

INDIGENOUS BAR ASSOCIATION IN CANADA 2021-2022

Annual Report



INDIGENOUS BAR
ASSOCIATION

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MESSAGE FROM THE PRESIDENT



Drew Lafond

Tansi nitotemak. It is fitting that the members of the Indigenous Bar Association in Canada (the "IBA") are congregating for the first in-person conference this year and for the first time since our fall 2019 conference. Since 2019, Indigenous lawyers, law students, academics and judges have been catalysts for some of the most seismic shifts in political and legal thought in our country's history. It is hard to overstate the importance of the strides taken by our members to improve the lives of Indigenous peoples. This past year we have witnessed:

- the dismantling of the systemic and structural assumptions on which the child welfare system was conceived;
- advancements in criminal law reform;
- federal codification of the process for implementing the United Nations Declaration on the rights of Indigenous Peoples;
- the appointment of the first Indigenous jurist to the Supreme Court of Canada; and
- monumental victories in the areas of jurisdiction and capacity building.

With respect to reconciliation and residential schools, our members in Treaty No. 6 Territory and Nunavut hosted the first papal visit to Maskwacis and Iqaluit in the history of the Catholic Church, and have assumed key roles in the Office of the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites.

Today, the need for those who have attained legal knowledge, expertise and networks to serve their home communities is greater than ever. The century-old systems used to oppress, colonize and weaken our people's governance, cultures, languages and spirits are breaking down and it is incumbent upon legal professionals to serve their home communities to repatriate and reclaim our Indigenous laws and kinship systems. This year's conference is titled "Reclaim, Return, Remember: Returning to our Homefires", and I hope you are able to take the time during this year's conference to reflect on the events that have transpired in the last year, to sharpen your focus on your home communities, and to contemplate the important work needed to restore the legal systems that held our Nations together since time immemorial.

The IBA's operations have expanded considerably in recent years. We have taken methodical steps to increase our capacity, expand our project workload and enhance the scope of services available to our members. Not only have we undertaken an aggressive fundraising campaign to build our incoming cash flow, but we have also worked to systemically organize and arrange our financial controls to provide increased accountability and transparency to our members. We have built partnerships with organizations Nation-wide, played an instrumental role in the development of legislation, policies, and guidelines impacting the lives of Indigenous peoples, and shaped case law to secure the rights of Indigenous peoples for years to come.

The IBA has always been a voice for those within the legal profession who wish to protect the virtues of Indigenous laws that are expressed through our traditions, customs and cultures, who want to build Indigenous legal systems that honour the natural laws to which we are all subject, and who wish to secure a just and prosperous society for our future generations. We also seek to preserve the mental well-being of our members undertaking and performing the challenging work and meeting the endless demands that have become intrinsic to the legal profession, and to assist those who are coming up with new ways to theorize about and practice law.

I am grateful for the privilege of being able to work alongside our esteemed Indigenous Peoples' Counsel designates, our task-oriented board members and incredibly hard working staff and volunteers, particularly the indomitable Anne Chalmers. I hope that this annual report provides a thorough and concise summary of the groundbreaking initiatives in which the IBA and its members have been involved during the last year.

ABOUT THE INDIGENOUS BAR ASSOCIATION (IBA)

OUR BOARD MEMBERS

Drew Lafond, President

Alain Bartleman, Treasurer

Brooks-Arcand-Paul, Vice President

Lori Mishibinjima, Secretary

Samantha Craig-Curnow, Board Member

Alexandria Winterburn, Board Member

Jocelyn Formsma, Board Member

Brendan Schatti, Student Representative

Catriona Dooley, Board Member

Anita Cardinal-Stewart, Student Representative

INDIGENOUS PEOPLES' COUNSEL

Candice Metallic, IPC

David Nahwegahbow, IPC

Delia Opekokew, IPC

Dianne G. Corbiere, IPC

Donald Worme, IPC

Eileen Sasakamoose, IPC

Helen Semaganis, IPC

J. Wilton Littlechild, IPC

James (Sakej) Youngblood-Henderson, IPC

Jeffery Hewitt, IPC

Jean Teillet, IPC

John Borrows, IPC

Leonard S. Mandamin, IPC

Kathleen N. Lickers, IPC

Kimberly Murray, IPC

Mark L. Stevenson, IPC

Mary Ellen Turpel-Lafond, IPC

Paul L.A.H. Chartrand, IPC

Darlene Johnston, IPC

Roberta Jamieson, IPC

Roger Jones, IPC

Murray Sinclair, IPC

Valerie Napoleon, IPC



SUMMARY OF OUR WORK

We are proud of the advocacy work we do to advance the revitalization and implementation of Indigenous legal traditions, and protection of the interests of Indigenous peoples in the legal profession.

With the help of our board and members, in the last year the IBA:

2

Major Publications



7

Public Statements/News Releases



5

Ongoing Research Projects



6

Partnerships and Alliances



18

Notable Accomplishments





CASES TO KEEP YOUR EYE ON

In the upcoming year, the Supreme Court of Canada (SCC) will be hearing two major cases that will impact Indigenous peoples as they relate to Indigenous rights. The first case is the Bill C-92 case between the Attorney General of Québec and the Attorney General of Canada, on appeal from the Québec Court of Appeal. It will determine the constitutionality of Bill C-92, which affirms Indigenous self-determination and authority to govern matters of child and family services of Indigenous peoples. The second case is the Dickson case between Cindy Dickson and Vuntut Gwitchin First Nation on the issue of the application and relationship between the Canadian Charter of Rights and Freedoms and Indigenous laws. In 2023, the Restoule v Canada case will be heard at the Supreme Court of Canada, impacting treaty interpretation and augmenting treaty annuity payments made per the Robinson-Huron and Robinson-Superior Treaties. This case is important as it will give the SCC an opportunity to comment on the standard of review for treaty interpretation and will also hold the Crown responsible for neglecting treaty terms and obligations.

The case briefs below also summarize a decision recently handed down by the SCC and in which the IBA participated as an intervener, being Anderson v Alberta 2022 SCC 6 which was heard by the SCC in March of 2022. This case is important as it clarifies the test upon how and when a First Nation will qualify for advance costs when pursuing litigation.

BILL C-92 (FEBRUARY 2022) - DECEMBER 7, 2022, AND DECEMBER 8, 2022, AT THE SCC

(Attorney General of Québec, et al. v. Attorney General of Canada, et al.)

Bill C-92, *An Act Respecting First Nations, Inuit, Métis children, youth, and families*, became law and received royal assent in June 2019. This Act comes after decades of the Canadian government willfully and systematically underfunding the on-reserve child welfare system. The Canadian Human Rights Tribunal ruled upon this discrimination. In response to their repeated findings, the Canadian government has proposed to settle the complaint and a related class-action lawsuit for \$20 billion

each. The main purpose of Bill C-92 is to recognize and affirm Indigenous Peoples' inherent jurisdiction over Indigenous child and family services, regardless of the service provider. As this is federal legislation, this recognition relies upon the mechanisms of cooperative federalism and paramountcy to work. "Coordination agreements" in Bill C-92's subsection 20(2) exemplify cooperative federalism as they contemplate Indigenous governing bodies consulting and negotiating with federal and provincial governments to determine how their laws related to child and family services will interact with both levels of government and to take steps to ensure that the laws of an Indigenous government prevail in the event of a conflict with provincial or federal legislation. . Bill C-92's section 21, section 22(1) and section 22(3) spell out that the doctrine of paramountcy will apply if there is a conflict or inconsistency between laws. Indigenous laws will prevail over provincial and territorial laws. Indigenous laws will also prevail over any federal laws other than in sections 10-15 of Bill C-92, the Canadian Human Rights Act and the *Canadian Charter of Rights and Freedoms*.

Bill C-92's constitutionality was challenged by the Attorney General of Québec, who asserted that the federal government is disrupting provincial authority over public services via this Act. The Attorney General of Québec also argued that Bill C-92 is creating a third level of government by granting the right of Indigenous self-government, and this is not supported by the *Canadian Constitution Act of 1982* or any tri-partite self-government agreement. There was a counterargument made by the Attorney General of Canada that because Indigenous affairs fall within the federal government's jurisdiction under Section 35 of the *Canadian Constitution*, Bill C-92 is constitutional. The Québec Court of Appeal found that the federal government has jurisdiction to set up Bill C-92 and accepted that the right to self-government for First Nations falls within Section 35 of the *Constitution*. This acceptance came with the exception of the Québec Court of Appeal striking Section 21 and Section 22.3 of Bill C-92. The Court said that these sections giving Indigenous laws paramountcy over provincial laws in the case of a conflict, inconsistency or because they were enacted through a federal mechanism are ultimately unconstitutional because the sections alter the structure of the *Constitution*.

The Government of Canada is appealing the decision and would like to see the Indigenous inherent right to self-government under Section 35 of the Constitution upheld by the Supreme Court of Canada in the jurisdiction of child and family services. The Attorney General of Québec is also appealing the decision to the SCC to reiterate its original argument that the entirety of Bill C-92 is unconstitutional, including the two sections mentioned above. The SCC will hear this case on December 7, 2022, and December 8, 2022. The IBA has leave to intervene in this case before the SCC in December of 2022.

DICKSON – TO BE HEARD AT THE SCC IN 2022-2023

(Cindy Dickson v. Vuntut Gwitchin First Nation)

This case is between Cindy Dickson and Vuntut Gwitchin First Nation (VGFN). Cindy Dickson is challenging VGFN's requirement that elected officials live on traditional settlement land because it violates Dickson's Section 15 (1) *Charter* right to equality and that this infringement is not justified under Section 1 of the *Charter*. Cindy Dickson was barred from running for VGFN Council in VGFN's 2018 election due to the residency requirement in the VGFN Constitution that requires her to relocate to settlement land. VGFN's settlement land is in Old Crow, the northernmost Yukon community with no road access and only flying access to Whitehorse. Cindy Dickson lives in Whitehorse, Yukon (800km from Old Crow) and does not want to move away due to familial, economic, resource and medical reasons that ground her staying in Whitehorse. The VGFN government, in response to Cindy's *Charter* challenge and application, stated that they have never consented to the *Charter's* application to their First Nation's laws during their historical or current self-government negotiations with Canada in any treaty.

The Yukon Court of Appeal heard this case in July 2021 and found that the *Charter* requirement applied to the residency requirement only and not to the whole VGFN governance. The Yukon Court of Appeal concluded that the residency requirement was shielded from further scrutiny as it is protected by Section 25 of the *Charter*, which guarantees and protects "Aboriginal, treaty or freedom rights that pertain to Aboriginal peoples of Canada". Cindy

Dickson is challenging the Section 25 *Charter* shield of the residency requirement, as stated by the Yukon Court of Appeal to the Supreme Court of Canada, to allege that it ultimately conflicts with her Section 15(1) *Charter* rights.

Dickson and the *Bill C-92* case will be the first cases in the SCC to consider how *Charter* rights or Canadian federal/provincial laws relate to or operate with Indigenous governance and law-making powers. Many Indigenous groups and peoples are applying to intervene in this case that will likely comment on Indigenous self-governance, and modern treaty-making creates authority and/or self-determination while existing in the same sphere of the *Canadian Constitution* and *Charter*.

