



“EXERCISING INDIGENOUS JURISDICTION OVER COLLECTIVE RIGHTS”

**INDIGENOUS BAR ASSOCIATION IN CANADA
17TH ANNUAL FALL CONFERENCE
Casino Rama – Chippewas of Rama Mnjikaning First Nation
Rama, Ontario - October 21 – 22, 2005**

FINAL SUMMARY REPORT

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

Acknowledgements

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

Conference Sponsors

Cassels Brock & Blackwell LLP
Department of Justice Canada
Heenan Blaikie
Law Commission of Canada
Law Foundation of Ontario
Law Society of Ontario
Law Society of Upper Canada
McCarthy Tetrault LLP
Ontario Secretariat for Aboriginal Affairs
Scotiabank

Corporate Gifts

Aboriginal Art and Culture Celebration
Society (Vancouver)
Indigenous Law Journal – University of
Toronto
Native Law Centre (Saskatoon)
Mnjikaning First Nation
Scotiabank

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

Many thanks as well to our Conference Facilitator, Pat Baxter, and the students who worked with Pat in recording the conference workshops. In her role as Conference Facilitator, Pat was responsible for drafting the following Final Summary Report. Thanks and recognition also go to our Conference Coordinator, IBA Administrator Germaine Langan, and to the members of the Conference Planning Committee, which included myself, former IBA President Dianne Corbiere, Kathleen Lickers, Candice Metallic, Kevin Bell, Lucy Richmond, and Margaret Froh.

Finally, the Indigenous Bar Association wishes to express its gratitude to the Chief and Council, and citizens of the Chippewas of Rama Mnjikaning First Nation for inviting us into their territory for this gathering and for the warm hospitality which they showed to us.

Jeffery Hewitt
Conference Chair & President, Indigenous Bar Association
December 2005

Table of Contents

Acknowledgements	ii
Preamble	1
Introduction	1
Opening Keynote Address – Roberta Jamieson, I.P.C.	2
I. REPORT CARD ON COLLECTIVE RIGHTS AND JURISDICTION.....	2
a) Plenary Presentations	2
i) Assembly of First Nations	2
ii) Métis National Council.....	3
iii) Inuit Tapiriit Kanatami.....	4
iv) Department of Justice.....	4
v) Ontario Secretariat for Aboriginal Affairs	5
II. ABORIGINAL INSTITUTIONS	5
a) Plenary Presentations	5
i) Professor John Borrows	5
ii) Professor David Newhouse	6
iii) Professor Paul Chartrand, I.P.C.	6
iv) Professor James Sakej Youngblood Henderson, I.P.C.	7
b) Workshops	7
i) Administration of Justice, Specialized Tribunals and Creation of Indigenous Courts – Sakej Henderson, I.P.C.	7
ii) Addressing Collective Rights and the Impact of the Charter Workshop – Delia Opekokew, I.P.C.	8
iii) Ombudsman and Dispute Resolution Workshop – Grant Wedge....	9
iv) Building Indigenous Institution through Indigenous Knowledge Workshop – Professor David Newhouse	10
v) Métis Institutions Workshop - Andre L’Hirondelle	11
III. CHALLENGES TO EXERCISING INDIGENOUS JURISDICTION	11
a) Plenary Presentations	11
i) Health and Education – Kathleen Lickers.....	11

ii) Natural Resource Revenue Sharing – Ontario Regional Chief Angus Toulouse	12
iii) Health Human Resources – Tracey Lavallee	13
iv) Jurisdiction and Education – Tim Thompson.....	13
b) Workshops	14
i) Health Initiatives in Ontario and Nationally Workshop – Saga Williams, Assembly of First Nations.....	14
ii) Education Initiatives in Ontario and Nationally Workshop – Tim Thompson, Chiefs of Ontario.....	15
iii) Expanding Indigenous Land Bases Workshop – Mark Stevenson	15
iv) Managing Forestry Resources Workshop – Byron Leclair, Pic River First Nation	17
IV. ECONOMIC DEVELOPMENT.....	18
a) Plenary Presentations	18
i) Indigenous Jurisdiction in the area of Economic Development - Chief Victor Buffalo.....	18
ii) Dan Brant – National Aboriginal Capital Corporation Association .	18
iii) Kristyna Bishop – Inter-American Development Bank.....	19
b) Workshops	19
i) Capitalization of Development International Initiative and Self Determination Workshop – Kristyna Bishop	19
ii) Indigenous Law vs. Indian Act: Serving the Creation of Sustainable Economies Workshop – Denise Lighting	20
iii) Labour Relations: What is a Good Employer and Relationships with Unions Workshop - Helen Semaganis-Worme and Dianne Corbiere	20
iv) Métis Economic Development Workshop – Judy Daniels.....	21
Conclusion	22

Preamble

The following report records in summary the presentations and workshop outcomes from the Indigenous Bar Association's 17th Annual Fall Conference held at Casino Rama, at the Chippewas of Rama Mnjikaning First Nation, Rama Ontario, on October 21-22, 2005.

