

1990 – 2010: What have we learned in twenty years?

The Haudenosaunee External Relations Committee was given the responsibility of dealing with the Government of Canada in what has come to be called “the Oka Crisis.” The Committee grew out of an earlier mandate from the Grand Council to Deskahe (Harvey Longboat) and Sotsisowah (John Mohawk) to address the issue. The mandate, in turn, arose from a request for help to the Grand Council from the Mohawk Nation Council of Chiefs, and began with a request from Tekarihoken, Samson Gabriel, the Turtle Clan Chief at Kanehsatake. I was a member of that Committee. It felt like we spent five years in the Montreal area in the summer and fall of 1990.

An earlier set of Mohawk negotiations had collapsed. Quebec’s Minister of Aboriginal Affairs and International Relations, John Ciaccia, had asked us to join those negotiations, and John Mohawk had turned down the request. If the talks work, he said, you won’t need us; and if they fail, you will need us as a backup, an alternative, before the army moves in. Internally, we had concluded that the earlier negotiations were doomed. They were doomed because the Mohawk demands were scattered and some were unreasonable. For example, there was the Mohawk demand that Canada ratify the 1794 Canandaigua Treaty. The Treaty was between the Six Nations and the United States: there is no conceivable role for Canada in, for example, a dispute resolution clause that calls for direct communication with the President of the United States. The negotiations were also doomed because the limited authority of the negotiators on all three sides indicated a lack of commitment to resolution. We were right, in hindsight, about the early negotiations. When they collapsed, both the federal and provincial governments quietly asked for Confederacy help.

Well, not quite. Every single thing the Government of Canada did in 1990 except for sending in the army was clad in deniability. Virtually at the same time as Roger Gagnon, the Assistant Deputy Minister of Indian Affairs, and Georges Beauchemin, sitting with us at a table at the Dorval Hilton, commenting clause by clause on a draft agreement, with a Department of Justice lawyer at his side and a cell phone call to Ottawa a standard part of his procedure, the Minister of Indian Affairs was giving a press conference in which he denied there were any negotiations, and denied Canada was part of them if they did exist. Any commitment made by Canada during the negotiations evaporated as soon as the crisis seemed to be over. Canada did not want a meaningful negotiated settlement.

John Ciaccia was a hero. He behaved with integrity and courage throughout the crisis. In the frustration and bitterness of the following twenty years, none of the participants has taken the time to acknowledge his conduct. But this is not to say that the Government of Quebec behaved with integrity and courage. In fact, Quebec behaved with confusion and unpredictability, for reasons we did not at the time understand. What was actually happening, we learned much later, was that Premier Bourassa was in Maryland, secretly receiving cancer treatments at the U.S. Naval Hospital at Bethesda. His cabinet, without a strong leader, had split into “hawks” and “doves.” Ciaccia was a conciliatory dove, but the cabinet was being dominated by the hawkish Attorney General, Gilles Remillard. At the negotiating table, Minister Ciaccia was accompanied by Jacques Chamberland. While

Ciaccia believed that his team was communicating by cell phone with the cabinet office, the calls went only to the “hawks,” who would then move to actively undermine anything Ciaccia said or did. Ciaccia, his efforts in tatters, would find out about this perfidy only a year later. Alex Paterson, a Montreal lawyer, was in the room next door to advise Ciaccia, and was told by Chamberland that “none of what Ciaccia was agreeing to had been authorized by the Justice Department.” By 4 a.m. August 29, Ciaccia wrote in *La Crise d’Oka*, he realized the Quebec government did not want a negotiated settlement. Quebec did not want a meaningful negotiated settlement.

The federal government was no better served or organized. Minister of Indian Affairs Tom Siddon was in cabinet mainly because he was one of the few Conservative Members of Parliament from British Columbia. He was spectacularly unsuited to address a crisis in Quebec: he spoke no French. As Minister of Fisheries, he had presided over the collapse of the Atlantic cod stocks with a series of political decisions of startling inanity. Prime Minister Brian Mulroney, sulking in Prince Edward Island over the collapse of his own constitutional efforts, left the handling of the crisis to his Quebec lieutenants, who had little meaningful experience with Aboriginal peoples and no history of dealing with Mohawks. Pierre Cadieux, Minister of Indian Affairs for just over a year in 1989, assumed responsibility, but we never had any communication with him. Canada never really sorted out who to work with, who could be relied upon, what its obligations were, or even what the issues were.

