IN THIS ISSUE:
- Religious Rights of Native Prisoners
- Unemployment Benefits
- Cross Border Rights - College Tuition

Crossing the Border in 2009
by Michael Guare, Esq.

In the last issue of Wabanaki Legal News, we reported on new border crossing rules. Beginning on June 1, 2009 most people entering the United States by land will need a passport or a passport card (see Passport Cards, below). See Wabanaki Legal News, Summer 2008, page 2.

The new rule has not changed. It will go into effect on June 1. However, the new rule says that there are exceptions for Indians under some circumstances.

Canadian-Born Indians
The federal government of Canada is developing a new version of the Certificate of Indian Status card. The Certificate of Indian Status card is often called the “INAC” card. The new INAC card will be called the Secure Certificate of Indian Status. Hopefully, the new card will be ready by June. If the U.S. government approves the new card, the new card may be used instead of a passport to enter the United States by land. Remember that current versions of the Indian Status card will not be accepted at the U.S. border instead of a passport. Learn more on-line at:
http://www.aicn-inac.gc.ca/br/is/ifk-eng.asp
http://www.aicn-inac.gc.ca/br/is/prtoip-eng.asp
http://www.getyouhome.gov/html/lang_can/can_sa.html

U.S.-Born Indians
The new passport rule allows any federally-recognized tribe in the United States to produce a new tribal ID card which can be used instead of a passport or a passport card to enter the United States by land. There are several issues involved with this. These issues include strict security requirements, access to tribal membership records, cost and other matters. The Penobscot Nation has decided not to produce new ID cards. The Passamaquoddy Tribe at Sipayik is interested in producing new ID cards. However, due to the cost and other issues, the Tribe is unable to do so at the present time. The Tribe hopes to be able to produce new ID cards at some point in the future. We do not believe that the Passamaquoddy Tribe at Indian Township plans to produce a new ID card, but we were not able to confirm that by the time this paper was published.

However, both the Aroostook Band of Micmacs and the Houlton Band of Maliseets may produce new tribal ID cards.

Please see Crossing the Border, Page 3

Francis V
Maine Law Court Says Tribe Had Exclusive Jurisdiction
by Paul Thibeault, Esq.

The State's highest court has made a final decision in the long legal battle between Pamela Francis and the Pleasant Point Passamaquoddy Housing Authority. On December 11, 2008 the Supreme Judicial Court (also known as the Law Court) held that the state courts had no jurisdiction and that the tribal court had exclusive jurisdiction over the case because it involves internal tribal matters.

The complicated history of the case has been described in previous issues of the Wabanaki Legal News. The dispute arose in 1998. Francis claimed that she was illegally evicted and that the Housing Authority unlawfully denied her ownership interest in a Turnkey III house at Pleasant Point. In addition to filing a case in Passamaquoddy Tribal Court Francis tried to pursue claims in the Washington County Superior Court. She claimed that the tribal court and tribal law would not provide her an adequate legal forum for all of her claims.

In the tribal court law suit Judge Rebecca Irving decided on Please see Francis V, Page 3

Images of the Tribal Communities That We Serve

Indian Island, Winter 2009
U.S. Supreme Court Decides Important Indian Law Case

On February 24, 2009 the U.S. Supreme Court ruled in the case of Carceri v. Salazar that Indian tribes that were not under federal jurisdiction in 1934 cannot use the land-into-trust process under the Indian Reorganization Act (IRA). The direct impact of the ruling stops the Interior Department from putting land into trust for the Narragansett Tribe. But the court decision could have a major impact on many other tribes and other issues because the decision restricts the term “Indian” as defined in the IRA.

According to expert witnesses at a Congressional hearing on April 1, Congress needs to amend the IRA to offset the court ruling. Otherwise the court decision could affect tribal business organizations, contracts, tribal lands, public safety and other services on reservations. For example, it might mean that members of some Tribes will not be eligible for preference in hiring by the Bureau of Indian Affairs because that right is based on the IRA.

The next issue of the Wabanaki Legal News will give an update on the impact of the decision, including any action that Congress or the Interior Department may take to reverse or limit the impact of the court ruling.

