



THE CANADIAN
BAR ASSOCIATION
British Columbia

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FORUM

Autumn 2021
Issue 11, Volume 1



CBABC Aboriginal Lawyers Forum

Executive Update

By Randy Robinson, ALF Chair

The Aboriginal Lawyers Forum (ALF) is pleased to welcome its incoming Executive as well as new and existing Membership to the 2021-2022 year. The past year has presented our profession with both tragic news and tremendous milestones. The resilience and commitment of our Executive and Membership has carried us through.

As the incoming Chair, I am honoured to continue the important work of Past Chair Isabel Jackson. As ALF tackled the challenges of a global pandemic, Isabel's exceptional service and dedication has enhanced the professional experiences of Indigenous lawyers and students during a difficult time.

I gratefully acknowledge the tremendous work of ALF's Executive in 2020-2021. In particular, Michelle Casavant, Katelyn Crabtree, Robyn Gervais, Geordie Hungerford and Karena Williams.

With the devastating news of the discovery of missing Indigenous children's unmarked graves found at the Kamloops and the Merieval former Indian Residential Schools, ALF banded together to support the Indigenous and non-Indigenous legal community in dealing with the grief. ALF is indebted to the wellness services, sage wisdom and counselling provided by Chief Bill Williams and the Vancouver Aboriginal Health Society (VAHS) for jointly facilitating a Sharing and Support Circle. This initiative was led by former ALF Chair Adam Munnings who is on the board of the VAHS. ALF will continue to work on promoting genuine Truth and Reconciliation, starting with a review of the CBABC's Truth and Reconciliation Committee work and Action plan. You will be invited to participate in this review, and I look forward to hearing from ALF Membership as we move forward.

While the past year has presented many challenges, we have also witnessed significant accomplishments by our fellow Indigenous lawyers. We welcomed the first Indigenous National CBA President Bradley Regehr, the first appointment of an Indigenous Governor General Her Excellency Mary Simon O.C, O.Q, and the appointment of the first Indigenous president of the Nova Scotia Barristers' Society Tuma Young Q.C. We also raise our hands and honour the two historical judicial appointments in this past ALF year of Leonard Marchand, Jr. the first Indigenous person appointed to the B.C. Court of Appeal and Ardith Wal'petko We'dalx Walkem as the first Indigenous woman appointed to the B.C. Supreme Court.

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The ALF welcomes incoming Executive Board Members, Martin Buhler (Legislative Liaison), Christina Cook (Secretary), Shawnee Monchalin (Member at Large) and Sheila Simpson (Member at Large) to the 21-22 team. We are particularly proud to welcome back ALF Founding Member Christina Cook who is a welcome addition to our active group. I look forward to the gradual return to in-person meetings in the coming year. The ALF Membership can look forward to an in-person annual Holiday Banquet and Annual Retreat where we can once again come together in the spirit of collegiality, support and professional development.



Pictured Above: Isabel Jackson being presented with a thank you gift and cake at the September 1, 2021 ALF Executive Meeting by current Chair Randy Robinson; as well as a photo with current ALF Executive: Shawnee Monchalin, Randy Robinson, Isabel Jackson and Michelle Casavant, present at the meeting but not in the photo: Geordie Hungerford, Sheila Simpson and Christina Cook.

Law Society of B.C. Bencher Elections November 16, 2021 – Will You Run?

By Christina J. Cook

The LSBC has issued a call out for nominations for the upcoming Bencher Elections. The LSBC election will be held on Tuesday, November 16, 2021 for Benchers of the Law Society of British Columbia in all districts for a two-year term beginning January 1, 2022 and ending December 31, 2023.

The LSBC advises that 2021 Bencher election will be conducted in accordance with the *Legal Profession Act, Law Society Rules 1-20 to 1-44* and the Code of Professional Conduct. There is an expectation that candidates will conduct themselves in a courteous and professional manner. Further information can be found [HERE](#).

Currently, the only elected Indigenous Bencher is Karen Snowshoe. Ms. Snowshoe was elected a Bencher with the B.C. Law Society in May 2018. Ms. Snowshoe is the first Indigenous woman (second Indigenous person) to be elected in the Law Society's history (founded in 1884). In October 2019, Ms. Snowshoe was re-elected for her second term. ***Ms. Snowshoe's work at the Bencher table has been invaluable.*** Her dissent on the Bronstein decision alone shows how important it is to have Indigenous voices at the table.

As the Benchers consider various initiatives that affect Indigenous people; like the Truth and Reconciliation Task Force; mandated Indigenous Cultural Competency; and the Indigenous Engagement in Regulatory Matters Task Force, please consider and encourage Indigenous lawyers from across B.C. to run for Bencher in their area. More Indigenous voices and perspectives are needed at the LSBC Bencher table for the betterment of Indigenous lawyers and clients.

Congratulations to the Two Historical Indigenous Judicial Appointments

By Shawnee B. Monchalin

Justice Ardith (Walpetko We'dalks) Walkem

The Aboriginal Lawyers Forum of the Canadian Bar Association BC Branch congratulates Justice Ardith (Walpetko We'dalks) Walkem on her appointment to the British Columbia Supreme Court on December 14, 2020.

Justice Walkem is a member of the Nlaka'pamux Nation and is the first Indigenous woman to be appointed to the British Columbia Supreme Court. She graduated from McGill with a B.A. in Political Science and Women's Studies. She graduated law school at the University of British Columbia, and subsequently earned a Masters of Laws degree from UBC with a focus on Indigenous laws.



