

# Malcolm Wiener Center for Social Policy

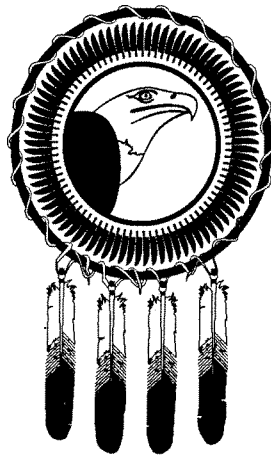
*Tool of Sovereignty: The Crow Commercial Code*

by

Eric Henson and Luxman Nathan

*PRS 98-4*

April 1998



Harvard Project on  
American Indian Economic Development

John F. Kennedy School of Government  
Harvard University

**The views expressed in this paper are those of the author(s) and do not necessarily reflect those of past and present sponsors of the Harvard Project on American Indian Economic Development, the Malcolm Wiener Center for Social Policy, the John F. Kennedy School of Government, or Harvard University. Reports to tribes in this series are currently supported by the Christian A. Johnson Endeavor Foundation. The Harvard Project is directed by Professors Stephen Cornell (Department of Sociology, University of California, San Diego) and Joseph P. Kalt (John F. Kennedy School of Government, Harvard University). For further information and reproduction permission, contact the Project's Executive Director, Manley Begay, at (617) 495-1338.**

## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b>	1
<b>INTRODUCTION</b>	4
<b>BACKGROUND</b>	7
<i>The State of the Crow Economy</i>	8
<i>Obstacles to Developing A Crow Private Sector</i>	10
<i>Promising Economic Developments</i>	15
<b>THE CROW COMMERCIAL CODE</b>	17
<i>What are Commercial Codes?</i>	18
<i>Contents of a Commercial Code</i>	19
<i>Commercial Codes in Indian Country</i>	21
<i>Benefits of Crow Commercial Code (CCC)</i>	22
<i>Prerequisites for Considering Adoption of the CCC</i>	27
<b>ANALYSIS OF CAPACITY FOR IMPLEMENTATION: THE CROW JUDICIARY</b>	30
<i>Enforcement Capacity of the Judicial Branch</i>	31
<b>ANALYSIS OF ALTERNATIVES</b>	37
<i>Alternative I: Going It Alone</i>	39
<i>Alternative II: Inter-Tribal Filing Office</i>	43
<i>Alternative III: MOU with State Agencies</i>	44
<i>Alternative IV: No Adoption of a CCC</i>	45
<i>Criteria to Evaluate Alternatives</i>	47
<i>Feasibility of Alternatives</i>	50
<i>Summary of the Analysis of Alternatives</i>	54
<b>RECOMMENDATIONS &amp; MILESTONES OF IMPLEMENTATION</b>	55
<b>CONCLUSION</b>	62
<b>APPENDICES</b>	
<b>BIBLIOGRAPHY</b>	

# EXECUTIVE SUMMARY

The Crow Tribe is actively engaged in the process of encouraging economic development in Crow Country. The benefits that a commercial code will bring to the on-reservation business environment leads us to conclude that **adoption of a Crow Commercial Code (CCC) should be a priority for the Tribe.** However, it is important to bear in mind that merely passing legislation enacting a commercial code will be *insufficient* to boost economic development without concurrent institutional reform. This institutional reform should focus on ensuring the independence of the Crow judicial branch, and providing professional management of tribal business ventures.

The current state of economic development in Crow Country is a direct reflection of the lack of an effective commercial legal infrastructure. Crow entrepreneurs and Tribal enterprises experience considerable difficulty in obtaining loan capital from off-reservation sources. Legitimate non-Crow financial and business concerns are deterred from investing funds in Crow Country since at present no formal recourse is available to them. At the same time, the Tribe is contemplating several major economic development projects which represent significant potential gains for the Tribe.

The Crow Tribal Bank initiative, and other ambitious projects such as electricity retailing, will necessitate a formal dispute resolution mechanism, a regime of contract law, and guidelines for how the government can regulate commercial activity. In addition, due to perceptions by some of the Crow Court as biased and ineffective, the Crow are subject to legislative attacks by unsympathetic outsiders. Many of these attacks are aimed at taking away sovereign jurisdiction over commercial ventures on their reservation.

A commercial code would allow the Crow to effectively address these problems. In particular, the Crow should adopt a *Crow Commercial Code*, by adapting existing Uniform Commercial Code models to fit specific tribal needs. The CCC would serve as a preemptive strike against outside jurisdictional challenges, and would enhance the sovereignty of the Nation.

The CCC would benefit both the Tribal government and the emerging Crow business community by:

- Instilling confidence on the part of outside commercial interests.
- Facilitating capital in-flows onto the reservation.
- Depoliticizing dispute resolution proceedings.
- Standardizing and streamlining commercial practices and contract enforcement.
- Enhancing Crow sovereignty, by allowing the Tribe to exert its regulatory authority over business activity on-reservation.

At this time, the Crow find themselves in a good position to start working on a commercial code. The Tribe has always been fortunate to control significant natural resources, and recent federal court proceedings might finally allow the Crow to be the beneficiaries of the abundant wealth which they have been unjustly denied. A Crow Commercial Code can help build the kind of business environment in which Crow ventures will thrive as these assets come into the Tribe's possession. In addition, by standardizing the rules governing transactions, the CCC can help the Tribe in its efforts to re-acquire Crow land that is no longer under tribal control.

After considering the Tribe's goals, their institutional capacity for implementation, and the current political environment, we have developed the following general recommendations which flow from our specific Milestones of Implementation:

### **Recommended Actions**

- Establish a Corporation Commission to oversee adoption and implementation.
- Prepare the Tribal Court for its role as the enforcement body of the CCC.
- **Enact the CCC and establish it as an important body of law governing commercial transactions in Crow Country.**
- Conduct Annual CCC Audit and Training Conference, to evaluate enforcement progress and build Crow expertise in commercial law.

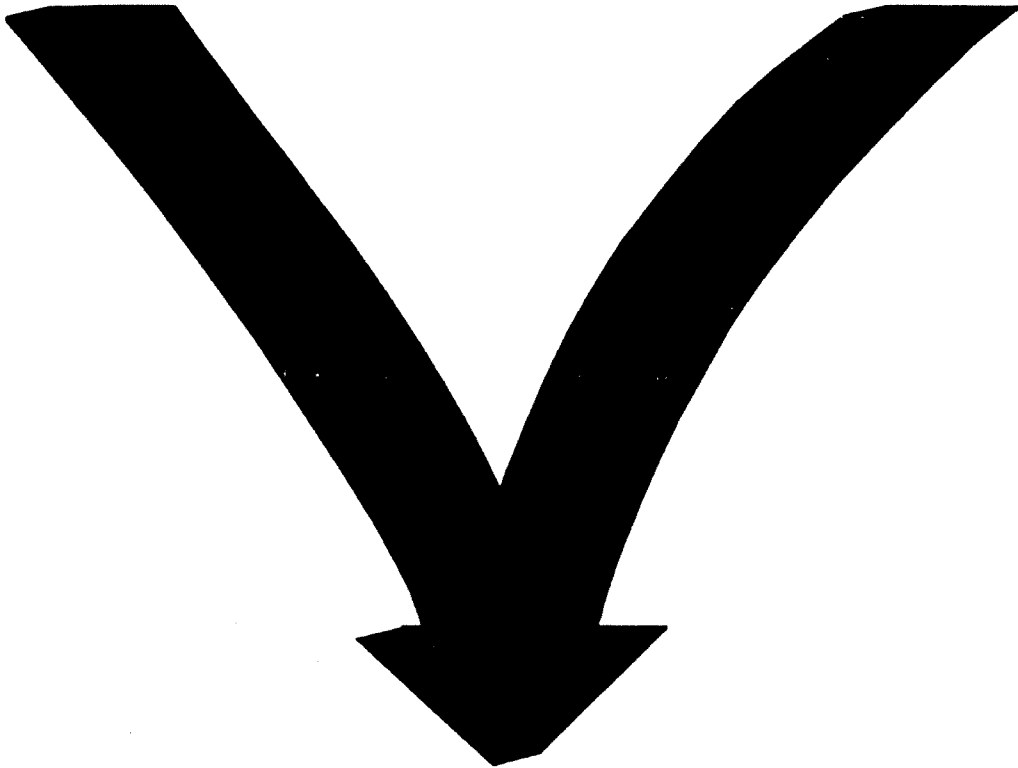
Based on our analysis, we conclude that the Crow should begin the process of drafting and adopting the CCC, while building up the requisite enforcement capacity. Since the day-to-day enforcement of the provisions of the CCC will rest within the Crow Courts, successful implementation is dependent upon judicial efficiency. A yearly evaluation process will enable the Crow to monitor their progress in regulating transactions. At the same time, the Crow will build a reputation as experts in commercial law within Indian Country.

Given the legal nature of commercial codes, this study does not attempt to craft the actual wording of the CCC itself. Rather, the analysis focuses on the ability of the Crow Tribe to adopt and implement laws designed to clarify and strengthen the business-government relationship in Crow Country. Those familiar with the Tribe and their lands might find it more useful to skip directly to Section III (The Crow Commercial Code). Immediately following this Executive Summary is a brief presentation that provides a quick overview of our findings.

# Prerequisites for Adoption of the CCC

Creation & Maintenance of  
an Independent Judiciary

Separation of Politics  
from Business



Foundation for  
CCC Implementation

# Milestones of Implementation

- ✓ Establish Corporation Commission
- ✓ Earmark Training Funds
- ✓ Draft the CCC
- ✓ Negotiate Interim MOU with State
- ✓ Educate Voters/Public Hearings
- ✓ Adopt CCC
- ✓ Build Capacity for *Going It Alone*
- ✓ Establish Commercial Case Record
- ✓ Adjudicate Under CCC
- ✓ Audit CCC Progress Annually

# What are Commercial Codes?

- **Legal rules governing commercial transactions.**
- **Cover sales and leases, shipping of goods, bank deposits, etc.**
- **Outline the rights and obligations in a contract or transaction.**

# Crow Commercial Code

Borrowers & Lenders  
Protected in Disputes

Standardized  
Commercial Laws

Investor Confidence  
Increases

Consistent & Credible  
Court Rulings

Capital Flows to  
Crow Businesses

Enhances Sovereignty

Economic Progress

# The CCC Audit Process

- ☑ Corporation Commission & Legal Counsel Hold Annual Audit
- ☑ Hold Annual Training Conference in Commercial Case Law
- ☑ Publish *Crow Commercial Case Resolution: The Year in Review*

# I.

## INTRODUCTION

*The Crow country is a good country. The Great Spirit has put it exactly in the right place; while you are in it you fare well; whenever you go out of it, whichever way you travel you fare worse.*

*Arapoash (Sore Belly), c.1830<sup>1</sup>*

---

<sup>1</sup> Frederick E. Hoxie, *Parading Through History: The Making of the Crow Nation in America 1805-1935*. (Cambridge, England, 1995), 60.

The Crow Tribe of Montana is actively engaged in a process to encourage economic development on their reservation. The Crow have experienced difficulty attracting outside businesses onto the reservation. Much of this difficulty stems from the absence of a standardized set of legal statutes governing commercial activity. In most nations such statutes are embodied in a commercial code, which serves to shape the nature of the business environment. A commercial code specifies the conditions under which businesses may operate, the rules which businesses must follow, and the mechanisms under which commercial disputes will be resolved. A commercial code instills confidence for the business community, financial interests, governments, and the consuming public. By helping standardize judicial rulings to protect the rights of creditors and debtors, as well as buyers and sellers, a commercial code brings certainty to the business-government relationship. Uncertainty can effectively limit the rate of economic development in any nation.

The existence of a code can help stimulate both investment on tribal lands and enterprise creation among indigenous entrepreneurs. For example, non-tribal commercial interests who might be willing to establish operations on the reservation are often uncomfortable with the lack of formal commercial dispute resolution mechanisms.<sup>2</sup> The situation in Crow Country is analogous to that in the new market economies of Central-Eastern Europe. World Bank studies of investment climate in this region establish a connection between the ability to enforce contracts and business confidence:

*The shortage of institutions to enforce contracts limits the scope of transactions, makes contracting more costly, and prohibits some contracts altogether... Lack of confidence in formal enforcement mechanisms ... limits firms' activities and hinders new firms from entering the market.<sup>3</sup>*

Without a commercial code and the judicial system to ensure enforcement, tribal sovereign immunity acts as a deterrent to business activity. Sovereign immunity protects governments from legal actions brought against them. This leads to a situation where fewer outside interests are willing to invest in tribal ventures. Tribal members who would like to start up businesses on their reservations often lack access to capital and outside expertise. Some of the most successful tribes overcome this by engaging in limited waivers of sovereign immunity. Waivers of sovereign immunity can be interpreted as acts of sovereignty. By actively choosing to engage capital interests in this manner, these tribes exercise their sovereign rights to establish an environment conducive to business on their reservations.

---

<sup>2</sup> Several discussions with bankers have stressed the unease financial institutions feel about doing business in Indian Country.

<sup>3</sup> The World Bank, "Legal Institutions and the Rule of Law," in *World Development Report*, (New York, 1996), 90.

## **Limited Waivers of Sovereign Immunity**

Limited waivers of sovereign immunity include: 1) Limiting tribal liability through establishment of a business development corporation, with corporation powers to enter into contracts on behalf of the tribe; 2) General waivers up to a given dollar value, thereby granting limited protection to lenders; 3) Contracts that tie all future claims to the specific enterprise and not to the tribe itself; 4) Pre-specification of which courts, Tribal or Federal, will hear disputes.<sup>4</sup>

## **Enforcement is Crucial**

It is important to remember that the mere adoption of a commercial code is not usually sufficient to spur economic development. Nevertheless, individuals and businesses operate more effectively in an environment in which long range planning is possible. A stable business environment allows both to plan without fear that continuously changing situations will invalidate such planning. The Crow leadership can further the development of a stable environment if they provide both efficient legal practices and a nurturing business climate in Crow Country.

Separating non-judicial governmental actors from the dispute resolution process is a critical step in furthering economic development. This has proven to be a difficult task for many developing governments in newly liberated Central-Eastern Europe, such as Russia and the Republic of Georgia.<sup>5</sup> The Crow face the same challenge today. In some cases, it is tempting to seek personal profit or exploit the system to distribute favors when the judiciary has no clear separation of power from the political process.

Unlike some societies attempting to make this transition, the Crow have a historical foundation upon which to build such a system. Prior to the reservation era, the Crow maintained law and order without a written legal code through an effective, apolitical, dispute resolution system. In those days, warrior societies patrolled camps and ensured proper behavior by all tribal members; few disruptions were tolerated.<sup>6</sup> Unfortunately, dispute resolution on the Crow Reservation is now a highly politicized activity, which draws criticism from both tribal members and outsiders. This is a serious obstacle to mutually beneficial economic interaction, and one that a well-functioning commercial code can help the Crow Nation to overcome.

## **The Purpose of this Report**

The following analysis will address the need for the Crow to adopt the Crow Commercial Code. It is not the purpose of this report to draft the specific language of this code, nor is it the intention of the authors to provide any form of legal advice to the Crow. The Crow already have access to expert legal counsel. This includes the Special Justice, the Appellate Court Justice, and outside attorneys employed by the Tribe. Instead, this study will focus on the need for a commercial code on the Crow reservation, and the capacity of the Crow to successfully implement and enforce such a code.

---

<sup>4</sup> Melissa L. Gedachian, "Safeguarding Sovereignty with Tax Free Bonds," in *American Indian Report*, July 1997, p. 18-20.

<sup>5</sup> See Garry Evans, ed., "An End to Easy Money," in *Euromoney: IMF/World Bank Issue 1997*, 319. Also, Absolute Bank, "Georgia" in *World Economic Analysis: Supplement to Euromoney: IMF/World Bank Issue 1997*, 46-47.

<sup>6</sup> Hoxie, *Op. Cit.* pp. 80-81.

# II.

## BACKGROUND

### **Crow Country at a Glance**

- 2.29 million acres.
- Rich in natural resources.
- Approximately 6,600 Crow reside on the reservation.

The Crow reservation is located in south-central Montana, comprising approximately 2.29 million acres (3,578 square miles). The land is rich with natural resources. The Crow own the third largest coal deposits in the world after the United States and Australia. They also possess the largest contiguous wheat fields in the world. Total tribal enrollment was 9,155 in 1995, with 72% residing on-reservation<sup>7</sup> Many tribal members also live outside the reservation in the cities of Billings and Hardin, as well as in Sheridan, Wyoming.<sup>8</sup> Non-Indians own approximately 34% of the total land base.<sup>9</sup>

### **The State of the Crow Economy**

#### **Crow Economy at a Glance**

- Official unemployment rate of 67%.
- Total unemployment rate of 78%.
- Per capita income of \$5,729.
- Most employment provided by Tribal or Federal governments.
- Small and informal private sector.

The Crow people are not unfamiliar with economic success. In the mid-1800s the Crow were one of the wealthiest tribes in the West. The main source of their livelihood was the buffalo herds that roamed the Great Plains. A male's standing in the society was determined by his acquisition of horses and his prowess as a warrior. Most families owned a hundred horses each, and Crow regalia, jewelry, and clothing were renowned for their craftsmanship and value throughout the Plains. Thus, the Crow, unlike some other native peoples, valued individual wealth and acquisition. These traits usually provide support for the development of a viable economy.

<sup>7</sup> Federal Reserve Bank of Minneapolis, *Community Reinvestment Act Performance Evaluation: First Interstate Bank of Commerce* (January 13, 1997): 17.

<sup>8</sup> Council of Energy Resource Tribes (CERT), *Crow Tribe Financial Institution Project Market Analysis Report* (May 19, 1997): 3.

<sup>9</sup> Federal Reserve Bank, *Op. Cit.*

The Crow are also known for having a strong belief in individualism. Leaders were followed and obeyed not by decree, but by the individual choice of tribal members. Furthermore, the Crow have always valued wisdom. This cultural emphasis on learning and knowledge survived relocation to the reservation. As Plenty Coups, last chief of the Crow remarked, "Education is your most powerful weapon. With education you are the white man's equal; without education you are his victim."<sup>10</sup> This is evident today in the high degree of educational attainment of Crow tribal members. The Crow boast one of the highest levels of high school graduation among Native Americans. Significantly, many are also knowledgeable about traditional Crow culture. Language retention and fluency are a source of pride for many reservation residents with estimates of the fluency rate ranging as high as 80%.

*Chief Plenty Coups voiced the Crow's respect for knowledge. He called education a "powerful weapon."*

*Today, the Crow boast an impressive high school graduation rate, and estimates of language retention range as high as 80%.*

### **Unemployment, Low Incomes, & Few Businesses**

While these characteristics (a history of economic success, individualism, and strong educational attainment) are usually correlated with entrepreneurial success, the Crow are still among the poorest Native people in the Americas. The Crow Tribe has one of the highest rates of unemployment in the country: In 1989 67% of tribal members were *officially* unemployed, with total unemployment at 78%.<sup>11</sup> Since the official employment statistics only count people actively looking for work, those who have become *discouraged workers* are not counted. Discouraged workers are those who have stopped actively seeking employment. Many tribal members currently depend on public assistance from the Federal government as their only source of income.

Per capita income on the reservation was \$5,729 in 1990. This figure was anywhere from one-half to one-fourth the per capita income of the surrounding counties.<sup>12</sup> Given the high level of unemployment, people have come to value what work is available. Those individuals fortunate to have jobs are employed in one of three sectors: agriculture, government (Tribal and Federal), and tourism. The United States government is by far the largest employer of Crow people, many of whom work for the Bureau of Indian Affairs, the Indian Health Service, and the National Park Service.<sup>13</sup> Aside from the Federal government, the Tribal government is a significant source of employment for the educated Crow populace.

---

<sup>10</sup> Tyrone Ten Bear, Sr., Interview with authors, Cambridge Massachusetts, November 12, 1997.

<sup>11</sup> United States Department of the Interior, Bureau of Indian Affairs, *Indian Service Population and Labor Force Estimates*, (January 1989).

<sup>12</sup> CERT, *Op. Cit.* Table 2-2.

<sup>13</sup> Interview with various sources, Crow Agency Montana, December, 1997.

Very few tribal members work in the private sector or own and operate commercial enterprises. Even including non-Indians who operate firms within the tribal boundaries, the reservation business community is rather small and informal. Many businesses are run out of homes and are not licensed by the Tribe. The business environment in Crow County was not always as limited as it is today. For example, twenty years ago the main population center of the reservation, Lodge Grass, was home to more than two dozen functioning businesses. Today, the local IGA Supermarket is the largest of three remaining establishments, and provides few jobs. Most goods, and virtually all services, must be procured off reservation. People often commute to the border town of Hardin (12 miles from Crow Agency), or even Billings (60 miles from Crow Agency), for mundane needs such as mechanic service or a haircut. The lack of current business activity on the reservation is not uncommon to sparsely populated areas throughout the United States. Modern mobility and the easy commute to Billings via the Interstate Highway allows tribal members to participate in the “Wal-Mart” dilemma so common to businesses in every small town, where a single mega-store forces all local “mom and pop shops” to close down.

### **Obstacles to Developing a Crow Private Sector**

The lack of a viable business community on the reservation stems mainly from three sources. First, the poor state of physical capital on the reservation prohibits the relocation of outside businesses to, or the start-up of new businesses on, reservation lands. Physical capital investment and accumulation is extremely low. Roads are often in need of serious repair, and many potential commercial sites or buildings are not currently up to code.<sup>14</sup> There are no financial institutions operating within the boundaries of Crow Country. Thus, physical capital improvements need to be financed by off-reservation sources.

This leads to the second reason for the absence of a viable business community on the reservation. A long history of animosity exists between the Crow people and the major banking institutions in the region. There is a deep mistrust of bankers on the part of tribal leaders, much of it due to past discrimination against Native Americans. At the same time, most outside financial institutions are concerned with the lack of formal protection afforded them on the reservation. A recent study indicated that “there is a reluctance on the part of most [off-reservation] institutions to provide anything other than depository services [to Crow people] due to racial stereotypes and lack of respect for and

#### **Obstacles to Developing a Crow Private Sector**

- **Poor physical infrastructure.**
- **Strained relationships with banks.**
- **Underdeveloped labor force.**
- **Off-reservation business formation easier than on-reservation.**

<sup>14</sup> Steve Stevens, Crow Tribal Planner, Interview with authors, Cambridge, Massachusetts, November 12, 1997.

understanding of Tribal jurisdiction.”<sup>15</sup> The vast majority of lending activity that transpires between tribal members and local banks involves low risk consumer loans, primarily for automobile purchases. Such loans carry relatively low risk due to the ability to use the auto itself as collateral. Even without a commercial code in place autos are easier to repossess than land or physical plant in case of default. In addition, the unique status of Trust land within reservation boundaries adds to bankers’ unease about commercial or real estate loans.<sup>16</sup>

Finally, outside industrial interests as well as Crow businesspeople face a relatively underdeveloped labor force. Though most tribal members possess a high school education, many lack skills and habits conducive to employment in a formal setting. This is primarily due to multi-generational dependency on public assistance.<sup>17</sup> In the absence of comprehensive social and workforce development services, the burden of training often falls on employers. This lack of human capital drains employers of time and energy which tends to deter businesspeople from taking on employees.

### **Hypothetical: Comparative Business Formation**

The chart below compares the steps necessary for starting a business off-reservation with the steps necessary to start a business within the reservation boundaries. Please bear in mind that this illustration is purely hypothetical, but is drawn from discussions with businesspeople both on and off the reservation. As this table demonstrates, on-reservation entrepreneurs face a much more difficult task in setting up and expanding their business operations.

---

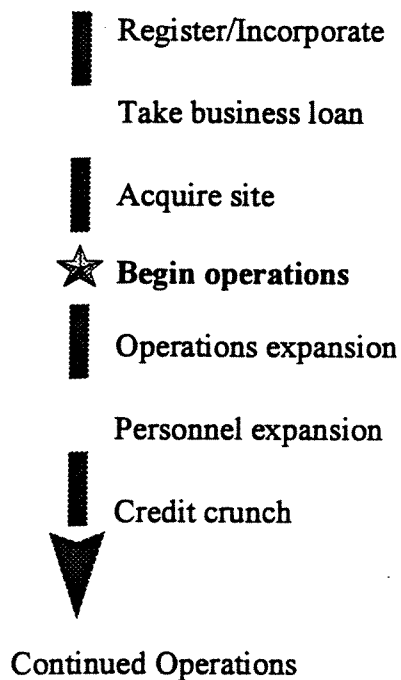
<sup>15</sup> CERT, *Op. Cit.*, p. 25.

<sup>16</sup> The major distinction made about reservation property is between Trust and Fee lands. Legal title on Trust land is often held by the US government, and the Tribe is allowed to occupy and use the land. Fee land is privately owned by tribal or non-tribal members. Transactions involving Trust land must be approved by the BIA.

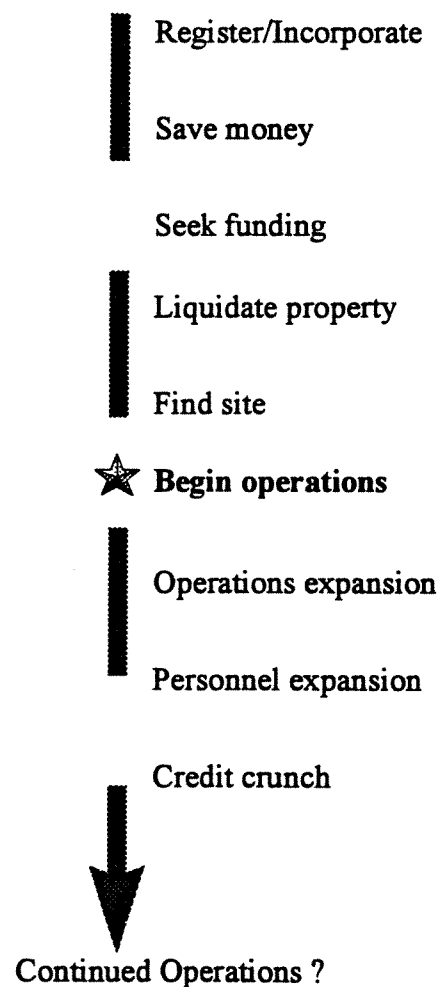
<sup>17</sup> Interview with various sources, Crow Agency Montana, December 5, 1997.

