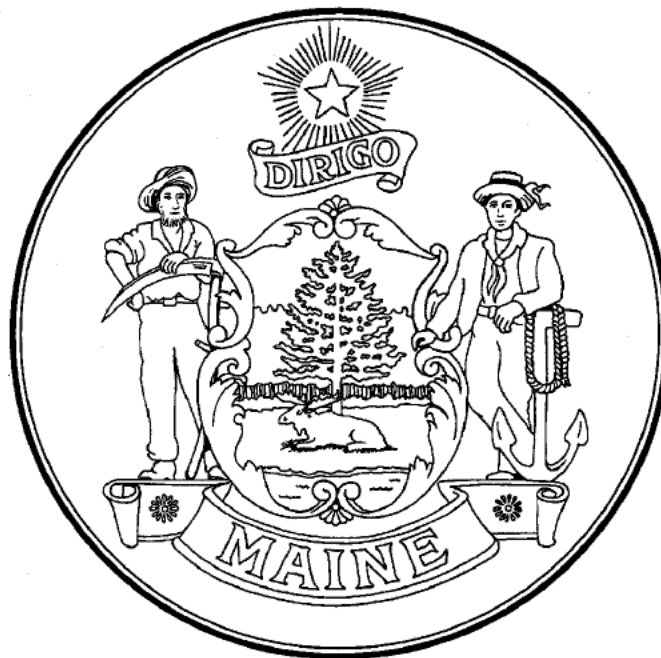


MAINE STATE LEGISLATURE

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Impact of Maine Civil Laws on the Wabanaki

Report to the 118th Legislature by the
Maine Indian Tribal-State Commission
pursuant to Resolves 1997, Chapter 45

December 15, 1997

1. Resolve

Pursuant to Resolves 1997, Chapter 45, the Maine Indian Tribal-State Commission (MITSC) is authorized and directed to undertake a systematic review of the civil laws of the State of Maine over a period of four years. The purpose of the review is to determine the manner and extent to which these laws, as enforced, constrict or impinge upon the best interests of children with respect to the:

- ◆ Traditional culture and way of life as practiced in tribal communities;
- ◆ Ability of the Tribes to regulate their members, lands, schools, and other cultural institutions and communities in a manner that honors tribal traditions; and
- ◆ Respect and dignity appropriately given to all individual citizens in the State and members of the Tribes.

In carrying out its study, MITSC is required to identify policies and programs that could foster the social and economic strength without posing a significant risk of harm to the resources of the State held for the benefit of all or to property or rights of people who are not members of the Tribes. The resolve also instructs MITSC to consult with appropriate representatives of the State and Tribes; use conflict resolution techniques; and determine how to address concerns underlying legislation to amend the Act to Implement the Maine Indian Claims Settlement proposed by the Passamaquoddy Tribe during the First Regular Session of the 118th Legislature. MITSC is required to report its findings and legislative recommendations to the Legislature on December 15, of the years 1997, 1998, and 2000.

2. Review Process

During its meeting of June 5, 1997, MITSC created a Civil Law Review Committee to develop recommendations for consideration by MITSC's full membership. Serving on this Committee are two MITSC members representing the State of Maine, one MITSC member representing the Penobscot Nation, and two MITSC members representing the Passamaquoddy Tribe. The Committee also has invited other interested people representing both the State and the Tribes to participate in its work on particular issues. A list of Committee members and participants is attached.

Over the past six months, the Civil Law Review Committee met several times and held several teleconferences. In addition, the full membership of MITSC deliberated about the work of the Committee during two meetings.

3. Initial Issues Reviewed

The Civil Law Review Committee identified five issues to tackle first. It was agreed that these are just a starting point and that many additional issues will be analyzed during the four-year review process. These initial issues include: 1) the regulation of land use on trust lands in Passamaquoddy and Penobscot Territory; 2) place names within Passamaquoddy Territory; 3) the enforcement of tribal court decisions beyond the reservation; 4) the relationship between jurisdiction and child welfare resources for Indian children; and 5) economic basis of Tribal Government.

4. Proposed Legislation Resulting from Review

As a result of this initial review by MITSC and its Civil Law Review Committee, two pieces of legislation are being proposed now. Both were unanimously approved during MITSC's meeting of December 4, 1997. It is possible that tribal-state discussions about the enforcement of tribal court decisions and child welfare jurisdiction and resources may yield additional legislative proposals over the next few months.

