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ALL MY RELATIONSHIPS

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INTRODUCTION

This narrative will explore the relationships among the University of British Columbia Faculty of Law and the University of British Columbia with First Nations governments, other universities, and aboriginal organizations and clients. To a lesser degree, I will discuss international groups as they relate to the establishment of the clinical program at the Vancouver Aboriginal Justice Centre in January, 1995. Since funding for the clinic initiative off-campus is secure only until January, 1997, I will also examine current efforts to stabilize the clinic.

On January 1, 1995 the University of British Columbia (UBC) Faculty of Law, in conjunction with the Legal Services Society (LSS) of British Columbia and the Vancouver Aboriginal Justice Centre (VAJC or Justice Centre), opened a free standing legal clinic for aboriginal people in the greater Vancouver region. Prior to the establishment of the Justice Centre, aboriginal people who did not qualify for legal aid could access services which are available to all indigent persons, such as the Law Students Legal Advice Program (LSLAP) or the Faculty of Law Clinical Program.

The VAJC was concerned that aboriginal people, particularly in the inner-city, were appearing before the courts and administrative tribunals in such large numbers. In addition, the Faculty of Law was twenty-six miles from the inner-city. Many aboriginal people were appearing before the courts and other authorities without representation, tending to increase the already alarming statistics that prevail.¹ Moreover, on aboriginal rights issues First Nations people were not being adequately defended, if at all. In response to these needs, the VAJC approached the Faculty of Law with a proposal to open a clinic "downtown."

Coincidentally, the faculty had undertaken a review of the Clinical Program in 1991, and in May, 1992, Faculty Council unanimously passed a resolution "approv[ing] the selection of First Nations as one of the themes of the new Clinic program, it being understood that this theme

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1. See Cariboo-Chilcotin Justice Inquiry, Attorney General of British Columbia, Report on the Cariboo-CHILCOTIN JUSTICE INQUIRY (1993); MARION L. BULLER, ATTORNEY GENERAL OF BRITISH COLUMBIA, A REVIEW OF LEGAL SERVICES TO ABORIGINAL PEOPLE IN BRITISH COLUMBIA (1994). In this jurisdiction, aboriginal people make up less than 4% of the population, but account for approximately 20% of all applications for legal aid. Moreover, the report on Legal Services states that 17% of the prisoners in provincial jails are aboriginal. *Id.* at 3, 17.

would be a *more or less permanent theme* within the program."² Prior to this decision, the clinical program, which began in 1975, had been a general practice clinic on campus.

The shift from general practice to public interest law advocacy was an attempt by Faculty Council to target "particular disadvantaged groups." The other focus group selected consisted of immigrants and refugees, also marginalized vis-a-vis legal representation, although there were many other possible focus groups, for example, the mentally disabled and battered women. Faculty Council gave three reasons for making First Nations the number one priority:

- (1) the need for the Faculty to demonstrate a strong commitment to the First Nations Law Program, and to ensure that that program provides a meaningful educational experience to the students in it;
- (2) the high level of student demand, particularly from First Nations students that we can expect for such offerings for the foreseeable future, and;
- (3) the importance that the issue of aboriginal self-government, which we see playing an integral role in the development of the First Nations theme in the Clinic, now has, and is likely to continue for the foreseeable future to have, for Canadian society.³

The decision of the Faculty Council to prioritize the First Nations theme can only be understood within the body politic. The University of British Columbia is situated on lands traditionally held by the Musqueam Nation. Both the University generally, and most certainly the Faculty of Law, acknowledge the unresolved nature of Musqueam's land claim. Indeed, almost all of British Columbia⁴ is currently subject to aboriginal land claims:

[British Columbia] aboriginals never signed away their traditional lands and rights to European settlers, a situation that differs from what happened in the rest of Canada. The oversight has led to frequent blockades and court battles.⁵

"Oversight" it was not. The province of British Columbia (B.C.) has vigorously resisted aboriginal claims since joining Confederation with Canada in 1876.⁶

In 1993, the British Columbia Treaty Commission was established and the first treaty, with the Nisga Tribal Council—who had been negotiating

2. ROBIN ELLIOT, UNIVERSITY OF BRITISH COLUMBIA FACULTY OF LAW, SELECTION OF CLINIC THEMES (1992) (motion submitted by Chair of Clinic Review Implementation Committee) (emphasis added).

