

# MAINE STATE LEGISLATURE

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# **Impact of Maine Civil Laws on the Wabanaki: 1998**

Report to the 119th Legislature by the  
Maine Indian Tribal-State Commission  
pursuant to Resolves 1997, Chapter 45

December 15, 1998

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## Background Information

### The Resolve

Pursuant to Resolves 1997, Chapter 45, the Maine Indian Tribal-State Commission (MITSC) is directed to undertake a systematic review of the civil laws of the State of Maine over a period of four years. The resolve is included as Attachment A. 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.

The resolve requires MITSC to identify policies and programs that could foster 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 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.

The resolve 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 Commission

With an annual operating budget of \$45,000 (50% state revenues and 50% tribal revenues), MITSC operates on a part-time basis. Created by the Maine Indian Claims Settlement Act of 1980, MITSC is an inter-governmental entity with five statutorily specified responsibilities:

- To continually review the effectiveness of the Act and the social, economic, and legal relationship between the Passamaquoddy Tribe and the Penobscot Nation and the State. <sup>30</sup> MRSa §6212(3)
- To make recommendations about the acquisition of certain lands to be included in Passamaquoddy and Penobscot Indian Territory. <sup>30</sup> MRSa §6205(5)

- To promulgate fishing rules on certain inland waters. 30 MRSA §6207(3)
- To study and make recommendations about fish and wildlife management policies on non-Indian lands, to protect fish and wildlife stocks subject to regulation by either Tribe or MITSC. 30 MRSA §6207(8)
- To review petitions by the Tribes for designation as an "extended reservation." 30 MRSA §6209(5)

## The People

Four of MITSC's members are appointed by the State, two by the Passamaquoddy Tribe, and two by the Penobscot Nation. The ninth, who is the chairperson, is selected by the eight appointees. MITSC's members are listed in Attachment B.

With the death of MITSC Chair Richard Cohen on April 13, 1998, MITSC worked hard to find strong new leadership. After contacting and interviewing several excellent candidates, MITSC unanimously voted on May 27, 1998 to offer the position of MITSC Chair to Cushman D. Anthony, Esq. The principal in the Portland firm of Cushman D. Anthony Dispute Resolution Services of Maine, Mr. Anthony specializes in divorce and family law mediation. A State Representative in the Maine Legislature from 1986-1992, he was a member of the Judiciary Committee, the Committee with jurisdiction over the Settlement Act.

## New Committee Structure

In July 1998, MITSC held a retreat(advance) to explore successes and challenges, resources available, people to whom MITSC members are accountable, type of leadership needed, and tasks and priorities for the coming year. The expectations resulting from Resolves 1997, Chapter 45 helped guide MITSC's discussions. After reflecting on the results of the retreat(advance), Chair Anthony proposed a new committee structure including participation by non-MITSC members; MITSC approved this on September 11, 1998. The new committee structure, included as Attachment C, will help MITSC carry out its work—including its review of civil laws—more effectively.

## This Report

This is MITSC's second report required by the civil law review process pursuant to the resolve. The first was submitted a year ago. The purpose of the report is to brief the 119th Maine Legislature, the Passamaquoddy Joint Tribal Council, and the Penobscot Chief and Council on MITSC's discussions and recommendations resulting from the 1998 civil law review process.

**Civil Law Review Issues****Overview**

In 1997, MITSC's review of civil laws focused on the regulation of land use in Indian Territory; the process of naming geographic features within Passamaquoddy Territory; the enforcement of tribal court decisions beyond the Reservation; the relationship between jurisdiction and child welfare resources for Indian children; and the economic basis of Tribal Government. MITSC submitted legislation to the 118th Legislature to regulate tribal land use, which did not pass, and to clarify that the Passamaquoddy Tribe may name geographic places within its Territory, an amended version of which did pass.

During 1998, MITSC has concentrated on seven areas: tribal land use regulation, regulation of the surface use of tribal inland waters, the economic basis of Tribal Government, child welfare issues, the enforcement of tribal court decisions, marine issues, and sovereignty. What follows is a brief description of MITSC's discussions and recommendations about each area.

