

Summit on Aboriginal Economic Development: Developing Aboriginal Economies

May 1, 2008

Bennett Lecture Hall, Faculty of Law, University of Toronto

Morning Welcome:

1. Professor Douglas Sanderson began the day by welcoming everyone in several different languages. He then expressed his gratitude to the many sponsors of the Summit; the Faculty of Law at the University of Toronto, the Law Foundation of Ontario, the Province of Ontario, and Indian and Northern Affairs Canada. Everyone was then invited to stand for a prayer by Elder Joanne Dallaire.

Prayer by Elder Dallaire

2. Elder Dallaire also greeted the room in several different languages. After her greetings, she reminded the room of the practice in First Nations traditions of “offer[ing] something of ourselves before we ask anything of anyone else.” She then introduced herself as a woman of Attawapiskat ancestry from Mattice, Ontario. Elder Dallaire then led the room in a prayer which she revealed was one of her favorites. She asked that we listen to it with our hearts, and hoped that it would help us with our work. Elder Dallaire began the prayer in her ancestral language, announcing her name, Shadow Hawk Woman, and her clan, Omushkego Swampy Cree. She then prayed in English, as follows:

I say Chi Meegwetch, Creator of each and every person who stands
in this room,

I call upon our ancestors, our spirit helpers and our clans to come
assist in today's good work.

I ask that we may be of open mind and of open heart.

I ask that you watch over each of us, our families and our loved
ones.

And I offer you this prayer for the direction of the day.

O Great Spirit, whose voice I hear in the winds,

Whose breath gives life to the whole world.

Hear me.

I come before you, one of your children,

I am small and weak,

And I need your strength and wisdom.

Let me walk in beauty.

Make my eyes ever behold the red and purple sunset.

Make my hands respect the things that you have made,

My ears sharp to hear your voice.

Make me wise so that I may know the things you taught my people,
the lessons you have hidden in every leaf and rock.

I seek strength not to be superior to my brothers and sisters, but to
be able to fight my worst enemy, myself.

Make me ever ready to come to you with clean hands and straight
eyes (with the truth)
So when life fades like a fading sunset, my spirit may come to you
without shame.
Meegwetch.

Introduction:

3. Following Elder Dallaire's prayer, Mayo Moran, Dean of the Faculty of Law at the University of Toronto, enthusiastically welcomed everyone to the Summit on behalf of the Faculty of Law. She explained that the Summit was the result of a conversation she had had with the Right Honourable Paul Martin in which Mr. Martin expressed a desire to speak with Aboriginal students at the law school. Professor Darlene Johnston helped gather students and alumni to meet with Mr. Martin for an interesting discussion about economic challenges facing Aboriginal peoples today. Using that meeting as a springboard, Professor Douglas Sanderson organized a capstone course at the faculty featuring several prominent guest lecturers, including; the Rt. Hon. Mr. Paul Martin, and Professors John Borrows and Darlene Johnston. The Summit, Dean Moran explained, was a way to publicly share and discuss some of the thoughts, plans, and ideas that had emerged in the capstone course.
4. With this background information in mind, Dean Moran introduced the key note speaker, Rupert Ross. Mr. Ross is an alumnus of the Faculty of Law and a distinguished author with a long standing relationship with Aboriginal communities in northern Ontario. He first became aware of some of the challenges facing Aboriginal peoples of northern Ontario while working as a fishing guide in the 1960s. After graduating law school in 1980, he practiced criminal law in Kenora, Ontario and continues to work with Aboriginal communities in northern Ontario as an Assistant Crown Attorney. Through his work, he has witnessed first hand the debilitating effects of poverty and the troubling consequences that a lack of access to justice have had on Aboriginal peoples. Mr. Ross has written two books, *Dancing with a Ghost*¹ and *Returning to the Teachings*², which are considered landmarks for their role in increasing the understanding of their readers of the challenges for Aboriginal peoples in Ontario interacting with the criminal justice system.

Key Note Speech by Mr. Rupert Ross:

5. As he prepared to begin his keynote speech, Mr. Ross revealed to the audience that the prayer Elder Dallaire shared was one of his favourite prayers as well. He made specific reference to the part of the prayer about finding lessons under every leaf. The image of lessons under leaves also turned out to be an apt description of the keynote speech as a whole. Using what may be considered examples of leaves in his career, Mr. Ross shared with the audience his story of learning from First Nations peoples and his insights into how the lessons he learned may be applied to criminal justice, mental health and therapy, global business, and Aboriginal development. Mr. Ross told the story of how, at a Royal Canadian Mounted Police (RCMP) meeting with Aboriginal youth in attendance, Cree Elder Marie Sinclair passed along her teachings to the young people. She said she had figured out that

¹ Rupert Ross, *Dancing with a Ghost* (Toronto: Penguin Canada, 2006).

² Rupert Ross, *Returning to the Teachings: exploring Aboriginal justice* (Toronto: Penguin, 2006).

how you know you've lived a good life is when you can look back in four or five years and say; "gee, I really didn't know much back then." Mr. Ross told the audience that he loved that image of life not being about collecting a stockpile of answers but rather about the questions that get deeper as we get older, making it easier for us to say; "I don't know". Mr. Ross also noted that once you realize that you would change your advice to yourself every four or five years, why would you give advice to anyone else? This was a hard lesson, especially for a lawyer. The reason, Ross shared, that he begins presentations with this story is to remind himself that all he can do is tell his stories. What meaning they may or may not have to the audience is up to each individual's life experience and the things they are working on. These stories are not advice, but are rather offered for the conclusions which can be drawn from them.

6. Mr Ross began his story by sharing that when he first began his work in Northern Ontario, he thought that Aboriginal peoples were "just like [him] but more primitive." However, he soon learned he was wrong. He came to realize that First Nations peoples had different metaphysics and different cultures from that with which he was familiar. From that realization, he also learned that to work effectively with First Nations peoples he had to learn about and understand this different culture.
7. Mr. Ross shared with us several illustrations of how being unfamiliar with First Nations customs, ethics, and codes had led to misunderstandings and other negative consequences. He recalled the time he thanked Elder Able Ray from Sandy Lake for his help on several court cases, using Western conventions; words of praise and thanks while looking someone in the eye, and shaking his or her hand. Through the guidance of teacher and friend, Charlie Fischer, Mr. Ross learned that his method of thanking Elder Able Ray was not only different from Aboriginal customs, but had been the direct opposite of the Aboriginal method of thanking someone. Mr. Fischer explained to Mr. Ross that in the Aboriginal tradition, when thanking or praising someone for their work, one asks that person to continue with what he or she has been doing rather than singling that person out and directly praising them. This is because in Aboriginal cultures, no one person wants to be seen as being better than anyone else. As well, while the practice of maintaining eye contact is a sign of respect in Western custom, it is a sign of disrespect in Aboriginal cultures. Rather, the appropriate custom is to look to the side, occasionally looking up to show that one is engaged and interested in the other person.
8. When Mr. Ross learned of these differences he was, in his own words, "blown away". Mr. Ross was also reminded of his experiences with First Nations witnesses on the stand, who, despite all of Mr. Ross' efforts to maintain eye contact, did what they could to avoid eye contact with him. At the time, Mr. Ross interpreted the witnesses' avoidance of eye contact as signs that they might have been untruthful. However, he now realized his negative conclusions were the result of miscommunication and a misinterpretation of signals. From then on Mr. Ross began to be more cognizant to the possibility that, as Seneca orator Red Jacket once told Christian missionaries, Gitche Manitou has given First Nations peoples an understanding of the world that was different from Mr. Ross' understanding of the world.

9. Mr. Ross stated that he realized that for him to be more effective in his work with Aboriginal individuals and communities, he needed to learn not only the signals Aboriginal individuals used but also the ethics underlying these signals. To do this he went on secondment to visit First Nations communities across North America to try and determine what healing meant to them, and how it worked with regards to criminal justice. On one visit he met an Eskasoni grandmother named Rubina Marshall. She told him that he could not possibly understand what he was looking at until he understood that First Nations peoples look at the world differently. She urged him to spend time with the teachers and Elders of First Nations communities, and if comfortable, to participate in Aboriginal ceremonies as well so that he might learn about and better understand First Nations peoples.
10. Ross accepted Ms. Marshall's advice and took advantage of any opportunity he had to listen and learn from the First Nations people he met. One of the lessons or ethics he has come to understand over the years, and which, as he later illustrates, has great relevance to the realm of business and commerce, is the ethic of non-interference.
11. To describe the ethic of non-interference, Ross shared his experience of working with Aboriginal communities on sentencing issues. When Mr. Ross first started meeting with justice groups in First Nations communities to try and determine the appropriate sentences for Aboriginal offenders, he was frustrated by what he thought was a lack of preparation, lack of care for, and therefore lack of productivity in their meetings. Mr. Ross used to ask members of these justice groups what he should tell the sentencing judge about the accused and what sentence he should recommend. When he posed these questions however, the members of the justice group would not provide him with the direct opinions or recommendations and advice that he sought. Instead, they would often answer "I don't know" or "whatever you want".
12. When Mr. Ross learned about the ethic of non-interference, he realized that his conclusions about apathy on the part of the justice group were wrong. The justice group did care a great deal about the accused and wanted to help them very much. However, the ethic of non-interference required them to avoid providing direct advice on what Mr. Ross should say to the judge. The ethic of non-interference required the members of the justice committee to allow Ross make his own choice about what he thought was the appropriate sentence. Once he understood this ethic, he changed his method of eliciting the information he sought. Rather than asking for a direct sentencing recommendation, Mr. Ross would speak with the justice group more generally about the accused; their merits, and the pressures and challenges in their life. Then, using all of the information the justice group shared about the accused, Mr. Ross formed his opinion on the appropriate sentence for the accused.
16. Mr. Ross also told the story of a young Aboriginal girl who was mistakenly arrested and had signed a confession to police, even though she was not the person the police thought she was. Because of the ethic of non-interference, she allowed the police to proceed at the time of her arrest on their conclusions about her identity. At her arraignment however, she told duty counsel of the mistake, who in turn notified the police. In this way she resolved the mistake while avoiding direct intervention.

16. Mr. Ross also described the time a young Aboriginal student had approached him during the break at a presentation he was giving at Canadore College. This young student told Mr. Ross that he admired Ross' courage for speaking in public. He personally, the student explained, would lack the nerve to speak in front of people and would worry that he would say the wrong thing, or that perhaps, his fly was open. Not long after the student left (and luckily before the presentation resumed) Mr. Ross realized that this student had, without direct interference or face to face embarrassment, been encouraging Mr. Ross to check his fly, which was, of course, open.
15. Underlying the ethic of non-interference is the Aboriginal metaphysic of viewing the world through a relational lens. Mr. Ross explained that the Aboriginal world view is different from the Western world view: Aboriginal metaphysics focuses on relationships, while Westerners hold a thing-based world view. For Aboriginal people who have been living in that pattern of the universe and have relied to such an extent on the right side of the brain, there is a much greater capability of looking and thinking in that way. Ross noted that there have been neurological studies where people in the north who have never been in a plane are able to draw a map of their community with great accuracy.
16. As an illustration, Mr. Ross described the difference between how a Western individual and a First Nations individual would classify the world. According to traditional Western thinking, man is supreme because of our abilities to communicate, use tools, and because of our mobility. Animals and then plants are lower in ranking because they lack these capabilities. However, an Aboriginal individual who understands the world in terms of relationships would classify the world precisely in the opposite way. Mother Earth, on whom everything depends is the most important, followed by her life blood the waters, then plants, and animals. Man is actually considered least important because we are the most dependent, and therefore, most fragile beings on earth.
17. Another demonstration of the different metaphysics Mr. Ross spoke of was an image used by Leroy Littlebear, a member of the Blackfoot First Nation in Alberta. At a four day dialogue he had organized between First Nations peoples and quantum physicists across North America, Littlebear spoke of the differences between how a Western scientist and an Aboriginal scientist would study a plant in a meadow. A Western scientist would spend most of his or her time taking that plant apart, and studying each of its constituent parts. An Aboriginal scientist on the other hand, would spend most of their time studying the plant in its context, observing what animals came to it, what other plants grew around it, and how it took in its water, because of their relational world view.
18. Thus, Mr. Ross realized that for him to work effectively with Aboriginal communities and individuals, he would have to start teaching his eyes to use a relational lens. For one, he would better be able to understand and communicate with the First Nations individuals he worked with. Ross could understand that when he asked a grandmother how the blueberry season was that year and the grandmother answered that there were sixteen bears in the dump the previous night, she was telling him that the blueberry season had been poor. Looking at the world now in terms of relations, Mr. Ross understood that bears raid

blueberry patches at night if the crop is good, but their absence or rather their presence in the dump at night is indicative of a poor crop.

19. By using a relational lens, Mr. Ross could better pursue criminal justice work within the Aboriginal communities of the north. Time and time again, Mr. Ross was challenged by the First Nations people he met to consider why Aboriginal people could not accept Western systems of criminal justice. As Ojibway elder Alex Skeed helped him to understand; for an Aboriginal person, the law does not come from books and is not merely about imprisoning individuals for their misdeeds; rather, as with all things, crime is about relationships. The instance of a crime is the instance of a creation of a relationship between the offender and their victim. When someone steals the purse of an elderly lady walking across the street, he or she does not merely steal a purse. they alter the relationship the elderly lady had with the streets of her community. For now in her mind, any one she comes across may be the next purse snatcher. Likewise, although no one may see the young boy stealing a bottle of rum from a house, the boy's actions are much more to the homeowners than petty theft. His action changes the homeowners' relation with their home as they now may become nervous of any suspicious sounds that they hear.
20. Thus, justice in the Aboriginal tradition focuses on making peace in the relationship between victims and offenders. In the peacemaking process, the offender comes to understand from an emotional standpoint what he or she has done and to take responsibility for their actions. The victim, on the other hand, learns to see the offender as a human being rather than a monster haunting his or her dreams, thereby being able to move beyond their fear and pain. This moment of justice where both parties come to their respective realizations is known in the Mohawk language as the moment of 'face cracking'.
21. Furthermore, once one realizes that crime is a relational act, it becomes clear that the traditional Western criminal justice process of imprisoning offenders may be limited in its ability to rehabilitate these individuals. Just as one cannot take a dying plant from a meadow that is doing poorly, revive it in a laboratory, and then replant it in the untreated meadow and expect it to do well, one cannot expect to rehabilitate criminals by merely imprisoning them for a period of time. Imprisonment may even impede rehabilitation, at least with respect to the context of family violence, as an Inuit grandmother from northern Quebec once told Mr. Ross. The grandmother told Mr. Ross that while she appreciated the fact that part of the reason for imprisoning those who committed domestic abuse is to protect the victims, under this method, to truly protect the victims the abuser would have to be imprisoned. This is rarely, if ever, the case. Moreover, First Nations people believe that someone who acts violently towards another person has somehow learned that relationships are based on fear, power, insecurity, terror, secrecy, and anger. These things are, ironically precisely what relationships in jails are based on. As such, how can one expect imprisonment to effectively rehabilitate offenders? Rather, First Nations peoples would help abusers learn and experience living in relationships based on the values of love, respect, humility, courage, honesty, truth and wisdom: the seven Grandfather Teachings.
22. In addition, a relational view of crime and justice allows for individualized and tailored interventions. The child who pounded his desk in anger last week but decided to throw a

rock through a window when angry this week should receive different treatment from the other child who breaks a window out of frustration instead of beating up a peer like he did the week before.

23. Leaders of the criminal justice system, such as the three hundred and fifty judges of the Superior Court of Ontario with whom Mr. Ross spoke to at a presentation last May, are starting to recognize the validity of Aboriginal perspectives and traditions.
24. So too is the mental health profession; psychologists and psychiatrists are starting to recognize that Western paradigms of mental health and therapy are limited. In the Western tradition, therapy is focused on an individual patient and what that patient tells an individual therapist are the problems and challenges they face. This approach is plagued with problems like the difficulty of transference, which could be avoided if as in the Aboriginal tradition, a circle of people works with the individual patient.
25. Mr. Ross believes that the business realm and world of commerce can also learn from First Nations peoples. As he showed us, the principles underlying and stemming from the ethic of non-interference are also gaining more recognition and acceptance in Western thinking. For example, chiefs and councils often discuss issues using what Ross calls 'consensus thinking'. Consensus thinking comes out of the ethic of non-interference. While the Western approach to decisions often involves individuals laying down recommendations of what the appropriate course of action is and subsequent fighting over the appropriate conclusion, individuals engaged in consensus thinking offer their opinions of what factors and considerations are important to the decision at hand. As everyone speaks, the ideas raised are distilled until a consensus is reached on the driving issues and concerns and the conclusion is often apparent to everyone.
26. Mr. Ross wrote about consensus thinking in one of his books. Queen's University has adopted the chapter as a part of the curriculum for their MBA program. Individual businessmen are also adopting consensus thinking into their businesses to make decisions while maintaining a sense of respect, collegiality, and validity amongst all of the participants in the decision-making process.
27. As another example, *The Globe and Mail* once featured an article about a Lieutenant-Colonel from the Marines who was brought in by a large business group in Toronto to speak on effective leadership. The Lieutenant-Colonel told the group that the best a leader can do is give their troops (so to speak) an objective, help them develop the skills required to meet that objective, let them make their own decisions on how to reach their goal, and stand by them, even if things don't work out. Mr. Ross was struck by how similar the Lieutenant-Colonel's advice was to the ethic of non-interference and how children in First Nations communities are raised. In the Aboriginal approach, people understand that it is impossible to predict, and consequently impossible to advise their children about every challenge and situation that may arise. Thus, the focus is on equipping people with skills to develop and make choices for themselves. Further they believe that if an individual makes a mistake, that does not mean failure. Progress is about trying things out. Just as one cannot look at a feather from beginning to end without occasionally being sidetracked, life can be

considered a journey or path with side roads that can be traveled and may occasionally have to back-track on.

