

If you have come here to help me,
You are wasting your time.....
But if you have come because
Your liberation is bound up with mine,
Then let us work together.

Lilla Watson, a Brisbane-based Aboriginal educator and activist.

SPEAKER ABSTRACTS AND BACKGROUNDS

THURSDAY, FEBRUARY 24TH, 2000

9:00 a.m. - 10:00 a.m.

FIRST NATIONS HOUSE OF LEARNING

Keynote Address

Madame Erica-Irene Daes

United Nations Chairperson-Rapporteur of the Sub-Commission's Working Group on Indigenous Populations

Erica-Irene A. Daes participated in the Greek resistance during the Second World War, for which she was decorated; went on to get her legal training at the University of Athens, and served in the Greek Foreign Ministry; has represented Greece in various capacities at both the United Nations Commission on Human Rights and the United Nations General Assembly for more than 30 years; and served as a member and chairperson of the UN Joint Inspection Unit in New York; repeatedly re-elected to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities since the 1970s; she has been the Chairperson-Rapporteur of the Sub-Commission's Working Group on Indigenous Populations since 1984, in which capacity she has literally traveled the world; also has been the Sub-Commission's Special Rapporteur on the Protection of the Heritage of Indigenous Peoples since 1990, and the Special Rapporteur on Indigenous People's Relationship to the Land since 1997; she also has held a professorship in international law at the European Institute in Florence, Italy; the United Nations has honoured Dr. Daes for her contributions to advocating the rights of indigenous peoples by bestowing upon her the UN's Human Rights Award in 1993, the International Year of the World's Indigenous People.

10:30 a.m. - 12.00 p.m.

FIRST NATIONS HOUSE OF LEARNING

Ecotourism Panel

Alison Johnston

A.M. Johnston & Associates

Alison Johnston has worked with indigenous peoples at the community level as well as internationally since 1993. A constant theme in this work has been concern for the impacts of tourism on indigenous rights. From 1997 thru 1999 Ms. Johnston organized a series of workshops on tourism at the United Nations for the Indigenous Peoples' Development Network. These dialogue sessions took place within the U.N. Convention on Biological Diversity, the U.N. Commission on Sustainable Development, and the U.N. Commission on Human Rights. The objective was to bring visibility to how

the tourism industry, particularly ecotourism, threatens indigenous cultures and homelands, while identifying ways that communities can develop tourism projects as a means to protect their traditional resource rights and promote self-determination.

Abstract

Around the world, indigenous peoples are finding that ecotourism is far from a straightforward issue. The economic opportunities that it presents can come at an extreme cost in the absence of prior informed consent.

The ecotourism industry is arguably the prime force today threatening cultural survival. Its track record is one of exploitation, dislocation, and desecration. Nonetheless, it is next to impossible for many indigenous communities affected or potentially affected by ecotourism to monitor such trends, because the industry is so mobile and so persuasive in its marketing.

Case studies illustrate the promise of indigenous conceptualized "ecotourism" programs. When communities have access to reliable information on the impacts of tourism on indigenous peoples, and can share strategies for sustainable tourism among themselves, tourism can be a powerful addition to the toolbox of indigenous peoples fighting for their rights.

k'ii'iljuus (Barbara J. Wilson)

Gwaii Haanas National Park Reserve

k'ii'iljuus is the name given to me by the grandmothers when I was born, AKA Barbara Wilson. I am a member of the xaaydaa (Haida) nation and have lived here in hlGaagilda (Skidegate) on Xaaydaa Gwaii the majority of my life.

I currently work as the Cultural Program Manager for Parks Canada at Gwaii Haanas National Park Reserve/Haida Heritage Site. In this position I am responsible for the historic man-made articles within or belonging to the area within Gwaii Haanas. Prior to my present position, I supervised the Haida Gwaii Watchmen contracts and interpretation for Gwaii Haanas. It has been challenging for Cindy Boyko and myself as we put together and managed the training courses for the Haida Gwaii Watchmen.

I recently completed a diploma program in Cultural Conservation at the University of Victoria. Since 1967 I have worked in interpretation and research as well as presentations about my heritage and area. I have been invited to and sit on an external board and offer suggestions to the Heiltsuk of

central BC as they plan how to accommodate visitors and care for their traditional lands, knowledge and properties.

Besides my work, I enjoy spending time with my family, kayaking trips, photography, music, dancing, sewing, reading, writing, and a good laugh. I am a grandmother (nunii) of three and one more on the way. As I learn my language and expand my knowledge of the stories and history I have much to be thankful for and just want to share it all.

Abstract

Haida Gwaii Watchmen

This paper will take a look at the issues related to the protection of the visible and invisible portions of the Haida's intellectual property. The Haida Gwaii Watchmen Program is an integral part of protecting the villages and natural portions within Gwaii Haanas National Park Reserve/Haida Heritage Site. Education for the Haida Gwaii Watchmen and visitors is a very important component of this protection.

10:30 a.m. - 12.00 p.m.

MUSEUM OF ANTHROPOLOGY

Repatriation Panel

My-yah-nelth (Daisy Sewid-Smith) &
Kim Recalma-Clutesi

Kwagiulth Museum

Kim Recalma-Clutesi, Oqwilowqwa, is the daughter of Chief Ewanuxdzi of the Kwagiulth and has lived on the Qualicum Indian Reserve her entire life. She is trained both culturally by traditional Ninigad (people of wisdom and training) and academically at the University of Victoria in History and the Administration of Aboriginal Governance. She lectures extensively on cross-cultural interpretations of the values held within her culture and has produced and organized many cultural gatherings for the outside world as well as ritually worked on dozens of Potlatches for Chiefs and their families.

At the Opening Ceremonies XV Commonwealth Games in Victoria in 1994, Kim was the Associate Producer for Chief Adam Dick's (Kwaxsistala) Legend of Kawadilikala, the First Man Born of the Wolf. Presently she is the Vice President of the Nuyumbalees Society, which is the governing body for the Kwagiulth Museum and Cultural Centre; the first Museum opened in Canada to receive the repatriated Potlatch Collection. As well, Kim is a principle advisor to the Unit on Research and Education on the Convention on the Rights of the Child (URECRC).

Abstract

The Kwagiulth Museum at Cape Mudge was the first Museum in Canada built to house the repatriated Kiksuw (artifacts and regalia) that had been confiscated by the Federal Government under the auspices of the anti-Potlatch Laws of 1884-1951.

This presentation will not examine the history of the confiscation or the consequential repatriation of the Kiksuw; many Aboriginal and non-Aboriginal scholars have already done just that. Instead this presentation will explore the ancient ownership laws that governed all aspects of Kwakwakawakw life. The presentation will discuss how taking sacred objects meant for a specific ritual use and displaying out of context in their homeland has altered intellectual property rights and diluted ancient laws. Cultural integrity will be the focus of examples demonstrated.

The presentation will rely entirely on oral testimony of Ninogad traditionally trained to work ritually in the ancient Potlatch Circle of the Kwakwakawakw people.

Gordon Pullar

University of Alaska, Fairbanks

Gordon L. Pullar, a Kodiak Island Alutiiq, is an Assistant Professor and Director of the Department of Alaska Native and Rural Development in the College of Rural Alaska at the University of Alaska-Fairbanks. He has been involved in tribal self-determination and cultural revitalization efforts for the past two decades. He served six years as President and CEO of the Kodiak Area Native Association, the regional tribal organization for his home area of Kodiak Island; seven years on the Board of Directors of the Alaska Federation of Natives, where he was a member of the Legislative Committee that worked toward securing amendments to the Alaska Native Claims Settlement Act, and two years as Chairman of the Board of the Alaska Native Foundation. He is a founder and past President of the national Keepers of the Treasures: Cultural Council of American Indians, Alaska Natives, and Native Hawaiians, an organization formed to address the protection of indigenous cultures and has represented the organization at the United Nations in Geneva. He is currently the Chairman of the Steering Committee for the Arctic Studies Center at the Smithsonian Institution and President of the Koniag Education Foundation. He holds a BA in Anthropology from Western Washington University, a Master of Public Administration degree from the University of Washington, and a Ph.D. in Organizational Anthropology and International Studies from the Union Institute. He has published articles on cultural identity, cultural revitalization movements, Alaska Natives and archaeology, repatriation, and other issues related to Native Americans. He has given presentations throughout the United States as well as in Canada, Denmark, Finland, Norway, Russia, and Switzerland. He is currently conducting ethnohistorical research for the Native Village of Afognak.