# It takes much longer to start a business on the reservation.

## Off-Reservation



## On-Reservation



## Off-Reservation Business Formation

- **Register/Incorporate in the State of Montana:** The first step in starting a business is to register for the necessary licenses to operate within the State of Montana.
- **Take out a business loan:** Local banks often supply the capital needed to get small businesses up and running. In addition, the entrepreneur can supplement private capital and personal savings with a variety of governmental business development resources. These include:
  - ~ loan guarantees
  - ~ tax credits
  - ~ lines of credit
- **Acquire site:** Land and equipment are usually rented or purchased outright.
- **Begin operations:** Once plant and equipment is set up, the firm can begin to generate revenues, which will be used to repay loan.
- **Plant & operations expansion:** If business is going well and new markets can be developed, the small business person has access to many sources of credit. This credit can be combined with re-invested profits to fund expansion, which is usually not difficult to undertake.
- **Personnel expansion:** In most cases, expansion entails adding staff. Often, these businesses draw from a labor pool that is job-ready and possess basic skills. Thus, they can be easily trained to fit into various positions within the new firm.

## On-Reservation Business Formation

- **Register/Incorporate in the State of Montana:** The first step in starting a business is to register for the necessary licenses to operate within the State of Montana. However, some tribal businesses choose not to do this because it is seen as a concession of Crow sovereignty.
- **Begin saving money:** Since it is difficult to acquire capital on the reservation, most funds must come from personal savings.
- **Seek outside funding:** Since saving is a time consuming process, the businessperson can sometimes accelerate the process through government loan guarantee programs. Access to these programs is relatively limited on-reservation. One resource for accessing such public financial assistance is the Little Bighorn College's Small Business Development Center.
- **Liquidating real property to supplement savings:** Often potential entrepreneurs still have meager savings and are forced to sell land to generate enough start-up capital.\* Banks sometimes pressure individuals to convert their property from Trust land to Fee land. Besides being a time-consuming process (average of six months), the new Fee land is subject to taxes.
- **Find site:** Poor physical condition of buildings and other infrastructure forces most businesspeople to locate enterprises in private homes.
- **Begin operations:** Finally, the on-reservation business gets underway. Since loan capital has not been a part of financing, profit margins might be expected to be rather high. However, this lack of access to substantial outside credit can impair future expansion.

## Off-Reservation Business Formation

- **Credit crunch:** If family or business conditions turn sour, outside financing (e.g. lines of credit) may still be available to see the business through temporary illiquidity.

## On-Reservation Business Formation

- **Plant & operations expansion:** Even if business is going well, the small business person has trouble expanding on the reservation. Usually he/she will not have outside financing and will be forced to rely on profits and savings to fund expansion.

Lack of access to credit often results in the business owner being forced to prepay for supplies and equipment, which must be procured off-reservation. Additionally, delivery of goods is complicated by the lack of formal addresses among reservation residents.

- **Personnel expansion:** Even when the most employable are hired from the available labor pool, considerable effort must be spent training them. Many come to the workplace lacking basic job readiness skills.

- **Credit crunch:** If family or business conditions turn sour, the lack of outside financing sources usually leads to bankruptcy.\*\* Lines of credit can be arranged, but the interest rates charged are often much higher than the business can bear. For example, if a businessperson needs a \$10,000 line of credit at the rate of 13.5% (comparable to some credit card rates), banks might require collateral of \$30,000 and up. In addition, on-reservation businesses might face even steeper rates if they require a long payback period. These conditions serve as barriers to the capital markets.

\*People on the reservation routinely sell property to finance consumer purchases such as autos. This leads to an increase in "checker-boarding" of the reservation.

\*\*Family obligations are often cited as the cause of business failure among Crow entrepreneurs. Cultural norms dictate that no assistance can be refused to clan members.

## **Promising Economic Developments**

Historically, the lack of physical capital, limited access to lending services, and underdeveloped labor force have served as potent obstacles to successful business development on the reservation. In addition, Tribal economic policy has tended to focus on the establishment of large public enterprises instead of fostering the creation of an independent private sector. In light of the current situation, prospects for economic development may seem dismal. However, there are three noticeable signs of change.

First, there are ongoing private sector initiatives undertaken by young, educated people in Crow Country. They are primarily involved in businesses which capitalize upon their Crow heritage. Some of these ventures provide employment for fellow tribal members. For example, several artisans supply area trading posts (which cater to tourists) with handicrafts, jewelry, and other traditional items. Since the trading posts themselves are owned by non-Indians, the artists also sell their works directly to the public. This allows them to keep a higher percentage of the profits than when dealing through a middle-man. Some of the artists would consider establishing their own retail facilities, but they are prevented from doing so by the lack of investment capital. Many tap into personal savings to cover start-up and expansion costs.

### **Example: I'tchik Herbs**

One example of family savings being used for this type of development is I'tchik Herbs. This small firm produces Crow herbal teas within the reservation and markets them for export. Through distributors within the United States and overseas, their products are demonstrating the competitive ability of Crow-made goods and services. By recognizing and exploiting part of the specialty health food and traditional medicine trends sweeping global popular culture, this firm has carved out a market niche for itself. They also provide employment for other Crow people, with a staff of up to 18 people during particularly busy times.

This emergent Crow business community could provide the type of accounts that justify local banking service. This leads us to a second development. Following the strengthening of the *Community Reinvestment Act* (CRA) legislation in 1986, off-reservation commercial banks have been penalized for their former discrimination against Native Americans in the provision of banking services and

## **Promising Economic Developments**

- Successful businesses undertaken by young, educated people in Crow Country.
- CRA enforcement has made banks reconsider reservation as potential market.
- Tribal initiatives can produce a thriving Crow private sector.

***I'tchik Herbs highlights promising economic developments despite a lack of easy access to capital. Family savings are often used to fund start-up costs for new businesses.***

loan capital. The enforcement of the CRA against Montana banking concerns has prompted interest in developing once eschewed reservation markets within local financial circles. In particular, the largest bank in the area, First Interstate Bank of Montana, recently lost a major CRA challenge brought by the neighboring Northern Cheyenne Tribe, which charged them with anti-Indian lending practices.

In the aftermath of this litigation, First Interstate has been contemplating entry onto several reservations in the area. At this point, they operate one ATM on the Crow Reservation.<sup>18</sup> First Interstate and other local banks could better meet their CRA requirements either through locating a branch on the reservation or by originating a greater volume of loans to reservation residents. These banks would be more comfortable serving tribal members in either capacity if commercial codes were in place on reservations.

Finally, the changing development priorities of the Crow Tribal authorities are also conducive to the creation of a viable Crow private sector. Currently, a Tribal Bank is being established. This bank would be responsible for redistributing the revenues from other public enterprises, such as the relatively successful Tribal Casino, as loan capital for Crow entrepreneurs. It would also allow for the concentration of Federal loan programs (such as those operated by the Veteran's Administration, Federal Housing Authority, Small Business Administration, and Housing and Urban Development), for commercial, real estate, housing, and disaster assistance. The bank would also provide employment for tribal members, and through the provision of standard banking services would meet the needs of the under-banked reservation population. The fees and interest earned by the bank would serve to increase public revenue and help to provide social services needed by the people. In order to proceed with the establishment of such a public financial entity, the Crow would have to adopt a commercial code to protect the Tribal government against potential borrower defaults.

---

<sup>18</sup> Federal Reserve Bank, *Op. Cit.* p. 26.

# III.

## THE CROW COMMERCIAL CODE

## **What are Commercial Codes?**

Laws regulating commerce are an essential part of the commercial infrastructure within many nations. In the United States, these laws are codified in the Uniform Commercial Code (UCC). The UCC was adopted by the US in 1951, and has subsequently been adopted by forty-nine of the fifty states. Its primary purpose was to standardize law governing commercial transactions among the states in response to the increasing levels of interstate commerce. Prior to this, each state had its own legal practices regarding business law.<sup>19</sup>

Commercial codes serve several purposes. First, they outline the rules which bind both governments and the businesses located within their jurisdiction. In particular, UCCs play a direct role in conditioning the terms for most secured transactions (those involving collateral), such as lending, investment, lease and rental agreements. Second, through standardization of these rules, commercial codes work to depoliticize the process by which business disputes are resolved. Third, the existence of formally recognized rules reassures both creditors and debtors that the transactions into which they enter are enforceable. This is an important benefit to creditors since it reduces the risk of non-payment, while protecting debtors from arbitrary or unfair collection actions.

The UCC contributes to the enforcement of the rule of law within a well functioning economy. It does this by laying a foundation for the development of a viable commercial infrastructure. A UCC contains explicit provisions governing transactions within a given jurisdiction. This includes the rights and responsibilities of parties involved, as well as procedures to deal with non-compliance and default. Most UCCs contain nine chapters, or articles, covering a range of commercial situations.

### **What are Commercial Codes?**

- Legal rules governing commercial transactions.
- Cover sales and leases, shipping of goods, bank deposits, etc.
- Outline the rights and obligations in a contract or transaction.

<sup>19</sup> See Legal Information Institute's web site at the following address: <http://www.law.cornell.edu/ucc/context.html>

## **Contents of a Commercial Code**<sup>20</sup>

Model codes which are being considered across Indian Country do not necessarily attempt to adopt every chapter contained in the Uniform Commercial Code of the United States. The models currently being reviewed by tribes in Montana tend to focus on Chapters one and nine. However, it is useful to consider the contents of all nine articles contained in most commercial codes (including the Federal code).

- **CHAPTER 1: GENERAL PROVISIONS**

This chapter is typically divided into two sections. Part 1, entitled “Short Title, Construction, Application, and Subject Matter of the Code” explains the purposes of the code, how it fits within the general body of existing laws, the jurisdictional reach of the code, and any limitations on the code. Part 2 usually defines terms used within the body of the code, as well as the basis for interpretation of the code’s provisions.

- **CHAPTER 2: SALES**

This chapter is concerned with defining and delineating the obligations of parties involved in any sales transaction, which is by definition restricted to those transactions involving the transfer of goods. Chapter 2 includes express provisions on the mechanisms through which either party can terminate or cancel the sales agreement, as well as the specific recourse available to parties in case of breach of a sales contract. In addition, this article affords various protections to buyers and sellers, including but not limited to: rights of buyers in case of improper delivery or damage of goods, the rights of sellers to halt delivery, and the statute of limitations governing a sales agreement.

- **CHAPTER 2A: LEASES**

This chapter details the rights and protections afforded to parties in a lease contract for either the purchase or rental of goods and services. Addresses issues similar to those in Chapter 2, but includes special provisions concerning the recourse available to leaseholders, given the often long time frame of such contracts.

- **CHAPTER 3: NEGOTIABLE INSTRUMENTS**

This article deals with all transactions carried out with a promise to pay a fixed amount of money, with or without interest or other charges described in the promise. It also deals with potential remedies in case the promise is broken or dishonored.

- **CHAPTER 4: BANK DEPOSITS AND COLLECTIONS**

This chapter regulates the relationship between banking institutions and their clients. It deals significantly with the duties and obligations of the banking entity towards its depositors and its borrowers, including provisions governing collection proceedings.

---

<sup>20</sup> For the complete text of the US Uniform Commercial Code, please visit the Legal Information Institute’s web site at the following address: <http://www.law.cornell.edu/ucc/ucc.table.html>

- **CHAPTER 4A: FUNDS TRANSFERS**

Deals with payments now being facilitated by emerging electronic technologies. This chapter balances the interests of the parties (banks, commercial and financial concerns, and the public) involved in such a transfer. Banks facilitate the exchange of money between these parties, and this chapter outlines the security procedures which are to be observed by banks.

- **CHAPTER 5: LETTERS OF CREDIT**

A letter of credit is an agreement between a financial institution and a customer, in which the financial institution pledges to honor drafts made by the customer. This chapter outlines procedures for establishing letters of credit, as well as remedies available to parties involved in case of breach.

- **CHAPTER 6: BULK TRANSFERS AND BULK SALES**

This chapter deals with sales and transfers that are not related to the normal business of the seller. These include sale by auction or a sale or series of sales conducted by a liquidator on the seller's behalf. This chapter outlines obligations of the buyer, and liability for noncompliance.

- **CHAPTER 7: WAREHOUSE RECEIPTS, BILLS OF LADING, AND OTHER DOCUMENTS OF TITLE**

This chapter seeks to structure the rules governing the shipping and storage of goods in the normal course of business. The purpose is to protect the rights of those who own the goods, those involved in the actual movement of the goods (shippers and warehousemen), and those to whom the goods will be delivered.

- **CHAPTER 8: INVESTMENT SECURITIES**

Investment securities are used to denote ownership of a property or enterprise. Chapter 8 defines the rights and obligations of those who engage in the ownership and transfer of such investment securities. It also includes provisions for the registration and tracking of ownership of securities. Finally, it includes provisions regulating government-issued securities.

- **CHAPTER 9: SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER**

Chattel paper is a document that outlines monetary obligations and security interests in a lease of specific goods. Liens are a form of chattel paper, and this chapter specifies how governing bodies are to execute and honor such documents. Specifically, it delineates the validity of secured agreements and rights of third parties, while establishing the order of claims to collateral, procedures for filing, and mechanisms to deal with defaults.

## **Commercial Codes in Indian Country**

Currently, there are several Indian tribes who have adopted UCCs. For example, the Navajo Nation has operated under its own commercial code since 1986. Their code allows the Tribe to exert its sovereignty through adaptation of four Articles of the United States UCC. Literature published by the Navajo describes the main reasons for enacting a code:

*The creation of a conducive climate for business and economic development on the Navajo Reservation is the basic purpose of the creation of a Navajo Uniform Commercial Code. The realization of this basic goal will lead to increasing the level of commercial banking activity, and thus the development of more Navajo-owned and operated small businesses on the Reservation.*<sup>21</sup>

Another example is the Blackfeet Tribe of Montana, who adopted the UCC as an early step in creating a federally chartered on-reservation banking institution. The code is extremely important for guiding the bank's management in its decision making. As Eloise Cobell of the Blackfeet Development Agency explains, the UCC spells out the "policies and procedures which the Bank needs when it goes to Blackfeet Court on defaulted loans."<sup>22</sup> The Blackfeet commercial code helps the Bank's customers as well since it prohibits arbitrary actions by bank officials.

Successful tribes which do not have their own commercial codes often rely on state codes. Some are contemplating adoption of their own tribal commercial codes in order to formalize business practices. This group includes the Mississippi Choctaw, a tribe generally held up as "the model" of Native American economic development.

### **Example: The Mississippi Choctaw**

The Choctaw government owns and operates several large-scale joint-ventures with manufacturing giants such as Ford, AT&T, and Boeing, which employ roughly 6,000 people. An indication of their tremendous growth is the fact that half of all tribal venture employees are non-Choctaws who commute into the reservation for work.<sup>23</sup> Until now, the Choctaw have managed to create and maintain a stable, investor-friendly environment without enacting their own commercial code. The Choctaw often defer to filings made off-reservation under the Mississippi State UCC.

***Commercial codes allow tribal governments to regulate business activity on the reservations.***

***Successful tribes who operate without commercial codes actively strive to promote a business friendly environment.***

<sup>21</sup> Division of Economic Development of the Navajo Tribe, *The Navajo Uniform Commercial Code CJA-I-86*, (Window Rock, AZ: Business Regulatory Department, 1986).

<sup>22</sup> Eloise Cobell, Blackfeet Development Agency in Browning, Montana. Phone interview, January 27, 1998.

<sup>23</sup> Fergus M. Bordewich, "How to Succeed in Business: Follow the Choctaws' Lead", in *Smithsonian*, March 1996, Volume 26, No. 12, p. 71.

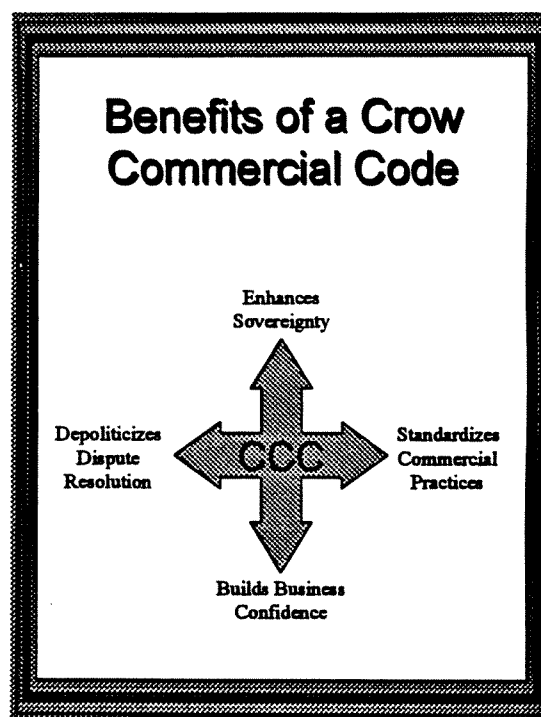
However, the Choctaw leadership has recently considered the adoption of a tribal commercial code or the integration of relevant state and federal commercial law into existing tribal statute. Choctaw Attorney General Jim Clancy notes that as the Choctaw economy transitions from manufacturing to a service-base, the Tribe will need a more comprehensive set of commercial laws.<sup>24</sup>

Those tribes who operate under UCCs, as well as those who are now considering adoption, recognize that the regulation of commercial activity falls well within their realm of legitimate powers. Thus, they view the drafting, adoption and enforcement of a commercial code as a mechanism to preserve and strengthen their sovereignty. Several tribes who are eager to adopt more standardized commercial law also hope to establish their court systems as courts of record.<sup>25</sup> As such, rulings on commercial cases will then be recognized by off-reservation legal authorities as legitimate and binding decisions. Thus, commercial codes offer Indian Country benefits on many levels.

### **Benefits of a Crow Commercial Code (CCC)**

In response to the current economic situation on the reservation, the Crow Tribe is considering adoption of a commercial code to encourage outside investment and stimulate enterprise creation among indigenous entrepreneurs. The main issue is how to create a commercial code that would both advance economic activity by reassuring business and financial interests, while still reflecting the needs of the Crow Tribe. Simply copying an existing UCC from a neighboring community or state is not sufficient. The code should be adapted to meet the specific needs of the Crow. Once adopted, the mere existence of such a code will not guarantee progress. If the Crow wish their commercial code to be a fundamental component for future economic development, success will depend primarily on their capacity to enforce its provisions.

Through adaptation of existing commercial codes, the Crow can establish a *Crow Commercial Code (CCC)* to guide business actions in Crow Country. The establishment of the CCC would also allow the Tribe to exercise its sovereignty by regulating commercial activity within the reservation.



<sup>24</sup> Jim Clancy, Attorney General of the Mississippi Choctaw Tribe of Indians in Philadelphia, Mississippi. Phone interview, November 20, 1997.

<sup>25</sup> In this case, *court of record* is not used as a legal term. We simply mean that rulings handed down by the tribal court will not be ignored by extra-tribal legal systems.

### **Customizing the Commercial Code: Land Issues**

The CCC adopted by the Crow can be crafted to pay particular attention to land issues. Maintaining the land base held by tribal members, while regaining the sections of the country that have been sold off over the years, is a major priority for many Crow. Due to the scarcity of loan capital freely flowing into the reservation, some Crow are forced to sell their land in order to fund large consumer purchases, such as automobiles. Tribal land managers are highly disturbed by this trend.

A commercial code could remedy this situation in two ways. First, it would increase investor confidence and thus provide an avenue for more loan capital. Second, the code could also include a consolidated set of prescriptions detailing the proper disposal of land in commercial transactions. Thus, the CCC could be a valuable tool for preserving the land base while standardizing commercial dispute resolution. Making land issues a priority focus of the CCC will unite an otherwise divided people behind adoption of the code.

The CCC has many other possible benefits and applications. The following hypothetical cases illustrate some of these benefits.

### **Hypothetical: The CCC & The Tribal Bank**

The Crow Tribal Bank wants to increase the range of services available to its on-reservation customers. As with many off-reservation banks, the Tribal Bank wants to offer money cards to its customers -- debit cards with an added credit card feature. The cards are linked to a customer's checking and savings accounts. Money cards give customers convenient access to both credit as well as cash at participating automatic teller machines (ATMs).

The Bank must enter an agreement with a major credit card company. Without a commercial code, a credit card company will not feel that it has any legal recourse against the Bank in case the agreement is breached. The Bank will have a hard time convincing any outside credit card company to begin issuing these cards for Bank customers.

Suppose that despite the lack of a commercial code, a credit card company decides to issue the cards with the Crow Tribal Bank. Without a commercial code the credit card company will demand certain conditions in the contract to protect its investment. This can be done through a waiver of sovereign immunity -- perhaps the contract would state that the credit card company could sue the Tribal Bank and Tribal Government in state or county courts. Or the entire value of the contract could be secured by assets of the Tribal Bank. This puts the assets of the Bank and the Tribe at risk if there is any dispute over issuing joint money cards.

Obviously without a commercial code, the Bank and its customers will be unable to enjoy money card services without having to waive sovereignty or risk tribal assets. With a

*The Crow Commercial Code can be customized by including provisions to standardize the treatment of property as a commercial good or as collateral.*

*Provisions to protect the land base should be included.*

commercial code, they can enter into a more beneficial agreement which protects the interests of both the Tribal Bank and the credit card company.

### **Hypothetical : The CCC & The Crow Electric Utility**

The Crow Electric Utility Company has begun to retail electricity to customers on the reservation. These customers include Crow tribal members and non-tribal members who reside and do business within the reservation boundaries.

A non-Crow business-owner, Mr. X, feels that the rates he is being charged are unfair and he refuses to pay his bill. When the Tribal Utility shuts off his power, Mr. X sues the utility. Under current federal law, such a case must first be heard in tribal court. What recourse is available to the Tribal Utility?

Lacking a commercial code, tribal justices must decide the case without a formal statute which outlines the rights and obligations of buyers and sellers in a sales agreement. If Mr. X does not like the decision, he will appeal it until it reaches Federal District Court. At the federal level the case will be heard under the United States Uniform Commercial Code (US UCC), and it is highly likely that the prior tribal court rulings will be overturned. These rulings will not stand because they were not heard under commercial law.

With a Crow Commercial Code, Mr. X's case would be heard in the tribal courts, but under a standard and recognized set of commercial case law. The CCC would state specifically what protections are available to buyers and sellers. If the case was eventually appealed to Federal District Court, the Tribal Court rulings would be more likely to stand.

Thus, a CCC can protect the interests of the Tribal Utility Company, the seller of electricity, when faced with clients who refuse to pay for services.

### **Hypothetical: The CCC & Commercial Disputes Between Tribal Members**

Most transactions among tribal members are done informally. Verbal agreements are common business practice in Crow Country. Ed owns a tractor that Joe would like to purchase in installments. They entered a verbal agreement about payments spread over the next year. For the next few months, Ed received regular payments from Joe .

But soon, Joe missed payments. When Ed demanded payment in full or return of the tractor, Joe refused. What recourse does Ed have? What are Joe's obligations to Ed?

The Crow Commercial Code can be written so that customary business practices, such as verbal agreements, are covered in articles that deal with sales and leases. Thus, even though there is no written sales contract, both buyer and seller will be expected to honor their obligations as set forth in the commercial code. Thus, Joe and Ed could expect an objective ruling from the Tribal Courts under a commercial code.

### **Opinions in Crow Country**

On the reservation, many people have an opinion about what the commercial code would mean for the Crow Nation. Unfortunately, some of these views are directly contradictory. For instance, some people see the enactment of a CCC as an enhancement of Crow sovereignty, while others see it as a surrender of sovereignty. Some of the arguments floating around Crow Country are outlined in the following chart.

## Arguments Against Adoption of a CCC

- **Not necessary for successful business operations on all reservations:** The effort expended to enact and enforce the CCC might result in little progress for the Crow. Some of the most successful tribes, such as the Mississippi Choctaw, do not currently operate under a commercial code.
- **Question of how to deal with filings must be answered:** If the Crow choose to perform all commercial code-related activities on-reservation, they might want to establish an office to deal with filings. Otherwise, the Tribe will have to reach an agreement to mesh the CCC with county and state governments, which currently perform other UCC-related functions. Both options might be difficult to achieve, and the effort expended could be better spent elsewhere.
- **Large human and institutional capital necessary for implementation:** Adopting the code will be the beginning of a development cycle rather than an end in itself. Implementation and enforcement of a CCC could present significant obstacles for the reservation. For the CCC to function properly, the Tribal Courts will have to be reformed, and this is another expenditure of effort which might better serve the Tribe in pursuit of other goals.
- **Limits sovereignty:** The argument can be made that the CCC is yet another "white man's remedy" for reservation problems. Some see adoption of the code as a reduction in the level of control maintained by Crow authorities.