28. Mr. Ross also commented on how the metaphysic of looking through a relational lens offers great lessons for the business world. Quoting from the book, *The Sacred Tree*,³ Mr. Ross outlined the two principles of Aboriginal metaphysics that he thought were especially relevant for global commerce: wholeness and change. As Mr. Ross' first year Torts professor, Robert Prichard told him when he asked why the class spent so much time in discussion instead of learning the law, "If you want to become more or different from what you are now, you have to pass the doorway of the will. It is the person who must decide to take the journey." Everything, Mr. Ross explained, is interconnected and interrelated. It is only possible to understand things when we understand how they relate to everything else. Everything, including the relations between things, changes. The only constant thing in the world is the cycles of change. There are two cycles; the coming together of things and the coming apart of things, but as with anything else, both cycles of change are necessary and always connected to each other. Change is not random or accidental: our standpoint may prevent us at times at seeing the pattern or cycles of change at hand, but change is never random.
29. Using the image of waves in a body of water, Ross illustrated the applications of the principles of wholeness and change to global commerce. He re-told the story an Inuit woman once told to him, about how her grandfather used to take her to the waters of Hudson's Bay when she was a child. Her grandfather taught her that there were five systems of waves in the water, all of which moved in seemingly different directions. Her grandfather taught her that she needed to learn how the waves all came together and interacted before she could jump into those waters. Global business, Mr. Ross then said, lives in a system of waves. There is the wave of the asset backed commercial papers affecting our financial waters right now. At the same time, however, there are also the tsunami waves of China and India. Their growth, and consequently their ever increasing need for and consumption of resources, also has a profound effect on Canadian businesses like Fording Canadian Coal Trust. To understand global business, one must be able to discern and understand how all the various waves affecting business interact.
30. Mr. Ross then noted that organizations and businesses need individuals who, like eagles flying high in the skies, can canvas and discern the big picture for the company. At the same time, however, Ross reminded us that eagles are not very good at fine detail work and thus build horrible nests. Field mice, on the other hand, have excellent micro vision. They often do not look above them because they are focused on their work, and therefore can be swooped up by an owl. However, they do wonderful fine detail work. An organization needs both types of people.
31. Mr. Ross closed his keynote speech with comments about the importance of healing for Aboriginal economic development. He spoke of the devastating and lasting effects of colonization on First Nations and the desperate conditions that some communities find themselves in. If economic development does not occur hand in hand with efforts to heal

³ Judie Bopp, *The Sacred Tree*, 4th ed. (Twin Lakes, WI : Lotus Press, 2004).

the grief and trauma Aboriginal communities face, the community will not prosper. As one particular chief told Mr. Ross, the members of his community are given training and development opportunities but are often kicked out by the second day because they were drinking.

32. While grief and substance abuse may be common in First Nations communities today, there are still many First Nations individuals and communities who remain in good health, faith and charity, and who are willing to share with the rest of the world. Mr. Ross concluded his speech by celebrating the survivorship of First Nations peoples and urged everyone to take every opportunity to work with and learn from them. As an example, he spoke of an Aboriginal woman in her forties who had attended a residential school where she had been prohibited from speaking her Anishibabe language. If caught, the nuns made them stand in the corner and repeat over and over again: “I will not speak my language.” However, this woman continued to speak to herself at night under her covers.

Morning Roundtable Discussion:

Introduction

33. The first roundtable discussion of the day entitled, “Lands and Resources: Control, Access, Consultation and Accommodation”, was led by Professor Shin Imai from Osgoode Hall Law School at York University.
34. The roundtable introduced some of the key issues and challenges facing Aboriginal economic development, including a discussion regarding whether development should be pursued communally or individually, on-reserve or off-reserve. The roundtable panelists featured Professor Michael Trebilcock from the Faculty of Law at the University of Toronto; Jason Madden, counsel for the Métis Nation of Ontario; Darwin Hannah, Counsel to many BC First Nations and Adjunct Professor at the Faculty of Law at UBC; Kimberly Thomas, a lawyer practicing in Six Nations of the Grand River; Professor John Borrows from the Faculty of Law at the University of Victoria; John A. Olthius, partner at the law firm Olthius, Kleer Townshend; and Professor John Richards from Simon Fraser University and the CD Howe Institute.

Part 1 of the Morning Roundtable:

Professor Michael Trebilcock

35. Professor Imai began the roundtable by asking Professor Trebilcock to outline some of the relevant issues surrounding Aboriginal economic development. Professor Trebilcock identified six factors that the current literature on development agrees are key determinants for private sector growth and commented on how each of these may be related to the challenges facing Aboriginal economic development.
36. The first factor for private sector development that Professor Trebilcock discussed was property rights. Stable property rights promote investment and development; however this is an obvious challenge in the Aboriginal context. There are still a great number of unresolved Aboriginal land claims, resulting in enormous instability as to who owns what. Thus, in working towards Aboriginal economic development, a priority should be to

resolve as many outstanding claims as possible. Further, much of the land in reserves is communally owned and thus subject to very limited forms of alienation. Consideration must be given to whether, and how, within this communal regime of ownership a more flexible system of property rights better facilitating individual or subgroup initiatives could be developed.

37. Professor Trebilcock then spoke about financing. Production and development activities require financing. Taking note of what has been happening in developing countries around the world one source of potential financing might be micro-credit institutions. However, for smaller or medium businesses, one should also consider other sources of financing, like venture capital.
38. The third factor scholars believe is necessary for private sector growth is physical infrastructure. As Paul Collier notes in his book, *The Bottom Billion*⁴, countries that are landlocked and that are not well physically connected to a larger market or larger economies tend to do poorly. Physical infrastructure is a challenge for many remote Aboriginal communities.
39. The fourth factor Professor Trebilcock identified was human capital. Many tasks in the modern economy require specialized skills sets. Therefore, education and vocational training are vital in promoting development. How these services are delivered is a key issue that must be addressed.
40. Similarly, technology is vital in the modern economy. There are already stories and lessons which can be learned from developing nations of how providing access to technology changes the economies. For example, providing access to cell phones has revolutionized how small businesses are doing business in sub-Saharan Africa, and by giving schools in developing countries one or two hundred dollar laptops, children are able to access the Internet and other information networks.
41. Finally as the sixth factor, Professor Trebilcock spoke of the need to reduce legal barriers standing in the way of development. He spoke of the World Bank's "Doing Business" studies which have shown that in many developing countries it is incredibly expensive to do even the simplest legal procedure, like incorporating a company. Red tape and legal complexity are incredible impediments for small business initiatives.

Mr. Jason Madden

42. Professor Imai further identified another issue affecting economic development, namely the law. He invited lawyer Jason Madden to comment on how the current state of the law and s.91(24) of the *Constitution Act* that recognizes Indians but not Métis people, affect economic issues surrounding the Métis.
43. Mr. Madden stated that the law as it stands, even apart from the issue of jurisdiction raised by s.91(24), has created a huge hindrance to Métis economic development. While the

⁴ Paul Collier, *The Bottom Billion: why the poorest countries are failing and what can be done about it* (Oxford; New York: Oxford University Press, 2007).

Supreme Court of Canada has recognized the Métis as a rights-bearing people with the *Powley* case⁵, as things currently stand there are no legislative frameworks for the Métis to develop their own communities. The only examples of legislation dealing specifically with the Métis that Canada currently has are the 8 Métis Settlements created through legislation by the province of Alberta, and the Saskatchewan *Métis Act*⁶. All that the *Métis Act* does however, is recognize the Métis Nation of Saskatchewan as a not-for-profit corporation. It does not deal with how to recognize and negotiate with the communities themselves. From Ontario westwards, various Métis communities are choosing to incorporate, like the Métis Nation of Saskatchewan did, under not-for-profit legislation or *Societies Acts*, to try fill the gap currently in the law and to create a vehicle for negotiating on behalf of their respective communities. Not-for-profit legislation and *Societies Acts* however, were never meant for Aboriginal self-government, and the communities that have chosen this route therefore continue to face challenges to their development.

44. In addition to the lack of a legislative framework under which the Métis can assert their rights as a community and pursue development goals, the dependence of Métis communities on program-based funding agreements is another impediment to their economic development. Citing the example of the Kelowna Accord, Mr. Madden spoke of the instability of program-based funding and the need for a more stable source of funding. Madden also spoke of the need for a longer-term vision with respect to the development of Aboriginal and Métis communities. The political system in Canada, with governments changing every four years or so, is not conducive for long-term planning.
45. Given these challenges facing Métis communities, Mr. Madden suggested that the Métis, who are not exempt from taxes, should consider using the tax system as a vehicle to develop their economies. For example, the Métis could use revenue resource sharing options. Another option may be to give Métis people the choice to allocate a part of their income to go back to the community. Not only would this be a more stable form of funding for the community, it also promotes a stronger sense of accountability as the community understands the term. For the communities, accountability means that the funds and benefits derived from the communities lands go back to the community.

Professor Hannah

46. Professor Imai then invited lawyer and law professor Darwin Hannah to share some of the federal and provincial legal issues that have come up in his work with Aboriginal business development companies on reserves. Professor Hannah began by stating that the challenges his clients and community face mainly have to do with access to capital and resources for business development initiatives. His clients and community are not involved in land claims and therefore do not have to deal with conflicts about title. Instead, the challenge lies in getting others to recognize and accommodate Aboriginal interests in land and resources.
47. In recent years, the federal and provincial governments of British Columbia have become increasingly accommodating to Aboriginal interests. When there is a major development

⁵ *R. v. Powley*, [2003] S.C.R. 207, 2003 SCC 43.

⁶ S.S. 2001, c. M-14.01.

project, such as foresting, mining, or commercial fishing, the government has offered to accommodate Aboriginal interests and to hire Aboriginal companies for these projects.

48. Outside of these projects however, the government provides little assistance to First Nations communities. While the federal government does provide some funding to First Nations, it is not a lot and the communities require additional funding. The federal government does offer some ad hoc funding for Aboriginal businesses through Aboriginal Business Canada, however, Aboriginal Business Canada is also under serviced. The provincial government on the other hand, does not have a file for business development on reserves as they say it's the responsibility of the federal government. Furthermore, because banks cannot get secured interest on personal property on reserves, First Nations people and businesses have a difficult time getting private institutional funding. The result of this lack of capital makes it difficult for the business development corporations operating on reserves to develop and pursue their business objectives.
49. In addition to a lack of capital, on-reserve development is also difficult because of the designation process. It takes about six to eight years to develop reserve lands on a commercial basis because of the designation process.
50. Beyond all of these issues, Aboriginal business development is difficult for a variety of other reasons. For example, because a First Nation is not considered a natural person, they must incorporate before they can purchase off-reserve property. Companies working with First Nations business development corporations on off-reserve projects will often want certainty of the legal status of the First Nation as a corporation. Professor Hannah explained that the process of incorporating also has challenges. First Nation business development corporations will often choose to incorporate under a First Nation name. To do so, they not only have to provide a translation of the name to the Registrar of Companies, but in certain cases, may also have to provide a supporting letter from the Chief of Council regarding the use of the name. As well, one needs to determine which labour laws apply to the corporation for any given project: the *Canada Labour Code*⁷, or the provincial *Employment Standards Act, 2000*⁸. There are also intellectual property and copyright issues that often arise in working with Aboriginal development companies.

Ms. Kimberly Thomas

51. Lawyer Kimberly Thomas also spoke of the challenges she faces in her work at Six Nations. Referring back to Mr. Ross' keynote speech earlier in the morning, Ms. Thomas spoke of the need to recognize that in working with Aboriginal people, there is a third jurisdiction and perspective beyond the federal and provincial divide at play. Indigenous peoples have their own laws, perspectives, and values, which have been with them since time immemorial, and which are different from the Western perspective. Traditional Western capitalism focuses on success for an individual. Economic success for First Nations is measured differently. For a First Nation, success does not mean looking at an isolated economic venture and simply weighing profit margins. Rather, success is measured by how a venture impacts and strengthens the community more broadly; whether the nation has

⁷ R.S., 1985, c. L-2.

⁸ S.O. 2000, CHAPTER 41.

been able to maintain their languages, ceremonies, culture, and traditional medicines; or whether the children of the First Nation have been completing their education and whether they have been given bicultural competency so that they will be proud of their heritage and help their communities, while also succeeding in the outside world. From the Indigenous perspective, economic development is seen through a relational perspective and goes hand in hand with healing the community. Thus, when working and negotiating with Indigenous communities on development projects the other party, whether federal government, provincial government or industry, needs to recognize this different perspective and to look at the venture in question from the perspective of the First Nation communities otherwise negotiations cannot progress. Consequently, much of the work that Ms. Thomas currently does during negotiations of Aboriginal economic development projects is interpreting, so to speak, between Canadian law and Indigenous law, so that both sides understand the impact of each on the other.

Professor John Borrows

52. After summarizing the discussions that went on thus far, Professor Imai shifted the focus to how the ideas of consultation and accommodation related to Aboriginal economic development.
53. For Professor Borrows, consultation and accommodation of Aboriginal rights and interests in traditional and reserve lands are only the first steps towards Aboriginal economic development. On-reserve development and development in traditional lands are important components of Aboriginal economic development however, given the mobility of Aboriginal peoples today; Aboriginal economical development needs to be thought of in a broader and more relational way. Fifty percent of First Nations peoples today live off reserve, and while there are many cities in Canada with an Aboriginal hub, no city in Canada has a permanent intergenerational Aboriginal population, in part because Aboriginal people constantly move between the reserve and the city. Furthermore, First Nation economies are “bungee economies”, in other words, the monies that come into the communities are usually spent in surrounding non-Aboriginal communities. Therefore, Aboriginal economic development requires more than consultation and accommodation for on-reserve development projects; it needs to encompass off-reserve initiatives. For First Nations communities to develop and grow, and to take back their lands, we need to think of ways for First Nations to invest off reserve and have property rights off reserve that are more fee-simple oriented. One method Professor Borrows suggested is to use condominium-type corporations to buy off-reserve lands collectively and then have individual ownership within that framework.

Professor John Olthius

54. John Olthius brought the discussion back to the development of traditional Aboriginal lands and shared what he believes is the best method for fulfilling the consultation and accommodation requirements and negotiating with First Nations who have an interest in these lands; through the use of Impact Benefit Agreements (IBAs).
55. IBAs developed in the 1980s when industry members approached First Nations to develop traditional non-treaty lands. With these agreements in place, First Nations allowed

development on their traditional lands with the understanding that impacts to the land would be minimized and benefits to the community would be maximized. As an example, in the IBA that INCO negotiated for the Voisey's Bay Mine in northern Labrador, INCO agreed to provide for the protection of the First Nations culture; economic benefits to the First Nations; as well as opportunities for education, training, and economic participation of the community. It has led to considerable economic growth and healing for the community.

56. Currently IBAs are common in industry initiatives with First Nations communities. Often, companies will approach First Nations before doing any exploration of the land; to negotiate with the community on how to conduct the exploration; give the community an opportunity for jobs from the outset; and promise that before any commercial production occurs that they will have an IBA in place with the First Nation community. Financial institutions have realized the importance of IBAs as well. Mr. Olthius is currently working on negotiations with Newfoundland and Labrador Hydro on the Lower Churchill project and the financial institution in that case refuses to fund the project without an IBA in place.
57. While industry has accepted IBAs, governments on the other hand have been reticent about them. Mr. Olthius believes that the government should legislate to make IBAs a mandatory requirement for development on First Nation lands. For example, he suggests that the *Mining Act*⁹ in Ontario could be amended to say that there will be no development on First Nation lands without the consent of the First Nation.
58. Many Aboriginal communities are interested in development initiatives and are willing to participate in development projects. However, as Mr. Olthius has learned through his thirty years of practicing Aboriginal law, First Nation governments want to be recognized as a government and to be in a government-to-government relationship with federal or provincial powers in a s.35 context. As well, First Nations want to control their economic development. Beyond consultation and accommodation, First Nation communities are fundamentally concerned with the notion of consent and making sure that development is done in ways that will protect First Nation lands and cultures. IBAs allow First Nation communities to try and structure development ventures in accordance with these concerns and aspirations. Once secure, they lead to a win-win situation for all parties. As such, Mr. Olthius believes that the next step in Aboriginal development is for governments to legislate for IBAs.

Professor John Richards

59. Professor Imai invited the final speaker of the morning, Professor Richards, to share his insights on the importance of human capital and education for Aboriginal economic development. Adding to Professor Trebilcock's comments earlier in the day, Professor Richards stressed the importance of education for development; no country or culture, he stated, prospers unless people are educated.
60. According to Professor Richards' research however, the education of Aboriginal people is currently a massive problem in Canada. According to the 2006 census, the majority of

⁹ R.S.O. 1990, CHAPTER M.14.

Aboriginal populations (people who self identify themselves as First Nation, Métis, or Inuit) now live in cities. Nearly half of those who have status and are registered live off-reserves. One-third of First Nations living on reserve are going to off-reserve schools, and as a whole, four out of five Aboriginal children go to schools off their reservations. Yet, while an increasing number of Aboriginal children are educated in provincial schools, not enough attention is being paid to them in these schools while they are there. Thus, more efforts need to be made in this respect.

