

BLAZING THE TRAIL

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I have given a great deal of thought to what I would say on this occasion. I had, of course, spent many hours working over a prepared text that the very talented people in my department had been working on for weeks. I was busy revising it and thought that I had a speech I could deliver to you with a good deal of pride and satisfaction, knowing that I would be saying things that would be interesting and relevant for your consideration on this third day of the Conference.

By Thursday morning, at the conclusion of the second panel, I had concluded that there was nothing in my prepared speech that bore saying today. That's no reflection on my staff, but a reflection on the dynamics of this Conference. Those of you who have been here from the beginning, and that includes most of you, will have felt the way the momentum has gathered and the discussions have picked up steam during the last three days, and will know the way in which your own thinking has changed. You have been provided with a great deal of information about the perspectives of other people who have been attending this Conference and the perspectives of various groups and stakeholders. We are all changed as a result of the experience.

I too have changed, as I think have the good officials from my department, so they will not be surprised to know that I have scrapped my prepared remarks in their entirety. I spent most of last night reflecting on what has been said at this Conference so that I could appear before you this morning and say something that would be of some relevance, some importance so far as your thinking is concerned and so far as the context of this Conference is concerned. So say a silent "good luck" for me as I begin because I am really hopeful that I will be able to meet my own objectives of saying something worthwhile.

My thoughts will cover a wide number of topics. I will not always be able to draw neat little connections between the topics and, in that sense, my remarks may be a bit disjointed. But I want to say a number of things that are important from my own perspective, based upon the experience that I have had with respect to these issues.

I want to begin by talking about the context in which I see justice reform. I believe that justice reform has to be built upon and has to develop within the framework of self-government. You can't go very far with many of the ideas that relate to justice reform without running smack up against the idea of self-government. For that reason, I believe that as we continue to work on these concepts, we must keep right in front of us the idea that they are part and parcel of the inherent right of Aboriginal Peoples to govern themselves.

I said so often during 1992, in the discussions on the Constitution and in meetings and speeches with outside groups as that process was going on, that I thought 1992 was the most important year in Canada's recent history. One of the main reasons I said this is that we saw, to our astonishment, governments of all political stripe and opinion in this country, freely and willingly acknowledging the inherent right of Aboriginal Peoples to govern themselves.

I thought back to 1987 and 1981 and all the years before that, and the attitude of the governments of this nation toward the aspirations, the ambitions and the goals of Aboriginal Peoples. I thought about the dismal history that is wound up in the events of those previous years.

Who of us will forget? Who of us will forget the constitutional conference in 1987 when the vote was taken on the question of Aboriginal self-government. Who will forget, for example, the intervention of Jim Sinclair, then speaking on behalf of the Métis Nation, and his scalding denunciation of the provincial governments who had refused to accept the right of Aboriginal Peoples to govern themselves?

Keep in mind that in 1987 what they were talking about was going to be a delegated right, a conferred right, something that the federal and provincial governments were going to extend and transfer to Aboriginal people. Contrast that with 1992, when governments of every political stripe were saying, "We acknowledge the inherent right of Aboriginal people to govern themselves." That, I think, was the most exciting event of my life! It was a watershed in Canadian history.

We lost the Charlottetown Accord. We lost it for who knows what reasons. The best I can offer is to say that there were probably a hundred reasons for voting against it and two or three reasons for voting for it. A hundred is a lot more than two or three, and so it failed. But the ideas in the Accord did not all fail with its collapse. One of the ideas that has survived is the recognition of the inherent right of Aboriginal Peoples to govern themselves. As you know, the recent premiers' meeting in Nova Scotia clearly indicated that this remains the position of the provincial governments. They recognize the inherent right.