RESTOULE – TO BE HEARD AT THE SCC IN 2023

(Attorney General of Ontario, et al. v. Mike Restoule, Patsy Corbiere, Duke Peltier, Peter Recollet, Dean Sayers and Roger Daybutch, on their own behalf and on behalf of all Members of the Ojibewa (Anishinaabe) Nation who are beneficiaries of the Robinson Huron Treaty of 1850, et al.)

This case was started by the signatory First Nations of the 1850 Robinson-Huron Treaty and Robinson-Superior Treaty (Robinson Treaties) in 2014 against Canada and Ontario (Crown). In these Robinson Treaties, among other provisions, is a perpetual annuity- one that is to be increased subject to conditions and paid by the Crown to the Anishinaabe. The Crown must pay these annuities and a lump sum payment per the Robinson Treaties. This case has gone to the Ontario Superior Court of Justice (*Restoule v Canada*, 2018 ONSC 7701, "Stage One" AND *Restoule v Canada*, 2020 ONSC 3932, "Stage Two") and the Ontario Court of Appeal (*Restoule v Canada*, 2021 ONCA 779). Stage One involved the interpretation of the Treaties, Stage Two was the presentation of the Crown's defences of Crown immunity and limitations, and Stage Three (which has not happened yet) will be discerning and organizing remedies, damages and liability between Canada and Ontario.

The First Nations (Anishinaabe) claim that the annuity payments made by the Crown, per the Robinson treaties, are subject to an increase due to inflation and ongoing resource development profits and revenues that the Crown receives from the

territories taken in 1850. They also claim that the Robinson Treaty terms obligate the Crown to share these revenues from the land by increasing annuity payments.

Since 1875, the treaty's annuity payments have not been increased and have remained at \$4 per person. In the 2018 Ontario Superior Court of Justice hearing, the Court found that the Anishinaabe are entitled to a constitutionally protected right under Section 35(1) of the Constitution Act of 1982 to share in Crown revenues from the taken land via the Robinson Treaties. Thus, the Crown has a "mandatory and reviewable" obligation to increase these individual annuity payments and the collective annuity to accurately reflect the first nation's share of economic revenue from the taken land. Ontario appealed the Superior Court decision on the grounds that the trial judge erred in their interpretation of the Robinson Treaties.

The Court of Appeal in 2021 unanimously held that the Robinson Treaties promises and provisions were neglected by the Crown upheld the trial decision and added amendments that should impact Stage Three of the litigation and remedies. The Court of Appeal also commented on potential barriers to Stage Three negotiations. It stated that Crown discretion regarding the increase in annuities and when it be implemented, and by whom (Canada and Ontario) in what proportion can hinder successful remedies. This case will allow the SCC to set a standard of review for treaty interpretation in Stage 3 at the SCC.

ANDERSON V ALBERTA 2022 SCC 6

On March 18, 2022, the SCC handed down its decision on *Anderson v. Alberta*, 2022 SCC 6. The hearing took place on November 4, 2021. The underlying legal question was whether the Crown (Canada and Alberta) must pay a portion of Beaver Lake Cree Nation's legal fees in the landmark treaty infringement case. The case was filed in 2008 by Beaver Lake Cree Nation, where they alleged that the Crown (federal and provincial) had improperly allowed a vast amount of land to be taken up for industrial development and resource exploitation. Beaver Lake Cree Nation has spent over \$3 million to pursue this important litigation and stated that it could no longer afford it. Thus, Beaver Lake Cree Nation filed for advance costs of \$5 million to be

able to fund litigation for a trial scheduled in 2024.

Advance costs allow litigants to receive enough funds to proceed with such litigation.

The case management judge found that Beaver Lake Cree Nation could not fund its legitimate and pressing community infrastructure and social needs while also funding this legal claim. The Alberta Court of Appeal (ACA) overturned this decision. The SCC overturned the ACA and returned the matter to the Court of Queen's Bench for a new hearing with a fuller evidentiary record regarding the "pressing needs" of the Beaver Lake Cree Nation. The SCC ultimately rejected the ACA's strict application of the impecuniosity requirement to Indigenous governments and confirmed that Indigenous governments can qualify for advanced costs for pursuing important litigation while still providing services of "pressing need" to their communities.

In the advance costs test, the SCC also clarified what could qualify as a "pressing need" for an Indigenous government. They held that "pressing needs" in every case include the "basic necessities of life, including adequate housing, a safe water supply, and basic health and education services," and may also include "spending to improve standards of living" like language and culture as well as the Indigenous government's priorities, as indicated by past spending. The SCC ultimately said that even if an Indigenous government can access financial resources to fund litigation, they can show that these funds have been and are devoted to "pressing needs" from the First Nation's perspective and community needs to qualify for advance costs. The SCC ordered Canada and Alberta to pay the Beaver Lake Cree First Nation's full legal costs to litigate this issue of advance costs.





EXPLANATION OF THE CHILD AND FAMILY SERVICES SETTLEMENT AGREEMENT

On March 31, 2022, Canada entered into an agreement (the “Settlement Agreement”) with the Moushoom Plaintiffs, the AFN Plaintiffs and the Trout Plaintiffs (in each case as defined below). The Settlement Agreement is a result of a consolidated action of the Moushoom Action and the AFN Action. It seeks to recognize the harm perpetuated to First Nations children and their families. It marks the largest settlement in Canadian history. To date, Canada has entered into two agreements-in-principle related to the Settlement Agreement. The Agreement-in-Principle on Compensation identified certain terms that were to be negotiated further for inclusion of the Settlement Agreement. Upon finalizing the Settlement Agreement, the AFN and Canada will seek an order from the Canadian Human Rights Tribunal declaring that the Order for compensation has been fully satisfied.

I. BACKGROUND

On March 4, 2019, the Xavier Moushoom, Jeremy Meawasige (by his litigation guardian, Jonavon Joseph Meawasige), and Jonavon Joseph Meawasige (together, the “Moushoom Plaintiffs”) commenced a proposed class action in the Federal Court seeking compensation for discrimination dating back to April 1, 1991. On January 28, 2020, the Assembly of First Nations (the “AFN”), Ashley Dawn Louise Bach, Karen Osachoff, Melissa Walterson, Noah Buffalo-Jackson (by his litigation guardian, Carolyn Buffalo), Carolyn Buffalo, and Dick Eugene Jackson also known as Richard Jackson (together, the “AFN Plaintiffs”) also filed a proposed class action in the Federal Court regarding similar allegations dating back to April 1, 1991. On July 7, 2021, the Honourable Justice St-Louis ordered that the two Actions be consolidated with certain modifications. As well, on July 16, 2021, the AFN and Zacheus Joseph Trout (together, the “Trout Plaintiffs”) filed a proposed class action in the Federal Court regarding the Crown’s discriminatory provision of services and products between April 1, 1991 and December 11, 2007.

On September 29, 2021, Justice Favel upheld the Canadian Human Rights Tribunal Decision,

2019 CHRT 3, in which the Tribunal awarded compensation to children and their caregiving parents or caregiving grandparents impacted by Canada’s systemic discrimination in the underfunding of child and family services on reserve and in the Yukon, and its narrow interpretation of Jordan’s Principle.

The parties engaged in mediation, under the Honourable Leonard Mandamin as mediator, to resolve all of the outstanding issues in the Consolidated Action. The mediation occurred from November 1, 2020 to November 10, 2021. The parties then entered into negotiations outside of the Federal Court mediation process, with the Honourable Murray Sinclair acting as chair of the negotiations.

The Settlement Agreement contains twenty-four Articles which have been agreed upon and this memorandum summarizes the substantive points of the Agreement in these Articles:

Administration

Article 3 provides for the designation of an administration, their duties, the appointment of a third-party assessor, and responsibility for costs. Importantly, the appointment of a third-party assessor may be composed of experts, with demonstrated knowledge of, and experience in, First Nations child and family services and Jordan’s Principle. A third-party assessor may be replaced at any time at the recommendation of the Settlement Implementation Committee.

Trust Fund

Article 4 provides for the establishment of the trust fund and the distribution of the trust fund. The Trust is further explained in Article 13. The Court is to appoint the Trustee, whose responsibilities are outlined on page 57. The fees, disbursements, and other costs of the Trustee relating to the management of the Trust Fund shall be paid by Canada. The Trustee shall deliver to the Administrator, Canada, and the Settlement Implementation Committee, within 30 days after the end of each calendar quarter, a quarterly report setting forth the assets held as at the end of such quarter in the Trust and each Fund and a record of

the Trust's account balance during such quarter. Tax provisions of the Trust are found on page 59 of the Settlement Agreement.

Claims Process

Article 5 lays out the principles governing the claims process, eligibility decisions, and enhanced compensation decisions. It also determines that the Administrator is to make the decisions on eligibility and compensation. In making such a determination, the Administrator will review the Claims Form, Supporting Documentation, First Nations Council Confirmation, and such other information as is relevant in determining whether a Claimant is eligible for compensation. Written reasons on the decision must be made within six months of the receipt of a completed Claim. Claimants will have 30 days to commence an appeal to the appointed Third-Party Assessor, if they so choose.

Compensation

Article 6 provides that any Class Member may claim compensation starting one year before they reach the Age of Majority, providing that no compensation is paid to that Class Member until after the Age of Majority. If a Class Member is eligible for more than one class, they will receive the higher amount for which they are eligible to receive.

Classes

i. Removed Child Class

Article 6.03 provides that an approved Removed Child Class Member will be entitled Base Compensation of \$40,000. As well, an approved Removed Child Class Member may be entitled to an Enhancement Payment based on Enhancement Factors. These factors will be weighed based on the input of the experts. Canada has an estimated budget of \$7.25 billion for the Removed Child Class.

The parties separately engaged Experts to prepare a Joint Report on the estimated size of the Removed Child Class to rely on for settlement discussions. The Experts relied on data provided by Indigenous Services Canada (ISC) in preparing the Joint Report. The data often came from third-party sources and was incomplete and inaccurate in some cases, of which was taken into account in the Joint Report. The Experts estimated that there was 106,200 Removed Child Class Members from 1991 to March 2019. The Experts advised that this class size must

be adjusted to 115,000 to cover the period from March 2019 to March 2022. The Estimated Removed Child Class Size was determined based on the data received from ISC and modelling taking into account gaps in the data.

ii. Caregiving Parents or Caregiving Grandparents of Removed Child Class

Article 6.04 provides the details for compensation for this Class. To note, foster parents are not entitled to compensation. Caregiving Parents or Caregiving Grandparents who have committed abuse that has resulted in the Removed Child Class member's removal are also ineligible for compensation. The budget Canada has for this Class is \$5.75 billion. The Base Compensation for this Class is \$40,000. A maximum compensation of two Base Compensation payments per child among Caregiving Parents and Caregiving Grandparents of a child may be distributed under the Settlement Agreement. The priority list is as follows:

- a) Category A: Caregiving Parents who are biological parents; then
- b) Category B: Caregiving Parents who are adopting parents or Stepparents, if applicable; then
- c) Category C: Caregiving Grandparent(s).

Priorities in compensation for this Class are further explained in Article 6.04.01.

iii. Jordan's Principle and Trout Classes

Canada provided to the plaintiffs estimates of the Jordan's Principle Class Size, which were between 58,385 and 69,728 for the period from December 12, 2007 to November 2, 2017. The Jordan's Principle Class Size Estimates were based on a single 2019-2020 quarter. Based on the size of the Jordan's Principle Class Size Estimate, the plaintiffs estimated the size of the Trout Class to be approximately 104,000.