Justice Walkem began her legal career articling at Mandell Pinder and McDonald and Associates. She later practiced at her own firm, Cedar and Sage Law, providing her with extensive experience and knowledge working with Indigenous communities and organizations to advocate for their Aboriginal Title and Treaty Rights. In addition to being a lawyer, Justice Walkem acted as mediator within Indigenous dispute-resolution mechanisms. Justice Walkem has provided extensive education to the legal community on how to work effectively with Indigenous peoples. She co-chaired the Truth and Reconciliation Committee (TRC) advisory committee of the Law Society of B.C. and sat on the Continuing Legal Education Society of BC's TRC advisory committee, in order to encourage understanding and pursue reconciliation.

Justice Walkem has been a fierce advocate for the rights of children. She was the author of "Wrapping Our Ways Around Them: Indigenous Communities Child Welfare" (for the ShchEma-mee.tkt project) in support of Indigenous communities implementing their Indigenous laws around child protection and welfare, or to work within existing regimes. She has taken an active role in providing access to justice through her work with Legal Aid B.C., the Union of B.C. Indian Chiefs, and the B.C. Human Rights Tribunal (authoring "Expanding Our Vision: Cultural Equality & Indigenous Peoples' Human Rights").



Justice Leonard Marchand, Jr.

Aboriginal Lawyers Forum of the Canadian Bar Association BC Branch congratulates Justice Leonard Marchand, Jr. on his appointment to the British Columbia Court of Appeal on Wednesday, March 24, 2021 by Federal Justice Minister David Lametti.

Justice Marchand is a member of the Okanagan Indian Band and grew up in Kamloops. He graduated from the University of British Columbia in 1986 with a bachelor of science in chemical engineering. Justice Marchand attended law school at the University of Victoria when he graduated in 1994 and served as a lawyer for 17 years at Fulton and Company, where his practice focused on the liability of public authorities and appeared before all levels of court and administrative tribunals, until he was appointed as a provincial court judge in 2013. Justice Marchand was further appointed to the B.C. Supreme Court in 2017.

Justice Marchand is the son of the late Leonard Marchand, Canada's first Indigenous cabinet minister and first Indigenous Member of Parliament. Justice Marchand is well known by the legal and Indigenous community for his work in advocating for reconciliation and pursuing civil claims relating to child abuse in institutional settings and residential schools. In 2005, Justice Marchand assisted in negotiating participated as a signatory to the Indian Residential Schools Settlement Agreement, the largest class action settlement in Canadian history.

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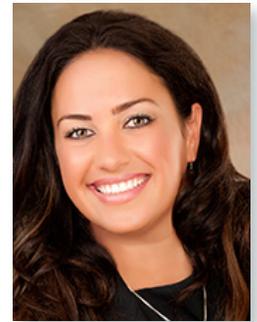
Justice Marchand’s career has inspired many Indigenous and non-Indigenous law students, lawyers, and judges. He served on the Oversight Committee for the Independent Assessment Process, and the Selection Committee for the Truth and Reconciliation Commission. Justice Marchand was one of few judges who had the opportunity to sit as a judge in First Nations Court, where Indigenous law is actively engaged in the Canadian legal system as Elders contribute to a healing plan for offenders. Justice Marchand was also the recipient of the ALF’s 2016 Special Contribution Award and he truly exemplifies the kind of recipient sought for the Award. He continues to demonstrate his outstanding contribution to Indigenous people and the law. Justice Marchand frequently takes time to engage with the legal community and speak at numerous events. He has paved the way for many Indigenous law students and the legal community thanks him for his career thus far.

Law Society of BC Truth & Reconciliation Task Force

By Nicole Bresser

In 2018 in reaction to calls to action 27 and 28 of the Truth and Reconciliation Commission, the Law Society of British Columbia established the Truth and Reconciliation Advisory Committee

(TRAC). The mandate of TRAC is to provide guidance and advice to the Law Society of British Columbia on legal issues affecting Indigenous people in the province, including those highlighted in the Truth and Reconciliation Commission’s Report and Recommendations, such as: Indigenous laws, the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, Aboriginal rights and title (including treaty rights), issues concerning jurisdictional responsibility for Indigenous people, child welfare, overrepresentation of Indigenous people in custody and the need for enhanced restorative justice programs, and the disproportionate victimization of Indigenous women and girls.



The 2021 Committee is currently comprised of Nicole D. Bresser (Co-Chair); Dean P.J. Lawton, QC (Co-Chair); W. Martin Finch, QC; Katrina M.L. Harry; Claire Marshall; Michael McDonald, QC; Christopher A. McPherson, QC; Terri-Lynn Williams-Davidson.

As with many of us, this year has been full of surprises and full of adaptations as we advise on matters such as: mentorship of Indigenous lawyers and students; guidance on the referendum regarding the Begbie statue; future work planning; and the creation of a task force in relation to the Bronstein decision.

Of considerable importance, this past year a substantial amount of time has been spent on advising on the Law Society cultural competency course. We are pleased to announce that we are in the pilot stage. During this time, all benchers and certain identified people will have access to the course so that we may obtain their feedback and incorporate suggestions. Stay-tuned for more updates to come.

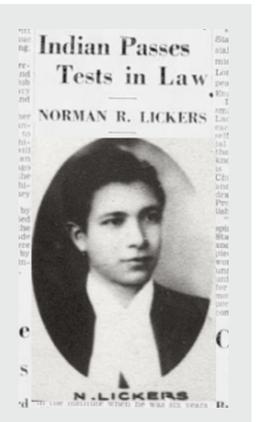
Although we consider the TRAC Action Plan to be a living document, that continues to be responsive to the needs of Indigenous Peoples, we encourage you to review the Action Plan on the Law Society website [here](#).