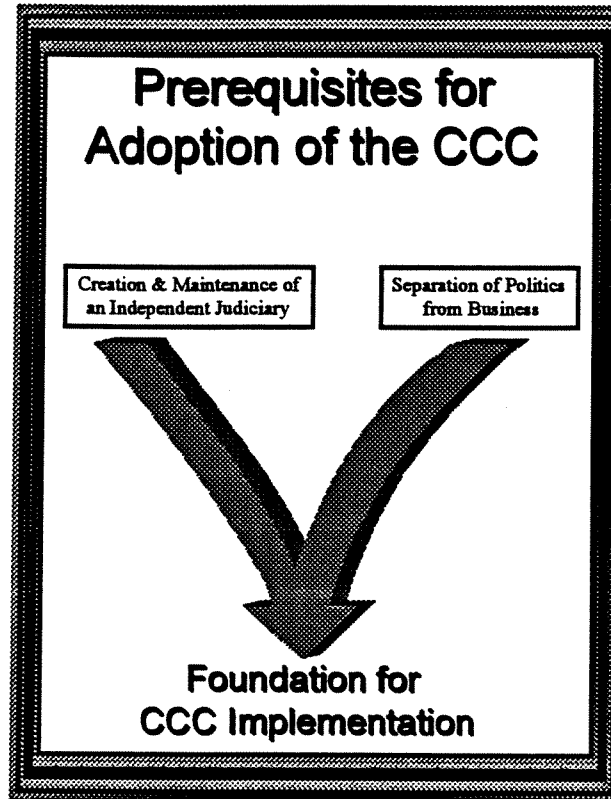
## Arguments in Favor of Adopting a CCC

- **Instills confidence in outside commercial interests:** The existence of the CCC would reassure business entities that arbitrary actions will not undermine their ability to plan for the future and conduct business on the reservation. Given the difficulty banks have in collateralizing loans for tribal members, the CCC will also define the recourse available to them. This will facilitate a steady stream of loan and investment capital flowing into the reservation.
- **Depoliticizes dispute proceedings:** The code can be utilized by the Crow justices to legitimize rulings which do not coincide with the political interests of the administration or other groups. The CCC would make rulings handed down by the Crow Court seem impartial, since by definition the same rules apply to all.
- **Standardizes and streamlines commercial practices.** By outlining the rules which bind the tribal government and businesses located on the reservation, the CCC lays the foundation for commercial ventures within the boundaries of the reservation.
- **Enhances sovereignty:** By enacting the rules of conduct for business and government entities, the CCC will allow the Crow Tribe to exert its power and authority to regulate activity within the boundaries of its reservation. This enhances the sovereignty of the Crow in their interaction with others. Economically successful tribes such as the Navajo use their commercial codes to define the business environment on their reservations and level the playing field when outsiders challenge their regulatory authority. The Crow can now do the same.

Sorting out these arguments will be an important task for the Crow, when they consider adoption of a CCC. The fact remains that the lack of commercial infrastructure in Crow Country inhibits progress towards economic self sufficiency. A commercial code would lay the foundation for the development of viable Crow-owned and operated enterprises. It will help the Crow government in defining its role vis-à-vis the emerging on-reservation business community. It will enhance the confidence which businesspeople (both Crow and non-Crow) have in the ability of the courts to effectively and fairly resolve commercial disputes. Thus, it will bring many administrative and legal benefits to the Crow Tribe.

## **Prerequisites for Considering Adoption of the CCC**

It is crucial to note that even without adopting the CCC, accomplishing these two important reforms would facilitate future economic development initiatives on the reservation. However, undergoing these reforms will also lay a solid foundation to implement critical CCC related functions.



### **Creation & Maintenance of an Independent Judiciary**

There is general consensus among members of all branches and levels of the Crow government, as well as among the nascent Crow business community and outside observers, that the current Crow Tribal Court system is ineffective. The latest BIA review of the Crow judiciary aired more than a dozen recommended reforms needed to make the court function more professionally.<sup>26</sup> The major problem is that judgments and settlements made in Tribal Court are either not implemented or are reversed by members of the administration, often to suit personal or political interests.

*The Crow Constitution attempts to establish an independent judiciary.*

*In practice the judiciary is under constant political pressure from other branches of government.*

<sup>26</sup> Bureau of Indian Affairs, *Op. Cit.*

The *Crow Constitution* does contain a brief amendment which establishes a separation of powers and calls for an independent Tribal Judiciary. In comparison, the Northern Cheyenne recently passed a comprehensive amendment to their constitution detailing a separation of powers (see Appendices) and establishing an independent Cheyenne judiciary. The amendment contains several provisions and procedures for judicial removal which should act to curtail both monetarily and politically motivated intrusion by executive or legislative officers into the court system. Such measures are notably absent from the Crow's Article X. It may not be coincidental that the Cheyenne are also further along in terms of adopting a commercial code and setting up a Crow Filing Office within their court system.

## Creation and Maintenance of an Independent Judiciary

- Strengthen existing separation of powers.
- Insulate judiciary from political pressures.

Discussions with members of the Crow judiciary point to a high degree of political involvement within the judicial process. The judiciary is concerned that these political actions will weaken the courts to the extent that outside forces -- such as the US Congress, the BIA, and the State and County -- will seize control and adjudicate disputes on the reservation. This will greatly impinge on sovereignty. At the same time, the Crow public does not see the connection between having a well-functioning court system and continued economic development. A well-functioning court system is one in which decisions are binding upon all members of the Tribe and the Crow government.

This does not bode well for the successful enforcement of a commercial code. One of the most common applications of commercial codes is the prosecution of liens against borrowers in default. If there are lingering concerns, particularly among outside commercial and banking interests, that the enforcement of liens in the Tribal Courts will be subject to extra-judicial and political considerations, then CCC adoption will fail to bring about the desired increase in capital flows onto the reservation. Banks and investors will remain wary of the capability of Crow Courts to systematically adjudicate without prejudice.

### *An Independent Judiciary Would Help the Tribe:*

- *Enforce the Crow Commercial Code.*
- *Attract capital by bolstering investor confidence.*
- *Defend tribal sovereignty against jurisdictional challenges.*

Strengthening the existing separation of powers legislation as well as spelling out concrete steps to insulate the judiciary from both the executive and legislative branches must be undertaken if the Tribe is to successfully enforce the provisions of the CCC on the reservation. If the Tribe operates its own filing office, it should exist within the court system and must operate independently of the other branches of government. It may not be possible for the Crow Tribe to actually start-up its own filing office until the court's larger problems are addressed.

## Separation of Politics from Business

The administration has always played an active role in the day to day operation of tribal businesses. Unlike the many corporatized and government-sponsored enterprises within the United States, the Crow tribal businesses are completely run by political appointees. Article IX of the *Crow Constitution* allows the tribal government to create and manage any enterprise deemed necessary, through appropriation of tribal funds. There are no constitutional or formal legislative prescriptions for independent management of these enterprises. As such, none have fully independent management boards.

High administrative turnover directly impacts employment and operations of these enterprises. A staff member of the Little Bighorn Casino, the largest Crow government-run business, indicated that all Casino employees could be fired if the current Chairwoman is not re-elected to another term. This affects most Crow people, since the Crow government is one of the largest employers on the reservation. High turnover affects investor confidence and has serious implications for the profitability of tribal enterprises.

Separating daily operations from the political considerations of the administration is necessary for the successful functioning of a Crow Filing Office, if this is the option the Crow choose. The filing office would need to be staffed by permanent<sup>27</sup> employees whose terms of hire insulate them from changes in Tribal administration. Commercial interests (both Crow and non-Crow) would not be satisfied with a Crow Filing Office where the staff might be forced to not honor liens and other filings against certain well-connected tribal members or businesses due to political pressures.

Finally, the proposed Crow Tribal Bank would also need to be run independently. The Crow bank would require a bonded Board of Directors with an independent management and staff. Members of the 107 Committee envision the bank as a conventional lending institution, which also concentrates the resources from various federal loan programs in one location. In creating this institution, the Crow can look to similar financial ventures established by other tribes. For example, the Blackfeet have their own Tribal Bank which is run by a private Board of Directors. As with the court system, any perception that the bank's management is subject to the political considerations of government officials will undermine its ability to serve the Crow Nation as a whole.

---

<sup>27</sup> *Permanent* does not mean a guaranteed job for life. Employees could still be dismissed for poor performance on the job. In this case, the term refers to the idea that they will not be fired just because of their political affiliations.

## Separation of Politics from Business

- High administrative turnover inhibits skill accumulation.
- Professional staff, insulated from the political process, bolsters investor confidence.

IV.  
ANALYSIS OF CAPACITY  
FOR IMPLEMENTATION:  
*THE CROW JUDICIARY*

## **Enforcement Capacity of the Judicial Branch**

An analysis of the institutional environment within which Crow policy makers must operate sheds light upon the current stage of economic development on the reservation, and on issues of concern regarding the CCC. The political and legal framework of any society plays a crucial role in influencing and shaping the course of economic development within its jurisdiction. Economic growth within reservations, as in developing countries, is often hampered by the particular institutional endowments of the society. Institutional endowments include the enforcement capacity and independence of the judiciary, which is particularly critical for enforcement of a viable commercial code.

## **The Role of the Judiciary in Economic Development**

Several studies of investor perceptions in developing country markets indicate that a lack of consistent judicial enforcement of property rights and of commercial law hinders efforts by these nations to attract foreign direct investment. One survey of 3000 firms in the developing world finds that the reliability of judicial enforcement matters significantly in explaining the differentials in foreign direct investment among countries.<sup>28</sup>

Another landmark cross-country analysis found that the rule of law, a proxy for “good institutions,” was significant in explaining divergent economic growth rates among industrializing nations. Rule of law includes enforcement of statutes by the judiciary.<sup>29</sup> Research by Cornell and Kalt points out that the same holds for the “sovereign and dependent” Native American nations.<sup>30</sup>

Thus, perceptions of both a weak judiciary and the lack of standard rules and procedures regarding commercial disputes undermine the confidence of Crow businesspeople, as well as outside commercial and financial interests. If this lack of confidence inhibits them from doing business on the reservation, Crow Country will face growth problems similar to those being experienced by developing nations around the world who cannot attract enough foreign direct investment. The participation of outside interests, either in terms of business creation or through providing loan capital, is integral in furthering economic development on the reservation.

---

<sup>28</sup> Aymo Brunetti, et. al., “Credibility of Rules & Economic Growth” (Policy Research Working Paper 1760, World Bank, April 1997).

<sup>29</sup> Robert J. Barro, “Determinants of Economic Growth: A Cross-Country Empirical Study” (NBER Working Paper, No. 5698, August 1996), 1-31.

<sup>30</sup> Stephen Cornell and Joseph P. Kalt, “What Can Tribes Do? Strategies and Institutions in American Indian Economic Development,” in *American Indian Manual and Handbook Series No. 4* (Los Angeles: University of California at Los Angeles, 1992), 2-59.

### **Crow Judicial Branch at a Glance**

- Lack of formalized commercial codes to guide justices.
- Problematic separation between judicial and other branches of government.
- Jurisdictional challenges from the State of Montana.

Article X of the *Crow Constitution* establishes the Tribal Judiciary. It calls for the creation of a Tribal Court, a Juvenile Court, and an Appellate Court. The Tribal Court deals with the bulk of litigation on the reservation, including commercial disputes. Currently there are three judges who hear most cases, and one special justice. Business cases are heard by the special justice who is an attorney hired by contract. At this time the special justice is a non-tribal member. The Juvenile Court deals with young offenders, and has one of the tribal justices specifically assigned to adjudicate these cases. The Appellate Court hears cases on appeal from the lower Tribal Courts, and is headed by an attorney on retainer from off the reservation. The current appellate justice is a tribal member. As with other tribal court systems that receive funds from the US government, the Crow Court is subject to review by the Bureau of Indian Affairs (BIA).<sup>31</sup>

---

<sup>31</sup> The PL 93-638 Crow Tribal Court Contract Review listed in the bibliography of this document is an example of a BIA review. A copy of this report can be obtained by filing a Freedom of Information Act request with the Billings Area Office of the BIA.

## Lack of Formalized Codes to Guide Justices

The jurisdiction of the Crow Courts is outlined in Article X, Section 2 of the *Crow Constitution* as follows:

*The jurisdiction of the Crow Tribe, pursuant to its inherent authority, shall extend to all civil and criminal matters occurring in the reservation or on lands in which the Tribe has a significant interest, provided the exercise of Tribal authority remains consistent with overriding interests of the Federal government.*<sup>32</sup>

The overriding interests of the Federal government are exemplified by the 1885 *Major Crimes Act*, enacted by the United States Congress, whereby Indian courts cannot hear cases involving seven prescribed “major crimes,” regardless of the affiliation of litigants. Such cases must be heard in Federal Court. However, following the landmark Supreme Court ruling in *National Farmers Union v. Crow Tribe (1985)* all other litigation originating in the Indian court systems must exhaust all tribal remedies prior to entering Federal Court.<sup>33</sup> This includes commercial litigation involving Indian and non-Indian parties, which must proceed through both the Lower Tribal Court and the Tribal Appellate Court before being appealed to the Federal District Court. (See figure on following page)

At present, justices look to “Crow tradition and statute”<sup>34</sup> in deciding cases, with heavy emphasis placed on the *Tribal Law & Order Code*. In instances when Crow law does not offer remedies, judges either fashion law or defer to relevant State or Federal statute. In particular, there is no formal set of laws or mechanisms which govern the adjudication of commercial disputes, such as a CCC, on the Crow reservation. Currently, judges occasionally defer to the Montana State Commercial Code in resolving commercial cases brought before them.

### Lack of Formalized Codes to Guide Justices

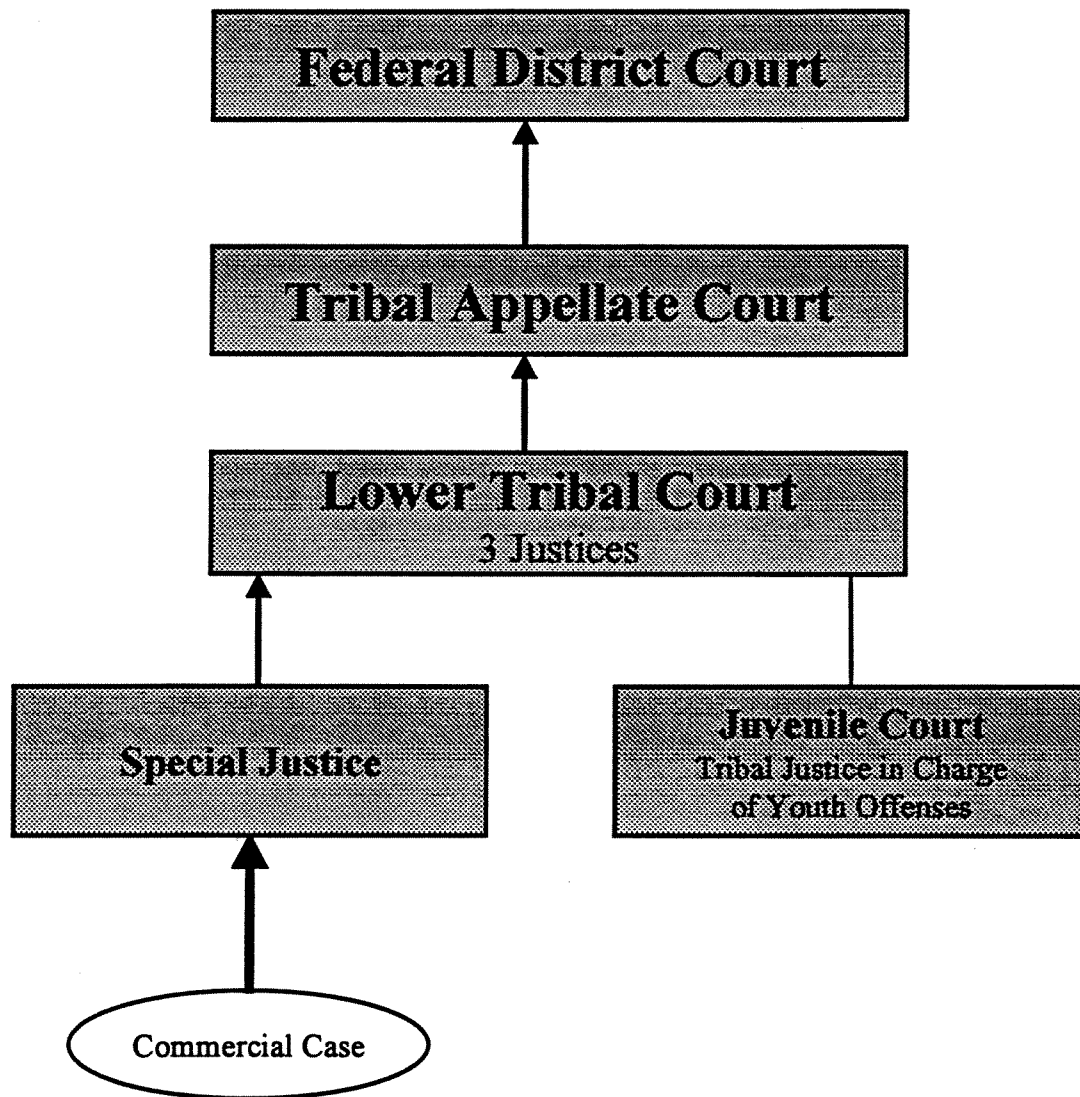
- Justices rely on tradition and Crow statute to resolve disputes.
- No formal set of laws for commercial disputes.
- Tribal judges *informally* defer to Montana’s commercial code.

<sup>32</sup> Amendment to the *Constitution and Bylaws of the Crow Tribal Council*, March 14, 1991.

<sup>33</sup> Emily Barker, “Point of Impact,” *The American Lawyer*, (January 1997).

<sup>34</sup> *Ibid.*

# Progression of Commercial Cases



## **No Separation Between Judicial and Other Branches**

The Crow Tribal Judiciary, as established, is a separate entity from both the executive and legislative branches of government. Tribal judges are elected by the Council, and they serve four year terms, thereby minimizing their exposure to political pressures from administrations. However, even with this built-in protection mechanism the judiciary is still subject to constant political pressure. For example, political interests worked to extend the terms of then serving justices beyond the scheduled elections in 1995. The recent election in the fall of 1997 was the first chance the Crow public had to place new judges into the judiciary since 1991.<sup>35</sup>

Respect for the court system is prevalent within the judiciary, but the importance of the courts is lost upon both the general populace and the political powers on the reservation. Court staff realize that they are not held in high regard by the rest of the community, and this is often discouraging to them. In addition, the justices recognize the stability which the unusually long tenure of Madam Chair Clara Nomee has afforded the Nation. However, the current administration is known to interfere in the judicial process, often reversing or ignoring judgments from the Tribal Court.<sup>36</sup>

### **No Separation Between Judicial and Other Branches**

- **The importance of the Court is not well understood by the general populace.**
- **Four-year terms designed to ensure independence, but justices are still subject to political pressure.**

<sup>35</sup>Bureau of Indian Affairs: Billings Branch Office, *PL 93-638 Crow Tribal Court Contract Review* (September 1997), p.3.

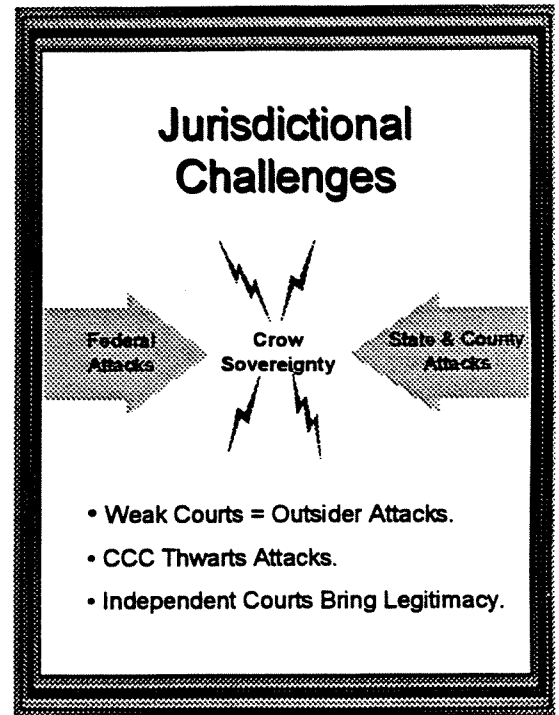
<sup>36</sup> Interview with various sources, Crow Agency Montana, December 5, 1997.

## Jurisdictional Challenges

Every political action which weakens the courts becomes an invitation for outsiders to attack the sovereignty of the Tribe. Recent Supreme Court rulings such as *Strate v. A-1 Contractors* may diminish the ability of Crow Courts to adjudicate cases involving non-members.<sup>37</sup> Outsiders with vested interests in keeping the Crow in a state of disarray take note of developments within the Crow judicial system.

Currently there is legislation being proposed in the US Senate that could greatly diminish the jurisdiction of Indian courts. Legislation sponsored by Senator Conrad Burns of Montana would extend the civil jurisdiction of the State of Montana to cover any, "civil causes of action involving any non-Indian that arises within the exterior boundaries of the reservation..."<sup>38</sup> With regard to commercial disputes, if this bill were signed into law, the State of Montana's UCC would govern a vast majority of transactions within the reservation.

The Tribe's adoption of its own comprehensive CCC would serve as a preemptive strike, helping to thwart this potent legislative onslaught. The poor state of judicial affairs contrasts with the benefits which the Crow would enjoy from a more credible and independent judiciary.<sup>39</sup> Independent courts would strengthen the ability of the Tribe to maintain legitimacy when confronted by outside legal attacks.



<sup>37</sup> Barker, *Op.Cit.*

<sup>38</sup> US Senator Conrad Burns (Republican). Discussion Draft of Senate Bill.

<sup>39</sup> Interview with various sources, Crow Agency Montana, December 5, 1997.

V.  
ANALYSIS OF  
ALTERNATIVES

# **Alternatives**

## **Alternative I**

- **Going it Alone**

## **Alternative II**

- **Inter-Tribal Filing Office**

## **Alternative III**

- **MOU (Memorandum of Understanding) with State**

## **Alternative IV**

- **No Adoption of a CCC**

In order to assess the options available to the Crow, each of four alternatives will be evaluated in light of the feasibility criteria outlined in this analysis. This comparison follows the general discussion of each alternative below.

### **Alternative I: Going It Alone**

There are many developments which point towards the Tribe's adoption of a Crow Commercial Code. The Tribe is attempting to bolster economic development with a number of initiatives, from land development to utility restructuring, all of which would directly benefit from the existence of a standardized compendium of commercial law. For example, the CCC would be a *beneficial* document to turn to when legal questions arise about retail wheeling of electricity by a Crow utility. It would also help structure the mechanism through which the Crow government can issue bonds to finance this and other projects.

An additional developmental initiative is the proposed Tribal Bank, to be located on the reservation. In this case, the CCC is *even more critical* for several reasons. Potential borrowers will want to see the CCC in place since it will protect them from arbitrary confiscation of property by bank or Crow authorities. In addition, the Board of Directors of the Tribal Bank will want a commercial code to be in place, protecting the institution in case of borrower defaults. The Crow Nation naturally wants its own bank to have every chance at success. The existence of a profitable bank will clearly align the interests of the Tribe with those who support adoption and enforcement of the CCC.

Given the potential development projects being considered by the Tribe, and the Crow history of self-reliance, the CCC could be adopted and enforced completely on-reservation. This strategy, referred to as *Going it Alone*, would involve important institutional and legal changes. In particular, this method of adoption would require establishment of a Crow Filing Office, and consideration of how the CCC will fit into the general body of law governing the Tribe. It is important to remember that regardless of how the Crow choose to adopt the code, *enforcement* of the code is absolutely crucial. In order to instill confidence among outside lenders and local Crow entrepreneurs, it is very important that the CCC be enforced in the most unbiased and efficient manner possible.

### **Alternative I: Going it Alone**

#### **Crow Filing Office Requires**

- Computerization of paperwork.
- Linking Crow computer system with external courts.
- Training existing court staff.

#### **Options for Enactment**

- Stand alone law, or
- Constitutional amendment.

***Going it Alone  
requires concrete steps  
to ensure the  
enforceability of the  
Crow Commercial  
Code.***

## **Establishment of a Crow Filing Office**

Crow Country is not a "PL 280 Reservation" -- state law has no authority within its boundaries. Therefore, some have suggested that an on-reservation filing office is the only option for the Crow.<sup>40</sup> There is a history of official record keeping on the Crow reservation within the Crow Courts. Liens and other filings could be signed by judges, as well as the purchaser and lender. This would serve to enter the document into the Crow judicial system. In fact, the Crow used to operate a similar registration system involving bank stipulations for livestock purchases by Crow members from non-Indians.<sup>41</sup>

The establishment of a Crow Filing Office would require several things. For example, both lien filings and searches must be computerized. In addition, the particular computer system used by the on-reservation filing office must be compatible with the network currently used to perform lien searches off-reservation. The Tribe probably has the capacity to do this. Several computer literate people already work within the court system. Next, someone will have to be trained to deal with the paperwork as liens are filed. The very low volume of projected filings means that the proposed filing office is *not* an opportunity to spur employment of tribal members. The role can be filled by an existing staff member, and will likely take only a few minutes per week of actual work. The low volume of expected filings also ensures that the office will be a money-losing facility for the Tribe. The revenue generated by filings is unlikely to even cover the cost of the computer resources used to establish the office.

An additional concern arising from an independent filing office is related to the backlog of legal filings noted during the latest court review performed by the BIA.<sup>42</sup> Though new filings are unlikely to generate significant amounts of paperwork, if the court is still buried under stacks of other business it might not be able to track liens and other documents efficiently.

### ***Establishment of a Crow Filing Office requires:***

- ***Computerization of paperwork.***
- ***Linking the Crow computer system with external courts.***
- ***Training existing court staff.***

---

<sup>40</sup> Interview with 107 Committee, Crow Agency Montana, December 5, 1997.

<sup>41</sup> *Ibid.*

<sup>42</sup> Bureau of Indian Affairs: Billings Branch Office, *Op Cit.* p. 8.

## Options for Enactment

The Crow Commercial Code can be adopted using one of two methods. In both cases, the Crow voting public must be extensively educated regarding the pros and cons of CCC adoption.

In the first scenario, the code can be adopted as a stand-alone set of laws designed to govern business activity on the reservation. The Tribe currently has a Highway Code which was adopted in this manner. Unfortunately the Highway Code is seldom, if ever, enforced. Passage of the Crow Commercial Code in this manner greatly increases the chances that the CCC will be put on a shelf in tribal headquarters and never looked at again.

***There are two methods for enacting the CCC:***

- ***Stand-alone law, or***
- ***Constitutional amendment.***

On the other hand, the CCC could be enacted as an amendment to the Crow Constitution. The Constitution is the one document that seems to carry the weight necessary to make enforcement of the code a possibility. As a potential constitutional amendment, tribal members are also more likely to be interested in learning about the CCC. The task of informing the Crow public regarding the potential benefits of a commercial code will be more successful if the entire population takes an active interest in understanding the implications of the CCC on reservation life.

