



Department of Justice  
Canada

Ministère de la Justice  
Canada



# Achieving Justice: Today and Tomorrow

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September 3 – 7, 1991  
WHITEHORSE, YUKON

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## CONFERENCE PROCEEDINGS

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Canada

**ACHIEVING JUSTICE:  
TODAY AND TOMORROW**

**CONFERENCE PROCEEDINGS  
WHITEHORSE, YUKON**

**SEPTEMBER 3 TO SEPTEMBER 7, 1991**

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### MESSAGE FROM THE MINISTER

In June of 1990, the Honourable Margaret Joe, Minister of Justice for Yukon, first raised the suggestion that there ought to be a national conference to address justice issues of particular relevance to aboriginal people. The idea was a good one and I was pleased to join Margaret Joe in helping her vision become a reality. A little more than one year later, in September of 1991, participants from the aboriginal and non-aboriginal communities, in equal numbers, converged upon the city of Whitehorse to take part in the proceedings of "Achieving Justice: Today and Tomorrow." The document you now hold is the written record of those extraordinary proceedings.

For me, "Achieving Justice: Today and Tomorrow" was a powerful learning experience which has served to inform much of my subsequent thinking on the aboriginal justice question. I spent most of my time at the conference listening and learning. Some of the things I learned were difficult but I came away convinced that reform is urgent and that *positive* reform is achievable.

The proceedings, as you will see, were often blunt. Harsh words were spoken at times but there was a spirit of good will which shone through, even during the tougher moments.

The Department of Justice is committed to the process of change which began with "Achieving Justice: Today and Tomorrow." We recognize that we can start now to respond to some of the issues raised at the Whitehorse conference. We realize also that aboriginal people must play a central part in choosing the path we take in search of more effective and meaningful ways of achieving justice for aboriginal people. Whitehorse, I believe, is where that journey began.

A handwritten signature in black ink, appearing to read 'A. Kim Campbell', with a large, stylized flourish extending to the right.

A. Kim Campbell

## PREFACE

From September 3 to September 7, 1991, the federal Minister of Justice, Kim Campbell, and the Yukon Minister of Justice, Margaret Joe, co-hosted a conference in Whitehorse to identify priorities and develop a practical agenda for aboriginal justice reform. "Achieving Justice: Today and Tomorrow" brought together from across Canada aboriginal leaders, federal, provincial and justice professionals and practitioners, and community workers. The commitment to partnership and inclusiveness was reflected in the 50 percent aboriginal participation. The goal was to achieve a dialogue which would include all aboriginal people, whether status or non-status Indians, Inuit or Métis, on or off reserve, in urban or rural centres, no matter where in Canada they reside. The conference focused on practical measures and options for action, on partnership and a new relationship between the justice system and aboriginal people. The conference was planned so that discussion of issues on a practical level, in 27 workshops, would take place before the arrival of the Ministers Responsible for Justice. The Friday and Saturday plenary sessions were devoted to informing the Ministers about the earlier discussions and to proposing action for the future. What follows are the proceedings of that conference.

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**WEDNESDAY**

**SEPTEMBER 4, 1991**

*Session commenced with prayer from Elder Pearl Keenan, Teslin Tlingit Council.*

**JUDGE DOUGLAS R. CAMPBELL  
CONFERENCE CONVENOR  
DIRECTOR, WESTERN JUDICIAL  
EDUCATION CENTRE,  
BRITISH COLUMBIA**

Good morning everyone. My name is Doug Campbell. I'm a convenor of this morning's program, together with my colleague, Kathy Louis. We're delighted to be here to help you gain from this meeting what I know you've come for.

It's a very important aspect of the meeting, of course, that we're holding it in the Yukon. Before we go further, I think it's important to acknowledge the presence and pay consideration to the Yukon Elders who are present.

We have a very important guest this morning who is from the Yukon territorial government. I'd like to call now on Mr. Tony Penikett, who is Government Leader for the Yukon to give us some opening remarks.

**MR. TONY PENIKETT  
GOVERNMENT LEADER  
YUKON**

Thank you, your Honour, ladies and gentlemen, Elders. One of the things political leaders in this country seem to take for granted — an almost arrogant assumption — is that we have always had a British system of law and justice. This assumption in this Territory is not

appropriate. It's not even historically accurate.

It is a matter of fact that only about a hundred years ago, on the creeks of the Forty Mile River before the goldrush, there was a system of justice in operation known as the Miners' Courts, an American frontier system, rough but democratic, which would seem very strange to us today. Before that, for many thousands of years, there were systems of aboriginal justice operating here in this land we call the Yukon, systems which we are only now beginning to appreciate.

Chief Keenan's people, the Teslin Tlingit, are now working to restore some elements of their traditional system of justice involving their clan leaders and Elders, and throughout the Yukon we are, we hope, in the final stages of the difficult negotiations of land claims agreements and self-government agreements, which will empower our communities enormously in a whole range of fields of responsibility, not the least of which is the area of justice.

I'm not a Minister of Justice, I'm not a lawyer. But as Minister of Finance in this territory — one of the other hats I wear — I am extraordinarily sensitive in this time of tight money and tight budgets to the absolutely staggering sums of money we spend on jails, judges, police and probation officers, courts and lawyers to incarcerate a relatively small number of people; our prison populations are disproportionately aboriginal.

I think most people in the Yukon with any wit or imagination would look at that situation and say that there has to be a

better way, there has to be an alternative. And I think that is the work which you are about to begin today. We are tremendously pleased and honoured that you have come here to do it because there is a nice irony about the Yukon as a meeting place. This is not only about the last place in North America to be settled by Europeans, but it may also have been the first home of the very first North Americans ever.

The conference is very timely and I would like, with my colleague, Margaret Joe, the Minister of Justice for the Yukon, to express again our pleasure in your being here. I bid you welcome and good luck.

#### **JUDGE DOUGLAS R. CAMPBELL**

I'm a Provincial Court Judge in British Columbia and I have been one for the last 17 years. During a large part of that time, approximately 10 years, I did mainly Family Law and administrated the Family Courts in the lower mainland and sat, primarily, in the Vancouver Family Court. There is a very large native population in the City of Vancouver. Some 80,000 people in the central core of the city are native Indians.

During the period that I worked in that role, I learned a good deal about the need to be sensitive and to respond to cultural demands. But, frankly, during that period, I really did not understand much of what I know now. I had an opportunity to do some circuit work in northern British Columbia for a number of years and learned more. But it really does not match what I now understand.

I would like to welcome everybody to this meeting. As you know from the program, the theme is Achieving Justice Today and Tomorrow. This conference is sponsored by the Honourable Kim Campbell, Minister of Justice for Canada, and the Honourable Margaret Joe, Minister of Justice for the Yukon. This conference provides a chance to meet a serious obligation and a tremendous opportunity to use our collective energies to improve dramatically the quality of justice delivery to aboriginal people in Canada. The timing of this meeting is very important. We gather here at a moment when a number of progressive movements focus on the need for fundamental change. I'm not referring here to marginal responses to provide for the immediate concerns of how justice is delivered to aboriginal people in a particular location, or by a particular police force, for example, or a particular court. I am talking about a transformation of attitudes and actions which will have an immediate and enduring impact in achieving equal and fair justice for aboriginal people.

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*There now exists a strong public concern that the rights of aboriginal people be recognized and satisfied.*

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The government of this country, with the justice system and each of its components, including the courts, is the property of the citizens of Canada. Within this system, we are accountable and, accordingly, must be honestly responsive to the needs expressed to change fundamentally the

operation of our justice approach and processes.

The prejudice which exists within the system against aboriginal people must be eradicated. Prejudice and institutional power combined form a basic definition of racism and racism cannot be tolerated in Canada wherever it is found. Within this context, the movements which place an obligation upon us and which provide the opportunity for very creative work to be done are these. There now exists a strong public concern that the rights of aboriginal people be recognized and satisfied.

Aboriginal people have made this request since the time of contact; I am referring here to the non-aboriginal communities becoming aware of this requirement.

Secondly, there is proof that the justice system's treatment of aboriginal people exhibits serious systemic discrimination. Each inquiry that has established the proof has recommended progressive change and this acts as a force compelling us to take action.

Thirdly, there is a willingness on the part of the federal, provincial and territorial governments to satisfy the concerns of aboriginal people and to proceed immediately and diligently to promote change.

And lastly — and this may be one of the most critical elements of all — there is the cultivation of a heightened level of awareness within the components of the government of this country to the beliefs and values of aboriginal people, which has

created an empathy that forms the basis of progressive change.

I include the courts as a component of government in this broader sense. And, accordingly, I include in this statement, the police, prosecutors, defense counsel, probation officers, correction officials, judges, court administrators and anyone else who has any role to play in the delivery of justice. Through education gained from contact with aboriginal people, justice system professionals have a new vision: they are now more able to see the world, particularly their own actions, through the eyes of aboriginal people, and this ability has had a powerful positive impact. There is now respect for aboriginal people and their beliefs and values, and that is the single most important ingredient in any formula for achieving justice. This respect contributes to the firm direction being taken within this country to accommodate and understand.

From what I have said, I want you to think about a process which will form a solid foundation for new and creative thoughts. Your ideas, which will be discussed here in the next three or four days, cannot become a reality without a process that will guarantee results.

Much of what I have said has been directed particularly to the non-aboriginal people present, but I have assumed in this the willingness and ability of aboriginal people to foster change, because it is from them that the demand comes. This process of reform will not succeed unless done in partnership. No one wants simply sympathetic or paternalistic attitudes or

actions. The only way to ensure the equality of thoughts and actions needed is to work together to achieve improvement.

This respect is, of course, needed on both sides. Aboriginal people, for whom it is a traditional value, accord respect generously. Those of us who are non-aboriginal can learn a good deal from this.

To feel a respect which will prompt you to new thoughts, you must do two things, critical things. First of all, you must take concrete steps to build personal relationships with one another. The important thing is to put that idea into action.

At this meeting, I ask you to take the opportunity to sit together with a stranger, a person you do not know or work with. Eat with that person. Talk to that person. Socialize with that person. You will find, and it's natural that this should be so, that a relationship will be created in that mere fact. Within this type of relationship, it will be possible for you to learn about the beliefs and values of that other person, which you probably know little about at this moment.

This, of course, is a cross-cultural education process. The information is best absorbed and understood when it comes through this personal contact. More than superficial understandings are needed.

Once you have done this, as a natural result of building these relationships, trust will be created. Trust is the most important factor in the foundation for

action. Once trust exists, action is possible; in this atmosphere of trust, literally anything can be done.

Let me make a brief comment on practicalities, and this is the most important point of what I have to say. Our presence here is a result of failure on the part of our justice system — failure to pay respect, failure to be accommodating and failure to be innovative. Let us not limit the discussion as it has been limited until these last few years, but let us arrive at the action which is desired and required, by the process I have mentioned.

The theme of this gathering suggests a framework for our efforts. "Achieving Justice: Today and Tomorrow" suggests that our hosts wish us to consider what can be done immediately in preparation for what will be done in the future. We want you to express your vision of what our justice system should be in service to aboriginal people, but please do not lose sight of the need for the foundation which will ensure success. A foundation is what you can build today and the action which can be taken will be the result for tomorrow.

**MS. KATHY LOUIS  
CONFERENCE CONVENOR  
SENIOR MEMBER, NATIONAL  
PAROLE BOARD  
BRITISH COLUMBIA**

My name is Kathy Louis. I'm a member of the National Parole Board of the Pacific Region. Originally, I come from the Samson Cree Nation of Alberta, and I



speak the "Y" dialect of the Cree language.

The National Parole Board is in the business of assessing the risk of criminal behaviour and, in doing so, it uses information from the offender, the police, the Crown counsel, family, friends, the community, judges, victims and, when necessary, psychiatric and psychological assessment reports.

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*I have seen their hurts, pain, and anger, and I have heard their cries.*

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As an aboriginal woman working within the National Parole Board for the last 13½ years, I have become fully aware of how the criminal justice system treats those who come into conflict with the law and, in particular, my aboriginal brothers and sisters.

I have seen their hurts, pain, and anger, and I have heard their cries. More importantly, and in spite of it all, I have observed their hopes, aspirations and human spirit to make changes in behaviour through involvement and healing by way of native spirituality and Elder courts and in prisons. Overall, change has come about because of the availability of appropriate institutional programs that reflect native culture and foster mental, physical, emotional and spiritual development for those who make the choice to turn their lives around. In recent years, I have been involved in very positive and creative changes and I see these taking place with aboriginal people and various components of the criminal

justice system — the judges (Judge Campbell mentioned what we've done with the South Island Tribal Council) the police, the Crown counsel, corrections, probation and parole officials.

Trust levels are developing. Attitudes have been challenged and I see hope and encouragement through the South Island Tribal Council. As an aboriginal person involved in a criminal justice system, and working with Tom Sampson and the Elders on this project, I have to earn their trust, respect and faith.

Yes, the challenges are there. Let us all take the risk of being vulnerable, challenged for development and awareness, sensitivity, knowledge and, above all, action-oriented towards change.

#### **JUDGE DOUGLAS R. CAMPBELL**

It's now my great pleasure to introduce our opening speaker, Tom Sampson. First, let me give you some biographical details about Tom. He is a Coast Salish and a member of the Scowlitz band which is located in the West Salish Peninsula on Vancouver Island.

Tom has quite a history as a leader in his own community. He was elected as a band councillor and served eight two-year terms in this capacity and he also served as chief of the band for a number of years. In the mid-1970s, he became the Chairperson of the South Vancouver Island Federation, later called the South Island District Council, which represented 19 bands covering the area from Qualicum south. In 1980, the First Nations of South

Island Tribal Council office was built at Mill Bay, which is presently its home. The South Island Tribal Council has as its member bands 11 bands on the south island.

Tom has been elected and has served as Vice-Chief for British Columbia of the Assembly of First Nations. Presently, he is Chairman of the Assembly of First Nations Constitution Committee and he was recently appointed Chairman of the Tribal Justice Committee. He is a man who speaks three languages: as well as English, he speaks his native tongues, Salishan and Hokominum. Tom is the person I related to most importantly when I gave you my opening remarks.

I got to meet him in my present role as a judicial educator. One fact that I left out of my own curriculum vitae is that for the last three years I have acted as the Director of the Western Judicial Education Centre, which has the responsibility for the education of provincial and territorial court judges in western and northern Canada. Three years ago, when we knew we had to concentrate on improving the delivery of justice to aboriginal people, I was very fortunate to be introduced to Tom. And I have had the real benefit of working with him closely for the last three years.

Through him, my vision has been dramatically improved. What I knew then is not what I know now; I know now a great deal more. It's what I still don't know that bothers me. And in this area, Tom continues to be my teacher. It is through this kind of relationship, which I

am stressing to you, that I have been able to see what I can now.

There are a couple of points he asked me to raise initially as an introduction to his talk. These points relate to concepts which he feels, understands and works with, which are totally integrated into his thinking. These concepts are not easily accomplishable in my past, in my culture.

The first concept is what he refers to in Salish as *kwa kwel tul*. *Kwa kwel tul* means nothing more and nothing less than talking to one another. It does not mean negotiation. It does not mean bargaining. It does not mean presentation of positions. It does not mean sitting down and discussing agendas. It just means talking to one another. Kathy referred to an ongoing project on South Vancouver Island, of which Tom is a primary leader, and in that project, there is an involvement of all the disciplines in the justice system, including judges, prosecutors, defense counsel, corrections officials, and police. One of the critical problems we had initially in starting the process really moving was how it would be possible for a judge to sit down and talk to a prosecutor and a defense counsel and a corrections official when this might be some kind of compromise of judicial independence or, indeed, might be showing some favour.

Frankly, ladies and gentlemen, those ideas are bunk when it comes to this topic. Because in dealing with aboriginal people and their needs, it is not possible to enter that discussion with any predesigned ideas. It was Tom who showed me that path. He said, "You guys are so hung up. You

haven't learned enough yet. You still haven't got the message. Don't come with your preconceived thoughts. Just let it happen."

He said, "When we have a problem, we talk to one another." And we said, "We know that but we can't talk to you about certain things." He replied, "Why not? What is there that you can't talk about?" And when you see the essence of the truth of that statement, you see a light which you can follow. There is no reason why people of good will, with energy and ambition to change things, cannot sit and talk about absolutely anything. Once that hurdle was crossed, this process happened very naturally; you'll hear more about it in the small groups.

The second thing is that the talking leads to something else. And this is the concept of *sesawatal*, which in Salish means helping one another. This is not the process you might hear of where we say, for example, that we would like native people to help us improve what we do. That is not a partnership. What *sesawatal* means is helping one another. In other words, it is an integrated concept of union, of commitment.

Again, the problem raises its head: How is this possible? How can people with defined roles within an existing justice system do this?

Well, I say to you that unless you do, you are not going to do the task at hand, which is to change fundamentally the processes and the attitudes which you hold. *Sesawatal* is a critical place to be. When you are *kwa kwel tul* that is, when you

have talked to one another, then you are *sesawatal*, and that is, you are helping one another. When you have done that, then you can decide what to do.

**CHIEF TOM SAMPSON  
CHAIRMAN, FIRST NATIONS OF  
SOUTH ISLAND TRIBAL COUNCIL  
BRITISH COLUMBIA**

My dear friends and relatives, first of all I want to thank the Elders for allowing us to stand on this land, because we have to be grateful for that. It is not right to stand in someone's territory without giving thanks to those who have been looking after it. Through that appreciation the words we have to say come much easier.

Like everyone else I want to thank you for being here. As Doug has said in his short introduction, I know some things that are important not only to myself but to you.

More importantly, I believe that the real message that has to come out of a gathering like this is the need to understand. Years ago, when I started talking, I addressed the Elders. One of them asked me at the time — this was almost 20 years ago — "Grandson, do you know what you're talking about? Do you know where you came from? Do you know who you belong to? Who are you?" These are the questions that I had to answer first before I could speak to the assembly. And it took me a long time to accept that kind of talk.

First of all, I thought I was being insulted because as a young leader at the time, I thought I was very smart and had all the

answers. But I found out three years later that my family decided to give me a name — an Indian name. And they did it in our own institution.

In other words, I was allowed to be born again, to begin to see where I had to go. So, my great-grandmother, while she was still alive, named me. But I never did get my name officially, because I had to go through our own system.

And that's what I want to talk to you about. My real name is *Tesluk*. *Tesluk* talks about a land and a place where my ancestors came from — my great, great grandparents. It talks about a time when the name knew the land and the land and the name were related to one another. *Tesluk* talks about a time when the law was the law in our way — natural law. It talks about a time when we knew what the trees were about. It talks about a time when we knew what the ocean was about. It talks about a time when we connected everything, one to another. That's what *Tesluk* says.

And I hadn't known that because, prior to that, I was just Tom Sampson born some 55 years ago. I didn't know anything but Tom Sampson. Very short history. But when you talk about your Indian name you're talking about thousands of years of history. Your name talks about the land. Your name talks about your religion. Your name talks about the culture. The name talks about your beginning. This is what we had to learn.

And it's through these institutions of our ancestors, through this continuous dialogue in our own language that we are allowed

to be here today, mostly because of the Elders, our old people — and not only the old people, but many young people now.

This history that I'm trying to convey to you was in place and is still in place and you have to accept that it's there and it's going to stay there. It's not going to move. It's not going to disappear. In fact, it's going to flourish and it's going to influence your life. You have to be aware of that because to deny it is going to cause you more pain.

Why am I so sure of this? Let me tell you why I'm so sure. Aboriginal law is what we say in English, but it's not that way in our language. Aboriginal law, in our language, is called *suwayth*. That means "the teaching." Where does *suwayth* come from? It comes from *suwain* which means "the beginning"; the two words are linked to one another. How do *suwain* and *suwayth* come together? Through spirituality. You could say you can't say one without the other.

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*Spirituality is the foundation of tribal laws. If you can't connect spirituality to law, then you have no law, you have no philosophy, you have nothing.*

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Today, when we talk about justice, we talk about precedents. We say that if it's not written, it isn't law yet. But for us, it's not like that. It's already been written at birth. It's at conception when the law begins, because the mother has a responsibility for the child that has yet to

be born from her. The law starts then. "Don't eat this, don't look at that, don't touch that." That's the law of the woman.

Spirituality is the foundation of tribal laws. If you can't connect spirituality to law, then you have no law, you have no philosophy, you have nothing.

Spirituality is the foundation of all human life, whether you're aboriginal or not. It was there in the beginning. But somehow or other it was set aside because it did not seem important. Spirituality today, whether in the schools or in the various parties you belong to — it's not there any more. You don't come to your gatherings and start your meetings with a prayer. Why do we start our meetings with a prayer? Because we have an obligation to the Creator. Without this commitment to the Creator, how can you carry out the day's business truthfully and honestly with each other? You can't do it.

That's the first principle. The other one is based on conservation and the environment. What is conservation? How do you see it in your life? How does it work in your life? What do you conserve? We look at our spirituality; it tells us what to conserve. Look after one another. How do you do that?

Doug said it a few minutes ago. You do it by talking to one another: *kwa kwel tul*. That's how you do it. You conserve these ideas and these precious things because they come from the Creator. They aren't human-made; they come directly from creation, and you can't change that. The reason I'm so sure about this is that I'm standing here and you're out there. If

you, and then we, as human beings, can't accept that, then we have made a serious mistake about what justice is about.

Conservation. The environment. When you say "conservation and environment" to a bunch of loggers, you're in real trouble. If you talk about conservation in the ocean and in the environment and you're talking to commercial fishermen, you're in real trouble, because they are not worried about conservation. They're not worried about the environment. They only want to make what they can hold in their hands because the minute they open their hands, it's gone. Do you know why it's gone? This is what our Elders say: "Open your hands and lift them up. Give it back to where it came from. It's gone." It's that simple.

The principles of justice, spirituality, conservation, the environment and, finally, the resources, economics — how do we deal with them? How have we, through spirituality, begun to understand that? We say that when we have plenty we must share. You cannot gather it for yourself because if you gather it for yourself, it is against aboriginal law.

How do we prove that? Very easily. Most aboriginal people throughout Canada know what potlatch is about: "Give away". We gather our things together then we give them away. It is a guarantee that you will always have something. With the non-Indian people, it's not like that.

I was reading, a day or so ago, about the richest people in the world and the Queen of England is second, I think, with 30

billion or something like that. What are you going to do with all that? I really don't know. But this is not sharing, this is not law; it's being very possessive about something that doesn't belong to you.

How do we know that it doesn't belong to you? Try to take it with you when you die. You'll find out very quickly that it's not yours; it belongs to the land.

I have given you a very brief explanation about what aboriginal law is about, what it means to me, what it means to our people, what we have to do with one another so that we can begin to understand.

Doug and I were setting up a conference one time and we were talking about what to call it. We were calling it Dispute Resolution Alternatives and all that sort of thing. And I said to Doug, "Do you know how we do it in our language? We just say, helping one another. That's not difficult unless you're afraid of me if I help you." Imagine helping a judge. These are the guys who have been putting us in jail for a long time, and all of a sudden we're going to start helping them. But here we go — let's take this journey together.

The journey you are about to take with me and with us, the aboriginal people, is a very complicated one, to say the least. It's complicated because you've never asked us: "What is your life about? What is it to be an aboriginal, to be Indian or indigenous, whatever is the best word? What does it mean?" It means this. When you agree to go somewhere with one another, you have to agree first of all to sit in the same vehicle. You have to

agree that you're going to trust me behind the wheel, to trust me as I give you direction. You've got to trust me and have faith in where I'm taking you, so when we get there, we're going to get there together, not divided. That's what it means.

There are too many obstacles in front of us today that deny us, keep us separate from one another because there are too many people controlling the resources who cannot allow us to work together — because if we work together, we might solve the problem of being greedy. That's the problem. In any journey you take with anyone these are some of the understandings, some of the details you have to deal with.

When you start out by disliking people, that's also the end result. You don't like white people. You don't like judges. You don't like Indians. But if you continue on that route it doesn't produce anything. It's non-productive.

So, in these cross-cultural workshops, you have to begin by submitting yourself first of all to whatever you agree to. How do you do that? I explained it to you earlier. You do it by talking to the Creator. "Creator, I'm going to sit with this judge today, and I want you to help me." That's how you do it, that's how you submit. Once you make this commitment and submission to what you're going to do, the process becomes easy, this cross-cultural meeting becomes easy.

Walking through the system, walking through Indian ways is going to be different for you white people. You're

going to be unsure of where you're going. Well, we've been unsure for a long time; we've been walking in your path for almost 500 years. And what did we end up with? Three tragic inquiries.

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*We've had one inquiry after another clearly stating ... that what has happened in the past must come to an end.*

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It's time to start walking together in another way, another fashion. What has happened to us in the last 500 years has been terrible. I don't have to dwell on that.

We've had one inquiry after another clearly stating where we must go together, clearly saying that what has happened in the past must come to an end.

It must stop. You can no longer continue to incarcerate Indian people. You can no longer use discrimination, racism, prejudice, hatred, bitterness. It has to stop now. That's what these inquiries have said.

The real question is not what these people said in their reports; the question is with you now. What are you prepared to do? Are you prepared to put aside racism, prejudice, discrimination, hatred? Are you prepared to put it aside and start a new beginning? That's the real question: Are governments prepared to do it?

This morning I was interviewed on CBC and the person who was talking to me

said, "But your system's going to be different. You may do things different from the regular system of law." I said, "Of course, it's going to be different. The reason is not only because I say so, but because you've had three inquiries that have clearly condemned the judiciary. That's why it's going to be different." There are going to be different ways of doing business, different ways of approaching a problem from here on in. The only way that it's not going to change is if you're not prepared to change.

A lot of non-Indians are going to say, "These Indians want a special way." Why not? What's wrong with it? I don't like being in jail. I don't like prejudice and being discriminated against. What's wrong with not having that? I would like to be free to go hunting and fishing. I would like to do many of the things that my ancestors left behind for me to do. That's what I'd like to do. What's wrong with that? Nothing.

So, as we begin this new journey, this new attitude or new approach, you're going to have to change your way.

A lot of people say we can't do that because the law won't let it happen. You're absolutely right. There are many people out there who are going to hang on to this status quo. We will continue to see a lot of our young people held in jails for reasons that are not valid, legitimate, or legal. We will continue to see a high rate of suicide amongst our people because those people want to maintain the status quo. You'll see a lot of broken families because people don't want to let go of the misery that's been created for us. You'll

see plenty of people who want to hang on to it.

But, I always say to people when I have spoken to them, "If you've been listening to me with an open heart, then the message has gotten through." Because it's what is in the heart that comes out of the mouth. What is in the brain sometimes isn't right. It has to come from the heart. And those people who want to hang on to the racism, the prejudice, the hatred, and hold it in their hearts, they are going to have heart attacks. They're going to have real problems with their health, because if they don't let go of this bitterness in their hearts, they're going to get pains in the chest.

The way to change this is to open up and begin to do it in a more peaceful manner and in understanding. When I was talking to Doug earlier, he asked how we can do this. Our Elders say, "Now that you've got them turned around, take them through this walk and teach them what it's about, because they will never understand unless we teach them."

It isn't in your law books. It isn't in your universities. It isn't in your colleges. It is in our community. That's where it is.

So, with that, I'd like to thank you for listening to me for a few minutes. I've been given half an hour, but I'm talking about thousands and thousands of years of history. That's not possible in a short half hour. I could tell you many more things, but I'll leave it at that because I know there are other people who have to speak to you this morning. I hope that what I have said to you is accepted because it

comes from my heart. I only hope you can appreciate that.

If I've offended anyone, especially my non-Indian friends, I didn't mean to do that. But I have to talk about the way it is. I wish I could have told you about some of our real history; I wish I had the time to do that. I wish I could tell you about the children who are at home, the old people who are being put in old people's homes, the families that have broken up, mothers that commit suicide, fathers, children — I wish I had time for that. I don't, but what I do have time for is what I've told you. Open up, my friends, because if you close your heart, you close the doors behind you, and it's you who will be closed in, not me.

#### MS. KATHY LOUIS

Tom, I want to thank you for your enlightening and challenging remarks. You have indeed walked us through what is possible.

To the delegates here: you heard the challenge this morning. You heard what is possible. You heard that, in fact, it's up to us. The heart and mind have to be in harmony and I challenge all of you to be able to work together and create a conference where change could be acted upon.

#### DRAMA PRESENTATION — "KEEPING THE PEACE"



## **JUDGE DOUGLAS R. CAMPBELL**

We now have a panel discussion on strategies for change. I'm going to begin by introducing Mr. Justice Réjean Paul. Judge Paul was educated at the Universities of Ottawa and Montreal and was called to the bar in 1967. Among his many professional activities, he has served as President of the Criminal Law Subsection for Quebec of the Canadian Bar Association for five years. He was a Professor of Criminal Law at the University of Ottawa. He was named to the Law Reform Commission of Canada in 1981 and became its Vice-President in 1982. He was named to the Superior Court of Quebec, District of Montreal, in 1983, and Associate Justice of the Northwest Territories in 1984. He was appointed Chairman of the Cree-Naskapi Commission in 1986, and he now serves in that role.

## **MR. JUSTICE RÉJEAN PAUL CHAIRMAN, CREE-NASKAPI COMMISSION, ONTARIO**

First of all, I'm delighted to participate in this important conference in Whitehorse. I would like to compliment the organizers who have initiated such an event. It will, undoubtedly, help everyone to understand the problems encountered by our aboriginal people in Canada and, more important, help to initiate urgent reforms specifically in the administration of justice.

My great-grandfather, Judge Paul, was born on the Indian reserve of Manawaki, Quebec. Many Pauls live on different

reserves throughout Canada. So I'm not the usual and traditional type of Superior or Supreme Court judge; I have a certain percentage of Indian blood. This probably explains my deep involvement in matters like the ones we are studying this week.

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*[Aboriginal] people will have greater respect for a system which they perceive to be their own.*

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I'm the Chairman of the Cree-Naskapi Commission and I will tell you about the hard-line findings that the commission reached at the end of last year. I think they apply everywhere in the country.

The availability of a court system is a major concern in the aboriginal community. Under the existing system, a travelling provincial court judge visits some of the communities. In some cases, the visit is regular, in others it is not. In cases involving federal and provincial laws and regulations and Cree-Naskapi by-laws and regulations, defense counsel is legally available. The travelling prosecutor has not always been disposed to prosecute local by-laws. This travelling court has, in the Province of Quebec, suspended its travel into some communities since August 22, 1988. The interprovincial court judge refuses, and rightly so, to hear cases in those communities which lack proper court facilities. As a result, persons with summonses who have to appear in court must travel hundreds of miles to do so.

The Cree and the Naskapi have always sought a comprehensive change in the

justice system. They want a system of permanent, local courts based on a traditional native dispute resolution system. Their rationale is that their people will have greater respect for a system which they perceive to be their own.

The issue of sentencing and incarceration was raised also with my commission, especially as it applies to young offenders. At present, communities are not equipped to deal with offenders who are sentenced to serve a period of incarceration in an institution. As a result, such offenders are sent to a non-native community and, according to the chiefs, such local offenders are normally sent down south; and when they get back to the community, they are worse off. What we recommend in our report to Parliament is that the incarceration or the treatment of these offenders be done at the community level.

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*It is wrong to think that native people ... merely want to turn back the clock to simpler times.*

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Last year, the Royal Commission on the Donald Marshall, Jr. prosecution handed down its report. What a masterpiece! The commission had this to say about the unusual treatment of our Indians:

"As aboriginal peoples, natives lived in what we now call Canada thousands of years before the English and the French colonized it. They had their own established ways of living and settling disputes. These were based not on our

adversarial system — confrontation, determination of guilt and then punishment of the offender by the state — but on mediation between the parties, with restitution to the victim and to the community. There was not just one person sitting in judgment either. Community elders and leaders settled disputes and they based their decision on what they believed was best for the whole community. This community-based approach to justice may be different than our method of resolving disputes, but that does not make it any less valid."

It is wrong to think that native people who wish to see native traditions reflected in their justice procedures merely want to turn back the clock to simpler times. Changes in the native and non-native way of life have brought changes in our laws that cannot be ignored. An accommodation can be reached with native traditions, human rights law, and the Charter, so that the end result will be relevant to native people and consistent with the protection provided to all Canadians.

The historical and cultural justification for establishing a native justice system must override the problems that might arise. The commission said they were in favour of creating a community-controlled native criminal court. And the same recommendation came out of the Cawsey report in Alberta and, more recently, the Hamilton Sinclair report had strong recommendations to that effect.

These are very important and interesting avenues. I know that the Quebec Provincial Department of Justice is on the

verge of tabling a complete proposal for reforms of the judicial system which, I hope, will deal with most of the native concerns. We at the Superior Court level will have to act rapidly following that reform.

Speaking for myself, I do sincerely think that if I can sit as a Supreme Court judge of the Northwest Territories in Paulatuk, a remote community of 125 people near Beaufort, as I did in 1986 to hear an attempted murder trial, I can certainly go and sit in northern Québec in communities like Chesapeake and Mistassini where large and well-established communities are entitled, from my point of view, to a first-class justice system in their community.

Amendments will have to be made to various acts, such as the *Jury Act* and the *Judicial Tribunals Act*, but that should not be a problem. Furthermore, the judiciary will not only have to sit in these communities, but also to learn about the history, tradition, culture and traditional way of life of our aboriginal peoples. The judges will have to go and live in the communities, discuss with the leaders, the Elders, and the young generation.

For the past six years, I have spent a lot of time in discussions with the Cree, Naskapi and Algonquins, and I think I made friends in their communities, and at my Ottawa and Montreal offices. I learned, in my opinion, a lot more from them than from any textbooks.

I was there to advance some elements of solution for discussion. First, let the aboriginal people decide what kind of judicial system they want. Let them take

into account their tradition and culture in order to create a judicial system that responds to their needs and expectations. The self-government aboriginal people are so loudly demanding must not be allowed to be turned into a puppet government with all the strings being pulled by either Ottawa or the provinces. The same rules should apply to the administration of justice and the judicial system, from my point of view.

Secondly, the alternate dispute resolution system, which has been in existence for years in the Indian communities, should become the basis of a sound Indian judicial system. It worked well for thousands of years. Why do we try to impose our system, which is not suited to their traditions and lifestyle? As Mr. Justice Sopinka of the Supreme Court of Canada so ably pointed out in a lecture at the Indigenous Bar Association on September 30, 1989, the question now is whether alternate dispute resolution can be useful in the context of aboriginal issues.

Since the conflict between aboriginal and European systems of justice seems to be the most acute in relation to criminal law, I'll start there. There has, in recent years, been some interest in the use of mediation in the field of criminal law. Projects have been set up to attempt, in certain cases, to bring the perpetrators and victims of crime together for the purposes of resolving disputes that might never have escalated to the level of criminal charges if there had been communication in the first place.

The focus in these mediation sessions is less on determining in a microscopic, factual way exactly what happened; than

on discussing the parties' perceptions of the conflict and how the tension and perhaps fear that exists between the parties can be reduced.

Thirdly, only those of us, judges and lawyers, who have a keen interest in aboriginal law should be allowed to help our aboriginal people or brothers and sisters. It's one thing to know what the Supreme Court said in the famous cases of Scaldar, Simon, Seawind, Sparrow and Bear Island but it is quite another thing to sit in the communities and try to help leaders cope with major problems like drug and alcohol abuse. The easy way is to send the offender to jail, but is it the right thing to do?

Just imagine a young Cree from Chesapeake, Quebec, speaking only the Cree language, sitting in his cell at Bordeaux Jail in Montreal with all kinds of white criminals surrounding him. What kind of a future does he have?

Fourth, we have to change the rules of evidence to take into account the oral tradition of our aboriginal peoples. Hearsay, for example, is important in the day-to-day operation of an Indian community. Just because Lord so-and-so decided centuries ago in England that hearsay evidence was inadmissible, that does not mean we should not invent special rules of evidence to adjust to the cultural background of our aboriginal peoples.

Finally, in developing policy initiatives in this area of the administration of justice, it is imperative that it not be done in isolation from other equally important

issues with a significant bearing on a societal justice system. Land claims settlement, self-government and social economic development are issues that are part of the overall formula or agenda for change that must be taken into account.

I have been exposed to a particular example where all of the issues I have described were treated and discussed separately and the consequences have been most discouraging. Between 1973 and 1975, the Cree of northern Quebec and the federal and provincial government negotiated, as you all know, a major land claim settlement. The agreement is an impressive document and the settlement is an impressive achievement. There is a significant cash component. There is a section dealing with the administration of justice stating that the responsibility for the administration of justice would remain with the province, but special measures would be taken to make the justice system more responsive to Cree society. There is even a provision in the agreement that promises Cree self-government. Economic development is also partly addressed. Unfortunately, despite the appearances of these various provisions, they are largely unconnected and there have been significant problems with implementation.

It was not until 1984 that the promise on self-government was delivered, in the form of a *Cree-Naskapi Act* without a justice system component. The court is still the only justice system available. There is massive unemployment and a significant problem with alcohol and drug abuse in these communities.

All of these are factors in the problem with the administration of justice in Cree territory and, I'm sure, elsewhere. I would encourage the participants not to unduly restrict the scope of the discussions you will have because measures taken in isolation from other important factors would only be half-measures.

As a judge, and having served for the past five years as the Chairman of the Cree-Naskapi Commission, I have developed a solid appreciation for the use of negotiation to resolve problems or to settle disputes. It is expected that, at some point or another, representatives of all interested parties will deal with implementing new ideas and concepts on the issues of justice.

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*Good results can flow from a change in the status quo.*

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Aside from the question of resources, the single most common barrier to constructive negotiation is the lack of clarity in articulating the positions held by the parties. It is my view that having clearly articulated positions from the outset, on all sides, will abridge time and distrust. Therefore, I would encourage all parties to be clear as to intention and expectation.

The devastation and harsh reality of the experience of aboriginal people within the justice system clearly establishes the necessity for reforms — and urgent ones. Good results can flow from a change in the status quo. I encourage all of you to consider the need and desire for change

from that perspective, because it can make the task less onerous. And let me tell you this, Indian brothers and sisters: I'm one of you, and one of these days, and the sooner the better, as Martin Luther King said, "we shall overcome."

### **JUDGE DOUGLAS R. CAMPBELL**

One of the scheduled panelists, Yvon Dumont, spokesman of the Métis National Council and President of the Manitoba Métis Federation from Winnipeg, cannot be here this morning. In his stead, I'm happy to introduce Larry Desmeules, President of the Métis Nation of Alberta. He has served for four years in this position and eight years in the communications industry, in radio, T.V. and newspapers in Alberta. He has a perspective on media influence and its impact on the work that we do. He's a social reformer. He has built the largest social housing program in Canada; in fact, he's been responsible for the creation of 750 homes in Alberta. He's on the steering committee of the task force on Indian and Métis justice, together with one of our other panellists, Leroy Littlebear, and comes here with full knowledge of that work.

**MR. LARRY DESMEULES**  
**PRESIDENT, MÉTIS NATION OF**  
**ALBERTA**  
**ALBERTA**

Elders, ladies and gentlemen, I will try to give you a different perspective on the justice system as it sits today. And I will

open with this remark: justice today, as I understand it, is largely determined by how much money you have to spend.

I don't think anyone can disagree with that. But it reminds me of a story of one of my Métis friends who came in from the north. He goes to a bar and has a couple of drafts. He orders these drafts and he's watching the guy pouring it and the guy bringing it over. He says, "You know, I just created two jobs for those guys." A guy comes along, and they get out into the alley. He gets into a fight and two policemen come along and throw him in the back of a car. He's going off to the hoosegow. He says, "I just created two more jobs for these two policemen." And the jailer gets ahold of him and throws him in jail. He says, "I just created a job for this jailer." Next morning, he's in court. There's the prosecutor, there's the lawyer assigned to him, the court clerk, and in comes the judge. He sits down and looks around. He says, "You know, I just created four more jobs." He gets thirty days in jail. Into the clink he goes — he's created another job. In comes the social worker. She says to him, "Why do you drink so much?" He says, "Because I'm tired of employing all these people." And that's what it has become.

We've become a resource for the system, because the system has all kinds of money to lock you up. At the judges' end, the resources never dry up; but at the other end, they're very dry, especially for Métis people, because we get lost in the whole shuffle.

Do you understand the interesting history we have had? We also had our own penal

system, our own community system, because we're of a tribal nature and a contemporary nature. We have tribal people; we also have contemporary people. Up north of Batoche we had our own kind of law and order going, keeping our people going. So, it's nothing new to us.

As a matter of fact, do most of you know that we fought for the basic human rights in this country? We were the first people to do that. If you read Riel's Magna Charta, you'll see we fought for the right for the French to speak French, for the Indian to speak Indian and the Métis to speak Métis. And what happened? Riel got hanged over that.

So, we've been slowing down in that area, fighting for those particular rights, because we've got a bad history in that area. Unfortunately, if you talk about the justice system, the federal government doesn't even recognize Métis people as a people. The only government in Canada that recognizes my people as a people is the Government of Alberta. I heard one of the premiers say last week in Saskatchewan, "We've got to go back to and get a land base for Métis people."

Finally, after all this time, they begin to realize that there are some of us over there and to remember the promises for them. You talk about communities in your justice system. We have large communities in the city of Edmonton. Talk about Calgary, talk about Regina. Let's not lean too much towards the reservation system. It's very important that you cover all Métis problems, all aboriginal problems, not just a select few. The reason is that Indian

Affairs has the money. You can go back and say we've cracked this system over here and then we go to Indian Affairs and bill them.

Let me give you an example on that. Right now, under federal Health and Welfare, all the doors are open, but not for our kids. But they go there because of recovery dollars from Indian Affairs. That's the name of the game between the provinces. That's the political football dilemma we're into, that money game.

Let me give you an example from when we started working on the system three years ago. The President of the I.A.A. had a lot to do with that, Raoul Louis. Raoul was the motivating force in the cause, and it's a good report. Then his counterpart took over, because he had an annual meeting down south where the Blackfoot are, and she's taken over on the steering committee and is moving very well in that area.

One of the first things it says in that report is that there were over 3,000 studies in the last 20 years on aboriginal people in this country and the criminal justice system. Do you realize that? So the real money is in the consulting business. It's a legal business. There were 3,000 studies.

Now we're talking about doing another one. Roy Louis came over and talked to me and he said, "Larry, we've got to do something in this area. Let's attack the system from the top down this time instead of from the side or from the bottom." And he did so. He arranged the meetings. We went up and met in the Premier's fancy little office up there, and there were

a couple of things that we argued him down for.

It had to be Alberta-made and aboriginal people driven — not consultant driven, not lawyer driven. This is very important. Both are needed, but they should be called in, because otherwise they begin to take over the thinking of the task force. It becomes their ideas that are implemented, not aboriginal ideas. In the Cawsey report, there are more than 300 recommendations and these come up from our communities, from reserves, settlements, isolated communities, cities, everything. That's why the report is good. We think it's excellent because it's people driven.

The second thing we insisted upon was that there should be another task force set up to oversee the implementation of the recommendations. Very important. Gordon Greig is the chairman of that committee. Right now there are 30 recommendations, from what I understand, going into place. So that's more successful, in my opinion, than all those other 3,000 studies put together.

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*No more will we accept the principle that our people should suffer at the hands of something that is driven by lawyers and consultants.*

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We were making recommendations from the Kirby report in 1976, the same recommendations that Harold Cardinal and Stan Daniels were making. We are making them today. What does that tell

you? It's an exercise in spending money that's going nowhere. And that shouldn't happen with this particular group here. It should be something that goes somewhere and does something in a positive way, but responds to all aboriginal concerns, not just a select few. Because that's the thing we'll be watching for, that it's in response to our needs too. No more will we accept the principle that our people should suffer at the hands of something that is driven by some lawyers and some consultants.

Let me give you an example from the Cawsey report. Over 90 percent of the kids from 12 to 18 years old who are incarcerated are Métis kids. Over 85 percent of them come out of white foster-care homes. We bought into something when that happened; we bought into the principle that if there are family problems, we should separate that family. That was what we did, we took the kids away from them, repossessed the kids, if you want to call it that. What's happened? We've changed our outlook on this whole thing and what we do now is work on the entire family, regardless of what kind of condition it's in, because it's been beaten so badly in a lot of cases, economically and every other way. We work on the whole family now. We bought into a lot of these principles, and we should never have bought into them.

I can give you another example. In Edmonton, there are 15,000 to 20,000 aboriginal people. There are about 1,500 on the drag, but they set the image for all the rest. Where the hell are all the rest? They're busy working and supporting their families, that's where they are.

That's the one thing that housing taught me. When I was taking applications I began to see the patterns. And I said: Why did we buy into this? Why have we bought into this system? Who's selling it to us? It became quite clear that we were sold on a lot of things we should never have been sold on, and we bought into them. We're not doing it any more.

I would like to say to the Minister of Justice that one of the first things she should start doing is to recognize Métis people as people of Canada. I would say Manitoba and Saskatchewan should do that and other provinces should take up that role. There are other aboriginal people in this country. And they've got to start realizing that it's an urban problem. It is really a severe problem when you go into the urban situation, in Winnipeg, Regina, Saskatchewan, Calgary, and Edmonton; and I would strongly suspect Vancouver has the same problem, though I don't really know.

We have to begin to address ourselves to those situations, too, because there are a lot of people who are starting to have tribal situations right in the city, when you get right down to it. The isolation today is not in the northern areas. The real isolation today for aboriginal people is in major cities.

So, I would say that this is an opportunity for us to get together and begin to look at how the law doesn't work for us, how the law works against us in a lot of cases. Even the federal legislation works against us. Read some of the reports, like the report that came out of Winnipeg last week. Read some of those reports to see



how my people have been discriminated against.

I'll tell you about discrimination, and how we've had to take houses in the city that you wouldn't let your dog live in. Yet we can't run down the slum landlords, because they are the only people who do business with our people; so we have to go along with it. It's incredible what's happening out there. Hopefully, that's beginning to change now. We have task forces in both cities. We see a positive change, that there is an awareness. But we also have momentum in this country right now because the government is becoming internationally embarrassed by what's happening in this country and they're finally starting to address themselves to it. They're consulting with us, and I think this is important because the success of the Cawsey report, in my opinion, lay in the fact that they went to the communities and talked to the people — not *at* the people, *to* the people. They were asked what they were interested in, how they thought it should be, instead of being told what is valuable. "Obey my laws or go to jail" — that was the old alternative.

Things are beginning to change, but they're not changing fast enough. There has to be a lot of political will and resources set aside to deal with just this sort of thing. We've been dealing now for the last couple of months on aboriginal rights. Well, we signed a treaty in something like 1870 with the federal government. It's right in the Canadian Constitution. It's the only treaty in Canada that's in the Canadian Constitution. I think what happened is

that all the guys went home after they had signed it and had a party and forgot to fill up the box; but I guess that's what this negotiation will be about now, starting to fill that box up.

The federal government hasn't lived up to its position with us at all. As a matter of fact, it's done everything to roadblock us, and actively. The first thing the Solicitor General will do is recognize our people as a nation of people because we are a nation of people. No question about that. It has to be true because the Supreme Court of Canada said so. Judges are never wrong, are they? At least they don't perceive themselves that way.

I think my 15 minutes are just about up, but there's a lot of things that I could say to you about the criminal justice system and how it works. I will say that in Alberta we are beginning to move on it. The Alberta government is the only government in Canada that does recognize Métis people as a people and has put a land base out for our people. We're active on this task force to try to begin to change it. We have a lot of hope for what's coming up because they are dealing directly with us. We sit on all the committees, the steering committees and all that, and the reports come to us. We see forward movement and I guess that's what the theme should be in these conferences, forward movement. After all these recommendations are here, if they're not implemented in some way, shape or form, then what was the meeting all about?

On behalf of the Métis people in Canada I would like to say good luck to you people

in reserves in getting your system in place, because it's long overdue as well as needed. It's very much needed and we have communities where we could be doing the same thing too. When we see parallels there, we'll agree upon those things. I'd like to see the government taking a more positive direct position on them.

