

Shin Imai, Katherine Logan and Gary Stein, *Aboriginal Law Handbook*. Toronto: Thomson Canada Ltd., 1993.

review by Brian Calliou

People without legal training often need to refer to texts that explain various legal concepts and principles. However, too often these texts are too technical or employ too much legalese to be useful. Shin Imai, Katherine Logan and Gary Stein have helped to alleviate such problems with their new text, *Aboriginal Law Handbook*. This book is written in a clear, concise and easy-to-understand style that will be of tremendous use to Aboriginal officials such as chiefs, councillors, band managers and agency officials. It will also benefit university students in Native Studies who have no legal training. Each chapter is very short and gives the reader a good introductory understanding of the various aspects of Aboriginal Law in Canada.

The handbook adds to the existing literature not so much in substance but in form. Indeed, lawyers and serious scholars would still be wise to consult the textbooks by Morse,¹ Woodward,² and Cumming and Mickenberg,³ leading legal articles,⁴ statutes⁵ and regulations.⁶ However, the form these sources take is very technical compared to the format the *Handbook* uses. By adopting a "plain language" approach to Aboriginal law, the *Handbook* reaches a wider audience and thus is beneficial for the majority of officials within Aboriginal communities who are not legally trained. Furthermore, any addition to the field is a welcome addition since there are so few textbooks on Aboriginal law.

The *Handbook* can also help lawyers or serious scholars. A great introductory text, it enables one to get a quick understanding of the law in various areas of Aboriginal law. The endnotes contain the leading cases, legal articles and related literature, which can be pursued by the serious researcher. There is also a table of cases, a bibliography and a twelve-page subject index to aid those who wish to delve deeper into the subjects. Additional interesting and useful materials are included as appendices to certain chapters; these will help students understand the subject and provide researchers with leads to additional sources.

The main context of the book concerns self-government powers. The majority of its chapters describe the powers and methods available for the functioning of a band or Aboriginal community. While most other Aboriginal

law books concentrate, for the most part, on treaty and Aboriginal rights, land claims and the constitutional framework, the *Handbook* devotes only the first four chapters, totalling 59 pages, to these issues. The *Handbook* commits eighteen chapters, totalling 233 pages, to existing powers and possible methods to govern the community. The last two chapters address the considerations raised in obtaining legal advice and the issues surrounding injunctions and blockades.

The *Handbook* covers a vast area. Some of the major topics include the constitutional framework, Aboriginal and treaty rights, land claims, self-government, economic development and Aboriginal justice systems. Many of the practical subtopics include regulations with respect to elections, membership, the formation of corporations, child welfare, contractual relations, employment relations and paycheck deductions.

One criticism is that the self-government powers explored in the *Handbook* are primarily based on powers delegated from Parliament through the *Indian Act*.⁷ This reliance on delegated powers flies in the face of the idea of the "inherent Aboriginal right" to self-government. The majority of Aboriginal peoples hold the view that self-government is inherent and that it has always been there within Aboriginal communities. The right to govern themselves existed before contact with Europeans. Just because some other nations came along and used legal fictions to assert some claim to sovereignty does not mean that the inherent right of self-government was magically "extinguished." Although the book focuses on delegated powers, it can still be used by Aboriginal peoples. Using these *Indian Act* powers as a means to an end does not necessarily signify any relinquishment of an inherent right on the part of Aboriginal peoples.⁸ The use of *Indian Act* powers was and is merely one means to reach the ends of self-governance.

Having the knowledge and understanding of *Indian Act* laws and regulations does not necessarily ensure the betterment of Aboriginal peoples. Indeed, as Brenda Small states, "We cannot pretend that just because we have learned the white man's law, we are in a better position to enhance the survival of our people." She warns, "that doesn't mean that we ought to become instruments or vehicles for the intrusiveness of the white man's law."⁹ Aboriginal peoples have increasingly become quite adept at using the "white man's law" to their advantage. Knowledge and understanding of these laws cannot ensure the betterment of Aboriginal peoples, but they may be a means to that end. Thus, the *Handbook's* exploration of delegated powers is important insofar as it presents some means of asserting the inherent right to self-government that Aboriginal governments still retain.

For this reason, the *Handbook's* devotion to delegated self-government

laws and regulations is therefore of considerable benefit. It spells out the powers existing at the band level. It illustrates to provincial and federal officials that self-government is occurring and actually has been all along. This can allay the fears of government officials who fear self-government for Aboriginal peoples because they do not know its exact definition.¹⁰ Furthermore, the *Handbook's* devotion to self-government is also beneficial to band officials and community leaders interested in studying the powers at their disposal. It is of great practical use because many of the essential services and business regulations are described in language that is understandable to the layman. This focus is timely also, since the "move to self-government is inevitable."¹¹

Another problem is that the authors present the powers as defined under the traditional paradigm of the *Constitution Act*. However, they also present conflicting perspectives—that is, Aboriginal perspectives—throughout their discussions of the issues. For example, the authors state:

Aboriginal peoples may have a very different perspective on their relation to the constitutional framework. The Haudenosaunee, for example, do not see their society within the structure of the Constitution of Canada, but as a structure of its own, parallel to the Constitution. [p. 4]

It is important today for Aboriginal perspectives to be presented since they have historically been ignored by the Canadian courts. The authors take care to highlight Aboriginal views in the debates on various issues.

