Roundtable on Environmental Management and the On-Reserve ‘Regulatory Gap’

Summary of the 3rd IOG Aboriginal Governance Roundtable

Ottawa, November 17, 2004

Speakers:

John Moffat, Stratos - strategies to sustainability

David Nahwegahbow, Nahwegahbow Nadjiwan Corbière
The views expressed in this document are the views of the author and do not necessarily reflect those of the Institute On Governance or its Board of Directors.

The Institute On Governance (IOG) is a Canadian, non-profit think tank founded in 1990 to promote responsive and responsible governance both in Canada and abroad. We define governance as the process whereby power is exercised, decisions are made, citizens or stakeholders are given voice, and account is rendered on important issues.

We explore what good governance means in different contexts. We undertake policy-relevant research, and publish the results in policy briefs and research papers.

We help public organizations of all kinds, including governments, public agencies and corporations, the voluntary sector, and communities to improve their governance.

We bring people together in a variety of settings, events and professional development activities to promote learning and dialogue on governance issues.

The IOG’s current interests include work related to Aboriginal governance; technology and governance; board governance; values, ethics and risk; building policy capacity; democratic reform and citizen engagement; voluntary sector governance; health and governance; accountability and performance measurement; and environmental governance.

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[IOG 2004-1099]

The IOG Roundtable Series for 2004-05 explored a number of governance issues affecting Aboriginal communities. At each of eight events, 20-25 senior policymakers from Aboriginal organizations and federal departments participated as individuals in the informal discussions. The series was supported by in-depth research and featured expert speakers to stimulate discussion. The eight events in the series were as follows:

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Larry Chartrand, Director, Aboriginal Self-Governance Program, University of Winnipeg |
| 2. First Nations Citizenship and Membership Issues – October 20, 2004 | Stewart Clatworthy, Four Directions Project Consultants, Ottawa  
Andrew Delisle Sr., O.C., Elder Advisor (and former Grand Chief), Mohawk Council of Kahnawake |
David Nahwegahbow, Senior Partner, Nahwegahbow Nadjiwan Corbiere; Chair of the Board, Forest Stewardship Council |
| 4. Aggregation and First Nations Governance – December 8, 2004 | John Graham, Director, Institute On Governance  
Val Monague, Chief, Beausoleil First Nation |
Peter Dinsdale, Executive Director, National Association of Friendship Centres  
Patrick Brazeau, Vice-Chief, Congress of Aboriginal Peoples |
| 6. Indigenous Legal Traditions – February 16, 2005 | John Borrows, Professor, Faculty of Law, University of Victoria; Law Foundation Chair of Aboriginal Justice and Governance |
| 7. Métis Governance – March 29, 2005 | Jason Madden, JTM Consulting Inc.  
John Graham, Director, Institute On Governance |
Alan Latourelle, CEO, Parks Canada  
Mike DeGagné, Executive Director, Aboriginal Healing Foundation |
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The third in the series of eight TANAGA Roundtable events focused on the topic of environmental management and the regulatory ‘gap’ in First Nations. Peter Decontie, the Elder’s firekeeper from Kitigan Zibi, kindly provided opening and closing prayers for the event, which was held on the Anishinabeg community’s traditional territory.

Before introducing the speakers, John Graham of the IOG introduced three special guests. Colin Lachance, formerly with Indian Affairs and now consulting and working with his home community of Sagamok in northern Ontario, was invited to attend, having encouraged the research initiative that produced the paper discussed that evening. Grant Hogg, a policy manager with Environment Canada, was also invited, due to his close involvement in managing the research effort. Finally Dr. Kernaghan Webb – an official at Industry Canada and an adjunct professor at Carleton University’s Faculty of Law and School of Public Policy and Administration – was invited to take part, particularly because of the relevance of the topic at hand of a recent paper he wrote entitled “Sustainable Governance: Beyond Instrument Choice”. His paper, distributed to all participants, draws out the distinctions between governance and government, and calls for a new approach to regulation based on a strategy of maximizing the energies of not only government but also the private sector, civil society, and many other players in society, including both ‘top-down’ and ‘bottom-up’ approaches.

