

“Providing support, information and networking opportunities to members”

# CFAR Society



Circle for Aboriginal Relations

## The CFAR Annual General Meeting: Introducing the 2008/2008 Board

The Circle for Aboriginal Relations held its Annual General Meeting (AGM) on September 24, 2008. This meeting provided the board's progress report from the previous years activity to the membership. In addition, an election was held for the CFAR executive and new board members. The 2008/2009 CFAR board members are:

### Executive

Barry Brisson, President  
Janais Turuk, Vice-President  
Karen McCullough, Secretary  
Bob Phillips, Co-Secretary  
Ted Muise, Treasurer

### Directors

Rob Barber, Past President  
Kuni Albert  
Craig Barraclough  
Vivienne Beisel  
Ben Brunnen  
Germaine Conacher  
Brad Williams

Art Cunningham  
Gaelle Eizlini  
Nora Flett  
Jacob Handel  
Gerry Laslo  
Domenyk Leach  
Rachelle McDonald

Andy Redcrow  
Norrine Samson  
David Turner  
Larry Veilleux  
Teri Villebrun  
Tweela Nepoose

### Advisors to the Board

Bee Calliou-Schadeck  
Mel Benson

## 2008/2009 Calender of Events

**November 20, 2008** (Calgary) – After Hours Mixer in partnership with the Calgary Chamber of Commerce: evening event will feature entertainment, appetizers and a cash bar. Donations will be accepted for SUNRISE Native Addictions Services, Calgary. This event is being sponsored by **Alliance Pipeline** and **TransCanada**. The Circle for Aboriginal Relations appreciates **TransCanada** and **Alliance Pipeline's** support and would like to thank them for being a part of the CFAR After Hours Mixer.



**February 19, 2009** (Calgary) – Calgary Luncheon will feature speaker Manny Jules, Chief Commissioner of the First Nations Tax Commission.

**March 19, 2009** (Fort McMurray) – Northern After Hours Mixer in Fort McMurray.

**June 3 and 4, 2009** (Edmonton) – CFAR's third conference, join us again at the Enoch River Cree Resort for a two-day conference.

# CFAR Members' Corner: Consultation and Watershed Management Planning

## By Vivienne Beisel

CFAR provides the Members' Corner portion of their newsletter to allow members to submit success stories or other interesting news that they would like to share with the CFAR membership. In this issue, Vivienne Beisel has provided a commentary piece on *Consultation and Watershed Management Planning*.

Vivienne Beisel practices law in Alberta and teaches law as a sessional lecturer at the University of Calgary. She recently completed her Master's Degree in law and her thesis, "Do not take them from myself and my children forever": Aboriginal water rights in Treaty 7 territories and the duty to consult", should be hot off the presses in November. To obtain a copy, you can e-mail the author at [vbeisel@beisellaw.com](mailto:vbeisel@beisellaw.com).

### Consultation and Watershed Management Planning

I'm sure I'm preaching to the converted<sup>1</sup>. If you're reading the CFAR newsletter, you believe in the necessity consulting with Aboriginal peoples whenever Aboriginal rights are impacted. Those of us in the business of consultation have our heads around consultation when it is related to land use, but what about water allocation and impacts to aquatic environments? I can imagine you nodding and saying, "Yes, of course, Aboriginal peoples should be consulted about water use, too."

Oddly, there are different and overlapping processes when it comes to consultation on water issues: 1) There are Water Policy and Advisory Committees (WPACs) made up of stakeholders whose mandate is to create watershed management plans for approval by the Minister of Environment. Approved watershed management plans set the standard for water licences and permits in each basin: this is essentially shared governance of water. 2) Under the Consultation Guidelines, consultation with First Nations on water use is required on each project impacting water and water use: this is consultation.

The tricky question is this: should First Nations be consulted prior to government approval of watershed management plans? Or, putting it another way, at what point in the decision-making process should First Nations be consulted on water use?

The recent Court of Queen's Bench decision in *Tsuu T'ina Nation et al. and the Samson Cree Nation et al. v. Alberta*, 2008 ABQB 547 answered this question in such a way that the First Nations immediately decided to send it to the Court of Appeal. Everyone involved in Aboriginal consultation will want to bone up on the case and watch the appeals unfold because it is sure to impact the future of consultation requirements.

### The facts in Tsuu T'ina

The Applicant First Nations asked for a judicial review of the decisions of the Minister of Environment to approve the South Saskatchewan River Basin Plan and submit the Plan to Cabinet for approval. The Water Act and Water for Life Policy set out a process whereby watershed management plans can be created for each of the major watersheds. These watershed management plans, once complete, are submitted to the Minister of Environment for approval. Once approved by the Minister, the watershed management plans are the standard against which all future permits, licences, and allocations are to be vetted prior to approval. The First Nations claim that the Crown had failed to consult with them regarding their rights that may be adversely affected by the SSRB Management Plan, including the use and enjoyment of reserves, hunting and fishing rights, and Aboriginal water rights. Although the Plan reserved a portion of water rights for First Nations use, they argued that Crown had not discharged its duty to accommodate First Nations interests.



