

BEYOND SECTION 35 BC SYMPOSIUM SUMMARY

February 19-20, 2013



Institute on
Governance

LEADING EXPERTISE

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We would like to thank our generous sponsors, without whom these important discussions could not occur.

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We would also like to thank the speakers and participants and hope that we have accurately reflected the stimulating discussions.

Introduction

The Beyond Section 35 Symposiums held in Ottawa in November 2012 and Vancouver, in February 2013, brought together key stakeholders from Indigenous communities and institutions, practitioners, public sector and academia to discuss and reflect upon the impact of the constitutional recognition of Section 35 on the lives and relations of Indigenous Peoples in Canada. Prominent leaders came together in both forums to discuss governance challenges and successes since the passage of Section 35. Animated discussions, sharing of wisdom and reflections on best practices provided the momentum to move beyond litigation and affect change.

The Beyond Section 35 Symposium in BC was a collaboration between the British Columbia Treaty Commission (BCTC), the New Relationship Trust (NRT), and the Institute on Governance (IOG), and hosted at Simon Fraser University's (SFU) Morris J. Wosk Centre for Dialogue in Vancouver, February 19-20, 2013. What follows is a summary of the discussions and recommendations that emerged from the Symposium. First, the summary takes a look at the history of the making and subsequent attempts to define Section 35. Then discussions move towards the current context of Section 35 related issues and recommendations for a path forward.

Visit us online for all [Beyond Section 35 materials](#), including a number of speeches, videos, the initial discussion paper *Beyond Section 35* and, the Ottawa Symposium Report: *Beating the Constitutional Drum*. Bios of the speakers can also be found on the website.

Executive Summary: Closing the Gap

While “beating the drum of Constitutional change” became the mantra for participants of the November Ottawa Beyond Section 35 symposium, participants of the February BC forum embraced the idea introduced by Neil Sterritt to do everything we can to “close the gap” between the promise of Section 35 and the reality of the present state of affairs. Apart from this, many similarities can be drawn between the themes and recommendations stemming from the two symposia.

Beyond Litigation

To begin, Honourable Mr Justice Ian Binnie, Former Justice of the Supreme Court's reflection that courts may sometimes be necessary in protecting Aboriginal rights but they will never be sufficient in defining them, and therefore not capable of arriving at solutions, was agreed upon by the majority of participants at each forum. Many speakers advised that litigation is not the best means to achieve reconciliation. In fact, Maria Morellato encouraged moving to a new process that uses an administrative tribunal to settle issues: they are generally less political, less expensive, and less time consuming. Grand Chief Ed John also advised that the Federal government needs to focus on the relationship as opposed to litigation. What is also needed is a more concerted, united effort amongst First Nations to reframe a new relationship.

Self Government and Treaty Negotiations

In his reflections about Nisga'a, Jim Aldridge confirmed that Aboriginal self-government belongs within the Canadian constitutional fabric. While many First Nations are and have already been engaged in strengthening their governance institutions and processes, many realize that the full potential of First Nations capacity has not yet been

reached. Jody Wilson asked, “If we had our governance rights recognized, would we have the governance capacity to implement them?”

Many participants felt that it is unfortunately that negotiations and treaty processes are impeded, oft times by federal and provincial entrenchment in policy and legal positions that are not acceptable to First Nations. Federal and provincial governments will not acknowledge Aboriginal title at the treaty negotiating table. As noted by Doug McArthur and many participants in the BC and Ottawa symposiums, extinguishment continues to be a goal of government and problem for First Nations. Chief Bellegarde reiterated that governments must stop pursuing the goal of extinguishment of Aboriginal rights.

According to Dave Porter, until governments change their mandates, we will not see any progress in treaties and relations between First Nations and government. The key issues, as he sees them, are:

- government insistence on extinguishment and modification;
- the rate of claw back of own source revenues, which represents an attempt to constitutionalize the poverty of First Nations; and
- the question of land quantum going to First Nations in treaties.

Both Scott Serson and Dr. Judith Sayers spoke to revisiting fiscal arrangements and the treatment of own source revenue. Dr. Judith Sayers argued that the key determinant of when First Nations should start paying into those vehicles is when they have reached the same level of living conditions as the rest of Canada. OSR clawbacks, without equal living conditions, removes a key incentive for First Nations to become economically independent.

Framework for a New Relationship

Region Chief Bellegarde spoke to aspects of the government-to-government relationship that need to be addressed. These include:

- Aboriginal people to share in the revenues from resource development. The Federal Minister of Natural Resources Canada, can facilitate this process. Resource revenue sharing will bring economic benefit and certainty to all.
- All legislation, including the recent omnibus Bills C-38 and C-45, should be reviewed through the lens of Section 35.
- A new fiscal relationship needs to be established. The two percent cap in increased funding through AANDC has been in place for too long. Inflation is higher than 2 percent and Aboriginal populations across the country are growing.
- The PM’s Office and the Privy Council Office, as opposed to AANDC, need to drive treaty implementation within the federal government. This approach is reflective of a nation-to-nation relationship. A new mechanism is needed to bring about transformational change across Canada.

Drivers for Success

Many participants contributed ideas around required changes and ways forward. Many of them can be considered drivers that are required for success. For example, Dave Porter posited that:

- as opposed to the *Indian Act*, there should be a First Nations *Self Determination Act* (also that includes a fiscal component as an aspect of the relationship between First Nations and government);
- First Nations need to develop a civil service capable of carrying out all of the functions of government;

- the creation of a First Nations Auditor General role, not only to review First Nations' audits, but also to assist First Nations in developing competent financial practices;
- First Nations need governance resources and a fair share of revenues.

Scott Serson suggested a permanent Aboriginal Peoples' Review Commission to regularly monitor progress by government to honour and implement existing treaties, negotiate new treaties, and improve socio-economic conditions for Aboriginal people in Canada.

Public Education

Commissioner Marie Wilson was but one speaker who recognized the need for increased public education efforts. This was also a major theme of the Ottawa symposium. One of the big challenges she identified that poses a problem for making positive change is the matter of how we create and claim space for dialogue. There is no set process. A huge part of this effort needs to take place within the education system: "We need honest history so we are not investing in another generation of ignorance."

Section 35 as a Framework for Reconciliation

According to Doug McArthur, what is needed is a new narrative around Section 35. Discussions should posit Section 35 as a moral statement: a reprimand, an expression for the need to do better, and a delineation of where governments must not go in the future. It is imperative for this moral statement to also articulate a policy direction to enable First Nations to reset the power relations with Canada and the provinces. In the words of Justice Binnie, while Section 35 looks backwards in one respect, more importantly it looks forward on how to build a responsible reasonable relationship between nations and cultures. In the future, in Section 35 cases, courts will continue to apply pressure. It is not just a collection of words thrown into the Constitution - Section 35 has massive bite!

Welcome Addresses: Setting the Stage

Simon Fraser University President Andrew Petter

Simon Fraser University (SFU) President, Mr. Andrew Petter, shared SFU's new strategic plan and vision: to become Canada's preeminent engaged university. The university's new strategic plan includes a commitment to Aboriginal peoples, to help overcome the many barriers that still exist today. Mr. Petter noted that, despite progress, not enough has changed: the BC Treaty Process has produced few settlements, and, despite many successes in court, First Nations people continue to suffer socio-economically. He emphasized the opportunity to draw lessons from this record and move forward. He cautioned Indigenous people about resorting to litigation to redress disputes with government, advising to critically evaluate the litigative approach considering that courts rarely bring social change. He noted that the sentiments being expressed by the Idle No More movement are not confined to Aboriginal people, and that many other Canadians recognize that the advancement of Aboriginal people will in turn advance all of Canada, reducing unemployment and enhancing economic stability as well as our international reputation and spiritual well being. Mr. Petter believes that the greatest potential in Section 35 is its political purpose. It served as an act of recognition of Aboriginal people and has provided a powerful tool for protecting Aboriginal rights and interests; ultimately facilitating a more just resolution of their concerns than may otherwise have been possible during these times.

BC Treaty Commission Chief Commissioner Sophie Pierre

Ms. Sophie Pierre, Chief Commissioner of the BCTC, described the role of the BCTC as the "Keeper of the Process," having the role of facilitating and supporting negotiations, gently prodding the parties when needed, and not so gently prodding them when necessary.

Ms. Pierre would like to have seen more treaties negotiated by this time and stressed that there is so much more that can be done to close the gap for First Nations. The BCTC has faith that there are ways to be more innovative in moving the issues forward, but finds that sometimes the parties get entrenched in certain positions and forget the larger picture. She reminded the audience of the three-part mandate of the BCTC:

- Facilitating negotiations, which can take a variety of different approaches, providing support to the Principals when necessary and probing when required.
- Providing funding to First Nations to negotiate treaties, typically through loans. The pace of loans has been growing, and BCTC is concerned.
- Public Education and Information. As part of this mandate, the BCTC got involved with the NRT and IOG to host the conference.

New Relationship Trust Chair Kathryn Teneese

Ms. Kathryn Teneese, Chair of the NRT, noted that, in 2006, the BC Legislature approved the creation of the NRT, along with a transfer of \$100 million to starting the organization. Key NRT strategic priorities include governance and policy development, economic development, education, language, and funding for elders and youth. In the years since 2006, the NRT has been able to confirm that these key areas are still the most relevant. The NRT has done community engagement to identify key needs throughout the province. There is a great amount of need for support from an organization like the NRT across the province. The NRT believes that the key component to addressing

many of the gaps it sees between First Nations and other Canadians lies in building capacity, the critical path that needs to be taken in order for First Nations to find their way.

Almost all money received by the NRT goes directly to First Nations. The administration costs of the NRT are less than two percent. The NRT accomplishes this by partnering with other organizations. This conference is a key example of such collaboration and partnership. The NRT is hopeful that through the existence of mechanisms like this forum, the First Nations agenda can be advanced.

Institute on Governance President Maryantonett Flumian

Ms. Maryantonett Flumian, President of the IOG, provided some background on the type of work the IOG does, as a research and advisory institute with charitable status. She noted that this was the second recent meeting on Section 35 hosted by the IOG and gave thanks to the leadership at the BCTC and the NRT for all their efforts to facilitate progress for Aboriginal rights. The IOG conducts ongoing research to assist First Nations governance that reflects First Nations timing, goals, and socio-economic priorities. In order to advance community agendas it is important to bring together stakeholders to discuss the process of the transfer of authority, the creations of corresponding institutions, and the evolving nature of governance.