3. *Id.*

4. Fourteen treaties were concluded between 1850 and 1854 on Vancouver Island, comprising 3% of Vancouver Island's total area. As well, in 1898 the federal cabinet approved an order-in-council authorising the extension of Treaty 8 into British Columbia which added 5500 square miles to the reserve allotment. See PAUL TENNANT, ABORIGINAL PEOPLES AND POLITICS: THE INDIAN LAND QUESTION IN BRITISH COLUMBIA 1849-1989 (1990) For a detailed discussion of Treaty 8, see HUGH BRODY, MAPS AND DREAMS (Pantheon Books 1981).

5. Jim Beatty, '\$10 Billion' Baffles Ottawa, VANCOUVER SUN, Oct. 19, 1995, at B1.

6. See *Guerin v. R.*, 2 S.C.R. 335 (Can. 1984).

for twenty years, independently of the treaty process with the federal and provincial governments—is expected to be concluded by early 1996. Prior to the formation of the Treaty Commission, aboriginal rights issues were litigated not negotiated:

A significant trend may be seen in all this. The direction of federal and provincial policy including aboriginal rights and aboriginal title is largely being steered by the courts, as questions of law are settled by the courts their determinations are reluctantly incorporated into government policy. This should occasion little surprise. As Kenneth Tyler pointed out some years ago, federal policy on the resolution of land claims only commits the government to meeting its legal obligations.⁷

Provincial and federal “obligations” to First Nations people in this jurisdiction find their origin in three contexts: litigation, negotiation, and legislation. Within these areas, the primacy of the legal profession, both First Nations and not, is obvious.

FACULTY OF LAW AT THE UNIVERSITY OF BRITISH COLUMBIA

Since 1961, the Faculty of Law has graduated 111 aboriginal students. It must be noted, however, that while the first graduate was in 1961, the second was not until 1971. “Annual figures” do not rise until 1980, with an increasing number of graduates as we move to the present: one in 1980, ten in 1992, fourteen in 1993, ten in 1994 and sixteen in 1995. In this academic year, forty-three First Nations law students are registered, with seventeen in their first year. The University of British Columbia has also graduated three “foreign” First Nations students from Australia (LL.B. 1988), New Zealand (LL.M., 1989) and Alaska (Ph.D., 1995). The faculty states:

UBC has historically graduated by far the highest number of First Nations students in Canada. . . . These people are from all across Canada and represent over 25 First Nations.⁸

Of interest is that out of the total graduate population of 111, only fifty are practising lawyers, while thirteen are currently articling. Three other graduates have been appointed to the bench, although Judge Alfred Scow—the first graduate in 1961—has recently retired. There are several prominent politicians, a few business people, several bureaucrats and administrators, two in graduate school (Harvard University and University of Saskatchewan), while three are employed by law faculties.⁹ Moreover,

7. Peter Elias, *Anthropology and Aboriginal Claims Research*, in ANTHROPOLOGY PUBLIC POLICY AND NATIVE PEOPLES IN CANADA 235 (Noel Dyck & James Waldram eds., 1993).

8. Funding Application from Faculty of Law to Attorney General for British Columbia, at 6 app. (Nov. 1993).

9. Interview with Kelly McDonald, Interim Director of the First Nations Law Program (Oct. 13, 1995).

"according to statistics from the Native Law Centre (University of Saskatchewan), there were 290 aboriginal lawyers in 1993. They contend that if aboriginal peoples were proportionately represented in the profession, there would be approximately 1500 aboriginal lawyers in Canada."¹⁰ As appalling as these statistics are, they are worse yet when one considers the fact that a good many graduates do not do trial work.

