

TAB 2



INDIGENOUS LAW

Issues 2016

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One Year Later: How the Liberal Government has Advanced Indigenous Peoples' Issues

Isadore Day
Ontario Regional Chief

November 14, 2016

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Indigenous Law Issues 2016
Law Society of Upper Canada
Ontario Regional Chief, Isadore Day
November 14, 2016

Department of Indigenous and Northern Affairs Canada

- Liberal Party 2015 platform committed to:
 - Immediately re-engage with First Nations in a renewed Nation-to-Nation process to advance critical issues such as: housing, infrastructure, health and mental health, community safety and policing, child welfare, and education.”
 - Lift the two percent funding cap for First Nations programs, and establish a new fiscal relationship- one that provides sufficient, predictable, and sustained funding to support community priorities.
- Speech from the Throne outlined that it will:
 - Implement the Truth and Reconciliation’s Calls to Action;
 - Launch an Inquiry into missing and murdered Indigenous women and girls
 - Work with First Nations so every First Nations child receives a quality education.

Ministry of Indigenous Relations and Reconciliation

- The Ipperwash Inquiry recommended a Minister and Ministry of Aboriginal Affairs for Ontario in 2007.
- The Recommendations also called for enough resources to have better land claims policy and resources, relationships between various arms of the Ontario government and First Nations.
- 2016 Mandate Letter instructed the Minister to the following priorities:
 - Addressing the Legacy of Residential Schools
 - Reconciling Relationships with Indigenous Peoples
 - Improving Drinking Water for First Nations
 - Ending Violence Against Indigenous Women
 - Engaging in Dialogue with the Federal Government

The Political Accord



Reconciliation

The TRC defines Reconciliation as:

“an ongoing process of establishing and maintain respectful relationships. A critical part of this process involves repairing damaged trust and following through with concrete actions that demonstrate real societal change. Establishing respectful relationships also requires the revitalization of Indigenous law and legal traditions....”

The Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*. (Winnipeg, MB: The Truth and Reconciliation Commission of Canada, 2015), at pp. 16-17.

A Score Card

- An ongoing process of establishing relationships (Political Accord, Working groups, Political Leadership tables, etc.)
- Ongoing maintaining of respectful relationships (HST discussions lead to Ontario regulation to allow for P.O.S. (8%) Ontario portion exemption)
- Repairing damaged trust (land claims policy, rebuilding social/education partnerships with First Nations)
- Implementing concrete actions (*Journey Together* and *Common Sense*)

Connections / Coexistence

- **Treaty Relationships:** First Nations understand their treaties and want the Crown to “perform” their obligations and work within treaty relations as established long ago.
- The sharp dealing regarding “surrender” provisions cannot be the basis of consultation and accommodation regimes. As Aboriginal title holders who reconciled that title within a new regime of sharing with others, that historic reconciliation needs to be the basis of renewed discussions of co-management, co-jurisdiction on
- **The priority of sustenance and cultural ways of life must find priority over resource management regimes. Revisiting our ancestral lands is so important to Indigenous continuity.**

Wealth Creation

- Many First Nations have strengthened their socio-economic well-being through partnerships, IBAs, and innovative agreements that protect their ways of life and connection to land and life-giving water.
- My vision of energy, involves working with political leadership on the opportunities and safeguards for our communities. We now have active solutions-based discussions on electricity in our communities as well as a recently announced wealth creation fund for First Nations in Hydro One.
- First Nations in Ontario can assist in advancing Ontario's economy in a better way. The energy sector is leading the way in how we can achieve success, allowing for large scale partnerships and solutions-based discussions. These very advanced and technical projects are a nice fit for our communities who have years and years of experience in living in our environment sustainably.

Social Determinants on Health

Our existence is connected...

- To the land;
- To the water;
- To our family, our children;
- To our ancestors;
- To the women and girls in our communities who have become vulnerable within this colonial relationship;

The colonial relationship needs to end.

The Indian Act is no safe harbour



Indigenous Jurisdiction

- Jurisdiction has always been a part of our relationships with others- from treaties to protocols, to long-lasting peace
- There are tables in Ontario, and relationships being renewed with First Nations, where jurisdiction is now the centre-piece of discussions. This is good news.
- Laws are important to self-government, and our jurisdiction has never been relinquished.
- We have a Diversity of over a dozen Indigenous Nations pre-existing Canada in this region north of the Great Lakes, alongside James Bay, Lake of the Woods, the Albany River, Rainy River and those many historic places well known by both Ontarians and First Nations people – this diversity is our strength.
- We need to honour these Nations for their strength and survival. It is our social collectivity that have saved our languages, cultural ways and laws....precious things awaiting strong renewal.

Important Interventions

- Because of the 1965 Welfare Agreement, Ontario First Nations intervened in the *First Nation Child and Family Caring Society v. Canada* human rights action. We continue to advance our interests here.
- We intervened in the *Daniels* decision and continue to monitor to ensure that the decision is understood and not misstated or misused to advance claims that weaken our Nations' jurisdictional efforts.

Our Nations support the *Shippewas of the Thames* in their appeal to the Supreme Court of Canada and our efforts to ensure that the *Shippewas* are not misstated or misused to advance claims that weaken our Nations' jurisdictional efforts.

- Canadian law is not necessarily where we want to be as First Nations in advancing our rights and interests. Our focus is on independence for our communities, respectful interdependence within our territories, and treaty enforcement.