**Tribal Land Use**

In 1997 and throughout the second regular session of the 118th Legislature in 1998, MITSC focused on negotiating an arrangement for the regulation of land use in Indian Territory in which neither side conceded the basic question of whether Tribes have jurisdiction or have to go through procedures to get out from the jurisdiction of the Land Use Regulation Commission. Under the arrangement, viewed as a clarification, MITSC was to review comprehensive plans by the Tribes, and once MITSC passed the plans, there would be no dispute about tribal authority. MITSC talked about excluding Albany Township or land areas of 500 acres or less.

MITSC took this arrangement to the 118th Legislature and negotiated it there. MITSC won the majority support of the Judiciary Committee, the majority support of the House, and a 16-16 tie in the Senate. The Conference Committee could not resolve this. The legislation lost as the result of a single lacking vote.

The Tribes now are doing their own planning for their territories and are carrying on, regardless of the outcome at the Legislature. MITSC believes that the Tribes already have authority over land use in Indian territory and that a memorandum of understanding focusing on the process and not on jurisdiction may be a worthwhile path to pursue. The memorandum of understanding about fisheries management on the Penobscot River offers a precedent for this.

Another path for clarifying this matter is to return to the Legislature. In case this path is determined to be necessary, MITSC is resubmitting the legislation (Committee Amendment "A" to H.P. 1403, L.D. 1961) to the 119th Legislature that came so close to passing during the 118th. Since the Joint Passamaquoddy Tribal Council has voted in support of legislation, but the Penobscot Tribal Council has not yet had the opportunity to decide which route to take, MITSC's proposal pertains only to the Passamaquoddy Tribe.

### Surface Use of Tribal Waters

During the 1997 Assembly of Governors and Chiefs, there was discussion about Round Mountain Pond, a small pond used for fishing in Penobscot Territory. MITSC thought it had jurisdiction to regulate the use of motors as a method of fishing, but the Department of Attorney General disagreed. The Governors and Chiefs agreed that there ought to be a way to figure out the regulation of motors and that MITSC should review issues relating to the surface use of waters in Indian Territory.

At MITSC's January 1998 meeting, members agreed to ask the 118th Legislature to consider an amendment to LD 1730, the Great Ponds Task Force bill. The proposal amended the Maine Implementing Act to authorize MITSC to regulate the use of motors on ponds of less than 200 acres within Indian Territory and used for fishing. The 200 acres was based on LD 1730's proposal to regulate jet skis on all Maine ponds of 200 acres or less. The Legislature enacted this provision as part of PL 1997, chapter 739, subject to approval by the Tribes, adding a further requirement that the waters must be entirely within Indian Territory.

In June 1998, MITSC held a workshop at the Penobscot Community Building at Indian Island to explore tribal concerns about the surface use of tribal inland waters. Thirty-one people attended, including both Passamaquoddy Governors and both Tribal Representatives. It became clear that the Tribes were not going to ratify the new provision. Tribal participants questioned why anyone other than the Tribes should regulate the surface use of waters within their territory. There was reluctance to amend the Maine Implementing Act, exemplified by the comment that "every time the Tribe ratifies something, the State has a new mechanism to hit the Tribe on the head again." Tribal participants stated their preference for a cooperative agreement approach.

As foretold during the workshop, the Tribes did not ratify the provision to authorize MITSC to regulate motors and horsepower on waters of 200 acres or less and entirely within Indian Territory. Thus, the provision is null and void. Meanwhile, the Land Use Regulation Commission has adopted new rules which prohibit the use of personal watercraft on five great ponds within Indian Territory.

MITSC's new Land and Surface Use Subcommittee has been discussing three options for regulating the surface use of waters within Indian Territory: by amending the Settlement to piggyback onto MITSC's regulatory authority over fishing; by amending the Settlement to piggyback onto the Tribes' regulatory authority over hunting and trapping; or by cooperative agreement. There is not yet agreement about which option to pursue.

### **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, it is important to figure out how other revenue raised by the Tribes can stay with the Tribes. During the 1997 Assembly of Governors and Chiefs, it was agreed that MITSC should continue to examine present practices with respect to the collection of fines and taxes on the Reservations, with the goal of allowing funds to be used for the support of Tribal Government. Reflecting the importance of this topic is MITSC's creation of a new Committee on the Economic Basis of Tribal Government.

