

Justice as Healing

A Newsletter on Aboriginal Concepts of Justice

Peacemaking and the Tsuu T'ina Court

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The Aboriginal Peoples of Canada's First Nations have a deep respect for their elders that is deeply rooted in their traditions and cultures. Even today, one can see the impact of aboriginal respect for elders. The Tsuu T'ina Court and peacemaking initiative on the Tsuu T'ina Reserve in southern Alberta is an example of Tsuu T'ina respect for their elders and the benefits that flow from that respect.

The Tsuu T'ina are Dene people. They number approximately 1800 and occupy a 108 square mile Reserve southwest of Calgary, Alberta. In 1996, the Tsuu T'ina proposed that an aboriginal court and peacemaking initiative be established on the Reserve.

The Tsuu T'ina Court began sitting in October 2000. It is a provincial court situated on the Reserve with jurisdiction for criminal, youth, and bylaw offences committed on the Tsuu T'ina Reserve. A peacemaking program was initiated by the Tsuu T'ina and is an integral part of the justice process.

A group of young people had been idle and, as a result, got into trouble. They broke into the school, stole some money and damaged school property. The loss was over one thousand dollars. The peacemaking circle decided that the youths had to pay back what they had stolen and compensate the school for the damage caused. The youths agreed with the circle to pay for the loss and damage they caused. They all found jobs and paid the restitution in full.

It started with a traffic case. A Tsuu T'ina member was charged with driving a motor vehicle without insurance on Reserve roads. The case went to court and the charge was dismissed because the provincial law regarding insurance only applied to public roads. The Reserve had been set aside for the benefit of the Tsuu T'ina and the roads on the Reserve were not for public use. The Tsuu T'ina elders, however, were concerned about the behaviour of motor vehicle drivers on Tsuu T'ina roads. They said all drivers on their roads should have insurance because, if there was an accident and someone was hurt, it would be the person who was hurt who would suffer and be without the benefit of insurance. The Tsuu T'ina elders directed the Chief and Council to do something about this problem.

The Chief and Council and their advisors decided they would pass a traffic bylaw. In the course of their deliberations, they decided that they had to look beyond traffic problems and address all justice issues whether arising from assaults, thefts, other crimes, or traffic offenses committed on the Reserve.

The criminal justice system was not working for the Tsuu T'ina as it should. The Tsuu T'ina had established their own police service and participated in a community corrections society that provided crime prevention, court worker and probation supervision services. Something was lacking. The Tsuu T'ina community was not becoming more peaceful. When the Tsuu T'ina consulted with their elders, the elders explained the traditional approach to dealing with conflict. The elders said that those in conflict had to be healed if they were to behave properly and relationships between victims and offenders had to be restored. These things had to be done by the people of the community. Through such peacemaking, conflict in the community could be resolved.

The Tsuu T'ina drew on the elders' advice, their community resources and cultural traditions, and the experience of other First Nations and Tribes to develop their concept for an aboriginal court and peacemaking initiative.

A younger woman assaulted an older woman. The two had been friends. The assault had ended the friendship. In the peacemaking circle, the younger woman apologized to the older woman, saying "I'm sorry I hit you but what you said to me at the time really hurt me." In this case, apologies went both ways and their friendship was restored.

[Sample Article]

The Tsuu T'ina proposal for an aboriginal court and peacemaking initiative was accepted and an agreement to proceed was accepted. An agreement to proceed was signed by the Tsuu T'ina, Alberta and the federal Department of Justice on October 15, 1999.

The Tsuu T'ina Peacemaker Court has two aspects. First, a provincial court was established on the Tsuu T'ina Reserve. The court is set up in a circular arrangement. The judge, the prosecutor, the court clerks, the courtworker, and the probation officer are aboriginal people. Some of the defence lawyers who appear are aboriginal. The protocols of the Court reflect Tsuu T'ina traditions. The Court starts with a smudge, a traditional burning of sage or sweetgrass signifying a prayer for guidance. The judge wears a beaded medallion symbolizing the Tsuu T'ina Nation. The court clerks wear tabs embroidered with eagle feathers, a sacred symbol for Aboriginal People. These measures are taken so that the Tsuu T'ina will see the Court as their court, their system of justice, and their wish for peace and order in their community.

Second, peacemaking was made an integral part of the court process. A Tsuu T'ina peacemaker sits across from the Crown prosecutor. When a person charged with an offence is willing to enter into peacemaking, the case is adjourned while the Peacemaker Coordinator assesses the case and decides whether to take it into peacemaking.

The Tsuu T'ina had asked the elders what offences could be dealt with by peacemaking. After deliberating, the elders advised that any offence could be considered for peacemaking except homicide or sexual assaults. The Tsuu T'ina also decided that they would do peacemaking only if the victim of the offence agrees to participate. The Peacemaker Coordinator also considers other factors before deciding to accept the matter into peacemaking.

Examples of cases dealt within peacemaking include break and enter, theft, assaults, domestic assaults, drug possession cases, and traffic bylaw offences.

An elderly lady from Morley was charged under the Tsuu T'ina traffic bylaw with driving on a Reserve road without motor vehicle insurance. The peacemaking circle included an elder from the Stoney Reserve. During the peacemaking circle, it came out that there had been a death in the family and the woman was driving around trying to complete arrangements for the funeral. The peacemaking circle asked the Stoney elder about the Stoney traditions. He explained that, some time after the death, the family of the deceased would arrange for a ceremony where the family and friends of the deceased would say goodbye to the departed and let go of their grief. The peacemaking circle decided that the woman had to arrange for that ceremony. There was an expense to holding the ceremony and that expense was comparable to a fine for driving without insurance but, in this case, the money was spent in a healing way. By the time the matter returned to court, the motor vehicle in question had been insured.

