



Taking Our Place: Resistance & Recovery

October 26 & 27, 2021

The Association of Iroquois & Allied Indians
Horseshoe Valley Resort, Barrie, Ontario

Summit Report



Purpose

The Taking Our Place: Resistance & Recovery Summit was designed in partnership with the AIAI Tobacco Task Force to bring together leadership, Councillors, Community staff, and others from the AIAI First Nations for discussions on restoring our true places in Creation. By coming together, we are able to share the varied approaches, challenges, and successes experienced as we continue the vital work of rebuilding our Communities and resisting external interference on our ways of life.



The Summit was intended as an opportunity to discuss and share with a broader group the directions and successes achieved by the AIAI Task Force in terms of tobacco and Indigenous law-making. It was shaped in a way that encouraged discussion of varied perspectives in these areas and allowed for a breadth of cutting-edge information (academic, legal, cultural, and community-based) to be relayed.

This event was planned as the first larger in-person gathering facilitated by AIAI since the onset of the pandemic in 2020. The Task Force understood the importance of being able to come together to celebrate our successes - the ways we have been able to continue to build upon our foundations and recover our abilities to be the authors of our own stories.

Agenda

The agenda was shaped carefully to include information and dialogue around the generation of potential solutions for tobacco, as well as the foundational aspects of our worlds. Leading experts in the fields of Indigenous law-making and governance were invited to share the latest academic undertakings in this area. Legal experts were asked to provide presentations on recent developments in Canadian case law impacting Indigenous rights. First Nation leadership from the AIAI member First Nations were invited to share their community-based approaches for building governance capacity. Cultural components were incorporated into the agenda with a pipe ceremony facilitated by an Elder. An adoption ceremony and feast was also facilitated to bring life to the Inter-Nation Trade Protocol between the AIAI First Nations.

Participants

Five representatives from each First Nation were invited to attend. The turnout was strong with representation (either virtually or in-person) from each of the seven AIAI member First Nations present and several participants from most of the AIAI First Nations. The majority of the attendees included First Nation political leadership, band admins and CEOs, economic development officers, health workers, community staff, and youth.



Day 1

The Summit was opened with a pipe ceremony by Elder Cat Criger. The ceremony was open to all who wanted to participate. Words and prayers were said for our families and everyone present. Chief Franks provided a welcoming to the territory and AIAI Deputy Grand Chief Loft provided an welcome to all participants.

Setting the Stage

Co-chairs (Gordon Peters, AIAI Special Project Advisor, & Tina Powell, AIAI Policy Advisor) introduced themselves and set the stage for the event. A powerpoint presentation that outlined project origins, history, positions, and forward directions was provided.

A copy of this presentation has been posted to the AIAI Tobacco & Law-Making Website (tobaccco.aiai.on.ca) and emailed to participants. A summary of the presentation is provided below:

- **Project Origins:** In 2017, A proposal was sent to Ontario to undertake work on tobacco, trade, and commerce based in First Nation Jurisdiction. The Chiefs Council rejected Ontario's proposal which included notions of price parity, tax parity, and resource revenue sharing. The proposal failed to recognize First Nation jurisdiction and economies.

- **Capacity Building:** The current focus is capacity building including, research around tobacco economics, legal research, and analysis of inter-Nation trade possibilities. Spiritual and cultural work has been done throughout the years, as well as workshops and exercises to build capacity around community decision-making and governance models.
- **Community Findings:** There is strong entrepreneurial spirit within the Communities. Businesses want protection and support.
- **Positions established:** Our jurisdiction is not up for debate. First Nation tax immunity is a collective right. Tobacco is a gift given to our people by Creator. We have Treaty relationships with one another that have existed prior to contact. We have Treaty relationships with the Crown in the right of Canada.
- **Directions:** We will never subject the Communities to taxation. We know our jurisdiction exists and continue to operate with this reality. The only thing we need to discuss is how we want to manage our relationships and how we will work jointly.
- **Community led:** The direction we have has been provided by leadership. All our documents are in draft form until provided to Communities for finalization. All the AIAI First Nations are invited to participate in the process, but there is no obligation or requirement to do so. This is not an "all-in deal." Community support funding in the amount of \$40,000 is available to each First Nation with the submission of a workplan. There is no requirement tied to this funding to participate in negotiations or agreements with Ontario.

Feedback and Discussion

The feedback from the presentation was positive, including support for the positions established, work completed, and directions forward. Participants asked questions to gain clarity and provide input. They agreed on the importance of building capacity to protect businesses, increase safety, and determine our own laws and processes.

