The land code conflict resolution proposal
by Grand Chief Steven Point

Why should we, collectively invest our time and energy into a Stolo Conflict resolution process, why not leave it to existing courts?

Some history.

- First Nations who have decided to opt into the Land Code, are doing so pursuant to the Land Code Framework Protocol Agreement with the Federal Government.

- Controlling reserve lands under a land code has been a lengthy process over many years.

- Reserve lands have been under the direct control of the Federal Government pursuant to the Indian Act. All leases for example or any land development had to be approved by the Minister.

- 207 First Nations have gradually obtained more and more direct control of their lands through opting out of the Indian Act to signing agreements with the Federal Government under the Framework Agreement.

- Today under the new land code, First Nations governments have their own staff, concluding large land development contracts. This kind of control has many benefits some of which include enforcing environmental laws passed by our own governments.

Conflicts arise

- As more First Nations take on more land responsibilities, the probability of disagreements between parties to a contract on reserve lands increases.

- For example, lets say that a neighbor needs access to his land for the purpose of building a home and an on-reserve door making factory. They enter into an access agreement but later on the development party renegs on the price for the access.

- In today's conflict resolution world, the courts are the obvious place to bring this conflict. For on reserve land, the court of choice is the Federal Court.

- The Canadian court system is not based on Indigenous values, but instead are costly, complex, centralistic, hierarchical, and adversarial.

- In your land codes however you now have the option of creating an indigenous conflict resolution process that could utilize indigenous law and indigenous conflict resolution process.

But how would this work?

- You could employ on a contract basis, legally trained individuals to conduct indigenous mediation gatherings.

- Pursuant to the Land Code you could also hire your own Justice of the Peace.

- I recommend doing both, with the former being a first level of conflict resolution with a trial de novo before a justice of the peace.

Could we utilize Indigenous ways and culture?

▶ The answer is a resounding yes. You could utilize elders to open such processes with a prayer and even smudge or sweat grass.

▶ The presence of an elder is always calming and lends an air of sincerity and objectivity.

▶ You could even have some food available for lengthy conflicts. Food is always a way to get informal discussion going and allows the parties to relax.

▶ In such gatherings all the court rules like the rules of evidence do not really apply and you need not even have to make a record of the dialogue, only the outcome is important.

▶ By allowing the parties the freedom to express themselves without fear of being quoted outside the room, allows the parties to vent, to get it off their chest.

How would this circle process get its conflicts to resolve in the first place?

- Ok lets go back to the right of way dispute, where the developer has failed to pay for the agreed right of way compensation.

- The aggrieved party would need to come to some place to lodge the complaint.

- This would require some building with offices and some staff.

- The plaintiff, should pay a registry fee, even if it is nominal in order to discourage frivolous or vexatious claims.

- The claim should be received by a registrar and filed with a stamp and date.

- There should be someone who actually prepares the a report for the mediator, because the process should be about resolving the dispute and not having to dig for facts not in dispute.

What if the parties don't like the results of the mediation?

- They should be able to have their dispute heard by a Justice of the Peace who conducts a hearing. This would be a more formal type process where the parties would be called upon to give evidence under oath.

- Whereas the rules of evidence would not be an impediment to this process but fairness demands that some rules would have to be developed to ensure that the process is objective and credible.

- There should be an appeal to the superior court if the one of the parties still is unhappy with the decision of the Justice of the Peace.

How would this process be paid for?

- It would be good if such a process could be self supportive, that is if it paid for itself, either through fines, or fees.

- This is probably not going to happen. Very likely it will require some government support in the beginning for capacity building, for capital expenditures , for start up equipment and training.

- If there are several First nations coming together to create this system then they could reduce the individual costs, by sharing the over all cost by some formula, such as percapta shares.

The Stolo House of Justice

- The Stolo Nation created the House of Justice, now called Qui Qwel Stom, in 1994. this House of Justice is part of a larger constitution, that contains a House of Chiefs, (Siam) and the House of Elders, and a Youth Council.

- Qui quel stom, already does work in the criminal law, by doing circle sentencing that utilizes Stolo Elders and Stolo culture.

- So Far seventeen Stolo First Nations have named Que quel stom as the place where their conflict resolution will be conducted pursuant to their Land Code agreements.

- These 17 Stolo First Nations have been meeting to discuss the way forward with regard to conflict resolution as they arise pursuant to the Land Code.

Questions Please.