If a case is accepted into peacemaking, the Peacemaker Coordinator assigns the matter to a community peacemaker. He chooses a person who will be seen as being someone who will be fair to both sides. The peacemaker then takes charge of the process.

The Tsuu T'ina chose their peacemakers from the community by asking the members of every household on the Reserve who they trusted to be fair in peacemaking. By this process they identified people who could be peacemakers for the community. They recruited from these community members and provided them with a training course of their own devising. The Tsuu T'ina course reflected their concept of peacemaking, their traditional values, mediation and dispute resolution, and provided an understanding of addictions, child welfare, and family issues.

Once the peacemaker takes charge, he or she will gather together the participants. The person charged with the offence will be present, as will be the victim. Family members of the offender or victim may also be involved. There is always an elder to see that the peacemaking is conducted properly. In addition there may be helpers or resource people. For instance, if the offense involves alcohol, then there may be an alcohol addiction counsellor from the Spirit Healing Lodge. A peacemaking circle may have anywhere from five to twenty-five people participating.

The peacemaking circle draws upon Tsuu T'ina tradition. Each peacemaking circle generates its own dynamics. Deception and evasion is discouraged because people are present who either know the event that happened or know the speaker. When one speaks, he or she has the attention of all those in the circle. A victim is supported and in a safe environment. The offender is offered help. The peacemaker guides the

process but does not take the direction away from the participants. The elder's presence and input, derived from life long experience and knowledge of Tsuu T'ina traditions, adds a further perspective to the peacemaking circle's understanding.

The peacemaking circles are directed at resolving the conflict, healing the offender and the victim and restoring relationships. A peacemaking circle begins with a ceremony. It may be a traditional ceremony using sage or sweetgrass, a prayer, or just a simple statement that the circle is about to deal with an important matter. When a circle is held, each person speaks, uninterrupted, while the others listen. The first time around the circle, they speak about what happened. The second time around the circle, each says how they were affected by what happened. The third time around the circle, they speak about what should be done. This may take time continuing until, it is clear what should be done. In the fourth circle they speak about what is agreed. Circles may take from two hours to two days, although, most are concluded within an afternoon.

A husband had assaulted his wife. The couple had a history of domestic strife because of drinking and arguments. After the husband was charged, the case was taken into peacemaking. The peacemaking circle enabled the couple to speak openly with each other and set limits for each other's conduct. The wife was able to tell her husband that she would not let him assault her again. She would call the police if necessary and she would leave the marriage. In the circle, the husband was able to express his frustrations and say to his wife that he would not accept her verbal harassment. The husband was also able to speak about his personal unresolved grief issues. They had children and neither wanted the marriage to break up. The husband undertook to take grief counselling and the couple both agreed to take marriage counselling together. The peacemaking circle was witness and party to these agreements. After the circle, the husband took counselling. As the counselling progressed, the husband began to feel better about himself and, as a result, the marital relationship has improved.

The person who committed the offence will sign an agreement to complete the undertakings he or she agreed to in the peacemaking circle. It may be an apology. It may be restitution for damage done. It may be taking alcohol abuse counselling, psychological counselling, or one on one sessions with an elder. The person may undertake to participate in a traditional ceremony. The person may do community service such as working for the elders or performing other tasks. The possible tasks are as varied as the people in the circle. There often are several tasks that must be undertaken. Once the person completes those tasks, he or she returns for a final peacemaking circle where a ceremony is held celebrating the completion of the tasks. The matter is then returned to court.

In court, the Peacemaker Coordinator reports on what has been completed by the offender. The Crown prosecutor assesses what has been done against the nature of the offence. If she thinks it is appropriate, the prosecutor will withdraw the charge. If the matter is serious, the prosecutor will agree that the peacemaking report will be part of the considerations placed before the court on sentencing. Either way, the outcome of peacemaking is an important in resolving the offence.

The peacemaker process allows for checks and balances. The person charged and his lawyer can assess whether to choose peacemaking. The Peacemaker Coordinator assesses whether the matter is to be taken into peacemaking. The Crown assesses that matter prior to the matter being referred to peacemaking and again when the matter case from peacemaking. The judge also has a role in deciding whether to adjourn a matter to allow peacemaking to proceed and considers the outcome of peacemaking if the matter returns for sentencing.

If the offender decides not to go into peacemaking, the matter stays in court. If the matter is not accepted into peacemaking or the offender fails to cooperate with the peacemaking process, then the Peacemaker Coordinator will return the matter to court to be dealt with without prejudice to the offender.

A woman attempted to steal some pills and was charged with shoplifting. She was very depressed. When asked in the peacemaking circle what skills she had, she answered that she had no skills, she had nothing. The pills were to help her cope with her depression. She had been relying on pills for a long time and she was addicted to them. Her life was going nowhere. She hadn't finished high school. In the peacemaking circle, the participants asked her if she could cook and keep house. She said yes. They asked if she could make camp. She said yes. They asked if she could make traditional garments. She said yes. Through their questions she came to realize she did have skills. They asked what were her dreams. She said she wanted to go to college. The circle decided she must take counselling for her drug dependency, complete high school, and then she

was to go to college. She took counselling for her addiction to pills. She finished her high school equivalency and registered in Mount Royal College. Some time later she came to the Peacemaker Coordinator and explained she was withdrawing from college. She had two teenage daughters that needed her help and attention. She was going to concentrate on helping them and then she would return to college. In this case, two daughters gained a mother's help at an important stage in their life when they most needed it.

The Tsuu T'ina have chosen to deal with conflict in their community. They are to be commended for becoming involved in the justice process and for showing another way to deal with conflict in the community. By addressing underlying problems of offenders and by restoring relationships between people, the Tsuu T'ina are working towards bringing about a more peaceful and safe community.