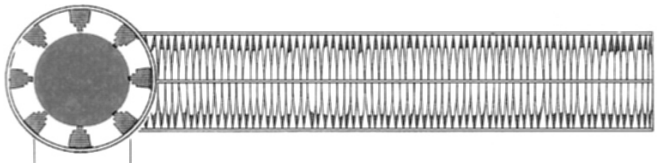
Native Women's Association of Canada

A REPORT ON THE CORBIÈRE CONSULTATION

~ May 2000 ~

A Consultation Process for the Follow-up on the Corbiére Decision

An NWAC Report



Native Women's Association of Canada

May 2000

The Native Women's Association of Canada is honoured and pleased to release the results of its consultation as followup to the *Corbiére* decision.

The consultation was held on the territory of the plaintiffs, Sault St. Marie, Ontario, to honour them for their self-sacrifice and tenacious efforts, which resulted in this ground-breaking decision. The consultation was held with the participation of the Congress of Aboriginal Peoples and the Ontario Metis Aboriginal Association. Participants came from all across Canada, and included status and non-status Indian, and Metis peoples.

The consultation was hard work and all the panelists and participants were up to the task. The result is a list of very practical recommendations that DIAND can begin to act on immediately, in order to facilitate elections and referenda taking place after November 20, 2000. The recommendations are included in this report.

The Native Women's Association of Canada strongly recommends that the government of Canada make strenuous efforts to ensure that the rights of non-resident band members to participate in the democratic processes of their bands are honoured and accommodated without any delay beyond the stipulated deadline, November 20, 2000.

The Native Women's Association of Canada is committed to continuing its involvement during Phase II, and until the full implications of the *Corbiére* decision are realized.

The Native Women's Association of Canada wishes to acknowledge the invaluable contribution of the panelists, the participants, the staff of the National Office and everyone else who worked hard to make the consultation a success.

Respectfully submitted.

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1. Participants' Statistics

NWAC attempted to register everyone who attended. On the registration form, participants had the opportunity to indicate whether they were status Indian (living on or off-reserve), or non-status Indian, or Métis.

One hundred and fifty-five participants registered. Of the 132 participants that indicated they were status Indians, 57 lived on-reserve and 75 lived off-reserve. Four participants indicated they were non-status and 19 indicated they were Métis.

2. Registration Form

MARCH 31 - APRIL 2, 2000
RAMADA INN
SAULT STE MARIE, ON

NAME: _____

ADDRESS: _____

CITY: _____

POSTAL: _____

TELEPHONE: ( ) _____

FAX: ( ) _____

☐ **STATUS INDIAN**

☐ **NON-STATUS INDIAN**

☐ **METIS**

NAME OF FIRST NATION: _____

☐ **LIVE ON RESERVE**

☐ **LIVE OFF RESERVE**

3. Summary of Proceedings

a) Day One - March 31, 2000

Conference Opening

Marilyn Buffalo introduced the morning speakers, Harry Daniels, John Corbière, and Mike McGuire. This was followed by smudging and a prayer given by Corrine Nabigon and her partner, and two songs by the Red Eagle Singers, a local drum group.

Opening Remarks - *Marilyn Buffalo*

In her opening remarks, Marilyn Buffalo noted that the conference was set up as a working conference to address the changes that came about as a result of the efforts of John Corbière, one of the primary complainants for the *Corbière* case. She described John as "a leader that always comes back."

Buffalo told attendees that for the last 12 years the Native Women's Association of Canada (NWAC) had sponsored and intervened in the *Corbière* case. At this point, she introduced NWAC's lawyer, Mary Eberts, describing her as someone who she felt proud to walk with in the Supreme Court of Canada.

Buffalo thanked the Elders for their ongoing support during the several years of the case. As well, she thanked the young people in attendance for participating in the conference, noting that the youth would become the leaders of the future.

Introducing the subject of the conference, she said that from a First Nations perspective, the issues identified in *Corbière* had been around for as long as the *Indian Act*.

Background - *Marilyn Buffalo*

Buffalo noted that she was a member of Treaty 6 and explained that, as owners of their territory, they had signed lateral treaties on a nation-to-nation basis. Her grandfather, John Tootoosis, founded the Assembly of First Nations because of changes imposed by the *Indian Act* that affected his right to be Chief. Under the new legislation, the minimum age requirement to be Chief was 21, which was older than he was at the time. On her mother's side, Buffalo spoke of her other grandfather, Big Bear, who was one of the last Chiefs to sign Treaty 6 because he did not want to be confined to a small parcel of land. Because of their resistance, both grandfathers were confined to prison. Both died by the age of fifty.

History is important, Buffalo said, noting that "white man's" legislation has been imposed on First Nations. As a result, First Nations people have experienced severe oppression, and poverty. "We are fighting for crumbs." With 60% of the population living off-reserve, "we have become beggars on our own reserves." Marilyn recalled instances where she saw children sleeping on the floors of their homes, with very little to eat. She noted that First Nations people have the largest youth population, with 82% aged 25 and under. Where are the resources for these children? She observed with dismay that many children are being bussed off the reserve to receive the education they need. In her lifetime, she said, she has seen what her grandfather John Tootoosis predicted when he warned her to "expect a rough ride."

Speaking about the importance of family, she encouraged participants to "put the children in front of us," to talk as a family, and figure out how we can work as a family side by side. Buffalo illustrated how this could be done with an example from her past. When she was asked to chair a pow wow for the four Nations of Hobbema she agreed, on four conditions:

1. Everyone from the community should help work in the pow wow.
2. There should be no competition in the pow wow.
3. There should be no use of Band monies to fund the pow wow.
4. The elders and youth should work alongside one another.

Buffalo concluded that she would like to see this same spirit embodied within this conference.

Harry Daniels

Harry thanked Marilyn Buffalo for inviting him to speak at the conference and said it was a great pleasure to be here to talk on this controversial subject. He warned that this issue would not go away on its own.

He expressed concern that this voting issue has pitted Aboriginal people against each other. Meanwhile, the issue is the result of an Act written by white people. He noted with irony that Aboriginal people have been forced to fight this issue in a "white" court that is not of their design. He informed participants that the *Indian Act* has survived since 1876 even though it was written with the exclusion of a large majority of Aboriginal people. He asserted that over 70% of First Nations with status live off-reserve, making on-reserve residents a minority. Thus, a small amount of people have control over a majority of people.

In this situation, the *Indian Act*, which was imposed by white people, is intentionally shrinking the definition of First Nations. Furthermore, said Daniels, there are now Aboriginal people fighting on behalf of the government to achieve this end. This comment was greeted by enthusiastic applause from the audience.

"We are denying our right to self-determination!" he said. Laws are being used to deny Aboriginal people the right to define themselves.

Daniels discussed how this scenario relates to the phenomena of "identifying with the enemy" which was common in the German concentration camps. With this mentality, a person says "O.K., the white guy is going to rule, so I am going to join them." Daniels cautioned against such thinking.

In his conclusion, Daniels thanked participants for coming and encouraged everyone to speak up on these tough issues throughout the conference.

Mike McGuire

Mike McGuire, President of the Ontario Métis Aboriginal Association, thanked Buffalo and Daniels for their opening remarks and for inviting his participation in this special event. He welcomed all participants and speakers to the conference.

McGuire spoke of the unity that he has shared with the Chiefs of Ontario, saying that although the Ontario Métis Aboriginal Association (OMAA) is a tribe of Métis in the Woodland Cree area, they are Aboriginal first. He then spoke about the various Chiefs' meetings in which he had been invited to participate. He noted that, as president of OMAA, he had been there as a support for many of the blockades of the Chiefs. He recalled an instance in which he was invited to a meeting with nine Chiefs, where he spoke on unity. In his speech, he said that the Chiefs could not look at OMAA as the "enemy". Rather, OMAA could be seen as a solution for unity -- because the day that there is equality among the Chiefs and OMAA, there will be unity.

McGuire noted that in 1987 he met with the Pope in Rome and reminded him of the promise he gave to talk to the Aboriginal people of Canada. After this meeting the Pope came to Canada and kept his promise. Since then, McGuire received direction from the Great Spirit to put on a ceremony and get a tribal drum. At the ceremony he gave the message emulated by the sacred sash (which he displayed to the conference participants). The sash is made of the tribal colours: purple, for the animal beings, blue, for the sky and water, and the red, white, yellow, and black, which represent the four races of human beings. Finally he noted that there was one red ribbon for one unified tribe of First Nations. "We don't have to negotiate with the government to know who we are," he said. "We have all these things to make peace and we know what we are going to do."

McGuire talked about Shingwaak's vision, which he summarized as: "teach my people so my people can teach our own people." He noted that Aboriginal people now have this opportunity to teach each other. Referring to the old stone house in Sault Ste. Marie, he said that Métis people have always lived in this area. This stone house was a Métis establishment.

Although people now say there are no descendants of the original owners, McGuire said that he knows one of the grandsons and showed him the stone house a number of years ago.

In closing, McGuire thanked everyone for participating.

John Corbière

John Corbière, one of the original complainants in the equality of rights issue involving the right of off-reserve members to vote in Band elections, welcomed everyone and urged them to actively participate in the conference. He said that the purpose of the meeting was to hear and address all concerns regarding the Corbière case.

He noted that at the launch of the equality of rights complaint, he was the only on-reserve complainant. The Department of Indian Affairs tried to get his name struck down as a complainant but the court ruled against them and allowed his name to stand as an active complainant. The other complainants were Charlotte Syrette, Clair Robinson, Frank Nolan, and Isadore Agawa, all of whom were off-reserve Band members.

Corbière observed that they had faced this lengthy struggle with limited financial resources. Resources included funding from the Court Challenges program and generous donations of labour from people who believed in the fight against this injustice.

He noted that this situation stood in stark contrast to the endless amounts of money laid out by the Department of Indian Affairs and the Batchewana Band Council to fight this case.

John Corbière explained that this case was the first time in history that the Batchewana Band had opposed its members on the issue of the right to vote. Prior to that, there was no record of Band members excluding other Band members and using the force of an alien law to do so. He observed that by using select regulations from the *Indian Act*, the Batchewana Band promoted a breakdown in the Band' s customary way of life. In allowing the courts to decide this issue, the Band undermined the value of their own systems. Added Corbière, the Band Council's adoption of s. 77(1) indicated its approval of the obvious injustices against the Band.

John observed that the Band Council is not putting itself in an admirable position. It is seeking support from the federal government to uphold treaty rights, yet it will not uphold the rights of Band members who live in areas where it has maintained that they can rightfully exercise treaty rights.

Corbière stated that equality had now finally been achieved for all First Nations people in their respective Bands. He acknowledged that this goal was reached through the determination of all concerned, and with much-needed intervention and support.

He added that elections were not a way of life at the time of the 1850 treaty, but neither were Band members required to live in a designated area in order to be considered full and equal members of a Band. He concluded that "membership in a Band is ascribed at birth, and that membership is secure whether or not the Indian was born on the reserve, or ever set foot on reserve land."

Robert Eyahpaise

Robert Eyahpaise, Special Advisor on the Corbière case for Indian and Northern Affairs Canada, gave thanks to the Elders for their good prayers and guidance, and to the drummers for their inspiration. He also expressed gratitude to the panelists and the Native Women's Association of Canada for inviting him to speak. He said the conference needs good debates and discussions that will bring out lots of different viewpoints from First Nations.