<sup>1</sup> This is where I have to warn you that what I'm writing is my own subjective and opinionated perspective and it is not to be construed as legal advice. So don't get any funny ideas about running off the Law Society and complaining that I gave you stupid advice. To earn whining privileges you would have to pay me first.

## CFAR Members' Corner: Consultation and Watershed Management Planning By Vivienne Beisel

### The Ruling

The Court of Queen's Bench ruled that there is no duty to consult at the planning stage of resource management. In coming to this conclusion, the Court characterized the Minister's approval of the Plan as a legislative act, assuming that this characterization eliminated the need to consider evidence of scope and nature of the right and impact on those rights. The Court decided that Mikisew does not apply to this kind of situation and applied the Sparrow analysis by considering consultation at the justificatory stage of analysis.

### The Importance of this Decision

1. It sets a precedent that puts Alberta's Aboriginal consultation law far behind that of other jurisdictions.
2. It relieves the province from the responsibility of consulting with First Nations prior to setting provincial policy and passing legislation.
3. It suggests that where there has been consultation over the broader issue of resource management, it is not necessary to have consultation with respect to each particular variation order. Alberta's Consultation Guidelines could be interpreted as being "adequate consultation with respect to a program or regime or regulation or development." This raises some problems for First Nations who often feel like they are powerless by-standers observing the consumption of their traditional lands by government approved industrial development.
4. It sidesteps dealing with First Nations jurisdiction over water by avoiding a determination of Aboriginal and treaty rights to water. Without a clear statement regarding First Nations jurisdiction in relation to water and unextinguished Aboriginal and treaty rights to water, the province will continue to govern water without sufficient consultation with First Nations.

### What comes next?

The Tsuu T'ina and Samson Cree Nations have decided to appeal the Court of Queen's Bench decision. This is one of those cases that is likely to go all the way to the Supreme Court before the issues are resolved. While we all wait with baited breath for the hammer to fall, we should carry on with defining best practices for consultation, understanding that the WPAC process is not consultation. We cannot expect First Nations to engage in watershed governance if the parties involved are going to claim that it is consultation for industrial development purposes. We all need very clearly set out the goals, expectations, and expected outcomes of each and every consultation process. Most important what does the particular consultation process do? And conversely, what doesn't it do? Although it may appear tedious and time consuming, careful planning of the consultation process could "cover your assets."

If you have a success story or other interesting news that you would like to share with CFAR membership please send your articles to [submissions@cfarsociety.ca](mailto:submissions@cfarsociety.ca) (note: not all submissions can be chosen, but we will endeavor to include as many as possible, submission may be edited for length and clarity). Also, if you have an event that you think CFAR members would be interested in you can send the event information to: [submissions@cfarsociety.ca](mailto:submissions@cfarsociety.ca). The event information will be posted in the Members Corner section (events will be posted at the board's discretion).

### Thanks to Our Corporate Members



The Circle for Aboriginal Relations (CFAR) Society is looking for a self-motivated, organized, detail-oriented individual to join our team as a part-time Bookkeeper/Office Administrator. This position is based in Calgary.

To be successful in this position, the applicant must:

- be proficient in Simply Accounting
- have a good command of the English language (both written and spoken)
- be able to complete all aspects of bookkeeping on their own
- be able to reconcile accounts
- be capable of doing month/year end detailed reports
- be familiar with filing of all government forms, taxes, etc.
- have good phone etiquette and customer service skills

You will be involved in the following:

- Facilitating, monitoring, assessing, and maximizing all activities within the accounting department including maintaining the integrity of the financial reporting systems.
- Coordinating and preparing Financial Statements
- Providing supporting information for purposes of Audit.
- Providing the Treasurer and other Executive with information vital to the decision-making process.
- Establishing, implementing, and monitoring financial controls, including approvals and authorizations and reviewing all financial processes and financial systems in conjunction with the Treasurer and other CFAR board Executive.
- Reviewing monthly and annual financial statements and ensuring that the appropriate corporate working paper support is prepared and maintained.
- Ensuring that accounting functionality is properly supported.
- Providing support and assistance as required in the day to day operation of CFAR, as necessary.

Our Needs: The successful candidate must be committed to CFAR values and visions. Also, the successful candidate will ideally have:

- A minimum of 2 years experience in a corporate environment.
- Full functionality with all aspects of accounting software, especially Simply Accounting, as well as other MS Office applications.
- Excellent knowledge of financial accounting principles and concepts.
- Ability to set and meet deadlines including a strong ability to manage multiple tasks.
- Excellent customer service skills.
- High School diploma and related work experience.

Please submit your resumé by November 7, 2008 to:

Christine Schreuder  
CFAR Office Manager  
cfarsoc@telus.net