In addition to the First Nations Law Program at UBC which recruits aboriginal students from all parts of Canada, there are several other institutional bodies including a Faculty Council First Nations committee composed of five professors, a First Nations Law interim director, and four aboriginal students. None of the professors is aboriginal although three are well-regarded academics in the field of aboriginal law. As well, in October, 1993, the current Dean, Lynn Smith, Q.C., invited several people to join the "newly established Advisory Committee to the First Nations Law Program."¹¹ There are five members on the ad hoc committee. Three members of this committee are aboriginal lawyers and two are non-aboriginal lawyers who practice aboriginal law.¹² Finally, the faculty has contracted the services of an aboriginal litigator, Renee Taylor (the author), to head the First Nations clinic at the VAJC for a period of two years. This position is wholly funded by a grant from the Attorney General for British Columbia.

UNIVERSITY OF BRITISH COLUMBIA

Like the Faculty of Law, the University has an aggressive affirmative action program to recruit aboriginal students. In 1993, the First Nations House of Learning (FNHL) opened on campus. The centrepiece of the House of Learning is a 3,000 square foot great hall, the Longhouse, christened "Sty-Wet-Tan" by the Musqueam which means "west wind spiritual power." The facility encompasses a library, an elder's lounge, administrative offices, a boardroom, seminar rooms, a student workroom/computer lab, and a child care centre. The complex is extremely versatile; large gatherings can be accommodated in the Longhouse and lounges serve as classrooms as the need arises. The Longhouse is open to all aboriginal programs and student associations. The House of Learning is central to coordinating efforts to increase aboriginal enrolment in all faculties, for example, law, education, medicine/health sciences, arts, forestry and graduate studies. The Director of the FNHL, Joanne Archibald, actively solicits input from aboriginal governments and organ-

10. MULTICULTURALISM COMMITTEE, LAW SOCIETY OF BRITISH COLUMBIA, ABORIGINAL LAW GRADUATE REPORT (1995).

11. Letter from Lynn Smith, Dean, University of British Columbia Law (Oct. 27, 1993) (on file with the author).

12. Interview with Audrey Wall, Secretary to Dean Lynn Smith, University of British Columbia Law (Oct. 17, 1995).

izations for guidance in her efforts to improve the "education, health and well-being of [the] First Nations."¹³

ABORIGINAL ORGANIZATIONS AND CLIENTS

Indirectly, the Faculty of Law, through the VAJC clinic, has had extensive contacts with First Nations organizations and clients. Virtually every major aboriginal organization has offered letters of support for the clinic at the VAJC and referred cases to the clinic. As well, the clinic is routinely asked by various tribes to give opinions on a wide range of legal matters, such as co-management agreements between the tribe and the provincial government's Wildlife and Fisheries Department and child protection agreements between tribal governments and the province's Ministry of Social Services and Housing. We have also been asked to draft by-laws for various aboriginal groups.

Individual cases, however, comprise the bulk of the workload. The cases are a combination of criminal, civil, family, and aboriginal rights. A maximum of seven students work at the VAJC per semester. The clinicians, thus far, have consisted of half aboriginal people and half not. The students have, in a relatively short period of time, built a good reputation with crown council, judges, and the police.

More importantly, perhaps, is that many of the First Nations students state that they can now see trial work as a viable option. The clinic builds self-confidence by teaching students to prepare cases thoroughly and to aggressively pursue their clients' interests. Standard law office procedures are followed, giving students an opportunity to hone their skills prior to the articling period. The biggest impact, however, has been on the clients. First Nations people are generally delighted that they can access aboriginal council. The statistics compiled at the VAJC¹⁴ detail the range of cases the students have worked on. At present, 140 case files are active. It is hoped that over time a cadre of aboriginal litigators will 'graduate' from the clinic equipped to do trial work. For both the aboriginal and non-aboriginal students, working in the inner-city area where the majority of clients reside, has been an illuminating experience.