The federal government was not at Nova Scotia, of course, because

that was a premiers' conference, and so they had no opportunity to speak to the issue when it came up. They were, however, in Inuvik a month earlier at a meeting of ministers responsible for Aboriginal affairs. The federal minister was certainly not saying at that meeting that she recognized the inherent right. I have to say, and I want to put the best light I can on the situation, that there seems to be some confusion in federal circles as to whether or not that recognition continues at the federal level. I would hope it does. I do not think it is acceptable for any government in Canada, and especially for our federal government, to be inconsistent, to be sucking and blowing at the same time on this kind of an issue.

This issue is too important and too fundamental to permit uncertainty or inconsistency. Having extended the recognition of the right, the federal government is not now free to withdraw it. I expect and I predict and I believe that in the days to come the federal government will make that position clear. It may take an election in order to drive the point home, but at the end of the day I think Aboriginal people can be secure that the other two levels of government in this country continue to recognize that you always had the right to govern yourself; you always did govern yourself and you never surrendered that right. You have it today and all of us have to live within the context of that reality.

My deputy minister, Marv Hendrickson, addressed the question of Aboriginal self-determination in the section on self-government (part III). He said that what it calls up to his mind is the division of powers and the shifting of power in this country. That is a familiar concept to constitutional scholars. The division of powers between the federal and provincial governments is all laid out neatly in sections 91 and 92 and other sections of the *British North America Act*. We can all go to those sections and see that it is perfectly clear, who has jurisdiction for what. Perhaps I exaggerate. Perhaps 125 years of legal wrangling indicates the sections are not perfectly clear, but they are there and, at least in a general way, they divide the jurisdictions of governments in this country.

Now comes the idea of Aboriginal self-government and the neat question arises—perhaps not so neat—the difficult question arises, as to how the powers of Aboriginal governments fit in to that existing division of powers. I think that Marv's use of that concept, the division and shifting of powers, is useful. The fact is that no matter how we approach this subject, at the end of the day, by some process or another, we are going to work out who does what in this country. What is the appropriate role for the federal government? What is the appropriate role for a provincial government? What is the appropriate role for Aboriginal government?

There are some people, and some of them are here, who will say that an Aboriginal government should do all of it, should have a jurisdiction

that is just as broad as the subject of government itself. A strong argument can be made for that.

I suggest, however, that this is not the proper approach. I believe that at the end of the day we are going to have to sit down and sort out this question of jurisdiction. In one way or another, we must arrive at accords or understandings or constitutional amendments, if that's necessary, in order to work out the question of who does what. We must do that from the perspective that nothing is being conferred upon or transferred to Aboriginal governments. We must do that in the context that Aboriginal Peoples have the inherent right to govern themselves. We must, by means of discussion and negotiation and reasoning together, try to work out what will be an appropriate way in which we will govern ourselves within this country, the way in which this country will function.

In doing that we must avoid duplication, so far as we are able. We have a lot of government in this country already. A very powerful case can be made, for example, that my province is over-governed. We have a provincial government; we have three hundred and some odd rural municipalities; we have dozens of urban municipalities; we have school boards, we have health boards, we have library boards. Practically everybody is involved in government in one way or another. Now we are talking about more government—Aboriginal governments. That's good, but it does raise the point that we can't all be doing everything. We have to avoid, whenever we reasonably can, a duplication of effort.

That question has arisen a number of times in this Conference with specific reference to the justice system. Are we talking about separate courts—separate court systems entirely separate from each other? Or are we talking about something else, which will avoid a lot of duplication, something that will give us a system that we can more realistically finance, yet that will meet all of our aspirations?

I don't pretend to know, and I would be the last person to stand here and try to define what should be the answer. I say this because one thing I have learned in all of these discussions is that I don't know anything of any real importance with respect to these subjects. None of us do. We have points of view and perspectives, and by reasoning together, by discussing and negotiating, we will be able to find our way through these very difficult subjects. But in doing so it is manifestly apparent to me that we must avoid duplication wherever we can, keeping in mind that there are goals and objectives that we cannot compromise. We all have goals, but having those firmly in front of us, I think we have to avoid duplication and try to be as practical as we can.