Eyahpaise told the audience that he is a member of the Beardy's and Okemasis First Nation, Saskatchewan. He grew up in a traditional family which gave him an appreciation of his culture and an ability to speak his language. He commented that this attachment is very important and keeps him alive. He added that he has three daughters -- all future NWAC members.

He admitted that he could identify with the frustrations expressed by Daniels in his opening remarks. A lawyer by profession, Eyahpaise said that he did not blame Daniels for his criticisms of an *Indian Act* that delineates a people and is divisive.

He noted that although law has a theoretical aspect, there is a point at which it enters into people's lives. He said that he took on this file because he knows how the machinery of the government works and he felt he could help to bring the various issues to light. He observed that the government had responded to Corbière in a very narrow way in assessing the impact the case will have on other areas of the *Indian Act*. The only implication of the Corbière case from INAC's point of view was that there would be a date on which off-reserve members would be able to vote for Chief and Council.

The *Indian Act* "is a structure that is imposed on people," said Eyahpaise. When the words "and is ordinarily resident on the reserve..." are dropped (as of November 20, 2000), there will be legal implications for the way in which Aboriginal legislation is asserted. He predicted that more and more band-aid solutions would have to be used down the road to remedy the inherent problems in the *Indian Act*. A key issue is that the regulations will be inconsistent with the

legislation. Thus, legal solutions will need to be found to make sure that legislation is compatible. Eyahpaise made it clear that he was not talking about custom Bands or hereditary Chiefs.

Twenty-seven First Nations will have *Indian Act* elections before November 20, 2000. The government has an onus to ensure a fair, smooth process so that these issues do not end up back in court.

With a view to his own concerns as a Band member, Eyahpaise stated that he wants to ensure that all members can vote and that this right is protected.

This case has also raised other issues, such as the question of why people are moving away from the reserves. He cited reasons such as Bill C-31, which meant that people who moved off-reserve ceased to be considered Band members. Eyahpaise recalled that although he missed residential school by a year, he still had to go off-reserve for school. This case has served to highlight the reasons why many First Nations do not live on-reserve anymore.

However, this case did not explore issues of status, but only focused on elections. Therefore, the government will have to be pro-active. As INAC's Special Advisor for the Corbière case, he considers the other aspects that will have an impact on people's lives. Other court cases might reinterpret status and the government should anticipate these issues. Eyahpaise noted that as a young person, he had observed the growth of the First Nations population off-reserve and foresaw a major shift in the way that government deals with Aboriginal people -- a shift which would be marked by important changes in legislation.

There are many issues that will arise from the Corbière case. For instance, if a member of a northern community lives in the south, how will they be notified of events on-reserve. Furthermore, who posts the notices, who pays, and what constitutes sufficient notice of events?

Eyahpaise explained how INAC proposes to address the issues of the Corbière case. A two-phase approach is proposed to deal with the regulations. The first phase is necessary to accommodate the 27 First Nations that are scheduled to hold elections before the Nov. 20, 2000 deadline. The second phase will address the question of how to ensure sound regulations. This phase will also address reoccurring issues in the *Indian Act*.

The issues are already unfolding. Different organizations are handling the situation in different ways. From Quebec to British Columbia, people are asking themselves how the issues will relate to them now and in the future. This process requires open and frank discussions. The government cannot continue to decide on these issues behind closed doors. Eyahpaise stated that since taking on this file, he has made a commitment to attend sessions like this and talk about these issues. He said that he had met with other First Nations on this case several

times already, and he had been asked very tough questions. That said, he welcomed the opportunity to field more tough questions regarding the case and that he would be available throughout the remainder of the conference to do so. He said that if he did not know the answers maybe someone else would know. Again, he thanked everyone for coming to the conference and for the opportunity to speak at it.

Discussion

Asked why any First Nation should acknowledge the electoral process, one of the speakers responded that this is the regime that exists. Until it is changed, it is the system that is in place.

A participant explained that she is from a First Nation that has been allowing off-reserve members to vote. She stated that the Corbière decision would simply bring the rest of Canada in line with their First Nations. Then she brought up an issue that affects the daily life of all Band members. There is a section of the *Indian Act* that requires people running for Council to live on-reserve. This forces people to vote for on-reserve candidates who do not represent the interests of off-reserve people.

Robert Eyahpaise agreed with this observation, saying that there are many other areas that are archaic and need to be resolved as well.

A participant asked whether Eyahpaise, as a lawyer, was capable of determining whether the removal of the seven words at issue in the Corbière case would affect the other sections of the *Indian Act*.

Eyahpaise responded that other sections of the *Indian Act* would have to be brought in line with the changes imposed by Corbière, to the extent that existing legislation could not contradict the ruling. However, he was uncertain about the exact impact that Corbière would have on the rest of the legislation.

John Corbière told Eyahpaise that he was making a simple matter confusing. Off-reserve Band members people did not have the right to vote prior to Corbière. Now, after this decision, they do have the right to vote. He added, "it is up to us to use it wisely." It is up to everyone to take these issues back to their communities and discuss them.

Eyahpaise conceded that this was a good point. However he noted that a lot of communities are dealing with limited land, housing, money, and resources, and these are issues that will have to be considered.

One of the participants observed that the off-reserve population influences the amount of money to which the Band membership is entitled. Thus, everyone (both on-and off-reserve members) should have a say in how these monies are allocated. This say should come from their vote. The speaker asked who, specifically, was affected by the issue: the [Bill C-31, sections] 6(1) or 6(2) First Nations people.

In response, it was explained that this issue had not yet been addressed; however, the assumption is that both 6(1) and 6(2) people were included in the decision.

A participant asked what challenges would be faced by the First Nations who would hold their elections before November 20, 2000.

The response was that, if there are no regulations in place, the elections will be open to a court appeal.

Gary Corbière asked if Eyahpaise could point out one existing regulation that would prohibit anyone from voting right now.

Eyahpaise said that, while many of the previous provisions might remain intact, it was necessary to ensure that the regulations were consistent with the rest of the legislation.

John and Gary Corbière had a debate with Eyahpaise, asking why he was complicating a simple decision by bringing all the other issues into the Corbière ruling. Eyahpaise's central point was that Indian Affairs should not make unilateral changes in the legislation to address the Corbière decision without consulting with First Nations.

A participant commented that the only difficulty with the Corbière decision is that the Chiefs will have difficulty accepting it.

A participant said that First Nations must understand who they are as a people, and who is a citizen. First Nations must get back to real self-determination, and that means getting away from imposed labeling. The non-Aboriginal government made changes in the original election/membership code that enforced a policy of exclusion on a whole generation. Rather, a policy of inclusion is needed which addresses the rights of all people. First Nations have to determine who are their citizens are, not because of court cases and the government, but because that is what First Nations people want.

A participant asked if the communities could change the minimum age requirement to vote.

It was suggested that it was through an oversight that the *Indian Act* had not brought the age limit in harmony with the rest of the code.

The participant spoke about her Band, which passed a bylaw in 1996 saying that no Bill C-31 people could apply for housing, educational funding, and other resources. Also, in 1996 and 1997, a Chief was voted out because she was a woman and a Bill C-31 person.

A speaker noted that while a custom election process can be established by the Band Council, they are obligated to keep their practices in line with the Charter of Rights and Freedoms.

Marilyn Buffalo gave her closing remarks on the system of hereditary Chiefs and the systems of government of her people. She talked about how in her traditions, the grandmothers did not discriminate against any of their grandchildren; they loved them equally. In the same way, First Nations should not give special rights to only some of the children and not others. She noted that First Nations were going to have to re-establish their traditional systems. She referred to the ways in which mothers have been doubly discriminated against, using examples from her personal experience.

b) Day Two - April 1, 2000

Morning Panel

After a morning greeting, Marilyn Buffalo introduced Mary Eberts, the lawyer representing the Native Women's Association of Canada on several cases up to the Supreme Court of Canada level, and the intervening lawyer on behalf of NWAC for the Corbière case.

Mary Eberts

Eberts gave thanks to the conference organizers and attendants, and said that the location of this conference was significant for her since it was in Sault Ste. Marie that she had met with John and Gary Corbière to discuss the off-reserve voting issue a number of years ago.

Eberts said that she had reviewed the Indian and Northern Affairs Canada discussion paper and would like to discuss the two-stage strategy for dealing with the Corbière Decision.

She told participants that she agreed with this two-stage strategy, in part because the Corbière decision will come into effect on November 20, 2000. She said that the department had opted for electoral reform in the first stage so that they could address the broader issues of the Corbière decision in the second phase. Eberts reminded everyone that the November 20 date was a deadline set by the Supreme Court.

Eberts spoke of the implications of electoral reform stressed in the Corbière decision. However, she cautioned participants of the dangers associated with the Corbière decision. She warned that someone might say that it is too hard to deal with these regulations, therefore we should put it off. Her response to this argument was that the courts have been very clear that they do not want any excuses from the Canadian government for neglecting to carry out the terms of the Corbière decision. Eberts cited several sections of the Supreme Court judgment in which there were clear statements to the effect that cost and administrative convenience will not constitute justifiable reasons to avoid complying with the Corbière decision:

> *The appellants argue that there are important difficulties and costs involved in maintaining an electoral list of off-reserve band members and in setting up a system of governance balancing the rights of on-reserve and off-reserve band members. But they present no evidence of efforts deployed or schemes considered and costed, and no argument or authority in support of the conclusion that costs and administrative convenience could justify a complete denial of the constitutional right.*
>
> *Corbière v. Canada (M.I.NA.) [1999] (McLachlin & Bastarache JJ.) 173 D.L.R. (4th) 1 at p.19.*

The minority judgment went even further to state that the government would have to provide the monies to aid in this reform:

> *Her Majesty the Queen suggests that [there are] administrative difficulties and costs involved in setting up, for example a two-tiered council where one tier would deal with local issues and the other with issues affecting all band embers, or in maintaining a voter's list and conducting elections where the electorate may be widely dispersed. Even assuming that such costs could legitimately constitute a s.1 justification, these arguments are unconvincing... Change to any administrative scheme so it accords with equality rights will always entail financial costs and administrative inconvenience. The refusal to come up with new, different or creative ways of designing such a system, and to find cost-effective ways to respect equality rights cannot constitute a minimal impairment of these rights. Though the government argues that these costs should not be imposed on small communities such as the Batchewana Band, the possible failure, in the future, of the government to provide Aboriginal communities with additional resources necessary to implement a regime that would ensure respect for equality rights cannot justify a violation of constitutional rights in its legislation.*
>
> *Corbière v. Canada (M.I.N.A.) [1999] (L 'Heureux-Dubé J.)173 D.L.R. (4th) 1 at pp.2-3.*

Eberts suggested that the Federal government not even try to make excuses.