Tobacco Task Force: Community Perspectives

The AIAI Tobacco Task Force was established at the beginning of 2020 per direction of AIAI member First Nation leadership. With challenges and setbacks due to the pandemic, the group was finally able to begin to meet in person in the summer of 2021. The Task Force has begun to take on more responsibility for the project, including technical work to develop solutions around tobacco and determine possibilities for future potential negotiations with Ontario.



Task Force Members

Chief Dean Sayers, Batchewana First Nation; Brianna Sands, Caldwell First Nation; Sarah Hopkins-Herr, Eelūnaapéewi Lahkéewiit; Amy Bickmore, Hiawatha First Nation; Ariel Strength, Wahta Mohawks; Chief R. Donald Maracle, Tyendinaga; Chief Adrian Chrisjohn & Jason Cornelius, Oneida Nation of the Thames; Chief Philip Franks, Wahta Mohawks.

The Task Force also play an important role in terms of community education and communication. Each Task Force member spoke to their work as a part of the Task Force and within their Communities. Key points the themes from the Task Force presentation included:

- Our jurisdictions and our responsibilities are not up for debate with the Province
- Building upon our cultural foundations
- Development and advancement of Task Force Technical and Strategic Work Plan
- Communication processes around project work
- Development of community workplans and prioritizing Community goals
- Approaches to working with and engaging the business community
- Business commission discussions
- Achieving Community feedback
- Youth involvement and perspectives
- Supporting businesses and keeping the Community safe
- Community governance initiatives (ie. Custom codes, community decision-making models, governance exercises)
- Advancing prosperity and economic development in our Communities
- Approaches to conversations and our relationships with the Crown

- Shared experiences amongst our Communities and the successes in finding common ground
- Tailoring group work to the specifics of individual First Nations
- Histories of the fight to maintain tax immunity

Feedback and Discussion

The group affirmed the messages from the Task Force and applauded their work. Participants commented on the importance of developing laws for ourselves and not to fit into existing Canadian laws. There was discussion around the enforcement of laws. There are processes that can be used to garner Community support, ensuring that laws address Community need and are based in Community buy-in. This is critical in our work.

The Communities have all expanded and developed so much since the Elders in the room were young. If we think of how much our Communities have grown, we realize that we are always expanding and that everything does takes time.

Communications

One of the biggest achievements over the past months has been the establishment of a new website for the First Nation Tobacco & Law-Making Initiative. This website serves as a hub of information and resources directed at Community members. Resources include both project-specific material and general information to support Indigenous governance and law-making capacity building.

The site also serves as an information hub for Task Force members. A password protected portion of the site hosts upcoming and past meeting materials, as well as updated/revised versions of critical project documents.

The development and sharing of educational and communication materials for Community work is a critical component of AIAI for supporting Community processes. The Task Force continues to have a strong voice in terms of content development and sharing, including the development and design of the website (www.aiai.tobacco.on.ca)



Commission Components

A draft commission component document was presented to the group. The document is not designed as a solution for any one Community. The document is a collection of ideas that came from the Task Force based on an exploratory exercise that they undertook at a working session on August 20, 2021. The document has been posted on the Tobacco & Law-Making Website (www.aiai.tobacco.on.ca). A summary of the document's presentation is outlined below:

- A commission or tobacco board serves the purpose of facilitating the regulatory functions and processes for the growth, manufacturing, import, export, transportation, and sale of tobacco products within a First Nation's Territory.
- The size and administration of the board would be determined based on a number of factors (ie. size of Community, number of businesses, revenue generation, etc.)
- Two key positions/personnel roles in the commission include:
 1. **Lead Person/Commissioner** - This role would liaise with community business. They take on the role of problem solver, inspector, educator, and communicator.
 2. **Finance and policy person**
- Reviews and assessments should take place regularly to allow analysis and reflection of regulatory process and its functioning. An appeals process that is transparent and consistent would be a critical component intertwined with this.
- Regulations would have to be clear and transparent and consistently applied to all businesses within the First Nation dealing with tobacco products.
- Each Community will decide what their licensing processes will look like. Components such as fees, signage and stamping will have to be determined along with health and safety and inspections processes.

Discussion & Feedback

There were questions around the work that other First Nation in Ontario had been doing. Akwesasne had a discussion on possibly doing a similar process, but they set aside their tobacco initiative because of issues related to Cannabis. Chippewa had a process, but nothing ended up coming of it. When it came to a vote, the draft law was not accepted. The Union of Ontario Indians (Anishinabek Nation) is involved in a process with Ontario and is trying to figure out how to access revenue sharing.