Question and Answer Period:

61. Professor Imai then opened the floor for questions from the audience. He encouraged the audience to consider themes that emerged in the morning's discussion such as; the different issues that might emerge with respect to on-reserve and off-reserve developments; and the idea that economic development goes beyond merely putting up capital to run a business. Rather, Aboriginal economic development involves other factors like human capital and Aboriginal aspirations.
62. Gabrielle Slowey, a professor at York University, former self-government officer for the Mikisew Cree First Nation and policy advisor to the Alberta government posed the first question to the panel. She asked the panel about the seeming lack of emphasis in the discussion about the reality that economic development involves consideration of a community's ability to operationalize their resources, and thereby raised the issue of self-governance. Professor Slowey asked the panelists about the legalization and formalization of self-governance agreements and the trilateral relationship that exists between First Nations, federal and provincial governments in Canada.
63. In response to Professor Slowey's question, Ms. Thomas addressed some of the difficulties underlying self-governance agreements. Often, Thomas said, when First Nations come to negotiate self-governance agreements, their perspectives and law are not respected or incorporated into the discussions. Rather, terms are often dictated to them in reference to what jurisdiction they can assume and under what terms they may assume it. For example, some of her clients were told that they could not participate in discussions unless they were willing to give up their s.87 tax exemption statuses. However, this condition is problematic for a variety of reasons. First, many First Nations people feel it is a breach of their sovereignty to have to pay tax to a foreign government. Rather, if they are going to have to pay taxes, First Nation people want to pay taxes under their own regimes that work for them at a nation level. Furthermore, because not a lot of research has been done on whether First Nations have the capacity to pay taxes, there have been several nations who are now required to pay tax under the self-governance agreements, but cannot because they do not have the tax base to do so.
64. Adding to the discussion of government-to-government negotiations, Professor Trebilcock agreed with Professor Slowey that governance is an important consideration. More specifically, Professor Trebilcock stated that it is the quality of a nation's governance and institutions that is the overwhelming determinant of the nation's economic prospects. Thus, in any negotiation between a First Nation and the federal or provincial government, one needs to look at the quality of the institution of each of these governments. Professor

Trebilcock suggested the possibility of applying criteria such as: voice and accountability, political stability, quality of regulation, corruption, and rule of law, which the World Bank uses to rank the quality of the institutions of various countries around the world, to examine the quality of Aboriginal governance systems as well.

65. Chief Glen Nolan then asked the panel for more comments about off-reserve development and First Nations looking outside of traditional Aboriginal jurisdictions to create wealth. Chief Nolan began by speaking of the need to recognize that Indigenous peoples have historically been subject to policies which have subverted their sovereignty. Indigenous people have constantly been told that they are incapable of caring for themselves. Given this history, it has been difficult for Aboriginal people to play an active role in developing their resources. However, Chief Nolan believes Aboriginal groups can now be more proactive and stronger in their efforts to attain wealth for their nations. Speaking of the experience of his own people, the Missanabie Cree, Chief Nolan explained that despite being a landless people, not yet receiving any land or compensation from a treaty signed in 1905, they have managed to prosper. The Missanabie receive over one hundred and forty thousand dollars in core funding from government each year and use those funds to create a number of successful businesses. Their companies are currently bidding for contracts in Alberta, and are involved with mining companies in the Northwest Territories and Ontario.
66. Mr. Madden offered his response to Chief Nolan's question about off-reserve projects as a means for Aboriginal economic development. Expanding on his earlier discussions about his recommendations on better achieving Métis economic development, Mr. Madden commented that while IBAs are an integral part of Aboriginal economic development, he believes they are only patchwork solutions. The problem with IBAs, Mr. Madden stated, was that they are boom or bust. When the venture does well, everyone profits. However, when things are a bust they offer no help to Aboriginal communities. Therefore, one needs a solution that is more stable. Mr. Madden again suggested reorienting the tax system. Currently, there are no tax bases on reserves. However, one may be created if we give Aboriginal communities a portion of royalties paid to them or a portion of the taxes that non-Aboriginal citizens pay in traditional territories. Rather than INAC (Indian and Northern Affairs Canada) determining, from their "father-knows-best" principles on how the funds should be spent, the community should be left to decide how they will spend this money. Such a system would not only create a more stable system of funds for the community, but as he suggested in his earlier discussion about the possibility of using taxes for Métis development, it also promotes a greater sense of responsibility and accountability.

Part 2 of the Morning Roundtable:

67. After a short break, Professor Imai welcomed us back with a brief statement outlining the focus of the rest of the roundtable discussion. In this portion, he said, the panel will be examining some specific examples of the vehicles and internal organizations within Aboriginal communities that can be used for economic development. In particular, the panel will be discussing whether it is important to go forward as a community, or as individuals.

68. Professors Richards and Borrows began the discussion by providing their comments on the controversial issues of whether there is currently too much emphasis on on-reservation development, and whether some of the government payments to Band Councils on reservations should be given to individuals who can use these funds for off-reserve activities.

Professor John Richards

69. Professor Richards noted that addressing the later idea was a suggestion by his friend, Métis MLA (Member of Legislative Assembly) Jean Allard, who feels that too much money is currently going to First Nations on-reserves, and that not enough is being done for Aboriginal individuals living off-reserve. Mr. Allard believes that transferring a part of the funds Band Councils receive from government to the individual members of the community living on or off the reservation, would alleviate this problem. In addition, if Band Councils decide to tax individuals on these monies it would also create a tax base for reserves. While this is an interesting idea that should be explored, Professor Richards believes that this can only provide part of the answer to Aboriginal economic development.
70. Then taking a step back, and looking at Aboriginal economic development from the larger, eagle-eyed perspective, Professor Richards warned of the danger of becoming too focused on either on-reserve or off-reserve solutions. Taking two prominent examples from the past, Professor Richards said, the great sin of the 1969 Trudeau White Papers was not to have envisaged the viability and importance of communal reserve development; and in the same way, the great sin of RCAP (the Royal Commission on Aboriginal Peoples) in 1996, was not to have envisaged the possibility of success of urban Aboriginal development (which he believes is inevitably primarily going to be successes of individual First Nations, Inuit, and Métis people in mainstream society), but rather that both on-reserve and urban development are important components to Aboriginal economic development. Thus, both issues must be given sufficient consideration.

Professor John Borrows

71. Professor Borrows echoed Professor Richards' sentiment; saying that he believes that there is often a dichotomy between communal, on-reserve development and individual, off-reserve development, as people feel if they choose one route the other closes. However, Borrows also believes this dichotomy is false. Economic development cannot be looked at from just the reserve, or off-reserve settings. Thus far, much of the emphasis on Aboriginal policy has been on-reserves. However, as he discussed earlier in the first part of the roundtable, Aboriginal peoples are increasingly interacting in more than just the on-reserve setting. As such, due consideration must also be given on how Aboriginal peoples can also prosper in urban areas off reserve.
72. Professor Borrows then provided some valuable insights from Aboriginal groups in the United States of possible ways Aboriginal communities here can pursue and institutionalize off-reserve development activities. For example, Professor Borrows referred to agreements between the Odawa and the Ojibway in Michigan on how to regulate themselves off the reservation regarding resource use. He also discussed the Great Lakes Indian Fish and Wildlife Council through which the First Nations in Wisconsin regulate off-reservation

activities in harmony with the state. Looking at these examples, Borrows urged us to consider ways in which First Nations, Inuit and Métis communities in Canada can step off their reservations while still taking their laws and teachings with them, and infuse these laws and teachings with the larger provincial or state setting; not in just a Aboriginal-friendly way, but to become a part of mainstream law.

73. Professor Borrows concluded his comments by returning to Mr. Allard's suggestion of creating funds for reserves by taxing those living off-reserve. He believes that such a tax system can help dispel the false dichotomy that currently seems to exist in discussions of collectivized on-reserve development and individualized off-reserve economic development. Using his own community as an example, where half the community lives off the reservation and some of the members of the community living off-reserve are doing alright financially, Professor Borrows imagines there could be substantial benefits if some of the economic production off-reserve could be tied back into the reserve economy. Not only would the reserve have more funds, off-reserve development would fuse with on-reserve development. Finally, as Mr. Madden's talk earlier in the day suggested, such a tax system would help empower the community, as members of the community whether they live off or on the reserve, can provide feedback on how the funds collected through this tax should be allocated and spent.

Professor Hannah

74. Professor Imai then asked Professor Hannah to speak about whether there should be a move towards individualizing ownership of reserve lands and freeing the constraints that currently exist around alienating reserve lands. On the one hand, individualizing ownership of the reserve lands could potentially allow the individual title holders to secure credit with the land as collateral, something that currently cannot be done with reserve lands. On the other hand, should that individual go bankrupt, they and the community would lose that land and reservations could eventually dissipate.
75. Professor Hannah addressed the topic by stating that there currently has been no real discussion for individual ownership of reserve lands, especially since there are no transfer payments yet specifically for business development. At least with respect to the communities he has worked with, business opportunities and development opportunities are created on a national or community level through development corporations for the benefit of the whole community. Individuals can, and often do participate in that business, or they may create their own proposal or opportunities for developing land, which the First Nation may support. To make sure that the opportunities benefit the whole community, the board of the development corporations are varied in their make up, with both on-reserve and off-reserve members. The leaders of these communities will also meet with the highest levels of government to negotiate management arrangements regarding the control of resources outside the community, for the benefit of the community. Therefore, economic development on-reserves proceeds primarily at the community level and individuals have learned to work within that framework.

Questions and Comments:

76. After Professor Hannah concluded, Professor Imai opened the floor for comments.

77. Mr. Andrew Saugnee provided comments on what he thought were some key requirements for economic development. Opening with a Chinese proverb that says; “you can’t climb the ladder of success with your hands in your pocket”, Mr. Saugnee stated that the pockets of First Nations are empty. Thus, even though we have the duty to consult, IBAs, and consensus developments, there has not been significant economic success because society has yet to recognize the duty to enable. With respect to what the duty to enable entitles, Mr. Saugnee provided some specific examples of tried and tested financial instruments that First Nation communities, like the Attawapiskat, have already taken advantage of, for example; interest-free municipal bonds, government guarantees, and debenture systems. Mr. Saugnee concluded by reiterating again that society at large, governments, and Bay Street must recognize that there is a duty to enable Aboriginal communities to economic development.
78. Picking up on the concerns about the inalienability of communally owned reserve lands and its impact on limiting financing options, Professor Imai then asked Professor Trebilcock to comment on whether this was a drag on economic development. Professor Trebilcock stated that while economist Hernando de Soto would argue for a move to individual title with full alienability, he on the other hand, takes a more cautious view to this issue. Professor Trebilcock believes that there are many good reasons for communal ownerships of reservations, and imagines that if the system of ownership changed to allow full and individual title the Aboriginal communal tradition would disintegrate over time. Drawing from Professor Hannah’s discussions, Professor Trebilcock said that given the strong communal culture of Aboriginal communities, he believes we should maintain communal ownership of land and turn to creative property arrangements within that framework to promote group and individual initiatives. For example, the community could lease parcels of land to individuals on which to run businesses. Further, there currently seems to be a heavy top-down, Indian Affairs oversight to these arrangements. Such top-down oversight tends to stifle both group and individual initiatives. Therefore, there could also be a move toward decentralized decision-making regarding property arrangements.
79. Mr. Madden then commented that he doesn’t understand why people think that communal development and individual development are mutually exclusive. Studies have shown time and time again that if a community builds an economic base, the people of that community residually benefit from it. It is therefore in Mr. Madden’s opinion, irrational and illogical to say that a strong community is disconnected from the idea of getting people jobs and individual development. Generally, if a new business comes into a community, a gas station will open up next, and as needs grow, other businesses will also develop. While it is a seductive argument to say that we need to focus on individual development, Mr. Madden urged us to remember and learn from the Métis experience with scrips.
80. Professor Richards followed up with his comment that no matter what arrangements we might use for economic development, he believes that none of them will work unless the First Nation, Inuit, and Métis have a better educational outcome. Education, he stated, is the most important piece of capital for development, especially since, the experience of the majority of Aboriginal peoples is off of reservations.

81. Ms. Thomas added, that education cannot be looked at solely from the Western perspective. To be truly successful, she argued, Aboriginal people need to have bicultural competency because as her elders taught her, they have their feet in two canoes. Therefore, having a solely Western mentality or a solely reserve mentality will lead to difficulty in trying to achieve development. Ms. Thomas illustrated the power of bicultural competency with the story of her brother, who through his knowledge of their Aboriginal language and traditions, combined with his Western training, successfully serves their community as a paramedic. He uses his training and knowledge about the body to treat individuals however, if there is a death or a tragedy, he is able to speak with the elders and to speak to the spirit of the person who has passed away.
82. Jack Iawa, then asked what the Great Law had to say about uranium mining, a process of extracting an ore that could threaten the planet.
83. Next, Carolyn King from the Mississauga Credit of First Nations commented that Aboriginal peoples have their own laws and ideas on business that do not, in her opinion, seem to be respected in the law. Rather, mainstream laws are imposed on First Nations people. For example, Indian Affairs has guidelines regarding the Indian-ness of a business. If a business run by an Aboriginal person does not meet these criteria it is not considered an Indian business and is taxed. Further, even though Aboriginal communities similar to her own might have community plans and zoning bylaws, they are not upheld by the courts. Thus, Ms. King stated she feels that the government does not yet truly support First Nations. Rather, in the midst of dealing with the influx of new immigrants, the government seems to have forgotten First Nations or seems to want to forget them. Ms. King also believes that First Nation tax exemption acts as a stigma for Aboriginal peoples with many non-Aboriginals taking the view that Aboriginal people aren't really doing their fair share. Ms. King feels that the government needs to do more to dispel this negative perception. Finally Ms. King pointed out that the numbers of First Nations, Inuit, and Métis living off reserves in recent statistics are in part due to Bill C-31 changing who has status; they are really indicative of a mass exodus from reserves.
84. Darryl Dagstander then spoke of the fallacy of a dichotomy between the notion of individual and collective rights. He also pointed out that mainstream Western society is starting to realize that economics is not built solely upon individuals and that there are costs to development. These realizations are in line with the type of economic development First Nations want to recognize; a development that provides for the next seven generations, rather than short term benefit. Mr. Dagstander ended by saying, only after the last tree is cut and the last fish is caught will you recognize that you can't eat money.
85. Raziel Zisman, a lawyer from Fasken Martineau, ended this round of questions and comments by sharing his optimism for Aboriginal economic development. He said that we live in amazing times, in an amazing country with tremendous opportunities. Having worked with Aboriginal communities on many business initiatives, he personally sees that there is a critical mass of qualified people among the First Nations and believes that Aboriginal peoples have tremendous potential. He recognizes however, that not all

communities have the same resources and thus the solution to Aboriginal economic development is neither simple nor homogeneous. He encouraged everyone, Aboriginal and non-Aboriginal to work towards a solution for Aboriginal economic development, saying it's not an 'us versus them' issue; it is an issue for all Canadians. Then speaking on the issue of mobility and movement off reserves, Mr. Zisman pointed to the Internet as a tool for preserving culture no matter where the members of a community reside. Finally, speaking to the issue of communal and individual initiatives, Mr. Zisman said that there are lessons that can be learned from the Mondragón system in Spain and the Kibbutzim in Israel. For example, like First Nations peoples in Canada, the Kibbutzim cannot alienate their communal assets. They, however, have pursued economic development though taking their intellectual property and have set up public companies. He believes that similar mechanisms can be set up in Canada with success.

Roundtable Answers and remarks:

Mr. John Olthius

86. Bringing the floor back to the panel, Mr. Olthius provided practical insight regarding the institutions of Aboriginal economic development. He began by outlining the two types of business opportunities that arise out of IBAs. First, there are business opportunities reserved for development corporations which benefit the entire community. There are also Aboriginal business opportunities in the form of joint ventures between Aboriginal and non-Aboriginal business peoples where Aboriginal peoples have fifty-one percent control of the venture. Most of the money from IBA ventures, royalties, and financial sharing goes into trusts governed by the Elders of the community. The trusts have limitations on how the monies can be used, but these uses are all related to ways to benefit the community as a whole. There is a symbiotic relationship therefore, between individual benefits and communal benefits created by IBA ventures. Mr. Olthius also noted that in most communities, economic decision-making is separate from political decision-making such that business development companies have their own lives outside of the Band Council.

Professor John Borrows

87. Professor Imai then asked Professor Borrows to elaborate on an idea that he had been referring to throughout the morning, namely, recovering territory for Aboriginal peoples. Professor Borrows explained that the idea of recovering Canada was a double entendre. Canada needs to recover from the trauma it created in its history with Aboriginal people. Thus, as a part of Aboriginal economic development, there have to be efforts made towards healing the trauma suffered by Aboriginal peoples. As well, Aboriginal people need to recover Canada with their laws and traditional ways of thinking, so that when Aboriginal peoples step off the reserve the country will still be recognizable to them as an Indigenous country. In other words, Aboriginal traditions need to be made alive today. Although it is a difficult task, just as Maori law is now finding a place in radio broadcasting in New Zealand, there are opportunities for applications of Aboriginal laws and traditions to various areas of mainstream society, from stem cell research, and intellectual property, to insider trading.