New Protections for Religious Rights of Native Prisoners

Native spiritual gatherings in prison are essential to the survival of tribal communities.

The Sipayik Criminal Justice Commission has been negotiating with the Maine Department of Corrections (DOC) about restrictions on the rights of Native prisoners to practice traditional Indian religion. The negotiations were supported by the Maine Indian Tribal State Commission. As a result of these efforts, some big changes have been made:

- Native prisoners have more access to spiritual leaders and religious materials.
- The first-ever sweat lodge ceremonies have been held at some of the prisons and the Commissioner has agreed to have swats at all state prisons at least four times per year.
- In February the Maine Department of Corrections formally adopted new written rules. These rules will protect the gains that have been made and will promote better solutions as new issues come up in the future.

One of the key parts of the new rules is the formal recognition of the Wabanaki Tribal Advisory Group, appointed by the Tribes in Maine to advise the State prison authorities on Native religion. The Advisory Group includes members from all of the tribal communities in Maine.

Religious freedom for prisoners is an important issue in the context of the relationship between the Indian Tribes in Maine and the State. Compared to non-Indians, a lopsided number of Native people, especially young adults, are confined in Maine prisons and jails. The Settlement Acts give the State jurisdiction over serious crimes on reservations by Indians. Otherwise, many of the Native American prisoners in Maine would be held in Federal and Tribal prisons rather than state prisons. The Federal Bureau of Prisons is governed by the Religious Freedom Restoration Act. It has policies that allow more access to Native spiritual practices than Maine has allowed in the past. The Tribal jails that exist in many parts of Indian Country allow even greater access to Native religion.

The interests of both the Tribes and the State will be served by the removal of unnecessary barriers. The new policy will promote both prison security and rehabilitation. Indian spiritual ways are rooted in a communal connection to the natural world. Prison environments make it hard for isolated Indian prisoners to hold on their traditional ways. Access to ceremonies with other Native prisoners can help them to keep their sense of personal identity, and build up their capacity to deal with the difficult challenges of prison life.

In much the same way that the Indian Child Welfare Act promotes tribal survival by preserving the connection of tribes to their children, Native spiritual gatherings in prisons are a cultural lifeline to tribal members who might otherwise be lost as human resources to their tribes.
Francis V
Continued from Page 1

March 3, 2008 that the Housing Authority had violated Tribal law. On the major claims, the Judge awarded Francis $10,000 in damages for Emotional Distress and ordered the Housing Authority to give Francis a deed to the property. The decision was appealed to the Passamaquoddy Appellate Court. On April 16, 2009 the Appellate Judge decided in favor of Francis on the major claims. The Appellate Judge also held that the trial court should have awarded Francis reasonable attorney's fees. The case was sent back to the trial court to determine the amount of attorney's fees.

The parallel state court case was going on in the Washington County Superior Court at the same time as the tribal court case. It was appealed to the Law Court five times. In its latest, and final, decision the Law Court upheld the ruling of Superior Court Justice E. Allen Hunter that the state court had no jurisdiction because the legal dispute involves "internal tribal matters" under the terms of the 1980 Settlement between the Passamaquoddy Tribe and the State of Maine. However, the Law Court did not wholly adopt the legal reasoning of Justice Hunter. As a result, while the case is a legal victory for tribal sovereignty, it may not be as far-reaching as it might have been if the Law Court had followed Justice Hunter's lead.

Perhaps the biggest difference between the two approaches is that Justice Hunter believed that the term "internal tribal matters" is inherently ambiguous and should be interpreted according to the historical judicial rule that requires courts to narrowly construe ambiguous statutes that restrict the sovereignty of Indian tribes. (This is one of a set of interpretive rules known collectively as the Indian Law Canons of Construction). Based on that rule Justice Hunter was convinced that the provision of affordable housing for tribal members is an example of "related activities" that are so closely tied to basic functions of tribal self-government that they should be considered "internal tribal matters" even when the tribal government chooses to use non-tribal means to achieve its goals. Justice Hunter's approach seems to be a workable and flexible approach that will promote effective tribal self-government in Maine's Indian Country.