John Mohawk and Harvey Longboat met with the people at the longhouses in Kanehsatake and Kahnawake. They secured a mandate for the negotiations, and an understanding that they would not be able to get everything on the “shopping list.” The restoration of peace, in the Haudenosaunee sense of the word, was the highest priority. Replacing the original Mohawk negotiators with an increasingly well-defined team of delegates from the Confederacy worked well initially, but began to founder as the draft agreement started to look like it would become a reality. As the negotiations proceeded, Mohawks from Kahnawake, Kanesatake and Akwesasne came into the room. When the representatives of the Kahnawake band council arrived, late in the talks, they brought provisions and proposals that duplicated the list of demands of the earlier, failed talks (Arnold Goodleaf presented them as “new,” but he soon admitted that they had simply been retyped in a different font). As the Mohawk factions began to argue, the unity of mind that had allowed the negotiations to progress began to dissipate. Afterwards, we learned that business people in Kahnawake had determined that the agreement that was taking form should die. They were especially concerned about the idea that there would be discussions between the Haudenosaunee and Canada and Quebec about viable, sustainable economies for Haudenosaunee communities. They saw this as aimed at a takeover or elimination of the tobacco economy. They were probably right. There were Mohawks who had no interest in a negotiated settlement.

What John Mohawk had done with John Ciaccia was to move the conversation from the effects of the crisis to the roots of the crisis. What were the things that had brought us to this point? What is the thinking that will draw us back to where we ought to be? It was

not difficult to identify these issues: the list was drawn up within the first hour of the real talks. Nor was it difficult to create a process that would generate agreement. The parties at the table would explain their concerns, and each would try to address and alleviate the concerns. They would listen hard. They would propose tentative solutions. They would seek peace. Above all – Mohawk and Ciaccia agreed from the very start – they would not lie to each other and they would not play tactical games. With two-thirds of the Canadian Armed Forces infantry ready to move in, there was no time for that.

While it is true that the issues and solutions of the draft agreement of 1990 are a product of their dark times, it is also true that every single issue remains a serious one, and that most have become more serious and remain unresolved. Ways to address many of the issues were among the recommendations of the Royal Commission on Aboriginal Peoples in 1995, and those recommendations have largely been ignored by the federal and provincial governments. I would like to examine the issues and then consider their present state. It is not a speculative exercise. It is a matter of taking inventory.

I should mention what seemed to be the least long-term of the issues first, because it became the one that led to the collapse of the negotiations. It had become clear that there would be criminal charges arising from the crisis. The Haudenosaunee negotiators set out several serious concerns: they needed guarantees of the safety and well-treatment of people taken into custody; they wanted clarity about the principles governing the laying of charges; they wanted fair trials. For example, they said, while we might agree that a Mohawk who broke into someone's house and stole a stereo should face criminal charges, a man who, in the face of an attack on his community, picked up a gun and blocked a road but never fired at or injured anyone should not be treated as a criminal. The point was that we could not agree on who ought to be charged in the little time we had. We could not even agree on the types of acts that ought to lead to charges. But we could agree to set up a fair process that could identify which acts should lead to criminal charges. Quebec's response was that the Attorney General demanded to have full and final authority and jurisdiction. There would be no impartial body, neither decision making nor advisory.

As we struggled with the Quebec Attorney General's deliberately intransigent position, the federal government was beginning to bail out. First Assistant Deputy Minister Roger Gagnon announced that Canada required the removal of any reference to a "land claim settlement agreement" in the agreement we were crafting. Perhaps because English was not his first language, his choice of words was unfortunate: we want it removed, he said, because the words might make the agreement binding. In fact, the Haudenosaunee had deliberately used the term because it is used in Section 35 of the 1982 Constitution Act. It could make the agreement more than binding: it could make it part of Canadian law. Faced with angry questions about why Canada would fear entering into a binding agreement, and what meaning a non-binding agreement might have, Gagnon suddenly announced that he was not representing Canada at the table; that he was only an observer. With intransigence from Quebec, and with Canada deserting, it did not take much for the

Mohawk factions to begin to hurl accusations at each other. The negotiations were in serious trouble.

The issue of fair trials and selective charges was never resolved. A proposal for immediate access to legal aid lawyers was inadequate. A later proposal for an independent prosecutor was also rejected. Quebec proceeded with dozens of charges, securing very few convictions. A legacy of bitterness and distrust remained.

The draft agreement committed the three governments to creating pragmatic, effective ways to address land rights and claims. Today, proposed development affecting the Pines at Kanehsatake threatens to explode into a new confrontation. Today, negotiations about Kahnawake's seignior claim move into their eighth year. Today, negotiations at the Grand River Territory are floundering after nearly four years. Canada's claims processes are in gridlock again. The Specific Claims Tribunal Act, declared in force in late 2008, is window-dressing: only three of nine judges have been appointed; no cases have even begun to be heard, nor will any be heard for at least another year; and other elements of the "Justice at Last" policy announcement of 2009 are in even worse shape. The panel of mediators doesn't exist. The independent centre for funding land rights research consists of the same Indian Affairs bureaucrats, in the same offices they've worked in for the past decade, reporting to the same people and doing the same work under the same policies. Federal austerity measures are hamstringing negotiations in unexpected ways: a ban on overtime pay, for example, means federal negotiating teams won't meet for talks on Mondays or Fridays. Provincial governments, whose participation is essential in the Canadian constitutional system to resolve claims involving land, have continued to avoid meaningful participation in claims resolution processes.