Did you know?

The First Status Indian was called to the Bar in Ontario in **1938**

His name was Norman Lickers; he was a member of Six Nations from Grand River in Ontario. His call to the Bar in 1938 made headlines across Canada, from Prince Rupert B.C. to Windsor Ontario. Between 1946 and 1948 he worked with the House of Commons & the Senate on a joint House-Senate examination of the Indian Act. Norman worked on the 1951 *Indian Act* amendments that removed the prohibition against Indigenous people filing land claims and hiring legal counsel.

You can read more about him and other historical Indigenous lawyers at: indigenoulawyerhistory.wordpress.com



STILL STANDING! 14th National Indigenous Peoples Day Auction 2021

By Isabel Jackson

We honestly did not think we would still be masking, distancing and unmuting by the time of our 2021 auction this year. We were grateful however that we were also counting silver linings, vaxing and ... **STILL STANDING!**

Many will recall that our previous auction in 2020 had a record-setting year in the midst of the COVID-19 global pandemic. By the time of this year's 14th annual 2021 auction we were anxious to see an end to the pandemic while keeping the record-setting momentum going. Our 2021 auction set yet another record this year raising **more than \$13,500!**

ALFers stepped up and continued to support the auction by donating auction items – including their own unique creations, soliciting auction items to be donated, bidding on auction items, sharing the link to the auction, making direct donations, etc. We are especially grateful to our donors who have made it easy to continue having the auction in the middle of an ongoing pandemic. They have become adept at staging photos and providing enough detailed information to enable descriptions that are then so cleverly and creatively drafted that it's fun just to browse the auction website.

Special recognition goes to artists Wendy Waddell, Paige Wilson and Tanya Anne Cardinal (Cold Lake AB) who created pieces in honour of:



Residential School Survivors and Victims



Murdered and Missing Indigenous Women and Girls



Our Veterans

In these quaran-times the auction has been a good opportunity to support local businesses and services struggling to stay open. Their gift cards and gift certificates were win-win donations.

The ALF is the first and still the only forum of its kind in the CBA nationally. The ALF's mandate is to enhance the stature and influence of Indigenous people in the legal profession, a cultural imperative. The ALF remains particularly committed to supporting Indigenous students - our future **Legal Warriors** - through financial awards and subsidizing their attendance at the ALF's signature events.

"If you build it they will come." We have already started building next year's **15th Annual National Indigenous Peoples Day Auction 2022** website. If you have something to donate or would like to contribute in any other way to the success of our annual fundraiser please let us know.

Please watch the ALF Facebook page, and CBABC notices for details on upcoming events!

If you have any questions, please email: ALF Chair, [Randy Robinson](mailto:Randy.Robinson@cbabc.org).



Would you like to contribute to the next Forum Drum? Do you have good news to share? Email us at ALF@cbabc.org.

A View From the Bench: Interview with Judge Linda D. Thomas

By Christina J. Cook

A young man recently sat in a northern courtroom, awaiting his sentence. He had been convicted of a serious crime that would see him serve a five-year prison term. His mother and grandmother solemnly sat in the gallery looking scared and tired, waiting for consequences and judgement. As Judge Linda Thomas spoke in her sentencing decision, she addressed the young man directly. She told him that there was still hope — that this was his chance to change his future. Even though he was facing sentencing this was an opportunity for him to right his path and turn his life around. She told him that it wasn't too late; he could still do something more constructive with himself with education and training.

Her words, though sincere, did not appear to reach him.

"Nah," he muttered. "I didn't even graduate high school."

"I didn't either," she responded.

The room grew silent. With three little words the accomplished, eloquent and powerful judge related to the young man, offering him hope in a seemingly hopeless situation. It could have been a scene out of a movie; Two people seated in opposite ends of the courtroom, living in completely different worlds, shared a similar life experience and an unlikely connection.

Prior to sentencing Judge Thomas had read the young man's Gladue Report. He experienced hardship throughout his life, being involved with a gang from a young age. He was selling drugs when he was just 10-years-old. The young man was hardened and could not see the potential for change in his life. But in that moment when Judge Thomas shared her own experience and the commonality, they shared she had his attention. As the sentencing wrapped up, the young man, his mother and grandmother as well as the clerk and the lawyers in the courtroom were all wiping away tears. Before the judge exited, she requested the sheriff to allow the young man to have a time with his mother and grandmother before being escorted away.

Later in the day following the sentencing, the young man's defence lawyer returned to court on behalf of the family to thank Judge Thomas for the way she connected with the young man and for allowing the family for the brief time together. Judge Thomas' clerk commented later that she had never seen anything like that – A judge relating to the accused on such a personal level and the whole room moved to tears because of it.

It was a special moment. That is how Indigenous Judge Linda Thomas conducts her courtroom in Williams Lake.

She brings with her to the bench her traditional values and teachings and works collaboratively and empathetically with the people appearing before her. Her lived experience as an Indigenous woman, mother, and grandmother is worn right on her sleeve. Judge Thomas says being a judge is a big responsibility and can be exhausting at times, it is rewarding as she enjoys helping people and to be practical in solving their legal issues. She says it's important to see each person before her as an individual, to see their humanity and try to understand them.