I wish you all the best of luck, and I can see us all walking together on this one, because in jails everybody's an aboriginal person. There is no difference in jail between different tribes or anything. Everybody is an Indian when in jail and that's the way it's treated. We've got to stop being the economic base for all these guards and all these lawyers because we've become big business. Poverty is big business, you know, and we've got to get over that poverty line.

I can talk about a lot of things that lead up to this lack of opportunity for our people, where civil servants take early retirement and fully indexed pension plans and everything else, and they get the same job back under contract at twice as much money. That's removal of opportunity.

In closing, I would like to wish us all good luck at the conference. Thank you for listening to me.

#### **MS. KATHY LOUIS**

Our next speaker is Joe Otokiak. He is an executive assistant to Rosemarie Kuptana, who could not be here. Over the years, Joe has been very involved in the Inuit community in the region he comes from

and in the issues and concerns that face his people.

#### **MR. JOE OTOKIAK EXECUTIVE ASSISTANT TO THE PRESIDENT INUIT TAPIRISAT OF CANADA, ONTARIO**

Elders, delegates to this conference, Ladies and Gentlemen. On behalf of Rosemarie, I'll give you a short presentation but, before I do, she has asked me to send her apologies. She's very much involved in other important matters and has delegated me to give you this presentation today, which is going to come from the heart more than anything else.

I'll give you some of my thoughts about what we've encountered from the Inuit perspective. There's a lot to say. It's too bad that at a conference like this, we don't have much time to talk to each other. As was mentioned earlier on, there are many important things to discuss, but at a number of conferences I've been to lately that are very important to aboriginal people, it seems that we've not had the time to make our presentations and our thoughts known.

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*Thirty to forty years back, there was a justice system that the Inuit understood, and it worked.*

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The ideal situation for Inuit would be one of a justice system from within. The one we have now is, more or less, a bandage

for the problems we encounter. It's too bad, because I think it puts the justice system in a bad light and it seems that the justice system is not doing what it's supposed to do. I think, more than anything else, it's hurting our own people. It's hardening the hearts of those people when, in some way or other, it's supposed to bring them in line with the status quo as to how people should live day-to-day, how they should react.

Thirty to forty years back, there was a justice system that the Inuit understood, and it worked. The new system we have now doesn't take into consideration the values of those Inuit people, the very important values of respect for one another. My mother always told me as I grew up never to forget this throughout life: "Respect other people." She didn't say it doesn't matter about the colour or anything, she just told me to respect other people. People, to me, means everyone. That's the way I was brought up. That's an important value to me. In a lot of cases, with the justice system we have in place, I think we dwell too much on the negative parts. There's a lot of good in everyone. We have to nurture that. We have to work on that as communities. More and more, we're having the Elders in the communities take part in bringing out ideas as to how we can better deliver services and programs to our people.

At one workshop a lot of organizations were gung-ho about taking on responsibilities of delivery of some of these programs, taking them away from government and whatnot, but the one thing they forgot was that the foundation has to be rebuilt. The policies have to change.

If you take responsibilities and services to aboriginal people from the federal or territorial government but you hang on to those policies, you're going to fail yet. Those have to change.

I left that message with a number of our leaders from the region because I saw so many little organizations trying to get to a certain goal. That goal, ultimately, is always to better the livelihood of those people you represent, socially and economically. In your own little organization, the bottom line is always to find ways of improving the lives of those people you represent. These organizations have to start to work together more and more, in much the same way that we have to work together to make those changes. The government is not going to listen to one little person or one little organization. They just brush it aside — speaking from experience — but once you get a number of people who are influential and you start to make a few waves, then they'll start to listen a bit more.

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*We want to look after ourselves and be self-sufficient.*

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I think we're at a time when government is willing to listen. For years and years, you've had programs and services and whatnot out there to look after us. We're saying we don't want to be looked after by you people. We want to look after ourselves and be self-sufficient. We did that a number of years back; I don't see why we can't do it now. In all aspects of Inuit life, we were responsible, and I don't see why we can't be now. A workshop

like this or a conference like this is a step in the right direction. The only thing is, once we get back home, we have to tell those other people what went on here and some of the directions that we need to work on.

I was reading through the agenda and I ran across this little portion here under Wednesday's presentations, Workshop Six. It says, "There seems to be a consensus developing amongst opinion leaders, aboriginal and non-aboriginal alike, that a separate justice system for aboriginal people will be necessary. The federal Justice Minister, however, has rejected the notion of an entirely separate system."

I think that has to change. That notion has to change and the place to do it is here. I hope that enough is said here to ensure that this notion is changed, because the foundation of our justice system has to change. It has to come from the aboriginal people. It has to come from the Inuit. Inuit have to build the foundation and then it's going to work.

It's working within other programs and services such as economic development opportunities for Inuit. I was involved in building up that foundation a year ago. And it's working well now, a lot better than what government had done up to that time. So, the foundation has to change and I think we're all here to help put bits and pieces of the foundation together. And I hope we can come out of this conference with some thoughts to bring back home so we can carry on building the foundation there.

On behalf of Rosemarie Kuptana, the President of Inuit Tapirisat of Canada, I hope you all will get something out of this conference to ensure that a fairer system is put in place and that the work may start here. Our ultimate goal is to have something there concrete for aboriginal people, made by aboriginal people.

#### **MS. KATHY LOUIS**

Our next speaker is Leroy Littlebear. Leroy is a lawyer. He is from the Blackfoot Nation and speaks his native language. Leroy has a very impressive curriculum vitae and I won't go into all the details this morning. He currently teaches at the University of Lethbridge and was involved in the Indian and Métis People of Alberta Task Force.

I first met Leroy in 1977 when we were doing research. At the time, there had been a sit-in at the Indian Affairs district office in Edmonton, Alberta. Some of you in the audience, I believe, will recall this, because it did make national headlines. Leroy was very much instrumental and involved in that research report.

#### **PROFESSOR LEROY LITTLEBEAR UNIVERSITY OF LETHBRIDGE ALBERTA**

Thank you very much, Kathy. Elders, Ladies and gentlemen, it's always an honour to be invited to come and hear some thoughts and I want you to know that I really appreciate being given that honour.

I want to talk about cross-cultural education. It's something that we're not going to be able to stop. It's something that's going to happen, so that we may think in terms of long-term goals.

However, in working towards those long-term goals, we must be aware that there are people who are presently suffering under the existing system. I think we have to do something about that immediate problem. That immediate problem can be resolved to a very large extent through cross-cultural education. It's something we can do now; it's something everybody can engage in.

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*Don't underestimate the cultural difference.*

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When we talk about cross-cultural education, we may say, "We're all human beings — what's the big difference?" Well, don't underestimate the differences. Don't underestimate the cultural difference. The most important thing when we're talking about cross-cultural education is the particular paradigm, the particular perspective that we're coming from. That difference, that perspective is what we need to understand.

Let me give you just a very brief example. We're all aware that subsection 91(24) of the *British North America Act* speaks of "Indians and lands reserved for Indians." If you simply read those words, what do they really mean? I don't think they mean too much, unless you begin to understand how government interprets those words. The way the government interprets those words is in terms of parliamentary

supremacy and, from that notion, they take those words to mean that they have complete dictatorial power over Indians and lands reserved for Indians.

If you look at it from the native perspective of self-government and self-determination, those same words simply mean a division of power between two governments, that it's the federal as opposed to the provincial government that is going to get to deal with Indians. So, the perspective, the paradigm is very important.

With that, I'd like to move on and try to give you, in a kind of a metaphoric sense, a native paradigm. The last time I talked to some psychologists, I asked them, "Who's the most intelligent being on this earth?" Most of the psychologists said, "Human beings, of course." But there were a couple of psychologists who said, "No, that's not true. The dolphin is smarter than human beings." In other words, there's starting to be some debate about who is the most intelligent being.

To make a long story short, the reason most psychologists would say that human beings are the most intelligent is that they use criteria such as language, because we can communicate and dolphins can't. They just murmur.

Well, let me tell you something that I don't know if most social scientists would agree with: Did you know that language, that communication, is really a sign of primitiveness?

If we ask these scientists, they'll tell you, for instance, that the fish has been around

for millions and millions of years. If we take the history of the fish, we know that fish used to speak and used to have language like we do. They used to talk to each other. Through a long process of evolution, trial and error, they found their particular niche in the totality of existence. And that's where we see them today. In that process of narrowing down to where they are today, the need for language starts to disappear. Why?

Because every fish knows what it is to be a fish. Therefore, they don't have to talk to the next guy, let them know who they are. In other words, fish don't have identity problems like we do. And those murmurs that the scientists are getting excited about, saying, "Hey, there's a primitive communication system between these fish," really are the last remnants of the language they used to speak. So, you can see how far off those scientists are.

Take that perspective and apply it to human beings. We all brag about being able to communicate. What does that say about us? That we're still very primitive, that we still need to identify each other, whereas those little murmurs between those fish are the slight differences that are required so the fish don't think they're seeing themselves in the mirror.

But human beings need that distinction, and because my experience is different from Joe's, from Larry's, from Rejean's, I get excited about telling them what happened to me. They do the same thing. So, language really is a sign of primitiveness. And because fish have narrowed down and found a place for themselves in the totality of existence, we

can say that, compared to human beings, fish are specialized and human beings are still very much jacks-of-all-trades and masters of none — generalists.

So the seeming domination by human beings of the earth, of other animals, is really the result of the fact that we are generalists. The fish has become so specialized, that I could never beat him in his environment. But if you change the environment for him, I'll beat him.

In other words, I could never beat the fish in a swimming contest. But if you threw the fish out on the beach and you threw me into the water, I bet you I'd last longer than the fish out on the beach; I'd last longer in the water. Why? Because I'm a generalist. I can climb trees a little bit, nowhere near as well as an orangutan. I can run a little bit, nowhere near as fast as a deer can. But my differential experience, my generalist background, allows me to respond to new environmental changes that occur.

If you take that notion, that idea of specialist and generalist, and apply it to European, western society and to aboriginal people, it doesn't take much to find out who is the specialist and who is the generalist, who has been making all of the accommodations and who hasn't. And this specialization results in instances such as we encountered during our task force work. We went to one community in northern Alberta where there was this one old lady, probably about 60 years old, who had been processed through the RCMP holding cells in this one town 897 times. Think about that: 897 times. Of course,

each case didn't result in a court appearance. Sometimes the police picked her up during cold days and brought her in. Sometimes she showed up at the door herself. Still, 897 times. When we asked why, the police said, "I'm just doing my work." We asked the prosecutor. He said, "That's not my problem. I'm just doing my work." And the judge said, "I'm just doing my work."

In other words, because of the specialties that have developed and been incorporated into the system, you get problems such as this lady had. There was no communication across boundary lines between the different people involved in the system. If there was a generalist approach to the justice system, those kind of occurrences would not take place.

So, it's important to try and appreciate that difference, that particular paradigm, that particular perspective that native people are trying to bring out when we're talking about understanding our way. If we could become a little bit more appreciative of that difference, I guarantee that the problems we have with the justice system would not occur and there wouldn't be calls and loud noises being made by aboriginal people for separate justice systems.

#### **JUDGE DOUGLAS R. CAMPBELL**

I want to thank each of our panelists for their presentations. For the next 15 to 20 minutes, you may take the opportunity to ask questions, make statements, debate topics as you wish with each of our

panelists and our opening speaker. Kathy and I are here to help you.

#### **MR. PETER AKIWENZIE UNION OF ONTARIO INDIANS REPRESENTATIVE ON ONTARIO NATIVE COUNCIL OF JUSTICE ONTARIO**

My name is Peter Akiwenzie and I come from Ontario. I'm curious, from what Tom was saying, about how we're going to try and work together in harmony, to go through an educational process.

They have a booth with literature back there that doesn't emphasize native customary law, yet the general public across Canada is going to be given this type of literature. How are we going to go about trying to convince the policy analysts, through the laws, to integrate the customary law process that needs to be taught to the non-native across Canada?

#### **CHIEF TOM SAMPSON**

That's been a real challenge, that question. What we've done over the past four years has been really interesting.

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*It's mostly word barriers that stop people from doing things.*

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It was 1988, I think, or 1987, where one of the judges actually didn't know how to make a decision regarding one of our children. He wrote me a letter and we talked and, eventually, we sat down and he

agreed to let us hear the case and to make a regular tribal court system. We really didn't call it that, because a lot of words, I think, are word barriers. Instead of opening doors, they create barriers; and "tribal courts" is one of them.

Non-Indians resist that term because the assumption is that we're taking over. So, we'll have a meeting with our Elders and let them decide what to do with the outcome of that. I think it's mostly word barriers that stop people from doing things. When you say "aboriginal justice" somebody says, "Well, is it going to be parallel or separate, or what?" These are hard-line words that the existing institutions don't want to hear. So what do we say to them? Let's talk about this awhile. You call it parallel; I'll say, we'll just have a meeting and decide how to settle the problem. Educating people in that way, I think, is really important. The language used by professionals, the lawyers, judges, Crown prosecutors — you've got to bring them down to the earth and just use ordinary, straight language. There are lots of words I don't understand, legal terms — everyone knows how difficult they are.

When we wrote up and codified our laws, we put it in a way that everybody would understand. When the average person reads it, it has to relate to that individual person, not to the band or the nation or the country. How does it relate to me? And we explain it to the Crown prosecutor or to the judge and, eventually, they agree.

But how to get them to agree is the real question you're asking. How do we educate them? We found, in our system,

that if we use Indian words, our own language — as we did with Doug and the other judges we have worked with in the past — if we use our words and explain what they mean, all of a sudden that barrier is gone. It's not there any more.

And that is the best way to do it. You might as well get down to business and say, "Say it in your language. Say what it means in Indian." Once you've said it, then you have to explain what it means. Detail it if you have to, because you'll never get the people to understand you if you don't explain it properly.

This is what the Elders told me in our meetings and the very question I used in demonstrating this morning when I was talking to the Elders. They got upset with me. They said, "What do you know about your law? Tell us about it. If you're so smart, tell us."

Well, I found out I wasn't all that smart when it came to that and it's the same with the non-Indian people. They're trying to find out and I think we should assist them. Don't let somebody else do it for you. You do it because, this way, you'll give the true meaning to aboriginal justice.

**MR. BERNIE FRANCIS  
UNION OF NOVA SCOTIA INDIANS  
NOVA SCOTIA**

My name is Bernie Francis, from the Union of Nova Scotia Indians, and I'd like to address this question to Mr. Justice Réjean Paul.



First, I'd like to thank you very much for the comments. I think that a lot of the points you made will be very valuable in the attempts that we'll be making to change the judicial system and how it affects native people.

With regard to a particular point you mentioned about the inadmissibility of hearsay evidence, I'd like to say how right you are about the importance of that to the native communities when they make their cases known in the courts of law.

Not too long ago we had what was known as "the moose trial" in Nova Scotia, whereby Micmacs were attempting to establish their right to hunt year-round by way of the 1752 Treaty and the 1763 Royal Proclamation. And, of course, when we brought in our Elders, a lot of it would have been hearsay evidence, if it had been admissible. Of course, it wasn't admissible.

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*Two historians were talking about history; and we wondered, since Elders were not allowed to bring in hearsay evidence, just what the historians were bringing in. Wasn't that hearsay evidence?*

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It just so happens that there is a verb form in the Micmac language which is interpreted by linguists as "the reported past". In other words, there's this tiny little inflectional ending which gives you a past, which may or may not be true, but is labelled the reported past. It's a very common phenomenon in the Micmac language.

At the same time that we were told by this particular judge that hearsay evidence was not admissible and he would stop it each time an Elder would attempt to bring his points across. There were two historians testifying. One historian was attempting to establish that Micmac treaties with the British crown were no longer valid, simply because they were defeated, and another historian was attempting to establish that this definitely wasn't the case at all and that the Micmacs were never defeated. In any event, this is not the way a treaty becomes invalid. But the point was these two historians were talking about history; and we wondered, since Elders were not allowed to bring in hearsay evidence, just what the historians were bringing in. Wasn't that hearsay evidence?

#### **MR. JUSTICE RÉJEAN PAUL**

I agree completely, and this has to change; in fact, it is changing. Some of the recent judgments have allowed hearsay evidence or oral tradition to be accepted by the courts. And I'm trying to promote the idea, at least in the Province of Quebec, that we have to get used to the tradition and the culture of our aboriginal people, as Leroy mentioned. There is nothing more disrespectful than stopping others from giving their testimony, saying what they have to say. Our courts should know better. It's very disrespectful and most of our judges do not know that.

When Elders are testifying before the court, they should be allowed to go in and say what they have to say without being stopped by so-called objections by one of the attorneys. We have to change all the

rules of evidence, from my point of view, because most of them are judge-made law from another century — or even from this century, in Canada — that do not reflect the Canadian reality at all. It has to be changed.

We have spent a lot of money over the past 20 years with the Law Reform Commission, which has performed a tremendous amount of work in order to promote a new *Criminal Code*, for example, and new rules of evidence. Unfortunately, that legislation is simply not there and, what is dangerous, more and more you will see judge-made law here and there throughout the country and contradictory judge-made law.

That is highly questionable from a public point of view. We have to be inventive to a certain extent but, nevertheless, I think Parliament has a responsibility to adopt changes in the legislation, and then the court should apply what Parliament has intended.

I do think — and there are honourable members of Parliament here — that Parliament should immediately start working on renewing or revamping the old rules of evidence that are absolutely inconsistent with Indian culture and tradition.

**CHIEF MIKE LEACH  
LILLOOET TRIBAL COUNCIL  
BRITISH COLUMBIA**

I'm Tribal Chief Mike Leach from the community around Lillooet, British Columbia. First of all, I would like to express my thanks to the Elders of the

Yukon for inviting the people here. It's an honour to be here.

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*We're not here to be separate.  
We're here to try to connect with  
one another and share the  
knowledge that we have.*

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It's not a question that I have, it's more of a comment on the events that took place this morning. I would like to thank the conference organizers for starting the conference in a very orderly fashion, that is, by thanking our Creator for bringing everybody together to address a very important subject that is dear to us all as people. And I would like to thank the speakers for their wise words and their wise humour, which I enjoyed very much.

I think that we're not here to be separate. We're here to try to connect with one another and share the knowledge that we have. And to the people here, if you have something to share and you believe that it's going to add to this sacred circle we're trying to develop here, for all of Canada and for all peoples, I would encourage you to participate and not hold back, because it's your knowledge and your experience and your dedication in the areas you have been working in that will really make this conference a success and will help our people — not only native people but all people throughout the earth — to bring together a justice system that concerns us all, whether it be parallel or any other term.

I believe that we're building a new house here, a house that has to be cleaned up and tidied up so that people can live in that house together and share and respect one another, and especially give the recognition that is necessary so people can live comfortably with one another and share the things we have.

And I believe that the sharing process keeps our traditions as native people still intact. I believe that the loss of that sharing is the root of a lot of the problems that we face. So, we can get back to sharing with one another what we have to offer. That starts here and I think that it starts back at home, as well.

I would like to thank Tom especially for his wise words. We talked last night and he got the point across. I believe that the legal system that exists today is one of the mind and the physical self. In other words, people are operating only in those two areas. And what Tom has talked about is putting the heart and the spirituality back into this system.

So, there you have your four components: the mind, the body, the emotional part of people, which is the heart, and the spirituality. You must bring all of those together within any system that you're talking about, whether it be the environment or the legal system and those things that are all important to the daily lives of all people. Tom has gotten that point across very well, and I certainly appreciate that.

Once again to the Elders: thank you very much for inviting me here. I'll make sure that while I'm in your territory I will

respect the way of life here; I would like to try to learn as much as I can about the people that live in this part of our great land.

**MS. J'NET AUGUST-MARTIN  
PRESIDENT, ABORIGINAL YOUTH  
COUNCIL  
ONTARIO**

My name is J'net August-Martin. I'm with the Aboriginal Youth Council of Canada, and I'm curious to hear what you're all saying up here about changing the justice system. This is new information for me. I'm starting university, and I'm starting to get into the area of social change and trying to find a way to play my part as an aboriginal woman in mainstream society, but still maintain my aboriginal identity. There are students out there right now who are studying law. I've a young friend back home who is also from B.C. and she's been accepted to law school and is going to the University of Ottawa. And I know that she really wants to see some social change, she wants to see some big changes in the justice system. But they're going to go on studying what's already out there. They're going to go on studying what other lawyers have studied. How might young aboriginal students take the initiative to try and make some changes in their own way? What kind of support structure is available, or what kind of support structures might we be able to create for young people who choose to study and make changes in the justice system right from the academic level?

### **CHIEF TOM SAMPSON**

What we've been doing in our area and what we continue to advocate is that, in terms of cross-cultural work, this is all fine. We really appreciate being able to communicate with judges, lawyers, prosecutors and so forth, but what is needed now, in order to come to a better understanding, is the recognition of aboriginal institutions.

In other words, it's our responsibility, yours and mine, if there's going to be a real change in this country, to re-institute the old institutions. I use the word "old" because I can't say it in English. I don't know how to use any other word there. But we have to build these institutions based on the information that we have received from our ancestors, including the Elders, and let these institutions train and teach not only our own people, but judges, lawyers and the whole justice community, because that's the work that has to be done now.

Cross-cultural workshops are fine. They're good to help the day-to-day problems we're having with the system, but if we're going to do anything in this country, it has to involve the recognition of those institutions so that future generations will have an opportunity to reflect on the history of this land as we know it, as well as the culture of this land. Because this land has a culture, its own culture. It's not called Canada — it's something else. And that's what these institutions will make very clear.

I agree that we have to begin to assist ourselves and the Government of Canada

and the provinces in coming to a better understanding, and that's one way of doing it. I hope we will begin to understand in this meeting that we should move now towards educating everybody all at the same time, but it has to include recognition of those institutions to better assist not just British Columbia and Alberta but the whole country.

### **PROFESSOR LEROY LITTLEBEAR**

You bring up a very important point and I think it's something that nobody has really addressed. At the University of Lethbridge, for example, and I know this to be true elsewhere, there are increasing numbers of complaints on the part of the faculty that students coming into the university don't know how to read and write. Their reading and writing skills are deteriorating all the time. The university is wondering how to deal with this, so they ask, "What should we do about it?" Usually they don't want to do anything about it. They say it's the responsibility of the public schools. But the students come back and say, "Well, what kind of teachers do you turn out?" We can look at this problem that you're referring to from the same angle. In other words, law schools are turning out these products. They're the ones that are turning out the lawyers who later become prosecutors and judges, and in all these studies, all these inquiries that have taken place, including ours in Alberta, nobody has said anything about the law schools.

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*Know your roots. Learn your language, if you don't know it. Take what you learned from the Elders and share it with your non-aboriginal brothers and sisters.*

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**MS. KATHY LOUIS**

I will just add a short comment on that. I would suggest that you make sure you know your history. Know your roots. Learn your language, if you don't know it. Take what you learned from the Elders and share it with your non-aboriginal brothers and sisters.

**GRAND CHIEF MIKE MITCHELL  
MOHAWK COUNCIL OF  
AKWESASNE  
ONTARIO**

My English name is Mike Mitchell. I'm the Grand Chief of the Mohawk Council of Akwesasne. I really got inspired to say a few words by that young lady who asked "What can we do?", because her generation is going to make some very important decisions.

I disagree with the idea of aboriginal lawyers, especially Indian aboriginal lawyers or law schools, because our salvation doesn't lie in that kind of system which we're trying to come out of.

I see a judge up there saying, "We must respect your culture." And I'm sitting over there saying, "What's left of my

culture?" You must be aware that at the residential schools and at the churches we have very little left of our culture, of our language, of our spiritual ways. Our line of defence and our survival in the next generation is to turn that around. It's not in a law. It's surviving, protecting, nurturing what we have of our culture. It's trying to reach out and work with our Elders. It's trying to find pride in our own spiritual way, our cultural way, in our land.

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*Our laws are built into our culture. Traditional law and spiritual law are interwoven.*

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Where I come from, there are very few traditional people, but when they are conducting a meeting, or gathering, or ceremony, every day they offer words of greeting. It starts from Mother Earth. They give up thanksgiving and an acknowledgment to the land, to the water, to the trees, to the air, to the birdlife, to the plants, to the four winds, to the thunders, to the rain, to the stars, to the moon, to the sun, to the heavens, to the great Creator.

Our laws are built into our culture. Traditional law and spiritual law are interwoven because of our tie-in to nature. Not long ago, our people were one with Mother Earth and we lived and that was our substance. It was a certain mentality that we had, the way we looked at life and acknowledged life and one another, living as one in comfort with nature. The four-legged, the wind, or ourselves — there was respect. We didn't have to talk about

environmentalists or conservationists or law. We lived it. And now we see a society that is killing itself; it's killing the land and it's killing its people, and it's not worried about the next seven generations.

You young people now hold a key to the survival, because if you lose what our people have, not only are we as aboriginal people going to lose, but I think everyone is going to lose. It's too bad. Before the Second World War, two-thirds of the world's medicine was contributed by Native American people. That was our gift to society. We shared that. And there were so many other things that our people gave to the world. So now it is a fight for survival, and the white man has taken almost everything away. And finally he says, "We must respect your culture. We must learn to respect your law." It is coming almost too late.

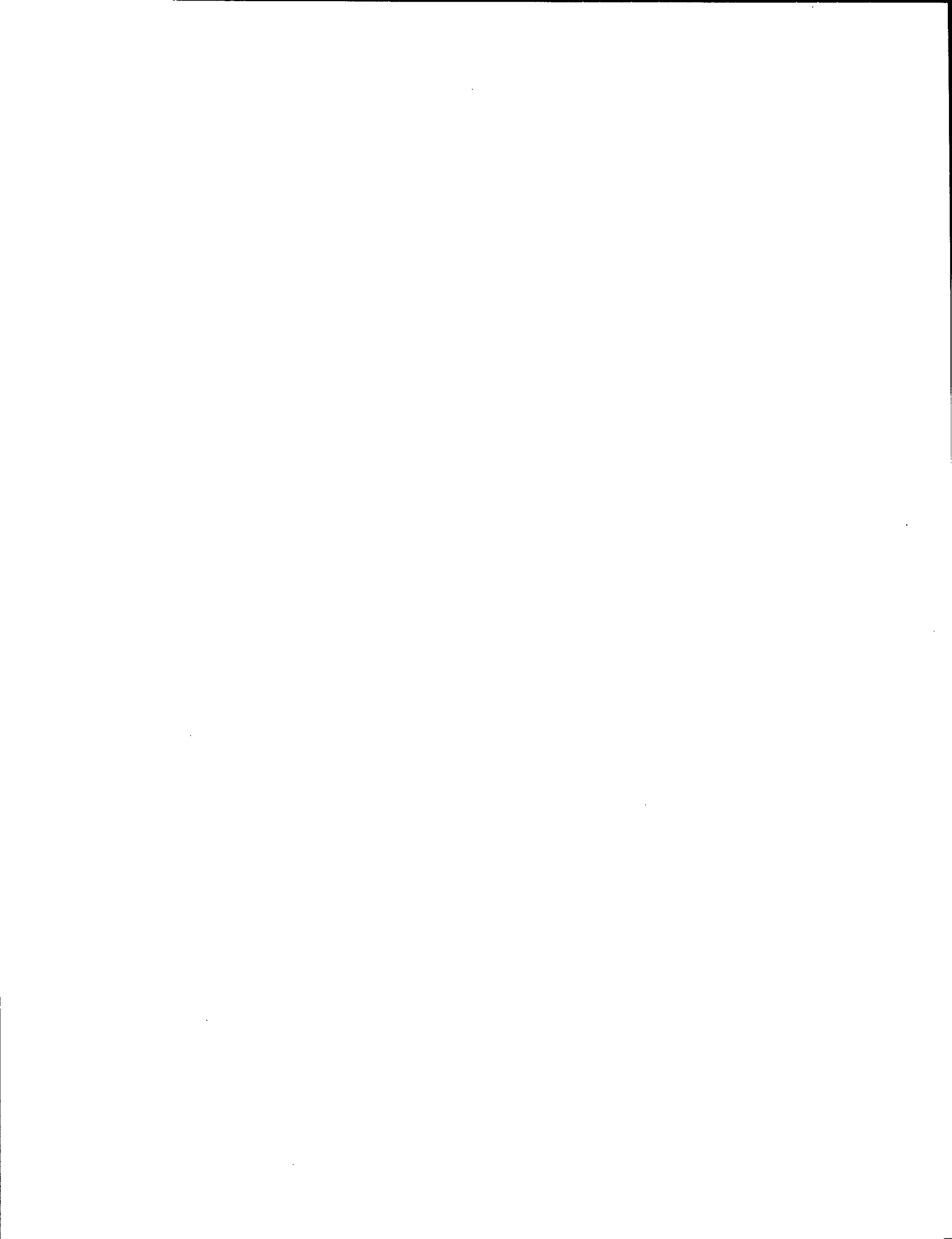
My message, basically, is to all you people who are from the government who are non-aboriginal people. These are the things you must take home and you must learn, because when you gave us your residential schools and churches, and when we learned another way of life, we left something behind that is a part of us like an arm or a leg. We don't have it with us any more. We don't have anything left to give to our children.

Some are fortunate in this area. They can live off the land. They might even have their language.

My message to you is that this is why we are here this week, to learn from one another. That play I saw a while ago

illustrates for every small community how they can keep their culture, their spiritual way together. What you people have been taking away from us for the last hundred years is our dignity and our pride. Give it back to us. When we have our traditional law, our culture, our language, then we can rebuild our nation. You don't understand. We're talking about a different way. Then, in the next hundred years, we can give back and share with you knowledge of medicine, respect for the land, a philosophy of how to relate to one another. We can speak on behalf of all those other animals. That's what the Creator intended us to do.

There is an education process down here and often it's not written in words, in laws. I hope and look forward to a good week, but let's understand each other. I carry with me — and I try to control it — a certain amount of resentment for what our people are losing, and I try to tell the next generation, the secret is there, be aware of it.



**THURSDAY**

**SEPTEMBER 5, 1991**



## JUDGE DOUGLAS R. CAMPBELL

I would like to make a slight alteration in the program. When we adjourned yesterday there was energy in the room to talk about some important recent events, and the most important is obviously the Manitoba Inquiry.

When the conference was organized, as you can see from the program, there wasn't a highlight placed on that particular initiative, because at that stage the document had not been tabled. Of course, we do have one important small group session dealing with the Alberta Inquiry.

But I think it is necessary now for us to take a pause to consider what that very important document says. I am sure all of you know the basic outline of the inquiry's recommendations because we are all intricately involved with this issue. On that assumption, I think we have a good opportunity here to discuss its important elements. This question of discussion is important, because all of us in this room have an interest which reflects that of those we represent, whether we be native leaders or government leaders. Indeed, the judges have a view to represent too, because judges are concerned with equal and fair treatment. So, everyone here has a view.

What I want you to do is put yourself in the frame of mind we talked about yesterday. You should use your view to your advantage. The view shouldn't be something which impedes you. The view should be something which aids you, focuses your attention; you can use it as a balance point. In other words, your ideas,

the things you know, the policies you have been asked to administer, can be used as balance points for the new discussion, because the new discussion must occur.

The period we are in is a period of radical change and things are overtaking us as we sit here. Consequently, to keep alive to this and to move with it, we have to actually make this attempt. It's difficult for some of us, because what we have and what we believe is what we came here with, and it is a difficult thing to be asked to transform your thoughts. But I am asking you to put yourself in that frame of mind.

Now, the leadership for being in that frame of mind comes from what we learned yesterday. What we learned yesterday is this concept of *kwa kwel tul*. Tom spoke about this and I have learned from him what it means.

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*We will respect each other's opinions, but we should also respect each other's opportunity to question them.*

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It is possible to sit and talk about anything without any positions being taken, without it being considered in any way a compromise of views held. The views we hold are opinions and the opinions we hold must be respected. We will respect each other's opinions, but we should also respect each other's opportunity to question them.

To start this off, I think we should pick up where we left off yesterday. An important

last speaker was Mike Mitchell, who raised some of these issues. I would like to call on him now to remind us of some of the thoughts he expressed, focussing on the Manitoba Inquiry.

There may be others of you who would like to speak, and you will get the chance to do so; otherwise just listen, hear points of view and weigh them against your own.

Kathy asks me to re-emphasize — and it's an important protocol point — that Mike is the Grand Chief and he speaks on behalf of a nation.

#### **GRAND CHIEF MIKE MITCHELL**

We had a workshop here last night, and we were really going, we were talking about self-government, but my head kept snapping and I finally admitted to everyone that I was really tired. Nobody seemed to want to stop, so they just kept going. I don't know how they made out, but we had a very interested group.

I got into my hotel room, and just by force of habit I flicked on the TV to catch the news. But there was a special last night on *The Journal* on self-government and a few seconds later I wasn't sleepy anymore. I just sat at the edge of the bed and watched the thing. The special was about the Navaho Nation.

Some of you may have seen it. It is a very impressive documentary and it really felt good to have CBC go down there and look at their situation and draw a parallel, a possibility of what may happen in Canada.

The Navaho Nation is the largest Indian nation in the United States. But that wasn't the focus or the purpose in their drive for self-determination in self-government; it wasn't the oil or coal, although they generated revenue and through a bureaucracy and government relations, they began to find some revenue and found a place, and that was their self-determination.

But what had the most important impact and led to self-government for them in seeking self-determination was something that we talked about yesterday. They were traditional people who refused to give up what is very important for them: their cultural heritage.

Self-government was built around that for the Navaho. It was reflected in their courts, it was reflected in their laws, it was reflected in their social programs — and they even took over the hospital and had the owners and the medicine man working alongside of the doctor. It was reflected in their education when they took it over, in the fact that they taught their own language while in the next part of the classroom they were teaching English simultaneously.

Even for a person like myself who can see and who has been preaching from one end of the country to another, this is what's going to make it for First Nations in Canada. I drew such inspiration from it, and you don't have to be a First Nation's citizen to see the message.

All you people who work for government, for the politicians and members of Parliament, can see the social impact on

the Navaho. They told us how the crime rate had gone down, how social problems like what we have just witnessed have gone down, and through the development of their self-government, through the laws they make that are related to their culture, there has been a revival and things have begun to turn around.

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*We are going to learn through trial and error. But ... we will learn from our own mistakes.*

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One important thing we can learn from this is that they are not saying it is a perfect system; and I don't think anybody in Canada, including the Indian leadership, should be telling our people at the community level that whatever we come up with is the perfect system. We are going to learn through trial and error. But it is very important that we all understand that we will learn from our *own* mistakes. And we will get back up and go again and correct things as we go along.

We also need to learn the concept of walking together, as Judge Campbell said this morning and yesterday, which is the program format for this conference.

Back home we are building self-government. I've gone to meetings and it's all related to self-government from the Elders, to education, to law, to justice; and what's emerging out of all the difficulties is a lot of energy, which we're trying to channel.

So, I don't have much time for national conferences. I would go to one and it

would almost be like taking a number because the next one was going to be the same. But at the last meeting of National Chiefs we had in Winnipeg, I began to see that many chiefs are no longer making it to these conferences. We have given up on them.

But we have to start going again, because we're talking a new language now. We have to go to these conferences because our technical people, community people, government people, are going to continue and there is going to be a void and a vacuum. So, you have to encourage your leaders to tell you the frustrations, the successes, which direction they're going in their respective communities.

One of the most important things that was *not* in the program was where we are today. They talk about achieving justice today and tomorrow. But last week there was a very important decision, a result of an inquiry in Manitoba, that has a drastic impact on why we are all here today; and we need to pick up on that.

All First Nations people will know the results of this and find that it is nothing to us. What we witnessed in this play — which each and everyone of you can identify with, whether you're a leader or you're a community person, or you're in charge, or you're a policeman or whatever you are — that is the reality and we want to see it changed.

We know that throughout history, a large majority in the jails and the prisons in this country have been aboriginal people, and we want to change that. We also know that the government's own studies are

really saying that they have to make some modifications.

We have to have a few more conferences; we need to understand. But they are not saying what we want them to say and tomorrow is going to be a very important meeting. We just can't keep going, things have changed.

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*We want a better way of life. We want an honourable way of life. We want to restore the honour and the integrity that our grandfathers had.*

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Manitoba's was not the only inquiry in this country; there have been others but they have all said the same thing. From Meech Lake there has been a series of events that led to the Mohawks' struggle and to others across this country, right up to B.C. The challenge has been picked up by the First Nations, who are saying: We want a better way of life. We want an honourable way of life, we want to restore the honour and the integrity that our grandfathers had.

And maybe we can improve the economy in our communities right away because that, in a large degree, will improve the social problems. But we cannot discuss self-government with Ottawa with the agenda and the documents they put on the table.

I said yesterday that there is a hole in the document, there is a vacuum in there. You, Canada, have put on the table a document, but there is no justice, there is no law. We can discuss anything else, and

when we get to that part, you say provincial law and federal law apply, criminal court applies and that is your answer.

My friends, in self-government negotiations in Canada, you start with law. Our traditions, as aboriginal people, start with law. And law for us means traditional law, it means our relationship with the land and the environment and with each other; that is where all these things start, and then we start talking about self-government.

What we've witnessed so far this week, in the past two days, through the plays and through dialogues, is that all this is missing. People from government have a certain mentality to say that they can only do and only tell you what is written down, they can only uphold and administer what is law.

We have a different history, we have a type of living culture. And as I said yesterday, I'm very much afraid that when you have finally come around and seen that you have to learn to respect our culture, not much of that culture will be left.

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*Law for us means traditional law. It means our relationship with the land and the environment and with each other.*

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Now that the story is over in residential schools and it's out in public, now that the Indian reserve schools have come out and

now we are talking more about self-government, self-control, how much is left? How many young people can speak their language? How many know even the songs of their Elders? But that is where self-government starts from.

Our attitude, how we relate to people, the honour we carry, and the dignity for our own people and others and life around us, that is what we have to put back.

I used to be a director of a cultural centre in Akwesasne called the "North American Indian Travelling College," and we travelled all over Ontario, all over Canada. We would take a young person and an Elder to work together. Many times the young people were in university or college and I wrote to them and asked them to come and work with us, to help us rewrite the history of this country, to help us to share with others the history of our nations, to help us acknowledge one another.

And I said the same to the Elders I invited to come and work with us. So there were spiritual Elders, there were cultural leaders, there were young people building something. And we left a lot of those ideas in different communities where we went. We worked on posters and videos, we rewrote history books.

Right now I can look back and see that it is still going on. But I see one other thing. That travelling college was a part of a national cultural program in Canada, with a five or six million dollar budget. I left that program ten years ago and it still has a five or six million dollar budget, maybe even smaller. I talked to some

people who were involved in Kluskus in B.C. this morning, and it's still the same way. Nothing has been done to rejuvenate that process, to uplift, restore pride and harmony.

I have no high expectations about this conference, that there will be lightning bolts and electricity here and we will wind up at the end of this week with laws that we are going to change and all these people are going to go back to Ottawa and say, "Now we understand." But we need to listen and we need to exchange. And part of that process is really what is happening now.

On the first day, Tom Sampson related to you a small process that he began with his Elders, a judicial process. And if you didn't see *The Journal* last night, you may have listened to his initial message. I have worked my way around the various workshops and talked to people, and what I've been hearing is that people are interested, people are impressed.

They have a judge working with them and they are trying to translate this message and take that further. From the other end of the country we are also trying to do the same thing and we start small. We take a good idea and we start.

But the official position in Ottawa is that we cannot have a parallel or a separate justice system.

In one of my workshops there was a young gentleman from Manitoba, who said, "But we went anyway. We started with our child care and youth programs." That is how you take a good idea and make it into

something. But at some point we are going to have to run into government or legislators whether at the local, regional, or national level. We have to talk about it.

There is a member of Parliament here from Mississauga. He's a Chairman of the Justice Committee and he said, "I'm here to learn. I've got my ears opened and my mind is opened and my heart is open and I'm here to learn from you. Tell me, show me, share with me." That is what we have to do, remove the obstructions, the blindfolds and just begin to talk.

The reason I'm telling you all this is that to me, tomorrow is a very important day. People in Canada who are reading about this conference, this week here in Whitehorse, Yukon, must be saying to themselves that Canada is responding, the government is responding to the inquiries, to the needs of aboriginal people and doing something about it up there in the Yukon.

Those of us who are sitting down here are saying, "No we're not, not really." At the end of the week, what is the Minister going to tell us? That we can't have a separate justice system? That they don't even want to talk about what our ideas are?

Are we sending a double signal here? From what I've been hearing from the organizers, that is not their intent. The policeman, the government people, the law-makers, the aboriginal leaders, the people in the community and all the technicians and everybody in between with a foundation, with our Elders' wisdom —

we're all here this week to say something else.

We're here to put together the kind of will to recognize that something has to happen in Canada with aboriginal people. And that something is so important that it begins with the will itself to recognize that alone, first and foremost.

Those of you people who are here to see may ask about the context. What laws have to be written down? How do we start? Forget about what is written down for now.

When we leave this meeting, put in your minds and your hearts that we recognize that there was a problem in the past, there is a problem today and we want solutions now. We have the will to do it and that is the message that Kim Campbell should receive tomorrow.

Ladies and gentlemen, that is why I am here, that is why each and every aboriginal person is here, to say we recognize these problems, we've known a long time and now we want to participate.

I hope that we can start this kind of dialogue, because some of you really want to go into depth about different inquiries you know about, to a lot of people in government who have to follow certain regulations and laws. Well, let's talk about that, because the law is really what is keeping our people in a state of misery. Later on I'd like to close it off by talking about our law in the future, how we are reaching out, from the far north, to the far east, from all our nations, and how we have this in common: our heritage and

our culture, our relationship to the land. We need to pass that on now to our youth who are in school.

That better tomorrow we are going to create reflects in law, reflects in understanding, reflects in education, reflects in economic development and social behavior. This is self-government, that is what we have been saying to ourselves, it's an understanding.

But, ladies and gentlemen, you have to let my culture survive. Because of the residential schools, because of government laws, because of the last hundred years, you've been taking that culture away from every aboriginal person in Canada, but it's not too late. It is not going to be the whole stack of books in the back there, it's going to be what you and I and everyone else in an exchange can share with one another.

To the organizers, I just want to say that from the program and from what I have seen in the workshops, I know, as an aboriginal leader, that you are interested.

### CHIEF TOM SAMPSON

I want to thank Mike for his presentation this morning. Mike has driven the point home, because that is our way. When you are delivering a message you say what is necessary. You don't have to bleed it to death. And I appreciate that; that's the way it is supposed to be done.

But what is important here today, as we go through this conference, is that we listen to one another, because when you talk to

one another you have to listen. You can't say, "I've heard this guy speak before so I am going to leave the room, I know what his point is now." That is not true.

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*Our laws exist because they are talked about endlessly.*

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In our system of law, we sit for 10, 12, 14 hours a day in the winter months in my territory, and sometimes it is not until the end of the last minute or the last 30 seconds, that the message comes through. This is the way our people are. Your patience, your whole physical being is being tested. When you lift one cheek up and rest on the other and then the other side, you know that you are struggling to learn. Sometimes you can hear your stomach growling and you are wishing the speaker would stop. That is part of discipline, that is part of training.

That's why our laws exist, because they are talked about endlessly. We have seen what the existing Canadian law means to us. I have seen these conferences happen, like today. One leader said years ago, "Thanks for getting off my neck, but now you are standing on my hands." And, really, that is the way it is. It's not quite as painful, but you are still standing on our necks. The message that seems to be coming out is that we are not kicking and screaming any more, we are not being punished as severely as before, so this time we are coming along more peacefully.

I want the government to know that this is unacceptable. I say these things because

the laws, as they are written in this play, are a prime example of the horror and the pain that goes on in our homes, because it's the economics, the education. And all of the things that are together are not separate, they are one and the same.

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*It's not just policing, it's not just education, it's not just justice, it's the whole thing. You can't talk about one thing in isolation.*

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I was saying to my friends from British Columbia, from the government: You have to remember that when you are talking to Indian people you have to see the whole thing. It's not just policing, it's not just education, it's not just justice, it's the whole thing. You can't talk about one thing in isolation. It doesn't work that way with aboriginal people; that's not the way it is.

The play is exactly the way it is. It's all just one. The economics are tied to this play, the education is tied to this play, the standard of living is tied to what you saw. Everything that you saw is tied to that short play. You can't talk about it in isolation, one thing from another.

So, when we talk about existing laws, at least you are not standing on our necks any more, but you are standing on our hands — that is not acceptable. As people, as brothers and sisters, in every way we relate to each other, we have to change that.

I talked to someone who has brought people to the community and made them

realize it's not so bad living on an Indian reservation. These Indians aren't all drunks, they're not all criminals, they're not all rapists and they're not all these things.

That is what is missing in talking to the communities. That's what I was trying to tell you about yesterday, and I hope it becomes real. Don't build any more programs that we can't relate to. Colleges, universities — I am not trying to put them down. They just don't know what's going on in our villages.

You have to come to our homes to find out what is going on. You have to see many of the broken-down families to realize that this is the real world for these Indians. It isn't a nice paragraph in Ottawa saying, "We are now determined to change the ways of the aboriginal people." You read it in Ottawa and when the media talk to you, you say, "We have it written here and this is what we are doing." Come to the reservation and see what has been created there. It's a much different story.

I wanted to say this because Mike riles people sometimes and he riles me too, every so often. But I hope that government officials here, whether they're federal or provincial, begin to realize what this means for the status quo. Let me quote the Minister of Multiculturalism, Gerry Weiner. He said in Yellowknife last summer: "The status quo is dead and no one should try to bring it back to life."

For me, that's an important statement for our government, especially for the Minister of Multiculturalism. He said:



"The status quo is dead and no one should attempt to bring it back to life."

That's a message from the Government of Canada and that's for the provinces. It's dead, don't try to breathe life into it because it's over. And unless you realize that, we can only assure you that we will resist you all the way, because the life you saw here is real and that has to come to an end.

So, this morning, whatever we do and however you talk among the people you represent — the communities, the councils, the tribal councils, the women's and men's organizations — let's see what we can do with what we have in front of us. And I hope that, before tomorrow night comes to an end, we will have made some real constructive changes that will really change the lives of our people.

**JUDGE DOUGLAS R. CAMPBELL**

We have time for a few questions and comments. Please identify yourself and tell us where you are from. Where you are from is an important point; it's not just location, but who you are.

**MR. TONY BELCOURT  
ADVISOR, MÉTIS NATIONAL  
COUNCIL  
ONTARIO**

My name is Tony Belcourt. I come from the Métis community of Lac St. Anne, Alberta.

First of all, I want very much to say thank you to the Elders and to the aboriginal people of the Yukon for hosting this conference and for hosting us all.

I first came to the Yukon 20 years ago at the invitation of Elijah Smith to speak to the Chiefs of the Yukon, because Elijah was worried at that time that the non-status Indians were not having a voice. And he asked me to come here to help organize. At that time I was president of the Native Council of Canada. I have spent 25 years of my life in the struggle for the Métis people and for non-status Indian people and also in support of our status Indian brothers and sisters.

Yesterday we had a workshop called "Achieving Justice for the Métis." And it was a travesty, a continuation of the travesty of justice to the Métis, that happened yesterday. I have been busting inside to tell this assembly, because yesterday there was not one official from the federal or provincial departments of Justice or from any Solicitor General's department present at our workshop.

I admire the words of Tom Sampson and what he has been able to achieve in his community, because he has been able to get people to listen. The Métis have been trying unsuccessfully for decades, centuries, to get people to listen. I really fear that the warnings the Métis have been giving will come about one day soon, unless there are some people who are prepared to listen.

When I talk about the travesty of justice to the Métis, I am not talking about a small family here and a small family there, some

cut-off lands here or there. I am not talking about hundreds of people and I am not talking about thousands of people; I am talking about hundreds of thousands of people who have been dispossessed of their rights and their lands, who are continually ignored by everyone — by governments, by the educational system, and by the media. And it just cannot continue.

I hope that this conference will be a beginning of a change, because the theme here is to listen to one another.

