

THE POSITION OF THE FSIN JUSTICE COMMISSION

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INTRODUCTION

The Federation of Saskatchewan Indian Nations (FSIN) is made up of 72 First Nations, 10 tribal councils and 85,000 treaty First Nation citizens in Saskatchewan. Tribal groupings include the Dene in northern Saskatchewan, the Cree in the north and central part of the province, the Dakota and Assiniboin in the central and southern part of the province, and the Saulteaux in the south.

The executive of the FSIN is made up of a chief and six vice-chiefs, each of whom have specific portfolios and commissions for which they are responsible. The commissions are made up of representatives from each of the ten tribal councils as selected by the chiefs of those tribal councils.

I chair the First Nations Justice Commission, which is charged with the responsibility of developing a First Nations-controlled justice system for Saskatchewan. Please note that I did not say "separate justice system" or "parallel justice system," because we are not yet ready to identify the final form of the Indian-controlled justice system that is under development at this time. We do believe that the Justice Commission is doing a great deal of good work, and we are here to take a positive approach to working together with allies from the academic community, from the other governments and from our own people.

TREATY RIGHTS TO JUSTICE

When Kim Campbell was minister of Justice, she said there was no room in this country for a separate Aboriginal justice system. A few decades earlier, Pierre Elliott Trudeau had said there was no room in this country for special status, for treaty rights or for historical might-have-beens. However, in 1973 the Supreme Court of Canada, in the Calder case, recognized Aboriginal rights to land and Pierre Elliott Trudeau said, "Well, maybe I was wrong." This was a major concession for him. So, Trudeau said, "Maybe you do have more rights than I originally thought," and that is what we have to focus on. Society has to understand Aboriginal and treaty rights as we understand them, and that understanding has to be passed on to all

levels of government. In particular, the people who control the administration of justice in this country need an understanding of these rights.

The treaties are very important to our people. Some people may think these 120-year-old documents have no place in contemporary society. People who think this way are absolutely wrong. In fact, the treaties set out the political and administrative arrangements between ourselves and the federal Crown. Please remember that these treaties were negotiated before the provinces came into existence.

It is my opinion, however, that the provinces have as much responsibility for the fiduciary obligation under treaty as does the federal Crown. When you hear provincial governments saying, "We support the inherent right to self-government and we support treaty rights as long as the federal Crown pays for it," we have to remember it is not the federal Crown that is getting the benefits of production from this land that was once ours. It is the provincial governments who are the main beneficiaries of the resources within this country.

There are two very important points to study in regards to the treaties and the application of justice within our territories. The first is that the treaties themselves are a manifestation of the inherent right of self-government. Self-government is a reality. Just because we haven't exercised this right of self-government because of the twin devils of overriding legislation and lack of resources to set up our government systems does not mean we have lost the right of self-government. The Justice Commission firmly believes that if we are to exercise the right of self-government we must first of all set up a First Nations-controlled justice system in our communities. This system will be part of community constitutions that will eventually replace the *Indian Act* as the governing bodies of our communities and our lives.

The second important thing to remember is that the treaties contain provisions that give the First Nations the authority to maintain peace and good order amongst ourselves. These peace and good order clauses in Treaty 6 and Treaty 8 recognize our right to a justice system and our right to develop and enforce law in our communities.

THE INDIAN ACT AND JUSTICE

Our historical grievances regarding the *Indian Act* are well documented, and the political direction of First Nations has been eloquently brought forward. I want to add a few brief points about the destruction of the self-government institutions of First Nations on the prairies being a direct result of federal legislation—the *Indian Act*.

The provisions of the *Indian Act* were enforced by Indian agents who had the powers of justices of the peace in our communities and who could call upon the North-West Mounted Police to enforce their decisions. Vio-

lators were often incarcerated off-reserve out of our communities. The *Indian Act* essentially took away all self-governing powers of First Nations and replaced them with Euro-Canadian systems of government. It even gave the provincial government jurisdiction in certain areas by virtue of section 88 of the Act, which stated that in the absence of federal law or treaty rights, provincial law shall apply on Indian territory. It will take some time, but eventually the *Indian Act* will be phased out and Indian-driven legislation that is accepted and supported by the community will replace it. That is where we will regain the responsibility and authority to manage our own justice systems in our own communities.