Introduction

The Indigenous Bar Association (IBA) held their 17th Annual Fall Conference at Chippewas of Rama Minjikaning First Nation in Rama, Ontario on October 21 & 22, 2005. IBA Student Day was held at the First Nation on October 20, 2005 and brought together Indigenous law students from across Canada to meet and speak with Indigenous elders, leaders, academics and lawyers on a host of issues relevant to the study and practice of law.

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

The Annual Conference theme was "Exercising Indigenous Jurisdiction over Collective Rights". The four plenary sessions included keynote addresses, panel presentations and discussions on the conference theme. In addition there were three corresponding workshop sessions with concurrent workshops offered in breakout rooms over the day and half of the conference, supporting discussion from the plenary and panel presentations and expanding on specific dialogue. When timing allowed, there was a question and answer period following the panellist/key note addresses. Participants also had an opportunity to dialogue among themselves and with presenters more thoroughly within the breakout sessions.

Three questions were consistently asked in each workshop session to record the discussion and presentation given.¹ The questions were generic in nature to fit with all workshop sessions:

¹ Workshop sessions were recorded by law student volunteers. Summaries for the workshops were framed around the questions noted above and the highlights were recorded in the flipchart notes. Some

1. What are some of the critical challenges that need to be addressed?
2. What are some key successes worth noting?
3. What are our key messages from this workshop?

Opening Keynote Address – Roberta Jamieson, I.P.C.

The conference began with a keynote address entitled “Collective Rights, Collective Action, Exercising Our Jurisdiction: Making It Happen” from Roberta Jamieson, I.P.C, President and CEO of the National Aboriginal Achievement Foundation. The opening keynote address formed the foundation for dialogue throughout the conference.

Ms Jamieson addressed “collective rights” and “collective responsibilities” in an inspiring address which focused on the need to protect our collectives; for without our collectives there would be no rights. She challenged the IBA and conference participants to take action in revitalizing our collectives and asserting collective rights.

I. REPORT CARD ON COLLECTIVE RIGHTS AND JURISDICTION (Chair Judge Murray Sinclair)

a) Plenary Presentations (Day One Morning Session)

i) Assembly of First Nations – Bob Watts, Chief of Staff

Key Points

- First Nation Accord – historic Cabinet retreat
- Council of Federation (seat)
- Renewal Commission for the AFN
- Residential School Resolution
- Lifting of taxation on post secondary
- \$700 M for Health

The agenda of the AFN has been moving at a fast pace with a number of issues advancing over the past year. AFN has signed an historic agreement with the Federal government (the Accord) that:

- Frames the context and parameters of a new working relationship between the parties.

of the summaries were either written by the presenter (e.g. Roberta Jamieson) or edited by the presenters (as requested).

- Addresses the Residential School case² (*Barney*) which indicated that the Government is 75% responsible for the damages caused by residential school abuse, while the Church was 25% liable through the review ordered by the Prime Minister
- Justice Iacobucci to make recommendations to resolve the residential school situation.

Negotiations have begun to establish a First Nations seat at the Council of the Federation (Provincial Territorial – Premier’s FMM Council).

The AFN will be tabling the Renewal Commission report, a restructuring report for the organization, at the Confederation meeting scheduled for December 2005. Key challenges continue to be dealing with clean water and ecoli in First Nation communities (50 under boil water order) and a class action suit filed on behalf of residential school survivors.

ii) Métis National Council – Jason Madden, Chief of Strategic Operations and General Counsel

Key Points

- *Powley Case*³ win and impacts
- Signing Accord with the Federal Government
- Establishing and recognition of Métis Nation issues
- Several Métis cases moving forward on land applying section 35 of the *Constitution Act*, 1982 and section 91(24) of the *Constitution Act*, 1867

² *Frederick Leroy Barney v. Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development, and the United Church of Canada and Her Majesty the Queen in right of Canada, as represented by the Minister of Indian Affairs and Northern Development v. The United Church of Canada, R.A.F., R.J.J., M.L.J., M.W. (2), Frederick Leroy Barney and Patrick Dennis Stewart and Assembly of First Nations, Women's Legal Education and Action Fund, Native Women's Association of Canada and disabled Women's Network of Canada, (interveners)*, [2005] S.C.J. No. 59, 2005 SCC 58, (2005) 339 N.R. 355, (2005) J.E. 2005-1925, (2005) EYB 2005-96641 (S.C.C.)

