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The University of Saskatchewan Native Law Centre

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Native Law Centre

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I. *Introduction*

In the minds of many, the Native Law Centre is identified with the Program of Legal Studies for Native People, a prerequisite orientation program for native students admitted to law school in the discretionary category. The association of the two is inevitable since the Native Law Centre has its origins in the Program of Legal Studies for Native People and continues to offer the course each summer. However, the Centre provides other resources and conducts several activities other than the "summer program" (as the Program of Legal Studies for Native People is often called). This note will give a brief account of the Native Law Centre's growth out of the summer program, outline the Centre's activities including the summer program, and look at some of the activities planned for the Centre in the coming years.

II. *The Beginnings*

The Program of Legal Studies for Native People and the Native Law Centre both trace their origins to the University of Saskatchewan College of Law. In 1969, under the leadership of (then Dean) Roger Carter, the faculty members at the College of Law unanimously agreed that the College should try to establish a mechanism which might interest native people in entering the legal profession and assist them in gaining admission to law school. The suggestion grew out of Professor Carter's awareness of the appalling lack of native lawyers in Canada and the need for native people to be better represented in the legal profession. At that time faculty members knew of only five native lawyers practicing in the country.

When deciding what sort of program would be appropriate, the faculty heard from a visiting N.A.A.C.P. lawyer about a summer orientation program for native Americans offered by the American Indian Law Center at the University of New Mexico. The American program was established in 1967 and later came under the direction of Sam Deloria, whose experience influenced the Saskatchewan faculty in designing a Canadian program. In 1971 the University of Saskatchewan financed a

*Professional Research Associate, Native Law Centre. Summer program statistics compiled by Marg Brown. Information on the beginnings of the summer program and Centre provided by Roger Carter and Don Purich.

visit by two faculty members to the Center in Albuquerque to permit them to acquaint themselves with the functioning of the pre-law orientation program. In 1972 one of the University of Saskatchewan College of Law faculty members taught in the University of New Mexico program. On the basis of that experience, and advice from Sam Deloria, the Program of Legal Studies for Native People was established by the College of Law in 1973. It has been offered every summer since then, with its administration taken over by the newly established Native Law Centre in 1975.

The Saskatchewan organizers knew they would have to secure the cooperation of other law schools if the program was to succeed. Roger Carter and Iwan Saunders therefore visited all the common law faculties in Canada during the fall of 1972 and early 1973 to explain the program and its purpose. Virtually all the law schools agreed to give native students applying in the discretionary category an opportunity to attend the summer program, and agreed to recognize the recommendations of the summer program's teaching group regarding admission of their students.

After the first summer program the faculty members decided that it had been useful to the students and was successful in overcoming some of the obstacles standing between them and admission to Canadian law schools. Faculty members therefore thought it would be appropriate to support and augment the summer program by establishing a native law centre, similar to the American Indian Law Center in New Mexico, which would administer the summer program as one aspect of its operations. An interdisciplinary committee made up of faculty members from law, education, history, political science, anthropology and sociology, along with a representative of the Federation of Saskatchewan Indians, completed a proposal for establishment of the Native Law Centre in 1974. It was submitted to the Donner Canadian Foundation and accepted by that Foundation for funding in 1975. The University of Saskatchewan received \$400,000, to be paid out over five years, to cover the operating budget of the Native Law Centre.

The Centre was then established as an independent pilot project within the University, rather than as an extension of the College of Law. Roger Carter was appointed as the Centre's first director. At that time there was no space available on the University campus to house the newly-created Centre. The Law Foundation of Saskatchewan was therefore approached with the problem and made a grant of \$50,000 to the university to purchase a house near the campus to serve as quarters for the Native Law Centre.

When the five-year start-up grant from the Donner Canadian Foundation was exhausted, the Centre's activities and accomplishments

were reviewed by independent assessors drawn from the Centre's three constituencies — the academic, native and legal communities. On the basis of their evaluations it was decided to maintain the Native Law Centre and establish it as an independent department within the University of Saskatchewan. This meant the strengthening of the Centre's ties with the University in that it received part of its operating budget from the university, although the Centre still had to secure outside funding to cover some of its operating expenses.