During the 1998 Assembly, MITSC asked the Governors and Chiefs to support MITSC's convening of a representative group to tackle issues relating to revenues for Tribal Government. They agreed. It is important to make sure that participants have the authority to make commitments within guidelines agreed to by the Governors and Chiefs. A major topic that needs to be discussed and fully understood is the importance of tribal businesses, including beano, as part of Tribal Government. Other topics include sales taxes paid by individual store owners on the Reservations; the flow of fines for traffic violations; and taxes paid by the Passamaquoddy Water District. Whenever possible, MITSC would prefer to see agreement reached on these matters through Tribal-State agreements that do not involve legislation.

Last spring, after the 118th Legislature enacted the property homestead tax exemption, the Tribes registered their concern that their Reservations had not been included. Because the exemption was the result of a surplus in state level taxes, tribal members contributed to it by paying income and sales taxes. MITSC has been considering the idea of payments to the Reservations in lieu of the property homestead tax exemption. The amount of money involved is estimated to be under \$100,000. This issue was discussed during the 1998 Assembly of Governors and Chiefs. More discussion is required between the State and the Tribes.

### **Child Welfare**

In late 1997 and early 1998, there were efforts between the State and the Tribes to arrive at agreement about draft legislation that could be presented to the 118th Legislature, but there was not enough time. The various drafts in



circulation focused on having the Passamaquoddy Tribe and the Penobscot Nation, rather than the State, regulate foster homes located within Indian Territory. There was particularly strong interest in gaining access to Title IV-E funds for Passamaquoddy and Penobscot children under the tribal jurisdiction.

In August 1998, MITSC held a workshop at the Wabanaki Center in Orono to explore tribal-state issues relating to child welfare and the courts. More than forty people from both the State and the Tribes attended. There was agreement that there should be full faith and credit for tribal foster home licensure and that to accomplish this, legislation is needed. A representative of the Department of Human Services said the Department plans to submit legislation. There also was agreement that federal IV-E money should be available for Indian children and that to accomplish this, foster home licensure legislation must be enacted, followed by written agreements between the Tribes and DHS and changes in the State's child welfare plan. Participants also felt that state money should be available for Indian children.

In a recent meeting of MITSC's new Child Welfare Subcommittee, the question was raised about whether licensing legislation actually is needed to get federal IV-E money for children in tribal custody, because Indian children now are all in state-licensed facilities. What may be needed is a memorandum of agreement between Tribal and State Government, and it may not necessary to hold up funding for licensing.

MITSC understands that the Maine Department of Human Services (DHS) is planning to introduce legislation to the 119th Legislature or take such other action as is needed to address child welfare licensing and financing issues. Because MITSC does not know precisely what DHS proposes, it is recommending draft proposed legislation as part of this report. See Attachment E. At the same time, MITSC will inform the Passamaquoddy and Penobscot Tribal Councils that this action is necessary to "save a place" in the State's process, in case legislation is determined to be necessary. If legislation is not needed, it can be withdrawn.

### **Tribal Court Subpoenas**

It is hard to enforce orders off the Reservation where a Tribe has no jurisdiction. There is a full faith and credit provision in the Maine Indian Claims Settlement Act, but this is cumbersome because the Tribes must go through State Court. Passamaquoddy Tribe Court Judge Rebecca Irving and others have described the difficulties involved in enforcing tribal court subpoenas served on non-Tribal members.

During MITSC's August 1998 tribal-state workshop on child welfare and the courts, a participant from the Department of Attorney General, agreed to

explore what needs to happen to make sure tribal court subpoenas are enforced. His initial look at this led him to conclude that: there is indeed a problem with enforcement of subpoenas outside Indian Territory; legislation is required to resolve the problem; there may or may not be constitutional issues involved; and it is doubtful that Tribal Court can issue contempt bench warrants. MITSC is recommending legislation as part of this report to clarify that there must be enforcement of and compliance with subpoenas issued by the Tribal Court off the Reservation, as well as on the Reservation. See Attachment F.