Land Use Regulation. One legislative proposal being introduced now is the result of extensive study and discussion by the Civil Law Review Committee. The bill clarifies the process by which the Passamaquoddy Tribe and Penobscot Nation may control land use and development and protect natural resources within unorganized and deorganized lands within Indian Territory.

The bill provides that the Tribe and Nation each may submit a comprehensive land use plan and implementing ordinances to MITSC. Upon receipt of a plan and ordinances, MITSC is required to solicit public review and comments, including the comments of the Land Use Regulation Commission (LURC), and to determine whether the plan satisfies specified planning and land use management criteria. Indian Territory lands governed by a plan and ordinances approved by the Tribal-State Commission are not within LURC's jurisdiction.

Under the bill, any contiguous block of Indian Territory consisting of less than 500 acres, the plan for which allows for development activity other than natural resources management activities and noncommercial uses by tribal members, is not covered by this Act. Acreages that are not contiguous but are sufficiently proximate to each other to be managed as a single unit are considered to be a contiguous block.

Finally, the bill provides that in considering zoning changes or development permits elsewhere in the unorganized and deorganized areas of the State, LURC must consider any potential adverse impacts on Indian Territory and provide notice to the affected Tribe or Nation when a significant adverse effect may be anticipated.

Names of Geographic Features. The second legislative proposal being introduced now affirms that the Joint Tribal Council of the Passamaquoddy Tribe may change the names of geographic features within Passamaquoddy Territory and directs state entities to assist in making sure that the name changes appear in maps and other public documents. The bill also instructs MITSC to study and develop a proposal for changing offensive names beyond Indian Territory.

The Penobscot Nation is reviewing this and may wish to be included as the bill wends its way through the legislative process. The bill builds on LD 955, the bill introduced to the First Regular Session of the 118th Legislature by Passamaquoddy Representative Fred Moore.

5. Other Issues Emerging from Review

Child Welfare. The Civil Law Review Committee's discussion about child welfare opened with a review of a specific case involving a Passamaquoddy child who does not live on the reservation. The Tribe did not assert its jurisdiction over the child, because state/federal funds available for that child while under state jurisdiction would not have continued flowing if the child were under tribal custody. The question was asked: Why shouldn't state/federal funds follow an Indian child who does not live on a reservation, regardless of whether the State or a Tribe has jurisdiction over that child? In November, the Committee met at Pleasant Point with several child welfare representatives from the Maine Department of Human Services (DHS), the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseets to explore this question and other child welfare issues.

Subsequent to the meeting, the Tribes proposed draft legislation to recognize that children within the jurisdiction of the Passamaquoddy Tribe and Penobscot Nation under the federal Indian Child Welfare Act are Maine children who should be entitled to the same level of financial support as children within the custody of DHS. The proposal amends laws governing reimbursement for foster care and child care services to include Indian children as eligible and to recognize facilities approved by the Tribes under Indian Child Welfare Act standards. The proposal also amends the Maine Implementing Act of the Maine Indian Claims Settlement to provide expressly for tribal participation in child welfare programs.

DHS officials have expressed some concerns about the proposal. The Civil Law Review Committee will set up a meeting with them to review their concerns and to determine how to proceed. In addition, the Committee anticipates continuing discussions between state and tribal front line workers.

Enforcement of Tribal Court Orders. Tribal concerns about the enforcement of Tribal Court decisions beyond the reservations gave rise to LD 957, a bill introduced by Passamaquoddy Representative Fred Moore during the First Regular Session of the 118th. The Civil Law Review Committee has had several discussions about these concerns. Because this area involves legal procedures that are complex and arcane to the non-lawyer, the Committee convened a meeting of State and Tribal lawyers to review this matter. An outcome of the meeting was agreement to focus on the areas of child support and probate court to gain a full understanding of what specifically needs to be fixed so that Tribal Court orders are enforced in an effective manner.

During MITSC's November 14 meeting at Pleasant Point a representative of WomanKind, a program for victims of domestic abuse, indicated that if a Tribal Court order is not honored for police off the reservation this becomes a safety issue for victims. Noting that one partner may be a tribal member and the other not, she stressed that Tribal Court orders must be taken seriously.