To observe first hand the degradation of poverty, racism, and substance abuse which affect many of the clients using the services of the VAJC, is education in itself. Given this client base, students are forced to develop a repertoire of interpersonal skills to effectively deal with the cases. This exposure to the myriad of social issues confronting this client group may not occur at any other point in the students' legal career. Even at this early stage of the clinic's operation, feedback from the courts and aboriginal organizations has been positive.

13. *Reflections on Life at the Longhouse*, LONGHOUSE NEWS Summer 1995, at 1.

14. See *infra* Appendix (providing a case breakdown for the Aboriginal Justice Centre from January to April 1994 and from May to September 1995).

RELATIONSHIPS WITH INTERNATIONAL GROUPS

As regards international groups, in 1993, the University of British Columbia signed a student exchange with the University of Arizona. The first two students from the Faculty of Law will attend school in Arizona beginning in January, 1996; both are First Nations women, one is presently enrolled at the VAJC clinic.

As well, the author of this paper spent a week at the University of New Mexico School of Law last November looking at office procedures, the tribal court system, and clinical lawyering skill development. By comparison to the University of New Mexico, the UBC First Nations clinical program is an extremely modest endeavour. Over time it is hoped that we can accommodate a larger client base. At present, referrals outnumber our capacity to handle the case load. In some cases we are able to secure the services of lawyers to work on matters pro bono, and at other times we simply cannot afford to go on the record, leaving the litigant/defendant to their own devices. The latter consideration is difficult because the Justice Centre is really the last resort for many aboriginal people. To quote one aboriginal academic:

To have justice, means to be in control of one's life and relations in terms of either individuals or communities. To address justice, we must therefore, address the realities of colonial oppression and the forces which create the situation that Aboriginal Peoples are not able to be central actors in our own lives. Aboriginal men and Aboriginal women as groups experience this colonial oppression in different ways, I believe the end result remains to be the same—the denial of the basic right to be in control of your own life.¹⁵

As well,

Many Aboriginal people are discriminated by the justice system at every step. They feel discriminated against by the police, lawyers, Crown attorney's, judges and probation officers because of their differing cultures, societies and languages. They suffer because of their low social standing, low educational levels and high unemployment.

They are discriminated against because of their poverty, poor living conditions and the social problems in their communities. They lack normal protection for their rights because of the lack of involvement by their people in the justice system. They also suffer because justice officials, from police to judges, too often choose apprehension and punishment instead of discretion and alternatives to incarceration.¹⁶

The establishment of the VAJC is an attempt to remedy the lack of aboriginal representation involving First Nation litigants. In addition to

15. Trish Monture, *Aboriginal Women and Feminism* (1993) (unpublished manuscript, on file with the author).

16. ROYAL COMM'N ON ABORIGINAL PEOPLES, MINISTER OF SUPPLY & SERV., *ABORIGINAL PEOPLES IN URBAN CENTRES: REPORT OF THE NATIONAL ROUND TABLE ON ABORIGINAL URBAN ISSUES 86-87* (1993).

the clinic, the VAJC does mediation, legal aid qualification, and community outreach. The entire staff at the VAJC is aboriginal, for example, a paralegal, office manager, staff lawyer for LSS.

EFFORTS TO STABILIZE THE CLINIC

The Faculty of Law obtained a two-year grant from the Attorney General for British Columbia to get the clinic off the ground. The funding will expire in January, 1997. A second grant proposal has been submitted to the Attorney General's ministry but it is not certain monies will be forthcoming. As a result of the uncertainty, the First Nations Faculty Council, the VAJC Board of Directors and the Aboriginal Students Association are all attempting to meet with the Attorney General in the coming weeks. It is clear to all parties that the only way to forestall the cyclical nature of grant funding is to obtain core funding.

Of further concern is the fact that the clinical program is currently under review. A one-person committee has been appointed by the Dean to complete a review of the Clinical Law Program, with a view towards investigating whether existing law school courses, for example, the Law Students Legal Advice Program, could address the needs of aboriginal people as well as reduce the school's overhead. The future of the clinic at the VAJC is precarious at this time.

