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2015 ANNUAL CONFERENCE

**ABORIGINAL
PEOPLES AND LAW:**
"WE ARE ALL HERE TO STAY"

October 14 - 16, 2015
Delta Bessborough Hotel
Saskatoon (SK)



Pawakan - <<·b³ - A Spirit Guide



ABORIGINAL PEOPLES AND LAW: "WE ARE ALL HERE TO STAY"

Following on the heels of the work of the Canadian Truth and Reconciliation Commission, this Conference presents a unique opportunity for everyone within the administration of justice to consider how best to work towards reconciliation. This Conference will be of interest to judges, lawyers, police officers, correction workers, court administrators, academics, law students, members of tribunals and community workers.

"Finally, this litigation has been both long and expensive, not only in economic but in human terms as well. By ordering a new trial, I do not necessarily encourage the parties to proceed to litigation and to settle their dispute through the courts. As was said in Sparrow, at p. 1105, s. 35(1) "provides a solid constitutional base upon which subsequent negotiations can take place". Those negotiations should also include other aboriginal nations which have a stake in the territory claimed. Moreover, the Crown is under a moral, if not a legal, duty to enter into and conduct those negotiations in good faith. Ultimately, it is through negotiated settlements, with good faith and give and take on all sides, reinforced by the judgments of this Court, that we will achieve what I stated in Van der Peet, supra, at para. 31, to be a basic purpose of s. 35(1) -- "the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown". Let us face it, we are all here to stay." Delgamuukw v. British Columbia (Supreme Court of Canada) [1997] 3 SCR 1010, par. 186

THE PLANNING COMMITTEE

Justice Georgina Jackson
Court of Appeal for Saskatchewan

Ms. Omeasoo Wāhpāsiw
Ph. D. Student, University of Saskatchewan

Ms. Maria Campbell
Author, artist, playwright and filmmaker, Saskatchewan

Chief Marie-Anne Daywalker
Okanese First Nation, Saskatchewan

Justice Jeffery D. Kalmakoff
Court of Queen's Bench of Saskatchewan

Mr. Mitch McAdam
Director, Aboriginal Law Branch, Ministry of Justice of
Saskatchewan, Regina (SK)

Professor Marilyn Poitras
College of Law, University of Saskatchewan

Mr. Marcel G. St-Onge
Director, Child and Family Programs, Ministry of Social Services,
Saskatoon (SK)

Ms. Jan Turner
Assistant Deputy Minister, Courts and Tribunals Division,
Ministry of Justice of Saskatchewan, Regina (SK)

Ms. Michèle Moreau
Executive Director, CIAJ, Montreal (QC)

Professor Beth Bilson
Acting Dean, College of Law, University of Saskatchewan

Assistant Commissioner Brenda Butterworth-Carr
Commanding Officer, RCMP, "F" Division, Saskatchewan

Chief Tammy Cook-Searson
Lac La Ronge Indian Band, Saskatchewan

Ms. Riva Farrell Racette
Lawyer, MacPherson Leslie & Tyeman LLP, Regina (SK)

Ms. Leanne LaPrise
Law Student, College of Law, University of Saskatchewan

Judge Gerald M. Morin
Saskatchewan Provincial Court (Prince Albert)

Chief Justice Martel Popescul
Saskatchewan Court of Queen's Bench

Ms. Beth Symes, LSM, CM
Symes Street & Millard LLP, Toronto (ON)

Chief Clive Weighill
Saskatoon Police Service - President of the Canadian Association
of Chiefs of Police

SPECIAL ADVISOR – Justice Murray Sinclair
Court of Queen's Bench for Manitoba and Chair of the Canadian
Truth and Reconciliation Commission

PROGRAM (SUBJECT TO CHANGE)

Delta Bessborough Hotel – Adam Ballroom

TUESDAY, OCTOBER 13, 2015

7:00 – 9:00 PM **PRE-REGISTRATION**
Convention Floor Foyer

WEDNESDAY, OCTOBER 14, 2015

7:30 – 8:45 AM **REGISTRATION AND CONTINENTAL BREAKFAST**

8:45 – 9:15 AM **OPENING REMARKS AND CEREMONIES**

9:15 – 10:15 AM **CRITICAL LESSONS LEARNED FROM THE CANADIAN TRUTH AND RECONCILIATION COMMISSION: "WE MUST LOOK AT MATTERS DIFFERENTLY"**

Chair **The Honourable Robert G. Richards**,
Chief Justice of Saskatchewan

Keynote Speaker **The Honourable Murray Sinclair**,
Justice of the Court of Queen's Bench for Manitoba, and Chair of the Canadian Truth and Reconciliation Commission