Ms. Flumian stressed that we need to generate the momentum to move beyond litigation and affect meaningful change in First Nations communities. She noted how it has been over three decades since the enactment of Section 35 of the *Constitution Act*, 1982. While many First Nations are and have already been engaged in strengthening their governance institutions and processes, many realize that the full potential of First Nations capacity has not yet been reached. To this end, the IOG strives to assist Indigenous governments to meet their governance aspirations in a manner that reflects their timing, capacity, priorities, and socio-economic realities within the context of the Canadian federation. She discussed the importance of strengthening governance by and for First Nations and how the statistics show that increased autonomy in the hands of Indigenous peoples improves their socio-economic outcomes and quality of life.



Justice Harry Slade, Specific Claims Tribunal



BC Treaty Commissioner Sophie Pierre



Change Makers Award Ceremony

Panel I: Behind the Scenes: The Framing of Section 35

Moderator: Mr. Miles Richardson Senior Associate, Institute on Governance

Panelists: Mr. Neil Sterritt President, Sterritt Consulting
Mr. Jim Aldridge Partner, Aldridge and Rosling
Ms. Maria Morelatto Partner, Mandell Pinder
Grand Chief Ed John Grand Chief, Tl'azt'en Nation / Executive, First Nations Summit

During the first panel discussion, “Behind the Scenes: The Framing of Section 35,” moderator Miles Richardson asked the panelists to discuss the intent of Section 35 from their perspectives, as well as aspirations, promise and meaning it offered during their involvement in its creation. Each panelist was involved in some capacity in the negotiations over the inclusion of Section 35 in the Constitution, or subsequently in discussions around the meaning of Section 35.

Neil Sterritt, President, Sterritt Consulting

Mr. Neil Sterritt reflected that now is a good time to look back and evaluate efforts leading to the enshrinement of Section 35, and to assess how to get where First Nations had hoped to get so long ago¹. He noted that it is the anniversary of a number of key milestones in the area of indigenous rights in Canada, including:

- 40th anniversary of *Calder v. British Columbia (Attorney General)* [1973] S.C.R. 313, [1973] 4 W.W.R. 1 (Calder);
- 38th anniversary of the process that came out of Calder: the Nisga'a treaty negotiations and the development of the Canadian government's land claims policy, to guide negotiations;
- 31st anniversary of the Assembly of First Nations (AFN);
- 20th anniversary of the Charlottetown Accord; and
- 16th anniversary of *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010 (Delgamuukw).

In many ways these achievements have advanced Aboriginal rights significantly further than where they were in the 1970s. However, we need to ensure that in 40 years we are not where we are today. He noted that the purpose of his presentation was to identify what needs to happen to ensure we do everything we can to close the gap between the promise of Section 35 and the reality of the present state of affairs.

Mr. Sterritt discussed the First Ministers' conferences held as required under Section 37 of the Constitution. By the end of the 1983 conference, Aboriginal negotiators realized what a huge task it would be to change the minds of the officials representing the federal and provincial governments, as legal advisors were the same people First Nations people had been fighting in court in such cases as *Calder* and *R. v. Sparrow* [1990]. At this point, the Gitksan and the Wet'suwet'en Nation filed the *Delgamuukw* case, which was ultimately decided by the SCC in 1997.

In 1992, at the Charlottetown Constitutional Conference, the Prime Minister and the Premiers were prepared to support inclusion of the inherent right of self-government in the Constitution, but many in Indigenous communities were not ready and felt that they did not understand the implications of what was being agreed on. At that point

¹ Mr. Sterritt's remarks can be found on the IOG website. [Click here](#)
Institute on Governance

there had not been enough time to communicate with Aboriginal communities to ensure that they were adequately informed on the consequences of the legal changes being proposed.

As it currently stands, the Constitution only recognizes two levels of government: the federal and provincial levels. The section 37 Constitutional process was to fill Section 35 out with more content and, in particular, gain acknowledgement of Aboriginal governments as a third order of government.

Mr. Sterritt asked the group to think about whether the AFN Chief has the mandate to put the meat on the bones of Section 35, because, without giving more content to Section 35 and without the development of a real government to government relationship any gains made with respect to education or other substantive issues in Aboriginal communities will only be temporary. For Mr. Sterritt, this is the lesson of past 40 years.

Jim Aldridge, Partner, Aldridge and Rosling

Mr. Jim Aldridge framed his presentation with a reference to a line in Thomas King's book, *The Truth About Stories*, saying, "the truth about stories is that's all we are." He told stories about his experiences in negotiations relating to Section 35. For example, during law school, Mr. Aldridge was inspired to further the cause of Aboriginal rights as the result of a course he took with former Mr. Justice Ian Binnie, who impressed upon his students what an injustice it was that the common law was not being respected when it came to Aboriginal and treaty rights. Shortly after Mr. Aldridge finished law school, then Prime Minister Trudeau decided to patriate and add the Canadian Charter of Rights and Freedoms (Charter). The original version included nothing on Aboriginal or treaty rights. In response to concerns expressed by Indigenous leaders, Trudeau assured them that nothing in the Charter would harm Aboriginal or treaty rights, and that they would be dealt with separately later. Not wanting to take such an assurance on faith, James Gosnell and others on Nisga'a executive insisted that the Nisga'a team, of which Mr. Aldridge was a part, become involved in the campaign to gain protection for Aboriginal and treaty rights in the Constitution, making a presentation on the issue to a joint committee of House of Commons and Senate on December 15, 1980.

Mr. Aldridge stressed the need to locate the development of Section 35 in its place in time, in relation to:

- The 1763 Royal Proclamation, which is interpreted by many to have acknowledged the existing title of Indigenous people in North America;
- The 1973 SCC Calder decision, in which six out of 7 of the SCC judges found that there was indeed an Aboriginal right to land that existed at the time of the Royal Proclamation of 1763. However, three of those judges maintained that Nisga'a title had been extinguished by virtue of the government's exercise of control over the lands, and three of the other judges did not believe extinguishment had occurred in this case;
- The federal comprehensive land claims policy and opening of the federal Native Claims Office in response to the Calder decision;
- The position of the BC Government that the tied judgment in the Calder case meant that the reigning judgment on the question of Aboriginal rights and title was the BC Court of Appeal Calder decision which held that title no longer existed.

He made the point that the inclusion of Section 35 in the Constitution was a constitutional act of recognition, which many advocated for because of the intent of the BC government to disregard the Aboriginal rights in BC. New Democratic Party (NDP) Leader Ed Broadbent insisted that the wording on Aboriginal and treaty rights that would be enshrined in the Constitution must be in the language of recognition.

A clause on Aboriginal rights was originally drafted for the Charter. In the fall of 1981, because of resistance from the provinces, that the clause was removed altogether from the Constitution. The provinces did not want it to have the

guaranteed status that comes with inclusion in the Charter, stating as their reason that they did “not know what it means.” Later, when the Aboriginal rights clause was put back in the Constitution, it was reinserted in a different location, just outside the Charter, with a few differences: in particular, the term ‘existing’ was added (“The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed”).

The content of Section 35 was to be defined in First Minister’s conferences, as specified in Section 37. The Nisga’a and others at the comprehensive land claims negotiating tables were concerned that the insertion of the term ‘existing’ would freeze treaty rights to mean those protected in treaties negotiated before 1982. Removal of the word ‘existing’ was one of the key goals of First Nations involved in the First Ministers’ conferences. The *idée fixe* of those First Nations was the need to gain clarity that when they concluded a land claims agreement, it would have the same constitutional protection and import as the existing treaties.

When Section 35(3) (“For greater certainty, in subsection (1) ‘treaty rights’ includes rights that now exist by way of land claims agreements or may be so acquired”) was adopted at the First Ministers’ conference in 1983, the stakes changed profoundly over night:

- Negotiations got much tougher, as governments had previously assumed that modern land claims would not have the same constitutional protection as traditional treaties.
- Self-government had always been part of the land claims process, until 1987, when the federal Conservative government issued a new comprehensive claims policy. Now, self-government would not be included in land claims and, hence, would not be constitutionally protected.
- When the Liberal Party of Canada was elected to form the federal government in 1993, it changed the stance of the federal government on self government in land claims. The BC NDP government at the time also agreed to this change in approach.

Mr. Aldridge noted how First Nations originally thought the biggest resistance from government was going to be over land or fish, but have subsequently found that the primary resistance stems from constitutionally-protected self-government. He cited the example of Premier Gordon Campbell and his colleagues, who launched a lawsuit contesting the constitutionality of the Nisga’a Agreement, arguing it was unconstitutional because the Constitution does not allow constitutional powers to be transferred without a constitutional amendment. Mr. Aldridge said his team thought that was a bizarre approach, given that Section 35 was, itself, a constitutional amendment. Mr. Campbell’s response was to say that, although it was true that Section 35 was a constitutional amendment, people like him had not anticipated that the adoption of that constitutional amendment would lead to the constitutional protection of self-government. The Supreme Court of BC ultimately found the *Nisga’a Agreement* to be constitutionally valid.

Mr. Aldridge noted that, while negotiating the *Nisga’a Final Agreement* (Nisga’a Agreement) the concept of jurisdiction remained at the forefront of the negotiating strategy. He recommended this to other First Nations involved in negotiations, both in a treaty and non-treaty context. He also stressed the risks of trying to pursue self-government through litigation, as this approach yields very limited rights which have to be tied to pre-contact practices. His advice is that it is best not to have such issues defined via litigation. He recommended the approach taken by the Nisga’a - simply including within their treaty a statement that they have the right of self-government. The Nisga’a did not feel the need to be specific about the origin or basis of that right, and have not needed to hire a team of anthropologists to quantify the evidence of the pre-contact scope of that right, or pretend they have no such right inherently in order for the right to be granted by government. Through the negotiation of the treaty, the Nisga’a right of self-government is not delegated from Crown, but is recognized by all, through the process of reconciliation. He concluded that Aboriginal self-government belongs within the Canadian constitutional fabric.

Maria Morellato, Partner, Mandell Pinder

As a starting point. Ms. Maria Morellato reflected that at the time of the inclusion of Section 35(1) within the Constitution, the First Nations she was working with were concerned that the insertion of the term ‘existing’ would make Section 35 an empty box, with no specific content. While Indigenous advocates saw the potential in Section 35 for a fulsome protection of their traditional rights, the Crown argued, often successfully, that these rights are site-specific and tied to pre-contact practices of hunting, fishing, trapping, and other such practices. As such, we have seen a chasm grow between the principles Indigenous advocates fought for and the reality of what has happened on the ground in terms of implementation. We have also seen the entrenchment of positions.