### Marine Issues

Over the years, MITSC has had some discussions about marine issues, but has had very little involvement with these issues. With tribal support, the State recently directed MITSC to become involved in the area of marine resources. A new law (PL 1997, chapter 708) concerning the taking of marine resources by members of the Passamaquoddy Tribe includes a provision requiring MITSC to "study any question or issue regarding the taking of marine resources by members of the Passamaquoddy Tribe and the Penobscot Nation" and to report any findings and recommendations to the Legislature's Committee on Marine Resources by December 15, 1998. MITSC also will submit its report to the Passamaquoddy and Penobscot Tribal Councils. MITSC has created an ad hoc committee to identify issues that need to be addressed and is asking Passamaquoddy and Penobscot tribal leaders for a list of their areas of concern.

### Sovereignty

During the 1997 Assembly of Governors and Chiefs, there was discussion about sovereignty. Governor King said his instinct is that if every attempt to solve an issue is a symbolic part of a chess game, "we'll never get anywhere." However, he also commented that maybe the time has come for the State and the Tribes to talk about sovereignty.

In September 1998, MITSC Chair Cush Anthony convened a session at the Wabanaki Center at Orono for MITSC members to discuss sovereignty and the Maine Indian Claims Settlement Act of 1980. Attachment G includes excerpts from the session. First, MITSC members were asked to share their thoughts about two questions: How do state sovereignty and tribal sovereignty inter-relate? What can you point to in the Settlement Act that supports your views regarding sovereignty? Next, a Legislative Analyst shared her perspective on issues that are important for a legislative committee to consider and information they need when working on bills relating to the Settlement Act. Finally, MITSC members participated in a round table discussion building on the reflections and the view from the Legislature. The discussion was not a debate; its purpose was to gain fuller

understanding of each other's views. MITSC members felt that the discussion that deepened understanding about what sovereignty means to each other.

Resolves 1997, Chapter 45 requires MITSC to determine how to address concerns underlying Passamaquoddy legislation to amend the Act to Implement the Maine Indian Claims Settlement during the First Regular Session of the 118th Legislature. It is clear that concerns about sovereignty are at the heart of this legislation. Thus, MITSC recommends that the Governors, Chiefs, and Legislators have their own extended discussions about what sovereignty means. There is nothing to be lost, only greater understanding to be gained. MITSC believes that greater understanding not only will lead to a deeper level of respect, but also will help leaders protect the Tribes' traditional culture and way of life and their ability to govern their members, lands, schools, cultural institutions, and communities in a manner that honors tribal traditions.

### Recommendations

MITSC's review of the civil laws of Maine is ongoing work. Thus, this report is a snapshot of issues at a point in time. MITSC is looking forward to the opportunity to discuss this work with the 119th Legislature when it returns in early 1999.

MITSC has filed three pieces of legislation with the Legislature along with this report:

- ◆ An Act to Implement Recommendations of the Maine Indian Tribal-State Commission Relating to Tribal Land Use Regulation;
- ◆ An Act to Implement Recommendations of the Maine Indian Tribal-State Commission Relating to Child Welfare Services for Wabanaki Children; and
- ◆ An Act to Implement Recommendations of the Maine Indian Tribal-State Commission to Ensure the Enforcement of Tribal Court Orders.

In addition, MITSC recommends that the State and the Tribes continue their ongoing work to resolve issues in the areas of tribal land use regulation, the regulation of surface use of tribal inland waters, and various tax and fine issues. In particular, MITSC encourages and stands ready to help state and tribal leaders to share and explore their views about sovereignty.

Attachment A**Resolves 1997, Chapter 45****H.P. 926 - L.D. 1269****Resolve, to Foster the Self-governing Powers of Maine's Indian Tribes  
in a Manner Consistent with Protection of Rights and Resources  
of the General Public**

**Preamble.** Whereas, there is conflict over the effect of the Act to Implement the Maine Indian Claims Settlement as evidenced by the introduction of legislation to give the Passamaquoddy Tribe authority to change the names of geographic features within Passamaquoddy territory; to eliminate the application of state law to tribal lands; to require full faith and credit for decisions of the tribal courts; and to make all persons within Passamaquoddy territory subject to tribal court jurisdiction; and