The first speaker, John Moffet of Stratos – strategies to sustainability, an expert on environmental law and policy, presented the results of a research project undertaken in 2004 in conjunction with the Institute On Governance, entitled “The Environmental Management Gap On Reserves: Overview and Assessment of Options”.

The IOG also invited a second speaker, David C. Nahwegahbow, to respond to Mr. Moffet’s presentation and provide other comments on issues around the regulatory gap in the First Nations context. Mr. Nahwegahbow is a senior partner in the First Nation law firm Nahwegahbow, Nadjiwan, Corbiere, and also the Chair of the Board of the Forest Stewardship Council, as well as a former president of the Indigenous Bar Association of Canada. The two presentations were followed by a substantive question and answer session.

**John Moffet’s Presentation**

The presentation had three purposes:

- To characterize the environmental management ‘gap’ – what are we talking about?
- To describe what currently exists on reserve in terms of regulatory and legal structures
- To identify options (but not to *recommend* a best option)

The first question is, where did this ‘gap’ come from? At its root, it derives from the fact that constitutional authority over environmental issues off reserves is divided among the federal and provincial governments. As the following figure illustrates, the provinces typically address a wide range of issues related to environmental management. Most of these provincial environmental management measures do not apply in their own right on reserve. Instead, there are a number of federal laws – some applying universally and some First Nation-specific – as well as some First Nation by-laws passed pursuant to the *Indian Act*. However, this patchwork of laws and bylaws misses a number of important aspects of environmental and related health issues that are regulated in the off-reserve context.

### Scope of Typical Provincial Environmental Regimes

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It is important to note that, in addition to these significant gaps in the law, in practice the gap is even more significant because in some cases the laws that do exist are not properly implemented because of a lack of performance standards, enforcement mechanisms, and administrative capacity in the First Nations and federal departments that attempt to handle these functions. The gaps are thus both legal and functional – and both of these need to be addressed.

Why is the gap such a concern? Why must it be dealt with urgently? There are a number of reasons. First, the regulatory gap is allowing negative impacts on the environment and on human health on-reserve. Second, regulatory uncertainty undermines economic development. In Alberta, for example, significant resource sector investments on-reserve were deferred because the investors lacked clarity over the rules that would apply to their operations.
Third, the absence of a regulatory baseline creates a practical impediment to self-government. First Nations and the federal government both need a practical baseline regulatory regime which they know will be in place in order for First Nations to make the transition to self-government and develop and implement effective environmental governance functions. Developing an environmental baseline regime would help avoid the type of situations that have occurred in the past where environmental management systems were ‘tacked-on’ to completed self-government designs. The pre-existence of a baseline regime would help ensure that self-government structures are developed so as to effectively accommodate the environmental management function. Likewise, in developing a regulatory approach it is important to anticipate self-government and ensure that an effective fit is possible, and the system does not itself become an impediment to realizing self-government.

The final reason to deal with the gap is that not doing so would be fundamentally unfair. First Nations people living on reserve should not be subject to greater environmental and health risks than people living in similar situations off reserve because of the limitations of the legal and regulatory framework.

Mr. Moffet then described the various measures that currently apply to environmental management on reserves. These include:

- The various federal environmental laws of general application (CEPA, the Fisheries Act, The Migratory Birds Act, CEAA)
- **Part 9 of the Canadian Environmental Protection Act, 1999** enables the federal government to address the gap on reserve (however, only one regulation has been proposed under Part 9).
- **Various provisions of the Indian Act.** The Indian Act was not written with environmental management in mind, and does not provide comprehensive authority for the federal government to pass regulations to address the gap. Relevant provisions include:
  - **Section 88** provides that provincial laws are applicable on-reserve unless they contradict treaties, federal laws and regulations, or First Nation by-laws. The courts, however, have interpreted this provision narrowly, and have excluded its application to provincial laws that relate directly to land and land use.
  - **Section 57 and 73 regulations.** These allow the government to regulate forestry and mining on-reserve, as well as a range of other environment-related issues such as disease control, sanitation in public and private premises, boundary fencing, etc.
  - The provision allowing First Nations to pass **by-laws** in various areas. The enforcement provisions for these bylaws are, however, very weak when compared to typical federal or provincial environmental legislation. Further, the scope of this by-law making power is limited.
  - Terms and conditions of **funding and leasing arrangements.** This approach enables a case-by-case basis for managing environmental risks. However, it does not provide assurance that risks will be adequately managed, because it provides only the limited set of remedies available under contract law.
• The First Nations Oil and Gas Management Act (FNOGMA). This is an interesting new model, which may have some relevance in other areas.

