



THE CANADIAN
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2013 NATIONAL ABORIGINAL LAW CONFERENCE WORKING WITH AND WITHIN INDIGENOUS LEGAL TRADITIONS

April 11-12, 2013 | Fairmont Empress Hotel | Victoria, BC

THURSDAY, APRIL 11

DAY 1: WORKING WITHIN INDIGENOUS LEGAL TRADITIONAL (Perspectives from within)

8:00 | 8:30 REGISTRATION

8:30 | 8:45 OPENING PRAYER: Elder

8:45 | 9:00 WELCOME REMARKS

John Borrows, 2013 Program Co-Chair, University of Minnesota Law School (Minneapolis)

Aimée Craft, 2013 Program Co-Chair, Public Interest Law Centre (Winnipeg)

9:00 | 12:00 A MULTI-JURIDICAL CANADA

Canada is founded on the legal traditions descended from French civil law, British common law and indigenous legal traditions. This opening panel aims to set out the questions and begin the dialogue on how to recognize and incorporate Indigenous legal traditions that form part of this pluralistic legal foundation. The panelists will address the continued practice and preservation of Indigenous legal traditions within Indigenous communities, the use of Indigenous traditions in Canadian courts, the complexities and efficiencies of a pluralistic legal system and the recognition and re-invigoration of Indigenous legal traditions through research and community-based work in ways that are cognizable to the common law. Each of the speakers will share their perspective on the importance of making space for Indigenous laws within the Canadian legal framework.

Moderator: **John Borrows**, University of Minnesota Law School (Minneapolis)

Panelists: **Gary Campo**, Woodward & Company LLP (Victoria)

The Honourable Steven Point, Former Lieutenant Governor of British Columbia (Vancouver)

Jeremy Webber, University of Victoria - Faculty of Law (Victoria)

Doug White, Elected Chief Snuneymuxw First Nation

12:00 | 13:30 NETWORKING LUNCH

13:30 | 14:45 INDIGENOUS LEGAL TRADITIONS IN GOVERNANCE

This panel will explore the many facets of governance and consider the role of Indigenous legal traditions in defining, shaping, affirming, implementing, continuing, developing and re-enforcing Indigenous governance. Panelists will address the intersection of Indigenous laws with issues of leadership, membership, citizenship, and internal and external relationships with other governments and entities.

Moderator: **Aimée Craft**, Public Interest Law Centre (Winnipeg)

Panelists: **Dr Taiaiake Alfred**, University of Victoria Indigenous Governance Program (Victoria)

Kerry Sloan, University of Victoria (Victoria)

Terri-Lynn Williams Davidson, White Raven Law Corporation (Surrey)

14:45 | 15:00 REFRESHMENT BREAK

Sponsored by Songbird Law Corporation

Session I: ***Custom Membership Codes and Election Acts***

Custom Membership Codes and Election Codes have become the norm rather than the exception. Panelists in this breakout session will highlight key legal issues and important case law, discuss community engagement and the development of custom codes, and engage participants with respect to the implementation and interpretation of custom codes in accordance with aboriginal values.

Moderator: **Kate Blomfield**, Ratcliff & Company LLP (Vancouver)

Panelists: **Leah Mack**, Woodward & Company (Victoria)
Monica Jacobs, Squamish Nation
Cheryl Simon, Simon Governance Services

Session II: ***Indigenous Alternative Dispute Resolution***

While courts and administrative tribunals may be important places for resolving disputes, there are other mechanisms for achieving resolution. This panel will discuss options for including indigenous legal traditions and legal principles in alternative dispute resolution and canvass some different models of dispute resolution that are rooted in indigenous laws, customs and traditions.

