

QUESTIONS & ANSWERS FROM THE SEPTEMBER 26, 2007
SIX NATIONS MRP COMMUNITY MEETING –

QUESTION 1- How does Aundeck Omni Kaning (AOK) First Nation enforce their law? The AOK First Nation has passed their own MRP law under their own inherent authority as recognized by the Royal Commission on Aboriginal Peoples. It has been in force for over two years with no implementation problems being encountered so far.

ANSWER – They do it through community cooperation. They took over two years to develop their law and what they said to the community was, “what we want is fairness and justice for everyone”. They realized it is a difficult time when people separate and they wanted fairness. They are a fairly small community and they were able to go home to home and have family meetings and all of their concerns were raised. There was greater ownership of the issue and people understood and essentially the people have agreed to abide by that law. One of the processes they have put in place is when a couple separates they have compulsory mediation, they have to go to mediation to try and resolve the disputes around Matrimonial Real Property. At the end of their process, if they still can not come to an agreement, they have written in their law that the Provincial court can have jurisdiction, if they can not come to an agreement. I have been told by the Chief, that it has not come to that, so far. They have been able to mediate and come to agreements. The thing they are encouraging is that when couples are contemplating marriage they encourage entering into marriage agreements, which are commonly called prenuptial agreements, so that it is very clear that if something happens it is down on paper. Their law enforces what they call domestic contracts, so once you enter into a contract and sign it then you are bound by that contract. They haven’t required any outside body to enforce that, they are doing it through community cooperation.

QUESTION 2 – Regarding Provincial court, you stated that the MRP is something the Federal government is trying to impose on First Nations, so how does the Provincial Government get involved when it is the federal government trying to impose this MRP issue?

ANSWER – I spoke about AOK First Nations law, within their law the last part of their process is, that is if they can not come to an agreement, they have what they call is a Court of Competent of Jurisdiction. Until they establish their own court, they have allowed the Provincial court to be that body. Six Nations is not contemplating that at this point - there are other options like establishing our own court, regional court, tribunal, or an elder’s panel. There are different options for resolving disputes. The specific one I was referring to was the AOK First Nations law.

QUESTION 3 – Is there anything in place right now at Six Nations to recognize the rights of both spouses, in regards to Matrimonial Real Property Issues?

ANSWER – No, that is why this law is needed.

QUESTION 4 – If the MRP Law is passed here at Six Nations, do you anticipate that it is something that the Federal Government will fail to recognize?

ANSWER – What Council has decided is, to do this law based on the inherent jurisdiction of Six Nations - we do not really care if the Federal government recognizes it or not. One thing is clear, that in my research on this issue, is that it has never gone to Federal Court. Basically what they would be doing is challenging our inherent authority to pass our own laws, which is ludicrous, because it is the right of self-government and self-determination, which is recognized in Canada's constitution.

QUESTION 5 – So it is possible that some where down the road, a couple here at Six Nations could take there property issues to litigation, if they feel their issues are not dealt with here at Six Nations?

ANSWER – Yes, that is possible, but the Provincial laws can not be enforced here. If we develop our own law and we have our own enforcement and if couples choose not to follow it and go to a provincial court, what ever decisions are made, they will not be enforced down here.

ANSWER2 – After Six Nations passes a MRP Law and it is being enforced, the MRP Law would be based on the inherent right to self-government. In a First Nations as large as Six Nations, if the law has been in placed for several years, it is possible you could get a couple that is not happy with a ruling of the MRP Law at Six Nations. If they challenge it in court, it would be in the nature of a constitutional challenge. One of the issues that would be raised would be, is this a valid law? The position of Six Nations would be yes, it is a valid law and it is based on sovereignty and the inherent right, recognized by section 35 of the Canadian Constitution Act. That law is a valid law, which is superior to federal and provincial law. It would be the constitutional issue that would be handled in the courts and the Six Nations legal position is very strong and positive, on that issue.

QUESTION 6 – We have heard those two words over the past year and half, jurisdiction and sovereignty, do you think that they are really going to recognize it this time?

ANSWER – We don't really care if they recognize it, we are just stating it and that is the same thing that AOK has done. They develop their own MRP law and the Federal government said, "I don't recognize it" and the Chief said, "I don't care, I never asked you to recognize it". If you are going to be sovereign and assert your own jurisdiction, then you just do it. We don't know what is in the Federal MRP law, it hasn't been tabled yet, we are trying to get the jump on it and be proactive on it. All we know is some of the recommendations, that were made by the Ministerial representative and we won't know what is in it until it tabled in Canadian Parliament, which we now understand will not be until after the Specific Claims legislation this fall. It also depends on what happens with the government, whether there is going to be a federal election this fall or even next spring. Despite all of that, we want to take the position that we are going to develop our own MRP law. If that is what the community wants, if the community doesn't want us to do that, then they should tell us.

QUESTION 7 – Does it have anything to do with Membership, if you marry a non-native?

ANSWER – It is not directly related to membership, it deals with the existing membership. It depends on the status of the couple that is separating; it is about how the real property – house and land, is dealt with when a couple separates or divorces . It doesn't deal directly with membership and it doesn't affect membership.