Professor Michael Trebilcock

88. The last comment from the panel came from Professor Trebilcock who spoke of the need to measure the institutional capacities of Band Councils and economic development companies to ensure that they seize communal economic development initiatives effectively. Top-down management from Indian Affairs, Professor Trebilcock stated, is not suitable to manage development initiatives. Decentralized, bottom-up management is required. However, the quality of the governance of Band Councils and development companies is likely to vary significantly from community to community. Therefore, Professor Trebilcock believes a high priority should be placed on evaluating the capacity of these institutions and enhancing them where they are currently deficient.
89. Chief Nolan concluded the morning roundtable session by elaborating on Professor Trebilcock's comments. Chief Nolan agrees that management by Indian Affairs is not the appropriate solution. He also acknowledged that many Aboriginal communities currently lack the capacity to manage the fiscal responsibilities of the community, in part because they lack the funds to manage themselves and because they are currently under third party management. Chief Nolan agreed with Professor Trebilcock that there is a need for Aboriginal communities to build capacity, but then went further, saying that Aboriginal communities need to build their wealth and their capacities themselves. To do so, they need the help and active engagement of corporate Canada, companies like Brookfield Power and De Beers, in partnership agreements with Aboriginal communities. As such, Chief Nolan concluded that the Assembly of First Nations has put out a Memo Of Understanding (MOU) and a corporate challenge for companies to work with Aboriginal communities on development initiatives.

Lunch Time Address by the Honourable Michael Bryant:

90. Dean Moran introduced the lunch time speaker; the Honourable Michael Bryant, Ontario Minister of Aboriginal Affairs. Mr. Bryant began by congratulating the organizers of the summit. In particular, he thanked Professor Douglas Sanderson, who formerly worked in his office as a policy advisor, where he brought about the first significant reform in forty years to Ontario's human rights system.
91. Mr. Bryant then commented on how great it was to speak at a Summit with the Right Honourable Paul Martin, whose Kelowna Accord signaled the first time since 1968 that a federal government had a comprehensive vision for the relationship between governments and First Nations, Métis, and Inuit peoples. 1968 was the year of the infamous White Paper, where Trudeau and Chretien had proposed desegregation. The idea behind the White Paper was to essentially eliminate the idea of Aboriginal rights. In proposing the White Paper, Trudeau had been influenced by the *Calder*¹⁰ decision. The White Paper did not go over well however, as desegregation does not work for self-determining peoples of self-determining nations. As such it was quickly shelved. Since then, as Mr. Bryant had already mentioned, the Kelowna Accord was the first comprehensive vision of what the division of responsibilities between governments would be. The Kelowna Accord provided and fulfilled the government role in Aboriginal self-determination. The achievement was remarkable because it involved intergovernmental collaboration, including input by Aboriginal governments, and because it was an agreement between governments. As such,

¹⁰ *R. v. Calder*, [1996] 1 S.C.R. 660.

Mr. Bryant expressed his regret that the current government did not implement the Kelowna Accord. Post-politics, Mr. Bryant commented, Mr. Martin has led a private sector emphasis on expanding the Aboriginal middle class, with hopes that this will provide a middle class community that will be self-determining.

92. Mr. Bryant then congratulated the sponsors of the conference; the Law Foundation of Ontario, the Faculty of Law at the University of Toronto, Indian and Northern Affairs Canada, and the Ministry of Aboriginal Affairs for their vision and support. He also thanked Dean Mayo Moran personally for her vision in hosting this conference and noted the invaluable insights both Joanne Dallaire, a respected Cree Elder from Northern Quebec, and Ontario Crown Attorney Rupert Ross, had already provided earlier in the day.
93. Mr. Bryant spoke of the provincial perspective to Aboriginal affairs and Aboriginal economic development. He stated that he often runs into people who ask him about the province's role and actions with respect to Aboriginal affairs, and admitted that, other than through the Kelowna Accord, the answer has not yet been fully explored. Mr. Bryant believes the province can and should start to articulate its role with more precision.
94. The first thing that Mr. Bryant believes provinces should undertake is to do is *something*. By and large, Mr. Bryant explained, the history of government behaviour with respect to Aboriginal peoples has been at behest of the governments; the courts make a decision, it shifts the landscape, and then the government implements or does not implement changes, and then it goes back to the court. Under this model there was no protection of Aboriginal activities or a concept of a fiduciary obligation of the Crown to First Nations, Métis, and Inuit before *Sparrow*,¹¹ the landmark 1990 decision by the Supreme Court of Canada. All of the concepts that we think about when it comes to Aboriginal peoples and affairs and rights have come from the courts.
95. Accordingly, "doing something" for Mr. Bryant means doing something ahead of the courts. This is radical for governments because the focus has been around the judiciary for so long. Governments have been understandably concerned about doing something that will expose them in the courts, in terms of either civil liability, or in some cases constitutional challenges. That concern has however, created a total paralysis within governments. It is, Mr. Bryant said, because of tyrannical Attorney Generals of the province of Ontario, including himself, that there is actually a force within governments made up of people doing their jobs who say;
 "You can't do that, no, no. If you do that you conceding what the 'duty to consult' means. So don't do that thing, we got to wait because we have a decision coming up in four months, and when that comes down, then we can revisit this other issue."
Since there is always a decision coming down in a few months, or next year, since there is always something working its way through the courts, the government constantly thinks

¹¹ *R. v. Sparrow*, [1990] 1 S.C.R. 1075.

about its impact on legal liability, and red flags rather than action engulf the entire cabinet table.

96. Mr. Bryant urged the province to shake off its paralysis and set forth policies. The province needs to “do something” and can avoid liability in “doing something” by making it clear that it is enacting policies and not constitutional positions.
97. Mr. Bryant then detailed some of specific things the province could do. First, the province can resolve historical grievances. Mr. Bryant believes much of the backlog with respect to dealing with claims should be cleared by the next election in the fall of 2011. After the election, he believes there should be a maximum timeline of three years per claim for negotiating claims, so as to create more certainty and action.
98. Secondly, the province should approach Aboriginal affairs with détente, or a warming of relations. Most Aboriginal peoples do not trust governments. This is not surprising considering so much of the past interactions with provincial and federal governments have been through the adversarial court system. Relations need to be improved, and that said Mr. Bryant, means not waiting for courts to make decisions.
99. For example, last January Mr. Bryant participated in an eight-day negotiation of a three-billion dollar agreement between the Government of Ontario and First Nations to share in the revenue from gaming. This was done in large part because of a need to share in the revenue of the province, but also in the name of trying to warm or improve the relationship to show and not just talk about, the government’s commitment to Aboriginal peoples.
100. Mr. Bryant said that government also needs to think of unique and special strategies for providing government services provincially. Many of these strategies were outlined in the Kelowna Accord and are ready to be implemented. Even without the Kelowna Accord however, the government needs to find ways to fulfill its obligations in providing services like education, healthcare, and urban Aboriginal strategies off-reserves.
101. Mr. Bryant then discussed why the provincial government is involved in Aboriginal affairs at all, in light of the fact that Aboriginal affairs are explicitly underlined as a federal responsibility. The main reason, Mr. Bryant explained, is because we are all in the same canoe. Looking past the constitutional divide, Aboriginal people are our provincial brothers and sisters, to whom Mr. Bryant for one, feels a kinship and obligation to, particularly in the circumstances of extraordinary poverty that we all know exists in Aboriginal communities. We cannot carve out a certain population within the province of Ontario and say, “Not my problem.” It is our problem. On that basis, provinces ought to as Ontario does, get involved in providing assistance and fulfilling its obligation in delivering services to Aboriginal peoples, even though there might be some overlap with the federal government.
102. Mr. Bryant also reviewed what the federal government could do with respect to issues concerning Aboriginal peoples. He said that it was the same formula for the federal government as for the provincial government; do something, resolve historical grievances, détente, implement the Kelowna Accord, and work on the issue of self-government.

103. Of all of the possible steps governments can take, Mr. Bryant believes that the most important is to work with Aboriginal peoples on the issue self-government. He believes that self determination can only be achieved for a community through self determination for the individual. Self determination comes through the expansion of an Aboriginal middle class, and that comes from two things; education, and jobs. Mr. Bryant spent the bulk of the remainder of his talk speaking about education and employment.
104. Getting unemployment for First Nations, Métis and Inuit into the single digits would transform Aboriginal peoples within Canada from an 'issue' that governments 'manage' to an enormous competitive economic advantage. This would, Mr. Bryant concluded, fulfill our constitutional responsibilities and improve our broader society.
105. As we lower unemployment by increments, it will be the measure that turns everything around. The jobs that are necessary will not happen without the government fulfilling its role in education. Furthermore, those jobs will not happen without the involvement of the private sector. In fact, Mr. Bryant believes that is it the private sector rather than the government that will play the largest role in any turnaround.
106. The moral imperative for the private sector to become involved in Aboriginal affairs has been there for our entire Canadian history, and is better understood by the Canadian population today. However, Mr. Bryant is aware that market forces are not going to make a contribution to the moral imperative above and beyond sponsorships and charity. Rather, market forces are going to get involved with Aboriginal peoples because it is a good investment for them to do so.
107. Mr. Bryant was very inspired by a small business person who came to see him some time ago. This business person was building an energy project in partnership with a First Nation, and told Mr. Bryant;
- “I don't do business with First Nations, Métis and Inuit leaders out of guilt, and I don't do it out of charity. I don't do it because it's the cost of doing business. I do it because it's a good investment. I can take that to my board, I can take it to my shareholders, and I take it to my partners. It's a good investment.”
- As such, one of the Province's jobs is to make working with Aboriginal peoples a good investment. One obvious way of contributing to a good investment, as Premier McGuinty has already made reference to, is guaranteed loans.
108. The province's job in this respect is eminently doable. While many people have approached Mr. Bryant and commented on how challenging his job must be and how mystified they are by the challenges he must face, Mr. Bryant replied that they should not be mystified. In Ontario, there are three hundred thousand Aboriginal people. That is two and a half times the size of his riding of St. Paul's. While the circumstances facing the one hundred and twenty thousand people of St. Paul's is not comparable to that of Aboriginal peoples in Ontario, there is still a way, Mr. Bryant believes, for MPs to provide attention and provide a level of service, accountability and responsibility to Aboriginal peoples. In

many cases it will be one First Nation at a time, or one Métis community at a time, or one Inuit community at a time; but that is how it will be done.

109. The province must realize as well that no First Nation is the same. It is a huge mistake to generalize with respect to what the partnership with Aboriginal peoples should look like, what the investment should look like, and what the government assistance should look like.
110. There have been so many success stories already, many of which have been discussed today. While Mr. Bryant appreciates that there is often little space in the media for good news stories, he believes that the government must also do a better job in celebrating success stories as well. Not only is involvement with Aboriginal peoples a good investment for the private sector, there are other advantages and attractions for businesses in working with Aboriginal peoples. One of which is the potential for filling the labour shortage in the private sector. Taking the mining industry as an example, Mr. Bryant explained that eighty one thousand high paying, highly skilled, new positions will be available to the mining industry alone according to the Prospectors and Developers Association of Canada. Many of these mining ventures take place in the northern and remote regions of Ontario. We've got the demand for and the supply of this labour force. First Nations are the fastest growing population in Ontario. They represent a potential labour pool with a wealth of local history, vast human resources, traditional knowledge, ecosystems, sustainability and survivability knowledge.
111. As the private sector starts to work with Aboriginal people however, businesses must remember to do no harm. If Wal-Mart wants to go into a community, they need to talk with the town council, and the hardware store or the pharmacy that might be shut down. If they are not welcome, they need pull out because it is bad for their brand and bad for businesses to do try to business in a community with neighbours where they are fundamentally not welcome.
112. When businesses want to move in, they need to do a lot of homework and a lot of good faith work first. Unfortunately, every time it does not happen that is all people hear about when it comes to the relation between the private sector and Aboriginal people. Instead of celebrating successes like Sandy Lake, we have focused on the six Council members and Chief in KI who are currently (and should not be) in jail. Businesses should not think that the aggressive posture of not showing respect for one's neighbours will have only a small impact based on the remoteness of the community. It is the same with First Nations, Métis and Inuit communities. Companies need to work with them instead of taking them for granted or ignoring their important place in Canada. The failure to do proper preparatory work can have serious harmful consequences, but if businesses approach the situation respectfully then they have the potential to form valuable partnerships and employ a knowledgeable workforce that can lead to even greater success.
113. As he mentioned earlier in his presentation, Mr. Bryant once again discussed the importance of the private sector. Aboriginal people and economic development need access to capital. The government can assist to a small extent through loan guarantees and other initiatives however; most of the capital required will come from the private sector access,

or through partnerships between primarily non-Aboriginal businesses and First Nations, Métis, or Inuit people.

114. There have been many successful partnerships on the mining and energy fronts. De Beer's is a shining example of a successful partnership. In their partnership for the Victor Mine, equity is shared with the Moose Cree First Nation, training is provided, jobs guaranteed, and the nation's middle class expanded. In turn, entrepreneurs led by Aboriginal people have developed.
115. Mr. Bryant also sees room for development of Aboriginal commercial courts. When Coca-Cola wanted to set up a bottling plant in Mississippi, they chose to set up the plant in Choctaw, Mississippi because unlike the commercial court of Mississippi the tribal court of Choctaw was like the Delaware commercial court they were familiar with. When a company is going into a territory where there might be some volatility, they want to go to a place where can resolve disputes with certainty. The development of Aboriginal commercial courts is a job for the government and Aboriginal leaders, but help is also needed from the bar and the bench.
116. In concluding his speech, Mr. Bryant said that in the noble fight for rights, sometimes protests and other activities take place, and many changes would not have occurred without these activities. From a business perspective however, there is an impact on the brand and credibility when potential customers see volatility with respect to potential businesses, and nations. The fight in the past has been about rights because governments wouldn't move and only because the fight for rights was a means to an end. The end objective was personal individual self-determination and in turn, self-determination and self-government for First Nations, Métis, and Inuit people. The untapped human capital, resources, and the creative class will be opened if business, government, First Nations, Métis and Inuit leaders engage in collaboration and the focus is on jobs. The only way to get there is through the skills training and education.

Lunch Hour Student Presentations:

117. During the lunch hour, three University of Toronto law students from this year's capstone course on Aboriginal economic development presented the research they did for the course. Professor Sanderson explained that capstone classes at the Faculty of Law are upper year directed studies classes providing students with unique opportunities to work with leading thinkers in a particular field. In the capstone course on Aboriginal economic development, students worked with; the Right Honourable Mr. Paul Martin, Professors Borrows and Trebilcock, Professor Marianna Prado, and Mr. Herb George. Students work with distinguished visitors, adjunct and full faculty in capstone courses to develop new and innovative research materials. Judith Rae, Austin Acton, and Darcy Belisle presented some of the research they did over the course of the term.

Judith Rae's Presentation

118. Ms. Rae spoke first, focusing her discussions on Aboriginal development and the public sector. The research she conducted in the capstone course this year examined the devolution of social program delivery to the band level and how it has served First Nations.

Her main question of research was, whether devolution can be a stepping stone to full self-government, or rather if it was a quagmire.

119. Ms. Rae began by outlining that the administration of social programs for First Nations has shifted steadily since the 1970s and even earlier, to the band level, particularly for Status Indians on-reserve. The devolution of program delivery progressed sector by sector, starting with income assistance and education and moving out to include child protection, policing, some health care programs and more.
120. In the non-Native contexts, social programs generally come under provincial jurisdiction. Indeed, some social programs, like child protection, were delivered to First Nations through the province as well. Other programs, like education, were delivered to First Nations through Indian Affairs. The federal power over 'Indians' in *s.91(24)* made the provision of social services to First Nations a perennial grey area. With devolution to the band level, a further complexity arose. In addition to the traditional federal and provincial division of powers, there is the added question of First Nations' jurisdiction and the right to self-government.
121. Program delivery by First Nations is also called "Self-Administration". First Nations assume the role of administering and managing programs, but do not have any decision-making control over policy and legislative scope. In most cases, First Nations run the program, the federal government provides funding and various criteria through Indian Affairs, and the province authorizes the program to be run in accordance with the relevant provincial laws, regulations, and policies. As such, Self-Administration does not recognize First Nations' legal jurisdiction and is not genuine self-government. True self-government, Ms. Rae explained, involves significant jurisdictional power in the hands of First Nations. In contrast, quoting Professor Cornell and his colleagues, Ms. Rae stated that self-administration is "a model in which indigenous government is designed by someone else..., funding comes from someone else, accountability is to someone else, and programs are designed and evaluated by someone else."
122. It is clear that self-administration is totally unsatisfactory on its own. However, Ms. Rae wondered whether it might be useful as a transitional tool towards genuine Aboriginal self-government.
123. In summarizing her research findings, Ms. Rae began by exploring deeper where devolution came from and how First Nations engaged with it. Through her research she learned that the federal government initially did not plan to be involved in social services for First Nations. However, when attempts to forcibly assimilate First Nations through separate 'training' programs were failing, the federal government decided in the 1950s and 1960s to assimilate First Nations by immediate integration. Under this new plan, they provided the new social programs by expanding at the provincial level.
124. However, this scheme suffered two fatal blows. First, the provinces proved highly reluctant to extend their programs to 'Indians', a position, Ms. Rae pointed out that still persists to some extent. Secondly, the policy of forced assimilation culminated and then died at least

officially, with the proposal of the 1969 White Paper and its historic rejection by Aboriginal peoples. Faced with these realities, it was then that the federal government began providing its own services to First Nations in the 1960s and 1970s.