The courts understood well that off-reserve Band members may not have had the choice to stay on their reserves for various reasons, including lack of housing, land, economic and educational resources:

> *Here several factors lead to the conclusion that recognizing off-reserve band member status as an analogous ground would accord with the purposes of s.15(1). From the perspective of off-reserve band members, the choice of whether to live on- or off-reserve, if it is available to them, is an important one to their identity and personhood, and is therefore fundamental. It involves choosing whether to live with other members of the band to which they belong, or apart from them. It relates to a community and land that have particular social and cultural significance to many or most band members. Also critical is the fact that, as discussed below during the third stage of analysis, band members living off-reserve have typically experienced disadvantage, stereotyping and prejudice, and form part of a 'discrete and insular minority' defined by race and place of residence. In addition, because of the lack of opportunities and housing on many reserves, and the fact that the Indian Act's rules formerly removed band membership from various categories of band members, residence off the reserve has often been forced upon them, or constitutes a choice made reluctantly or at a high personal cost. For these reasons, the second stage of analysis has been satisfied, and 'off-reserve band member status' is an analogous ground. It will hereafter be recognized as an analogous ground in any future case involving this combination of traits.*
>
> *Corbière v. Canada (M.I.N.A.) [1999] (L'Heureux-Dubé J.) 173 D.L.R. (4th) 1 at p.41.*

In addition, some people have been excommunicated by section 12(1b) of the *Indian Act* or Bill C-31. Also First Nations women have had to leave for various political reasons. Eberts noted that it is very difficult for these women, because they are apart from communities where they have connections and they face discrimination. This understanding of the issues faced by off-reserve people was why the court felt that it was so important for those living off-reserve to have the right to vote:

> *[O]ff-reserve band members experience particular disadvantages compared to those living on-reserve because of their separation from the reserve. They are apart from communities to which many feel connection, and have experienced racism, culture shock, and difficulty maintaining their identity in particular and serious ways because of this fact. Third, it should be noted that the context is one in which, due to various factors, Aboriginal women, who can be said to be doubly disadvantaged on the basis of both sex and race, are among those particularly affected by legislation relating to off-reserve band members, because of their history and circumstances in Canadian and Aboriginal society.*

> *Corbière v. Canada (M.I.N.A.) [1999] (L'Heureux-Dubé J.) 173 D.L.R. (4th) 1 at p.45*

The court also reviewed the powers of the Council, including the expenditures of Band monies and the construction of housing, and noted that off-reserve people have a vested interest in these things:

> *[We emphasize] the important financial interest that non-residents have in the financial affairs of the band. As I outlined in the previous section, the band council must give consent for the expenditure of the band' s capital and revenue moneys. The band' s electors also control decisions about the surrender of band lands which are owned collectively by all band members. Second, the band council controls the allotment of land and by-laws relating to trespass and residence, which affect in important ways the ability to return and live on the reserve. Third, the council makes decisions about the availability of services that may be important to non-residents, particularly those who may live near the reserve. Also important is the role of band leadership in the work of the Assembly of First Nations and other Aboriginal organizations at the regional, national and international levels.*
>
> *Corbière v. Canada (M.I.N.A.) [1999] (L 'Heureux-Dubé J.) 173 D.L.R. (4th) 1 at p.48.*

The court noted that the wording of section 77(1) of the *Indian Act* gives no say to off-reserve people and no acknowledgment of the monies that belong to them:

> *The wording of s. 77(1), therefore, gives off-reserve band members no voice in electing a band council that, among other functions, spends moneys derived from land owned by all members, and money provided to the band council by the government to be spent on all band members. The band council also determines who can live on the reserve and what new housing will be built. The legislation denies those in the position of the claimants a vote in decisions about whether the reserve land owned by all members of the band will be surrendered. In addition, members who live in the vicinity of the reserve, as shown by the evidence of several of the plaintiffs in this case, may take advantage of services controlled by the band council such as schools or recreational facilities. Moreover, as a practical matter, representation of Aboriginal peoples in land claims and self-government negotiations often takes place through the structure of Indian Act bands. The need for and interest in this representation is shared by all band members, whether they live on or off-reserve.*
>
> *Corbière v. Canada (M.I.N.A.) [1999] (L'Heureux-Dubé J.) 173 D.L.R. (4th) 1 at pp.47-48.*

Eberts referred to the factum of Sharon McIvor, counsel for the B.C. Native Women's Society, also interveners in the Corbière case, which said that Council made services available to off- reserve people, so people off-reserve should be accommodated and included in the elections right away.

She then made some quick observations about the questions referred to in the paper put out by INAC on the Corbière decision. She said that the questions ranged from silly to important. Some of the more important questions she observed asked how the accuracy of the membership list would be ensured. Other questions which she called very "technical" included: "What type of arrangements will be required to send the ballot boxes to the remote places?"

Referring to some of the more important areas of concern within the *Indian Act*, she noted that the minimum voting age was archaic because it was 21 instead of 18. She also commented that the INAC paper seemed to assume that the nomination meetings were fair, and said that she disagreed with this because the practice can be very intimidating. Mary added that there is a simple alternative to this --secret ballots have been around for many years.

Another question for which Mary said there was a simple answer was whether to have an advance poll: "There is usually an advance poll in Canada." She commented that a lot of people were getting hung up on these technicalities, but that it is more important to ensure that off-reserve Band members have the right to vote. The government must stay on track, she concluded.

Dwight Dorey

Dwight Dorey, a Micmac from Nova Scotia, is currently serving as Chief Commissioner for the Congress of Aboriginal Peoples (formerly the Native Council of Canada). He has been involved at the political level for 25 years. The Congress of Aboriginal Peoples has represented the interests of off-reserve Aboriginal people for years. Those living off-reserve represent significant interests of the Band. Furthermore, as Band members, they are represented by the Band Council.

Systems must be created that work for Aboriginal people, and all Aboriginal people must be able to participate in this process. As Commissioner of the Congress of Aboriginal Peoples, he expressed hope that discrimination in the *Indian Act* can be reduced. Still, he acknowledged that the Act is flawed. However, positive changes must be made one step at a time.

The Supreme Court has responded in a very narrow way to the Corbière Case. Thus Dorey maintained that it is important to be creative and pro-active in making concrete recommendations and in considering how these regulations should be put into place. Dorey expressed his belief that the Corbière case will eventually lead to the abolishment of the *Indian Act*. However, he warned that it would not

happen soon. *Indian Act* regulations do not currently accommodate and provide for off-reserve voting. The focus needs to be on the mechanics of accommodating the right of off-reserve Band members to vote. He then listed some of the related issues, such as how notices should be posted and distributed to those living off-reserve, how travelers and people in nursing homes should be accommodated, and who could run for Chief and Council. These are all issues that have risen out of the existing regulations and there is no clear answer to them.

In order to make recommendations on this process, we need to understand what is happening. There is a lot to sort out and understand. Key questions to consider in this process are: Why do we think off-reserve people should have the vote? Should we have the right to vote on everything or just on certain issues? By what methods do off reserve Indians want to be informed?

Gary Corbière

Gary Corbière, a graduate of Osgoode Hall Law School, and counsel for the plaintiffs, told the audience that he wanted to talk about the myths and misconceptions surrounding the Corbière case.

He clarified that he supports the two-stage strategy outlined by INAC. This is because off-reserve band members do not currently have representation in the administration as those living on-reserve do. There has been some confusion over whether the November 20, 2000 date was a deadline for the consultations; however, consultations will continue for some time after that date.

Another myth is the idea that the case is divisive and pits residents against non-residents. This issue is about a fight with the non-Aboriginal government over legislation that they imposed on Aboriginal people.

Corbière also disputed the myth that this idea was new and unique. Rather, non-residents did have the right to vote from the 1800s to the mid-1900s. It was only after this period that they were excluded from the elections process. In fact some non-residents continued to vote in band elections until 1978 and after 1985. It was only in relatively recent years that band councils took a firm stance against off-reserve voting.

The next issue he examined was the idea of 'confusing versus basic'. With respect to how far the Corbière case extends to other rights in the *Indian Act*, he said that there is no reason to make things difficult. Concerns about these issues should not hinder the right of off-reserve band members to exercise their vote in the meantime. The Supreme Court of Canada has simply made a decision regarding off-reserve voting.

Another issue in the Supreme Court factum was a quote from the Batchewana Band claiming that they do not govern the affairs of the off-reserve members. Yet, after the judgment against the Band and INAC, the Batchewana Band Council was given monies to implement and facilitate the voting process for off-reserve Indians. He noted with regret that the Band had intervened in the case on the side of INAC. This action was contrary to the good judgment of the Band's previous lawyer, who advised that they should not get involved in the court case.

With respect to concerns about the high cost of accommodating off-reserve individuals in the elections process, Corbière said that this does not have to cost anything. Extra ballots could be printed out at just pennies a page.

Another myth was the "takeover misconception". Batchewana Band existed as a non-resident Band for 20 years, and had minimal land. The Band's land base has only increased as a result of off-reserve members trying to secure the land. Corbière called the takeover misconception "scare mongering".

The final myth he addressed was the idea that if there was more money involved then off-reserve members would have been involved in the elections process. This is not the case.

Susan Hare

Susan Hare, a member of the M'chiging First Nation, graduate of Osgoode Hall law school, and past president of the Ontario Native Women's Association, said that her comments would be specific to this area of Aboriginal law. Hare quoted a First Nations person from Arizona who said that "an Indian Law is a law for Indians which is has been written with the intention of controlling them." This law was not written by Aboriginal people, yet it intends to change them and their tribal law. By the same token, the Corbière decision was made by white men and women.

Voting rights have their roots in the British Common Law. The right to vote was developed for the protection of property such as lease holdings of land and money. Originally, only property owners were allowed to vote. In 1921, the right to vote was established for all men and women.

Currently in Canada and around the world, the right to vote can often be linked to having a proprietary interest vested in a municipality or region. Sometimes the right to vote can be associated with residency in a given area. This is the case in Alberta.

This requirement contrasts with the situation in Britain, where a citizen who is living abroad for up to 12 years can still vote in British elections. Hare likened this to some First Nations who have had provisions for non-residents to vote in their Band elections. In cases like these, ballots are mailed out and voters can mail

them back in. There are other examples of Absentee voting. In the US, methods include touch screen systems, hand counting, fax, mail, and new technologies that are on the horizon. However, it should be noted that these technologies are not a requirement for making changes to accommodate off-reserve Band members in elections. One reason for the technology is to encourage proper turnout in the elections and to encourage minority voters to elect candidates of their choice. Israel takes another approach: any citizen can vote as long as they go to Israel to do it.

Hare went on to speak about the various challenges faced by First Nations in ensuring a fair process for off-reserve elections. As an example she talked about the "White Earth fiasco", where the Chief would not share his mailing lists with the other candidates for the purpose of campaigning. This went on for some time until one of the office workers slipped a copy of the list to the other candidates within the last two weeks of the campaign. This resulted in the old Chief being ousted by about 700 votes.

Aboriginal women have been affected by voting rights because of Bill C31 and section 12(b) of the *Indian Act*. Susan pointed out that this has resulted in the exclusion of Aboriginal women from the governing systems. She also warned of the possibility that Bands may now argue that there is no reason to give money to women's groups and groups like the Ontario Métis Aboriginal Association because the people they represent will now be represented through the elections.

Hare noted that the *Indian Act* is patriarchal and there is no equality in Band Councils. She asked if equality could now be expected for women in Band Councils, and expressed doubt. In agreement with Gary Corbière, she said that this is not a complicated issue. Furthermore, she noted that she has worked with First Nations who are anxious to change the election rules for the benefit of both on-and off-reserve members.

Based on her review of the *Indian Act*, she predicted a lot of changes in November of this year. She recommended that principles of fairness and the issue of appeals be addressed as the changes are made. It is also important for First Nations to establish a clear definition of corruption. She referred to one example in which an electoral officer let his name stand for Chief, and another example in which a request for a recount of the votes was denied. These kinds of things should not happen.

