

Increasing the Authority of the Guardian Watchmen

Tim Watson
Uvic Environmental Law Centre

The Questions

- To what degree is it possible for Watchmen members to enforce existing environmental laws?
- What other mechanisms are available to increase the Watchmen's authority?

Underlying Enforcement Issues

- Enforcing laws outside of Reserve / Settlement Lands
- Enforcing laws vs. non-First Nations
- Territory Overlaps / Enforcing laws vs. other First Nations
- Liability

Research Overview

1. Review of provincial and federal laws
2. Review of national and international Agreements
2. Recommendations

Provincial and Federal Laws (Appointment)

Examples

- *Environmental Management Act* (Conservation Service)
- *Fisheries Act*
(Fisheries Officers)
- *Parks Act*
(Park Rangers)

Positive Aspects of Appointment

- In most cases, there are no significant legal barriers to appointment under provincial and federal legislation
- Support at a provincial level for greater Aboriginal jurisdiction

Challenges to Appointments under Existing Legislation

- Appointment is Discretionary
- Funding
- Level of Band Control
- Accountability

Appointment: Two Tiered Model

- Gradual assumption of duties:
 - Conservation Officers;
 - Park Rangers; and
 - Fisheries Officers.
 - RCMP community constable designation could provide further authority and potentially an additional stream of funding.
- Policy involvement at a political level

National and International Agreements

“Crossing the Jurisdictional Divide”

- Gaining substantive community-directed enforcement outside of reserve / settlement lands

Great Lake Indian Fish and Wildlife Council

- Intertribal body: represents eleven Ojibwe Nations in Michigan, Wisconsin & Minnesota
- Enforces band-specific tribal codes against tribal members and state conservation laws against non-tribal members in ceded lands.
- Unless an intertribal agreement is in place, GLFIWC officers will not enforce the regulations of one tribe against the members of another.

GLIFWC: Authority to Enforce

- Authority to Enforce Tribe-specific Laws against Tribal Members
- Enforcement of State Laws Against non-tribal Members
- Enforcement of Federal Laws
- Powers under the *Warden Bill*

Recommended Steps: Appointment

- Identify key government contacts within relevant Ministries;
- Identify enforcement roles, make formal requests to the relevant Ministries for designation, training and funding;
- Identify linkages between Nations and the potential for inter-tribal cooperation;
- Seek support from political representatives of Watchmen member Nations;
- Contact Provincial / Federal ministries about coordinating government-to-government relationship with regard to enforcement (could be formal or informal);
- Contact the RCMP about the Community Constable Program; and
- Identify long-term, steady funding sources.

Recommended Steps: GWLIFC Model

- Identify Indigenous laws the Nations wish to enforce through community / elder consultation;
- Draft Indigenous legal codes for each Nation;
- Carry out further research on the legality of enforcement outside of reserve lands (ie. is legislative change allowing delegation required?);
- Discuss the potential for an inter-tribal enforcement agency; and
- Obtain training in enforcement equivalent to conservation / peace officers.

Concluding Comments

Pros

- Some government interest in appointment
- International precedents re: Band directed enforcement
- Growing movement supporting Aboriginal jurisdiction

Challenges

- Funding
- Level of Band Control