Ms. Morellato reviewed a number of the key wins in court for Aboriginal rights after the entrenchment of Section 35²:

- In *Sparrow*, the SCC dismissed the BC Government’s argument that Aboriginal title had been extinguished by virtue of regulation of fishing rights and held that extinguishment could only occur through a “clear and plain intention” to extinguish.
- In *Delgamuukw*, the SCC held that the BC Government does not have the jurisdiction to extinguish; only the federal government, which has a fiduciary duty of trust toward Aboriginal people, has the jurisdiction under the Canadian Constitution, to extinguish rights. As held in *Delgamuukw*, the purpose of Section 35 “is to reconcile the prior presence of Aboriginal peoples with the assertion of Crown sovereignty,” implying that true reconciliation will place equal weight on Aboriginal perspective, or Aboriginal law, and the common law.
- *R. v. Marshall*, [1999] 3 S.C.R. 456 (*Marshall*) acknowledged customary Aboriginal laws and that the purpose of Section 35 cannot be achieved unless and until indigenous laws are recognized, respected, and actualized through the reconciliation process.
- In *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511 (*Haida*), the SCC emphasized the importance of the process of engagement and the requirement of consultation and accommodation.

Ms. Morellato stressed that now the difficult struggle facing Aboriginal people, the most daunting task, is implementation: to ensure the right mechanisms are in place to fulfill promise of Section 35. Despite successes in the legal forum, she suggested that the process of giving definition to the Aboriginal rights protected by Section 35 has not been working well. The key issue, she has found, is that there has not been the legislative reform necessary in the enabling legislation relating to resource management. These laws have not been adapted to provide space for the constitutional change represented by the entrenchment of Section 35. She cautioned First Nations about the limited promise of protecting their rights through litigation: the process is quite costly, the outcome is very uncertain, and devoting talent in the community to litigation can drain it from other areas of possible benefit.

Ms Morellato discussed the recent change in approach to treaty making by the federal government: the “results-based approach” which prioritizes those First Nations the federal government finds it easiest negotiate with. First Nations are put in the position of choosing between accepting fewer rights than originally negotiated, or ceasing the negotiation process altogether. She recommended moving to a new process that uses an administrative tribunal to settle issues: they are generally less political, less expensive, and less time consuming.

² Ms Morellato’s presentation can be found in full on the IOG website. [Click here](#)
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Grand Chief Edward John, Grand Chief, Tl'azt'en Nation / Executive, First Nations Summit

In introducing Grand Chief Edward John, the moderator Miles Richardson emphasized that both Chief John and Grand Chief Stewart Phillips have shown exemplary leadership in their long and well-fought struggle to protect Indigenous rights. He commended Chief John's work on the UN Forum on Indigenous Issues and the UN Declaration on Indigenous Rights to make the idea of free prior and informed consent a standard for working with Indigenous peoples, which has since been adopted by Canada.

Grand Chief John noted that governments seem to have forgotten the commitment made by the Crown in the Royal Proclamation. When Scott Serson was the Deputy Minister (DM) of Indian and Northern Affairs Canada (INAC) he opened the door to a different kind of relationship. Unfortunately this door closed soon after he left: AANDC and the federal government went back to the idea of managing Indigenous people, rather than managing the relationship.

When Section 35 was included in the Constitution, it was a moment to celebrate. At the series of First Ministers' conferences dealing with the inclusion of Aboriginal rights in the Constitution, there was deep discussion of the meaning of Section 35. Two technical people were appointed to do technical work in support of the meeting: Neil Sterritt was appointed by First Nations and Honourable Mr Justice Ian Binnie was appointed by Canada. Government took the "empty box" approach, defending the contingent-rights approach, which holds that unless particular First Nations could prove the ongoing historic practice of their rights, they did not continue to exist: hence the effort to include the term 'existing' in Section 35(1). First Nations argued that Section 35 was a full box, responding that something that does not exist can not be both recognized and constitutionalized. The challenge since has been understanding the nature and scope of the rights protected by Section 35.

Courts provide answers, but even the courts are not sure the answers they provide are the right ones. When the SCC leaves things in an ambiguous state, governments often turn to lower court decisions, which tend to be less favourable in their findings for First Nations rights. Moreover, when Canadian courts try to interpret Indigenous and customary law through the common law lens, something is always missing, as only customary leaders, or elders, understand customary law. It is not something that can be taught in law school curricula.

Chief John expressed concern about the large federal legal budget dedicated to Aboriginal Affairs and Northern Development Canada (AANDC) - it is not in the spirit of reconciliation and good relations to invest efforts and resources in this manner. It is more important for First Nations to develop their governance institutions, processes and capacity, and ensure that the appropriate capacities are in place for them to exercise their jurisdictions. The risk, if First Nations are not careful, is assuming responsibility for further delegated programming, based on someone else's legislative foundation, rather than genuine self-governance and self-determination.

Chief John discussed the January 11, 2013 meeting with Prime Minister Harper, noting that the Prime Minister affirmed the idea that a high-level resolution of these issues is needed. Chief John advised that First Nations have to position themselves strategically, create the opportunities that need to be created, and build on existing leverage (such as oil and gas). With Idle No More, Indigenous people are not sitting back patiently waiting for government and settler society to treat them well. He praised the Idle No More movement for getting indigenous people out there showing who they are, showing their cultures, showing their presence with drums, regalia, and numbers. He suggested that we may be at a turning point, noting that Idle No More will continue to push for redress of First Nations inequality and restoration of their rights. Chiefs have said "the lateral violence that has happened within our communities will be redirected towards standing up for our rights." Ultimately, cooperating with and respecting Indigenous peoples will be good for the nation.

Change Makers Award

After the first panel, the IOG, BCTC, and NRT presented Change Makers Awards to the Musqueam Nation, Chief Ernest Campbell, and Mr. Ron (Bud) Sparrow, acknowledging their contribution to Aboriginal rights through their role in bringing the Sparrow case forward.

BC First Nations have vigorously asserted their rights in a variety of venues over many generations. They have led the way in helping to define the legal recognition of the meaning of Sec.35 rights in Canada and in creating the processes, such as the BC Treaty Process, for honourable reconciliation of these rights within Canada.

From Calder to Delgam Uukw, Haida - Tlingit, and other cases too numerous to cite, BC First Nations have advanced the rights agenda. They have also negotiated far-reaching agreements regarding health and land and resource management to name a few examples. While all of the First Nation leaders who initiated these pivotal initiatives deserve our recognition and gratitude, because of the nature of this symposium, it was our honor to single out the Musqueam for the Sparrow decision, the first Supreme Court decision in Canada to rely on Sec.35 to interpret the scope of Aboriginal rights. By so doing they contributed much to all First Nations, to BC and to Canada.

R. v. Sparrow [1990] established the original four-part test for determining whether an interference with an Aboriginal right is justified. In this case, Ronald Edward Sparrow, a Musqueam Band member, was charged with violating the federal Fisheries Act, but successfully argued that he was exercising his 'existing' aboriginal right to fish under s.35(1).

- The first step is to determine whether there is an existing Aboriginal right. This involves characterizing the right and assessing whether its exercise is integral to the culture of the Aboriginal people in question.
- The second step is to determine whether that right has been extinguished. R. v. Sparrow defines an existing Aboriginal right as one that had not been extinguished prior to 1982. Extinguishment requires a clear and plain intention by the Crown to extinguish the right or rights in question. Mere regulation (as in the Fisheries Act) does not extinguish an Aboriginal right.
- The third step is to determine whether in fact the right in question has been infringed. This step involves a few key considerations: 1. Is the limitation unreasonable? 2. Does the regulation impose undue hardship? 3. Does the regulation deny to holders of the right their preferred means of exercising that right?
- The final step is to assess whether the infringement is justified. This involves two components.
 - Firstly, whether the right has been infringed by a valid or "compelling and substantial" legislative objective.
 - Secondly, whether the Crown's actions were consistent with its fiduciary duty toward Aboriginal peoples. This requires that any infringement be minimized and that Crown consult an Aboriginal people if its rights may be infringed.

The Sparrow case gave greater recognition to Aboriginal rights in Canadian law. It recognized that Aboriginal rights have a different nature than other non-Aboriginal rights and must be given priority by federal or provincial governments when enacting legislation that may interfere with those rights.

Keynote Speech Honourable Mr Justice Ian Binnie, Former Justice of the Supreme Court

Former Justice Ian Binnie³ began by stating that as Aboriginal people have succeeded in winning major cases, starting with *Calder*, governments have been presented with issues that are beyond their wildest nightmares.

He discussed the first Aboriginal rights case in which he was involved: *R. v. George*, [1966] S.C.R. 267. In this case, Calvin William George, from the Kettle Point Indian Reserve in Ontario, was found to have violated the Migratory Birds Convention Act for having shot a duck outside of the permitted season. Despite his argument, which had been persuasive in the lower courts, that such hunting was consistent with his rights under the Treaty of 1827, his rights ultimately were not recognized or respected. Since then, however, there has been an apocalyptic change in how the highest court in the land has dealt with Aboriginal and treaty rights. Although things may have improved in many ways, it is disappointing how the promise of Section 35 and *Sparrow* have gone unfulfilled.

Justice Binnie discussed two major developments that occurred since the last IOG conference on Section 35 in November 2012: the recent *Daniels v. Canada*, 2013 FC 6 (*Daniels*) decision and the combined public impact of the hunger strike of Chief Teresa Spence and the Idle No More movement. He anticipated that *Daniels* will certainly be appealed by government, due to the exponential increase in people who will be eligible for programs and support formerly only offered to Status Indians. He also predicted that *Daniels* will also lead to more contestation between the federal and provincial governments over who is responsible for the provision of programs, services and supports, which may leave many First Nations caught in the middle of jurisdictional bickering.

He reiterated the point made by Mr. Richardson regarding Idle No More, that First Nations leaders have certainly not been idle. The name of the movement, Idle No More, has been successful in catching the attention of the public. However, despite being aware of Idle No More and Chief Spence's hunger strike, many Canadians do not understand the root cause of Indigenous frustration and dissatisfaction and only see the socio-economic disparities. Many Canadians have a difficult time understanding the frustrations relating to the relationship between First Nations and government. However, for government to change its approach to the relationship with First Nations, the public has to become engaged in wanting these issues to be resolved. Politicians will not make the changes needed without demand from the public.

Self-government, or the ability of Aboriginal people to take responsibility for the future of their communities, is what is needed for the well being of First Nations and the well being of the country as a whole. There needs to be space within the Constitution to enable First Nations to take responsibility for the future of their communities.

