responses and principles might be drawn from the stories to make a legal framework. She noted that in the workshop we could only outline a brief slice of a framework as a very large number of stories need to be read and analysed in order to draft a rigorous legal framework for any specific Indigenous society.
**Special guest Justice Mandamin**

During the lunch break on October 18th, The Honourable Leonard S. Mandamin of the Federal Court (Canada) described his experience as a Judge of the Tsuu T’ina Peacemaker Court on Tsuu T’ina Nation’s reserve lands, which operated according to Indigenous peacemaking procedures and with an entirely Indigenous staff. The circle processes of the court involved those accused of committing the harm and all those impacted by the situation. On the first time around the Peacemaking circle, participants described “what happened?” or, “what did you hear happened?” On the second time around, participants answered the question, “how did the situation affect people?” On the third time around, participants were asked to answer, “what is to be done?” According to Indigenous law, the circle leads to an agreement. This collaborative process is found many places in Indigenous law and also in the common law.

After the person who did the harm goes out and fulfills the agreed upon responses and resolutions, the whole circle meets again and, except for a letter from the Peacemaker to the provincial court and documents held by other community organizations involved, all of the documents involved in the Peacemaking are burnt together to show that it is done.

Justice Mandamin asserted that several key aspects of the processes were fundamental to the success of the initiative. In the first place, the peacemaking group was carefully assembled after the Peacemaker went to every home in the nation asking, “who do you trust?” A group of Peacemakers was drawn from those names as trusted individuals. Moreover, an Elder always accompanied the Peacemaker in her/his work. The introduction of this court led to a huge drop in crime in the nation.
Appendix 1: Speaker Biographies

Steering Committee Speaker Bios

Margaret Froh

Margaret is a Métis lawyer from the Qu'Appelle Valley in Saskatchewan, currently based in Barrie, Ontario. She recently left her position as in-house legal counsel to the Chippewas of Rama First Nation to open her own law practice and consulting business, Turquoise Buffalo. Prior to her position at Rama, Margaret was Aboriginal Issues Coordinator for the Law Society of Upper Canada, and practiced employment, labour and human rights law in Toronto. Margaret is the Past President of the Indigenous Bar Association in Canada (IBA), and is currently a Faculty Lead in the Banff Centre's Aboriginal Leadership and Management Program, President of the IBA Law Student Scholarship Foundation, and Chair of the IBA's Accessing Justice and Reconciliation Project Steering Committee.

Paulette Regan

Dr. Paulette Regan is Senior Researcher for the Truth and Reconciliation Commission of Canada and a Visiting Fellow at the Liu Institute for Global Issues at the University of BC.


Research Team Bios

Val Napoleon


Val Napoleon was appointed Law Foundation Professor of Aboriginal Justice and Governance at the Faculty of Law, University of Victoria on January 1, 2012. She is from north east British Columbia (Treaty 8) and a member of Saulteau First Nation. She is also an adopted member of the Gitanyow (Gitksan) House of Luuxhon, Ganada (Frog) Clan. Prior to joining the Faculty of Law at UVIC, she was an associate professor cross appointed with the faculties of native studies and law at the University of Alberta.

Val worked as a community activist and consultant in northwestern BC for over 25 years, specializing in health, education, and justice issues. She has also worked with a number of regional, provincial, national, and international projects relating to Indigenous legal traditions, conflict management, education, and citizenship. Her dissertation on Gitksan law and legal theory was awarded the UVIC Governor General's Gold Medal for best dissertation in 2009.
Val’s current research focuses on Indigenous legal traditions, Indigenous legal theory, Indigenous feminism, citizenship, self-determination, and governance. Several of her major initiatives include the JID (joint JD and Indigenous law degree) program and establishing an Indigenous law clinic. Her other projects include Dechinta (land-based pedagogy and bush university in the NWT), and a collaborative national reconciliation and justice with the Indigenous Bar Association, Truth and Reconciliation, and the Ontario Law Foundation.

Val has taught and published on aboriginal legal issues, Indigenous legal theory, Indigenous feminist legal studies, self-government, critical issues in restorative justice, oral traditions, and contemporary aboriginal issues.

Hadley Friedland

Hadley Friedland is currently Research Coordinator of the IBA’s “Accessing Justice and Reconciliation” Project, a PhD student and Vanier Scholar in the Faculty of Law at the University of Alberta. Her dissertation explores the contemporary articulation and application of Cree legal principles in Canada. Hadley completed a law degree at the University of Victoria and an LLM, also focused on Cree legal traditions, at the University of Alberta, entitled, “The Wetiko (Windigo) Legal Principles”. She articled with the Department of Justice, Canada, and practiced in their Aboriginal Law section before returning to school full-time to pursue doctoral studies. Prior to law school, she attained a Child and Youth Care Diploma and worked in the Child and Family Services field for eight years. She has published and researched in the areas of Aboriginal law, international law, legal theory, criminal law and child welfare law.