³ *Her Majesty The Queen v. Steve Powley and Roddy Charles Powley, and Attorney General of Canada, Attorney General of Quebec, Attorney General of New Brunswick, Attorney General of Manitoba, Attorney General of British Columbia, Attorney General for Saskatchewan, Attorney General of Alberta, Attorney General of Newfoundland and Labrador, Labrador Métis Nation, a body corporate, Congress of Aboriginal Peoples, Métis National Council ("MNC"), Métis Nation of Ontario ("MNO"), B.C. Fisheries Survival Coalition, Aboriginal Legal Services of Toronto Inc. ("ALST"), Ontario Métis and Aboriginal Association ("OMAA"), Ontario Federation of Anglers and Hunters ("OFAH"), Métis Chief Roy E. J. DeLaRonde, on behalf of the Red Sky Métis Independent Nation, and North Slave Métis Alliance (Interveners)*, [2003] S.C.J. No. 43; 2003 SCC 43; [2003] 2 S.C.R. 207; (2003) 230 D.L.R. (4th) 1; (2003) 308 N.R. 201; (2003) J.E. 2003-1751; (2003) 177 C.C.C. (3d) 193; (2003) 5 C.E.L.R. (3d) 1; [2003] 4 C.N.L.R. 321; (2003) 110 C.R.R. (2d) 92

- Federal and Provincial acknowledgment of a “distinct Nation” policy approach

Some of the challenges faced by the Métis National Council (MNC) after the win of *Powley* are: moving forward on new policy, and ensuring that government (west of Ontario) are updated on how the case has influenced programming and potential policy. Currently a mapping of traditional territory for hunting is being completed. Métis National Council is advancing the distinct based policy approach in negotiations with the federal government. In the future, there will be several Métis cases moving in the courts related to land set aside (involving section 35 and section 91(24)).

iii) Inuit Tapiriit Kanatami – Aaju Peter

Key Points

- University of Victoria Akitsiraq Law School Program – for 15 students, maintaining support for students to stay with their families, and access to country food
- Inuit specific recognition for programming and services
- Accord signed with Federal government
- Inuit Secretariat to support Inuit issues with the federal government

Developing programs and services directly in the Arctic territory is a priority for the Inuit. Greater success is achieved when Inuit do not have to travel south for education or training. The Akitsiraq Law School is an excellent model to follow. Inuit Tapiriit Kanatami (ITK) has been working toward recognition of “Inuit Specific” policies, programs and services due to the unique culture and traditions of the Inuit. This approach is being recognized by the federal and territorial governments. The Inuit Accord and Inuit Secretariat are new initiatives this past year. Inuit traditions and cultural practices are being reinforced in the homeland territories through language retention and talking about traditional approaches to law and justice.

iv) Department of Justice – Ronald Stevenson, Senior Counsel

Key Points (* not representing the federal government position)

- Recognition of equality and cultural differences
- Treaties are the foundation
- Greater scope leading to middle ground is needed (accommodating obligations)

Ron Stevenson spoke about the emerging complexity of building sovereignty and current thinking on Treaty negotiations, building on equality and cultural differences. Treaties are the foundation and the government has an obligation to accommodate, however new middle ground needs to be found to support outcomes.

v) Ontario Secretariat for Aboriginal Affairs – Kevin Bell, Counsel

Key Points

- Renewal of Aboriginal Affairs – moved to Natural Resources
- Bilateral process – meeting every two years
- FMM involvement and co-chairing
- Tri-lateral meeting with First Nations and Tri-partite with OMNSIA
- Consultation guidelines drafted and will be released 2006
- 12 settled land claims, 48 claims in negotiations.

Ontario Native Affairs Secretariat has been revitalized and renamed Ontario Secretariat of Aboriginal Affairs. The branch now works from within Natural Resources. The Secretariat has developed new principles around the government relationship to support a co-operative relationship with Aboriginal groups. The new principles include: Quality of life – 6 principles; respecting First Nations; recognition of diversity; involvement in matters affecting their communities, and government flexibility. The process that the Ontario government is working towards includes: inclusiveness, responding to proposals, implementing *Sparrow* policy for consultation.