Abstract

Throughout most of the twentieth century human remains were expropriated by the thousands from Alaska. All were taken in the name of science. The decade of the 1980s brought a new awareness that reversed this trend. Native communities began taking stands against the further destruction of ancestral graves sites and demanding that museums and government agencies return remains for reburial. These were turbulent times for this issue. Lines were drawn and it seemed only the passage of new laws would resolve the issue. And such laws were passed by the U.S. Congress, namely the National Museum of the American Indian Act of 1989 and the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990. Attempts were made to have state laws passed that would protect unmarked Alaska Native burials on state and private land but these efforts were met with tremendous resistance and no such laws were ever passed. The Kodiak Island Native village of Larsen Bay had a reburial of the remains of over a thousand people in 1991 after several years of confrontation with the Smithsonian Institution. How does the issue of repatriation fit into the larger context of cultural preservation and revitalization? Using Kodiak Island, Alaska as an example, this presentation will discuss those issues.

Catherine Bell
University of Alberta

Catherine Bell is from Edmonton, Alberta. She is a Professor of Law at the University of Alberta and has been a Visiting Professor at the University of Niigata Japan, the University of Saskatchewan, and most recently the University of Victoria. She is also a lead faculty member for the Aboriginal Leadership and Self-Government Program offered by the Banff Center for Management. She currently teaches in the areas of Aboriginal law, property law and dispute resolution. She has published extensively on First Nation and Metis legal issues. Her second book, *Contemporary Metis Justice: The Settlement Way* was released this fall. She has also published nationally and internationally on the issue of repatriation and Aboriginal rights to cultural property. She has acted as an advisor to First Nations and provincial governments on these and other issues. She is currently a member of a research team working with the U'Mista Cultural Society on a research project which is exploring ways to better protect and control Aboriginal cultural heritage through legal and other means. Other current projects include co-editing a collection of essays on inter-cultural dispute resolution and development of a national, interdisciplinary research collaboration on Aboriginal property issues.

Abstract

Repatriation And Aboriginal Rights To Cultural Property

This presentation will introduce participants to the impact of Canadian Aboriginal rights law on repatriation of objects identified as “moveable cultural property” in western law. In particular Professor Bell will comment on the role of law in negotiations and private agreements, broad legal issues raised by repatriation claims (such as Aboriginal rights to own, control and protect their cultural heritage) and potential outcomes of litigation based on the *Delgamuukw* and *Van der Peet* decisions. Examples drawn from repatriation negotiations in Canada and the United States will be used to illustrate problems that arise when the law of property, rather than the law of Aboriginal rights, is assumed to be the proper law to inform negotiations. The need to revise existing legislation concerning ownership, control and protection of cultural property to reconcile such legislation with Aboriginal rights law will also be raised. In order to facilitate discussion with panel members, the presentation will provide a general overview only. More detailed discussion of the issues raised are contained in the article authored by Professors Bell and Paterson entitled “Aboriginal Rights to Cultural Property in Canada” contained in the materials reproduced for this conference.

1:30 - 3:00. p.m.
FIRST NATIONS HOUSE OF LEARNING
Forest Resources Panel

Charlene Higgins
Shuswap Nation Tribal Council

Charlene Higgins currently works as the Natural Resources Coordinator for the Shuswap Nation Tribal Council in Kamloops. She completed her PhD work in community ecology at Stockholm University, in Sweden, and did a Masters degree in population ecology at the University of British Columbia. For the past three years Charlene has been involved in advocacy work for Indigenous peoples in forest policy in local, national and international fora. She

participated at the 4th meeting of the Conference of the Parties on the Convention on Biological Diversity, and represented the interests of the Assembly of First Nations on the Canadian Delegation at the second and third meetings of the Intergovernmental Forum on Forests. Locally Charlene works to involve the First Nations’ communities she works with in partnerships with industry, FRBC initiatives and strategic directions, Ministry of Forest policies and initiatives, research, and capacity building and training opportunities.

Abstract

Policies and Politics: Impacts of the Convention on Biological Diversity and the Intergovernmental Forum on Indigenous Communities

British Columbia’s forested lands contain many resources that support a diversity of biological, commercial, recreational, social, cultural and spiritual values. However, the current legal regime of forest management in British Columbia inhibits Aboriginal peoples from implementing ecosystem-based management of forested lands, despite several legal decisions, such as *Delgamuukw*, and commitments in several international conventions and agreements Canada has signed which state the need to involve Indigenous peoples in the conservation, management and sustainable use of forest resources. The objective of this presentation is to highlight some of the decisions and proposals for actions connected to the sustainable use and conservation of all forest values that impact Indigenous Peoples. This presentation will focus on decisions and actions dealt with in the Convention on Biological Diversity and the Intergovernmental Forum on Forests which cite the need to develop methodologies to incorporate Article 8(j), and/or develop ecosystem approaches that integrate the conservation and sustainable use of biological diversity, and take into account social, cultural and economic considerations.

Louise Mandell, Q.C.

Mandell Pinder

Louise Mandell is a lawyer practicing with the firm, Mandell Pinder. Louise received her formal education at UBC with a B.Ed. and L.L.B. Louise has worked exclusively in the area of aboriginal and treaty rights since 1977.

Louise has specialized in specific claims work, and has worked with a large number of Bands, providing legal options, presenting the claims to Government and negotiating a settlement and resolution of the claims.

Louise has also been involved in a large number of court cases asserting aboriginal and treaty rights, including (i) *Regina v. Sparrow*, where the Supreme Court of Canada upheld aboriginal rights to fish, protected by Section 35 of the *Constitution Act*; (ii) *Guerin v. The Queen*, a leading case establishing the Crown’s fiduciary relations to First Nations; (iii) *Delgamuukw v. The Queen*, a case where the Gitksan and Wet’suwet’en asserted their rights of ownership and jurisdiction over their territory; and (iv) *Regina v. Van der Peet*, a case asserting a commercial right to fishery. She is presently working in Westbank and with other Bands who are engaged in the unauthorized logging cases.

Mary Williams
Sil’at’imc Nation
Wa7lhkal’apa t u7 ama

My name is k’waterminak which in my language means “headless bird that steps wisely”. I think this name suits me;

you can make your own conclusions once you have heard my presentation.

I am Lil'watemc which is part of the Stl'atl'imc Nation, we are Interior Salish Peoples and our territories are in the mountains surrounding what is now called Pemberton Valley. My home is not far from the mouth of Lillooet Lake, at the foot of Ts'zil Mountain. It's known as Mount Currie by the settlers.

I was born in the Village in 1937. My father was nQetsa7ten and my mother was nTemtemkal't. I was one of 12 children, 5 brothers and 6 sisters. As a young child, I spent a great deal of time with my Ma (my father's sister) and her husband. At this time I spoke only my own language, Lil'wat. When I returned from boarding school I spent more and more time with all the Mamas (the older women of the community) and it was from them that I learned of the old ways.

At the age of nine, I was sent to boarding school. I went to Saint Mary's in Mission. I do not have much to say about my experiences there at this time. I am sure you all know how it was in those places. I graduated in 1957. I went to the University of British Columbia to study teaching. For the next 14 years I taught in an elementary school.

In 1958 I married my husband John. In a very few short years, I had 9 kids, and today I have 10 grandchildren.

In 1972 John and I with others in the Village, made a decision that the school should be run by the community. We formed an all native school board. The plan was to have Lil'wat as a first language. I left teaching in 1973 to work in the Band Office. I worked there until 1982.

Since 1982, after much consideration and concern for the future of my family, we have been attempting to lead a life of continued sustainability outside of the commonly recognized "system". Some call us activists but that is a strong word; we are living a life that we hope will ensure a future for our children and grandchildren, as Lil'wat peoples.

Abstract

In my presentation, I will explain how my husband, my children and I make our living by working in the forest. I will describe our daily activities, how we harvest indigenous plants such as boxwood and pine and mushrooms.

I will attempt to explain our aims and objectives, for doing this type of work. Why we gave up well paid jobs in other "systems" to pursue a lifestyle that would allow us to be self-reliant, also ensuring the sustainability of the resources that we harvest.

I will briefly talk about other people, that we have met through the work we are doing. We share common aims with them.

I would like to outline the dream we have of creating and building an Interpretation Center in the community. This center would enable others to relate to the culture and ways of the Lil'wat people and perhaps realize their own desires of being self-reliant.