Judge Thomas has been on the Provincial Court for three years and she continues to make a big impact at the Williams Lake Court House. She also sits in Williams Lake Indigenous Court and Prince George Indigenous Court. At the time of her appointment to the Provincial Court, Judge Thomas was the Executive Director of Secwépemc Child and Family Services; a board member of the Legal Services Society of BC; a member of the Minister's Advisory Council on Indigenous Women; and an advisory council to the BC Minister of Indigenous Relations and Reconciliation. She led the establishment of the Cknúcwentn - First Nations Court in Kamloops; a provincial sentencing court for Aboriginal people.

Representation matters, Indigenous voices and perspectives in positions of power matter; and Judge Thomas is a shining example of this and an inspiration.

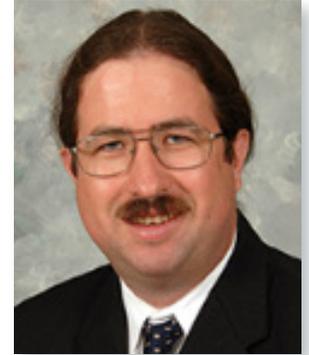


Would you like to contribute to the next Forum Drum? Do you have good news to share? Email us at ALF@cbabc.org.

Teaching Transsystemic Laws at University of Victoria

By Dr. David Milward

The University of Victoria started the world's first ever joint degree in both Common Law and Indigenous Legal orders in 2018. It had been a long time in the making, the product of years of work by Val Napoleon, John Borrows, Jeremy Webber and many others. The University of Manitoba was a wonderful place to start my career as a law professor. Robson Hall has wonderful faculty and students, and a dedicated interest in Indigenous legal issues. But I could not contain my excitement from 2017 onwards when I learned of the vision that the University of Victoria had for its new program. All first year courses, such as Constitutional Law or Criminal Law or Property Law, would be taught as transsystemic courses. For example, it was anticipated that John Borrows would teach Anishinaabe Law alongside Canadian Constitutional Law, and Val Napoleon would teach Gitksan Property Law alongside Canadian Property Law. There would also be field schools, where students would get to experience Indigenous legal orders as a daily lived experience and not just something to read about from a book. It was with the utmost relief and elation that I accepted the University of Victoria's offer to join their program.



One of my key responsibilities since the move has been to teach a course that includes both Canadian Criminal Law and Cree Law that governs social conflicts. And the experience has been everything that I hoped it would be. The class discussions and intellectual exchanges are of a kind that I do not believe are possible in first year courses in other law schools. And the reason for that is students right away begin to learn that there may be similarities between Canadian law and Indigenous legal orders, and yet Indigenous laws can come up with very different and yet still valid answers to the same questions Canadian law tries to provide answers for.

For example, Canadian law refuses to impose a general duty to assist others who may be in danger. Reasons include fears of extending state power to coerce people in situations they may not be able to handle, and the difficulties around being able to delineate what is and what is not an acceptable degree of risk. Cree Law does impose a general duty to assist, subject to the assistance being within a person's capabilities. Another example is that Canadian law makes a distinction between true criminal offences and regulatory offences. The former are seen as inherently wrong and blameworthy, and can therefore be justifiably addressed with incarceration and the stigma of being a criminal. The latter address actions that are not seen as inherently wrong or blameworthy in isolation. But regulatory offences typically address such actions (e.g. overfishing, hunting out of season) with fines out of a perceived necessity to limit harm to larger society. The laws of the Cree and many other Indigenous societies see actions such as hunting without need, overhunting, hunting out of season, or letting slain animals go to waste, as inherently wrong actions that need to be punished as blameworthy. Indigenous legal thought would regard the dichotomy constructed by Canadian law as a false one.

I do not exaggerate when I say that teaching the Transsystemic Criminal Law course really does not feel like work for me. I look forward to having the discussions and intellectual exchanges with my students. And I can say I have seen the eyes of many of my students light up as they experience Eureka moments as they learn the content of both legal orders and appreciate both the similarities but also the very real differences between them. Being part of the program is truly my dream job, and I have no desire to be anywhere else or do any other work than where I am now. In fact, I have also done several public presentations on the program. And I have had audience members tell me afterwards that they wish they had waited a little longer before starting law school, or wishing they could do law school over again in the program. For anyone wanting to come to law school with an interest in Indigenous legal issues, I would strongly recommend giving the University of Victoria program serious consideration. I am convinced that it now offers the best degree and education possible in Indigenous legal issues. The doors are open.

BC PROVINCIAL COURT: Call for Applications for Judicial Appointments as Part Time Judicial Justice

The Judicial Council of B.C. is looking for applicants from diverse backgrounds who have had a minimum of 5 years active practice as a lawyer in Canada & who are interested in part time adjudication work as a Judicial Justice of the Provincial Court at various locations throughout the province. For more information please visit the BC Provincial Court posting [HERE](#).

2021 Marks 50 Years Since the Honourable Alfred Scow became Canada's First Indigenous Judge

By Christina J. Cook

On September 13, 1971, Alfred Scow, hereditary chief of the Kwikwaka'wakw First Nation on Gilford Island, was appointed a judge of the BC Provincial Court, becoming the first Indigenous person appointed to the bench in Canada. Judge Scow also has the distinction of being the first Indigenous person in B.C. to attend law school and be called to the bar.

Judge Scow's legacy was recently commemorated by the B.C. Provincial Court in an article that features warm comments from Judges Marion Buller; Tina Dion and Karen Whonnock (read the article [here](#)).