Since 1980 the major changes to the Native Law Centre have been the resignation of Roger Carter, and appointment of Donald Purich, as director of the Centre in 1981; its move in 1983 from the house on Cumberland Avenue to offices in the Diefenbaker Centre on campus; and its amalgamation with the College of Law in 1984. Although the Centre is now part of the College, its financing remains on the same footing as when it was independent — part of the core operating budget comes from the University, but substantial outside funding is required to carry on many of its activities.

III. *Administrative Structure*

Before the administrative reorganisation in 1984, the director of the Centre reported to the president and the vice-president (special projects) of the University of Saskatchewan. Since the Centre has become a department of the College of Law, the director now reports to the Dean of Law.

The Centre has always worked closely with the College and has also worked in consultation with an *ad hoc* advisory committee whenever possible. The committee consists of representatives of the Canadian Indian Lawyers Association, the Native Law Students Association, the Federation of Saskatchewan Indians and/or the Saskatchewan Indian Federated College, the Association of Métis and Non-Status Indians of Saskatchewan, and various departments of the university.

At present the Centre employs, on a full-time basis, the director, a professional research associate, a librarian, a legal editor, and two support staff. Another full-time research associate was hired for a research project in the fall of 1987. In addition, editorial and research consultants are hired for short-term projects whenever necessary. When funding is available the Centre hires and trains student research assistants. Each summer the Centre employs six teachers and two or three student tutors to teach in the summer program.

IV. *Activities and Achievements*

The Centre's principal activities are teaching, research, publication and

maintaining a resource centre. The Native Law Centre is not a law office — it does not act for individual clients in legal matters; however, the Centre often receives requests for advice and information on native law issues from individuals, organizations and law firms. Where possible these requests are answered by existing resources located by the Centre's librarian. If the question is of general interest the issue may be investigated by a legal researcher and the results may be published in the Centre's Legal Information Service. The Legal Information Service is a series of short bulletins on native law issues intended for a general audience.

1. *Teaching*

The Native Law Centre organizes a seminar series every year, as well as special workshops and lectures. Thomas Berger delivered the inaugural Poundmaker Lecture in 1986. The Program of Legal Studies for Native People is, however, the Centre's main teaching activity. Since its history has been outlined above, this section will describe its functioning and achievements since 1973.

The Program of Legal Studies for Native People is a national program involving students referred to it by law schools across the country. The students referred to the program are those who apply in the discretionary admissions category as native students. In a typical year there will be approximately 30 students from almost every province and territory taking the eight-week summer course in Saskatoon.

The course has two functions — orientation and screening — and two client groups — students and law schools. The program identifies students capable of succeeding in law school while it introduces them to legal studies. The program simulates eight weeks of law school, providing students with an introduction to courses in contracts, property, torts, legal writing and criminal law. Each student's performance is assessed throughout the program and the teaching group keeps students informed of their progress. In the past few years the program has moved toward placing more emphasis on language and study skills and giving students individual tutoring to improve those skills as much as possible. At the end of the program, law schools to which the students have applied receive a summary of the teaching group's assessments of the students' abilities including a recommendation on admission.

In 1987 the Centre offered the 15th Program of Legal Studies for Native People. From the time the program began in 1973 to November 1986 (when the last available statistics were compiled) 83 students who attended the summer program have graduated from law school. These law degrees have been granted by 13 universities. The following table

shows the number of program graduates receiving law degrees from each university (as of November 1986):

- University of Victoria — 6
- University of British Columbia — 27
- University of Alberta — 3
- University of Calgary — 1
- University of Saskatchewan — 6
- University of Manitoba — 6
- Osgoode Hall, York University — 10
- University of Toronto — 1
- University of Ottawa — 1
- University of Western Ontario — 5
- Queen's University — 14
- McGill University — 2
- Dalhousie University — 1

Forty-eight students recommended by the summer program are currently attending 12 law schools across Canada. The following table indicates the number of students enrolled at each university (as of November 1986):