125. Before long, Indian Affairs started to pursue devolution. Yet throughout this time First Nations were promoting a much more comprehensive vision for change. Their view towards self-administration, Ms. Rae stated, during this time was “ambivalent”. First Nations often denounced program devolution, and maintained that their rights must be recognized within the context of more robust self-government. They worried that they would end up stuck with mere self-administration, and yet almost all First Nations participated in at least some type of self-administration program. They have usually consented to it, and have even lobbied for local delivery in some cases.
126. Ms. Rae believes that this ambivalence makes sense if one considers the immense dissatisfaction with the prior situation, in which the federal and provincial governments made decisions for First Nations without any input. The disastrous residential schools system which began in the 19th century and was widespread by the 1960s was reason enough for First Nations to be eager to run their own schools on reserves, which they began to do in the 1970s. Similarly, the massive and culturally-biased “scoop” of children into the provincial child welfare systems in the 1960s and 1970s made the development of First Nation-run child protection agencies in the 1980s an urgent necessity. As the desperation of these situations illustrate, the “take it or leave it” context that First Nations were in was a grim one: the option of waiting for Canadian governments to recognize jurisdictional Aboriginal self-government was a luxury that simply could not be afforded.
127. Despite opportunities towards self-government, Ms. Rae shared that self-administration programs directed from the top by Indian Affairs remain by far the most common arrangement to this day under which First Nations, especially those on reserves, receive their basic services.
128. She then reviewed some of the costs and benefits of devolution as a transition towards self-government. She focused her discussions on the examples of education and child protection contexts. Beginning with the benefits of devolution, Ms. Rae outlined that local programs are better, in the sense that they are more responsive to real needs and are culturally appropriate. Also they help build capacity at the individual level (through staff), community level (with experience), and institution level. With new schools and new agencies we can have more developed band administration and more experimentation with inter-First Nation cooperative arrangements and innovative delivery structures. Further, all of these benefits can potentially be integrated into new system and will be assets once Aboriginal jurisdiction recognized.
129. There are costs to devolution as well. First and foremost, as Ms. Rae mentioned, currently the program delivery structure is not one of self-government. As well, the constraints of federal and provincial laws, regulations, and financial controls mean that programs have little flexibility and are also limited in their cultural compatibility. There are also problems with governance. There is often a lot of bureaucracy but no real good governance because

everyone is involved but no one is responsible. Additionally, there are a lot of jurisdictional disputes, and there is weak accountability internally within the First Nation because accountability moves upwards to Indian Affairs. The new capacity that is built is centered around Indian Affairs's designs and their role in imposed program structures and is not legitimate or effective as it is not designed internally. Devolution also maintains the on-reserve and off-reserve divide, limiting First Nation influence on public services off-reserve. Finally, it may also produce inertia, by letting Indian Affairs off the hook, blaming First Nations for poor outcomes, and consuming First Nations with competition for resources for basic services rather than focusing on a movement for systemic changes.

130. Thus, so far the balance between self-administration being a "stepping stone" or a "quagmire" is close. Ms. Rae however, believes that there are now two critical factors are tipping the balance for the worse and crippling under-funding and the immense difficulties of self-government negotiations.
131. The first major disappointment that Ms. Rae outlined has been at the negotiation tables. By the mid 1990s, there was hope that land and self-government claims would soon be resolved. Yet now, in 2008, only a handful of major agreements have been concluded. Willingness from the provinces has been uneven, and treaty peoples in particular have seen few developments. Even where negotiation tables are functioning, they move at a glacial speed. While the achievements that have been made are important, the overall pace has been significantly slower than expected.
132. The second major problem is that funding for devolved programs has dwindled, particularly since the 1995/1996 cap limiting growth in Indian Affairs' spending on core programs. Given inflation and the fact that the population of First Nations relying on these programs has grown twenty five percent in the same period, the effect has been an actual decrease in the real purchasing power of First Nations providing essential services to their citizens.
133. The shortfall accumulated from the cap is over one-point-three billion dollars in education alone, Ms. Rae stated. Also, in 2000, child welfare funding levels from Indian Affairs were twenty two percent less than the provincial averages and have seen no improvement since. Other areas such as housing, infrastructure (including school buildings) and water have been even harder hit, since Indian Affairs has unilaterally reallocated money from these areas to others. The historic 2005 Kelowna Accord set an agenda for change and earmarked five billion dollars in new funding. Unfortunately, as is well known, the new Conservative federal government has abandoned Kelowna entirely and the direction ahead remains unclear.
134. Considering these developments, the hazards of devolution that Ms. Rae outlined earlier take on a new weight in this context and its potential benefits are hollowed out. Any ability to deliver improved, effective, and culturally-innovative programming is quashed by under-funding. Nascent institutions are struggling to survive, let alone flourish. Job positions are so precarious and salaries so low that First Nation schools and child protection agencies have difficulty attracting and retaining staff; those staff who remain are consumed by crisis

management and burnout. Thus, the dysfunctional jurisdictional structure underlying devolution becomes more pervasive and more deeply entrenched the longer it continues.

135. What kind of capacity is being built through self-administration, Ms. Rae asked, when local programs are brought to their knees and the next generation of First Nation youth is abandoned without adequate education, strong families, or other essentials? What kind of transition is underway, when genuine self-government is so remote that it feels more like a distant dream rather than an immediate reality?
136. In these circumstances, Ms. Rae concluded, devolution looks more and more like a raw deal and less like a useful transition. She urged that it would be foolish for us as a country to ignore the urgency of this increasingly desperate situation. If any benefits are to be salvaged from devolution, they depend on significant movement forward rather than stagnation.

Austin Acton's Presentation

137. Mr. Acton spoke next. He introduced himself as having grown up in a small gold mining town in Northern Ontario. He stated that given his background, he is very familiar with Mr. Madden's comments on overreliance on a single industry.
138. Mr. Acton's research focused on IBAs and the benefits that they may offer Aboriginal people other than financial benefits. With help from the Harvard Project on American Indian Economic Development, Mr. Acton has come to the conclusion that the single unifying metric that can be used to evaluate IBAs is the degree to which they enable First Nations governance.
139. Mr. Acton began by stating that IBAs are curious tools. They arise out of the constitutional arena of Aboriginal rights, national identity, land claims, and duties of the Crown. However, they are executed using traditional common law tools of contract. They are negotiated directly between private industry and First Nations leadership, and their terms almost always remain confidential. As such, IBAs are both a legal mystery, and a physical mystery.
140. Further, no one has quite answered the question of whether IBAs work. Early academic analyses, Mr. Acton outlined, focused on the traditional indicators of socioeconomic well-being, namely, income, education, and employment. Others compared a community's perceived benefits to actual benefits. Others still actually tried to quantify whether the impacts on the community were numerically balanced out by the benefits of the agreement. While this last type of analysis sounds logical, it is almost impossible to answer, especially in the short term. Environmental groups also have their own approach, as do sustainable development groups. The simple inquiry "do IBAs work" has become such a complicated analysis that it is now known as a "million dollar question".
141. Mr. Acton believes that the key to answer whether IBAs works lies in looking for the common thread between corporate and First Nation objectives. On the one hand, resource extractors value stability, certainty, a predictable political relationship with First Nations,

and a predictable financial relationship. They presumably also want some good PR. First Nations however, have reported that they see IBAs a tool to recognize the assertion of Aboriginal rights and title; to participate in development of their traditional lands; to confront the legacy of mineral resource exploitation; and to fill a number of regulatory gaps. They are also concerned with the ability to renegotiate terms; whether their IBA would lead to long term infrastructure development; whether benefits were being passed on to the younger generation; and whether there was opportunity for follow-up.

- 142.** Mr. Acton believes that both sides are essentially looking for good governance. IBAs do not simply require governance, however. Engagement in IBAs can, Mr. Acton believes, actually help validate and build governance.
- 143.** Mr. Acton reviewed the Harvard Project's conclusions of elements important in First Nations governance. These factors, he stated, are accountability, cultural fit, and jurisdiction. Mr. Acton then elaborated on how IBAs can serve to reinforce and extend the last factor, First Nations jurisdiction. While he focused his discussions on First Nations, Mr. Acton did state that his analyses can also be applied to the Métis and Inuit with minor modifications.
- 144.** Mr. Acton began by outlining the two components of jurisdiction: a source (the authority to govern) and a subject (something to govern over). Beginning with a study of the sources of jurisdiction, Mr. Acton found four elements of First Nations jurisdiction which can be exercised by negotiating and implementing IBAs.
- 145.** The first element of First Nations jurisdiction which can be exercised through IBAs is sovereignty. In great contrast to the European or Canadian use of the term, Mr. Acton explained that the First Nation conception of Sovereignty has been defined as "the original freedom conferred to [Aboriginal] people by the Creator, not a temporal power, but a gift from the Creator." Aboriginal Elders have called it a "very special and complete relationship with creation." While the First Nation conceptualization of sovereignty is more all-encompassing than bartering with private industry, by negotiating and implementing IBAs, First Nations have the opportunity to exercise their relationship with creation in a meaningful way by participating in IBAs. For example, the initial choice to enter into a resource extraction agreement and see benefits flow from it may be seen as assertion that the land is a gift to First Nations from the Creator. As negotiators, First Nations can be seen as protectors of the terms and restrictions placed on that gift by the Creator. Thus, the exercise of carefully negotiated land use can reaffirm the continued "very special and complete relationship" between First Nations, the land, and the Creator.
- 146.** The second source of jurisdiction is prior occupation. Mr. Acton explained that the court has repeatedly stated that the right of First Nations to organize as a political body and control their own affairs is one of those rights arising out of the fact that it was happening before the arrival of Europeans. In other words, the Court has found a truly inherent right to self-governance for First Nations. Crown policy has recognized this right as well. IBAs, Mr. Acton believes, can allow revival and assertion of First Nations' inherent right to self-government. Reciprocally, recognition of the connection between First Nations and the

earth by third parties (both private actors and the Crown) can serve to reinforce the continuing existence of those pre-existing rights. Currently, corporate entities do not owe any duty to consult with First Nations at common law; the duty is often described as being “delegated” from the Crown to private enterprise. However, Mr. Acton reminded us that in many cases, private actors have sought out IBAs willingly with no involvement of the Crown and without being required to do so. Increasingly attitudes are changing and IBAs are increasingly being seen as “the right thing to do”. Not only is it “right” because of the negative impacts exploration and development can have on First Nations, but also because First Nations have an enduring source of jurisdiction. Recapturing and reiterating this jurisdiction can thus easily be seen as an exercise in governance.

- 147.** The third source of governance that Mr. Acton discussed was jurisdictional space. It has been debated whether or not the enactment of s. 35 of the *Charter* had the intention of limiting the scope of federal and provincial jurisdiction in Canada in order to make room for Aboriginal governance. Recently, the British Columbia Supreme Court has clearly articulated a jurisdictional space for First Nation governance. In *Campbell*¹², the court said that the *Constitution Act* did not distribute all jurisdictional power to the Parliament and the legislatures. If that is true, then the net effect of s. 35 may have been to actually reduce the amount of jurisdictional power available to the Crown. It then stands to reason that if the total source of jurisdiction in Canada has become less than full, First Nation governance can (and is intended to) rush in to fill the void.
- 148.** In addition to sovereignty, prior occupation, and jurisdictional space, the fourth source of governing authority comes from what Mr. Acton calls ‘de facto control’. Mr. Acton stated that First Nations do in fact have real and practical control in several ways over their traditional territories regardless of the state of the law. Firstly, private enterprise is simply undertaking the task to sign IBAs and follow their terms. In the mining industry for example, this is not mandated by law, yet is being considered by mining companies themselves a prerequisite for new projects. Secondly, First Nations are becoming less and less willing to put up with being ignored. Communities are increasingly mobilized and fearless. Stock prices are affected by the increasing public awareness of First Nations issues. At the end of the day, Mr. Acton stated, as influence grows so does control, and the manner in which First Nations choose to assert their de facto control is an important element of governance.
- 149.** After addressing the sources of governing authority, Mr. Acton discussed the second element of jurisdiction: the subject matter over which jurisdiction is exerted. Once again he found four notable areas where IBAs allow for an exercise in governance in this respect.
- 150.** The first and most obvious subject is private corporations. IBA terms may include much more than revenue sharing. They may include First Nations oversight of the project, hiring practices, training initiatives, environmental standards, and other restrictions or duties placed on the project by First Nations. This is not to imply that they must be burdensome or oppressive. However, it is important to note that private corporations are being required to act under IBAs in physical, financial, and administrative ways previously unheard of.

¹² *Campbell v. AG British Columbia* (2000) BCSC 1123.

- 151.** This is happening quite quickly as well. Private actors working with First Nations through IBAs have a momentum that is not experienced in government. While the current state of the KI band council is certainly unfortunate, in the early days of the *Platinex*¹³ litigation, the court said that corporations who attempt to steamroll over First Nations government are being disrespectful and insulting, and will be the authors of their own misfortune. Those are strong and visionary words from the court regardless of the temporary setback.
- 152.** Mr. Acton went on to say that IBAs may also extend governance into new sectors of industry. While currently limited to traditional resource extraction, new industries may seek to expand into more remote areas of Canada. Governance over these fields may grow as well.
- 153.** Mr. Acton then said that while this may be a surprise to many, the second subject of governance is the Crown. He explained this conclusion by stating that where IBAs cannot be agreed to between First Nations and industry alone, the Crown is obliged to sit in and assist with the negotiations in an honourable way. Furthermore, the preference of First Nations to deal directly with private enterprise may also be seen as a “butt-out” order to government, which in many cases, is being heeded.
- 154.** A third subject of governance, and perhaps the most obvious of the four subjects Mr. Acton reviewed, is territory. The nature of IBAs allows First Nations to exercise governance over traditional territories regardless of the strength of a claim or proof of title.
- 155.** Finally, in addition to corporations, the Crown, and traditional territory, Mr. Acton believes that IBAs allow for a significant exercise in governance over a First Nation's own members. Since IBAs are a new concept and take place largely outside of *Indian Act* rules, they allow for many types of new or revived self-governance. Members often may have not had extensive contact with the development sector before an IBA. As such, First Nation governments may have the responsibility of informing the citizenry of their interests, the possible terms of an IBA, the potential benefits, and the potential losses. If fissures in opinions within the community arise, they must be resolved by good governance.
- 156.** Thus Mr. Acton concluded his over view of the eight elements of First Nations jurisdiction and how First Nations may assert jurisdiction in the context of an IBA. He reviewed four ways to receive and claim jurisdiction and four areas over which that jurisdiction can be asserted. He stated that there may be more elements but that these were the eight most significant in his opinion. Mr. Acton further stated that negotiating and implementing an IBA can be an exercise of First Nation jurisdiction in all eight areas. He feels that in combination with building accountability and culturally appropriate institutions, IBAs can be seen as a new and important element of building and extending First Nations

¹³ *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation* (2006), 272 D.L.R. (4th) 727, 2006 CanLII 26171 (ON S.C.).

governance. As such, Mr. Acton believes that agreements which recognize and enable First Nations governance will be the most likely to foster long term economic development.

Darcy Belisle's Presentation

- 157.** Mr. Belisle was the last student to speak during the lunch hour presentations. He shared with us his research on Métis economic development and its associated challenges.
- 158.** Mr. Belisle began by stating that Métis economic development must be consistent with Métis traditions for it to be successful. Further, he stated, the political goals of the Métis must not interfere with this development. The Métis, Mr. Belisle explained, are a distinct people in Canada of mixed European and Aboriginal ancestry. They have their own traditions and cultural values. They have a long history of state-enforced oppression and are, with the exception of First Nation people, among the most disadvantaged populations in Canada with respect to economic status, education, health, and housing. Thus, Mr. Belisle stated, there is much need for Métis-specific economic development.
- 159.** Historically, Mr. Belisle stated, the Métis were a proud and independent people who owned themselves, hunted bison, spoke their Michif language, were stewards of the land, and were deeply religious. Mr. Belisle urges those designing economic initiatives for the Métis to be cognizant of this history.
- 160.** To illustrate the importance of being cognizant of Métis culture, Mr. Belisle referred to the concept of nomadic pastoralists. Nomadic pastoralists, Mr. Belisle said, raise livestock but do not settle. Rather, they travel from pasture to pasture, constantly relocating themselves. Government intervention, international agencies and scientific experts have taken over their land and applied their own methods of agricultural development. These methods, however, were criticized as largely ineffective. It has since become clear that the traditional practices of the nomadic pastoralists were more successful than techniques used by outsiders.
- 161.** The consequences faced by nomadic pastoralists, Mr. Belisle stated, reemphasized the need to integrate cultural knowledge in development. The challenge for the Métis is integrating their cultural histories which include self-government, self-sufficiency, community values, and economic soundness into their development schemes.
- 162.** Recent research on American Indians emphasizes the importance of understanding the close relationship between culture and development. Mr. Belisle explained that a study conducted by the Harvard Project on American Indian economic development found that Indian culture reinforces Indian government and consequently benefits the Indian economy. The benefits include bottom line results such as forest productivity and housing quality. The Harvard Project found that cultural values created the genus of what makes good Indian governance, that is, effective representation for Indian communities and Indian individuals.
- 163.** Mr. Belisle does not think it is unrealistic to apply the findings of the Harvard Project to the Métis. Before trying to do so, however, Mr. Belisle thinks it is important to first draw

out the distinctions between the American Indian context and the Canadian Métis context. Mr. Belisle began by outlining that American Indians are organized around tribes. While these tribes have recently come under attack by the state and the courts, they have been generally quite successful in taking control and implementing practical self-rule. The Métis have also made considerable strides to self-government as well, Mr. Belisle stated, but they have been considerably less successful. Further, while American Indians tribes are generally focused around contained geography, the Métis are traditionally semi-mobile and are today becoming increasingly scattered. In other words, Métis communities are simply harder to define in common terms.