I hope you will bear with me. I want to tell you some things about the Métis. It's not understood or recognized that in 1815, for example, we had a treaty with the settlers at the Red River. That was a good 65 years before the northwest ever became part of Canada and before Canada even existed.

Those who know anything about the Prairies or the Métis know that there were the laws of the Prairies, the Métis laws of the Prairies. These were established so that everyone could survive on the Prairies, the full bloods and the half-breeds, so that they could survive on the only source of food available at that time, which was the buffalo.

After the Métis lost their lands in 1870 in Manitoba because of a series of acts — which amount to constitutional fraud on the part of the Manitoba government and the government of Canada of the day — the Métis moved away from the Red River to seek areas in other places where they could live in peace.

Some of those people moved to Saskatchewan, to a place called St. Laurent in Saskatchewan near Batoche. Gabriel Dumont was one of them, with a number of his relatives and some other people who were at Red River. On December 13 they had an assembly to update the laws of the Prairies. And I just want to read you a couple of things:

"The Chief, with the members of his Council, is elected for one year and during this term of power, the President and the members of the Council are empowered to judge all cases that shall be brought before them. The Chief, by the advice of his Council, can convoke the general assemblies of the public, in order to submit for their decision matters of higher consequence, concerning which they will hesitate to pass orders without knowing the opinion of the majority of the public."

This is just one paragraph of the preamble.

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*The Métis are and have always been an organized nation of people.*

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There are many articles in the laws of St. Laurent. These are the laws of the Métis and, incidentally, these are the laws I was raised by, by my parents, even though I lived hundreds of miles away. We didn't have these written down. My parents knew these laws and they passed them on to me in Lac St. Anne.

Article 1:

"On the first Monday of the month, the President and members of the Council shall be obliged to assemble in the house indicated beforehand by the President in order to judge the cases that may be submitted to their arbitration."

Article 6:

"Any person who shall insult the Council or a member of the Council in public, in exercise of his functions, shall pay a fine of three louis."

Another example of another article:

"Any case, once brought before the Council, can no longer be judged by any arbitration outside the Council."

"Any person who shall defame the character of another person and shall attack his honour, his virtue or his probity, shall be liable to a fine in proportion to the quality and rank of the person attacked or to the degree of the injury caused."

Article 27:

"Any person who shall leave his employer before the expiration of his term agreed upon shall forfeit all right to his wages. And in the same way, any employer dismissing his servant without proper cause shall pay his wages in full."

I am reading you some of these articles to demonstrate to you, to articulate to you, that the Métis are and have always been an organized nation of people.

We have laws, laws that were once well respected. When these laws were in existence in our communities, we did not have the tragedies, the kind of violence that you saw depicted on the stage today. And that's the same for all the rest of the First Nations.

I want all the governments of Canada to understand that when we come to conferences like this we are not talking of making things up, of having to re-invent the wheel. When will people in this country stop to listen to us when we say we know where we are coming from, we know we can handle our own affairs?

We want to be able to control our own law and our own communities. All of us want that desperately because we know we will be able to keep our people out of the jails. We know we will be able to reduce the numbers in child care and in foster care. We want the chance to do that.

We also want some other things. Almost all aboriginal people in this country are in the same boat. We want to set the record straight. Where the Métis are concerned, we want to set the record straight concerning our lands.

In 1869 the Métis people of the Red River numbered nearly 10,000 people. There were only 500 whites there. The Métis people had a provisional government. It was not only recognized by Ottawa, it was recognized by London.

There was a deputation of those people sent to Ottawa to negotiate a treaty, because Riel and his people would not allow the surveyors and settlers to come

out there when Canada intended to take that land over from the Hudson's Bay Company. The government in Britain insisted that Canada negotiate a treaty and the government in Britain oversaw that treaty negotiation taking place.

When the Métis deputies went down to Ottawa, Sir John A. McDonald put them in jail. And it was only an outcry in London that got them out of jail, so that the Métis could then negotiate their treaty.

The treaty they negotiated resulted in the *Manitoba Act*, which was sent to London in 1870 as part of the *British North America Act*. So the *Manitoba Act* is not a simple piece of legislation of the Canada government; the *Manitoba Act* is a piece of the Canadian Constitution.

Article 31 of the *Manitoba Act* provided that 1.4 million acres of land should be set aside for the children of the half-breeds in that small parcel of land which was Manitoba at the time, just around Winnipeg and south to the border. Article 32 provided that all of the land rights of the 10,000 Métis who were sitting there would be recognized.

In the next few years there was a series of 23 different pieces of legislation contrived by the federal government and the Government of Manitoba to dispossess the Métis of all of those lands.

Back in those days, the Manitoba Government passed a law saying that even though it is illegal for any child to sign documents, this law won't apply to the Métis. Do you know what the federal government said? They said, "Oh no, we

had better think about that, we are going to challenge that, because under subsection 91(24), we have the responsibility for them."

But today, will the federal government say anything about their responsibility to the Métis, to legislate for the Métis?

I have taken enough of your time. I simply want to make two very important points here. The Métis are like all other First Nations. We have laws, culture, hopes, aspirations, dreams and lands. We want them respected and recognized too.

And we share with every other aboriginal person in this room, the kinds of struggles that we face day in and day out, and the kind of violence and the abhorrence we want to get rid of. We want the governments to listen.

**MR. SYLVESTER JACK  
FORMER CHIEF, TAKU RIVER  
TLINGIT  
YUKON**

My name is Sylvester. I am the former Chief of the Taku River Tlingits.

I would like to try to make this as brief as possible. I will start with when I went to school. I knew no other language but the Tlingit language when I left to go to a residential school. I was there for two and a half years. I never entered school until I was nine years old.

The government tried very hard to brainwash me out of being an Indian. They had done some bad things to me,

through my upbringing and residential school. In fact, when I came back from school I had been degraded so much for being an Indian that I was ashamed of my mother being an Indian. It is very heartbreaking when I think about it afterwards. I didn't realize what I was doing.

I could make it very lengthy and say all the bad things that had happened to me in school, but I will just touch here and there.

They tried to make me ashamed of the drum music, the very culture that I knew my grandfather was teaching me. I spoke very good Indian language. And today, I am ashamed to say that there is a block up here that they put in and it can't go away. And I can't speak my language, which really hurts me.

I am getting to be an old man and it is still there. I hurt. I want so much to be able to talk to my grandchildren, to teach them that language. These are some of the things that people suffer from; and nobody has listened and heard the Indian people.

To be pulled away from something where you know the lifestyle, trapping, where your grandfather tried to teach you about animals and things like that — it was the only lifestyle you knew and they pulled you away and said your language cannot be used here. These are the things that I went through.

Somebody has to hear us here. Is this as far as it is going to go? I don't want it to stop here. It's the only way that we are ever going to get somewhere.

There are so many things. You look at the non-natives — they have human rights to protect them. What is protecting our first people? We have aboriginal rights here and yet we cannot practice them.

Our laws can come from their aboriginal rights. But when we tell that to the government, they listen with a deaf ear. They become negative about it. We need Indian people to make these laws. We have to start somewhere. The *Charter of Rights and Freedoms* tells you that. Equality — where is the equality? Where is it?

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*Indians have love within their hearts, the same as the non-natives do.*

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We have to make laws in child welfare. I will give you an example. This summer my grandchild is in Vancouver. My daughter has a drinking problem — I will get back to that later, the drinking problem, because I went through a lot in my time. Then the welfare worker comes around and says: "You are an unfit mother, so we are going to take your child away and you are not going to see her for 45 days."

Indians have love within their hearts, the same as the non-natives do. These things hurt us.

And I think I have proven myself, over the years. I have tried to be as honest as I could when I was leading my people — I am no longer chief. I stopped my

drinking, I tried to practise my honesty as much as I could. I didn't drink for 18 years now. And yet, I go to the government and tell them I was a leader of my people for 14 years and I never drank for 18 years and they say, "Oh, that's just another Indian. We will just take the child away."

Haven't we got anything or will anybody listen to us, to what we are trying to say? Where is our sharing? Where is our loving? Instead, we have jealousy and hate. I'm sorry, maybe I'm getting out of line here, when we are talking about making laws. I can't help it, I've got to say it.

I was lost in alcohol for many years. There was so much prejudice against natives that the only time I could be an Indian was when I had four or five beers. Then I could look at the white man and say: "I am just as good as you are because I can drink alcohol and talk at your level."

But finally, after about 17 or 18 years of it, I knew I was talking to an empty space and pretending. It took me a long time. When I did become sober, then the answers started coming to me. And I liked what I heard. Our Elders are very spiritual. They were good teachers.

My grandfather went to school two and a half days and all he knew was "J-A-C". He thought that was his name. He wrote "J-A-C" on anything he had. His name was "Telegraph Jack." That's where I got my teaching from, a very spiritual way.

Let us turn the tables. Now, just supposing the non-natives had the rights we have, those rights would have been recognized a long time ago.

Here we are involved in things like Oka, to try to make them listen, to make the government people listen to Indian people. Are they doing it? These are the kinds of things that we have to go through, to try to make our government listen.

I had my sister go to Oka as well as my daughter. And if any of you have a family here, think about what kind of risk they were taking for the Indian people. I never knew from one day to the next whether I would see my daughter or my baby sister again. Those are the kinds of thing that I had to go through.

I don't blame the non-natives here. It's the government way of being so negative to Indian rights.

**ELIJAH SMITH  
ELDER, COUNCIL FOR YUKON  
INDIANS  
YUKON**

I am Elijah Smith, Council for the Yukon Indians.

I have been listening here for the last couple of days. And first of all, I heard you people talk about the Elders who have sponsored this wonderful meeting. This is the first time I heard it from you. But anyway, I will take this opportunity to welcome each and every one of you to the Yukon.

We have people who worked on it who came from across Canada, but we have done very little of it up here in the Yukon. The laws were made in other parts of the country. Can we be included in that? That's one question.

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*I think that self-government is a word that is fooling everybody.*

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What I would like to see myself is a commission, a group of people, not as big as this, but where we could feel free to talk about our land, our language and what we called "aboriginal rights."

There are a lot of things being said about self-government. I have been asking the same question for the last 12 years. I ask our Indian leaders what they mean by self-government, and I get no answers. I ask the federal government what they mean by self-government. They don't give me an answer.

I think that self-government is a word that is fooling everybody. It is fooling us because we think that we will have a self-government such as we could see among ourselves, and then we take it to the governments and the governments say, "No, this is not what we mean." So, it is thrown out again. Until we get to know what is in that self-government, I think we are losing a lot of time.

We should get this commission going and find out from the government what self-government means, what it is prepared to give us. Are we going to take what they give us? These are the kinds of questions that have to be answered before we start

jumping from one province to another province or territory, making laws for ourselves.

From 1969, since I have been involved with the National Indian Brotherhood, we have had leaders out there who could really talk, lawyers and everything else. They had been trying to push the government into a corner where we could write the *Indian Act* itself.

Have we done it? No, we haven't done it yet. Every time a young fellow steps up and he gets smart, the government tells us he is no good, that man there, don't listen to him. This is not what we mean by writing the *Indian Act*. The government made this *Indian Act*, writing it in Ottawa, and it applied to us all over Canada.

Why can't the Indian people come up together? Let's get united like we did in 1969 in defeating that paper. When Chretien tried to introduce the new *Indian Act* to us, that is the only time I saw the Indian people come across Canada and get united within two hours, to defeat that paper.

And this is what we have to do today. We have to get united, clear across Canada, and write a paper, write our laws in it the way it suits every province and territory across Canada. Only then will we get a good, clear answer. But going at it, picking at it here and there is not going to work. I am sure it is not going to work because I have heard too much of it.

For 24 years now I have been listening to the government making laws. I will tell

you about one incident to show why I have a big beef with law.

A friend of mine had all kinds of money. We staked a piece of ground out here; it's called the "Versluce Estate" now. We staked it in 1925, then we went to get it recorded and the guy behind the desk told us Indians could not stake lands. He said, "You live on the reserve." And there were no reserves in the Yukon.

This is what I have lived with all my life. How many times have they dragged me into the jail, for what? For the liquor they sold me. And they would read the charges the next morning: "Drunken, off the reserve." And there are no reserves in the Yukon.

Laws were made by individuals. You might have a book there, but every person who reads the law book has a different interpretation, so they pass it on to you.

I have great faith in our leaders. When I first saw the Indian leaders get together in 1969, I had great faith in them. We were going someplace, the way we answered that paper of Chretien's.

And I still have faith, but I think we have been approaching it the wrong way. We should have got together ourselves and had something there in place of that law book, so we could say: "Here is the Indian law; now compare it with yours and let's start negotiating." That's what we should have done.

But first of all, let's be sure that all Canadian Indians agree to it. That's what I think we should be doing.

## MS. J'NET AUGUST-MARTIN

My name is J'net August-Martin and I am the President of the Aboriginal Youth Council of Canada. It's a young organization and I know that a lot of people are still learning about it.

When I come up here and hear a lot of questions about changing now and changing the future, the concern I have, being a young person, is how it is going to affect my unborn children. How is it going to affect my grandchildren who aren't here yet?

When I hear what is happening here, I am curious. I can only offer a personal perspective, because I have always lived off-reserve and I was raised in white foster homes. I don't have a connection to my family, other than knowing who my extended family is.

And I am currently living off-reserve. I don't know if I will ever go back home to where my family lived, and my immediate family lives off-reserve. I asked a couple of questions yesterday in workshops regarding off-reserve people and the subject seemed to be evaded; the questions aren't being answered.

When I look at our community holistically, I think that there is so much that has changed. I have heard our Elders speak here and heard what they have said about residential school; a lot of our people have been taken away from their people.



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*We must recognize that our community has extended to those who are living off-reserve.*

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Well, a lot has changed for our people and I think that in coming up to date with ourselves as aboriginal people, we must recognize that our community has extended to those who are living off-reserve.

Another gentleman yesterday mentioned that the most isolated aboriginal people today are those of us living off-reserve. I feel very isolated from my community. I have been speaking with an Elder here and it has been really helpful for me, because I don't get that in Ottawa.

But the point I want to make is this: When we speak today, when we come together today, when we are thinking about now and we are thinking about our future, how does that encompass our brothers and sisters who live off-reserve, our brothers and sisters who may choose or, like me, didn't have a choice and didn't grow up on a reserve?

I hear a concentration of people talking about on-reserve issues and I really appreciate that, because I still have family who live on-reserve. But there are a lot of my brothers and sisters who have been through the justice system, because they have lived off-reserve and they don't have that family support. That's the point I want to make today, because I really felt evaded yesterday when it came to off-reserve issues.

One other point: I find it interesting that when we are in workshops it's as though we are talking to ourselves as aboriginal people. Where is Kim Campbell? Where are the other people who need to be hearing us? It is really important that we hear from one another what we have to say, but how can we get that information and share that information?

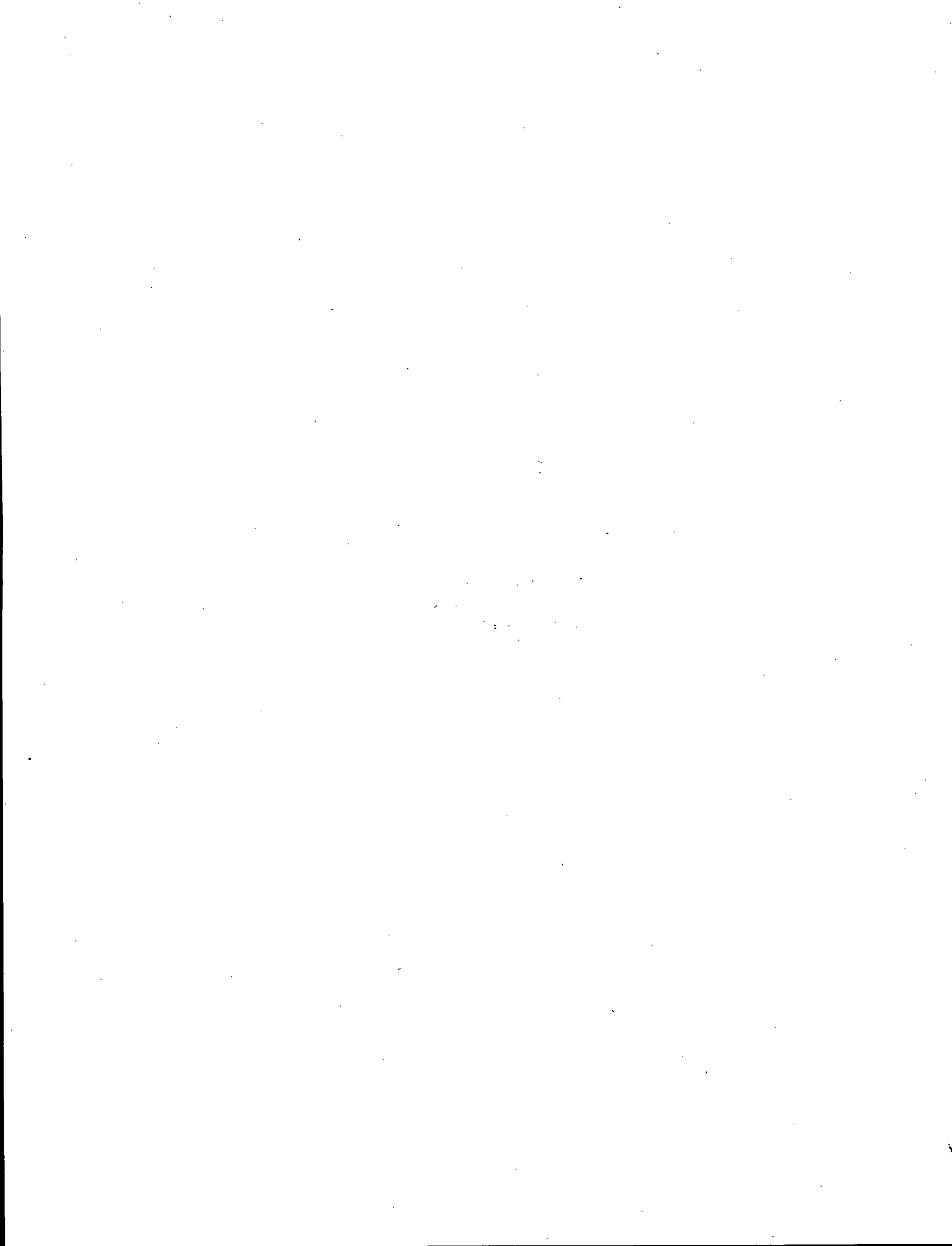
I find it curious that as soon as the workshops and presentations are over and we head for the coffee machines, we have problems with what happened in the workshops. We are making comments about what might have been said or should have been said or what should have been opposed, facts that should have been challenged but weren't.

A lot of this is new information for me, so I am not sure how to challenge some of these thoughts. But there are people out there who have been at this for years and they are really having a problem with some of what is happening at this conference and they aren't voicing it in the workshops.

I realize that maybe you are going to bombard Kim Campbell when she gets here, but it would be wise to get your thoughts together before she gets here.

If you have something to say in a workshop, say it — not only to share your opinion, but to inform people like me, to understand where you are coming from, because I have a lot of questions. We sat up late last night asking one another questions, the same kinds of questions we felt we should have been asking in the workshops.

So, those were the two points: think about our off-reserve brothers and sisters and ask those questions, challenge the thoughts that are out there. As a young woman who is going into the university system, I want to know what needs to be challenged out there, because I am in a position where I can challenge some of the academic thoughts. Inform me, inform one another.



**FRIDAY**

**SEPTEMBER 6, 1991**

*Session commenced with prayer from Chief Frank Malloway, Yakwekwioose Indian Band, British Columbia. Chief David Keenan then introduced the following Elders and aboriginal political leaders: Mike Mitchell, Grand Chief of the Mohawk Council of Akwesasne; Leroy Littlebear, Professor, University of Lethbridge; Rejena Crowchild, President, Indian Association of Alberta; Grand Chief Phil Fontaine, Assembly of Manitoba Chiefs; Dan Smith, President, Native Council of Canada; Tom Sampson, Chairperson, South Island Tribal Council; Lena Johns, Chief, Kwanlin Dun; Judy Gingell, Chairperson, Council for the Yukon Indians; Antonio Jack, Elder, Taku River Tlingits; Edward Jack, Elder, Taku River Tlingits; Silvester Jack, Elder, Taku River Tlingits; Chief Frank Malloway, Yakwekwioose Indian Band; Pearl Keenan, Elder, Teslin Tlingit Council; Matthew Thom, Teslin Tlingit Council; Elijah Smith, Elder, Council for Yukon Indians; and Martha Flaherty, President, Inuit Women's Association.*

*The Hon. Kim Campbell, Minister of Justice, then read the following letter from the Hon. Tom Siddon, Minister of Indian and Northern Affairs.*

"Dear Colleague: Thank you for the kind invitation you extended to my Deputy Minister, Mr. Harry Swain, and me to attend the aboriginal justice conference, "Achieving Justice Today and Tomorrow," that you are co-sponsoring with Margaret Joe, Minister of Justice for the Yukon Territorial Government.

Although Mr. Swain and I will not be able to attend the conference, I am pleased that three of my departmental officials, Mr. Robert Sterling, Ms Elizabeth Hanson and Mr. Robert Christie, will be actively involved in workshops and contribute to the discussions on such significant issues as self-government negotiations and policing on reserves, which are very important to me as Minister responsible for Indian and Northern Affairs.

I am confident that the conference will provide an excellent forum for exchanging information on a wide range of program and policy issues dealing with aboriginal justice. I wholeheartedly support the conference's worthy objective and look forward to receiving a comprehensive report on the discussions.

I would like to close by offering my very best wishes for a productive conference to all the delegates and to you and Ms Joe for making this platform available for the purpose of engaging in an earnest debate on aboriginal justice. Yours sincerely, Tom Siddon."

*The Minister of Justice Canada, then introduced the following representatives of the federal, provincial and territorial governments: the Hon. Michael Ballantyne, Minister of Justice, Northwest Territories; the Hon. Guy Le Blanc, Minister for Aboriginal Affairs, Nova Scotia; the Hon. Joel Matheson, Attorney*

*General for Nova Scotia; the Hon. Marie Dechman, Minister of Community Services, Nova Scotia; and the Hon. Doug Lewis, Solicitor General of Canada.*

*The Hon. Margaret Joe, Minister of Justice, Yukon, then introduced the following: the Hon. Ken Rostad, Attorney General for Alberta; the Hon. Joseph Ghiz, Minister of Justice for Prince Edward Island; Joyce Hayden, Minister for Health and Social Services, Yukon; the Hon. James McCrae, Attorney General for Manitoba; the Hon. R.S. Fowler, Solicitor General for Alberta; the Hon. Howard Hampton, Attorney General for Ontario; Norma Cassey, MLA, Old Crow, Yukon; and Sam Johnson, Speaker of the House, Yukon.*

**CHIEF LENA JOHNS  
KWANLIN DUN FIRST NATION  
YUKON**

Good morning Elders, ladies and gentlemen, and ministers. I am the Chief of the Kwanlin Dun Band and I would like you to know what *Kwanlin* means. *Kwanlin* means "River flowing between two mountains or canyons."

I would like to welcome you to our traditional land. I know we still own our land yet, but for how long I don't know.

I am most honoured to have been asked here to take part in this conference, even if it is only to welcome you. I know this is a great beginning for the justice system. It can only get better.

Healing plays a big part in our lives. Unless we recognize the symptoms we can never get healed or well. Alcohol and drugs are only used for hiding the true feeling or the hurts. In order to get healed we need healing circles and lots of love and understanding.

I know this conference will be the beginning of a good future for our children, for our friends and for ourselves.

With this I leave you and thank you very much for having me here. God bless you all.

**CHIEF TOM SAMPSON**

I want to apologize to the Elders. It is not my way to go ahead of those people who have been designated to talk first, and I do it with great humbleness.

On behalf of myself and my people I'd like to say that, where I come from, we are always thankful and grateful to be able to speak on someone else's land. When I was taught many years ago about going to another land, I was told: "It is another nation that you go to, and you must always say thank you." So, I do that now.

To the ministers and to the government officials who are here this morning and have just joined us, I want to say that it has been a trying three days for me and for a lot of the people who are here, because we have to go before this assembly again, to talk to more people, to explain something we have known for thousands of years.

And to talk about it is to reflect on our history. The play we saw this morning shows where we came from and where we are going and what has happened in between. That is so appropriate, to see something like that, to physically see what has transpired and what we hope to see for the future.

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*We have known each other for almost 500 years. It is time to begin to understand.*

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I can only encourage the ministers, and tell the governments here that we really don't have to study each other any more. We have had 500 years of looking at each other. We have walked sometimes side-by-side with each other. Many times we have been asked to be followers rather than leaders. Many times we have had to behave like foreigners in our own land and that has been very uncomfortable. Many times in our history we have had to humble ourselves in front of people we don't know because we don't understand each other. And many times it appears, because we have not spoken, that we are agreeing, but it was out of respect that we did that.

But now, this is another time. We have known each other for almost 500 years. It is time to begin to understand. If we don't understand each other now, it is not likely we will understand each other in the future. I can almost guarantee you that. That is not a threat; that is reality.

Unless we begin to really and truly understand each other as human beings, as

people sharing a land, we will continue to be on opposite sides; we will continue to have meetings like this — trying to divide one from the other — when that's not what we have been saying.

Right from the beginning, some 500 years ago, we welcomed the people. That was always our way, to say: "Welcome! Welcome to my home; welcome to my land; and here are the rules of the land." Our people knew what those rules were.

Now it's time for the governments of Canada — the governments of the provinces, the territories, Ottawa — it is time to begin this new beginning. We should not be afraid to step forward even though every step we take is going to be a brand new one for you and for me.

There should be no reluctance on anyone's part to walk forward. Someone asked me a few hours ago: "Why do you want a separate system? Why do you want to be different?" Well, we are different. Let's accept that.

We have never said we want to be separate. We have said we want to be understood. That's what we have always said. We don't want to take over the white people's way; nobody ever said that. We don't want to take over the French people's way; we never said that.

If we now talk about a new beginning, and if we are not afraid to walk forward, and if we are truly listening — as we should do — then the road will be difficult. But at least we will be trying.

We must never use words that are going to block us. We must never use words that are going to make it difficult for us to walk together. If we use these words, they are going to stop people from being with each other. Our language provides healing words. My friend Doug Campbell and the people I have worked with in the past few years — we had to educate them in our language.

I don't know a lot of the words they use in legal language. But when you are on my territory, when you are in my home ground, I am going to speak in my language. I hope you accept that. You must accept it, otherwise you deny other human beings from living and moving on with their lives. I don't think anybody in this room wants to deny another.

If it sounds like I am pleading, I am not. I am saying that aboriginal people throughout Canada, throughout this great land, want to work with you, we want to share with you; but don't put barriers in front of us. We haven't got time for that; life is too short. Our children and grandchildren are coming forward and we have to make room for them as well as for your children.

Justice - sometimes we are not sure what that term means. Other people interpret what it means; that's why you have these inquiries. And what have these inquiries done? Well, I think all of us know what the word means. We know what it is saying. I don't think we have to be told time and again.

My great-grandmother told me years ago, and one of my great grand-uncles repeated

it just a few days before I came here to talk to you, they gave me a message. They said, "Go up there; I think we have these people turned around. Now let's walk with these people and see if they are capable of walking. Let's see if they can truly walk with you, Grandson, when you go up there. Let's see how far they are prepared to walk."

They said: "Grandson, if you are so afraid to walk, why did you get up? Don't walk unless you are sure. If you are afraid, sit down. But if you know where you are going, you will do it. If you know, grandson, where you came from, you should be able to walk quite well. In English they say: To know where you come from is to know where you are going." That is what I have been told to do.

The aboriginal people who sit in this room know what that means. The play you saw this morning demonstrated that.

I have something to say to the two ministers: it's strange — I was thinking about this when I was watching them walk up here together — I was thinking, here are two mothers, leading a country and leading a nation. It's just as though we were talking to our mothers again, but this time they are different colours; we have to respect that.

And this is the greatness of this country, Honourable Ministers, that women are mothers; they are the people we are born from. It is my hope that, with the wisdom you have and the power you have, you will use it wisely for our people. You must foster the nation as a growing child



and you must let it grow. You must guide it but, at the same time, never restrict it, because that is to deny growth. I am sure that, as mothers, you wouldn't do that to your own children.

So, look at this country and look at this land as if you are trying to help it grow and let it grow. And I know it is in your heart to do that.

#### **JUDGE DOUGLAS R. CAMPBELL**

I would now like to call on a woman who is well known to us, a tremendous person, Elder Pearl Keenan, to give words from the Elders.

#### **MS. PEARL KEENAN ELDER, TESLIN TLINGIT COUNCIL YUKON**

I want to welcome the ministers and all the delegates from across Canada, welcome to our homeland.

It gives me great pleasure to be at this meeting. I am an Elder now and I used to listen to my Elders talk and they used to go after us: "Sit down and listen, one day you are going to need this."

I was very privileged to grow up when my people were still governing themselves. We had our own Tlingit law. I think we are one of a few peoples in the Yukon who weren't exposed to the white way and white laws until the late forties. I lived within our cultural law. I know it works because I lived it.

I lived it until the end of the forties. Yes, we had the RCMP in our community — they came in 1918 — but I don't think you can find an arrest in the records until the fifties, because it was Tlingit rule, Tlingit law that prevailed.

It's just in the last few years that I have really worried about my people. I look back and I wonder what is happening to my people. I lived in Vancouver for about ten years. I volunteered with Christian outreach work; I worked in all the prisons in the lower mainland. And you know, the majority of the population in the prisons were First Nations people. I kept thinking there was something wrong there; what are we doing? It took years and a lot of thought to really find out what the problem was.

As I told you, I grew up under the Tlingit rule. I still live the Tlingit rule in my house. I brought my children up, and I am bringing my grandchildren up, under Tlingit tradition. There is nothing superstitious in that. The tradition helps the environment; it helps you understand your fellow man.

When a highway came through, they took our rule away. Before that, we didn't have an Indian Department there; everybody was free and everybody was equal. There was no such thing as anybody being different than another person. And my people were really prosperous. We were trappers.

I come from a Scottish father and Tlingit mother. We had a mink ranch. We raised mink for a living and we cut cord wood; and we lived under the Tlingit law and

rule. As I said, there are no records of anybody murdered, drunk or stealing. You could leave your doors open.

Then the Indian Department came in and they took that away from us, that responsibility for one another. They took it away. Then our people thought, "Well, the white people are taking it over and they are the ones that are ruling now," so they sat back. They took our children away and put them in school. We sat back and thought, "Let them do it," and we are still doing that. And that is why the institutions are full of our people.

In my way of thinking, you have to involve us as people. Sure, we have lawyers, we have teachers, you name it, among native people today. They're political, they're MPs, they are everything. That's not enough. We have to get it right at the community level. We have to go back and rule ourselves, our Elders have to rule.

In our community we have five clan leaders or Elders. There is the Crow Clan, the Beaver Clan, the Frog Clan — there are five of them. I belong to the Eagle Clan, I wear my eagle blankets and I make eagle shirts. I have two Tlingit names. They give me roots. I come from this land. This is my ancestors' land and I am very proud of who I am because my parents brought me up that way. They said: "You don't belong to this side and you don't belong to that side because you are not fully white and you are not fully Indian. But hold your head up and walk down the middle, grasp what these people have. You are going to be an asset to your people, don't disgrace yourself."

I am proud that I am part Tlingit and part Scottish. The Lord put me here for a reason.

Under Tlingit rule, you pay for everything you do, be it a death or a break-in and so on. If you break somebody's leg, the law is there. And you don't disgrace your clan members. You toe the mark to your clan leader.

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*The First Nations people belong to Canada. We want to work hand in hand with you.*

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This is what we lost in the fifties. And after just 30 years you can see that we lost our culture. But it is coming back. Our young people know it; they are studying their culture, they are trying to bring it back. We are getting it back, but very slowly. We have to be involved in our lives. We belong; the First Nations people belong to Canada. We want to work hand in hand with you. Give us this chance.

As different people at the workshops have said: talk to one another, understand. This is what we have to do; we have to understand one another. We can't point our fingers.

I have great hopes for this Justice conference. When I was asked to come, I really was happy. We are going to get someplace. We are going to work hand in hand with people in the government.

But the big thing is, you have to let us work with our own people. We will talk with you, we are very obliging people. We won't contradict you. Some of our

people have been standing up for themselves in the last few years, but before that we didn't. We would agree with you, but we didn't believe you. I find myself doing that. I will never hurt anybody's feelings. I may not think what you are saying is right at all. But I won't hurt your feelings. We are tender-hearted people. I will go along with you.

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*We have lost our identity. We don't know who we are.*

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I sit on a native drug board here. Thanks to the Government of Canada, we have money to fight our drug and alcohol problems. We had a study on it, a six-month study. There were six of us native people and two others — a coordinator from Ottawa and a medical services man. These problems were due to our lack of culture. We have lost our identity. We don't know who we are. This is why we drink and use drugs. We have no pride in ourselves.

It always came back to the natives and their identity. We have to involve native people because they are the only ones who will listen to one another. We can communicate. The suicide rate across Canada, the institutions full of our people — these issues really concern the Elders.

I am speaking for most of the Elders across the Yukon; they feel exactly the same way. Our hands are tied; our culture is taken away from us; we can't speak. There is hope. Our clan leaders are taking part in the justice system. But it is not enough; we have to go all the way.

In the Yukon, we have a clan system. I often worry what they are going to do across Canada where they don't have the clan system, they have lost it. It is up to us to put our heads together. How are we going to make native people responsible for their young people?

I truly do have my hopes up for our people. I thank the ministers for coming here, I thank the people who have promoted this workshop; I have really enjoyed it. I just hope this is not the end. I would love to see our culture come back.

I haven't had an education. There was no school in Teslin when I was growing up. The school never came until the end of the forties. But my mother brought us up with a culture. That was law in our house and Dad went along with it.

I kind of held it against my Dad for not giving me an education... I really faced a lot of obstacles in my life. I am not an alcoholic. I like a social drink. I know how to handle it. And it is through my cultural upbringing that I am like that.

I have lost a son in my life; I have lost my brothers and my mother. As they tell you, a Tlingit woman is strong. That's the way our people have to be, strong; and we are.

But we ask you to understand this: include us when you are making the laws. Let us bring our culture back. That's our identity. We can't live without it.

**JUDGE DOUGLAS R. CAMPBELL**

I would like to call now on the most senior leader of the Elders, Elijah Smith.

## ELIJAH SMITH

I was young when I first started to work with the Indian people with no education. Now I am old and we still have not got any response for what we have tried to achieve for our people across Canada.

Now we are gathered here again with new people; big books have been handed out again. When are we going to be heard? We are still trying.

It doesn't take long for Indians to get together. It took us two hours to get together, clean across Canada, to turn down that paper Chretien brought out in 1969, the "White Paper."

And it took another year and a half after that for the Indian people to put out another paper, called the "Red Paper," our answer to the "White Paper," and we got no answer to that.

That is what we have been doing: get a few dollars, spend it on lawyers, write up another paper. This has been a big game in my life. I wish I was able to sit down and write a book about my 50 years with the wrong people, trying to convince them about what we are trying to do.

We are trying to get control, a little control, to uphold our end, a promise to look after this country for our kids and not destroy it. That's all we wanted to do.

We are looking after this ground only while we are walking on it. But this ground is pretty well destroyed — nothing left. All the oil is taken out of it, all the rocks have been taken out and sent to

foreign countries. The Indian people didn't do that. They want to hang on to what we have, what we can call our own in the Yukon while we live on it because our kids have got to have something to do.

I am going to get down to where it really hurts some of you people. What have you got for your kids now after you have destroyed this country? You took all the timber out of it; you took all the fish out of it; now all the rocks. What have you got for the future, for your kids to do? When is that going to stop? Think about it. If I had my way all this would have stopped a long time ago. We take only what we need. We don't dig up the ground, and for that we are called lazy Indians, good-for-nothing Indians.

Like I said, this is going to hurt some of you people, but it has to be said. We have to win you over to our side, to have public input into building this new world that we are going to try to build. You opened immigration to other people who came even before we got ourselves settled. And now they are ruling us. As a result, what have we got? A great big unemployment problem.

To get down to what we are here for, justice: We have young people today who are lawyers. If we could sit down with you people and bring this book together, this law together, then we would all be happy — if we had an input into it.

We have no Métis people here. Why? I was one of the first to see what was going wrong with our people. And I went back to the chiefs and I said to one: "You have a lot of grandsons out there. You have a

lot of grandchildren out there. Do you want them back?" He said, "Yes, we want all our grandchildren back." So, I talked to the government about it, about these people. They were Métis people, chiefs' grandsons and granddaughters. "They want them back," I said. We have got to put them back together.

So, we did away with Bill C-31 by using common sense. Other people across Canada are still struggling with it. Why? Because they never got recognition. The law says you are Métis and that's it. Every time I hear an Indian Affairs official say "Bill C-31," I say, "There is no Bill C-31 in the Yukon." And there isn't.

We got together at Watson Lake. I had Joe Jackel on that trip with me, and the ministers, and we formed a Council for Yukon Indians, just as simple as that.

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*The laws are all right in many ways. The problem lies with the people who are administering them.*

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Now, it could be that if all you judges and lawyers get together with these people who have done a lot of work, you might understand what they mean by, "let's walk together, get together and make that law book together."

The laws are all right in many ways. The problem lies with the people who are administering them. They think that once they put on a uniform and have a billyclub it means they have the right to club a man down with it. No, it doesn't mean that. That kind of authority should never be

there. If you find somebody that is out of order, you can talk them out of being that way. But with the authority the police have, the whole department gets criticized for one man's actions.

Many a man has hatred in his head before he joins the police force. Maybe that's why he joins the police force, to get back at somebody. And now the whole police force suffers for it, the whole department suffers for it.

I have waited a long time to say what I have to say. This opportunity came today, to talk to you people, to you dignitaries. I have tried for 24 years to get up and speak. Maybe you can help me.

#### **JUDGE DOUGLAS R. CAMPBELL**

We have two further speakers who represent all of us, whether we be Métis, Dene, Inuit, Cree, Blackfoot or any other nation in this room. First of all I am going to call on Leroy Littlebear.

#### **PROFESSOR LEROY LITTLEBEAR**

I would like to start off with some real heavy and loaded stuff, then go to some light fare, then come back to the heavy and loaded stuff. It is not very often that I get the opportunity to speak to ministers of justice, solicitors general, even premiers, so I would like to take this opportunity to share some thoughts.

I am not sure that I would want to be in your shoes today. On the other hand, we can look at this whole conference and what I referred to in my earlier talk as "judicial

glasnost." We can take this opportunity to do something about it.

You, as ministers, as people in charge of the Canadian justice system, you represent a system that incarcerates aboriginal people, who make up probably two to three percent of the total population, yet who constitute in some cases, such as the Peace River Provincial Institution in Alberta, probably more than 50 percent of the inmates.

Well, I think we can do something about it. Rather than looking at the negative aspects we can be leaders, we can be pioneers of a new system that is more responsive and less expensive.

Another idea that has been expressed is that the Canadian justice system has forgotten its main goal. What is the goal? What is the idea? What's the fundamental idea behind the Canadian justice system?

We suggest, and it has been suggested at this conference, that we should not forget fundamental justice. Fairness is what the justice system should be all about. Elimination of bad feelings, restoration of harmony in the community, that should be what the justice system is all about.

However, we make it so complicated, we have fragmented the system so badly that we have these situations — for instance in Alberta, where we have an Indian lady who had been processed through RCMP holding cells 897 times. When we asked why, everybody from the police to the prosecutor to the judges to the corrections officers to the jail guards, they all said, "we are just doing our jobs."

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*We are different; don't underestimate the difference.*

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We found in our study that all these agencies, including the police, social and welfare people, psychologists and so on, all those people never communicate with each other. They never sit down together to talk about problems in a holistic sense. During our study, we did bring them all together, and we found out that was the first time they had actually gotten together. So, this fragmented approach is, in fact, one of the major problems that contributes to the very high incarceration rate for aboriginal peoples.

Last but not least, we are different; don't underestimate the difference. We have just finished watching "The *Indian Act*, Back to the Future." Well, I would like to tell you a story to illustrate that difference. One big difference is that we have a different concept of time. And I need to give you a little bit of background.

You know that the Plains Indians are famous with the archaeologists for our buffalo jumps. For one reason or another, buffalo jumps have gained some importance. But that was not the only way we used to hunt buffalo on the plains. In another way, we used to chase buffalo into sloughs and gumbos and get them stuck and come after them. Out on the plains there isn't always a cliff around, you know, to chase them over.

Well, this one Elder from our reserve was closing in on 100 or so. He was being asked by these younger guys how old he

was, and he didn't think it was very important, so he just kept pushing them off. But they were insistent, and they kept on, "How old are you? When were you born?" Eventually the Elder said, "Oh well, they wouldn't understand." So, he asked them, "Do you remember the last time we got the buffalo stuck? I was born the Wednesday before that."

### **JUDGE DOUGLAS R. CAMPBELL**

As our last speaker, Grand Chief Mike Mitchell.

### **GRAND CHIEF MIKE MITCHELL**

Mr. Chairman, people of the Yukon, people of the north, people of the west, we are very glad to be here.

I came all this way because of what you are meeting about. I came because I knew you were going to be here too. But I am here to talk about my native sovereignty, my law — what it means to me. And I am here to share this knowledge and information with you. If there is something that you didn't know about aboriginal justice and law and history, and how we look at things, then I am going to make a small contribution that you can take back with you.

I am from Akwesasne. Over the past two years we have made a lot of news in Canada; a lot of it was the type of news that we do not care to make. We fought over the law outside and inside Akwesasne. And our people are still fighting for aboriginal law — the right to

choose, to take care of our people, of our nation, what will give us strength and pride.

In case you people from the government don't know, half my reservation is in the United States, half in Canada. Of the part in Canada, half is in Quebec and half in Ontario. So, that's five government jurisdictions we have to deal with.

Inside our community, there are three Mohawk governments, one of which I lead. My traditional leaders are my real chiefs. I am the Grand Chief for the Mohawk Council of Akwesasne, elected. Back home I am referred to as the puppet chief, the one that Ottawa controls with strings.

Our people want to cut the strings. And we would like to take the traditional government and put it back in power. You see, at the turn of the century Canada dissolved our traditional government. That government was the salvation of our culture, of our spirituality, of our attachment to the land.

It is the laws that your people gave to us at the turn of the century that we follow now. In the last few years we have tried to modify these laws. In Akwesasne we have accepted what Canada has offered; we put on the table the control of our membership, our elections, and our education, to the extent that we took justice and molded it to a model based on the philosophy of the traditional confederacy government.

So, when I started to inquire about self-government negotiations in Canada, they

said, "We can talk to you". But what we talked about was something that I was not familiar with.

The representative from Indian Affairs said we can't talk about sovereignty, we can talk only about the process of self-government within the context of the Canadian constitution. What they are really talking about is of a municipal nature. Within that, we have to follow the law that we are familiar with.

I took it home and we started a process of identification, of education, of interaction with our people. And to my amazement, the Elders said, "What Ottawa has given to you has a hole in it. And that hole is justice."

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*For aboriginal people in Canada to feel as if they are a part of this country, they have to be recognized.*

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Aboriginal people have natural law; they have spiritual law. We had these laws given to us. And when the white man came here, we made agreements and the King made proclamations. Today we call them "aboriginal rights," or "treaties". That was how aboriginal people got their rights.

When Mohawks in Akwesasne look this way, we see Canada; if we look that way, we see the United States. So, we are familiar with what goes on on both sides. This past summer, I invited both sides to an international justice conference in Akwesasne. At the height of all our

troubles I wanted to talk about law and order. New York State and Washington came and Ottawa came and Quebec and Ontario came. As you are doing today, I said, "I want you to listen and then later on I want you to participate. But the important thing is you have to hear us." I want you to hear me today.

For aboriginal people in Canada to feel as if they are a part of this country, they have to be recognized. They have a distinct place in this country; they are a distinct people with inherent rights. In the process of establishing self-government, you have to give us the ability to legislate our laws and take care of our people, and that includes law and justice.

We don't have that in Canada. This was a proclamation President Bush made on June 14, 1991, three months ago:

"This government-to-government relationship is the result of a sovereign and independent tribal government being incorporated into the fabric of our nation, of Indian tribes becoming what our courts have come to refer to as quasi-sovereign domestic dependent nations. Over the years the relationship has flourished, grown, and evolved into a vibrant partnership in which over 500 tribal governments stand shoulder to shoulder with other governmental units that form our Republic."

But in Canada, if First Nations people say "sovereignty", everybody backs away. You can't say that. Quebec is saying that



and you don't want to hear it. They want to separate.

We can talk about sovereignty because the word should not mean what it means to the French or to anybody else. In aboriginal thought, sovereignty means we are tied together. Aboriginal people can't go home to some other country because this is our country. We say, "sovereign generations beyond." I am the product of that sovereign generation.

I am also what we consider a diplomat. I am regarded as a non-violent leader. I try to find a middle ground because, in our traditional teachings, reasoning — the use of a good mind — is better than picking up a weapon. Our law forbids us to cause warfare, except as a last resort. Our traditional leaders have always told us there always is a good mind. I wouldn't want to throw those teachings aside, just to follow a pure elective system, an *Indian Act* system.

I wish that Canada, as a government, would find a way to take the beautiful things that aboriginal people gave to you, and shared with you, and that you — as a government — would recognize what we have given.

I want to give you, as an example, another resolution passed by Congress. You know, the term "We, the People," is not a United States republic term. It came from my people. I belong to the Iroquois Confederacy: Mohawks, Oneida, Cayuga, Onondaga, Seneca, Tuscarora — Six Nations that formed a union. A peacemaker brought peace, unity, a thousand years ago. Our people were

living like this, in unity, at peace with one another. That's where this saying came from.

Congress passed this Resolution:

"To acknowledge the contribution of the Iroquois Confederacy of Nations to the development of the United States Constitution and to reaffirm the continuing government-to-government relationship between Indian tribes and the United States, established in the Constitution.

Whereas the original framers of the Constitution, including most notably George Washington and Benjamin Franklin, are known to have greatly admired the concepts, principles and governmental practices of the Six Nations of the Iroquois Confederacy; and

whereas the confederation of the original Thirteen Colonies into one republic was explicitly modeled upon the Iroquois Confederacy, as were many of the democratic principles which were incorporated into the Constitution itself; and

whereas, since the formation of the United States, the Congress has recognized a sovereign status of Indian tribes, and has, through the exercise of powers reserved to the Federal Government in the Commerce Clause of the Constitution, dealt with Indian tribes on a government-to-government basis and has, through

the treaty clause, entered into 370 treaties with Indian tribal nations; and;

whereas in the first treaty entered into with an Indian nation, the treaty with the Delaware Indians, and thereafter in every Indian treaty until the cessation of treaty-making in 1871, the Congress has assumed a trust, responsibility and obligation to their members to exercise the utmost good faith in dealing with Indians, provided for in accordance with 1787; and

whereas Congress has consistently reaffirmed these fundamental policies over the past 200 years, through legislation specifically designed to honour this special relationship; and

whereas the judicial system of the United States has consistently recognized and reaffirmed this special relationship:

THEREFORE BE IT  
RESOLVED:

The Congress, on the occasion of the two hundredth anniversary of the signing of the United States Constitution, acknowledges the historical debt which the Republic of the United States owes to the Iroquois Confederacy and other Indian nations for their demonstration of enlightened, democratic principles of government and their example of a

free association of independent Indian nations.

Congress also hereby reaffirms the constitutionally recognized government-to-government relationship with Indian tribes which has historically been the corner-stone of this nation's official Indian policy.

In Ontario, Indian chiefs and leaders and Elders gathered in Thunder Bay last month. We signed a Statement of Political Relationship which I would like to quote.