She also discussed the "Sui generis" nature of Aboriginal People in law, saying that because the Aboriginal situation is out of the ordinary, it is important to be very specific in any changes to the legislation.

Once again, she urged that the principle of fairness and a proper appeals process be included in changes to the voting legislation. In conclusion, she said that people should not be scared away by the cost issues associated with this change -- it does not have to be that costly.

Discussion

Asked who will take up the legal challenge to strike down discriminatory or problematic subsections of the *Indian Act* such as Bill C-31, it was noted that Sharon Mclvor has initiated a case involving Bill C-31. If it is the new policy of the government to challenge discriminatory sections of the *Indian Act*, then this will be an excellent time to address the issue. One remedy may be to go to the United Nations regarding Bill C-31.

A participant asked Gary Corbière and Susan Hare to explain the corruption regulations that could be established. They responded that expanding the time period between nominations and elections would allow people the time to make a more informed decision. They also cited policies that would set out procedure for dealing with issues such as a corrupt electoral officer and an election ballot with no sign-off. The legislation governing corruption would have to be very specific. As well, consideration should be given to the methods of choosing an electoral officer and of identifying who could be disqualified from voting. Other issues include the process of determining a spoiled ballot and a rejected ballot. Generally, ordinary rules of fairness should apply.

A participant asked the panel to outline the process of for applying for funding to challenge legislation.

Mary Eberts answered that The Court Challenges Program of Canada is an organization based in Winnipeg that deals with Charter cases. The first step would be to get in touch with them at (204) 942-0022. They would provide a kit outlining their services and the process for applying. Eberts told participants that there is always someone from the office who will help to ensure that the story is told properly. The organization has many experienced people. However, there are a number of requirements for cases to qualify for the organization's assistance. For example, the case cannot be brought for profit, and it has to challenge a charter issue.

Asked whether a membership code would supersede the Corbière ruling or if the ruling supersedes a membership code, Gary Corbière answered that on one hand, if the Band made consultations with the whole membership in the process of establishing its membership code then the code might possibly stand up to the decision. However, if the membership's interests were compromised in the code then the code could be challenged on the basis of the Corbière decision.

A participant asked whether this case did indeed protect the rights of off-reserve Indians to vote, if every situation could be required to go through the court process.

Mary Eberts answered that referenda are supposed to be held when the election or membership codes are created. She expressed confidence that there were prospects for progress in the future. Election codes must follow the *Indian Act* policies. This affects the process of appeals and amendments. Even so, the codes must follow principles of fairness and uphold the Charter of Rights and Freedoms. The custom election codes of the past could be challenged on the basis of how they were approved. As for the future, all election codes will have to follow the *Corbière* decision.

A participant asked whether there would be amendments to the referendum process to accommodate non-residents. Gary Corbière answered that there would be a requirement for non-residents to participate in those processes.

Asked how the *Indian Referendum Regulations* could be changed so that sections 3(2) and 3(3) would not be so restricted, Mary Eberts stated that while phase two of the reform is taking place, people can give input on issues like the "show of hands nominations." She noted that because referenda are always called at the instigation of government, there needs to be a process called an initiative. She gave the example of a situation wherein there was a petition signed by a large number of people on a particular issue. In this case, there would have to be a vote on it. People should look towards an amendment of the Act that would support this.

A participant commented that money is a very real issue in considering the Corbière ruling. As an on-reserve Band member who is currently in a contract position, she has a budget of only $4000 for administration. She asked how money should be distributed and who will pay the additional expenses. In addition, if people from distant areas are getting positions on Council, who will pay to have them come to the meetings?

Susan Hare replied that both sides will have to cooperate a lot in this process. For instance, she said she knows of three First Nations who let their Band members know about election dates. That said, she suggested that it is the responsibility of the Band membership to remain up to date on the activities of the Band.

A participant expressed concern about assimilation into mainstream society, saying it seems as if First Nations have no concept of where they come from or who they are. Citing the system of Chief and Council and the *Indian Act*, she said that First Nations ancestors had their own ways of doing things that were not like the way things are done today. The participant asked when First Nations people would regain their own language and traditions. She added that "we have always been inclusive." She pointed to corruption as one of the main reasons why First Nations forget who they are.

A participant stated that there are many ramifications stemming from off-reserve voting. She asked how the various *Indian Act* sections affecting off-reserve voting would be affected. She also asked at what level these changes would occur -- the Band, regulation, or government level? Finally, she asked whether a body to address corruption issues would be a possible solution.

A panelist answered that we could begin by commenting on the discussion paper written by INAC, which contains recommendations for regulations. We have to start slowly, the speaker said: there is a lot of time to get participation from everyone.

Afternoon Panel - *Robert MacRea*

Chair Kimberly Murray, Director of Aboriginal Legal Services in Toronto, an organization that intervened in the Corbière case, introduced the first speaker, Sault Ste. Marie lawyer Robert MacRea, Special Council to the Ontario Métis Aboriginal Association (OMAA). MacRea spoke of the impact of the Corbière case on other cases.

MacRea began by thanking NWAC for hosting the conference and also for working so closely with OMAA and the Congress of Aboriginal People. He commented that in his work over the years, one of the things he had witnessed firsthand was how the various divisions or factions within the Aboriginal community had come together to form a common front and move the Aboriginal agenda forward.

MacRea discussed the litigation that had come forward as a result of Corbière. He noted that in preparing for his presentation, he had recalled NWAC's initial lawsuit in 1992 and wondered how that initial defeat paved the way for those that came after. The *Corbière* decision has impacted upon other cases, and those lawsuits, taken collectively, are bringing about changes on behalf of Aboriginal people on a multitude of issues.

MacRea recalled the comment of Harry Daniels, speaking in a previous session, regarding how Aboriginal issues are being litigated in "a white man's court." Although not apologizing for the court, MacRea did confirm that this was so. Most importantly, he said, Aboriginal cases are being won at the Supreme Court of Canada (SCC). One could refer to other decisions that have changed the way governments are now forced to deal with Aboriginal people. MacRea said that in his experience governments will not voluntarily negotiate Aboriginal rights.

With respect to the negotiations that are forced on the government, the SCC has been clear and consistent. Since 1990 and the Regina vs. Sparrow case, Aboriginal rights have been made very clear: they must be respected, and there must be negotiation. Although the SCC has ruled that governments must negotiate, they have been loathe to do so. It has been an uphill struggle for many Aboriginal communities ever since that decision.

In 1992, NWAC went to court because the organization was being under-represented and underfunded with respect to negotiations regarding constitutional amendments. While the case may not have been entirely successful, MacRea gave evidence of how that case made its way into the *Corbière* decision. Less than 5% of the funding that was provided to Aboriginal organizations actually made its way into women's associations, and it was NWAC's position that this was discriminatory under section 15 (1) of the Charter of Rights. NWAC lost that fight, but MacRea drew attention to the following passage in the *Corbière* judgment:

> *[O]ff-reserve band members experience particular disadvantages compared to living on-reserve. They are apart from communities to which many feel connections and have experienced racism, culture shock and difficulty maintaining their identity in particular, in serious ways, because of this fact.*
>
> *Corbière v. Canada (M.I.N.A.) [1999] (L'Heureux-Dubé J.) 173 D.L.R. (4th) 1 at p.45*

It should also be noted that this context is one in which, due to various factors, Aboriginal women experience a 'double whammy' (on the basis of both sex and race) among those particularly affected by the legislation relating to off-reserve band members, because of their history of discrimination and circumstances in both Canadian and Aboriginal societies.

MacRea suggested that the reason for including that passage in *Corbière* was that the SCC was made aware in 1992, as a result of the NWAC challenge," of the' double' disadvantages that Aboriginal women face, particularly when living off-reserve.

It was against this background that MacRea spoke about the implications of the *Corbière* decision for the OMAA, the Council of Aboriginal Peoples (CAP), and their memberships.

In December 1999, MacRea argued the Lovelace case before the SCC, which asked whether it was discriminatory not to include Métis members of a non-status Aboriginal community in revenue sharing from the Casino Rama in southern Ontario. That argument was well on its way to being heard when the *Corbière* decision was released. As a result of *Corbière*, all parties (that is, all the lawyers representing those parties) stopped in their tracks to go back to square one with respect to off-reserve voting rights.

There is an expression in Aboriginal circles about throwing a stone into a pond and the ripple that comes to the edge of the pond as a result of that stone. That is exactly what has happened with the *Corbière* decision. Counsel was able to point out to the SCC that women who are particularly and doubly disadvantaged have been reinstated to their reserves as a result of C-31, while there are many Aboriginal people in Canada, particularly in Ontario, who have been unable to attain their status.

Referring to the issue of status and non-status, MacRea recalled that when he started practicing Aboriginal law, one almost needed a road map to get through Section 6 of the *Indian Act* and negotiate the distinction between status and non-status, Aboriginal and non-Aboriginal. It seemed to him that every time he was involved in a matter, it was because of a division caused as a result of the government purposefully under-funding a group so that there was only so much money to go around. This was difficult to deal with because that was the government's intention.

In appearing before the SCC with *Corbière*, he was able to argue that the Court had already determined how discriminatory it was to prevent off-reserve individuals from voting. In preparation for that argument, MacRea ordered a copy of the tape of Gary Corbière and Mary Eberts's able argument before the Court, which basically said, "You're stereotyping us. You're saying that because we live off-reserve, we care less about our reserve. You're saying that because we live off-reserve we're going to take all the money from the reserve and we're going to spend it in ways that won't benefit our reserves."

Those prejudicial and stereotypical statements have been going on for years and years, according to MacRea. They give the very real impression that the people on the reserve are the only real First Nations people, and anybody off-reserve "can't be a real Indian."

Because of *Corbière*, the SCC dealt with all those arguments, saying they are stereotypical. There is no basis in truth to those stereotypes. If you are an Aboriginal person, you can relate to your Aboriginal identity in your own way, whether it's in downtown Toronto or in Batchewana Bay. Aboriginal identity is something unique and special that exists within an individual. It doesn't matter whether one lives on-reserve or off, and it is immaterial whether one is able to return to the reserve (for an election, for example).

For the first time, the SCC stated clearly that Aboriginal identity is not going to be defined by where one lives. The next step, suggested MacRea, is that the *Indian Act* will cease to be used to define an Aboriginal person. He quoted Harry Daniels from an earlier presentation, stating that "a white man's law ...a white man's regulation ...is not going to be used to define who we are as Aboriginal people."

When starting out in the field, MacRea did not know that some non-Aboriginals could have status under the *Indian Act*, while many Aboriginals could very possible not have status because they were absent for the census and had not been enumerated.

In a recent court case in which OMAA participated, three factors were established which will now be used in determining whether an individual is Métis.

They must have Aboriginal ancestry (and that doesn't necessarily mean Aboriginal blood -- it could include those who were adopted, for example). Second, the individual must self-identify as Métis. Third, they must be accepted into a community as Métis. In an important aspect of this decision, the court found that the OMAA was, in fact, a community and represented its members throughout all of Ontario.

This was a separate argument from *Corbière*, but *Corbière* was an important link.