I would encourage you to ask many questions, as our work in the forest is quite unusual. I would be pleased to answer your queries.

1:30 p.m. – 3:00 p.m.

MUSEUM OF ANTHROPOLOGY

Art Panel

Lou-ann Neel & Diane Biin

Consortium of Indigenous Arts

Lou-ann Neel is from the Mamalillikala, Da'naxda'xw, Ma'amtagila, and Kwagiulth peoples in the Northern Vancouver Island area. Lou-ann is the grand-daughter of Ellen Neel (Kwagiulth), who was a recognized master in the disciplines of carving and textiles. Lou-ann is initiated within the Potlatch system, having receiving a name and a dance from the Mamalillikala side of her family during her family's feast in 1994. With the guidance and mentorship of accomplished Kwakwakawa'kw masters, Lou-ann has been creating works in textiles, painting and silver-engraving for over 10 years, and has been involved in community development work for the past 15 years.

Dianne Biin is from the Tsilqhot'in peoples along the Chilcotin Plateau region of BC. She comes from a tradition of basket weavers, textile makers, and beadwork designers. For the past few years, Dianne has been learning the disciplines of beadwork and painting with her mother, aunts, and grandmother as her teachers. Dianne's other energies are focused upon her business where she shares her expertise of over 10 years in economic/community development and her lifetime of expertise in entrepreneurship with various First Nation communities across the province.

Abstract

Please see "By Design: The Protection of Intellectual and Creative Rights" in this conference kit.

Sally McCausland

Arts Law Centre of Australia

Sally McCausland is a intellectual property lawyer from the Arts Law Centre of Australia. She has a long held interest in the protection of indigenous cultural heritage. She completed a masters thesis on this subject at the University of British Columbia in 1997, and was assisted to attend the conference by the Canadian Consulate General, Sydney.

Abstract

Current developments in the protection of indigenous cultural and intellectual property in Australia

Australia has been at the forefront of developments in the protection of indigenous cultural and intellectual property in recent years. Along with other Pacific region countries such as New Zealand, Australian indigenous groups have increasingly emphasized their cultural heritage as one of the key rights of self determination. This paper is aimed at providing a general overview for the benefit of delegates, but could be adapted to suit a panel on a particular aspect of the agenda, such as community agreements or the protection of cultural symbols. Sally will be prepared to participate in as many discussion panels as required.

The paper will include the following topics, subject to coverage by other speakers and advice from conference organisers:

Overview of the role of the Arts Law Centre of Australia, the only national community legal centre for the arts, with emphasis on the benefits it provides for remote area indigenous communities;

Examples of legal initiatives assisted by Arts Law, including review of internet auction contracts between a major worldwide auction house and remote indigenous art centres, advice on reproduction licences for manufacture and community collaborations with festival organisers;

Overview of recent legal developments in Australia, including a history of copyright infringement cases brought by indigenous artists, legal reform initiatives and the *Our Culture: Our Future* Report;

Overview of recent internal debates over the ownership of indigenous cultural and intellectual property rights as seen in recent newspaper reports and in recent conferences attended by Sally;

Outline of the National Indigenous Arts Advocacy Association's new Label of Authenticity and current government and public responses to its implementation;

Legal issues for indigenous groups leading up to the Sydney Olympics when indigenous culture will be in high demand;

Brief overview of comparative Canadian developments such as the provisions on cultural symbols in the Nisga'a Agreement and in legal actions commenced by local First Nations groups in the Vancouver area.

Peter Shand

University Of Auckland & King's College London

I am currently a graduate student at King's College, London, reading for a Master of Laws Intellectual Property. During this time I am on leave from a position as Senior Lecturer at the Fine Arts Department of the University of Auckland, New Zealand. My research is in two principal areas: cross-cultural appropriation and legal issues in art.

Abstract

Can Copyright be Reconciled with Indigenous Peoples' Interests in Visual Culture?

This paper seeks to investigate the possible reconciliation of aspects of orthodox principles of Euro-American copyright law and indigenous peoples' interests in visual art – two areas that seem to be in opposition. It argues for an interpretation of such principles so as to serve indigenous peoples' principles of cultural expression but in a way that can be reconciled with external legislative requirements. In this regard it attempts to introduce both theoretical ideas and practical solutions.

Euro-American copyright law is founded on several core concepts that both reflect and determine the relationship between individuals and their creative work. Generally, such concepts as authorship, originality, fixation and limited duration reflect a series of proprietary and economic interests vested in individuals over works for which they claim responsibility. As such, there can often seem to be a significant degree of conflict between the interests protected by copyright and the interests of indigenous peoples, for whom some proprietary and economic rights can be anathema. The first part of this paper focuses on visual culture and the gaps that exist between the assumptions required for copyright protection and contrasting conditions of art making by indigenous peoples – particularly in relation to the concept of "originality". The second seeks to reconcile these differences somewhat. It notes the spaces within copyright law that might allow for interventions that might result in a development of copyright law that more readily takes into account the demands of indigenous communities.

To that end it asks whether it is possible to reform copyright from within.

3:30 p.m. - 5:00 p.m.

FIRST NATIONS HOUSE OF LEARNING

Oral History Panel

Songs, dances, names and stories tell us who we are. What happens when oral history is shared? What happens when there is a breach of confidentiality? Should there be more community control of research projects? What are the ways to protect oral history? These are the questions that many communities are now asking. The panel members will speak to these issues.

Miluulak (Alice Jeffrey)

Gitksan Hereditary Chief

Ghillar (Michael Eckford)

Southern Union of First Peoples of Australia

3:30 p.m. - 5:00 p.m.

MUSEUM OF ANTHROPOLOGY

Non-legal Instruments Panel

Russel Barsh

University of Lethbridge

Russel Barsh has worked on land claims, treaty rights, and international advocacy for the Union of Nova Scotia Indians and Mi'kmaq Grand Council, and conducted research projects for the International Labour Organisation, the U.N. Development Programme, the U.N. Centre on Transnational Corporations, and Royal Commission on Aboriginal Peoples. He has taught law and policy at the University of Washington's Graduate School of Business Administration, and Native American Studies at the University of Lethbridge. A member of the advisory board of First Peoples Worldwide, an indigenous development foundation, he was a technical adviser in the adoption of the Calvert Group's indigenous rights "social screen," and continues to conduct research on corporations' impacts on the lands of indigenous peoples in Latin America and southeast Asia.

Abstract

Investment screening and shareholder action as tools for corporate accountability

As trade liberalization and privatization increase the freedom and power of private corporations, indigenous peoples are finding effective weapons to fight corporate irresponsibility by influencing the decisions of investors and shareholders. A number of institutional investors, such as pension funds and mutual funds, offer "green" portfolios that do not include companies known to damage the environment or violate human rights. This "socially responsible investing" (SRI) industry has grown in just 25 years to about \$18 billion of assets in management in North America (10 per cent of all managed investments). In October 1999, the Calvert Group, the largest of these SRI funds, adopted a "screen" to exclude companies that disregard the rights of indigenous peoples. Meanwhile, a number of social-justice groups have experimented with buying blocks of stock in companies, in order to exercise their voting rights as shareholders to alter corporate policies. Examples include Home Depot's recent

decision to stop purchasing lumber from old-growth rainforests and Occidental Petroleum to withdraw from the U'wa Reserve in Venezuela. Using the example of the B.C. forest products industry, this presentation will explore the potential use of these tools by B.C.'s First Nations.

Keep a few embers
from the fire
that used to burn in your village,
some day go back
so all can gather again
and rekindle a new flame,
for a new life in a changed world.

Chief Dan George and Helmut Hirschall, *My Heart Soars* (Saanichton, B.C.: Hancock House Publishers, Ltd., 1974), p. 60.

9:00 a.m.- 10:00 a.m.
FIRST NATIONS HOUSE OF LEARNING
International Human Rights Overview

Shelley Wright
University of Sydney

I was born in Middleton, Nova Scotia and have lived all over Canada, the US, England, Singapore, New Zealand and Australia. I graduated from the University of Alberta with a B.A. in English and History and an LL.B. I have an LL.M. from the London School of Economics. I have taught at the National University of Singapore, Canterbury University in Christchurch New Zealand and the University of Sydney, Australia (since 1988). I was also the Sallows Professor of Human Rights at the University of Saskatchewan in 1995 and 1996 and was a Visiting Professor at the University of Victoria in 1999. I have published in the areas of international law, international human rights, feminist approaches to international law, human rights and intellectual property, and Indigenous cultural knowledge and intellectual property. I have recently co-edited a book of essays on *Human Rights and Corporate Responsibility: A Dialogue* with Stuart Rees (to be released in March, 2000) and am in the final stages of completing the book *Becoming Human: Decolonising the Subject of International Human Rights*. I have dual citizenship in Canada and Australia and travel frequently between Sydney and Vancouver/Victoria.