Economic Basis of Tribal Government. Another topic under consideration by the Civil Law Review Committee is the economic basis of Tribal Government. Because land is held in common by tribal members, there are no property taxes to support the operation of Tribal Government. Thus, the Committee is examining how other revenue raised by the Tribes might stay with the Tribes. Discussions to date have focused on fines (e.g. traffic fines) and sales taxes. Proposals about the latter have ranged from sales tax exemptions on tribal lands to having sales taxes on tribal lands flow to the Tribes.

6. Assembly of Governors

Resolves 1997, Chapter 45 also requires MITSC to convene an annual Assembly of Governors and Chiefs. Included are the Governors of the State of Maine and the Passamaquoddy Tribe and the Chiefs of the Penobscot Nation, Houlton Band of Maliseets and Aroostook Band of Micmacs. The first annual Assembly was held on December 4, 1997 at the Wabanaki Center in Orono. The attendance was excellent and the session was productive and positive. There was consensus that over the next year:

- ◆ State agencies should discuss intended major actions with MITSC if the action is expected to affect the Tribes and that the Tribes should do the same when they are contemplating a major action that would affect the State.
- ◆ MITSC should review policy with respect to the surface use of waters in Indian Territory.
- ◆ MITSC should analyze the potential for resolving conflict over jurisdiction over the lakes at Indian Township and the St. Croix and Penobscot Rivers.
- ◆ MITSC should continue its examination of present practices with respect to the collection of fines and taxes on the Reservation, with the goal of allowing funds to be used for the support of Tribal Government.
- ◆ MITSC should continue with its review of child welfare issues.
- ◆ MITSC should recommend a formal means of including the Houlton Band of Maliseets and Aroostook Band of Micmacs as active participants in tribal-state discussions.

7. Other Issues Before the Legislature

MITSC is aware of three additional pieces of legislation that will be before the Second Regular Session of the 118th Legislature. MITSC has not yet had an opportunity to discuss these proposals in detail and, therefore, has not yet taken a position on them.

- ◆ A bill to correct a 1995 technical error in legislation relating to the jurisdiction of the Penobscot Tribal Court.
- ◆ A bill to continue the current method of financing the schools on the Passamaquoddy and Penobscot reservations.
- ◆ A bill relating to the regulation of marine resources, which includes a role for MITSC.

8. Summary

MITSC has been hard at work in its review of the civil laws of Maine, pursuant to Resolves 1997, Chapter 45. This report is a snapshot of issues at a point in time. MITSC's review of the civil laws is ongoing work. MITSC is looking forward to the opportunity to discuss this work with the Joint Standing Committee on Judiciary when the 118th Legislature reconvenes in January 1998.

MITSC has filed two pieces of legislation with the Legislature along with this report and has submitted them under separate cover:

- ◆ An Act to Implement the Recommendations of the Maine Indian Tribal-State Commission Relating to Tribal Land Use; and
- ◆ An Act to Implement the Recommendations of the Maine Indian Tribal-State Commission Relating to the Names of Geographic Features in Passamaquoddy Territory.

Civil Law Review Participants

MITSC Members Serving on Civil Law Review Committee

Eric Altvater, Lt. Governor, Passamaquoddy Tribe at Pleasant Point
Mike Best, Passamaquoddy Tribe at Indian Township
Alan Brigham, Maine Department of Economic and Community Development
Mark Chavaree, Penobscot Nation
Evan Richert, Maine State Planning Office

Participants in Child Welfare Meeting & Review

MITSC Members on Civil Law Review Committee
Don Aymonds, Passamaquoddy Tribe at Pleasant Point
Sonja Dana, Passamaquoddy Tribe at Indian Township
Susan Deveau, Houlton Band of Maliseet Indians
Nancy Goddard, Maine Department of Human Services
Sherry Moran, Houlton Band of Maliseet Indians
Earlene Paul, Penobscot Nation
Greg Sample, Lawyer for Passamaquoddy Tribe
Diana Scully, MITSC Executive Director
Fred Tomah, Houlton Band of Maliseet Indians
Susanna Wright, Houlton Band of Maliseet Indians

Participants in Other Civil Law Review Committee Meetings

MITSC Members on Civil Law Review Committee
John Banks, MITSC Member and Director of Natural Resources, Penobscot Nation
Elizabeth Butler, Chief Legal Counsel to Governor King
Fred Moore, Passamaquoddy Tribal Representative
Greg Sample, Lawyer for Passamaquoddy Tribe
Diana Scully, MITSC Executive Director
Paul Stern, Maine Department of Attorney General
Dwayne Socobasin, Council Member, Passamaquoddy Tribe at Indian Township