The draft agreement considered the verifiable destruction of the weapons of confrontation. It didn't happen. If anything, all three sides are more prepared for a fight today than they were twenty years ago. The Quebec Police had a press conference to show off their new armoured personnel carriers, which they explained would be available to assist with "natural disasters." The Canadian Armed Forces have, as a result of their experience in Afghanistan, become combat soldiers rather than peacekeepers (at last count, there were four Canadian Armed Forces peacekeepers left on active duty). Not only have none of the Mohawk armaments been destroyed: the state of readiness and the quality of the weaponry has been enhanced. It's not generally appreciated that Kahnawake has a long history of close relations with the United States armed forces, and especially the Marines. In 1990, the Canadian Armed Forces reported to the federal government that, given the maze of defensive earthworks around Kahnawake, any attack that was not preceded by aerial bombardment would result in unacceptable levels of casualties. Today, intent on protecting not only the tobacco business but also internet gambling operations that dominate that industry, Kahnawake is even more prepared to defend itself.

The draft agreement acknowledged that the lack of viable, sustainable, non-dependent and culturally appropriate economies in Haudenosaunee communities had contributed to

the problems of 1990. It proposed that the three governments should work together toward the creation of those economies. That never happened. Instead, Haudenosaunee community economies are linked to their neighbours' addictions to nicotine, gambling, and even drugs and alcohol. Communities in which everyone was more or less equally poor have given way to those in which an economic overclass is deeply linked to morally marginal activities.

The draft agreement committed the parties to a review of the history and substance of treaty relations between the Crown and the Iroquois Confederacy. The work was to begin immediately. Within three months after the collapse of the talks, federal officials began to deny that any commitment had been made. Within a month after that, they simply stopped replying to telephone calls, and Jack Donegani, the designated liaison, was transferred to other duties and not replaced. When the situation at the Six Nations Grand River Territory and Caledonia began to fester, it was clear that, fifteen years later, Canada had not done any of its homework. It still had no principled conception of the relationship – or else wanted none.

A commitment to repair Crown relations with traditional Haudenosaunee governments was another issue addressed in the draft agreement. It was also a recommendation of the Royal Commission on Aboriginal Peoples. A year later, the Minister of Indian Affairs was to meet with the Chiefs of the Confederacy at the Grand River. A week before the meeting, it was postponed. A few months later, the Department of Indian Affairs began to assert that no meeting had ever been arranged. Today, things have receded further: the Government of Canada seems to have no idea who the chiefs are.

There had been agreement that Canada, Quebec and the Haudenosaunee would together discuss viable, sustainable economies for the communities. There has been no such conversation. Instead, dependency on tobacco and gaming has increased. The result has been a new set of confrontations waiting to happen.

Policing was another issue covered by the draft agreement. If there had been any viable agreement on the subject, we probably would have been able to avoid the troubles at Kanasatake that saw the police station torched, and outside police forces become a virtual occupying army. We might even have been able to avoid the difficulties at Tyendinaga last year. Basic questions of law and order – whose law, and the nature of order – have not even been the subject of respectful conversations. A patchwork of band-aid solutions has avoided several collapses, but the stability and sense of purpose that implementing the draft agreement would have produced are painfully absent.

Court is clearly not a solution, and several cases have demonstrated this. There is something about the confrontations that attracts lawyers - private, federal and provincial – who inhabit territory at the edge of sanity. The adversary system of Canadian law is ill suited to issues that require respectful negotiation, and placing matters in the hands of lawyers, especially lawyers with no authority to negotiate, fosters a “no prisoners” atmosphere in every court case. Abdicating the issues to the courts guarantees flawed

results, inadequate solutions, legalistic and narrow thinking. It doesn't postpone the need to address the real issues – it only appears to do so.

There are days when I think that if we could only return to that hotel room in Dorval, we might be able to do things right. Those days are rare. Some of us are twenty years older, and we have learned something during that time. Some of us, clearly, have learned nothing. Some of us are dead. Realistically, the commitment to address the issues was not there then, and it remains absent now.

In a lot of ways, they got the principles right over three hundred years ago. The Covenant Chain is made of silver, because that metal is precious, but also because it requires maintenance to remove any tarnish. Its three links symbolize respect, trust and friendship. As with any Haudenosaunee matter, there is a proper order to these concepts. Respect comes first, for without respect one cannot build trust. Only once trust is established can one hope for friendship. But the beginning, the base without which no structure can stand and no process can succeed, is respect.

I remember my horror, back in 1990, when Justice Minister Kim Campbell announced that the rule of law had to be re-established, and that these people needed to learn that there was one law in this country, and it was Canadian law. I was horrified at the ignorance and the arrogance and the disrespect. Haudenosaunee law exists. It is complex, respectable, peace-based and thoughtful. It will not disappear simply because the Minister says it does not exist. If we think the abiding lesson of 1990 was only that power grows out of the barrel of a gun, then we have learned nothing for next time. And next time, which will come inevitably, and sooner than we are ready.