While agreeing with Justice Hunter's conclusion that the state court did not have jurisdiction, the Law Court took a somewhat different approach to the issue of internal tribal matters. It did not concede the ambiguity of the "internal tribal matters" language and it did not expressly rely on the historical Indian Law canons of construction, as Justice Hunter did. Instead the Court reviewed the criteria developed in its prior decisions, and those of the federal courts, on the "internal tribal matters" issue. Then the Court listed seven factors present in the Francis case which indicate that it involves an internal tribal matter over which the Tribal Court had exclusive jurisdiction. One of those factors was that all of the disputed actions involved only members of the tribe and agencies controlled by the Tribe. The Law Court did not clearly adopt Justice Hunter's concept of using non-tribal means to achieve the goals of tribal self-governance. But the Law Court took a step in that direction by recognizing that, even though the Housing Authority was incorporated under state law, it is actually an arm of tribal government that serves important tribal goals.

Unfortunately for both Indians and non-Indians in Maine, it is unlikely that this will be the last courtroom battle concerning the scope of tribal self-governance in Maine. But the Law Court's decision in Francis V may be a signal that the state courts are taking a more flexible and realistic approach concerning the definition of internal tribal matters. That could give the Maine Tribes a better chance to overcome the many social and economic challenges that still confront the tribal communities almost three decades after the Maine Indian Land Claims Settlement.

Crossing the Border
Continued from Page 1

cards. The U.S. Government would have to approve the new cards. If that happens, a person who has one of the new cards will be able to enter the United States by land without a passport or a passport card. No new ID cards have been produced or approved yet, however. For now, remember that as of June 1, if you travel outside the United States you will need a passport or a passport card to re-enter the United States by land if your tribe produces a new ID card which is approved by the U.S. government.

Air Travel
The rules discussed above apply only to people entering the United States by land. Anyone entering the United States by air from another country must have a passport. There are no exceptions to this rule for Indians. If you are flying into the United States from another country, you must have a passport even if you are an Indian.

However, for flights within the United States (domestic flights), the rules say that existing tribal ID cards should be accepted as proof of identity. Nevertheless, if you have other forms of ID, it would be wise to have them with you, just in case.

Passport Cards
A normal passport comes in the form of a small booklet. A U.S. citizen can obtain a document known as a passport card instead of a passport booklet. Passport cards are considerably less expensive than passport booklets. However, a passport card can only be used to enter the United States from Canada, Mexico, Bermuda or the Caribbean by land or at a seaport. Passport cards cannot be used at all for international air travel.

For more information, go to: www.travel.state.gov/passport/ppt_card/ppt_card_3926.html.

Other Documents
There are a few other documents which can be used instead of passports to enter the United States by land or by air. These documents don't have anything to do with a person's status as an Indian. Rather, they are documents which can be used instead of a passport by anyone who is eligible to get one. For more information, go to http://www.dhs.gov/xtrvlsec/crossingborders.

Jay Treaty
Under the Jay Treaty, as interpreted by the U.S. government, Canadian-born Indians with 50% or more
Guardian Ad Litem Cases
The Maine court has asked Pine Tree to help Micmac and Maliseet families by serving as Guardians Ad Litem ("GAL") in family cases, such as divorces. We try to help low income children by advocating for their best interests in these court cases, where parental rights are an issue. We are not involved in “child protective” cases - where the state is trying to remove a child from the parental home. In those cases the State appoints a GAL and a lawyer for one or both low income parents at no cost. The Presque Isle office of our Native American Unit is doing this GAL work.

In cases involving Native children the GAL is especially important. A GAL can highlight for the court issues similar to those raised by the Indian Child Welfare Act (ICWA), such as:

- placing a child with a Native relative if the child may be removed from the parent's home
- ensuring or establishing a good relationship between the child and Native culture
- promoting contact between the child and Native parents and relatives, regardless of placement.

We also believe that doing this GAL work will better prepare us to help the new Tribal Family Court at the Houlton Band of Maliseets with its child protective cases. We want to make sure that the courts follow the Indian Child Welfare Act in those cases, as well.