Estella Charleson

Estella Charleson whose traditional name is Hee Na’h Chah Chist, comes from the Hesquiaht First Nation, Nuu Chah Nulth and is a member of the house of Kinquahtacumlth. She is currently a second year law student at the University of Victoria. Additionally she serves as an elected Councillor for her Nation. As well as her extensive work in her own territories, she has worked and studied with Indigenous peoples in Kenya, Tanzania, Mexico, and the USA. She credits where she is today to the ongoing guidance from her grandmothers in propelling her to protect and honour the ecological, political, cultural, and legal continuum of her ancestors.

Alan Hanna

Alan Hanna is a second year law student at the University of Victoria.

His mixed First Nation and European ancestry underscores the importance of fostering respectful relationships between nations. Alan has an honours B.A. in addition to an M.A. in Anthropology from the University of Victoria where his research focused on the provincial Crown’s relationships with First Nations in British Columbia through negotiation (BC treaty) and litigation processes. His legal interest is Aboriginal law, specifically pertaining to exploring ways the Crown may effectively recognize First Nations’ self-determination and autonomy in governance and jurisdiction over their respective lands, resources and people.
Identifying enduring Indigenous legal traditions is a step along the path to this realizing this objective.

Kris Statnyk

Kris is a member of the Vuntut Gwitchin First Nation in Old Crow, Yukon. Kris is also a third year J.D. student at the University of Victoria, Faculty of Law. In addition to this project, Kris has worked with various First Nations communities and organizations in a range of capacities from Youth Work to Policy Development.

Lindsay Borrows

Lindsay Borrows is in her first year of law school at the University of Toronto. Prior to law school she completed her B.A. in Native American Studies and Linguistics at Dartmouth College. She wrote her honours thesis on Anishinaabek Law and Language Revitalisation which is currently in the process of publication. She worked for the Pascua Yaqui Tribal Court after finishing her B.A. and is currently working on a legal project with the residential school settlement. She is Anishinaabe from the Chippewas of Nawash First Nation.

Kerry Sloan

Kerry Sloan is a Metis PhD candidate in the Law and Society program at UVic. Her work looks at the impact of the "historic community connection" test in Powley on Metis rights in BC, especially in light of misperceptions about BC Metis history. Before beginning her doctoral studies, Kerry practised Aboriginal law and general litigation in Alberta. She was called to the Alberta bar in 1999. Kerry has a Master's in English from UBC and is a freelance writer and editor. A member of the Metis Nation of Greater Victoria, Kerry also has ties to the Metis communities of the southern BC interior, where many of her family members reside.

Gordon Christie

Professor Christie has an A.B. from Princeton University (1984), a LL.B. from the University of Victoria (1997), and a Ph.D. (in philosophy) from the University of California, Santa Barbara (1997). He has taught in universities in Canada (Lakehead University, York University and UBC) and the United States (Central Michigan University), in Faculties of Law, and Departments of Philosophy and Indigenous Studies. Before joining the Faculty of Law at the University of British Columbia as an Associate Professor (in 2004) he was an Assistant Professor at Osgoode Hall Law School (York University), where he also acted as Director of the Intensive Program in Aboriginal Lands, Resources and Governments.

Professor Christie has published articles and book chapters about, inter alia, the interpretation of treaties, constitutional law, colonialism, Aboriginal title, legal theory (and particularly Indigenous legal theory), duties to consult and accommodate, and Arctic sovereignty. He is currently working on a manuscript focused on issues that come up around the task of understanding the nature of Aboriginal rights ('Making Sense of Aboriginal Rights: An Exercise in the Application of Methodological Naturalism'), expected to be completed in the spring of 2013.
He is Inuvialuit/Inupiat, originally from the Mackenzie River delta (NT), with family ties to the Northeast slope of Alaska.

Aaron Mills

Aaron Mills is a Bear Clan Anishinaabe from Couchiching First Nation, Treaty #3 Territory. He finished law school in 2010, articulated in 2011 and completed his LL.M. at Yale Law School earlier this year. Currently he is a senior researcher for the IBA’s Accessing Justice and Reconciliation: Integrating Indigenous Oral History and Legal Traditions project and the Indigenous Law Research Clinic, Faculty of Law, University of Victoria.