Abstract
International Human Rights Overview

This paper will map out some of the main areas of international human rights law that could prove useful in protecting Indigenous knowledge and cultural heritage. Cultural rights are an important if often neglected area of human rights. Intellectual and cultural property protection are themselves human rights. I will try and show how the intersection between cultural rights, other kinds of human rights and the right to self-determination are crucial in the protection of Indigenous identities, traditions and cultures. The benefits flow both ways as Indigenous peoples have opened up the meaning of self-determination in international law in new and important ways. It is not just the protection of intellectual and cultural property that is important, but connecting these issues with rights to land, expression, religion, education and health issues and the protection of distinct communities that is also important. Women's rights are an important factor as well. Problems within human rights include the division between group or "peoples" rights, individual rights and the question of Indigenous peoples' status in international law as "peoples" or as "populations" of individuals. There is also the recurring problem of universality and cultural difference and whether "universal" human rights can protect the distinctiveness of Indigenous cultural identity. This may ultimately be, not a legal question, but rather one of political choices.

9:00 a.m.- 10:00 a.m.
MUSEUM OF ANTHROPOLOGY
International Biodiversity Overview

Fred Fortier
Shuswap Nation Tribal Council

Fred is a Senior Councilor for the North Thompson Indian Band, one of the 17 Shuswap or Secwepemc First Nations from the South-Central Interior of BC. His Peoples are known by the Secwepemc as the Simpc, or "the people up-river". His occupation and avocation in the last decade has been almost exclusively fisheries-related, and has become known for his work to recover wild fish populations, and as an advocate of aboriginal rights and responsibilities in fisheries.

Fred works as the Chairman of the Shuswap Nation Fisheries Commission and the Columbia River Inter-tribal Fisheries Commission in his territory, and is responsible for coordination of fisheries management in the Columbia and Fraser rivers involving the area Bands including related government arrangements. Fred was recently appointed Chair of the BC Aboriginal Fisheries Commission (BCAFC), where he is responsible for the regional coordination of information and policy associated with aboriginal fisheries in the province. A key component of his work in the last 10 years has been the development of an international working group of indigenous peoples on aquatic biological diversity, and has played a leadership role in related work with the Convention on Biological Diversity.

Fred sits on the Board of the Global Indigenous Knowledge Program, the World Fisheries Trust and the Pacific Coast Sustainable Fisheries Strategy.

Nilo Cayuqueo
Abya Yala Fund for Indigenous Development

Nilo Cayuqueo is Mapucha from Los Toldos community to the southwest part of Argentina and has been actively involved in the international movement for Indian rights for more than 20 years. He left Argentina in 1979 during the military regime. From 1979-81 he lived in Peru where he co-founded the Indian Council of South America in Cuzco in 1980. He also lived in Bolivia where he worked as an executive member of the Indian Council.

He came to the United States at the end of 1981 to live in the San Francisco Bay Area. In 1983 Nilo co-founded the South and Meso-American Indian Rights Center (SAIIC). SAIIC has been actively advocating for the rights of Indigenous Peoples of the Americas and linking people from the South with the North.

Nilo was the director of SAIIC from 1983 until 1994, when together with other Indigenous leaders mainly from the South founded by Abya Yala Fund. Abya Yala Fund is the first foundation run by and for Indigenous Peoples of South and Central America, and Mexico.

Abya Yala Fund provides critical training in organizational development, communication, administration, fund-raising and project management. The Fund also provides grants for small-scale community projects in South and central America, and Mexico.

Nilo studied journalism and community development in Argentina from 1971-75 and organizational development in Oakland, California in 1991. From 1989 to 1995 he directed the journal *Abya Yala News* that presents international human rights issues from the perspective of Indigenous Peoples, and has published numerous articles on Indigenous issues.

He has also organized, helped to organize, and participated in numerous regional and international conferences, such as the Working Group on Indigenous Population, the Human Rights Commission at the UN, Convention on Biodiversity, UNESCO about the issues facing Indigenous People today. These issues include but are not limited to: human rights, protection of the territories of Indigenous People, Protection of the natural environment, Eco-tourism, Intellectual Property Rights, International treaties, International Forum of Globalization and Health.

Nilo has visited almost all the countries of Latin America and worked with hundreds of organizations representing Indians from North, Central and South America in issues on Biodiversity, Economic development, Human Rights and Community Organizing.

Jose Fragoso
Florida Atlantic University

Much of my work focuses on understanding the interactions between peoples, cultures and biodiversity. Almost all my work has occurred in the tropics and I've spent some time on Baffin Island, Canada. In Central America I worked on issues concerning the population status of wildlife in and around areas used by the Ketchi-Maya. In Brazil I worked and continue working on understanding the processes that maintain biodiversity. Much of this work has involved/involves working in indigenous areas and with indigenous peoples. For example, I have participated in the last 4 annual assemblies of the Yanomami people, where we discussed a variety of issues including the environmental degradation of their lands (northern Amazon region). In central Brazil (as part of a team of Xavantes and biologists) I was team leader for a recently completed wildlife management plan for a 350,000 ha Xavante Area (we are trying to publish this work as a book). For this work we used the approach of integrating Xavante views with concepts derived from biological theory.

I have also organized a panel discussion and workshop at two meetings of the "Wildlife Management in Amazonia and South America" conferences, one held in Peru (1997) and the other in Paraguay (1999).

Abstract

Some researchers posit that Native Americans are similar to European descendents in their attitudes and relationships with non-human nature, suggesting that the environmental morality espoused in the "noble savage" worldview is the romantic creation of Europeans. Empirical data suggests otherwise: Native Americans with healthy cultures inhabit areas that are environmentally intact. This observation indicates that some form of positive feedback must be occurring between human and non human systems that prevents the over exploitation of non-human nature. I use information collected over 18 years of field work from the Yucatan Peninsula of Central America (living with various groups of Maya Indians) to Brazil, South America (working with the Xavante, Yanomami, Macuxi and Wapixana). I have

observed behaviors that indicate that native Americans do maintain a moral/ethical system whose outcome is habitat conservation. This system continues to function in native American societies as yet lightly affected by European descent cultures; however, it can be quickly destroyed once native societies are contacted by "whites". Relying on observations of recent changes in the Yanomami culture of Brazil, I propose that one reason such ethical systems have not been observed or noted by "conservation biologists" working with native groups in Amazonia is that most of these groups are already well into the downward spiral of integration into the exploitive "western frontier" mentality commonly encountered in the borderlands connecting "European" and "native American" ethical systems.

10:30 a.m. - 12.00 p.m.
FIRST NATIONS HOUSE OF LEARNING
Sacred Sites Panel

Geraldine Manson
Councilor, Snuneymuxw First Nation

My Name Is Geraldine Manson, Councilor for Snuneymuxw First Nation. My position within the administration is Elders' Cultural & Language Coordinator employed within the Treaty Office.

I work very closely with Elders of our community in regards to cultural issues such as Sacred Sites, repatriation, language & heritage protection. Presently we are involved in making a stand in the significance of protecting petroglyphs along with other known sacred sites within our territory.

Murray Browne
Negotiator/Counsel Snuneymuxw First Nation

Murray is a lawyer with a Master's Degree in Public Administration. His background is in aboriginal law and environmental law. He formerly worked for various governments and the BC Treaty Commission and is currently the Treaty Office Manager and legal advisor for Snuneymuxw First Nation in Nanaimo. Murray is also an executive member of the Aboriginal Law Victoria Subsection of the Canadian Bar Association.

Part of his work with the First Nation involves working with Snuneymuxw Elders and members to protect sacred sites and cultural sites in Snuneymuxw Territory.

Abstract

Snuneymuxw First Nation

Using the Trade-marks Act to Protect First Nation Petroglyph Images

The Snuneymuxw First Nation in Nanaimo, BC has received designation under the Canadian *Trade-marks Act* for 10 petroglyph images to protect them from commercial exploitation and unauthorized copying.