QUESTION 8 – If a non-native marries a native and that partner passes away and they get that land, can they have two other non-native people living there?

ANSWER – If there is a native and non-native couple and the non-native is not a band member and the property is left to the non-native, they would have to sell it, because they can not own it. The residency by-law says they can't live here.

QUESTION 9 –A non-native could sell to another non-native, would that be the worst case of scenario of that?

ANSWER - You are actually getting into the text of what I want to get into. At this point, I just want to get into the background of MRP. We are going to get into that, the specifics of specific situations, so that we can deal with that and everyone understands. You are just a little bit ahead of us. [Non natives cannot own First Nations land so could not sell to other non Indians.]

QUESTION 10 - Would it be beneficial for us, not just for this by -law, but for other issues that come up on reserve, that we develop our own justice system first before we could carry on with these other? The way you mentioned that we have to deal with a provincial judge, if we had our own justice system we would deal with our own judge, is that possible?

ANSWER – Definitely, the last two terms there has been a committee struck to look at those items. Sorry to say we are without a coordinator right now, so the work is not being done as quickly as we like, but we are certainly going to look at that. As we are doing tonight, we would get community input. I know they did some back in 1999/2000 and my understanding is that it wasn't presented to the community in a fashion, that the community understood. The community didn't have enough information, so they said no to a provincial court at that time. There is always a possibility that Six Nations could look at that down the road. You are right, if we are going to have our own law and then run to the province when we don't agree, then definitely it is not going to work.

QUESTION 11 – Are you also working on the Federal Provincial government, for them to sanction our justice system, so that we could develop our own laws?

ANSWER – Right now we have that ability, to develop our own laws, which is what this is. You got to get the community input and do it. If you want to be a law maker, you do not go

to someone else and ask them if you can do it, you just do it. That is what the community has to do and support it. If they don't want us to do it, then we don't it.

ANSWER2 – I just want to make one comment, you referred to this as a by-law, it is not a by-law. A by-law is something that is under the Indian Act that you have to send to the Minister of Indian Act and he has to approve it or disapprove it. This is a Six Nations Law, being under its own jurisdiction, it is not going to be submitted to Federal governments; it is going to be our own law.

COMMENT - Speaking of laws, we had a voting at the last election on a by-law. It was accepted, the votes were for the law and so far nothing has been done to uphold this law. It was a residency by-law. I would urge my representative of my district, district 4 to work with council and whoever else, to make this by-law work, because nobody has done anything about it and it passed at the last election.

ANSWER3 – What we are trying to do here is be proactive, instead of reactive. What generally happens is all of these things get done and right away council is reactive to what has happen. So, we are trying to be proactive and get ahead of the game. As far as the provincial court goes, if we do our own law and people choose to go to the provincial court and not use our law, whatever the provincial courts decides, it isn't going to apply on the reserve. They can do it if they want, but it is not going to be enforced on the reserve. Only our law will be enforced, so that is something people need to know. We really want to work on this mediation process, to get people to settle all of their difference without having to go to court. For me anyways, that is going to be the main trust of this law. Hopefully people will do that.

ANSWER4 –When you talk about the justice system, yes we are trying to put things in place. I believe that we have to have something, for example a judge to enforce the law, because we know we haven't been successful in even enforcing some of our by-laws. Everyone knows that the police do the best they can. We are trying to gather all the necessary information we will see what we can do with your input.

ANSWER5 – The Federal Government is going to enact their law, whether we like it or not. As we sit here, we have the opportunity to create our own law and that law will come from the community at large and that law will stick. If you get out and do your due diligence and get your feed back, that law will stay here. It will come from the community, all we are going to do is implement what is coming from the community. In the mean time the federal government is going to put a law on us and their law will stay, until we put our own law in place. To me, that is after the fact and it would be hard to do that. I am saying get a jump on them now and do our own law and that will take jurisdiction over any other law they are trying to impose on us. I am really looking forward to your feed back and however we are going to proceed on this.

QUESTION – Why Do we need this law, if we have survived as a people for so long, without the dictation of dispensation of property? Why now and is it the influence of C-31's who have regained their status and are now depending the same, has to what they would be entitled too off the reserve? You see that influence going on a lot. Is making this law going to diminish Six Nations? For generations we survived, the real property is here, so what is different what is happening now?

RICHARD – The background to this is the Federal Government is going to be introducing legislation, probably this fall or the spring at the latest. I was on the phone yesterday with some people at AFN, who are involved in meetings and they are going to be shown the third draft of the federal law, although it hasn't been tabled yet, of what the Federal Government is going to be introducing in the fall on this issue. For the Federal Government, parliamentary studies started in 2002 and went to 2005, there is a Standing Committee and Senate Committee who have studied this and have come out and said, "there is a gap in law, there is no protection for First Nations women on reserves" and that was the initiative behind this . The best intelligence we have, is that the Federal Government is going to go forward and impose a law and that is the reason for us doing it, is to take control and be proactive. Take control and set our own law.