Unlike those who view *Charlottetown* (1992) as the high watermark of recognition of self-government, because of its use of the language of the inherent right of self-government and a third order of government, Justice Binnie maintains that this actually occurred much earlier: the *Calder* case in 1973 recognized that the Aboriginal right to self-government had never been lawfully extinguished. The most important question is what the content of third order of government power would be, as there is a big difference between a third order of government with the authority to license grocery stores and one that has the authority to regulate its economy. Furthermore, if a nation has the right to regulate its existing economy, much will depend on what the land or resource base for that economy will be.

³ Justice Ian Binnie's full remarks can be found on the IOG website.
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The gap that persists is the gap between recognition of Aboriginal rights at a high level of generality and reality on the ground. The Penner Report in the early 1980s argued that Aboriginal self-government should be supported by government and protected in the Constitution. The report of the Royal Commission on Aboriginal Peoples (RCAP) was extremely thoughtful, but its potential has never been met, as the report was essentially shelved by government.

Justice Binnie noted that the First Ministers conference disintegrated as a result of conflicts within the Aboriginal delegation, and one of the biggest challenges in advancing the dialogue has been disunity amongst the Aboriginal side. The First Ministers' conferences in the 1980s were premature, particularly as Aboriginal proponents felt there was not sufficient consultation; provinces were recalcitrant; and the federal government was uncertain and hesitant on where it wanted to go.

Justice Binnie's reflection, at this stage in his legal career, is that courts may sometimes be necessary in protecting Aboriginal rights but they will never be sufficient. They are not capable of arriving at solutions that will close the gap between the promise and reality of Section 35. Any party who falls down in negotiation will feel the whiplash of the courts. Again, Justice Binnie stressed the idea that it is one thing for government to recognize the right of self-government, but the most important matter is what is being governed. For example, to a certain extent used car dealers can self-govern; but that is not very interesting or important. It all depends on how the powers of the third order of government are defined.

In *R. v. Pamajewon*, [1996] 2 S.C.R. 821, the SCC decided not to look at the broad question of self-government, but to focus on gambling. They asked what historic governance and regulation of gambling was before contact. This is the risk of turning to the courts to fill in the box: the focus can be so narrow as to exclude the principle First Nations are trying to have recognized and legally protected. Such exercises impose a huge burden on First Nations to find and pay for expert anthropologists who can attest to such practices in the courts, but is also very limiting for First Nations when courts tend to restrict rights in relation to demonstrable historic practices. The SCC will likely continue to refuse to deal with the broad right to self-governance, and will just go strand by strand. The more narrowly defined each strand becomes, the less helpful these cases will be for First Nations.

A key case to watch at the moment is *Tsilhqot'in Nation v. British Columbia*, which the SCC just recently agreed to hear. The BC Court of Appeal disagreed with the trial judge's findings of Aboriginal title arguing title can only be established for specific, intensively used sites, and not the wider hunting and trapping grounds that were used by the *Tsilhqot'in*. This case will be critical to closing the gap.

The courts have been very aggressive in establishing the right and duty of consultation. This tendency is a manifestation of the message the courts have been setting out over the last 30 odd years: these matters need to be dealt with via negotiation, not litigation. This duty and right varies with context. It is a flexible right based on the honour of the Crown, regardless of whether the issue under consideration relates to resource development or legislation that may affect the Aboriginal community in question.

While Section 35 looks backwards in one respect, more importantly it looks forward on how to build a responsible reasonable relationship between nations and cultures. In the future, in Section 35 cases, courts will continue to apply pressure: Section 35 has massive bite. It is not just a collection of words thrown into the Constitution. We have seen this when governments have argued that existing Aboriginal rights were enjoyed at the pleasure of the crown: the courts have disagreed. In sum, Justice Binnie maintained that it is in everyone's interest to negotiate and reconcile - the broader community wants fairness.

Panel II: How Has the Landscape Changed?

Moderator: Mr. Jean-François Tremblay Senior Assistant Deputy Minister, AANDC
Panelists: Dr. Doug McArthur Senior Fellow, School of Public Policy, SFU
Chief Jody Wilson-Raybould BC Regional Vice Chief, AFN
Chief Perry Bellegarde Saskatchewan Regional Vice Chief, AFN
Chief, Federation of Saskatchewan Indian Nations

In his opening remarks regarding how the landscape has changed for Aboriginal people since Section 35 became enshrined in the Constitution, Mr. Jean-François Tremblay noted that one of the biggest problems many First Nations have been facing is the fact that treaty negotiations take such a long time.

Doug McArthur

At the time of the negotiations over inclusion of Aboriginal rights in the Constitution, Dr. Doug McArthur was a senior public servant in the Saskatchewan Government. He noted that contrary to the point made by several provincial governments that Aboriginal rights should not be enshrined in the Constitution because their meaning was unclear, many people in these meetings thought Aboriginal and treaty rights were really quite well understood. They understood that both policy and litigation would be expected to operationalize and fill out this clause and that policy in particular would be the key means of filling out Section 35 rights and making them more than an “empty box.”

Many had questions and concerns over what Section 35 would mean for existing historic treaties. It was expected that Section 35 would reframe historic treaties, bringing a renewed effort for clarification, modernization, and implementation, including outstanding land entitlements. None of this resulted. Many expected that the existing model for land claims negotiation would be updated. The settlements that were achieved in the North and some in BC are much different than what the federal government had planned in the 1970s, not because of federal efforts but because of tireless negotiators for the First Nations.

Federal and provincial governments will not acknowledge Aboriginal title at the treaty negotiating table. Extinguishment continues to be a goal of government and a problem for First Nations. Another term frequently used for extinguishment in these negotiations and agreements is ‘modification.’ He expressed surprise at how infringement has unfolded as an available policy option for governments, with respect to Aboriginal rights and hopes this will not be the case for treaty rights. He argued that Sparrow was a high point in recognizing Aboriginal rights, but that, since then, governments have been quite pleased with the leading court cases on Section 35. “Government loved Delgamuukw,” believing what it allowed was almost as good as extinguishment. After Delgamuukw, government perceived that infringement was possible at any time, so long as it provided justification. After a certain point, it is no longer possible to distinguish between multiple infringements and extinguishment in effect.

Although there may certainly have been advances in the area of Aboriginal rights in the past 30 years, it is not clear that these advances are the result of the enshrinement of Section 35 in the Constitution, as compared with the many other political forces that have been at work. Like a number of other speakers, Dr. McArthur cautioned First Nations about the litigative approach to defining Section 35 rights. He argued that the payoffs that have initially been seen in the courts are not likely to continue.

What is needed, he suggested, is a new narrative around Section 35, bringing it back into discussion as a moral statement: a reprimand and a need to do better and a delineation of where governments must not go in the future. It is imperative for this moral statement to also articulate a policy direction, to enable First Nations to reset the power

relations with Canada and the provinces. What is also needed is a more concerted, united effort amongst First Nations. We need to restart the new relationship. Some elements of Section 35 need to be rediscovered.

BC Regional Vice-Chief Jody Wilson-Raybould

AFN BC Regional Chief Jody Wilson-Raybould began her presentation noting that Canada is one of the only liberal democracies in the world in which Indigenous rights are constitutionally protected. She noted that it was a major accomplishment that Indigenous leaders achieved the first amendment to the Canadian Constitution. Many people have underplayed the significance of this amendment.

Vice-Chief Wilson stated that from a First Nations perspective, Section 35 is a full box. First Nations have spent many years defining their rights in court. Most definition has been given to Aboriginal rights to hunt, fish, etc. So why, despite Section 35, are there so few self-governing First Nations and why does the *Indian Act* still govern Aboriginal lives. What is the point of Section 35 if it is not applied? Part of the problem is the result of inaction or stonewalling by the Crown, but part of the responsibility lies with First Nations. She asked, “If we had our governance rights recognized, would we have the governance capacity to implement them?” No one else is going to implement governance rights for First Nations. Getting ready to self-govern will take a lot of internal rebuilding.

While there is a place for Canada to support nation rebuilding under Section 91(24) of the Constitution Act, 1867, this should not be attempted through the Indian Act system, with Chiefs and Councils being little more than mechanisms for delivering federal programs. She argued that continued involvement with *Indian Act* system diminishes First Nations capacity. Many First Nations leaders talk about traditional laws, but few have the needed governance capacity: they are not governing their lands and resources as well as they aspire to govern them.

Chief Wilson-Raybould discussed how many First Nations are making progress through what could be called the “just do it” approach. When they have needed water to support their communities, some have just gone ahead and built the infrastructure, exercising the power and jurisdiction they believe is theirs. If another government or third party wants to challenge this, they can feel free to do so. Other First Nations have elected, as a practical strategy, to negotiate agreements, rather than going to court. Courts tend to throw First Nations curve balls sometimes, particularly with the requirement that any protected right must be backed up with evidence of pre-contact practice. This is too limiting when it comes to the question of which governing practices are needed in current reality.

First Nations require contemporary mechanisms to facilitate the transition from *Indian Act* band governance to self-government. Vice Chief Wilson spoke about Bill S-212: The First Nations Self-Government Recognition Act - an Act providing for the recognition of self-governing First Nations of Canada - as an example of a way to recognize the inherent right to self-government without Constitutional change. First Nations will remove themselves from governance under the *Indian Act* when they are ready. The real challenge is doing the hard work back home in the communities and being ready to take on self-governance responsibility. Constitutional protection not as important as internal capacity.

Canada, First Nations, and the provinces agreed to self-government in principle during the *Charlottetown Accord* negotiations. Chief Wilson-Raybould contended that it might be advantageous not to have this right fully spelled out as doing so may be limiting. Instead, it might be better to attain constitutional protection for that right after its meaning has been defined in practice.

Saskatchewan Regional Vice Chief Perry Bellegarde

AFN Saskatchewan Regional Chief Perry Bellegarde has been working to close one of the most infamous gaps: the gap between the commitments made in the historic treaties and their implementation. Practice in this area shows that with all court cases that First Nations have been winning, the executive and legislative branches are not keeping up or implementing with what the judicial branch is ruling.

Chief Bellegarde discussed a First Nations perspective on Treaty 4, noting that upon signing the Treaty Little Black Bear did not agree to cede or extinguish his people's rights. Rather, he agreed to enter into relations of peaceful coexistence and respect, so both peoples could mutually benefit from the land and resources. Governments, however, continue to insist on extinguishment.

