



THE CANADIAN  
BAR ASSOCIATION  
British Columbia Branch

# FORUM DRUM

Spring 2012  
Issue 3, Volume 1

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June 2012



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"Aboriginal Lawyers Forum"

## CBABC Aboriginal Lawyers Forum

### ALF Executive Update

*by Christina J. Cook, CBABC ALF Chair*

Well the first part of the 2011 – 2012 CBABC year has been busy for the ALF. We started the year off with a CPD Lunch & Learn on November 9, 2011. This event was well attended with a presentation by the Lawyers Assistance Program (LAP). The second annual ALF Holiday Banquet held on December 2, 2011 was a huge success. The evening included a special presentation by keynote speaker Dr. Judith Sayer, silent auction and a fun trivia challenge. The Holiday Banquet was well attended, with guests from the Lower Mainland, Interior, Vancouver Island, and law students from UBC and TRU.

Your ALF Executive is planning more great events for the New Year. On March 15, 2012 the ALF will host its second annual Speed Mentoring. This event brings together experienced senior lawyers with junior lawyer and law students for fun and fast paced mentoring session. We hope the participants keep in contact and continue the mentoring relationships started at this event. On May 4 – 6, 2012 the ALF will be hosting its first annual Spa & Golf Retreat. This fun event will include networking, recreation, and up to six hours of CPD credit. We are pleased to hold this event at the First Nations' owned and operated Quaaout Lodge, in Chase, B.C. Quaaout Lodge is owned by the Little Shuswap Indian Band. Registrations are filling up fast, so please secure your spot by registering early! Early bird registration starts at ONLY \$450, and is available until March 2, 2012.

Stay tuned for more details of these and other ALF events.

You're invited to the  
ALF Spa & Golf Retreat  
May 4 ~ 6, 2012

Cost: (taxes included, based on double occupancy)

⇒ Early Bird: \$450  
(if payment received by or on March 2, 2012)

⇒ Regular: \$550

## Executive Committee

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Christina J. Cook  
cjcook@bilkey.ca

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isabel.jackson@justice.gc.ca

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George Hungerford  
ghungerford@bcsc.bc.ca

Katrina Harry  
katrinaharry@shaw.ca

Rosalind Campbell  
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karen.whonnock@lss.bc.ca

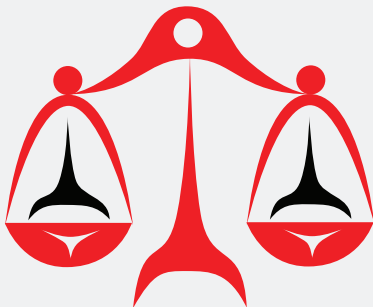
Hannah McDonald  
hmcDonald@boughton.ca

### Vancouver Island Representative

Colleen Spier  
colleen@spierlaw.ca

## ALSST Donations

To make a donation to the CBABC Aboriginal Law Student Scholarship Trust please call the CBABC office at 1-877-669-9601.



## Season of Giving Not Over

*by Isabel Jackson, CBABC ALF Vice Chair*

To date we have raised more than \$24,000 toward the CBABC's Aboriginal Law Student Scholarship Trust! This year in June 2012 our 5th Annual National Aboriginal Day On-Line Auction & Reception will take place continuing to raise money to assist Aboriginal law students attending UBC and UVic law schools. We have begun to accumulate donations of items that can be auctioned off. Go to our website (<http://nadauction.com>) to check out last year's auction for an idea of the wide array of items that attract bids. Many auction items are original works, Aboriginal and non-Aboriginal -- books, photography, paintings, limited edition prints and jewellery. Our auction provides a great opportunity to showcase talent while raising money for a good cause. Other popular items include tickets, passes, gift certificates/cards, etc. Consider soliciting a donation from your favourite hotel, restaurant, spa or other business that you patronize. Opportunities for corporate promotions are provided on the auction website and at the reception event. Opportunities for corporate sponsorships are also available. In addition we will once again be auctioning off "Mentor Lunches", an initiative that was started last year with good success. To make a donation or to assist in any way with this unique fundraising event please contact Isabel Jackson, Jennifer Duncan or Christina Cook.

