

National Post

# Judge's frank talk unwelcome on reserve



Kevin Libin, National Post · Tuesday, Nov. 16, 2010

Canadians are used to judges saving their opinions for the courtrooms. And used to those opinions sticking to matters of the law. But John Reilly doesn't much care what Canadians expect.

He's mostly retired. And his opinions have been developed after a long career on the Bench. They are about the way First Nations are governed in Canada and, in particular, at the nearby Stoney Nakoda reserve that delivered a river of victims and perpetrators into his Canmore, Alta. courtroom for decades. This is too important, he believes, to stay silent about.

"What concerns me is that the ordinary member of a native community does not have the protection of the law. If I know my mayor and councillors are taking money that they shouldn't, they will be prosecuted immediately for trust thefts and probably face imprisonment," Mr. Reilly says. On reserve, corruption rarely brings repercussions. "Becoming an Indian chief in Canada is a licence to steal. Some of them use it, some of them don't."

Stoney Nakoda leaders want to quiet Mr. Reilly. After he released a book this month entitled *Bad Medicine: A Judge's Struggle for Justice in a First Nations Community*, their lawyer filed a formal complaint with Alberta's Judicial Council about Mr. Reilly's public comments. He was bringing their leadership into "disrepute." He was working to "interfere" in their democratic process.

"They talk about me bringing their leadership into disrepute? The dictatorship style of government that's happening there is appalling," Mr. Reilly says.

The Stoney Nakoda Nation, a regime of three First Nations — Bearspaw, Chiniki, and Wesley — has had its share of governance controversies.

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In the '90s, it was put under third-party management for a while by the federal government, a measure Ottawa takes when a band shows an inability to manage its finances properly and scrupulously.

Two weeks ago, Bearspaw members blockaded roads to protest their chief, David Bearspaw, and his fellow councillors, for suspending elections and granting themselves two more years of unchallenged rule — something Mr. Reilly publicly condemned as being “motivated totally by greed.”

There is word now that Wesley chief, Clifford Poucette, has been trying to interfere in his own band's upcoming vote, by invalidating the candidacy of his challenger.

Still, Stoney's councillors appear to have strong feelings about accountability when it comes to provincial judges.

“Comments from a sitting judge in matters in which he is no way seized are not only inappropriate, they are an ultra vires intrusion into Stoney Nakoda customary law,” Stoney lawyer, Douglas Rae, wrote to the judicial council.

Though he retired in 2008, Mr. Reilly still sees the occasional criminal case, as a supernumerary, essentially a substitute judge. Many of the accused are members of the reserve. He is unbothered by the complaints over the appropriateness of his remarks. He's entitled to speak publicly in his retirement, he says.

“What they are used to on the reserve is being able to shut people up; they don't want anybody to speak out.” He further points out that they never say he's wrong: “All they say is that I shouldn't be saying these things.”

Mr. Reilly has faced this kind of accusation before. He spent the latter part of his career fighting claims that criticizing the corruption of power on native reserves undermined his impartiality.

Alberta's chief justice once ordered Mr. Reilly reassigned to Calgary, insisting his views on native governance had compromised his objectivity. Mr. Reilly fought the ruling, arguing that the order constituted interference with judicial independence. At a cost of a quarter million dollars in legal fees, he prevailed in having the order set aside (the province was eventually ordered to pay his costs.)

Ironically enough, it was the opinions of his fellow jurists over the years that turned John Reilly from his early days as a by-the-book sentencing judge into a crusader for native reform — what he calls a “180 degree” change in his position towards aboriginal offenders.

In addition to excoriating the leadership of Stoney Nakoda in his book, he calls for the disbanding of the department of Indian and Northern Affairs, something the Royal Commission Report on Aboriginal Peoples suggested more than a decade ago, while changes in aboriginal sentencing stemming from the Supreme Court's 1999 Gladue decision brought Mr. Reilly to consider the effect a badly governed community can have on crime.

One case that dramatically altered his views was that of Ernest Hunter, a wife abuser who had been doing well in anger management classes — until the Stoney council withdrew program funding. Mr. Reilly ordered a Crown investigation into corruption on this fairly prosperous reserve that was so apparently hampered by funding shortages and poverty. He compared it in one ruling to a “dictatorship of a banana republic.” In the end, both the province and Ottawa wouldn't agree to investigate the corruption claims.

This is why, ultimately, Mr. Reilly's argument is one directed at what he sees as the culture of indifference in provincial and federal governments nervous to touch the hot potato of First Nations governance, and across society, about the lot of aboriginal people subjected to the rule of unscrupulous leaders. In his book, he recalls the response to his criticism, in the Hunter ruling, of Stoney leadership. “There is no doubt that one of the worst aspects of life on reserves is corrupt tribal governments, but we can't say anything about it,” he remembers Judge Allan Cawsey, then-chairman of a special task force on the justice system and aboriginals, telling him.

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John Reilly long ago decided he had to say something about it. He does not plan on stopping now.

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