Chief Bellegarde cautioned Indigenous people against turning to the Canadian court system for the enforcement of their treaty rights, as it is a foreign court system based on different legal and cultural principles wherein First Nations have not had a significant role. The courts have an inherent bias against Indigenous people because they apply foreign legal concepts and lack First Nations representation. He also advised that First Nations try to come together on actions where possible, considering that individual First Nations do not have the same legal resources that government employs to extinguish First Nations rights.

Chief Bellegarde contended that First Nations may not need to rely on the Supreme Court to fill out the content of Section 35 rights. He suggested that if enough political will and pressure are applied to the federal and provincial governments, then Aboriginal peoples could determine their rights through negotiation. However, once rights are recognized they require implementation to truly give them meaning. For example, First Nations need to exercise their own jurisdiction: they have to create their own laws and occupy the field, define their own citizenship and move away from the *Indian Act* (e.g., Bill C-31).

Chief Bellegarde identified a number of key priorities and challenges for First Nations in relation to their rights and relationships with the federal and provincial governments:

- The honour of the Crown has been tarnished. How can we work together to ensure it becomes restored?
- Governments must stop pursuing the goal of extinguishment of Aboriginal rights.
- Aboriginal people to share in the revenues from resource development. The Minister of Natural Resources Canada, can facilitate this process. Resource revenue sharing will bring economic benefit and certainty to all.
- All legislation, including the recent omnibus Bills C-38 and C-45, should be reviewed through the lens of Section 35.
- A new fiscal relationship needs to be established. The two percent cap in increased funding through AANDC has been in place for too long. Inflation is higher than 2 percent and First Nations populations across the country are growing rapidly.
- We need a National Public Inquiry on violence against indigenous women.
- We need to close the education gap between Aboriginal people and other Canadians.
- The PM's Office and the Privy Council Office, as opposed to AANDC, need to drive treaty implementation within the federal government. This approach is reflective of a nation-to-nation relationship. A new mechanism is needed to bring about transformational change across Canada.

Chief Bellegarde ended by encouraging us to be mindful that there are collective rights and of the need to protect them, though not at the cost of individual rights.

Panel III: What Are the Initiatives and Promising Practices that Can Move Section 35 Forward in BC?

<i>Moderator:</i>	<i>Mr. Peter Walters</i>	<i>Assistant Deputy Minister, Ministry of Aboriginal Relations and Reconciliation, BC</i>
<i>Panelists:</i>	<i>Mr. Dave Porter</i> <i>Mr. Cliff Atleo, Sr.</i> <i>Mr. Miles Richardson</i>	<i>CEO, First Nations Energy and Mining Council</i> <i>President, Nuu-chal-nulth Tribal Council</i> <i>Senior Associate, IOG</i>

Dave Porter CEO, First Nations Energy and Mining Council

Mr. Dave Porter began by discussing his experience at the infamous “kitchen meeting,” a negotiation leading to agreement between most of the provinces on the content of what would become the Constitution Act, 1982. In this meeting, Aboriginal people and women were removed from protection in the Constitution. Mr. Porter discussed the failure in BC to produce the kinds of treaties First Nations require. This is partly because the BC Government has failed to produce the necessary policy developments to protect Section 35 rights. Until governments change their mandates, we will not see any progress in treaties and relations between First Nations and government. The key issues, as he sees them, are:

- government insistence on extinguishment and modification;
- the rate of claw back of own source revenues, which represents an attempt to constitutionalize the poverty of First Nations; and
- the question of land quantum going to First Nations in treaties.

Mr. Porter posited that

- as opposed to the *Indian Act*, there should be a First Nations Self-Determination Act that includes a fiscal component as an aspect of the relationship between First Nations and government
- First Nations need to develop a civil service capable of carrying out all of the functions of government
- the creation of a First Nations Auditor General role, not only to review First Nations’ audits, but also to assist First Nations in developing competent financial practices. He suggested that First Nations could partner with public governments to build the requisites for governance.
- First Nations need governance resources
- First Nations need a fair share of revenues.

On the issue of revenues, Mr. Porter suggested that working well with First Nations could bring Canada billions in revenue and contributions to the economy. Even when it comes to their direct interests, public governments refuse to cooperate on the issue of resource revenue sharing, even when those resources are located on First Nations’ traditional lands. One of the key reforms that must be made is in the area of mining, particularly with regard to the free entry system. For years, First Nations have said this system is fundamentally wrong, yet government has not changed the way it does business. We may see some change now after the December 2012 case in Yukon that challenged that part of the Yukon mining act: *Ross River Dena Council v. Government of Yukon*, 2012 YKCA 14 (Ross River). *Ross River* held that the duty to consult does not begin only after a mining claim is awarded, but must occur

before. The Court gave the Yukon Government one year to redraft its legislation. It is only a matter of time before the BC government faces a legal challenge of this nature. “If we can map the human genome, we can figure out a different tenure process.”

Mr. Porter also discussed the poor state of Environmental Assessment (EA) law and practice and the implications for Aboriginal rights. He noted the recent evisceration of EA through the passing of the omnibus Bills C-38 and C-45 and through the huge changes to the Navigable Waters Protection Act and the Fisheries Act. Omnibus bills are usually intended for clean up of a number of small parts of legislation. However, under this government omnibus legislation has become the norm and First Nations are very concerned about this. Chiefs have asked the Prime Minister to step back and repeal these acts, but the PM has refused. The BC Government and First Nations should sit down together and design an EA process that will work for both.

Regarding resource revenue sharing, there have been steps forward in BC. There is now revenue sharing for new mines, but a lot more progress needs to be made. First Nations also need a similar response from industry around profit sharing: if industry is going to extract resources from First Nations territories, it is not enough to simply talk about jobs. He also made the case that Canada needs an energy strategy and that First Nations need to be key players in that strategy. Many First Nations have developed such projects and we need to continue to embrace the renewable energy sector. The very structure of Canada’s economy is dependent on a successful energy policy.

Cliff Atleo, President, Nuu-chal-nulth Tribal Council

Mr. Atleo presented⁴ on the First Nations Health Council (FNHC) model of First Nations health governance in BC, a pan-BC First Nations organization which, on behalf of First Nations, will oversee the transfer of funding, programs, records, personnel, and other key resources from the Health Canada First Nations and Inuit Health Branch-BC (FNIHB-BC) to a BC First Nations Health Authority (FNHA). He described the BC First Nations health governance model as having three prongs:

- The FNHC, which is the political arm, a board comprised of regional decision makers.
- The First Nations Health Authority (FNHA), which is the service delivery and administration organization, comprised of senior management and other staff.
- The First Nations Health Directors Association, which supports education, knowledge transfer, professional development, and best practices for health directors; and acts as a technical advisory body to FNHC and FNHA.

According to Mr. Atleo, the keys to the success of this model of governance are the importance of key governance principles: including reciprocal accountability, partnership and collaboration, transparency and defined operating standards; and a Board of Directors composed of people with experience in First Nations health programs and services and experience running large scale operations.

⁴ To see Mr. Atleo’s full presentation on the First Nations Health Council, [click here](#).

Miles Richardson, Senior Associate, Institute on Governance

Mr. Miles Richardson agreed that the FNHC model of Aboriginal health governance in BC is one of the key cutting-edge efforts to develop governance alternatives and initiatives. He noted that one of the strengths of both the FNHC and the First Nations Energy and Mining Council is the practice of community participation through regional fora.

Mr. Richardson posited that one of the key factors that needs to be addressed at the national level is the fact that First Nations peoples are still generally organized as Band Councils, while “Aboriginal rights and title” adheres to nations, not Bands. The Band Council system will be an obstacle moving forward. For First Nations to be empowered requires knowing who we are as nations. Are we members of *Indian Act* Bands? Maybe you want to be a hybrid of your traditions coupled with aspects of the *Indian Act* system. “Define your nationhood: only you can do that. Canada and BC cannot do that for you.”

He also advised First Nations that another key factor in bridging the gap between the promise and current reality of Section 35 was the need to clarify which jurisdictions will be exercised. Governance is about power: making and executing decisions. As the Crown has usurped most First Nation jurisdictions, First Nations need to define and prioritize jurisdictions, while building the capacity to exercise them.

Mr. Richardson illustrated these principles with an example from his presidency of the Council of the Haida Nation. He stressed that Haida efforts had nothing to do with the *Indian Act*. The Council of the Haida Nation unilaterally passed legislation to protect Gwaii Haanas: “This area will remain in its natural state in perpetuity.” At the time, the BC Government was allowing clearcut logging in a site of profound historic and ongoing value to the Haida. The Haida blockaded logging operations, and when a number of Haida were arrested (15 in total) they renounced their Canadian citizenship to demonstrate to the courts that they were not breaking Canadian law, but contesting it. Canadian law recognizes and protects Aboriginal rights and title, which do not derive from the Crown. These rights are inherent rights. It was a challenge, but the Haida were successful.

Mr. Richardson explained his work with the IOG is geared towards helping other nations claim their jurisdiction and develop the capacity to self-govern. First Nations have made good progress, but much more is needed. Leadership is key. From his experience, it is best for First Nations to get their own houses in order and be ready for self-government. The courts keep pushing the parties back to negotiation. He has full confidence that, like the Haida, other First Nations are eminently capable of taking the initiative to get their governance houses in order, rather than waiting for the honour of the Crown to manifest.

Plenary Session

Jim Sinclair, Video from First Ministers' Discussions on Aboriginal Constitutional Rights

Ms. Marcia Nickerson, Head of Indigenous Governance for the IOG, introduced a moving video of Métis leader Jim Sinclair Jim's iconic 1987 speech to Prime Minister Brian Mulroney and attendees of the last First Ministers' Conference on the Rights of the Aboriginal Peoples⁵. Mr. Sinclair was scheduled to present at the Beyond Section 35 conference hosted by the IOG in Ottawa in late 2012, but passed away during the conference. Mr. Sinclair made a number of key points to the First Ministers, not the least of which was his conclusion:

"...and we struggled with our Aboriginal brothers on what should go on the table. But one thing I want to say when we leave this meeting: I'm glad to see that we stuck together on a right that is truly right for our people, and right for all of Canada, and right within international law throughout the world based on human rights alone. We have the right. We have the right to self-government, self-determination and land, and the people that are here are going to go back and continue to struggle."