## Justice at Last?

*by Hannah McDonald, CBABC ALF Executive*

The Specific Claims Tribunal – which has been quietly but anxiously anticipated by those involved with specific claims – is a body whose purpose encompasses everything that Canada's Specific Claims Branch has for so long failed to provide: fairness, impartiality, and expediency. But perhaps most of all, the Tribunal symbolizes progress and justice for First Nations claimants who have been struggling for decades with inadequate tools to reclaim their lands, resources and culture. Or does it?



My excitement to be participating in the Tribunal's early stages was quickly extinguished (pun intended) when I discovered the first item on its agenda. Counsel for Canada made it clear from the outset that long gone were the days of encouraging mediated settlement. Instead, Canada is grasping for a preliminary determination on what could be a serious issue in B.C. specific claims thus far: the proper interpretation of the Supreme Court of Canada's blind-siding decision in *Wewaykum Indian Band v. Canada*, 2002 (Wewaykum).

*(Continued on Page 3)*



The majority in *Wewaykum* determined that while “provisional reserves” in B.C. were allotted to Indians in the 1800’s through federal task forces and reserve commissions, these lands were not true “Indian reserves” until title formally passed from the Province to the Federal government in 1938 (Order in Council 1036). This 60-year delay (resulting primarily from disagreements between the two governments) may result in an extreme detriment to any B.C. First Nation alleging a breach of Crown obligation prior to 1938 (meaning nearly all B.C. claimants). Canada is relying on the *Wewaykum* decision to suggest that because of the provisional status of Indian reserves prior to 1938, any Crown duty owed before that time is limited to “basic obligations of loyalty, good faith in the discharge of its mandate, providing full disclosure appropriate to the subject matter, and acting with ordinary prudence with a view to the best interest of the aboriginal beneficiaries...” (*Wewaykum*, para. 86).

As a First Nations person; as a Canadian; and, not least of all – as a new, naive lawyer with happy thoughts about potential progress in this area, I am deeply disappointed that my first task at the Tribunal will be a desperate attempt, on behalf of all Canadian First Nations and my client in particular, to entertain such a prejudicial argument from Canada. This feels more like a giant step backward than any resemblance of justice or progress. Only time will tell how the Tribunal will approach such a daunting and controversial undertaking.

If you have any questions with respect to this article please contact [hmcDonald@boughton.ca](mailto:hmcDonald@boughton.ca).

### CBABC ALF Newsletter Spring 2012

Editor: Christina J. Cook  
Contributors: Isabel Jackson,  
Hannah McDonald, Shayla Point and  
Christina J. Cook

### Contact Us!

Are you interested in writing an article for the ALF Newsletter or have any comments or feedback? Send your comments and feedback to [ALF@bccba.org](mailto:ALF@bccba.org).

Don't forget to sign up as a member of the ALF on your CBABC Section Enrolment forms.  
Go to [www.cba.org](http://www.cba.org) for more details.

## What is the First Nations Financial Management Board?

by Shayla Point, Manager of Legal Services and Policy

**F**irst Nations Financial Management Board (FMB) is one of four institutions established under the federal *Fiscal and Statistical Management Act* (FSMA). FMB's primary function under the Act is to assist First Nations to establish strong, credible and transparent financial management practices for their communities that are consistent with those adopted by other Canadian governments.



With the assistance of FMB and the other FSMA institutions (First Nations Tax Commission, First Nation Finance Authority and First Nations Statistical Institute), First Nations will be better positioned to achieve economic independence through more effective budgeting, planning and reporting, through real property taxation and through pooled borrowing using property tax revenues and own source revenues as security.

FMB has established standards for the financial administration laws, financial management systems and financial performance of First Nations communities. On request of a First Nation FMB will review a financial administration law and issue a compliance approval if it meets its standards and will issue a First Nation a certificate if it meets FMB financial management system or financial performance standards. Before a First Nation may become a borrowing member of the

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First Nation Finance Authority and have access to its pooled borrowing program, it must have received compliance approval of its financial administration law by FMB and either a financial management certificate or financial performance certificate issued by FMB.