Judge Scow graduated UBC Law in 1961 becoming the first Indigenous person to obtain a law degree in B.C. In an interview with the UBC Law Alumni Magazine he recalled, "It was a real struggle for me to get through law school". However, he said his timing proved perfect. "If I had graduated before 1961," he explained, "I could not be called to the bar, because Aboriginal people in Canada were not citizens."

Prior to his appointment to the bench, Judge Scow practiced law in Vancouver, then became a City Prosecutor for New Westminster, chair of the board of review for the Workmen's Compensation Board and completed a two-year assignment to Guyana on the Amerindian Lands Commission. Judge Scow served on the bench for 21 years, retiring in 1992. After his retirement he remained active in the Indigenous community and Indigenous legal community. In 1997 he received an honorary Doctor of Laws (1997) from the Allard School of Law; in 2000 he was awarded the Order of Canada in 2000 and in 2004 the Order of BC. In 2001 Judge Scow founded the Scow Institute for Communicating Information on Aboriginal Issues, and in 2006 he co-authored the children's book Secret of the Dance.

Judge Scow passed away on February 26, 2013 at the age of 86; however his legacy continues. Judge Scow has been an inspiration to Indigenous lawyers in B.C. and across Canada. The entire Aboriginal Lawyers Forum stands on the shoulders of Judge Scow and we raise our hands to him.



SAVE THE DATE

**ALF HOLIDAY BANQUET
NOVEMBER 26, 2021**

**KEYNOTE SPEAKER: BRADLEY REGEHR,
2020 CBA NATIONAL PRESIDENT**

FAIRMONT WATERFRONT - VANCOUVER

UBC Indigenous Legal Studies Program Update

By Lee Schmidt

This summer, Indigenous Legal Studies (ILS) at the Peter A. Allard School of Law, University of British Columbia, successfully offered an ambitious pilot: the 5 credit **ILS Summer Intensive in Torts** to the incoming Indigenous JD student cohort from May 11th to June 30th, 2021.



**PETER A. ALLARD
SCHOOL OF LAW**
THE UNIVERSITY OF BRITISH COLUMBIA

The Intensive course was offered three full days a week, and students could participate either in person or online, or a combination of both formats, using in class instruction, zoom technology and Canvas, the online course platform used by UBC. Incoming Indigenous students from across the country, and from the US, were welcomed to the ILS Intensive with a poignant opening welcome by Musqueam Elder Larry Grant, Dean “Pro Tem” Janine Benedet and Indigenous Legal Studies Academic Director, Darlene Johnston.

Over the course of the 7 weeks, in addition to substantive torts content led by Professor Anne Uteck, several Allard professors offered introductory lectures in first year law subjects, including those teaching the first year mandatory Indigenous Settler Legal Relations course, and professor, staff and student led sessions on challenges studying colonial law. The Intensive included sessions orienting students to studying at UBC such as well being, counselling and accessibility resources, the Indigenous collegiate and the First Nations House of Learning, financial aid and awards, and the Allard and Xwi7xwa Libraries. Indigenous lawyers and alumni generously participated in panels on Indigenous ways of interpreting tort law, Indigenous perspectives on the reasonable person, and advice on succeeding in law school.

All in all, focusing on skills-based teaching, mentorship and study skills workshops by current upper year Indigenous law students, the participation of Elders Larry Grant and Kat Zucomulwut Norris, IRSSS Counsellors Shirley David and Yvonne Jones, providing a dedicated space for cultural ceremony, circles and reflection prior and during class ALL helped to ensure the atmosphere of the Intensive was one in which students were encouraged to learn, and connect with each other in a way that facilitated both learning and community with an Indigenous perspective.

The ILS Intensive Planning Team was comprised of, Professor Anne Uteck, Intensive lead and taught the substantive torts content, ILS Associate Director Lee Schmidt who coordinated the Intensive and the additional non torts content, ILS Academic Director Professor Darlene Johnston, Professor Nikos Harris who is faculty lead for the ILS Academic Leadership Certificate, and Indigenous law students Verukah Poirier, who coordinated the ILS JD Mentorship Program and acted as group mentor, Rikki Logan who coordinated the technology, the online platform and worked closely with Professor Uteck on the torts content, and ILS Coach Cassandra Sawers, who offered additional tutoring during the summer which will continue into the 2021-22 academic year.

Contributing lawyers and/or UBC alumni included: Aaron Wilson, Stephen Mussell, Terri-Lynn Williams Davidson, Nigel Grenier, Maira Hassan, Micah Clark, Katrina Harry, Greg McDade, Nancy Smith, Bruce McIvor, Victoria Watson, Dawn Johnson, Keith Brown, Darwin Hanna, Tamara Starblanket, Tamara Pearl, Harold Johnson, and Provincial Court Judge Alex Wolf.

The Intensive culminated with a closing circle in which the students reflected on how they have grown together and managed to complete such a feat of endurance during a global pandemic. During the closing circle, the ILS Intensive Team announced the winners of the ILS Spirit Award, which is a new award given to students who displayed exceptional community spirit throughout the Intensive. The recipients of the ILS Spirit Award were Gabriel George of the Tsleil-Waututh Nation and Sara Finnegan of the Metis Nation.

It was an honour to provide the incoming Indigenous law students this opportunity to gain skills prior to the overwhelming rigour of first year law, as such we raise our hands to the donors who made the **2021 ILS Summer Intensive in Torts** a reality by providing funds for the course budget and the allocation of ILS Intensive Awards to each of the registered students to offset tuition costs. We also heartily thank all those who participated and generously gave of their time and expertise to ensure the students feel prepared for full time study in the fall.

