

Alberta band has plan for tribal court system

Southam News

A northern Alberta Indian band is trying to set up Canada's first tribal court system.

The Saddle Lake reserve has submitted a plan to Ottawa for a pilot court — but their model is a radical one.

The band of about 3,700 wants a tribal court that will emphasize mediation and arbitration to resolve disputes, including criminal complaints.

They propose to replace police officers with "peacemakers," who would attempt to settle arguments through discussion.

If that failed, the dispute would be sent to a tribunal composed of band elders.

Their revolutionary proposal would amend the Criminal Code for application on the reserve, replacing an offence such as break and enter with a charge of trespass.

Fit punishment

They say a fit punishment upon conviction for such a "trespass" would be compensation to the victim.

The Saddle Lake band would also largely do away with incarceration, and instead impose penalties of community service.

But a legal researcher about to publish a book containing draft legislation for a tribal court says the justice system can't be so radically different.

Robert Reiter, who thinks provisions of the Constitution Act and the Indian Act may already give authority for a tribal justice system, says: "The whole thing has to fit into the mainstream somehow or it just won't work."

Reiter, who researches aboriginal law issues for the Edmonton-based First Nations Resource

Council, says his model incorporates some aspects of the U.S. system.

But he would extend a tribal court's powers to some of the more serious crimes, such as assaults.

He suggests appeals of tribal court decisions be taken to the federal court, which would forestall some of the current debate in the United States about the appeal process.

He also says tribal court judges should not be chosen only by the band council, which in the U.S. has led to allegations of serious political interference in the justice system.

Reiter says that because many Canadian native bands are too small to support their own court, an amalgamated system could be developed.

Adds Ronald Toya of the United States Bureau of Indian Affairs: "For this to work, all the parts of the puzzle have to fit together."

"You have to give them law enforcement, a tribal code, courts and the ability to impose and enforce penalties, including alternative sentencing."

The Saddle Lake band estimates it would cost about \$300,000 per year to operate its justice system, and Justice Minister Doug Lewis has said expense is one reason Ottawa remains unconvinced about tribal justice.

In the United States, the Bureau of Indian Affairs spent about \$10 million last year on the court system, and another \$400,000 to train court personnel.

And most critics say that's not enough money.

A medium-sized tribe in New Mexico delivers justice to its 7,000 members on a budget of just \$110,000 per year.