II. ABORIGINAL INSTITUTIONS (Chair Judge Tim Whetung)

a) Plenary Presentations (Day One Afternoon Session)

i) Professor John Borrows – University of Victoria, Faculty of Law

Key Points

- Building Indigenous institutions from the ground up – includes strong families
- Apply cultural laws – taking good living outside our boundaries
- Need to build an Indigenous law degree

- 10% of students at University of Victoria are Aboriginal and 10% of faculty are Aboriginal
- Inuit are using their own laws
- Legal traditions can overlap and work side by side
- Role for IBA – supporting establishment of an Aboriginal law school

Professor Borrows spoke about building Indigenous institutions by envisioning establishment of an Indigenous law degree and creation of an Indigenous law school. It would incorporate the use of Indigenous teachings and learning of traditional and cultural laws. Established programs could be open to all students. These programs could weave traditional law curriculum (e.g. business, family, and evidence law) with Indigenous law, for example Salish law or Haida-Gwaii law. Programs could incorporate work with Elders and traditional law keepers and oral practitioners focussing on traditional legal practice. These courses could be crafted from the work of leaders such as Mungo Martin. There are some examples where successful integration has occurred. One example is University of Arizona, where Elders and traditional law keepers are cohorts in an international Indigenous legal studies program. University of Ottawa and McGill University are also attempting to build unique Indigenous law programs.

ii) Professor David Newhouse – Native Studies, Trent University

Key Points

- Eight Aboriginal graduates with PhDs in Native Studies and 26 students in various years of the program
- Tenure guidelines for Elders
- Indigenous knowledge being recognized and articulated in institutions

Professor Newhouse spoke about the importance of Indigenous institutions, both existing and new ones being established, being based on self determination. An example included establishing tenure guidelines with and for Elders – supporting the discipline of the learner scholar. An issue worth further consideration is ensuring that mainstream society is educated in Indigenous culture which may not be a fit to modern thinking.

iii) Professor Paul Chartrand, I.P.C. – University of Saskatchewan

Key Points

- Need to review Commissions in Canada, the value and influence
- Tribunal in New Zealand, worth looking at education of the public
- Commission in Australia, studying the model
- Royal Commission of Aboriginal People (RCAP) recommendation – Tribal Court system
- Creating culturally appropriate symbols such as Aboriginal Day, etc.

Professor Chartrand spoke about his reviews of Commissions in Canada and how they have impacted policy and institutional development in this country. In addition to the Canadian experience other countries such as New Zealand have adopted a tribunal process worth exploring. This model has incorporated an approach where the public is educated as the Tribunal does business. The Royal Commission of Aboriginal People also recommended the development of a Tribunal Court in Canada. Some critical considerations in the establishment of a Tribunal Court are identifying the interests of the stakeholders, the options, and the resources needed including the external legal factors and the test with the people.

iv) Professor James Sakej Youngblood Henderson, I.P.C. – University of Saskatchewan

Key Points

- Using traditional building blocks to support institutional development
- Women’s equality must be part of the effort
- Developing an indigenous law library to support traditional law making

Professor Youngblood Henderson spoke about the kind of values and principles required in establishing Indigenous institutions. The framework is interpreted from certain conscious behaviours. Establishing building blocks based on kindness, love, respect and truth is essential. Strengthening the ability to dialogue and consult with one another helps to build from the ground up. Creating a better understanding of traditional ways, through the establishment of a traditional law library would also be an important resource.

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

i) Administration of Justice, Specialized Tribunals and Creation of Indigenous Courts Workshop – James Sakej Youngblood Henderson

Key Challenges

- Canada's thinking that an Indigenous Court may be a threat
- Cost of establishing and running the court
- Judicial independence
- Accommodating women's request for communal justice models
- The disconnect and jurisdictional issues of many Aboriginal people who are not connected to their communities

Key Successes/Points

- Communities need to consider what kind of "court structure" is appropriate – this needs to be fleshed out
- Justice and court structures must be community based with respect to teachings, people, elders and environment
- Courts must be optional and not become another layer of law
- Establishing Indigenous knowledge, practices, ceremonies into the court
- Incorporating modern tools into the Indigenous court system
- Codify traditional protocols and procedures to support traditional laws

Key Messages

- Strangers who dispense justice/common law need to trust First Nations jurisprudence
- Need education opportunities, codify process/protocols – not substance
- Establishing courts based on Indigenous knowledge, empowering families and communities
- Look at US Tribunals as models and the Cree court.

ii) **Addressing Collective Rights and the Impact of the Charter⁴** **Workshop – Delia Opekokew, I.P.C.**

Key Challenges

- Defining "certain" rights
- Identifying the collective "reps"
- Codifying laws

⁴ *Charter of Rights and Freedoms, Constitution Act, 1982 [being Schedule B to the Canada Act, 1982 (U.K.) 1982, c. 11], Part I*

- Dealing with the individuals who exploit the laws
- Determining if something that is a section 35 right, is brought into the *Charter* through section 25
- Conflict between Indigenous Traditional Law and Canadian Law

Key Successes/Points

- Possibly Nisga'a Treaty is a success; yet to be seen
- Collective commercial fishing rights of Aboriginal people being protected
- Returning to communal lifestyle