There was discussion around the enforcement of laws within Community and current issues in this regard. Enforcement is a discussion that comes up often within Task Force sessions. Our greatest means of enforcement in our Communities is our people. There is an importance in Community processes that build upon Community needs and where everyone's voice is heard. We need to continue this discussion.

Panel Presentations: Resistance & Recovery

There is a lot of work always on-going to recover our Nations and resist external influences that detract from our ability to carry out our responsibilities. The panel presentations provided examples of current work within Communities that can provide a sense of our worlds today from different angles. Often times, we want to look far and wide for support and capacity to make changes but, we have the power we need within ourselves and our Communities.

Chief Dean Sayers (Batchewana First Nation)

Chief Sayers spoke to the work that Batchewana is doing and the processes they undertake to prepare themselves to carry out initiatives to protect and advance their Communities. He spoke to the regulation of tobacco and cannabis as a positive thing in terms of health and safety. He spoke to questions around generating dialogue with businesses and how we can support them. Ideas around smoke shop employee pension and E.I. and other stability mechanisms could be important in this regard. There is importance in talking about what we can secure for businesses and how we should approach businesses.

Chief Sayers shared stories and teachings from his area illustrating how they are the substance of law. Ceremonies with the birch bark tree and the canoe show us how our world can help us and guide us in the work we do. We have our laws, collective rights, and responsibilities to sustainably look after our People and all of Creation. When we have discussions with Elders, those words are laws themselves. We don't have to go into their courts to create resolve. We can build upon our foundations and the teachings that we have.

Sara Mainville (Couchiching First Nation)

Sara Mainville provided an outline of recent Section 35 rights cases. There are historic cases that have impacted the viability of Section 35 to fulfill its intended purposes. Cases have established Common Law Tests and evidence barriers wherein the onus of proof is placed on Indigenous Peoples. Historic cases still create barriers for our legal assertions, even as Federal Courts attempt to "make space" for Indigenous jurisdiction.

Blueberry River First Nation has won a case on cumulative impacts of development and their affect on First Nation right to hunt, fish, harvest. The victory for Blueberry River First Nation is based on Treaty clauses. This will be something to monitor. It is currently not being appealed.

It is important to understand whether the courts understand Indigenous rights. The courts still do not understand that the Royal Proclamation is not the source of our rights. They do not understand and that it is our own inherent authorities that is our source. We do see the courts trying to educate themselves on Indigenous sovereignty but, they seem unable to grasp certain foundational pieces. We must recognize that we have our own laws and that these are the best way forward.

Open Dialogue

There were questions and dialogue amongst the group speaking to the new information presented, frustrations experiences, and relevant/shared experiences.

There should be no burden of proof for our Peoples to hunt, fish, and gather on our land for their survival. For the most part, we are stuck in this justifiable infringement wheel, where we continue to allow the onus of proof to be put on us and are forced to operate through co-management regimes. First Nations are still very criminalized when practicing their hunting and fishing rights.



There needs to be a new way to argue these things in the courts. Courts do not understand Treaties. We have to get to a place where we can actually talk about Indigenous law. Bad facts make bad law. Governments are looking for facts to limit Indigenous rights and title as much as possible. They should be considering how to decolonize the law. We must challenge their assumptions and stop normalizing their laws within our own worlds.

Inter-Nation Trade Protocol Ceremony

The Inter-Nation Trade Protocol was adopted by the General Assembly in November 2020. The document sets the foundation for knowledge and information sharing amongst the AIAI member First Nations for future work around tobacco, trade, and commerce. The signing process is still ongoing. Due to pandemic restrictions, we had been unable to carry out the protocols required to bring the document to life. As such, a ceremony and feast was led by Elder Cat Criger at the end of the day. All participants were invited to join.



DAY 2



To start the day, good words were provided from the Elder. The chairs provided a brief summary of the previous day, reminding us of all we have accomplished and of the importance of coming together to celebrate and to share. The second day of the meeting is continuing to build upon the knowledge shared yesterday.

Indigenous vs. Western Legal Orders

Gordon Peters provided a brief introduction on the differences between Indigenous and Western Legal orders showing how each system is based on very different sets of values and worldviews. He provided a brief outline of current efforts from Canada that continue to undermine our worldviews and assume jurisdictions that are not theirs.