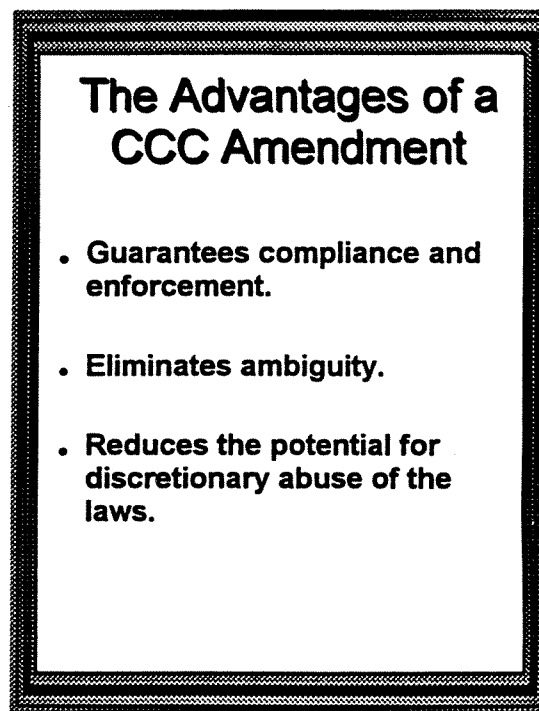
## The Advantages of a CCC Amendment to the Constitution

Members of the 107 Committee and other Crow officials have emphasized the need to pass the CCC as a constitutional amendment. There is a long history of failed and lax implementation of previous tribal legislation. The key problem was that in each case laws were enacted, but never enforced due to a lack of incorporation within the Constitution itself.

The most notable example is that of *Resolution 78-06*, passed in the late 1970s. This resolution was a comprehensive and exhaustive management systems re-organization initiative, designed to enhance the credibility and efficiency of tribal government. It created an extensive management code which included detailed procedures for improving personnel, financial, and property management within the tribal government. It also included major provisions detailing severe punishment for government employees with regard to corruption and conflicts of interest. The enforcement history of this Resolution is spotty at best. In 1989 the administration was found to be in violation of *Resolution 78-06* and its officials were eventually arrested and prosecuted. However, for the most part, the main restructuring and re-organization components of the law, and many of the anti-corruption provisions, have not been enforced by the authorities.

The need to amend the Constitution in order to guarantee compliance and enforcement of new legislation is unique to the Crow style of government. As Bill Pease, the Economic Development Planner stated, "You have to adopt whatever law you are considering and then amend the Constitution to give [the new law] teeth. That is the only thing that gets [tribal officials'] attention."<sup>43</sup> Amending the Constitution may bind officials within the judiciary and executive branches, in a manner which is wholly different from when laws are adopted without constitutional amendments.

If the Crow Tribe is to adopt and successfully enforce a CCC on their reservation, a constitutional amendment must be considered. This may take two forms. It may be sufficient to adopt an amendment with explicit language regarding the enforcement of the CCC. Such an *enforcement clause* would require that the CCC be honored by the courts, with support and recognition of dispute settlements and court judgments by other branches of Crow government. Alternatively, it may be necessary to actually amend the Constitution to include the CCC in its entirety. A *comprehensive amendment* of this sort, through physical inclusion of the code's detailed provisions, would also ensure that the CCC is properly recognized and enforced by the relevant on-reservation authorities.



**The Advantages of a CCC Amendment**

- Guarantees compliance and enforcement.
- Eliminates ambiguity.
- Reduces the potential for discretionary abuse of the laws.

### **Enforcement Clause vs. Comprehensive Amendment**

Adopting an enforcement clause into the Constitution is not without precedent. Article X established the Crow Judiciary as a separate, independent branch of the government. However, explicit language detailing how the Tribe will implement an independent judiciary, including provisions detailing removal and censure, is left out of this amendment. Given current scrutiny of the Crow court system, it is clear that the underlying legislative framework for establishing judicial independence has not been properly enforced.

In light of this, a comprehensive amendment presents several key advantages. As a legal document governing many potential business situations, a CCC provides explicit and detailed language to guide policymakers and enforcement authorities. Including the entire document in the Crow Constitution will thus eliminate any potential ambiguities regarding the CCC's prescriptions on any commercial situation. In addition, full inclusion in the Constitution will reduce the potential for discretionary abuse of the laws governing business activity on the reservation. This will enhance private sector confidence regarding the on-reservation business environment.

<sup>43</sup> Bill Pease, Economic Development Planner & Member of the 107 Committee, Interview with authors, Crow Agency Montana, December 5, 1997.

Rather than attempt to adopt and implement a CCC completely on their own, the Crow might want to pursue cooperative adoption as an interim step towards establishing completely independent CCC-enforcement institutions. There are two methods to accomplish this. First, the Crow could enter into an inter-tribal agreement with other tribes in Montana. The members could then share start-up costs and operating expenses. Second, the Crow could enter into an interim Memorandum of Understanding (MOU) with either the State or the County to utilize their systems while the Crow build capacity for commercial code enforcement.

### **Alternative II: Inter-Tribal Filing Office**

The Crow could pursue a strategy whereby they adopt their own commercial code, while entering into a treaty with other tribes in Montana to finance and create a multilateral commercial code enforcement office. An inter-tribal office, recognized by relevant state and county governments, would be a place where liens and other commercial code-related documents involving Montana Indians could be filed and registered. This would reduce some of the large start-up costs (incurred in starting a Crow Filing Office) by spreading them across several tribes, including expenses for computer and technological upgrading, records transfer and duplication from state and county offices, and personnel training. In addition, the Crow could benefit from the expertise of other tribes who have experience with commercial code related functions.

In light of the poor working relationships among the Montana tribes, such a cooperative endeavor may be difficult to achieve. Cooperative organizations have existed in the past, such as the Native American Manufacturing Association, but their operations were plagued by infighting and disagreement.<sup>44</sup> Currently it takes a crisis situation to unite the tribes. Recent legislative attacks on the judicial sovereignty of all of the tribes in Montana might serve to unite the Crow with other tribes. *Cooperative Adoption* of a CCC would help the Crow and their allies wage a counterattack against any attempt to take away jurisdiction of commercial cases from on-reservation courts. In addition, if the Crow organize an inter-tribal office and lead a legal counterattack against the State, this would be an excellent exercise of their sovereign powers.

### **Alternative II: Inter-Tribal Filing Office**

- Participating tribes share start-up and training costs.
- May be difficult to make treaty with other Montana tribes.

<sup>44</sup> Interview with various sources, Billings Montana, December 5, 1997.

### **Alternative III: MOU with State Agencies**

As the Crow move towards independent operation of a filing office, CCC adoption and enforcement need not be delayed. Through an MOU, the Crow can continue to defer to State and County filings, albeit in a more formal context than is currently done. This MOU would bind the Crow Tribe and the relevant State and County governments, stipulating that for a fixed time period the Crow Court would recognize and honor liens and other documents filed off-reservation involving tribal members, their businesses, and public enterprises.

An MOU is necessary since Crow Country is not a 280-Reservation. As with the Inter-tribal arrangement mentioned above, this MOU-based strategy will save the Tribe the effort of establishing and integrating computer systems. It will also save the Crow money which would likely be lost from immediately operating their own filing office. Furthermore, even if the Tribe established its own office, many people are likely to continue to file liens and other documents as they do now, in either State or County court. An MOU could stipulate that the Crow retain the option to start-up their own lien office in the future, once they accrue the necessary institutional capacity.

Entering into an MOU might be an extremely difficult proposition. Legislative action might have to be taken within the Montana Legislature. The acrimonious relationship between the Crow Nation and the State of Montana might make this an impossible compromise. However, if an agreement could be reached on this issue, it would provide the Tribe with a strong argument for maintaining its jurisdiction over cases heard in Crow Court.

### **Alternative III: MOU with State**

- **Allows for immediate implementation and enforcement of CCC.**
- **Utilize existing State system.**
- **Crow build capacity to start Crow Filing Office.**
- **Enhance Crow-Montana working relationship.**

### **Alternative IV: No Adoption of a CCC**

The Tribe does not necessarily have to adopt a Crow Commercial Code. Some respected members of the Tribe feel that the adoption of yet another Western-style legal document will further erode the integrity of the Crow Nation. For some Crow people, the Uniform Commercial Code is analogous to the IRA Constitutions adopted by other tribes in the 1930s. The Crow formed their own, non-IRA, constitution. This independent thinking has helped the Crow proudly enter the modern age on their own terms. Similarly, some Crow perceive the UCC as a concession to the desires of outside bankers, effectively limiting sovereignty.

What of the several successful Indian nations that have chosen to not adopt UCCs? Their successes have depended on other factors which are absent at Crow. For example, the Flathead reservation in Montana does not have a formal UCC. Instead, they defer to state code in adjudicating commercial disputes. This is made possible by the concurrent jurisdiction provisions afforded to them in their constitution. This tribe has been noted for its successful development of an indigenous private sector. This activity has been bolstered by the Flathead court system's operation within a stable set of laws. It has not mattered whether the laws were generated by the State of Montana or by the Flathead legislature: the important point is that the rules have been fairly applied to all (Indian and non-Indian) business activity within their reservation.

Another example is the Mississippi Choctaw, who do not operate under a commercial code at this time. During commercial disputes the Choctaw also defer to state code. This tribe is noted for a number of major industrial and manufacturing joint ventures on the reservation, and are frequently cited as one of the largest employers in the entire state of Mississippi.<sup>45</sup>

### **Alternative IV: No Adoption of a CCC**

- Saves Crow Resources.
- Successful tribes w/o commercial codes have a reputation for enforcing rules. They rely on State codes.
- No CCC makes it difficult to build a business-friendly environment.

***Neither the Mississippi Choctaw nor the Montana Flathead operate under their own commercial codes. They both rely on state codes, and are commercially successful. Their success is based not on a code, but on enforcement of rules.***

<sup>45</sup> The Choctaw are currently considering whether or not to adopt a formal commercial code, thereby ending their current reliance on State and Federal law in this area.

In both the Flathead and Choctaw cases, businesspeople (tribal and non-tribal) face a stable institutional environment perceived as having a fair and effective dispute resolution system. Both tribes enforce existing rules consistently, boosting the confidence of outside investors, financial institutions, and indigenous entrepreneurs. This business-friendly environment has been crucial for their economic development successes. Therefore, if the Crow decide to not adopt a commercial code, they will still need to build institutional stability. Additionally, they will need to ensure that outsiders perceive their court system as fair and efficient. This is a formidable task given the current reputation of the Crow Courts as biased and ineffective. Therefore, this option may result in the standardization of the current Crow practice of informally deferring to UCC-related documents filed outside the reservation.

### **Enforcement is Key**

All of this emphasizes the fact that adoption of the code is not the crucial issue: *enforcement* is. The same elements of reform which would facilitate enforcement of a CCC are still necessary if the Tribe opts to proceed without one. Specifically, the Crow will need to address the deficiencies that exist within their judicial system, most of which stem from the current lack of judicial independence. Therefore, not adopting a CCC does not mitigate the need to restructure both the functioning of the judicial branch and the role of the administration in business development.

On the other hand, creating, adopting, and enforcing a Crow Commercial Code would be an *exercise* of sovereignty. Unlike the IRA constitutions and other externally generated legislation, the CCC can bring direct benefits to the Tribe if enforced properly. Through codifying the “rules of engagement for dealing with the outside world,”<sup>46</sup> the CCC allows the Crow to define these rules before they are imposed on them by outsiders.

---

<sup>46</sup> William Walks Along, Chairman of Northern Cheyenne Tribe of Indians & Member of Economic Development Committee, Interview with authors, Lame Deer Montana, December 6, 1997.

# Criteria to Evaluate Alternatives

## Financial Feasibility

- Financially self-sustaining?
- Budgetary impact on common Crow?

## Political Feasibility

- Method of enactment?
- Potential political constraints?

## Administrative Feasibility

- Capacity for implementation?
- Evaluation mechanism/body?

## Economic Impacts

- Short term.
- Long term.

## **Criteria to Evaluate Alternatives**

The alternatives available to the Crow leadership must be evaluated against a consistent and logical set of objectives. In assessing the relative strengths and weaknesses of the options presented in this analysis, we will make use of the following feasibility criteria:

### **Financial Feasibility:**

#### *Is the proposal financially self sustaining?*

Financial feasibility is an important test for any proposed policy innovation. However, if an alternative under consideration does not generate enough revenue to pay for itself, the Crow may determine that the project is still viable for non-financial reasons. For example, funds could be diverted from another source if the Crow determine that the alternative being considered is still worthwhile.

#### *What is the budgetary impact on the common Crow?*

Policy changes no doubt involve expenditures from the tribal budget. If such expenditures shift considerable sums of money from existing governmental services, this may affect the day to day lives of the population.

### **Political Feasibility:**

#### *How should the proposed legislation fit into the existing body of law?*

Evaluation of major policy changes must include an assessment of constitutional issues. In some cases it may be appropriate to amend the *Crow Constitution*, while minor changes need only be enacted as stand-alone legislation. This legislation should not violate the intent of the Constitution.

#### *What are the potential political constraints?*

Any new policy or law threatens to alter the existing political status quo. Oftentimes various stakeholders have a vested interest in thwarting change. The assessment of a new policy must take into consideration political barriers that will be erected by such groups.

### **Administrative Feasibility:**

*What is the level of capacity for implementation?*

The capabilities of the staff who will be in charge of the implementation and enforcement of the proposed policy must also be evaluated. Any deficiency in skill or expertise must be addressed, otherwise the viability of the proposal will suffer. Sufficient thought must be given to the types of technologies and processes which will be involved.

*Who will be available to evaluate progress?*

Third party evaluation of the implementation of a policy should ensure that reasonable progress is made.

### **Short Term vs. Long Term Economic Impacts:**

Finally, an evaluation of the proposed policy should include consideration of the immediate impacts of enactment, as well as long run effects. Short term costs might be outweighed by potential long term benefits. Institutional developments often influence the path of economic growth over time.

## **Feasibility of Alternatives**

Presented below are summary pages of the evaluation of alternatives, as measured against the four feasibility criteria outlined on the previous page. For a detailed discussion of the pros and cons of each alternative, as they relate to the different criteria, see the Appendices.

### **Financial Feasibility of Alternatives**

#### **Going it Alone**

- Large start-up costs.
- Not financially self sustaining.
- Spending from general revenues.

#### **Inter-Tribal**

- Cost sharing.
- Small budgetary impact.

#### **MOU with State**

- Delays start-up costs.
- Small budgetary impact.

#### **No Adoption of a CCC**

- No new spending.
- Other reforms still drain funds.

# **Political Feasibility of Alternatives**

## **Going it Alone**

- **Path to self determination.**
- **Enhances sovereignty.**

## **Inter-Tribal**

- **Treaty with Montana tribes.**
- **Difficult working relationships.**

## **MOU with State**

- **Treaty with State.**
- **Concerns over conceding sovereignty.**

## **No Adoption of a CCC**

- **Judicial reform necessary w/o CCC.**
- **Political support for judicial reform.**

# **Administrative Feasibility of Alternatives**

## **Going it Alone**

- **Lack of judicial independence.**
- **Major staff training needs.**
- **No third party to evaluate progress.**

## **Inter-Tribal**

- **Sharing of expertise.**
- **Does not address capacity issues.**

## **MOU with State**

- **Access existing state systems.**
- **Build capacity for Crow Filing Office.**
- **State & County officials help monitor.**

## **No Adoption of a CCC**

- **Does not address capacity problems.**

# **Economic Impacts**

## **Going it Alone**

- **No immediate benefits.**
- **Positive developments in long-term.**

## **Inter-Tribal**

- **Few immediate benefits.**
- **Builds long-term relationships with other tribes.**

## **MOU with State**

- **Short-term cost savings & advantages.**
- **Significant long-term benefits.**

## **No Adoption of a CCC**

- **Continued problems.**

## **Summary of the Analysis of Alternatives**

### **Going it Alone**

*Going it Alone* appears to be a strategy which may incur many short term financial and political costs, but will bring many long term institutional and economic benefits to the Crow. Of the four selection criteria, this strategy fails the administrative feasibility test. While *Going it Alone* is an admirable path to follow, there are considerable administrative and institutional constraints which must be dealt with up front. In particular, gaps in administrative capacity must be addressed. This may imply that embarking on an intermediate strategy might be more immediately effective.

### **Inter-Tribal Filing Office**

The intermediate strategies are not without their disadvantages. In particular, the inter-tribal filing office approach may not be effective at all. While it does offer some financial and operational benefits, a myriad of political and administrative complexities outweigh these benefits. However, this option is still an example of how the Crow can utilize their sovereign treaty-making powers to defend the jurisdiction of their courts over commercial cases.

### **MOU with State**

This brings us to the strategy of *Cooperative Adoption Through an MOU* with the State of Montana. With this option the Crow will be well positioned to operate their own filing office, after they develop the requisite capabilities. Based on the above-mentioned analysis, the MOU strategy offers several advantages, primarily financial and administrative. In addition, it will bring the Crow many short term benefits which will facilitate realization of their long term institutional objectives. The major drawback concerns the political feasibility of dealing with an often hostile state government. Since there might be troubling questions regarding concessions of sovereignty, entering into discussion with State authorities can fuel opposition Crow political factions. However, the Crow stand to benefit significantly from a well crafted MOU on commercial dispute resolution, particularly one which allows for a transfer of technical and administrative skills to government staff over a set period of time. Thus, the MOU strategy should be looked at as an *interim* step: as the Crow develop their institutional capacity to enforce a commercial code, the *Going it Alone* strategy becomes more feasible.

### **No Adoption of CCC**

Finally, if the Crow were to not adopt the CCC, there are still several critical issues which they must resolve in order to further their economic development objectives. In particular, the Crow's administrative environment will still need to be reformed through a strengthened judiciary, increased efficiency within the courts, and the separation of politics from business activities. The CCC adoption process could provide the necessary impetus for such reform efforts. Without this impetus it will be more difficult for the Crow to build a stable, business friendly, institutional environment. The major downside of the *No Adoption* strategy is that it does not address these institutional deficiencies. The Crow will still experience problems in attracting outside investment and loan capital, and in progressing with their economic development initiatives, such as the Tribal Bank.

VI.  
RECOMMENDATIONS  
& MILESTONES  
OF IMPLEMENTATION

**RECOMMENDATION**

**★Going It Alone★**

by way of

**Cooperative  
Adoption Through  
MOU with State**

From the preceding analysis, it is clear that *enforcement* of the Crow Commercial Code (CCC) will be the key to unlocking the future economic development potential of the Crow. Therefore, any action taken must address the Crow's capacity for enforcing a comprehensive commercial legal framework. In light of this challenge, the Crow Tribe should consider an integrated strategy: *Cooperative Adoption through an MOU* as a means to eventually *Going It Alone*. Through this sequenced and combined approach, the Crow will develop the capacity to effectively run a self-sustaining commercial code enforcement system on-reservation. While this recommendation will initially involve an MOU with outside entities, it is still sovereignty-enhancing. Initiating this process allows the Crow to take charge of the business regulatory environment on their lands, rather than passively reacting to outside developments.

The following is a step-by-step guide for adopting and implementing the Crow Commercial Code through this integrated approach. Note that special attention has been focused on establishing a monitoring agency which it is hoped will operate in an unbiased and apolitical manner. As the Crow progress through this series of milestones, they will develop sufficient capacity to transition from the *MOU-Based Adoption* strategy into the *Going It Alone* strategy, eventually creating an independent Crow Filing Office.

## Milestones of Implementation

<input type="checkbox"/>	<b>Establish Corporation Commission</b>	<p>The lack of an independent monitoring body on-reservation prevents unbiased evaluation of progress on policy implementation. If the CCC is to play an integral role in furthering economic development, such a body will be necessary.</p> <p>Historically, the Crow have benefited from apolitical, third parties, who were instrumental in enforcing compliance with the law, such as the warrior societies and the Council of Clans. With regard to the necessary steps for CCC adoption, enforcement, and compliance, perhaps such models from the past can be useful.</p> <p>The Corporation Commission would be charged with oversight of the steps required to effectively implement a Crow Commercial Code. As in the models of old, the Commission should consist of equal representation from all clans or districts, whichever entity the Crow feel is more appropriate. By having representation from all factions, impartiality will be ensured.</p> <p>Establishment of this body as the initial step in the CCC adoption process will allow the members of the Corporation Commission to begin overseeing the subsequent steps immediately.</p>
<input type="checkbox"/>	<b>Earmark Training Funds for Tribal Courts</b>	<p>The budgeting process must be altered to allow the relevant judicial members adequate access to training. This training is important if the Crow are to eventually start their own filing office. The judicial branch should be given discretion over the use of training funds, subject to review by the Corporation Commission.</p>
<input type="checkbox"/>	<b>Draft the CCC</b>	<p>The Crow have access to experienced legal counsel. This includes both the Special Justice and the Appellate Court Justice within the Crow Courts, and outside attorneys employed by the Tribe. The Crow should solicit the advice and services of these legal experts in drafting a CCC which will simultaneously stimulate a business-friendly environment and protect the needs of the Crow Nation.</p> <p>Several draft commercial codes specifically written to address transactions in Indian Country are available for review. The United States Uniform Commercial Code could be the model upon which the Crow base their commercial statutes. Once again, the CCC will have to include provisions which meet the specific needs of the developing on-reservation business community.</p> <p>All underlying work, including drafts, notes, and discussions about the language and intent of the code must be maintained by the Corporation Commission. Following adoption, the collected files should be available to the Crow Court so that interpretation of the laws can be informed by the original intent of the authors.</p> <p>As the commercial needs and types of transactions in Crow Country change, the Corporation Commission should for assess the need for CCC revision. They should also initiate the amendment and redraft process when necessary.</p>

**Milestones of Implementation (cont.)**

<input type="checkbox"/>	<p><b>Negotiate Interim MOU with State</b></p>	<p>Though it is not a perfect solution, an MOU will be necessary until the Crow build institutional capacity and transaction volume to a level that will support an independent filing office. As mentioned earlier, this action is an <i>exercise</i>, not an abdication, of sovereignty. The Crow are taking a positive step to build their capacity for implementing their own commercial code enforcement system in the near future. The MOU should be written with a specific expiration date upon which the Crow will begin independent administration of commercial code-related functions.</p> <p>The Tribal Council, the Chair, and the Corporation Commission must engage the relevant state officials in Helena. During the course of the interim period, the Corporation Commission must work with the Tribal Judiciary to hasten development of the Crow Filing Office. Such a move is critical if the Crow want to eventually embark on the <i>Going it Alone</i> strategy.</p> <p>The Crow should simultaneously draft the CCC while they enter MOU negotiations with relevant external agencies. Since negotiation may be a lengthy process, the Crow do not want to delay subsequent implementation steps while waiting for the MOU to be finalized.</p>
<input type="checkbox"/>	<p><b>Educate Voters and Hold Public Hearings</b></p>	<p>As a potential constitutional amendment, the CCC is likely to generate significant amounts of interest among the voting public. Commercial codes are highly technical legal documents, often unfamiliar to people both on and off the reservation. Yet, in order for the CCC to pass political muster, the Crow public must see the benefits of having such a standardized set of business law. This task will be difficult given the conflicting and contradictory notions of the impact a commercial code will have on tribal life. A primary concern in the minds of many Crow people is that adoption of the code will sacrifice sovereignty.</p> <p>This educational effort should begin as both the drafting process and the MOU negotiations near completion. In addition, the Corporation Commission should hold public hearings on the CCC, thereby allowing them to incorporate feedback from interested tribal members into the document.</p> <p>The Corporation Commission must work with the Chair, the Tribal Council, the Tribal Judiciary, and Little Bighorn College to develop a comprehensive public education and outreach campaign on the benefits of a CCC. In doing so, members of the Crow business community should be consulted. The educational program must begin sufficiently before the vote on amending the CCC to the <i>Crow Constitution</i>.</p>
<input type="checkbox"/>	<p><b>Adopt CCC as a Comprehensive Constitutional Amendment</b></p>	<p>The Corporation Commission will face significant challenges to ensure a timely vote on CCC adoption. However, the steps outlined to this point should lay the groundwork for successful adoption and implementation. The Commission must pay careful attention to the constitutionally-mandated procedures under which a proposed amendment can be brought to a vote. This is very important so that the CCC adoption process is not challenged on legal technicality.</p>

**Milestones of Implementation (cont.)**

<input type="checkbox"/>	<b>Build Capacity for <i>Going It Alone</i></b>	<p>Passage of the CCC into law, and the signing of an MOU, does not bring an end to the monitoring process. In particular, the Corporation Commission must continuously evaluate progress made towards the establishment of the Crow Filing Office. The Corporation Commission should also recommend when the Tribe has reached the appropriate stage to create an independent enforcement authority on-reservation.</p>
<input type="checkbox"/>	<b>Establish Commercial Case Record within Tribal Court</b>	<p>A separate system should be maintained to house all court documentation of cases heard in Crow Court under the CCC. This will help in setting precedents for use in later hearings. Finding information on commercial cases and how the court interpreted the CCC will be much easier with a centralized document area. Eventually these documents will be maintained in the Crow Filing Office.</p>
<input type="checkbox"/>	<b>Adjudicate Commercial Cases under CCC</b>	<p>Unlike other types of development activities, the act of implementing the Crow Commercial Code is largely accomplished through consistent and fair application of the law to cases heard before the Court. This is important in establishing the Crow Court as a viable commercial dispute resolution body.</p>

# THE CCC ANNUAL AUDIT PROCESS



## The CCC Audit Process

<input type="checkbox"/>	<b>Audit CCC Progress Annually</b>	<p>An annual audit of the CCC implementation process within the courts must be performed by the Corporation Commission, in conjunction with legal counsel. The Commission will review all cases heard under the CCC over the course of the previous year. The purpose is to provide a regular review of commercial dispute practices in Crow Country.</p>
<input type="checkbox"/>	<b>Conduct Annual Training Conference</b>	<p>In order to keep the Crow judiciary abreast of new developments in commercial case law, an annual conference would be appropriate. Expert commercial lawyers from around the country can be invited to conduct legal seminars for the attendees which would include Crow justices and representatives from other tribal courts. A training conference held in Crow Agency would allow the Crow to demonstrate their emerging expertise in commercial law.</p> <p>In addition, this annual training conference could be held immediately before Crow Fair in August. This would allow attendees to see all aspects of the modern Crow reservation, from its cultural heritage to its innovative legal and commercial environment. We realize that this may be difficult due to the hectic activity in preparation for Crow Fair, but such timing would be advantageous.</p>
<input type="checkbox"/>	<b>Publish Audit Findings</b>	<p>The Corporation Commission's findings will be instrumental in helping the Tribe adapt to new developments in commercial case law. These findings will be published in an annual report entitled, <i>Crow Commercial Case Resolution: The Year in Review</i>.</p> <p>The publication could include:</p> <ul style="list-style-type: none"> <li>• The audit review of cases heard over the previous year in Crow Court;</li> <li>• A survey of proceedings from other tribal courts who operate under UCCs;</li> <li>• Summaries of the events held at the annual training conference.</li> </ul> <p>These reports should be made public and widely disseminated both on and off-reservation, thereby helping build investor and business confidence. Other tribes will learn from these reports when they restructure their commercial case practices. Thus, the Crow Courts will become specialists on commercial law in Indian Country.</p>

With their long-term involvement in the commercial code implementation process, members of the Corporation Commission will become knowledgeable on a wide range of issues affecting the local business community and the interests of outside investors. Thus, as time progresses, the Commission will become a valuable resource for both Crow and non-Crow entrepreneurs who want to start-up or expand their operations within Crow Country. In addition to its monitoring role, the Commission could simultaneously serve as an advisory group and an advocacy organization for businesses.