Aaron’s research focuses on Indigenous law generally and on Anishinaabe law in particular.
Appendix 2: Workshop Program

[Begins on next page]
Revitalizing Indigenous Laws: Accessing Justice and Reconciliation

Delta Winnipeg
Winnipeg, Manitoba

October 17 and 18, 2012

Program
<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
</tr>
</thead>
<tbody>
<tr>
<td>8:30 - 9:00</td>
<td>Welcome and Opening Remarks</td>
</tr>
<tr>
<td>9:00 – 9:20</td>
<td>Introduction to the IBA Aboriginal Justice &amp; Reconciliation Project</td>
</tr>
<tr>
<td></td>
<td>• Margaret Froh</td>
</tr>
<tr>
<td>9:20 – 9:50</td>
<td>Beyond the Whys: Methods of Engagement with Indigenous Legal Traditions</td>
</tr>
<tr>
<td></td>
<td>• Val Napoleon &amp; Hadley Friedland</td>
</tr>
<tr>
<td>9:50- 10:00</td>
<td>BREAK</td>
</tr>
<tr>
<td>10:00 – 11:00</td>
<td>Presentations: The Research Experience and Outcomes</td>
</tr>
<tr>
<td></td>
<td>• Coast Salish – Estella Charleson</td>
</tr>
<tr>
<td></td>
<td>• Tsilhqot’in – Al Hanna</td>
</tr>
<tr>
<td>11:00 – 12:00</td>
<td>Community Presentations: The Research Experience and Outcomes</td>
</tr>
<tr>
<td></td>
<td>• Cree – Kris Statnyk</td>
</tr>
<tr>
<td></td>
<td>• Anishinaabe – Hannah Askew</td>
</tr>
<tr>
<td>12:00 - 1:00</td>
<td>LUNCH</td>
</tr>
<tr>
<td>1:00 – 2:00</td>
<td>Presentations: The Research Experience and Outcomes</td>
</tr>
<tr>
<td></td>
<td>• Mi’kmaq – Lindsay Borrows</td>
</tr>
<tr>
<td></td>
<td>• Secwepemc – Al Hanna</td>
</tr>
<tr>
<td>2:00 – 3:00</td>
<td>Research Presentations:</td>
</tr>
<tr>
<td></td>
<td>• Métis – Kerry Sloan</td>
</tr>
<tr>
<td></td>
<td>• Inuit – Gordon Christie</td>
</tr>
<tr>
<td>3:00 – 3:15</td>
<td>BREAK</td>
</tr>
<tr>
<td>3:15 – 3:45</td>
<td>Some of the Critical Questions Moving Forward</td>
</tr>
<tr>
<td></td>
<td>• Aaron Mills &amp; Lindsay Borrows, Senior Researchers</td>
</tr>
<tr>
<td>3:45 – 4:15</td>
<td>TRC Perspectives on the Project</td>
</tr>
<tr>
<td></td>
<td>• Paulette Regan</td>
</tr>
<tr>
<td>4:15 – 4:30</td>
<td>Closing Remarks</td>
</tr>
<tr>
<td>6:00</td>
<td>Banquet</td>
</tr>
<tr>
<td></td>
<td>• Keynote Speaker – Wilton Littlechild, IPC</td>
</tr>
</tbody>
</table>
**DAY TWO: PROGRAM**

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Speaker(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>9:00 – 10:30</td>
<td>Mini-Intensive: Drawing Law From Stories</td>
<td>Val Napoleon &amp; Hadley Friedland, and Researchers</td>
</tr>
<tr>
<td>10:30 – 10:45</td>
<td>BREAK</td>
<td></td>
</tr>
<tr>
<td>10:45 – 12:00</td>
<td>Mini-Intensive: Synthesizing Areas of Indigenous Law</td>
<td>Val Napoleon &amp; Hadley Friedland, and Researchers</td>
</tr>
<tr>
<td>11:00 – 12:00</td>
<td>LUNCH</td>
<td></td>
</tr>
<tr>
<td>1:00 – 2:30</td>
<td>An Informal Discussion about Community Law Projects:</td>
<td>Val Napoleon &amp; Hadley Friedland, and Researchers</td>
</tr>
<tr>
<td></td>
<td>Possibilities, Experiences, and Questions</td>
<td></td>
</tr>
<tr>
<td>2:30 – 2:45</td>
<td>BREAK</td>
<td></td>
</tr>
<tr>
<td>2:45 – 4:00</td>
<td>Continued ... An Informal Discussion about Community Law</td>
<td>Val Napoleon &amp; Hadley Friedland, and Researchers</td>
</tr>
<tr>
<td></td>
<td>Projects: Possibilities, Experiences, and Questions</td>
<td></td>
</tr>
<tr>
<td>4:00</td>
<td>Closing Remarks</td>
<td></td>
</tr>
</tbody>
</table>