Prime Minister Brian Mulroney Video Address

Miles Richardson introduced a video address to the conference by former Prime Minister Mulroney, on his thoughts about the status of Aboriginal people in Canada and Section 35⁶. Mr. Richardson shared stories of Prime Minister Mulroney's passion for justice for Indigenous peoples, including:

- His leadership in imposing sanctions against the apartheid regime in South Africa, despite significant pressure from other countries, including the United States and the United Kingdom;
- His significant efforts for Canada to acquire the lands of Gwaii Haanas from BC, resulting in the the first modern nation-to-nation agreement in Canada and protection of some of the most important lands in Haida Gwaii;
- His cooperation in the establishment of the Gwaii Trust, a locally controlled, interest-bearing fund to advance economic diversification and sustainable development on Haida Gwaii;
- His establishment of the Royal Commission on Aboriginal Peoples; and.
- His negotiation of the Aboriginal Fisheries Strategy following the Sparrow decision. This agreement is still seen as the high watermark for interim measures in BC.

In his video address former Prime Minister Mulroney stated that what was achieved with the Haida is the model for moving forward and putting meat on the bones of Section 35. He argued that the great stigma in Canada's approximately 150-year history is the manner in which it has treated Aboriginal people. The results are terrible: poverty, inequality, and mistreatment. He ended with the hope that the 21st Century could be the century for the Aboriginal people of Canada.

⁵ To view Jim Sinclair's speech, [click here](#).

⁶ To view Prime Minister Mulroney's video address, [click here](#).

Scott Serson, Former Deputy Minister of Aboriginal Affairs

Mr. Scott Serson discussed his involvement in the negotiations over the inclusion of Aboriginal rights in the Constitution⁷. In the final Section 37 First Ministers' conference, the argument was whether the Aboriginal right to self-governance was an inherent right, as the Aboriginal representatives at the conference maintained; or whether it was a granted right, deriving from the good will of the Crown, to be fully defined and delimited by the Crown. It was clear at that point that self-government was perhaps the key issue that had to be tackled in resolving the question of whether and how to include Aboriginal rights in the Constitution at the time. Aboriginal leaders came under tremendous pressure in multiple directions from government and the multiple voices and perspectives within the Aboriginal community. Despite this pressure, Aboriginal leaders came together and insisted on the inherent right of Aboriginal self-government. Mr. Serson noted how, at the end of the final Section 37 First Ministers' conference, Prime Minister Mulroney observed that these conferences had been a tremendous lost opportunity.

Mr. Serson maintained that the challenge today is how to replicate the kinds of discussions we saw between Mr. Jim Sinclair and Canada. This challenge persists as Prime Minister Harper has not shown a strong propensity to work with other leaders in the country, including provincial First Ministers. He also noted that, after the failure of the Charlottetown and Meech Lake Accords, Canadians and their governments are very reluctant to enter into further Constitutional discussions.

Mr. Serson was the Deputy Minister of Indian & Northern Affairs Canada when the RCAP report was completed and released, in 1996. The problem faced at the time was how to analyze the report and respond in a timely manner (the resulting response being "Gathering Strength.") Mr Serson suggested, as did National Chief Atleo at the Ottawa symposium, that RCAP should be revisited.

Mr. Serson's recommendation to current and future Aboriginal leaders was to be careful not to yield leadership to the federal government, to make sure the governance and negotiation processes that are established are joint processes. In thinking about some of the key blocks to moving things forward, he has been preoccupied with the issue of fiscal arrangements. He urged First Nations to put together their own policy frameworks and guiding principles on fiscal arrangements before going much further in negotiations with government on this matter.

Mr. Serson also took exception to the manner in which own-source revenues (OSR) are being handled. The current policy claws back any revenues gained by an Aboriginal community to the point where they exceed funding provided to the community by AANDC. This effectively condemns those communities to remain in poverty in perpetuity, as they cannot use new revenues to improve their living standards. This is a high threshold to meet and makes it difficult for Aboriginal communities to break free of the cycle of poverty and gear up for innovation. He recommended that Aboriginal communities adopt the principle that OSR will not be touched until the quality of life in the community or nation in question is equivalent to the quality of life experience by other Canadians.

In his final remarks Mr. Serson supported returning to one of the recommendations made in RCAP in order fulfill the promise of Section 35, namely: the creation of a permanent Aboriginal Peoples' Review Commission to regularly monitor progress by government to honour and implement existing treaties, negotiate new treaties, and improve socio-economic conditions for Aboriginal people in Canada.

⁷ For Mr. Serson's full remarks, [click here](#).
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Panel IV: Where Should We Go From Here to Live Up to the Promise of Section 35?

Moderator: Justice Harry Slade Chairperson, Specific Claims Tribunal
Panelists: Mr. Michael Hudson Associate Assistant Deputy Attorney General, Department of Justice, Government of Canada
Ms. Kim Baird Strategic Initiatives Director, Tsawwassen First Nation
Dr. Judith Sayers Assistant Professor, University of Victoria
Grand Chief Stewart Phillip Union of BC Indian Chiefs
Ms. Marie Wilson Commissioner, Truth and Reconciliation Commission

Michael Hudson, Associate Assistant Deputy Attorney General, Department of Justice, Government of Canada

Mr. Michael Hudson noted that the anniversaries of such as the Royal Proclamation and Section 35 enable us to reflect on where we want to go on this journey recognizing that for the most part we have been on parallel journeys and do not yet share a collective journey. The courts have breathed life into Section 35 which has fundamentally changed the thinking of people in government. Today, no one can deny the fundamental integrity, existence, and culture of Aboriginal communities. Many more Canadians recognize there has to be a key place for Aboriginal people in decision-making processes.

Rhetorically, he asked what reconciliation means for us in the context of Section 35. He noted that the opposite of reconciliation is not necessarily repression, but indifference, collective amnesia, or lack of knowledge. Mr. Hudson posited that the kinds of conversations that were had during the negotiations to include Aboriginal rights in the Constitution need to be repeated on a generational basis: non-Aboriginal people need to be constantly reminded about the role Aboriginal people have in Canada and the distinctiveness they contribute. Canada is a country of immigrants, with many new people arriving who have no knowledge of the collective journey of the last 300 years, let alone last 30 years. This presents a challenge for reconciliation in our present.

One of the consequences of Section 35 has been the significant lawyering-up of both sides, which is not the problem itself, but a symptom of the problem: in any relationship, when two parties cannot communicate except through lawyers, you have a real problem. Law should be a handmaiden to good public policy; it should not be dictating the terms of what we do. Increasingly, it stands in the way of good relationships. There will be no shortage of litigation on Aboriginal rights in the coming years - there are a number of issues going before the courts. Courts are not going to stop taking up these matters, because we have not been able to find ways to resolve them outside of court. He argued that we will not make progress until Aboriginal success becomes a truly national project, as the success of Canada and Aboriginal people are truly interdependent.

Mr. Hudson also suggested that we consider rethinking the role of the Crown. When the Royal Proclamation was written, the role of the Crown was to hold back settlement. In the 19th century, the Crown became a fiduciary steward for Indigenous people, under Section 91(24). Now, with Section 35, the role of the Crown could become many things. All around the planet, people are redefining the role of the state. Mr. Hudson asked whether, along with this trend, we should redefine the role of the state with respect to First Nations (for example as a facilitator rather than as a ruler). Mr. Hudson concluded by recommending First Nations look for opportunities to help the Crown facilitate First Nation success and objectives.

Kim Baird, Strategic Initiatives Director, Tsawwassen First Nation

Former Chief of the Tsawwassen First Nation (TFN), Kim Baird spoke on the question of what should be done to realize the promise of Section 35 stemming from the perspective of having concluded treaty negotiations and resetting the relationship with the federal and provincial governments. The TFN has replaced the *Indian Act* with new legislation and new institutions, rebuilding their nation's governance from the ground up. She acknowledges that while the treaty did not necessarily encompass everything everyone in the nation wanted, a risk assessment was applied to determine whether the treaty would be better or worse than remaining under the *Indian Act*. Five years after the treaty was finalized, Ms Baird has concluded that the jurisdiction held by her nation is 100 fold better than under the *Indian Act*: the TFN now passes their own laws without having to get permission from the federal government. The fact that TFN lands are no longer a federal reserve and do not fall under the purview of Section 91(24) is a major accomplishment. The TFN and the other government parties have not agreed on how to classify TFN land: the federal and provincial governments refuse to recognize this land as TFN land.

Ms Baird recognizes that there is room for improvement in treaty outcomes and is hopeful that other First Nations will enter and remain in treaty negotiations. She noted a fundamental difference in the way many First Nations and government view treaties: many First Nations have viewed treaties as weddings, while government continues to think of them as divorce. She noted that Canada has not updated its comprehensive claims policy to reflect the evolution of Section 35 case law. Canada shows no sense of urgency in negotiating treaties or in moving forward to address the issues First Nations communities face.

Now, the task of the TFN is to establish an economy to transform their socio-economic conditions. They are seeking a commitment from the federal and provincial governments to reducing poverty in First Nations communities.

Kekinusuqs, Judith Sayers Assistant Professor and Visiting National Aboriginal Economic Development Chair in Business and Law, University of Victoria

Dr. Judith Sayers began by reflecting on the negotiations of what was included within Section 35, noting that, while giving some protection to Indigenous rights it does not include much of what First Nations had been fighting for.

Dr. Sayers took some exception to the argument that First Nations must put aside their differences and come together in unified negotiations with the federal and provincial governments. She emphasized that First Nations are very diverse and often have very different ideas and historical relationships with each other and other governments. There is no "one-size-fits all" solution. The federal government has been trying to push through unilateral, "one-size-fits all" solutions through its omnibus legislation. This approach does not work for Indigenous people.

Section 35 was supposed to enable First Nations to define their rights, particularly through treaty negotiation tables. Dr. Sayers has found that litigation seems to be the most effective way of pushing governments. However, despite the recognition of Section 35 rights by the courts, she feels that not much has substantively changed regarding actual recognition of and respect for Aboriginal and treaty rights by the federal and provincial governments. Indigenous rights are continually infringed upon. Reconciliation or the BC idea of a New Relationship are nowhere near being achieved. It is no wonder that Idle No More, a powerful surge of grassroots people who want get the attention of the public on the need to deal justly with Indigenous people, has emerged. The federal and provincial governments will have reckon with and Indigenous leaders will have to embrace the energy of Idle No More.

Historically, First Nations were amongst the most prosperous peoples in the world. They had a high quality of life and were economically independent. They were entrepreneurs, who traded amongst themselves and with the newcomers. This independence and entrepreneurship ended when the federal government put First Nations on reserves, appropriated their resources, and imposed laws attempting to separate First Nations from their culture and assimilate them into settler society. First Nations are recovering now, trying to wrest back control of their lands and resources. They are not interested in doing pittance management anymore, but, rather, wealth and revenue management. In this vein, she advised First Nations to make the most out of Section 35. She encouraged business partnerships with developers, ensuring that the business to be undertaken is not environmentally or socially harmful. In particular, she recommended negotiating for equity as an aspect of the accommodation they are entitled to receive under Section 35 case law. Equity is not only a good financial investment, it can also serve as important leverage in business decisions that can affect First Nations interests in their land. First Nations are not against development, but proposed development has to be reasonable. She recommended that First Nations set the terms of what is acceptable development on their lands.