The term "practical," the term that Mary Ellen Turpel used in her presentation at lunch yesterday, is a very important one. She and I and a lot of other people really came to appreciate the true meaning of the term

“practical” during the Charlottetown negotiations.

I come from a culture where people like to be able to predict what the outcome is. That is the majority culture in this country. Before we get committed to an idea, we like to know how it's likely to come out. And so when we in the majority culture look at self-government, we ask ourselves, what does it mean? What's it going to look like? What are these new governments going to do? How are they going to work? How much will they cost? All those questions arise because we like to know as exactly as we can the shape of things to come. We spend a lot of time and dedicate a lot of resources to analysing what the outcome is likely to be.

What I think I learned from my Aboriginal friends during the Charlottetown process is that this is not so important. It's not possible to accurately predict these things. What is important is to set in place a process for getting us from here to there, from where we are to where we want to be. And if the process is sound, it is not a large leap of faith to predict that the outcome will also be sound.

In the Charlottetown discussions these two perspectives were clashing. Gradually, the Aboriginal groups were teaching the premiers and the constitutional ministers that they didn't have to worry so much about the outcome as long as the process was sound. I learned this early and became an advocate for this leap of faith. I recall urging my colleagues that we have to stop worrying about these things, we have to stop picking away at them, we have to make this leap of faith. My good friend Jim McRae, who was the constitutional minister from Manitoba smiled at me and said, “Well, a leap of faith. Okay, but couldn't we at least attach a bungee cord?” I said, “Jim, no bungee cord, man. Just jump in.” And we did.

My premier made it clear the other night, and I want to say it again for the record: the Government of Saskatchewan recognizes the inherent right of Aboriginal Peoples to govern themselves. This is the fundamental principle that drives all of our considerations and all of our policies in this area, and it will continue to do so. Nowhere is this more the case than in the area of justice reform.

We have constraints. The main one is that we're broke. While we were teetering on the edge of bankruptcy, it is now clear that we are going to make it. We've had to do some very difficult things in order to get on top of the problem, but we are getting there. We are going to get the province's finances back on a sound basis and begin to make some progress.

Having said that, having reminded you of that fact, I want to indicate again that our work in justice and other policy areas will be based firmly upon the recognition of the inherent right of Aboriginal Peoples to govern themselves.

Another constraint is the old jurisdictional problem that has arisen so often during discussions at this Conference. It is the Constitution, the re-

sponsibilities of the federal government, the responsibilities of the provincial government, and the way we are able to get into big fights about who is responsible for what. The losers in those fights have not been the federal government or the provincial government. The losers have been the Aboriginal people who are caught in the crossfire and as a result don't receive the level of service to which they are entitled. That's a constraint, but it is a constraint that we are just going to have to get over.

I made a submission to the Royal Commission on behalf of the Government of Saskatchewan in which I tried to highlight that point, tried to highlight the need for the federal and provincial governments to put aside our problems, put aside our arguments and put aside our positions on jurisdiction. We need to start to talk to each other, start to co-operate with each other, start, for example, just to tell each other what it is that we are trying to do.

From a provincial government perspective, and as the minister responsible for Indian and Métis Affairs, this is a very important idea. If I had a clear idea of where the federal Department of Indian Affairs was going with some of their ideas, what their plans were, how they saw the world in five years and ten years, how they saw their responsibilities, what are the meanings of some of the moves that they make, then maybe I could co-operate with them. Maybe I could trim my own sails to sail in the same direction. But I don't know the federal mind on these matters. We are reduced to guesswork.

We have to resort to telephone calls to officials in the federal departments to ask, "What's going on there guys? What's happening?" In effect, we operate in a vacuum of information. We are drawing conclusions on the basis of scant information. That's inexcusable. I freely admit that the federal government could say the same thing about us. Not to the same extent, mind you. We don't tell them everything that we're thinking about either, and we should.