"Whereas the First Nations represented by the Chiefs-in-Assembly (hereinafter "The First Nations") exist in Ontario as distinct nations, with their governments, cultures, languages, traditions, customs and territories; and

whereas the Government of Ontario recognizes its relationships with

First Nations are based on aboriginal rights, including aboriginal title and treaty rights of First Nations recognized and affirmed in the *Constitution Act*, including those formally recognized in the Royal Proclamation of 1763 and in treaties and agreements with the Crown; and

whereas Ontario's commitment to and participation in this Statement of Political Relationship is subject to the limits on provincial constitutional authority; and

whereas it is desirable to minimize conflicts between Ontario and the First Nations; and

whereas the First Nations and Ontario recognize the need for a mutual understanding of the government-to-government relationships between them.

NOW THEREFORE THE FIRST NATIONS AND ONTARIO AGREE AS FOLLOWS:

The inherent right to self-government of the First Nations flows from the Creator and from the First Nations' original occupation of the land.

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*We can't have a relationship with each other unless we define it. And we have to be involved in that process.*

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And there are five articles. There is a lot of similarity.

Chiefs in Ontario worked hard for this; a lot of meetings took place. We can't have a relationship with each other unless we define it. And we have to be involved in that process.

The reason I am saying this is because I am sick and tired of seeing how many of our people are in your jails and in your prisons. This has got to change. The way it is going to change is that we are going to have to sit down together, because

many of our people don't know why they are in jail, what law they broke.

I was a director of an Indian Cultural College in Ontario called the North American Indian Tribal College. It had a prison program. With the Elders of the different nations that I worked with, we visited the prisons. In the Kingston area, the inmates came from all over Canada. Minimum, women's, medium, maximum, we visited all these prisons. And I didn't like what I saw.

Now we can do something. The answer lies, in part, in you allowing us to administer and take responsibility for the affairs of our people — basing that on aboriginal right, title and occupation and, within that area, including our land claims in the whole process of establishing native self-government in Canada.

That is the language we have to speak. That is the reason I brought these documents, and there are many more.

I don't know how many aboriginal people, here in this room or here in this country, would not agree that the time has come when we have to assert ourselves, and we have to think seven generations ahead. If we are going to find our place in this country, we have to know where it is and what it is based on. We, today, have to think several generations ahead.

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*We have to find a peaceful way; our Elders tell us that.*

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I am glad to have been here to share my thoughts with you. But my brothers and sisters, ours is not an impossible dream. Take it from a chief who is coming out of a situation where there has been violence, where there have been deaths, and where our people are asking for traditional law and order. We want peace in our community, but we are shackled by white laws — remember we have five governments on the outside. We have still got to continue to talk about a peaceful way to resolve our differences.

Sometimes I hear bullets whizzing by me and I am still saying this — we have to find a peaceful way; our Elders tell us that. I know there are elements saying, "If the white man wants us to fight, we will fight." But I think we have a choice. And I will never cease saying we must make the changes in a peaceful manner.

#### **JUDGE DOUGLAS R. CAMPBELL**

Ministers, this morning when Tom Sampson gave you his comments, he referred to the fact that his community is attempting to teach us about his way of life. We need this instruction. He pointed to me as a person whom he has had an opportunity to instruct, and I am glad to have had the benefit of it.

We talked, particularly on the first day, about elements within that instruction. There is a primary concept that we have started to consider within this meeting. The concept in Salish is called *kwa kwel tul* which means "talking to one another." It isn't a negotiation or bargaining; it isn't the making of an agreement or an

arrangement; it is simply talking with no boundaries, no limits, no impediments.

The concept assumes that people of rank can talk to people without rank, people who are aboriginal can talk to non-aboriginal people. It assumes that people who have compartmental jobs and thinking, who work in governments and bureaucracies, can talk to anyone else, regardless of roles.

In this meeting we are *kwa kwel tul*. The next step after *kwa kwel tul* is *sesawatal*. And this is what Mike Mitchell referred to, meaning "helping one another." Before we can be *sesawatal* we must be *kwa kwel tul*. Today is our opportunity to have a dialogue, but from what I know of Tom and the richness of his culture, a much more important meeting of minds can occur.

We are now going to turn to the rapporteurs from the various groups, who will give their reports. First of all, I would like to call on Rose-Ann Morris who is with the Assembly of First Nations.

#### **MS. ROSE-ANN MORRIS ASSEMBLY OF FIRST NATIONS JUSTICE POLICY ADVISOR ONTARIO**

Good day. I will try to summarize what happened in the plenaries over the last couple of days.

When Doug Campbell started off the conference on the first morning, he talked about the need for respect and stressed that all of the participants had to think about not only actions for the future but a

process of working toward change together. He issued a challenge that everyone had to start thinking about working on personal relationships in order to work towards that change.

You heard Tom Sampson this morning. Tom has raised the importance of the Elders in reviving our culture, in maintaining culture. And what the Elders always ask is, "Where do you come from and who are you?" You have to know that in order to be able to work with other people.

Tom feels that spirituality is the foundation of tribal law; if you don't have spirituality, then there is no law.

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*We must all speak from the heart  
and listen with an open heart.*

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He talked about the principles of justice, and he set them out as being spiritualism, conservation, environment and resources. And when he referred to resources, he meant the economics of how people shared what they had.

He feels this is a time to walk together, to talk together towards change. We must all speak from the heart and listen with an open heart. We must help one another.

During the panel discussion, Justice Réjean Paul, who is with the Cree-Naskapi Commission found that policing problems in the Cree communities in Quebec crop up again in the Alberta and Manitoba Inquiry reports. Quebec is putting forward proposals for a number of changes.

Larry Desmeules, of the Métis Nation of Alberta, noted that aboriginal offenders are an economic resource, a big business, and that you need money to deal with the present justice system. He stated that the Métis nation had laws that were recognized in the past by Canada and by Britain.

During an open session yesterday, Tony Belcourt, who is with the Métis National Council, elaborated on those laws and the history of the Métis nation; how those laws have been ignored, and their history ignored. He said the Métis had to be included in any discussion about change for aboriginal people.

Joe Otokiak, with the Inuit Tapirisat of Canada, agreed with Tom Sampson that we need to look at the role of the Elders in rebuilding the communities and cultures of all of our people.

Leroy Littlebear, of the Cawsey Commission, emphasized that we need to understand each other's views. He gave a good example about how subsection 91(24) of the *British North America Act* is really interpreted differently by the aboriginal and non-aboriginal people. When you look at the federal government's authority over Indians, and over lands reserved for Indians, the government interpretation flows from the perspective of parliamentary supremacy. But the Indian interpretation is that this section is simply a part of the Act that provides for the division of powers between different levels of government.

You also heard his story also about the generalist and the specialist. As Tom

Sampson and some of the others like Leroy said, there is a holistic view of how to deal with the system. And that seems to aboriginal people to be much better than the specialist way, in which issues are compartmentalized.

Mike Mitchell was also a speaker during the plenary session. He repeated many of those things again this morning, saying that self-government is a way of saying, "Let my culture survive." He felt that native people must work together on their culture and whatever language they have left; that they need support from the governments and people within Canada.

Mike made it very clear that native people do not need to feel that they have to build a perfect system from the beginning. They can make mistakes and learn from those mistakes. As he said, native people have already started building self-government.

#### **JUDGE DOUGLAS R. CAMPBELL**

The next topic in our reporting is policing, and I am going to call on David Chartrand of the Manitoba Métis Federation.

#### **MR. DAVID CHARTRAND EXECUTIVE DIRECTOR, ABORIGINAL COURTWORKERS PROGRAM AND MANITOBA MÉTIS FEDERATION MANITOBA**

I will be talking on three different topics today, starting with policing. The finding of the workshops is that policing systems

are inadequate. Training of police officers in cross-culture issues and community issues is inadequate. This component of training for new and present officers must be firmly entrenched in the system. There must also be a recognition of the importance of including an officer and his family in community activities.

It was further agreed that surrounding communities must play a critical role, in both the urban and rural settings, for the healing process to begin between aboriginal and non-aboriginal peoples. Proven liaison programs should be transferred to other communities on a national basis, with due regard to the fact that powers are split between the federal and provincial governments.

Aboriginal representatives recognized these initiatives. One example is the commencement of a new program concerning policing in Ontario, including the possible transfer of policing powers to communities. Overall, participants felt that the appropriate way to provide police services to aboriginal people was by appointing aboriginal officers. It was hoped that this would begin soon.

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*There is an opportunity now to move towards tribal justice.*

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Another topic was the use of tribal justice. Examples were given of places where tribal justice was used. The Teslin are in phase two of such a project; they worked out a process among their people and their Elders to develop ways of governing

themselves in traditional ways. However, there was concern that government does not provide enough support to community counselling and healing services, both of which are important aspects of community justice. In the opinion of many, there is an opportunity now to move towards tribal justice.

Another workshop was entitled The Native Courtworker Program - Emerging Issues. I will read the report of that workshop, because it is brief:

Similarities, difficulties, emerging issues and the importance of the Native Courtworker Program were discussed. Although there is a variance in court duties from one area to another, the common ground is always culture and the need to expand community development and education. Present problems, including the lack of funding to carry out training and supervisory functions within the program, and to equip the program with human resources, must be dealt with for the program to be effective in the aboriginal communities.

Travelling costs are a serious budgetary problem. There is a lack of financial security since many funding agencies have to be approached, usually on a project-by-project basis.

In one area the program was cancelled because the courtworker program did not reduce the incarceration rate. In reality, this

was not the intent of the courtworker program. It is hard to have any faith in talk about equal access to justice when there are funding cuts.

The recommendations of this workshop are as follows: that the governments not take such a restrictive view in funding for the courtworker program; that a more appropriate reporting level be instituted, one in which funding can be more easily accessed; that the court workers be given proper recognition and be placed on a level that their duties require; that national aboriginal justice conferences continue because networking is of great importance.

#### **JUDGE DOUGLAS R. CAMPBELL**

Next is Courts and Alternative Dispute Resolution. I will call on Ruby Miller from the Ontario Federation of the Indian Friendship Centres.

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*[Alternative dispute systems] are based on traditional ways and they seem to be more effective.*

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#### **MS. RUBY MILLER ONTARIO FEDERATION OF INDIAN FRIENDSHIP CENTRES ONTARIO**

There were five workshops dealing with different models of alternative courts in native communities. One dealt with

alternative dispute systems that are working right now in native communities and are proof that native people and native communities are better at developing programs that will work in their communities. The programs make sense; they are based on traditional ways and they seem to be more effective.

A number of workshops dealt with models of alternative dispute resolution, of building justice into a community-constitutional process. Discussions were held within First Nations communities on developing band constitutions that could be legislated. Concerning aboriginal justice initiatives, there were discussions on the St. Theresa Point Indian Government Youth Court and on the Wabasca/Fort Chipewyan Youth Justice Committee in Alberta.

The Tribal Justice, A New Beginning workshop looked at a particular justice system that is working, based on traditional ways.

Two workshops ended up with recommendations. One was that the government should provide support and resources for community counselling and healing services, which are important aspects of community justice. Also, we should look at tribal community justice for use in all communities in Canada; Canadians should start thinking of themselves as a group of communities. Each community needs to step back, look at what they're doing, re-group and initiate changes to their systems to meet community needs.

The other workshops focused on the Justice of the Peace programs. The presenters were from the Mohawk Nation and from the Northwest Territories. The Mohawk Nation's theme was that the traditional justice system is not accommodated within the J.P. program, even though it is run by the Mohawk people. Both systems dispense justice from a native perspective.

The other workshops that considered native J.P. programs, particularly in Ontario, found that there is some flexibility in that program. The native J.P. can go into communities and allow those communities to develop their own sentencing system; that is, the J.P. comes in and listens to what the justice committees or the Elders panels have to say about sentencing.

The Northwest Territories presented recommendations that are being implemented by the Justice of the Peace Review Council. Authority for J.P.s has been transferred to the Chief Judges' Office. The training of J.P.s will take on a higher priority. J.P.s from the community must be endorsed by the whole community.

The Justice of the Peace Court is being adapted so as to be community-based. That is, the community will participate in, and take responsibility for, various aspects of the justice system.

The Northwest Territories government is holding community meetings to explain how this system operates and to get the community to discuss how the system should be changed. The community would



then be responsible for developing the alternatives, procedures and providing resources that will be used.

**JUDGE DOUGLAS R. CAMPBELL**

Next I call on Pat Kelly to speak on programs and policy issues.

**MR. PAT KELLY  
MINISTRY OF SECRETARY OF  
STATE  
BRITISH COLUMBIA**

The area of programs and policies was a fairly large one. I would like to put it in context by summarizing some elements of the Department of Justice report, "Aboriginal People and Justice Administration."

It proposes that improved aboriginal justice is a key element of the federal government's overall policy. It suggests that the policy would be based on the principles of fairness, respect and sensitivity to First Nations languages and culture. Ultimately, solutions must be found within the Constitution of Canada, present and future, as interpreted by the Supreme Court of Canada.

Although not envisaged as an entirely separate system of justice for aboriginal peoples, the First Nations community of justice systems, as part of aboriginal self-government, are considered to be both possible and desirable.

The paper recognizes the broad political aspirations of aboriginal peoples as

reflected in the constitutional negotiations on self-government. It also recognizes that much can be achieved now, within existing arrangements, without prejudice to constitutional discussions and with respect for the constitutional rights of aboriginal people.

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*The principle of trust is critically important.*

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There were eight workshops in this section: (1) The *Young Offenders Act* Under Review, focusing on youth rehabilitation and community protection; (2) Aboriginal Justice Initiatives, the St. Theresa Point Youth Court in Manitoba and the Wabasca/Fort Chipewyan Youth Justice Committee in Alberta; (3) Jurisdictional Issues, on the provincial administration of justice and the exercise of the fiduciary responsibility — with a special focus on non-reserve Indians and Métis; (4) Achieving Justice for the Métis; (5) Canadian Justice and the Métis Nation — the Struggle for Recognition; (6) Family Violence, looking at issues and options; (7) Partnership in Correctional Planning, focusing on the healing lodge for aboriginal women; and (8) Gender Bias on Aboriginal Issues and the Justice System.

They all reinforced the value of the policy principles stated earlier. In addition, the principle of trust was considered to be critically important. Special note from the reports must be given to the high value of the contribution made by Elders and to their prominent place within any of the First Nations justice initiatives.

In the *Young Offenders Act* Review workshop, a great deal of frustration was expressed regarding the handling of aboriginal youth. The belief was expressed that current ways are not effective, but rather damaging. The frustration is based on several factors: (1) Insufficient resources; (2) an absence of aboriginal control over programs and the ways and means to respond to aboriginal youth; (3) an emphasis on custody which creates hardship in small communities and which does not allow funding for community programs; (4) insufficient legal aid; and (5) insufficient health and other services to respond to the needs of the aboriginal youth, including substance abuse.

The Wabasca/Fort Chipewyan and St. Theresa Point initiatives demonstrate First Nations youth justice practices that complement, or provide policy alternatives to, those available under the *Young Offenders Act*.

A critical jurisdictional issue is that Canadian justice system policymakers need education in terms of native concepts of justice. Another critical jurisdictional policy issue was related to the Crown's "fiduciary responsibility, and its intentional disregard for off-reserve Indian, Métis and Inuit peoples."

Three questions arose from the critical jurisdictional issues workshop: (1) Would starting an institute or foundation devoted to aboriginal justice be a start? (2) Would a new policy or act acknowledging all aboriginal peoples as equals solve the problem of several classifications of Indians? (3) Can proper

administration of laws in Canada be effectively rendered through a diarchal form of justice — that is, non-aboriginal laws for non-aboriginal people and aboriginal laws for aboriginal peoples?

The workshop on achieving justice for the Métis cited examples of (1) injustice and discrimination felt by Métis through provisions of the comprehensive and specific claims policies that exclude Métis living outside of the Northwest Territories and the Yukon; (2) limited access to federal and provincial funds to address matters within the native agenda; and (3) a lack of statistical information concerning the Métis, compared to other aboriginal groups.

Métis delegates to the conference questioned the sincerity of the provincial and federal governments, and the delegates representing those governments, where the justice of the Métis is concerned. They concluded that, while achieving justice for the Métis is better achieved through negotiation, the only assured way to meet this objective will continue to be through litigation.

The Canadian Justice and the Métis workshop reported a consensual assessment that there is a total lack of recognition of the Métis people. This lack of awareness is particularly acute in both provincial and federal governments and in their administrations. The commencement of self-government for the Métis in institutions of child welfare, education, economic development, justice and corrections was seen as key to reversing current trends.

Recommendations from the Family Violence workshop included: (1) Family violence in native communities must be addressed from a holistic perspective; band-aid solutions are not acceptable; solutions must be community-based and relevant to the traditions and practices of each first nation. (2) Under the umbrella of one aboriginal justice system, the different needs and traditions of each community must be recognized and supported. A flexible system is required. (3) There is a strong need for education of individuals at the community level, and particularly for children, to "unlearn" violence and to learn how special they are.

The Partnership in Correction Planning workshop, focusing on a healing lodge for aboriginal women, noted that the report of the aboriginal justice inquiry in Manitoba recommended closure of the women's jail at Portage la Prairie. Concern was expressed that it might take many years to close the jail. Policy decisions on such matters should be taken with great care.

The Gender Bias workshop also had recommendations:

(1) Mandatory education should be provided for all judges and justice system personnel on cross-cultural and gender-bias issues. This education should be community-based and take place on aboriginal land.

(2) Two or three Elders should sit in a panel with judges on sensitive cases.

(3) Resources and money should be put into place for aboriginal societies to study the return to traditional ways; half of the money and resources should be dedicated to women.

(4) There should be an acknowledgement that the current justice system is patriarchal and that women's realities must be recognized and respected.

(5) Rape crisis centres should be set up in all communities.

(6) Victims advocate programs should be funded at the same level as crown counsels' offices.

(7) There should be an independent investigation of the Kitty Nowdluk case.

(8) Regional conferences should be funded around racial and gender bias.

(9) The appropriateness of cultural behaviors should be assessed by the people themselves.

(10) Cross-cultural education should be provided by community people; they are the experts; aboriginal people should set the agenda.

(11) There should be recognition of the difficulties and conflicts faced by aboriginal people, lawyers, police, interpreters, etc., working in a system that is foreign to them.

Communities, not individuals, should take responsibility for decision-making.

(12) In situations of family violence, men — not women and children — should be removed from the home. Safe houses are required for both men and women where trained people can assist them in their healing process.

(13) This conference should produce a public report. One year later, a review should be published reporting on the progress made since the conference.

(14) New rape shield laws should be put in place. In the interim, an ombudsman should be appointed in each community to monitor the progress of all sexual assault trials and insure that proper discretion is being used in all aspects of the cases.

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*The criminal justice system works poorly for aboriginal people and non-aboriginals too.*

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**JUDGE DOUGLAS R. CAMPBELL**

We now have the report on Sentencing and Corrections. I call on Judge Maurice Lagacé from Quebec.

**JUDGE MAURICE LAGACÉ  
SUPERIOR COURT OF QUEBEC  
QUEBEC**

I will report briefly on five workshops dealing with sentencing and correction. First, the criminal justice system works poorly for aboriginal people and non-aboriginals too. It needs to be more flexible and sensitive to community needs.

There is still a lack of faith in the Correctional Service of Canada. Prisons ought to be eliminated for aboriginal women. There should be more support for healing programs, more halfway houses, more healing lodges and adequate support. This applies also to prevention programs and to after-care programs for women.

There was a review and assessment of the various cooperative ventures in prison and probation, that is, ventures between the Corrections Branch and native organizations and communities.

There were discussions on such issues as the recruitment of native correctional staff, the benefit of aboriginal and alternative measures programs, and the need to meet the spiritual needs of natives from a variety of cultural backgrounds.

What are the means of achieving all these proposals and fulfilling all these aspirations? It was clear from the discussion that there is a need to enhance communication between aboriginal communities and the various components of the criminal justice system; to consult with the communities, especially Elders; to involve communities in the development and implementation of programs; to

transfer ownership of the system to the aboriginal communities; and to set up cross-cultural training mechanisms.

**JUDGE DOUGLAS R. CAMPBELL**

We now have our last report, which is interjurisdictional and deals with general issues. I am going to call on Joan Crowe, the Land Office Director with the Taku River Tlingits.

**MS. JOAN CROWE  
LAND OFFICE DIRECTOR  
BRITISH COLUMBIA**

I carry the name "Red Thunder Woman" and I am from a place called Berens River. Tell the Elders that I am very honoured and happy to stand here.

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*One justice system will not work for all aboriginal peoples within Canada.*

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I tend to agree with Leroy that we are generalists. But when I saw that there were eleven workshops, I got very nervous, especially as we didn't get the information until late. But I tend to take a generalist approach and I thought, I bet I will find that some common themes keep recurring. There were four major themes within the 11 subject areas we were broken down into. There was a common solution. That is what I have chosen to share with you this afternoon.

The first thing that people kept saying, over and over again, was that one justice system will not work for all aboriginal peoples within Canada. That came up in all 11 workshops.

The second thing was that justice initiatives must come directly from the First Nations. This is not a new idea, it is the old "by the people for the people" philosophy. As peoples we are entitled to design and develop our own solutions and we are quite able, if given the support, to implement those solutions.

The third thing was how we would actually implement those solutions. This is where you hear the reference to a holistic approach. After seven years of university within your system I have learned to explain it this way. When I was growing up, I wasn't taught to separate myself from everything around me in order to achieve an objective perspective. I was taught the opposite. I was taught that I must put myself in that place and learn what it feels to be like in that place before I can step back and decide what to do.

A holistic approach involves looking at everything. When a crime is committed you don't just look at the crime and who is right or wrong; you look at why it happened, who is affected, how they were hurt, what needs to be done. It's a much broader approach.

We take that approach as generalists because we do not espouse the western liberal philosophy that there is a split between public and private. As I stand here in front of you, I bring all of who I

am in front of you. I am not speaking from a place of holding a law degree, or as a lands-office director, or any of those other places. I am all of me. There is no split. Therefore, I am accountable and responsible for my behavior in all situations, no matter what hat I have on. That, to me, is the holistic approach and I think many first nations would agree.

The fourth and final thing that cropped up is something that, at a personal level, makes me a little nervous, especially after having recently acquired a legal education. Many people said we can work together, we should work together. Many important white people — judges — said there are means within the existing justice system to provide aboriginal justice, if only those in power were willing to implement those means.

That's where I get a little nervous; I think lots of First Nations people get a little nervous. But I look to the Elders again and they say, "You must have faith," and they say, "You must believe that the political will to do that is there." Over and over again in the workshops, people kept saying the discretion exists. Judges have discretion, police officers have discretion, people who currently hold the power, all of them have discretion. That is a really important word in law school and in the English language. I would like to see us all take a more holistic approach to the application and use of that word. That might be a starting point.

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*I think we want to take back our share of the power governing who we are, because we all own ourselves.*

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As part of my own healing and growth, I have looked to my own language. And I am sure those of you who are non-aboriginal can find aboriginal people in here and talk to them about these things in their own language. In my language the word *tepinik* means "I own myself." That is what self-government means to me. I own myself; I am responsible for myself and I am accountable to my own people.

That is not what I want you to allow me to do. That is what I want you to assist me to do. I think we want to take back our share of the power governing who we are, because we all own ourselves.

#### **JUDGE DOUGLAS R. CAMPBELL**

We are going to move now to the final presentation portion of our program today. It is entitled "Aboriginal People and Justice Structures — Priorities for Action and the Challenge of Implementation."

To introduce our first speaker, I call on my learned colleague, Chief David Keenan.

**CHIEF DAVID KEENAN**

Our first speaker is Frank McKay. Frank is the Chief of Police of the Dakota Ojibway Tribal Council Police Department of the Manitoba area. Frank is a Dakota from the Sioux Valley Indian Reserve. Frank is also a temporary Board Member of the National Parole Board in the Prairie Region.

**MR. FRANK MCKAY  
CHIEF OF POLICE, DAKOTA  
OJIBWAY TRIBAL COUNCIL  
MANITOBA**

Good afternoon, Elders, chiefs, leaders, participants and ministers of the two governments of this country. I am honoured to be invited here to participate and express some of my views and gather some of your thoughts and beliefs.

I hope that, from both the government side and the aboriginal side, we can come together and make this a successful conference. I have been to a lot of conferences in my life. I was the Chief for my reserve from 1974 to 1978 and I was a council member a couple of years later. Last year I attended a conference in Manitoba, and the issues you are discussing were the same ones we discussed — let's make some changes today for the betterment of our people for tomorrow.

In the last few years there has been an urgent need for self-government. I guess we all know the reason why. And there is a major component within self-government

that we Indian people are addressing today, which is the justice system.

This is a major component of self-government; to start anything in a community we need law and order. The community has to be part of developing whatever law and order you want to have. So, it is an important issue, one that we all have to resolve. The justice system has been the talk of the Indian country in the last three years, especially since the aboriginal justice inquiries began in 1988 in Manitoba.

What Indian people have been saying in the last while is that we need our own justice system. The existing system has failed us drastically. That can be seen in all the provincial and federal jails across the country.

Maybe it's not the fault of non-Indian people, but we haven't been working together. The government, the people who have decision-making powers, they haven't been listening to us. That's what we are trying to do today; we are asking you to listen to us, to work with us. Perhaps then we will make some changes in our community for the benefit of children who are going to be living in this country of ours.

There have been attempts made from the government side but I consider these to be band-aid solutions. For example, the government has worked with the RCMP to introduce the aboriginal section of the force, to recruit Indian people to work with them. But as we all know today, that hasn't worked. There are a lot of young Indian people out there who are university

students. So, what is the problem? Why are they not joining the RCMP or city police? There is a problem.

Another example is the non-Indian RCMP and city police. They are all taking cross-cultural courses. For what reason? To understand us better? It is going to be hard for me to accept them. I can accept them as individuals, but it's difficult to accept them with the uniform they're wearing.

That's the very reason why my tribal council in Manitoba developed their own police force and their own uniform. The council chose the colour of the uniform. Everybody was involved in the development of our police department, so it's accepted by our community and we have the respect of the community.

Maybe this is the kind of change that we have to make. It may take some money, but we are already spending a lot of money on incarceration and institutions. We need to have our own laws, our own courts, our own judges. That's what everybody has been saying the last two days. I don't think that is very hard to understand. I think that if everybody has the heart and the will to do it, we can do it. But if we leave here today saying "That's not going to work, it's going to take a lot of time and money," then we are going to fail again and we are going to be here next year talking about the same subject.

It appears that the government does not have the confidence in Indian people to have their own system. Before the Europeans arrived, we had our own

system, as the Elders have been saying the last two days. Give us that confidence. Help us along, let's work together in harmony. That's what we are saying.

In 1975, we made our presentations to both governments, federal and provincial, to start our own police force. We were encouraged to try out for the RCMP program. Our leaders, the Indian people, said, "No, that's not what we want, that's not what we ask you. We ask you to help us to have our own police force." The reason we refused to support an aboriginal section in the RCMP is that our Indian boys would be wearing the RCMP uniform; they would be working out of the detachment maybe 30 or 40 or 50 miles away. They would be working under the policies and the guidelines of the sergeant or the N.C.O. of that detachment, which is passed on from Ottawa.

So, there would be no change, no accountability to the community they were going to police. This is the reason we fought to have our own police force; and eventually we did get it, in 1977. We are still operating. We are 13 years old now. Obviously we are not operating the way we want to because of financial restraints. But we exist and we are accepted by the Indian people, in eight tribal councils in the D.O.T.C. area.

Crime prevention through education is our prime concern, to reduce crime on the reserves. Another objective is to reduce the incarceration rate at provincial and federal institutions. In the last three years, statistics indicate that we have reduced the incarceration rate, and this is a saving for the taxpayer.



This is what we are trying to tell you, to make you realize that our way can save money. Why can't you listen to us; why can't you agree with us; why can't you work with us? That is what we are saying.

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*The solution is not to bring in the right non-Indian to wear the uniform, give him cross-cultural education and hope to get accepted by the community.*

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At this conference, everybody agrees there is a need for change. And I believe sincerely that with the ministers in attendance here, with their kind hearts and willingness to make these changes, it can be done. When we leave this meeting, we should walk out of here with something accomplished, something that has been started and will be accomplished this year.

The solution is not to bring in the right non-Indian to wear the uniform, give him cross-cultural education and hope to get accepted by the community; that's not the answer. The answer is to have our own police force; Indian people policing Indian people, with our own uniform, accountable to the Indian people we serve. That is what we want and that's not really much to ask.

#### **JUDGE DOUGLAS R. CAMPBELL**

It's now my pleasure to introduce a colleague who is our next speaker, Mr. Justice David Marshall.

With Judge Marshall, I share two roles: he is a Judge, Justice of the Supreme Court of the Northwest Territories and also the Court of Appeal of the Territories; as well, he is a judicial educator, and in that role, he is a colleague as well.

He is the Executive Director of the National Judicial Institute which, until recently, was called the "Canadian Judicial Centre." Judge Marshall is also a medical doctor and has an extensive academic background. I would like to call on him now for his remarks.

#### **MR. JUSTICE DAVID MARSHALL DIRECTOR GENERAL - NATIONAL JUDICIAL INSTITUTE ONTARIO**

Ministers, respected Elders, ladies and gentlemen.

First of all, I want to thank the organizers for inviting me here. I have been listening carefully, as we all have, and I have learned a great deal.

I want to say at the outset that there is no question that Canadian judges do require cross-cultural training. We have heard from the workshops — and I think it's really a proposition of common sense — that law and justice are culturally specific. They are specific to the community.

And when you consider Euro-Canadian judges operating in a Euro-Canadian system, dealing with people from another culture, there is a tremendous possibility of injustice. We must recognize that, and I think the Canadian people do realize it

now. So, we must have change, from my point of view and from the point of view of judicial education. We must have cross-cultural training.

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*Canadian judges must go into the communities and learn from the people.*

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During the workshops we heard of the work of Chief David Keenan and Chief Judge Heino Lilles in the Teslin tribal justice experiment or system, and I think we can learn a great deal from that. First of all, it is important to recognize that Judge Lilles goes into the community. The point has been made that Canadian judges, to understand the communities, indeed must go into the communities and learn from the people. Judge Lilles does so, and I think the success of their program is owing to that.

The second important thing is that our Euro-Canadian, or common law system — our Canadian system — can take account of another culture and can work with those people. There is no doubt that, as with Judge Lilles, we must have good cross-cultural training.

A further point is that it is essential that we get on with this quickly. When you think of it, these changes that are taking place, that are going to take place, will generate appeals that will go up through the system. So, it is important that judges not only at the provincial court level, but in our courts of appeal and indeed in all our courts, be sensitive to cultural differences.

I want to speak for a moment about judicial independence. Some of you have heard me speak of this before, but I think it's important for us to take this into consideration when we are talking about change and about educating our judges in cultural matters. I think we have to recognize that judicial independence is also an important value in our system of justice. Our judges must be independent to stand between the state or between powerful individuals and the lesser among us.

Judicial independence is very important. I don't think that any of us want to tell judges how to decide cases. What we must do is expand the experience of judges, make them aware of cultural differences. But I don't think that we can tell the judges they must decide cases this way or that way, just as I am sure that you don't tell your Elders how to advise you in any particular matter.

So, judicial education has to be a free and consultative matter. It is a matter of showing the judges, of enlarging their experience, of enlarging their concept of reality, rather than telling them how to decide cases. I think that the education of our judges has to be done in a non-confrontational way to preserve judicial independence.

I want to turn for a moment to the question of resources. And resources, unfortunately, we must speak of.

Judicial education in Canada is relatively new and we have come a long way in a short time, thanks to both the provincial and federal governments. But Canada is

really the last country in the western world to introduce continuing education for its judges. I think it is important that the resources be made available so that judges can have the time to go into the communities to learn and to make that learning a part of their experience.

But, as you all know, some of our courts are very overloaded; our dockets are long and, as you know, we can't keep up with the case load. Some judges, if they want to take educational courses, have to do it on their holidays. I think that somehow we have to make it more attractive to judges to take part.

I don't want to give you the impression that judges don't want to learn. Judges are anxious to take these programs; we have no difficulty in bringing judges into educational programs. My point is that we have to make the educational climate right.

The final point I want to make is that we need your assistance in this educational effort.

#### **MS. KATHY LOUIS**

Our next speaker is Mr. Dan Smith, the President of the Native Council of Canada. Dan is from the Campbell River Indian Band. His mother is from the Oweekeno Band in Rivers Inlet in British Columbia.

Dan's Indian name is *Halitzika*, which means "to bring together to make things better." Indeed, he has done this over the years. Dan has been advocating aboriginal issues for the last 20 years. He was secretary-treasurer for the B.C.

Association of Non-Status Indians; he has been the president of the Vancouver Indian Centre; he was aboriginal advisor for legal services to the Commissioner of British Columbia and a Director for the Native Courtworkers of British Columbia Program. He has also worked with three federal departments.

#### **MR. DAN SMITH ACTING PRESIDENT, NATIVE COUNCIL OF CANADA ONTARIO**

I would first like to honour the Elders, and the Elders before them, for their courage, for their vision and for having the guts to face up to a system that was imposed upon them.

Chiefs, honoured guests, ministers, I am very honoured to be here. The Native Council of Canada represents the interests of our constituents and their membership who, generally speaking, reside off-reserve.

I would like to pose a question, as food for thought: Why is it necessary to have cross-cultural training or education for the non-aboriginal population? Reflect on the non-aboriginal educational system that was imposed upon us, a system in which we had no participation. The education system, as we know it today, has no teaching of aboriginal people across Canada. So, when you reflect upon that and you ask why cross-cultural training or education is required for non-aboriginal people, that's one of the reasons.

Also, I would like to reflect on the *Indian Act* and its intent and its purpose.

Basically, its purpose was to assimilate, to discriminate against Indian women, to get to the children, so that the government could escape from its responsibilities to the aboriginal people of Canada and the First Nations. The *Indian Act*, by taking children away to impose a non-aboriginal education on them, also created a dysfunction within the family. If you don't have children to love, you don't have children being loved. It creates that kind of dysfunctional society.

Last Thursday, national aboriginal leaders met with the Prime Minister, Joe Clark, Kim Campbell and other members of the Special Committee of Cabinet on the Constitution, to discuss what has come to be known as the Aboriginal Parallel Process. This is my second opportunity to speak for the Council as its president and it gives me great pleasure to note that here too we are talking about parallel processes, this time in the establishment, or re-establishment, of aboriginal justice systems.

The justice system has received a great deal of attention over the last week or so. The report of the Manitoba Justice Inquiry has set out a major agenda for action, both for that province and nationally. The theme is very much one of parallel systems, pluralism and joint action. The federal government announced earlier this week an extensive process of consultation and support for community initiatives. This is to be welcomed.

We also look forward to the Law Reform Commission of Canada's report on aboriginal peoples and criminal justice. This report was to have been provided to

the Minister of Justice some months ago, but it has been delayed.

These reports and policy announcements must also take into account the Canadian Bar Association's recommendations in 1989; Michael Jackson's work on locking up natives; the Marshall Inquiry; the McCauley Report in Alberta; and other reviews of aboriginal justice under way, regionally and nationally.

We are not short of ideas for change. The task now is to focus on implementation. Attorneys General last met in 1975 to discuss aboriginal justice issues. It is my view that this sort of hiatus cannot continue. It is also my view that the next time we meet — and we should agree today or tomorrow to meet soon — it must be as equals, in a federal-aboriginal-provincial-territorial meeting on justice.

Some of you may have observed last week at the premiers' conference in Whistler, we proposed — and it was agreed to by the premiers — that an ongoing structure be established with aboriginal peoples. The details remain to be worked out, but there is a clear commitment to develop a structure for intergovernmental dialogue with aboriginal peoples. This forum may have many purposes and many spin-offs. It is up to us to help set the agenda.

One purpose of the forum is certainly to focus on what is feasible in the justice field. Sixteen years have past since the 1975 federal-provincial minister's meeting in Edmonton. We know that advisory structures were established and that they fell into disuse, nationally and provincially.

For the Native Council of Canada's part, we established a Crime and Justice Commission in 1977 to re-focus debate. However, only limited progress was achieved in some areas. Initiatives in the area of policing on reserve have been undertaken, but they, too, have run into major roadblocks concerning jurisdiction, funding and community control. Other initiatives in the areas of corrections have been attempted, also with inadequate implementation and follow-up.

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*There is a continuing rift in understanding and this is perhaps the greatest challenge we face.*

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The time for advisory structures is, in my view, fast ebbing. Aboriginal peoples are seeking the right to control, to self-determination. And this means that decisions will have to be made for aboriginal peoples, by aboriginal peoples.

It is on this question that we must be clear in our minds and in our communities. There is a continuing rift in understanding and this is perhaps the greatest challenge we face. It is not clear to me whether this challenge of bridging world views was helped or hindered by the events last year at Kanesatake and Kahnawake.

However, those events certainly focused our attention on the rift. In my view, the issue is not an either/or situation where there should be either separate or parallel aboriginal justice systems or one Canadian system that can be improved to better integrate aboriginal perspectives and involvement.

There is a deeper reality we must grapple with. All systems of justice are intended to represent a shared consensus, a consensus of values. The rule of law is an expression of moral consensus. However, a basic fact about aboriginal peoples is that we have rarely been invited into the consensus. The Canadian justice system is still largely an expression of the consensus between settlers, not a consensus between newcomers and first peoples.

In this context, our relations have been governed not by the rule of law so much as by the principle of imposition. We do have jointly-agreed-to rules of law expressed in treaties and similar terms of union. We also have a legacy of consensus deferred.

Our people, the Kwagiulth, are a case in point. We have original title, but no negotiated implementation of that title. We have laws and structures of governments that are ancient and still alive, but we have no way to translate them into federal or provincial acceptance.

We also have many common values with our neighbours in British Columbia and in Canada. However, these common values have been severely strained by the imposed consensus that insults us daily; we have no choice but to obey the law. The entire court system, the ultimate expression of dispute-resolution, rests on the notion of shared consensus. For it to work, there must be enough agreement in the political world to allow even the toughest and biggest issues to be given impartial review and adjudication.

The relations between aboriginal peoples and others — the big issues, the tough issues — mostly relate to fundamental questions of political and economic autonomy. Who owns the land? What is a First Nation? Can the existing, non-native, court system really adjudicate such issues?

The Gitksan Wet'suwet'en people took a big risk in 1984 in assuming that the B.C. courts could do this. They received an answer in the B.C. Supreme Court. The court clearly answered that aboriginal peoples must conform to the outsiders' consensus. But our place in their system was a place defined in terms of subjugation and assimilation. This matter is under appeal to the higher courts, but we can already see the challenge.

We must give some new focus to the need for a truly consensual system of arbitrating our conflicts, a system that is not based on exclusivity, on neither settler ideologies nor aboriginal justice systems, but rather on a new and jointly-agreed-to consensus.

One answer to the lack of consensus is called federalism. French and English Canada have been able to live together largely owing to this device. Federalism is a unique dispute-resolution structure that respects the presence of parallel autonomous systems. It requires otherwise limited and even isolated societies to share in each other's cultural distinctions and diversities.

The challenge we face in this decade, and for the next century, is to broaden out the federal principle to include aboriginal peoples as well. After all, was it not the

Six Nations Confederacy that offered the federal system in the first place, the system known in English as "The Great Law of Peace"? Only when federalism accepts aboriginal societies as full constituents can we really begin to share in the challenge to build specific solutions.

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*A constitutionally sanctioned and jointly authored system of reconciliation and resolution is required.*

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Otherwise we have to look forward to more violence. Violence, after all, is the reality when there is no shared consensus on how to resolve disputes. To avoid violence and to live together, we must start by building a new consensus. This will not mean simply adapting existing non-native structures to better listen to, or be culturally aware of, aboriginal values or perspectives. That is important and it is not to be slighted. But alone, it is at best a transitional measure; at worst, it can be a trap.

A more lasting resolution, as recommended by the Manitoba Justice Inquiry, is to establish a new consensus out of jointly mandated and jointly accepted rules and mechanisms for dispute resolution. This will include looking at the Supreme Court itself. It will probably require a new constitutionally sanctioned dispute resolution system, especially concerning the big issues of ownership, jurisdiction, and identity — perhaps along the lines suggested recently by the Hon. Roland Penner. After all, it is almost a decade since aboriginal and treaty

rights were affirmed in the Constitution. We still have major disputes over implementation; without some direction it will be very difficult to structure community-level solutions that respect those rights.

It seems clear that a constitutionally sanctioned and jointly authored system of reconciliation and resolution is required. Aboriginal peoples in Canada have evolved a special mechanism to resolve disputes over the past 300 years, and it is time for this mechanism to be used again. I am talking about treaty-making. It is a model that fits the needs of people who live together but who lack consensus on many things.

For example, Canada and the United States have, through treaties, established binding arbitration and adjudication systems to resolve disputes, such as the trade dispute panels, the International Joint Commission, and so on. In Europe, a joint parliament has been established using a treaty. And of course we are seeing in the Soviet Union that the concept of a new federal structure is being advanced through a treaty.

The Native Council of Canada has suggested that we begin to readdress how we are to live together by way of a treaty or covenant. It is only through this kind of expression of shared values, mutually accepted rather than unilaterally imposed, that we can really begin to achieve justice, both today and tomorrow. For justice means nothing unless it expresses a consensus of the constitutive parts to work as a whole, in accordance with common rules.

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*A justice system is not made  
aboriginal simply by labelling it.*

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This can include a recognition that different legislative regimes and land tenure systems can cohabit the same territory. The consensus can recognize that aboriginal community integrity must be the goal of any just system, a goal that necessarily means that policing, local courts, corrections and the definition of what a crime is must be affirmed in aboriginal hands to be worked out in accordance with aboriginal consensus.

The workshops held this week dealt, in different ways, with the issue of dispute resolution, perhaps without a common definition. Many on-the-ground initiatives and proposals for future change were discussed. I see three major challenges for action:

(1) Recognizing First Nations. I want to stress that we must abandon imposed rules and rebuild the institutions and structures that are autonomous to First Nations. I am a First Nations' citizen; I am a clan member and I have a house. These things mean something very dear to me and all our people. And I wish to insure that it is the Kwagiulth Nation that is rebuilt. Our status under the *Indian Act* or membership under our band code can and should mean little to us if we focus on establishing true First Nation justice systems.

(2) Accepting treaty-making as a vehicle for agreement. I think the message here is clear. As societies, we are not conquered. The model of treaty-making is the only

true test of respect we can have in building a federalism in which aboriginal peoples are really a part of the consensus.

(3) Rejection of any new apartheid regime. There will always be a need to focus on the economics and costs of any departure from the past. One factor that should be rejected in counting the cost is the reserve boundary. Traditional territories are relevant. Equity of access and mobility of rights are relevant. The presence of large populations of aboriginal peoples within metropolitan centres is a reality that must be relevant. But the convenience of the reserve boundary must not be the test for whether or not an aboriginal community or aboriginal peoples have access to justice, any more than it is relevant to the implementation of aboriginal or treaty rights.

In reaching for these goals, it will not serve the cause of justice to have non-native legislatures simply passing aboriginal justice system acts; a justice system is not made aboriginal simply by labelling it, any more than a legislator can simply choose whom to recognize as a First Nation.

The challenge is a bit more fundamental than this, but it goes both ways. Aboriginal peoples must re-establish control over their own political structures of accountability, their own territories and, in fact, themselves.

A great deal of reconciliation and healing is needed, both within our communities and between them and other Canadians. We must develop a new ethic of sharing so that our talents, our resources and our

diversity are truly valid and contribute to a common future that builds on trust, mutual regard and shared principles of justice.

### **JUDGE DOUGLAS R. CAMPBELL**

Our next speaker is Michael Jackson, who is a law professor at the University of British Columbia.

Michael has devoted his professional and academic career to following four topics, of which native law is at the front. In addition, he is an expert in criminal and correctional law, family law, and psychiatry and the law. Recently he was involved as a member of the defense team representing aboriginal chiefs in the Gitksan Wet'suwet'en case, referred to by our previous speaker.

### **PROFESSOR MICHAEL JACKSON FACULTY OF LAW, UNIVERSITY OF BRITISH COLUMBIA BRITISH COLUMBIA**

Respected Elders, ministers of the Crown and ladies and gentlemen, I would like to read a statement about the nature of justice. Some of you might find it particularly authoritative insofar as it is an expression of the Minister of Indian Affairs in 1983. The Minister at that time said:

"Justice is a basic need in the life of every person. It has confronted, challenged and concerned every society which ever joined together for mutual benefit. The law belongs not to governments, not to



bureaucrats, not to lawyers, but to the people.

Many alternative means of resolving disputes suggested now — mediation, arbitration, restitution and reconciliation, to name a few — are the very methods which are part of customary law.

Native peoples have been deprived of their own traditional laws, concepts of justice and legal procedure. We realize that the native peoples of Canada expect a system of justice that reflects their own cultural heritage."

The Marshall Inquiry Report, in citing that statement by the Minister, had this to add:

"Native Canadians have a right to a justice system they respect and which has respect for them, and which dispenses justice in a manner consistent with, and sensitive to, their history, culture and language."

Throughout this week at this conference, aboriginal leaders and members of communities have emphasized this principle of respect. I would like to explore the essential contours of a system, or systems, of justice which aboriginal peoples could respect.

At this point I would like to direct myself specifically to the ministers of the Crown. Many of you are lawyers, most of you who hold the office of Attorney General and Minister of Justice have legal training.

You have to ask yourselves what it is about our system, the non-aboriginal system, which commands our respect.

What you find is a system in which those who make decisions are respected for their integrity and for their learning. We have confidence that our judges are legally trained, that they have been accepted and are well regarded in their profession. Their elevation to the bench, therefore, is a way of reflecting, in an honorific way, the respect and trust we have for them.

Respect for the system also arises from a set of procedures that have been tested, whether they evolved from the civil law or the common law — a set of procedures for the adjudication of disputes and resolving those disputes in an effective way, consistent with our fundamental values.

Finally, respect for the criminal law arises from a set of sanctions that command the general approval of the community at large.

Now, taking those three criteria which lead us to have respect, what would be the contours of aboriginal systems which merit equal respect from aboriginal peoples?

Let's turn first of all to the manner of the individuals who are the repository of the law, who know the law, who are respected for it and who can dispense it. Instead of professional judges, legally trained, we have Elders, people who are respected in the community, many of whom have been trained to be the carriers of the oral tradition; in whom the laws are passed down from generation to generation; who command respect in the community

because their judgments, when they are handed down, carry weight and are obeyed. These judgements are valued for the collective wisdom inherent within them.

In terms of the procedures, in place of the adversarial system of adjudication, which common and civil law lawyers are comfortable with, we have a process of consensus. We have a circle instead of the circus which many people in the criminal justice system feel that a trial resembles.

In relation to sanctions, instead of punishment in which exclusion from the community and condemnation by the community is foremost, we have a system of sanctions that feature reconciliation and reintegration. We attempt to heal collective wounds, rather than to aggravate them by isolation. That is the hallmark of our system and it demands respect.

Now, they are very different systems. And we have heard this week of ways in which accommodation is possible. One of the ways in which accommodation is possible is in the Teslin model, in what is happening in Sandy Lake in Ontario, in what is happening, to some extent, in the South Vancouver Island area — you have a marriage of the systems in which a non-aboriginal judge presides and Elders participate and make recommendations regarding the appropriate disposition.

Now, as a method of accommodation, that seems to be working quite well in those places where it is used. It clearly depends, however, upon judges who are willing to make that accommodation. It depends on Crown counsel who are

prepared to participate in that kind of system. In those communities, those individuals have proven they are up to the task. And Judge Marshall explained how, in fact, cross-cultural education is an important part of making those kinds of experiments and initiatives work.

But the large question which I have for all of the non-aboriginal participants in the criminal justice process is this: Ultimately why should aboriginal Elders, who have incorporated and used their traditional systems of making decisions, who have called upon the collective wisdom of an aboriginal tradition in coming up with the solution — why should they have to persuade a non-aboriginal judge that this or that is the appropriate disposition of a case? What is the principle? What is the justification upon which we insist that their sanctions and their system have to pass through the filter of our judgment to be given respect? Somehow, we have to be cross-culturally trained so we can be sensitive to receive that message.