Although much of the land from which government royalties are collected are Aboriginal lands, current policy puts many First Nations in the position of having to seek other ways, such as business development, to raise revenues. Regarding OSR and taxation, she posited that the key determinant of when First Nations should start paying into those vehicles is when they have reached the same level of living conditions as the rest of Canada. While Indigenous poverty continues to persist, it is not appropriate to offset the small gains made by First Nations with OSR clawbacks and taxation. OSR clawbacks, without equal living conditions, removes a key incentive for First Nations to become economically independent.

She advised First Nations to do what they can to develop economically, to strengthen internal conditions, and to strengthen their negotiating power with federal and provincial governments. If First Nations achieve economic power and clout, governments will want to sit at the table with them. Not every First Nation has the same options available to them - many have very little in the way of land. This makes it especially important that First Nations do all they can do to slow down the allocation of land to other interests.

She ended her remarks by noting that the current federal government is particularly difficult to work with and is likely to generate more resistance from First Nations. Current generations of Indigenous people owe it to their future generations to retain the warrior spirit and survival skills of their ancestors. She is hopeful that attitudes and understanding are changing, and that Section 35 can be what we make of it.

Grand Chief Stewart Phillip, Union of BC Indian Chiefs

Grand Chief Stewart Phillip expressed gratitude to all of the historic Indigenous leaders who fought to have the Aboriginal and treaty rights clause included in the Constitution. He remembers going to Ottawa and seeing thousands of Indigenous people rallying outside negotiations: First Nations were so full of hope that they were going to achieve the promise of Section 35. He reflected on many signs of social progress in a number of the decades leading up to and following Section 35, including the civil rights movement, the peace movement, the Constitutional Accords and the beginnings of the BC Treaty Process. He has always been frustrated by the debate over whether Section 35 is a full or empty box. To him, his 13 grandchildren are the contents of the box. Their right to live well, on their lands, and live their culture is the content of Section 35. He stressed the importance of reconstituting all the institutions necessary for Indigenous peoples to steward the teachings of their cultures reflected by their languages.

Grand Chief Phillip characterized the current relationship between Indigenous people and the federal and provincial government as a very, very bad marriage. Under the current relationship, Indigenous people have to drag governments into the room, kicking and screaming, in order to have basic discussions on the state of Aboriginal well being and Aboriginal rights. It is almost as if the relationship is frozen in time and the parties need to start making some decisions to move the relationship forward. Governments remain reluctant to move beyond the reserve and *Indian Act* system. The courts have been equally reluctant to recognize Aboriginal title. He cautioned First Nations and other Aboriginal communities about relying on the courts to support their rights. Many recent court cases have had significant downsides for Indigenous communities, and under the current federal government we are likely to see a less progressive court.

Grand Chief Phillip embraces Idle No More. Given the intensifying poverty in many Aboriginal communities, and because of Aboriginal populations are growing, we will continue to hear more from Idle No More and other Indigenous voices. He recommended that First Nations and allies work to raise the profile of what Section 35 represents. This work is urgent, as the status quo is killing Aboriginal people. There are many allies, particularly environmental organizations and activists, who are committed to rectifying the relationship with Indigenous people.

Marie Wilson, Commissioner, Truth and Reconciliation Commission

Commissioner Marie Wilson recalled that her knowledge of Aboriginal rights and struggles has largely come from two experiences: decades of involvement in the media, and her time as a Commissioner for the Truth and Reconciliation Commission (TRC) of Canada⁸. She recalled the electric environments surrounding negotiations of Section 35. Because the media was present, the country as a whole was able to see this and participate in it as a national experience - there were not 500 different streams of communication. Commissioner Wilson can not remember the last time the country had a national public policy discussion of this consistency.

Part of what was so important about the Constitutional conversation was that things that had been previously kept out of public view were now highlighted and out in the open for all to see. Many of the most amazing examples of great progress have been led by Indigenous people. For example, the establishment of the TRC – historic both in Canada and the world – in response to residential school survivors who filed a class action lawsuit. Commissioner Wilson spoke about residential schools and the residential school legacy - history that remains absent in much of contemporary education. She attributed this dearth to why so many in newcomer society just do not understand what reconciliation is all about, why there were residential schools, or what either phenomenon has to do with them as immigrants.

Commissioner Wilson outlined a number of significant gaps that continue to affect Indigenous people, including gaps between:

- Law and perceived justice;
- The perceived value of English and French languages and cultures vis-à-vis indigenous languages and cultures;
- The apology from the federal government and meaningful redress action;
- Being elected and being a true leader;

⁸ For Marie Wilson's full comments, [click here](#)
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- Who is in the room and who needs to be in the room;
- Having vision and having the capacity to move towards it;
- Needs (especially mental health needs) and appropriate resources for meeting those needs;
- Doing well and having great achievements and getting recognition and appreciation for those achievements;
- Feeling for family members and having any learned ability to express those feelings;
- AFN leadership and community realities;
- AFN leadership and other First Nations leadership;
- Native and non-native understanding and world views (the real two solitudes); and
- What we were taught in school and what we need to know to live in respectful relation to each other.

Commissioner Wilson stressed the need for us to have confidence in the possibility of change. She finds it hopeful that many of the people who participate in Idle No More also go to TRC gatherings. They realize they are not alone. Idle No more has reclaimed and redefined the media, using it as a valuable tool for a wider dialogue on respect and change.

One of the big challenges for change Commissioner Wilson identified is how we create and claim space for dialogue. It is almost always the case that public begging by Indigenous people occur before discussions emerge. There is no set process. Dialogues also must occur within communities, as many feel that the power relations that played out in residential schools are still at play in the existing band governance system. A huge part of this effort needs to take place within the education system. We need honest history so that we are not investing in another generation of ignorance. Indigenous people have many committed allies across the country who are not proud of being part of the problem and want Canada and the provinces to do the right thing.

Plenary Discussion: Building the Agenda for Action

All attendees joined smaller breakout group discussions fashioned around what kinds of messages they would send to Prime Minister Harper on how to move forward the issues raised throughout the Symposium: priorities for and obstacles to closing the gap between the promise and current reality of Section 35 rights. The highlights of the breakout group discussions are summarized below:

Priorities for Moving Forward

1) Government-to-Government Relationship

- Institute a meaningful and umbrella process that allows for a government-to-government discussion to reset the relationship. By virtue of the nature of the discussion, this requires the Prime Minister to meet with nations rather than deferring nations to the Minister of AANDC. A new relationship would, by necessity, have as its content:
 - recognition of jurisdiction and governance enablement,
 - fiscal relationships and capacity (including revenue sharing, and alternative OSR measures),
 - resource access and environmental stewardship, and
 - implementation of Indigenous rights in the fullest sense, which must also include fulsome support for culture and heritage preservation.
- The time for coming to the negotiating table is now. Neither Indigenous people nor Canada can afford to delay meaningful reconciliation any longer.
- We could tap into the potential desire of this PM to have a legacy. This could be an enabling tool for First Nations, if they think strategically when considering what legacy options they present to him. They should consider what might get them in the door by developing his desire to have a legacy. Of course, this tactic should not change what First Nations' priorities are, but it might get them more of a hearing than they are currently getting.

2) Addressing Social Disparities

- The huge disparity in socio-economic conditions between Indigenous and non-Indigenous populations need to be addressed immediately, particularly through a fair distribution of resources.

3) Revitalized Government Policies and Direction

- Government needs to implement its own policies regarding respect for First Nations rights and follow through on its own research, such as RCAP.
- Revitalize RCAP and the Kelowna Accord and create a new Aboriginal Commission. We can tap many existing resources, such as the wealth of recommendations and input in RCAP, for possible proposals that could be updated and brought forward to repair the relationship today.

4) Finding Common Ground

- Come together in a united way to increase our power with major players like the federal and provincial governments. Develop a common message delivered by one group, with meaningful input and participation by all, which allows for diversity of outcomes and visions.

Obstacles to be Addressed

1) Public Awareness

- Not only is the current federal government reluctant to engage with Indigenous people, but the public at large shows a strong lack of knowledge and understanding of the history and current issues facing Indigenous people in Canada. This ignorance serves as a barrier to finding common ground. Public education regarding Indigenous culture, rights and responsibilities is a strategic tool to pressure governments to deal honourably with Indigenous peoples in Canada. The work that needs to be done should be framed as an investment in our futures, to get the participation and support of as many people, Indigenous and non-Indigenous as possible.
- Educate and raise awareness within federal and provincial bureaucracies on the problems of colonization and how First Nations are benefiting the entire country and economy.
- Fix the education system and institutionalize knowledge of Indigenous history and rights so we do not have to keep educating ourselves about the same things decade after decade.
- Aboriginal peoples should also consider how they could use corporate Canada, unions, and other organizations in a strategic way to leverage influence over Ottawa and provincial governments.

2) Negotiation Mandates

- Treaty mandates are seriously limited by negotiating governments. They also lack continuity of process. Government retains the attitude that Indigenous communities have no rights unless granted by government and that they are a burden rather than a source of contribution to national, provincial, regional, and local economies.
- The treaty system is broken. Too much debt is being incurred by First Nations and substantive issues are not being addressed, particularly fisheries. A number of participants noted that it is insulting to have government say they will not even discuss fisheries in treaty negotiations. We need a treaty implementation oversight mechanism. Nisga'a have had a treaty for 13 years, but still constantly have to deal with government authorities who know nothing about the treaty.

3) Indigenous Representation and Capacity

- The *Indian Act* entrenches many bands, while the common law recognizes the rights of nations. Bands are nations divided. This poses the question of who has the authority and legitimacy to represent a community or nation. We need to find common ground to support a process that initiates government-to-government discussions without compromising the political integrity of individual First Nations to strike their own path and make their own deals. Diversity of outcomes is key: 'community sovereignty' is an issue that needs to be balanced with the need for fast, focused negotiation and a strong mandate for the national organization.
- Indigenous peoples need to have the capacity to govern themselves, as well as have their rights recognized and respected by governments.
- Focus on empowering and raising awareness in youth. Aboriginal youth are the fastest growing demographic in the country. Their minds are like sponges. They want to know who they are, where they come from and what they can do to make a difference. This is true of both Indigenous and non-Indigenous youth.