• Self-government processes. The “Federal Policy Guide: Aboriginal Self-government”, often referred to as the Inherent Right Policy, guides self-government negotiators. Self-government regimes negotiated with this guide have had such mixed results in managing environmental risks, however, in part because the document does not address environmental governance adequately. The result has been a lack of consistency in self-government agreements and in their implementation.

• The First Nations Land Management Act (FNLMA), which authorizes First Nations to enter into arrangements with the federal government to take over land management, including negotiation of an environmental management agreement. So far there are 20 First Nations operating under the FNLMA, but none have negotiated environmental management agreements. From a practical perspective only a few First Nations with significant governance capacity will take on FNLMA.

• The inherent right to self-government. The problem here is that there is no agreement on the extent of this right as it applies to environmental management. Further, the federal government’s strong preference has been to negotiate the definition and implementation of this right through self-government processes; consequently, the government has not provided any resources to First Nations to exercise this right outside of self-government agreements.

Before outlining potential options for closing the gap, it is useful to consider the lessons from other ‘gaps’ that have been dealt with in other contexts. In some cases, federal and provincial governments have come together and extended provincial regimes (suitably modified) to the on-reserve context. Examples include policing, and child and family services. In other cases, a federal regime has been implemented on reserve, such as the examples of the Canada Labour Code or the National Fire Code. A final approach is for provinces to develop a national (as opposed to federal) standard in areas under their jurisdiction, such as the National Building Code, which has also been used to guide housing programmes on-reserve.

In most cases there is no a priori reason to use a federal or provincial approach. Rather, the determining factor is which jurisdiction has the infrastructure in place. Mr. Moffet therefore suggested that for environmental management, harmonization with provincial regimes would be preferable. On many environmental issues – water, waste disposal, etc. – the institutions and infrastructure are in place at the provincial level. He also emphasized the importance of involving First Nations in the development and delivery of whatever model is implemented.

In considering options for dealing with the gap the following reflections are also relevant:

• Efforts should build towards a comprehensive regime, covering all relevant issues, with legal standards, redress mechanisms, compliance programs, public education, mechanisms and capacity.
• Lands occupied by First Nations are not the same as other federal lands and should not be equated in legislation, as CEPA did. For legal and practical reasons a number of differences must be respected.

• The governance of land management on reserves is a key element of the transition to self-government, and environmental management regimes must take the self-government eventuality into account.

There are a number of desirable features to approaches to environmental management on reserve. Mr. Moffet suggested that any approach should do the following in particular:

• Ensure effective and equitable management of risks
• Derive from adequate legal authority
• Respect federal fiduciary obligations
• Provide an efficient basis for bridging to self-government
• Protect against conflict of interest by separating regulator from administrator
• Be cost-effective
• Be feasible, institutionally
• Be supported by federal and relevant provincial governments, as well as First Nations
• Enable adequate management of federal and First Nation liability

Having outlined all of these considerations, we can sketch out three categories of options for closing the environmental management ‘gap’ in the on-reserve context, and consider their advantages and disadvantages. The categories of options are:

1. To rely exclusively on First Nation management

2. To use Part 9 of CEPA

3. To amend legislation so as to allow the federal government to develop on-reserve regimes that are harmonized with provincial regimes

Within the first category there are essentially four approaches to eliminating the ‘gap’:

a. **Invoking the inherent right to self-government**: under the inherent right doctrine there is, theoretically, no ‘gap’, because First Nations have the inherent authority to address environmental management to whatever extent they determine makes most sense. In practice, however, Mr. Moffet suggested that relying exclusively on the inherent right to close the gap would not be appropriate, because functional gaps will remain as small communities are left to handle a wide array of complex governance functions. Further, there is no agreement on the scope of the inherent right as it applies to environmental management nor do most First Nations currently have sufficient resources and expertise to exercise this right effectively.
b. **Operate under the FNLMA**: while this is an interesting legal development which is providing the basis for a transition to self-government for *some* First Nations (those with adequate capacity), this measure is also likely to be insufficient on its own. No First Nations have yet to conclude Environmental Management agreements under the FNLMA, and it is unlikely that many – let alone all – First Nations will elect to address environmental management issues under this Act in the short to medium term.