- University of Victoria — 5
- University of British Columbia — 10
- University of Alberta — 3
- University of Saskatchewan — 8
- University of Manitoba — 2
- Osgoode Hall, York University — 9
- University of Ottawa — 3
- Queen's University — 4
- University of Windsor — 1
- McGill University — 1
- University of New Brunswick — 1
- Dalhousie University — 1

The summer program has clearly been successful in encouraging native people to attend law school, and in providing a means for students who would not otherwise qualify to be admitted to law school. (The table in the Appendix gives a detailed account of the summer program statistics.) Eighty-three law graduates and 48 native students in law school is a vast improvement over the situation when the program began in 1973. The program is still far from seeing native people proportionately represented in the Canadian legal profession. If native peoples — Indian, Inuit, and Métis — were represented in the legal profession in proportion to the

population, there would be about 1400 native lawyers and 400 native law students in the country.

2. Research

Since its establishment in 1975, the Native Law Centre has undertaken various research projects. As noted above, some of the smaller research projects are initiated by inquiries received by the Centre, particularly when there are several requests for information on the same topic and when there is a lack of material available on the issue. Some of these research projects have been supported by the Department of Justice Public Legal Information program, and others have been completed by the Native Law Centre alone. They cover diverse topics, including Indian child welfare; creditors' rights in property on a reserve; labour relations on reserves; customs, immigration and the Jay Treaty; application of matrimonial property legislation on reserves; and other questions on the application of the *Indian Act*.

The Centre's research priorities for major research projects are determined by Centre staff in consultation with colleagues at the College of Law and the advisory committee. The Centre monitors social issues as well as developments in legislation, case law and politics to determine which issues most need attention at any particular time. To a certain extent, the research projects actually undertaken are determined by the resources available to support the research, and the Centre is never able to do all the research that is needed in the field of native law. At one time, the Centre had research staff positions funded by the university which were not committed to any particular project, permitting the Centre more flexibility in setting its research priorities. Since the budget cut-backs of the past few years, only research projects funded by outside sources can be undertaken.

A major research project on land rights was funded in 1979 by matching grants from the Law Foundations of Saskatchewan and Alberta. The project resulted in a series of monographs dealing with various aboriginal land rights issues.

In 1980 Centre staff began a research project intended to compile and index all Canadian native law cases from 1763 to 1979 (when the Centre began reporting native law cases in the *Canadian Native Law Reporter*). The task is now nearing completion, with five volumes of *Canadian Native Law Cases* published to date, covering 1763 to 1959.

Indian hunting, trapping and fishing rights in the prairie provinces were the subject of another major research project supported by the Treaty and Aboriginal Rights Research Centre of Manitoba, Inc. T.A.R.R. was an organization of all Manitoba chiefs with a mandate to conduct research on their behalf. Part of that project involved

“translating” the results of the research into non-legal language to produce a layman’s guide to Indian hunting, fishing and trapping rights in Manitoba.

The rights of indigenous peoples in international law were the subject of a major research project undertaken by the Centre in 1984 with the support of the Donner Canadian Foundation. The project was designed to make information about the rights of indigenous peoples in international law available in Canada, and to carry out research to contribute to the development of the law in this area. The project included development of a collection of international legal materials within the Centre’s library, compilation of an annotated bibliography, editing collections of papers by various scholars on indigenous self-determination and other international indigenous issues, as well as preparation of original research papers by project researchers. As part of the project the Centre also organized and hosted a workshop on the establishment of international standards for the treatment of indigenous peoples. A summary of the papers presented and discussions at the workshop was published by the Centre.

In the fall of 1987 the research program of the Native Law Centre became more involved with the Program of Legal Studies for Native People in a research project financed by the Law School Admission Council’s Minority Enrollment Challenge Grant Program. The Challenge Grant was awarded to develop a language and study skills focus for the summer program and to develop language and study skills materials for use in tutorial programs for native students at law schools. The 28-month project is entitled “Survival Skills for Native Law Students”. It is intended to shift the orientation of the summer program from teaching legal subject matter to teaching the skills needed to survive (that is, to succeed) in law school. The project will develop a course which is appropriate to the particular background and circumstances of native students and the specific requirements of legal studies. If the project is successful it will increase the number of native students admitted to and graduating from law schools, and will improve the level of academic achievement of those students.