In this time of scarce government resources and great pressures to stop the debt from mounting and mounting, we have to find ways of governing with maximum efficiency. That will require a level of co-operation between the federal and provincial government that has been hitherto unknown, at least in the field of Aboriginal affairs. I said that to the Royal Commission on behalf of the provincial government, I've said it to Tom Siddon, I've said it to the latest minister, Pauline Browes, and I'll say it again to the next minister after October 25. We have to win that argument. We have to sit down together and talk as equals, openly, directly, hiding nothing, no hidden agendas, no secret objectives, no long-term plans that we aren't all aware of.

Now I have not mentioned Aboriginal government, but let me say

that in my opinion Aboriginal governments have to be involved in that exchange from day one to the end of the process. We all have to know what's going on and we all have to work together to achieve as much as we possibly can within the fiscal realities of this nation of Canada.

That long discussion about Aboriginal self-government was my first point. I want to move now to my second point. I want to talk about a couple of examples of cultural differences that we experience when we discuss the issues that we're discussing at this Conference.

One cultural difference I have already mentioned is the different ways we have of looking at a subject. I look at it and I spend a lot of time and energy trying to figure out how it's going to come out. My Aboriginal friend spends a lot of time talking about *how* we are going to get from where we are now to where we want to go. In other words, the Aboriginal approach focuses on the process—a process with integrity, a process that will work—and says, "Let's worry about the result when the process gets us there."

There is another difference between us, and it strikes very fundamentally at the issues that we are talking about here. That is the idea of the basis for government. My culture thinks about government in terms of land. We have a Government of Canada that has jurisdiction over land that you can see on a map. It's the pink part on most maps, and it's called Canada. My government has jurisdiction over a province called Saskatchewan, and that is defined in great detail in an annex to the Constitution. That is the sweep or the grasp of my Government of Saskatchewan.

When my culture talks about Aboriginal government, we have a tendency to think in terms of a land-based government. For my Indian friends who are treaty Indians living on reserves that may be of some comfort, but for all of the Aboriginal people in this country who do not live on reserves, it is a matter of no comfort at all, and yet we in the majority culture have a hard time imagining a government that is not directly related to a plot of land. I don't know why this is so.

I have been working hard in the last two years to understand the function of a government that would not be dependent upon a particular piece of territory. It would be a government over people, and when we are talking about urban Indians or urban Métis, we are talking about people. They live on land but they live on land that is shared by many other people. In most communities, the Aboriginal Peoples are the minority. What does self-government mean to them in those circumstances? Is it a government that is a government of services? That is to say, that they will be able to deliver services to themselves. That's a legitimate idea, and an important one. But is that all self-government means to urban Aboriginals? Or can we look at it in a wider context?

Can there be governments over people? I think there can be. My understanding of the Roman Empire is that Rome had jurisdiction over Romans no matter where they were, whether it was in Italia or whether it was in Gaul or whether it was in Britannia. Wherever a Roman went, he took his government with him. I don't fully know what Métis and Indian organizations think of that idea, but I suspect their expectation is more than simply a government over services. I suspect fruitful negotiations will have to take that into account.

As I said when I started out, an important understanding you must have is that "we don't know what we're talking about." I mean this in the sense that I don't have any solutions. I have a mind full of questions, but I do draw to your attention the important cultural perspective that the majority community has: government is related to land. I raise the question about whether that is workable in the context of Aboriginal self-government.

Now to move to a third area. I was struck by Mary Ellen Turpel's speech yesterday when she talked about the idea of "dual respect." She talked of the importance of the respect by the law, by the judicial system, for Aboriginal people. She linked that to the importance of the respect of Aboriginal people for the legal system. That reciprocal respect is absolutely fundamental to everything that may come out of the reforms that will result from the work we are doing. We who are working within the system have to accept that for Aboriginal people our system has been a massive failure. We have a system that at the end of the day probably does a lot more harm than it does good. We simply can't keep it as it is. We have to change it.

It seems to me that while we are changing the system we have to keep in mind the idea of reciprocal respect. I believe that, unless and until we have a justice system in this country that will earn and deserve the respect and confidence of Aboriginal people, we should not be surprised by our negative statistics. We should not be surprised at who are the people who are in trouble with the law and who are the people who are in our correctional centres and who are the people who are young offenders.