Cross Border Rights: Tuition Reduced for College Student
A U.S. college charged a Canadian born Native American student the higher international tuition rate. The school was not aware of Jay Treaty border crossing rights. The school insisted that the Indian student show them a "green card" as proof he was a Permanent Resident. Only then would he be eligible for lower resident tuition rates. Later the student had to quit school due to the high tuition rate. Pine Tree Legal Assistance provided legal information to the college. The college then accepted tribal documents as proof of the student's legal resident status. The college retroactively reduced the tuition by $11,500. The student is back in school and has 5 semesters left to get his degree in business administration.

Employment Discrimination
We successfully settled a case of employment discrimination on behalf of a Native American client.

Unemployment Benefits
A worker was unfairly accused of making a false statement on a weekly unemployment claim report. We helped the worker appeal this to a fair hearing. The Hearing Officer agreed that the worker's testimony was credible. The Hearing Officer found that the worker had not knowingly failed to disclose required information. As a result, the penalty of $1640 was removed.

Supplemental Security Income (SSI) Overpayment
The Social Security Administration said that our client received an overpayment of SSI benefits. She had earned wages from part-time work. The review showed that our client had reported her income in good faith. Her request for a waiver was granted and the overpayment of $872 was removed.

Health Care Power of Attorney
We wrote a Health Care Power of Attorney for a disabled Indian elder. He has a progressive medical condition that will gradually reduce his mental ability. He wanted his daughter to have the Power of Attorney so that she can:

- talk to his doctor about his medical condition and treatment, and
- make medical decisions for him if and when he becomes unable to make them himself.

Harassment by Debt Collectors
Debt collectors often send letters and make calls in hopes of scaring people into making payments they can't afford. These debt collectors know that in many cases the debtors would not have to make any payments if the case went to court. We helped a frail Indian elder who was emotionally upset because of repeated contacts from a debt collector. We sent a "cease and desist" letter to the debt collector. Under the federal Fair Debt Collection Practices Act, such a letter requires them to stop making calls and sending letters. The creditor can still file a law suit on the alleged debt. However, in most cases they give up when the alleged debtors do not have enough assets or income to pay on the debt. The law protects certain basic assets (such as a modest home) and low income amounts.

Problems With the IRS???
WE MAY BE ABLE TO HELP! Pine Tree Legal Assistance's Low-Income Taxpayer Clinic (LITC) offers free representation to qualifying taxpayers facing the following tax problems:

- Outstanding tax debt
- Levies and liens
- Earned Income Credit denials
- Exams and audits
- Innocent/Injured spouse relief
- Tax Court representation

Call 942-8241 to speak to one of our LITC advocates today. We also offer free tax workshops on a variety of tax-related issues.

www.ptla.org/taxpayer/litc.htm
Unemployment Benefits

What are unemployment benefits? If you lose your job, you may be able to get Unemployment Compensation Benefits. This state benefit program can help you to meet your basic needs while you are looking for a new job. The maximum weekly benefit is $344. The average weekly amount is around $260. You can also get $10 per week more for each dependent child. You may get benefits for up to 26 weeks. You may also be able to get extended benefits for 33 more weeks.

How do I apply? If you lose your job, you should apply for Unemployment Benefits. Many people in Maine are eligible for these benefits but never apply. Even if you are fired from your job or you quit your job, you may still qualify for benefits. If you are only seeking part-time work, you may still qualify. You can also get this benefit while you are in an “approved” training program.

You can apply online, by phone, or by mail.

Online: www.maine.gov/labor/unemployment/howtofile.html
Phone: 1-800-593-7660; TTY: 1-888-457-8884
Mail: Get forms from your nearest Career Center; some town offices also have them.

Do I have a right to appeal? Yes. If you apply and are denied, seek legal help right away. Call:

Maine Volunteer Lawyers Project (VLP) 1-800-442-4293
They may be able to find a lawyer to help you with your appeal. You have only have 15 days to appeal.

For more information about your right to Unemployment Benefits, check these websites:

Pine Tree Legal Assistance: www.ptla.org/cliented/benefits/unemployment.htm
Maine Department of Labor www.maine.gov/labor/unemployment/index.html

Also, if you have questions, please call Pine Tree Legal’s Employment Law Project: 1-800-879-7463.