3. *Publication*

The Native Law Centre is the largest publisher of native law materials in Canada. It publishes the quarterly *Canadian Native Law Reporter* which covers all contemporary native law cases in the country, and also includes articles on issues in native law. *The Canadian Native Law Cases* series, which covers cases from 1763 to 1979, has been described above, as has the series of reports published under the title *Legal Information Service*. In addition, the Centre has published the results of the Centre’s research

projects, as well as the work of other researchers, in numerous monographs, bibliographies, and other publications.

4. *Resource Centre*

A library specializing in native law and related materials is maintained by the Native Law Centre. The collection of over 15,000 items is available to students and staff at the University of Saskatchewan as well as to researchers, lawyers and others outside the university through interlibrary loan. The collection is maintained by a professional librarian who replies to numerous requests for materials and information from library users within the university and beyond.

The Centre recently received a Social Sciences and Humanities Research Council of Canada grant to produce a retrospective catalogue of unpublished materials collected during the 1970s. The materials which originated with native organizations cover topics including land claims, self-government and Métis rights.

V. *The Future*

The Program of Legal Studies for Native People was always intended to be a temporary measure to redress some of the past discrimination and other impediments which kept native people out of the legal profession. As an affirmative action program it will, of course, be maintained only as long as it is warranted; however, it is far from achieving the goal of equal representation of native people in the legal profession, and will probably be needed for several years to come.

While the Native Law Centre works toward eliminating the need for the summer program, the Centre's other activities are arguably more permanent. The special rights of Canada's native peoples are now recognized in the constitution and, whatever the outcome of any future talks to delineate those rights, they will certainly continue to form the core of a specialized field of law. The need for commentary and development in the area of native law will not disappear, even with the recognition and implementation of aboriginal self-government, since that special area of Canadian law dealing with aboriginal and treaty rights (and perhaps constitutional arrangements) will continue to exist. The Native Law Centre will have a continuing role to play providing the native, legal and academic communities with research, publications and access to resources on various aspects of native law.

Appendix
November, 1986 Statistics — Program of Legal Studies for Native People

	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	Total
Applications Received	36	36	30	55	39	44	38	45	50	55	58	61	68	67	682
Applications Accepted	15	20	18	29	21	23	19	24	28	30	31	34	34	35	361
Applicants who Registered in Program	14	19	16	28	20	20	18	19	27	30	28	29	34	30	332
Applicants who Withdrew from Program	(3)	(3)	(2)	(2)	(2)	(1)	(1)	(1)	(2)	(2)	(3)	(3)	(2)	(2)	(16)
Men/Women	11-3	12-7	10-6	21-7	14-6	8-12	11-7	14-5	20-7	18-12	18-10	17-12	17-17	19-11	210-122
Registered — Non-Status/Métis Inuit	8-6	12-7	8-8	16-12	13-7	11-9	9-9	12-7	17-10	23-7	18-10	16-12	20-14	15-15	198-133
											Inuit	Inuit			Inuit
No. of Students Recommended to Law School	10	14	13	20	11	12	13	13	21	21	13	17	24	18	220
No. of Students who Enrolled in Law School	11	14	13	20	9	10	10	12	21	21	13	15	19	17	205
No. of Students in First Year Law						1						1	5	17	24
No. of Students in Second Year Law												3	12		15
No. of Students in Third Year Law											2	7			9
No. of Students who Graduated from Law Studies	6	6	3	10	5	5	8	12	12	12	4				83
No. of Students in Program without Any Post-Secondary Academic Work	2	2	1	2	1	2	1	2	4	4	1	3	4		22
No. of Students in Program with Less Than Two Years University Work	1	2	2	6	2	4	4	3	3	2	5	8	1	2	45
No. of Graduates without Any Post-Secondary Academic Work	1			1											2
No. of Graduates with Less Than Two Years University Work				1	1	2	1	1	2						8