

The problem with incorporation and the Indian Act

By Nahnda Garlow

For nearly a year members of the Haudenosaunee Development Institute (HDI) have insisted they are not a corporation.

According to the HDI reports given at Confederacy Council, the HDI says they hold 50 shares in '2438543 Ontario Inc.' "in trust" for the Haudenosaunee Confederacy Chiefs Council.

A process has been underway since this past winter to first transfer the title of those shares into the hands of the HCCC and then to dissolve that corporation.

However, none of the documentation at Confederacy was presented to explain why, if the corporation is going to be dissolved does share titles need to be transferred into the hands of Haudenosaunee elder title holders.

According to a corporate profile report dated April 28, 2016 the numbered company is still active.

But new reports show that on April 23, 2016 a report was filed with the province of Ontario reserving the name "Haudenosaunee Development Insti-

Search Pattern: Haudenosaunee Development Institute		No. of Occurrences	
NAME	JUR.-NO.	DATE	ADDITIONAL INFO
HAUDENOSAUNEE DEVELOPMENT INSTITUTE	Prop-118517321 ON	2016A123	N & F

Database Update Dates:
Alberta Business 2016-04-25 | Alberta Corporate 2016-04-25 | British Columbia Business 2016-04-27 | British Columbia Corporate 2016-04-27 | Manitoba 2016-04-18 | New Brunswick 2016-04-26 | Nova Scotia 2016-04-26 | Federal Corporate 2016-04-27 | Northwest Territories Business 2016-04-26 | Ontario Business 2016-04-26 | Ontario Corporate 2016-04-26 | Prince Edward Island 2016-04-26 | Nunavut Corporate 2016-04-26 | Nunavut Business 2016-04-26 | Patent of Financial Institutions 2011-10-21 | Trade-marks 2016-04-26

Documents indicate the name 'Haudenosaunee Development Institute' has been reserved with the province of Ontario for the purposes of incorporation. The hold was filed on April 23rd, 2016. They have 90 days to complete the process. PHOTO BY NAHNDGA GARLOW

tute" for the purposes of incorporation.

Representatives for OnCorp told the *Two Row Times* that reservation gives the party ninety days to file incorporation documents.

So is HDI, the self-described administrative arm of Haudenosaunee traditional governance going to become an incorporation under the jurisdiction of the province of Ontario? And why?

Further investigation into corporations revealed that there are considerable risks to business corpora-

tions fully partnering and doing business with status Indians on reserve.

According to a 2010 report by the law firm Bennett Jones, there are specific issues surrounding corporations fully doing business with indigenous groups on reserve because of the Indian Act.

"Section 89(1) of the Indian Act provides that the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the in-

stance of any person other than an Indian or a band."

Canadian courts have ruled that Section 89 of the Indian Act is connected to the early foundations of the relationship between the Haudenosaunee and the Crown as articulated in both the Royal Proclamation and the Two Row Wampum.

"In essence, it results in reserves being a safe-haven for an Indian or a band seeking to shield qualifying real or personal property from creditors," says the report.

However when indige-

nous groups become corporations, they are no longer subject to those same restrictions of Section 89, even if they are owned by status Indians and even if the operations of the corporation are situated on an Indian Reserve.

It also opens them up to being subject to taxation, which is why Bennett Jones writes, most reserve bands opt instead for partnerships.

The report from Bennett-Jones writes, "The courts have determined that a corporation is not considered to be an Indian or a band within the meaning of the Indian Act, even if a corporation has its registered office on reserve and all shareholders are registered Indians and band members residing on reserve. This exception is

often relied on by lenders or other parties wishing to take security over property that would otherwise be subject to Section 89(1)."

Could this be the purpose HDI is taking steps of incorporation? And what implication does this have on the title transfer of '2438543 Ontario Inc.' into the hands of the HCCC prior to it being dissolved?

Ironically, documents were sent to the *Two Row Times* indicating HDI lawyer Aaron Detlor is headed to court May 6 challenging Section 89 of the Indian Act against the estate of a Haudenosaunee Mohawk man who was living on Six Nations at the time of his death. That man's ex-spouse, a non-native woman from Hamilton, is suing the Haudenosaunee man's estate.