RECONCILING THE MODERN AND THE TRADITIONAL – CHALLENGES FOR ABORIGINAL COMMUNITIES AND CULTURE

The plight of the First Nations people within Canada has existed since the arrival of the white man, or mamalthne in our language, people who arrived by boat. Prior to this, First Nations people had lived within our homelands since iikmoot, longer than any person can remember. Or time immemorial as it has been described by Canadian courts.

First Nations were the richest of people, living off the lands and waters that had plenty of sea resources and wildlife to live off. Mother Earth supplied all the medicines, berries, and other foodstuffs in order for our people to be healthy, and well looked after. Our Hupacasath people, looked after the lands and resources through our own systems of governments. We had River keepers, beach keepers, forest keepers, hunters, gatherers, and our own laws based on sustainability, ensuring all future generations would be able to share in the resources as well.

When the white man arrived, we were put on small tracts of land and very slowly denied access to all the resources which made us such a rich people. Instead, the government used the resources for their own purposes and became a wealthy government while we became the poorest of the poor. In forest resources alone within the Hupacasath territory, billions of dollars were paid to the government in royalties and that does not account for the billions of dollars the forest companies made on their own. Today, we have the highest rates of unemployment, the highest rates of suicide and health problems. Getting clean water to our communities is a problem even when we live in a country where there is so much clean drinking water.

The issue of aboriginal title is still an ongoing issue in British Columbia where we do not have treaties as in other parts of Canada. Aboriginal title has been acknowledged by Canada in the Canadian Constitution but proof of title has been an incredible task for First Nations. As early as 1973 in the Calder case, the issue of title was examined but had a tie with the judges as to whether it indeed existed. One judge decided against the case on a procedural issue, that a fiat had

been needed and would not decide on the merits of the case. Subsequent cases and millions of dollars later, Delgamuuk and Tsilquo'tin decisions determined that aboriginal title did exist, and since we were all here to stay, it would be better if First Nations and governments negotiated a settlement. The difficulties of taking an aboriginal title case to court besides times and money, Delgamuukw took 10 years and over $30 million dollars, is that the Eurocentric views and laws of the court do not follow the collective rights and title of the First Nations people. Court cases often require sharing of sacred information that may not be taken seriously or respectfully.

Years later, and again millions of dollars later, we are still trying to negotiate a settlement of our aboriginal rights and title and to maintain a way of life that allows us to be who we are.

Through many court cases, First Nations in BC have rulings that if there is any development on Crown Lands that may infringe on our rights and title, that the governments must consult and accommodate us as there is no settlement of our title as of yet. The courts have gone as far as to say that we have the right of consent if our rights will be abrogated. This has helped First Nations to try and preserve our way of life in exercising our rights but at the same time the government thinks as long as they give us something for infringing on our rights it is ok. We would rather be able to have our children fishing, hunting and gathering cedar bark, grasses and foodstuffs instead of telling them this is how it used to be.

TRADITIONAL LEADERSHIP

Throughout the colonization process, our traditional forms of government have been eroded away through imposition of laws like the Indian Act. All First Nations had traditional forms of government. Hupacasath had a hereditary system of government where the father would pass his chieftainship to his son. His son was required to marry a Chief's daughter. Often marriages were arranged for political reasons or to avert wars or gain allies. Our chiefs were royalty and were brought up very strictly from the time they were born and schooled to be the chiefs they were to become. Chief's daughters were raised in the same manner. The last

arranged marriage happened with my grandfather and grandmother. My grandfather's family arranged a marriage with our neighbouring First Nation. My grandfather arrived on a board between two canoes, looking like he was walking on water, to pick up my grandmother. They had never met. My grandmother was 15 years of age. Today, that part of our culture is not practiced.

The Federal government did not like our system of leaders. They felt we had to be "democratic", and insisted that we elect our chiefs on two year cycles. The governments pretty much forced first Nations to go into the elective system. There are only a few communities today, including my Uncles, who have never had elected Chiefs. A story I always remember from the Mohawks of Kahnawake was when they were being pursued to have elected chiefs, they accepted a one year trial. At the end of the year, the Indian Agent came along and took a vote as to what system they liked better. He had people line up on either side of the long house as to what system they wanted. They wanted their own traditional system, but that Indian Agent interchanged the numbers and reported to the offices of government that the Mohawks had chosen the elective system. Today, that community and many others are divided amongst the traditional governance people and the elective governance people. It was a major hit by the government to destroy our governments at the core of who we are.