Key Messages

- Any development of institutions for the collective must consider the individual rights within the collective
- Give life to section 35 in litigation or case law
- In practice, always protect collective rights for future generations
- Need to recognize traditional forms of government
- Reach agreement of the meaning of section 25

iii) Ombudsman and Dispute Resolution Workshop – Grant Wedge

Key Challenges

- Consensual
- Compulsory
- Resources to implement a process
- How to divide what is administrative and what is political
- If done consensual, may not get a result
- Political will

Key Successes/Points

- Big Stone Appeal Tribunal
- Chief and Council update on local radio
- Inserting clause in policy for an appeal process
- Nation on bigger scale can assist

Key Messages

- Cost is a big factor
- Power going both ways

- Understanding/acceptance from community
- Community development needs to be in place
- Community education
- Community support, written decision and reasons

iv) Building Indigenous Institution through Indigenous Knowledge_Workshop – Professor David Newhouse

Key Challenges

- Traditional knowledge “may not be in line with the *Charter*” - “reconstruction of Aboriginal rights vs. reconciliation of Aboriginal rights with the Crown”
- Changing behaviour and maintaining consistent use of traditional approaches
- Transferring knowledge, due to different understandings of customs and traditional knowledge
- Communicating with the urban Aboriginal population, being transparent
- Loss of language and checking authenticity of traditional knowledge when language base is gone
- Reconstruction of Aboriginal rights, reconciliation of Aboriginal rights with Crown. Reconstruction means building a foundation and bringing the two together. Reconciliation not always about solutions

Key Successes/Points

- Begin to use own ideas as basis, see this occurring in terms of indigenous pedagogies
- Healthcare system that talks about wellness
- Restorative justice. Begin to bring forward ideas from various traditions. Begin to encounter ideas from across Canada
- Leadership roles (become more important), think about women’s roles
- Development of institutions that are reflective of Indigenous values – how this is the beginning to use Indigenous knowledge; emerging over next decade
- Make the difference between traditional practices and spiritual ceremony – separating these approaches

Key Messages

- Build important Aboriginal institutions such as the Indigenous law school (degree) – how do we get there

- Think about the challenges in using and establishing traditional and indigenous knowledge
- Focus on principles – ideas start with respect
- Maintain patience, while working with communities as they consider indigenous law

v) Métis Institutions Workshop - Andre L'Hirondelle

Key Challenges

- Establishing a relationship between Minister of Aboriginal Affairs and the Métis Settlement Appeal Tribunal
- The breakdown in negotiations of a Memorandum of Understanding
- Developing Tribunals that are administrative and have quasi-judicial functions with rules and procedures

Key Successes/Points

- Decisions upheld by Aboriginals
- Canada respecting decision making of tribunal and credible institution
- Tribunal has handled *Charter* question section 15 (equality under the *Charter*) successfully
- Able to continue to deal with *Charter* issues
- Other options after the Tribunal are available through Canada

Key Messages

- Example of using administrative tribunals as a court system for Aboriginal communities
- Serves as a template for other Provinces and institutions where Aboriginal peoples perspectives are represented
- MSAT (Métis Settlement Appeal Tribunal) is a new and unique institution that works

III. CHALLENGES TO EXERCISING INDIGENOUS JURISDICTION (Chair Judge Harry LaForme)

a) Plenary Presentations (Day Two Morning Session)

i) Exercising Indigenous Jurisdiction Regarding Health and Education - Kathleen Lickers

Key Points

- Exemplify the exercise of section 35 rights in order to continue to evolve in learning
- Support each other through the innovation in one community; inspiring continued work with courage and sustained effort
- One singular element rings true for all - the communities themselves defined the priority issue
- Designed ways of working with and around colonial institutions
- Grew outside the sphere of political influence within the communities – each creating independent Boards of authority.

Kathleen Lickers referred to three community-based examples from British Columbia, Quebec and Ontario, and how these communities exercised jurisdiction within health and education. Critical to their collective success was that the communities themselves determined their priorities, without influence. Language in all the communities was also seen as a priority. Exercising jurisdiction means growing at a rate that is comfortable and achievable through incremental steps. Expanding accessible management training programs was another important element. And finally, establishing an effective dispute resolution model grounded in Potlatch guidelines had a positive impact.

ii) Natural Resource Revenue Sharing - Ontario Regional Chief Angus Toulouse

Key Points

- Lack of interest from the Provinces/Territories to discuss revenue sharing on natural resources
- Rights issues to the land for Indigenous communities, require Indigenous law support
- Requirement to define interests, assessments and policy development in revenue sharing issues