Whereas, the most basic function of the Maine Indian Tribal-State Commission, established as a part of the Act to Implement the Maine Indian Claims Settlement, is to "continually review the effectiveness of . . . [the Settlement] Act and the social, economic and legal relationship between the Passamaquoddy Tribe and the Penobscot Nation and the State and . . . make such reports and recommendations to the Legislature as it deems appropriate"; and

Whereas, we realize that the "[continual] review [of] the effectiveness of ... the social, economic and legal relationship between the Passamaquoddy Tribe and the Penobscot Nation and the State" requires an effort by and is of mutual interest to both the State and the Maine Indian Tribes to learn to better respect and honor the powers and duties of the State and the Indian tribes within the tribes' Indian territories; and

Whereas, we all pride ourselves on our abilities to listen, learn, identify and adapt to changing circumstances, especially with respect to the needs of our youth, both within the State and within the tribal territories; now, therefore, be it

**Sec. 1. Maine Indian Tribal-State Commission authorized to focus on needs of youth. Resolved:** That the Maine Indian Tribal-State Commission, established by the Maine Revised Statutes, Title 30, section 6212, is authorized and directed to undertake a systematic review of the civil laws of the State to determine the manner and extent to which those laws, as enforced, constrict or impinge upon the best interests of the children with respect to:

1. The traditional culture and way of life as practiced in the tribal communities;

2. The ability of the tribes to regulate their members, lands, schools and other cultural institutions and communities in a manner that honors tribal traditions without jeopardizing the resources of the State held for the benefit of all or the property or other rights of persons who are nonmembers of the Tribe; and

3. The respect and dignity appropriately given to all individual citizens in the State and members of the tribes; and be it further

**Sec. 2. Study organization, objective; consultation, conflict resolution. Resolved:** That the Maine Indian Tribal-State Commission study must be conducted over the next 4 years, in consultation with appropriate representatives of affected tribes and agencies of the State, including teachers and local law enforcement, and using conflict resolution techniques, to identify policies, programs or provisions that could be undertaken to foster the social and economic strength of both the State and Maine's tribal communities without significant risk of harm to the resources of the State held for the benefit of all, or the property or other rights of persons who are not members of the tribes and with special attention to the needs of the youth of both the State and the tribes.

The commission shall consider the concerns that gave rise to the legislation proposed by the Passamaquoddy Tribe to amend the Act to Implement the Maine Indian Claims Settlement and determine how those concerns may be addressed; and be it further

**Sec. 3. Reporting dates established. Resolved:** That the Maine Indian Tribal-State Commission shall report its findings and legislative recommendations to the Second Regular Session of the 118th Legislature by December 15, 1997; to the First Regular Session of the 119th Legislature by December 15, 1998; and to the First Regular Session of the 120th Legislature by December 15, 2000; and be it further

**Sec. 4. Annual Assembly of the Governors and Chiefs. Resolved:** That the Maine Indian Tribal-State Commission shall convene an annual Assembly of Governors and Chiefs, including 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.

Effective September 19, 1997, unless otherwise indicated.

Attachment B

Maine Indian Tribal-State Commission

**Chair**

Cushman Anthony, Esq.  
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**State Appointees**