Finally, the *Handbook* is not historical enough in that it fails to illustrate the historical relationship between Aboriginal peoples and the British, and later the Canadian, governments. Readers unfamiliar with these historic relationships may find it difficult to understand the present concerns being voiced by Aboriginal peoples. In defence of the authors, it was likely beyond the scope of their intentions, and the result might have been chapters that were not so clear and concise.

Overall, this is a welcome addition to the literature on Aboriginal law. It presents a quick introduction to the various legal issues affecting Aboriginal communities that is in plain enough language for the layman to understand. It primarily presents the delegated sources of power, but that is all right. Aboriginal communities have been exercising their inherent right to self-government in spite of federal and provincial claims to exclusive and exhaustive powers. This *Handbook* clearly and concisely describes the delegated powers available to Aboriginal communities in order to self-govern in practice, if not in principle. Frank Cassidy and Robert Bish have stated:

This, then is the emerging nature of Indian government in practice while seeking a change in the basic design of Canadian federalism, Indian peoples and their governments have taken advantage of the possibilities in the current federal-provincial framework to realize and extend their vision of Indian government.¹²

This is what the *Handbook* helps Aboriginal governments do. It helps them understand the powers at their disposal so that they can provide the necessary services to community members. Indeed, "Children need to go to school. Sick people need medical care. All people need housing and community services."¹³ In exercising such powers, Aboriginal peoples are not necessarily relinquishing any inherent rights to be self-governing, as some legal minds in the Canadian courts would have us believe.

Notes

- 1 Bradford W. Morse, ed., *Aboriginal Peoples and the Law: Indians, Inuit and Metis Rights in Canada*, rev. 1st ed. (Ottawa: Carleton University Press, 1989).
- 2 Jack Woodward, *Native Law* (Toronto: Carswell, 1989).
- 3 Peter A. Cumming and Neil H. Mickenberg, eds., *Native Rights in Canada*, 2nd ed. (Toronto: Indian-Eskimo Association of Canada, 1972).
- 4 See, for example, Brian Slattery, "Understanding Aboriginal Rights" *Canadian Bar Review* 66 (1987): 727; Mary Ellen Turpel, "Aboriginal Peoples and the Canadian Charter, Interpretive Monopolies, Cultural Differences: *Canadian Human Rights Year Book* 6 (1989-90): 3; Paul L. A. H. Chartrand, "Aboriginal Rights: The Dispossession of the Metis" *Osgoode Hall Law Journal* 29 (1991): 457; Brian Slattery, "Aboriginal Sovereignty and Imperial Claims" *Osgoode Hall Law Journal* 29 (1991): 681; Patrick Macklem, "First Nations Self Government and the Borders of the Canadian Legal Imagination" *McGill Law Journal* 36 (1991): 382.
- 5 See, for example, Donna Lea Hawley, *The Indian Act Annotated*, 2nd ed. (Toronto: Carswell, 1986); Carswell, *Consolidated Native Law Statutes, Regulations and Treaties 1994* (Toronto: Carswell, 1994).
- 6 See, for example, Robert Reiter, *Fundamental Principles of Indian Law* (Edmonton: First Nations Resource Council, 1991).
- 7 R.S.C. 1985. c/ 1-5.
- 8 John J. Burrows, "A Geneology of Law: Inherent Sovereignty and First Nations Self-Government" *Osgoode Hall Law Journal* 30 (1992): 291. Burrows argues that certain interactions between First Nations and non-Native societies established the continuance of the inherent exercise of sovereignty, even though the First Nations used the *Indian Act* to exercise governance and economic development.
- 9 Brenda Small, "The Silence of the Corridors: One Person's Journey Through Law School" *Native Beat* 2 (1993): 8, as quoted in the preface of Imai, Logan and Stein.

- 10 The failure of the First Ministers' Conferences resulted from such fears by many first ministers.
 - 11 *Handbook*, p. v.
 - 12 Frank Cassidy and Robert L. Bish, *Indian Government: Its Meaning in Practice* (Halifax: Institute for Research on Public Policy, 1989), pp. 156-57.
 - 13 *Ibid.*
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Pat Sandiford Grygier, *A Long Way from Home: The Tuberculosis Epidemic Among the Inuit*. Montreal and Kingston: McGill-Queen's University Press, 1994.

review by James B. Waldram

Tuberculosis began to emerge as a serious public health problem in Canada in the late 19th century. By the mid-20th century it had become clear that the Aboriginal population in Canada was suffering extensively from this disease, more so than the non-Aboriginal population. Initially, the response of health officials was the institution of sanatorium therapy, consisting primarily of bed rest and fresh air. It is not possible to determine exactly how many Aboriginal people spent time in these facilities, but today it is clear that the experience, for many, was traumatic.

Grygier has examined the tuberculosis issue with respect to the Inuit. Employing primarily archival materials, including fairly accurate data on the numbers of Inuit institutionalized, the work documents an important era of medical history in Canada. Perhaps more important, the book documents the extent to which Inuit society was disrupted by the extensive evacuation of tubercular patients to the south. The scandalous treatment of these people is clearly detailed: they were all but kidnapped in some instances; the government frequently lost track of which institutions they were in; some were returned to the wrong communities, often poorly dressed and poorly prepared for reintegration into the arctic and Inuit life-style. The trip south, often in overcrowded ships, was traumatic. Their experiences in the south were difficult at best, because most Inuit patients did not speak English, and the treatment staff did not speak Inuktitut. Loneliness was pervasive, resulting in the occasional suicide. Some Inuit children were billeted with non-Aboriginal families, often for years, so they began to lose their language and cultural orientation. Some were simply adopted without the permission of their parents. And back home, families often found it difficult