The Snuneymuxw First Nation is a Hul'qumi'num-speaking or "Coast Salish" First Nation whose territory centers around the Nanaimo River watershed and Estuary on Vancouver Island and includes neighbouring islands such as Newcastle and Gabriola. The Snuneymuxw territory is rich in cultural sites, sacred sites archaeological sites which evidence continual Snuneymuxw presence extending back over five thousand years. The Nanaimo and Gabriola areas have a large concentration of ancient petroglyphs.

Unfortunately, the Nanaimo and Gabriola areas have been subject to extensive development and many sacred and cultural sites have been destroyed or compromised. The provincial *Heritage Conservation Act* has not been effective in protecting sites. Over the past few years a number of artists, merchants and organizations have begun to use Snuneymuxw petroglyph images for commercial purposes. Snuneymuxw Elders and members have become increasingly concerned about the inappropriate use and exploitation of these sacred images.

I worked with the Elders, members and Council to explore ways of protecting the petroglyph images. Their decision was to ask people to stop using the images out of respect but also to seek legal protection as a back-up. We have had several meetings with local residents, artists and merchants, most of whom have been supportive of the First Nation's request. However, the First Nation has had many bad experiences in the past with sites and artifacts being destroyed and the Elders and Councilors wanted to pursue additional legal protection.

In my opinion, there is a strong legal argument in favour of protecting petroglyphs and sacred sites as part of aboriginal rights and title. Unfortunately, this remains a largely unexplored area of Canadian jurisprudence so we turned to intellectual property, also called copyright and trademark law. Canadian copyright law and trademark law has a number of limitations. The law is designed to protect the intellectual property, ideas and creations of individuals and corporations, but is not very helpful or effective in protecting cultural intellectual property or ideas, stories, dances, songs or images created by First Nations.

The only viable way to protect the petroglyph images seemed to be via a "public mark" under section 9 of the *Trade-marks Act*. This section provides the mechanism that the Government of Canada uses to protect the Canadian Flag and that the Canadian Olympic Association uses to protect its logo. The primary difficulty is demonstrating that First Nations are, in fact, "public authorities". Once a First Nation successfully registers a public mark, the image receives substantial legal protection and the First Nation can take legal action against any unauthorized use.

The Snuneymuxw Council hopes that people will respect their request not to use the petroglyph images without permission but now the Snuneymuxw also have a legal back-up, just in case.

Lucy Mulenkei
Indigenous Information Network

10:30 a.m. - 12.00 p.m.
MUSEUM OF ANTHROPOLOGY
Medicinal Plants Panel

Mary Thomas
Secwepemc Nation

Mary Thomas was born in Salmon Arm, BC and attended the Kamloops Residential School. She has become quite active in trying to maintain her culture and the environment. She has received an award from Seacology in September 1997 besides many other awards. Her hard work and achievements had paid off and her vision of having a

cultural center built is finally coming true on the Neskonlith reserve in Salmon Arm.

Kelly Bannister
University of British Columbia

Kelly Bannister is a Ph. D. student in the Department of Botany, UBC. She is currently completing her doctoral research on relationships between traditional knowledge and medicinal properties of plants of the Secwepemc (Shuswap) First Nation. Her research is part of an ethnobotanical study in collaboration with the Secwepemc Cultural and Education Society and the Shuswap Nation Tribal Council. She has worked closely with Mary Thomas on understanding the antimicrobial properties of balsamroot as a traditional and contemporary medicine.

Pete McCoy
Ktunaxa Kinbasket Treaty Council

Pete McCoy, elder in training received his formal education from his grandparents and their friends. Pete is one of the youngest fluent Ktunaxa speakers, along with this gift is his intimate knowledge of the Ktunaxa culture, including plant uses. While working with Michael on the Ktunaxa Ethnobotany project Pete has provided an essential cultural context. Some of Pete's accomplishments are work on documenting Ktunaxa plant uses and names, helping in the publishing of [ʔakxamis qapi qapsin – All Living Things](#), organizing educational workshops as well as working towards the opening of the indigenous plant nursery.

Michael Keefer
Ktunaxa Kinbasket Treaty Council

Michael Keefer has been working with the Ktunaxa Nation on the Ktunaxa Ethnobotany Project since 1997. Although Michael grew up in Vancouver he spent much of his childhood in the forests of what is now Pacific Spirit Park enjoying and learning about the plants. Michael received his undergraduate degree in geography and environmental studies at the University of Victoria and has been busy to return for more formal education as of yet. Some of Michael's accomplishments while working on the Ktunaxa Ethnobotany Project are: the publishing of the Ktunaxa ethnobotany handbook titled [ʔakxamis qapi qapsin – All Living Things](#), numerous successful educational workshops and the imminent opening of an indigenous plant nursery on the St. Mary's Reserve near Cranbrook.

Abstract
A Possible Strategy to Protect Medicinal Plants

The Ktunaxa Ethnobotany Project is now in its third year of working with the Ktunaxa Nation and Kinbasket people on traditional plant uses and environmental management. In 1996 the Ktunaxa Kinbasket Tribal Council (KKTC) recognized that there was a need to document the Elders knowledge of the plants as their generation was rapidly passing. Through the fundraising activities of the Ktunaxa Kinbasket Tribal Council this project was made possible. The initial focus of the project was to conduct oral history interviews of the Elders knowledge of plant uses and to compliment this research the creation of herbarium. Although we are still actively working on traditional ethnobotany we have found the need to move into a more applied type of ethnobotany, where we are actively working on protecting and enhancing botanical resources. A recent development has been with the local major logging company,

Crestbrook Forest Industries (CFI) and some of their proposed cutblocks.

CFI has two new logging blocks proposed in an area where an important medicinal plant is traditionally gathered. KKTC Resource Protection manager Thomas Munson recently contacted CFI to inform them that their proposed logging will likely damage an important plant. Shortly after, we met up with CFI to discuss the ecological needs of this plant, at this time we did not disclose the name of the plant as we had not yet consulted our Elders Working Committee. Without having disclosed the plants identity our discussions with CFI were cumbersome, although somewhat entertaining for us. We consulted our Elders Working Committee on the issue and they made the decision to disclose the plants identification. Their decision to disclose the plants identification was the first such example to my knowledge of the Ktunaxa revealing a plants identification to industry for the purpose of mitigation. Previously, the unwritten policy was avoidance of such issues, the move to a mitigative approach may have its own challenges; most notably that this plant will now be known by more people and possibly have an increased chance of being commercialized and overexploited. Through working with CFI's foresters they are changing the prescription to allow for buffer strips around the shady, moist sites that this species depends on. There will be three different treatments as to allow for scientific research of this species needs: 1) complete buffer 2) buffer with partial harvesting of larger lodgepole pine and 3) no buffer, as well there will be adjacent areas with no harvesting used as a control. We intend to seek funds so that we can research the effects of the various treatments on the plant's production. With the results from this research it is hoped that we can come up with an effective management strategy for continued use of this plant.

Other activities of the Ktunaxa Ethnobotany Project include the publishing of a small book in 1999 called *?akxamis qapi qapsin*; the delivery of numerous educational workshops; working towards opening a native plant nursery and contributing towards the Treaty Process.

1:30 - 3:00. p.m.
FIRST NATIONS HOUSE OF LEARNING
Biopiracy Panel

Debra Harry
Indigenous Peoples Council on Biocolonialism

Debra Harry is Northern Paiute, from Pyramid Lake, Nevada. She serves as the Executive Director of the Indigenous Peoples Council on Biocolonialism. She received a three-year Kellogg Foundation leadership fellowship in 1994 and studied the field of human genetic research and its implications for indigenous peoples. She serves on the board of the Council for Responsible Genetics based in Cambridge, MA. She earned a master's degree in community economic development from New Hampshire College.

Abstract

Biopiracy: The Theft of Human DNA from Indigenous Peoples

Indigenous peoples are largely unaware of the scale and potential impacts of human genetic research to their communities. Or, whether they are slated to become subjects of genetic research at all, because the projects are conceived and developed without their participation. Indigenous

communities are not informed their DNA can be commercialized through patents and used in the development of new products. The potential commercialization of unique human DNA seems to be a significant motivation of many research projects.

Ms. Harry will discuss the current state of genetic research which affects indigenous peoples; its implications for indigenous peoples. Topics will include: human genetic research and indigenous peoples, scientific interest in ancestral human remains and its impacts on tribal repatriation efforts, the relation of genetic research issues to sovereignty, and strategies to protect indigenous peoples genetic resources from exploitation.

