

## **CLEA conference - Windsor, Ontario 2005**

*Report from Alicia Elias (University of Guyana)*

On June 11-14, 2003, the Commonwealth Legal Education Association (CLEA) Conference on "Reparations, Theory, Practice and Legal Education" took place at the University of Windsor. The conference was organised by Jeff Berryman of the Faculty of Law, University of Windsor and the CLEA Executive Committee member for North America. Participants were drawn from 24 universities and institutions from the United States and from around the Commonwealth.

Throughout the world attention has been focussed on the issue of reparations for past injustices and the role that such reparations play in reconciling various minority groups within a nation, or between nation states, towards a greater state of harmony and justice.

However, the issue of reparations presents fundamental challenges for the law. What harms warrant reparations? How far back in history should one go? Do reparations require a known victim and perpetrator, or can the present economic and social conditions of a recognised group be causally linked to the activities of an earlier dominant group or colonial government? Even where a past injustice has been recognised, how should reparations be effected? Should loss be compensated in money, or some other form of restitution? Even assuming a substantive claim arises; a reparation claim may entail complex issues of proof and the taking of evidence. How can oral history be presented in such circumstances? These were the issues the conference aimed to address.

The conference format followed a "roundtable" concept. Papers were distributed to participants prior to the conference and speakers were asked to lead discussions. The roundtable format maximized discussion and facilitated active rather than passive participation.

*Day One:  
Theory*

Discussions began with an introduction on the theoretical aspect of reparations. The focus was upon the legitimacy of claims for reparations and the capacity of the legal system to respond to them. The discussion was chaired by Dean of the Faculty of Law, University of Windsor and Prof. James of the same faculty. There was a stimulating overview of the use of existing legal doctrines, such as tort remedies, and their limitations. Speakers included Ken Cooper-Stevenson of the University of Saskatchewan, Mayo Morgan of the University of Toronto and Alfred Brophy of the University of Alabama. Max Du Plessis from the University of Natal, Durban provided an analysis on the international perspective of the subject.

*Day Two: Practice*

The conference addressed the practice of reparations with the focus on case studies drawn from around the Commonwealth. These addressed specific wrongs and measured their success against the goals identified for the specific scheme. The discussions addressed the theoretical underpinnings of the schemes discussed on Day One.

The situation in Canada with the Aboriginal Healing Foundation, and problems associated with residential schools were discussed by Georges Erasmus, the President of the Aboriginal Healing Foundation. Slavery reparation in the United States was addressed by Roy Brooks of the University of San Diego and his theory of 'Atonement' brought not only a new perspective to the topic, but also provoked much critical analysis and discussion. David Levine of the School of Law, University of Hastings also discussed the hurdles one must overcome to have successful reparation litigation in the United States. Warren Freeman of the Faculty of law, University of Natal, discussed South Africa's land reparation and apartheid legal issues whilst Kerry Howe from Massey University, New Zealand, enlightened the group on the "Waitangi Tribunal" and Maori treaty claims. The reparation efforts in Sri Lanka were addressed by Joe Silva of the Sri Lanka School of Law.

#### *Day Three: Legal Education*

Discussions focused on legal education issues. The importance of including a discussion on reparations in the law school curriculum was recognised with the real question being how to achieve this. Particularly important here was the presentation by John McLaren of the University of Victoria who demonstrated a programme he is involved in with teaching a legal history course over the internet through a collaborative link between several Canadian and Australian universities.

It was agreed that developing a similar electronic course on reparations should be encouraged and Jeff Berryman undertook to develop this on behalf of the Association.

Finally, I would like to acknowledge the financial assistance of the Canadian International Development Agency (CIDA) that enabled participants from Guyana, Vanuatu, Sri Lanka and South Africa to attend the conference.