- 164.** Given these significant differences between these two contexts, Mr. Belisle admitted that it remains to be seen whether or not the comparison that he is trying to draw between the American Indian and the Canadian Métis contexts is reasonable. The overlap between Indigenous economic development across countries and contexts is something that Mr. Belisle feels needs to be further researched. For the sake of his discussion, however, Mr. Belisle assumed that there is a connection between the American Indian and Métis contexts.
- 165.** Mr. Belisle reiterated the Harvard Project's findings. The Harvard Project concluded that tribal governance can create success in business initiatives if it is informed by traditional values. Business initiatives however, are not successful when tribal governments pursue political goals before profit. In other words, Mr. Belisle said, the research found that poverty in Indian country is a political problem, not an economic one.
- 166.** Mr. Belisle then stated that across the spectrum of provincial Métis nations, the overwhelming reality is that Métis economic development initiatives conform to this pattern of employing culture in governance. For example, the Métis National Council tells us that a fundamental tenet of the Métis world view is that all economic activity that the Métis engages in must be in keeping with Métis values and beliefs of the land. What remains to be seen is whether the political goals of Métis nations interfere with Métis businesses.
- 167.** On the provincial level of Métis government, the Métis Nation of Ontario (the MNO) has created the Métis Nation of Ontario Development Corporation in which that nation is the sole shareholder, and whose purpose is to serve the needs of the Métis. The MNO insists that the purpose of its development corporation is to make money and that the corporation is a separate body from the Métis Nation as a political entity. However, at the same time, the MNO insists that the corporation's goals are to assist Métis peoples to create businesses of their own, to make money, to generate jobs, and in general to bring about a better way of life for the Métis people. Mr. Belisle summarized the Métis Nation of Ontario Development Corporation's goals as generating profit with the result of creating business, jobs, and money.
- 168.** However, viewed in this light, Mr. Belisle believes that it is apparent that the development corporation may not be a totally separate body from the political body of the Métis Nation of Ontario. Taking as an example the purported goal of the development corporation of

creating jobs, Mr. Belisle stated that job creation is a political goal in that the Métis voters who elect the Métis government want more jobs, or in the alternate, Métis government sees the need for job creation in the community and subsequently pursues it. With job creation as a political goal that is exercised through apparently separate corporate and political bodies, corporations and businesses may be at risk. As the American Indian context has shown, corporations whose goals are political and not for profit face serious danger of failure. The problem, Mr. Belisle explained, is that if a political goal of the Métis nation is to create jobs, then it can put pressure on Métis businesses to invent more jobs than the business actually has the capacity for. Over-capacitated with jobs that it has too little means to support means that a business will fail.

- 169.** More generally, Mr. Belisle stated, Métis culture structures Métis government. The MNO insists that its practices are informed by self-sustainability, which may be read as a manifestation of self-government and independence. Both self-governance and independence are values which define the Métis as a culture. However, self-sustainability depends on job creation. Mr. Belisle thinks that it is therefore ironic that this political goal may ultimately endanger Métis culture by making Métis economic development and profitability less viable.
- 170.** Mr. Belisle revealed that the Métis Nation of Ontario Development Corporation has had difficulty with its success. However, he stated, this reality may not have much to do with political goals conflicting with economic goals. After recently speaking with an MNO representative, Mr. Belisle has found out that the core of the problem with the success of the development corporation has been gross underfunding and lack of staff. In regards to this fact, Mr. Belisle said, it may be that we cannot apply the American Indian context to the Métis.
- 171.** Yet, Mr. Belisle reminded us, because the corporation has faced other problems in realizing its goals does not mean that politics would ultimately interfere with profit, and Mr. Belisle believes that the proposition that the Métis economy may be weakened by the intervention of political motivations still stands. Referring again to the Harvard Project, Mr. Belisle said that the American context has shown that separating business and government is critical because many Indian businesses are government-owned.
- 172.** Mr. Belisle then explained that when institutional virtues contradict each other, they create risk. On the one side, governments must provide good service to voter constituents. On the other side, the corporation has a fiduciary duty to its shareholders. The confusion of these virtues creates risk because the political pressures of voters in government ultimately interfere with business. However, culture informs the creation of politics in Indian government. Mr. Belisle believes that the same might be said for culture's role in the Métis context.
- 173.** It remains, he said, that where tribes can make their own decisions on what to approaches to take and what resources to develop, they consistently outperform outside decision-makers. Thus, in Mr. Belisle's opinion, the distinction between tribal decision-making and the disintegration of political goals in tribal business decision-making is simply that in the

context of economic development, there must be clear lines drawn between the economic goals of the corporation and the political goals of those who make business decisions.

- 174.** Mr. Belisle acknowledged however, that cultural values like community and stewardship have an active role in business decision-making. In this sense, the Métis Nation of Ontario is not misguided in integrating cultural values like self-sustainability into its governance structure. Furthermore, the Métis National Council believes that programs and services are more effective when delivered through Métis governance structures. These structures are created around Métis culture. The result is that the existence of Métis culture and Métis governance makes for better decision making. In the case of Native Indians, because tribes bear the consequences of their government's decision-making, whereas outsiders like the state and non-tribal developers do not, tribes that make their own decisions do better.
- 175.** While the Métis recognize the importance of culture as an active element in the success of their economic development strategies, the challenge, Mr. Belisle reiterated once again, is in separating political goals and cultural values. Mr. Belisle also acknowledged that the challenge is significant as Métis culture, politics, and governance are bound into one another. For example, the Métis are the children of the fur trade and through their involvement in trade, they have established themselves as political agents. Their cultural distinctiveness as a hunting people is closely connected to their political history. While the interlocking nature of culture and politics is an enormous challenge to entangle, Mr. Belisle concluded by emphasizing the importance of entangling this challenge, saying, the success of Métis businesses may depend on it.

Afternoon Roundtable

Introduction

176. The afternoon roundtable, "Overcoming the Legacy: Developing Aboriginal Economies," was moderated by Professor Darlene Johnston from the Faculty of Law at the University of Toronto. There were seven speakers on this panel: Satsan (Herb George), from the National Centre for First Nations Governance; Professor Douglas Sanderson, a Visiting Scholar at the University of Toronto; Professor Stephen Cornell, co-director of The Harvard Project on American Indian Economic Development, and the Director of the Udall Centre for Studies in Public Policy and Professor of Sociology and of Public Administration and Policy at The University of Arizona; Clint Davis, President and CEO, Canadian Council for Aboriginal Business; Manny Jules, Chairman of the First Nations Tax Commission; Professor Mariana Prado from the Faculty of Law at the University of Toronto; and Rochelle Côté, a doctoral candidate in the Department of Sociology at the University of Toronto.

Part 1 of the Afternoon Roundtable

Introduction

177. Professor Johnston began the afternoon discussions by greeting everyone in different languages and dialects. As Elder Dallaire did in morning prayers, Professor Johnston also introduced herself in her own language. She told the audience that she is Anishinabe Ojibway, of the Marten clan, from the Neyaashiinigmiing (Cape Croker) reserve, and that her Anishinabe name is Noon-day Woman.

Satsan

178. Satsan (Herb George) was the first of the panelists to speak. Professor Johnston asked that, in light of his long history of advocacy and efforts towards the recognition of inherent self government, he speak on the connection between self governance and economic development and what institutional measures might be required to carry this vision forward.
179. Satsan began by thanking and recognizing the organizers of the Summit and the Right Honourable Paul Martin for developing the Summit. He then addressed the question Professor Johnston posed to him by first outlining an assumption that he operates by: namely, that the *Indian Act* and reserve system are not the solution and that we need to move away from these systems. Referring to a paper that Professor Borrows wrote on getting out of the *Indian Act*, Satsan spoke of how he and Professor Borrows are the sixth generations of their respective families under the *Indian Act*. Their children are the seventh generations under the *Indian Act*. This shocking realization led Satsan to recognize that he needs to make a choice between continuing to accept the *Indian Act* or stopping it and having his children be the first of the next seven generations to be free.
180. Satsan then outlined the achievements Aboriginal people have attained in the last few years in the struggle for recognition of Aboriginal and treaty rights in mainstream law and recognition of their right to jurisdiction over their territories. (The right to jurisdiction over territory, Satsan explained, is composed of the right to choose how one's land is used and therefore has an economic component to it but it has also been identified by the Harvard Project as a main building block to self-rule and government.) Because of these developments, the Crown must now justify infringements to Aboriginal and treaty rights and owes First Nations duties of consultation and accommodation.
181. In light of these developments, Satsan said that First Nations no longer need to spend valuable time and effort seeking recognition of their rights and jurisdictions. Rather, communities and nations need to focus on developing a clear vision of their future and the needs of their people. They need to reorganize themselves to develop strong governance to achieve their visions for the future in a healthy, productive and sustainable way. Developing effective and efficient governance is especially important given that governance and economic development are intimately related.
182. Satsan illustrated the connection between governance and economic development with the example of his hometown, Smithers, British Columbia. In the 230 miles between Smithers and Prince George, the First Nations have almost 5.5 million cubic metres of forest land and fibre that could be developed. However, because they have been shut out of participating in the economy for so long, they lack the expertise to develop businesses. They also lack the capital and investment to realize this opportunity. Finally, they also lack the management capacity to ensure success of business opportunities. Many other Aboriginal communities across the Canada are also in the same boat. First Nations have many opportunities for economic development at their fingertips, but are prevented from taking advantage of them because they lack expertise, capital, and management capacity.

183. Satsan outlined two tools he believes First Nations need to use if they are going to be able to overcome these challenges and start taking advantage of the business opportunities they have created. The first tool that Satsan discussed was dialogue. First Nations need to start talking to each other about their visions for the future and they need to set up a strategic plan as to how to move forward towards their vision. The second tool for achieving economic development is effective governance. Effective governance will allow First Nations to work with the Crown on business opportunities. As the example of Smithers, B.C., shows, there are tremendous opportunities for shared jurisdictions, economies, resources, and revenues. Effective governance will help resolve the issue of jurisdiction and will allow First Nations to have a government-to-government relationship with the Crown in negotiations.

Professor Douglas Sanderson

184. The next speaker was Professor Sanderson. Having worked with the Honourable Michael Bryant both when he was Minister of Aboriginal Affairs and also as Attorney General, Professor Johnston asked Professor Sanderson to provide some comments on the role the province can play in Aboriginal economic development, and if possible the role of the private sector can play as well.

185. The province, Professor Sanderson began, has not traditionally played a large role in Aboriginal economic development. The amount of attention and assistance the province has provided has, in part, depended on the government of the day. When the Native secretariat first began, it was a small unit, with a budget of approximately \$10 million. It has now developed into its own department within the government, and funding has increased five fold.

186. The province has also been reluctant to play a large role because of the perceived constitutional divide. Under the *Constitution Act*, jurisdiction of Aboriginal peoples lies with the federal government. The province cannot legislate with respect to Aboriginal peoples, and any such law that does deal with Aboriginal peoples may be struck down by the courts as being invalid for over-stepping the province's jurisdiction.

187. A government's actions, however, Professor Sanderson pointed out, is not always instantiated in statutory law. Governments can make policies and do accomplish much of their work through policies. As Mr. Bryant mentioned in his lunch time address, Professor Sanderson agrees that the province needs to do something for Aboriginal peoples. Considering that the province is responsible for Crown lands, Professor Sanderson believes there is great room for the province to contribute to Aboriginal economic development. The allocation of resources through instruments like the *Mining Act*¹⁴, *Forestry Act*¹⁵, and the placement of hydro dams are all things the province can do with or in conflict with First Nations and Métis people.

¹⁴ R.S.O. 1990, CHAPTER M.14.

¹⁵ R.S.O. 1990, CHAPTER F.26.

188. The first step the province needs to take, however, is to listen to Aboriginal peoples. Professor Sanderson shared the story of a time he went up north to advise a Chief and Council that the Attorney General's office would not be taking their land claim to negotiation. The Chief said that the community had expected as much and then advised Professor Sanderson that the community had put in the land claim so that they could have a means of interacting with the Minister's office. What the community really wanted was for the Minister's office to help them secure a loan guarantee to start a business. The only way for them to get in touch with the government however, was to start a land claim.
189. The government must listen to the needs of Aboriginal peoples. The province must also realize that simple solutions exist. The difficulty may be in the implementation of the solution, because the government is bifurcated. The Minister of Aboriginal Affairs cannot affect the Ministries of Energy, Finance, or Natural Resources, without the Premier office's will and directive. However, listening and looking for simple solutions that work for individual communities are the beginning steps for the province.

Professor Stephen Cornell

190. Professor Johnston then introduced Professor Cornell, who co-developed the Harvard Project on American Indian Economic Development. Professor Johnston asked what prompted Professor Cornell and his colleague Professor Joseph Kalt to start the project, and what he thought were lessons from the project that could be applied to the Canadian context.
191. Addressing each question in turn, Professor Cornell began by explaining that during the mid-1970s, with the rise of a political activist movement of Indigenous people, the federal American government, under enormous pressure, agreed to back off as the major decision maker on Indian community affairs. American Indian nations therefore started moving into a substantial decision-making role in their own affairs, deciding on issues ranging from the design of their own governments, the determination of citizenship, economic strategies, decision on how to use their lands and their funds. However, some communities did better than others. More interestingly, researchers could not predict the performance of Indigenous nations with their knowledge of the community's asset base, the opportunities they had, their educational attainment, or any of the usual factors that economists and sociologists typically look at. Curious to discover as to why some communities did better, Professors Cornell and Kalt started the Harvard Project in 1986.
192. They originally focused on economic development, however, the study evolved over time to examine Indigenous efficacy more generally. Indigenous efficacy, Professor Cornell explained, refers to the ability of some nations to effectively pursue their own goals whatever that may be, whether revitalization of Indigenous language through the formation of immersion schools (like the one developed by the Cherokee Nation in Oklahoma,) the regaining of a nation's lands, economic development, or pursuing subsistence economies.
193. The study is still going on. Early on, however, Professors Cornell and Kalt found that three factors appeared to be critical to Indigenous efficacy. These factors are: placing power in

the hands of Indigenous peoples; effective governance, and the inclusion of the values and principles of the Indigenous peoples in the design of governance systems.

194. Placing power in the hands of Indigenous people is important, Professor Cornell explained, because decision-making power and accountability go together. You can only ask people to be accountable if you give them the power to make the decisions that produce the results you are trying to hold them accountable for. Thus, a lesson for the federal government arising out this first factor is to give the decision-making power to Indigenous peoples.
195. The second factor for Indigenous efficacy is governance. Nations that have better governance capacities do better. Good governance is not only important for effectively exercising Indigenous rights once they are secured, but also while the rights are not yet secured to evidence that it would be better for societies to give Indigenous peoples the rights they claimed.
196. The third factor Professor Cornell outlined is designing good systems of governance. Good governance incorporates the most important values and principles of the people being governed. These values and principles may be traditional or they may not be, but Indigenous values and principles need to be incorporated to give the governance system validity and legitimacy for the people being governed. Then Indigenous people will be able to view the government as their own and not as someone else's. The *Indian Act*¹⁶ in Canada, and the *Indian Reorganization Act* in the United States for example, are not strongly supported by First Nations precisely because they are designed by somebody else, primarily for that person's purposes and agendas.
197. These three factors and lessons from the Harvard Project on Indigenous efficacy are transferable lessons for the Canadian context. The Harvard Project has grown since its conception in 1986 and research is already being done in Canada, Australia, and New Zealand. Although on the ground, each nation faces different obstacles when they try to implement these factors by virtue of the different political and legal regimes they operate in, these three factors have proved time and time again to be important for Indigenous efficacy.
198. Professor Cornell believes that another transferable lesson is to realize that Indigenous peoples may make mistakes in the course of exercising the decision-making powers given back to them. However, that is not grounds for federal governments to take back this decision-making power. Part of giving someone the power to make decisions is letting them learn for themselves from their decisions. As time goes by, the quality of the decisions Indigenous communities make will get better. Moreover, Indigenous peoples are best able to make decisions regarding their affairs because it's their lives and futures at stake.
199. Since each nation is diverse and will be making their own decisions, there will inevitably be diversity in the approaches Indigenous people take to governance, economic development, and other issues. We need to recognize this diversity. Federal governments,

¹⁶ R.S., 1985, c. I-5.

Professor Cornell remarked, tend to make the mistake of trying to create one template that can be applied every where, and trying to impose this template. However, such a template is a fantasy. There will be diversity in the governments, strategies, and outcomes of First Nations. However, this is still much better than the status quo.

200. Finally, Professor Cornell said that we need more conversations across international boundaries. When he comes to Canada and works with First Nations here, he often finds solutions and lessons he can take back to the States. Similarly, there are lessons from the Australian and American experiences which are also applicable to Canada. Indigenous peoples cannot afford to all be working on investing a solution on their own. There is a network of Indigenous innovation, Professor Cornell stated, that is emerging in the world that we need to bring forward and provide with a stronger voice than it has now.

Mr. Clint Davis

201. Professor Johnston then introduced Mr. Davis. Given his experience with the Canadian Council for Aboriginal Business and BMO Bank of Montreal, Professor Johnston asked Mr. Davis to speak about the role of banks in Aboriginal economic development.
202. Although speaking mainly about his experience at BMO, Mr. Davis said that he believes that banks are doing quite a lot for Aboriginal development, at least with respect to providing commercial loans for Aboriginal governance. Their efforts to service Aboriginal clients and businesses began after the Assembly of Manitoba Chiefs filed a human rights complaint against all of Canada's banks in 1990, contending that the financial industry was not accessible to Aboriginal peoples. BMO's response specifically to that complaint was to set up an Aboriginal banking unit headed up by Ron Jamieson, a Mohawk man from the Six Nations in Ontario. By 2008, BMO developed 15 Aboriginal banking unit branches across the country. Since 1992, BMO's book of business in commercial loans has grown from \$10 million to \$1.3 billion. Seventy-five percent of the \$1.3 billion are commercial loans. All major banks, Mr. Davis shared, now have an Aboriginal banking unit and are aggressively seeking this type of business, looking at it as a great opportunity for the bank.
203. Mr. Davis then went into detail about commercial loans and BMO's commercial loan policy for Aboriginal businesses. Commercial loans, he explained, are loans of up to \$10 million to First Nation governments, primarily to develop infrastructure. When a bank considers whether or not to provide a loan, they consider two principles: the soundness of a loan, or whether the person they are lending the money to has the capability to repay the loan; and also the safety of the loan, whether there is any security. However, because banks cannot take security in assets on the reserve BMO had to develop a new lending policy with respect to commercial loans to First Nations government. This policy requires BMO to consider the following factors: money (where the revenue or cash flow is for the First Nation to repay the loan), material (how much this is going to cost), market (although strictly speaking, there is no market because the loans are used to develop infrastructure), and management. Management is the most critical factor in determining whether to provide a commercial loan. It involves looking at things like: the political structure of the First Nation, how long the Chief and Council have been there, what their expertise is with respect to economic development, whether there is a separation between business and

politics in the Nation, and whether the Nation has qualified outside advisors, like legal counsel, consultants, engineers, etc. to counsel them on the project.