THE TWO-TRACK STRATEGY

As a result of decisions made by the FSIN Justice Commission, and with support from the chiefs' legislative assembly, the First Nations are following two tracks. First, we are looking at situations where we can have an immediate impact. This is a program-oriented track that fits within the current justice system so we can assist our people who are in conflict with the law, whether they are on our reserves or in urban centres. This track means developing and delivering programs within the current justice system such as a court worker program. In 1987 that program was killed in Saskatchewan. We will bring that program back with the unqualified support of our own people, the police services, the court system and corrections.

Another example within the immediate-impact track would be the agreement with the Royal Canadian Mounted Police for contracted services between the bands and the local RCMP detachments. Some of our communities have been having conflicts with surrounding detachments over everything from protocol disagreements, to inability to enforce band by-laws, to slow response time to emergencies, to when police would patrol our communities. For instance, the RCMP chose to patrol on Wednesday and Tuesday instead of on Friday and Saturday, when most of the action was happening in the community.

We are now setting the stage where First Nations can negotiate agreements and enter into contracts with the local RCMP detachment, the subdivision and even the provincial command to provide service that First Nations see as important. Under these contracts, the RCMP would remain under the jurisdiction of federal and provincial authorities and under the command structure of the RCMP, but there would be much more accountability to First Nations. These contract-for-services arrangements would offset some of the hard feelings, not only between the RCMP and the First Nations but also between the First Nations and the surrounding communities.

The situation with corrections is similar. We need more cross-cultural

training, employment equity and a better way of dealing with prisoner complaints. We are attempting to set up alternative corrections facilities with far more rehabilitation programs built into them than are available under the current system. In the last six weeks I visited the Prince Albert Correctional Centre and their Cultural Survival Group, as well as the Indian and Métis Spiritual Brotherhood in Regina and asked them to give me their response to the recommendations of the Treaty Indian Justice Review Committee report. There are many recommendations in there regarding improving the corrections system in order to meet the rehabilitation needs of prisoners and I have to have the feedback from the prisoners themselves as to whether these recommendations are being followed and if they are valuable.

We are also working within the court system itself on things such as sentencing circles and alternative sentencing. There seems to be a new sensitivity by many judges that the court system they now operate is clearly failing Aboriginal people in this province, and they are prepared to work with us in a constructive and co-ordinated manner to ensure a more fair and equitable treatment of First Nations citizens in the provincial and federal court system.

The second track is a longer term strategy of entering into larger longer term self-government initiatives surrounding justice. For example, we are looking at the development of Indian law that would apply in our territories and would be recognized by federal and provincial jurisdictions. There are commissions within the FSIN—such as the Health and Social Development Commission; Education Commission; Hunting, Fishing and Trapping Commission; Indian Government Commission; Housing Commission, and the Economic Development Commission—that are developing framework legislation we can implement in our communities. Such framework legislation would allow individual communities and tribal councils to fit their unique circumstances under the general umbrella of the framework in a flexible and community-oriented process.

As we develop our laws, we cannot depend upon the RCMP to enforce them nor upon the provincial or federal courts to interpret them. We will have our own First Nations-controlled police services across the province, as well as our own tribal court system, which will be recognized by the provincial and federal court systems, and our own system of rehabilitation and sanctions.

There is a real sensitivity in our communities to traditional law and its interaction with contemporary law. While there are traditional values and principles that must be upheld, we fully recognize that we are living in the electronic age. We must be able to reach a combination of traditional and contemporary values and find ways of ensuring that these values can be supported under a First Nations-controlled justice system.