Chief Toulouse spoke about the many challenges facing the resolution to natural resource revenue sharing. Governments in general are not inclined to discuss an issue that will affect their revenues. There are some agreements that are worth looking at to guide the discussion in this area such as the land claim settlements in B.C., Labrador, Quebec, and Yukon. AFN has tabled a discussion paper on revenue sharing that should be reviewed.

iii) Health Human Resources - Tracey Lavallee, Assembly of First Nations

Key Points

- Pan-Aboriginal approach is not supported - moving toward rights-based agenda
- The Interpretive Gap
- Constitutional and legislative challenges to asserting jurisdiction
- Blueprint on health is being negotiated
- Health Action Plan – supporting First Nation Governance

Tracey Lavallee shared that First Nations want the right and authority to create, implement and enforce health laws. First Nations' lack common interpretation of what jurisdiction is because of diversity and different experiences. There is some delegated authority depending on programming stemming from federal or provincial law or both. Inherent right is subject to some limitation requiring forms of consent, and First Nation laws need to align and harmonize federal and provincial/territorial laws and supremacy of certain federal/provincial laws in the event of conflict. Despite Constitutional protection of rights, government views the inherent right as conditional. Asserting jurisdiction is impeded by non recognition of First Nation governments, *Indian Act*⁵ legislation, distribution and sharing of lands and resources and policies not reflecting a level playing field, perpetuating imbalance of power. Accord commitments and other vehicles, implementation of Treaties, compliance with Crown fiduciary, human rights and socio-economic development will support efforts.

iv) Jurisdiction and Education – Tim Thompson, Chiefs of Ontario

Key Points

- Some examples to jurisdictional control – Sechelt Band, Cree School Boards
- Self-government agreements are helping to negotiate educational jurisdiction in Nishnawbe Aski Nation (NAN), Union of Ontario Indians (UOI), and Treaty 3

Indian control over Indian education has been and continues to be a long struggle. There are limited authorities with INAC now. It is not enough

⁵ R.S. 1985, c. I-5

to acknowledge jurisdiction from K to 12 only. It must extend to post secondary. Indigenous language must have funding priorities along with increases in student enrolment rates and school delivery budgets.

b) Workshops - Challenges to Exercising Indigenous Jurisdiction

i) Health Initiatives in Ontario and Nationally Workshop – Saga Williams, Assembly of First Nations

Key Challenges

- Combating pan-Aboriginal approach and promoting a rights-based approach
- Incorporating concerns of individual First Nation communities
- Balancing health issues at the ground level with the national strategies and issues of jurisdiction
- Creating laws – addressing the jurisdictional issues in health (overlapping provincial/federal/First Nation jurisdiction)
- Recognizing (internally and externally) the validity and importance of Indigenous knowledge of medicine
- Resolving conflicts between western medicine and traditional healing
- The confinement of the *Canada Health Act*, R.S.C. 1985, c-6 (reconciling with Aboriginal approach to health), Local Health Integrated Networks (LHINS)
- Advancing the Aboriginal and treaty rights to health under section 35; medicine chest clause
- Expanding health human resources - labour force and career development

Key Successes/Points

- Conference on treaty right to health – coming up
- 20/20 Vision – wants to increase number of Aboriginal people in health professions
- Aboriginal Healing and Wellness Strategy
- Integration of services at the community level
- Comprehensive community planning, with creativity
- Overcoming jurisdictional and citizenship challenges by providing services to non-members
- Recognition of Indigenous science/scientists at the international level
- CIHR Canadian Institute of Health Research approving guidelines for conducting health research in communities

Key Messages

- Current system is a failure
- Health needs to be a key priority
- Promoting prevention and healthy lifestyles and eating and habits for First Nations, Inuit and Métis peoples, especially among youth
- The importance of accurate and timely health data (“OCAP”) – ownership, control, access, possession

ii) Education Initiatives in Ontario and Nationally Workshop – Tim Thompson, Chiefs of Ontario

Key Challenges

- Encouraging the development of the 4 levels outlined in the Ontario First Nations Manifesto document
- Creating an administration for INAC
- Joint AFN and First Nations education policy framework;
- Decreasing the involvement of INAC

Key Successes/Points

- Nisga’a authority over education at all levels, including post secondary – this is a watershed.
- Lawyers should support First Nations education by getting more involved
- Some First Nations in Alberta have been successful in accessing other funding sources to support education
- Ontario Manifesto speaks to the following 4 levels: First Nation operates and owns schools; Support to teacher education and curriculum development; Provincial and Treaty level is where education laws should be Teacher certification nationally

Key Messages

- Joint planning with First Nations and governments on policy, provincially and regionally

iii) Expanding Indigenous Land Bases Workshop – Mark Stevenson

The example was illustrated through a review of one of his cases in a northern B.C. community (Carrier Nation).