The powerpoint presentation been provided to all participants and is available on the AIAI Tobacco & Law-Making Website www.tobacco.aiai.on.ca This presentation served as an introduction to the keynote presenters Karen Drake & Kevin Deer.

Rooted Constitutionalism: A Conversation About Spiritual Laws

Karen Drake (Wabigoon Lake First Nation)

A slide was shown to participants to illustrate the concept of rooted constitutionalism. This concept can help guide our spiritual relationships. The diagram is of two trees. The branches refer to legal processes, the roots represent the society's world view, and the trunk represents constitutional orders. Each level shakes and constraints the one above it. The image shows that there are two different orders of law that cannot simply be grafted upon one another.

Karen spoke about Wiidookodaadigiwin, the good life. She spoke of how reciprocal sharing is a concept within this and how this concept is different from those around which western legal orders are developed and operate. She shared stories to show how reciprocal sharing works, and what happens when two parties have a relationship wherein each is operating under different notions in this regard.

This Colonial governments do not operate under the same concepts of reciprocal sharing and relationships as Indigenous Nations do. This is how the relationship becomes unbalanced. This is why we should focus on our own development of spiritual laws based in our own cultures and stories and ways. Canada needs to bring itself to a place where it can be in appropriate relationships with First Nations.



Kevin Deer (Kahnawake)

Kevin Deer reminded us of the colonial history of Turtle Island wherein the goal of colonial governments was to get rid of the Indian. The justification around this was Christian notions of superiority and racist beliefs enshrined in the Doctrine of Discovery. The motto for Residential Schools was “kill the Indian to save the man.” Their idea was to get rid of the “Indian problem” by getting rid of us, by removing our language, traditions – the essence of who we are as Peoples.

Kevin reminded the group to be fearless when we go to the negotiations table because we are powerful and have rights and responsibilities that cannot be taken.

There is an importance in maintaining jurisdictional separation and not having our own constitutions enshrined with or sublimated to Canada's. The Iroquois confederacy are going to remain separate and will negotiate with Canada based on their own language, ceremonies, treaties, and everything that makes them unique. We cannot take Canada's constitution and put it above our own and say that their constitution will have our rights entrenched in it. This does not work.

Kevin recommended watching “Dancing Around the Table” documentary. It is available on YouTube and here: https://www.nfb.ca/film/dancing_around_the_table_1/. This documentary shows the mindset of Canada when speaking about constitutional rights.

He concluded by talking about the importance of following our own ways. It is new systems, such as the monetary system, implemented by foreign bodies, that create arguments among our Peoples and disrupt our natural balances.

Discussion & Feedback

The group addressed the podium with comments and questions pertaining to their presentations. There was dialogue around assertions of Treaty and taking governments to court regarding the upholding of their terms. When we talk about the land, we are not supposed to use territorial boundaries and private ownership of lands. We must understand that no one can ever sell Aboriginal Title. We must reverse the idea and understand how settler governments got title for the lands. Remember that our title comes from the Creator.

When we talk about Treaties and write our laws, we should use our own languages. There was never a proper translation of Treaty. We can never treat a Treaty like a bill of sale. The government passed C-15. We need to unite to sit with government on this and must push them to start talking about its issues.



Governance in the Community

Chief Carr outlined the work that is happening within Hiawatha around governance. Hiawatha incorporates the 7 grandfather teachings within their processes in the Community. Hiawatha has sent a request for proposals to complete governance documents and to facilitate engagement processes with their Citizens, Staff, and Council. Some of the documents they are working on include custom citizenship code, custom election code, residency code, and governance documents. Their work will also include a framework plan with community ratification processes.

To date, Hiawatha has completed a Comprehensive Community Plan, Land Code, Williams Treaties Trust, Economic Development Corporation, First Nations Council Resolutions on cannabis, and work on new/expanding businesses. Hiawatha has also hosted governance sessions within the community with the support of AIAI. They recently brought Gord and Tina in to do a clan-based governance exercise with their staff.

Feedback & Discussion

The group thanked Chief Carr for her insight and congratulated Hiawatha on their achievements. It is important to share what we are all doing in our Communities so we can learn from each other. It was said, if our community doesn't have laws established, the government will have them established for us. An example of this is matrimonial real property.

There was discussion of the issue of contribution agreements only dealing with people who are status members. There are people in the Community who are not status, but it is hard to get funding to cover their services.

A strong approach to Community engagement was the promotion of a survey. Hiawatha offered their survey online, on social media, and also mailed it out. It was advertised very well. Through this, and in-person sessions in the Community, there was successful response in terms feedback from Community.