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Attachment C

<b>Committees of the Maine Indian Tribal-State Commission*</b>	
<b>Standing Committees</b>	<b>Subcommittees and Ad Hoc Committee</b>
<p><u>Civil Law Review Committee</u>                      Chair: Mark Chavaree                      Members: Eric Altvater                      Cush Anthony                      Alan Brigham                      Mike Hastings                      Evan Richert</p> <p>Keep track of all civil law issues. Deal with any issue not specifically assigned to a subcommittee.</p>	<p><u>Child Welfare Subcommittee</u>                      Chair: Cush Anthony                      Members: Eric Altvater      Robert Newell                      Mark Chavaree</p> <p>Address child welfare and court issues dealing with family law.</p>
<p><u>Economic Basis of Tribal Government</u>                      Chair: Eric Altvater                      Members: Cush Anthony                      Alan Brigham                      Mark Chavaree</p> <p>Work on issues of taxation and fines. Address larger issue of improving the financial base of the Tribes.</p>	<p><u>Land and Surface Use Subcommittee</u>                      Chair: Evan Richert                      Members: John Banks      Robert Newell                      Mark Chavaree      Greg Sample                      Dorothy Duddy      Donald Soctomah                      Mike Hastings      Margaret Wille                      Fred Hurley      John Williams</p> <p>Complete work started during last legislative session.</p>
<p><u>Fish and Wildlife Committee</u>                      Chair: Fred Hurley                      Members: John Banks                      Donald Soctomah</p> <p>Oversee fishing rules. Propose modifications, as needed.</p>	<p><u>Marine Issues Ad Hoc Committee</u>                      Chair: Mike Hastings</p> <p>Members: Eric Altvater                      John Banks                      Wane Loring                      Ed Nicholas                      Marge Peacock                      Allen Talbot</p> <p>Deal with salt water concerns, including fishing rights.</p>
<p><u>Personnel Committee</u>                      Chair: Cush Anthony                      Members: John Banks                      Fred Hurley</p> <p>Oversee and support work of Executive Director.</p>	
<p><u>Planning Committee</u>                      Chair: Alan Brigham                      Members: Cush Anthony                      Allison Reichartinger                      David Westphal</p> <p>Develop means of educating legislators and other policymakers about relationship between tribal and state sovereignty. Plan for Assembly of Governors and Chiefs. Plan other educational efforts.</p>	

\* Anyone interested in MITSC's work is encouraged to participate on these committees.

Attachment D

**Proposed Legislation Relating to Tribal Land Use Regulation**

MITSC is recommending that tribal land use legislation that failed to pass by one vote during the Second Regular Session of the 118th Legislature (Committee Amendment "A" to H.P. 1403, L.D. 1961) be resubmitted to the 119th Legislature. MITSC further recommends that the legislation apply only to the Passamaquoddy Tribe, because the Passamaquoddy Joint Tribal Council supports legislation, but the Penobscot Tribal Council has not yet had the opportunity to discuss and decide which route to take with regard to land use regulation.



Attachment E**Proposed Legislation Relating to Child Welfare Services****An Act to Implement Recommendations by the  
Maine Indian Tribal-State Commission Relating to  
Child Welfare Services for Wabanaki Children**

**Sec. 1. 22 M.R.S.A. § 4062, subsection 1, is amended to read:**

**1. Payments by department.** The department shall provide payments to facilities caring for children to meet the costs of clothing, board and care, within the limits of available funds. The department may establish, by rule, different categories of facilities, levels of need and care and flat-rate or reimbursement methods to distribute these funds. The department may provide child care and travel expense payments to foster and adoptive parents and trainers participating in foster and adoptive parent training programs and volunteers participating in the administrative case review program.

Any federally recognized Indian tribe in this State, or any other person or facility, providing foster care for a child who is a member, or eligible to be a member, of those tribes shall be eligible for benefits and reimbursement under any state or federally funded program administered by the State for the benefit of Maine children, including without limitation for the benefit of children within the jurisdiction of the Passamaquoddy Tribe or Penobscot Nation under the Indian Child Welfare Act, 25 U.S.C. Section 1901 et. seq.

**Sec. 2. 22 MRSA §8101, sub-§3a is enacted to read:**

**3a. Indian family foster home.** Indian family foster home means a family foster home where substitute parental care is provided for an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. Section 1901 et. seq.

Attachment F**Proposed Legislation Relating to Tribal Court Orders****An Act to Implement Recommendations by the  
Maine Indian Tribal-State Commission to Ensure the  
Enforcement of Tribal Court Orders**

Sec. 1. 14 M.R.S.A. §702, as amended by PL 1987, c. 223, §1, is further amended to read:

**702. Duty of sheriffs and deputies; fees**

Every sheriff and each of his deputies shall serve and execute, within his county, all writs and precepts issued by lawful authority to him directed and committed, including the Passamaquoddy Tribal Court, as defined in Title 30, Section 6209-A and the Penobscot Tribal Court, as defined in Title 30, Section 6209-B, including those in which a town, plantation, parish, religious society or school district, of which he is at the time a member, is a party or interested, but his legal fees for service shall first be paid or secured to him. If the fees are not paid or secured to him when the process is delivered to him, he shall immediately return it to the plaintiff or attorney offering it; or if sent to him by mail or otherwise, he shall put it into some post office within 24 hours, directed to the person sending it; otherwise he waives his right to his fees before service.