10:15 – 10:30 AM **BREAK**

10:30 AM – 12:00 PM **PROVIDING PERSPECTIVES ON JUSTICE ISSUES**

Chair **The Honourable Harry S. LaForme**,
Justice of the Court of Appeal for Ontario

Speakers **Professor Aimée Craft**, Assistant Professor, Faculty of Law, University of Manitoba, Director of Research, National Center for Truth and Reconciliation, Winnipeg (MB) – *Kiinaakonigewin: Re-Claiming Space for Indigenous Laws*

Mr. Jeffery Hewitt, Visiting Scholar, Osgoode Hall Law School, General Counsel, Chippewas of Rama First Nation, Ontario, and CIAJ 2015 Charles D. Gonthier Fellowship Recipient – *Indigenous Peoples: Restorative Justice as Innovation or Commodification?*

Ms. Kimberly Murray, Assistant Deputy Attorney General, Aboriginal Justice Division, Ministry of the Attorney General, Ontario – *Truth, Reconciliation and the Justice System*

Chief Clive Weighill, Chief of Police for the City of Saskatoon and President of the Canadian Association of Chiefs of Police – *Lessons Learned on the Importance of Community Engagement from the Perspective of the Police Services*

12:00 – 1:30 PM **LUNCH (IN BREAKOUT GROUPS)**

Small group discussions while sharing food together in the traditional aboriginal way. *Final list of co-facilitators on site.*

Co-Facilitators

The Hon. Chief Judge Ken Champagne, Provincial Court of Manitoba

The Hon. Chief Judge Élizabeth Corte, Court of Quebec

The Hon. Chief Judge Thomas Crabtree, Provincial Court of British Columbia

The Hon. Chief Judge Christine Gagnon, Territorial Court of the Northwest Territories

The Hon. Chief Judge Terrence Matchett, Provincial Court of Alberta

The Hon. Chief Judge Karen Ruddy, Territorial Court of Yukon

The Hon. Chief Judge James Plemel, Provincial Court of Saskatchewan

The Hon. Leonard S. 'Tony' Mandamin, Federal Court of Canada

The Hon. Murray Sinclair, Court of Queen's Bench for Manitoba

The Hon. Gerald M. Morin, Saskatchewan Provincial Court

Ms. Maria Campbell, Author, artist, playwright, filmmaker, Saskatchewan

Chief Tammy Cook-Searson, Lac La Ronge Indian Band, Saskatchewan

Chief Marie-Anne Daywalker, Okanese First Nation, Saskatchewan

Mr. Daniel Shapiro, Q.C., Chief Adjudicator of the Independent Assessment Process

1:30 – 4:00 PM **TAKING JUDICIAL NOTICE: WHAT CAN THE JUSTICE SYSTEM LEARN FROM STORIES?**

In R. v. Ipeelee 2012 SCC 13, Lebel J., speaking for the Court, stated: "*Courts have, at times, been hesitant to take judicial notice of the systemic and background factors affecting Aboriginal people in Canadian society...To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples.*"

In R. v. Sioui [1990] 1 S.C.R. 1025, Lamer C.J. for the Court approved this passage: "*The Court is entitled "to take judicial notice of the facts of history whether past or contemporaneous" as Lord du Parc said in Monarch Steamship Co., Ltd. v. Karlshamns Oljefabriker (A/B), [1949] A.C. 196 at p. 234, [1949] 1 All E.R. 1 at p. 20, and it is entitled to rely on its own historical knowledge and researches, Read v. Bishop of Lincoln, [1892] A.C. 644, Lord Halsbury, L.C., at pp. 652-4.*"

Given this legal reality, the question is: what are the limits of judicial notice? And with that question comes another, which is: what is the place for the stories?

1:30 – 2:00 PM **IN THE CONTEXT OF TAKING JUDICIAL NOTICE: WHY STORIES AND PERSONAL EXPERIENCES CAN ASSIST IN UNDERSTANDING COMPLEX LEGAL ISSUES**

Chair **Judge Gerald M. Morin**, Saskatchewan Provincial Court (Prince Albert)

Speaker **Professor John Borrows**, University of Victoria, Victoria (BC)

PROGRAM (SUBJECT TO CHANGE)

Delta Bessborough Hotel – Adam Ballroom

2:00 – 4:00 PM **ARTISTIC PERFORMANCE INVOLVING STORYTELLING AND MUSIC**

Created by **Ms. Maria Campbell**, author, artist, playwright and filmmaker
Ms. Yvette Nolan, playwright, director, dramaturg and educator

Performed by **Ms. Dakota Hebert**, actor and writer
Mr. Joseph Naytowhow, singer, songwriter, storyteller and voice, stage and film actor

4:15 PM **BUSES TO WANUSKEWIN HERITAGE PARK**

4:45 – 5:30 PM **WALK THE LAND AT WANUSKEWIN HERITAGE PARK**
Dress warmly!