Article 6.05 provides that the Settlement Agreement provisions apply the same methodology to the Jordan's Principle Class and Trout Child Class. It highlights the intention of the Settlement Agreement to be trauma-informed. For compensation, eligibility is determined based on those Class Members' Confirmed Need for an Essential Service. The Framework establishes two categories: the

Significant Impact Essential Service and the Other Essential Service. The timeline in collaborating to create the Framework is as follows:

- a) Canada will confer with experts to review the Framework of Essential Services by June 15, 2022, or other such dates as agreed to by the Parties.
- b) Canada will prepare a final Framework of Essential Services by August 5, 2022.
- c) Canada will have an expert report in support of the finalized Framework of Essential services by August 19, 2022.

Canada has an estimated budget of \$3.0 billion for the Jordan's Principle Class and an estimated budget of \$2.0 billion for the Trout Child Class. An Approved Jordan's Principle Class Member will receive a minimum of \$40,000 in compensation, depending on whether they can establish one of the two criteria. An Approved Trout Class Member will receive a minimum of \$20,000 in compensation, depending on whether they can establish one of the two criteria. Further compensation details are conveyed on page 36.

Cy-près Fund

Article 7 provides that Canada is to design a Cy-près Fund whose purpose is to benefit Class Members who do not receive direct payment under the Settlement Agreement. The Cy-près Fund will have \$50 million endowed to it by the Trustee. It is to be First Nations led with an objective to provide culturally sensitive and trauma-informed supports to Class Members. The fund seeks to offer grant-based supports to facilitate access to culture-based, community-based and healing-based programs, services and activities to Class Members and the Children of First Nations parents who experienced a Delay, Denial or Service Gap under Jordan's Principle. Examples of this support include family and community unification, connection, and reconnection for youth in care, cultural access, and transition and navigation supports.

Supports to Class in Claims Process

Article 8 provides that the AFN will be allotted \$2,550,000 by Canada to provide supports to First Nations claimants. This process includes administering a help desk with AFN liaisons and providing culturally safe assistance to Claimants in completing relevant forms. As well, Canada will fund the enhancement of the Hope for Wellness Line, pay

for mental health, and cultural supports, navigators to promote communications and provide referrals to health services, and reasonable costs incurred by First Nations service providers, amongst many other specific supports.

Implementation

Article 10 sets out that the Settlement Agreement is conditional upon the Tribunal confirming the satisfaction of its Compensation Order and the Compensation Framework Order. The parties are subject to questioning on the sufficiency of the Settlement Agreement.

Opting Out

Article 11 provides the circumstances in which a Class Member may opt out of the compensation. To do so, a Class Member may deliver an Opt-Out form or a written request to the Administrator, or they may obtain leave of the Court to Opt-Out.

Settlement Implementation Committee

Article 12 describes the requirements to be a Committee Member, as well as their duties, fees, and other such undertakings. Two of the five members must be First Nations members (meaning non-counsel) and the remaining three members must be counsel members. They are to serve for no more than two five-year terms, consecutive or cumulative. The three counsel members will be appointed by Sotos LLP, Kugler Kandestin LLP and the AFN Executive Committee, one each. They may be removed by special majority vote of four.

Termination

The Settlement Agreement will continue in full force and effect until all obligations are fulfilled and the Court orders that the Agreement has terminated per Article 18. No amendment may be made to the Agreement, unless agreed to by the Parties in writing, and if the Court has issued the Settlement Approval Order.

Confidentiality

Article 20 lays out a general confidentiality provision wherein the Administrator is to destroy all Class Member information and documentation after two years of completing the payment of all compensation. Prior to this, the Administrator is to create and provide to Canada a list showing the Approved Class Member's information.



PUBLICATIONS AND RESEARCH

In the last year the IBA's members have been instrumental in researching and publishing important and timely work concerning the advancement of the interests of Indigenous Peoples. Below is a summary of "The Guide for Lawyers working with Indigenous Peoples" that the IBA contributed to:

IBA members, including Indigenous Peoples Counsel designates, the Advocates Society and the Law Society of Ontario jointly contributed to the new and upcoming supplement to *The Guide for Lawyers working with Indigenous People*. This supplement builds upon the original Guide that was published in 2018. *The Guide for Lawyers working with Indigenous Peoples* is an educational resource meant to accompany and precede relationship-making based upon mutual respect and understanding between parties in legal processes. *The Guide* provides an introductory avenue for people in law and adjacent professions in Canadian criminal and civil systems to learn more about Indigenous peoples, communities and organizations.

Chapter 1 of *The Guide* discusses the historical and current significance of land acknowledgments and how one might educate themselves when preparing to deliver one. There are also tips that help people avoid communicating false ideas about Indigenous dispossession and current contemporary Indigenous realities. These tips outline common problems that often turn land acknowledgements into "contemporary institutionalized land acknowledgments." In the end, the section also offers sample language that one may use to think about when learning about land acknowledgements or writing one.

Chapter 2 of *The Guide* is titled "Developing a Trauma Informed Practice". It describes the relationship between cultural competency and trauma in the context of legal practice and details how a legal practitioner must understand what trauma is and how it manifests to adapt to client needs and also, beyond that, deliver legal services free from racism.

Chapter 3 of *The Guide* is about the Missing and Murdered Indigenous Women and Girls (MMIWG) Inquiry Report and its 231 Calls to Justice. This Chapter describes the nature and scope of the MMIWG National Inquiry and details its significant findings. It builds upon Chapter 2, which emphasizes the significance of developing trauma-informed practices, skills and advocacy. It then provides the proposals and calls to action the MMIWG Final report imposes on the legal profession- including the 25 calls to Justice directed explicitly towards the justice sector. The authors emphasize the importance of implementing women-led solutions, understanding and supporting relationships and understanding and ending causes of violence faced by women, girls and 2SLGBTQQIA+ people at the hands of individuals, institutions, systems and structures.

Chapter 4 of *The Guide* touches upon the framework of the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDRIP Act), which was adopted in 2021. The Chapter assesses the limitations of the UNDRIP Act concerning the existing Section 35 framework from the *Canadian Constitution*. Chapter 4 specifically calls for actions to challenge existing federal laws and policies that undermine the implementation of UNDRIP in line



with the legislation. There is also a case study on the British Columbia *Declaration on the Rights of Indigenous Peoples Act* (DRIA Act), providing analysis for legal practitioners to be wary of the harms produced via its lack of substance. The Chapter ends with notes for legal practitioners to incorporate the UNDRIP Act into their practices and advocacy by honestly and respectfully committing to its provisions calling for Indigenous self-determination and self-governance.

Chapter 5 of *The Guide* is regarding developing, strengthening and supporting Indigenous responses to National Child Welfare legislation through methods like the Canadian Human Rights Tribunal, *Act respecting First Nations, Inuit and Métis children, youth and families* (Bill C-92) and the *United Nations Declaration on the Rights of Indigenous Peoples Act*. It begins by providing context about Jordan's Principle, a legal principle that ensures that First Nations children get the services they need when they need them, and how the Canadian government has continually failed them by systemic neglect and inadequate care or financial support. This Chapter also studies the novel approaches taken by the First Nations Child and Family Caring Society and the Assembly of First Nations with their first complaint to the Canadian Human Rights Tribunal in 2007, including their use of evidence and class action remedies. The beginning of this complaint in 2007 resulted in a \$40 billion settlement in 2021-2022 for compensation and long-term reform of the on-reserve child welfare system. Chapter 5 further examines how the federal Bill C-92 Act can affirm the rights of First Nations, Inuit and Métis peoples to exercise jurisdiction over child and family services. It also discusses the monumental importance of the *Quebec* reference to Bill C-92's constitutionality, as mentioned earlier in this report. Chapter 5 concludes with an overview of Indigenous nations like Cowessess First Nation and Louis Bull First Nation, who have published their own child welfare laws. Chapter 5 also provides valuable resources from the *Indigenous Law Research Unit* at the University of Victoria, which facilitates access to toolkits focusing on Indigenous family laws, child welfare and governance by communities like the Coast Salish and the Anishinaabeg people.

Chapter 6 of *The Guide* discusses Treaty Interpretation and the *Restoule v Canada* case. As summarized in the "Cases to Watch" section of this annual IBA report, Chapter 6 of *The Guide* also talks about the importance of *Restoule's* Ontario Court of Appeal judgement and the preceding Superior Court judgement within the historical

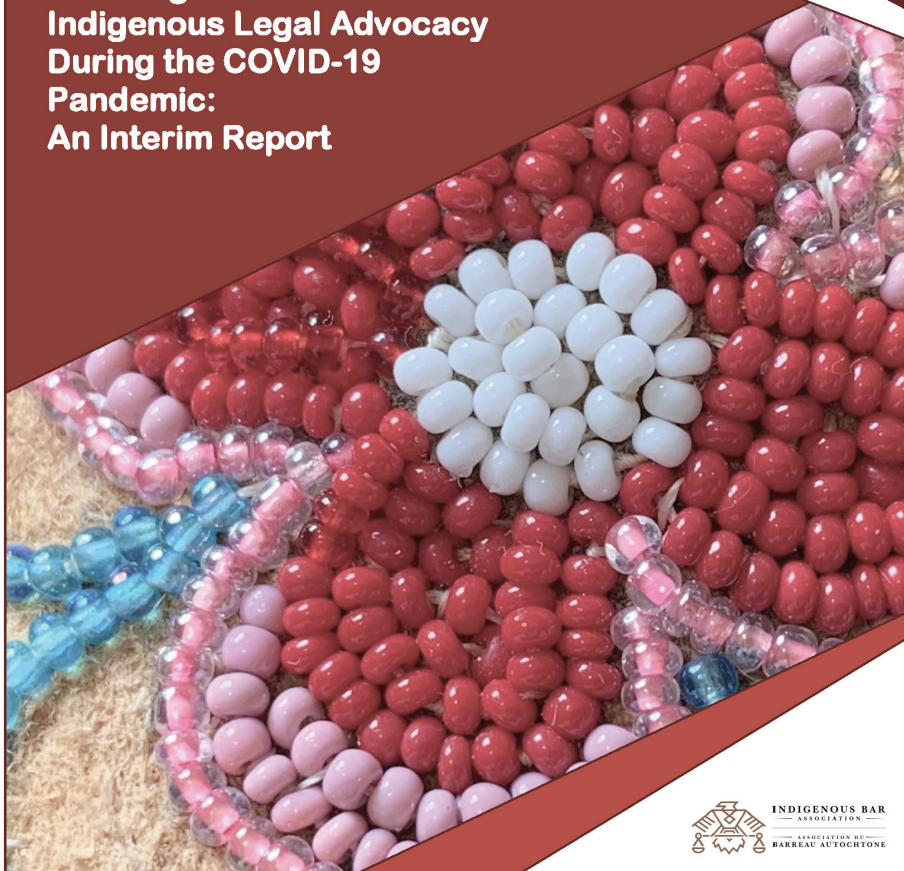
and political context of the Robinson-Huron and Robinson treaties. The Chapter further explains and breaks down the parties' positions, arguments, and significant findings of the *Restoule* case and describes the inclusive court process facilitated by using the Federal Court's *Practice Guidelines for Aboriginal Law Proceedings*. This Chapter also outlines how the *Restoule* case is an excellent example of community lawyering.