In pointing out how difficult the Aboriginal cause has become, MacRea related a story about appearing before the Ontario Aboriginal Affairs Secretariat, to discuss Aboriginal hunting and fishing rights. Although OMAA was invited to appear, they had to use their own money to get to Toronto (ONAS often pays for travel in these instances). After they got there, the Director read them a letter, which OMAA had already received, and to which they were prepared to respond. MacRea said that they had the letter and would like to discuss it. The Director said "no" and insisted on reading the letter. After the reading, MacRea said, "fine, we've got some questions." The Director replied, "No, that's the end of the meeting."

If they had not attended the meeting, the government would have said that OMAA was not interested in negotiating. By holding the meeting, they could now say that OMAA participated fully and completely.

Corbière moved the agenda forward. Yet in other cases, like Van der Peet or Delgamuukw, the final paragraph of each decision, interestingly, included the court's instruction to take the issue to the government, where final resolution would rest. "We would love to," said MacRea -- but the government does not want to negotiate.

Finally, MacRea said that he and his colleague, Mary Eberts, had had the privilege of arguing the Lovelace decision, where the Court asked, "Isn't this just an indirect attack on the *Indian Act*?" Eberts responded, "You better believe it is. And as soon as we can get at it directly, we'll be back!"

Lovelace will bring about further involvement from many organizations, further unifying the Aboriginal front, because there will surely be many references to *Corbière*.

In closing, MacRea thanked everybody for the opportunity to speak, and extended special thanks and congratulations to the *Corbière* family and others for fighting the good fight for so long. He remarked on how wonderful it was that these cross-Canada conferences were taking place because of something that started in Sault Ste. Marie.

Sharon McIvor

Kimberley Murray introduced Sharon McIvor, Vice-President of the Aboriginal Court Records and Counsel Association of BC, a member of the Canadian Bar Association, and a member of numerous organizations dedicated to Aboriginal women.

McIvor began her speech by thanking NWAC for the opportunity to speak on *Corbière*. Special thanks were extended to John Corbière for pursuing the case and taking it to the SCC, particularly since it is such a costly process. It costs upwards of $150,000 to go all the way, and only if much of the legal work is provided pro bono. McIvor spoke about the decision, its context, First Nations women (her favourite subject), reserves, and, finally, the journey back -- not just to the reserve, but to a matriarchal society.

The *Corbière* case, began McIvor, was decided by the SCC on May 20,1999. The court held that seven words in Section 77 (1) of the *Indian Act* were unconstitutional, because they discriminated against the equality rights of non-resident band members by preventing them from voting in band elections. Basically, the decision required that any new voting arrangements recognize and respect the interests that both on- and off-reserve band members have in their community, and in commonly held assets such as land, money and natural resources.

McIvor said that the *Corbière* case would stand as a watershed case, redefining the rights of off-reserve Aboriginal people and First Nations women. "The reality of our lives," she said, "is that almost two-thirds of First Nations people live off-reserve." She noted that her mother married "out" and she raised two children off-reserve. McIvor was re-instated under Bill C-31, but her children were not.

The McIvor family has had three generations removed from the reserve. Removed, she said, "from our political rights... removed from our land... alienated from our culture and language. And we are not unique."

Along with hundreds of thousands of other Aboriginal people, the McIvors stand with First Nations families disenfranchised from their communities. For generations Aboriginal people have been alienated from decisions concerning land, money and natural resources -- decisions that affect many families both on and off-reserve. This is why *Corbière* is so important: it will offer an opportunity to redefine the participation of off-reserve people, particularly with respect to political and economic issues.

With respect to culture and family, the decision has great implications, said McIvor. But it is also important legally. Aboriginal women are most affected because the majority of Bill C-31 registrants live off-reserve, with many of those being single mothers.

Many are forced to live off-reserve because of the lack of housing and/or land. Others choose to do so in order to earn a living, or to escape poverty and persecution. And yet others live off- reserve because their leadership will not allow them to live on the reserve.

First Nations women have not fared well in the courts. "We have banged our heads on the doors of justice, to no avail." McIvor said she was there as a litigant in 1992 when NWAC took its case to the SCC, and that was just one of many failures.

She spoke of Jeanette Lavell, the first First Nations woman to bring the collective right for sexual equality to the attention of the SCC. It did not go well, because the Court said that she was not discriminated against on the basis of her sex. In following her husband off-reserve, she was simply doing what many Canadian women have done. For that she lost all her rights.

The SCC decision led directly to Sandra Lovelace, and Aboriginal woman who brought her case of sexual discrimination to the United Nations Committee on Human Rights. Marrying before Canada had signed an international legal agreement that would have granted her sexual equality, she lost her case on a technicality. Mrs. Paul and Mrs. Derrickson also lost important cases at the SCC level, when the courts failed to uphold their right to share in matrimonial property on-reserve.

Since 1986, women married to First Nations male property holders have had no law governing their right to matrimonial property. First Nations women have also lost their right to retain custody of children adopted out to middle class Canadians.

"Have there been any victories," asked McIvor? Well, *Corbière* is one. The *Superintendent of Child Welfare* (1986) is another. There, the Court decided that provincial adoption law could not deprive First Nations children of their right to be registered as Indians. Prior to that, Aboriginal children were no longer deemed Aboriginal once they were adopted.

There have been other victories. The BC Native Women's Society brought a case of matrimonial property rights that is now in the Federal Court, Trial Division, in Vancouver. The context of this case is important as it calls into question numerous legal and political losses by First Nations women in Canadian courts.

Since 1869, the Canadian government has had a legal requirement to force First Nations women off their reserves. There hasn't been any effort to remove this law from the books. More recently, the government has adopted a cautious strategy to oppress and suppress women, forcing their removal from their families and communities. McIvor stated that the removal of children from their cultures, to be raised in residential schools, was another strategy -- a strategy designed to destroy family life and obliterate the language.

Furthermore, *Indian Act* government has replaced traditional Aboriginal governing structures. The focus of meetings like this one should be to reformulate the current structure, which was forced on Aboriginals by an alien government over 100 years ago.

McIvor remarked that Aboriginal women "have had a long journey home, and we are not there yet." Many come from matriarchal societies where women had economic and political power, where women controlled real and matrimonial properties, where women were the backbone of the nation. "How can we use this exercise to regain our rightful place in our families, communities and nations?" she asked. Expanding further, she asked the audience whether it was worth it to have the right to vote in band elections without the right to run for Band Council, and whether Band Councils should continue to be male dominated or whether they should offer equal participation.

In her research on matriarchies, in an Aboriginal political context, McIvor found that a matriarchy has meant that "women can choose the man or men who will be their leader or leaders." In current discussions, she has urged women to take a more active role in reserve political life. She asked a number of questions:

- "Do we want to run for Chief in the election?" That is currently possible under the *Indian Act*. Running for Band Council, however, is currently impossible for off-reserve Aboriginals.

- "Do you want a portion of the seats on Band Council held for off-reserve residents?" That is only possible with changes to the Act and to Indian Band Election Regulations.

- "Do you want off-reserve seats on Band Council, proportionate to our representation off reserve?" Again, more changes would be needed.

- "Do you want to just elect on-reserve men to run your economic and political affairs, or do you want to participate as decision makers?"

McIvor said that she has spent much of her adult life as an Aboriginal feminist and activist. Her struggle is for substantive equality, and to her that means women participating equally in all economic and political decisions affecting land, money, natural resources, communities, and families. Her position is clear: women must run for Chief. Off-reserve members must have their own representative(s) on Band Councils. This will require radical change, because the current system is entrenched, and women have been denied substantive equality in their homes, communities and government structures since the days of the first European contact.

"But this is our road to recovery," concluded McIvor. "This is our road to healing. For men, women and children, this could be our road to nation building!"

Arthur Elliott

Kimberley Murray introduced Arthur Elliott of the Chippewa First Nations, who she described as "150 pounds Ojibwa and 150 pounds Potawatami".

Elliott began by explaining why he was introduced in this manner. He said that over the years he has learned how silly it is to "pigeon hole" people. Definitions can divide, and what is needed is unification. He chooses to introduce himself in his own way, and be judged on what he says rather than by some label put on him.

At this point Elliott looked in the audience for " the man from Indian Affairs" (Robert Eyahpaise) who had said he would attend the session. The person in question was not present, which prompted Elliott to remark, "See, another lie."

Elliott began his presentation by thanking NWAC for the opportunity to speak. He said that in 1985 he was elected Chief of his Band, and he was awed by the weight of the responsibility. Just thirty-five years old, he thought himself too young to hold such a responsible position. Chiefs, he felt, should be older and more experienced. He was, however, proud to serve his one term, and then chose to leave the community in search of the experience he was lacking. The colonial infrastructure was too much to surmount.

Part of the frustration related to elections. Folks would come home to vote, but could not vote because they were living off-reserve. Seeing this as a fundamental right, the Chief petitioned the community, asking if off-reserve band members should be allowed the right to vote. Only one person dissented. With that documented support, we advised the community to inform their off-reserve family members to come home to vote. And they did. The project went off without a hitch, until one of the losing candidates contested the results because "off-reserve voters decided the outcome of the election." So, in a bi-election, the question was once again posed, this time in ballot form, and the community confirmed the original outcome by a wide margin.

Off-reserve voting is not the issue which should command attention, said Elliott: it's not that big a deal. There are much bigger fish to fry. One such issue is the history of the North American Indigenous experience. He referred to four distinct time frames:

- 1492 - 1650: Aboriginal people were totally sovereign. They were intact and strong, in every way free, and generally held common views.
- 1650 - 1850: Contact had been made with the Europeans. There was freedom, but with some distractions.

- 1850 - 1960: Colonialism was entrenched. Aboriginal people were occupied, abused and misled. There was a loss of identity.

- 1960 - 1990: This period was a renaissance. Aboriginal people were still occupied, and had become confused. Self-imposed restrictions and family dysfunction abounded. The collective identity was going through restructuring.

So what happens now? asked Elliott. What changes should be made and how should Aboriginal people go about making those changes? He noted that his grandchild, who was born in the United States, is classified to be 50% Indian in his own community. "We do that to ourselves," he said.

Watching television recently, Elliott said that he was listening to one Aboriginal leader who was expressing hopelessness at ever becoming part of Canadian society. Elliott said that this particular leader certainly was not speaking for him, and that he profoundly does not want to become part of Canadian society. "Canada doesn't recognize the contribution of Aboriginal people, and has been selling us out since 1812. I am not a Canadian citizen, and I don't have a relationship with Canada." The former Chief also noted that he was not an American citizen either.

Elliott stated emphatically that everybody should have the right to vote in band elections and said that he believes in the 'Aboriginalization' of North America. Governments cannot determine that -- they can't even begin to understand it.

While battles are won "here and there," the war is being lost. When he was Chief, Elliott opposed Bill C-31, even though it re-instated his mother and sister. He was opposed because of the classification it would impose on future generations. By the time his own grandchild was born, his forecast became true.

Being Aboriginal is all about establishing relationships, said Elliott. It is about self-detennination.1t means not being told what to do by an alien authority. It's about the love we should feel for one another. All Indians -- Métis, Inuit, everybody -- should pull together to fight together. "We need your strength," he said. "Our children, and our grandchildren are counting on us."

Discussion

Kimberly Murray asked Elliott how he went about securing the right for off-reserve band members to vote. He said he did so simply by petitioning every age-of-majority person in the community. That was not difficult since the community is not large in the geographic sense. When the results of that petition became known, families were advised, who in turn informed their off-reserve members and invited them home to vote. And they came. Then, when the issue was contested, the Chief approached the matter more formally by putting the question on a bi-election ballot.