Moderator: **Krista Robertson**, Janes Freedman Kyle Law Corporation (Victoria)

Panelists: **Cassandra Campbell**, Canadian Human Rights Commission, National Aboriginal Initiative (Winnipeg)
Koren Lightning-Earle, Indigenous Bar Association (Hobbema)
Justice Leonard S. Mandamin, Federal Court (Ottawa)
Jenny Restoule-Mallozzi, Union of Ontario Indians

Session III: ***Family law***

Dating back as early as 1867 in the *Connolly v. Woolrich* Cree customary marriage case, courts have determined that English Common law does not “supersede or abrogate” the laws of indigenous people. This reasoning has been prevalent in the area of family law: indigenous laws and customs have been applied to judicial decision-making in relation to marriage, divorce and custody. In addition, developments in the area of child welfare are building on indigenous legal principles and legislation. This panel focuses on the application and creation of indigenous laws that must balance the interests of individuals (including children) and the customs and traditions of the collective.

Moderator: **Allison Fenske**, Thompson Dorfman Sweatman LLP (Winnipeg)

Panelists: **Katherine Hensel**, Hensel Barristers (Toronto)
Sharon McIvor, Nicola Valley Institute of Technology (NVIT) (Burnaby)
Karen Whonnock, Whonnock Law Firm (Terrace)

18:00 OFFSITE NETWORKING DINNER WITH ENTERTAINMENT AT THE FIRST PEOPLES GALLERY, **ROYAL BC MUSEUM**

Entertainment Sponsored by Devlin Gailus Barristers and Solicitors

The Royal BC Museum, situated on the historic Inner Harbour, is across the street from the Fairmont Empress Hotel and the majestic provincial Parliament Buildings. The First Peoples Gallery gives visitors dramatic glimpses of First Nations cultures before and after the arrival of Europeans. www.royalbcmuseum.bc.ca/

FRIDAY, APRIL 12

DAY 2: WORKING WITH INDIGENOUS LEGAL TRADITIONS (Shared Perspectives)

8:30 | 9:00 REFLECTIONS ON DAY ONE
John Borrows, 2013 Program Co-Chair, University of Minnesota Law School (Minneapolis)

9:00 | 10:30 ARGUING INDIGENOUS LAWS BEFORE REGULATORY BODIES AND IN LITIGATION

This panel will explore how Indigenous Legal Traditions can be presented to regulatory bodies or in the litigation context and the responses from those bodies to date. It will set out practical approaches and seek to clarify what works, and what does not work, to demonstrate validity, reliability and iterability. Are there areas of law that have proven more open to the reception and uptake of Indigenous Legal Traditions? What evidentiary concerns have been expressed and what issues might drive the response of tribunals and regulatory bodies? How are courts and tribunals integrating those traditions into their processes? How are conflicts between Indigenous laws and western sources of law likely to play out?

Moderator: **Christopher Devlin**, Devlin Gailus (Victoria)
Panellists: **Brenda Gaertner**, Mandell Pinder LLP (Vancouver)
Peter Hutchins, Hutchins Légal Inc. (Montréal)
David M. Robbins, Woodward and Company (Victoria)

10:30 | 10:45 REFRESHMENT BREAK
Sponsored by Janes Freedman Kyle Law Corporation

10:45 | 12:15 OUR LAND, OUR LAWS: INDIGENOUS LAND USE AND LAND MANAGEMENT

For Indigenous peoples, land is central to culture, way of life, and identity. While Indigenous land laws recognize a complex web of relationships, rights and responsibilities in relation to the use and management of lands and resources, western concepts of private property rights have been imposed on Indigenous communities, often without their consent. This panel will examine if and how common law property concepts work in parallel with Indigenous land laws. Panelists will provide insights on how Indigenous people are reinvigorating traditional laws and perspectives on land, proving these land laws in court, and incorporating them into present-day land use and land management regimes.