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*We are not talking about  
resurrecting a system whose time  
has long since passed.*

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That question leads to a number of further issues. It would be my submission that the onus is upon non-aboriginal justice people to justify why that step has to be taken because, to the extent that aboriginal justice systems are already in place, to the extent that aboriginal people are able to make those systems contemporary, we are not talking about resurrecting a system whose time has long since passed; we are

talking about communities who are aware of their traditions, who, in Tom Sampson's words, "can trace where they came from and have a vision for the future."

When those communities take their collective wisdom and use it to resolve contemporary problems — problems which, thankfully, the generations that went before never had to deal with — when they come up with useful solutions, it seems to me there is no good reason why we have to say, "You come to our system and we will, with all the benevolence and cross-cultural training we can bring to bear, ratify your decision."

That may be a transitional reform. That may be a necessary first step for some communities, as they develop and make their systems contemporary, but ultimately it seems to me that the case is for a separate justice system, intersecting with the larger system — and here there is a spectrum of possibilities. Ultimately, when a native community has come up with a method of resolving its internal disputes, it should be able to implement them without going through that further filter.

And that, of course, is where justice intersects with self-government. It seems to me that any Crown policy which places limits upon those possibilities is inherently suspect. I would recommend to both provincial and federal ministers that when they are looking at changes and modifications, the imposed restraints upon the development of native justice systems should be removed.

Most native communities are not looking forward tomorrow to going into a completely separate system. Many communities are now content, and may be content in the future, to work within the existing system, to see the points of intersection. But having worked through those points of intersection, where the points of irresolvable conflict come out, it seems to me they should be allowed — and they have the constitutional right under the Charter, under Section 35 of the Constitution — to develop those kinds of systems.

The last point I want to make is this: this is not a one-way street. I don't think this is a situation in which non-aboriginal ministers of the Crown have to say, "Well, we will give you aboriginal peoples the right to self-government." As aboriginal peoples implement these systems of justice, we will have much to learn.

I recently did a study for the Federal Law Reform Commission. They asked me to look at alternative dispute resolution and its application in aboriginal communities. They asked me to look at all the work they had done in the past on alternative dispute resolution.

So, I looked at all the work they had done and they had done a lot. What I found was that, in the 1970s, they explored the idea of community participation in the criminal justice system; they explored the idea of victim reconciliation; they explored the idea of alternatives to incarceration; they explored the idea of restitution.

Some of these ideas have now been reflected in the Canadian *Criminal Code*;

some of them are on the agenda in the proposed reforms by the Minister of Justice. But what is really interesting is that, as I was looking at what is, in the larger system, seen as the leading edge of criminal law reform, I was finding the very elements of aboriginal justice systems, which were in existence for centuries before the building of the Kingston Penitentiary.

In this regard, as aboriginal peoples develop their own justice systems and work out the way in which they can be accommodated within the larger system, I think we have much to learn. I think the justice system will benefit, and not only in terms of providing real justice to aboriginal peoples. Ultimately, it will provide better justice for all of us.

#### **JUDGE DOUGLAS R. CAMPBELL**

I am pleased now to call on Pauline Busch, who is on the Board of Directors of the Native Women's Association of Canada.

Pauline was born in northern Manitoba, Nelson House Reserve. She is married with six children and is a student at the University of Manitoba, Department of Education.

#### **MS. PAULINE BUSCH PRESIDENT, ABORIGINAL WOMEN OF MANITOBA**

Greetings to the Elders. We bring to you love and respect from our lands.

My Indian name is *Vineeskoo*. It means, "a woman of the people." And to me that means a responsibility I have to my people.

The first thing that I want to talk about is the communication process. This is one of the few times that we as aboriginal women get to reach out to those who are decision-makers, those of you who are in power.

So, it was important that we were slotted that time, the opportunity to speak. At the same time, I was concerned because our communication processes differ. We, as aboriginal women, are taught to speak from the heart. Your culture, your traditions, teach you to believe only what is black and white.

What I am going to present to you is not black and white. I am going to present what I learned in my grandfather's one-room cabin, heated by a 45-gallon drum converted to a stove. That is where I gained my education. And I have not learned anything in your institutions that is comparable to what I learned in that cabin.

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*Women have to be a part of your plans.*

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I want to talk about the role that aboriginal women have in our society. Prior to the European contact, we aboriginal women had a status of equality and even, in some instances, of power. We were no one's servant, we were no one's beast of burden. And I want to be able to share with you how we have come from that to being

almost non-existent, nothing, and not only in our own society but in yours as well.

Many of you may have noticed that the panelists who have spoken so far made very little mention of women. We do not assume that means we are included in what you say, because we have been excluded for a long time. I would like to say to you men, when you come up and speak of "our brothers," that women have to be a part of your plans, we have to be a part of your speech.

What I am going to share with you is not intended for your brain, because the brain is very selective. If we rely primarily on memory, it picks and chooses what it is going to remember. I want to touch your heart. The heart does not have the same problem the brain has. Once you have learned through your heart, once your heart has been touched, you don't very easily forget that.

Prior to the European contact we, as aboriginal women, had a chosen path, a path that was given to us by the Creator. It was a path that we walked on an equal footing with our men, as partners dependent on each other.

I was thinking about how to present this thought, how to reach an audience like this. My presentation should be something elaborate, it should be something that will really hit them. As I was trying to figure this out, talking to people, I heard my grandfather's words. He always used to say this to me as a child: "Slow down, grandchild, listen to the quiet of your heart, that's where the answers are." And

I thought, of course, with all that running around, I am not going to find it.

Upon contact with European people, we continued to walk our chosen path, but the walk was changing. Our women clutched babes to their breasts, tried to maintain the youth and the Elders, tried to bring them along, tried to walk them along.

And at the same time, we saw our men being shackled, being chained by the values of a foreign system. They were being shackled and chained by colonization. Our hearts went out to our men. Then women, also, picked up the chains and the shackles, still hanging on to those responsibilities the Creator had given. The path is now getting rough; more chains are being added, and when I say "chains" I mean these great big, thick ones. We began to bow under the weight. We had to do something to survive.

One of the first things we had to do was open our hands and let our men go. We left our men aside. That was the beginning of the breakdown of aboriginal society, the breakdown of our lives. The separation from our men added to the chains that we were bearing. We had been weakened as a people.

Then along came a dominant society and said, "We want to help you, we want to help you carry out your responsibilities." Now when we offer to help each other in our culture, we mean on an equal basis. When the dominant society offered to help us we took it to mean the same thing. So we accepted that help. That was one other mistake.

Some of those shackles, those chains, were lifted for a time. But there was a price, a cost to accepting that help. Once again we had to open our hands. This time we put our Elders aside. Without the Elders, we bow down further. We began to despair.

We are no longer the women the Creator put on this earth. We turn to foreign remedies. We want to escape. We turn to alcohol and drugs. We become victims of violence and abuse, all forms of abuse.

We add more chains, this time we add them ourselves. They are chains of guilt, of shame, of dishonour. We again reach out for help.

This time we sacrifice our culture; we sacrifice our languages; we sacrifice our community structures. We lose many sisters in this process. Then we stop. We stop long enough to bury our sisters. We stop long enough to go to your institutions, to your prisons and your mental hospitals.

The road narrows, it is getting rockier and steeper, it's getting tougher to walk. We still have our children, but it's getting harder, it's getting harder to walk that road. Finally, we let go of our children. We put our children in your residential schools — our babies barely five years old.

But it is still not finished. We, as women, have not given in totally because we know we have to continue on the path the Creator gave us to walk. And to assure that we would, the Creator placed a deep sense of responsibility in our hearts, a responsibility for the very survival of our people.

For whom do we walk now? As the young woman said on the second day of our conference, for those children yet unborn, for those grandchildren, unborn. It is for those that we continue to walk.

But we are not walking now with our heads up. We are right down to the ground now. We are crawling. Even so, we continue, we will complete our job. Our job is to rebuild the foundation of our nations.

With this in mind, we aboriginal women come to this conference, we participate in your inquiries, in your commissions and endless studies. We are tired of these studies. And each time we come forward to participate we ask ourselves, why? In 1975 we had a similar conference, and we questioned ourselves: Are we wasting our time, our energy?

But we will come time and time again, because there is still a glimmer of hope. Now, the inquiries that have been completed on aboriginal justice, such as the inquiry in Manitoba — those we are going to use for tools. They are not an end in themselves. And it is not necessary for every province in this country to say they want another inquiry. There is going to be nothing new, there is going to be nothing different if an inquiry is conducted in every province in the country. They will all say the same thing. None of these findings surprised the aboriginal people. It's the same thing we have been saying for so many years. But now it is in black and white. And when it is in black and white, it seems like God himself carved it in stone, because then it is believed.

We also have what I am going to take — and what I guess a lot of aboriginal people will take — as a commitment from the federal government in this paper they have released, "The Aboriginal People and Justice Administration." It states:

"The federal government is committed to making the justice system more inclusive, fair and effective. Reform of justice administration to address the needs, concerns and aspirations of aboriginal people will only succeed if aboriginal people are full participants in shaping policies and programs, shaping the direction of justice administration reform."

I hope there was a lot of thought that went into printing this because we will use this. You have provided us with another tool.

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*We have no more sacrifices to offer you. We have shared all that we have to share. There is nothing left.*

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Many times in the past, change came only when we shamed you internationally. We should not have to do that. We are all people of this country. We need to learn to work with each other. But if need be, we have learned your system and we will shame you internationally. We will take you to international court because the time has come. We cannot afford to sit with you time and time again, and make three-year studies.

We feel that we are at a very crucial time. We have no more sacrifices to offer you. We have shared all that we have to share. There is nothing left. You now have to come and stand beside us in equality.

We are once more reaching out, but this time it's us, the aboriginal people, that are reaching and this is the manner in which we want to do this. We are inviting you, walk *with* us, not *for* us. We need to drop again those chains you have given us, to walk the straight path that we were meant to walk.

We need to begin a healing process. We have had, for too many years, festering thorns in our hearts. We have buried too many people. There have been enough sacrifices.

The first thing we want is to bring our people out of your penitentiaries. When we talk about reforming or rehabilitating people, we talk about a healing process. For those of you who have entered the healing ceremony, a healing sweat, it is where Elders tell us, "whatever you bring here that is causing you pain, you are coming to give it to the Creator. He will take it and he will bury it in the deepest of the seas." And the Bible says the same thing.

There is no punitive system after that. You walk out of there regenerated, a new person. You can again walk the straight path. You have been renewed. And that is the manner that we want to be able to heal our people who are in penitentiaries.

For that, we need to have healing lodges and these lodges must be built on our

lands. They must be built on Indian lands. They must be built on Métis lands. They must be located in areas where we can maintain contact with our sisters and our brothers, because we cannot afford to have them be squished like bugs somewhere else.

We need the resources to enable the full participation of aboriginal people in this process. And we need to have the traditional aspects. When we enter our own traditional healing, we give our wounds to the Creator and they are healed, simply by the asking. Your God does the same thing; you ask, he gives.

The next item is what has been termed "community empowerment." Well, you are not empowering us, we are taking back our responsibilities. Those are our responsibilities. You cannot carry them for us; you cannot do them for us. They were given to us by the Creator.

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*To be successful the change has to come from within the communities.*

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The present justice system is not administered *for* us, it is administered *to* us. There is a very big difference. The system is not of our people. We did not have a part in building that foundation. Yet we are asked to help maintain the building. If we didn't have a part in the foundation, why do we get a part in maintaining the building?

Everybody acknowledges there has to be change. To be successful the change has to come from within the communities. It

has to be initiated by the people from the grassroots. In the Young Offenders Workshop that I attended, it was demonstrated what dramatic changes can take place when the community itself takes total responsibility; not just a certain group but the whole community.

In St. Theresa, they had 144 cases the first year, 88 cases the second year, and the third year, 44. In Fort Chipewyan, there were 8 cases in two weeks, down to one case per session. Why? Because the responsibility came back. Those children know. You are no longer going to laugh at a foreign system when you do wrong, it's your own people you are going to face. It is your parents, your family, your community Elders that you are going to be facing.

One thing that many of us commented on was that we are a lot tougher on our own people than were the provincial systems. But the number of cases coming back was much less.

We have to have a holistic approach. We are constantly told we can't deal with your social problems, we can't deal with your poverty or economics. But we also cannot succeed in a piecemeal fashion. If nothing else, the past 200 years have demonstrated that.

And the other important thing, in my view, is that aboriginal women have to be a part of the process. One of our Elders talks about how women have had their heads bowed for far too long. He said you will never see a change come upon Indian country until the women stand up,



lift their heads, take up their responsibilities.

I really believe that. We are seeing it across Canada, right across this country. I have pre-arranged something with my sisters, I would like all my aboriginal sisters to come forward and we will show you.

Everything fit in so perfectly. I slowed down and asked the Creator, how am I going to do it? The next thing you know, there's a drum here, there's people who can sing, Kathy explains the concept, the sacredness of the circle, everything falls into place when something is meant to be.

So, I would like Kathy and all the aboriginal women to form a circle, a circle of unity.

***CIRCLE FORMED BY ALL  
PARTICIPANTS AND SONG  
PERFORMED***

**JUDGE DOUGLAS R. CAMPBELL**

There is an enormous amount of power in the human touch. I can see that you are now very much awake and very energized. I want to thank the participants in that very important experience. It was absolutely wonderful. Thank you so much.

I am now going to call on the Honourable Margaret Joe to introduce a special speaker.

**THE HONOURABLE  
MARGARET JOE  
MINISTER OF JUSTICE,  
YUKON**

I didn't think that we could finish an aboriginal justice conference without inviting Elijah Harper.

Elijah has been an M.L.A. for ten years. He represents the riding of Rupert's Land. He is a former Chief of the Red Sucker Lake Band. He is also a former member of Northern Native Affairs in Manitoba.

We all remember Elijah on T.V. with a feather in his hand, a lone person doing something that was so important to us. And Elijah, with much determination, stopped the Meech Lake Accord because of the exclusion of aboriginal rights. I am very proud of Elijah. And I would like to call him right now to speak to you.

**MR. ELIJAH HARPER  
M.L.A.  
MANITOBA**

First of all I would like to thank Margaret Joe for inviting me to attend this conference and to be able to say a few words to you. I would like to acknowledge all the members of the legislature here and also the ministers, the justice ministers and other government officials. I would like to acknowledge all the aboriginal members and aboriginal organizations and the people here from the Yukon.

During the last year or so, the aboriginal people in this country stood up together,

stood up for their rights and to let the world know that aboriginal people will no longer take a back seat in this country.

Aboriginal people in this country have been ignored for far too long; we have not been part of this country, or of the development of this country, or recognized for the tremendous contributions that we have made in our homeland, which we call Canada today. It was one of the reasons we aboriginal people objected to the constitutional amendment known as the "Meech Lake Accord."

I have been involved in the process, the constitutional process, since it began. I have been to every constitutional meeting, starting with Trudeau and now with the present Prime Minister. And all those meetings ended in failure because governments demanded to know exactly what self-government meant or what it means. Or they want to approve what it means.

Why? Because we aboriginal people do not have recognition, within the Canadian Constitution, to make laws within our own territories.

We have a parliamentary system that recognizes two jurisdictions which have the ability to legislate and to make laws: the federal government and the provincial legislatures across this country.

There is no recognition, no ability, no forum or authority for aboriginal people to make their own laws. At least, that's what the governments think. We have in this country aboriginal self-governments that have existed for 10,000 years or more.

We had the ability to create our own laws; we had communities; we had political structures; we traded with other nations and within this country; we occupied territories and exercised the ability to harvest the resources in this country, in this continent.

But that has never been recognized within the Canadian Constitution. What we have in this country is a colonial attitude that has existed from day one, from our initial contact with the European settlers that came to these shores.

We have the infamous *Indian Act*, which needs to be abolished. We have this piece of legislation that permits human bondage. These shackles of human bondage have to be removed. Until we get that recognition, until that attitude changes, until governments in this country recognize that aboriginal people do have inherent self-government rights in this country, things are not going to improve.

Self-government: that is the only way that aboriginal people are ever going to take control of their lives. Aboriginal people must also establish their own justice systems. What we have in this country is a penitentiary government where the government acts like a warden.

The Indian people have been asked to make changes within this penitentiary government, to change rules so that governments in this country appear to be giving more control to the aboriginal people. It is as if the governments are being generous so that aboriginal people will determine their own future and their own destiny.

Last summer we stood up to say "no" to the constitutional amendment. You would have thought that the governments in this country would have learned something from that process. Can you tell me anything positive that has happened today, as a result of the actions taken by the aboriginal people in stopping the Meech Lake Accord, or in another demonstration, the Oka crisis?

There have been promises made to the aboriginal people in this country. One of the reasons we said "no" to the constitutional amendment, when the Prime Minister sent in his heavy hitters, was that we said "no" to the idea of a Royal Commission. Because we had been promised too many times; the promises made to the aboriginal people in this country don't mean anything any longer.

There came a time when the aboriginal people had to stand up to the governments in this country and say, "no", and say, "enough is enough".

That's what happened last summer. A lot of statements have been made by governments. We know that the federal government said that once the Oka crisis settled down and the arms had been put down, negotiations would begin. What has happened there? Nothing really.

And we saw the Prime Minister in the House of Commons stating a policy that aboriginal issues would be dealt with, that aboriginal land claims would be accelerated in this country. How many land claims have been settled? How many of these issues have been resolved? We know governments tend to do things

piecemeal, appearing to do something. We have *Indian Act* amendments instead of addressing the whole *Indian Act*; they should get rid of the entire *Indian Act*, that's what needs to happen in this country.

What needs to happen is that the politicians must recognize that aboriginal people have the inherent right to self-government. It is not something for the governments to give, it never has been. Until that occurs, we have a long road to go. This relationship has to change fundamentally, to recognize that aboriginal people have been here for a long time and that we always had the ability to make laws and the ability to look after our own.

The general public across this country supports self-government. It's the politicians who don't want to support it. They're afraid, they don't have the courage to make changes so that people will have the ability to make their own laws.

Look at what happened during the constitutional conference. Governments in this country didn't want to give, didn't want to recognize the aboriginal people, didn't want to recognize self-government for aboriginal people. They don't want to give up what they have. They don't want to give up power. They want to retain that power so that they can administer it to the people.

Let's look at the constitutional process, what happened — the failure of Meech Lake — why it failed. It wasn't only the aboriginal people who objected to the Meech Lake Accord. I know many people

in the Yukon who objected to the Meech Lake Accord. Why? Because what it proposed was that, for this territory to become a province, it would require unanimous approval by all the premiers across this country.

You would have thought there would have been no restrictions, that there would have been an arms-right-open policy. Why not? Because politicians wanted to have control up there, they wanted to control the resources, they didn't want to give it to the people in the Yukon or the Territories.

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*Aboriginal people will play an important role ... in keeping this country together.*

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That is what the fight is all about. I would have thought, in talking about unity, that they would have had unanimity with respect to Quebec. If they wanted to separate, it would be by an agreement of all the provinces. That's what I thought the politicians would have come up with, that kind of formula. But that's not the case.

I have always said that if aboriginal people speak with one mind and one voice, if we stand united, we become a very powerful voice in this country. We demonstrated that last summer when we stood up to the governments.

And I have always said too — as a matter of fact I said this in Quebec when I was in Quebec in July — that the aboriginal people will play an important role, a key

role, in keeping this country together. The aspiration of the aboriginal people of this country is to remain united.

And what is happening in Quebec? The James Bay Cree, the Mohawk people — they want to be part of this country. They don't want to be separated from Canada. And that is why — because it is more important today when we are addressing fundamental issues like self-government and sovereignty or self-determination — the federal government has to come out and make its position known, or at least issue a statement of policy with respect to the James Bay Cree.

I have not seen anything, any policy statements, to guarantee that the aboriginal people will have the support of the federal government. After all, the federal government has the constitutional and legal obligations to uphold the interests of the aboriginal people in that province.

History is repeating itself. The clock is ticking. We see Quebec with their timeline, with a referendum sometime in the fall, and what are our politicians going to do? Despite the federal government's initiatives — Royal Commissions and other things — what good does it do to the James Bay Cree if time runs out? What if the Royal Commission's recommendations have not been completed? What is there to defend if the rights of the Cree have been ignored and taken away?

I say it becomes crucial for the federal government to stand up, to take up their responsibilities to the aboriginal people. Whatever the James Bay Cree lose is our loss. We, as aboriginal people, as

aboriginal leaders, cannot allow the federal government to escape from their responsibilities, from fundamental issues such as self-government or the resolution that was passed at the Conservative convention, supporting Quebec's call for self-determination.

Quebec, as a province, has more power and more resources than the aboriginal people in that province. And if the federal government is willing to recognize or give more self-determination to the Province of Quebec, then it must also recognize, first and foremost, the sovereignty and self-determination of the aboriginal people in Quebec.

When you talk about justice, it must have a process. We must have tolerance. We must have an understanding of each other and treat each other equally. You must work with aboriginal people. I don't mean that in the sense of the aboriginal people making presentations to the governments and leaving it to the whim of the governments to determine which recommendations they will accept.

What I am asking of the government is recognition of aboriginal self-government, the self-determination of aboriginal people, and the right of aboriginal people to take control of their own affairs, including an aboriginal justice system. That does not necessarily mean that the laws we create will be different from yours. Those people who will be dealt with in an aboriginal court may be treated more harshly than they would be under the present system.

I don't think that a politician needs to fear aboriginal people taking control of themselves. After all, governments have tried for so many years — and it's costing billions of dollars to look after the affairs of aboriginal people. All we are asking is that the government should finally recognize that we have that ability. We have always had self-government in this country.

In Ontario, the government has made a statement, a political statement, in which it has recognized the inherent right to self-government of aboriginal people. But that doesn't mean to say that everything will change.

It was only recently, 30 or 31 years ago, that aboriginal people were involved in a democratic process, had the right to vote. Many Canadians don't realize that. Many don't realize that we have treaties with their governments. But last year, for the first time, aboriginal people created an awareness across this country and all over the world. Canada cannot be preaching about democracy, about human rights, to other countries unless it starts dealing with its own situation in its own backyard.

But the important point that I wanted to make today is that you must alter that fundamental relationship with the aboriginal people, allow the aboriginal people to be recognized in the Canadian Constitution as having an inherent right to self-government. Only then will you see changes. You will see aboriginal people taking responsibility for their own actions in the justice system.

There are so many other things that I wanted to address, but that is the most important thing that I wanted to say to the justice ministers, to the people here. A fundamental change in relationship needs to occur with the governments in this country.

There are only two nations recognized in the Canadian constitution, the French and English. There is no recognition for aboriginal people. And yet we are the ones that welcomed your ancestors onto these shores hundreds of years ago. We treated them with respect and honour; we shared our land and resources with the newcomers. We didn't envision that we would be dominated by your governments. That was never the vision of our forefathers. At that time, the vision was to co-exist with each other, to share what we had, not to put a burden on the other society.

I hope the governments in this country, at some point, will give us this recognition. It is inevitable that this will come about. Many governments in this country want to define what self-government is. I feel I shouldn't need to define what self-government is. It should be a matter of respect, respect for the fact that we were always sovereign nations in this country.

And that's the number one recommendation that I would make to this conference. Aboriginal people have a right to self-government, an inherent right to self-government.

### **JUDGE DOUGLAS R. CAMPBELL**

The Assembly of First Nations in Canada represents almost 600 Chiefs in this nation. It is a consultant to the federal government, and a very important political force in the country. Today we have Mr. Bill Wilson with us, the Assembly's Vice-Chief for the Province of British Columbia, and he comes to us with words from the Grand Chief, Ovide Mercredi.

### **MR. BILL WILSON BRITISH COLUMBIA REGIONAL CHIEF, ASSEMBLY OF FIRST NATIONS**

Thank you very much. I want, first of all, to thank David, the Chief and especially his mother. She reminds me of my mother. I hope I live long enough to have that kind of dignity, though I sincerely doubt it. I want to thank as well the people of the Yukon, Judy and Margaret, for inviting us here.

I am here substituting for Ovide Mercredi, the National Chief. As you know, he is on a roadblock in Shefferville, Quebec, and he may very well end up spending most of his term in jail.

He is a "hands-on" kind of guy who likes to be where the action is and he is on a roadblock protecting the land from hunters. Hunters are taking an extraordinary amount of moose out of that particular area which is supposed to be a park and supposed to be reserved for the people in the area. So, he is putting his money where his mouth is and he is there on the roadblock.

I did talk to him this morning. He asked me to make some comments about the discussion paper and about the process. He is very pleased that we are engaging in a process. The process that has gone on has taken a great deal of work by a lot of people and it is obviously something we should continue.

However, he does have a concern which comes directly out of the discussion paper, and I will just quote it very briefly to you. It says: "It does not envisage an entirely separate system of justice for aboriginal peoples."

Well, that is the first mistake. That is a direct quotation and it is clearly a mistake. Why are we doing this if we aren't envisaging an entirely separate system of justice for aboriginal people?

Ovide says, and these are his words: "We need a discussion paper that respects our inherent right to self-government." He says that this paper is not a basis for serious discussion, but a basis for simply dressing up a tired old system that has failed not only Canadians, but aboriginal citizens as well across the country. And I agree with him.

He is also concerned that they didn't talk to us. Who "they" are, I don't know. These things, I suppose, appear as mushrooms in the night. And very often aboriginal people feel like mushrooms — you keep them in the dark and you put certain substances on them, and when they poke their heads above, you cut the heads off.

Let me make a personal comment which I know he would agree with. In the paper this morning, they speak about self-government being negotiated with the Department of Indian Affairs. How stupid can you be? That's incredible. How can you negotiate self-government with a colonial branch of the Canadian government? It's like going to a jailor and asking him for a longer chain. And that's exactly what the negotiations for self-government through the Department of Indian Affairs are all about, talking about expanding the cell size but keeping you there incarcerated in your own land, using your own resources to keep you down. And that simply is not going to continue to exist unless we can put it into our hearts and minds, especially our hearts, that we have the inherent, God-given right to govern ourselves.

Unless you can accept that, we aren't talking to each other with respect. I see the words "trust" and "respect" thrown throughout that document when in fact the basis for trust and respect does not exist, that is, treating us as equals and recognizing that we have the right to make decisions for ourselves. We know what the problems are with your system and we can solve them with your help, working together with you in the manner that you put your mind and your hearts to do here.

What does an all-inclusive Canadian justice system mean? That your system is better than ours? That you are superior to us? That if we don't adapt to your system we are going to be incarcerated? What is this but simple racism? Such attitudes are reminiscent — exactly as the residential school system is — of the attitudes that

prevailed at the time of the majority taking over our people. When are we going to learn that white people are no better than any others? When are we going to get that through our hearts and our minds?

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*The fundamental reality is that all human relationships must be based on respect.*

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Aboriginal people aren't any better than white people either. You simply have to understand that as individuals, as races of people, we have to be treated with the same respect that you expect for yourselves.

If the drafters of this document cannot accept that, if the Minister of Justice cannot accept that, then I suppose we will struggle on forever until they can. The fundamental reality is that all human relationships must be based on respect, not on the assumption that somehow you know what's best for us and you are going to whip us into submission. That's what you tried to do in the residential school system and it didn't work, and that's what you are trying to do in the justice system. But your systems aren't superior to ours. Your systems simply are not superior to ours; actually, in many respects they are inferior. Having graduated from the University of British Columbia law school, I can tell you that.

However, I think that the work in the association and the discussion must continue, that we must continue to get together. But it is going to go nowhere unless the officials and the Justice

Ministers and the Solicitors General and the other people who are involved recognize that we are just as good as they are and that what we are saying about taking control of ourselves has to become a reality. You cannot patch up the English common law system like an old tire and somehow make it accommodating to the aboriginal people, because it is not going to be. And it is going to continue to cost us \$50,000 a year to incarcerate each aboriginal prisoner when we could be applying that money to insuring that they didn't have to go into that system at all.

The National Chief has told me that we will be proceeding with our discussions in this area with you in two stages. We intend to transform the old process that is now hurting our people. We can do that very quickly. We know what the problems are, we know what the solutions are. With your help we can transform it, but that is just step one. We are not going to stand by and allow the kind of window-dressing, cosmetic applications of non-Indian solutions to Indian problems to continue.

The ultimate step is a parallel justice system for our people, based on our inherent right to self-government. And we are talking about full jurisdiction; that is where we are going, don't make any mistake about it. We will have full and exclusive jurisdiction on the lands that we occupy with the citizens who are there, whether they're Indians or white people. That is where we are going. And those of you who, 25 years ago or so, laughed at the idea of aboriginal title, land claims and treaty grievances finding their way into the constitution, you know the lesson. We are



not going to quit until we have full and absolute jurisdiction.

We must set our minds to working out how those jurisdictions will relate in a parallel process. Instead of trying to dress up this tired old whore, we must start now to make changes that will allow us to be respected and stop assuming that some people are superior.

I agree with what Michael said today: Why does the white judge have to be the one that makes the decision about the Elders? Why do we have to channel it through a non-Indian judge, when the Elders have made those decisions?

We have to get beyond this. We believe that our inherent right to self-government will eventually be enshrined in the constitution. We view it as a full box of rights that cannot be taken away, cannot be granted and simply must be exercised. And we will proceed on that assumption because we know we are right and we know what 150 years of dealing with non-Indian assumptions has produced in this land. You see the evidence and I don't have to bore you with the litany of abuse that our people have suffered; it is not going anywhere.

So, let's proceed with it in two stages. We want to continue as the Assembly of First Nations with this process. We are hoping to form with your assistance our own justice group. They speak of "policing" and "justice" — those are very often mutually contradictory terms, to my mind. I would like to think about a justice system. We will be establishing our own office at the national level with the

cooperation not only of the Indian people, but also of the Métis and Inuit people across the country, to make absolutely sure we can proceed to monitor this first-stage change and then to assist each other in developing the second-stage change.

We were looking forward to a conference perhaps as early as Christmas, but more likely in January, where we will be inviting the aboriginal people to come and tell each other exactly how we intend to proceed. We will be inviting you as well and we need your assistance in that regard.

But we would want you to come and listen to us, which is something very different. There is listening and there is listening. If you come in here with the assumption that somehow we are fixing up the old tire, we are not going to get anywhere. But if you come with the knowledge that we are just as good as you are and that we have it within ourselves to police ourselves, to have justice systems, to have a relationship with our own people, then we can possibly go somewhere. Then the question becomes: "How do we accommodate and mesh these two parallel systems?" That is the question to answer, instead of arguing over whether or not it is legitimate for aboriginal people to have their own system, because we have had it for 25,000 years. That argument is old and tired and racist.

The challenge now is simply to make sure that we can put those two systems together. Let's take our minds away from the assumption that somehow we simply continue to go ahead and deal with aboriginal people as fodder for the jail system.

I want you to know that the National Chief is very enthusiastic and he is a very positive individual. He believes we can resolve any kind of a relationship, if we approach it on the basis of mutual respect. But he is a very tough individual as well when it comes to people assuming things for him and assuming things for his people. And I am afraid that the assumption on the part of the non-Indian system, whether in the court system or the Department of Indian Affairs, or any other institutions of Canadian society, has been that Indians are inferior, Métis are inferior, Inuit people are inferior and the other people are superior.

Let's disabuse ourselves of that foolish assumption and start to deal with one another on the basis of the mutual respect that is expressed in the paper, but has really not been found in any of the contact we had.

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*Our justice system was our entire way of life.*

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Let me tell you something from a personal point of view. I have asked my mother many times about certain situations that occurred before, because I was wondering about the system of justice that we had. What was it? Were there courts? Were there police officers?

And she always says, "You certainly are a stupid little man, aren't you? Our justice system was our entire way of life. Our justice system could not be separated in a courthouse or a jail; our justice system was our potlatch and our culture and our

relationship to the land." So, when you committed offenses, you committed offenses against the entire community. You didn't commit offenses that were in a criminal code. It was the community's responsibility to ensure that you were brought into line. And she said to me, "I think I will turn you back to that community." She always wants me to go there.

But now that I am not quite so stupid, I finally realize that we cannot compartmentalize our relationship to each other. It cannot be justice, prisons, corrections, women's rights, men's rights, Inuit rights, and so on. It can't be like that. We have to have a relationship based on the respect that is responsive to the needs of communities and individuals.

We can start to do that again, and we can do it as aboriginal people. Something the non-aboriginal people should probably pick up on is this idea that the offenders are actually part of your community. If they are part of your community, why do you send them away? It does not make an awful lot of sense to me. But what we can do as Indian people — and the challenge rests with us to do it — is to make sure that we don't try to dress up a system with brown faces that is just a duplicate of the white man's system. Just as it is foolish to put brown faces into the Department of Indian Affairs, so too is it foolish to put brown faces on lawyers and judges. If you are operating on white assumptions, it is not going to work. Simply changing the prison guards, having brown faces and khaki uniforms, is not going to work either. We have to have a basic re-adjustment of the relationship between

ourselves and this country and we are not going to stop until it's finished. We will commit ourselves and all our energies to making this happen. But we cannot do all of this alone; we need your help. And you must be prepared to help on the basis of mutual respect, recognizing in your hearts that you aren't any better than us, recognizing, even though it may be obscure to you, that our systems are best for us.

I look forward to doing it. I haven't been approached to become a judge yet, but perhaps I might in my own tribe. I don't think we will need them because with my name, *Himas*, I am in a sense a judge in my tribe. My high rank makes me responsible for a lot of land and a lot of people and their conduct. We have to return to those basic roots and not pretend that putting more brown faces through law school is going to get us anywhere. We need brown faces going back through our potlatch systems, through our learning, through our traditions, through our languages and the associations with our communities. That is going to get us somewhere and I look forward to it.

#### **JUDGE DOUGLAS R. CAMPBELL**

Ladies and gentlemen, on your behalf I want to thank all the speakers who provided us today with what I consider to be an incredible asset.

They gave us frank and honest discussion. The asset they provided us with is knowledge and this is the single most important, critical element in an

understanding. *Kwa kwel tul* continues. We are talking to one another.

**ADDRESS OF THE HONOURABLE**

**A. KIM CAMPBELL**

**AT THE CONFERENCE BANQUET**

**FRIDAY, SEPTEMBER 6, 1991**

I will have the opportunity to speak to you in greater depth tomorrow about the work of the conference and where I want to go as Minister of Justice in contributing to the follow-through which is such an important part of any meeting like this. So I will keep my remarks reasonably short tonight.

I want to begin by expressing my gratitude for the privilege of standing on your soil, for meeting with old friends and new in this magnificent setting, discussing issues about which we all care deeply, in an atmosphere of good will that holds great promise for this future. I offer these thanks particularly to the Elders. As we have seen today, their counsel is deep, resonant and a precious light for anyone seeking a just path.

We owe a particular debt to Margaret Joe, Minister of Justice for the Yukon, who proposed this conference over a year ago and who, with her Advisory Committee, has worked so hard to make it a success. In fact, it was at the first meeting that I chaired, the federal-provincial meeting of Ministers of Justice in Niagara-on-the-Lake in June 1990, that the question of aboriginal justice arose and Margaret Joe volunteered to host this conference in the Yukon. We have worked with Margaret and it has been a pleasure, but it really was her vision that this was an important thing to do. It is amazing how women get these visions that turn out to be extraordinarily timely, and I want to pay tribute to Margaret.

I also want to express my gratitude to the national aboriginal organizations that also played a central role in the program planning of this meeting. And last but

certainly not least, I would also like to thank my federal, provincial and territorial colleagues and the aboriginal leaders across the country whose participation has made Margaret Joe's vision a reality.

*Translation from French*

[You have worked very hard over the last few days. It's hard to believe that we will be going our separate ways after our meal tomorrow and returning home to all parts of the country. I hope that this conference will enable us to make a concerted effort towards the creation of a better justice system.]

Today has been an extraordinary day for me. I want to tell you how much I appreciate the candour and the openness with which you have addressed the issues before this conference. I am heartbroken to have missed the circle that brought the whole conference together today; I had a commitment to meet with my own Regional Office people in Whitehorse and did not know what was planned. But I want to thank Joan Crowe and Pauline Busch for the honour of inviting me to join your circle and I hope very much that I will have the opportunity to do so sometime in the future. I think it was evidence of the role that aboriginal women play in the broader society. Pauline played a very important role and actually stepped in at the last minute when someone else was not able to attend our symposium on Women, Law and the Administration of Justice in Vancouver in June — and the voices of aboriginal women there were very strong. I knew and expected nothing less, and I knew they

would want to have their own perspective reflected in this meeting.

For me, and I think for most of my colleagues, today was a day for listening, and the things I heard were extraordinary. I heard that reform of the system as it affects aboriginal people is urgent; that we have a great distance to travel before aboriginal people will come to see the justice system as theirs; and that we must travel together. Some of that has been done. We have already walked far together and you had much open trusting talk. We have been *kwa kwel tul* together. Now it is time to go further together, to go beyond talk, to take joint action that builds on and flows from our *kwa kwel tul*. *Sesawatel* or "helping one another" is our present challenge. I believe it is also, as we saw in the wonderful play this morning, our joint destiny.

Of the many themes that I heard throughout the day, there are three that I want to focus on particularly, because I think they are extremely important. The first is the theme that aboriginal peoples, the first peoples, are different and must be respected for what they are. And that includes all aboriginal peoples. But we must also work together to have a common vision to share and to lift each other up.

Secondly, what you said — and the theme ran through all the presentations today — was that the community must be respected. It has great resources and strengths, such as the Elders. In the community, justice must be based on aboriginal values and delivered by and with aboriginal peoples.

The third theme that struck me as a constant throughout the day was that justice for aboriginal people is not adversarial. It is based on healing, fairness, restoration and reconciliation. It is supported by the wisdom of the elders and by spiritual beliefs.

I have listened carefully to Chief Sampson's wise reflections on the double-edged power of words. They can be precious conduits between open hearts or they can raise terrible barriers to understanding. So I want to be clear and open with you about what I am feeling and thinking, without placing useless obstacles in our path together. What I want to say to you tonight is that I am committed to the support of community-based aboriginal justice systems which aboriginal people develop and deliver. Now, not tomorrow and not the day after, is the time to act together to bring this about. In fact, I think the reason this day was so extraordinary for me is that I have heard my own views articulated back to me over and over again today, in many cases more strongly and eloquently than I could do myself.

I have been very impressed by the positive spirit of the contributions today. There were some exceptions, and that is understandable. But I think we all recognize that negativism is destructive and not helpful. For the most part this conference has been enormously positive. We must be open, we must not be impatient. The details of what we are going to do will emerge as we continue our work.

The message is that things must change. We need a new beginning, as Tom Sampson said. Chief Lena Johns spoke to us this morning of her home's Tlingit name which meant "river between mountains, one river, two mountains." The question is: Does the river divide the mountains, does it hold them apart from one another? Or, does the river flow from them speaking of their strength and life together? This is what I want for our justice system and what I will commit myself to as Minister.

The justice system of Canada must no longer just speak *to* aboriginal peoples; it must speak *for* them and *from* them. This is what I believe that Elder Pearl was trying to teach me. And this is what I want to join hands with you in achieving now.

**SATURDAY**  
**SEPTEMBER 7, 1991**



*Session commenced with prayer from Matthew Thom, Teslin Tlingit Council, Yukon.*

### **JUDGE DOUGLAS R. CAMPBELL**

There was a special gathering of Elders the day before yesterday to discuss what we're doing here and they showed a very strong willingness to assist. I would like to take this opportunity to pay special recognition to an Elder in this room who has been very influential over these last three or four days.

I am talking about Edward Jack. Mr. Jack is a person who tells an interesting story. Not many years ago, he was a leader in his own community but he wasn't following the ways of his Elders. As a result, he lost his leadership. He now has regained his leadership. One of the greatest compliments that could possibly be paid to him has been paid. He is an extremely proud man and he is an important person in his own community. And for conveying those thoughts and for the help he has given us over the last four days, I am truly grateful.

Edward has words for us and I am going to call on David Keenan to read those words.

### **CHIEF DAVID KEENAN**

What Doug has said about Edward is very true and I feel very honoured and privileged to deliver Edward's message to you the people.

Edward's poem or story or thoughts is entitled "Circle of the Bow," and these are Edward's words:

"Every time you take something from Mother Earth you have to give something back. You have to give something back that you really like to show that you appreciate what Mother Earth has given you.

If the bow-maker wants to make a bow, he first has to ask the Creator for help in finding the right tree. The best trees for making bows are balsam, growing high up in the mountains. The tree may be small, but because of the high altitude and severe conditions, the tree is old and strong. The growth rings are very close together and because the tree gets blown by the strong east wind, it has learned to be flexible and to bend with the wind. A bow made from such a tree cannot be broken, no matter how strong the hunter using it is.

After the bow-maker is told by the Creator which tree is the right tree, it is cut and then the earth is given an offering. This offering could be tobacco, a piece of dried meat, or anything else that you really like.

After the tree is cut, it is brought back and carved into a bow. After the bow is finished, it is given to the hunter who asks for the bow. I hope this bow is good for killing bear and moose and that the Creator has made it strong and accurate.

It is passed to the hunter and it is now up to the hunter to take good care of the bow. The hunter has to remember always where the bow came from: the earth and the bow-maker.

If the bow cracks or gets worn out, it cannot be thrown away because that would be a disgrace. It has to be burned so that out of the ashes another tree may grow. And while the bow is burning, another offering is given into the fire. The bow always has to be respected.

This story shows how everything goes in a circle. The bow can mean life or death to the hunter. The earth from which the bow comes is given respect. The bow-maker who makes the bow is given respect. The bow itself is given respect. The animal which the bow kills and everything made from the animal is given respect. When the bow's life is over, it is given its final respect as it goes back to the earth once again to begin another circle."

This is Edward's message to you the people.

#### MS. KATHY LOUIS

Good morning ladies and gentlemen. I have the honour of introducing Chief David Keenan, from the Teslin Tlingit First Nation. He is the son of Pearl Keenan, a woman we have heard in the last three days.

Chief Keenan is and has been one of the major forces behind the development of tribal justice in Teslin, a leader in the Yukon area in negotiating a fair settlement of land claims. He is also a member of the Advisory Committee to the Minister, Mrs. Margaret Joe, a person acknowledged as a great developer and teacher of intercultural understanding.

#### CHIEF DAVID KEENAN

Honoured Elders, honoured ministers, ladies and gentlemen, chiefs and all interested people who are here.

I have listened in the last four days with great pleasure and interest, knowing that we have gathered here for one common goal and that is to find a path which I believe is long overdue, to initiate justice or make it possible for us to initiate our own justice systems.

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*We are not a bitter people, but that system that was put upon us is not our system and it never has been.*

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And you people who have been here for the last four days, I think you have a very thorough understanding of what has gone on in the workshops, just through your participation and being here.

I ask you not to treat this as just another conference, but to actually carry it in your hearts so that it might come from your heart to your brain to your mouth, and you might be able to enact what we indigenous people of this country so desperately need.

In the program it says I am to speak to the future and what the future means to our people. I have always found it very difficult to speak to the future without reaching to the past; and that's what we have done in my community.

We are not bitter. We recognize the hurts and the sorrows of the mission schools, the Department of Indian Affairs and their misguided attempt to nurture us and to help us. We never needed that. We are not a bitter people, but that system that was put upon us is not our system and it never has been our system.

It was a few short years ago that we brought together a team of people, including our Elders and our clan leaders, of whom Matthew Thom is one and Sam Johnson is another. These are our traditional leaders.

We had good governing structures and we had accountability and that accountability was to our culture. In our systems, in our culture, we had Elders' care, we had child care, we had education, we had health care, we had everything that makes up a good government; yet it was done slightly differently, it was a different process. That's what we had as a people and we were a happy people, we were a thriving people, we had an economy. Deep in the forest, as I like to say, we were a very happy people, a healthy, strong, vibrant people. That's what we were.

What about the future? As I said, I am not a bitter person and neither are my Elders. But when we look to the future, the future is undefined. You do not have a road map to the future. There is not a

blazed trail so you can look on both sides of the tree and see which way you are going and which way you are coming. The future is up to us to define and that's what we have to do.

When a community reaches the point my community has reached and a lot of other communities in this great country of ours, such as Tom Sampson's community — I know very few of these communities, but I know they're out there because my people are here and surviving yet — when these communities know who it is and what it is, then we can begin to deal with its conflicts. Therefore, I certainly believe that aboriginal justice systems should be and must be allowed to evolve in the context of self-government negotiations.

You have to prepare your people. You cannot just take an elite group of leaders and say, "Here we go, we have a justice system." That is not our way. We have to bring our people with us.

We can only go as fast as our slowest member. And if we have to carry him, we have to carry him with us, because there is no such thing as a dispensable Tlingit. And I know that there is no such thing as a dispensable person anywhere in this country. We must quit treating them as such.

When you get to this state of preparedness you start to solve other community problems, because you cannot look at it as a singular justice system. You have to look at it in the context of economic development, housing, education, all these other things that make up this great country of ours. This is what you have to look at. And we can do that through the

context of self-government negotiations, people development, because it's our own government. As was said by Joan Crowe, I believe, it starts right here; that's where self-government starts and then you take it out.

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*The governments and the bureaucracy must trust our culture and must allow us to heal ourselves.*

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I believe that the goal for aboriginal people in our communities is peace and harmony. These are goals that will guide a justice system: peace and harmony based on our cultural values. And the control of these justice systems must be in the hands of the community, ladies and gentlemen. For so long it has been out of the community. It must be returned to the community, it must be in the community so that we may do it ourselves.

I make no bones at this point in time that we are not frightened of it — maybe "frightened" is not the right word, but we are nervous. But we have faith in ourselves and our Elders and our people, and we can do it, I know we can do it.

What the government must do — and these are words that I hope you will listen to — is assist in the empowerment of the communities. You cannot direct it.

Next year we are going to be celebrating 500 years of European contact. And in 500 years it hasn't worked, assimilation hasn't worked, none of these words that we have used have worked for my people

and they never will. So, don't do it for us. Enable us to do it, give us the resources so that we may do it.

Those are strong words and a strong direction if you take it to your heart. This requires that the governments and the bureaucracy must trust our culture and must allow us to heal ourselves. You must trust our culture.

We do not condone what happens in the communities. You know the statistics. I do not have to reiterate the statistics for you at this time. We don't condone sexual assault, rape, violence against our women. Our women are our purity, they are what hold us up. We don't condone violence.

What we have, though, is a different process for dealing with these things. We want justice in our communities. We definitely want justice in our communities.

If my brother "Brown" out there is going to do something that offends the individual or the culture or the community, we are not going to stroke him off and say just because he is a Brown brother we will let him get away with this. No, that type of thing doesn't go on. We have a different process. We do not have now, at this point in time, case law. We have history and how we dealt with it, but we don't have case law. It is not up to you, the government people, or the Crown attorneys. It is not up to you people to appeal these cases.

As I said before, we are not stroking off one another. We want justice; we have a different process of doing things and we want that to be respected. I do not need a

Crown attorney telling me that he is going to appeal it because Joe Blow in the next province got 10 years for it. Joe Blow is going to come out of that jail a bitter man, a drug addict, a drunk, a mixed-up person. That is what he is going to come out as.

As I said once before, there is no such thing as a dispensable Tlingit. There isn't. You have to have open hearts and open minds for these people. An adversarial community justice system is not compatible with our traditional values, and I think I have made that point quite clear now.

In May of 1991, Graydon Nicholas became the first native Justice of the Provincial Court of New Brunswick. And that gentleman said at that point in time: "The only right we have is the right to life and the rest is a responsibility." That's what it is, that's what it comes down to — a responsibility.

And as my mother said yesterday, it was just 40 short years ago in the Yukon that they took away our responsibility. Now, at this time, we must take back that responsibility. And we started doing that in Teslin by reverting to our traditional values.

You must recognize that the challenge to solve these community problems is the only salvation we have, to see the challenge of creating a different environment in our community. And the challenge is just as great for us as it is for you, yet we must do it for ourselves.