Marlene Gol, of the Northwest Territories, asked a question related to general band lists, saying that there are people registered on these lists who do not have the right to vote for Chief of their community. For some reason, they have been registered by Indian Affairs as members of a different band following Bill C-31.

Elliott responded that this situation was unfamiliar to him and he could not really comment on it. Kimberly Murray polled the audience to see if anybody had an answer, but no one did.

Another participant commented that she had more rights under the Constitution than she did in her own community. Elliot responded that "if you feel that your rights are being eroded under the *Indian Act*... it proves that we are still under the colonial wheel."

Referring to a speaker from the previous day, as well as to Arthur Elliott's comments, Patrick Aiudi spoke about decolonization. Relying on the *Indian Act* to determine who can be citizens of Aboriginal communities is simply "crazy!" The *Indian Act* could be legislated out of existence tomorrow, and "that might be the best thing that ever happened."

He suggested that resources are at the crux of every issue. Normally, these issues are determined in a "nation to nation" manner. "We must teach the settlers how to deal with us," he said. In the old days, military alliances were established in order to control the resources. Administratively, not much has changed since the time of Confederation. It is time to come full circle in order to reach a degree of sovereignty. "Who better to define our citizens, than our citizens," he said.

There is a lot of 'nitty-gritty' work to do, but Aboriginal people have to rely on themselves. Apathy abounds: only about 30% of eligible voters exercise their rights on election day. Aiudi quipped, "I know it's hard when you're competing against bingo, and other "traditional" games like that."

He confirmed that apathy abounds, even in his own family. "I was walking down a path overlooking our community one day not too long ago, with my big goofball cousin. And I asked him if he thought there was a lot of apathy in our community. He looked at me and said, 'I don't know and I don't care!'"

Aiudi concluded that Aboriginal people have to care, and if that means establishing off-reserve voting, then so be it. He went further by suggesting that off-reserve band members should not even have to come home to vote. Setting up voting booths in Indian Friendship Centres, in any city, "isn't rocket science."

A younger participant, Dwight Elliott, commented that he came to the conference to ask one simple question: Why are Aboriginal people playing by the old rules; playing by a system that isn't their own, the same "stupid" game as their ancestors? He said he had been to a lot of conferences, and has not seen anything come out of them, except for "another bunch of lawyers saying, hey, look at what we've got." 90% of people his age, he surmised, do not even know how to speak in their Aboriginal tongues. He also warned that young Aboriginals have their own rules.

Dwight Dorey, a panelist at an earlier session, commented that he now knew where the next generation of Aboriginal leadership was coming from.

He went on to respond to Marlene GoI of the Northwest Territories, who had asked a question regarding general band lists. CAP has been trying to find out just how many people are on the general band lists. He "guesstimated" that the numbers range from a few thousand to as many as 50,000. "It must be one of the best kept secrets in the country," he said.

Dorey criticized the process, saying that tight timelines and limited resources have affected the results. However, he noted that this is only stage one, and there is going to be a stage two. "We had better have the resources to do things right," he said. If people do not understand the process, and how it impacts upon them, then "none of us has done his job right!"

Marilyn Buffalo

As Marilyn Buffalo took the podium, NWAC staff handed out a one-page briefing note, and a revised draft of a Band Council Resolution (BCR), which read as follows:

> WHEREAS, in or about May of 1999, the Supreme Court of Canada released its judgment in Corbière v. The Queen striking the *Indian Act* R.S.C. 1985s.77(1) but stayed the implementation of its judgment for a period of 18 months to permit consultation between, *inter alia*, First Nations and the Government of Canada;
>
> WHEREAS, to date there has been no meaningful consultation as contemplated by the aforementioned judgment;
>
> WHEREAS, the Interveners before the Supreme Court, namely The Lesser Slave Indian Regional Council and the Tsuu T'ina First Nation, have confirmed their intention to bring an application in the Supreme Court for an Order to extend the stay in the aforementioned judgment;

> NOW THEREFORE BE IT RESOLVED that First Nation, as represented by its Band Council, believes that it is critical that there be meaningful consultation between First Nation Governments and the Government of Canada, as contemplated by the Supreme Court in the aforementioned judgment, before the implementation of the judgment;
>
> NOW THEREFORE BE IT RESOLVED that the First Nation, as represented by its Band Council, fully supports the aforementioned application of the Interveners for an Order to extend the suspension to permit such consultation.

Buffalo began by referring to her comments from the previous day, when she spoke about being cross-examined in the Twinn case. It was a dilatory tactic, she said, designed to buy more time, by the likes of late Senator Walter Twinn, in order to mount an attack on NWAC members who were lobbying on Parliament Hill.

NWAC simply does not have the resources to respond in kind -- neither in money nor in personnel. A national campaign is out of the question, but the issue is no less than "an assault on each and every one of us." The opposition has $400 million in the bank and that money is going to "bank roll" a lot of politicians. Buffalo pointed out that even with all that cash, "their elders don't have adequate housing and their children are squatting in the streets."

Buffalo pleaded for support. She commented that although it wasn't a complicated process, it is this kind of politics that complicates the lives of Aboriginal women unnecessarily.

"This room should be full of children from the Sawridge First Nation, but they didn't have the money to come. Take this resolution, study it and let's come up with one resolution that we can all endorse," she urged.

Discussion

Arthur Elliott said that he supported Buffalo "100%". He surmised that Aboriginal people were trying to skirt the issue, and, in doing so, are not considering the impact upon future generations. He was emphatic in his view that love and compassion should underlie all relationships, and said there was one relationship he definitely wanted everybody to reconsider. It relates to the issue of decolonization -- in his view, the only meaningful issue. He recalled Noel Starblanket, who left the Assembly of First Nations in the 1980s. "I have seen the writing on the wall," said Starblanket, "and I have read the documents. I don't want to be a part of what is going to be."

That should have been a red flag to all Aboriginal people, continued Elliott, but it was not. With Starblanket's departure, there were six others ready and waiting to take his seat.

Trying to respond to the young man who spoke earlier (Dwight Elliott), the former Chief said that he and his generation were trying to offer "a ray of hope." In response to the question, why are we playing by the same old rules, Elliott noted that it's the only game in town.

The next speaker was an elderly lady who began by speaking in her Aboriginal tongue. She said that she aches for the old days, and is "torn up inside" at the state of Aboriginal affairs today. She fasted on Parliament Hill for five days in 1994, knowing full well that it was not the woman's role to do such a thing. She said she wanted to say things that very clearly would upset the non- Aboriginal people in the audience, so out of respect for them, she contained her comments. She said that she has suffered at the hands of non-Aboriginal people. "We keep supporting their way," she said. "But it's not our way." She added that "something good is happening here."

The speaker noted that she was Ojibwa and Potawatami. She was also of Scottish ancestry .She pleaded that Aboriginal people look within themselves for the answer to all this chaos.

Harry Daniels expanded on Arthur Elliott's response to participant Dwight Elliott, and referred to Arthur Elliott's comment that "this was the only game in town." Daniels said that he understands that neo-colonialist powers are running the show; but if there is inspiration for change, then so be it. "Our own people are screwing us," said Daniels. "Malcolm X spoke about 'house niggers' and 'field niggers'. Extremists end up getting killed, like in Wounded Knee. It is only practical to use the system as it is, or we do nothing. "Why are we playing the game? Why, indeed." He advised the young man that if he wanted to do something about it, he should organize with like-minded individuals. If you want advice, he said, it is available.

Arthur Elliott closed the discussion by relating a joke he had heard: There was this Pot (Potawatami) standing at the pearly gates and St. Peter wanted to know if he had lived an honourable life. "You bet I did," said the Pott. "Why, I even went into a Lakota camp to make peace." St. Peter was impressed. "Wow, Lakotas have been your sworn enemies for hundreds of years. When did you do this?" "Oh, about ten minutes ago," said the Pot.

In conclusion, Kimberley Murray thanked the panelists for attending, and the audience for their participation.

c) Day Three - April 2, 2000

Opening Comments - *Harry Daniels*

Harry Daniels had several comments to make after having listened to many people speaking throughout the conference. He observed that legislation has affected First Nations since the 1800's. Bill C-31 was an attempt to end discrimination against Aboriginal women. However, it has only succeeded in applying equally to men and children the discrimination that was applied to women. He added that everything the federal government has done since the 1850's towards First Nations has been done in the name of redefining and shrinking the notion of what Aboriginal people are.

Daniels predicted that if INAC uses section 77 of the *Indian Act* as it has done in the past, then the definition of 'Aboriginal' will shrink even further. Who will continue to define 'Aboriginal'? "Non-Indians!" If Aboriginal people continue to use these imposed definitions, there soon won't be any Aboriginal people left because most are living off-reserve. Then, the government will have accomplished their goal. To illustrate this point, he referred to a book called The Vanishing Indian that discussed the common conception that Aboriginal people would soon vanish.

Daniels pointed out that when rules are made there is always the assumption that everyone has access to the same knowledge. In fact, this was not the case most of the time. Often people are uninformed because of the many barriers they face in getting the knowledge. He suggested that, if people were properly advised, they would not have supported Bill C-31 and other legislation which has defined who is Aboriginal. He observed that First Nations are buying into the imposed definitions.

"We all know the socio-economic reasons that cause people to migrate off-reserve," he stated. If we have access to better education, higher paying jobs, more housing and other socio-economic resources off-reserve, then is there any reason why Aboriginal people would choose to go back to the reserve? No.

The government cannot make legislation to exclude all Aboriginal people. Nor can they deny the franchise to any First Nations person. The government will make concessions for themselves when it suits their purposes, but they won't do the same for First Nations.

On another topic, he discussed the benefits of negotiations, as compared to the litigation process. He mentioned the lack of money available for the consultations that now have to take place as a result of the *Corbière* case: $200,000 is not enough.

He discussed the downfalls of consultations, which have often been used as mechanisms to buy time for the federal government. He added that by November 20th, a whole lot of litigation could have arisen. This, he said, lets the government off the hook from dealing with the issues now.

He quoted an old saying: "If people can't see themselves in the present, how can they plan for the future?" It is important to inspire the youth and families toward pro-active change. Daniels then told participants of the many generations in his own family who had fought the same issues that he was fighting. Generations later they are still going to the same meetings. He asked if this was the legacy participants wanted to leave their children.

It is also important to reach out to other First Nation organizations. He added that "we cannot continue to knock Indian Affairs; we have to work together." He discussed the concepts of consultation and partnership, which he termed as "bogus" because the word 'partnership' implies equality. Meanwhile, the government is not acting in an equal partnership with First Nations. Daniels recalled a conversation with Bob Nault (Minister of Indian and Northern Affairs), who said that he would not give any more money to First Nations for the purpose of consultations because he does not want any more unproductive consultations to occur at the expense of actual change.

Daniels then pointed to the report of the Royal Commission on Aboriginal Peoples, which recommended that First Nations start two new regimes of government: one for those with status and one for those without status. However, none of the stacks of recommendations identified by RCAP have been implemented yet. He gave examples of the mishandling of HRD funds related to First Nations. Millions of dollars were spent for only a few jobs. "We are being busted up, lured by money, as in the days of the treaties, " he warned, adding: "We are just like crows: if you had a million dollars in one stack of bills and a bunch of quarters scattered around them, we would go for the quarters because they are shiny."