Community partners:

- Tsleil-Waututh Nation
- Snuneymuxw First Nation
- Tsilhqot’in National Government
- T’exelc Williams Lake Indian Band
- Aseniwuche Winewak Nation
- Chippewas of Nawash
- Mi’kmaq Legal Services Network

Organizing partners and sponsors:
Revitalizing Indigenous Laws: Accessing Justice and Reconciliation

Indigenous legal orders are central to Indigenous societies. They were displaced and denigrated, pushed aside in the process of colonization. They were studied as anthropological data, not as a source of practical social ordering and contemporary normative insight into the principles that should govern social organization. However in recent years, Indigenous legal orders are experiencing resurgence in Canada and abroad. This resurgence is driven by Indigenous peoples to regain control over their lives, families, and communities. They are drawing on their legal orders to re-establish their societies, fulfill obligations to their children, govern their lands, and organize their institutions. Indigenous legal orders are not static, frozen in the past, or rigidly defined in their content. Rather they are living intellectual traditions, with capacity for critical self-reflection, and capable of interacting productively with other legal and political traditions.

Indigenous Law Research Clinic

The overall purpose of the Indigenous Law Research Clinic is to partner with communities in order to investigate, rigorously and critically, research questions pertaining to indigenous law. To this end, in collaboration with the Indigenous Bar Association and the Truth and Reconciliation Commission (and funded by the Ontario Law Foundation), the Faculty of Law launched a national research project: **Revitalizing Indigenous Laws: Accessing Justice and Reconciliation**. This one year project is designed to explore how indigenous societies (a) responded to harms and conflicts between groups, and (b) responded to harms and injuries between individuals within groups. The student researchers are employing an adapted common-law methodology to analyse and synthesize the law in indigenous oral traditions with a focus on articulating legal principles of compensation, sanctions and community safety, peace-making, and dispute resolution. Working with communities, the researchers are identifying internal strengths and resiliencies within indigenous legal orders – intellectual resources, problem solving procedures and ways of teaching.

Thus far, the clinic’s research includes:

(1) Developing and delivering an intensive introductory course for working with indigenous legal orders,

(2) Researching publicly available ethnographic materials for targeted indigenous legal orders,

(3) Analyzing and synthesizing materials,

(4) Presenting legal materials to partner indigenous communities, and

(5) Working with and conducting interviews in partner indigenous communities.
The indigenous peoples that the researchers worked with are the Coast Salish, Cree, Tsilhqot’in, Secwepmc, Mi’kmaq, and Anishinaabe. Additional work is taking place with the legal traditions of the Inuit (circumpolar perspectives), Métis, and Nuu-chah-nulth peoples. These materials provide the basis from which texts and materials are drawn for the proposed Indigenous Law Degree Program (JID) curricula. Equally importantly, the research materials generated will be made available to the participating communities, other interested indigenous communities, the Truth and Reconciliation Commission, and the Indigenous Bar Association. Next year, the clinic will continue its research, but will shift to focus on areas of governance and citizenship (constitutional law), obligations and liabilities (contracts), and lands and resources (property). Future areas of research include, but are not limited to, law relating to kinship and obligations (family law), protocols and ceremonies (civil procedure), and trade and business relations (business law).

Proposed Indigenous Law Degree Program (JID)

This is a four-year combined program, leading to professional degrees in both the common law (Juris Doctor or JD) and indigenous legal traditions (Juris Indigenarum Doctor or JID). The purpose of this program, the first of its kind in the world, is to bring indigenous legal orders into the heart of university legal education. The program works comparatively across legal traditions – that of the common law and those of selected indigenous legal orders in a way that focuses on mechanisms of transmission of law, enables cross-illumination, explores points of connection and difference, and examines modes of legal reasoning across societal divides. The JID will be taught in a law school environment and in the communities themselves, and in all cases in close collaboration with the communities involved. Initially, during a pilot phase, a single cohort will move through the program. There will then be a transition to the permanent delivery of the program with an intake of students every year or two, depending on student demand. The principal features of the program are set out below, and demonstrate how its objectives will be achieved.

Contacts:

- Professor Val Napoleon may be reached at the University of Victoria, Faculty of Law: 250-721-8172 or napoleon@uvic.ca.
- Professor Jeremy Webber may be reached at the University of Victoria, Faculty of Law: 250-721-8154 or jwebber@uvic.ca.
- Renée McBeth may be reached at the University of Victoria, Faculty of Law: demcon@uvic.ca.