

Submissions to: SARNIA CITY COUNCIL

Re: MAINTENANCE OF ROADS  
ACROSS INDIAN RESERVE

From: A. ALAN BOROVOY, Counsel  
CANADIAN CIVIL LIBERTIES  
ASSOCIATION

On Behalf Of

THE CHIPPEWAS of SARNIA

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Tuesday, May 7th, 1968

This is a delegation representing the Chippewas of Sarnia Indian Band. We are here because of the deplorable condition of Indian, Tashmoo and Scott roads which run across our reserve. The open ditches along the roads are laden with weeds, accumulated garbage, and saplings. Clogged culverts often create serious flooding. At times, the ditches contain about four or five feet of water—a serious threat to our little children. Speed limits are not enforced; lighting is not provided. In the summer, the roads are veritable dust bowls. Where the other roads are paved with asphalt, these roads are sprinkled with oil.

What entitles these roads to such exceptional neglect? Unlike most other Sarnia roads, these roads run across the Indian reserve and the Indians do not pay municipal taxes.

At one time, these roads were the property of the Chippewas of Sarnia Indian Band. Today they are the property of the City of Sarnia. How did the Indians lose the ownership of this property which had been guaranteed to them by the Crown many years ago?

In the early nineteen fifties, when annexation arrangements incorporated the territory of our reserve into the municipal boundaries of Sarnia, this City believed that it was necessary to secure control of all the roads in the area. The Chippewas Band Council was quite prepared to co-operate in the interests of good road service and good community relations. All that the Band Council sought in return for the surrender of the roads to the municipality was an understanding that the municipality would maintain the roads.

The elected officials of the municipality of Sarnia promised to do just that.

The following items from the Sarnia newspaper during the year 1952:-

"Pointing out that the Committee's intention all along has been that the City should be responsible for upkeep of the roads, the Mayor said it is likely a meeting will be called for next week to study the angles".

(March 1st, 1952)

"City Council this evening will be asked to consider application to the Department of Indian Affairs for an Order-in-Council surrendering to the City all existing roads on the Indian Reservation. Mayor W.C. Nelson said today. This would give Council control over these roads and at the same time, it is suggested, make the City responsible for upkeep".

(January 21st, 1952)

"Sarnia City Council has offered to take over complete maintenance of all roads in the Indian Reserve in return for the right to control the roads."

(March 5th, 1952)

The Indian Band Council believing in the good faith of the Sarnia City Council, agreed to the transfer of these roads under the conditions mentioned. The following is the Resolution adopted by the Indian Band Council on June 3rd 1952:

"It was moved by James B. Williams and seconded by Telford Adams that this Council recommends that title to existing road allowances within the Reserve, namely, Indian, Churchill, Tashmoo and Scott, be transferred to the City of Sarnia immediately without charge, on the understanding that the City is to be entirely responsible for their future maintenance ....."

However, as this Council well knows, Indian Bands have no power on their own, to transfer title to their own property. Accordingly, the transfer had to be facilitated by the Federal Government. On the 4th of June 1953, Her Majesty the Queen made a land grant in favour of the Corporation of the City of Sarnia in order to complete the transaction.

For some unexplained reason, the land grant said absolutely nothing about the obligation of the City of Sarnia to maintain the roads. The only condition regarding future treatment of the roads, which appears in the Grant stipulates as follows:

".... should the said lands cease to be used for road purposes then all the right, title, and interest hereby granted therein or in such portions thereof as are not so used shall revert to us (the Crown)"

The Federal Government, the supposed trustee for the interests of the Indian people, was guilty of, at the very least, an act of negligence. Sarnia's obligation to maintain the roads, agreed upon by all parties, is nowhere to be found in this Grant. Perhaps this incident will in some small way convey to you the nature of the misgivings and suspicions which many Indian people have developed towards Canadian society.

Deprived of the roads and the undertakings which your predecessors incurred we resort, in the first instance, to the force of moral persuasion. Your predecessors agreed to maintain the roads; the Indians agreed to give up the roads on the basis

that you would maintain them. We believe, therefore, that your obligation is clear. Accordingly, we call upon you to undertake immediately and hereafter the maintenance of these roads up to the standard which you apply on other municipal roads.

Some Sarnia residents have balked at this proposal on the basis that the Indians do not pay taxes to the municipality. Surely it is clear that such a position is devoid of ethical validity. Since it was known to the Sarnia City Council in 1952 that the Indians do not pay taxes and since the Sarnia City Council in 1952 agreed, nevertheless, to maintain these roads, the moral obligation persists. If the Municipality of the City of Sarnia does not wish to maintain the roads it should surrender them to the Federal Government for re-conveyance to the Indian Band Council. These are the only two alternatives which we believe would satisfy Sarnia's moral obligation.

The Sarnia Indians wish to enjoy good relations with their non-Indian neighbours; they believe that you wish the same thing. Clearly, your compliance with these submissions would go a long way toward establishing the kind of community relations which all parties of good will so keenly desire.

The Canadian Civil Liberties Association has intervened in this matter, at the request of the Sarnia Indian Band Council, to secure the principle that when state power is employed to deprive citizens of their property, the state should be obliged to



fulfill its agreements with the citizens. As this City Council is well aware, where Canada's Indians are concerned, this principle has been violated on innumerable occasions.

It is to begin the process of restoring equity to the Indian people that the Canadian Civil Liberties Association appears on behalf of the Chippewas Band Council today. It is no exaggeration to say that Canada's national honour rests on the outcome of the kind of issue which is involved in this matter.

In summary, this delegation calls upon the City of Sarnia:

1. To maintain these roads now and hereafter up to the standard employed on other municipal roads

or

2. To surrender the roads to the Federal Government for re-conveyance to the Indian Band Council.

We do hope that you accede to these recommendations.

Respectfully submitted

A. Alan Borovoy,  
General Counsel

CANADIAN CIVIL LIBERTIES ASSOCIATION

On behalf of

Chief Fred Plain and the  
Chippewas of Sarnia Indian  
Band.

These submissions are endorsed by  
the Sarnia and District Labour Council.