The alternatives to the *Indian Act* are limited. Perhaps it will take outright civil disobedience or a peaceful movement like that of Gandhi. There must be a total explanation of the recommendations coming out of this consultation process. Daniels noted that self-government does not necessarily mean self-determination: it is just self-administration -- governing with white laws.

In closing, he said that although he is eligible for treaty money he will never take it. He also gave a word of warning to those with status who felt that their Band membership was safe. The Indian Registrar is your "God", he said, and can strike you off the list at any time.

John Corbière

John Corbière addressed the members of the Native Women's Association of Canada, and said that he was very honoured to be at this conference. He added that he was pleased to be among fellow complainants in the case, people who had played an important role, and those who were intervenors in the case. He acknowledged the role of NWAC, and other important intervenors such as Harry Daniels, the present leader of CAP, Viola Thomas, who leads the United Native Nations of British Columbia, and The Aboriginal Legal Services of Toronto, headed by Kim Murray.

Corbière talked about the Batchewana Band's unique historical situation compared to that of other reserves. He said that as a result of the Pennyfather Treaty of 1859, the Band's Chief and headmen sold the reserve from beneath its members. He called the Pennyfather Treaty "a complete farce," and said that the non-residents of Batchewana did not "leave" the reserve granted to them under the Robinson Huron Treaty in 1850 -- the reserve was sold from beneath them.

As a result, the Band was left landless until 1879 when Goulais Mission was purchased with Band money. Many of the members lived in Garden River, while many others remained in Batchewana unable to believe the land had been sold.

Corbière told how he was involved with pioneering the development of the community which is now known as the Rankin Reserve and is part of the Batchewana Band. During his term in elected office as Chief of the Band for 14 consecutive years, they were instrumental in achieving the highest level of migration to Band lands in the history of the Batchewana Band. He said that he personally visited members and asked them to move to the reserve.

In 1993, the Batchewana Band Council made the sensible decision not to participate in the court case involving the voting rights of their off-reserve members. He noted that their position at the time was established under the guidance of another lawyer.

This "Solomic wisdom" was forgotten after the decision of Strayer was released in favour of the non-residents. Batchewana decided to attack their own members in the Federal Court of Appeal, and never consulted with the Band membership before doing this. He noted also that the decision to attack the vast majority of the Band's members with their own money and the "Band lawyer" was made with zero participation or consultation from the Band's membership.

Corbière then raised one of the most outrageous points made by the Band's lawyer in the Supreme Court factum: "The Band says *its Chief and Council do not govern the off-reserve members*." Corbière noted that if and when it suits their purposes, the Band Council will abandon its members and call itself a 'town council'. Meanwhile, on other issues it declares itself a Nation State and attempts to rally support from the entire Band.

Corbière observed the irony in the fact that the Band Council now wants to consult with the membership after it has actively attacked the majority of the Band with the Band's own money and lawyer while avoiding consultation every step of the way.

He noted that in 1996 the Band Council cried "confusion" as an excuse to deny members the right of electoral participation in their own Band. He warned that "confusion" had been manufactured by the Band Council to defeat peoples' Band rights many times in the past.

"Expect them to label whatever information they collect in the next 18 months as an example of 'confusion' and use it to defeat their own Band members again," he said, adding that "the trust, if it was ever there, is gone."

Corbière said that the Band Council has avoided consultation with its members for years, but professes all of a sudden to want to consult with the federal government on behalf of the same non-residents they have said they don't represent.

He told participants: "This is the first example of which I have ever been aware, of the losing group in the highest Court of the land being presented with a sizable amount of money to implement a decision they had spent thousands of Band dollars to oppose... without the membership's informed consent. The Band Council received $100,000 from their co-litigants at INAC to prepare a database."

He then read a section of the case in which the "Council's lawyer" was quoted as follows:

> The Band asks that the Court make no order in relation to the validity of the legislation at this time, but rather declare the legislation unconstitutional and order the Band, in conjunction with its on- and off-reserve members and with the Minister, to develop its own customary voting rules that would respect the Charter.

Corbière reported that the court flatly denied this request.

Corbière talked about the many years of intense work and the overwhelming odds faced by the complainants. In contrast, their opposition had endless amounts of financial resources at their disposal for legal expenses. He expressed the view that the Council spent thousands of Band dollars to preserve their captive voting clientele, which it relied upon heavily for re-election. He added that the Batchewana Band Council perpetuated the disadvantages that Band members already faced as "Indians".

He pointed out that many members "are not living off-reserve by their choice, but rather by the choice of an inept Band Council who are lacking in foresight to provide an acceptable housing program to meet the needs of its members."

He added that the kind of injustice that the members suffered at the hands of the Department of Indian Affairs and their co-litigants, the Batchewana Band, could never have happened in a non- Aboriginal community. However, "a full panel of the Supreme Court of Canada has spoken. The off-reserve members will vote in the December 2000 election."

If nothing else, this episode demonstrates yet again that the elected officials do not understand the extent of the powers and responsibilities they are supposed to exercise on behalf of their membership. The Federal Court process of the *Corbière* case was a prime example of some inexperienced Band members controlling the development of the Band to the detriment of all the Band members.

However, "to every end there is a new beginning. Our successful triumph at the Supreme Court of Canada will help end corrupt and tyrannical elected Native administrations across Canada through the equality of voting rights." It is now the responsibility of the voting public to use their new voting privileges wisely, because what a community becomes depends on what its members contribute to its present and future development.

Discussion

A participant thanked Corbière for fighting this issue. Another participant told him that it was important to hear his story.

Another participant talked about the struggles of the *Corbière* case since it began in 1987. There have always been obstacles, but they have always been here to fight as Aanishinaabe supporting one another. It is essential to practice unity instead of fighting one another.

Marilyn Buffalo commented that sometimes she intellectualizes too much about the culture, instead of looking at the important values within it. Then she opened the floor for recommendations on the INAC discussion paper.

The following comments were made by participants:

Section 6 of the regulations: Will there be traveling polls for clustered bands?

- Section 2: An explanation of the voting process should be made available. Also, the electoral officer should be objective and should not be a Band member.

- Section 3: The officials should not take a break and eat before counting the ballots.

A participant observed that the leaders have modeled unity in the *Corbière* case, and it is now necessary to extend an olive branch to Chief and Councils and members of other communities. Aboriginal people have the right to ask that leaders are responsible to all whom they represent. The speaker recalled how the first 10 years of her life were spent as a non-registered Aboriginal living off-reserve. Since then, she has become registered and has attended Chief and Council meetings as an observer -- although she said she did not really feel welcome. She commented that when women in Canada got the right to vote there was a lot of fear about this, but the law was still implemented. She thanked Corbière for enduring the struggles associated with the case, and said that it has given her strength and encouragement to endure the struggles which she faces.

Marilyn Buffalo remarked that Aboriginal people have to regain their own voices and teach their children to use theirs.

A participant who was one of the Band members who protested the election issue by occupying the Batchewana band office told the story of the takeover in 1994.

Recommendations for Amending the Regulations

Mary Eberts, Gary Corbière, Lila Duffy, and Debra Wright presented draft recommendations which were based on the discussions of the previous two days. The recommendations were read once all the way through. They invited comments from the participants for each section during the second reading. The following comments were made:

Recommendation #1: *That a new set of election and referendum regulations be drafted, commencing May 31,2000, to take effect November 20, 2000.*

- John Corbière said that any reference to the seven words should be struck down in the *Indian Act*. Also, the recommendations should be kept simple and should enable off- reserve Aboriginal people to vote this year. In other words, the regulations must include off-reserve voters, and there should not be a drawn-out process of going back to Parliament to implement this. More sweeping changes could be made in phase two.

- Gary Corbière said that a new set of regulations is not needed to allow off-reserve Aboriginal people to vote. This, he said, was confirmed by Robert Eyahpaise from INAC.

- A participant asked when the members would become the drivers of this process and how they would give their input. She was told that the Department of Indian Affairs is consulting with off-reserve members through processes such as these conferences.

Recommendation #3: *That the drafting process include representatives of the affected National Aboriginal organizations: the Native Women's Association and the Congress of Aboriginal Peoples.*

- There was some debate over the reason why Aboriginal Friendship Centres were not listed as participants in this consultation. Harry Daniels said that it was because they were a social rather than a political organization.

Recommendation #4: *That a study of long-distance voting procedures be funded by DIAND, during the drafting process. The intent of the study is to explore existing options to facilitate non- resident band member voting through a number of reasonable inexpensive methods, including mail-in, electronic mail, Internet, etc. Further, that consultation with agencies, governments, municipalities and North American Aboriginal communities that have dealt with long-distance elections be carried out. Examples are the Canadian Armed Forces, Elections Canada, unions and corporations.*

- Participant said that a time limit of 3 months should be set for this process.

Recommendation #5: *That during the drafting process, as a minimum, provision be made for the following:*

That possible instances of corruption be clearly defined;

- A participant suggested that a note be made to the effect that the list was not exhaustive but were only examples.

  That anyone who perceives corruption or irregularities in the election process have access to a swift appeal process;

- A participant recommended that a 90-day time limit be put on the appeals process.

  That all voting be done in secrecy;

- A participant asked how secrecy would be maintained if voting took place on the Internet.

  That anyone who offends election procedures face penalties. For example, the invalidation of the election, being prohibited from running again, personal fines...

- A participant asked who would determine whether the election procedures have been offended.

  That a process be developed for community members to initiate referenda;

- A participant said that it would cause confusion to use the term "community members". Instead she recommended that the word be changed to "Band members".

  That candidates be required to provide the Band members with full disclosure prior to the election. Disclosure should include, but is not limited to, current and past business activities, convictions of criminal offenses and any outstanding criminal charges.

Participants made the following questions and comments:

- How and when will the disclosure take place?
- Will people be prevented from running if they have a criminal record?
- The CPIC should specify the information because the generic record can be misleading.
- If a person is a domestic violence offender who has not dealt with their issues, they should not be considered as a candidate for elections.
- This mechanism is questionable. It is the responsibility of the person to declare themselves and to be honest so that the community can judge for themselves. Would this mechanism allow the police or the community to judge the person 's background?

General Comments on changes to the *Indian Act* legislation included the following:

- Will there be accommodation for those who do not speak or write English?
- Which process for disclosure will be used: CPIC or RCMP?
- Should there be an office set up to deal with problems arising out of changes to *Indian Act* legislation?

Recommendations for Phase Two: *That Phase Two activities include the identification and implementation of necessary changes to existing governance structures, in recognition of the accountability issues that currently exist and the necessity to fully explore and address the full implications of the Corbière decision.*

Participants made the following comments on this recommendation:

- Adequate resources should be made available to facilitate this process.
- This phase is going to mean a big change for First Nations.
- An appeals process should be set up for members who are seeking support.
- There needs to be a process for review included in this phase.
- Band members who hold management positions in the band should not be allowed to hold positions as Chief or Council members.
- We should seek assistance from Elections Canada to facilitate this phase.
- If Aboriginal people use the Elections process, it would undermining who they are. Further, the Charter process minimizes the autonomy of reserves.

Harry Daniels thanked everyone for participating in the conference, and invited everyone to come to the next meetings in Toronto and across the country .He added that a web site was available for information pertaining to this process.