September 30, 2021 – National Day for Truth and Reconciliation

September 30, 2021 marks the first National Day for Truth and Reconciliation – a day for all Canadians to observe and reflect on the tragic history and ongoing legacy of residential schools and honour their survivors, their families and communities.

CBABC has compiled a list of resources available for further education and understanding of residential schools and Indigenous Cultural Competency, including the CBABC Reconciliation Toolkit and the on-line course The Path, which can be found [HERE](#).

On September 30, 2021 and throughout the year the topic of residential schools and genocide is so painful for our Indigenous lawyers. The ALF encourages our members and Indigenous communities to reach out for support and take the time for your own mental health and self-care.

If you, or a family need support please note that the [Indian Residential School Survivors Society](#) has a 24/7 support line available for all residential school survivors, family members and descendants, and traditional counsellors are available upon request. Please call 1-800-721-0066 or 1-866-925-4419.

CBABC BarTalk - Indigenous Matters

By Isabel Jackson

In the most recent August 2021 issue of the CBABC *BarTalk* magazine ALF member Malcolm Macpherson wrote for the *Indigenous Matters* column on [“The Keystone XL Cancellation — Indigenous Nations Hold the Key to Moving Forward”](#). He writes about the mixed views on the topic within the Indigenous Nations of Canada.

BarTalk

BarTalk magazine discusses legal news and issues from across BC. It is published six times per year by the CBABC. The *Indigenous Matters* column is a regular feature in *BarTalk*. It provides an Indigenous perspective on legal news and issues that are particularly relevant to Indigenous people.

If you are interested in contributing an article to Indigenous Matters please contact isabel.jackson@justice.gc.ca. Below are upcoming *BarTalk* themes and deadlines. Please note however that the *Indigenous Matters* column is not necessarily limited by the *BarTalk* theme. If there is a particular topic you would like to write about please let us know.

October 2021 — Family Law;

December 2021 — Criminal Law;

February 2022 — Law after COVID (Copy deadline January 7, 2022)

April 2022 — The Law of Ownership: Property, Real, Intellectual, and Cultural (Copy deadline March 4, 2022)

June 2022 — Career Transitions (Copy deadline May 6, 2022)

August 2022 — STEM (Science, Technology, Engineering, Mathematics, and the Law (Copy deadline Thursday, June 30, 2022)



#919 Métis Descent vs the Race-Shifters

A Book Review of “Distorted Descent: White Claims to Indigenous Identity by Darryl Leroux”

Reviewed by David Milward

Republished with Permission from The Ormsby Review Find the original [here](#).

The arrival of Europeans on the shores of the Americas centuries ago made certain results inevitable. The colonization of Indigenous peoples, with its attendant atrocities and exploitation, certainly constitute a great many of those results. Another inevitability was intermarriage between the European arrivals and the Indigenous residents. That in turn meant significant generations of people of mixed ancestries. In fact, mestizo is a centuries’ old Latin American term often meant to describe someone descended from both Spanish (or Portuguese) and Indigenous ancestors. And miscegenation between Europeans and Indigenous peoples in turn meant that Indigenous identity would forever after become a subject of incredible controversy and debate.

The Métis, whomever they may be, present a prime example of the kinds of controversies that can surround claims to Indigenous identity. I myself have frequently been asked if I am Métis, which is understandable since many Indigenous peoples themselves equate the term with anyone of mixed Indigenous ancestry. My answer has always been no, and that I am a member of a Cree First Nation through my mother. My answer is not driven by shame, but out of a sense that it would be a disservice to Métis people themselves to make a claim that I do not feel I merit. It reflects an understanding shared by many other Indigenous peoples that the definition of Métis people necessarily has to include cultural and historical elements as well. Métis cultures have, over the decades, evolved their cultures to include elements of both Indigenous and European (especially French and Scottish) cultures. The Métis also have their own language, michif, which again reflects both Indigenous and European elements.

Sometimes claims to Indigenous authenticity and heritage can be a source of debate and strife among Indigenous peoples themselves. Claims to the benefits of legislation such as the Indian Act, including the right to vote in band elections and access to financial benefits, are often at the heart of such disputes. Sometimes it is deeper than just tangible benefits. Questions of identity are also bound up with differing perspectives on to what degree can an Indigenous person immerse him or herself in the lifestyles of the colonizers and yet retain a sense of authenticity. Where is the line that separates legitimate cultural evolution and inevitable syncretism from betrayal and inauthenticity? And who gets to decide where those lines are drawn?

These questions seem controversial and difficult in their own right, even within recognized Indigenous communities themselves. What happens when people of dubious claims to Indigenous community and lineage start to assert themselves as legitimate claimants to Indigenous identity? That theme is the focus of Darryl Leroux’s new book, *Distorted Descent: White Claims to Indigenous Identity*. Leroux spends the early portions of his book describing the various genealogical techniques by which organizations and their members, who can fairly be considered settler instead of Indigenous, lay claim to Indigenous identities. And some of those techniques can feel like the proverbial pulling of a rabbit from the magic hat.

There is for example the technique of Lineal Descent, claiming to be descended from an identifiable Indigenous ancestor who shows up in a pronounced way in historical materials. The convenience manifests when simply identifying that ancestor is considered enough to establish a claim to Indigenous identity, without any painstaking and robust genealogical processes of verifying Indigenous inheritance from that ancestor through the generations and all the way to the claimant.