Tradition has changed somewhat in that hereditary chiefs can now be woman, and the picture on the PowerPoint shows my Uncle giving his Chieftainship to his daughter. Chiefs had curtains, which used to be made of cedar panel, as shown in the PowerPoint, but today are made of canvas. These Curtains showed the riches of the Chiefs and the importance of the resources to his people. It told the lineage of the Chief and where he came from.

DEFINING WHO IS AN INDIAN

Another government action which struck at the core of who we are was their efforts to define who is an Indian. From the very early Indian Acts in the late 1800's, an Indian was defined as anyone who lived with the Indians and maintained their way of life. Over the years the definition devolved into something much more definite. The most famous provisions was when an Indian

woman married a non Indian man, she lost her status as an Indian and her children were not entitled to be registered. The opposite was true for the man, if he married a non Indian woman, she gained status and all their children were considered Indians entitled to full rights and benefits. Sandra Lovelace took a complaint to the United Nations under the international Convention on Civil and Political Rights. In 1981, the Committee ruled that Canada was in breach of their obligation under the Covenant as they were denying women who married non Indians the right to their culture and way of life. It was at that same period of time that Canada was trying to bring the constitution home to Canada and sever ties completely with Great Britain. The New Canadian Constitution included s. 15 which guaranteed equality to men and women. I believe it was more the fear of a breach of the constitution than the committee of the United Nations that the Government of Canada restored Indian status to the women who married out and their children.

While amending the law, the government did not allow the grandchildren of the women who married out to gain status unless they had two parents that had status. The child of the mother who married out could not pass Indian status on unless the other parent was a registered Indian. As the pattern that is occurring is that there is much intermarriage, people are predicting that by 2050, there will not be any status Indians left in Canada. Canada would be very happy about that but not the same with First Nations peoples. Sharon McIvor challenged this part of the Indian Act in the courts and now the Supreme Court of Canada will decide whether this is a valid provision. It is a shame that the Government of Canada instead of fighting us in court cannot just sit down with us and try and work out what our definition of who an Indian is.

The ridiculousness of defining who is an Indian results from legislative drafters sitting in a room and coming up with some very far out ideas. Things like if you wanted to go to war, go to university, become a priest or a nun, or drink alcohol, you had to give up your status as an Indian. An even more complicated provision deals with an Indian man who marries a non Indian woman and she gains her status. Their Son also marries a non Indian woman. At the age of 21, any children they had would lose their status. This is called the double mother rule. Who

thinks of such things? Definitions so far away from our values, traditions and culture. These categories of people were given their status back as well with the amendments to the Indian act. Certainly, working with First Nations people would work much better than imposing ridiculous definitions that have to be challenged in court.

First Nations issues were often dealt with by traditional law in our long houses. For example, our divorces were handled simply. The couple would enter the long house, walk around the long house four times in separate direction, and their divorce would be final, without shame and without lawyers. Taking care of our children was also an important aspect of our culture. Families and communities always looked after their children and seen that they were cared for. When the residential school system took our people away, it caused multi generational effects on our people. Our children were taken away at an early age. They went to school for many years. They did not know what it was to be in a family, or how to be a parent. The mental, physical and sexual abuses suffered often caused untold problems for that individual and their families. As a result, many of our children are in care today, over 27,000. We have tried to improve the system by forming child care agencies with delegated authority from the province. The problem with that, is that the laws and regulations remain the same. Only it is our people administering the program. Until we can use our own laws, policies and procedures, will we ever succeed and getting our children home. Today, there are more children in care then ever attended residential schools which again is very destructive to our communities and to the child who is deprived of growing up with our culture, language and rights.

PROTECTING WHAT IS IMPORTANT TO US

There are many challenges today with protecting our heritage and culture. Laws that apply do not do what we need them to. In BC we have a Heritage Conservation Act where everything that pre dates 1846 is protected, and nothing after. The year 1846 came from the Delgamuukw decision where the Supreme Court Justice said was when the white man came and when our title "crystallized". Which means sites and objects which are important to us that we

cannot pre date cannot be protected. It also means things like our sacred sites which do not fall within the definitions of the Act are also not protected. A good example happened on Vancouver Island. One of the First Nations had a sacred bathing cave which had a natural underground mineral pool. When the cave was discovered, they had archaeologist enter the cave. They took the roof off to do the work which destroyed the integrity of the cave. They could not find any evidence it was used as a spiritual site and gave permission to the developers to destroy it. With our sacred sites, we do not leave evidence of use. We go to great extremes to keep them pristine, so no one knows we were there. We use branches to wipe away our footprints, we leave nothing at the site. All the proof we have is in the oral evidence of the people who use it. When that doesn't fall within the definitions, there is no protection. The devastation of the peoples who used the cave was immense and such a site can never be replaced.