Marilyn Buffalo thanked everyone for coming out to participate, and said that even though there was a lot of debate, the input was required to aid in the process.

4. Recommendations

a) Recommendations for Amending the Regulations

Recommendation #1:

That a new set of regulations relating to Indian band elections and referenda be drafted, commencing May 31, 2000, to take effect November 20, 2000. It is imperative that the new regulations take effect by November 20, 2000 in order that elections go forward including non-resident band members after November 20, 2000.

Recommendation #2:

That ordinary principles of fairness apply to these regulations.

Recommendation #3:

That the drafting process include representatives the Native Women's Association of Canada and the Congress of Aboriginal Peoples.

Recommendation #4:

That a study of long-distance voting procedures be funded by DIAND, during the drafting - process, for completion no later than August 31, 2000. The intent of the study is to explore existing options to facilitate non-resident band member voting through a number of reasonable, inexpensive methods, including mail-in, electronic mail, internet, etc. Further, that consultation with agencies, governments, municipalities and North American Aboriginal communities that have dealt with long-distance elections, occur as a part of this study. Examples are the Canadian Armed Forces, Elections Canada, unions and corporations.

Recommendation #5:

That during the drafting process, as a minimum, provision be made for the following:

- That elders, and shut-ins be provided with access to advance polling or a rolling poll;
- That provision be made to accommodate the needs of voters who cannot speak or read English and those who cannot see.
- That an independent body be mandated to carry out the responsibilities of the electoral officer;

- That the Electoral Officer must not be a candidate, cannot be nominated or accept a nomination in an election for which they are engaged;
- That candidates be given the opportunity to fully scrutinize the elections process;
- That possible instances of corruption be clearly defined with a non-exhaustive list of examples provided;
- That ballots be kept until the time limits for the initiation of appeals have expired and/or until all avenues of appeal have been exhausted;
- That voters be responsible for providing updated information on residency;
- That the list of names and addresses of all band members, including non-resident band members, be made available to all candidates to ensure that non-resident band members are fully informed on issues of concern;
- That anyone who perceives corruption or irregularities in the election process have access to a swift appeal process (i.e., 90 days);
- That all voting be done in secrecy;
- That a simplified process for written nominations be implemented;
- That options be explored for the participation of non-resident band members in the nominations process, both as nominators and as candidates;
- That anyone who offends election procedures face penalties. For example, the invalidation of the election, being prohibited from running again, PERSONAL fines;
- That a process be developed for band members to initiate referenda;
- That proxy voting be permitted;
- That notice periods for elections and referenda be sufficient to accommodate the needs of non-resident band members;
- That candidates be required to provide the band members with full disclosure prior to the election. Disclosure should include, but is not limited to, current and past business activities, convictions of criminal offences and any outstanding criminal charges;

- That an independent body be created for band members to appeal to in situations when a band council is perceived as not respecting the rights of non-resident band members to vote in band elections or referenda;

- That band members who hold management positions in the band not be allowed to hold positions as Chief or Council members.

- That provision be made for a process of regular review of the regulations.

b) Recommendations for Phase II

Recommendation # 1:

That Phase II activities include the identification and implementation of necessary changes to existing governance structures, in recognition of the accountability issues that currently exist and the necessity to fully explore and address the full implications of the *Corbière* decision.

It is imperative that Phase II consultations extend beyond the November 20, 2000, expiration of the suspension of voting rights.

Recommendation #2:

That the Native Women's Association of Canada and the Congress of Aboriginal Peoples participate fully in Phase II consultations and that their consultation activities be fully and equitably financed by the Department of Indian Affairs and Northern Development.

Appendix 1: Vote by Mail

Frequently Asked Questions

1. What is Vote by Mail?

Vote by Mail is a method of conducting elections and referendums using the mail. It helps to eliminate the need for polling stations, advance polls, or proxy voting. Essentially, every mailbox is transformed into a ballot box. When voting is as easy as mailing a letter, more people are likely to cast their ballots.

2. Why choose Vote by Mail?

Improves voter turnout:

Conducting elections through the mail eliminates many of the obstacles, which traditionally keep voters away from the ballot box. Voters can cast their ballot when it's convenient. They no longer have to worry about fitting it into their hectic schedules and bad weather is never a deterrent. Some seniors and people with disabilities will find it much easier to cast their ballots from home. In communities where much of the population is made up of seasonal residents, voting by mail allows these seasonal residents to cast their votes without having to travel long distances. Receiving their ballot at home allows people to vote in complete privacy.

3. How does Vote by Mail work?

Canada Post can handle most of the process for you with our Electronic Services' Volume Electronic Mail. Begin by supplying your electronic voters' list and election data to Canada Post. A Vote by Mail kit can be customized to meet your specific needs as per Volume Electronic Mail's technical capabilities. Canada Post will print, address and mail your kits to the voters, and return the cast ballots back to you. The kit includes a ballot, a voter declaration form, voter instructions, and two envelopes. Having completed the ballot, the voter inserts it into an anonymous inner secrecy envelope, seals it, and places that envelope in the yellow outer pre-paid return envelope. The voter signs and dates the voter declaration and places it in the outer pre-paid return envelope with the municipal address appearing in the window. Following your set procedure at your returning office, which ensures voter anonymity, ballots are counted as usual.

4. How does the Voter cast his or her Vote?

Step 1: The voter reads the simple instructions on the personalized sheet provided.

Step 2: The voter fills in the ballot and inserts it into the inner secrecy envelope.

Step 3: The voter signs the voter declaration form.

Step 4: The voter inserts both the declaration form and the inner secrecy envelope inside the yellow outer pre-paid return envelope and deposits it in the mail.

5. What types of Quality Control measures does Canada Post have in place when producing the voter kits?

Canada Post's Volume Electronic Mail service uses a unique job identification number on the voter instruction sheet to ensure that all kits are sorted accurately. These unique identifiers will not be located anywhere on the voter declaration form or the ballot, in no way compromising the voter's right to confidentiality.

Prior to embarking on full printing and insertion of the voter kits, Volume Electronic Mail has quality control measures in place to ensure the integrity and accuracy of your mail pieces. Errors or omissions that may have occurred in data file transmission can be caught and rectified early enough in the process.

Once Volume Electronic Mail has received and processed your data, you will be faxed a "Data Confirmation Report" that will confirm the number of records received and the number of mail pieces to be produced. For example, if you have 5,000 voters, your confirmation report will tell you that 5,000 records are going to print.

Proofs (samples) of the individual pages will be produced and faxed to you for your review and approval. It is important to note that you are responsible to ensure that the components of your kit conform to any legal and local requirements. Once you sign off on the samples, Volume Electronic Mail will proceed with printing and insertion of the pieces into the envelopes.

6. Has Vote by Mail ever been successfully used in Canada?

Yes! In November 1997 twenty Ontario municipalities conducted their municipal elections by mail. Significant increases in voter turnout were reported - even as much as double! Municipalities reported more participation from seasonal residents than ever before. Municipal clerks and Canada Post worked closely together to develop forms and processes to best meet each municipality's needs. Canada Post played a very responsive and supportive role.

7. Do I still maintain control over the election process?

Yes, you still decide how the election process will run in your municipality. Additionally, you have the final approval before anything goes into full production. However, a number of the very time-consuming traditional processes are streamlined for you by the Vote by Mail program.

You also still maintain responsibility for ensuring that all of your election forms and processes conform to all legal and any local requirements.

8. Were there many spoiled ballots in the 1997 Vote by Mail program?

Canada Post received feedback indicating that there were very few spoiled ballots. Participating municipalities reported that spoiled ballots were certainly no more of a problem with Vote by Mail than in a traditional election. There was an additional level of comfort because with a tangible copy of the ballot, the clerk could show cause as to why the ballot was spoiled.

9. What is a spoiled ballot?

A ballot may be considered spoiled if:

- It is not in the Secrecy Envelope, or the Secrecy Envelope is not sealed.
- There is no Voter Declaration present, or the Voter Declaration is not signed.
- The voter has already cast a ballot.
- A single Secrecy Envelope is marked in any way that might identify it.
- There are any improper markings on the ballot.

Prescribed rules for rejecting ballots in municipal elections should be followed as per the applicable legislation.

10. How easily will the voters understand the Vote by Mail process?

We all use the mail everyday for many different things. Vote by Mail is not significantly different from paying bills, choosing your next CD from the music club, or supporting your favourite charity. All of these represent things that people are very accustomed to doing. There is trust in the mail system. Everyday voters send information in the mail with complete confidence.

11. To what extent were Municipal Clerks involved in the Vote by Mail Program in the 1997 Ontario Municipal Elections?

1997 marked the first year that Vote by Mail was introduced in Canada and as such was a new opportunity for Ontario municipalities. Given the expertise of Municipal Clerks in election processes, Canada Post involved interested Municipal Clerks in the entire process. We met in focus groups with many of the Municipal Clerks involved and reviewed the content, format and wording of the voter kit.

12. Why is the return envelope yellow?

Yellow envelopes help give more control over the ballots being processed by Canada Post. As well, the yellow envelope will contain the trademarked Vote by Mail logo, authorized for use only by Canada Post. The distinctive logo and bright colour stands out in the mail stream, thus speeding up mail processing by all involved.

13. Our municipality has recently purchased electronic ballot scanning equipment. Is Vote by Mail compatible with this technology?

The ballot available through Volume Electronic Mail may not be readable by the scanning equipment. (Ontario Municipal Elections Information - November, 2000. Ontario Municipal Elections Information Only: For more detailed information on contractual requirements and other technical specifications, please discuss the Vote by Mail opportunity with your Canada Post Sales Representative through our Business Action Centre at 1-800-260-7678.)

14. When is the final sign on period to use Vote by Mail for November 2000?

It is important to note that your local by-law authorizing the use of Vote by Mail must be passed at least 60 days before Election Day. (Municipal Elections Act Section 42 (2).)

Vote by Mail contracts with Canada Post should be finalized by June 30, 2000. From a planning standpoint, the sooner you sign on, the better. However, remember, Canada Post has the nation's premier distribution system for business communications. With a delivery network spanning the country -urban and rural areas, coast to coast - Canada Post has the capability to deliver the vote!

15. Can I obtain blank voter kits?

Yes, blank voter kits can be provided. Identical to voter-specific kits, these blank kits do not have the voter's name or address printed on them. The service fees for the blank kit are the same as for the standard kit.

16. What are the Vote by Mail Service Fees?

Fees for the November 2000 Ontario Municipal Elections are volume-based. You can discuss the price structure with your Canada Post Sales Representative.

17. Is there a minimum volume requirement for Canada Post to handle production?

Canada Post has set a minimum volume of 1,000 Vote by Mail kits. If your municipality is smaller, you can talk to us about your alternatives.

18. Am I able to customize the voter kits by adding our municipal logo anywhere? If so, how do I provide the logo to Canada Post?

You may customize your kits by adding your municipal logo only on the Voter Instruction sheet. Electronic files of artwork can be saved in the following PC formats: black and white *.pcx file, .gif file, .bmp format, and .tif format. The files must have a minimum resolution of 600 dots per inch. Camera ready artwork should be submitted in black and white, as Volume Electronic Mail is only compatible with black and white logos.

More information is available at the Canada Post website:

www.canadapost.ca/cpc2/comserv/info/votemailfaq.html

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