Attachment G**Sovereignty and the Settlement Act**

These are excerpts from a MITSC discussion  
to explore different views of sovereignty.  
(September 11, 1998)

**Eric Altwater, Passamaquoddy MITSC Representative**

The Tribes had sovereignty before the Settlement Act. Tribal sovereignty was a solid block of sharp Vermont cheddar cheese back then. Post-Settlement Act, tribal sovereignty is Swiss cheese. Since 1980, the State has been attempting, little by little, to nibble away at the Tribes' sovereignty...The area of child welfare is an example...A native woman is not allowed to speak Passamaquoddy to a Passamaquoddy child. There is nothing more dear and precious than the tribal tongue...

The politically correct thing being said is that everyone should be treated the same. Why does an eagle or salmon deserve special protection? We, too, are endangered species. We spend more money protecting the eagle and salmon.

**Mark Chavaree, Penobscot MITSC Representative**

My uncle went to war, he fought and died for the United States, and he could not vote.

Tribal sovereignty is at the heart of survival for Maine Tribes and all Tribes. We will not be pigeonholed by the State. The State takes the narrow view. We feel we are being painted into a corner. To us, it's a matter of survival. There are 2,000 Penobscot Tribal Members. We have given up enough. We cannot give up anything else or we will disappear as a species. That is why we need to protect ourselves...

We are first and foremost an Indian People. Many say a sovereign is absolute and ask how can there be two sovereigns. This is the same as the States and the Federal Government...People ask why should Indian People have "special rights"? Indians have always been dealt with uniquely. We owned the land. People do not want to recognize this when it is not convenient...

There is a lack of recognition of the Tribes as Indian Tribes. The State says the Penobscot Nation is nothing more than a municipality and it can do what it wants on our lands. Maine does not have to negotiate with municipalities because they are creations of the State. We were here before the State. People often point to the section in the Settlement dealing with the rights and responsibilities of municipalities. This was intended to be an additional

authority, but the State likes to use this as a limitation on Tribes. I will never say we are another municipality. We are the Penobscot Nation...

**Evan Richert, State of Maine MITSC Member**

Sovereignty is what divides us so much. When we work on issues we come together. When we talk about sovereignty we are apart. To be sovereign means to be apart. Sovereignty happens at three levels:

- To be sovereign as an *individual* means to have free thoughts, freedom to participate in elections, the right to be tried by juries. Tribal members are protected by law, but there are social problems which interfere with this level of sovereignty.
- To be sovereign as a *people* involves the sovereignty of culture, religion, and various practices. It means living on and controlling one's own lands, so that cultural practices can be carried out. The Settlement Act talks about this. It provides the right of determination of tribal membership, the right to a land base and sustenance fishing, and tribal regulation of hunting and fishing.
- To be sovereign as a *government* means to have supreme political authority. A sovereign nation has authority over internal matters and toward other nations. The Settlement Act is a hybrid. Tribes have authority over internal matters. This is additive to other things, not instead of them. They have authority over certain crimes and civil actions, the right to enter into agreement with other governments, and the right to be part of MITSC to oversee implementation of the Settlement Act.

The Settlement Act is clear. Tribes are sovereign over internal matters. But under the Settlement, sovereignty with respect to relationships with foreign nations is not provided. Section 6204 says that, except as otherwise provided, Tribes are subject to State laws...

If we focus on the sovereignty of individuals, we will find boundless energy to achieve this. This (e.g. fighting discrimination) is the very reason government exists. To the extent we focus on cultural sovereignty, there will be boundless energy to protect this. We agree that this has been nibbled away at, particularly in the area of child welfare. With respect to the sovereignty of government, we will run into the greatest resistance...

The State has nibbled away at a few areas, but this does not call for wholesale renegotiation of the Settlement. All of the parties agreed that sovereignty does not apply to dealing with other nations.