Chapter 7 of *The Guide* addresses the common law principles of "The Duty to Consult and Accommodate" from *R v Sparrow 1990* and *Mikisew Cree First Nation v Canada 2018* and the doctrine of "free, prior and informed consent" from UNDRIP. This Chapter discusses when the Duty to Consult arises and its scope and impact. It also discusses the potential impact of the federal UNDRIP Act and British Columbia's UNDRIP Act on the Duty to Consult. Chapter 7 also outlines and identifies considerations and essential questions that legal practitioners should consider when the Duty to Consult and Accommodate is engaged. There is hope that UNDRIP's articles potentially emphasize Indigenous self-determination more than the current Section 35 model where Crown sovereignty dominates.

Chapter 8 is about applying and adapting *R v Gladue* principles and framework in various avenues (bail hearings, civil contempt, extradition, non-criminally responsible hearings and professional discipline in general) where a state agency's decisions may impact an Indigenous person's life, liberty or security interests. The importance of including this section is enormous as the rate of incarceration of Indigenous peoples is distinctively high and continually increases, along with the increasing rate of Indigenous peoples being victimized.

The Guide closes with additional resources (hyperlinked) that one may use to support and further their learning and use within their legal practices.

Assessing Legal Issues and Challenges Faced in Indigenous Legal Advocacy During the COVID-19 Pandemic: An Interim Report



Assessing Legal Issues and Challenges Faced in Indigenous Legal Advocacy during the COVID-19 Pandemic: Final Report

The spread of COVID-19 has proven devastating for countless individuals, families, and communities across Turtle Island, yet Indigenous Peoples in Canada have nonetheless experienced many of the pandemic's adverse impacts in wholly disproportionate ways. While a number of health-based, economic, political, social, and legal disparities have affected Indigenous populations for decades (if not centuries), these and other structural inequalities have only intensified since the advent of the pandemic. Being that law is a determinant of health that can impact the well-being of both individuals and communities, the IBA,

in partnership with the Canadian Bar Association and the University of Saskatchewan, has undertaken to produce two nationally-oriented reports towards assessing the legal impacts of COVID-19 on Indigenous Peoples in Canada. More specifically, the two reports seek to assess (1) the legal issues faced by Indigenous communities during the pandemic, and (2) the challenges encountered by legal advocates of Indigenous clients.

Alongside researchers at the University of Saskatchewan, a first Interim Report was released in June of 2021. As the first of two phases comprising the research

project, the Interim Report aims to gather and summarize the results of a survey responded to by 122 lawyers—both Indigenous and non-Indigenous—working within the field of Indigenous legal advocacy. The results of the Interim Report illustrate a number of key findings, including overwhelming concern that the pandemic is causing additional legal challenges for Indigenous clients.

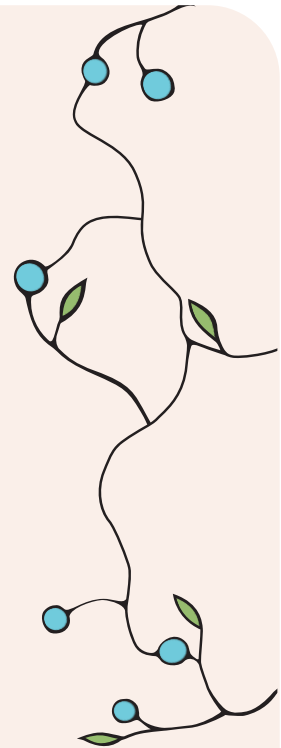
The final report will be circulated to the members shortly after this year's annual conference.

For their roles in researching and preparing this project, the IBA is thankful for Emily Snyder Christy Anderson, Brock Roe, Simon Lambert, and Naomi Metallic.



PARTNERSHIPS AND ALLIANCES

The IBA's partnerships and networks have grown considerably in recent years. I am proud to report that there have been significant strides in the IBA's communication and collaboration with organizations, Nations and Indigenous governments to protect the interests of Indigenous People and undertake the work needed to make reconciliation a reality in our legal systems. This section outlines a few of the important partnerships that contribute to the success of the IBA and the ongoing performance of its mandate.



THE REZILIENT 8TH GENERATION CONFERENCE

IBA President Drew Lafond was invited by the Federation of Sovereign Indigenous Nations ("FSIN") and collaborators Youth Empowerment Water Symposium to attend and give remarks at their hybrid 2022 FSIN Youth Legislative Assembly held in April of 2022. This Youth Legislative Assembly brought together First Nation youth from across Saskatchewan and welcomes newly elected youth representatives. It is also an opportunity for Indigenous youth to network, dialogue and create innovative solutions to problems that are faced by Indigenous peoples. IBA President Drew Lafond among other speakers like Dr. David Suzuki, Olympian Bridgette Lacquette and AFN National Chief Rose Anne Archibald offered inspiration, supported unity and uplifted Indigenous youth and their voices.

WEBINAR ON THE EXPERT DISCUSSION ON THE IMPLEMENTATION OF THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT



The Indigenous Bar Association (IBA) and Canadian Council on International Law (CCIL) held an accredited (Saskatchewan, Ontario and British Columbia) Continuing Professional Development session devoted to the opportunities, implications, and pitfalls involved in the domestic implementation of the United Nations Declaration on the Rights of Indigenous Peoples Act. Speakers and session chairs were experts in Indigenous, international and Canadian constitutional law, including Brooks Arcand Paul (IBA Vice President), Gib van Ert, Dr. Carwyn Jones, Dr. Sheryl Lightfoot, Risa Schwartz, Brenda Gunn, Sarah Morales and Merle Alexander. This event had around 483 registrants!

In a session chaired by Brooks Arcand Paul, Gib van Ert, Dr. Carwyn Jones, and Dr. Sheryl Lightfoot discussed the implementation of the UNDRIP Act. Gib van Ert, the President of the CCIL, presented on applying international law in Canadian Courts, specifically using Justice Canada's newly appointed Secretariat (who are responsible for carrying out UNDRIP). They characterized the implementation of UNDRIP in Canada as measures that the Canadian state takes in domestic law to perform

international obligations it has incurred. Dr. Carwyn Jones, a Māori legal scholar, brought perspectives from New Zealand, including the relationship between UNDRIP and the Treaty of Waitangi. Dr. Sheryl Lightfoot, the Canada Research Chair and advisor to the Prime Minister, spoke about how UNDRIP's uptake is hopeful by referencing the references made to UNDRIP in the hearings and decisions by the Canadian Human Rights Tribunal and the First Nations Child and Family Caring Society (FNCFCS) regarding First Nations Child welfare and state discrimination.

In a session chaired by Risa Schwartz, Brenda Gunn, Sarah Morales, and Merle Alexander spoke about how the implementation of UNDRIP in Canada can be related to the existing Section 35 framework as set out by the Canadian Constitution. Professor Brenda Gunn, Academic and Research Chair at the National Centre for Truth and Reconciliation, answered questions regarding whether the new UNDRIP Act could be considered a new benchmark against which infringements against Indigenous sovereignty and self-determination ought to be measured.

Professor Sarah Morales from the University of Victoria talked about how the Canadian Constitution must not subsume the UNDRIP Act to avoid the pitfalls of Section 35. It was also stated many times that the rights laid out in UNDRIP are not a creation of new rights but rather an affirmation of existing Indigenous rights and Indigenous legal orders. Merle Alexander, an Indigenous lawyer and partner at Miller Titerle + Co. and Sarah Morales, added that UNDRIP offers an "exciting opportunity" to be a "hard reset." There were also discussions regarding Canada's current bi-juridical nature due to the domination of Canadian common and civil law, but in reality, Canada is actually multi-juridical due to the continuing existence and use of Indigenous legal orders. The webinar speakers also commented on how UNDRIP can implement consent-based decision-making and how it can ensure consistency between Canadian laws and international law like UNDRIP.





FILM SCREENING OF THE KLABONA KEEPERS BY TAMO CAMPOS AND RHODA QUOCK AT THE INDIGENOUS BAR ASSOCIATION'S ONLINE ANNUAL CONFERENCE ON OCTOBER 22 AND OCTOBER 23, 2021.

The Klabona Keepers is an intimate portrait of the dynamic Indigenous community that succeeded in protecting the remote Sacred Headwaters, known as the Klabona, in northwest British Columbia from industrial activities. Spanning 15 years of matriarch-led resistance, the film follows a small group of determined elders in the village of Iskut as they heal from the wounds of colonization to push back against law enforcement, the government, and some of the world's largest multinational companies. Nestled between scenes of stand-offs and blockades, land defenders reflect on how their history of forced displacement, residential schools, and trauma strengthened their resolve to protect the very land that was so essential to their healing journey.





ON GOING IBA PROJECTS

In the past year, the IBA has been seeking opportunities to implement action that contributes to large scale change in many ongoing projects like the Indigenous Justice Strategy, Anti-Racism Strategy, UNDRIP implementation, the Law Foundation of Ontario's Accessing Justice Project and the Indigenous Citizenship project. Actions include seeking opportunities to provide feedback, data collection, research, writing, community consultation and engagement and conference planning and organization.

I. NATIONAL INDIGENOUS JUSTICE STRATEGY

The purpose of this project is to engage with Indigenous peoples on a potential path forward for designing and implementing a national Indigenous Justice Strategy (the "Strategy"). The engagement will generally proceed in three phases.

Pre-Engagement Planning

The first phase involves the retention of an Indigenous Justice Strategy Engagement Coordinator, administrative staff (part-time), and two researchers (part-time) in order to form an Indigenous Justice Reform Secretariat. The Secretariat will identify priorities and form recommendations for engagement with Indigenous stakeholders towards defining and implementing a comprehensive Strategy. The IBA will create and maintain relationships with Indigenous Peoples in order to develop the Strategy, as well as to assess the progress and effectiveness of the undertaken engagements. The IBA will work with Indigenous peoples, including representatives from Indigenous governing bodies and within the legal profession, as well as law societies to address systemic discrimination and Indigenous over-representation within the Canadian criminal justice system. At this stage, the IBA will research and identify proposals for reforming various policies, procedures, rules and regulations concerning Indigenous peoples within Canada's justice system. The recommendations to come from the Secretariat will be informed by Indigenous law, Indigenous research methodologies, and the UNDRIP.

Implementing Engagement

At the implementing engagement phase, the Secretariat will seek to utilize an inclusive and intersectional approach towards partnership, particularly where concerned with Indigenous women, youth, and 2SLGBTQQIA+ persons. At this stage, the Secretariat will utilize both quantitative and qualitative data collection methods through Indigenous research methodologies. Using a two phased approach (data collection and community engagement/consultation), the Secretariat will have the opportunity to share an interim report with the Federal Government.

Final Report

Lastly, the Secretariat will then synthesize the results of the research into a Final Report which shall contain recommendations and steps for its implementation. Upon completion, the IBA seeks to distribute the conclusions at the national annual conference, as well as to interested law societies, universities, or other stakeholders across the country.