The Wanuskewin area contains some of the most exciting archeological finds in North America. Some are 5,000 to 6,000 years old. Wanuskewin gives us the opportunity to delve into the past and discover what life was really like for the nomadic tribes. The theme of Wanuskewin Heritage Park is one of interpretation – exploring and explaining the meaning of plains culture so that we can gain a better understanding of Saskatchewan’s First Nations peoples, and our common heritage: <http://www.wanuskewin.com>

5:30 – 7:30 PM **DISCUSSIONS CONTINUE WITH SOUP AND BANNOCK**

8:00 & 8:30 PM **BUSES BACK TO THE HOTEL**

THURSDAY, OCTOBER 15, 2015

7:30 – 8:45 AM **CONTINENTAL BREAKFAST**

8:45 – 8:55 AM **CEREMONY**

8:55 – 10:30 AM **WHO ARE ABORIGINAL PEOPLES? AND WHY ARE WE ASKING THIS QUESTION?**

In *Lovelace v. Ontario* [2000] 1 SCR 950, Iacobucci J, speaking for the Court, noted : “There are important differences among First Nations bands, Métis communities and non-band First Nations, and as stated by L’Heureux-Dubé, in *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203 at para. 94, “[t]aking into account, recognizing, and affirming differences between groups in a manner that respects and values their dignity and difference are not only legitimate, but necessary considerations in ensuring that substantive equality is present in Canadian society.”

In recent years, Canadian society has started to recognize the harm that has been caused by the racist attitudes of the past, particularly with respect to Canada’s Aboriginal peoples. However, distinctions between different groups of people in our society remain embedded in our law and, indeed, in our Constitution. In this panel, we will explore the continuing significance of these distinctions. We will begin by providing an understanding of who Canada’s Aboriginal peoples are, their similarities and their differences and some of the difficulties of coming up with clear definitions. We will then discuss some of the implications of characterization as Indian, Inuit or Metis both in terms of determining whether federal or provincial law applies to specific activities and in terms of determining an individual’s ability to exercise specific Aboriginal rights and/or Treaty rights.

Chair **Professor Marilyn Poitras**, College of Law, University of Saskatchewan

Speakers **Mr. Jason T. Madden**, Partner, Pape Salter Teillet LLP, Toronto and Vancouver

Professor Winona Wheeler, Associate Professor and Department Head, College of Arts and Science, University of Saskatchewan

Following these two presentations, one fact pattern will be discussed at tables on an unsolved issue of Aboriginal status.

10:30 – 10:45 AM **BREAK**

10:45 – 12:00 PM **INDIGENOUS PEOPLES AND THE ENVIRONMENT**

In *Osoyoos Indian Band v. Oliver (Town)* [2001] 3 S.C.R. 746, Iacobucci J. for the Court wrote: “an aboriginal interest in land is more than just a fungible commodity. The aboriginal interest in land will generally have an important cultural component that reflects the relationship between an aboriginal community and the land and the inherent and unique value in the land itself which is enjoyed by the community. This view flows from the fact that the legal justification for the inalienability of aboriginal interests in land is partly a function of the common law principle that settlers in colonies must derive their title from Crown grant, and partly a function of the general policy “to ensure that Indians are not dispossessed of their entitlements” *Delgamuukw v. British Columbia (Supreme Court of Canada)* [1997] 3 SCR 1010, at paras. 129-31.

This session will explain what these words mean in a cultural context. For traditional people everything is about the land; their laws come from this, they are all kept alive by it; it sustains them. Speakers will explore issues of Aboriginal title and rights, and examine the implications for economic development in Indigenous communities. It will also include an examination of the relationship of Indigenous people and the land, and consider issues concerning the stewardship of the environment.

Chair **Mr. Ovide Mercredi**, Senior Advisor, University of Manitoba, Winnipeg (MB)

Speakers **Professor Jamie Baxter**, Assistant Professor, Schulich School of Law, Dalhousie University, Halifax (NS)

Mr. Caleb Behn, Lawyer, President and Executive Director, Keepers of the Water, Victoria (BC)

12:00 PM **CIAJ ANNUAL GENERAL MEETING**
Carlton Room

12:00 – 1:30 PM **LUNCH**

1:30 – 2:00 PM **KEYNOTE PRESENTATION: THE TREATY IMPLEMENTATION GAP – IT’S ALL ABOUT JURISDICTION**

Chair **Professor Beth Bilson**, Acting Dean, College of Law, University of Saskatchewan

Keynote Speaker **National Chief Perry Bellegarde**, Assembly of First Nations

PROGRAM (SUBJECT TO CHANGE)

Delta Bessborough Hotel – Adam Ballroom

2:00 – 4:15 PM

WHAT DOES ABORIGINAL TITLE NOW MEAN? OR TSILHQOT'IN NATION: WHAT'S NEXT?
(break from 3:15 to 3:30 PM)

In 2014, the Supreme Court of Canada released two key decisions about Aboriginal title: *Tsilhqot'in Nation v. British Columbia* 2014 SCC 44 and *Grassy Narrows First Nation v. Ontario (Natural Resources)* 2014 SCC 48. This panel will explore the implications of these decisions going forward from the perspective of First Nations, academics, the federal government and a provincial government.