The Petroglyphs in the picture on the PowerPoint, are stories and records of our history. By the provincial law, these do not belong to us. We have no control or management over them. If anyone damages them and someone is charged and fined, the money goes to the province. That which is so critical to our people, is not respected or our ownership recognized. The Petroglyphs are fading away over time. We want to go in and carve them again, just as they are now. The Archaeology Branch does not think we should be able to do that. But if we do not do it, all we have is pictures of what used to be there when in reality we could have what was always there.

INTELLECTUAL PROPERTY, COPYRIGHT: Indigenous wisdom

The whole issue of what is known as Intellectual property which we like to consider customary law is under Canadian law, and out of our jurisdiction. Our Indigenous traditional Knowledge or wisdom is about our practices and culture and the knowledge of plants and animals and of their methods of propagation; it includes expressions of cultural values, beliefs, rituals and community laws, and it includes knowledge regarding land and ecosystem management. More simply put, it includes intellectual property law, environmental law, heritage and sustainable development.

There is some national protection for Indigenous wisdom, but do not adequately address our concerns. Our beautiful work of art can be copied with small difference and not be protected under copyright. Copyrights are for 25 years and for an individual. Our ways of making things, designs, belong to families, or communities and are passed down from generation to generation. If we try to use trademarks to protect designs from our petroglyphs being used by others, we are forced to use the designs that were not meant for public viewing or purposes. Our songs, our dances, our medicines, our method of using cedar and grasses for our art, are all at danger of being misappropriated.

We need a system to that can adapt in unique ways in order to properly address the misappropriation and misuse of indigenous wisdom/knowledge. A system that is not bound by current systems and structures of national and international law. We need a unique way that is grounded in indigenous legal systems without concern by States that we are infringing on intellectual property laws.

Desire to protect Indigenous wisdom also includes the desire to recognize ownership and control, which creates an opportunity for indigenous peoples and communities to utilize a valuable resource. The fact that Indigenous wisdom has been misappropriated illustrates the commercial value of this knowledge.

Generally it is the indigenous community collectively who owns the right to traditional knowledge. The operation of customary law occurs at a community level

It is this indigenous wisdom that will help with climate change, with the negative impacts that are occurring on Mother Earth and in the waters that run through her. It is this indigenous wisdom that will once again help with medicines and sustainability but we need guarantees of protection before we share it.

CONCLUSION

We have been struggling with Governments to reconcile the traditional with the modern. We have brought court cases that we have won, we have staged protests and other actions to get the governments attention. We have upped our profile in the media. I remember in the early 1980's, we couldn't get a newspaper

or a TV station to do a story on our issues. Today, you open any paper, watch the news, and inevitably, there is some issue dealing with First Nations people. We are not yet an election issue and we need to be in order to get results. But we are in the eye of the media, and as our circumstances are such that it brings shame to Canada, things are going to have to change.

The time for change is now. There are many opportunities, so many open windows and doors. It is an exciting time to be involved as we can be the agents of change. We can bring our ideas and our solutions to the forefront and be the designers of that change. In the early years I worked on the Declaration of Indigenous Rights, long before it was even in draft, but we had a vision of what that declaration should contain, and we used our influence to help shape that Declaration. In the end, it was not everything we wanted, when States have the power, we will not get everything we want. So it is today, as we sit down and try and negotiate a treaty with the governments to address some of the issues I have discussed with you today. We want change, we need change and we can make it happen. In 1922 my grandfather was negotiating treaties. In 2009, I am still negotiating treaties. I do not want my grandchildren negotiating treaties in another 87 years. I hope they can live off the benefits of what we are able to negotiate. We can build on the foundation of leaders that came before us, as collective First Nations, and with the help of others, we can help reconcile the traditional with the modern in ways that will benefit everyone and our grandchildren and those yet to come will still know what it is to be First Nations.