II. ANTI-RACISM STRATEGY

This anti-Indigenous racism in the legal profession project will address racism by using three methods – education and awareness; justice reform; and research. This Anti-Racism Strategy is expected to have the following outcomes: create relationships among organizations, communities and institutions to target racism; to effect systemic changes to Canada's justice system, specifically, in the areas of police reform, correctional facilities and judicial appointments; and create an ongoing, permanent forum for addressing and preventing anti-racism in Canada's legal institutions.

Education and Awareness

The main component for this method is the three-day national annual conference. The IBA will dedicate a conference stream to anti-racism and will expand the conference's reach to both the legal profession and the public by including relevant portions of multimedia content on its website. On the day of the conference dedicated to students, the IBA

will provide anti-racism training and will build allyship with Black law students. Further to the conference, the IBA will hold smaller regional panels and workshops to continue the work of the national conference. Finally, the IBA will address current and relevant justice initiatives and/or disputes to foster anti-discrimination with local and community specific solutions.

Justice Reform

As noted above, the IBA plans to advance a long-term national Indigenous Justice Strategy to achieve real and substantive law reform in Canada. The Strategy will address the crisis of racism, discrimination, and violence against Indigenous peoples in the justice system. The Strategy will complete specific justice reform activities, as well as demonstrate an advanced presence and influence on social media. In order to do so, the IBA will hire a communications consultant and will increase paid promotion of the IBA's social media accounts.

Research

Through current and new partnerships with law schools, the IBA will amplify existing research on anti-Indigenous racism in justice. The IBA will create and support opportunities for Indigenous law students and academics to produce new research which supports the goal of anti-racism. In order to do so, the IBA will hire a part time project coordinator.

III. UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (“UNDRIP”) IMPLEMENTATION

The IBA held a legal education webinar in Spring of 2022 jointly with the Canadian Council on International Law. The IBA then sent out an online survey to membership (330+ members) asking for the Indigenous legal community's feedback on priorities and areas to be included in Canada's Action Plan to implement UNDRIP. The IBA will prepare submissions to Canada with the IBA's recommendations, including the legal community's feedback.

IV. LAW FOUNDATION OF ONTARIO ACCESSING JUSTICE PROJECT

This project seeks to center the measurement and progress of ongoing revitalization of Indigenous laws and to generate outputs through toolkits for two audiences – Indigenous communities, as well as courts and tribunals in Ontario. In the first year there is a gathering of data and the development of a draft toolkit for Indigenous communities. In the second year, the draft toolkit will be field tested in Indigenous communities and refined based on testing results. The second toolkit for courts and tribunals will also be developed in the first year and refined in the second year with the development of training sessions delivered by the IBA for interested stakeholders.

V. INDIGENOUS CITIZENSHIP

The IBA is committed to creating space for Indigenous Nations to develop and implement their own citizenship systems. This work is in response to Bill S-3 An Act to Amend the Indian Act (elimination of sex-based inequities in registration). In 2019, the IBA completed a research paper relating to the collaborative process and issues relating to Bill S-3. The paper defined Indigenous citizenship as it relates to UNDRIP, the Canadian Human Rights Act, and the Canadian Charter of Rights and Freedoms. Citizenship practices among First Nations have been drastically altered from models of inclusive citizenship to exclusive and gendered methods of membership. Membership exclusivity has been entrenched along lines of descent, cultural knowledge, residency, blood quantum and ethnicity. Exclusion of our own people has been the basis of the gender, sexual orientation and racial discrimination within the Indian Act and the movement against this historical wrong must be a more inclusive and empowering direction.

The paper provided for a path forward, which involved further pursuing the enforcement of anti-discrimination practices, subjecting Indigenous Nations to judicial review if their laws provide for restrictive citizenship practices, to name a few. The IBA seeks to continue this research and to understand what this may look like in practice. These imperative research findings have the potential to put a course of action into play to ensure gender-based discrimination as a result of the Indian Act is eliminated.

VI) IBA MEMBERSHIP COMMITTEE REPORT

The IBA Membership Committee (the “Committee”) was created in 2017 to assist the IBA Board by providing options and recommendations for how to respond to membership applications that are not captured by the current classes of membership set out in the IBA By-Laws (full member, student member, honorary member). Specifically, the Committee was tasked with:

- Considering sections of the IBA By-Laws on Membership in relation to non-members seeking membership with the IBA; and
- Exploring ways to increase membership and membership benefits.

With respect to this first task, the Committee was informed that Board often receives requests from individuals wishing to join the IBA but who do not fall squarely within the three classes of membership. This includes membership applications by: individuals who are Indigenous but are members of Indigenous Peoples from outside of Canada; individuals who assert Indigenous ancestry or self-identify as Indigenous but do not identify as members of an Indigenous community or nation; and individuals who are non-Indigenous but work closely with Indigenous peoples (e.g. work in the area of Aboriginal law and/or are allies).

In 2018, the Committee prepared a draft Interim Report for the Board, which was the subject of discussion at the 2018 IBA Annual General Meeting (“AGM”). In 2019, the Board agreed to establish a permanent Membership Committee to address membership inquiries on an ongoing basis, provide advice to the Board, and work towards the completion of a final report. Based on the feedback received, the Committee has prepared its Final Membership Committee Report, which will be available for discussion at the 2022 AGM.

Importantly, supporting the self-determination of Indigenous Peoples was a foundational theme and guiding principle that informed the Committee in its work and in the development of the Final Report and recommendations. Self-determination is largely considered a fundamental right that is grounded in the identities of Indigenous Peoples as distinct, independent, and sovereign nations. The Committee recognized that it is not its place, or the IBA’s, to determine who is and who is not a member of an Indigenous People

or community. That right is held by Indigenous Peoples themselves. The Committee’s Final Report and recommendations attempt to assist the IBA in respecting the choices of Indigenous Peoples and communities as part of determining who falls within the IBA membership categories.

The Committee made 5 recommendations as part of its Final Report:

1. The Board adopt, as a matter of policy, that “Indian, Inuit and Métis peoples” (e.g. those already falling within the term “Indigenous” as defined in the By-Laws) be admitted as members of the IBA where their Indigenous People, Nation, or community is outside of Canada but falls within North America (e.g. those lands/areas that, absent colonial boundaries, fall within these nations traditional territory).
2. The Board amend Article 3.3 of the By-Laws to include a new membership category for individuals who are Indigenous but not Indigenous “to Canada” (e.g. Maori, Australian Aboriginal people, etc.) This new class of membership would be non-voting and not eligible to run for elected positions on the Board. Prior to this recommendation being acted on, the Committee recommends that it be brought to the IBA AGM for discussion by the current membership.
3. The Board adopt, as a matter of policy, that self-identification alone is not sufficient to ground membership in the IBA and accordingly, that applicants who are unable to identify the “Indigenous Nation” and “Heritage” sections of the application form not be admitted for membership.
4. The Board adopt, as a matter of policy, additional guidance around Métis as a distinct Indigenous People, including an express rejection of the mistaken belief of “Metis as anyone with mixed ancestry” and options for applicants to identify the Métis Nation, a distinct Métis community, or a Métis government/governing body as part of the membership application form.
5. The Board adopt, as a matter of policy, an “Ally” or “Friend of the IBA” category. This would not be a member and would not require amendment of the IBA By-Laws, however additional policy guidance on this designation should be developed on what this involves, including the process and requirements/responsibilities.

Further discussion on the recommendations, as well as various options considered, are outlined in the Committee's Final Report.

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



APPOINTING AN INDIGENOUS JUDGE TO THE SCC

INDEPENDENT ADVISORY BOARD FOR SUPREME COURT OF CANADA JUDICIAL APPOINTMENTS

The Independent Advisory Board for Supreme Court of Canada Judicial Appointments (the "IAB") is an independent and non-partisan body whose mandate is to provide non-binding, merit-based recommendations to the Prime Minister on Supreme Court of Canada (the "SCC") appointments. It was established in 2016 and currently consists of eight members:

- Three members, at least two of whom are not advocates or barristers in a province or territory, nominated by the Minister of Justice;
- A practising member in good standing of the bar of a province or territory, nominated by the Canadian Bar Association;
- A practising member in good standing of the bar of a province or territory, nominated by the Federation of Law Societies of Canada;
- A practising member in good standing of the bar of a province or territory, nominated by the Indigenous Bar Association;
- A retired superior court judge, nominated by the Canadian Judicial Council; and
- A legal scholar, nominated by the Council of Canadian Law Deans.

The inclusion of space for an IAB Board Member to be nominated by the IBA occurred in response to a formal letter sent to the Prime Minister and Attorney General of Canada in early 2021. The letter outlined the deplorable fact that there has never once been an Indigenous jurist of the SCC. This letter requested that there be Indigenous representation on the IAB for the selection of SCC justices, as well as a call for reforms to ensure the inclusion of Indigenous jurists among the SCC judiciary.

APPOINTING AN INDIGENOUS JURIST TO THE SCC

Potential Indigenous SCC justice candidates have been making significant contributions to Canada's legal system, yet have been historically excluded or dismissed from the process due to institutionalized racism. Aside from the fact that there have been several calls to more broadly include Indigenous Peoples in the legal system (such as the Royal Commission on Aboriginal Peoples, Final Report of the Truth and Reconciliation Commission of Canada, and the United Nations Declaration on the Rights of Indigenous Peoples), our legal system is multi-juridical, recognized and affirmed through the Constitution Act, 1982. Indigenous legal orders are protected under section 35(1) of the Constitution. Indigenous Peoples are the knowledge keepers of Indigenous law, and therefore, to secure a fair and balanced application of Indigenous law in our legal system, there must be an Indigenous person on the SCC judiciary. It is crucial for the ongoing health and development of Canada's legal pluralism to incorporate the perspectives of Indigenous Peoples prominently in legal discourse at the highest level.

One of the steps to support the appointment of an Indigenous SCC justice is to reimagine and reconfigure the administrative processes surrounding the appointments. Accordingly, the IBA argued that it is incumbent upon the Prime Minister to establish a permanent seat on the IAB.

INDIGENOUS MEMBERS ON THE IAB FOR SCC JUDICIAL APPOINTMENTS

The eight IAB members of 2022 were responsible for identifying candidates to fill the SCC vacancy that arose when the Honourable Michael Moldaver retired in September 2022. This year marks the first time the IBA was able to nominate a member to the IAB and is pleased to congratulate Dave Nahwegahbow on his nomination and appointment.

David Nahwegahbow is the founding partner of the law firm Nahwegahbow Corbiere, which acts exclusively for First Nation individuals, communities, and organizations. He is Anishinaabe from the Whitefish River First Nation. He is the recipient of multiple awards, including the IBA's Indigenous Peoples Counsel (IPC) designation, the National Aboriginal Achievement Award (now Indspire Awards) for Law and Justice, the Common Law Honour Society from the University of Ottawa, the Law Society of Ontario's Law Society Medal, the Advocates' Society Award of Justice, and the Lifetime Achievement Award from the Anishinabek Nation. He was nominated by the IBA.

It is also important to mention that another Indigenous representative, Konrad Sioui, served on the IAB alongside Mr. Nahwegahbow. Mr. Sioui is the former Grand Chief of the Huron-Wendat Nation in Wendake, near Quebec City. Prior to serving as Grand Chief, he was the representative of the Assembly of First Nations in Geneva, from 1985 to 1992. He has been the Chairman of the Board of Directors of the Société de l'assurance automobile du Québec (SAAQ) since January 2021. He was nominated by the Minister of Justice and Attorney General of Canada.