If I were an Aboriginal person, I would find very little reason for respecting the present system and many, many reasons for criticizing it. How can my children and I accept and work within the framework of a system that I do not respect and that all too often does not respect me? I was struck by the force of Mary Ellen's point. It seems to me that whatever it is that we do in this area, we have to have the idea of the duality of respect firmly at the top of our mind.

That point leads me to considering a more fundamental question, and that is the purpose of all this. Why do we have laws? Why do we have a

criminal law? We in the majority community will tell you that it is a system of social control. It is the way by which society controls itself. It prescribes the form and the type of behaviour that is tolerable. It actually doesn't do that. It prescribes the behaviour that is not tolerable. So anything that is not intolerable is tolerable. Those lines are drawn by the law, and people who get outside the pale get in trouble and they wind up as clients of the justice system.

I recall vividly Patricia Monture's idea presented in the section on moving toward a separate justice system (part VI). When I first heard her point, I just absorbed it as a familiar idea, part of what I thought. Reflecting on the idea later, I realized it is not part of what I thought at all. It's the other side of the same coin. She said that the law is "the way to live most nicely together." I understand that this is a literal translation of the Aboriginal words describing it. Then I realized that my usual definition of the purpose of law is entirely negative—a system of social control. Hers is entirely positive—the way to live most nicely together. Then I asked myself, who is teaching whom in this exercise?

What that raises in my mind is that I think we all have to take one step back and ask what it is fundamentally that we're trying to do here. What are we talking about? Are we talking about social control, or are we talking about living nicely together? Are we talking about a negative or talking about a positive? I believe it is a powerful idea that Trish puts forward and one that we would all do well to reflect on.

Who is teaching what to whom? Of course, I'm not suggesting for a moment that the purpose of this conference is to teach Aboriginal people, nor is it to teach white people or bureaucrats or anybody in particular. We are all here to learn. We are all here to share our perspectives and to understand other peoples' perspectives. We are here to try to figure out what it is we should do, where the path is and where the path is clear.

I remember the remarks over the last couple of days about the concept of healing. My culture knows very little about healing. Aboriginal culture knows a great deal about healing.

My culture knows very little about the involvement of the community in the delivery of justice-related programs and the laws of this province or this country. My culture knows very little about involving the community. We draw from the community in the sense that we draw from the community to train our lawyers, we draw from the community to train our police officers, our corrections workers and all of the other people involved in the process. But that's it. That's the end of the community involvement. There is no mechanism connecting these people back to the community so that they will know what the community is thinking about, how the community sees things, what the community is feeling, what

changes are taking place. Someone said this morning that often the last people to know that changes are taking place are the people right in the centre of the things being changed.

This idea of community involvement is another area where we in the majority culture have a great deal to learn. I think, for example, without commenting on it for a moment, of the sentencing circle respecting Ivan Morin that was referred to in the panel we just left. I asked myself as I listened to those remarks, who in that circle was representing the public interest? Was it correct for our prosecutors in the Department of Justice to consider that they were representing the public interest? We are going to have to think hard about that and talk about it. But the question was so legitimate. It was a startling question because we in the majority culture don't think very much about involving the community in justice questions, whereas that seems to be the essence of a great deal that happens within Aboriginal concepts of justice.

Finally, and in sort of an overarching way, I thought of this: I thought of all the things that I'm hearing in this Conference, and in the last two years, about appropriate ways of dealing with "antisocial behaviour," as we in the majority would say, behaviour that is beyond the pale of this framework of laws that describes tolerable or intolerable behaviour. We have a way of dealing with that. We know that this way doesn't work because crimes keep being committed, people keep getting sent to jail for longer and longer periods, people keep committing the same crimes over again and we keep sending them back to jail.