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An example of the lineal descent technique that Leroux focuses on is an Indigenous woman named Marie Sylvestre, who is apparently the basis for many settler claims to Indigenous identity. That the evidence suggests that her surviving children were raised in a French-Canadian community, and not much else beyond that, strongly suggests that establishing such a chain may be challenging to say the least. But it is enough for the “race shifters” to pin their claims on Sylvestre as an ancestor, or a few other notable Indigenous women Leroux identifies.

Another technique is what Leroux terms Aspirational Descent, constructing someone from the past as an Indigenous ancestor, even though any evidentiary basis to conclude that past person was actually Indigenous may be questionable to say the least. Francoise Grenier is one of the most frequent examples that showed up in Leroux’s research. And then there is Lateral Descent, where direct descent from the past Indigenous figure may not necessarily be established, but the claim to Indigenous identity can be established by claiming descent from a family member of that identifiable figure.

Leroux next focuses his attention on how legal developments have led to a definite irony. Section 35 of the Constitution Act, 1982, is the Aboriginal rights provision of Canada’s constitution. An outstanding question until 2003 was how the rights of Métis people, who are explicitly mentioned in s. 35, were going to be framed. Métis people were in anxiety because judicial interpretation of s. 35 had limited Aboriginal rights to those that were practiced prior to contact with Europeans. The obvious source of anxiety is that Métis peoples are themselves the products of extended contact between First Nations and European settlers. The Powley decision from the Supreme Court of Canada was an effort to answer those fears. A different temporal cut off point was provided for the Métis, when Canada asserted legal control over territories they resided in.[1] Powley was an effort to open a door that many feared had been closed against those who merited being let into the benefits of s. 35 rights. The irony is that the act of opening that door has become an invitation to people who were never contemplated as beneficiaries of s. 35 at its inception.

Leroux details two such examples. One is the Communauté métisse du Domaine du Roy et de la Seigneurie de Mingan (CMDRSM), a white settler organization that opposed Innu land claims and hunting rights around the St. Lawrence River. Their opposition had prior to Powley been limited to channeling public opinion and political will against the Innu. They joined the Corneau case as new plaintiffs staking a claim to s. 35 rights under Powley as a “Métis” community, a claim to the same land being claimed by the Innu.[2] The other example is the Métis Nation of the Rising Sun, another white settler organization that began several “Métis” rights cases of its own to foil Mikmaw hunting and fishing rights in the Gaspé Peninsula.

The irony is that these “Métis” claims come from people against whom s. 35 rights were meant to demand redress from, and who were not at all envisioned by anyone in 1982 as being potential beneficiaries of s. 35. Race-shifting techniques of genealogy have allowed white settler organizations to give constitutional and legal teeth to their opposition to Indigenous rights, where previously they were limited to trying to muster political will. Leroux is entirely correct when he condemns the whole phenomena as a more creative form of colonialism, and one that is contrary to the spirit of s. 35.

Distorted Descent is a fascinating book that I can recommend for anyone interested in Indigenous rights, or, for that matter, anyone interested in controversial questions of race and identity.

Endnotes:

[1] R. v. Powley, [2003] 2 S.C.R. 207.

[2] Corneau c. Quebec, 2016 QCCA 1835.

David Milward is an Associate Professor of Law with the University of Victoria, and a member of the Beardsy’s & Okemasis First Nation of Duck Lake, Saskatchewan. He assisted the Truth and Reconciliation Commission with the authoring of its final report on Indigenous justice issues, and is the author of *Aboriginal Justice and the Charter: Realizing a Culturally Sensitive Interpretation of Legal Rights* (UBC Press, 2013), which was joint winner of the K.D. Srivastava Prize for Excellence in Scholarly Publishing and was short-listed for Canadian Law & Society Association Book Prize, both for books published in 2013. David is also the author of numerous articles on Indigenous justice in leading national and international law journals. Editor’s note: David Milward has also reviewed books by Bob Joseph with Cynthia F. Joseph, Elspeth Kaiser-Derrick, David B. MacDonald, and Darrel J. McLeod for *The Ormsby Review*.

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CLEBC's Board Truth and Reconciliation Committee ("TR")

By Chair Michelle Casavant

This season has been very heavy with grief for many Indigenous people. One of the teachings I have recently learned is that our people used to have a year to grieve. During that time, other families would help take care of us if we were grieving, by cooking, gathering, or hunting. There was a safety aspect to not hunting or gathering during this time. We understood that grieving changes us. That we are easily distracted during this time, which could pose a danger to ourselves and others. We understood that we needed this time so that we would be able to come back and contribute in a good way.

Under the colonial system we currently live in, where time and efficiency are important, we don't have this ability anymore.

I have found that my grief during this season ebbs and flows. Some days/moments, I feel completely overwhelmed and drowning. At other times, I feel easily distracted. There are many more residential schools that still have to report the remains found in unmarked graves. I will continue to smudge each time, and pray for those whose lives ended too early, for their families and communities, for you and for me.

As a member of CLEBC's Truth and Reconciliation Board Committee, I recently led a reflection, did a smudging, and shared a video of my daughter doing a jingle dress dance with the CLEBC Board and staff in recognition of the remains found in unmarked graves and as a way to share how we grieve. The Truth and Reconciliation Committee has been doing some great work the past few years. You can find the CLEBC Truth and Reconciliation Action plan [here](#).

As of August 2021, the members of the committee are: Michelle Casavant, (Chair), Chief Leah Sisi-ya-ama George-Wilson, (Indigenous Liaison), Professor Gerry Ferguson, Melanie Mortensen, Nina Purewal, QC, and staff members, include: Linda Russell, Rob Seto, Teresa Sheward, Joy Tataryn, and Jenny Leung.