The Indigenous Peoples Council on Biocolonialism is organized to assist indigenous peoples in the protection of their genetic resources, indigenous knowledge, cultural and human rights from the negative effects of biotechnology.

Russell Wills

Cognetics International Research Inc.

Russel Wills is an economist and president of Cognetics International Research Inc., a Vancouver-based economic consulting firm. Recently he directed a small group writing Laos' first bioprospecting legislation for the Lao National Assembly and is co-author (with Richard G. Lipsey) of the 1999 "Economic Strategy to Develop Non-Timber Forest Products and Services in BC" (Please see the *Table of Contents* in this kit) which contains an analysis of BC First Nations rights in traditional knowledge, and which can be downloaded from <http://fbminet.ca/bc>.

1:30 p.m. – 3:00 p.m.
MUSEUM OF ANTHROPOLOGY
What is Article 8(j)?

Arthur Campeau, Q.C.

Canint Consulting Inc.

Arthur H. Campeau is presently a policy consultant in all areas relating to sustainable environmental, economic and social development to national governments, international environmental convention secretariats, regional commissions, the private sector and national and international N.G.O.s. He is also, an independent advisor within the giant screen industry in theater construction, film production and ancillary educational products.

Appointed as Canada's first Ambassador for Environment and Sustainable Development following the "Earth Summit" in 1992 after having served as the Prime Minister's principal advisor and representative in international environmental fora, he was the "Sherpa" responsible for Canadian preparations for participation at the "Summit", senior advisor on international affairs to three successive Ministers of Environment.

He was the Head of the Canadian. delegation in the negotiations of the Convention on Biodiversity and other Canadian delegations in various multilateral and bilateral fora, negotiations and meetings.

He was retained by UNEP to oversee and advise on ways and means to advance the implementation of articles in the CBD relating to indigenous peoples.

Prior thereto, he was engaged in the practice of law as a barrister before the courts of Canada and Quebec, several Royal Commissions and principal strategist in a number of major corporate re-organizations; appointed a Queen's Counsel in 1986; member of a variety of corporate Boards of Directors; founding president of a Canadian N.G.O., dedicated to enhancing understanding and co-operation in the pursuit of sustainable development.

Abstract

Please see "*Traditional Knowledge Of Indigenous Peoples*" in this conference kit.

Victoria Tauli-Corpuz
Tebtebba Foundation (Philippines)

3:30 p.m. - 5:00 p.m.

FIRST NATIONS HOUSE OF LEARNING
European Community Law - Another Theatre of Action

Nicole Schabus
Vienna Legal Institute, University of Vienna

Nicole Schabus is Austrian. She studied Law at the University of Vienna, where she is currently completing her degree in International Business Administration. Since the beginning of her studies she has been active in the field of human rights, working for various NGOs especially the European Law Students' Association, that was very active in the Campaign for the Establishment of an International Criminal Court.

During her studies at the University of Sydney in Australia Nicole focused on indigenous rights. In Australia she actively participated in the Native Title Campaign and organised conferences and community meetings together with her Aboriginal friends. Nicole brought her knowledge of international law and the UN, where she participated in the Graduate Study Programme of the United Nations Geneva, to strengthen the political support work of the society. In its *Working Circle for North American Indians* she documented the Canadian *Royal Commission on Aboriginal Peoples* and the resulting *Gathering Strength* initiative, especially the residential school problem which is comparable to the Australian policy of Separation of Aboriginal and Torres Strait Islander Children from their Families and the resulting *Bringing them Home Report*. Under the supervision of the Working Group for Legal Anthropology of the University of Vienna she will continue her academic research on indigenous rights with a focus on influencing the European politics concerning indigenous peoples, critically pointing at the involvement of European firms and governments in projects on indigenous land without taking a clear international position towards indigenous peoples.

Abstract

Most European countries are not home to any peoples that claim indigenous status. This is also one of the key arguments why many European governments refuse to actively participate in the discussion on indigenous rights. They do not send official representatives to follow the meetings of the expert Working Group on Indigenous Populations. In our present international legal and economic system, which are characterised by the growing influence of international actors, like multinational companies and

organisations, which also exercise pressure on indigenous land, responsibility has to be assumed.

European actors have to learn to respect indigenous rights and acknowledge them internationally. One option would be to conceptualise possible court cases before international and European national courts suing for damages or enforcing their title under commercial law or other relevant provisions.

Some European countries, like Denmark and the Netherlands have already ratified the ILO Convention 169, the only international legal instrument enshrining the central rights of indigenous peoples, further weakening the arguments that other European countries use to avoid ratification, especially because they also do not have any national indigenous populations.

Political processes in the European Union are usually directed by the country holding the EU presidency, in the second half of 1998 the Austrian government used its presidency to focus on issues like ecology and human rights, both key concerns of indigenous peoples who still were not integrated in the mainstream processes.

The European parliament has proven to be a more sensitive institution concerning indigenous issues, passing resolutions when they saw their rights threatened and regularly listening to indigenous speakers presenting their European campaigns.

Those issues and many more should be discussed in order to finally establish the European Theatre of Action as a regular stage for indigenous peoples' concerns world-wide. Viewing indigenous peoples as "guest-performers" is no longer acceptable.

3:30 p.m. - 5:00 p.m.

MUSEUM OF ANTHROPOLOGY
Biodiversity Case Study

Klah-kist-ki_is (Simon Lucas)

Chief, Hesquiat Nation

Chief Simon Lucas of the Hesquiat Nation has served as a Chairman of the B.C. Aboriginal Fisheries Commission since it was established in 1983 to February 1997. The Commission is a forum to facilitate dialogue on aboriginal fishing rights and issues amongst First Nations.

Chief Lucas is a ranking Chief of Hesquiat which is located on the west coast of Vancouver Island. His hereditary names Kla-Kisht-Ke-Is. For six years, he served as co-chairman of the Nuu-Chah-Nulth Tribal Council.

Chief Lucas is a member of the Commercial Fishing Industry Council; a member of the Treaty of Indigenous People Internationally (TIPI) formally known as Pacific Northwest Treaty Steering Committee; a member of an advisory board on Aquaculture to the Province of B.C.'s Minister of Fisheries and a member of an advisory board on Native issues for the B.C. Medical Association. He is closely associated with Northwest Indian Fisheries Commission in Washington State and with the Columbia River Inter-Tribal Fish Commission in Oregon State.

Chief Lucas for the past nine years has served as an Executive Member of the Aboriginal Council of B.C. The Aboriginal Council manages the allocation of funds to First Nations in B.C. to conduct land claims research for Specific

Claims which are based on the government's failure to fulfill specific obligation under treaties, other agreements or the federal Indian Act.

Chief Lucas is popular speaker at international and national forums on environmental issues which affect fisheries and aboriginal peoples. He is also in demand on social issues such as drug and alcohol, family violence and suicide.

It must be noted that Chief Simon Lucas is also fluent in his traditional tongue.

Arnie Narcisse

BC Aboriginal Fisheries Commission

- Manager of Nicola Watershed Stewardship & Fisheries Authority (NWSFA) - fisheries management unit for the Nicola Tribal Association (NTA);
- organization's activities involve Stock Recovery efforts with Chinook and Coho stocks in the Nicola Watershed; also involved in Habitat assessment,
- enhancement and creation to compliment the Stock Recovery efforts.
- Interior Co-chair of BC Aboriginal Fisheries Commission; represent interest of Interior Tribes of British Columbia; report to BC-AFN monthly meetings;
- meet with BC ministries of Agriculture, Fish & Food; Aboriginal Affairs and Environment on a monthly basis.
- Member of Fraser Watershed Steering Committee; organization meets on monthly basis with representatives from Department of Fisheries and Oceans
- (DFO) to discuss issues arising from Aboriginal Fisheries Strategy.
- Participant in the Pacific Fisheries Think-Tank; made up of people from the University of British Columbia and Simon Fraser University that deal with fisheries
- issues form and academic perspective.
- Member of BCAFC Policy Analysis Group; this group meets to analyze policy initiatives put forward by the Provincial and federal government and to
- formulate policy initiative from the First Nations perspective.
- Host of annual "Visions in Shared Management" workshops held in Merritt, BC, each February; workshop showcases First Nations and DFO fisheries
- activities and initiatives that take place on the ground each year that benefit the fisheries resource.
- Organizer of annual "First Fish Ceremonies" held each year to give honor and respect to the first salmon that return each fishing season.
- Father of five children and an avid fisherman that chases trout in the spring, salmon in the summer, and 'spokaleech' in the water.

