



THE HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT

John F. Kennedy School of Government • Harvard University

HONORING NATIONS: 1999 HONOREE

Tribal Court

Grand Traverse Band of Ottawa and Chippewa Indians

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The vagaries of U.S. government policy toward American Indian nations in the 1900s had a particularly damaging effect on the Grand Traverse Band of Ottawa and Chippewa Indians (GTB). During various and overlapping periods, they existed as a self-governing Indian community, a non-profit corporation, and a state-recognized Band with lands held by the local county government to meet the housing needs of the immediate Indian community. Finally, in 1980, the Band obtained federal recognition and, in 1988, developed a constitutional government.

In this process, GTB's leaders were acutely aware that developing a constitutional government was not about constitution writing alone. The challenge was also to develop a government that accorded with community members' beliefs about who should hold authority and how it should be exercised, so that the system outlined in the written constitution would be both workable and sustainable. For example, GTB leaders involved in the development of the Band's constitutional government felt there was substantial value in having a separate and independent tribal judiciary, and therefore wrote provisions for one into the Band's constitution. But for the Court truly to operate as the fundamental institution of government envisioned by its founders, it would need to be used by tribal members, operate in a way tribal members appreciated, and be able to exercise its independence effectively. This "constitutionalization" of the Court is occurring at Grand Traverse and deserves recognition.

When the GTB Tribal Court opened its doors in 1988, it heard very few cases. The Chief Judge worked only part-time in the evenings, with little or no staff. Just over ten years later, the Court has grown into a well-functioning and oft-used institution, hearing as many as 500 cases a year. The Chief Judge now works full time, as does his staff, which includes an Associate Judge, three court clerks, and a tribal court administrator. The Band also has established an Appellate Court, comprised of three appellate justices.

Despite this remarkable maturation, the Chief Judge became concerned that, in some cases, the Court's western dispute resolution mechanisms did not serve the community well. His experiences on the bench convinced him that tribal members would value a system that relied on more indigenous practices. Thus, the GTB Court has recently begun to incorporate Ottawa and Chippewa culture into the legal system through Peacemaker Courts. As in other communities, peacemaking is a non-adversarial, traditionally based process of conflict resolution. At GTB, the procedure is for two peacemakers to be present to facilitate the session, but not to decide issues in the case; for all parties to the dispute to participate; and for participants to rely on and use emblems of blessing, comfort, open conversation, listening,

wisdom, and peace in their conversation.

While the Peacemaker Court is still in its development phases, the peacemakers themselves already have had an impact on the community. Because their initial jurisdiction involved juvenile offenses, they have worked to become more involved with GTB youth. In 1999, for example, the director of the Peacemakers and the tribal prosecutor conducted a 150-mile canoe trip for at-risk youth, to help them develop social skills and confidence. At the end of the trip, the peacemaker asked each participant to become the “caretaker” of an eagle feather, in an effort to remind the youths to be good stewards of the community’s values. Later, when one trip participant ran afoul of the law, the Court was able to officially remind him of his stewardship responsibilities—evidence of a creative synergy between the western-style court and the peacemakers’ preventative work.

Finally, and perhaps most importantly, the GTB Court is effectively establishing its independence. A true separation of powers, in which the branches of government serve as a check on the actions of the others, is difficult for many governments to achieve. All too often, American Indian nations’ judiciaries succumb to the volatile influences of tribal politics. But the Grand Traverse Tribal Court is achieving status as a separate and independent branch of government. Rulings that adversely affect the Tribal Council have been respected and followed by the elected leadership, instead of devolving into a political tugs-of-war. While building precedents in the area of political-judicial relations takes time, the GTB Court and Council are laying a strong foundation for government constituted on a respectful separation of powers.

The Grand Traverse Tribal Court is growing, adapting to tribal culture by pursuing Ottawa and Chippewa approaches to conflict resolution, and establishing itself as a strong, separate and independent branch of government—a combination that has, and will continue to, serve the Grand Traverse Band well.

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