And we have learned that one man or one woman can make a difference. Because I

say now that these people who have made the difference in Teslin are not of our society, are not of our culture, but are understanding and trusting of our culture, such as Chief Justice Heino Lilles and Corporal Tom Grant of the RCMP. Without those gentlemen and that trust and that faith in our system, it wouldn't have come as far as it has come. I would just have been walking into pillars and have a much flatter forehead than I have now.

But I trust you. What will happen if these people leave? I hate to call Heino and Tom transients, but in our system I think that is what they are. They are not going to be there forever. And I hope that I have not offended either one of those gentlemen when I say that.

What is going to happen when they leave? I believe that this is where the Government of Canada has a responsibility to assist us in ensuring that the implementation of systems of justice is not personality-dependent. It cannot be personality-dependent and I hope I have made that quite clear.

I listened to the Hon. Kim Campbell's comments last night and she said we are going to do it now. She said that she wants to start something now. And I thought, I have heard these words before, I have heard these words. Well, I am about a six-year veteran of a land claims negotiation process and I guess I have become paranoid.

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*What is said at the top does not  
always trickle to the bottom.*

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I have been told that paranoid is not the right word. But I am actually a very paranoid individual at times, because what is said at the top does not always trickle to the bottom. But from what I have heard of Ms. Campbell, she will get it to trickle to the bottom of her ranks and into the streets where it belongs. So many times I have sat around a negotiating table and listened to a minister and then the very next day the people have said, "Well, that's what he said but we are sure that is not what he meant."

We do not need a bureaucracy interfering with the good intentions of a government. We do not need that interference. And consider that a slap on the wrist to the bureaucracy.

When you say "now", then we have to implement now, we have to do it now. My people are in jails all over this country, my people are sick, my people are in a state of not healing. We have to do it now. There are so very few of us. Give us the opportunity to come back.

That play that we saw on the stage yesterday brought tears to my eyes because it showed the past, the present and the future. That poor kid from the future, he was lost, he was just bumping into himself. Thank God he came to the dream rock and he had seen and then he took something back with him.

Don't put us into that position, please do not put us into that position.

When the Europeans came to North America 499 years ago they brought their own laws and their own justice system

with them and they ignored ours. They ignored our system — I can't say our justice system, our self-government system, because it is all one.

Today — and Elijah Harper is the living example and he proves what can be done by one solitary figure — we should be able to recognize that we are part of a very amazing process whereby we are developing a new body of law and a new justice system, and this justice system will eventually become North American common law. It will only be truly North American if it incorporates aboriginal law and that includes aboriginal values, aboriginal customs and aboriginal traditions.

Ladies and gentlemen, I leave this to you for your consideration for the future, but I also consider it to be a challenge for the future.

#### **JUDGE DOUGLAS R. CAMPBELL**

I now call on the Hon. Margaret Joe.

#### **THE HONOURABLE MARGARET JOE**

Elders, honoured guests, 15 months ago at Niagara-on-the-Lake the idea of a conference to deal with aboriginal justice was born. It was conceived as a conference that would be action-oriented, one that would demonstrate the positive things that were happening and those that should be happening, so that we could listen and learn from each other and make concrete plans for the future.

It was recognized from the outset that aboriginal participation in the conference was crucial. And I am pleased to see that more than half of the participants here this week have been aboriginal.

I am encouraged by the commitment from the federal Justice Minister, Kim Campbell; I am encouraged by the commitment from my territorial and provincial colleagues. In the last 15 months, since Niagara-on-the-Lake, there has been a deep commitment and I think that commitment is evidenced here today and yesterday by the presence of these people.

At a breakfast meeting this morning we talked about where we would go from here. We talked about the importance of being here, and the Minister of Justice for Nova Scotia said at that meeting, "I came here to learn. And what I learned is that I have much more to learn." I think we all feel that way.

At Niagara we agreed that we would concentrate not so much on the problems the justice system caused for aboriginal people as on looking for solutions to those problems and taking the action to put those solutions into place.

At that time we had the Marshall Inquiry report and indeed the many reports that came before it. We knew the basic problems and we talked them to death. But that was just about all. It was just talk.

Since Niagara we have received the report of the Alberta Task Force, and just last week the Manitoba Inquiry report. These

reports clearly elaborate the problems and issues and recommend courses of action for consideration.

As I say, the time is upon us when action must be taken — firm, deliberate action, action with full participation of our aboriginal people — so that justice is finally achieved, starting today and for tomorrow.

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*We must recognize that what works in one area may not be suitable in another.*

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Canada is a great, magnificent country and it is heartwarming for me to look out and see representation here today from all parts of the country. But Canada is a diverse country and so often we hear that the strength is in its diversity. But that is only partially true. Aboriginal people are part of that diversity. And even among themselves there is a great diversity that often goes unnoticed.

We must recognize that what works in one area may not be suitable in another. There are no hard and fast formulas. Such formulas have been put in place in the past, and we are witnesses to their ineptness and to the damage they have caused.

No wide and sweeping formulas are needed, but rather action with and by native people, recognizing their particular customs, traditions and values, recognizing the socio-economic situation and planning action to achieve justice.

We all must be mindful, at all times in this process, that aboriginal people have far too often been treated unfairly, with little or no respect and with insensitivity to their language and their culture, so their perception of the justice system is often one of a system that is alien to them.

These two factors — fairness and the pervasive feeling of alienness — must constantly be recognized as we strive for remedial action, whether it be in the area of policing, legal services, community and crime prevention, courts and adjudication, sentencing and corrections or special interest groups such as women and young offenders.

The First Nations people of Canada have persistently refused to let others define who they should be and how they should be. This has brought about an awakening in other Canadians and non-Canadians.

We must recognize that the traditional aboriginal approaches to justice were integrated with community, social, economic and religious institutions. When community expectations were breached they were dealt with in a way designed to foster social harmony, to recompense the victim and restore the community.

These practices, these values, must be observed in the action plan. And this must be done through the full and effective involvement of aboriginal people at every stage of the process.

The debate is over. The results of this failure have been documented. It is now up to us to go on from here, to develop a system which both recognizes and

accommodates these differences. It will not be easy. There are no simple solutions, but it must be done. Achieving justice for aboriginal people will involve many levels of change.

It may well be that it will require constitutional change and certainly legislative change. But the most profound and significant changes will be achieved by the countless dedicated individuals working together in the traditional way within their communities. This conference has given us an opportunity to meet some of those individuals, to listen to their experiences, to compare points of view.

In my own jurisdiction here in the Yukon, we have started to take this approach. Negotiations between the Yukon First Nations and Yukon and federal governments for self-government have been under way for many months and are making progress. As part of those negotiations, the role of the native community in developing a system of justice that meets their needs and aspirations is a high priority.

Those of you who attended the workshop Tribal Justice - A New Beginning will know that the Teslin Tlingit First Nation is already taking an active role in the administration of justice and proposing a far greater role for the future.

Another example of the native community becoming fully involved in the process of reform can be seen in the plans of the Selkirk First Nation in the Pelly area of the Yukon. Working together, they have initiated a project which will help their community rediscover and reaffirm



traditional values. They have obtained a community development grant from this government to develop and maintain an alternative workplan.

This is an example of what a community can attempt to do on its own. It will foster both treatment and prevention. I must stress that with that project there was no government involvement. The project represents the Selkirk First Nation's own vision of what they want to accomplish.

Another area in which the Yukon is planning positive action relates to family violence. Until recently, the needs of the victims of crime were largely overlooked, yet nowhere is there a greater need for sensitivity towards victims than in cases of family violence. This must be reflected in many areas, in initial contact with authorities and particularly in contact with the court. These cases must be accommodated expeditiously. All aspects of the victims of family violence and the treatment of the offender are now under consideration, and an action plan will be forthcoming in the near future.

One further Yukon incentive I wish to touch on is that of the correctional facilities. I will not reiterate the many problems that current facilities across Canada more often than not create for aboriginal people. Simply said, correctional facilities should be smaller and, wherever possible, near the community where the offender resides.

In the Yukon, aboriginal communities are becoming more and more involved in the delivery of correctional services to native offenders. They want to see offenders

accommodated in their own communities. They want to develop rehabilitation programs that are culturally appropriate in ways that are traditional to the aboriginal community. They want to participate at all levels of developing and implementing such programs.

This government has a stated commitment to decentralized correction services to rural communities. Plans are under consideration to build a 25-bed co-ed minimum security rural facility. You might ask why we are building a new facility. This facility will be used to provide predominantly aboriginal programs and the government will work very closely with the community in developing the facility and its programs.

While many of us were in Yellowknife, some 27 or 28 workshops were conducted, workshops that shared ideas and gave new incentives to such matters as family violence and gender bias, policing and cultural awareness, sentencing, and corrections for the aboriginal offender. Many dealt with the administration of justice, self-government and systems of justice for aboriginal people. You heard the rapporteurs' reports on these yesterday. New ideas were advanced, ideas which can lead to dramatic changes, yet changes which in the end will be in the interest of all of us.

The search is for a way, as Leroy Littlebear put it, to restore fundamental fairness, to concentrate on restoring harmony, not on the process of accusing and condemning.

We received much wisdom from our native brothers and sisters in yesterday's sessions. We must listen carefully to our Elders and to our native leaders.

They may use language such as "nations" and "separate systems," which to some people implies that they intend to become independent nations. But listen carefully: Mike Mitchell said that for aboriginal people to feel part of this country, they need recognition as a distinct people, they need control of their laws. But make no mistake, Mike is talking in terms of his people being part of Canada, but on a new basis, in a new relationship.

Pearl Keenan said, "We have to go back and rule ourselves. Our responsibilities were taken away. We have to get them back. That is the only way we can have pride and faith in our new ways." At the same time she said we must work hand in hand with people in government. She also said that the non-aboriginal people have to let aboriginals work with their own people. She talked of her people losing their identity and wanting once again to take control of their destiny.

Tom Sampson talked of wanting his people to be understood. They are different, he told us, they do not want to take over the white philosophy. He wants both sides to listen carefully to each other. He wants power to be used wisely for his people. And he says, "Look at this country, look at this land as if you are trying to make it grow."

To the government people, I say: Listen, don't get turned off by words like "nation", or "separate systems." Listen

first. Try to understand and realize that understanding the ideals and values of another culture is often difficult. If we all do this, it will work out. Responsibility will be renewed, lost pride will be regained and Canada will be a much stronger nation for it.

I wish to make one final comment. I do not want this to be a conference where you return home and say, "that was a great conference," and then forget about it. I was at the last national conference on justice for aboriginal people in Edmonton in 1975. We all left with good intentions, but those intentions were not translated into action.

I want you to go back home, back to your people and say there are things that all of us can do, now and in the months ahead, so that justice truly will be achieved for aboriginal people.

Kim Campbell and I are giving you a reminder, something to prompt you to action. It is this print, which was commissioned for this conference from a Yukon aboriginal person. And when you ask an artist to create a piece of art that is to explore such things as problems, culture, ideals, the past and the future, the artist may be somewhat confused. I must admit that when I first saw the painting I was confused. Symbols from different cultures mixed together at first had little meaning. The scales of justice were askew. The judge's gavel appeared in an aboriginal hand. But as I continued to look at it, although I could see that it was open to many interpretations it began to have a very definite meaning to me.

The native spirit is at the bottom. I do not know if that is significant. There is frustration, even sorrow in his face. The most dominant figure is the dancer. It stands for the culture, the customs, traditions and values of aboriginal people — the area that is so misunderstood and which now must impact dramatically if our people are to be treated with dignity and fairness in the administration of justice.

The scales of justice are out of kilter. We all know that they must be set in balance, a balance that reflects the needs, the culture and "Indianness" if you like, of our people. The gavel authority must be transferred more to our people. Significant is the fact that a native hand now holds it.

The quill, I believe, represents the writing of laws, laws that must be now written in a manner that will ensure that the injustices of the past are not repeated. The eagle will then dart over and keep those laws and see that fairness and balance is maintained.

The pillars here are, I believe, the pillars of wisdom, the wisdom of each and every one of us that will be exercised in understanding each other's ways, respecting each other's values and traditions, and recognizing not only that change must take place, but that we must be wise in the decisions we make and the way those decisions are carried out.

And, finally, there is the sun, whose forces will give the strength to achieve our aspirations and at the same time heal the many wounds that are still festering. The sun's rays provide us with hope and

inspiration, hope that we must convert to possible action.

This print is left with you as a reminder of all that we have to do, and of the manner in which it must be done. I look to a new era. Justice must be achieved both today and tomorrow.

**THE JUDGE DOUGLAS R.  
CAMPBELL**

I would like to call now on the Hon. Kim Campbell.

**THE HONOURABLE KIM  
CAMPBELL  
MINISTER OF JUSTICE**

Elders, chiefs, ministers and friends:  
Today marks the end of an extraordinary few days and a new beginning for the justice system.

This was not a meeting of lawyers and politicians to discuss technical aspects of the law. This conference was a consultation with the entire aboriginal community, starting with the Elders, who reflected throughout these proceedings the spirituality which is so central to that community and used the genius of theatre to reach deep into people's hearts and to open their minds.

In my view, the conference has been an unqualified success. And I want to express my thanks to all of you who have participated and especially to those who made it their labour of love and thereby created that success.

From the presentations and reports yesterday I have learned of the limits of a system based on formalism, adversarial in its approach, and often punitive in purpose. I have also come to appreciate that there is much that we can learn from the rich culture and customs of aboriginal peoples to make the system work better for all Canadians. And I have learned that the governments of Canada and the provinces and territories must support aboriginal communities in using their own rich traditions and learning to provide true justice for their people.

In some ways these past few days have been difficult. It is never easy to be reminded about the mistakes of history and the suffering these have brought about. But it is important to be reminded. We will not repeat these mistakes, we cannot.

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*The future must be based on partnership and respect.*

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Attempts at assimilation, symbolized by the residential schools, were doomed because they were wrong, because they were not based on respect. The exclusion of aboriginal people from our institutions was wrong and has hurt all Canadians. We have learned this from the Manitoba Aboriginal Justice Inquiry, we have learned this from the Alberta Inquiries and the Donald Marshall Commission, and we have learned it from this conference. The future must be based on partnership and respect, a new relationship; this is what all Canadians want.

*Translation from French*

[In the framework of this conference we have examined our differences and discussed the measures that must be taken and what can be done. We have begun a process, a dialogue, that must be followed up. I am struck by the fact that in spite of what separates us, we can always find grounds for understanding.]

But talk is not enough. It is time for action, joint action. And this is why I have taken the opportunity of the conference to announce a new initiative which I will be undertaking with the Solicitor General of Canada and with the cooperation of the Minister of Indian and Northern Affairs. This initiative, for which we have been provided more than \$26 million over five years beginning immediately, is but one element of the government's overall commitment to greater justice for aboriginal people.

The Minister of Indian and Northern Affairs and other federal colleagues have announced and will be announcing initiatives directed at the economic, cultural and social roots of injustice. The Royal Commission recently announced that we will develop proposals for lasting change, including change in the justice system.

And constitutional negotiations will be a very important forum for addressing the aspirations of aboriginal people. But there are real problems now and opportunities to address them now, without undermining the outcome of these larger processes.

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*I am committed to ensuring that aboriginal women will continue to have a voice in charting the direction for the future.*

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There are too many aboriginal people incarcerated, provincially and federally. Aboriginal people see the system as alien, and rather than making effective use of it, they feel victimized by it. Problems of substance abuse and family violence, while in no measure unique to aboriginal communities, are symptomatic of past injustice and current inequities and inhibit social progress and development.

In June of this year I had the privilege of bringing together women from across Canada to a symposium in Vancouver to discuss Canadian women and the law. I will always remember the passionate contribution of aboriginal women, who spoke not only on their own behalf, but on behalf of youth and aboriginal families and aboriginal communities. They spoke of racism and of the double burden born by aboriginal women, who play a crucial role in family and community. Racism is a cancer that cannot be tolerated any time, any place, by anyone. I am committed to ensuring that aboriginal women will continue to have a voice in charting the direction for the future.

If I sound optimistic, it is because of what I heard at this meeting and the previous conference in Vancouver, because of what I see as a will to change and a commitment to partnership. It is not because I underestimate the task.

We can make progress immediately, but a full solution will take longer. I am committed to reform, to strengthening and adapting federal programs, to testing innovative arrangements and to consulting on all of this and on our research and policy priorities. I am committed to openness, to partnership and to new approaches.

Let me sketch out the broad directions of our new initiatives. First, we want to remove barriers and build bridges. Barriers must be removed and new bridges built if we are to establish a new relationship. And that relationship must be one of mutual understanding and respect.

The discussion paper we released at this conference asks aboriginal people and my provincial and territorial colleagues to help us to put in place at the national, provincial and territorial levels, mechanisms that will allow us to continue our dialogue, that will ensure that aboriginal people play a central role in policy development.

I have been assured that the Law Reform Commission will soon be publishing its response to my request that the Commission examine how to remove systemic barriers to justice for aboriginal people in Canada's criminal law. This report will, I hope, provide a framework for consultation. It will be important that all aboriginal people, First Nations, Inuit and Métis, have a full opportunity to study and discuss the report. And I will support these initiatives as well.

New policies will emerge out of a new partnership. Our discussion paper sets out some principles as a framework for discourse and joint action. The paper also sets out our objectives. I would like to remind you of what they are.

First, equitable participation of all aboriginal peoples in the overall system of justice and their effective participation in shaping justice policy and delivering justice programs; secondly, reduction of the economic and social costs of crime by and against aboriginal people and the preservation of peace, safety and order in aboriginal communities; thirdly, equitable and fair treatment of all aboriginal persons by the justice system in a manner that respects aboriginal culture and the unique history and circumstances of aboriginal people and which responds to the special needs and aspirations of aboriginal people; and finally, increasing responsibility of aboriginal communities for justice administration compatible with, and supportive of, government policy and negotiations on self-government.

The discussion paper reflects our commitment to a broad-based approach that looks at change in every component of justice administration: change in attitude, change in understanding, change in structure and process, and change in law. This will require a cooperative effort of all justice components in all levels of government. We will have to transcend the compartments and jurisdictional lines that too often inhibit reform. We will have to work together.

And most important, aboriginal people will have to be full participants in reform.

Aboriginal people must also be fully involved in the administration of justice itself. I have therefore undertaken to strengthen and adapt the Native Courtworker program, which serves as a bridge between aboriginal people and the justice system. In consultation with aboriginal organizations and communities and with the provinces and territories, we will make sure that this program more fully realizes its potential to provide access to justice for aboriginal people.

*Translation from French*

[Clearly, we must work to make all those involved in the administration of justice more aware and also perhaps bring them to change their attitudes. Cross-cultural education may be a first step towards the responsible exercising of discretionary power in a manner that shows respect for the constitutional position of aboriginal people, their culture, and their history. If we wish to change attitudes further, aboriginal people must come to occupy positions at all levels within the justice system. I have therefore decided to enlarge our program to provide access to legal studies for aboriginal people and to increase the number of scholarships available.]

We must also ensure that aboriginal people have the knowledge and information they need to make use of this system, to ensure that they know their rights and the remedies available to them, and we are therefore committed to strengthening our efforts in public legal education to ensure that aboriginal communities help us to design and deliver public education materials that are responsive to aboriginal

peoples' needs and concerns, that are accessible and that are respectful of aboriginal customs.

All of these initiatives will help us to change the system which exists outside the community; but this is only one part of the approach. The other part has already been undertaken by many aboriginal communities and I am committed to supporting these efforts.

For over a decade, we in Canada have been exploring how most effectively to restore the place of community in the administration of justice. We have explored ways of giving victims their rightful voice. The Solicitor General recently released a paper on new directions in policing based in and accountable to the community. We are exploring how to give the community a voice in programs of mediation and diversion at every stage of the justice program. How ironic that we have not taken the opportunity to learn from aboriginal communities how we might achieve those goals. I am therefore committed to working with aboriginal communities, the provinces and territories, to test innovative approaches to justice administration that are community-based, respectful of aboriginal ways, and designed and delivered by aboriginal people.

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*We are talking about more than a face-lift to the existing system.*

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The discussion paper outlines some options, some in the context of self-government negotiations, which can be tested now. The discussion paper is by no

means exhaustive, and the discussions over the past several days have raised new possibilities. We will have to work together to identify those options that show the most promise.

Clearly, we are talking about more than a face-lift to the existing system. We are talking about fundamental reform and this means no quick solutions. We are talking about a practical agenda for reform, not an abstract blueprint for debate.

This is all a beginning, a framework to examine many issues. I am looking forward to consultation on the Law Reform Commission report. I am committed to discussing with you how our criminal procedure might be amended so that aboriginal people are assured of respect and are not disadvantaged. Together we may look at special remedies to deal with obstacles of language and understanding, provisions that take into account the remoteness of some aboriginal communities.

The Minister of Indian and Northern Affairs and the Solicitor General have announced a new policy for policing on reserves. In addition, the Solicitor General has undertaken a program of correctional reform, following the work of a special task force on aboriginal corrections.

Much remains to be done with all aboriginal communities on and off reserve, urban and rural, in every province and region. I want to discuss with you further changes to the *Young Offenders Act* that will allow us to be responsive to the special needs of aboriginal youth. I want

to support research by aboriginal people on customary law and customary approaches. I want to work with aboriginal women, indeed all aboriginal organizations, on issues of family violence and substance abuse. The Solicitor General and I will be supporting the program of consultations, pilot projects and research to address these issues.

As I have said, this is a beginning, a new beginning. In looking at the path which lies before us I can't help turning again to Tom Sampson's reflections on the double-edged power of words, that they can be precious conduits between open hearts or can raise terrible barriers to understanding. We must avoid empty debate and search for a language that draws us together in mutual understanding. Your messages of the past few days have given me a fuller understanding of my responsibilities as Minister of Justice. They have underscored my responsibilities towards you as your Minister of Justice.

Justice is not simply the name of a department. Justice is fairness and equity, justice is balance and harmony, justice is healing and reconciliation. Above all, justice is respect for the inherent worth and dignity of all individuals and for the distinct communities that compose our country. Justice is *washin-et-gidone*. I want to thank Matthew Thom for the Tlingit word. It means "working together."

To achieve justice, we must work together. I pledge my respect and my support. The next stage is *sesawatal*, helping one another. Together, I know,

we will make a difference for the next seven generations.

#### **JUDGE DOUGLAS R. CAMPBELL**

Kathy and I have been trying to help you achieve your goals at this meeting. As helper I have a couple of small observations.

No one in this room can say what the future will hold, but I sense that each of you knows how to reach that future. If you bring from this meeting the knowledge you have gained, you will find what you are looking for. What you have learned is the experience you have had. Just don't forget that experience.

As I said at the outset, the critical element in the action that we know will now be taken is the building of the relationships, which leads to trust. The building of relationships leads to trust.

#### **MS KATHY LOUIS**

Elders, brothers and sisters. When I accepted the invitation to co-convene this conference, my prayer and hope from the beginning was to help open the hearts and minds of all people attending this conference.

I think we have attained that level of harmony where we are talking together, listening together, listening to each other; a level of respect is building. Let us keep that challenge and maintain that commitment.

*Session concluded with prayer from Elder Pearl Keenan.*





## WORKSHOPS

**WORKSHOP 1 — FAMILY VIOLENCE:  
ISSUES AND OPPORTUNITIES**

*Speakers*

Susan Anderson, Ontario Native Women's Association

Ruby Miller, Courtworker Trainer,  
Ontario Federation of Indian Friendship  
Centres, Toronto, Ontario (*Moderator*)

*Rapporteur*

Lois Lowenberger, Counsel, Policy  
Development Division, Ministry of  
Attorney General Ontario, Toronto,  
Ontario

Susan Anderson commented on the recent report on aboriginal family violence prepared by the Ontario Native Women's Association. The report examined the problems of family violence and developed 13 recommendations for addressing family violence in aboriginal communities. Current approaches which address family violence, such as healing circles and healing lodges for men and women, were discussed.

Ruby Miller discussed current initiatives and approaches of friendship centres, and the training of front-line workers. She emphasized the need for people to heal from their own experiences of family violence before being able to work effectively in the community. Ways in which this may be done include intensive work with Elders. The recommendations of the Manitoba Justice Inquiry on family violence were also discussed. Many of these are similar to the recommendations

of the Ontario Native Women's Association report.

The discussion covered a wide range of issues. There is a need for the knowledge and the assistance of Elders. Individuals and communities must be able to discuss family violence openly. Victims of family violence require continuing support from their communities; women and children who are victims of violence should be able to stay in their homes rather than having to leave the community.

The existing legal system does not deal effectively with the problems of family violence, some of which arise out of the *Indian Act*, such as division of property. Aboriginal jurisdiction over justice is necessary in order to begin to deal effectively with the problems and to heal both individuals and communities.

Education is especially important in teaching children that they are unique and of value. Different communities have dealt with the issues in different ways, and there is a role for women in developing these alternatives. Communities are at different stages in their approaches to justice and they will need to work inside the community to regenerate traditional values and teachings.

The presenters and participants in the workshop acknowledged the complex nature of family violence and the reality that many people are affected — women, men, children and Elders. It is important to deal with the needs of people living both on and off reserve and to recognize the particular problems of native communities without reserve status.

### *Recommendations*

- family violence in native communities must be addressed from a holistic perspective — band-aid solutions are not acceptable. Solutions must be community-based and relevant to the traditions and practices of each First Nation.
- under the umbrella of one aboriginal justice system, the different needs and traditions of each community must be recognized and supported. A flexible system is required.
- there is a strong need for educating both individuals and the community. In particular, children must unlearn violence and learn how special they are.

### **WORKSHOP 2 — ABORIGINAL POLICING: POLICY AND PRACTICE**

#### *Speakers*

Peter Akiwenzie, Representative to Ontario Native Council on Justice and Director, Intergovernmental Affairs, Union of Ontario Indians, North Bay, Ontario

Wallace McKay, Chairman, Ontario First Nations Policing Commission, Sioux Lookout, Ontario

Dale Davis, Administrator, Six Nations Police Commission, Six Nations, Ontario

Tom Wall, Chief Superintendent Responsible for Management of Ontario

First Nations Policing Program, Ontario Provincial Police, Toronto, Ontario

Ron Ferri, Manager, Aboriginal Policing, Police Security Branch, Solicitor General Canada, Ottawa, Ontario

Robert Sterling, Director, Band Support, Indian and Northern Affairs Canada, Hull, Québec

Doug Scott, Special Assistant, Policing, to the Deputy Solicitor General Ontario, Toronto, Ontario (*Moderator*)

#### *Rapporteur*

Ron George, Special Assistant to the Deputy Solicitor General Ontario, Toronto, Ontario

In spite of insufficient time, there was an attempt at a comprehensive presentation by participants of the Ontario First Nations policing arrangement. The participants are the Ontario Solicitor General's office, the Ontario Provincial Police, the federal government, and representatives of First Nations organizations and police organizations.

There was considerable discussion about the actual construction of the administration of the Ontario Provincial Police and the First Nations police services. The consensus seemed to be that the appropriate way to provide police services to First Nations was for First Nations to administer those services themselves.

The federal government representatives discussed the key elements of their policy

on First Nations policing. At the core of their presentation was recognition that the existing service to First Nations is inadequate and that the development of the federal policy does not address the needs of the off-reserve First Nations population. They also acknowledged that the service provided to First Nations communities might well differ, and that a number of different models might therefore exist.

There was some discussion of the question of the respective jurisdiction of the provincial and federal governments and First Nations people, but this was left unresolved. First Nations representatives put forward the suggestion that federal and provincial governments should recognize with legislation the inherent jurisdiction of First Nations communities. Representatives of the native organizations recognized that initiatives in Ontario are moving toward a service reflecting First Nations values and needs. For the present, they concluded, this is acceptable, as long as there is continued movement toward self-government in policing First Nations communities. Moreover, training of First Nations and non-native officers should be developed to establish knowledge of First Nations culture and ways.

The Chair of the Ontario First Nations Policing Commission presented a very positive description of the function of that organization. The past and continuing evolution of policing First Nations in Ontario was seen by him as encouraging.

Finally, it was noted that the Commissioner of the Ontario Provincial Police recognizes the need for change and

is committed to the smooth transition of the administration of First Nations police services to First Nations.

### **WORKSHOP 3 — ACHIEVING JUSTICE FOR THE MÉTIS**

#### *Speakers*

Jim Aldridge, Barrister and Solicitor, Rosenbloom and Aldridge, Vancouver Legal Counsel to Métis National Council, Vancouver, British Columbia

Clem Chartier, Consultant, Saskatchewan Métis Society, Saskatoon, Saskatchewan

A.E. (Tony) Belcourt, Advisor, Métis National Council, Ottawa, Ontario  
*(Moderator)*

#### *Rapporteur*

Elizabeth Lane, Superintendent, Whitehorse Correctional Centre, Whitehorse, Yukon

The discussion focused on the *Dumont v. the Attorney General of Canada* case in the context of the conference theme of "achieving justice: today and tomorrow."

The speakers implored the conference participants to try to comprehend the magnitude of injustice confronting the Métis. To begin with, the Métis are the only aboriginal group in Canada that is denied a process for the negotiation of their claims. Both the federal Comprehensive Claims Policy and the federal Specific Claims Policy exclude the Métis who live outside the Northwest

Territories and the Yukon. Moreover, in order to achieve justice for their claims, the Métis are forced to take the government to court, yet the federal government does all in its power to deny Métis their hearing in that forum.

While much attention and millions of dollars get paid to the "native agenda" and for programs and services for aboriginal peoples, none of these federal funds are accessible to the Métis. Provincial governments are similarly reluctant to provide specific funding for the Métis.

Finally, although the new child and family service agencies for various Indian First Nations are reducing the number of Indian children in care, the total number of "aboriginal" apprehensions has still not decreased. The reason is that more Métis children are being apprehended, because funding mechanisms encourage removal from the home and discourage community-based preventative programs.

These are a few of the justice-related issues discussed in the workshop. It was also noted that while participants were urged at the outset of the conference to come together in dialogue, there was not one participant present who represented a federal or provincial justice department. And although the Minister of Justice is the "federal interlocutor for the Métis," no representative of that Minister or her department was present at the workshop which was called to consider the matter of "achieving justice for the Métis."

Presenters also pointed to other examples of continuing discrimination towards the Métis. They noted that, while the Métis

people number in the hundreds of thousands in Canada and this conference is also being sponsored by provincial governments, the conference nonetheless focuses on issues related to status Indians on reserves. As well, there are few Métis delegates in comparison to the total.

Research and review of matters of concern to Métis are hindered by the lack of formal statistical information concerning the Métis compared to other aboriginal groups.

The Métis participants in the conference questioned the sincerity of the provincial and federal governments and the delegates representing those governments where justice for the Métis is concerned. They concluded that, while "achieving justice for the Métis" is better managed through negotiation, the only assured way to meet this objective will continue to be through litigation.

#### **WORKSHOP 5 — ABORIGINAL SELF-SUFFICIENCY IN JUSTICE ISSUES: PRACTICAL APPROACHES AND MODELS**

##### *Speakers*

Shin Imai, Counsel, Policy Development Division, Ministry of the Attorney General Ontario, Toronto, Ontario

Marvin Alexander, Revolving Chair, Nenquay Deni Jajelhtig Law Centre Society, Alexis Creek, British Columbia

Joy Waters, Instructor, Yukon College, Whitehorse, Yukon (*Moderator*)

*Rapporteur*

Marvin Alexander

The participants agreed that one justice system will not work for all aboriginal communities, that each community or group of communities may want to develop its own system. The size, population, and location of aboriginal communities are important considerations in the development of a native justice system.

It was pointed out that money spent today on incarceration of aboriginal people could be better spent tomorrow on developing creative alternative judicial systems for them. Moreover, development of native judicial systems does not necessarily have to wait for the aboriginal right to self-government to be entrenched in the Constitution. Participants agreed on a number of points. They supported local initiatives undertaken by First Nations in regard to judicial systems. Further, they recommended that the federal and provincial governments continue to appoint judges on reserves, but stressed that the justice systems should be community-focused. In addition, federal and provincial governments must constantly review their own policies and procedures to suit the local autonomy.

**WORKSHOP 6 — A SEPARATE  
JUSTICE SYSTEM FOR FIRST NATIONS?**

*Speakers*

Marion Buller, Barrister and Solicitor,  
Ray Connell, Vancouver, British Columbia

William T. Badcock, Counsel, Aboriginal  
Justice Project, Department of Justice  
Canada, Ottawa, Ontario

Donald E. Worme, President, Indigenous  
Bar Association, Saskatoon, Saskatchewan  
(*Moderator*)

*Rapporteur*

Joan Crowe, Taku River Tlingits, Atlin,  
British Columbia

Initially, discussions focused on the more legal or technical issues associated with the question of jurisdiction. How would two separate systems operate? Whose laws would apply and in what situation? How would the question of individual versus collective rights be handled within an aboriginal justice system?

After concerns had been voiced about specific examples of how the present justice system is failing to meet the needs of aboriginal people, the participants reached a definite consensus that it had failed and is unacceptable in its present state. We all know what is wrong with the present system; the real question is: "Where do we go from here?"

In attempting to answer this question, participants expressed a wide range of insights. These ranged from arguments that a completely separate and distinct justice system for aboriginal people is inevitable, to suggestions that there are ways and means to alter the current justice system to make it work.

Ultimately, consensus on one single approach was not achieved. However, the

group did agree that this exercise was useful and that there is a definite need for continued open and honest debate of the issues. Forums such as these are necessary in order to educate the public about aboriginal people and to assist in defining our unique needs and aspirations.

The group concluded that future discussions must not be confined or limited by the legal and academic questions of jurisdiction and collective versus individual rights, but must focus on holistic rather than adversarial approaches, designed by aboriginal people for aboriginal people. Furthermore, individual First Nations should, in the end, determine what is best in view of their own respective circumstances.

Participants did not come up with a single answer to the questions; however, there was agreement on some possible courses. Continued opportunities for discussion are necessary for all in order to develop and implement solutions. Preconceived notions of what can and cannot be done to create a solution are not acceptable; all parties must strive to maintain an open mind.

It was also agreed that it is futile to rehash the current situation, since the present justice system has clearly failed and the various aboriginal justice inquiries have answered the question of why.

### **WORKSHOP 7 — CREATIVE SENTENCING AND THE CONTEXT OF THE PURPOSES AND PRINCIPLES OF SENTENCING**

#### *Speakers*

Doug Breithaupt, Counsel, Sentencing Team, Department of Justice Canada, Ottawa, Ontario

Robert Gillen, Regional Crown Counsel, Criminal Justice Branch, Ministry of Attorney General British Columbia, Victoria, British Columbia

His Honour Judge Cunliffe Barnett, Provincial Court of British Columbia, Williams Lake, British Columbia

Tom Sampson, Chief, First Nations of South Island Tribal Council, Mill Bay, British Columbia

Frank Brown, Vancouver, British Columbia

Gordon D. Parry, Coordinator, Sentencing Team, Department of Justice Canada, Ottawa, Ontario (*Moderator*)

#### *Rapporteur*

Gordon D. Parry

Frank Brown showed workshop participants a video which documented an earlier part of his life during which he was banished prior to sentencing and prior to a guilty plea for an offence which he had committed. He discussed the traditional rights of banishment and the relationship of that sentence to the natural



environment. The traditional belief is that if one lives through the banishment, one deserves to live. Participants considered the story inspiring and representative of an ideal process to which we can aspire when considering creative sentencing options.

If the sentencing process is formalized too much, participants agreed, there is a danger that the capacity to deal with aboriginal justice may be reduced. Aboriginal people want recognition accorded to them. They feel that they are not treated fairly and they want to be excluded from any sentencing guidelines. The whole community needs to be brought into the sentencing process, which should be a healing process, going beyond the dominant society's restricted definition of restitution. There cannot be rehabilitation if there is no healing process in place within the community. Incarceration removes from the offender the necessity to take responsibility for his actions. It also removes the offender from the community which is then not forced to take responsibility either.

In the current system, judges and criminal justice professionals and others who practice creative sentencing put themselves at risk. All need time and resources to develop creative sentencing options. Cross-cultural sensitivity in the community needs to be provided for criminal justice professionals and to the community at large. It was recommended that aboriginal communities be consulted and involved in such training. Solutions should be generated by them, not imposed upon them from outside.

Judge Cunliffe Barnett does not support new sentencing guidelines which would inevitably cost much time and effort in the training of judges to attend seminars to study them. Instead he supports sending judges into the communities to learn about the people they are judging and thereby become more productive and sensitive.

Further, Judge Barnett feels that common law is not that deficient, but is concerned that creative sentencing connotes leniency. He knows of judges who, in order to show that they are not prejudiced, impose more lenient sentences on aboriginal offenders. A well-known British Columbia case, *R. v. Mitchell*, involved the court in making a creative sentence, but without asking the band council members if they had anything to say — in fact, the accused was *not* a member of that band. Judge Barnett feels that there must be community involvement and the court must be prepared to participate in ways that are not altogether orthodox.

Judge Barnett also indicates that British Columbia Court of Appeal judges do not have the experience within native communities. They need to meet ordinary native people, not the criminals. They get a false impression by meeting criminals all the time.

Judges are encouraged to take risks, yet judges who are the most creative are sometimes the most vulnerable — frequently the public feels that judges fail where women and/or aboriginal persons have been victimized. To do something creative in a sexual assault case, for example, may be seen as too soft and not find public support.

Judges today are driven to push the cases through. From a practical point of view, they do not have the time to engage in creative sentencing in every single situation. If a judge goes into the community, spends time there and devotes adequate time to dealing with a case, it may decrease the number of cases the judge hears. But by doing a good job in one particular case, the judge may save ten down the line. There are limits, however; there can be no creative sentencing in murder cases where there is a minimum sentence. It should also be noted that creative sentencing may be more difficult for the accused while at the same time being more effective and more meaningful. It does not necessarily mean letting the offender off easily.

Robert Gillen noted that native justice is capable of a holistic approach because the community and culture are organized that way. Sentences have to be creative because aboriginal offenders come from a different culture. It is therefore necessary to bring justice in a more meaningful way to native communities. If not, they will not respect the justice system. Cross-cultural sessions are imperative for non-natives.

On the South Island, native input is sought and received with respect to diversion and with respect to the court system. Recommendations are received from the community which the Crown can support. The Crown uses the charge approval system. A police report is received and the Crown determines the likelihood of conviction and public interest in the case. Where a decision is taken to proceed, a native representative is contacted who will

find out more about the offender to see if the native community wants to become involved. If not, the offender goes through the system like everyone else. Sometimes a delay is necessary in order to receive a recommendation from Elders. In the South Island justice project, 80 Elders are involved, providing guidance to offenders and recommendations to the Crown. The court invariably follows these recommendations.

Tom Sampson said that imposing a sentence on people of another land will not work. One must know where the offender is from, his laws, his standards, his principles, so that when the judge looks at the situation he sees that person who is part of the people of that land. It is not up to a person of one land to punish a person from another. With respect to aboriginal offenders, creative sentencing should be provided by aboriginal people. This should not be impossible, despite the fact that our system of adversarial law is inconsistent with aboriginal systems. Natives do not think like non-natives nor is it necessary to convert them to non-native ways of thinking. Only when you know their language can you know how they think.

The criminal justice system cannot be blamed for all the social problems which beset aboriginal peoples. It cannot provide all the solutions either. The criminal justice system works poorly for aboriginal peoples, but it works poorly for non-aboriginals too. Aboriginal communities need to be consulted and involved. Solutions need to be generated by them, not imposed from outside. Participants believed that everyone involved in

aboriginal justice issues needs time and resources to develop creative sentencing options.

## **WORKSHOP 9 — MODELS OF ALTERNATIVE DISPUTE RESOLUTION**

### *Speakers*

Richard LeSarge, Administrator, Native Justice of the Peace Program and Training Officer, Justice of the Peace Programs, Ontario Court, General Division, Toronto, Ontario

Jonathan Rudin, Representative, Ontario Native Council on Justice, Toronto, Ontario

Josias Fiddler, Coordinator, Sandy Lake Justice Project, Sandy Lake, Ontario

Joe Louttit, Coordinator, Attawapiskat Justice Project, Attawapiskat First Nation, Attawapiskat, Ontario

Lois Lowenberger, Counsel, Policy Development Division, Ministry of the Attorney General Ontario, Toronto, Ontario (*Moderator*)

### *Rapporteur*

Ruby Miller, Courtworker Trainer, Ontario Federation of Indian Friendship Centres, Toronto, Ontario

Participants considered various models of alternative dispute resolution, beginning with the Native Justice of the Peace Program, which was discussed in terms of its history, differences from the existing

Justice of the Peace program, recruitment, selection process, training, appointments, apprenticeships, and support systems.

The Attawapiskat Alternative Dispute System was examined next. It is based on people communicating with each other. The Elders panel presides over matters and decides sentences. There are no lawyers or jails, but offenders understand that they have violated the social code of the Attawapiskat Nation. In general, 50 percent of the charges are by-law infractions and 50 percent are summary charges. There is no post-charge diversion at this time and they are working on pre-charge diversion. Proceedings are held in the Cree language.

The Sandy Lake Alternative Dispute System was described as a marriage of two systems. It employs a court setting with court personnel and an Elders panel in a circle. The emphasis is on sentencing with a healing focus, not advocacy, and most charges involve pleas of guilty. The system allows the community to see that they have control over something that affects their daily lives.

The Ontario Native Council on Justice Alternative Dispute Resolution Paper was then discussed. It was pointed out that when we talk about native justice systems we have to look at the establishment of equal justice systems for all native people, including status, non-status, Métis, Inuit, people without a land base, on-reserve and off-reserve. The recognition of system and jurisdiction is essential to success. Systems can be developed for criminal, family, and civil law both on reserves and in urban areas. Communities can develop

or adopt a constitution that allows them to review band council decisions or resolutions. It was concluded that what the community needs to deliver a justice system is an infrastructure, community resources, and adequate funding and resources.

Other existing models of alternative dispute resolution were also considered. In one model communities have set up sentencing systems which are decided before the native Justice of the Peace who will preside arrives in the community. In other models, community justice panels monitor offenders' sentences, or the Justice of the Peace recognizes that each community is different, each has taken responsibility for their people, and each is to a different degree delivering an appropriate justice system.

**WORKSHOP 10 — A HEALING LODGE  
FOR ABORIGINAL WOMEN:  
PARTNERSHIP IN CORRECTIONAL  
PLANNING**

*Speakers*

Sharon McIvor, Member, Executive Council, Native Women's Association of Canada, Merritt, British Columbia

Jeff Christian, District Director, Northern Alberta - Northwest Territories District Parole Office, Correctional Service of Canada, Edmonton, Alberta

Liza Mosher, Elder, Sudbury, Ontario

Fran Sugar, Member, Aboriginal Women's Caucus, Kingston, Ontario

Jane Miller-Ashton, National Coordinator, Federally Sentenced Women Initiative, Correctional Service of Canada, Ottawa, Ontario

Ginger Bacchus, Regional Chief, Sentence Administration, Correctional Service of Canada, Abbotsford, British Columbia  
(Moderator)

*Rapporteur*

Jeff Christian

This workshop explored the situation of aboriginal women in prisons. It presented the findings of a 1990 Task Force Report on Federally Sentenced Women, as these pertained to native women. It described the unique partnership which developed between aboriginal women's groups and the Correctional Service of Canada in planning a Healing Lodge for incarcerated native women. The session was attended by approximately 30 participants, including seven members of the Healing Lodge Planning Committee.

A brief overview of the Task Force process and findings was presented by Jane Miller-Ashton, who emphasized the learning that took place with respect to native issues, and the powerful assistance provided by aboriginal women in consulting with the native community. Throughout, she emphasized the successes achieved to date, while clearly affirming the need to continue the learning process.

Sharon McIvor presented a similar overview from the perspective of the aboriginal women who participated in the process. She pointed out that it has not

been easy. The long tradition of not working well with non-natives (and bureaucrats at that) is a barrier which must continually be faced.

A 1990 film about native women in prison, *To Heal the Spirit*, was presented. The consensus was that this powerful video accurately depicts the realities facing aboriginal women in prison today and indeed the realities of aboriginal women in general.

Following the film, Fran Sugar presented her view of the process, much of which was consistent with Sharon McIvor's view of barriers which must be overcome. She indicated that she still lacks faith in the Correctional Service of Canada. Her contribution to the original Task Force research was to interview some 40 native women across Canada who had been incarcerated. The consistent theme of victims of abuse victimizing others was observed. She emphasized the need to adhere to a vision of a Healing Lodge which is truly a step toward the elimination of prisons altogether. The source of the vision has been the Elders, and must continue to be so. Despite her scepticism about working with government, Ms. Sugar acknowledged that some improvements had been made at the Prison for Women.

Sharon McIvor described the Healing Lodge Committee process, indicating that even now the struggle continues. Progress, is being made together, but "the guard is never really down."

Ole Ingstrup, Commissioner, Correctional Service of Canada, emphasized the need

for trust and respect. It is important, he said, to avoid stereotyping one another, for if we hear it often enough, we begin to act like the stereotyper — not unlike the child who is constantly told he is delinquent. He expressed concern for the inmates and staff who continue to reside and work at Prison for Women. He appealed to all to take great care while we make this important transition.

A participant noted that the Manitoba Aboriginal Justice Inquiry Report was available, after taking three years to produce, and that it recommended closure of the women's jail at Portage la Prairie. Concern was expressed that it might take many years to implement the recommendation.

Sharon McIvor noted that the Elders on the Healing Lodge Committee had said at the beginning that the gift brought to the table by aboriginal peoples was the gift of "vision," while the gift of white people was the gift of "movement and technology," and that both would be required to achieve success.

**WORKSHOP 11 — COMMUNITY  
SELF-GOVERNMENT NEGOTIATIONS  
AND ABORIGINAL JUSTICE: THE  
CONTEXT OF NATIONAL  
NEGOTIATIONS AND THE CONTEXT OF  
THE ROLE OF PROVINCIAL  
JURISDICTIONS**

*Speakers*

Elizabeth Hanson, Negotiator, Community Self-Government Negotiations, Indian and

Northern Affairs Canada, Whitehorse,  
Yukon

Shin Imai, Counsel, Policy Development  
Division, Ministry of Attorney General,  
Toronto, Ontario

Phil Tunley, Counsel, Constitutional Law  
and Policy Division, Ministry of Attorney  
General Ontario, Toronto, Ontario

Robert Christy, Manager, Policy  
Directorate, Self-Government Sector,  
Indian and Northern Affairs Canada, Hull,  
Québec (*Moderator*)

*Rapporteur*

Andrew Beynon, Counsel, Legal Services,  
Indian and Northern Affairs Canada, Hull,  
Québec

Presenters supported the principle that the administration of justice measures should be driven by the First Nations and that their proposals should be based on their traditions. First Nations can take measures now, even before any negotiations with government (e.g. having Elders attend court to try to make submissions about sentencing of community members). The success in such courtroom presentations with concrete results smooths the way for later negotiations with the government.

There is much scope within the current system to have changes made by agreement with a province and to develop some measures to address the proposals based on traditions.

We should bear in mind during negotiations about the administration of justice that modifying procedures in courts and with police may address only the symptoms, not the root causes of crime (e.g. social problems, substance abuse); but these are very big and complex issues.

The negotiation of the administration of justice in a self-government context has, in the past, raised many complex issues, including jurisdiction in both criminal and civil administration of justice issues; implementation of traditional dispute resolution systems; jurisdiction over First Nation members, even off First Nation lands; enforcement of First Nation laws; dispute resolution mechanisms and procedures for prosecutions; and the independence of judiciary.

When attempting to develop an administration of justice system which provides for the traditions of particular communities, it will be necessary to address Charter concerns, since the protection of individuals under the Charter might be inconsistent with collective rights of community in a traditional system.

A number of potential solutions were raised. With the consent of the individual to be dealt with by the traditional system, the Charter rights could be waived. This might be equated to a "pre-charge diversion program." Native administration of justice, particularly courts, might be established in such a way as to approximate Charter values. A further argument suggested that a native system, even if it does not duplicate the Anglo-Canadian system, would guarantee fairness adequately to meet Charter concerns.