Closing Remarks

In closing, Dr. Sayers stressed that when First Nations put forward initiatives to close the gaps that exist, such initiatives will succeed because they are based on First Nations values and needs. She found hope at the end of the Symposium, particularly reflected by the young people, who want to fix the world and are tired of what governments, including Bands, are doing.

Ms. Pierre emphasized that an opportunity exists because First Nations have the Prime Minister's attention, thus we should be very strategic in our approaches. One of the key themes emerging from the Symposium that resonates with her, particularly in her role as Chief Commissioner of the BC Treaty Commission, is the need for greater public awareness and public education. She noted that every year the BCTC conducts a poll on public awareness of First Nations rights and issues, and that this year, for the first year in quite a while, the poll showed that public awareness has declined (though only by three percent). This drop in awareness is even more concerning given that the poll was conducted at the peak (to date) of Idle No More and Chief Teresa Spence's hunger strike. Her organization plans to step up awareness efforts regarding the history of the province and country and the place of Aboriginal people within each. She was also particularly moved by Ms. Wilson's question of whether we should invest in another generation of ignorance.

Ms. Flumian finds promise in viewing Section 35 as an aspirational statement of the people of Canada to recognize Indigenous peoples. Many newcomers want to make things right, recognizing that as a country we are only as strong as our weakest members. She does not see Section 35 as a box, full or empty. Rather, she sees it as an ever-widening circle in which we can all find ourselves. We will only be great if we fulfill the promise we made as Canada.

Appendix A: Participants Lists

Beyond Section 35 Speakers' List		
Name	Title	Organization
Jim Aldridge	Partner	Rosenbloom and Aldridge
Cliff Atleo	President	Nuu-chah-nulth Tribal Council
Kim Baird	Former Chief	Tsawwassen First Nation
Justice Ian Binnie	Former Supreme Court Justice	Lenczner Slaght
Perry Bellegrade	SK Regional Chief	Assembly of First Nations
Ian Campbell	Chief	Squamish Nation
Ernest Campbell	Former Chief	Musqueam
Maryantonett Flumian	President	Institute on Governance
Cliff Fregin	Chief Executive Officer	New Relationship Trust
Larry Grant	Elder	Musqueam
Michael Hudson	Associate Assistant Deputy Attorney General	Justice Canada
Ed John	Grand Chief/Executive	Tl'azt'en Nation/First Nations Summit
Marion Lefebvre	Senior Associate	IOG
Doug McArthur	Professor	SFU
Maria Morellato	Partner	Mandell Pinder LLP
Marcia Nickerson	Head of Indigenous Governance	Institute on Governance
Andrew Petter	President and Vice-Chancellor	Simon Fraser University
Sophie Pierre	Chief Commissioner	BC Treaty Commission
Stewart Philip	Grand Chief	Union of BC Indian Chiefs
Hon. Steven Point	Former Lieutenant Governor of BC	
Dave Porter	CEO	First Nations Energy and Mining Council
Jody Wilson-Raybould	Vice Chief BC	Assembly of First Nations
Miles Richardson	Senior Associate	Institute on Governance

Judith Sayers	Assistant Professor and Visiting National Chair in Aboriginal Economic Development	University of Victoria
Scott Serson	Co-Chair, IOG Indigenous Advisory Circle	Institute on Governance
Justice Harry Slade	Chairperson	Specific Claims Tribunal of Canada
Bud Sparrow		Musqueam
Wayne Sparrow	Chief	Musqueam
Neil Sterritt	Owner	Sterritt Consulting
Jean-Francois Tremblay	Senior Assistant Deputy Minister, Treaties and Aboriginal Govt	Aboriginal Affairs & Northern Development Canada
Kathryn Teneese	Chair	New Relationship Trust
Peter Walters	Assistant Deputy Minister, Strategic Initiatives Division	Ministry of Aboriginal Relations and Reconciliation
Marie Wilson	Chief Commissioner	Truth and Reconciliation Commission

Beyond Section 35 Participants' List		
Name	Title	Organization
Debbie Abbott	Executive Director	Nlaka'pamux Nation Tribal Council
Stuart Alec	Councilor	Nazko First Nation
Thomas Alexis	Executive Council Member	BC First Nations Fisheries Council
Don Bain	Executive Director	Union of BC Indian Chiefs
Stu Barnes	Executive Council Member	BC First Nations Fisheries Council
Darren Blaney	Council	Homalco First Nation
Kelly R. Brown	Director	Heiltsuk Integrated Resource Management Department
Frances Brown	Heiltsuk Tribal Councillor & Heiltsuk Language Coordinator	Heiltsuk Tribal Council/ Bella Bella Community School
Cynthia Bohn	Elected Band Councilor	Kitsumkalum Band
Rob Cahill	Elected Council	Quatsino
Craig Carey	Aboriginal Relations Coordinator	BC Hydro
Cheryl Casimer	Consultant	Ktunaxa Nation Council
Al Claxton	Executive Council Member	BC First Nations Fisheries Council

Peter Cunningham	Assistant Deputy Minister	Ministry of Aboriginal Relations and Reconciliation
Jeff Cyr	Executive Director	National Association of Friendship Centres
Joe David	Councilor, Treaty	Tla-O-Qui-Aht First Nation
Ralph Dick	Chief Negotiator for Wei Wai Kum First Nation	Laich-Kwil-Tach Treaty Society
Lisa Ethans	Partner	Deloitte
Stacey Fox	Lawyer	Morgan & Associates
Angela Gasparinatos	Assistant Negotiator	AANDC
Mike George		Tsleil-Waututh Nation
William Gladstone		Heiltsuk Tribal Council
Wendy Grant-John	Senior Advisor, National Aboriginal Client Services Practice	Deloitte
Louie Greg	Councillor	Ahousaht
Mathieu Gregoire	Senior Policy Advisor	AANDC
Pam Goldsmith-Jones	Consultant	PGJ Consulting Inc
Celeste Haldane	Commissioner	BCTC
Dave Haggard	Commissioner	BCTC
Joy Hall	Treaty Liaison	Sto:lo Nation/ Sto:lo Xwexwilmexw Treaty Association
Travis Hall	Councillor	Heiltsuk Tribal Council
Reginald Moody Humchitt	Councillor	Heiltsuk Tribal Council
John Henderson	Executive Council Member	BC First Nations Fisheries Council
James Hobart	Chief	Spuzzum First Nation
Troy Hunter	Consultant	Ktunaxa Nation Council
Irvine Johnson	Chief Negotiator	Esk'etemc Land Settlement Office
Iva Jules	Lands Manager	Adams Lake Indian Band
Rose Marie Karnes	Director	DFO
Chris Kelly	Manager, Strategic Policy	AANDC
Judy Kitts	Manager, Community and Aboriginal Affairs	Port Metro Vancouver
Brenna Latimer	Director of Communications	BCTC
Heather Leake	Relationship Manager, Aboriginal Relations	BC Hydro
Christopher Lewis	Councilor	Squamish
Amanda Lim	Research Officer	Institute on Governance
William G. Lindsay	Director	Office of Aboriginal Peoples, Simon Fraser University

	Alisa Lombard	Junior Legal Counsel	Specific Claims Tribunal of Canada
	Greg Louie	Councillor	Ahousaht
	Julian Lowely	Youth Engagement Facilitator	Lake Babine Nation Treaty Office
	Heather McLean	Director	AANDC
	Ken Malloway	Executive Council Member	BC First Nations Fisheries Council
	Mary Sue Maloughney	Director, Governance, Strategic Policy and Planning	Ministry of Aboriginal Relations and Reconciliation
	Eric Magnuson	Regional Director General, BC Region	AANDC
	Shana Manson		Lyackson First Nation
	Moses Martin	Chief Councillor	Tla-O-Qui-Aht First Nation
	Alyssa Melynk	Policy Analyst	BC Assembly of First Nations
	Jacquie Miller	Research Officer	Institute on Governance
	Megan Moody	Executive Council Member	BC First Nations Fisheries Council
	Melody Morrison	Senior Advisor	Boreal
	Sarah Murdoch	Director, Treaties and Aboriginal Policy Directorate	DFO
	Amanda Nahanee		Squamish Nation
	Laurel Nash	Chief Negotiator	Ministry of Aboriginal Relations and Reconciliation
	Edwin Newman	Councillor	Heiltsuk Tribal Council
	Shawn Patrick	Chief	Nazko First Nation
	Clarence Pennier	Manager – Title and Rights	Sto:lo Tribal Council
	Steve Potts	Vice President	Commander Resources Ltd
	Lisa Osoba	Legal Counsel	Department of Justice
	Rosemary Owens	Administrative Coordinator, Negotiations Support	AANDC
	Dorothy Patrick	Managing Director	Lake Babine Nation Treaty
	Monica Perry	Executive Director	Ministry of Aboriginal Relations and Reconciliation
	Robert Phillips	Commissioner	BCTC
	Robert Pollard	Chief Negotiator for Wei Wai Kum First Nation	Laich-Kwil-Tach Treaty Society
	Jordan Point	Executive Director	BC First Nations Fisheries Council
	Helder Ponte	Director, Economics	Ktunaxa Nation Council
	Kristin Price	Process Advisor	BCTC
	Garry Reece	Mayor	Lax Kw'alaams Band
	Raija Reid	Teacher	Bella Bella Community School
	Corey Rich	Owner	Life Mechanical

	Don Roberts	Executive Council Member	BC First Nations Fisheries Council
	Tony Roberts	Director	Laich-Kwil-Tach Treaty Society
	Agnes Rosicki	Senior Policy Analyst	Metro Vancouver
	Marilyn Slett	Chief Councillor	Heiltsuk Tribal Council
	Mark Smith	Director of Process and Legal Counsel	BCTC
	Richard Sparrow	Fisheries Manager	Musqueam
	Gord Sterritt	Executive Council Member	BC First Nations Fisheries Council
	Miranda Stirling	Capacity & Events Manager	New Relationship Trust
	Laura Strand	Manager, Community and Aboriginal Affairs	Port Metro Vancouver
	Carleen Thomas	Councillor	Tsleil-Waututh Nation
	Steve Tierney	Visiting Executive	Institute on Governance
	Simon Tom	Council Member	Tla-O-Qui-Aht First Nation
	Andrew Vesely	Senior Policy Advisor	Ministry of Aboriginal Relations and Reconciliation
	Conrad Walton	Student	SFU EMBA
	Janet Webster	Chief	Lytton First Nation
	Tenisha Williams	Receptionist	BCTC
	Judith Wright	IOG Board Member	Institute on Governance