

Minutes from Indian Law Section Meeting on Friday September 4, 2020.

Julie Kane, Chairperson, called the meeting to order at approximately 11:05 am. Attendees:

Billy Barquin, Presenter

Darren Williams

Shanna Knight

Helo Hancock

Jason Brown

Wendy Olson

Joseph Preston

Maureen Mackay

Brandelle Whitworth

B. Church

Amanda Rogerson

Regarding Old Business, Kane updated the section members that the ISB CLE schedule was rapidly filling up, but it was still possible to host a virtual conference. The ISB prefers that folks deliver their presentations at their office in Boise, but they are also able to have Zoom presentations from other areas. There was some discussion about how we could do a conference after the busy months of October and November.

Kane also, under New Business, brought up elections and asked folks to start thinking about representing the Indian Law Section as an officer. Helo Hancock and Billy Barquin focused on Julie Kane continuing on as President. Kane was hoping that someone else would step up to the plate, so she changed subjects by introducing Billy Barquin to provide the CLE presentation on "The Jay Treaty and Indigenous Border Crossings between the United States and Canada".

Barquin started off with the Kootenai Creation Story. He talked about the aboriginal territory of the Kootenai Tribe, which included areas north of the border between the U.S. and Canada. The heart of the territory is the Kootenai river, which flows from Canada.

In the later 1900's, surveyors from the International Boundary Commission came into the territory and the Kootenai helped them to find their way. They then drew a line that became the U.S.-Canada border that went smack dab through the middle of the Kootenai territory.

Treaty of Amity, Commerce, And Navigation (Jay Treaty). "It is agreed that it shall at all times be free...to the Indians dwelling on either side of the said boundary line." The border patrol officers have a lot of discretion and don't always honor tribal ID's when tribal members want to pass through. There is a US statute, 8 USC 1359 (formerly INA Section 289) where American Indians born in Canada may pass the U.S. borders, but shall extend to only persons who possess at least 50 per centum of blood of the American Indian race."

The Kootenai Tribe started working with Saint Regis Mohawk Northern Tribes Border Alliance which became the Jay Treaty Border Alliance. The Tribes were proposing to change the

language of the statute to allow the Tribes themselves to determine who is a member of their Tribe and whom should be able to cross the border, rather than impose a random 50% tribal blood quantum. Canada has been very difficult to work with “has done nothing” to assist Tribes in this situation. They respond that only persons with “indigenous status” in the Country of Canada can have entry.

The Tribes continue pushing for an improved relationship and about 5 years ago, Canada, after a lot of interviews and research, released the “Minister’s Special Representative Report”, Tribes recommended that Canada allow Tribes to decide whom to enter the country as tribal citizens. Prime Minister Trudeau welcomes immigrants from other countries, but wants to keep natives out. We are working on trying to negotiate with the Canadian government to improve the situation.

This year, a COVID-19 order closure regarding cross-border travel, started prohibiting tribal members from crossing back and forth if the country is not their primary residence. This order is really separating families like never before.

Billy focused on The Covenant, the Kootenai’s creation document. Kootenai will continue working with both governments to try to get freer access for tribal members to both countries. Aboriginal people should have special status. Indians are not immigrants. For a government to put up such roadblocks, it is ridiculous.

Credentials. For U.S. you need a status card or a tribal ID. We are working with both countries to honor just tribal IDs whether enhanced or not enhanced. Billy was asked to talk about enhanced tribal ID. The REAL ID Act does not apply to Tribes, but the need for more secure credentials were recommended. ETC or Enhanced Tribal Credentials. Digital photo, security mechanisms, ID can’t be forged. We did it through an agreement with U.S. Border Protection. A U.S. Passcard has an RFID in it, so all of your information pops up for the border agents, so it will speed up your crossing.

There was a discussion as to whether Nez Perce and Shoshone-Bannock have Enhanced Tribal ID’s. They have better, more secure ID systems, but no agreements with U.S. Border Protection.

Seneca, Mohawks, Blackfeet, Kootenai and other Tribes are members of the Jay Treaty Alliance and are developing improved relationships with both the U.S. and Canada. Billy invited anyone who wanted additional information to contact him.

After questions, Kane notified folks about the next Indian Law Section meeting on October 2, 2020. She asked if anyone wanted to present a CLE to let her know. She let people know that they needed to let Dayna Ferrero know if they wanted credit for the CLE.

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The meeting was adjourned at about 11:45 a.m. pacific time.