BASIC RIGHTS FOR PEOPLE APPLYING FOR UNEMPLOYMENT BENEFITS:
- the right to apply for benefits (in person, by phone, or online)
- the right to a written decision
- the right to appeal any decision related to your benefits by going to a fair hearing (Read the notice carefully and be sure to appeal within the specified time.)
- the right to a written notice before your benefits are cut off
- the right to a fact finding meeting before any benefit is terminated
- the right to read and copy the written rules of the program to help you figure out whether or not a decision about your benefits was right

Images of the Tribal Communities That We Serve

OUTREACH SCHEDULE
Passamaquoddy Tribe
Indian Township-Clinic at Peter Dana Point:
1st and 3rd Tuesdays 1pm - 3pm
Sipayik Tribal Courtroom:
2nd and 4th Tuesdays 1pm - 3pm
It is helpful to make an appointment, but walk-in clients are welcome. To make an appointment call: 255-8656

Penobscot Nation
Penobscot Tribal Courtroom
Last Tuesday of each month from 10am-12pm
(changes to schedule announced in Tribal Newsletter)
It is helpful to make an appointment, but walk-in clients are welcome. To make an appointment and to confirm outreach dates and times call the Bangor office at: 1-800-879-7463

Houlton Band of Maliseets
Aroostook Band of Micmacs
Call Presque Isle office at: 764-4349 for outreach dates and times and to make an appointment.
“You Be the Judge”
Indian Island teens participate in juvenile justice program.

Bob Meggison is an attorney with Pine Tree’s KIDS Legal project. He works out of our Bangor office. Among other things, Bob serves as defense counsel for juveniles in the Penobscot Nation Tribal Court.

In February Bob participated in an activity that permitted him to step out of his usual role while at the same time drawing on his experience as an attorney. In conjunction with the Boys and Girls Club of Indian Island, the Penobscot Nation Tribal Court sponsored a “You Be the Judge” program. It involved more than forty Indian Island teenagers. The program is based on the work of a retired judge from Arizona. The goal is to stimulate thinking about the many forces that affect the lives of teenagers, particularly those who find themselves in the juvenile justice system, while at the same time fostering an appreciation of the needs of society and victims.

The group at Indian Island was divided into two. Each was presented with a “fact pattern” about a fictional fourteen year old, “Ericka”. She had been charged with assault and possession of drug paraphernalia. In fact, Ericka was not so fictional. Her story was that of a young woman who had appeared before the judge several times. Each group had to figure out a plan for Ericka as if they were the judges in her case. They spent around ninety minutes discussing Ericka’s family situation, life experiences and behaviors. They debated the relative impact of each on the conduct that brought her to court. Tribal Court Judge Eric Mehnert, Juvenile Corrections Officer Kathy Paul, Bob Meggison, and Micah Robbins, Director of Special Projects for Jobs for Maine Graduates, facilitated the discussion.

There followed a lively discussion of the possible options (treatment/punishment/restoration). Each group developed a plan and then presented it to the whole group. The group of judges decided that Ericka should be placed on probation for one year. During that time she should undergo counseling focused on substance abuse and anger. They also agreed on a community service component to her sentence since a pair of glasses had been broken during the assault. By the end of the program, participants had learned that judicial decision-making is no easy matter and that it takes into account a variety of factors, including personal and societal ones.
Crossing the Border
Continued from Page 3

Indian blood have the right to freely enter the United States by land. Nothing in the new rule changes the Jay Treaty. However, the new rule requires everyone who enters the United States to present a secure document that proves their identity. This includes U.S. citizens and citizens of other countries. It also includes people with Jay Treaty rights. Like everyone else, people with Jay Treaty rights will need to prove their identity with a secure document, such as a passport or a new secure INAC card, in order to cross the border.

Canadian-born Indians may also need to present proof that they have at least 50% Indian blood. It is important to remember that a passport does not prove blood quantum. An INAC card - even new secure INAC card - does not prove blood quantum; either. Therefore, if you have at least 50% Indian blood, you should bring proof of your blood quantum with you to the border. If you are asked for this proof and you do not have it, you may not be allowed to enter the United States.
2-1-1 MAINE & COMMUNITY ACTION PROGRAMS

2-1-1 MAINE  www.211maine.org
2-1-1 Maine is part of a national movement to centralize and streamline access to health and human service information and resources. The state of Maine has thousands of programs offering all types of health and human services. 2-1-1 is an easy-to-remember universal number and website for non-emergency help.