In *Tsilhqot'in Nation* (par. 75-76), the Court wrote: *The rights and restrictions on Aboriginal title flow from the legal interest Aboriginal title confers, which in turn flows from the fact of Aboriginal occupancy at the time of European sovereignty which attached as a burden on the underlying title asserted by the Crown at sovereignty. Aboriginal title post-sovereignty reflects the fact of Aboriginal occupancy pre-sovereignty, with all the pre-sovereignty incidents of use and enjoyment that were part of the collective title enjoyed by the ancestors of the claimant group — most notably the right to control how the land is used. However, these uses are not confined to the uses and customs of pre-sovereignty times; like other landowners, Aboriginal title holders of modern times can use their land in modern ways, if that is their choice.*

The right to control the land conferred by Aboriginal title means that governments and others seeking to use the land must obtain the consent of the Aboriginal title holders. If the Aboriginal group does not consent to the use, the government's only recourse is to establish that the proposed incursion on the land is justified under s. 35 of the Constitution Act, 1982.

Chair

Ms. Beth Symes, LSM, CM, Symes Street & Millard LLP, Toronto (ON)

Speakers

Mr. Robert Janes, JFK Law Corporation, Victoria (BC)

Ms. Heather Leonoff, Director, Legal Services Branch, Constitutional Law Section, Department of Justice, Manitoba

Professor Dwight Newman, College of Law, University of Saskatchewan

4:15 – 4:45 PM

FROM ASYMMETRY TO SYMMETRY? INDIGENOUS LEGAL PERSPECTIVES

"The governing concept is simply the traditional customs and laws of people prior to imposition of European law and customs." R. v. Van der Peet, [1996] 2 S.C.R. 507, para. 247

Chair

Mr. W. Thomas Molloy, Q.C., Q.C., Molloy Negotiations, Saskatoon

Keynote Speaker

Professor Val Napoleon, Law Foundation Professor of Aboriginal Justice and Governance at the Faculty of Law, University of Victoria (BC)

5:30 – 7:30 PM

RECEPTION (Ticketed event)
Convention Floor Foyer

7:00 – 8:30 PM

Live musical performances
(Open to all Registrants)

World renown Metis fiddler and multi-national award winning country music artist **Donny Parenteau**.

Aboriginal Indie folk singer and recording artist **Riva Farrell Racette** with members of Sweet Justice - MacPherson Leslie and Tyerman LLP band



Western Canada's Law Firm

Musical event sponsored by:

FRIDAY, OCTOBER 16, 2015

7:30 – 8:30 AM

CONTINENTAL BREAKFAST

8:30 – 9:00 AM

PRESENTATION OF CIAJ JUSTICE MEDAL BY JUDGE PATRICK HEALY

9:00 – 9:45 AM

KEYNOTE PRESENTATION

Chair

Chief Justice Martel Popescul, Court of Queen's Bench, Saskatchewan

Keynote Speaker

The Right Honourable Beverley McLachlin, P.C. Chief Justice of Canada

9:45 – 10:00 AM

BREAK

10:00 AM – 12:00 PM

INNOVATION IN THE JUSTICE SYSTEM: IDEAS WORTH SPREADING

Short presentations of best practices and promising innovations in the administration of justice.

Chair

Assistant Commissioner Brenda Butterworth Carr, Commanding Officer, RCMP, "F" Division, Saskatchewan

Speakers

The Hon. Daniel Bédard, Judge of the Quebec Court

Professor Sarah Buhler, College of Law University of Saskatchewan

The Hon. Thomas Crabtree, Chief Judge of the Provincial Court of British Columbia

Mr. Kevin Fenwick, Q.C., Deputy Minister of Justice and Deputy Attorney General, Saskatchewan

Ms. Lisa Jackson, Filmmaker, Gladue and Visual Advocacy Initiative, Osgoode Hall Law School, Toronto (ON)

The Hon. Leonard S. 'Tony' Mandamin, Justice of the Federal Court of Canada

The Hon. Gerald M. Morin, Judge of the Provincial Court of Saskatchewan

The Hon. Shaun Nakatsuru, Judge of the Ontario Court of Justice

The Hon. Ysanne Wilkinson, Justice of the Court of Queen's Bench, Saskatchewan

12:00 – 12:15 PM

CLOSING CEREMONY