

# **MOHAWK COUNCIL OF AKWESASNE**

*The Ipperwash Inquiry*

*March 8 & 9, 2006*

*Forest, Ontario*

## **JUSTICE-CONFLICT AND PEACE**

### **Introduction:**

*Offer of Condolence to George Family.*

*Before making this statement, Akwesasne would like to offer its condolences to the family of Dudley George and to the community.*

*Please be assured that this unfortunate incident remains to be within the minds of the people of Akwesasne.*

### **Justice- Conflict and Peace: (March 8, 2006)**

*Canada's system of laws and courts continue to ignore significant cultural factors and is viewed as harsh and unproductive.*

*In Canadian courts, First Nations peoples are forced to subject themselves to a forum that is alien: a process where they have no voice because prosecutors and defense lawyers do battle before a Judge who in turn, makes a decision on the best argument put forth. In this process, there is very little opportunity for an aboriginal person to address the Court.*

*Given this situation, lack of cultural sensitivity operates in a subtle way:*

*We all make assumptions based on our experience about the way people behave, and we judge others based on those assumptions. When people are from a different culture, assumptions can be mistaken and the consequences devastating:*

*These words, taken from a prosecuting lawyer dealing with an aboriginal accused for the first time:*

*"I had been reading evasiveness and insincerity as possible lies and guilt and I prosecuted accordingly. It wasn't until later I realized I should have been reading only respect and sincerity of the accused".*

*If these assumptions continue from the time an accused is charged up to sentencing, then the consequences are not only devastating but horrific because it impact's not only on the accused but his family and community.*

*Although there has been some progress made to rectify this through the creation of Gladue Courts, this in itself is not enough.*

### **General:**

*The Report of the Royal Commission on Aboriginal Peoples (RCAP) published in 1996 provides a comprehensive legal context to support the notion of inherent right to aboriginal self-government, such right being constitutionally protected by section 35. Although there is no definitive statement by the Supreme Court of Canada, the general consensus in RCAP suggests that the aboriginal right of self-government is an unextinguished aboriginal right afforded protection by section 35.*

### **Different Circumstances:**

*Given the vastly different circumstances of Aboriginal people throughout Canada, implementation of the inherent right cannot be uniform across the country or result in a one size fits all form of self-government simply because not all First Nations are the same.*

### **Akwesasne:**

*Akwesasne is a multi-jurisdictional community with the international border between Canada and the United States and the provincial boundary between Ontario and Quebec. It is critical for the Mohawk Council of Akwesasne to ensure harmony and equality for our people in all fields but more so in the area of Justice.*

*The intent to implement strictly Ontario authority will not work for us. Such authority is viewed as an infringement on our jurisdiction because we view our territory as one. This is the same position we take with the province of Quebec.*

*Having being multi-jurisdictional, we have progressed in several areas as a result of our efforts of sensitizing and educating Canada and the provinces to our problems **that only we know the answers to.***

### **Relationships:**

*The policies of the traditional Haudenosaunee is based on fostering good relationships. This is guided by the principles of peace, power and the good mind. (Skennen, Kasastenera and Kanikonriio). For the Haudenosaunee the relations with other governments are marked by the spirit of peace, respect and friendship. This is not unique, as every First Nation in Ontario carries similar traditions as part of their*

government structure. It is important that the effectiveness of these processes is predicated on the availability of open dialogue and cooperative effort to identify enough common ground to foster and develop relationships.

Ontario, do you think that if these were in place Ipperwash would have even occurred?

As Ontario struggles to identify what its new agenda should be for First Nation peoples in Ontario, all they need to do is recognize that Agenda as it's already been laid out-- you only need to see it.

Akwesasne is taking a Nation Building approach for the exercise of expanded jurisdiction. During our negotiations, we know in some areas will require provincial involvement but like any other issue unique to Akwesasne, we will pursue these discussions on a government to government basis.

Akwesasne's development of its Justice system is based on the collective voice from our community and assertion of inherent right. Part of the development of our system will be to harmonize our traditional methods with the conventional ones but we know one thing for certain, that does not mean bringing in a provincial court system.

### **JUSTICE INITIATIVES (Akwesasne-March 9, 2006):**

Since 1970's Akwesasne has been in development of its own community based justice systems and at present time administers five distinct service delivery programs, all administered locally:

#### **Akwesasne Mohawk Court:**

Mandate: Hears traffic offences and community law violations. Presided over by Community Justices trained on a training manual developed by Akwesasne and one section 107 Justice of the Peace.

#### **Mediation Services:**

Mandate: Deals with disputes mainly civil in nature and works with not only community but other Mohawk Council of Akwesasne Departments.

#### **The Legislative Commission:**

Mandate: Development of Community Laws:

#### **The Community Justice Program that operates a Diversion program in addition to a Native Court worker services:**

Mandate: Diversion program is the body that deals with offences otherwise heard in the provincial courts or the Akwesasne Mohawk Court.

#### **The Probation and Parole Service:**

*Mandate: Local authority established as a means of increasing the effectiveness of supervision for community members on probation.*

***Legal Services and Mohawk Interpreter Services:***

*Mandate: Provides legal to the organization and community and offers Mohawk interpreter services to the outside Courts (Ontario, Quebec and New York State).*

*Work to date: Akwesasne is working with Ontario with respect to Youth Criminal Justice Act. Akwesasne has devised a community plan that would be applicable in all Courts, the Akwesasne Mohawk Court, the Ontario Court of Justice and Quebec.*

*The Working Group is made up of Justice, Social, Police, Education, Nation Building and portfolio Chiefs. Our goal is to develop on service agency in Akwesasne irrespective of which provincial line the offence occurred.*

*All programs are designed in a fashion that culturally matches our membership.*

***Summary Remarks and Dialogue:***

*There is a need for the government of Ontario to examine the RCAP recommendations and open a dialogue with First Nations peoples to jointly explore how these recommendations can improve the relationship between First Nations peoples and Ontario.*

*Protocols with government agencies, enforcement agencies and consulting with FN people on their traditions needs structure. The protocols should reflect harmonization of FN interests with provincial ones to develop common ground and foster healthy relationships.*

***There needs to be some oversight over potential areas of conflict between First Nations peoples and Ontario in order to be in a better position for conflict management. This oversight for example could be an Ombudsman of some sort. Negotiation and open dialogue are primary tools that should be examined before a situation becomes too confrontational and or positional.***

*Cross cultural training for all members of the legal community should be expanded and improved upon as necessary. The training should be delivered by FN from the respective community; especially those outside agencies who come into their community through their regular duties.*

*Transfer of authority to aboriginal community at certain stages of court proceedings for an aboriginal offender to be dealt with by his/her community.*

*Recognition of law making capacity in FN communities.*

*Aboriginal interpreters should be a part of the legal process at all stages to ensure the FN member and his/her family understands what is happening.*

*Native Court workers should be a part of the process from time of person's arrest up to and including incarceration, and parole,*

*Aboriginal interpreters should be part of a legal system to ensure the accused understands the proceedings,*

*Transfer of authority to FN community to deal with the offender.*

**Closing:**

*Thank you both to the Chiefs of Ontario and the Honourable Sid Linden for the invitation extended to Akwesasne.*

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