In an overwhelming majority of cases, the person who has gone to jail doesn't come out reformed. He comes out, if anything, worse off for the experience. This happens not because of the way prisoners are treated in jail, but because of some of the new tricks they've learned while they were there, and some of the new associations and the new friends they have made there.

Then I think about what I hear about sentencing circles or healing circles, and the role of the community and the families and the clans and the elders, and the way in which antisocial behaviour is dealt with in that context. I ask the question again, who's teaching whom? And I answer again, of course, that we are all here to learn. But I make the point that we are all learning, and that is a very, very important thing.

I must speak to the advertised subject, or at least to one possible interpretation of the advertised subject. You have heard in this Conference of the steps, and I think they are modest steps, that we have taken in Saskatchewan upon this road of justice reform.

You know that we have been doing a lot of work on the reinstatement of a court workers' program. That is a good program. Everyone in

Saskatchewan seems to agree with that and that is a definite development in our future. We are also working within the policing agreement. I think we will be able to do some very good work on a co-operative basis between the RCMP and the communities, with some provincial involvement, to improve the relationship in the policing function between the communities and the RCMP. I think that is a good agreement and the way in which it will involve the community is a positive step.

We have, as has been described to you, a bipartite mechanism firmly in place, which means that the Government of Saskatchewan and the Federation of Saskatchewan Indian Nations have a forum, a process, in which we can sit down and talk to each other about the issues we have to resolve. We have a good structure there. It is still in the early stages and we are learning a great deal about how it can work, but we are proud of it. We think it is probably the most advanced of its kind in the country, and we have great hopes with respect to how it will work. We have the same mechanism in place with the Métis Society of Saskatchewan. That process is off to a good start with a meeting between President Morin and Premier Romanow, and a lot of staff work has followed from that meeting.

Those are very important developments. Common to both of them is that we have invited the federal government in. We are confident that the federal government, when they get over being cranky at us over a couple of issues, will see the benefits to that kind of a process and will, in fact, come in.

We are also trying some other things. In my original text, these were referred to as pilot projects. In view of comments made earlier, I will no longer use that term, but we are trying some things. And again, we don't know everything. In some of these areas, we don't know anything, but we are feeling our way and we're feeling it in full co-operation and consultation with Aboriginal groups. We're very optimistic that we will be able to get some positive results from some of these efforts of ours that will be of interest to a lot of Aboriginal people and may develop across the province.

That is, for the most part, the list of things we have done. As I say, it is a modest list. But more exciting for us in the government and for us in the Department of Justice and the Department of Indian and Métis Affairs is what we are going to do in the future. In short, we will do as much as we possibly can. We will approach this in the manner I have described to you, on the basis of the inherent right of Aboriginal Peoples to govern themselves. We will respect that and build upon that base. As I said earlier, this is the only way to approach this subject and the way in which it is likely to have the most positive results. We will do this in an open way, in a fully accountable way, in a transparent way without any hidden agendas, and deal with it in the interests of making what we regard as a dreadful situation a lot better.

I also want to say that we want to do this quickly. We are going to be a lot better at things that don't cost any money than we are at things that cost money for reasons you all appreciate. But we are going to do our level best. We must act and we must act soon. We are going to have to take several leaps of faith. We are not going to have a bungee cord or anything like that. We are simply going to "do it," as Don Worme said in his presentation in the section on self-government (part III).

I want to close on a note that I think captures our approach. It is an English translation of a statement made by the great Chief Poundmaker. It was not said in the context of reforming the justice system, because Chief Poundmaker had larger issues on his mind when he was saying the words I am about to quote, but I believe that those words apply to us every bit as though Chief Poundmaker were at this conference at this microphone saying what I am about to say. I quote:

It would be so much easier just to fold our hands and not make this fight. To say that I, one man, can do nothing.

I grow afraid only when I see people thinking and acting like that. We all know the story about the man who sat by the trail too long, and then it grew over, and he could never find his way again.

We can never forget what has happened, but we cannot go back. Nor can we just sit beside the trail.

So said Poundmaker.