204. While banks have made significant strides in the lending department, Mr. Davis still sees three areas in which banks can improve. First, banks can do better to target Aboriginal entrepreneurs, especially First Nation entrepreneurs on reserves. This is a challenge because banks do not consider these individuals safe or low risk as banks cannot take on-reserve assets as capital. Further, given the current economic climate and asset-backed commercial papers, banks will be reluctant to loosen their credit criteria anytime soon. Nevertheless, there is a great opportunity for banks in this area. In 2006, Aboriginal Business Canada did a study and found there were 27,000 Aboriginal entrepreneurs. Since then, the number has gone up and is probably somewhere between 30,000 and 35,000 entrepreneurs. The rate of growth of Aboriginal entrepreneurs is nine times faster than that of non-Aboriginal entrepreneurs. If banks were creative, they might be able to take advantage of this opportunity.
205. Next, banks could be more aggressive in their hiring of Aboriginal individuals than they currently are. They could more actively go out, identify, recruit, retain and advance Aboriginal peoples within their organizations, enabling Aboriginal people with financial skills to help the organization. They also need to be accepting if these individuals later want to leave the organization. By bringing in Aboriginal people into banks and these opportunities, we create opportunities for individuals to not only develop financial skills but also opportunities to have disposable income. They will inevitably spend this income, thereby creating a basic economy.
206. Finally, Mr. Davis believes that banks should have a proactive aggressive procurement of Aboriginal businesses. As Chief Clarence Louie once said, if you want to help out Aboriginal communities, be a customer. Mr. Davis believes that every level of government, all the provinces, and every major urban centre should set aside a program for Aboriginal services. The federal government is already doing this. We can learn from this experience.
207. To close, Mr. Davis spoke of the possible role private equity firms can play in Aboriginal economic development. Banks, he stated, are only one piece of the financial world. Private equity firms now have a great opportunity to work with Aboriginal businesses, and it baffles Mr. Davis why they have not done so already. The two biggest issues facing Aboriginal business, Mr. Davis said, are the lack of management expertise or capability, and lack of equity. In 2006, the private equity industry was approximately \$365 billion in North America and there have recently been a growth in the number of small firms investing in equity positions under \$200 million. They could easily cover Aboriginal business, and in the opinion of Mr. Davis, get returns of ten to twelve percent. Thus, there are opportunities for other private sector institutions to play an active role in Aboriginal economic development.

Mr. Manny Jules

208. Next, Mr. Jules was asked in light of his role in creating the First Nations Tax Commission to speak of the role of taxation, as well as the role of land and land registry systems on Aboriginal economic development.
209. Mr. Jules began by talking about markets. In order to trade, Mr. Jules said, a seller requires a competitive advantage or specialty; there must also be openness and voluntariness in the exchange between seller and buyer. Markets require rules and infrastructure to support them. However, the *Indian Act*, as it was developed in the 1800s, was never designed for nor did it ever contemplate the kinds of development or economic strategies that First Nations and Indigenous nations are now starting to employ. The *Indian Act* will never, Mr. Jules emphasized, encompass the hopes and aspirations of First Nations. As such, First Nations need to turn their minds to and imagine a life without the Department of Indian affairs and the *Indian Act*. To do so, Indigenous peoples need to create institutions which reflect who they are and which facilitate economic development and market growth in First Nations communities wherever they are. This, Mr. Jules stated, needs to be done collectively with Indigenous groups from the north to the very tip of the Americas, or else, the countries and the federations Indigenous people live in will not achieve the greatness to which they aspire.
210. Mr. Jules believes that taxation can and should play a large role in Aboriginal economic development. It is a fundamental government institution because without taxation, Mr. Jules believes that Indigenous people are condemning their governments to rely on provincial or federal handouts. If Aboriginal communities utilized tax, they could generate some of the revenue that is currently being transferred from their own developments and through corporate interests in Aboriginal lands. Between 1886 to 1990, Mr. Jules explained, there were only eight communities that used corporate investments in their lands. There are now over 120 communities, and over three-quarters of a billion dollars has been generated.
211. Mr. Jules has therefore, been active in lobbying for legislation to create taxation powers for First Nations. The last piece of legislation he worked on was Bill C-20, through which he created a First Nations Tax Commission to deal with tax matters. The First Nations Tax Commission deals especially with how taxes affect those being taxed, namely the investors on Aboriginal lands. They also created a First Nations Management Board, because transparency and accountability are important to facilitating investment on Indigenous lands, and are also important to show Indigenous people that they are accountable. They also created a First Nations Finance Authority to lever through bonds, debentures, and the taxes collected to develop badly needed infrastructure, without having to rely on the Department of Indian Affairs. Finally, he has also created a First Nations statistical institute, so that Indigenous peoples can take a snapshot of where they are today and plan based on sound statistical numbers for where they want to go in the future.
212. These institutions, Mr. Jules stated, will help Indigenous peoples to free their imaginations for economic development. Economic development is not all based on resources or commercial type development, as the story of Microsoft shows. The story of how Indigenous peoples developed corn, which is now one of the world's most important foodstuffs, showed that Indigenous people were creative in the past. First Nations must, Mr.

Jules urged, harness this creativity again. Ron Derrickson, former Chief of the Westbank First Nation, who Mr. Jules believes is one of the most successful Indian entrepreneurs, with his own bank in Russia, lives by the maxim: “opportunity knocks softly”. First Nations need to be able to listen for opportunities and to take advantage of situations that may not have happened at the current time, but will eventually happen.

213. Another fundamental foundation for Aboriginal economic development is related to land. Mr. Jules believes that First Nations need to be able to create something he calls the First Nation Land Title Recognition Act, because of the biggest barriers to First Nations developing their own lands is the assumed ownership of the land by Her Majesty. Under the current land system, if First Nations want to undertake a particular economic strategy, they have to get permission from someone else. This is a great impediment for First Nations, and it must stop. The only way for it to stop, Mr. Jules believes, is to create a proper land titles system that protects and preserves the underlying title of First Nations, but which also allows individual torrens-like systems on Indigenous lands. Such a system would allow Indigenous people to continue to have jurisdiction in the lands, and would open up a myriad of ways for promoting economic growth on the basis of Indigenous institutions and governments. It would allow for the imagination of individuals to be freed but, will also help in convincing the Canadian public that it is in the interest to build Aboriginal economies, by showing that Aboriginal economies are integral to the Canadian and global economies.
214. Mr. Jules concluded with a quote from Chief Joseph of the Nez Perce, which captured the spirit of the Summit: “Let me be a free man, free to travel, free to stop, free to work, free to trade where I choose, free to chose my own teachers, free to follow the religion of my father, free to think and talk and act for myself”.

Professor Marianna Prado

215. After a break, Professor Johnston asked Professor Prado to comment on lessons from the international development community for Aboriginal communities and the types of institutions that could be implemented to develop strong economic bases for Aboriginal communities.
216. Professor Prado outlined three main lessons from the international scenario that she believes can have application to Aboriginal economic development efforts in Canada. The first lesson she said, is to realize that economic development must be done from the bottom-up. Giving the example of Belize when the World Bank required the regulation of land title there, Professor Prado said that top-down reforms are ineffective. This is because centralized reforms tend to ignore the specifics required for policies to work. If a reform measure is going to work effectively, it needs to incorporate the rules and ways of the people it is being designed for. Tying in her comments with Ms. Thomas’s comments earlier in the day about recognizing the third jurisdiction, Professor Prado said that reform policies cannot ignore Aboriginal community rules and government. This is especially important with respect to land reform efforts because formal title of land is seen as necessary for the full realization of one’s rights and wealth. As such, in the specific

situation of Aboriginal peoples in Canada, we might consider reform options like voluntary titling or communal title recognition.

217. From the first lesson, it is obvious that insiders, the people who are going to be effected by and are the beneficiaries of the reform effort in question, and their local knowledge, need to be involved in development efforts. The second lesson Professor Prado shared however, had to do with the role of outsiders in the development of a community. In the international context, outsiders may be neighbouring countries, institutions like the World Bank or the IMF, or the general international community. They can play a role in three ways. Outsiders may help to create the political work to support reforms. There may be people who want reform but lack the voice to advocate for it. The international community has, in the past funded NGOs and activists, and provided means for the media to give effective voices and support to these people. In addition, outsiders can provide suggestions for possible solutions to problems a community is facing. Generally though, Professor Prado qualified that, outsiders that have similar problems and situations to the people wanting reforms, will have more useful insight than outsiders in very different situations. For example, Brazil being a large, middle income country would better benefit from copying reforms in India and China than reform policies of Canada and the United States. Similarly, outside Aboriginal communities can share their experiences with communities in similar situations as they were in. Finally, outsiders may contribute by providing resources to people that want to reform. These resources do not necessarily have to be financial resources. Outsiders may provide technical assistance, or human resources like access to knowledge, to capacitate the people trying to implement reforms. In fact, in his book, *The Bottom Billion*, Paul Collier pinpointed that it is technical assistance that is key to the beginning of any reform. Financial resources and money become key once reforms have been implemented. This distinction between technical and other resources and financial resources can play a key role in Aboriginal development issues considering that the Crown transfers money to reserves.
218. The third lesson from the international experience that Professor Prado discussed also addressed Professor Johnston's second question of which institutions should be implemented to promote economic development. Everyone doing development research, Professor Prado stated, agrees that good governance is necessary. There is less agreement, however, on what good governance is. Professor Prado believes that there is no formula, blueprint, or silver bullet for good governance. Good governance is, in her opinion, whatever works. It develops out of a process of trial and error and experimentation by the community.
219. To conclude, Professor Prado discussed two reform policies that were quite effective in the international scenario that she believes could have application to the Aboriginal context in Canada.
220. The first reform policy was the development of microcredit institutions. Microcredit was started in Bangladesh as a pilot project. When it turned out to be successful there, it expanded to other countries and is now being replicated in many different scenarios around the world. Microcredit developed to help poor people whom banks declined to provide

services to, get the financing they needed. These people needed to borrow very small amounts of money and banks were unwilling to provide loans to these individuals because the transaction costs did not justify such loans. Further, being poor, these people had no assets to put up as collateral, could not provide guarantees, and often did not even have an income. As Mr. Davis had explained earlier however, these are very important considerations for banks when deciding whether or not to provide a loan. Microcredits overcame this concern by inventing group lending, where by one person receives financing but a group of people are responsible for paying back the loan. In coming up with this creative solution, microcredits were able to fill the gap left by traditional banks. The example of microcredits in Bangladesh and other countries prompt us to consider whether there is room for microcredits here in Canada. It also suggests to us that we need to think creatively and pursue creative decentralized arrangements as Professor Trebilcock had mentioned in the morning roundtable.

221. The second reform policy Professor Prado shared with us was the participatory budgeting scheme developed in Porto Alegre, Brazil. Participatory budgeting schemes are schemes to manage fiscal resources by gathering people to discuss what they want and debate how to spend their resources for that fiscal year. As with microcredits, participatory budgeting was a creative solution to solving a number of problems in Brazil: making the government accountable and reducing deficient application of resources. It is a consensus building process, and in that way, is similar to the consensus decision making that Mr. Ross spoke about in his keynote speech. As such, Professor Prado suggested that participatory budgeting schemes may be another basis to build a conversation about creative arrangements for Aboriginal economic development in Canada.

Ms. Rochelle Côté

222. The last speaker was Rochelle Côté. Ms. Côté shared with us some of the research she was doing on the role of social capital on the success of Aboriginal entrepreneurs in Toronto.
223. The term “social capital”, Ms. Côté explained, was popularized by Robert Putnam from Harvard University. Prof. Putnam outlined three components to social capital. First, social capital is comprised of the contacts that people have in their social networks. Social capital also consists of civic participation or the level of participation that people have in voluntary associations in various communities. Finally, although he did not define this final component, Putnam said that social capital is also built on trust.
224. Like physical capital (such as the space in which one conducts their business), financial capital and human capital, social capital is a fourth type of capital necessary for the success of business. Further, realizing that not everybody has equal access to physical, financial and human capital, those doing research on social capital believe that social capital is not only a requirement to getting access to these other types of capital, but also for the effective use of them once they have been acquired. As such, Ms. Côté looks at social capital as the quality and quantity of resources that individuals can potentially access through contacts in our networks.

225. Social capital is not static. We have different types of contacts in our networks who provide different types of resources to us and whom play different roles for us, and we have different kinds of relationships within our networks. Some of our contacts are close to us, like our friends and family. Others are less close, like acquaintances and business contacts.
226. Research on social capital and entrepreneurs have shown that depending on the resources that an entrepreneur needs access to, he or she will look at these different types of contacts to help them out during different stages of their business. When businesses are first starting out, entrepreneurs, especially small businesses, tend to look towards and depend on close family members and friends for labour, start-up funds, space for their businesses. The problem with close contacts however is that this type of social capital is eventually exhausted. As such, research has shown that entrepreneurs need to look at weak ties to help them build a greater supply of clientele, suppliers, and more financial capital for their businesses.
227. There has not been a lot of work on Indigenous entrepreneurship yet. Some research has been done in Australia and New Zealand on this topic, and Ms. Côté has conducted research on the Toronto Aboriginal entrepreneur community. Most of the research available on social capital and entrepreneurs in large urban centres, however, has focused on immigrant entrepreneurs. Although Aboriginal entrepreneurs have a different history and different issues than immigrant entrepreneurs, Ms. Côté believes the research on immigrant communities can offer valuable lessons on network development. For example, research has shown that not everybody has similar kinds of capital; class, gender, and ethnicity influences access to social capital. Ethnic communities, like Chinese communities in urban centers, are often shut out of mainstream markets, in part because of discriminatory practices against ethnic minorities, but also because these entrepreneurs often do not have the knowledge of how to network effectively. Ms. Côté's research is examining the issue of different networking practices that Aboriginal entrepreneurs are using, and how these networking practices are aiding or not aiding Aboriginal businesses.

Questions and Answer Period

228. Professor Johnston then opened the floor for questions from the audience.
229. The Right Honourable Paul Martin posed the first question to the panel. He began by acknowledging the need to respect the Aboriginal approach to issues, and then asked if there might be some conflict between theories on Aboriginal economic and the reality of Aboriginal practices. For example, as Mr. Davis and Professor Cornell had discussed in their presentations, it is largely accepted by the academic community and those involved in Aboriginal economic development efforts, like BMO's Aboriginal banking department, that there needs to be a separation between politics and business for success. However, many successful Aboriginal entrepreneurs like those of Clarence Louie or the MicMaw, owe a large part of their success to the active involvement of Chief and Council. As well, while the Province of Ontario would never name the majority of the board of directors to the University of Toronto, the Federation of Chiefs in Saskatchewan dismissed the administration of the First Nations University a while back. Thus, the reality of Aboriginal

practices is that business is not always separate from politics. Chief and Band Council are often actively involved in business. How might this be reconciled, Mr. Martin asked, with theories on economic development?

230. Professor Cornell was the first member of the panel to provide a response to Mr. Martin's question. He noted that he has actually had a number of discussions with Clarence Louie on this issue. Professor Cornell then went on to say that it was probably a mistake for him to have said that there needs to be separation between politics and business. It would be more appropriate to say, Professor Cornell explained, that the way in which communities manage political roles and political considerations in economic development is important.
231. Professor Cornell and his colleagues view the relation between politics and business as two ends of a continuum. On the one hand, economic activity can completely escape First Nations. This is counterproductive. Similarly, Aboriginal communities can make business decisions according to political considerations. This too is counterproductive. The middle ground is where communities should be.
232. Professor Cornell does realize however that this is a difficult task, especially in smaller communities where all relations tend to have a political element to them. What matters then is how communities make sure that when they are faced with a business decision, they make that decision according to what is best for the long term life of the business, given the strategic goals of the nation. They should not make business decisions according to considerations such as: whether that decision helps those currently in power to stay in power, or whether they can give jobs to their family rather than the community as a whole. The issue, Professor Cornell emphasized, is about strategic decision making, rather than separating business from politics per se, so that the leaders are thinking of where the nation wants to go, and how those goals will be supported. This however, must be separated from the day to day management decisions based on business criteria that businesses or corporations set up to support the nation's goals have to make.
233. Satsan added to the discussion by saying that Mr. Martin posed a tough but important question to the panel as it addresses one of the biggest problems in Aboriginal communities today. The issue of separating politics and business is a deep question requiring Aboriginal peoples' need to reconcile the systemic effects of the *Indian Act*, reserve systems, and residential schools. While the public in general and the government do not appreciate the depth of damage done by these instruments of colonization, the trauma that Aboriginal people suffer because of them is great, and the political culture left by them has been insidious. Aboriginal peoples, Satsan urged, need to shed their trauma and move forward with their own systems of government and own visions. Working with their regained jurisdiction and recognition in the law of Aboriginal rights, treaties, and lands, Mr. Jules believes that Aboriginal people need to start a dialogue of reconciliation on how they want to govern themselves.
234. There needs as well, to be a move away from the status quo: state-owned approach to economic development where the band for the most part takes all the development opportunities. This, Satsan says, prohibits individuals and families in the community from

engaging in economic development. As with the relation between politics and business, however, there also needs to be a balance with the band and individuals taking part in economic development.