c. **Relying on self-government negotiations**. If guidance documents to self-government negotiators were updated to include environmental management components, this could be an option, but interim measures to eliminate the ‘gap’ would still be required for First Nations not in self-government processes.

d. **Enhancing the by-law making authority under the Indian Act**. Mr. Moffat suggested that this option is likely not feasible politically, as ‘opening’ the Indian Act is likely a non-starter politically.

These reflections lead us to conclude that self-government will be a key aspect of both the short- and long-term solutions. The transition to self-government is, however, not adequate on its own, as a ‘baseline’ regime is required beforehand.

The second category of options involves utilizing part 9 of CEPA. This option would, however, require developing a parallel federal regime, applicable only on Aboriginal land, because the Act appears not to allow incorporation by reference to provincial standards, or variation by region. The result would be the a regime that is out of synch with the regimes in place off reserves. Such differences only make sense under a sustainable, long-term self-government context. Furthermore, this approach is not a comprehensive solution, as CEPA 1999 is restricted to environmental protection issues, and does not authorize the development of regulations covering the full scope of the environmental management gap.

The third category involves enabling harmonization of on-reserve approaches with those in place in the surrounding province. There are six distinct options in this category:

a. **Enhancing the scope of contractual obligations under funding and leasing arrangements**. This will not suffice as a comprehensive solution as it addresses only large industrial developments.

b. **Drafting a First Nations Commercial and Industrial Development Act** so that funding and leasing contracts can be simplified. This would improve on the contractual option by incorporating provincial rules into a new federal environmental law, thus expanding the remedies beyond those currently available under the contractual approach in option a). Again, however, this would not be a comprehensive solution.

c. **Amending Part 9 of CEPA to authorize incorporation by reference** to provincial standards. In the past there has been significant political opposition to this approach, so it may be difficult to achieve. In addition, this approach is not a comprehensive solution, as CEPA 1999 is restricted to environmental protection issues, and does not authorize the development of regulations covering the full scope of the environmental management gap.
d. **Also amending Part 9 to authorize the regulation of the full scope of environmental management issues.** One concern is that this would mean charging Environment Canada with a wide array of responsibilities, some of which it lacks capacity to manage, such as natural resources management or municipal-like functions. At the provincial level there are generally several ministries handling this range of functions.

e. **Developing new federal legislation.** This would be a complex interdepartmental exercise, likely involving a suite of changes to existing statutes, and joint responsibilities by various departments.

f. **Hybrid:** amending Part 9 of CEPA for environmental protection issues and developing a new statute for other issues. Under this approach, Environment Canada could take on functions it has the expertise and capacity to handle, while other departments would specialize in their own areas.

Upon comparing the various options, there are a number of reasons to conclude that the adoption of provincial approaches in the on-reserve context is likely the best approach. This option would ensure a level playing field across reserve boundaries. It would allow the negotiation of situations where provincial officials could act as federal agents to enforce their own regulations on reserve. It is important, however, that the federal government retain the ability to institute uniform standards nationwide, in areas which are not handled effectively at the provincial level.

Whatever approach is adopted, it may be appropriate to consider using some type of hybrid approach, particularly in order to extend beyond the environmental protection limitation of CEPA 1999.

Regardless of the legal option chosen, there are a number of other key conclusions:

- Self government must be part of the solution. More transparent policy guidance around the integration of environmental management issues into self-government designs should be provided. In addition, the design and implementation of the regimes should be conducted in a manner that builds First Nation capacity, is effective and legitimate, and provides a bridge towards self-government.
- In most cases, provincial administration of the regulatory regimes would be desirable because environmental management regimes are very complex and because the infrastructure often exists only at the provincial level. The federal government would have to retain oversight.