Key Challenges

- Little capacity (*Indian Act* controlled)
- High unemployment, bad socio economic conditions
- No economic development
- Involved in B.C. Treaty process
- 45,000 sq. kilo of traditional territory
- Less than 1,000 hectares First Nation territory
- Agreement in principle for land negotiations reached with the Provincial and Federal governments “less than 1,000.00 per Indian” – always a per capita process. Typically ½ value of land and ½ in cash
- Initial agreement was \$15M plus 4,000 hectares of land
- Self government was worked into the Agreement in Principle

Key Successes/Points

- Fisheries management regime and economic development management regime put in place by the community to achieve the following;
 1. increase land base
 2. increase monetary gain
 3. increase influence in Territory
- \$20M increase through revenue sharing mandates
- Forestry Site Agreement – wood supply and additional revenue sharing a management regime with forestry. Also did same with oil and gas plus an impact agreement benefit agreement. Went outside the box mandate of the AIP
- In addition to treaty provisions the impact benefit agreement was between Enbridge and Northern Gas
- Negotiated a Joint Stewardship Agreement - impact of the Agreement was the shared running of the watershed
- Revenue and influence of Territory - achieved but the goal of increased land base had still to be addressed

Key Message

- The Law – issues around the land
- Tenure: limitations inherent to fee simple ownership (highest form of land ownership in common law)
- With fee simple the Crown has underlying title
- Two main limitations on the fee simple ownership & property taxes and further limitations are:

- (a) Escheat - need heirs to the land or land will revert to Crown
- (b) Forfeiture – lands can be lost to private interest
- The Personal Property and Security Act applies. If a band member gets a traditional mortgage and fails to pay, the bank may exercise foreclosure but the bank is subject to the First Nation laws
- There is no framework for legal analysis in this new area of law. We have to make our own policies and reinterpret

iv) Managing Forestry Resources Workshop – Byron Leclair, Pic River First Nation

Key Challenges

- Definition and allocation from direct to general
- A First Nations designation doesn't allow specific management (who gets what?)
- Traditional knowledge: Practical management works with things, i.e. hunting/fishing; challenge when spiritual notions must be considered
- Developing a mandate through consultation with Elders and community
- Land Claims clarification of tenure – multiple claimants (who invests and how much) before settlement if any
- Other development: Eco tourism is considered not fully developed
- Establishing an economic base
- Union challenge and government programs – better settled once and claim settled and Union Impact
- Strategic position to move on case law under review -- when it suits government laws are ignored and sidelined

Key Successes/Points

- Growth (reinvestment) services supported by revenue from forestry activities
- Rights should be exercised
- Evolved participation – expansion into larger revenue
- Expansion means greater competition (government/business)
- DOMTAR – dispute brings issues to forefront (union and non-union), allocation and development, government conflicts, and recreation
- Diversion of promised resources forced First Nations into sided by-stander
- Harvest anyway forced issue into 1999 dispute resolution

IV. ECONOMIC DEVELOPMENT (Chair Judge Rose Boyko)

a) Plenary Presentations (Day Two Afternoon Session)

i) Indigenous Jurisdiction in the area of Economic Development - Chief Victor Buffalo, Samson Cree Nation and Peace Hills Trust

Key Points

- Collective ownership of economic development initiatives is part of cultural survival for First Nations
- Require strong governance to succeed with economic development
- Just went ahead and did it – did not wait for any approval from government

Chief Buffalo spoke about a number of economic initiatives within his territory, what makes them successful and why. The approach is collective economic development in which the community shares in the success. The Band is involved in: Peace Hills Trust (25 years); developing risk lending through Aboriginal Capital Corporation (ACC), oil and gas production; human and natural resources; hotels; and the northern pipeline. The Band provides training directly in the community (e.g. drilling) which leads to direct employment. They have established creative investments to get around the barriers created by the *Indian Act*. Good governance practices are essential such as: 1) separating politics from business; 2) code of ethics; 3) education and training at all levels; 4) long range strategic plan with regular reviews; 5) if skills are lacking – partnering with someone; 6) getting the right people in place.

ii) Dan Brant – National Aboriginal Capital Corporation Association

Key Points

- Legal profession has a strong role in building economic development
- “Just Do It” revolution needs to happen
- Community owned and operated 60 financial institutions
- One billion dollars in loans supporting 12,000 businesses, over 30,000 jobs

Control over capital is an essential element. There is a need to create the paradigm shift for First Nations and home ownership on reserve to support mortgages on reserve. Some communities like the Nisga’a

through Tri-Corp have already established ways to create local mortgages for members on reserve. Some communities are “Just Doing It” and with the support of the Indigenous legal expertise this can support First Nations economic development.