Nigel Haggan

University of British Columbia

Back to the Future

Reconstructing the past abundance and diversity of marine ecosystems

Back to the Future is a process that allows scientists, First Nations, commercial fishers, historians and archaeologists to work together to reconstruct the abundance and diversity of marine ecosystems before modern industrial fishing began. Constructing models of ecosystems prior to modern industrial fishing provides a baseline or 'audit' against which today's levels or management targets may be measured.

Back to the Future proposes rebuilding rather than sustainability as the policy goal of fisheries management. The rationale is the failure to take account of the ecosystem effects of fishing. Industrial fleets harvest the top predators, then gear up to catch their prey. If this continues unchecked, the ocean 50 years from now will be dominated by jellyfish, squids and krill. Where this happens over generations, perceptions of what abundance and diversity "ought to be" are successively reduced. Even though today's generation knows from their grandparents that things were better than they are now, they still discount these tales of past abundance as fanciful or impossible to re-attain.

Back To The Future has a ceremonial aspect of coming to terms with the depletion of the marine environment. This includes acknowledgement that aquatic ecosystems are severely compromised and that all concerned: government, commercial fishers, (native and non-native) sport fishers, scientists, managers, processors and policy-makers share responsibility. This is balanced by recognition that all sectors have knowledge that can contribute to better understanding of how ecosystems work. The objective is to reach agreement to treat different knowledge systems with respect and work towards sharing knowledge in the interest of improved understanding.

Case studies in the Georgia and Hecate Straits are presented.

One of my elders told me a situation. He said we can get rid of all the Dene people in Denendeh, we can all die off for some reason, but if there was another human being came stumbling along and came to Denendeh, the environment will turn him into a Dene person. It's the environment and the land that makes us Dene people.

Roy Fabian, Executive Director
Hay River Treatment Centre
Hay River, Northwest Territories, 17 June 1993

9:00 a.m. - 10:00 a.m.
FIRST NATIONS HOUSE OF LEARNING
International Legal Review

Terri Janke
Michael Frankel & Co., Barristers

Indigenous Australians are concerned that their culture is currently under threat. In an age of commercialisation, new technology and increased globalisation, Indigenous people are concerned for the ongoing maintenance of the culture. Indigenous people seek better recognition and protection of their Indigenous Cultural and Intellectual Property.

The *Our Culture: Our Future* report (the *Table of Contents* are included in this kit) is the first of its kind to comprehensively map the rights Indigenous Australians want to their cultural heritage and to comprehensively analyse the laws and policies that affect the ability of Indigenous Australians to realise these rights. The Report also lists a range of measures for protecting Indigenous Cultural and Intellectual Property.

The Report was written and Researched by Terri Janke, Principal Consultant, Michael Frankel & Company, Solicitors under commission by the Australian Institute of Aboriginal and Torres Strait Islander Studies and the Aboriginal and Torres Strait Islander Commission (ATSIC).

Our Culture: Our Future is the result of extensive research and consultations with Indigenous peoples, government departments, industry organisations and interested individuals.

The Report sets out a blueprint for the better recognition and protection of Indigenous Cultural and Intellectual Property.

Sakej (James Youngblood) Henderson
Native Law Centre, University of Saskatchewan

Professor and Research Director, Native Law Centre of Canada College of Law, University of Saskatchewan Saskatoon, Saskatchewan, Canada.

Born to the Bear Clan of the Chickasaw Nation and Cheyenne Tribe in Oklahoma in 1944, in 1974, he received a *Juris Doctorate* in law from Harvard Law School and became a law professor who created litigation strategies to restore Aboriginal culture, institutions and rights He co-authored the book, *The Road. Indian Tribes and Political Liberty* that became an important and enduring classic in Indian law in the United States. During the constitutional process (1978-1993) in Canada, Professor Henderson served as a constitutional advisor for the Míkmaq nation and the Assembly of First Nations. He is a leading advocate for uniting the treaty federalism with provincial federalism to create a shared rule, democracy, and government in Canada. His arguments in "Empowering Treaty Federalism" in *Saskatchewan Law Review* (1994) 58: 241 has influenced the Treaty First Nations leaders and the treaty sections of Final Report on the Royal Commission on Aboriginal Peoples. His

latest book is on *Aboriginal Tenure in the Constitutional of Canada* (2000).

He is also a noted international human rights lawyer. He is one of the founders of the international Indigenous right movement and a spokesperson for post-colonial legal theory movement. His latest book in this area is *Protecting Indigenous Knowledge and Heritage* (2000) He currently pursues justice for Aboriginal Peoples of Canada through all the activities of the Native Law Centre as its senior administrator and Research Director and as a member of the College of Law. He is currently a member of the Advisory Council to the Minister of Foreign Affairs that assists in identifying strategic and emerging foreign policy issues.

9:00 a.m. - 10:00 a.m.
MUSEUM OF ANTHROPOLOGY
TRIPS Review & The Next World Trade Round

Valerie Phillips
Washington State University

Valerie Phillips joined Washington State University in 1998 as Assistant Professor, School of Accounting, Information Systems, & Business Law. She received her *Juris Doctorate in Law* (1986) from the University of California, Berkeley.

Abstract

The Impact of Indigenous Peoples on the Development of Intellectual Property Rights

Indigenous peoples have been on a collision course with the business and scientific world over the latter's use of intellectual property (cultural property) laws to profit from products, ideas, and cultural property originally developed by indigenous peoples. Recently, over one hundred indigenous people's organizations from around the world have issued a statement calling on governments to amend Article 27.3(b) of the TRIPS Agreement. Their statement calls on the world's governments to ban the patenting of all life forms, all naturally occurring processes, and the misappropriation by Western interests of traditional knowledge on the use of natural resources.

This paper will provide an overview of the current recurring themes and its potential impact on the development of the law. It will also include an analysis of selected anthropological studies on some of the traditional ways in which indigenous peoples have approached cultural property rights as potentially useful background for those tribes that are interested in the further development of their cultural property laws today.

Cheryl Markham
Native American Pro-Bono Panel

Cheryl Markham is a 1988 graduate of the University of California at Los Angeles where she studied Psychology and American Indian Studies. After several years in the field of

education Cheryl went to work as a legal assistant with Legal Services programs serving low-income clients with civil legal problems.

In 1997, Ms. Markham graduated from the City University of New York School of Law. She is currently a staff attorney with the King County Bar Association's Community Legal Services in Seattle, Washington, where she defends tenants in eviction cases and runs volunteer programs where private attorneys represent low-income clients free of charge.

One of the programs she manages is the *Native American Pro Bono Panel*, in which private attorneys receive specialized training to represent Native Americans in tribal court proceedings. She is also a member of the Native American Advocates Task Force of legal services organizations and a member of the Indian Law Section of the Washington State Bar.

This past fall, Ms. Markham served as legal observer for various groups protesting policies of the WTO during the November-December meetings in Seattle. During the week of meetings of the WTO she attended the meetings of indigenous organizations at the Seattle University campus. She will share her experiences during the WTO in Seattle. Ms. Markham is a native of British Columbia and retains Canadian citizenship.

10:30 a.m. - 12.00 p.m.
FIRST NATIONS HOUSE OF LEARNING
Language & Heritage Protection

Chief Ron Ignace
Vice-Chair, First People's Cultural Foundation; Co-Chair, Assembly of First Nations Chiefs Committee on Languages

Bartolo Ushuiga
President, Zapara of Ecuadorian Amazon

Manari (Bartolo Alejandro) Ushigua is the powerful young leader of the Zapara, a nation of 125 individuals in the Ecuadorian Amazon whose numbers exceeded 200,000 before the arrival of Europeans. Pronounced extinct by academics and other "Indigenous experts," the Zapara, under Manari's leadership, have spent the past two years organizing to revive and protect their culture, including territory, traditions, and language.

They are further having to defend their cultural identity amid confusion caused by a false Zapara organization, led by an Evangelist pastor who uses the Zapara name to raise funds internationally. Manari, President of the Association of the Zapara of Pastaza Province of Ecuador (ANAZPPA), exemplifies a new generation of Indigenous leaders in the Amazon who are as determined to fight for the preservation of their cultural heritage as they are to fight against political repression and destruction of the rainforest.