Breakout Discussions: Spiritual Laws & Community Governance

Participants were split into four groups at random. They were asked to consider information and discussions over the past two days to respond to discussion questions. Feedback has been themed and summarized below. Themes include, community decision-making, language & cultural foundations, capacity for supporting businesses, & tobacco.



Questions

- You heard Dynamic presentations? What did it trigger in your mind?
- Are cultural practices of governance and law-making still used in your community? Are these practices used in governance processes? If so, please identify.
- What steps can be taken to develop and maintain cultural practices in your community?

Community Decision-Making

- There is a need for the Communities to control and create their own policy and laws. The challenge is bringing the Community to a place where they are able to do that. We need to think of the Community as a whole and not focus on individuals. We can promote harmony and relationship building and address the lack of family unification. We need to be able to have meetings involving family groupings, create safe spaces, and realize this work is not a quick process - it takes time.
- The development of Community Strategic Plans has been useful. We realize that when we have Community processes in place, we are doing our own Community engagement and automatically being the decision-makers of our own futures.
- There is a need to have transparent and accessible communication to encourage widespread participation in decision-making and continue to build capacity around this. It is important to involve every segment of Community, including youth and elders, knowledge keepers, etc. We need to continue to build upon the work we have done and what we already know.
- We have to have open conversations with one another and share our approaches to see how others are doing their work. We can learn so much from each other and support one another in different ways.

Language & Cultural Foundations

- There is merit to going back to the basics, offering cultural competences, and bringing culture to the forefront to help the Community to come together. We need to develop methods of doing this that make people feel comfortable and welcomed.
- We need to have Indigenous worldview in the root of the laws moving forward. Key to developing our own policies and processes is building capacity to rebuild our foundations and utilize the knowledge and values of our Peoples and our ancestors. We must recover our own ways and resist those of external bodies and governments.
- It will be important to develop our laws in our own languages. There is a lot of work to be done to be able to achieve this. Revitalizing language is a whole-community process that can help bring us together. We should begin with teaching children at a young age and operating under the values of our People. We need to put the language within the schools to pass it along and bring the families together to revitalize the language to pave the way forward.
- Some Communities have based Council portfolio structures on the clan system and find this is working well. Within clan systems, each clan has a role and responsibilities. It is useful to have different departments intertwined in this way.
- We can incorporate ceremonies in our work and get community involved. Being a citizen comes with responsibility and implementing Treaty is about building better relationships.
- It is important to lead by example and promote our ways within our existing programming. Leaders need to follow their best practices and decolonize minds. We can be fearless because we know that knowledge is power
- One positive program is example is called Building your Bundle. It teaches youth culture, making culture more approachable and accessible.
- We must never forget the importance of Mother Earth, the air, the land, and the water.

Capacity for Supporting Businesses

- How do we best work with businesses and vendors to establish regulations that support their operations and improve the community?
- Community involvement in every step of development is key. Law is not just about writing and developing, it is about implementing, and operating. Ideas around enforcement should be focused on the realization that our best enforcers are our own People. It is Community process that allow our laws and legal orders to function. We have to realize this is different from the westernized approaches we have been forced to normalize.

Tobacco

- We need to consider questions around tobacco and clarify/establish our Community standards. For example, when we grow our tobacco, will we allow for additives? What standards will be needed to address safety?
- We need to talk about health and safety around tobacco and the difference between cultural vs. recreational uses.
- We need to find ways to recognize traditional teachings and western science to find balance.
- Community understands the need for policies to be created to keep Community safe. It is important to keep Community informed on what is going on.
- All of this work will require significant human resources and time. It is important that we are dedicated in this way and remember that this work can support so many other areas.

Summary & Future Directions

AIAI Deputy Grand Chief Loft provided closing words to summarize the two days we shared together. She highlighted that workplans need to reflect the needs of each Community and that it is key to be able to collaborate with each other. There have been many stories shared throughout our time together. Some people have not heard these stories before. It will now be for participants to pass on and share these.

Our future direction is to continue building capacity within Communities, emphasizing building relationships with Communities. There is a component of culture and of learning the language so we can continue to build our foundations for going forward.

There is so much is being done in different Communities. It is important to realize this, to keep excitement the alive, and to keep momentum going. Participants were asked to share one word that summarizes how they feel having completed the session. Words included:



Elder Cat Criger provided comments and a prayer to close the meeting. All participants were invited to participate in a Round Dance. Geoff Stonefish provided an explanation around Round Dance. The group danced to celebrate friendship.

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