# VII.

## CONCLUSION

Given the current development priorities of the Crow government, and the needs of its emergent business class, the Crow should take steps to draft and adopt a CCC. In order to realize the benefits of a commercial code the Tribe must also take action to develop the necessary enforcement capacity, even if this includes a temporary working relationship with outside legal entities. Once adopted, proper enforcement of the CCC will aid the Crow Tribe in achieving several related objectives:

- First, CCC enforcement will be critical if and when the Crow Tribe opens its own bank. Unbiased application of the CCC will serve to strengthen the bank's authority in terms of its own lending operations.
- Second, successful CCC enforcement will aid both Crow public enterprises, and individual Crow, in obtaining commercial financing from off-reservation banking institutions and investors. By officially affording lenders recourse in the courts, the CCC acts to reduce the risks often associated with lending on the reservation.
- Third, it will help establish the Crow Tribal Court as a court of record. This will mitigate negative perceptions of the on-reservation system among County, State and Federal legal authorities, as well as outside commercial interests.
- Finally, by standardizing the rules through which all parties interact with outside commercial interests, the CCC will augment -- not diminish -- the Nation's sovereignty.

The CCC is a Tool of Sovereignty. This is particularly important given the ever-shifting Congressional mood towards Indian nationhood. If the Crow take positive steps towards regulating the business environment in Crow Country they will demonstrate vigilance in protecting their sovereign status. Adoption and proper enforcement of the Crow Commercial Code are fundamental decisions that transcend mere business considerations. By making the rules of the game, rather than having the rules imposed on them by others, the Tribe will effectively defend the Crow way of life.

In closing, perhaps a few words from someone whose career revolves around the state of affairs in Crow Country would be appropriate:

*It would be nice if I had more law.*

*Judge Arneson<sup>47</sup>*

---

<sup>47</sup> Barker, *Op.Cit.* At the time of this quote, Judge Arneson was speaking of the lack of legal statute available for his consideration as he oversaw the most important jury case yet heard in the Crow Courts.

# **Appendices**

**Feasibility of Alternatives  
The Crow Constitution  
Northern Cheyenne Tribe's Separation of Powers Ordinance**

## **Appendix A: Feasibility of Alternatives**

## Financial Feasibility

Alternative	Analysis of Financial Feasibility
<p><i>Going it Alone</i></p>	<p><i>Is the proposal financially self sustaining?</i></p> <p>Given the small number of revenue generating filings on the reservation, a Crow Filing Office would most likely not be financially self-sustaining. Note that establishing this office requires expenditures on:</p> <ul style="list-style-type: none"> <li>• computer systems;</li> <li>• staff training;</li> <li>• linking the Crow system with those of other courts.</li> </ul> <p>If the Tribe establishes a Crow Filing Office, filing fee revenues will be supplemented with money from the general operating budget.</p> <p><i>What is the budgetary impact on the common Crow?</i></p> <p>Since general revenues will be needed to operate a filing office, other programs enjoyed by the Crow population might have to be scaled back. Of course, the degree of cutbacks depends on the level of funding necessary to start-up and manage an on-reservation filing office and enforcement system.</p>

Alternative	Analysis of Financial Feasibility
<p><i>Inter-Tribal Filing Office</i></p>	<p><i>Is the proposal financially self sustaining?</i></p> <p>An inter-tribal filing agency would bring financial benefits through sharing the start-up, operating, and training costs among member tribes.</p> <p><i>What is the budgetary impact on the common Crow?</i></p> <p>With costs being spread across tribes, few funds from the Crow's general revenues will be required. This will probably not significantly affect the provision of existing services to the Crow population.</p>

Alternative	Analysis of Financial Feasibility
<i>MOU with State Agencies</i>	<p data-bbox="418 281 922 312"><i>Is the proposal financially self sustaining?</i></p> <p data-bbox="418 312 1537 451">Entering into an MOU with state or county authorities would allow the Tribe to pursue immediate enactment of the CCC, without having to expend tribal resources up front. The Crow could simply access the existing state and county system. The MOU can be crafted in a manner that allows the Crow to determine when they should establish a Crow Filing Office.</p> <p data-bbox="418 482 1040 513"><i>What is the budgetary impact on the common Crow?</i></p> <p data-bbox="418 513 1537 586">Since general revenues are unlikely to be required for enactment of an MOU, the budgets of other programs enjoyed by the Crow population are protected.</p>

Alternative	Analysis of Financial Feasibility
<i>No Adoption</i>	<p data-bbox="418 808 922 839"><i>Is the proposal financially self sustaining?</i></p> <p data-bbox="418 839 1341 870">Obviously, doing nothing will require no new spending by tribal administrators.</p> <p data-bbox="418 901 1040 932"><i>What is the budgetary impact on the common Crow?</i></p> <p data-bbox="418 932 1537 1135">The Crow will still need to institute broad reforms to improve their commercial climate. These reforms will definitely affect on the budget. For example, upgrading judicial staff training would involve earmarking funds for expenditure by the judiciary, rather than the current appropriations system. This does not necessarily have to affect the overall budget needs of the courts, but merely the manner in which funds are delivered for use by the judiciary. Other reforms undertaken may also have similar budgetary impacts.</p>

## Political Feasibility

Alternative	Analysis of Political Feasibility
<p><i>Going it Alone</i></p>	<p><i>How should the proposed legislation fit into the existing body of law?</i></p> <p>This strategy would potentially involve the enactment of comprehensive and sweeping legislation. This legislation can be adopted as a stand alone law, or as a constitutional amendment. There are two options for fitting the CCC into the Constitution:</p> <ul style="list-style-type: none"> <li>• an enforcement clause, or</li> <li>• a comprehensive amendment.</li> </ul> <p><i>What are the potential political constraints?</i></p> <p>Most members of the tribal administration are disposed to adopt a CCC. The <i>Going it Alone</i> strategy has political advantages in that it strongly advances the laudable goals of independent action and tribal sovereignty. This could be a useful argument for convincing opposition groups that the CCC is beneficial.</p>

Alternative	Analysis of Political Feasibility
<p><i>Inter-Tribal Filing Office</i></p>	<p><i>How should the proposed legislation fit into the existing body of law?</i></p> <p>In addition to deciding how the CCC will fit into the existing body of law, this option would necessitate the Crow entering a treaty with participating tribes. The tribes located near Crow Country are not known for working together very well. However, the recent attack on tribal judicial sovereignty initiated by Senator Conrad Burns might provide the necessary impetus to allow them to enter into such an agreement.</p> <p><i>What are the potential political constraints?</i></p> <p>Given the poor working relationships between the Crow and other tribes in Montana, this option might be unpopular with the Tribal Council. However, if seen as an act of sovereign initiative, perhaps the Crow population would support this strategy.</p>

Alternative	Analysis of Political Feasibility
<p><b>MOU with State Agencies</b></p>	<p><i>How should the proposed legislation fit into the existing body of law?</i>  Much like the inter-tribal strategy, cooperative adoption through an MOU would involve dealing with outsiders. In this case, a treaty would have to be entered into with the Montana legislature. The hostile nature of the Crow-Montana relationship makes this a difficult proposition.</p> <p><i>What are the potential political constraints?</i>  Internal opposition to an MOU with the State might be especially fierce, since compromising with outsiders is often seen as a relinquishment of tribal sovereignty. However, if carefully crafted, an MOU could protect the autonomy of the Crow, while simultaneously allowing them to proceed with adoption of the CCC.</p>

Alternative	Analysis of Political Feasibility
<p><b>No Adoption</b></p>	<p><i>How should the proposed legislation fit into the existing body of law?</i>  Reform of systems like the judicial branch could be accomplished through legislative action. As discussed earlier, directly amending the <i>Crow Constitution</i> might be the only way to ensure the effectiveness of such reforms.</p> <p><i>What are the potential political constraints?</i>  Enacting a CCC is a real chance to demonstrate political vision, but few are likely to complain if the status quo is simply maintained. Those who are against a CCC might favor the status quo since it would not diminish Crow sovereignty through adopting a Western-model.</p>

## Administrative Feasibility

<b>Alternative</b>	<b>Analysis of Administrative Feasibility</b>
<i>Going it Alone</i>	<p><i>What is the level of capacity for implementation?</i></p> <p>Implementation and enforcement of the code hinges primarily upon the capabilities of key personnel. At present there are issues of concern regarding staff capacity:</p> <ul style="list-style-type: none"> <li>• The court does not operate with sufficient independence to effectively and fairly enforce the provisions of a CCC;</li> <li>• If the Crow had an enduring, apolitical civil service, then this body could see enactment of the CCC to completion even in the event of regime change;</li> <li>• Finally, the lack of experience of the court staff regarding filings will need to be overcome through intensive training.</li> </ul> <p><i>Who will be available to evaluate progress?</i></p> <p>Currently there is no unbiased third party that can be relied upon to evaluate progress towards CCC enforcement. This includes making sure that the CCC is not used to discriminate against those parties not politically well connected.</p>

<b>Alternative</b>	<b>Analysis of Administrative Feasibility</b>
<i>Inter-Tribal Filing Office</i>	<p><i>What is the level of capacity for implementation?</i></p> <p>Inter-tribal cooperation brings one benefit to the Crow. It will allow for the sharing of expertise between employees of the judicial and executive branches of participating tribes. This will help the Crow build capacity. However, there are some administrative problems associated with this option:</p> <ul style="list-style-type: none"> <li>• The exact location of the office might be an issue of contention;</li> <li>• Crow staffing capacity still needs to be addressed;</li> <li>• The lack of judicial independence on the Crow reservation, and its impact on business confidence, is not resolved.</li> </ul> <p><i>Who will be available to evaluate progress?</i></p> <p>Treaty provisions could specify the creation of an Inter-Tribal Commercial Code Oversight Board:</p> <ul style="list-style-type: none"> <li>• Membership would include appointees from all participating tribes;</li> <li>• The Board could ensure progress on commercial code adoption and implementation.</li> </ul> <p>Unanswered questions regarding this Board include:</p> <ul style="list-style-type: none"> <li>• How would such an extra-Crow body operate without impinging on Crow sovereignty?</li> <li>• What enforcement authority would such a Board be given?</li> </ul>

Alternative	Analysis of Administrative Feasibility
<p><i>MOU with State Agencies</i></p>	<p><i>What is the level of capacity for implementation?</i>  This option would bypass some of the capacity issues within the current Crow judicial and executive branches, since existing State and County filing systems will be used. If the Crow subsequently decide to start their own office, the experience gained during the interim period will boost Crow capacity for implementation.</p> <p><i>Who will be available to evaluate progress?</i>  If the MOU strategy is chosen, State and County officials will likely monitor the efficiency of commercial code related tasks. Due to the potentially biased nature of such monitoring, the Crow will need to establish an independent on-reservation body to evaluate CCC implementation. This body should be named the Corporation Commission to denote its pro-business orientation.</p>

Alternative	Analysis of Administrative Feasibility
<p><i>No Adoption</i></p>	<p><i>What is the level of capacity for implementation?</i>  If the Crow want to strengthen commercial infrastructure without adopting the CCC, there is still a need for comprehensive reforms. These include:</p> <ul style="list-style-type: none"> <li>• Strengthening independence of judiciary, and increasing efficiency within the court system;</li> <li>• Separating politics from business activities.</li> </ul> <p><i>Who will be available to evaluate progress?</i>  There is currently no third party evaluation system which could ensure that such institutional reforms are carried out.</p>

## Short Term vs. Long Term Economic Impacts

Alternative	Analysis of Short Term vs. Long Term Economic Impacts
<i>Going it Alone</i>	<p>Short term impacts:</p> <ul style="list-style-type: none"> <li>• Until a filing office is established, the Crow Tribe may have to defer adoption of CCC;</li> <li>• Low number of new filings and registrations will result in a loss of money by the Crow Filing Office, once it is operational;</li> <li>• Political opposition to adoption might be problematic;</li> <li>• Few benefits will be immediately apparent, especially to the general population.</li> </ul> <p>Long term impacts:</p> <ul style="list-style-type: none"> <li>• Standardizes the laws governing businesses and government on the reservation;</li> <li>• Allows for the setting of precedents in handling commercial cases in Crow Country;</li> <li>• Establishes Crow Court as a respected institution both on and off the reservation;</li> <li>• Guides tribal administration in management of its many development projects;</li> <li>• Lays foundation for private sector development on the reservation.</li> </ul>

Alternative	Analysis of Short Term vs. Long Term Economic Impacts
<i>Inter-Tribal Filing Office</i>	<p>Short term impacts:</p> <ul style="list-style-type: none"> <li>• Sharing of costs and operating expenses saves Crow money otherwise lost from the low number of document filings;</li> <li>• Political opposition to the treaty might be fierce given history of poor inter-tribal relations;</li> <li>• Few benefits will be immediately apparent, especially to the general population.</li> </ul> <p>Long term impacts:</p> <ul style="list-style-type: none"> <li>• Improves inter-tribal relationships;</li> <li>• Allows for sharing of expertise and experience among judicial and executive employees of participating tribes;</li> <li>• Helps the Crow Court in setting precedent in handling commercial cases in Crow Country;</li> <li>• Establishes Crow Court as a respected institution both on and off the reservation;</li> <li>• Guides tribal administration in management of its many development projects;</li> <li>• Lays foundation for private sector development on the reservation.</li> </ul>

Alternative	Analysis of Short Term vs. Long Term Economic Impacts
<i>MOU with State Agencies</i>	<p>Short term impacts:</p> <ul style="list-style-type: none"> <li>• CCC can be adopted immediately, without waiting for the establishment of a filing agency;</li> <li>• Through accessing the existing Montana State system, the Tribe will not immediately incur start-up costs for the new Crow Filing Office;</li> <li>• Political opposition to the MOU likely to be fierce;</li> <li>• Few benefits will be immediately apparent, especially to the general population.</li> </ul> <p>Long term impacts:</p> <ul style="list-style-type: none"> <li>• Improves the Crow-Montana working relationship;</li> <li>• Standardizes the laws governing business and government on the reservation;</li> <li>• Allows for the setting of precedents in handling commercial cases in Crow Country;</li> <li>• Establishes Crow Court as a respected institution both on and off the reservation;</li> <li>• Guides tribal administration in management of its many development projects;</li> <li>• Lays foundation for private sector development on the reservation.</li> </ul>

Alternative	Analysis of Short Term vs. Long Term Economic Impacts
<i>No Adoption</i>	<p>Short term impacts:</p> <ul style="list-style-type: none"> <li>• Continued problems gaining access to outside investment and loan capital;</li> <li>• Does not address the immediate threat posed by Senator Conrad Burns who is attempting to limit jurisdiction of tribal courts;</li> <li>• Makes it more difficult for the Tribe to progress with development of Crow bank.</li> </ul> <p>Long term impacts:</p> <ul style="list-style-type: none"> <li>• Leaves the Tribe on a poor long-term growth path;</li> <li>• Business confidence will not be built up, adversely affecting future economic development projects;</li> <li>• Crow Courts rulings, particularly on commercial issues, will not be recognized outside the boundaries of the reservation.</li> </ul>

## **Appendix B: The Crow Constitution**

Amended  
CONSTITUTION AND BYLAWS  
of the  
CROW TRIBAL COUNCIL

PREAMBLE

The Crow Tribe, of Indians, in an effort to enforce the respect of their basic human, constitutional and treaty rights, do hereby re-establish the Crow Tribal Council to represent, act and speak for the Crow Tribe in any and all tribal matters, and to promote the general welfare of the Crow Tribe, do adopt the following constitution and bylaws for the conduct of Crow Tribal matters in conjunction with the lawful right of the Bureau of Indian Affairs to conduct same.

Article I

The Crow Tribal Council shall be composed of the entire membership of the Crow Tribe.

Article II

The council shall elect every two (2) years, in conformity to its rules of procedure, a Chairman, Vice-Chairman, Secretary and Vice-Secretary. The Chairman shall have no vote unless there be a tie vote before the council. The election for these officers shall be held the second Saturday of May every other year after May 12, then the first election shall be held under this constitutional change. Officials are to assume their duties July 1, after election.

Article III

Any duly enrolled member of the Crow Tribe, except as herein provided, shall be entitled to engage in the deliberations and voting of the council, provided the females are 18 years old and the males 21 years.

Article IV

All nominations for officers of the council and any other tribal matter before the council shall be by voice, standing, hand-raising or secret ballot, as the council shall elect at each of its meetings.

Article V

The Crow Tribe, through its tribal council, reserves unto itself the right to remove for cause any officer of the council, for misconduct or negligence or non-diligence in connection with the protection of the rights of the Crow Tribe in its relations with the Bureau of Indian Affairs or the local employees.

See Resolution 80-26

## Article VI

### The Powers, Duties, and Functions of the Council:

1. The council shall establish its own rules of procedure.
2. Meetings. There shall be regular tribal council meetings held each year on the second Saturday of January, the second Saturday of April, the second Saturday of July, and the second Saturday of October, and as many additional meetings shall be held as tribal business may require. All meetings shall be called by the Chairman and the Committee.
3. Notice of meetings and agendas. It shall be the duty of the Secretary, or in his absence, the Vice-Secretary of the Crow Tribal Council to give notice of all tribal council meetings of the Crow Tribe in writing for a period of at least seven days prior to each meeting date. Notices shall be posted at one public place in each district of the reservation, and at the Agency Headquarters, and, where possible, in the local newspapers and by radio broadcast. Notices in addition to the date, time and place of the meeting, shall list in numerical order the business to come before the tribal council meeting. No business shall be transacted at the meeting unless it has been included in the public notice. Copies of proposed resolutions or other business to be considered shall be furnished to the elected district representatives by the Tribal Secretary seven (7) days prior to meeting dates.
4. Items of business. Agenda of the tribal council meeting shall include all items required by the (1) Tribal Chairman and committee, (2) Superintendent of the Crow Agency, and (3) any petition duly signed by 100 qualified voters. All requests to the Chairman and committee for a general council meeting shall be in writing and shall clearly state the nature of the business to be presented before the general council.
5. If the Commissioner of Indian Affairs desires to present any matter to the council for its action, such request shall be presented in writing to the Chairman or the committee, who shall as herein provided, advertise such request as provided, and set the date for the council sessions.
6. Except where otherwise specified in this constitution and bylaws, decisions of the council shall be by a simple majority of the vote cast.
7. The council shall perform the duties assigned to it under this constitution and bylaws and shall have such powers in addition to those expressly conferred on it thereunder as may be necessary to achieve its effective operation and to realize its objective.

8. All matters presented and coming before the Crow Tribal Council to be voted upon by the members of the Crow Tribe shall be decided and determined by a simple majority vote.

9. There shall be a committee composed of two (2) members from each of the Six Districts of the Crow Reservation and two (2) members from off-the-reservation Indians elected for a term of two (2) years, in accordance with the tribal council's rules of procedure, to act as an executive committee to work with the officers under the general direction of the council. The first election of these committee members shall be held within 30 days from and after adoption of this constitutional amendment, and all subsequent elections to be held the second Saturday of the month of May at 2-year intervals on alternate years from the tribal officials election. Each district shall select its own election judges from within said district whose expenses shall be paid from tribal funds. The results of such elections shall be final and conclusive.

10. The Crow Tribe, through the Crow Tribal Council, shall have the power to levy, assess and collect taxes and license fees upon non-members of the Crow Tribe doing business within the boundaries of the Crow Indian Reservation, subject to review by the Secretary of the Interior. . .

#### Article VII

##### Status and Functions of the Council:

1. The Crow Tribal Council is the voice of the Crow Tribe.
2. The Crow Tribal Council is the medium, the body, the tribal organization through which the Crow Tribe speaks to the government and the general public.
3. The Council, representing the entire Crow Tribe, shall voice the opinions, wishes, sentiment, hopes and decisions in any and all tribal matters for the Crow people to the Congress and the Interior Department, by resolutions and through tribally elected delegates who shall, under instructions of the council, proceed to Washington or elsewhere to present in person such decisions and their own arguments and appeals in support thereof as the council shall direct by majority vote.
4. Subject to existing federal law which endows the Congress with plenary powers over the Indians in their tribal state, and which in turn passes such authorities down the line to the Secretary of Interior and the Commissioner of Indian Affairs, who by regulations based upon acts of the Congress, control the management of Indian Affairs subject to constitutional limitations. The Crow Tribal Council, without legal status as such, but being the mouthpiece and the voice of the Crow people, will from time to time call to the attention of the Congress its views and wishes with respect to the administration of its rights, property and affairs by the Bureau of Indian Affairs.

5. Because of existing law governing Indian administration by the Congress herein pointed out, the Crow Council admits its limited authority in the administration of its own tribal matters, but also, understanding the constitutional limitations of the government in this same field, the Crow Tribal Council will sponsor all legislation with state, federal and local governments on behalf of the Crow Tribe, and will, through tribal council resolutions and elected delegates and representatives, consult with and otherwise deal with representatives of the department of the government of the United States on all matters affecting the interests of the Crow Tribe.

6. The Crow Tribal Council, which encompasses the entire membership of the Crow Tribe, so far as the Crow people are concerned, shall be supreme in determining by a majority vote of those attending, any course of action taken which is designed to protect Crow tribal interests.

7. The American system of "majority rule" used in the Congress of the United States shall prevail in the decisions of the Crow Tribal Council in regularly called and duly assembled conventions, and its majority decisions shall be conclusive and binding over the losing minority.

8. The Bureau of Indian Affairs, being a part of the United States Government, shall in no wise interfere directly or indirectly through its field representatives or agents with the deliberations or decisions of the Crow Tribal Council. The council, existing under the legal handicaps herein pointed out, belongs to the Crow Tribe only, and not the government, and as such will make its decisions without Indian Bureau interference or advice, inasmuch as the Indian Bureau, under the broad powers in Indian administration conferred upon the Congress and the Indian department by both the Congress and the courts, can and does nullify Indian tribal council actions the country over when same takes issue with its own views. However, the Crow Tribal Council, regardless of same, hereby reserved unto itself the right to initiate moves looking to the protection of the Crow tribal rights and interests under their treaties and under the American constitution guaranteeing all basic human rights to all who live under the American flag, and to the equal protection of the laws of our country.

9. The Crow Tribal Council in a duly called session will decide the manner of voting, whether by districts or in the council itself or whether by secret ballots in the districts or in the council, and on this issue the local Indian Bureau representatives will have no voice whatsoever - the council reserves this right unto itself.

10. Every member of the Crow Tribe, outside of the exception herein provided for, shall have equal opportunities to discuss any and every question of tribal concern before the council, and to participate, without interference, in all votes taken upon any such questions.

Article VIII

SECTION I: This Constitution and Bylaws shall be amended by a majority vote of the qualified voters of the Crow Tribe voting at an election called for that purpose by the tribal council, provided that no amendment shall become effective until it shall have been approved by the Commissioner of Indian Affairs or his authorized representative.

SECTION II: All eligible tribal members may vote at such duly called elections. The enactment of rules and procedure for conducting such an election shall be the responsibility of the tribal council. The tribal council shall enact an election ordinance.

AND, BE IT FURTHER RESOLVED, that the above listed changes are those which the tribal council wishes to make in the present Crow Tribal Constitution and shall do so regardless of any or all other resolutions or provisions, and if other resolutions or constitutional changes are in conflict with the above state rules, they shall be henceforth repealed, rescinded and expunged from the records.

Article IX

Amended

12-25-66

BYLAWS

Article I

Duties of Crow Tribal Council

Section 1. The Chairman of the Council shall preside over all meetings of the Council, perform all duties of the Chairman and exercise any and all authority detailed by the Council, and shall be entitled to vote only in case of a tie.

Section 2. The Vice-Chairman shall assist the Chairman when called upon so to do; in the absence of the Chairman, shall preside and when so presiding shall have all the privileges, duties, and responsibilities of the Chairman.

Section 3. The Secretary of the Council shall forward a copy of the minutes of all the meetings to the Superintendent of the Reservation, and the Commissioner of Indian Affairs, and the Regional Director, and shall conduct all correspondence of the Council and shall keep all records and minutes of the meetings, records as to expenditures and allotment of tribal gratuitous and other funds over which the Council has sole charge.

Section 4. The duties of all appointed special committees or officer of the Council shall be clearly defined by resolutions of the Council at the time of their creation or appointment. Such committees and officers shall report from time to time as required to the Council and their activities and decisions shall be subject to review of the Council.

Section 5. Regular and emergency meetings of the Crow Council shall be held on call of the Chairman at Crow Agency, Crow Agency, Montana.

Section 6. No business shall be transacted unless a quorum of 100 is present.