SIGNA DAUM SHANKS

The IBA also wishes to extend a sincere thank you to Dr. Signa Daum Shanks for her extensive and contributory work in the legal system as it relates to Indigenous Peoples. Dr. Signa Daum Shanks, from the prairies, is trained as both a lawyer and historian. She has worked for various Crown governments, a national law firm, a national Indigenous organization, and various universities. Her research interests have included Indigenous governance and history, Canadian history, law and economics, game theory, legal history, and torts. She has published about various subjects, including the use of history as evidence, the slavery of Indigenous Peoples, learning about Indigenous methodology, insolvency law, the Canadian legal profession and its Indigenous members, and recent responses to the pandemic and First Nations communities. Dr. Signa Daum Shanks has dedicated a significant portion of her legal career to the betterment of Indigenous nations and for that, the IBA wishes to acknowledge her.





THE HONOURABLE MADAM MICHELLE O'BONSAWIN - THE FIRST EVER INDIGENOUS JUDGE ON THE SUPREME COURT OF CANADA



The members of the Indigenous Bar Association in Canada are pleased to give our inspired congratulations to the Honourable Madam Michelle O'Bonsawin on becoming the first Indigenous person nominated to the Supreme Court of Canada (the SCC) on August 19, 2022.

Justice O'Bonsawin is active in Indigenous and legal communities and is a long-standing supporter of the IBA. A fluently bilingual Franco-Ontarian, she is an Abenaki member of the Odanak First Nation. She has been a judge of the Ontario Superior Court of Justice in Ottawa since 2017. Justice O'Bonsawin holds a B.A., an LL.B., and an LL.M., and completed her Ph.D. in Law earlier this year. Justice O'Bonsawin brings to the SCC an incredible wealth of knowledge relating to Indigenous matters, such as a dedication to the mental health of Indigenous peoples, a deep understanding of Gladue principles in criminal law, and a passion for access to justice, amongst other excellent contributions in areas like labour and employment law, human rights, and privacy law. She is a highly sought-after public speaker, which demonstrates the demand for her knowledge and her tireless commitment to education and on-going involvement in the legal community. She provides a respected example of integrity, work ethic, and clarity of judgment.

The IBA continues to advocate for the appointment of Indigenous Judges at all levels of Courts in Canada. We offer our sincere thank you to David Nahwegahbow, who was appointed to the Independent Advisory Board for Supreme Court of Canada Judicial Appointments. The IBA nominated Mr. Nahwegahbow to hold the seat as one of eight members who provided non-binding, merit-based recommendations to the Prime Minister on SCC appointments. The IBA wishes to recognize his hard work serving the Advisory Board.

The members of the IBA are looking forward to the historic changes that will come from the appointment of Justice O'Bonsawin in the years to come. Historically, despite Indigenous SCC justice candidates making significant contributions to Canada's legal systems, they are often systemically excluded or dismissed from the process due to internalized and institutional racism. There have been many calls to include Indigenous peoples more broadly in the legal system, such as the Royal Commission on Aboriginal Peoples, the Final Report of the Truth and Reconciliation Commission of Canada, and the United Nations Declaration on the Rights of Indigenous Peoples. Today, those calls have been answered and it is an exciting, monumental day for Indigenous nations across the country.

We commend the appointment of an Indigenous person to the SCC which will take strong and necessary steps towards a more fair and balanced application of Indigenous law in our legal system. As a multi-juridical country, there is finally a judiciary that is reflective of Canada's legal traditions and the unique place Indigenous peoples have within Canada.

The announcement serves as a moment in history for those who have come before us and relentlessly advocated for this moment. Collectively, we celebrate today and the official announcement of the first Indigenous person's appointment to the Supreme Court of Canada. We wish a deep and sincere congratulations to the Honourable Madam Michelle O'Bonsawin.



INDIGENOUS JUDGES IN CANADA

The IBA has compiled a comprehensive list of all Indigenous judges in Canada in order to celebrate them and look to them for the work they do. Their accomplishments and journeys are commendable.

KEY: * Member of the IBA

SUPERIOR COURTS:

Alberta

- Johana Price - Alberta Court of Queen's Bench
- Cheryl Lynn Arcand Kootenay - Alberta Court of Queen's Bench, formerly Alberta Provincial Court

British Columbia

- Leonard Marchand - British Columbia Court of Appeal, formerly BC Superior Court and BC Provincial Court
- Ardith Walkem - BC Superior Court*

Newfoundland & Labrador

- Stacy Ryan - NL Supreme Court

Nova Scotia:

- Diane Rowe - NS Supreme Court
- Pierre Leon Muisse - NS Supreme Court
- Tim Gabriel - NS Supreme Court

Northwest Territories

- Shannon Smallwood - NWT Supreme Court

Ontario:

- Todd Ducharme - Ontario Superior Court of Justice *
- Harry Laforme - Ontario Court of Appeal, previously Ontario Superior Court of Justice (retired)
- Rose Boyko - UN Administrative Appeals Tribunal, previously Ontario Superior Court of Justice, (retired)
- Evelyn J. Baxter - Ontario Superior Court of Justice *

- Jessica Wolfe - Ontario Court of Justice*
- Michelle O'Bonsawin - Ontario Superior Court
- Jonathon George - Ontario Court of Appeal *

Quebec:

- Rejean Paul - Quebec Superior Court (retired)

Manitoba:

- Ken Champagne - Manitoba Court of Queen's Bench, previously Manitoba Provincial Court Chief Judge
- Murray Sinclair - Manitoba Court of Queen's Bench, previously Manitoba Provincial Court Associate Chief Judge (retired) * IPC

Saskatchewan

- Natasha Crooks - Saskatchewan Court of Queen's Bench, Previously Saskatchewan Provincial Court

FEDERAL:

- L.S. Tony Mandamin Federal Court (supernumerary), previously Alberta Provincial Court (retired) *IPC
- Paul Favel - Federal Court*
- Roger Lafreniere - Federal Court, previously Federal Court Prothonotary

PROVINCIAL COURTS:

British Columbia:

- Steven Point BC Provincial Court retired (formerly BC Lieutenant Governor)*
- Alexander M.D. Wolf - BC Provincial Court
- Karen Wonnock - BC Provincial Court * (not current)
- Linda Thomas - BC Provincial Court
- Tina Dion - BC Provincial Court*not current
- Alfred Scow - BC Provincial Court (deceased)
- John Joe - BC Provincial Court (retired)
- Marion Buller Bennet - BC Provincial Court retired *
- Raymond Phillips - BC Provincial Court
- Gene Jamison - BC Provincial Court

Alberta:

- Danielle Dalton Alberta Provincial Court *
- Eugene J Creighton Alberta Provincial Court
- Ivan M L Ladouceur Alberta Provincial Court
- Karen A Crowshoe Alberta Provincial Court * not current
- Deborah M L Hanly Alberta Justice of the Peace *
- Thomas Goodson Alberta Provincial Court (retired)
- Grace Auger, Alberta Provincial Court

Saskatchewan:

- Michelle Brass - Saskatchewan Provincial Court *
- Mary McAuley - Saskatchewan Provincial Court
- Ken Bellerose - Saskatchewan Provincial Court (retired)
- Mary Ellen Turpel-Lafond - Saskatchewan Provincial Court (retired) * IPC
- Gerry Morin - Saskatchewan Provincial Court (retired)* not Current
- Donald Bird - Saskatchewan Provincial Court (retired)
- Lua Gibb - Saskatchewan Provincial Court
- Murray Pelletier – Saskatchewan Provincial Court

Manitoba:

- Kelly Moar - Manitoba Provincial Court
- Doreen Redhead - Manitoba Provincial Court
- Kael McKenzie - Manitoba Provincial Court

Ontario:

- Terry Vyse - Ontario Court of Justice
- Gethin Edward - Ontario Court of Justice
- Joyce Lynn Pelletier - Ontario Court of Justice
- Peter Isaac - Ontario Court of Justice
- Catherine Mathais McDonald - Ontario Court of Justice
- Jodie Lynn Waddilove - Ontario Court of Justice* not current
- Timothy C Whetung - Ontario Court of Justice (retired)

- Jessica Wolfe – Ontario Court of Justice*
- Evelyn Baxter – Ontario Court of Justice*

Quebec

- Mark Phillipe - Provincial Court of Quebec

New Brunswick:

- Troy Sweet - NB Provincial Court * not current
- Graydon Nicholas - NB Provincial Court (retired)
- Newfoundland & Labrador:
 - James Igloliorte - Newfoundland & Labrador (retired)
 - Kerri (Kari) Ann Pike – Newfoundland & Labrador Provincial Court

Nova Scotia

- Catherine Benton - Nova Scotia Provincial Court*
- Aleta Cromwell – Nova Scotia Provincial Court*

TERRITORIAL COURTS:

Nunavut

- Nicole Sikma - Nunavut Justice of the Peace Court
- Joseph Flowers Murdoch - Nunavut Justice of the Peace Court – stepped down 2020*

Akwesasne

- Joyce Tekahnawiiaks King – Akwesasne Court



NOTABLE ACCOMPLISHMENTS OF INDIGENOUS LAWYERS AND ALLIES IN CANADA

We would like to celebrate the accomplishments of the IBA's members and allies during the last year. These individuals have demonstrated leadership and resilience in the face of the challenges that our communities and our profession have experienced and are experiencing.

(JUNE 30, 2022) JURIST MARION BULLER APPOINTED INTO THE ORDER OF CANADA



Please join us in congratulating Jurist Marion Buller who has been selected for induction into the Order of Canada. She was the first First Nations woman judge in B.C in 1994 and has worked tirelessly as

a fierce advocate for Indigenous Rights and in her commitment to justice.



(JUNE 30, 2022) ELDER ROSEMARY CROWSHOE AND ELDER REG CROWSHOE APPOINTED INTO THE ORDER OF CANADA

Please join us in congratulating Elder Rosemary Crowshoe and Elder Reg Crowshoe who have been selected to be inducted into the Order of Canada. They are both being recognized for their commitment to the preservation of Blackfoot culture and to reconciliation.



(JUNE 16, 2022) DAVID C. NAHWEGAHBOW, IPC, LSM PRESENTED WITH A DOCTOR OF LAWS

Please join the Indigenous Bar Association in celebrating David C. Nahwegahbow, IPC, LSM, as he is presented with a degree of Doctor of Laws, honoris causa (LLD) on June 16, 2022 at the Law Society of Ontario's Call to the Bar ceremony in Ottawa, Ontario. A member of the Whitefish River First Nation, Mr. Nahwegahbow is one of Canada's leading Indigenous lawyers and the founding

partner of Nahwegahbow Corbiere Genoodmagejig. He has represented First Nations and First Nations organizations at the Supreme Court of Canada, the Canadian Human Rights Tribunal, and at various federal and provincial trial and appellate courts. Mr. Nahwegahbow's recent work includes efforts to eliminate discrimination against First Nations children in care; and, work on behalf of 21 First Nation signatories to the Robinson Huron Treaty alleging breach of treaty, breach of fiduciary duty and failure to uphold the honour of the crown.



(JUNE 8, 2022) KIMBERLY MURRAY'S APPOINTMENT AS INDEPENDENT SPECIAL INTERLOCUTOR FOR MISSING CHILDREN.