Moderator: **Drew Mildon**, Woodward and Company (Victoria)
Panellists: **Belinda Claxton**, Tsawout First Nation (Saanichton)
Linda McDonald, Kaska Land Steward
Heather Mahony, Woodward & Company (Victoria)
Heidi Stark, University of Victoria (Victoria)

12:15 | 13:45 KEYNOTE LUNCH
Justice Murray Sinclair, Chair Truth and Reconciliation Commission of Canada

13:45 | 15:00 BREAKOUT SESSIONS

Session I: ***Canadian Human Rights Act – interpretive clause***

The CHRA has been amended to allow for complaints against First Nations governments for actions related to the Indian Act and in addressing those complaints, consideration has to be given to indigenous legal traditions and customary laws. How is this done in practice?

Moderator: **Jesse McCormick**, Donovan and Company (Vancouver)
Panelists: **Naomi Metallic**, Burchells LLP (Halifax)
Valerie Phillips, Canadian Human Rights Commission (Ottawa)

Session II: *IBA/UVic Indigenous Laws Research Project*

The Indigenous Bar Association with Uvic Law and other partners has undertaken ground-breaking research project with indigenous communities aimed at accessing indigenous laws. Researchers will share information about this project, the conclusions to be drawn from it and the next steps in the process.

Moderator: **Neil Vallance**, University of Victoria (Victoria)
Panellists: **Estella Charleson**, University of Victoria (Victoria)
Hadley Friedland, University of Alberta (Edmonton)
Alan Hanna, University of Victoria (Victoria)
Kris Statnyk, University of Victoria (Victoria)

Session III: *Indigenous Economies*

Indigenous communities have always had complex economic relationships, including diverse activities trade, and systems of redistribution. Today, Aboriginal Peoples are operating sophisticated businesses, partnering with industry in economic ventures, and developing systems of taxation for their lands. This breakout session will look at how Indigenous legal traditions influence Aboriginal economic development, and in particular how the history and culture of communities determines the way they choose to do business.

Moderator: **Derek Simon**, Burchells LLP (Halifax)
Panellists: **Trevor Bernard**, Membertou First Nation (Membertou)
Darwin Hanna, Callison & Hanna (Vancouver)
Dr Judith Sayers, University of Victoria, National Aboriginal Economic Development Chair (Victoria)

15:00 | 15:15 REFRESHMENT BREAK

15:15 | 16:30 INDIGENOUS LEGAL TRADITIONS IN ACTION: ABORIGINAL JUSTICE

This panel will examine Aboriginal justice in action in the context of a self-governing First Nation, such as the Teslin Tlingit Council (TTC) in the Yukon, which has its own court system and laws which apply on its territory to everyone, whether they are First Nation citizens or not. The panelists will also speak to programs designed to incorporate First Nation concepts of justice into the mainstream system where Aboriginal persons come into conflict with the law (e.g. Aboriginal Justice Strategy projects and restorative justice initiatives, tripartite policing agreements, and specialized aboriginal courts).

- How successful are these approaches?
- How do FN concepts of justice interact with procedural fairness, Charter rights and the rules of court?
- How are FN laws being enforced and adjudicated?

Moderator: **Julie Jai**, Department of Justice Canada (Toronto)
Panellists: **Pauline Busch**, Chief, Aboriginal Corrections Policy Unit (Ottawa)
Justice Leonard S. Mandamin, Federal Court (Ottawa)
Georgina Sydney, Negotiator, Teslin Tlingit Council (Whitehorse)

16:30 | 16:45 CLOSING REMARKS
John Borrows, 2013 Program Co-Chair, University of Minnesota Law School (Minneapolis)
Aimée Craft, 2013 Program Co-Chair, Public Interest Law Centre (Winnipeg)

ACCREDITATION

The time spent attending this program (13.0 hours) is eligible for credit towards the annual continuing professional development ("CPD") requirement in all mandatory CPD jurisdictions.

For more information, or to register for this informative program, please visit the conference webpage:

http://www.cba.org/pd/details_en.aspx?id=NA_ABL13.

SPEAKERS AND TOPICS SUBJECT TO CHANGE