

Legality of "Custom Band Council" goes to court

by Lynda Powless
Editor

Six Nations first "Custom Band Council" and the Ministry of Indian and Northern Affairs will be heading to federal court in March to prove the election that swept Band Council chief Wellington Staats and the current council to power was legal.

Local author Brian Maracle and his sister, Marilyn Maracle, launched a challenge of the legality of the Six Nations Election code, the 1995 election and a by-election held in February of 1996.

It's taken almost two years for the case to wind its way through the court system. Maracle's lawyer, legislative lawyer, Owen Young of Hamilton said the case, "finally, its on."

Maracle maintained the code that

was used to conduct the elections had not been approved by the community and the "custom" of Six Nations in choosing its leadership was through the age-old Hodenosauce Confederacy.

Maracle protested the election by handing out pamphlets, carrying a picket sign and demonstrating in front of the polling station.

His sister Marilyn had been nominated for Chief and withdrew her

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nomination after saying she feared the election was illegal.

During the debate former band council chief Steve Williams said Six Nations "custom" for choosing its leaders was through an electoral process that allowed "off-reserve members to vote."

Maracle could not be reached for comment.

The court case created a hot debate at Six Nations over who

ernment, the federal government's or the communities. It contemplates a made-up custom, and if authority to govern comes from self government does it come from the roots of the culture or out of thin air.

Young said in some places oral traditions have not been remembered with enough precision to be applied as a body of law and federal court has recognized a form of contemporary custom.

Nations."

The case challenges the new guidelines that swept current band council Chief Wellington Staats to power, maintaining that until 1995 elections at Six Nations had been held under Indian Act provisions.

It maintains:

*the new elections code does not reflect a contemporary view of the custom of the Six Nations

* was established without a majority consensus or broad base of legitimate popular support

* no referendum was held or other form of vote or process conducted by which the consent, approval or ratification of the Grand River community at large was or could be demonstrated.

It says the Minister was without the authority or legal power to institute the new code and the Six Nations Band Council, as a body, was and is, without statutory inherent or other legal power or authority, to substitute the new election code for the provisions of the Indian Act

The elections guidelines were changed to among other things extend the life of the council from a two year term to a three year term.

The code allowed for off reserve band members to vote, required the Chief Councillor to reside in the community, deemed a chief or councillor, if removed from office, would be unable to be eligible to run for office for three years, required a police check of all candidates, provided for an advance poll and an appeals process.

The court case charges it is not Six Nations custom to select its leaders through an election process.

The case says the process that selected the governing body at Six Nations prior to the 1924 imposition of an "elected council" was a traditional, formal and well-established customary law by which the Council of chiefs was selected by the women of the community under the terms of the Kayaneren tsherakown, which was known throughout the community, by the British Crown and the Minister

and the federal Department of Indian Affairs.

Maracle maintains the new elections code is not an expression of and does not reflect the traditional law or custom by which the governing council at Grand River was selected prior to the imposition in 1924 and 1951, or of the selection or election process provided for in section 74 of the Indian Act.

Former band councillors Deborah Styres, in an affidavit filed with the court, claims there were no objections to the proposed election code.

She says extensive community consultation was held, through mailings of the new code, public meetings and a radio show that solicited only two phone calls, one that had nothing to do with the code.

As a result, she said she determined "the lack of response or comments or objections....indicated to me that there was no objection of any significance from Six Nations members to the new Election Code."

She maintains both Brian Maracle and Marilyn Maracle are new residents to the reserve, having left as children and returned as adults.

She also maintained the band council could not hold a referen-

dum on the elections code because "the community did not care one way or the other and would not participate in a referendum process in any event."

She said Six Nations members living on the Reserve who support



Marilyn Maracle

traditional ways will not participate in any vote of any kind out of principle."

As a result, she testified it would be impossible to gain approval or disapproval of a majority of the community through a referendum.

Band council Chief Wellington Staats could not be reached for comment by press time.



Brian Maracle

was actually in political power here, the Elected Band Council, imposed at Six Nations in 1924 by the federal government, or the age-old Hodenosanne

Confederacy Council that has continued to operate.

Young said the case will challenge the guidelines used to conduct an election that would allow a "custom" government to be established at Six Nations.

Six Nations, he said, has always had a "strong custom of governance, not one made up to suit the day."

He said the move to establish its own "custom government and have it approved by the Minister of Indian Affairs in the face of a strong traditional government, "strikes to the very essence of self-government and who's self-gov-

"But that's not the case at Six Nations. Six Nations clearly has custom and tradition and well established, well defined customs and bodies of law. That's why Six Nations is so unique. Why it's so important. If this happens at Six Nations it strikes at the heart of the question of how self government is to work. Will it come from Indian authority or federal power or authority."

Young said traditional governments have checks and balances. "That's what makes the system so important and the practice of it so important."

He said unfortunately there was no political arena at Six Nations to resolve the issue. "I think they were all hoping we'd go away and resolve this issue politically but there's no way to address it at Six