Section 7. Order of business:

- (a) Call to order by Chairman
- (b) Reading of minutes of last meeting
- (c) Unfinished business
- (d) Reports
- (e) New business
- (f) Adjournment

Section 8. It shall be the duty of the Chairman of the Council to duly notice all tribal council meetings of the tribe for a period of at least seven (7) days prior to such meeting date, for decisions of the Crow Tribe affecting the sale or lease of tribal property, or of legislative matters affecting the Crow Tribe.

Section 9. A salary is to be paid to each officer or member of the Crow Tribal Council when serving as an authorized delegate as follows:

Within the State of Montana ..... \$10.00 per day  
Outside the State of Montana, with the  
exception of trips to Washington, D. C. .... 15.00 per day  
To Washington, D. C. .... 25.00 per day

In addition to the above scale of salaries a per diem is to be paid each officer or member of the Crow Tribal Council, computed in accordance with the U. S. Government Travel Regulations and in addition transportation via rail, air or personal car, whichever is administratively determined to be in the best interest of the Crow Tribe.

#### Approval

Resolution No. 31 adopted February 3, 1955, approved by letter to the Chairman of the Crow Tribal Council from Commissioner Glenn L. Emmons dated March 18, 1955.

#### Article II

##### Ratification of Constitution and Bylaws

This Constitution and the attached Bylaws, when adopted by a majority of those attending District Councils called to vote on accepting a Constitution and Bylaws shall be binding upon the Crow Tribe.

#### CERTIFICATE OF ADOPTION

Pursuant to the Constitutional election held on June 24, 1948, this Constitution and Bylaws of the Crow Tribal Council of Montana, was adopted by a vote of 295 for and 130 against in an election in which 425 votes were cast.

(Signed)  
\_\_\_\_\_  
Robert Yellowtail  
Chairman, Tribal Council

(Signed)  
\_\_\_\_\_  
George Hogan, Sr.  
Secretary, Tribal Council

(Signed)  
\_\_\_\_\_  
L. C. Lippert, Crow Agency

APPROVAL

This Constitution and Bylaws, having been proposed and ratified by the members of the Crow Tribe on June 24, 1948, at a referendum, is herewith approved.

(Sgd) William Zimmerman, Jr.

---

William Zimmerman, Jr.  
Assistant Commissioner

Washington, D. C.; May 23, 1949

RESOLUTION NO. 62-11

A RESOLUTION OF THE CROW TRIBAL COUNCIL PROVIDING FOR THE AMENDMENT OF THE CONSTITUTION OF THE CROW TRIBAL COUNCIL, BY ADDING TO AND CHANGING ART. II, ART. VII, AND ART. VIII, BY MAKING CERTAIN CHANGES BY ADDING TO AND CHANGING ART. II, ART. VI, ADDING SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, ART. VIII, ADDING SECTIONS 1, 2, AND FOR OTHER PURPOSES.

WHEREAS, there has been a need for certain changes in the Crow Tribal Constitution, it is deemed to be in the best interests of the Crow Tribe that Resolutions 107, 140, 145, 223, and 152, shall be, and the same are hereby rescinded, repealed and expunged from the Crow Tribal records;

AND WHEREAS, it is evident that the rescission will enable tribal members to appoint committee members and delegates more democratically in accordance with certain existing provisions of the Crow Tribal Constitution.

NOW, THEREFORE, BE IT RESOLVED, by the Crow Tribal Council in Crow Tribal Council duly called and held this 18th day of December, 1961, that the Constitution of the Crow Tribal Council be, and hereby is amended by making the following changes in the present Crow Tribal Constitution, to-wit:

ARTICLE II.

The council shall elect every two (2) years, in conformity to its rules of procedure, a Chairman, Vice-Chairman, Secretary and Vice-Secretary. The Chairman shall have no vote unless there be a tie vote before the council. The election for these officers shall be held the second Saturday of May every other year after May 12, then the first election shall be held under this constitutional change. Officials are to assume their duties July 1, after election.

ARTICLE VI.

The Powers, Duties, and Functions of the Council:

1. The Council shall establish its own rules of procedure.
2. Meetings. There shall be regular Tribal Council meetings held each year on the second Saturday of January, the second Saturday of April, the second Saturday of July, and the second Saturday of October, and as many additional meetings shall be held as tribal business may require. All meetings shall be called by the Chairman and the Committee.

3. Notice of meetings and agendas. It shall be the duty of the Secretary, or in his absence, the Vice-Secretary of the Crow Tribal Council to give notice of all Tribal Council meetings of the Crow Tribe in writing for a period of at least seven days prior to each meeting date. Notices shall be posted at one public place in each district of the reservation, and at the Agency Headquarters, and, where possible, in the local newspapers and by radio broadcast. Notices in addition to the date, time and place of the meeting, shall list in numerical order the business to come before the Tribal Council meeting. No business shall be transacted at the meeting unless it has been included in the public notice. Copies of proposed resolutions or other business to be considered shall be furnished to the elected district representatives by the Tribal Secretary seven (7) days prior to meeting dates.

4. Items of business. Agenda of the Tribal Council meeting shall include all items required by the (1) Tribal Chairman and committee. (2) Superintendent of the Crow Agency, and (3) any petition duly signed by 100 qualified voters. All requests to the Chairman and committee for a general Council meeting shall be in writing and shall clearly state the nature of the business to be presented before the General Council.

5. If the Commissioner of Indian Affairs desires to present any matter to the council for its action, such request shall be presented in writing to the Chairman or the committee, who shall as herein provided, advertise such request as provided, and set the date for the Council Sessions.

6. Except where otherwise specified in this constitution and By-Laws, decisions of the Council shall be by a simple majority of the vote cast.

7. The Council shall perform the duties assigned to it under this Constitution and By-Laws and shall have such powers in addition to those expressly conferred on it thereunder as may be necessary to achieve its effective operation and to realize its objective.

8. All matters presented and coming before the Crow Tribal Council to be voted upon by the members of the Crow Tribe shall be decided and determined by a simple majority vote.

9. There shall be a committee composed of two (2) members from each of the Six Districts of the Crow Reservation and two (2) members from off-the-reservation Indians elected for a term of two (2) years, in accordance with the Tribal Council's rules of procedure, to act as an executive committee to work with the officers under the general direction of the Council. The first election of these committee members shall be held within 30 days from and after adoption of this Constitutional amendment, and all subsequent elections to be held the second Saturday of the month of May at 2-year intervals on alternate years from the tribal officials election. Each district shall select its own election judges from within said district whose expenses shall be paid from tribal funds. The results of such elections shall be final and conclusive.

10. The Crow Tribe, through the Crow Tribal Council, shall have the power to levy, assess and collect taxes and license fees upon non-members of the Crow Tribe doing business within the boundaries of the Crow Indian Reservation, subject to review by the Secretary of the Interior.

ARTICLE VIII.

SECTION I: This Constitution and By-Laws shall be amended by a majority vote of the qualified voters of the Crow Tribe voting at an election called for that purpose by the Tribal Council, provided that no amendment shall become effective until it shall have been approved by the Commissioner of Indian Affairs or his authorized representative.

SECTION II: All eligible tribal members may vote at such duly called elections. The enactment of rules and procedure for conducting such an election shall be the responsibility of the Tribal Council. The Tribal Council shall enact an election ordinance.

AND, BE IT FURTHER RESOLVED, that the above listed changes are those which the Tribal Council wishes to make in the present Crow Tribal Constitution and shall do so regardless of any or all other resolutions or provisions, and if other resolutions or constitutional changes are in conflict with the above state rules they shall be henceforth repealed, rescinded and expunged from the records.

PASSED, ADOPTED AND APPROVED this 18th day of December, 1961, by the Crow Tribal Council at a duly assembled meeting of said council according to a notice duly given on December 11, 1961, in a duly called Council, a quorum being present at Crow Agency, Montana. Votes for 280; Votes against None.

(Sgd) Roger Stops

Roger Stops, Chairman, Pro-Tem.  
Crow Tribal Council

ATTEST:

(Sgd) Arthur R. Garrigus

Arthur R. Garrigus, Secretary, Pro-Tem.  
Crow Tribal Council

I recommend \_\_\_\_\_  
I do not recommend \_\_\_\_\_

Superintendent, Crow Indian Agency

FEB 14 1962

Mr. John Cummins

Chairman, Crow Tribal Council

Dear Mr. Cummins:

This will refer to your letter of February 14, 1962, and other letters, minutes, resolutions, and opinions growing out of the Crow Tribal Council meeting on December 18, 1961, and February 2, 1962, have been presented to me for consideration.

During the December 18th meeting, the session was declared adjourned by the Chairman, but it was continued under the direction of a chairman pro tempore. The first question presented to me is whether to recognize as binding actions taken following the attempted adjournment; or whether to accept the view of the Regional Solicitor, concurred in by the Area Director, that the adjournment was ineffective and that the extended meeting was proper. If the latter view is correct, actions taken by the extended meeting may properly be recognized by the Commissioner.

As the former presiding officer of a legislative body it is distressing to me to have to resolve a question which is properly a matter for the Crow Tribe itself to decide. Furthermore, under the Crow constitution, the Tribal Council, at the time of the December 18th meeting, was empowered to amend its constitution and by-laws without necessarily making the Commissioner a party to its action. These two considerations make me reluctant to take any action which would, to me, present the appearance of assuming prerogatives that belong to the Crow Tribe itself.

Against these negative factors is the fact that the tribe is at present displaying a desirable unity, demonstrated by the delegation now in Washington and by the tribal resolution with respect to the disposition of the judgment money.

The way of progress seems to me to be the one which has been followed by the tribe in seeking to strengthen its constitution and to provide for the wisest possible use of the judgment money. For this reason I am at this time recognizing the December 18, 1961, meeting as the extension of a properly convened session of the Crow Tribal Council. The amendments adopted at that time are recognized by me as valid amendments to the Crow tribal constitution.

This action makes it possible to receive and welcome the present delegation as representatives of the Constitution and By-Laws Committee, which has been instructed by the tribe to meet and prepare amendments and changes to the constitution and by-laws and present them to the Tribal Council within 60 days from February 2, 1962. I do so with the understanding that any ambiguities in the amendments to the constitution adopted at the meeting of December 18, 1961, and any uncertainties in their interpretation can and should be corrected in the proposed changes to the constitution and by-laws to be prepared by the aforementioned committee.

The action I am now taking is consistent with the view of the Regional Solicitor and does not infringe on the trust responsibility of the Secretary. It will aid in the movement toward a stable and fully responsive tribal government and a wise and prudently planned use of the judgment monies. If the delegation works within the framework of the amendments adopted on December 18, 1961, and within the terms of the resolution adopted on February 2, 1962, it can, together with the bureau, clarify details within the next few days so that an exact presentation of the tribe's wishes can be made to the Secretary of the Interior.

Accordingly, this office now recognizes the validity of Resolution No. 62-11 of the Crow Tribal Council and offers to the present delegation the services of the Branch of Tribal Affairs in the preparation of further amendments to the constitution.

Cordially,

/s/ Philleo Nash

Philleo Nash  
Commissioner of Indian Affairs

AMENDMENT  
CONSTITUTION AND BYLAWS  
of the  
CROW TRIBAL COUNCIL

AMENDMENT

The Constitution and Bylaws of the Crow Tribal Council shall be amended by adding Article IX, which shall read as follows:

ARTICLE IX

Section 1. The Crow Tribe through the Crow Tribal Council shall have power to establish, own, operate, maintain and engage in any business or business enterprise, either as sole owner and operator, or jointly with any person, firm, or corporation, or jointly with any agency or department of the Government of the United States of America. For the purpose of carrying out the powers herein set forth, the Crow Tribal Council is authorized and empowered to use and expend tribal funds of the Crow Tribe.

Approved:

(sgd.) Robert L. Bennett

Commissioner of Indian Affairs  
Washington, D. C.

Date: December 28, 1966

RESOLUTION REGARDING AN AMENDMENT TO THE CROW CONSTITUTION  
AND BY-LAWS REGARDING IMPEACHMENT

WHEREAS, notice has been given pursuant to Crow Tribal Resolution 65-10 that the Tribal Council will consider at its Quarterly Council meeting in July, 1980, an amendment to the Constitution with regard to Article V of the Constitution.

WHEREAS, Article V of the Crow Constitution presently reads as follows:

The Crow Tribe, through its Tribal Council, reserves unto itself the right to remove for cause any officer of the Council for misconduct or negligence or nondiligence in connection with the protection of the rights of the Crow Tribe in its relations with the Bureau of Indian Affairs or the local employees.

WHEREAS, the proposed changes would be as follows:

The Crow Tribe, through its Tribal Council reserves unto itself the right to remove for cause any officer of the Council for misconduct or negligence or nondiligence in connection with the protection of the rights of the Crow Tribe or in connection with its relations with the Bureau of Indian Affairs or its employees; provided, however, said removal shall not take place unless two-thirds of the votes of the eligible voters present are cast in favor of such removal. (The proposed change is underlined).

THEREFORE, BE IT RESOLVED that the Crow Tribal Council, in a duly noticed meeting, and in conformance with the provisions of Resolution 65-10 adopt the following amendment to Article V of the Crow Tribal Constitution:

The Crow Tribe, through its Tribal Council reserves unto itself the right to remove for cause any officer of the Council for misconduct or negligence or nondiligence in connection with the protection of the rights of the Crow Tribe or in connection with its relations with the Bureau of Indian Affairs or its employees/ provided, however, said removal shall not take place unless two-thirds of the votes of the eligible voters present are cast in favor of such removal.

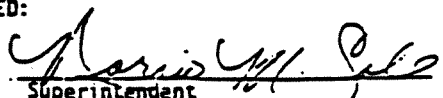
PASSED, ADOPTED AND APPROVED this 11th day of July, 1980, with 118 votes for passage and approval and 102 votes against passage and approval.

  
Chairman, Crow Tribe of Indians

ATTEST:

  
Secretary, Crow Tribe of Indians

NOTED:

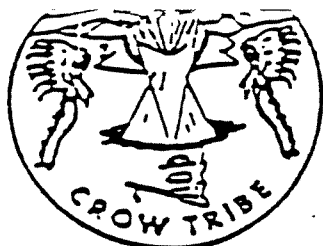
  
Superintendent

Approval on Resolution

I Anson Baker, Area Director, Billings Area Office, Bureau of Indian Affairs, by virtue of requirements under Article VIII, Section 1, of the Crow Tribal Constitution and delegated to me by 10 BIAF J.L. do hereby approve the above amendment to Article V of the Constitution and Bylaws of the Crow Tribe.

FEB 13 1981  
Date

  
Area Director, Billings Area



Crow Country

P.O. Box 154  
Crow Agency, Montana 59022

Clara Nones, Madam Chairman  
Joseph Pickett, Vice Chairman  
Blaine Small, Secretary  
Sylvester Goes Ahead, Vice-Secretary

## NOTICE TO ALL CROW TRIBAL MEMBERS

OF

### PROPOSED AMENDMENT TO THE CROW CONSTITUTION AND BYLAWS

The Crow Indian Tribe, through exercise of the lawful authority of the Crow Tribal Council and those powers vested therein through Treaty and Statute of the United States government, does hereby establish the Crow Tribal Judicial system as a separate, Constitutionally recognized branch, of the Crow Tribal Government.

The Crow Tribal constitution and ByLaws is hereby amended by the addition of Article X, CROW TRIBAL JUDICIARY, as follows:

#### ARTICLE X

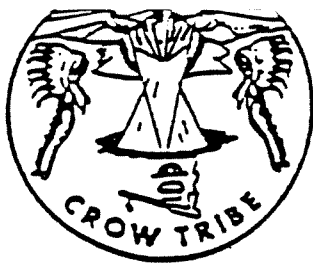
#### CROW TRIBAL JUDICIARY

##### SECTION 1. Judicial Power

The judicial power of the Crow Tribe shall be vested in the Crow Tribal Judiciary, which shall consist of: 1) The Crow Tribal Court and Trial Court, 2) Juvenile Court, and 3) Appellate Court. The operational authorities shall remain as established through the Crow Tribal council, pursuant to the provisions of Title 3, Chapter I; Title 3, Chapter II; and Title 3, Chapter III of the Crow Tribal Law and Order Code as formally adopted by the Crow Tribal Council and subsequently amended through the legal procedures of the Crow Tribal Council.

##### SECTION 2. Jurisdiction

The jurisdiction of the Crow Tribe, pursuant to its inherent authority, shall extend to all civil and criminal matters occurring on the reservation or on lands in which the Tribe has a significant interest, provided the exercise of Tribal authority remains consistent with overriding interests of the Federal government. Jurisdiction by the Crow Tribal Court in criminal matters shall not extend to Indians not enrolled in the Crow Indian Tribe, nor to non-Indians, unless such jurisdiction has been authorized by Federal Judicial or Congressional determination.



Crow Country

# CROW TRIBAL COUNCIL

A. Box 159

Crow Agency, Montana 59022

Clara Nomes, Madam Chairman  
Joseph Pickett, Vice-Chairman

Blaine Small, Secretary  
Sylvester Goes Ahead, Vice-Secretary

## NOTICE TO ALL CROW TRIBAL MEMBERS

OF

## PROPOSED AMENDMENT TO THE CROW CONSTITUTION AND BYLAWS

The Crow Indian Tribe, through exercise of the lawful authority of the Crow Tribal Council and those powers vested therein through Treaty and Statute of the United States government, does hereby give notice of a proposed amendment to the existing Crow Constitution and Bylaws. The proposed amendment reads as follows:

### ARTICLE VI

Section 3. Change the number of days in the second and last sentence of this section from seven (7) days to thirty (30) days.

Section 4. To this section add the following paragraph which shall read as follows: "Forty-five (45) days prior to all Crow Tribal Council meetings, rough drafts of resolutions shall be submitted to the four elected Officers of the Crow Tribal Council. The Tribal Officers and Executive Committee shall convene to deliberate on the resolutions and to recommend any necessary revisions. Said recommendations shall be presented to the authors of each resolutions in writing. Final drafts of the resolutions shall be submitted to the Officers and the Executive Committee thirty (30) days prior to the Crow Tribal Council meetings. ~~Executive~~ Committee members shall schedule and conduct meetings in their respective districts for the purpose of distributing the resolutions that shall be considered at the forthcoming Crow Tribal Council meeting."

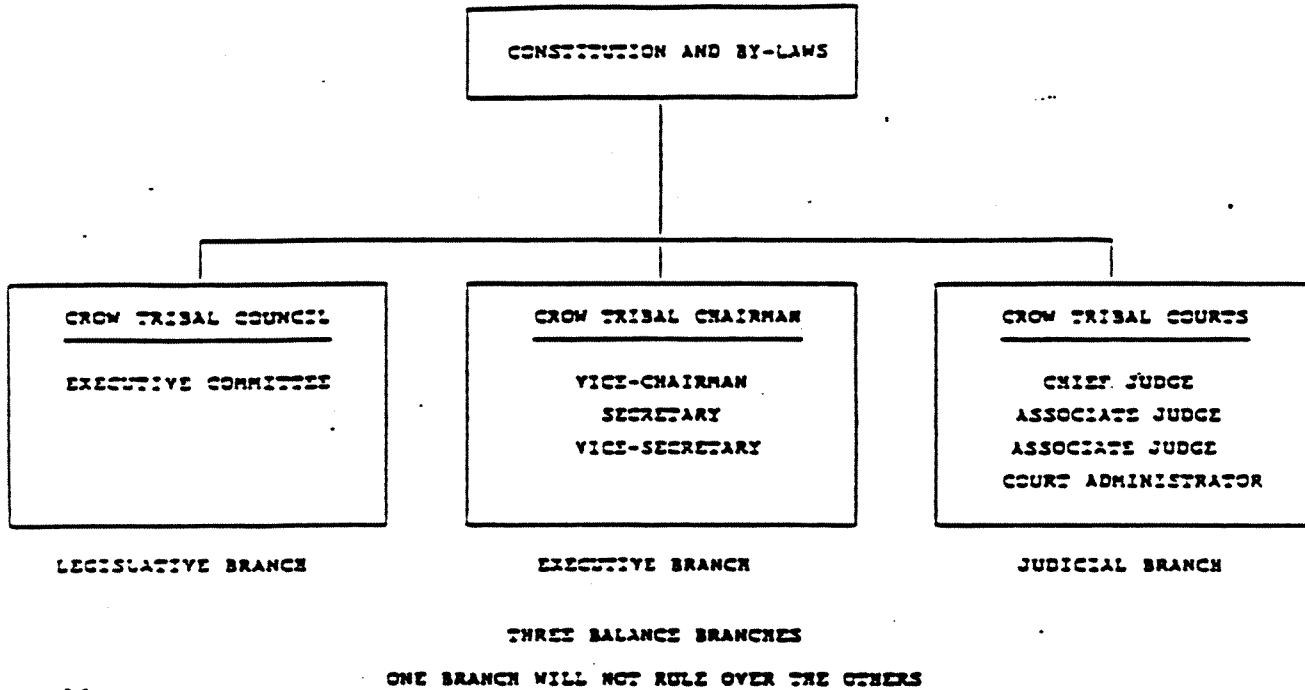
### ARTICLE VII

Section 6. Delete the last three words "of those attending" from the fourth phrase.

Section 9. Change the wording of this section to: "The Crow Tribal Council in a duly called meeting shall convene for the sole purpose of deliberating on the pros and cons of each resolution. Amendments to resolutions and substitute resolutions shall not be allowed at any Crow Tribal Council meeting. In order to give the majority of the

of

PROPOSED AMENDMENTS



(4)

WITH THIS PROPOSED AMENDMENT THE

CROW TRIBAL COUNCIL CANNOT BE MANIPULATED

TIME FRAME FOR THE DRAFTING AND ADOPTION OF RESOLUTIONS

45 DAYS PRIOR TO COUNCIL MEETING	30 DAYS PRIOR TO COUNCIL MEETING	CROW TRIBAL COUNCIL MEETING	7 DAYS FOLLOWING TRIBAL COUNCIL
<p>Rough drafts submitted to the Tribal Council Officers &amp; Executive Committee.</p> <p>Written recommendations given to originators of resolutions.</p>	<p>Final drafts submitted to Tribal Officers and the Executive Committee.</p> <p>Distributed to the public.</p> <p>Set and Post Council meeting agenda.</p> <p>Council will have the opportunity to scrutinize resolutions ahead of time.</p>	<p>Deliberate pros and cons of resolutions.</p> <p>No Amendments.</p> <p>No Substitute resolutions.</p> <p>No vetings.</p> <p>No more hidden items sneaking through the Council floor.</p> <p>Politicians cannot manipulate the floor or intimidate voters.</p>	<p>Secret ballot voting.</p> <p>Referendum on all resolutions at district locations.</p> <p>Council will understand the issues and vote for what they believe in instead of being manipulated by politicians.</p>

RESOLUTION REGARDING AN AMENDMENT TO THE CROW CONSTITUTION AND BY-LAWS REGARDING IMPEACHMENT

WHEREAS, notice has been given pursuant to Crow Tribal Resolution 65-10 that the Tribal Council will consider at its Quarterly Council meeting in July, 1980, an amendment to the Constitution with regard to Article V of the Constitution.

WHEREAS, Article V of the Crow Constitution presently reads as follows:

The Crow Tribe, through its Tribal Council, reserves unto itself the right to remove for cause any officer of the Council for misconduct or negligence or nondiligence in connection with the protection of the rights of the Crow Tribe in its relations with the Bureau of Indian Affairs or the local employees.

WHEREAS, the proposed changes would be as follows:

The Crow Tribe, through its Tribal Council reserves unto itself the right to remove for cause any officer of the Council for misconduct or negligence or nondiligence in connection with the protection of the rights of the Crow Tribe or in connection with its relations with the Bureau of Indian Affairs or its employees; provided, however, said removal shall not take place unless two-thirds of the votes of the eligible voters present are cast in favor of such removal. (The proposed change is underlined).

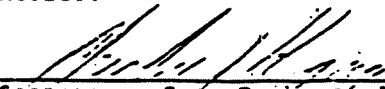
THEREFORE, BE IT RESOLVED that the Crow Tribal Council, in a duly noticed meeting, and in conformance with the provisions of Resolution 65-10 adopt the following amendment to Article V of the Crow Tribal Constitution:

The Crow Tribe, through its Tribal Council reserves unto itself the right to remove for cause any officer of the Council for misconduct or negligence or nondiligence in connection with the protection of the rights of the Crow Tribe or in connection with its relations with the Bureau of Indian Affairs or its employees/ provided, however, said removal shall not take place unless two-thirds of the votes of the eligible voters present are cast in favor of such removal.

PASSED, ADOPTED AND APPROVED this 12th day of July, 1980, with 118 votes for passage and approval and 102 votes against passage and approval.

  
Chairman, Crow Tribe of Indians

ATTEST:

  
Secretary, Crow Tribe of Indians

NOTED:

  
Superintendent

Approval on Resolution

I Anson Baker, Area Director, Billings Area Office, Bureau of Indian Affairs, by virtue of requirements under Article VIII, Section 1, of the Crow Tribal Constitution and delegated to me by IO BIAH-3.1, do hereby approve the above amendment to Article V of the Constitution and Bylaws of the Crow Tribe.



Crow Country

# CROW TRIBAL COUNCIL

P.O. Box 159  
Crow Agency, Montana 59022

Clara Nomicz, Madam Chairman  
Joseph Pickett, Vice Chairman  
Blaine Small, Secretary  
Sylvester Goes Ahead, Vice-Secretary

## NOTICE TO ALL CROW TRIBAL MEMBERS

OF

### PROPOSED AMENDMENT TO THE CROW CONSTITUTION AND BYLAWS

The Crow Indian Tribe, through exercise of the lawful authority of the Crow Tribal Council and those powers vested therein through Treaty and Statute of the United States government, does hereby establish the Crow Tribal Judicial system as a separate, Constitutionally recognized branch, of the Crow Tribal Government:

The Crow Tribal constitution and ByLaws is hereby amended by the addition of Article X, CROW TRIBAL JUDICIARY, as follows:

#### ARTICLE X

#### CROW TRIBAL JUDICIARY

##### SECTION 1. Judicial Power

The judicial power of the Crow Tribe shall be vested in the Crow Tribal Judiciary, which shall consist of: 1) The Crow Tribal Court and Trial Court, 2) Juvenile Court, and 3) Appellate Court. The operational authorities shall remain as established through the Crow Tribal council, pursuant to the provisions of Title 3, Chapter I; Title 3, Chapter II; and Title 3, Chapter III of the Crow Tribal Law and Order Code as formally adopted by the Crow Tribal Council and subsequently amended through the legal procedures of the Crow Tribal Council.