**WORKSHOP 12 — BUILDING JUSTICE  
INTO A COMMUNITY CONSTITUTIONAL  
PROCESS**

*Speaker*

Neil Sterritt, Chairman, Chief's  
Governance Working Group and Gitksan  
Wet'suwet'en, British Columbia  
(Moderator)

*Rapporteur*

Pat Kelly, Senior Officer, Native  
Programs of British Columbia and the  
Yukon, Secretary of State, Vancouver,  
British Columbia

Mr. Sterritt stated that there is not just one way to deal with community goals or problems, but neither is there a substitute for community resolve to ensure that community development is meaningful and long-lasting.

One way to help give focus to First Nations community development is to recognize that community initiatives are part and parcel of a community constitutional process. A community initiative such as the development of an education or health system, or in this case, a justice system, can represent a building block or an element of a community constitution. Eventually, with increased community awareness, the various acts can be amalgamated as a community constitution. This can be considered the incremental approach to community constitutional development.

Alternatively, a community with access to necessary resources, could set as a priority the development of a community constitution which sets out the aspirations, values, customs, and powers to be exercised by the community leaders on behalf of members. In this instance, the community which sets justice as their priority would have a framework for proceeding on its justice system. This can be considered a comprehensive approach to community constitutional development. At an early stage, choices must be made concerning a community justice system on such matters as the degree of traditional content in the system; local control; how to achieve community peace and harmony; how to be less formal; possible economies of scale; sources of funding and resource people; and linkages to the federal or provincial justice systems.

Finally, a community should be aware that the incremental and comprehensive approaches are mutually compatible and supportive ways of building a community justice system.

**WORKSHOP 13 — ADAPTING THE  
EXISTING EURO-CANADIAN SYSTEM**

*Speakers*

Cathy Staats, Co-Chair, Coordinating  
Committee, Ontario Native Courtworker  
Program, Ontario Federation of Indian  
Friendship Centres, Hamilton, Ontario

His Worship Tom Logan, Justice of the  
Peace, Thunder Bay, Ontario

Don Auger, Executive Director,  
Nishnawbe-Aski Legal Services  
Corporation, Thunder Bay, Ontario

Richard LeSarge, Administrator, Native  
Justice of the Peace Program and Training  
Officer, Justice of the Peace Programs,  
Ontario Court, General Division, Toronto,  
Ontario (*Moderator*)

*Rapporteur*

Lois Lowenberger, Counsel, Policy  
Development, Ministry of the Attorney  
General of Ontario, Toronto, Ontario

Cathy Staats discussed the history and  
structure of the Ontario native criminal  
courtworker program. Native  
courtworkers provide physical and moral  
support by acting as a friend of the court,  
ensuring that native people understand  
their rights. They also act as cultural and  
language interpreters, although they do not  
provide translations in court. They assist  
the client in developing options for  
sentencing and in resolving problems such  
as alcohol abuse which may be related to  
the client's legal problem. Each  
courtworker averages up to 500 contacts  
annually.

Native courtworkers face many problems.  
Often they are not treated as professionals  
in the court system. Not all courts  
recognize and provide support and  
facilities for native courtworkers and not  
all judges are prepared to listen to them.  
Often courtworkers must take the initiative  
to meet with those involved in the justice  
system such as judges and Crown  
attorneys, to educate them about the needs  
and circumstances of the native accused.

Support in the field for native accused and  
offenders, in terms of available programs  
and services, is inadequate. The Ontario  
approach was contrasted with that of the  
Northwest Territories, where native  
courtworkers often represent accused  
persons before Justices of Peace.

His Worship Tom Logan discussed the  
role and jurisdiction of Justices of the  
Peace in Ontario. The Justice of the Peace  
is the last independent agent between the  
individual and the police, or between  
people, before a matter goes to the court  
system. The duties of Justices of the  
Peace in Ontario vary, depending on the  
direction of the Justice presiding. Justices  
of the Peace conduct bail hearings and  
hear provincial offences and *Indian Act*  
and band by-law offences.

Mr. Logan was appointed through the  
Ontario Native Justice of the Peace  
program. He sits in Thunder Bay,  
Ontario, as well as conducting courts in a  
number of remote native communities in  
northern Ontario. Mr. Logan discussed  
the continuum of justice structures and  
needs of these communities and the need  
for a Justice of the Peace to be aware of  
the different conditions and needs in each  
community.

Some communities have little need for a  
Justice of the Peace because of the strength  
of their traditional systems. Some  
communities work with the Justice of the  
Peace to develop effective sentencing  
options and alternatives; and some  
communities have not been significantly  
involved in the Justice of the Peace court  
sittings or in developing sentencing  
options. The role and ability of the native



Justice of the Peace in adjusting the system to meet the needs of native communities was discussed.

Don Auger discussed the history and structure of the Nishnawbe-Aski Legal Services Corporation, which is a native-run organization providing legal services to the member communities of Nishnawbe-Aski Nation (NAN) in Ontario. The corporation was established by NAN as part of a two-pronged approach. The ultimate objective is to move towards a native justice system while providing services in the existing system to NAN members. The corporation is modified in its provision of legal services, including legal aid and representation. It is also responsible for education of native people about the legal systems and of non-native people about native communities, and for development of information and research to help the move to a native justice system.

The corporation has established certain principles for its operation. In all communities there is an existing traditional justice system which functions to the extent that it can. Individual communities are distinct and all services are available to all NAN members. Services provided are those requested by communities and there is recognition that English is not the communities' first language.

The main areas in which the corporation provides services were discussed, including legal aid; hiring and training of paralegals who reside in the communities being served; assistance to band councils; development of a glossary of legal terms in the Ojibway, Cree, and OjiCree

languages; public legal education programs; and an extensive research project into the nature of crime and delivery of justice in NAN communities.

The other project is also researching the nature of traditional justice systems and the views of the communities on what types of native justice systems they would like to establish or continue in these communities.

Richard LeSarge outlined the Native Justice of the Peace program in Ontario through which Mr. Logan was appointed.

Issues discussed in the workshop indicated the ways in which the Euro-Canadian System and native systems function together and the future possibilities in this area. The workshop also considered to what extent it was necessary to work within the existing system.

#### **WORKSHOP 14 — NATIVE JUSTICE CONSULTATIONS AND NATIVE JUSTICE PILOT DIVERSION PROJECTS IN BRITISH COLUMBIA**

##### *Speakers*

Charlene Belleau, Cariboo Tribal Council, Williams Lake, British Columbia

Robert Gillen, Regional Crown Counsel, Criminal Justice Branch, Ministry of Attorney General British Columbia, Victoria, British Columbia

Tom Sampson, Chief, First Nations of South Island Tribal Council, Mill Bay, British Columbia

Hugh Braker, President, Native Courtworkers and Counselling Association, Port Alberni, British Columbia

Peter Ewert, Executive Counsel, Criminal Justice Branch, Ministry of the Attorney General British Columbia, Victoria, British Columbia (*Moderator*)

*Rapporteur*

Peter Ewart

The first part of the workshop was concerned with the Native Justice Consultation in British Columbia. An outline of a consultation process between government justice personnel, police, judges, and native people was presented. The process began in 1989 and still continues at the provincial, regional and local levels. The discussion identified issues and common themes arising from the process, including the need for greater native community responsibility for providing justice services using traditional methods; better understanding of issues by native people and justice system personnel; regular and improved communications between native people and the justice system; a holistic approach to justice; and much greater native employment opportunities in the justice system.

The types of projects funded by B.C. as a result of the consultations were outlined. These projects have had total funding in excess of \$1 million per year over the last two years and include Victim Assistance Programs, a Community Native Justice Workers Program, cross-cultural training, development of a community law centre,

research into traditional law and diversions, and creative sentencing programs developed by native people.

A number of concerns relating to the process were identified, such as the lack of native representation on the provincial steering committee responsible for managing and coordinating the process; non-natives defined the process and also identified the issues (although, admittedly, they had previously met with native people at the local level). The question of whether there was any accountability to native people in the process was raised, and the point was made that the discussions with native people must always be followed up with progress reports. Further, participants believed that there was insufficient funding for many of the projects submitted for consideration and that consultations in the Vancouver urban area have not been effective.

Participants identified the strengths of the process as well. Communities have become involved with justice concerns and dispute resolution at their own level. Native people have begun to participate in the justice system. Judges, prosecutors, and probation officers are becoming increasingly aware of the problems, as well as improving their relationship with Elders and native people. Justice personnel are becoming more sensitized to native justice issues. The process has provided unique opportunities for bands to deal with local issues. Participants thought that native people should make use of this process and other opportunities to further their justice objectives. They further concluded that, while not perfect, the process is a step in the right direction.

In the second part of the workshop an outline of the British Columbia Native Justice Pilot Project Diversion Policy was presented. The policy is designed to encourage native communities to develop their own diversion programs with such objectives as improvement of the delivery of justice services; reduction of the number of native people in prison; greater disclosure of offences and reduction of the number of offences; and the use of traditional values and customs to deal with offenders. It is hoped that the policy will lead to a process which emphasizes rehabilitation of the offender, reconciliation between the victim and offender, and restoration of harmony in the community.

The offences considered for inclusion would be all summary conviction offences; provincial offences; sexual assaults and some other violent offences; property offences; offences under the *Young Offender's Act*; and alcohol-related offences.

All band members committing offences on or off reserves which have a diversion project could be eligible. Native diversion projects must have the unqualified support of the native community. Pilot projects for diversion have started in an informal way in parts of B.C.

The selection of appropriate diversion cases would take into consideration the admission of responsibility or guilt; the past record of the offender; the reconciliation and rehabilitation possibilities; the degree of risk to the community; considerations of community or family training; and consent of the

victim to diversion where a case involves sexual or familial assault. Serious cases, including sexual offences, would not be diverted without approval by Regional Crown Counsel and Provincial Executive Crown Counsel.

Two further concerns were that the policy does not specifically address these problems of native people residing in the Vancouver urban area and that no specific funding is provided to allow native communities to provide diversion services.

Workshop participants generally felt that the policy provided an opportunity for native communities to assume ownership over some justice programs, to utilize traditional and cultural means of dealing with offenders, to use traditional dispute resolution methods within the community, and to encourage disclosure of more serious offences (such as sexual assaults), making it possible to address those issues more effectively.

#### **WORKSHOP 15 — TRIBAL JUSTICE: A NEW BEGINNING**

##### *Speakers*

Georgina Sydney, Researcher, Teslin Tlingit Council, Teslin, Yukon  
Matthew Thom, Clan Leader, Yanyeyidi Clan, Teslin Tlingit Council, Teslin, Yukon

Chief Judge Heino Lilles, Yukon Territorial Court, Whitehorse, Yukon

Corporal Tom Grant, Teslin Detachment, RCMP, Teslin, Yukon

David Keenan, Chief, Teslin Tlingit Council, Teslin, Yukon (*Moderator*)

*Rapporteur*

Rose-Ann Morris, Assembly of First Nations, Ottawa, Ontario

Teslin only felt the loss of their culture and laws since 1942 when the *Indian Act* election system was imposed upon them. For some years Teslin has been working on a land claim settlement which included looking at self-government. To the Teslin people self-government means "the survival of their distinct culture."

Teslin worked out a process for their people to talk together with their Elders to develop ways of governing themselves in their traditional way. The basis of Teslin's way of governing is the Teslin word for "respect," which means a holistic respect for everyone and everything. This principle of respect is much stronger than Canada's Bill of Rights.

Teslin has three reserves in the Yukon and five clans. Their tribal justice system is now into Phase II. Phase I is the territorial court holding court in Teslin with a place for the leaders of the five clans to listen to all of the information and meet separately to discuss an appropriate sentence to rehabilitate the offender. The leader of the accused's clan then explains to the offender and the judge their recommended sentence and the reasons for the sentence. The judge usually accepts their recommendations.

Teslin has arranged for a court clerk to act as liaison with the court and agencies

involved. This person has helped the community and Elders to understand the court language and bring the information together.

Phase II is a diversion process for Teslin people who come into conflict with the law. The RCMP officer discusses with the clan leaders whether to arrest or hold over and follows their recommendations to deal with the person as they would in the court situation.

Judge Heino Lilles distributed a paper on his experiences with the court cases in the Yukon, highlighting decisions he approved based on community and Elders direction. He saw the court as important in reinforcing cultural values. Moreover, he felt that the strength of Elders and community recommendations (which are usually harsher than the Crown counsel's) is a strong detractor to further crime or violence in the community. There have been fewer offences reported in Teslin since Phases I and II began.

The government does not provide support and resources for community counselling and healing services which are important aspects of community justice. Participants recommended that Canada should look at tribal/community justice for all communities in Canada. Canadians should start thinking of themselves as a group of communities. Each community needs to step back, look at what it is they are doing, regroup and initiate changes to its system to meet community needs.

**WORKSHOP 16 — NATIVE  
COURTWORKER PROGRAMS:  
EMERGING ISSUES**

*Speakers*

Rosemary Trehearne, Manager, Justice Programs, Council for Yukon Indians, Whitehorse, Yukon

Hugh Braker, President, Native Courtworkers and Counselling Association, Port Alberni, British Columbia

Ruby Miller, Courtworker Trainer, Ontario Federation of Indian Friendship Centres, Toronto, Ontario

Cathy Staats, Co-Chair, Coordinating Committee, Ontario Native Courtworker Program, Ontario Federation of Indian Friendship Centres, Hamilton, Ontario  
(Moderator)

*Rapporteur*

Dale Davis, Policing Administrator, Six Nations Police Commission, Oshwekan, Ontario

Similarities, difficulties, emerging issues and the importance of the native courtworker program were discussed by those in attendance. Although actual court duties vary from one area to another, the common ground is always to adjust or maintain the task, subject to cultural appropriateness and the necessity to expand the task to community development and education.

Problems presently being encountered included the lack of funding both to carry out proper training and supervisory functions within the program and to equip the program with human resources so that it can to be effective in the First Nations communities. The distance that has to be covered by courtworkers results in budget depletion since most of those dollars are committed to travel. There is also a lack of security because a number of funding agencies have to be approached, usually on a project-related basis (projects are usually short term).

One First Nations community had been advised that one of the programs was cancelled because the courtworker program did not reduce incarceration rates. In reality, this was not the intent of the courtworker program. It is hard to have any faith in the idea of equal access to justice when funding is being cut.

*Recommendations*

- that governments not take such a restrictive view in funding the courtworker program;
- that a more appropriate reporting level be instituted where funding can be more easily accessed; that the courtworkers be given proper recognition and be placed on the level that their duties require; and
- that national aboriginal justice conferences should continue to be convened, because the networking aspect is of great importance.

**WORKSHOP 17 — THE YOUNG  
OFFENDERS ACT UNDER REVIEW:  
CONSULTATION ON PROPOSALS TO  
ENHANCE REHABILITATION OF YOUTH  
AND PROTECTION OF COMMUNITIES**

*Speaker*

Mary-Anne Kirvan, Counsel, Family and Youth Law Policy, Department of Justice Canada, Ottawa, Ontario (*Moderator*)

*Rapporteur*

Mary-Anne Kirvan

The workshop reviewed the following issues which are being examined by the federal government with respect to young offenders: ways to reduce resort to custody and, where custody is required, to hasten reintegration; provisions to enhance the goal of rehabilitation by better meeting young peoples' needs; the transfer of young people to adult court; and the placement of youth transferred to adult court.

A great deal of frustration was expressed about the handling of aboriginal youth. Participants maintained that current ways are not at all effective; rather, they are damaging. Indeed, there was a strong sense that legislative change alone will not provide the answer.

The frustration is based on several factors. To begin with, there are totally insufficient resources and a lack of aboriginal control over both programs and the ways and means to respond to aboriginal youth. An emphasis on custody creates hardship in small communities and does not allow

funding for community programs. Further, there is insufficient legal aid and insufficient health and other services to respond to the needs of the aboriginal youth in such matters as substance abuse. The spiralling effect for kids who don't get help in the community and often end up in custody was also noted.

There was no dispute that the *Young Offenders Act* offers considerable scope for greater aboriginal community control over youth justice issues through its provisions regarding alternative resources, alternatives to bail (e.g. through the responsible adult provisions), and the youth justice committees.

Suggestions were made to allow greater aboriginal control through delegating powers of the provincial director to aboriginal community members. Personal accounts spoke of the power in aboriginal ways to bring about change in behaviour, restoring self-esteem, and of the nurturing power of communities, particularly through the Elders.

**WORKSHOP 18 — MAKING  
CORRECTIONS: COOPERATIVE  
VENTURES IN PROBATION AND  
PRISON**

*Speakers*

Ruth Williams, Executive Director, Interior Friendship Centre, Kamloops, British Columbia

Steve D. Howell, Program Analyst, Adult Probation Services, Corrections Branch,

Ministry of Solicitor General British Columbia, Victoria, British Columbia

Frank Malloway, Chief, Yakwekwioose Indian Band, Sardis, British Columbia  
(Moderator)

*Rapporteur*

Steve D. Howell

Ruth Williams described a native heritage program offered to young offenders at High Valley Youth Custody Centre. The 10-week program combines lifeskills training with traditional native games and spirituality. Upon completing the program, participants are awarded a certificate in native games which qualifies them to teach the games in their home communities. Ms. Williams also discussed a proposed pre- and post-release program for adult inmates designed to facilitate the transition from prison to community.

Chief Frank Malloway described the Native Justice Worker concepts. His Yakwekwioose Cultural Centre has a contract with the Corrections Branch to provide a number of probation-related services. He also reported on his experiences in delivering spiritual services to inmates in federal institutions and the problems of meeting the spiritual needs of natives from a variety of cultural backgrounds. Other correctional programs and issues were addressed by Steve Howell. The Branch has some 48 contracts with native bands, tribal councils, and organizations for the delivery of adult and youth services in institutions and the community.

Participants also discussed issues in the recruitment of native correctional staff, as well as the benefits of aboriginal alternative measures programs. They emphasized that British Columbia is only beginning to explore the potential for cooperative ventures between the Corrections Branch and native communities and organizations, but it is starting from a position of consultation and respect for the uniqueness of local communities.

**WORKSHOP 19 — ABORIGINAL JUSTICE INITIATIVES: THE ST. THERESA POINT INDIAN GOVERNMENT YOUTH COURT AND THE WABASCA/FORT CHIPEWYAN YOUTH JUSTICE COMMITTEE IN ALBERTA**

*Speakers*

Robert Wood, Coordinator, St. Theresa Point Indian Government Youth Court, St. Theresa Point, Manitoba

Emile Girard, Chairman, Youth Justice Committee, Fort Chipewyan, Alberta

His Honour Judge J. Clayton Spence, Provincial Court of Alberta, Fort McMurray, Alberta (Moderator)

*Rapporteur*

His Honour Judge Clayton J. Spence

The Wabasca/Fort Chipewyan Program is a native initiative which has been in operation since the fall of 1990. The people of Ft. Chipewyan, with the agreement of the Provincial Court, set up

a Youth Justice Committee under section 69 of the *Young Offenders Act*. The Committee consists of representatives from the three groups: Cree, Chipewyan and Métis. Its policies and guidelines were developed by the Committee.

When a young offender appears in Youth Court and pleads or is found guilty, the matter is forwarded to the Committee for their recommendation for disposition. The Committee considers all relevant information supplied by the police, probation officers and citizens. After hearing from the youth and his or her family the Committee submits a recommendation, without reasons, to the Court. The Court, after hearing submissions from defence and the Crown, institutes the disposition. To date, no inappropriate recommendations have been received by the Court. It is expected that the program will be expanded to include specific adult offenders. It is also anticipated that the Committee will be advising the court on family matters.

The program in St. Theresa's Point, Manitoba, is unique and has been operating since 1984. This model is totally within the native community. When an offence has been committed by a youth, the youth and his or her family elect to enter either the native youth system or the federal-provincial system. The community-based youth system consists of a judge or magistrate, a coordinator and a case conference team, all appointed by the chief and council.

If the youth and his or her family consent to the Community Youth Justice System, he or she must appear before the case

conference team. A recommendation by consensus is forwarded to the court. The court follows the recommendation but has some discretionary powers in that the judge may increase or decrease the disposition depending on certain conditions. Guidelines are in place for the case conference team. These guidelines were formulated or ratified by the chief and council.

The jurisdiction of the court is normally limited to youths aged 12-17, though cases outside these ages have been considered. The court is restricted to summary offenses and by-laws, but also considers other infractions of the community.

There are a number of options open to youths. They may consent to the Community Native Justice System or to an alternative program outside this system or any other system, similar to the alternative measures program of the *Young Offenders Act*. Alternatively, they may submit to the disciplinary action of the chief and council for certain infractions of rules of the band. As a last resort, the youth may choose the justice system of the *Young Offenders Act* and the Provincial Youth Court. The Director carries out all disciplinary action of the court such as community service and restitution.

The St. Theresa Point program was initiated without federal or provincial approval and still does not have such approval, although it operates through the cooperation of all departments of the federal and provincial governments.



**WORKSHOP 20 — GENDER BIAS ON  
ABORIGINAL ISSUES AND THE JUSTICE  
SYSTEM**

*Speakers*

Heloise Spitzer, Co-Chair, Legal  
Committee, Women's Legal Education and  
Action Fund, Yellowknife, Northwest  
Territories

Kitty Nowdluk, Inuit Women's  
Association, Surrey, British Columbia

Martha Flaherty, Vice-President, Inuit  
Women's Association, Pauktuutit, Ottawa,  
Ontario (*Moderator*)

*Rapporteur*

Heloise Spitzer

Discussion centred on the multiple  
disadvantages faced by aboriginal women  
involved with the justice system. The  
workshop considered who defines culture  
and the necessity for the reality of  
women's lives to be taken into account.  
Participants also looked at how a holistic  
aboriginal approach differs from a  
southern hierarchical/patriarchal reality.

Kitty Nowdluk spoke from the perspective  
of a rape victim revictimized by a justice  
system which allowed her to be jailed and  
transported from Surrey, B.C., to Iqaluit,  
N.W.T. If she had been the offender and  
had failed to appear she would have been  
provided with counsel and the possibility  
of bail, but such support was not available  
to her as a victim. She felt that the system  
would have been more sensitive to a  
non-aboriginal woman.

Dorothy Thorsen spoke from her  
experience as Indian Recreation  
Coordinator counselling people at  
Skookum Jim Friendship Centre. She  
gave case histories of the impact of the  
system on poor, aboriginal single mothers.

Martha Flaherty addressed the workshop  
in her own language first. She then spoke  
of the 30,000 Inuit residing in 52 Canadian  
communities. Pauktuutit represents all  
Inuit women in Canada. She voiced her  
concerns for the cultural and gender bias  
faced by women and children who are  
victims of family violence. Ms. Flaherty  
outlined some of the cultural myths  
surrounding Inuit society and she stated  
clearly that child sexual abuse is  
unacceptable in Inuit society. A  
forthcoming publication, *Arniit: The  
Views of Inuit Women on Contemporary  
Issues*, deals with these matters. Any  
justice system which does not involve Inuit  
women as well as Inuit men in its design  
and administration would still be biased.  
She concluded by underlining that it is  
crucial that the views of men and women  
be given equal weight in defining and  
describing culture.

*Recommendations*

- Education should be mandatory for  
all judges and justice system  
personnel on cross-cultural and  
gender-bias issues. This education  
should be community-based and take  
place on aboriginal land.
- Two or three Elders should sit on a  
panel with judges on sensitive cases.

- Resources and money should be put into place for aboriginal societies to study and return to traditional ways. Half of this money and resources should be dedicated to women.
- There should be an acknowledgement that the current justice system is patriarchal and that women's realities must be recognized and respected.
- Rape crisis centres should be set up in all communities.
- Victim advocate programs should be funded at the same level as Crown Counsel's offices.
- There should be an independent investigation of Kitty Nowdluk's case.
- Regional conferences on racial and gender bias should be funded.
- The appropriateness of cultural behaviours should be assessed by the people themselves.
- Cross-cultural education should be done by people in the community — they are the experts. Aboriginal people should set their own agenda.
- There should be recognition of the difficulties and conflicts faced by aboriginal people (lawyers, police, interpreters, etc.) working in a system that is foreign to them. Communities, rather than individuals, should take responsibility for decision-making.
- In situations of family violence men, not women and children, should be removed from the home. Safe houses are required for women and for men, where trained people can assist them in starting the healing process.
- This conference should produce a public report. One year later a review should be published reporting on progress made since the conference.
- New rape shield laws should be put in place. In the interim, ombudsmen should be appointed in each community to monitor the progress of all sexual assault trials and ensure that proper discretion is being used in all aspects of the conduct of the cases.

**WORKSHOP 21 - CRITICAL JURISDICTIONAL ISSUES: THE PROVINCIAL ADMINISTRATION OF JUSTICE AND EXERCISE OF THE FEDERAL FIDUCIARY RESPONSIBILITY, WITH A SPECIAL FOCUS ON NON-RESERVE INDIANS AND MÉTIS.**

*Speakers*

Donald E. Worme, President, Indigenous Bar Association, Saskatoon, Saskatchewan

Marion Buller, Barrister and Solicitor, Ray Connell, Vancouver, British Columbia

Rosalee Tizya, Advisor, Self-Government, United Native Nations, Vancouver, British Columbia

Leonard Heron, Juvenile Court Judge,  
Métis Association of Northwest  
Territories, Fort Smith, Northwest  
Territories

Dwight Dory, President, Native Council of  
Nova Scotia, Truro, Nova Scotia

Lee Seto-Thomas, Native Council of  
Canada, and Professor of Social Work,  
Carleton University, Ottawa, Ontario  
(*Moderator*)

*Rapporteur*

Lee Seto-Thomas

This workshop was presented in five interconnected components that discussed the effects of the Euro-Canadian justice system on off-reserve aboriginal peoples. The first component, "Traditional Native Justice," demonstrated the disparate philosophies of native and non-native justice. The need for mainstream policy-makers to be educated in terms of native justice concepts was emphasized. The second component spoke to the Crown's fiduciary responsibility and its intentional disregard for off-reserve Indian, Métis and Inuit peoples. Further, there was the question of credibility and accountability of trust relationships with respect to treaties, fiduciary responsibilities and the *Indian Act*. It was stated that the justice system's utilization of British traditional law as a means of escaping fiduciary responsibility creates a caste system consisting of "classes" of aboriginal peoples.

The third presentation focused on the inaccessibility of justice programs and

services for native people. The lack of resources in this area underlines the need for native peoples to forge ahead and not rely on outside sources to deal with community concerns. The final presentation reinforced the belief that the present justice system (regardless of previous commissions and inquiries) remains paternalistic and blatantly selective in terms of who it seeks to serve when it fails to acknowledge its fiduciary responsibility. Three main questions arose from this presentation:

- Would establishing an institute or foundation devoted to aboriginal justice be a start?
- Would a new policy or act acknowledging all aboriginal peoples as equals solve this problem of several classifications?
- Can laws in Canada be effectively administered through a diarchal form of justice (i.e. non-aboriginal laws for non-aboriginal people and aboriginal laws for aboriginal people)?

**WORKSHOP 22 — STRUGGLE FOR  
RECOGNITION: CANADIAN JUSTICE  
AND THE MÉTIS NATION**

*Speakers*

David Chartrand, Executive Director,  
Aboriginal Courtworker Program of  
Manitoba, and Chair, Child and Family  
Service and Justice Committees of the  
Board, Manitoba Métis Federation,  
Winnipeg, Manitoba

Lawrence Barkwell, Senior Justice  
Consultant, Manitoba Métis Federation,  
Winnipeg, Manitoba (*Moderator*)

*Rapporteur*

Lawrence Barkwell

The presenters underlined the workshop's theme historically. They noted that the British Parliament and Colonial Office failed to recognize Métis grievances and petitions presented by Alexander Isbestor in the 1840s. Further, the governments of Canada and Manitoba failed to fulfil the provisions of the *Manitoba Act* of 1870, nor did they recognize Louis Riel as a Father of Confederation. The Government of Canada also failed to assume its primary constitutional responsibility to the Métis under subsection 91(24) of the Constitution. (This is now a recommendation of the Manitoba Aboriginal Justice Inquiry.)

More recently, the Correctional Service of Canada, Task Force on Aboriginal People in Federal Corrections did not consult or meet with the Manitoba Métis Federation. The Law Reform Commission of Canada also initially omitted consultation with the Manitoba Métis Federation from the Ministerial reference on aboriginal justice issues. And the Manitoba Government failed to mandate a Michif Child and Family Service Agency (which is also recommended by the Manitoba Aboriginal Justice Inquiry).

This workshop drew a link between the cultural genocide through child welfare apprehension of Métis children, the breakup of Métis families and the

over-incarceration of Métis youth and adults. Workshop participants from Saskatchewan added further examples from their province.

Presenters argued that white middle class administrators and bureaucrats have never felt the pain in their heart that is caused by being forced to live as the Métis live or they would never make the decisions that they do. Many participants believed there was a total lack of acknowledgment and recognition of the Métis people. This lack of awareness is particularly acute in both provincial and federal governments and their administrations.

The commencement of self-government for the Métis in the institutions of child welfare, education, economic development, justice and corrections was seen as key to reversing current trends.

**WORKSHOP 23 — ABORIGINAL-  
POLICE RELATIONS: CROSS-CULTURAL  
TRAINING FOR RCMP OFFICERS IN  
THE YUKON AND MODELS OF URBAN  
LIAISON MECHANISMS BETWEEN  
POLICE AND OTHER SOCIAL  
AGENCIES**

*Speakers*

Staff Sergeant Mick Ryan, NCO in  
Charge, Whitehorse Detachment, RCMP,  
Whitehorse, Yukon

Alan Jacobs, Kwanlin Dun Indian Band,  
Whitehorse, Yukon

Vasa Sramek, Executive Director,  
Vancouver Police and Native Liaison

Society Storefront Project, Vancouver,  
British Columbia

Margaret Beare, Director, Police Policy  
and Research Division, Solicitor General  
Canada, Ottawa, Ontario (*Moderator*)

*Rapporteur*

Vasa Sramek

Presenters believed that cross-cultural training of police force members in a given community should be available on an ongoing basis for all force members, not just new recruits. Such a component must be firmly entrenched into all police training.

Cross-cultural training and awareness must be developed on a community level. Programs should incorporate the element of trust and this may only be accomplished over time, through police officers becoming part of a given community, sharing cultural events and continuous communication. The importance of including an officer's family in community activities was recognized.

The issue of police officer transfers poses a tremendous threat to programs in both rural and urban settings. In order to insure continuity of services and community participation, the "right" people must be chosen and supported. Alternatively, the community must have a voice in ridding itself of unsuitable officers.

The community plays a critical role in the healing process in both rural and urban settings. This role must be the foundation

for true community-based policing. Innovative and proven liaison programs should be replicated nationally in comparable communities. A mechanism for sharing valuable experiences and expertise is required. Governments and other funding agencies with a policing mandate should demonstrate a willingness to take a broad view of the types of projects that may facilitate liaison between police and aboriginal communities.

**WORKSHOP 24 — A REVIEW OF  
PUBLIC INQUIRIES INTO JUSTICE AND  
ABORIGINAL PEOPLES IN CANADA**

*Speakers*

Gordon Greig, Assistant Commissioner  
(retired), RCMP, Edmonton, Alberta

Regina Crowchild, President, Indian  
Association of Alberta, Edmonton, Alberta

Larry Desmeules, President, Métis Nation  
(Association), Edmonton, Alberta

Ken Geroux, Chairman, Ontario Native  
Council on Justice, Barrie, Ontario

Glen Lewis, Policy Analyst, Policy,  
Planning and Communications,  
Department of Justice Manitoba,  
Winnipeg, Manitoba

Gilles Létourneau, President, Law Reform  
Commission of Canada, Ottawa, Ontario  
(*Moderator*)

*Rapporteur*

His Honour Judge Maurice Lagacé,  
Montréal, Québec

The participants agreed with the findings of the various provincial inquiries, especially that the existing system of justice is discriminatory and racist and that there is a need for reform. Aboriginal people, within the meaning of the Constitution, should have control over their own justice system. This system should be sensitive to aboriginal direction and the needs of aboriginal communities. Cross-cultural training should be mandatory for all justice personnel including judges of all levels.

The federal government should set up a mechanism to implement the recommendations made by the various provincial inquiries. More healing lodges for aboriginal women should be created.

In conclusion, the participants stressed strongly that the time has come not for more studies, but for action.

**WORKSHOP 25 — JUSTICE OF THE PEACE PROGRAMS: TWO MODELS**

*Speakers*

Christine Deom, Articling Student and Representative, Mohawk Nation Office, Kahnawake, Québec

John K. Diabo, Kahnawake Peacekeeper Department, Kahnawake, Québec

Sam Stevens, Administrator, Justice of the Peace Program, Department of Justice Northwest Territories, Yellowknife, Northwest Territories (*Moderator*)

*Rapporteur*

Sam Stevens

Presenters from Kahnawake represented two different approaches to aboriginal justice. The traditional justice system (as represented by the Mohawk Nation Office) is not accommodated within the Justice of the Peace Program even though the J.P. system is run by Mohawk people (Kahnawake Peacekeeper Department).

Both systems dispense justice from a native perspective but there is a need for greater understanding and coordination between the two. There seems to have been some movement lately, on the part of both parties, to work out a better way of handling justice issues.

The presenters from the Northwest Territories raised a number of themes. The J.P. system has been reviewed and many recommendations that were made are being implemented: a Justice of the Peace Review Council has been created; authority for J.P.s has been transferred to the Chief Judge's office; training of J.P.s has a high priority; J.P.s from the community must be endorsed by the whole community.

The Justice of the Peace Court is being adapted so that it is community based, i.e. the whole community will own, participate in, and take responsibility for various aspects of the justice system. The

Northwest Territories is doing this by having community meetings to explain how the system operates and to discuss how the system should be changed. The community is responsible for developing the alternatives, procedures, and resources that will be used in the justice system.

**WORKSHOP 26 — RESEARCH  
TRAINING FOR RELEARNING DENE  
TRADITIONAL JUSTICE SYSTEMS: THE  
LAC LA MARTRE, N.W.T. CASE STUDY**

*Speakers*

Isadore Zoe, Chief, Lac La Martre Band Council and Chairman, Community Advisory Committee, Dene Traditional Justice Case Study, Lac La Martre, Northwest Territories

Francis Zoe, Researcher, Dene Traditional Justice Case Study, Lac La Martre, Northwest Territories

Aggie Brockman, Project Director, Dene Traditional Justice Case Study, Lac La Martre, Northwest Territories (*Moderator*)

*Rapporteur*

Aggie Brockman

The goals of the Dene Traditional Justice Case Study are to document the traditional laws and justice system of the Dogrib people, and to study the extent to which traditional justice mechanisms are still practised. The information can be used by both Dene and non-Dene in discussions for improving the administration of justice for

Dene, as well as for education of the judiciary and others involved in justice work. The research will also contribute to the cultural knowledge of the Dene among both First Nations and non-aboriginal people.

The project involves training local researchers so that marketable skills are kept in the community. Training includes research and interviewing skills, Dogrib literacy, English literacy upgrading, and computer skills. All decisions within the project are made by consensus. At all stages the project is locally controlled through a hands-on Community Advisory Committee made up of Elders and local leaders.

The study of traditional law and methods of maintaining social harmony should be encouraged. Increased knowledge in this area will reduce resistance to aboriginal justice initiatives by reducing fear of the unknown. There will be change, whether through parallel systems or adaptations. Documenting traditional law is critical to change. It is urgent to do this work while the traditional knowledge of Elders is still available.

Judicial education is critical but it is difficult to educate judges without written materials. For example, Courts of Appeal which are aware of traditional law and First Nations cultures are less likely to overturn decisions from courts where sentencing is carried out by clan leaders (such as the Teslin Tribal Council).

While Euro-Canadian law emphasizes an absolute truth, autonomous aboriginal communities each have their own truths.

Research into traditional law will assist in the recognition that there are parallel or multiple truths/realities.

#### *Recommendations*

- Aboriginal traditional justice research projects and results should be community controlled.
- There must be recognition of the competency of local researchers.

#### **WORKSHOP 27 — ABORIGINAL FEMALE OFFENDERS: PERSPECTIVES ON CORRECTIONS IN SASKATCHEWAN**

#### *Speakers*

Alphonsine Koehler, Director, Community Training Institute, Gabriel Dumont Institute, Saskatoon, Saskatchewan

Annette Neustaedter, Director, Pine Grove Correctional Centre, Prince Albert, Saskatchewan (*Moderator*)

#### *Rapporteur*

Annette Neustaedter

This session explored the holistic culture- and gender-relevant programming developed at the Pine Grove Centre for Women, and the native-directed Gabriel Dumont Community Training Residence. The foundation for programming at both centres is healing — attending to the mental, spiritual, emotional and physical health of native women in conflict with the law.

Two specific programs were discussed. The Healing Project is funded by grant to form healing circles in and out of the Centre for Aboriginal Women; to develop and deliver a healing program in the centre; and to provide healing education workshops with key members of the criminal justice system, including judges, Crown attorneys, police, and corrections officers. The program draws connections between sexual abuse, and substance abuse, and deals with reconnecting with native culture, specifically language and spirituality. It will begin self-help healing circles not only in the centre for inmates, but also in the community for former inmates.

The Gabriel Dumont Centre is a halfway house for women. It is run by a Métis organization, the Gabriel Dumont Society. Its native staff deliver a program which is holistic in nature and strongly linked to the community.

#### *Recommendations*

- Policy and funding support should be improved for healing programs for women in conflict with the law; prevention programming for women; aftercare programming for women.
- Initiatives that support family healing, services for the sexually and physically abused, and victimization programming would be welcomed.
- Halfway houses rather than jails should be used as a rehabilitative measure.



**WORKSHOP 28 — ACCESS TO  
JUSTICE: LEGAL INFORMATION AND  
NATIVE LANGUAGE INTERPRETATION  
IN COURTS**

*Speakers*

Betty Harnum, Manager, Legal Interpreting, Department of Justice Northwest Territories, Yellowknife, Northwest Territories

David Gullickson, Research Officer, Policy, Planning and Evaluation, Department of Justice Saskatchewan, Regina, Saskatchewan (Moderator)

*Rapporteurs*

Betty Harnum and David Gullickson

In 1984, the Northwest Territories Legislative Assembly passed the *Northwest Territories Official Languages Act* granting official legal status to the six native languages, as well as to English and French. In 1986, the *Northwest Territories Jury Act* was amended to allow unilingual aboriginal language speakers to be jurors. Both of these pieces of legislation are unique in Canada. So too is the legislature, which has a native majority.

Native language interpreters and translators have been providing simultaneous interpretation and much written material to native people in the Northwest Territories for many years. Since 1988, they have been able to take training in interpreting for the courts in an intensive eight-week program, covering law, court structure, court protocol, ethics,

assertiveness, and interpreting skills. More than 80 students have now taken this training, and more than 25 trials have been held with unilingual jurors who speak aboriginal languages.

This incorporation of native people into the existing legal system has guaranteed greater participation and a better quality of service for them. Even if a separate or parallel justice system evolves for native people, issues of the quality of interpretation will still have to be addressed, as those who speak native languages will undoubtedly have disputes to resolve with those who do not.

David Gullickson profiled the Public Legal Education Association of Saskatchewan's Legal Lifeskills Course, a one-day workshop for potential legal intermediaries, that is, people in the helping professions who can serve as links between the law and those who need help with the law. The workshop, he noted, seeks to provide legal information to sectors of the Saskatchewan population historically ill-served by traditional public legal education — the marginalized in general, and women, aboriginal people and the disabled in particular.

Those present agreed that the translation of aboriginal languages in the court system has for far too long been inadequate. Further, they urged governments to re-examine their policies in this area carefully, especially given their commitment to improving access to justice services for aboriginal Canadians.

Regarding public legal education programming for intermediaries, those in

attendance supported its consideration by other associations across the country. However, they cautioned that such programming should not become a substitute for direct, community-level activity by and for aboriginal people.

**WORKSHOP 29 — INSTITUTIONAL  
DOORS SWING BOTH WAYS:  
ABORIGINAL COMMUNITY  
PARTICIPATION IN INSTITUTIONAL  
PROGRAMS AND SERVICES**

*Speakers*

Fred Gibson, Chairman, National Parole Board, Ottawa, Ontario  
Ole Ingstrup, Commissioner, Correctional Service of Canada, Ottawa, Ontario

Sylvia Novik, Special Advisor, Native Issues, Solicitor General Alberta, Edmonton, Alberta

Bruce Anderson, Director, Provincial Parole Program, Solicitor General Alberta, Edmonton, Alberta

Ed Buller, Senior Policy Analyst, Ministry of Solicitor General Canada, Ottawa, Ontario (*Moderator*)

*Rapporteur*

Alison Molloy, Regional Director, Pacific Regional Office, Ministry of the Solicitor General Canada, Vancouver, British Columbia

Participants agreed that while there were a number of positive signs, there remain inconsistencies and problems in the current

system. Parole boards should look at spirituality as a factor in decision-making. Cross-cultural training should be mandatory for all justice system personnel. Efforts should be made to enhance communications between aboriginal communities and the various components in the criminal justice system. Special arrangements (e.g. travel, babysitting) should be made to ensure that those aboriginal people who wish to volunteer are able to do so. Consultation with the entire aboriginal community, including Elders and other key players, must be an integral part of all new corrections initiatives and policy development. The key to successful programming is community involvement and ownership. Justice officials must work more creatively to involve urban aboriginal organizations in programming for native offenders.



APPENDIX 1

CONFERENCE PROGRAMME



***Sponsored by The Honourable Kim Campbell,  
Minister of Justice Canada and  
The Honourable Margaret Joe,  
Minister of Justice Yukon***

This conference provides a forum for:

- ❖ identifying common issues arising out of the various inquiries on aboriginal justice;
- ❖ consultation on a range of program and policy issues, including aboriginal policing, young offenders legislation, sentencing reform, prosecution policy, community corrections and programs of crime prevention and justice administration;
- ❖ information exchange on successful projects in aboriginal communities;
- ❖ dialogue between aboriginal leaders and Ministers and officials responsible for justice on aboriginal justice priorities and on a practical agenda for reform.

*It is about achieving justice, today and tomorrow.*

— ❖ —

All programs take place at Yukon College.

— ❖ —

An exhibit of Yukon aboriginal art will be held throughout the conference in the Archives Building, Yukon College.

— ❖ —

Version française disponible

### **Hospitality**

#### **Tuesday, September 3**

7:30 - 9:30 pm (Goldrush Inn)  
Welcoming reception hosted by Elders of Yukon

#### **Wednesday, September 4**

12:30 - 2:00 pm (Cafeteria, Yukon College)  
Lunch hosted by the Government of Yukon  
5:30 - 6:45 pm (Cafeteria, Yukon College)  
Dinner jointly hosted by the Government of Yukon  
and Department of Justice Canada

#### **Thursday, September 5**

12:30 - 1:30 pm (Cafeteria, Yukon College)  
Lunch hosted by the Government of Yukon  
7:00 pm (High Country Park)  
Bar-B-Que of Indian cuisine followed by  
entertainment by the Teslin Tlingit Drummers, The  
Stick Gamblers and dancing to the music of Bob  
Charlie and the Klukshu Flats Boogie Band. Jointly  
hosted by the Government of Yukon and  
Department of Justice Canada

#### **Friday, September 6**

12:30 - 2:00 pm (Cafeteria, Yukon College)  
Buffet Lunch hosted by the Government of Yukon  
7:30 - 10:00 pm (Mount McIntyre Recreational  
Centre)  
Banquet hosted by the Department of Justice  
Canada

### **Dramatic Presentations**

#### **Wednesday, September 4**

10:30 - 11:00 am  
*Keeping the Peace*, presented by the Nakai Theatre  
Ensemble (script courtesy of The Northern Justice  
Society; story based on a case study provided by  
the Gitksan Wet'suwet'en Education Society)

#### **Thursday, September 5**

9:00 - 9:45 am  
*A House That's Not a Home*, presented by the Nakai  
Theatre Ensemble (script courtesy of The Northern  
Justice Society)

#### **Friday, September 6**

9:00 - 10:00 am  
*Toronto at Dreamer's Rock*, a story by  
De-Ba-Jeh-Mu-Jig from Manitoulin Island

Transportation will be provided to  
Yukon College from the following  
hotels:

The Goldrush Inn  
The Regina Hotel  
The Yukon Inn  
The Taku

Transportation schedules will be  
posted in the hotel lobbies.

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**Tuesday, September 3**

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- 5:00 pm Registration  
Goldrush Inn
- 5:00 - 6:00 pm Meeting of Plenary Speakers and Moderators  
Goldrush Inn
- 6:30 - 7:30 pm Orientation for Rapporteurs/Moderators  
Goldrush Inn
- 7:30 - 9:30 pm Welcoming reception Hosted by Elders of Yukon  
Goldrush Inn

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**Wednesday, September 4**

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- 8:00 am Buses depart hotels for Yukon College  
(transportation schedules are posted in each lobby)
- 8:00 - 9:00 am Registration
- 9:00 - 9:15 am *Opening Prayer and Ceremonies*
- 9:15 - 9:45 am *Opening Remarks and Conference Agenda*  
Conference Convenors:  
His Honour Judge Douglas R. Campbell, Director, Western Judicial Education Centre,  
Vancouver  
Kathy Louis, Senior Board Member, National Parole Board, Pacific Region, Vancouver
- 9:45 - 10:15 am *Opening Address*  
Tom Sampson, Chairman, First Nations of South Island Tribal Council, Mill Bay, B.C.  
and Chairman, Justice Committee, Assembly of First Nations
- 10:15 - 10:30 am Break  
Art Exhibit Open
- 10:30 - 11:00 am *Keeping the Peace*  
A drama presented by the Nakai Theatre Ensemble  
(script courtesy of The Northern Justice Society; story based on a case study  
provided by Vicki Russell, Gitksan Wet'suwet'en Education Society)
- 11:00 am - 12:30 pm *A Panel Discussion*  
The focus will be strategies for making the justice system more effective, respectful  
of aboriginal cultures, and responsive to aspirations for greater responsibility.  
Leroy Littlebear, Native American Studies, University of Lethbridge, Alberta  
Yvon Dumont, Spokesman, Métis National Council and President, Manitoba Métis  
Federation, Winnipeg  
Rosemarie Kuptana, President, Inuit Tapirisat of Canada, Ottawa  
The Honourable Mr. Justice Réjean Paul, Superior Court of Québec and The Cree  
Naskapi Commission, Ottawa  
Moderator: Judge Doug Campbell
- 12:30 - 2:00 pm Lunch  
Cafeteria, Yukon College  
Hosted by the Government of Yukon  
Art Exhibit Open



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**Wednesday continued**

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2:00 - 3:30 pm

*Concurrent Workshops 1 to 7*

Individuals, jurisdictions and associations that have developed and implemented new initiatives in the justice area or are advancing new or comparative points of view present these so that others can assess the potential for their own jurisdictions. Workshop presentations and discussions concentrate on objectives, structures, strategies and challenges of implementation and evaluation. (Some workshops include multiple presentations.)

**1** *Family Violence: Issues and Opportunities*

This workshop discusses issues relating to family violence, particularly the specific problems and context of aboriginal communities. Issues include the need for community-based holistic solutions, the ability of existing systems to meet needs, current provincial initiatives, and healing lodge models.

Corrinne Nabigon, President, Ontario Native Women's Association, Thunder Bay, Ontario

Leona Nahwegahbow, Chief of White Fish River First Nation, Union of Ontario Indians, Toronto, Ontario

Ruby Miller, Courtworker Trainer, Ontario Federation of Indian Friendship Centres, Toronto, Ontario (Moderator)

**2** *Aboriginal Policing: Policy and Practice*

One purpose of the session is to discuss the recently announced Indian Policing Policy and implementation and to exchange ideas about new policing services or the improvement of existing services on reserves. It is based in part on the experience of Indian communities which have their own police services or are in the process of developing a service.

