

## **Jeffery G. Hewitt**

Good morning, first thing I want to thank the Mississaugas of the New Credit for hosting us in their territory, where we all live and work at the end of the day. I also want to thank all of you for coming, I was listening to some of your earlier discussions around CLE and membership and I know it is a lot on your plates everyday so I am grateful you made the choice to come here and spend your day and I am already getting the signal that I am not speaking loud enough. Before I start my talk, I wanted to acknowledge a few of the things that David has said. In Rama First Nation, we have about 1,600 members, half of them live on the reserve. Aboriginal people, if you don't know, disproportionately are higher inclined to suffer from diabetes and hear disease. What that means is the older we get, we have a disproportionately high number of people that are in wheelchairs. Every single one of the buildings on our reserve is accessible. We did review the data that David is asking you to do, so I can challenge you to say, if the First Nation can do, surely law firms can do it. I would only ask you to meet us there. I will move onto my topic because I have 6 minutes and 45 minutes of discussion. I will take you back in history and I have a very brief slide show for you. What is on the screen right now is a photograph of the commissioner's in James Bay. Guess who is not there when they signed the treaty in this photograph? You have a photograph of a lot of anglo men sitting in front of their tents at a treaty signing. This is the kind of photograph you will find more of. When you find the photographs with aboriginal people in them at treaty signings, you will typically see if you take note, the anglo guys are sitting in their nice tents on their chairs where the rest of us are kneeling or squatting on the floor. Just to make sure the power structure was clear from the beginning when the treaties were signed and we have photographic evidence of that. I wanted to put these images in your minds and ask you to challenge some of the assumptions that I think we end up making in a profession which leads to some of the matters. I am going to talk to you about. Here's an interesting one. I thought this would be relevant to all of you. What I have brought to you on the screen is a digital rendering of one of the treaties for Upper Canada. You will see all the signatories for the Crown on your left. On the other side you will see, and I have noted for you if you can't see very clearly, a number of renderings where our leadership, this is William's Treaty Territory that you are in right now by the way, who have signed. They signed with an icon or iconography for their dodem of reindeer at the top, underneath that is an otter and you have a pike and two more reindeers, so the people who would have signed here are actually the heads of their dodems or their clans. They represent all of the people who are part of the treaties in Upper Canada. So here's where the fun comes in. At the point where we were making treaties, our laws and customs were recognized as valid at least for the purposes of treaty making. Subsequently in 1867 you now see the only photograph in record of the signing of Confederation. Guess who is not in that photograph. We say that we are a founding partner of Confederation. We are in our own country, we don't need the land back, we don't need any of those things, we have contributed lands and resources as indigenous people to the confederation as a founding partner. Subsequently, immediately after Confederation we go forward with only two of the partners jurisprudence. Only two of the partners recognition of law, common and civil. By the way if you don't know your history began with oral tradition. Common and civil law began with what people talked about with the customs and traditions of the people. It began to be codified after practice. Let me give you some numbers and I will pull it all together in a second for you. The source of the numbers I am about to give you come from 3 places. They come the indigenous Bar Association, they come from the Law Society of Upper Canada and

they come from Statistics Canada. 500 approximate number of Aboriginal Judges and Lawyers in the entire country. 1 is the number of Aboriginal Appellant Judges in the entire commonwealth. Happens to be Justice Harry Laforme who is in Ontario so good for Ontario for being the first in the commonwealth to appoint an Aboriginal Judge, which we did 6 years ago. 12 is about the number of Aboriginal academics, 6 of whom are working in law schools in this country. The Law Society will say there is about 260 people who are self identified as Aboriginal lawyers in Ontario, and they are pretty close, although none of us know including the indigenous bar, based on some of the things that you said it is hard to get institutional awareness about tracking this profile – 80 is about the percentage of Aboriginal lawyers who are under 45, I am pushing it, but I am still in that category. 68 and this is really interesting, is the percentage of Aboriginal lawyers who are no longer practicing law by their 3<sup>rd</sup> year of call. 1.6 percent is about the percentage of the population Aboriginal people represent in Ontario and the Law Society will also confirm for you that 1.6 percent is the number of Aboriginal people in the Bar Admissions course. While we have about population proportionate representation in the Bar Admissions, by year 3, almost 70% of us are out of the profession. We are in jobs that don't require us to have a law degree, or license to practice.