Mr. Moffet concluded by referring to the recent report of the External Advisory Committee on Smart Regulations, which recognized the importance of these issues. A few of their comments are particularly germane:

- “More and more First Nation communities are promoting economic development … the goal … is to build stronger indigenous economies, leading to greater economic independence for First Nations”.
- “The regulatory regime on reserves, however, is undermining this agenda”.

- “There are significant gaps in regulation on reserves which contribute to regulatory uncertainty and can discourage investment”.
- “Economic development is key to improving the quality of life for Aboriginal citizens and advancing their participation in the Canadian economy”.

**David C. Nahwegahbow’s Response**

Mr. Nahwegahbow thanked the IOG, participants, the elder, and the Algonquin Nation from the traditional territory for the opportunity to speak at the event, and introduced himself. Particularly deriving from his work with the Assembly of First Nations, he explained that self-government issues were his primary point of entry to the issue of environmental management.

Self-government is a burning issue for First Nations people. Mr. Nahwegahbow has been involved with them since the 1970s, with the National Indian Brotherhood. Prior to 1982, the thinking around self-government concentrated on the Indian Act. Since then, it has shifted to focusing on the Constitution. The patriation of the Constitution debate was a turning point in Indian policy, and Indian people knew this, and indeed travelled to London to make their voice heard. The constitution affirms that self-government is not delegated but is inherent. So the self-government concept has existed for some time, but while there has been recognition of its importance little has been achieved by way of implementation.

More recently, in the aftermath of the debate around Robert Nault’s First Nations Governance Act, there has been recognition among Aboriginal leadership that it is not sufficient to shoot the effort down; rather, something must be done in its stead. Thus the Assembly of First Nations has mandated a committee on the implementation of self-government, which Mr. Nahwegahbow is co-chairing with Shawn Atleo from British Columbia. In this context Mr. Nahwegahbow praised the TANAGA initiative as an important process, as it could inspire the creativity which is required to move the self-government agenda towards a point where Aboriginal people have not been in 200 years – where the inherent right to self-government and sovereignty is restored.

With the greatest respect for the research and thinking behind John Moffet and John Graham’s paper on environmental management, its single greatest flaw is its assumption that Aboriginal self-government doesn’t exist or that there aren’t Aboriginal laws existing and in place. Another issue is the language of ‘transition to self-government’ – why are we still talking about the ‘interim’, 20 years later? Section 35 of the Constitution Act, 1983 has unfortunately been seen by government departments as an ‘empty box’ – it’s there but there’s nothing in it. This government approach has meant that the meaning of section 35, which ‘recognizes and affirms’ Aboriginal and treaty rights, has had to be worked out in the courts. It took the Sparrow and Delgamuukw decisions, however to show that ‘recognize and affirm’ actually means a lot.

In this context, self-government clearly includes the right to manage environmental issues. It will be difficult to argue to Chiefs that a self-government approach is not feasible ‘for practical purposes’. It is important not to base this argument on the inherent right policy basis, which is a shaky foundation. To many Chiefs, the inherent right policy doesn’t recognize anything approaching an inherent right, for an inherent right does not need to be negotiated. The policy
sees First Nations as moving towards self-government over a process of 20-50 years, which is too long.

On the other hand, the idea of imposing provincial laws on reserve is politically unviable. Chiefs will react, saying “this is just like Chrétien and the 1969 white paper, we’re going to get railroaded into being provincial citizens”.

There is a degree of ethnocentrism to the assumption that there are no laws in place on-reserve relating to environmental management. For many Aboriginal cultures, mores and values are inculcated in culture – they do exist, perhaps they should be better identified and built on as an alternative to an expansion of CEPA, for example.

Moving away from the subject of the inherent right of self-government, in many ways the ‘gap’ arises because Indian Affairs is not delivering on its fiduciary responsibility for on-reserve environmental management. The argument that federal departments do not have the legal capacity to deliver is not entirely convincing, because no similar ‘gap’ exists on other federal lands such as national parks, for example. So in many cases it is a question of the federal government not applying the human resources to do the job itself or not adequately training and resourcing First Nations to do the job. This is likely the case with potable water provision on-reserve for example – it is not entirely a question of governance or regulation.