Ardith Wal'petko We'dalx Walken QC [as she then was] vacated her role as Chair of the Truth and Reconciliation Committee in 2019. I replaced her as Chair at that time. In 2020 when she was appointed to the BC Supreme Court, the first Indigenous woman appointed to the BC Supreme Court, Chief Leah Sisi-ya-ama George-Wilson became the Indigenous Liaison.

CLEBC has made it a priority to offer courses with an Indigenous focus including their bi-annual Indigenous Legal Orders Conference. This year, other courses were offered including included Government-to-Government Agreements & Implementation, Child Protection Conference, and Confronting Racism in the Criminal Justice System. This last course was offered free of charge as a public interest program.

Another commitment CLEBC made in its strategic plan was to focus on board and staff education on Indigenous issues. This year, Andrea Hilland facilitated a discussion around the latest edition of "But I Was Wearing A Suit 2" - the second video in this series, available for viewing on YouTube.

CLEBC has committed to implementing TRC Call to Action #27, "We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the UNDRIP, Treaties and Aboriginal rights, Indigenous law, and Aboriginal - Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights and anti-racism."



Did you know?

The **Golden Eagle Rising Society** has created a trauma informed practice resource tool kit for members of the legal profession. The Tool Kit is designed to educate legal professionals on how to avoid or minimize the re-traumatization of traumatized persons who engage with our legal systems for the purpose of seeking protection, recognition or redress within our legal systems; and to educate legal professionals on the symptoms of vicarious trauma and create a self-assessment tool so as to minimize our own risk of vicarious trauma when working with traumatized persons or graphic and disturbing evidence. Get your copy of the Trauma Informed Practice Resource Tool Kit [HERE](#).

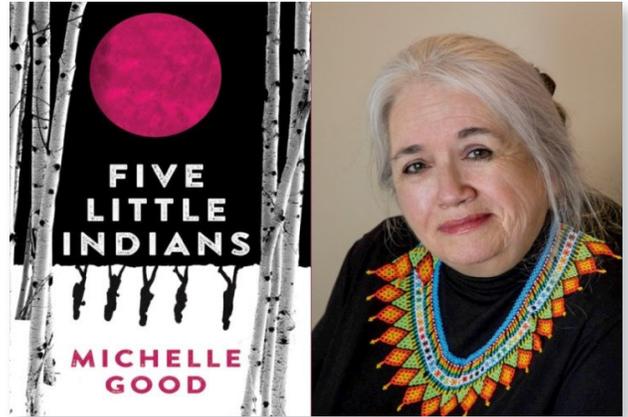
B.C. Indigenous Lawyers Making a Splash in the Literary World

Congratulations to B.C. Indigenous lawyer Michelle Good on the success of her book: *Five Little Indians*

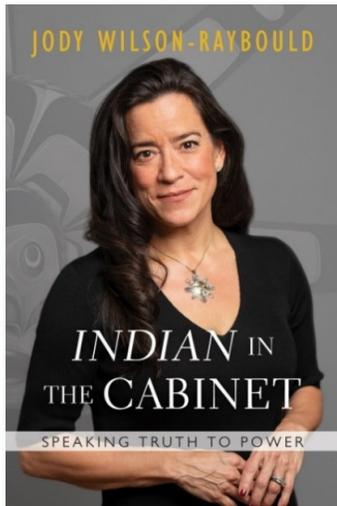
Michelle Good, noted Indigenous lawyer, has won acclaim for her first novel *Five Little Indians*, including the 2020 Governor General's Literary Award for fiction; the HarperCollins/UBC Best New Fiction Prize; and the 2021 Amazon Canada First Novel Award.

It was also reported in June 2021 in *The Hollywood Reporter* that Prospero Pictures Producer Martin Katz is set to Adapt 'Five Little Indians' a limited-series for TV. Cree Metis writer Shannon Masters will write and showrun the limited-series take on Michelle's novel.

A Big Congratulations to Michelle on her literary and TV success!



Congratulations to B.C. Indigenous lawyer Jody Wilson-Raybould on the publication of her latest book: *Indian in the Cabinet*



Indigenous lawyer Jody Wilson-Raybould has recently released her latest book *Indian in the Cabinet*. Jody is a member of the We Wai Kai Nation and a descendant of the Musgamagw Tsawataineuk and Laich-Kwil-Tach peoples who are part of the Kwakwaka'wakw and Kwak'waka-speaking peoples. Jody a graduate of UBC Law Class of 1999, also has the esteemed distinction of being the First Indigenous Justice Minister in Canada.

Jody's new book details her experience in politics and speaking truth to power. In a September 2021 *McClean's* interview, she is quoted saying that she hopes her book "creates discussion around what I think have been really important themes in our politics right now and for our country."

Jody also notes in her interview to *McLean's* that she hopes to work updating a governance toolkit for Indigenous Nations. The current toolkit is available on the BC AFN website [HERE](#) and is an amazing resource for First Nations governance.

A Big Congratulations to Jody on her latest book!

Did you know?

The First Inuk Person to be Called to the Bar in Canada was in 1983!

His name is Kiviaq. Kiviaq fought to change his legal name from David C. Ward to his original birth name. Vital Statistics argued he couldn't have just one name, as Inuit have traditionally used for millennia, but he appealed his case and won in 2001.

You can read more about him and other historical Indigenous lawyers at: indigenouslawyerhistory.wordpress.com