235. Finally, addressing Mr. Martin's point about a perceived disconnect between theory and reality, Satsan feels that this also applies to Aboriginal communities, who in his opinion, still seem to look at the idea of regained jurisdiction and recognition of Aboriginal and treaty rights as theory, rather than a reality. Until Aboriginal people recognize these are realities, Satsan believes they are not in a position to effectively rebuild their communities and societies with their own governments, nor are they in a position to build their economies to the point of raising revenue and providing services like health and education. Aboriginal communities will not be able to harness the economic benefits from access to their lands and resources so that people have businesses and are part of the economy at large.
236. Mr. Jules also provided a response to Mr. Martin's question, saying that governments- federal, provincial, municipal, or band governments, have critical roles in facilitating economic development and growth, and in building infrastructure to facilitate economic development. Speaking then about band councils in particular, Mr. Jules said that they are important because band councils are in an easier position than individual Aboriginal businessmen to lobby the government for funds that can be put towards development. Bands have to give room though, to individuals to develop business, and also have to foster individual business. In that respect, Mr. Jules spoke of his experience with a development corporation that he helped to form, KRB Development Corporation, through which he learned that there needs to be some separation between band council and businesses.
237. Mr. Jules shared that individual entrepreneurs are not a recent phenomenon in First Nations. First Nation history is full of individual entrepreneurs. By way of illustration, Mr. Jules' Chinook language is a trade language spoken from Alaska, down to California, and across the prairies. Entrepreneurship and trade is part of First Nation identity. Yet, it is difficult for Aboriginal entrepreneurs to negotiate with government for funds. Furthermore, Aboriginal entrepreneurs do not have parity with other Canadian businessmen and face a number of unique challenges. For example, since Aboriginal individuals cannot designate lands, their quality of development is limited. Further, Aboriginal entrepreneurs have to go through the same processes that bands have to go through to develop their business. This is an incredible challenge for individual Aboriginal businessmen. As Professor Hannah had mentioned in the morning roundtable, the process can take as long as 8 years. Mr. Jules was involved in a handshake development project in which it took the developer \$18 million dollars of investment in the project before they got any returns. While Canadian businessmen may be able to turn to CIBC, BMO, or other banks more easily for funds, the situation is different for Aboriginal entrepreneurs on-reserve and off-reserve. This is why, Mr. Jules suggested, that there is currently a dichotomy between band and individual development.
238. Mr. Jules said that the only way to change the situation for Aboriginal entrepreneurs is through institutional development. He closed his remarks by saying Aboriginal

communities need to develop education programs, entrepreneur programs, and to open up those markets that other Canadians have been able to take for granted.

239. Before moving to the second question, Satan commented on the importance of effective governance. He mentioned that many communities have created corporate boards and entities under various society acts. However, this is often done without a clear idea as to the relationships between these structures, or clear notions about accountability and responsibility. These boards are often untrained, political in nature, inefficient and incompetent. As such, First Nations are now stepping back to reorganize themselves and to address the issue of governance before they develop any more such structures. Organizations like the National Centre for First Nations governance is partnering with corporate directors to develop training programs on core competencies for directors.
240. The second question followed up on the panel's discussions about the challenges and complexities of finding the appropriate institutional circumstances under which Aboriginal communities can flourish. The questions asked about how best-knowledge creation and knowledge-sharing can be most effectively institutionalized to move communities forward. The Harvard Project may be one model but there is yet to be a similar research consortium here in Canada. Given the importance of sharing knowledge and experiences, as Professor Cornell mentioned, and given that there are many different levels of knowledge producers such as government, communities or scholars, is the Harvard Project is the best model to make the most use of the knowledge being generated or whether there is another model?
241. Satsan, in response to the question, emphasized the important of dialogue between communities for achieving success. Through his work with the National Centre for First Nations Governance, he has witnessed the power of bringing communities to dialogue with each other through what he called 'self-help networks'. The National Centre has various centres across the country bringing communities who have overcome a particular challenge together with other communities struggling with similar issues. This network, where communities share their experiences, success and solutions as well as provide support for one another, is becoming successful.
242. Professor Cornell praised the National Centre as a tremendous resource in Canada; the United States does not have a comparable resource. Instead, in the United States, much of the institutionalization of knowledge has been through universities. Professor Cornell believes that there are multiple strategies and solutions to institutionalizing knowledge, but to play an important role, universities have to be committed to listening to what Indigenous people want to know. Universities are not skilled in everything that Indigenous people want to know, and thus must listen to Indigenous communities to better determine what research they should conduct as well as what they should not do. Further clarifying their role, Professor Cornell stated that universities should also strive not to be the people with the answers, but the place that assembles diverse answers, most of which will come from Indigenous communities themselves, for other people to draw on.
243. In speaking of institutions for sharing knowledge, Ms. Côté then provided the concrete example of urban reserves that are being developed across Western Canada. Speaking

primarily about Saskatoon, Ms. Côté explained that there are various different types of urban reserves. For example, an urban reserve may be set up around a specific business, or they may be set up more as a business or community incubator. Whatever the type of urban reserve, First Nations in Western Canada are setting up reserve lands in this manner to foster business activity and also community organizations, thereby creating centres from First Nations to come together and mentor each other with respect to business practices, and providing incentives for businesses to grow.

244. Mr. Jules ended the responses to this second question by speaking of the present time as a period of transformative change where Aboriginal communities are starting to move from their colonial history and choosing to decolonize by freeing their minds. In this period of transformation, Mr. Jules said, Aboriginal peoples need transformers like the transformers in First Nations mythology that helped the ancestors learn to live on the land, to hunt and to fish. The transformers for the present period will be varied. They may be institutions like the National Centre for First Nation Governance, or the Harvard Project, the University of Toronto, or corporations. However, Mr. Jules urged Aboriginal communities to start working with transformers to help them transform from how they were under the *Indian Act* to how they will be after the *Indian Act*.
245. Another audience member made two comments. He first commented on how Aboriginal peoples had to transition quickly to their understanding of money, exchange, and investments. Then, after expressing appreciation for the depth of talent and experience of the panelists, he noted that there are now many well-educated Aboriginal individuals and Aboriginal scholars who work in mainstream society. However, he said that very few of these individuals are returning back to the community. Communities are facing a brain drain. How can communities get educated people back into the community to transfer their knowledge to their communities and enable communities to perpetuate themselves.
246. Professor Johnston commented that sabbaticals are one option. In her case, she will be on sabbatical from July and will be going back to Cape Croker.
247. Mr. Davis then provided his opinion on the question, stating that while the brain drain is a large concern for Aboriginal communities, it is also an issue nationally and internationally as well. Richard Florida has observed in his work that top talent across the world are moving and gravitating towards urban centres. In Canada, which is an urban country, 23% of the entire Canadian population lives in the GTA. The reasons why people are going to urban cities include that cities provide individuals with big "C" cultural stimulation, chances for these individuals to meet their own career goals, and all the amenities of city life.
248. Mr. Davis did acknowledge that Aboriginal communities need to think seriously about this issue because as we have heard throughout the day, capacity is essential for development. As such, in thinking of how to tackle the brain drain, Mr. Davis said that the leaders of Aboriginal communities need to think about the interests of the people they are trying to attract back into the community. Mr. Davis suggested that communities start offering competitive salaries, which if they can tap into people's emotional connections to their

communities do not necessarily have to be comparable to what the corporate sector offers. As well, communities can also emphasize the incentives of work-life balance and of safety for raising children.

249. Mr. Davis also commented on the importance of true leadership for the success of Aboriginal communities and economic development. Part of true leadership is what Professor Cornell's colleague, Professor Kalt, calls a "can do" attitude, the notion that one can go out and achieve what they want. With great respect, Mr. David lauded Satsan and Mr. Jules for exhibiting true leadership. They are leaders in their communities, have been committed to economic development, and have the track record to support them. Mr. Davis recognized Chief Nolan as well, who despite having a landless band has also been committed to economic development. Rather than waiting for the government to resolve their land claim, Chief Nolan is going after development opportunities in anticipation of getting his land base. True leadership, Mr. Davis then stated, needs to happen at the community level and does not necessarily have to come from chiefs. Entrepreneurs, the youth, elders, any member of the community can exhibit leadership by identify issues and opportunities for building the community, and getting community support.
250. Chief Nolan then closed the roundtable discussions by expressing his desire to see more of corporate Canada showing their support for and willingness to work with Aboriginal communities. After noting the number of First Nations, Inuit, Métis individuals, the number of lawyers and businessmen, Chief Nolan said that while initiatives by universities are great, Aboriginal peoples need first and foremost to find partners in the corporate sector who can provide on-the-job training on how to become good managers. Therefore, he hopes there will be more corporate support at events like this Summit. Chief Nolan concluded by saying that communities may make mistakes as they pursue development opportunities, like his community did. However, to succeed, communities need to identify when they make mistakes and to change their course when they discover their mistakes.

Closing Address by the Right Honourable Paul Martin

251. Professor Sanderson introduced the Rt. Hon. Paul Martin, who rendered a candid and stimulating closing address.
252. Mr. Martin began by thanking Professor Sanderson, Dean Moran, the other organizers of the Summit, as well as the panelists and student speakers who participated in the day. Then, he pondered why, in the face of the tragic statistics about Aboriginal health and education, Canadians are still indifferent to issues pertaining to Aboriginal peoples. Often times, the Canadians he's approached have tried to explain their indifference through responses like, "Indians don't pay taxes", "they drink too much", "they're claiming 110% of B.C. as theirs," responses which are, in Mr. Martin's opinion, both non-sensical and bear little relationship to reality. When you start pushing beyond these prejudices and biases, Mr. Martin explained, one often hears the response that Aboriginal people just don't seem to get that the world has passed them by. This type of response is simply a modern refrain of the historic view by colonial powers across the world about the Indigenous people they encountered. Indigenous people in Canada, New Zealand, Africa and elsewhere were told time in and time out that everything they knew was bad, and that everything foreign was

good. Their self-esteem was destroyed by colonial powers; they were incapacitated from building leadership. However, it is non-Aboriginals who 'just don't get it'. To approach things differently and to come from a different background is not wrong. It is just different. Mr. Martin believes that events like the Summit are important for demonstrating this to Canadians.

253. To illustrate the differences in understanding between Aboriginal and non-Aboriginal people, Mr. Martin spoke of four experiences in his life and career. First, he spoke of a time in his youth, when he worked on a tugboat on the Mackenzie River. Having passed through Winnipeg to get to this job, he asked his shipmate, a Métis gentleman, why First Nations people from the north going down to Winnipeg could not adjust to Winnipeg life, and why they all appeared to be homeless and drunk. Even though his shipmate tried to explain the situation to Mr. Martin, he did not understand his shipmate's explanation at the time. However, the explanation soon came clear to him. One day, when their tug was laid up in the North, Mr. Martin took a walk, fell asleep in the tundra, and lost his way. When he finally made his way back to the tug boat, his shipmate told Mr. Martin that he would take him back to the place where he had gotten lost. Mr. Martin was initially skeptical, but the shipmate found Mr. Martin's footprints, and was able to track all of Mr. Martin's actions earlier that day. He then also explained that the Inuit could tell in wintertime, by the colour of the snow where they were and how to return. Mr. Martin expressed his amazement at these abilities and said that he would never be able to learn all of those skills. His shipmate then told him that it was the same for Aboriginal people coming from the north to live in Winnipeg.
254. Mr. Martin also spoke of the time he spoke to a small class of ten Aboriginal students at the University of Alberta who were getting their masters degrees. During his talk, he asked the students about residential schools. Even though it was his government that settled the residential schools issue, Mr. Martin very honestly admitted that it wasn't until that he spoke with these students that he truly understood the impact of residential schools on Aboriginal people and why Phil Fontaine wanted a \$350 million healing program. Like most other Canadians, Mr. Martin didn't really see the need for a restorative program, he knew that residential schools were terrible, but that it was time to move on with life. It was when he spoke to these students, that he truly understood the devastating impact of residential schools on Aboriginal peoples. All of the students' grandparents went to residential schools and eight of the ten students had parents who went to residential schools. But even those whose parents did not go to residential schools had been deeply affected by residential schools; their parents fought regularly and their grandparents could not relate to their parents. As he needed to, other Canadians need to better understand the trauma caused by residential schools.
255. Canadians also do not have a clear understanding as to why there is a high school drop-out rate among Aboriginal peoples. As such, they rationalize the statistics with responses of glue-sniffing problems, problems at home, stating that Aboriginal people do not care about education. Perhaps those are contributory factors. However, a large part of the problem, Mr. Martin explained, has to do with the conditions of schooling for Aboriginal children. While most Canadians do not experience any great transformative change when they go to school,

many Aboriginal children do. For example, children from small communities in Hudson Bay or James Bay are flown into Thunder Bay for school. These kids, aged thirteen or fourteen, who have never even seen a bus, stay in a boarding house with lodgers who only care for their cheques, and attend awful schools. If Canadians saw these conditions, perhaps they might start understanding the issue better.

256. The last illustration of how Canadians don't understand Aboriginal peoples came from a discussion with Jose Kusugak, former head of the Inuit Tapirisat, at Kelowna. In the midst of discussing the poor conditions of Aboriginal housing with the other Premiers, territorial leaders and Aboriginal leaders, Mr. Kusugak was asked by a Premier why Aboriginal people didn't take care of their houses. Mr. Kusugak responded with some frustration, that people do not understand the Aboriginal perspective. He referred to the different backgrounds an Aboriginal person and a non-Aboriginal person faced. His people were nomadic, living in igloos in the winter and tents in the summer. They were gathered together by the government, given numbers, and moved into houses in the name of providing health and education. They were never told why the houses were important; they were never given any sense of ownership over these houses. As such, Aboriginal peoples treat these houses like things they don't have ownership over.
257. Aboriginal people, Mr. Martin reiterated, often have different approaches from non-Aboriginal peoples and many Canadians do not understand the Aboriginal perspective. However, these different approaches are not wrong, they are just different. The Summit was important in showing this.
258. Mr. Martin went on to say that it is not enough to get the message across to Canadians who do not understand. We must also consider who is giving the answer. For example, as Mr. Ross discussed in his keynote speech, five percent of the young people in Canada are Aboriginal. However, Aboriginal people make up thirty-three percent of the people in jail. Clearly, the criminal justice system is problematic for Aboriginal peoples. Aboriginal lawyers and crowns play an important part in explaining to Canadians why the criminal justice system is inappropriate the way it is and why it has to change. However, Mr. Martin then said that he believes that no one can make a bigger impact in this area than Mr. Ross in circumstances like today, in which he explained his evolution of thinking as a non-Aboriginal person. As such, Mr. Martin concluded, it was especially important that the Faculty of Law at the University of Toronto hosted the Summit and brought in panelists who could explain Aboriginal contexts and perspectives. Through the efforts of Professor Sanderson and Dean Moran, the nation's greatest university and law school has recognized that Aboriginal economic development is an issue that Canadians can no longer ignore.

Closing prayer

259. Before Elder Dallaire closed the day with prayer, Professor Sanderson thanked the various organizers and participants of the Summit. He thanked the panelists, the funders, the moderators, Dean Moran's office, the Office of the Right Honourable Paul Martin, Jennifer Tam and Diana Alpeza. Professor Sanderson then admitted that he often is overwhelmed by events such as this Summit because of all the information he is presented with throughout one day. One thing he hopes that we take away is, as Mr. Jule's friend Ron

Derrickson said, that opportunity knocks softly. If we keep our ears and eyes open, we will find in our lives opportunities to generate change. These opportunities may come in small ways; they may be opportunities for impacting an individual, a family, a community, or a nation. But if we together, Professor Sanderson urged, are able to listen for the small opportunities, we will be able to generate big opportunities for change as well.

260. Elder Dallaire thanked Mr. Martin for his closing address and for speaking of the impact residential schools had on Aboriginal families. She then reminded us about the negative effects residential schools had at the community and the nation level. Elder Dallaire encouraged us to learn from the past, when the Europeans first came over. They did not understand Aboriginal peoples because they spoke a different language and did things differently. However, if we approach problems with compassion and a focus on solutions and with the understanding that we all speak the language of emotions, together we will be able to solve the problems that we face. Elder Dallaire then expressed her excitement and happiness that the Summit took place, stating that we need such efforts from lawmakers because it is through the law that society can really incorporate change. Finally, before leading us in prayer, Elder Dallaire imparted that the most important thing we could take away from the day's events is what we had learned about ourselves.

261. She then concluded the day with her prayer which went as follows:

I say Chi Meegwetch to our ancestors, our spirit helpers, and our clans who came and sat through this proceeding today.

I ask Creator that you continue to walk with us, continue to guide us into the path of the good.

I ask that we be compassionate, be of open mind and open heart to a new way of seeing and a new way of being.

I ask Creator that you remind each of us that if we take responsibility for self, that means we take good steps for all.

Please support these people in their good work and their journeys ahead.

I say Chi Meegwetch, Chi Meegwetch, Chi Meegwetch, Chi Meegwetch.