COMMUNITY ACTION PROGRAMS bring community resources together. Call your local program for information on heating assistance and other utility issues, subsidized housing and child care, and transportation services for disabled people.

Washington/Hancock CAP  www.whcacap.org
  Milbridge  546-7544
  Ellsworth  664-2424
Penquis CAP  www.penquis.org  1-800-215-4942

Aroostook County CAP  www.acap-me.org
  Presque Isle  764-3721
  Houlton  532-5311
  Fort Kent  834-5135
  Madawaska  728-6345

LEGAL SERVICES

PINE TREE LEGAL ASSISTANCE  www.ptla.org
Pine Tree Legal represents low-income people with civil legal problems including:
  ♦ Eviction from public housing.
  ♦ Home foreclosures
  ♦ Discrimination
  ♦ Domestic Violence
  ♦ Loss, reduction or denial of government benefits
  ♦ Problems with Medicare or Medicaid
  ♦ Special Education or Public Education

Portland: 774-8211
Augusta: 622-4731
Houlton: 532-5311
Native American Unit & Farm worker: 1-800-879-7463

VOLUNTEER LAWYERS PROJECT  www.vlp.org  1-800-442-4293
If you meet its eligibility requirements, the VLP can give you legal advice or informational materials for free. In some cases the VLP may provide a referral to a private attorney for free representation.

Intake hours are:
Monday and Tuesday - 9am to 12pm and 1pm to 4pm
Wednesday and Friday - 9am to 12pm
Thursday - 1pm to 4pm

MAINE LAWYER REFERRAL AND INFORMATION SERVICE  www.mainebar.org  1-800-860-1460
For a $25.00 fee, you can be referred to a lawyer in your area. The first half-hour of consultation is free.

LEGAL SERVICES FOR THE ELDERLY  www.mainelse.org  1-800-750-5353
If you are age 60 or older, LSE can give you free legal advice or limited representation.

PENQUIS LAW PROJECT  www.penquiscap.org  1-800-215-4942
This group gives legal representation to low and moderate income residents of Penobscot and Piscataquis Counties in cases involving domestic relations, including divorce, protection from abuse, child support and visitation. Priority is given to people who have experienced or are experiencing domestic violence, sexual assault or stalking.

DISABILITY RIGHTS CENTER  www.drcme.org  1-800-452-1948
This group offers advice and legal representation to people with disabilities.

BANGOR COURT ASSISTANCE PROGRAM  www.ptla.org/ptlasite/cliente/family/pclsa.htm  941-3040
Volunteers are available at the Bangor District Court once a month to help you fill out family law and small claims court forms, serve forms, calculate child support, and answer questions. For upcoming dates call Holly Jarvis at 941-3040.

OTHER COMMUNITY RESOURCES

WABANAKI MENTAL HEALTH ASSOC.  www.wabanaki.org  990-0605 or 1-800-434-3000
Wabanaki provides culturally-sensitive psychological and social services to the Native American populations of Hancock, Penobscot, Piscataquis and parts of Washington Counties.

MAINE CIVIL LIBERTIES UNION  www.mclu.org  774-5444

SOCIAL SECURITY ADMINISTRATION  www.ssa.gov/reach.htm
Statewide  1-800-772-1213
Bangor Area  990-4530
Presque Isle Area  764-3771

MAINE HUMAN RIGHTS COMMISSION  www.maine.gov/mhrc
  TTY  1-888-577-6690

MAINE ATTORNEY GENERAL’S OFFICE

MAINE DEPARTMENT OF LABOR

STATE BUREAU OF LABOR STANDARDS  www.mainese.org/labor/labor_laws/wagehour.html
Wage and Hour, Child Labor and Safety Complaints  624-6400

MAINE HUMAN RIGHTS COMMISSION

MAINE DEPARTMENT OF LABOR

STATE BUREAU OF LABOR STANDARDS  www.mainese.org/labor/labor_laws/wagehour.html
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