One of the issues we must come to grips with as we develop our First Nations-controlled justice system is the dual reality of on-reserve and off-reserve citizens. It is the FSIN's position that simply because a treaty First Nations citizen leaves a First Nations community does not mean that he or she ceases to exist as a member of that community. In fact, (s)he still maintains citizenship in that community and still maintains all treaty rights. (S)he will also remain eligible for services from our communities. This particular situation raises the question of how we provide services for our people who live in another government's jurisdiction. This is one of the tough questions we have to work out and will no doubt have an impact on how we develop our First Nations justice systems.

The long-term development of a First Nations-controlled justice system must keep pace with other developments occurring within our territories. A good example is the recent Treaty Land Entitlement Agreement whereby treaty Indians in this province are probably in charge of one of the largest mega-projects by virtue of a \$500-million treaty land entitlement project. This agreement will double the land base of our people and make significant changes to certain areas of the province. As the economy and the land base increase, we will have to have additional services in the areas of legislation, protection and enforcement services.

CURRENT ACTIVITIES OF THE FSIN JUSTICE COMMISSION

The FSIN Justice Commission is working diligently to assist communities in developing the capability to adjudicate disputes, in enforcing band by-laws and in getting used to the idea once again after 120 years of controlling our own communities. If you refer to the paper that follows, "FSIN Justice Models," written by my friend and colleague Jacob Tootoosis under my direction and editorial guidance, you will see coverage of topics we have talked about such as treaty rights and *Indian Act* legislation. There is also information about a court docket in northern Saskatchewan. Take a look at these statistics and come to your own conclusions.

There are questions about short-term legislative initiatives on which we can co-operatively work together. From our perspective, of particular importance is the development of reciprocal legislation whereby First Nations legislation will be immediately recognized by federal and provincial legislation. The time when federal and provincial governments can legislate unilaterally on issues affecting Aboriginal people is past, thanks to Supreme Court decisions such as *Sparrow* and *Nowegijick*. In order to give everything legal effect, there has to be reciprocal legislation from all sides.

Our paper also talks about a Police Services Act, a Justice Administration Act and a Rehabilitation Act. Appendix A of that paper also has a strategic plan that I think outlines some of the more pressing issues we have

to try and develop. Once again I stress our two-track approach: immediate-impact issues, such as improvements to the corrections systems, policing, existing court systems and existing support systems; but also the long-term goal of developing a First Nations-controlled justice system that will include tribal law, tribal police services, tribal courts, and tribally sanctioned systems of punishment and rehabilitation.

SOME POSITIVE SIGNS

Many positive things are happening. The chiefs of police in Prince Albert, Saskatoon and Regina are very co-operative. Six Aboriginal police officers have just been hired in Regina. There is a long way to go, but that's a start. Some good work is being done in corrections. The RCMP from the Commissioner on down have been very supportive, though we have some problems with the old-line field officers and sergeants who are somewhat entrenched in their ways. A system for First Nations justices of the peace is under active consideration, as are various activities used to sensitize present court judges and other civil servants in the area of corrections.

We requested, through the civil service of the provincial and federal governments, financial resources and expertise in the area of policy development. We need knowledgeable people to set up the apparatus to govern First Nations on both a local and regional scale. Individual First Nations will have their own ways of doing things, but to make self-government work on a regional and national basis we need experts on public administration who can work under our direction and make that connection between ourselves and other governments. I think the idea of secondment of people from other levels of governments is going to be accepted.

The tribal councils and the First Nations are actively pursuing various initiatives in the area of justice development. For instance, the Meadow Lake Tribal Council is actively developing a justice system with their First Nations as part of their overall community-based self-government project. The Onion Lake First Nation is taking the initiative and has developed a community justice committee that provides alternatives to both charging by police and sentencing in corrections. Co-operation between all levels of government will benefit not only the treaty Indian people but all sectors of this province and this nation.

I close by referring to Mary Ellen Turpel's statement that we have to start taking responsibility for ourselves. The time has come when Indian people cannot become leaders of organizations or of our communities simply by bashing federal or provincial government policy or people, or by reciting historical wrongs. We must be able to come up with solid, logically planned processes for development in our communities, and ways and means of handling the issues in all areas—particularly in such complex and important areas as the justice system and self-government.