##### SECTION 2. Jurisdiction

The jurisdiction of the Crow Tribe, pursuant to its inherent authority, shall extend to all civil and criminal matters occurring on the reservation or on lands in which the Tribe has a significant interest, provided the exercise of Tribal authority remains consistent with overriding interests of the Federal government. Jurisdiction by the Crow Tribal Court in criminal matters shall not extend to Indians not enrolled in the Crow Indian Tribe, nor to non-Indians, unless such jurisdiction has been authorized by Federal Judicial or Congressional determination.

**SECTION 3. Jurisdiction: Indian Civil Rights Act**

The Tribal Judiciary shall have jurisdiction to hear and render decisions in any matter concerning alleged violations of the Indian Civil Rights Act.

**SECTION 4. Judicial Limitation**

The Crow Tribal Court shall not impose any fine or sentence which constitutes discriminatory, cruel, or unusual punishment toward any individual. Nor shall the Tribal Court impose on any person a criminal fine or sentence that exceeds limits as prescribed by ordinance of the Crow Tribal Council and duly adopted to the Crow Tribal Law and Order Code.

**SECTION 5. Appellate Jurisdiction**

The Tribal Judiciary shall have jurisdiction and authority to establish an Appellate Court as necessary to hear appeals from any lower Tribal Court, as well as appeals from quasi-judicial agencies or commissions. All decisions of the Appellate Court shall be the final and conclusive remedy of any matter heard before the Crow Tribal Judicial System.

**SECTION 6. Separate Branch**

The Crow Tribal Judiciary shall function as a separate entity of the Crow Tribal government without any interference from the Executive Branch.

**SECTION 7. Fiscal management and Administration**

The Chief Judge shall be responsible for the fiscal management and administration of the Crow Tribal Judiciary.

BE ADVISED THAT AN ELECTION WILL BE HELD FOR THE PROPOSED AMENDMENT TO THE CONSTITUTION AND BYLAWS PURSUANT TO ORDINANCE 65-10 2:00 P.M. APRIL 13, 1991 AT THE QUARTERLY CROW TRIBAL COUNCIL MEETING AT CROW AGENCY, MONTANA.

THIS NOTICE IS DATED ON THE 14TH DAY OF MARCH, 1991.

BY: Clara Nomez  
Clara Nomez  
Crow Tribal Council  
Crow Agency, MT 59022

Appendix C: Northern Cheyenne Tribe's  
Separation of Powers Ordinance



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY  
LAME DEER, MONTANA 59043

IN REPLY REFER TO:

Executive Direction  
Code 100

OCT 27 1997

NORTHERN CHEYENNE TRIBE, INC.  
ADMINISTRATION

OCT 28 1997

RECEIVED

Mr. William Walks Along, President  
Northern Cheyenne Tribal Council  
Lame Deer, Montana

Dear Mr. William Walks Along,

Enclosed is the original of the Northern Cheyenne Tribal Council Ordinance No. 1(98) enacted by the Council October 6, 1997 and received in this office on October 21, 1997.

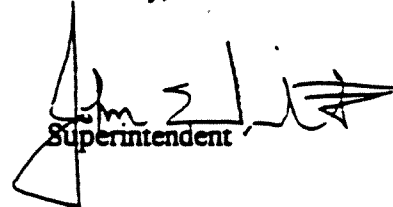
**Ordinance No. DOI No. 1 (98)** - adopts the Separation of Powers Ordinance.

The Constitutional Amendments in Article XI established the Separation of Powers for the Northern Cheyenne Tribal Government. This ordinance will implement the Separation of Powers and reorganize the Judicial Branch of the Tribal Government.

The Northern Cheyenne Tribal Council has the authority to take this action via Article IV, Section 1 (I) of the Constitution and By-Laws.

All necessary copies of this resolution have been retained for our files.

Sincerely,

  
Superintendent

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE  
NORTHERN CHEYENNE RESERVATION  
LAME DEER, MONTANA

ORDINANCE NO. 1 (98) DO1

ADOPTION OF SEPARATION OF POWERS ORDINANCE.

WHEREAS, certain amendments (the "Constitutional Amendments") of the Constitution and Bylaws of the Northern Cheyenne Tribe have been adopted by: (1) vote of the Tribal membership in an election held by the Secretary of the Interior ("Secretary") on May 10, 1996; and (2) approval of the Billings Area Director, acting on behalf of the Secretary, on May 31, 1996;

WHEREAS, among other revisions, the Constitutional Amendments in Article XI established the principle of separation of powers for Northern Cheyenne Tribal Government;

WHEREAS, to assist in implementing the principle of separation of powers, the Tribal Council wishes to reorganize the Judicial Branch of the Tribal Government in order to enhance its independence and quality;

WHEREAS, to that end, over much of the past year the Tribal Council has prepared, presented publicly, solicited comment on, and revised a draft Separation of Powers Ordinance; and

WHEREAS, the final product is the attached Separation of Powers Ordinance which the Tribal Council has concluded should be adopted.

THEREFORE, BE IT ORDAINED AS FOLLOWS:

1. The attached Ordinance, hereafter to be known as the "Separation of Powers Ordinance," is hereby approved and adopted.
2. As provided in section 19.1 of the attached Separation of Powers Ordinance, the Ordinance may be amended, repealed or suspended only by affirmative vote of two-thirds of all Tribal Council seats (whether such seats are filled or vacant), i.e., by affirmative vote of 8 Tribal Council members.

**CERTIFICATION**

PASSED, ADOPTED AND APPROVED by vote of the Northern Cheyenne Tribal Council by 7 votes for passage and adoption and 0 votes against passage and adoption with 0 abstentions this 6<sup>th</sup> day of October, 1997.

*for Norma Bourneau - VP*  
\_\_\_\_\_  
William Walksalong, President  
Northern Cheyenne Tribe

ATTEST:

*Shariene Evans*  
\_\_\_\_\_  
Shariene Evans, Secretary  
Northern Cheyenne Tribe

APPROVED: \_\_\_\_\_

*[Signature]*  
SUPERINTENDENT

**NORTHERN CHEYENNE TRIBE**

**SEPARATION OF POWERS ORDINANCE**

**Final — 10/6/97**

# TABLE OF CONTENTS

## CHAPTER 1. DEFINITIONS

1.1	Definitions	1
a.	"Appellate Court"	1
b.	"Appellate Judge"	1
c.	"Associate Appellate Judge"	1
d.	"Associate Trial Judge"	1
e.	"Automatic Removal"	1
f.	"Chapter"	1
g.	"Chief Appellate Judge"	1
h.	"Chief Trial Judge"	1
i.	"Code of Judicial Conduct"	1
j.	"Constitutional Claim"	1
k.	"Constitutional Court"	1
l.	"Council Enactment"	1
m.	"Court Clerk"	2
n.	"Declaratory Judgment"	2
o.	"Domestic Relations Code"	2
p.	"Effective Date"	2
q.	" <i>en banc</i> "	2
r.	"Executive Branch"	2
s.	"Heirship and Probate Code"	2
t.	"Judge"	2
u.	"Judge Pro Tem"	2
v.	"Judicial Branch"	2
w.	"Judicial Review"	2
x.	"Juvenile Code"	2
y.	"Law and Order Code"	2
z.	"Misdemeanor Involving Moral Turpitude"	2
aa.	"Northern Cheyenne Court"	3
bb.	"Office of the Court Clerk"	3
cc.	"Regular Presidential Election"	3
dd.	"Removal"	3
ee.	"Removal by Complaint"	3
ff.	"section"	3
gg.	"Term of Office" or "Term"	3
hh.	"Trial Court"	3
ii.	"Trial Judge"	3
jj.	"Tribal Constitution and Bylaws"	3
kk.	"Tribal Entity"	3
ll.	"Tribal Representative"	3
mm.	"Tribe" and "Tribal"	3

CHAPTER 2. BASIS, PURPOSE.  
LAW AND ORDER CODE. IMPLEMENTATION

2.1	Constitutional Basis .....	4
a.	Article XI .....	4
b.	Article IV, Section 1(i) .....	4
c.	Judicial Branch a Distinct Branch of Tribal Government .....	4
2.2	Purpose .....	5
2.3	Relationship to Law and Order Code .....	5
2.4	Implementation Period .....	5

CHAPTER 3. COMPOSITION OF JUDICIAL BRANCH

3.1	Composition .....	5
-----	-------------------	---

CHAPTER 4. TRIAL COURT

4.1	Court of General Jurisdiction .....	5
4.2	Trial Judges .....	5
4.3	Selection of Chief Trial Judge .....	6
4.4	Authority of Chief Trial Judge .....	6

CHAPTER 5. APPELLATE COURT

5.1	Hears All Appeals .....	6
5.2	Appellate Judges .....	6
5.3	Selection of Chief Appellate Judge .....	6
5.4	Authority of Chief Appellate Judge .....	7
5.5	One Judge Review; En Banc Review .....	7
5.6	Review on Record Below .....	7

## CHAPTER 6. CONSTITUTIONAL COURT

6.1	Judicial Review .....	7
6.2	Three-Judge Panel .....	7
6.3	Exclusive and Original Jurisdiction Over Constitutional Claims .....	7
6.4	Relief .....	8
6.5	Participation of Tribal Council .....	8
6.6	Procedures and Rules .....	8
6.7	Standing; Case or Controversy .....	8
6.8	Principles of Judicial Restraint .....	8
6.9	Certification of Constitutional Claim by Other Courts .....	9
6.10	Limited Waiver of Immunity .....	9
6.11	Other Claims or Relief .....	9
6.12	Removals .....	10
6.13	Decisions Binding .....	10
6.14	Implementation of Declaratory Judgment Vindicating a Constitutional Claim .....	10

## CHAPTER 7. OFFICE OF THE COURT CLERK

7.1	Clerk's Office .....	10
7.2	Clerk's Duties .....	11
7.3	Appointment and Term of Clerk .....	11
7.4	Removal .....	11

## CHAPTER 8. QUALIFICATIONS OF JUDGES

8.1	Certification of Qualifications .....	11
-----	---------------------------------------	----

8.2	Age .....	11
8.3	Tribal Membership .....	11
8.4	Education and Bar Membership .....	11
8.5	No Felony Conviction .....	11
8.6	No Serious Misdemeanor Conviction Within 10 Years .....	11
8.7	No Removal Within Three Years .....	12
8.8	Domicile .....	12
8.9	Not a Party to Tribal Court Proceedings .....	12
8.10	Legal Knowledge .....	12
8.11	Legal Skills .....	12
8.12	Deal with Conflict .....	12
8.13	Familiarity with Cheyenne Language .....	12

**CHAPTER 9. JUDGES' TERMS OF OFFICE**

9.1	Four-Year Terms .....	12
9.2	Serve Until Successor Elected or Appointed .....	12
	a. Trial Judges .....	12
	b. Appellate Judges .....	13

**CHAPTER 10. ELECTION OF TRIAL JUDGES**

10.1	Primary and General Elections; Filing Fee .....	13
10.2	First Election .....	13
10.3	Regular Elections .....	13
10.4	Filling Vacancies .....	13
10.5	Amended Revised Election Ordinance .....	13

CHAPTER 11. APPOINTMENT OF APPELLATE JUDGES

11.1 Appointment ..... 14  
11.2 Expiration of Term ..... 14  
11.3 Death, Resignation or Removal ..... 14

CHAPTER 12. ADJUSTMENT OF JUDGESHIPS

12.1 Retained Power to Add Judges or Adjust Their Work Schedules ..... 14  
12.2 Added Trial Judges ..... 14  
12.3 Added Appellate Judges ..... 14  
12.4 Expiration of Term ..... 14

CHAPTER 13. OVERSIGHT OF JUDICIAL BRANCH

13.1 Audits, Reports and Removal ..... 15  
    a. Annual Audits ..... 15  
    b. Annual Reports ..... 15  
    c. Removal Proceedings ..... 15

CHAPTER 14. TRIAL AND APPELLATE COURT JURISDICTION

14.1 Civil Jurisdiction ..... 15  
14.2 Criminal Jurisdiction ..... 15  
14.3 Subject Matter Jurisdiction ..... 16  
14.4 Sovereign Immunity ..... 16

CHAPTER 15. JUDICIAL TRAINING,  
CODE OF CONDUCT, COMPENSATION

15.1 Judicial Training ..... 16  
    a. Annual Training ..... 16  
    b. Subjects ..... 17  
    c. Conduct of Training ..... 17  
15.2 Code of Judicial Conduct ..... 17

15.3	Judge's Compensation .....	17
------	----------------------------	----

**CHAPTER 16. JUDGES PRO TEM**

16.1	Appointment of Panel; Removal of Judge Pro Tem .....	17
16.2	Qualifications .....	17
16.3	Assignment .....	17
16.4	Pro Tem Assignment of Sitting Judges .....	18

**CHAPTER 17. REMOVAL OF JUDGES**

17.1	Exclusive Method – Before Constitutional Court .....	18
17.2	Automatic Removal .....	18
	a. Conviction of Felony .....	18
	b. Conviction of Misdemeanor Involving Moral Turpitude .....	18
	c. Lack of Qualifications .....	18
	d. Confirmation by Constitutional Court .....	19
	e. Effect of Subsequent Vacation of Conviction .....	20
17.3	Removal by Complaint .....	20
	a. Complaint .....	20
	b. Grounds .....	20
	c. Withdrawal of Complaint .....	21
	d. Review by Tribal Secretary .....	21
	e. Review by Constitutional Court .....	21
	f. Timelines .....	21
	g. Hearing .....	21
	h. Decision .....	22
17.4	Effect of Removal on Future Eligibility for Judge .....	22
	a. Automatic Removal – Felony .....	22
	b. Automatic Removal – Misdemeanor Involving Moral Turpitude .....	22
	c. Removal by Complaint .....	22

**CHAPTER 18. FUNDING FOR JUDICIAL BRANCH**

18.1	Per Regular Tribal Budget .....	23
18.2	Independent Fund Raising .....	23

18.3 Remittance of Court Revenues to Treasurer ..... 23

CHAPTER 19. AMENDMENT OR REPEAL

19.1 Two-Thirds Council Vote ..... 23

EXHIBIT A - Form for Certification of Constitutional Claim to Constitutional Court

## CHAPTER 1. DEFINITIONS

1.1 **Definitions.** When used in this Ordinance, the following terms shall have the following meanings:

- a. "Appellate Court" means the appellate court of the Northern Cheyenne Court established and operating under Chapter 5.
- b. "Appellate Judge" means a judge of the Appellate Court, serving as provided in section 5.2.
- c. "Associate Appellate Judge" means an associate judge of the Appellate Court.
- d. "Associate Trial Judge" means an associate judge of the Trial Court.
- e. "Automatic Removal" means the removal of a Judge because of conviction of a felony, conviction of a Misdemeanor Involving Moral Turpitude, or lack of required qualifications, as confirmed by the Constitutional Court under section 17.2.
- f. "Chapter" means a chapter of this Ordinance.
- g. "Chief Appellate Judge" means the chief judge of the Appellate Court, selected as provided in section 5.3.
- h. "Chief Trial Judge" means the chief judge of the Trial Court, selected as provided in section 4.3.
- i. "Code of Judicial Conduct" means the code of conduct for Judges reaffirmed or adopted under section 15.2.
- j. "Constitutional Claim" means a claim between any parties, whether made in a civil or criminal context, that a resolution, ordinance, code or other legislative enactment of the Tribal Council adopted after the Effective Date of this Ordinance is in whole or in part invalid because it violates: (i) the Tribal Constitution and Bylaws; (ii) a referendum adopted under Article VIII of the Tribal Constitution; (iii) a Tribal resolution, ordinance or code; or (iv) applicable federal law including without limitation the Indian Civil Rights Act.
- k. "Constitutional Court" means the constitutional court of the Northern Cheyenne Court established and operating under Chapter 6.
- l. "Council Enactment" means the resolution, ordinance, code or other legislative enactment of the Tribal Council which is the subject of a Constitutional Claim.

- m. "Court Clerk" means the court clerk in charge of the Office of the Court Clerk appointed and functioning under Chapter 7.
- n. "Declaratory Judgment" means a final declaration by the Constitutional Court under section 6.4 that a Constitutional Claim is in whole or in part valid or invalid.
- o. "Domestic Relations Code" means Title VIII of the Law and Order Code (as amended or supplemented) now or hereafter in force.
- p. "Effective Date" means the date on which this Ordinance has been enacted by the Tribal Council, signed by the Tribal President, and reviewed by the Secretary of the Interior or his authorized representative.
- q. "*en banc*" means three Appellate Judges sitting as a panel as provided in section 5.5.
- r. "Executive Branch" means the Tribal President, Vice President, Secretary and Treasurer, and the administrative agencies, departments and other instrumentalities of the Executive Branch.
- s. "Heirship and Probate Code" means Title IX of the Law and Order Code (as amended or supplemented) now or hereafter in force.
- t. "Judge" means any one of the Chief Trial Judge, an Associate Trial Judge, the Chief Appellate Judge, or an Associate Appellate Judge.
- u. "Judge Pro Tem" means a temporary judge appointed and assigned under Chapter 16 to temporarily fill-in for a sitting Judge.
- v. "Judicial Branch" means the Trial Court, Appellate Court, Constitutional Court, and Office of the Court Clerk.
- w. "Judicial Review" means the power of the Constitutional Court to review and declare unlawful legislative actions of the Tribal Council, as provided in Chapter 6.
- x. "Juvenile Code" means Title III of the Law and Order Code (as amended or supplemented) now or hereafter in force.
- y. "Law and Order Code" means the Tribe's Law and Order Code, consisting of Titles I through IX (as amended or supplemented) now or hereafter in force.
- z. "Misdemeanor Involving Moral Turpitude" means a misdemeanor or gross misdemeanor involving an intentional act or omission which is vile, immoral, or otherwise gravely violative of the moral sentiments or accepted moral standards of the Tribal community. This shall include, by way of example but not limitation, an

intentional act or omission involving violence, child abuse, spousal abuse, manufacture or distribution of alcohol, drugs or other mind-altering substance, or theft or other dishonesty.

- aa. "Northern Cheyenne Court" means the Trial Court, Appellate Court and Constitutional Court.
- bb. "Office of the Court Clerk" means the office of the Court Clerk established and operating under Chapter 7.
- cc. "Regular Presidential Election" means the regular Tribal election to be held, in accordance with the Revised Tribal Election Ordinance (as it may be amended), in November 2000 and on the dates set for regular Congressional elections every four years thereafter, for Tribal President, Tribal Vice President, open seats on the Tribal Council, and all Trial Judges.
- dd. "Removal" means Automatic Removal or Removal by Complaint of a Judge under Chapter 17.
- ee. "Removal by Complaint" means removal of a Judge by the Constitutional Court as a result of the filing and processing of a Complaint as provided in section 17.3.
- ff. "section" means a section of this Ordinance.
- gg. "Term of Office" or "Term" means the term of office of a Judge as described in Chapter 9.
- hh. "Trial Court" means the trial court of the Northern Cheyenne Court established and operating under Chapter 4..
- ii. "Trial Judge" means a judge of the Trial Court.
- jj. "Tribal Constitution and Bylaws" means the constitution and bylaws of the Tribe, as amended in 1960 and 1996, and as it may be further amended.
- kk. "Tribal Entity" means any governmental or proprietary branch, division, department, agency or other instrumentality of the Tribe.
- ll. "Tribal Representative" means any officer, councilperson, board member, director, executive, other employee, or agent of the Tribe or any Tribal Entity.
- mm. "Tribe" means and "Tribal" refers to the Northern Cheyenne Tribe.

**CHAPTER 2. BASIS, PURPOSE,  
LAW AND ORDER CODE, IMPLEMENTATION**

**2.1 Constitutional Basis.**

- a. **Article XI.** Article XI of the Tribal Constitution in its entirety provides:

**SEPARATION OF POWERS**

**Section 1. Three Branches of Tribal Government.** The power of the government of the Tribe shall be divided into three distinct branches – Legislative, Executive and Judicial. No person or entity charged with the exercise of power of one branch shall exercise a power belonging to another branch unless expressly authorized to do so in this Constitution and Bylaws, Tribal law, or applicable federal law.

(a) The Legislative Branch shall consist of the Tribal Council and all committees of the Tribal Council. The Tribal Council shall exercise the legislative power of the Tribe, subject to the right of referendum reserved to the Tribal membership under Article VIII.

(b) The Executive Branch shall consist of the Tribal President, Vice President, Secretary and Treasurer, and all administrative agencies, departments and other instrumentalities of the Executive Branch.

(c) The Judicial Branch shall consist of all courts established by ordinance under Article IV, section 1(i) or any other provision of this Constitution and Bylaws.

- b. **Article IV, Section 1(i).** Under Article IV, section 1(i) of the Tribal Constitution, the Tribal Council is empowered to establish the Judicial Branch of Tribal government and define its powers. Specifically, the Council is authorized:

To promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior . . . providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers.

- c. **Judicial Branch a Distinct Branch of Tribal Government.** Under the above Constitutional provisions: The Judicial Branch is one of the three distinct branches of Tribal government. Once the Judicial Branch is established by the Tribal Council,

neither the Legislative Branch nor the Executive Branch may exercise powers granted to the Judicial Branch, except if otherwise provided in the Tribal Constitution and Bylaws, or Tribal or federal law.

- 2.2 **Purpose.** The purpose of this Ordinance is to reorganize the Judicial Branch to facilitate implementation of the Tribal Constitutional requirement of separation of powers.
- 2.3 **Relationship to Law and Order Code.** This Ordinance does not repeal the Tribal Law and Order Code, but does include provisions which are inconsistent with the Law and Order Code. In all cases of such inconsistency, or inconsistency with any other Tribal resolution, ordinance or code in force on the Effective Date of this Ordinance, the provisions of this Ordinance shall be controlling. After the Effective Date of this Ordinance, the Tribal Council shall prepare and adopt formal amendments of the Law and Order Code to fully conform it to this Ordinance.
- 2.4 **Implementation Period.** To enable orderly implementation of the reorganization of the Judicial Branch under in this Ordinance, there shall be a transition period for the implementation of Chapters 3 through 17 ("Implementation Period"). All involved Tribal governmental personnel shall make best efforts to complete the reorganization of the Judicial Branch by the close of the Implementation Period. It is estimated that the Implementation Period will end no earlier than 180 days after the Effective Date of this Ordinance.

### **CHAPTER 3. COMPOSITION OF JUDICIAL BRANCH**

- 3.1 **Composition.** The Judicial Branch shall consist of the:
- Trial Court described in Chapter 4;
  - Appellate Court described in Chapter 5;
  - Constitutional Court described in Chapter 6; and
  - Office of the Court Clerk described in Chapter 7.

### **CHAPTER 4. TRIAL COURT**

- 4.1 **Court of General Jurisdiction.** The Trial Court shall be a trial-level court of general civil jurisdiction and limited criminal jurisdiction, including without limitation jurisdiction over matters arising under the Tribe's Juvenile Code, Domestic Relations Code, and Heirship and Probate Code. The scope of the Trial Court's jurisdiction is set forth in Chapter 14.
- 4.2 **Trial Judges.** The Trial Court shall have at least two full-time Trial Judges, including a Chief Trial Judge and one or more Associate Trial Judges. Each Trial Judge shall:

- a. possess the qualifications applicable to Trial Judges set forth in Chapter 8;
- b. be elected as provided in Chapter 10 (or appointed as permitted by section 10.4 or 12.2);
- c. have a Term of Office as provided in Chapter 9; and
- d. be subject to Removal from office as provided in Chapter 17.

4.3 **Selection of Chief Trial Judge.** The Tribal President with the concurrence of the Tribal Council shall designate one Trial Judge as the Chief Trial Judge. The designee shall serve as Chief Trial Judge through his or her Term of Office as Trial Judge, provided that the Tribal President with the concurrence of the Tribal Council, in their absolute discretion, may at any time designate another Trial Judge as the Chief Trial Judge.

4.4 **Authority of Chief Trial Judge.** The Chief Trial Judge shall have overall administrative authority over the Trial Court, including without limitation authority to assign cases among the Trial Judges, assign Judges Pro Tem to Trial Court proceedings as provided in section 16.3, manage the Trial Court calendar, and supervise the Court Clerk.

## CHAPTER 5. APPELLATE COURT

5.1 **Hears All Appeals.** The Appellate Court shall hear all appeals and other authorized requests for appellate review of decisions of the Trial Court.

5.2 **Appellate Judges.** The Appellate Court shall have at least three part-time Appellate Judges, including a Chief Appellate Judge and at least two Associate Appellate Judges. Each Appellate Judge shall:

- a. possess the qualifications applicable to Appellate Judges set forth in Chapter 8;
- b. be appointed as provided in Chapter 11;
- c. have a Term of Office as provided in Chapter 9;
- d. be subject to Removal from office as provided in Chapter 17; and
- e. not preside over any appeal from Trial Court proceedings where the Appellate Judge decided any material matter in the Trial Court proceedings.

5.3 **Selection of Chief Appellate Judge.** The Tribal President with the concurrence of the Tribal Council shall designate one Appellate Judge as the Chief Appellate Judge. The designee will serve as Chief Appellate Judge through his or her Term of Office as Appellate Judge, provided that the Tribal President with the concurrence of the Tribal Council, in their

absolute discretion. may at any time designate another Appellate Judge as the Chief Appellate Judge.