Given the range of cases that the VAJC handles, it is my view that existing services at the law school will not be a viable alternative to the clinic. Many of the cases, particularly in the area of aboriginal rights, are extremely complex and require more consistent attention than that given in any other program. Thus far, it has been necessitated by demand that the clinicians work predominately on case advocacy, although our larger mandate encompasses systemic problems and issues.

CONCLUSION

While this Paper has explored the relationships among the Faculty of Law and University of British Columbia, the Faculty with First Nations governments, organizations and clients, and international groups, it is, at best, a cursory examination. As previously mentioned, funding will dictate whether or not there is a future direction to be followed by the VAJC. While the clinic's future is uncertain, what is certain is that the need for this type of clinical program will continue to exist for aboriginal people. From the moment of birth, aboriginal people accrue an identity that is subject to legislation different from any other sector of society. It follows, then, that the aboriginal community be represented in ways which enhance their rights and aspirations.

OH, IT'S WRITTEN IN BOOKS AND SONGS
THAT WE'VE BEEN MISTREATED AND WRONGED
WELL OVER AND OVER, I HEAR THE SAME WORDS
FROM YOU GOOD LADY, AND YOU GOOD MAN
WELL LISTEN TO ME IF YOU CARE WHERE WE STAND

AND YOU FEEL YOU'RE A PART OF THESE ONES¹⁷
ALL MY RELATIONSHIPS, ALL MY RELATIONS

17. Buffy Saint Marie, *Now that the Buffalo's Gone, on It's My Way* (Vanguard Records 1968).

APPENDIX ABORIGINAL JUSTICE CENTRE: CASE STATISTICS

January to April 1994

CRIMINAL (64)

False Pretenses X 1	Indecent Act X1
Assault X 14	Mischief X 7
Theft Under X 11	.08/Care & Control X 5
Solicitation X2	S.810 Peace Bond X 1
Fraud X 4	F.T.A. X 3
Jaywalking X 1	Possession/Trafficking X 4
Vary Sentence X 1	Driving w/Prohibited X4
Obstruction X 2	Unregistered Vehicle X 1
Dangerous Driving X 1	Attempt Theft X 1

FAMILY (7)

Divorce X 4	Paternity X 1
Vary Maintenance X 1	Separation Agreement X 1

CIVIL (46)

G.A.I.N. Appeal X 11	Revenue Canada Appeal X 2
Landlord/Tenant X 3	U.I.C. Appeal X 1
Harassment X 1	Criminal Injury X 4
Small Claims X 5	Wrongful Detention X 1
Pardon Application X 3	Aboriginal Rights X 8
Bankruptcy X 1	I.C.B.C. X 3
Negotiations (Collections Agencies etc.) X 2	
Wrongful Dismissal X 1	

OTHER (6)

Police Complaint X 3	Charge Pending X 3 (advice)
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Over the summer two students worked on an additional 98 cases. This does not include responses for legal information by phone, fax and letter (approx 45). The cases range from jaywalking to Aboriginal rights.

NB: Statistics reflect files opened; not inquiries, drop-ins, outreach, etc.

Total Cases = 123

ABORIGINAL JUSTICE CENTRE: CASE STATISTICS

May to September 1995

CRIMINAL (52)

Impaired X 6
Mischief X 9
Theft Under X 10
Assault X 13
Soliciting X 5
Fraud X 1
Possession of Stolen Property X 4
Uttering Threats X 2
No licence/Insurance X 2

FAMILY (12)

Divorce X 5
Vary Maintenance X 1
Uncontested Custody X 6

CIVIL (52)

G.A.I.N. Appeal X 18
Landlord/Tenant X 6
Small Claims X 2
Pardons X 3
Negotiations (Collection Agency) X 4
Wrongful Dismissal X 1
Revenue Canada Appeal X 1
U.I.C. Appeal X 1
Criminal Injuries X 4
I.C.B.C. X 4
Human Rights X 6
Workers Compensation X 1
Name Change X 1

ABORIGINAL RIGHTS (12)

OTHER (2)

Police Complaints X 2

TOTAL CASES = 129