Starting June 14, 2022, Ms. Murray will work closely and collaboratively with Indigenous leaders, communities, Survivors, families and experts to identify needed measures to recommend a new federal legal framework to ensure the respectful and culturally appropriate treatment and protection of unmarked graves and burial sites of children at former residential schools. In her capacity as Special Interlocutor, Ms. Murray will engage with First Nations, Inuit and Métis governments, representative organizations, communities, Survivors and families to discuss issues of concern around the identification, preservation, and protection of unmarked graves and burial sites, including the potential repatriation of remains. The Special Interlocutor will guide this process, facilitate listening and action by engaging in conversations in ways that are culturally informed, trauma-informed, appropriate and respectful, and based on Indigenous customs, decision and consensus-building practices. Her mandate will also extend to facilitating dialogue with provinces, territories, local communities, as well as other relevant institutions, such as various churches. This work will be carried out independently and impartially, in a non-partisan and transparent manner. The Special Interlocutor will deliver an interim report after the first year describing her work and progress to date. A final report will be delivered at the end of two years. Both interim and final reports will be delivered concurrently to the

Minister of Justice and to First Nations, Métis and Inuit Survivors, families, leaders and communities, and to the public. The appointment and the work of the Special Interlocutor will be supported by a proposed investment in Budget 2022 of \$10.4 million over two years.



(MAY 19, 2022) IBA NOMINATES IPC DAVID NAHWEGAHBOW (FOUNDING PARTNER OF NAHWEGAHBOW CORBIERE) TO THE INDEPENDENT ADVISORY BOARD RESPONSIBLE FOR CHOOSING THE NEXT SCC JUDGE.

The Indigenous Bar Association in Canada (the "IBA") congratulates the seven members of the Independent Advisory Board who are responsible for identifying candidates to fill the upcoming Supreme Court of Canada (SCC) vacancy when the Honourable Michael Moldaver retires in September 2022. The IBA was pleased to, for the first time, be able to nominate a member to the Independent Advisory Board similar to how the Canadian Bar Association is able to nominate one member of the Board. In particular, the IBA offers our deepest congratulations to IPC David Nahwegahbow (founding partner of Nahwegahbow Corbiere) and Konrad Sioui (former Grand Chief of the Huron-Wendat Nation) on their appointment and applauds the Prime Minister for choosing two Indigenous individuals to sit on this critical committee.



(MAY 16, 2022) BC FIRST NATIONS JUSTICE COUNCIL CHAIR, DOUGLAS S. WHITE, Q.C. KWULASULTUN CHOSEN AS 2022 RECIPIENT OF THE JOE ARVAY AWARD

Douglas is an important and well-respected member of the Indigenous legal community and has been an active member of the IBA since he served as a board member nearly 16 years ago. Douglas is a member, former Governance Coordinator (2000-2004) former Chief (2009-2014) and former Councillor and Chief Negotiator (2016-2020) of the Snuneymuxw First Nation in Nanaimo, BC, where a major focus of his work was in relation to the implementation of the Snuneymuxw Treaty of

1854. He is a practising lawyer and negotiator for First Nations across Canada. He is currently the Chief Negotiator for Lake Babine Nation, Chair and Member of BC First Nations Justice Council, Director of the Nanaimo Port Authority (appointed by the British Columbia government in 2019), and an Advisory Board Member of the University of Victoria. In 2020, he was given the honour of being appointed as Queen's Counsel for British Columbia, the designation that recognizes Canadian lawyers for exceptional merit and contributions to the legal profession. Most recently (2022), Douglas, as Chair of the BC First Nations Justice Council, entered into a tripartite memorandum of understanding with the British Columbia and Canadian governments to collaborate on revitalizing Indigenous legal traditions and addressing systemic racism in British Columbia, obtaining a \$9 million funding for the implementation of his strategy regarding justice reform. This includes addressing the overrepresentation of Indigenous peoples in the justice system and enhancing restorative justice and First Nations-led community justice programs.



(MAY 02, 2022) STUART WUTTKE RECEIVES LAW SOCIETY OF ONTARIO MEDAL

Stuart Wuttke is a leader in Indigenous rights and policy reform. He has been pivotal to the development of new legislation at the federal level which is rights based, such as the new child and family services legislation. As General Counsel at the Assembly of First Nations, Mr. Wuttke successfully advanced the largest ever class action settlements, including the ongoing implementation of the Indian Residential Schools Settlement Agreement (2006) and the more recent agreement in principle related to ending discrimination against Indigenous children and youth, and their families (2022). His profound expertise and involvement on the national stage in First Nations law has lent itself to the significant progress for First Nations and the advancement of reconciliation in Canada. Mr. Wuttke is a fierce yet humble advocate who is dedicated to public service and his compassionate nature shows through his impactful work. He also mentors and supports Indigenous and non-Indigenous lawyers in the legal professions to advocate and defend Indigenous rights and human rights.

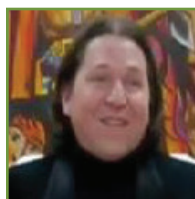


(MAY 02, 2022) MARIAN JACKO RECEIVES LAUREN LEGGE AWARD FROM THE LAW SOCIETY OF ONTARIO

Marian Jacko has made significant contributions to the legal professions by advancing access to justice for children, youth, Indigenous communities, victims of crime and survivors of human trafficking. Her extensive experience working in the child protection system coupled with her deep understanding of the disproportionately negative impact of this system on Indigenous and racialized children has enabled her to affect significant positive change. A compassionate leader, Ms. Jacko always puts her clients first and takes a trauma-informed approach to representing children's interests — she does so with empathy, integrity and deep emotional intelligence. Ms. Jacko also led the establishment of an innovative program for survivors of human trafficking to obtain restraining orders against their trafficker. She is a generous leader and mentor who provides leadership and guidance to younger lawyers and to the community through her extensive volunteer work. As the first Indigenous person appointed as the Children's Lawyer for Ontario, Ms. Jacko is a trailblazer, leaving important footprints for Indigenous youth and younger lawyers to follow.

(FEBRUARY 10, 2022) JUSTICE JONATHON GEORGE APPOINTED TO ONTARIO COURT OF APPEAL.

Please join the Indigenous Bar Association in Canada (the "IBA") in congratulating Justice Jonathon George on his recent appointment to the Ontario Court of Appeal. Before this appointment, Justice George was first appointed to the Ontario Court in 2012 and then to the Superior Court in 2016. As an Ojibway of Pottawatomi descent and a tenacious voice for Indigenous Peoples throughout his career in legal practice, Justice George's designation is both merited and encouraging. He graduated from the University of Western Ontario and was admitted to the Ontario Bar in 2001. He articulated and practiced law at Robbins, Henderson and Davis from 2001 to 2012, building an impressive criminal defence practice. He is originally from the Sarnia area and made his mark there in all aspects of criminal law, including representing members of the area's Indigenous communities.



(OCTOBER 22, 2021) JEFFERY HEWITT, A CREE LEGAL SCHOLAR AND PRACTITIONER INDUCTED AS AN INDIGENOUS PEOPLE'S COUNSEL AT THE IBA'S ANNUAL ONLINE CONFERENCE.

Each year, the IPC designation is given to an Indigenous lawyer in recognition of their outstanding achievements in the practice of law. His deep commitment to re-shaping legal education and supporting Indigenous communities make him worthy of our highest recognition. IBA President Drew Lafond commented that "Jeffrey's deep commitment to advocating for the recognition of legal pluralism while supporting Indigenous communities to reclaim and strengthen their laws and traditions embodies what the IPC designation is all about. He is a legal warrior in every sense of the word, educating the hearts and minds of future generations of lawyers in Canada regarding Indigenous Peoples rights and responsibilities. It is an honour to be able to recognize and celebrate Jeff's achievements—particularly for someone who's trademark humility and quiet dedication to advancing justice for Indigenous Peoples means he is rarely in the spotlight."

(JUNE 02, 2022) TUMA YOUNG RECEIVES THE QUEEN ELIZABETH II PLATINUM JUBILEE MEDAL

As Her Majesty's reign embodied the importance of commitment to one's community, the Platinum Jubilee provides opportunities for Nova Scotians to honour those in the province who have demonstrated an unwavering dedication to family, neighbours and colleagues.

Tuma T.W. Young K.C. is L'nu (Mi'kmaq) and grew up in a traditional manner on the Malagawatch First Nation. He has a Bachelor of Arts in Mi'kmaw Studies from the University of Cape Breton; a Bachelor of Laws from the University of British Columbia; and a Master of Laws in Indigenous Peoples Law and Policy from the University of Arizona. Tuma was called to the Bar in June 2001, becoming the first Mi'kmaq speaking lawyer in Nova Scotia. In 2021, he was announced as President of the Nova Scotia Barrister's Society, which exists

to protect the public interest in the practice of law within the province. He has served on various Society committees and is a dedicated member of the Truth & Reconciliation Commission Working Group.

LEXPERT RISING STAR AWARDS HONOUR LAWYERS UNDER 40 FROM LAW FIRMS, IN-HOUSE DEPARTMENTS, AND OTHER PRACTICES



(NOVEMBER 25, 2021) BILLIE FORTIER NAMED A LEXPERT RISING STAR

Calgary lawyer Billie Fortier has been named a Lexpert Rising Star, a recognition given to lawyers under 40 who excel in their practice areas. Billie advises First Nations and Métis communities and their businesses on economic development, commercial leasing, industry partnerships and community governance matters. She has had the privilege of working with a number of successful clients, including the McKay Métis Group Ltd., which grew its revenue from \$50,000 in 2009 to more than \$110 million in 2020. Outside the office, Billie is an active contributor to the community. She has volunteered with the Level Justice Indigenous Youth Outreach Program and was a board member of the Impact Society, a non-profit organization that promotes character development and mental well-being among youth in Canada. She currently sits on the leadership council of Forward Summit, an Indigenous-led conference aimed at advancing economic partnerships between industry and Indigenous communities. Billie is also an executive member of the Aboriginal Law Subsection of the Canadian Bar Association and a member of the Indigenous Bar Association.



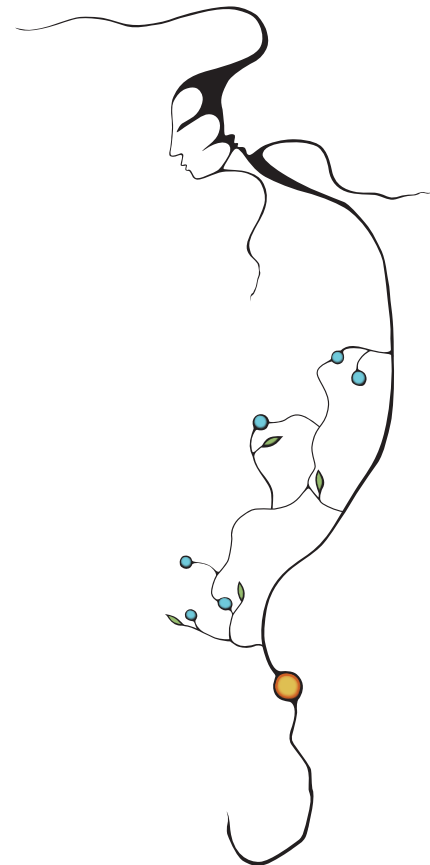
(NOVEMBER 22, 2022) JOCELYN FORMSMA NAMED A LEXPERT RISING STAR

Jocelyn Formsma is well-known nationally and internationally for serving Indigenous peoples and communities. She has worked tirelessly, at times to her own personal detriment, to move the dial on reconciliation within Indigenous communities. Ms. Formsma graduated from the University of Ottawa

with an Honours Bachelor of Social Sciences, with a major in public administration and a minor in women's studies, followed by a Juris Doctor at the University of Ottawa's Faculty of Law. She is currently the Executive Director of the National Association of Friendship Centres and has worked in various capacities at organizations advancing Indigenous rights.