FMB assists First Nations to develop financial administration laws that meet FMB standards by providing financial assistance, a sample law, explanatory notes to the law and a self-assessment guide. FMB will also conduct informal reviews of a law before a First Nation submits it for approval under the FSMA.

For more information about how FMB can assist your First Nation clients, go to [www.fnfmb.ca](http://www.fnfmb.ca) or contact Shayla Point, Manager of Legal Services and Policy at 604-925-6665.

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## Mark your calendars for all the 2012 ALF Events

### ALF – Speed Mentoring

**Date:** March 15, 2012

**Time:** 7 - 9pm

**Cost:** Free (space is limited, so attendees must RSVP)

**Location:** Bull Housser & Tupper LLP Office @ 3000 Royal Centre, 1055 West Georgia Street, Vancouver, British Columbia, Canada, V6E 3R3

*If you've heard of speed dating – you've got the idea. While the goal here is career-building, not courtship, the underlying philosophy remains the same. Spend a few minutes meeting potential future mentors and allies and tap in to a wealth of wisdom, knowledge and experience which will help you make the most of your legal career.*

*Advantages of Speed Mentoring:*

- *Get a quick dose of career guidance*
- *Build your professional networks*
- *Connect with Aboriginal leaders in law and learn about new career paths and Opportunities*

RSVP by March 2, 2012 to [http://cba.org/pd/details\\_en.aspx?id=BC\\_ALF0312](http://cba.org/pd/details_en.aspx?id=BC_ALF0312)

A big thank you goes out to Bull, Housser & Tupper LLP for sponsoring this event. For more information on BHT please go to: <http://www.bht.com>

### ALF Golf & Spa Retreat

**Date:** May 4 – 6, 2012

*This event will have CPD accredited presentations, an afternoon of either golf or spa treatments, great food and a chance to get away with your fellow Aboriginal colleagues. RSVP to [http://www.cba.org/pd/details\\_en.aspx?id=BC\\_ALF0512](http://www.cba.org/pd/details_en.aspx?id=BC_ALF0512).*

### DOJ- ALF National Aboriginal Day Auction & Reception

**Date:** June 2012

*The 5th Annual 2011 National Aboriginal Day On-Line Auction & Reception began with the inception of the CBABC's Aboriginal Law Student Scholarship Trust and continues to raise funds toward endowing the Trust.*





## TRU Law Student Lunch

by ALF

*Weytk (hello) from Secwepemc Traditional Territory!*

On December 16, 2011 members of the Aboriginal Lawyers Forum in Kamloops met with the Aboriginal law students of Thompson Rivers University. The informal lunch was well attended by both the TRU law students and ALF lawyers. The students have a chance to speak with lawyers from different practice areas and backgrounds, including civil litigation, residential school claims, family law, criminal law, and Aboriginal law. The first year Aboriginal law students were very keen and asked very thoughtful questions.

The Faculty of Law at TRU has said they hope to attract Aboriginal law students and offer a wide range of Aboriginal law courses in its upcoming years. The ALF hopes to establish a relationship with the Faculty of Law at TRU and provide support and mentorship to its Aboriginal law students. The Faculty of Law at TRU offers a great opportunity for many Aboriginal people in the Interior to study law closer to home, and hopefully utilize their skills in their communities.

### You're invited to the ALF Spa & Golf Retreat May 4 ~ 6, 2012

Cost: (taxes included, based on double occupancy)

- ⇒ Early Bird: \$450  
(if payment received by or on March 2, 2012)
- ⇒ Regular: \$550

#### This includes:

- ⇒ two nights stay at the lodge;
- ⇒ welcome reception on Friday;
- ⇒ 4 meals on Saturday;
- ⇒ CPD presentations;
- ⇒ a cultural session; and,
- ⇒ \$75 spa credit or 9 holes of golf.

Location: Quaaout Lodge & Talking Rock Golf Resort  
1663 Little Shuswap Road West, Chase BC

*Space is limited!*

[http://www.cba.org/pd/details\\_en.aspx?id=BC\\_ALF0512](http://www.cba.org/pd/details_en.aspx?id=BC_ALF0512)

*Quaaout Lodge is owned and  
operated by the Little  
Shuswap Indian Band.*