iii) Kristyna Bishop – Inter-American Development Bank

Key Points

- Never mistake community development with economic development
- Revenue streams can be defined by how money is made
- Maintaining rights is essential in economic development

Krystina Bishop spoke about how economic development can protect rights, and about planning to ensure that this is the case. Securing assets is an important beginning but security over assets is essential. Communities need to ensure that they have a strong vision, a leadership dream that includes try, try and try again, effective management over assets, and finally when making choices they need to think about who they are hiring, what they are buying and when and what they are investing in .

b) Workshops - Economic Development

i) Capitalization of Development International Initiative and Self Determination Workshop – Kristyna Bishop

Key Challenges

- Rules
- Time
- Perception
- Absence of legal framework
- Representation of communities

Key Successes/Points

- Casino Rama, economic development, social and health
- Canada has resources and expertise

Key messages

- Learn from successes
- Keep talking

- Keep learning

ii) **Indigenous Law vs. Indian Act: Serving the Creation of Sustainable Economies Workshop – Denise Lighting**

Key Challenges

- INAC policies
- Finding balance between economic vs. cultural
- Who governs us

Key Successes/Points

- St. Eugene’s Mission, a Cranbrook Casino, an example of three First Nation communities working together

Key Messages

- Building capacity and working together with other communities
- Economic development - accountability to the people and accountability to spirit world
- Needing to find balance between intellectual, heart, spirit, physical
- Getting youth jobs
- Creating corporations can create opportunities, funding, liability
- Land designations
- Band members as share holders
- To build capacity, infrastructure communities need to work together

iii) **Labour Relations: What is a Good Employer and Relationships with Unions Workshop - Helen Semaganis-Worme and Dianne Corbiere**

Key challenges

- Indigenous Bar Association (IBA) should focus on labour issues in the second decade of United Nations – designation on the Decade of Indigenous People
- Control of final product process and keep balance

Key Successes/Points

- Could challenge under section 35 of the *Constitution Act, 1982*
- Labour unions will have to challenge Aboriginal First Nations’ inherent right to exclude unionization

- Labour issues will be increasing in First Nations context and should be addressed through upcoming – jurisdictional issues
- Communities require good governance and good resolution process
- External experts have to understand First Nation context
- Even with independent Tribunal they do not understand First Nation context/perspective
- First Nations lacking in resources and effective policies and processes, do not understand what is behind the existing problems
- Education of employers needs to address and organize employment issues
- Suggested: from employers perspective it is always best to speak to employee directly

Key Messages

- Need for collective input into process creating (National)
- Look outside *Canadian Labour Code* process
- Education on jurisdiction for judges on recommendations from Aboriginal judges and Indigenous experts

iv) **Métis Economic Development Workshop – Judy Daniels**

Key Challenges

- Lack of recognition that Métis fall within section 91(24) of the *Constitution Act, 1867*
- Lack of recognition of the Métis Nation as a nation
- Lack of fiscal support (monetary funds) from provincial and federal governments

Key Successes/Points

- Métis owned Aboriginal financial institutions are economic engine of the Métis economy (total of 4 in Canada)
- AHRDA Agreements (training of Métis People that is Métis Nation driven)
- Métis economic development plans

Key Messages

- Future looks bright for the Métis Nation
- Moving forward
- Lots more people with education (increasing)

- Métis people are entrepreneurs, inherent strength is part of culture
- Need the capital – more capital, more businesses

Conclusion

The conference hosted seventeen presentations on a wide range of issues focusing on Indigenous institutional development, jurisdiction and economic development. Delegates heard innovative recommendations such as the establishment of an Indigenous law degree and eventually an Indigenous law school. Some presentations challenged the audience by suggesting that more work is needed to “protect the collective right” within communities, suggesting that the IBA has a critical role in supporting and establishing infrastructure, skills development and ultimately protecting collective rights. Other messages indicated the resurgence of traditional practice and cultural relevance to governance and the future path for Aboriginal communities and their institutions. Governments report that they are moving and adapting, in an attempt to evolve with the future needs of Aboriginal communities.

Delegates had the opportunity to discuss various subjects in thirteen different workshops. The sessions provided insight and experience into different legal considerations or practices, community negotiations and/or new policy on the horizon.

The importance of protecting and revitalizing our collectives in the exercise of collective jurisdiction was stressed throughout the conference. A theme arising from the presentations and workshops is that Indigenous communities are out there “Doing It”. In some cases, it was shared that communities have asserted their own jurisdiction by developing their own institution or business on their terms with Aboriginal values. Traditional and cultural law has also become a very important aspect of this development resurging and are being reinforced through our educational institutions using Aboriginal experts such as traditional faith keepers and Elders.