In many cases First Nations are concerned that if provincial standards are adopted, it will allow the federal government to off-load some of its responsibility onto the communities. Moreover, regardless of what standards are used, the First Nations cannot do very much if Indian Affairs fails to apply the necessary resources to properly do the job. Another example involves a situation in which a non-member of a First Nation removed gravel from a reserve with no regard to environmental impacts, Indian Act regulations or safety issues when it failed to ensure the gravel pit was re-covered properly. Regulations won’t solve all the issues.

The strongest of all the options is to recognize and implement the inherent right of self-government. It is achievable, applicable, and would provide the basis for First Nations to address the gap by bringing in appropriate regulations, consistent with and built upon their existing customs. Until this is done, interim measures could be implemented which would apply until First Nations decided to enact their own regulations. The best approach would be to develop a federal system of laws that perhaps allows modified provincial standards. Eventually, First Nations may wish to adopt these laws as their own, and perhaps adapt the standards to suit their own needs as required. The difference with this proposal is that it immediately recognizes the inherent right of self-government, but also addresses the regulatory gap. At the root of this, governments must respect the ability and right of First Nations to manage these issues in the way that is most appropriate to their realities.
Questions and Answers, Open Discussion

Note: Participants spoke as individuals at the event, and because their comments do not necessarily represent the views of their departments or organizations, they are recorded without attribution.

Comment (a participant): I am in no ways an expert on Aboriginal issues, but this whole debate reaffirms that governance is more than government. Governance is about harnessing all the energies available not only in government – at any level – but also in the private, public and voluntary sectors, and communities, towards achieving legitimate and accepted policy goals. First Nations have the most to win and to lose depending on the results of this dynamic.

The top-down approach dominant throughout the 20th century – where initiatives start with government & Parliament first, not with communities – is gradually fading, as we recognize its limitations. Policymakers in all camps are noticing that other sectors beyond government can handle governance responsibilities.

At the same time we know that in some instances ‘top-down’ power is irreplacable: in ensuring the rule of law, for example. But there is an equally powerful ‘bottom-up’ model, which, if appropriately balanced with ‘top-down’ approaches, could be very effective in dealing with some of the issues that Mr. Moffet and Mr. Nahwegahbow are struggling with. First Nations have pointed out that they have had their own way of dealing with things for years – if this set of institutions, processes, and energies can be tapped into much could be done. What has to be achieved is a rebalancing of ‘governance’ in society – an accepting that players beyond government have a legitimate role in governing.

Response (David Nahwegahbow): Indeed, there is capability and a willingness at the community level that could be usefully tapped into in the process of dealing with environmental management issues. The issue is that this will needs to be assisted if it is to play the meaningful role that it requires.

Comment (a participant): I find the last comment “rang in my ears”, and I connect with the perspective Mr. Nahwegahbow brings. But it is hard to integrate this into one’s work as a bureaucrat. We need to work to frame solutions down at the grassroots. And in First Nations there is something more important to many Aboriginal people than the rule of law – and this is natural law, which comes from the soul. This concept reminds me of the adage: “when man’s heart is pure, laws are not required. When man’s heart is impure, nothing will stop him”. The first priority of any approach for First Nations has to be the protection of Mother Earth. Does the federal government really think that environment regulations will manage these issues when you have people who have been living here and stewarding nature for 12,000 years? The people just don’t have the tools today. The first step should be to talk to people at the grassroots – these people have answers. One of the answers is: natural law is very powerful, and must not be underestimated.

Question (another participant): I understand and respect the importance of natural law to First Nation cultures, but what do you do today, when you have oil processing, plastics manufacturing, pulp mills, and other such industries operating on reserve? Is there no need for
federal and provincial laws to ensure that the operation of these complex activities is done effectively on reserve? Is natural law really applicable in this context? How can these large, complex, high-tech activities be managed?

Response (previous commentator): Well, if you look objectively at the environmental regulatory regime that is in place, you begin to realize that all these regulations and standards are not necessarily enforced. A First Nation is not going to actually succeed in having the Department of Fisheries and Oceans enforce the regulations around small environmental management issues, for example.

What we have here is a tension between natural law and scientific man-made law. The latter is essentially based around the growth imperative, and a motivation of greed to exploit the bounty of Mother Earth. We are eternal optimists that she can always handle just a little more, and we entrust the protagonist of the economic process to ensure that there are no environmental impacts. We will have rules, and so on, but we make lots of mistakes at the assessment stage and the operation stage. Out of this process you get things like uranium disasters, or all kinds of other problems.