CANADIAN LAWYER MAGAZINE TOP 25 MOST INFLUENTIAL LAWYERS 2022

A place on Canadian Lawyer's Top 25 Most Influential Lawyers list is a highly regarded accolade. The list reflects how the work of these members of the legal system has had an impact, whether in the courtroom, law school, law firm or business, or at a policy level. The IBA is pleased to congratulate the three prominent Indigenous practitioners who made the list in 2022. Congratulations to **Andrea Menard** of Indigenous Connect, **Bradley Regehr** of Maurice Law, and **Alana Robert** of McCarthy Tetrault LLP.





NEWS RELEASES AND MEDIA

Throughout the year, the IBA responds to current justice events and issues impacting Indigenous peoples and communities. Below is a list of the news releases and statements we put out since July 2021. Our board of directors is also regularly asked to give comments to media and write opinion pieces.

IBA PRESIDENT ON “THE PROBLEM WITH LABELLING PEOPLE “PRETENDIANS”

May 28, 2022 – by IBA President Drew Lafond for the The Globe and Mail.

The recent trend of labelling people who fraudulently claim to have Indigenous ancestry “Pretendians” has spawned a particularly toxic, divisive and insidious interpretation of what it means to be Indigenous. Problematically, it also distracts from the tireless work that Indigenous nations are doing to rebuild their own citizenship laws and decolonize how Indigenous citizenship decisions are made, and who makes them. Increasingly used in mainstream media and by Indigenous people themselves, the term “Pretendian” is applied when people are “outed” publicly as non-Indigenous based on a myopic focus on a person’s lineage or ancestry and without a deeper understanding of the rich and diverse relationships that Indigenous nations have internally and with others. Kinship and belonging in Indigenous societies is much more than a box ticked on an application form, or a card given out by the Crown, but these deeper conversations are muted by the “Pretendian” brand...

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

May 19, 2022-The Indigenous Bar Association in Canada (the “IBA”) congratulates the seven members of the Independent Advisory Board who are responsible for identifying candidates to fill the upcoming Supreme Court of Canada (“SCC”) vacancy when the Honourable Michael Moldaver retires in September 2022. The IBA was pleased to, for the first time, be able to nominate a member to the Independent Advisory Board similar to how the

Canadian Bar Association is able to nominate one member of the Board. In particular, the IBA offers our deepest congratulations to IPC David Nahwegahbow (founding partner of Nahwegahbow Corbiere) and Konrad Sioui (former Grand Chief of the Huron-Wendat Nation) on their appointment and applauds the Prime Minister for choosing two Indigenous individuals to sit on this critical committee.

IBA CALLS TO REFORM TO PROTECT INDIGENOUS CLIENTS

May 13, 2022 – by Drew Lafond in the CBA National

The Indigenous Bar Association (IBA) is calling for changes to the Federation of Law Societies of Canada’s model code of professional conduct to prevent lawyers from exploiting Indigenous clients. A recent article published by CBA National discussed the power imbalance that exists between Indigenous clients and their legal representatives, resulting in disputes over the hourly fees, retainers and contingency fees charged by lawyers. Saskatoon lawyer Drew Lafond, who is president of the IBA, told CBA National that the systemic issues facing Indigenous clients have made them vulnerable to exploitation by their legal counsel. “First Nations are involved in massive, hugely complex legal claims that take years, decades to settle,” Drew said. “And they’re trying to manage these claims while dealing with a backdrop of poverty and colonialization that makes it harder to address these claims, particularly when coping with community demands for basic services.” ...

THE INDIGENOUS BAR ASSOCIATION GRIEVES WITH THE T’EXELCEMC AND CONTINUES TO MOURN GENERATIONS OF INDIGENOUS CHILDREN VICTIMIZED BY CANADIAN RESIDENTIAL “SCHOOL” SYSTEMS

January 2022- For those presently in need of support during these trying times, the IBA urges you to contact the Residential School Crisis Line at 1-866-925-4419, or the Indigenous Residential School Survivors’ Society at 1-800-721-0066. The members of the Indigenous Bar Association

in Canada (the “IBA”) are horrified by the recent discovery of the remains of 93 children at the site of the former St. Joseph’s Mission residential “school” near the Williams Lake First Nation community. Indigenous peoples throughout Canada, and those with close ties to the T’exelcenc, continue to mourn the loss of their ancestors and denounce the dreadful atrocities committed against them. The IBA stands with the T’exelcenc and continues to grieve for the countless Indigenous children stolen and victimized by Canada’s residential “school” system. The National Centre for Truth and Reconciliation (“NCTR”) and the Truth and Reconciliation Committee (“TRC”) have confirmed the identities of 4,117 Indigenous children that died due to the neglect and abuse they experienced in residential “schools”. The NCTR estimates that closer to 6,000 lives of innocent Indigenous children have been lost from these horrific institutions. The recognition of these unmarked graves allows for greater understanding of the appalling truth which has been too long overlooked...

IN THE WAKE OF THE WET’SUWET’EN RESISTANCE, THE IBA CALLS FOR SUBSTANTIVE IMPLEMENTATION OF UNDRIP INCLUDING CONSENT, CONSULTATION, AND COOPERATION WITH INDIGENOUS PEOPLES

December 17, 2021- The Indigenous Bar Association in Canada (the “IBA”) calls upon the provincial Crown to work in partnership with Indigenous Peoples to substantively implement the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”). This is urgently needed relating to decisions and actions affecting Indigenous Peoples’ lands and waters. As per our February 2020 news release, it bears repeating that the rule of law is a foundational principle in Canada and that the laws of the Wet’suwet’en Nation form an integral part of Canada’s legal pluralism. Moreover, in the wake of the ongoing resistance by certain members of the Wet’suwet’en Nation against the Coastal Gaslink Project, the IBA is of the view that (i) the federal and British Columbia governments have not delivered on their promise to substantively implement UNDRIP; and (ii) the use of excessive force in interactions with protestors and land defenders seeking to prevent pipeline development betrays a blatant disregard for the rule of law.

IBA WELCOMES NEWLY ANNOUNCED FEDERAL CABINET – CALLS FOR ACTION ON LAW AND JUSTICE MATTERS FOR INDIGENOUS PEOPLES

October 2021- The Indigenous Bar Association in Canada (IBA) welcomes back Minister of Justice David Lametti, Northern Affairs Minister Dan Vandal, and Crown Indigenous Relations Minister Marc Miller, in his new role. The IBA extend greetings to Minister of Indigenous Services Patty Hajdu and Minister of Public Safety Marco Mendicino.

The IBA would also like to congratulate the twelve Indigenous Members of Parliament who were elected following the 44th General Election, including those esteemed members of the IBA. “This has surpassed the record set in the 42nd General Election which saw 10 MPs being First Nations, Métis or Inuit peoples,” said President Drew Lafond, “and we look forward to working with the Indigenous elected representatives, and certainly with caucus, to continue the important work for our families, Nations and communities.” We also look forward to continuing the work initiated prior to the 44th federal election, including advancing Access to Justice for Indigenous peoples, a more equitable process for Supreme Court nominees, decarceration of Indigenous peoples, re-establishing the Law Commission of Canada with an Indigenous section, and implementation of UN Declaration on the Rights of Indigenous peoples and the MMIWG2SLGTBQ+ action plan.



KEY RESULTS FOR STRATEGIC PRIORITY #1

Organizational Structure Plan

Hire a Part Time Executive Director

- Enable the Board to become less operational and more strategic. The ED should be part time, someone that is already familiar with the administrative duties of the Board and able to execute on Board strategy and direction.

Committee Structures

- Further expand the mandate of the IBA by establishing committees to work under Board members to operationalize tasks around finance, relationship building and communications.
- Formalize the roles, responsibilities and accountabilities of each committee through terms of reference and regular Board reports.

2022 One-day Board Retreat

- Organize a one-day retreat approximately half-way through the year for the Board members to meet and discuss progress on existing initiatives and the next steps for finalizing initiatives prior to the Annual General Meeting.

KEY RESULTS FOR STRATEGIC PRIORITY #2

Internal Strategic Plan

Key Projects

- List of key projects that the IBA Board agrees to undertake moving forward with periodic reviews.

Internal Budget

- Itemize and track an internal budget with line items for Revenues (money the IBA is receiving from membership fees and sponsorships) against Expenses (projects the IBA is funding).

Scholarship Foundation

- Discuss ways in which the Board can work with the IBA Scholarship Foundation to enhance and grow its capital

KEY RESULTS FOR STRATEGIC PRIORITY #3

External Strategic Plan

Relationship Building

- Continue building on positive relationships with key priority partners .
- The IBA has become the 'voice of the Indigenous community' at the table with partners such as the Federal Court of Canada.

Community Driven

- Become responsive to community input regarding what they think fulfills the IBA's mandate.
- Seek input from the community on potential projects. Be the credible voice of the community at the table with discussions with the AFN, ISC and the Federal and Provincial Courts.

KEY RESULTS FOR STRATEGIC PRIORITY #4

Communications Plan

Newsletter Committee

- Communicate with donors about the role of the IBA and the importance of its work.
- Communicate with the public; collect input regarding the projects selected by the Board.

Press Releases

- Provide media releases on current issues and directions taken by the IBA.

Social Media Platforms

- Maintain a consistent and ongoing social media presence on Facebook and Twitter.

Website Review/ Update

- Identify any gaps or kinks with the IBA's website and remedy the defects going forward.

IBA App

- Research, budget and plan the organization of a members-only IBA application.

ABOUT THE COVER IMAGE AND ARTIST

We are so grateful to Mary McPherson for allowing us to feature her beautiful artwork, and elements of it, in this annual report.

Mary McPherson is a daughter, sister, auntie, and a mixed Anishinaabe member of Couchiching First Nation in Northwestern Ontario, where her family is from. She grew up in Thunder Bay, working as a visual artist in the community while pursuing her undergraduate degree in Fine Arts and Indigenous Learning at Lakehead University. She has since obtained a J.D. from the University of Ottawa and is currently pursuing an LL.M. at Queen's University.

Our future relies on envisioning a world where we join together despite our differences for the sake of the future generations. The increasing divide, adversarial attitudes, and sense of self-devaluation amongst ourselves means somebody else is writing the script of our own destinies. The person writing the script has no desire to transform the status quo as they are vested in the oppression of others. Just as our ancestors once did, it remains our responsibility to unite amongst ourselves as a community, to never compromise on our core principles, and to put aside our egos and allow ourselves to be challenged for the sake of what is truly important: our children. This is our shared future.

"The central problem is this: how can the oppressed, as divided, unauthentic beings, participate in developing the pedagogy of their liberation? ...As long as they live in the duality in which to be is to be like the oppressor, this contribution is impossible."

– Paulo Freire