I want to talk to you about why some of those statistics are the way that they are. Because there are a few barriers there. 1. There is an assumption that, if you are an Aboriginal law student seeking articles, you must only be qualified to practice Aboriginal law notwithstanding most law schools don't have a course in it. Notwithstanding we have the same monitoring as everybody else that were competing for the articling positions also has. 2. We don't end up getting interviews or considered as applicants because sole practitioners, small firms, large firms, don't have an Aboriginal based practice so there is no room for an Aboriginal candidate to even be interviewed. I will tell you as general counsel for a First Nation, we need securities law, construction law, employment law, we look at every area of law and we access lawyers in all of those areas, so in terms of addressing how we can change things a little bit, I would say go to your hiring committees and firms that have them first educate them to say we don't need to prescreen all Aboriginal applicants out because we don't have an Aboriginal group, and qualify them as every other person who would be a candidate and if you are a small firm or sole practitioner and you don't practice in the area in the Aboriginal law or have an Aboriginal client or even met with a native person, but you can all say now you do. It's still ok to consider them as a candidate for articles. The Law Society works pretty hard on helping students get articles and one of the major groups they end up helping are Aboriginal law students who have a tough time out there for those reasons that I have set forward for you.

I wanted to end with the image that I have up on the screen right now. Which if you look to your lower right has 4 blue circles. This is a petition that went from the people of the Great Lakes to the American President. Those are the Great Lakes in the bottom right corner. You will see all the figures that are drawn in there, there is a pike, there is a merperson which configures in mythology for indigenous people. There are 3 otters, there is a bear and leading the pack is a crane. You will see lines that go from all of their hearts to the heart of the crane. The message is in this petition, we are one heart. You will see lines drawn from their eyes and heads all to the eyes of the crane to say we are also of one mind. What this tells you is, we are the people of the Great Lakes, here are our dodems, here are our clans, this is how we organize ourselves. We are of one mind, we are of one heart, the crane is going to be speaking to you in person and he

speaks for all of us. Some of these images might look familiar, let's go back. There's one on the treaty for Upper Canada, so what's interesting about all of this is that at the point of signing treaties, the way that indigenous people represented ourselves, our laws, our customs were valid at the time of treaty, but subsequently thereafter they have become quaint, they have become provincial, colloquial, there is no recognition of our customs or traditions in law and yet when it mattered, for the land that we now live on, that we are now meeting on, it was valid. So I would say to you, one of two things, we can't have it both ways. Either the treaties aren't valid, in which case the Mississauga's of New Credit got a whole lot of land just given to them. Or we recognize our own history, we recognize indigenous people are in fact a founding partner in Confederation and one of the biggest barriers that we face is going to law school, learning common and civil law and seeing ourselves reflected absolutely nowhere except in criminal law in first year and except in property law when we all learn all property vests to the Crown. This is the first time in first year, mid October where any native student in law school across this country begins to identify themselves and begins to be excluded. Because a hand will shoot up and we will all say – no it doesn't. It is fundamentally wrong. But we are teaching this so another thing you guys can do for those of you who are teaching, are faculty, for those of you whose spouses are faculty or family members, one of the things you can talk about is some of the fundamental things that we are not doing in law school is to educate ourselves to become the profession that we are. It is a big barrier and we don't need to be afraid of it, everyday we grasp and wrestle with the concepts of civil and common law, all of which was from an oral tradition so this stuff that I am talking to you about is not foreign, it is not unusual, it isn't quaint and it isn't to be dismissed. To do so dismisses the foundation of common and civil doctrines as well so I am going to leave you with that as an image and I will come back to you with that later.

Thank you.