Another purpose is to review various initiatives being undertaken by First Nations in Ontario with respect to policing and native peacekeeping. Examples are a native peacekeeping symposium hosted by the Ontario Native Council on Justice in 1990 and its recommendations with respect to policing as it affects aboriginal communities; the Six Nations Police Commission and other First Nations involved in projects under development or in self-government negotiations, and initiatives of the Ontario Provincial Police with respect to innovations in policing in First Nations communities.

Peter Akiwenzie, Representative to Ontario Native Council on Justice and Director, Intergovernmental Affairs, Union of Ontario Indians, North Bay, Ontario

Wallace McKay, Chairman, Ontario First Nations Policing Commission, Sioux Lookout, Ontario

Dale Davis, Administrator, Six Nations Police Commission, Six Nations, Ontario

Tom Wall, Chief Superintendent Responsible for Management of Ontario First Nations Policing Program, Ontario Provincial Police, Toronto, Ontario

Representative from Union of Ontario Indians (TBA)

Ron Ferri, Manager, Aboriginal Policing, Police Security Branch, Solicitor General Canada, Ottawa, Ontario

Robert Sterling, Director, Band Support, Department of Indian Affairs and Northern Development, Hull, Québec

Doug Scott, Special Assistant, Policing, to the Deputy Solicitor General Ontario, Toronto, Ontario (Moderator)

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**Wednesday continued**

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**3** *Achieving Justice for the Métis*

The discussion examines the unique obstacles or impediments confronting the Métis people, including: a) the "jurisdictional limbo"; (the current federal policy is to deny a fiduciary responsibility for the Métis people through Section 91.24 of the *Constitutional Act, 1982*); some provinces, Alberta in particular, accept some jurisdictional responsibility for the Métis; b) the dispossession of Métis lands and the denial of redress through the claims process or the courts (the federal land claims policies exclude claims by Métis, except in the Northwest Territories); the federal government's litigation strategy is to cause delay and frustrate attempts by the Métis to obtain a hearing by the courts; c) the denial of the recognition of hunting and fishing rights and the consequential justice problems caused by this denial. The workshop examines the implications of these impediments and practical directions for change.

Jim Aldridge, Barrister and Solicitor, Rosenbloom and Aldridge, Vancouver Legal Counsel to Métis National Council, Vancouver, British Columbia

Clem Chartier, Consultant, Saskatchewan Métis Society, Saskatoon, Saskatchewan

A.E. (Tony) Belcourt, Advisor, Métis National Council, Ottawa, Ontario (Moderator)

**4** *International Experiences in Indigenous Justice Systems*  
(not confirmed at time of printing)

**5** *Aboriginal Self-Sufficiency in Justice Issues: Practical Approaches and Models*

Aboriginal self-sufficiency in justice is no longer a topic for negotiation; it is on the verge of becoming a reality. Although leadership for this comes from the aboriginal people themselves, there are many ways that non-native governments and institutions can assist to make this transition a smooth one. This session explores how non-native governments and institutions can enable the transition process. It discusses some of the perceived threats (real and imagined) and barriers facing aboriginal justice self-sufficiency and what can be done to overcome them in a governmental and institutional context.

The session also introduces an approach to justice systems which begins by developing models in the community; this approach is different from most existing approaches which begin from the existing non-native system, and look for changes in that system.

Finally, the workshop focuses on a unique example of self-sufficiency, the Nenquay Deni Yajelhtig Law Centre in Alexis Creek, British Columbia. Its history, structure and programs, local control and traditional form of Indian leadership are discussed.

Shin Imai, Counsel, Policy Development Division, Ministry of the Attorney General Ontario, Toronto, Ontario

Joy Waters, Instructor, Yukon College, Whitehorse, Yukon

Joan Gentles, Revolving Chair, Nenquay Deni Yajelhtig Law Centre Society, Alexis Creek, British Columbia (Moderator)

**6** *A Separate Justice System for First Nations?*

There has been considerable debate over what needs to be done in order to correct the deficiencies within the existing justice system in regard to its application to aboriginal people. Will minor adjustments be adequate? There seems to be a consensus developing amongst opinion leaders, aboriginal and non-aboriginal alike, that a separate justice system for aboriginal people will be necessary. The Federal Justice Minister, however, has rejected the notion of an entirely separate system. Will it be possible to achieve a balance between these two views? Will it be possible to construct a system of justice which is autonomous enough to accommodate the different aspirations and circumstances of aboriginal people within the existing general framework of the administration of justice?

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**Wednesday continued**

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Marion Buller, Barrister and Solicitor, Ray Connell, Vancouver, British Columbia

William T. Badcock, Counsel, Aboriginal Justice Project, Department of Justice Canada, Ottawa, Ontario

Donald E. Worme, President, Indigenous Bar Association, Saskatoon, Saskatchewan (Moderator)

**7 *Creative Sentencing and the Context of the Purposes and Principles of Sentencing***

The treatment of this subject proceeds from an historical perspective and then moves into the practicality of sentencing the native offender. The South Vancouver Island experience is explored in detail including the role of native Elders and the use of the longhouse. Levels of support are reviewed as is the task of unlearning many assumptions that the non-native person so often makes.

In addition, the Sentencing Team of the Department of Justice Canada uses this opportunity to meet with a wider cross-section of aboriginal leaders than has been done to date. The purposes and principles of sentencing are discussed, which have been developed as a result of the Directions for Reform document published jointly by the Minister of Justice and the Solicitor General in July 1990.

Doug Breithaupt, Counsel, Sentencing Team, Department of Justice Canada, Ottawa, Ontario

Robert Gillen, Regional Crown Counsel, Criminal Justice Branch, Ministry of Attorney General British Columbia, Victoria, British Columbia

His Honour Judge Cunliffe Barnett, Provincial Court of British Columbia, Williams Lake, British Columbia

Tom Sampson, Chief, First Nations of South Island Tribal Council, Mill Bay, British Columbia

Frank Brown, Vancouver, British Columbia

Gordon D. Parry, Coordinator, Sentencing Team, Department of Justice Canada, Ottawa, Ontario (Moderator)

3:30 - 3:45 pm Break

Art Exhibit Open

3:45 - 5:00 pm Workshops 1 to 7 continued

5:30 - 6:45 pm Dinner

Cafeteria, Yukon College

Jointly hosted by the Government of Yukon and Department of Justice Canada

7:00 - 9:30 pm *Concurrent Workshops 8 to 14*

**8 *The Greenlandic Experience with Alternative Sentencing***

The workshop presents possible alternatives for Inuit communities to carry out sentencing and punishment with a view to avoiding sending offenders out of the communities, in which they have been charged or convicted. In Greenland, people that are convicted of crimes other than murder are not sent to prison: an "alternative sentencing" policy allows lay judges to let convicted persons serve their sentence within their own community.

Rosemarie Kuptana, President, Inuit Tapirisat of Canada, Ottawa, Ontario

Representative from Greenland, TBA

Joe Otokiak, Executive Assistant to the President, Inuit Tapirisat of Canada, Ottawa, Ontario (Moderator)

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Wednesday continued

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- 9 *Models of Alternative Dispute Resolution* (moved to Thursday, 1:30 - 4:30 p.m.)
- 10 *A Healing Lodge for Aboriginal Women: Partnership in Correctional Planning*  
This workshop explores the situation of aboriginal women in prisons, presents the findings and recommendations of a 1990 Task Force on Federally Sentenced Women as they pertain to natives, and describes the unique partnership developed between aboriginal women's groups and the Correctional Service of Canada to plan the Healing Lodge for incarcerated native women. A 1990 Canadian film about native women in prison is also shown.
- Sharon McIvor, Member, Executive Council, Native Women's Association of Canada, Merritt, B.C.
- Ginger Bacchus, Regional Chief, Sentence Administration, Correctional Service of Canada, Abbotsford, B.C.
- Jeff Christian, District Director, Northern Alberta - Northwest Territories District Parole Office, Correctional Service of Canada, Edmonton, Alberta
- Liza Mosher, Elder, Sudbury, Ontario
- Fran Sugar, Member, Aboriginal Women's Caucus, Kingston, Ontario
- Jane Miller-Ashton, National Coordinator, Federally Sentenced Women Initiative, Correctional Service of Canada, Ottawa, Ontario (Moderator).
- 11 *Community Self-Government Negotiations and Aboriginal Justice: the Context of National Negotiations and the Context of the Role of Provincial Jurisdictions*  
The session looks at possibilities for the provincial role in negotiations for self-government in justice, examines constitutional and other limitations and the First Nation view of the limits of the provincial role. Issues include the diversity in the family and criminal and civil justice systems. The specific models discussed are dependent on the views of the First Nations involved in the session, but may include Whitefish Bay and the Akwesasne proposal for a Mohawk Justice Code.
- Secondly, the session outlines current justice problems facing Community Self-Government Negotiations such as community by-law enforcement, together with actual proposals which are under discussion; and the difficulties faced by small communities, which have had no clear indications about solutions, which may be acceptable to government.
- Elizabeth Hanson, Negotiator, Community Self-Government Negotiations, Department of Indian Affairs and Northern Development Canada, Whitehorse, Yukon
- Shin Imai, Counsel, Policy Development Division, Ministry of Attorney General, Toronto, Ontario
- Representative of White Fish Bay First Nation, Ontario (TBA)
- Representative of Akwesasne First Nation, Ontario (TBA)
- Phil Tunley, Counsel, Constitutional Law and Policy Division, Ministry of Attorney General Ontario, Toronto, Ontario
- Robert Christy, Manager, Policy Directorate, Self-Government Sector, Department of Indian Affairs and Northern Development Canada, Hull, Québec (Moderator)
- 12 *Building Justice into a Community Constitutional Process*  
This workshop describes how governance works, its elements, its lawmaking powers and its enforcement powers.
- Neil Sterritt, Chairman, Chiefs' Governance Working Group and Gitksan Wet'suwet'en, British Columbia (Moderator)

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**Wednesday continued**

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**13** *Adapting the Existing Euro-Canadian System*

The workshop discusses various models for adapting the existing system, enhancing the cultural sensitivity of the existing system (including issues relating to court interpretation), and providing for aboriginal delivery of services. Models to discuss include the Native Justice of the Peace Program, the Native Courtworker Program, NAN Legal Service Corporation (especially the current study of crime and justice being undertaken by the Corporation), public legal education models and the Working Group in Justice in Nishnawbe-Aski Nation. Issues include problems in the existing system, capacity of the existing system to adapt, and possibilities for change.

Cathy Staats, Co-Chair, Coordinating Committee, Ontario Native Courtworker Program, Ontario Federation of Indian Friendship Centres, Hamilton, Ontario

His Worship Tom Logan, Justice of the Peace, Thunder Bay, Ontario

Don Auger, Executive Director, Nishnawbe-Aski Legal Services Corporation, Thunder Bay, Ontario

Richard LeSarge, Administrator, Native Justice of the Peace Program and Training Officer, Justice of the Peace Programs, Ontario Court, General Division, Toronto, Ontario (Moderator)

**14** *Native Justice Consultations and Native Justice Pilot Diversion Projects in British Columbia*

The native justice consultation is structured around the framework of a provincial steering committee on native justice issues with the participation of senior executives from the Attorney General, Solicitor General and Native Affairs ministries of British Columbia as well as from the R.C.M.P. Committees and councils have been formed with the participation of justice system personnel and aboriginal representatives. An action plan to set goals for the process and the implementation of a funding program to support aboriginal community-based justice initiatives is discussed. Outcomes to be examined include: results of the consultation and funding; perceptions of the process in the aboriginal communities; changes among local justice personnel and senior justice system officials; and unforeseen or unexpected outcomes.

In addition, the workshop describes the Native Justice Pilot Diversion Project which arose from a recommendation in the Access to Justice Report of 1988. The presenters discuss objectives of the diversion program, parameters of policy, considerations for selection of appropriate cases, special considerations such as sexual or familial assaults or protocols for diversion agreements, form and length of agreements and consequences of failing to comply with agreement:

Charlene Belleau, Cariboo Tribal Council, Williams Lake, British Columbia

Kelly Speck, Assistant Deputy Minister, Ministry of Native Affairs, Victoria, British Columbia

Robert Gillen, Regional Crown Counsel, Criminal Justice Branch, Ministry of Attorney General British Columbia, Victoria, British Columbia

Tom Sampson, Chief, First Nations of South Island Tribal Council, Mill Bay, British Columbia

Hugh Braker, President, Native Courtworkers and Counselling Association, Port Alberni, British Columbia

Peter Ewert, Executive Counsel, Criminal Justice Branch, Ministry of the Attorney General British Columbia, Victoria, British Columbia (Moderator)

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**Thursday, September 5**

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9:00 - 9:45 am *Opening Prayer and Dramatization*  
*A House That's Not a Home*  
Nakai Theatre Ensemble  
(script courtesy of the Northern Justice Society)

9:45 - 11:00 am *Concurrent Workshops 15 to 22*

**15** *Tribal Justice: A New Beginning*

The Teslin Tlingit Council reestablished its traditional system of governing several years ago, based on the Clan system. The ongoing development of a system of Tribal Justice is part of this process. Presenters develop the historical background leading up to the present development and describe how the present system has become a merger of some of their traditional practices coupled with aspects of the Canadian justice system; for example, a Council of Elders assisting the judge in the sentencing process. Another aspect being developed is the elimination of lawyers and judges for a set number of minor offences, which are to be handled by the Justice Committee established by the Indian community. Finally, the presenters describe where they believe the evolution of this system may lead.

Georgina Sydney, Researcher, Teslin Tlingit Council, Teslin, Yukon

Matthew Thom, Clan Leader, Yanyeidi Clan, Teslin Tlingit Council, Teslin, Yukon

Chief Judge Heino Lilles, Yukon Territorial Court, Whitehorse, Yukon

Corporal Tom Grant, Teslin Detachment, R.C.M.P., Teslin, Yukon

David Keenan, Chief, Teslin Tlingit Council, Teslin, Yukon (Moderator)

**16** *Native Courtworker Programs: Emerging Issues*

This workshop addresses the role of courtworkers in a process of change in the justice system and the emerging implications for courtworker programs and structures.

Rosemary Trehearne, Manager, Justice Programs, Council for Yukon Indians, Whitehorse, Yukon

Hugh Braker, President, Native Courtworkers and Counselling Association, Port Alberni, British Columbia

Cathy Staats, Co-Chair, Coordinating Committee, Ontario Native Courtworker Program, Ontario Federation of Indian Friendship Centres, Hamilton, Ontario (Moderator)

**17** *The Young Offenders Act Under Review: Consultation on Proposals to Enhance Rehabilitation of Youth and Protection of Communities*

This session features criteria to encourage community dispositions wherever possible, means to strengthen the objective of rehabilitation throughout the process, and issues of placement for youth transferred to adult court.

Mary-Anne Kirvan, Counsel, Family and Youth Law Policy, Department of Justice Canada, Ottawa, Ontario (Moderator)

**18** *Making Corrections: Cooperative Ventures in Probation and Prison*

Issues to be discussed include the over-representation of natives in correctional populations, high recidivism rates among native offender population, the lack of understanding by non-native staff and native aspirations to assume responsibility for correctional programming. The developments prior to 1989 in British Columbia, the Inter-Ministry Consultation Initiative, the Branch Native Program Action Plan and Cross-Cultural Training are also discussed. Reference is made to these programs: the Native Prison Liaison Workers, Native Justice Workers, Native Attendance Program and native spirituality in institutions with a discussion of the strengths and weaknesses of the British Columbia Corrections experience.

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**Thursday continued**

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Ruth Williams, Executive Director, Interior Friendship Centre, Kamloops, British Columbia

Jim B. Graham, Assistant Deputy Minister, Corrections Branch, Ministry of the Solicitor General British Columbia, Victoria, British Columbia

Steve D. Howell, Program Analyst, Adult Probation Services, Corrections Branch, Ministry of Solicitor General British Columbia, Victoria, British Columbia

Frank Malloway, Chief, Yakwekwioosse Indian Band, Sardis, British Columbia  
(Moderator)

19 *Aboriginal Justice Initiatives: The St. Theresa Point Indian Government Youth Court and the Wabasca/Fort Chipewyan Youth Justice Committee in Alberta*

The St. Theresa Point Indian Government Youth Court is described: its origin, structure and impact. It provides participants with information on one form of "tribal court" that was developed at the community level. As well, the role structure of the Wabasca/Fort Chipewyan Youth Justice Committee in Alberta is discussed and the potential for replication in other jurisdictions.

Robert Wood, Coordinator, St. Theresa Point Indian Government Youth Court, St. Theresa Point, Manitoba

Elsie Yanik, Elder and Member, Youth Justice Committee, Fort Chipewyan, Alberta

His Honour Judge J. Clayton Spence, Provincial Court of Alberta, Fort McMurray, Alberta  
(Moderator)

20 *Gender Bias on Aboriginal Issues and the Justice System*

The Inuit Women's Association, Pauktuutit, has been concerned for years about child sexual abuse and gender bias issues. After much consultation, it has come to the conclusion that there is a gender bias on aboriginal issues in the justice system that needs to be addressed.

Heloise Spitzer, Co-Chair, Legal Committee, Women's Legal Education and Action Fund, Yellowknife, Northwest Territories

Martha Flaherty, Vice-President, Inuit Women's Association, Pauktuutit, Ottawa, Ontario  
(Moderator)

21 *Critical Jurisdictional Issues: The Provincial Administration of Justice and Exercise of the Federal Fiduciary Responsibility, with a Special Focus on Non-Reserve Indians and Métis*

The themes addressed in this workshop will include: traditional native justice/dispute resolution; the Canadian justice system: a question of assimilation/integration; what the Crown is doing to affect the interests of off-reserve native peoples; cultural appropriateness within the Canadian criminal justice system and acknowledging all First Peoples to establish a native justice system versus reconstructing the Canadian justice system.

As well, the workshop addresses the serious questions that remain as a result of the Oka and Kahnawake crises of last summer with respect to when the federal government should intervene in the exercise of its fiduciary responsibility over Indians and Indian lands, when issues of the administration of criminal justice are also involved. Last summer, federal officials took the position that because criminal justice issues were involved, the matter became one within the exclusive jurisdiction of the province. First Nation representatives, on the other hand, took the view that this was a federal matter because Indians and Indian lands were involved. They argued that it only became a criminal justice matter because of the failure of the federal government to properly fulfill its legal fiduciary responsibility and because of the inadequacy of federal policies respecting land claims and self-government. Given the possibility of similar problems arising in the future, there must be some objective discussions about the most appropriate course of action in similar situations.

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**Thursday continued**

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Donald E. Worme, President, Indigenous Bar Association, Saskatoon, Saskatchewan

Marion Buller, Barrister and Solicitor, Ray Connell, Vancouver, British Columbia

Rosalee Tizya, Advisor, Self-Government, United Native Nations, Vancouver, British Columbia

Leonard Heron, Juvenile Court Judge, Métis Association of Northwest Territories, Fort Smith, Northwest Territories

Phillip Fraser, President, New Brunswick Aboriginal Peoples Council, Fredericton, New Brunswick

Dwight Dory, President, Native Council of Nova Scotia, Truro, Nova Scotia

Lee Seto-Thomas, School of Social Work, Carleton University, Ottawa, Ontario  
(Moderator)

**22** *Struggle for Recognition: Canadian Justice and the Métis Nation*

This workshop traces the struggle of the Métis to retain and develop their own legal system in the colonial context and documents the present day impact of the legal system upon the Métis people. It also makes reference to the research evidence presented to the Manitoba Aboriginal Justice inquiry by the Manitoba Métis Federation and outlines the recommendation made for aboriginal self-determination and control of their own justice system.

David Chartrand, Executive Director, Aboriginal Courtworker Program of Manitoba and Chair, Child and Family Service and Justice Committees of the Board, Manitoba Métis Federation, Winnipeg, Manitoba

Lawrence Barkwell, Senior Justice Consultant, Manitoba Métis Federation, Winnipeg, Manitoba (Moderator)

11:00 - 11:15 am Break

Art Exhibit Open

11:15 am - 12:30 pm Workshops 15 to 22 continued

12:30 - 1:30 pm Lunch

Cafeteria, Yukon College

Hosted by the Government of Yukon

Art Exhibit Open

1:30 - 3:00 pm *Concurrent Workshops 9 and 23 to 29*

**9** *Models of Alternative Dispute Resolution* (moved from Wednesday, 7:00 - 9:30 p.m.)

The purpose of the workshop is to explore alternative means of community-based dispute resolution including traditional and customary mechanisms within communities, and the means available to enable development of community-based alternatives. Areas for discussion include the Attawapiskat Justice Project, Sandy Lake Justice Project and the Ontario Native Council on Justice report on Alternative Dispute Resolution. Issues include possibilities for alternative dispute resolution, the relationship between the existing system and alternative programmes and systems, constitutional and other legal issues, how to facilitate development of community-based alternatives, role of traditional systems, means of marrying traditional systems and current realities, and the relevance of the American experience.

Richard LeSarge, Administrator, Native Justice of the Peace Program and Training Officer, Justice of the Peace Programs, Ontario Court, General Division, Toronto, Ontario

Jonathan Rudin, Representative, Ontario Native Council on Justice, Toronto, Ontario

Josias Fiddler, Coordinator, Sandy Lake Justice Project, Sandy Lake, Ontario



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**Thursday continued**

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Joe Louttit, Coordinator, Attawapiskat Justice Project, Attawapiskat First Nation, Attawapiskat, Ontario

Lois Lowenberger, Counsel, Policy Development Division, Ministry of the Attorney General Ontario, Toronto, Ontario (Moderator)

23. *Aboriginal - Police Relations: Cross-Cultural Training for R.C.M.P. Officers in the Yukon and Models of Urban Liaison Mechanisms between Police and other Social Agencies*

The Cross-Cultural Training Program was initiated in the Yukon because of complaints about cultural insensitivity on the part of R.C.M.P. officers towards the native community and the lack of a successful program in the past. Panelists deal with the background of the program and how it was developed. Panelists also discuss definitions of "culture", cross-cultural traits, and provide an historical/social/political analysis of culture. In addition, the causes of tension that may arise in the course of R.C.M.P. working in a community are discussed, how that tension can be alleviated, and how an R.C.M.P. officer can successfully integrate into a native community.

As well the Vancouver Police Native Liaison Storefront Project is presented. It is a victim/witness support program for the aboriginal community of Vancouver. It has been developed as a complementary community-based service to enhance the accessibility of police services as well as to provide information, referral and follow-up crime prevention, education and limited counselling. This presentation describes the program and also explores applications of this model to other settings with substantial native populations.

Staff Sergeant Mick Ryan, NCO in Charge, Whitehorse Detachment, R.C.M.P., Whitehorse, Yukon.

Ken Kane, Manager, Native Broadcasting, Whitehorse, Yukon

Vasa Sramek, Executive Director, Vancouver Police and Native Liaison Society Storefront Project, Vancouver, British Columbia

Margaret Beare, Director, Police Policy and Research Division, Solicitor General Canada, Ottawa, Ontario (Moderator)

24. *A Review of Public Inquiries into Justice and Aboriginal Peoples in Canada*

This workshop reviews the findings of the Manitoba Public Inquiry into the Administration of Justice and Aboriginal People and the Cawsey Task Force Report on the Criminal Justice System and its impact on the Indian and Métis People of Alberta. It also discusses generally the progress made since the 1975 Edmonton Federal-Provincial Conference on Native Peoples and the Criminal Justice System, the justice inquiry reports from various provinces, and the development of strategies and proposals for change.

Gordon Greig, Assistant Commissioner (retired), R.C.M.P., Edmonton, Alberta

Regina Crowchild, President, Indian Association of Alberta, Edmonton, Alberta

Larry Desmeules, President, Métis Nation (Association), Edmonton, Alberta

Ken Geroux, Chairman, Ontario Native Council on Justice, Barrie, Ontario

Representative from Windigo Tribal Council, Ontario

Glen Lewis, Policy Analyst, Policy, Planning and Communications, Department of Justice Manitoba, Winnipeg, Manitoba

Gilles Letourneau, President, Law Reform Commission of Canada, Ottawa, Ontario (Moderator)

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**Thursday continued**

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**25. *Justice of the Peace Programs: Two Models***

This presentation involves a discussion of an Expanded Justice of the Peace Program in the Northwest Territories, its present jurisdiction to conduct trials up to and including summary conviction Criminal Code trials, and all of the Territorial Act trials. The future enlarged jurisdiction of the justices of the peace may include young offenders, child custody hearings, landlord and tenant disputes, small claims court, and human rights violations. Training on a continuous basis will specifically train the justices of the peace in these areas of enlarged jurisdiction. As well, future development in the area of "community justice" is discussed. A "community justice" approach would promote the encouragement of communities taking responsibility to develop alternatives for the handling of offenders from that community, and would promote meaningful ways for the community to participate in the justice of the peace court or justice system.

In addition, the Kahnawake Justice of the Peace Program and Longhouse Tribal Justice are presented. The Kahnawake presenter discusses their community's integration of the Justice of Peace Program with Iroquois Longhouse traditional justice, and their development of a five year plan to establish one justice system in their community.

Christine Deom, Articling Student and Representative, Mohawk Nation Office, Kahnawake, Quebec

John K. Diabo, Kahnawake Peacekeeper Department, Kahnawake, Québec

Sam Stevens, Administrator, Justice of the Peace Program, Department of Justice Northwest Territories, Yellowknife, Northwest Territories (Moderator)

**26. *Research Training for Relearning Dene Traditional Justice Systems: The Lac La Martre, N.W.T. Case Study***

This workshop outlines how to establish a community-based research program which involves an advisory committee composed of elders and local leaders and an interdisciplinary technical committee. Important aspects of the process include local initiatives, local control of the project and all decisions regarding training of local researchers. At all stages, researchers direct the process in consultation with the project staff and all decisions are made by consensus. The goals of the project are to collect the data in culturally appropriate ways, to have community input into data analysis and verification, and to make recommendations for the integration of community perspectives and justice system alternatives into the Canadian one. Any such recommendations will be the base of a pilot action project. In addition to generating information, researchers upgrade literacy, learn marketable research, analytical and report writing skills, and increase their sense of confidence. Pitfalls, frustrations and general problems are also presented so that discussions can be realistic.

Isadore Zoe, Chief, Lac La Martre Band Council and Chairman, Community Advisory Committee, Dene Traditional Justice Case Study, Lac La Martre, Northwest Territories

Francis Zoe, Researcher, Dene Traditional Justice Case Study, Lac La Martre, Northwest Territories

Aggie Brockman, Project Director, Dene Traditional Justice Case Study, Lac La Martre, Northwest Territories (Moderator)

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## Thursday continued

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27 *Aboriginal Female Offenders: Perspectives on Corrections in Saskatchewan*

One of the projects being discussed in this session is a collaborative undertaking by the Pine Grove Correctional Centre and the Prince Albert Sexual Assault Centre. Launched in May 1991 with funding support from Health and Welfare Canada, it involves the self-examination of the linkages between victimization, offending and substance abuse among incarcerated aboriginal women. It seeks to provide a supportive self-help environment within which participants gain new insights into destructive lifestyles and belief systems and build new lifeskills. Further, by drawing upon the knowledge and skills of local substance abuse, sexual assault and aboriginal women's groups as well as tribal councils, the project seeks to lay the groundwork for a holistic regional approach to better meet the needs of aboriginal women offenders following release.

As well, the Community Training Institute is discussed. Established in 1989, this 14-bed Saskatoon facility provides incarcerated female offenders and selected probationers a structured living environment in the community and an opportunity for education, training, employment and substance abuse treatment. The facility is operated by the Gabriel Dumont Institute under contract with Corrections Division, Saskatchewan Justice. It provides a variety of culturally and gender appropriate programs to foster the reintegration of offenders into the community.

Alphonsine Koehler, Director, Community Training Institute, Gabriel Dumont Institute, Saskatoon, Saskatchewan

Annette Neustaedter, Director, Pine Grove Correctional Centre, Prince Albert, Saskatchewan (Moderator)

28 *Access to Justice: Legal Information and Native Language Interpretation in Courts*

This session explores the many social, cultural, linguistic and legal constraints that must be taken into consideration in order to develop legal terminology in native languages. Legal advisors, linguists and native language speakers meet from time to time when trying to ascertain a suitable translation. It is difficult to find equivalent translations in the native languages that have the same legal meaning as the English term; linguistically there are often problems because some English words just do not exist in native languages; and socially and culturally there are problems in trying to convince people to accept a new translation when a commonly accepted older translation is found to be inaccurate or insufficient.

Also discussed are the various initiatives in Ontario related to public legal education, with a goal of sharing information on the development of effective models. One outcome of the session could be an agreement to develop a descriptive bibliography of all aboriginal public legal education materials presently available, an inventory of all known aboriginal public legal education projects and the preparation of recommendations for a basic library for public legal education.

Finally the PLEA Legal Life Skill Workshop, funded by Justice Canada and supported by Saskatchewan Justice, is studied. This is a one-day workshop for potential legal intermediaries. Upwards of 70 workshops have been conducted since the program began in 1986 for corrections staff, friendship centres, women's programs, home care staff, disabled persons' organizations, aboriginal groups, mental health organizations, transition houses, social service organizations, and upgrading programs. The primary target groups are aboriginal people, women and the disabled with questions about the law. The objective of the workshop is to enable participants to act as skilled guides to the legal system for the benefit of others.

Betty Harnum, Manager, Legal Interpreting, Department of Justice Northwest Territories, Yellowknife, Northwest Territories

Representative from Northwest Territories (TBA)

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**Thursday continued**

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Representative from Ontario (TBA)

David Gullickson, Research Officer, Policy, Planning and Evaluation, Department of Justice Saskatchewan, Regina, Saskatchewan (Moderator)

**29** *Institutional Doors Swing Both Ways: Aboriginal Community Participation in Institutional Programs and Services*

A major issue affecting aboriginal inmates is the lack of community involvement while they are incarcerated and the lack of post-release opportunities and options in aboriginal communities upon their release. The purpose of this workshop is to discuss methods of increasing aboriginal community participation in institutional programs/services, and having those programs/services continued through aboriginal community agencies upon an inmate's release. The workshop uses the recently completed aboriginal substance abuse pretreatment pilot project and other successful approaches as models. Participants are invited to propose other programs and services which might be "brought into the prisons" by aboriginal communities, which could also be offered to offenders upon their release. These "continuum of care" models are discussed from an institution viewpoint, from release decision-making positions and from an aboriginal community perspective.

The Kanai Correctional Centre on the Blood Reserve is the first correctional centre in Alberta to be operated and staffed entirely by an aboriginal society. The 24-bed minimum security correctional centre assists in the reintegration of adult male and female offenders. In addition to standard correctional programs, the facility also provides traditional aboriginal counselling and spiritual ceremonies. The Elders of the Blood Tribe have played a significant role in the facility's development.

Fred Gibson, Chairman, National Parole Board, Ottawa, Ontario

Ole Ingstrup, Commissioner, Correctional Service of Canada, Ottawa, Ontario

Sylvia Novik, Special Advisor, Native Issues, Solicitor General Alberta, Edmonton, Alberta

Bruce Anderson, Director, Provincial Parole Program, Solicitor General Alberta, Edmonton, Alberta

Ed Buller, Senior Policy Analyst, Ministry of Solicitor General Canada, Ottawa, Ontario (Moderator)

3:00 - 3:15 pm Break

Art Exhibit Open

3:15 - 4:30 pm Workshops 9 and 23 to 29 continued

4:30 - 5:30 pm Meeting of all Rapporteurs  
Boardroom, Yukon College

7:00 pm Bar-B-Que of Indian cuisine at High Country Park followed by entertainment by the Teslin Tlingit Drummers, The Stick Gamblers and dancing to the music of Bob Charlie and the Klukshu Flats Boogie Band.

Jointly hosted by the Government of Yukon and Department of Justice Canada

Welcoming Remarks:

The Honourable Margaret Joe, Minister of Justice Yukon

Judy Gingell, Chairperson, Council for Yukon Indians (CYI)

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Friday, September 6

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- 8:45 - 9:00 am *Opening Prayer*
- 9:00 - 10:00 am *Dramatic Presentation*  
*Toronto at Dreamer's Rock*  
A story by De-Ba-Jeh-Mu-Jig from Manitoulin Island
- 10:00 - 10:30 am Break  
Art Exhibit Open
- 10:30 am - 12:30 pm *Conference Update*  
Rapporteurs report to the plenary of the conference and to the Ministers and aboriginal leaders in attendance. They report highlights and recommendations from the previous two days' workshops, with additional highlights from the floor.  
Moderator: Kathy Louis
- 12:30 - 2:00 pm Buffet Lunch  
Cafeteria, Yukon College  
Hosted by the Government of Yukon  
Art Exhibit Open
- 2:00 - 3:15 pm *Aboriginal People and Justice Structures: Priorities for Action and the Challenge of Implementation*  
This session highlights the most critical priorities for change in the areas of: policing and community crime prevention, the Canadian court system, alternate dispute resolution, corrections and needs of special interest groups, and addresses the challenges facing individuals, organizations and governments in translating the expressed need for change in the legislative and policy arenas. In closing, the session focuses on the role of research by public inquiries and commissions on the economics of change, and on mechanisms for effective consultation and participation toward the achievement of justice for aboriginal peoples in Canada.  
Frank McKay, Chief of Police, Dakota Ojibway Tribal Council, Brandon, Manitoba  
Mr. Justice David Marshall, Executive Director, National Judicial Institute, Ottawa, Ontario  
Michael Jackson, Faculty of Law, University of British Columbia, Vancouver  
Pauline Busch, President, Aboriginal Women of Manitoba, Winnipeg  
Viola Robinson, President, Native Council of Canada, Ottawa  
Moderator: Judge Doug Campbell
- 3:15 - 3:30 pm Break  
Art Exhibit Open
- 3:30 - 5:00 pm *A Dialogue*  
Moderator: Judge Doug Campbell  
The speakers from the previous session are available as resource persons for this session.
- 7:30 - 10:00 pm *Banquet*  
Mount McIntyre Recreational Centre  
Hosted by the Department of Justice Canada  
Speaker: The Honourable Kim Campbell, P.C., Q.C., M.P., Minister of Justice Canada  
Entertainment by the Teslin Tlingit Dancers

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**Saturday, September 7**

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9:00 - 10:15 am *The Future*

David Keenan, Chief, Teslin Tlingit Council, Yukon

The Honourable Margaret Joe, Minister of Justice Yukon

The Honourable Kim Campbell, P.C., Q.C., M.P., Minister of Justice Canada

Closing Remarks

Conference Convenors:

Judge Doug Campbell

Kathy Louis

Closing prayer

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**Workshops According to Subject**

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*I - Policing* Workshops: 2 (Wednesday, September 4, 2:00 - 5:00 p.m.)  
15 (Thursday, September 5, 9:45 - 12:30 p.m.)  
16 (Thursday, September 5, 9:45 - 12:30 p.m.)  
23 (Thursday, September 5, 1:30 - 4:30 p.m.)

*II - The Courts  
and Alternative  
Dispute Resolution* Workshops: 12 (Wednesday, September 4, 7:00 - 9:30 p.m.)  
15 (Thursday, September 5, 9:45 - 12:30 p.m.)  
19 (Thursday, September 5, 9:45 - 11:00 a.m.)  
25 (Thursday, September 5, 1:30 - 4:30 p.m.)  
9 (Thursday, September 5, 1:30 - 4:30 p.m.)

*III - Program and  
Policy Issues* Workshops: 1 (Wednesday, September 4, 2:00 - 5:00 p.m.)  
3 (Wednesday, September 4, 2:00 - 5:00 p.m.)  
10 (Wednesday, September 4, 7:00 - 9:30 p.m.)  
17 (Thursday, September 5, 9:45 - 12:30 p.m.)  
19 (Thursday, September 5, 9:45 - 12:30 p.m.)  
20 (Thursday, September 5, 9:45 - 12:30 p.m.)  
21 (Thursday, September 5, 9:45 - 12:30 p.m.)  
22 (Thursday, September 5, 9:45 - 12:30 p.m.)

*IV - Sentencing and  
Corrections* Workshops: 7 (Wednesday, September 4, 2:00 - 5:00 p.m.)  
8 (Wednesday, September 4, 7:00 - 9:30 p.m.)  
10 (Wednesday, September 4, 7:00 - 9:30 p.m.)  
18 (Thursday, September 5, 9:45 - 12:30 p.m.)  
27 (Thursday, September 5, 1:30 - 4:30 p.m.)  
29 (Thursday, September 5, 1:30 - 4:30 p.m.)

*V - Interjurisdictional  
and General Issues* Workshops: 1 (Wednesday, September 4, 2:00 - 5:00 p.m.)  
4 (Wednesday, September 4, 2:00 - 5:00 p.m.)  
5 (Wednesday, September 4, 2:00 - 5:00 p.m.)  
6 (Wednesday, September 4, 2:00 - 5:00 p.m.)  
11 (Wednesday, September 4, 7:00 - 9:30 p.m.)  
13 (Wednesday, September 4, 7:00 - 9:30 p.m.)  
14 (Wednesday, September 4, 7:00 - 9:30 p.m.)  
21 (Thursday, September 5, 9:45 - 12:30 p.m.)  
24 (Thursday, September 5, 1:30 - 4:30 p.m.)  
26 (Thursday, September 5, 1:30 - 4:30 p.m.)  
28 (Thursday, September 5, 1:30 - 4:30 p.m.)

## Activities In and Around Whitehorse

### Cultural Activities

#### Eldorado Musical Revue

c/o Gold Rush Inn  
411 Main Street  
Whitehorse, Yukon  
(403) 668-6472

Family entertainment, musical drama about the Klondike Gold Rush. Listen to Robert Service poetry, the adventurers, the excitement and tragedy they experienced during the Gold Rush. Performances daily, 8:00 pm. Adult, \$14.00; child, \$7.00; under 3, free.

#### Frantic Follies Vaudeville Show

c/o Atlas Tours,  
Westmark Whitehorse Hotel  
2nd Avenue and Wood Street  
Whitehorse, Yukon  
(403) 668-3161

Gold Rush songs and skits, can-can dancers and the poetry of Robert Service highlight this 1 3/4 hour show. Performances daily, 9:15 pm. Adult, \$15.00; child (under 12) \$7.50.

#### MacBride Museum

1st Avenue and Wood Street  
Whitehorse, Yukon  
(403) 667-2709

This museum offers an in-depth look at Yukon heritage. Exhibits such as prehistoric mammals, profiles of native cultures, early exploration and fur trade, the 1898 Gold Rush, post Gold Rush development, construction of the Alaska Highway, origins of Whitehorse and an historic photography exhibit of Yukon people, Yukon wildlife. Audio-visual presentations on Yukon history and gift shop. Adult, \$3.00; student/senior \$2.00; child (6-12) \$0.50. Open daily: 12:00 pm to 4:00 pm.

#### S.S. Klondike Sternwheeler Tour

National Historic Sites  
Canadian Parks Service  
(403) 667-4511

Located on the bank of the Yukon River at the Robert Campbell Bridge. The stately *S.S. Klondike* was built in 1929, sank in 1936 and was rebuilt in 1937 using the original machinery. At 71.6 metres (235 feet) in length, it was the largest

sternwheeler to ply the mighty Yukon River. The vessel has been restored to reflect the late 1930's period and designated a National Historic Site.

#### Whitehorse/Miles Canyon Tour

Bus tour of the Yukon's scenic capital and the surrounding area. Highlights include the unique log skyscrapers, the historic Old Log Church, the Whitehorse Rapids Dam and the spectacular Miles Canyon. Options are available to include Yukon Gardens and the Yukon Wildlife Preserve. Daily departures. For reservation contact Gray Line Yukon (403) 668-3225 or Atlas Tours (403) 668-3161; both are located at the Westmark Whitehorse Hotel.

#### Yukon Archives

Yukon College  
Whitehorse, Yukon  
(403) 667-5321

Discover the Yukon's Gold Rush history in the documents and records of the Yukon Archives. Open Tuesday to Friday, 9:00 am to 5:00 pm. Admission is free.

#### Yukon Transportation Museum

Box 5867  
Whitehorse, Yukon  
(403) 668-4191

Located at the Whitehorse airport. The museum boasts artifacts that helped open the Yukon. Exhibits include "The Queen of the Yukon", sister aircraft of the Spirit of St. Louis, as well as many exhibits donated by the White Pass & Yukon Route Railroad. No admission fee but donations are welcome.

#### Territorial Art Gallery

Whitehorse Public Library  
Territorial Government Building  
Whitehorse, Yukon  
(403) 667-5858

Free monthly exhibits in the gallery including displays by local artists and shows from other parts of Canada. Open 10:00 am to 6:00 pm, Monday to Friday; Saturday, 1:00 pm to 9:00 pm.

#### Yukon Gallery

Visit the gallery and see beautiful pieces created by northern artists (Harrison, Caldwell, Robb, etc.).

#### Yukon Permanent Art Collection

Northern landscapes and lifestyles (with an emphasis on Yukon art) are evident in the works of prominent Canadian artists on display in the Yukon Government Administration Building foyer. Open weekdays from 8:30 am to 5:00 pm.

#### Yukon Gardens

Box 5959  
Whitehorse, Yukon  
(403) 668-7972

Visit the only northern show garden in the western world. Open daily 9:00 am to 9:00 pm. Allow 1 to 2 hours for a tour. Adult, \$5.75; child \$2.00.

#### Yukon Native Products

4230 - 4th Avenue  
Whitehorse, Yukon  
(403) 668-5955

Take a free tour of this specialized garment factory and see how the stylish double shell Yukon Parka and anorak are manufactured by native craftspeople.

Open year round, 9:00 am to 5:30 pm.

### Wilderness and Fishing Excursions

#### Atsi Tan Tours

c/o Yukon Travel  
Whitehorse, Yukon  
(403) 668-4488

Guided hiking trips in Whitehorse area (Miles Canyon, Takhini River, Takhini Hot Springs).

Guided overnight camping/hiking adventure (Wheaton River).

Canoe trips (Yukon River/Teslin River)—one week to 10 days.

Call for further information.

#### Guided Nature Walks: Yukon Conservation Society

302 Hawkins Street  
Whitehorse, Yukon  
(403) 667-4943

Escorted nature walks in the Whitehorse area (Grey Mountain, Miles Canyon and Hidden Lake). Allow 6 hours.

### **Gone Fishing Excursions**

Site 20, Comp 77, RR #1  
Whitehorse, Yukon  
(403) 668-6641

### **Peacock Yukon Camps Ltd.**

(403) 667-2846 or fax (403) 667-6076

Fly-in wilderness fishing.  
Call for information.

### **Sha-Tan Tours**

(403) 668-3763

Kluane Park Horseback Tours. 3  
hour trips or 1 day trip. Boat tours.  
Van tours.

Call for more information.

### **Sky High Wilderness Ranches**

Box 4482 Whitehorse, Yukon  
(403) 667-4321  
Fax (403) 668-7953  
Mobile Radio YS3 9074

Trail riding adventures in the Fish  
Lake area renowned for its beauty.  
Day trips, overnight camp-outs,  
wildlife viewing, hourly horse  
rentals with or without a guide,  
fishing tackle and boat rentals.  
Special discounts for touring groups  
for two-hour and half-day treks.

### **Whitehorse Rapids Dam and Fish Ladder**

(403) 667-2235

Located at the end of Nisutlin Drive  
in the suburb of Riverdale. The  
ladder allows spawning Chinook  
(King) salmon to bypass the dam on  
their upstream journey. Witness the  
longest migration of the Chinook  
salmon in the world. Interpretive  
display and display tanks for fresh-  
water species, and an upper deck to  
permit viewing of the fish ladder,  
the river and holding tanks. Also,  
an access ramp to the deck for the  
disabled. Open daily, 8:00 am to  
10:00 pm.

### **Yukon Wildlife Preserve**

c/o Gray Line Yukon  
2080 Steele Street  
Whitehorse, Yukon  
(403) 667-3225 / fax (403) 667-4494

Animals roam freely in this preserve  
that covers hundreds of acres of  
forests, meadows and marshlands  
which include elk, caribou, bison,  
moose, mountain goats, Dall sheep,  
muskox, mule deer, snowy owls,  
duck, geese and rare Peregrine  
falcon. Departures daily and the  
tour lasts 1 1/2 hours.

### **Northern Splendour Reindeer Farm**

Box 5136  
Whitehorse, Yukon  
(403) 633-2996

The Yukon's only reindeer farm  
located on the Shallow Bay Road,  
off the Klondike Hwy., 30 minutes  
north of Whitehorse.  
Complimentary coffee while you  
watch a video on northern Canada  
and Alaska reindeer. Reindeer  
feedings between 8:00 am - 9:00 pm.  
Adult, \$2.50; child, \$1.00; 5 years  
and under, free.

### **Cruises**

#### **Youcon Voyage Inc.**

#1 Morley Road  
Whitehorse, Yukon  
(403) 668-2927 / fax (403) 667-7379

Variety of short daily sightseeing  
cruises and evening BBQ dinner  
cruises, on the Yukon River, aboard  
the *Youcon Kat*.

#### **Yukon River Cruise—M.V.**

*Schwatka*  
c/o Atlas Tours  
Westmark Whitehorse Hotel  
2nd Avenue and Wood Street  
Whitehorse, Yukon  
(403) 668-3161

Cruise the historic Miles Canyon on  
the famous Gold Rush trail to  
Dawson and the Klondike gold  
fields of 1898. The cruise may be  
purchased with motorcoach transfers  
at \$20.00 for adults and \$10.00 for  
children (under 12). Departures:  
1:30 pm from hotel, 2:00 pm from  
dock.

### **Recreational Activities**

#### **Whitehorse Recreation Facilities**

- Lions Swimming Pool 668-7665
- Peak Fitness (aerobics/weights)  
668-4628
- Yukon B Fit (aerobics) 667-7979
- Whitehorse Racquet Club  
668-4171

### **Mountain View Golf Course**

Off Range Road  
Box 5883  
Whitehorse, Yukon  
(403) 633-6020

Eighteen hole irrigated golf course,  
back nine sand greens, driving  
range, club rentals, club house, pro  
shop, lounge and snack bar. Green  
fees: 9 holes, \$10.00; 18 holes,  
\$15.00.

### **Takhini Hot Springs**

Km 198 Klondike Hoi.  
9.6 km Takhini Hot Springs Road

Swim in natural hot springs  
surrounded by rolling mountains,  
with horseback riding and walking  
trips close at hand. Twenty minutes  
from the city centre. Bathing suit  
and towel rentals. Eighty seat coffee  
shop serving many homemade  
specialties.

Open year round 9:00 am - 10:00  
pm. Adult \$3.00; child \$2.00; free 4  
years and under.

### **Other Suggestions**

#### **Flight-seeing**

Air North (403) 668-2228  
Alkan Air (403) 668-6616  
Trans North Air (403) 668-2177

#### **Skagway, Alaska**

One day trip or overnight. Skagway  
is a small port town situated  
approximately 100 miles from  
Whitehorse. For special conference  
car rental rate call Norcan  
(403) 668-2137.

For reservations or further  
information, for any of these  
activities, contact Debbie Ryan at  
(403) 667-4943.



The Department of Justice Canada and The Department of Justice Yukon gratefully acknowledge:

The Program Planning Committee (Ottawa):

Assembly of First Nations  
Native Council of Canada  
Métis National Council  
Inuit Tapirisat of Canada  
Native Women's Association of Canada  
National Association of Friendship Centres  
Indigenous Bar Association  
Inuit Women's Association, Pauktuutit  
Aboriginal Youth Council of Canada  
Solicitor General Canada  
Department of Indian Affairs and Northern Development Canada  
Department of Justice Canada

The Advisory Committee to the Minister of Justice Yukon:

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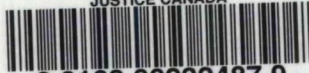


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Canada. Dept. of Justice **Acheiving  
justice: Today and tomorrow/ Une  
justice a realiser: aujourd'hui et demain.**

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