Alivereti Bogiva
Fijian Affairs Board

I Lost My Talk

I lost my talk
The talk you took away.
When I was a little girl
At Shubenacadie school.
You snatched it away:
I speak like you
I think like you
I create like you
The scrambled ballad, about my world.
Two ways I talk
Both ways I say,
Your way is more powerful.
So gently I offer my hand and ask,
Let me find my talk
So I can teach you about me.

—Rita Joe

"Four Poems by Rita Joe", *Canadian Woman Studies*
10/2&3 (Summer/Fall 1989), p. 28.

10:30 a.m. - 12.00 p.m.
MUSEUM OF ANTHROPOLOGY
Traditional Ecological Knowledge: Policy Considerations

Jeanette Armstrong
En'owkin Centre

Jeanette is Okanagan, residing on the Penticton Indian Reserve. A fluent speaker of the Okanagan language, she has study under some of the most knowledgeable Elders of the Okanagan. She says, "The Native people of this land developed a lifestyle through a unique world view. I believe its underlying values and structures are important contributions to the pool of knowledge as critical factors in reversing and reshaping a world view whose values foster an attitude of self-destruction."

Jeanette has a degree in Fine Arts from the University of Victoria. Her visual artistic works have been recognized through awards, such as the Mungo Martin Award, the Helen Pitt Memorial Award and the Vancouver Foundation Graduate Award. She is a recognized Canadian author. Her published works include two children's books, one of which won the Children's Book Centre "Our Choice" award. She has published a critically acclaimed novel Slash and a collection of poetry, Breath Tracks and collaborated with renowned Native architect Douglas Cardinal on the book Native Creative Process. She has been anthologized numerous and has published poetry and articles in a wide variety of journals.

Her other creative works include two produced video scripts, three produced poetry music collaborations. Her collaboration Indian Woman on Cargo Record release, Till The Bars Break was nominated for Canadian Juno award. She has performed a story telling mini-series on local television and participated in a National TV talk show on Vision TV called "Arts Express". Works in progress include a music video collaboration and a new novel.

Jeanette is Director of the *En'owkin International School of Writing*. Jeanette is an appointed traditional council member of the Penticton Indian Band. She is an advocate of Indigenous rights, recently appointed to the Council of Listeners in the International Testimonials on Violations to Indigenous Sovereignty and recently was invited to attend as an international observer by the Continental Coordinating Commission of Indigenous Peoples in peace talks in Mexico. She is an advocate of a healthy environment and social change in which peace between all peoples is central. She serves as a consultant to many environmentalist and social change organizations, including the Esalen Institute, the Omega Institute, the Elmwood Institute and the Centre for Creative Change and the World Institute for Humanities. Jeanette has served on various international councils and working groups for a wide variety of issues.

Jeanette had the opportunity to address conferences and assemblies on a wide range of topics in universities in Japan, Moscow, Switzerland, Germany, New Zealand as well as the USA and Canada. She has addressed a World Conference on Indigenous Education as a keynote speaker as well as the World Council of Churches on Racism in education, media and the church.

Priscilla Settee
Indigenous Peoples Programs, University of Saskatchewan
Michael Halewood
Crucible Group

Priscilla Settee is Co-coordinator of the Indigenous Peoples Programs at the University of Saskatchewan and is active with the North American Indigenous Peoples Biodiversity Network and the Indigenous Peoples Council on Biocolonialism. She has a Master's of Education and her thesis is entitled "Honouring Indigenous Knowledge as a Means of ensuring Scientific responsibility".

Working Out Options for National Sui Generis Intellectual Property Laws for Indigenous and Local Knowledge: (Insights Gained from the Crucible Project)

This would be a two-part presentation.

The first part would be presented by Professor Priscilla Settee who is, among other things, one of the other three people from Canada participating in the Crucible project. In this first part, Professor Settee would present a case for the need to acknowledge the vast body of Indigenous knowledge which exists not only here in Canada but in Indigenous communities globally. She will describe communities such as the Zuni Traditional Agriculture Project and others which use Indigenous knowledge to promote community well-being. Professor Settee will include a summary of how indigenous peoples' knowledge has been stolen, undermined and lost and of how western development continues to destroy the conditions which are necessary for Indigenous knowledge to exist. She will talk about the history of patents, and intellectual property generally as a tool for benefitting largely northern non-Indigenous countries at the expense of Southern and largely Indigenous communities. Professor Settee will focus on an analysis of intellectual property as a means to protect indigenous and local knowledge because intellectual property "solutions" have come to dominate the agenda of most (if not all) fora where indigenous and local knowledge protection is considered. Professor Settee will

conclude that there is a great urgency to address the preservation of the world's natural environment and hence Indigenous knowledge through awareness and policies and possibly legislative options which recognize the human rights of world's some 500 million Indigenous peoples

The second part would be presented by Michael Halewood, and would build upon Professor Settee's critique. The starting point will be an acknowledgment of the general strength of Professor Settee's criticisms. The presentation will then describe the difficulties that one encounters at the legal and technical end of creating intellectual property laws that seek to accommodate (and build upwards from) those criticisms. The presentation will present views on the subject and draw upon the difficulties encountered, resolved or left unresolved over the course of the Crucible Group's deliberations. It will describe the five or six major sticking points (both technical and conceptual) that arise in the context of creating concrete sui generis intellectual property laws for indigenous and local knowledge. It will also describe various options that policy makers and activists could endorse to resolve these problems in the context of law-making and legislation-writing. In the course of this presentation therefore review the logical (from a legal point of view) steps that are necessary to create such laws, starting with identifying the purposes of such legislation, defining the scope of the knowledge it is meant to "protect," the conditions under which it should be protected, the strength and nature of those protections, their duration, what outside parties would need to do to apply to use this knowledge, exceptions to these rules and so on. In each of these stages the presentation will describe conceptual and technical difficulties that arise, and possible resolutions to those difficulties. It will conclude that there is no such thing as a *sui generis* intellectual property law for indigenous and local knowledge panacea. It will also highlight the conceptual issues (from a technical and legal point of view) that are in immediate need of further critical attention.

1:30 p.m. - 3:00 p.m.
FIRST NATIONS HOUSE OF LEARNING
Non-legal Instruments Case Study

Chief Arthur Manuel
Chairman, Interior Alliance & Shuswap Nation Tribal Council

Chief Arthur Manuel is the Chief of the Neskonlith Reserve (Approximately 7,000 acres), established in 1862. Neskonlith is part of the Shuswap (Secwepemc) Nation and is one of seventeen Shuswap Bands. The administration offices of Neskonlith are located just outside of Chase along the Trans-Canada highway and South Thompson River.

Chief Manuel is also the Chairperson of the Shuswap Nation Tribal Council (SNTC) as well as spokesperson of the Interior Alliance. The Interior Alliance is composed of five member nations of the Interior of BC which include Southern Carrier, St'at'imc, Secwepemc, Nlaka'pamux and Okanagan. The Interior Alliance collectively support each other in developing an alternate process to the BC Treaty process; one that would not involve the extinguishment of Aboriginal title in exchange for reduced treaty rights. The Alliance is committed to the implementation of Delgamuukw and is opposed to any extinguishment or partial extinguishment of Aboriginal title and rights.

Russel Barsh

University of Lethbridge

Russel Barsh has worked on land claims, treaty rights, and international advocacy for the Union of Nova Scotia Indians and Mi'kmaq Grand Council, and conducted research projects for the International Labour Organisation, the U.N. Development Programme, the U.N. Centre on Transnational Corporations, and Royal Commission on Aboriginal Peoples. He has taught law and policy at the University of Washington's Graduate School of Business Administration, and Native American Studies at the University of Lethbridge. A member of the advisory board of First Peoples Worldwide, an indigenous development foundation, he was a technical adviser in the adoption of the Calvert Group's indigenous rights "social screen," and continues to conduct research on corporations' impacts on the lands of indigenous peoples in Latin America and southeast Asia.

1:30 p.m. - 3:00 p.m.

MUSEUM OF ANTHROPOLOGY

Topic: TBA

TBA

FIRST NATIONS HOUSE OF LEARNING

3:30 p.m. - 5:00 p.m.

Closing

Augusto Willemsen Diaz

Guatemala

MUSEUM OF ANTHROPOLOGY

No event at this venue for this time slot