Natural law, on the other hand, has to be understood in its cultural and spiritual context. The preservation of Mother Earth has to come first under this approach. You don’t go ahead and exploit nature until you have all the facts at your fingertips. Today, Aboriginal folks are in a situation where they’ve been managing nature well for 12,000 years, but in the space of 200 years it’s all been eroded, and they can’t do anything about it because they have become disenfranchised.

Natural law is also connected with sharing. Sharing is really all about preserving the environment, as well as about survival and meeting human needs. The strength and usefulness of Aboriginal values are continually underestimated in policy processes, and this has to change. At the end of the day what I think we need is grassroots efforts arising from the bottom-up linked into a regulatory system coming from the top-down.

Comment (a participant): David Nahwegahbow hinted at the important reflection that there is no such thing as a legal terra nullis – and this is particularly relevant in the Aboriginal context where a different sort of law applies, just one that is not readily apparent or recognized by outsiders.

In dealing with First Nations, we need to shift the dynamic to a government-to-government basis. The federal government should deal with First Nations with the same mindset that, say, British Columbia would have in approaching Alaska – which is a government in its own right, although it is not a sovereign nation in the international sense. This would require a significant shift in thinking – but we shouldn’t be scared of these concepts, for nations have dealt with each other like this for time immemorial. It shouldn’t be scary just because it’s different.

Comment (a participant): John Burrows is an interesting commentator and talks a lot about these issues, about pluralism in our jural traditions. He makes the point that there are more traditions of law than just ‘common’ and ‘civil’ at play in Canadian society, and the First Nations context is no exception.
One problem is that government bureaucrats and the Assembly of First Nations are still not talking the same story. Government has to get through its head the following point: “It’s about self-government, stupid!” There are too many issues important to First Nations that government still does not understand sufficiently. Natural law is a case in point, it is foreign to those of us who were not raised at the knees of elders.

Comment (a participant): It is important to note that there is a spiritual pluralism among many First Nations people, as with indigenous societies around the world. Many First Nation people attend Christian churches, for example, and also consult with their elders and uphold in Aboriginal spiritual tenets simultaneously. The two spheres are not necessarily opposed, indeed some churches are acknowledging what they might learn from Aboriginal spirituality.

Closing Prayer

To conclude the evening, Elder’s firekeeper Peter Decontie shared some lessons he learned in his growing up, influenced by both Algonquin and Christian spirituality, and about the importance of natural law to his community. He offered a closing prayer for the event and wished participants a safe journey home.
Participants Attending

Perry Billingsley  
Director, Self-government Policy  
Indian and Northern Affairs Canada

Bruno Bonneville  
Executive Director  
Law Commission of Canada

Richard Côté  
A/Director, Federal-Provincial Relations  
Natural Resources Canada

Art Dedam  
Program Manager, Aboriginal Affairs  
Human Resources and Skills Development

Rose-Marie Karnes  
A/ Director General  
Aboriginal Policy and Governance  
Fisheries and Oceans Canada

Pam McCurry  
Senior General Counsel  
Justice Canada

Jean-François Tremblay  
Director, Policy Development  
Health Canada

Dr. Gail Valaskakis  
Director of Research  
Aboriginal Healing Foundation

SPEAKERS

John Moffet  
Sustainability Expert  
Stratos STS

David Nahwegahbow  
Board Chair, Forest Stewardship Council  
Past President, Indigenous Bar Association

SPECIAL GUESTS

Peter Decontie  
Elder’s Firekeeper  
Kitigan Zibi Anishinabeg

Mrs. Decontie

Grant Hogg  
Policy Manager  
Environment Canada

Colin Lachance  
Consultant  
Lachance Environmental

Kernaghan Webb  
Senior Legal Policy Advisor  
Consumer Policy, Industry Canada

IOG STAFF

John Graham, Director  
Jake Wilson, Program Officer  
Evlyn Fortier, Program Officer  
Gina Barbeau, Special Events Coordinator

1 Attendees participated in their individual capacity, not as representatives of their organizations.