- 5.4 **Authority of Chief Appellate Judge.** The Chief Appellate Judge shall have overall administrative authority over the Appellate Court and the Constitutional Court, including without limitation authority to assign cases among the Appellate Judges, designate *en banc* Appellate panels, designate Constitutional Court panels, assign Judges Pro Tem to Appellate Court or Constitutional Court proceedings as provided in section 16.3, and manage the calendars of the Appellate Court and the Constitutional Court.
- 5.5 **One Judge Review; En Banc Review.** All appeals and other authorized requests for review before the Appellate Court shall be heard and decided by one Appellate Judge. However, *en banc* review (by a panel of three Appellate Judges) of the decision of a single Appellate Judge may be sought and shall be granted if two Appellate Judges, in their absolute discretion, vote in favor of *en banc* review. Requests for *en banc* review must be in writing and filed and served within 30 days of issuance of the single Appellate Judge's decision. Any other party may file and serve a written response to the request within 10 days of its receipt of the request. The Court Clerk shall assure that copies of all requests for *en banc* review and all responses thereto are promptly distributed to each Appellate Judge.
- 5.6 **Review on Record Below.** All appeals and other authorized requests for review before the Appellate Court shall be based and decided on the files, records and transcripts of the Trial Court proceedings. No new evidence may be introduced or trial *de novo* conducted in the Appellate Court.

## CHAPTER 6. CONSTITUTIONAL COURT

- 6.1 **Judicial Review.** The Constitutional Court shall have the exclusive power of Judicial Review – the power to review and declare unlawful legislative actions of the Tribal Council as provided in this Chapter
- 6.2 **Three-Judge Panel.** The Constitutional Court shall consist of three Judges of the Appellate Court, sitting as a panel and acting by majority vote. All claims brought in the Constitutional Court shall be tried to and adjudicated by the panel; there shall be no jury trials in the Constitutional Court.
- 6.3 **Exclusive and Original Jurisdiction Over Constitutional Claims.** The Constitutional Court shall have original jurisdiction over, and be the exclusive Tribal judicial forum to adjudicate, any and all claims ("Constitutional Claims") between any parties, whether made in a civil or criminal context, that a resolution, ordinance, code or other legislative enactment of the Tribal Council adopted after the Effective Date of this Ordinance ("Council Enactment") is in whole or in part invalid because it violates:
- a. the Tribal Constitution and Bylaws;

- b. a referendum adopted under Article VIII of the Tribal Constitution;
- c. a Tribal resolution, ordinance or code; or
- d. applicable federal law including without limitation the Indian Civil Rights Act;

provided that the Constitutional Court may not adjudicate a Constitutional Claim if and to the extent the Council Enactment which is the subject of the Claim has been explicitly designated as final and not subject to review by any court in any controlling source of law described in paragraphs a - d above.

- 6.4 **Relief.** Unless authorized to grant Other Relief as provided in section 6.11, the Constitutional Court shall have authority to issue only one form of relief on a Constitutional Claim -- a declaration that the Claim is in whole or in part valid or invalid ("Declaratory Judgment"), along with such supporting findings of fact, conclusions of law, and/or opinion as the Constitutional Court considers necessary or appropriate.
- 6.5 **Participation of Tribal Council.** The Tribal Council, as an entity, shall be made a party-defendant in any Constitutional Court proceedings on a Constitutional Claim, whether the claim is brought directly in the Constitutional Court or is certified to the Court under section 6.9.
- 6.6 **Procedures and Rules.** Except to the extent inconsistent with this Chapter 6, Constitutional Claims and Other Claims (other than appeals) authorized under section 6.11, shall be initiated in and adjudicated by the Constitutional Court in accordance with all relevant trial-level rules and procedures, evidentiary standards, and statutes of limitation applicable to trial-level civil actions under the Law and Order Code. In the event of any inconsistency between such provisions of the Law and Order Code and this Chapter, the provisions of this Chapter shall be controlling. The Constitutional Court shall have continuing authority to adopt general or case-specific special procedural rules for its proceedings (including without limitation proceedings on Constitutional Claims certified under section 6.9), to cover matters not addressed by the foregoing provisions of this section 6.6.
- 6.7 **Standing; Case or Controversy.** In order to bring a Constitutional Claim, a party must have standing to do so and there must be an actual case or controversy, under recognized legal principles.
- 6.8 **Principles of Judicial Restraint.** In adjudicating Constitutional Claims, the Constitutional Court shall observe all established doctrines of judicial restraint, including without limitation the following:
  - a. requiring exhaustion of available remedies within the Executive Branch and/or the Legislative Branch;

- b. presuming that the Council Enactment is valid and requiring that its invalidity be clearly and convincingly shown;
- c. deferring to the Tribal Council's judgment on policy matters and political questions;
- d. deferring to determinations of administrative agencies within the Executive Branch in matters within their particular expertise;
- e. avoiding Constitutional issues;
- f. deciding on non-Constitutional grounds;
- g. abstaining from hypothetical or moot questions; and
- h. upholding all valid and severable portions of the enactment or other action of the Tribal Council under challenge.

**6.9 Certification of Constitutional Claim by Other Courts.** In the event a Constitutional Claim is made in a civil or criminal proceeding between any parties in another Tribal Court or other Tribal adjudicatory body (if any) (together "Other Tribal Adjudicatory Body"), such Other Tribal Adjudicatory Body shall not have jurisdiction to adjudicate the Constitutional Claim, but may certify it to the Constitutional Court for adjudication. Subject to and in accordance with the provisions of this Chapter 6, the Constitutional Court shall have authority to adjudicate and issue a Declaratory Judgment on the Constitutional Claim so certified. Upon so certifying a Constitutional Claim, and pending the issuance of a Declaratory Judgment on it by the Constitutional Court, the Other Tribal Adjudicatory Body may, as it considers appropriate, proceed with the adjudication of any other claim (other than a Constitutional Claim) within its jurisdiction in the proceeding pending before it. In addition, the Constitutional Court shall have authority to adjudicate Constitutional Claims certified to it by any federal, state or tribal court or adjudicatory body. Constitutional Claims shall be certified to the Constitutional Court by execution and delivery of a written instrument generally in the form of the attached Exhibit A. Claims so certified shall be adjudicated in accordance with all rules, procedures and standards set forth, referred to, or authorized in this Chapter for Constitutional Claims initiated in the first instance in the Constitutional Court.

**6.10 Limited Waiver of Immunity.** With respect to Constitutional Claims, the sovereign immunity of the Tribal Council, as an entity, is hereby waived in the Constitutional Court (and in no other court) solely with respect to Declaratory Judgments on Constitutional Claims brought or certified in strict compliance with this Ordinance. The sovereign immunity of the Tribe, any Tribal Entity, or any Tribal Representative is not otherwise waived in any respect.

**6.11 Other Claims or Relief.** In addition to Constitutional Claims, the Tribal Council by

resolution, ordinance or code may in its absolute discretion explicitly empower the Constitutional Court to:

- a. adjudicate or hear appeals on other claims brought by or against the Tribe, any Tribal Entity, or any Tribal Representative, or any other claim of import to the Tribe (collectively "Other Claims"); and/or
  - b. provide relief other than or in addition to a Declaratory Judgment on a Constitutional Claim or Other Claim ("Other Relief").
  - c. Any such resolution, ordinance or code must describe each Other Claim and/or the Other Relief with specificity and must explicitly set forth any necessary limited waiver of Tribal sovereign immunity with respect thereto in the Constitutional Court.
- 6.12 **Removals.** The Constitutional Court shall confirm the Automatic Removal of a Judge as provided in section 17.2, and shall hear and decide any Complaint for Removal of a Judge as provided in section 17.3.
- 6.13 **Decisions Binding.** All Declaratory Judgments of the Constitutional Court on matters within its jurisdiction:
- a. shall be final, conclusive and binding on the Tribal Council, all other parties to the Constitutional Court proceeding, the Judicial Branch, and any Other Tribal Adjudicatory Body certifying the Constitutional Claim under section 6.9; and
  - b. may not be modified, vacated or reversed by the Tribal Council or the Executive Branch.
- 6.14 **Implementation of Declaratory Judgment Vindicating a Constitutional Claim.** Upon issuance of a Declaratory Judgment vindicating a Constitutional Claim in whole or in part, the Tribal Council shall bring the Council Enactment at issue into compliance with the Declaratory Judgment and may, in its absolute discretion, explicitly provide other remedial relief to any party. The decision of the Tribal Council with respect to such other remedial relief shall be final and not reviewable by any court. The Executive Branch and all other Tribal Entities and Tribal Representatives shall give full faith and credit to the Declaratory Judgment and take such action as may be necessary to assure that their actions are not inconsistent with the terms of the Declaratory Judgment.

## **CHAPTER 7. OFFICE OF THE COURT CLERK**

- 7.1 **Clerk's Office.** There shall be an Office of the Court Clerk serving the entire Northern Cheyenne Court. The Office of the Court Clerk shall be administered by the Court Clerk, subject to the supervision of the Chief Trial Judge.

- 7.2 **Clerk's Duties.** The Court Clerk shall have administrative authority over the Office of the Court Clerk and its staff, and overall responsibility for: maintenance of all court files, exhibits, evidence and records; receipt of all filing fees, fines, and other revenues; preparation and transmission of all records on appeal and transcripts to the Appellate Court; and performance of all other necessary duties and functions of the Office of the Court Clerk.
- 7.3 **Appointment and Term of Clerk.** The Court Clerk shall be nominated by the Chief Trial Judge and appointed by the Tribal President with the concurrence of the Tribal Council. The Court Clerk shall serve for the same four-year Term of Office established for Judges in Chapter 9, and until a successor is appointed and takes office. Upon the death, resignation or removal of a Court Clerk, a successor Clerk shall be appointed who shall serve for the remainder of the former Clerk's term of office.
- 7.4 **Removal.** The Court Clerk may be removed or suspended from office at any time by concurrence of the Chief Trial Judge, Tribal President and Tribal Council, in their absolute discretion.

## CHAPTER 8. QUALIFICATIONS OF JUDGES

- 8.1 **Certification of Qualifications.** Before a candidate for the position of Trial Judge is placed on a primary or general election ballot (or appointed under section 10.4 or 12.2), and before a person is appointed to the position of Appellate Judge or appointed to the panel of Judges Pro Tem, the Tribal President must (a) assure that the qualifications of the candidate for appointment have been carefully investigated, and (b) certify in writing that such an investigation has been performed and that the candidate possesses the requisite qualifications.
- 8.2 **Age.** All Judges must be at least 30 years old.
- 8.3 **Tribal Membership.** All Trial Judges must be enrolled members of the Tribe. At least one Appellate Judge must be an enrolled member of the Tribe.
- 8.4 **Education and Bar Membership.** Every Judge must be a high school graduate or hold a G.E.D. certificate or its equivalent. At least two Appellate Judges must have graduated from an accredited law school and be a member of a state bar, which credentials are desirable, but not mandatory, for all other Appellate Judges and all Trial Judges.
- 8.5 **No Felony Conviction.** A Judge must never have been convicted of a felony in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure. The foregoing shall not include convictions which have been vacated.
- 8.6 **No Serious Misdemeanor Conviction Within 10 Years.** Within the 10-year period preceding the date set for the primary election or the date of appointment to office, as the case may be, and at all times thereafter through the end of the Term of Office, a Judge must

not have been convicted of a Misdemeanor Involving Moral Turpitude in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure. The foregoing shall not include convictions which have been vacated.

- 8.7 **No Removal Within Three Years.** Within the three-year period preceding (a) the date set for the primary election (and through the date of the general election) or (b) the date of appointment to office, as the case may be, a candidate for Judge must not have been removed as a Judge on a Complaint for Removal under section 17.3.
- 8.8 **Domicile.** All Trial Judges must be domiciled on the Reservation throughout the Term of Office. At least one Appellate Judge must be domiciled within 150 miles of Lame Deer throughout the Term of Office. As used herein, the term "domicile" means the residence in which a person customarily and actually resides during the applicable time period.
- 8.9 **Not a Party to Tribal Court Proceedings.** At the time of filing for election to office or of appointment to office, as the case may be, a candidate for Judge must not be a plaintiff or defendant in any civil or criminal action pending in the Northern Cheyenne Court.
- 8.10 **Legal Knowledge.** All Judges must be familiar with the Tribal Constitution, the Tribal Law and Order Code, civil and criminal procedures, the Indian Civil Rights Act, the Indian Child Welfare Act, and federal Indian law generally.
- 8.11 **Legal Skills.** All Judges must have ability and competence to: conduct efficient and organized proceedings; research and apply applicable law; timely decide or otherwise resolve disputes; and set forth clear and reasoned decisions and orders in writing.
- 8.12 **Deal with Conflict.** All Judges must be able to deal effectively with people in highly emotional, adversarial and confrontational situations.
- 8.13 **Familiarity with Cheyenne Language.** It is desirable, but not mandatory, that all Judges have some familiarity with the Cheyenne language.

## CHAPTER 9. JUDGES' TERMS OF OFFICE

- 9.1 **Four-Year Terms.** There shall be a four-year Term of Office for all Judges, ending with the first Regular Presidential Election occurring after appointment, except that it is projected that the first set of Judges will not take office until approximately late 1997 and will therefore have three-year Terms approximately, ending with the Regular Presidential Election in the year 2000.
- 9.2 **Serve Until Successor Elected or Appointed.**
- a. **Trial Judges.** Each Trial Judge shall serve until his or her Term of Office expires and thereafter until the election and swearing-in of his or her successor. The person

whose Term has expired may be re-elected to office.

- b. **Appellate Judges.** Each Appellate Judge shall serve until his or her Term of Office expires and thereafter until the appointment and swearing-in of his or her successor or the assignment of a Judge Pro Tem to temporarily fill the position pending the appointment of a successor. The person whose term has expired may be re-appointed to office.

## CHAPTER 10. ELECTION OF TRIAL JUDGES

- 10.1 **Primary and General Elections; Filing Fee.** All Trial Judges shall be selected through a primary election followed by a general election, both conducted at-large, and otherwise generally conducted on the same conditions and under the same procedures as those applicable to the selection of the Tribal President and Vice President, as more particularly set forth in the Revised Tribal Election Ordinance as amended pursuant to section 10.5 below (as it may be further amended) ("Amended Revised Election Ordinance"). All persons filing to run for Trial Judge must pay a non-refundable \$200 filing fee as more particularly described in section 7.a of the Amended Revised Election Ordinance, provided that, for each Regular Presidential Election, the Tribal Council may adjust the filing fee to account for inflation or other factors.
- 10.2 **First Election.** As promptly as reasonably possible after the Effective Date of this Ordinance, an at-large primary election followed by an at-large general election shall be held to elect two Trial Judges. Each winner in that election shall have a Term of Office which expires upon the occurrence of the Regular Presidential Election in the year 2000.
- 10.3 **Regular Elections.** In the Regular Presidential Election in the year 2000, and in the Regular Presidential Election every four years thereafter, there shall be an at-large primary election followed by an at-large general election to fill all Trial Judge positions. The winner in each regular election shall serve a four-year Term of Office.
- 10.4 **Filling Vacancies.** If the office of Trial Judge becomes vacant due to death, resignation, removal, or other cause, there shall be an at-large primary election followed by an at-large general election to fill the vacancy for the remainder of the Term of Office, provided that, if the vacancy in office occurs when there is less than 180 days remaining in the Term of Office, the Tribal Council in its discretion may choose not to hold the election, whereupon the Tribal Council shall appoint a qualified person to the office.
- 10.5 **Amended Revised Election Ordinance.** Contemporaneous with or promptly after the adoption of this Ordinance, the Tribal Council shall prepare and adopt amendments of the Revised Election Ordinance to implement the foregoing provisions of this Chapter 10.

Thereafter, all elections of Trial Judges shall be conducted under the Revised Election Ordinance as so amended (and as it may be further amended). In the event of any conflict between the foregoing provisions of this Chapter 10 and the provisions of the Revised Election Ordinance, as so amended, the latter shall be controlling.

#### CHAPTER 11. APPOINTMENT OF APPELLATE JUDGES

- 11.1 **Appointment.** All Appellate Judges shall be appointed by the Tribal President with the concurrence of the Tribal Council.
- 11.2 **Expiration of Term.** Upon expiration of the Term of Office, a successor Appellate Judge shall be appointed for the four-year Term described in section 9.1.
- 11.3 **Death, Resignation or Removal.** Upon the death, resignation or Removal of an Appellate Judge, a successor shall be appointed to fill the vacancy. The appointee shall serve for the remainder of the former Appellate Judge's Term of Office.

#### CHAPTER 12. ADJUSTMENT OF JUDGESHIPS

- 12.1 **Retained Power to Add Judges or Adjust Their Work Schedules.** In light of the needs of the Northern Cheyenne Court and available Tribal financial resources, the Tribal Council may at any time temporarily or permanently: increase the number of Judges specified in this Ordinance for any Court; and convert any Judgeship specified as a part-time position in this Ordinance to a full-time position (or vice versa). Judges added under this section are referred to in this Chapter as "Added Judges," "Added Trial Judges," or "Added Appellate Judges," as the case may be.
- 12.2 **Added Trial Judges.** If it is intended that an Added Trial Judge will hold office for a term of 180 days or more, the Added Trial Judge shall be selected through a primary election followed by a general election in the manner described in Chapter 10. If, however, it is intended that an Added Trial Judge will hold office for a term less than 180 days, the Tribal Council in its discretion may choose not to hold such election, whereupon the position shall be filled through appointment by the Tribal President with the concurrence of the Tribal Council.
- 12.3 **Added Appellate Judges.** All Added Appellate Judges shall be appointed by the Tribal President with the concurrence of the Tribal Council.
- 12.4 **Expiration of Term.** In no case may any Added Judge have a term of office which expires after expiration of the four-year Term of Office specified in section 9.1 during which the Added Judge was elected or appointed, plus the additional period described in section 9.2.

#### CHAPTER 13. OVERSIGHT OF JUDICIAL BRANCH

13.1 **Audits, Reports and Removal.** The following mechanisms are intended to enable the Tribal Council, Tribal membership, and Judicial Branch to monitor and take action in light of the capabilities or performance of the Judicial Branch:

- a. **Annual Audits.** The annual Tribal financial audit shall include a financial audit of the Judicial Branch.
- b. **Annual Reports.** Within 90 days after the close of each fiscal year, the Chief Trial Judge shall present to the Tribal President and Tribal Council a written report on the operations of the Judicial Branch during the preceding fiscal year. The report may also include recommendations for action by the Tribal Council or others with respect to the future operations or needs of the Judicial Branch.
- c. **Removal Proceedings.** A Judge may be removed for cause through proceedings for Automatic Removal under section 17.2 or Removal by Complaint under section 17.3.

#### CHAPTER 14. TRIAL AND APPELLATE COURT JURISDICTION

14.1 **Civil Jurisdiction.** The Trial Court and Appellate Court shall have and exercise the full reach of the Tribe's lawful civil jurisdiction (except for matters committed to the exclusive jurisdiction of the Constitutional Court). This includes the following so long as not inconsistent with controlling federal statutory or decisional law:

- a. civil jurisdiction over all persons, entities, property, lands, natural resources, environmental interests or values, cultural interests or values, transactions and/or activities located or occurring on the Reservation (collectively "On-Reservation Persons, Matters and/or Interests");
- b. civil jurisdiction over matters arising or occurring outside the Reservation which have sufficient effect on, or sufficient minimum contacts with, On-Reservation Persons, Matters and/or Interests to legally justify the assertion of such civil jurisdiction;
- c. civil jurisdiction over matters in which a plaintiff or defendant is a resident or has a place of business on the Reservation; and
- d. civil jurisdiction over all persons, entities, property, lands, natural resources, environmental interests or values, cultural interests or values, transactions and/or activities (collectively "Off-Reservation Persons, Matters and/or Interests") located or occurring on lands located outside the Reservation which are owned in trust or in fee by the Tribe or are controlled by the Tribe ("Off-Reservation Tribal Lands");

14.2 **Criminal Jurisdiction.** The Trial Court and Appellate Court shall have and exercise the full reach of the Tribe's lawful criminal jurisdiction (except for matters committed to the

exclusive jurisdiction of the Constitutional Court) over all offenses committed by Tribal members or other Indians on the Reservation or on Off-Reservation Tribal Lands, and over any other offenses, persons or entities within the Tribe's criminal jurisdiction under applicable law, compact, or consensual arrangement.

14.3 **Subject Matter Jurisdiction.** Applying appropriate choice of law and jurisdictional rules, the Trial Court and Appellate Court shall hear civil claims and criminal matters within their jurisdiction (as set forth in sections 14.1 and 14.2) arising under:

- a. the Tribal Constitution and Bylaws;
- b. a referendum under Article VIII of the Tribal Constitution;
- c. Tribal codes, ordinances and resolutions;
- d. Tribal decisional law;
- e. Tribal customs and traditions, provided that the content of relevant customs and traditions must be proven and may be rebutted by testimony from qualified persons or the submission of authoritative written materials ;
- f. the Indian Civil Rights Act, Indian Child Welfare Act or other applicable federal law, or
- g. principles of state common law used by the Tribal Court to guide its fashioning of decisional principles under Tribal law not found in applicable existing provisions of the foregoing bodies of Tribal and federal law, provided that, absent federal law to the contrary or lawful consent of the Tribal Council, state law shall not govern or apply to On-Reservation Persons, Matters and/or Interests or Off-Reservation Persons, Matters and/or Interests.

14.4 **Sovereign Immunity.** Nothing in this Chapter 14 is intended or shall be interpreted to in any respect waive the sovereign immunity of the Tribe, any Tribal Entity or any Tribal Representative.

## CHAPTER 15. JUDICIAL TRAINING, CODE OF CONDUCT, COMPENSATION

15.1 **Judicial Training.** Subject to the availability of funds, there shall be mandatory training for all Judges, as directed by the Chief Trial Judge for the Trial Judges and by the Chief Appellate Judge for the Appellate Judges.

- a. **Annual Training.** Each Judge will receive training at least annually.

- b. **Subjects.** The training must cover subjects relevant to the Judge's function, including without limitation pre-trial, trial, or appellate procedures, discovery, legal research, legal writing, Tribal law, and federal Indian law.
  - c. **Conduct of Training.** The training shall be conducted by authorities in their respective fields.
- 15.2 **Code of Judicial Conduct.** The Tribal Council, in consultation with the Chief Trial Judge and Chief Appellate Judge, shall either reaffirm the Code of Judicial Conduct for the Judicial Branch in force on the Effective Date of this Ordinance ("Current Code"), or adopt an amended or new Code of Judicial Conduct based on American Bar Association or other appropriate models. Until such Tribal Council action, the Current Code shall remain in force.
- 15.3 **Judge's Compensation.** Except for cases where the Tribal Council, acting under section 12.1, converts a full-time Judgeship to a part-time Judgeship, the compensation of a Judge may not be reduced while the Judge is in office, unless the reduction is part of a program which provides for comparable and proportionate reductions in compensation for the President, Vice President and all Tribal Council members.

#### CHAPTER 16. JUDGES PRO TEM

- 16.1 **Appointment of Panel; Removal of Judge Pro Tem.** The Tribal President with the concurrence of the Tribal Council shall endeavor to appoint and maintain a panel of Judges Pro Tem available to temporarily fill-in for a sitting Judge who is recused, disqualified, or otherwise temporarily unavailable to serve in a particular case or for a discrete period of time. The Tribal President with the concurrence of the Tribal Council, in their absolute discretion, may at any time remove a Judge Pro Tem from the panel, provided that such removal shall not be effective with respect to any Trial Court, Appellate Court or Constitutional Court matter which has been assigned to the Judge Pro Tem unless the removal has been concurred in by the Chief Trial Judge or Chief Appellate Judge making the assignment.
- 16.2 **Qualifications.** To serve as a Judge Pro Tem in a particular Court, one must possess the qualifications set forth in sections 8.2, 8.4 - 8.7, and 8.9 - 8.12 for Judges of that Court, provided that a sitting or recently retired judge of any federal or state court shall be deemed fully qualified to sit as a Judge Pro Tem in the Trial Court, Appellate Court or Constitutional Court.
- 16.3 **Assignment.** For the temporary purpose described in section 16.1 above, the Chief Trial Judge may assign a qualified Judge Pro Tem to serve in the Trial Court and the Chief Appellate Judge may assign a qualified Judge Pro Tem to serve in the Appellate Court or Constitutional Court, provided that, in removal proceedings under Chapter 17 directed at an Appellate Judge, only the Chief Trial Judge may assign a Judge Pro Tem to the

Constitutional Court as provided in section 17.1.

- 16.4 **Pro Tem Assignment of Sitting Judges.** If assignment of a Judge Pro Tem is not feasible, for the temporary purpose described in section 16.1 above, the Chief Trial Judge and Chief Appellate Judge may jointly designate (a) any Trial Judge to serve pro tem in the Appellate Court or in the Constitutional Court, or (b) any Appellate Judge to serve in the Trial Court, provided the designee possesses the qualifications for Judge of the Court to which he or she has been assigned as set forth in Chapter 8 and has not previously decided any material matter in the particular case; provided further that, in removal proceedings directed at an Appellate Judge under Chapter 17, only the Chief Trial Judge may assign a Trial Judge to the Constitutional Court as provided in section 17.1.

## CHAPTER 17. REMOVAL OF JUDGES

- 17.1 **Exclusive Method – Before Constitutional Court.** The following shall be the exclusive procedures and standards for removal of any Judge. As described below, there are two types of removal – Automatic Removal and Removal by Complaint – both administered and decided by the Constitutional Court. If the removal is directed at an Appellate Judge ("Respondent"), and if there are fewer than three other available sitting Appellate Judges, the Respondent's seat on the Constitutional Court shall be filled in the removal proceedings by a Trial Judge or a qualified Judge Pro Tem designated by the Chief Trial Judge.
- 17.2 **Automatic Removal.** A Judge shall forfeit and be removed from office ("Automatic Removal") as provided in this section 17.2;
- a. **Conviction of Felony.** Automatic Removal shall occur if the Judge, while holding his or her current position as Judge, is convicted of any felony in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure, irrespective of whether the conduct on which the conviction is based occurred before or during the Judge's current term of office.
  - b. **Conviction of Misdemeanor Involving Moral Turpitude.** Automatic Removal shall occur if the Judge, while holding his or her current position as Judge, is convicted of any misdemeanor or gross misdemeanor in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure, which the Constitutional Court determines is a Misdemeanor Involving Moral Turpitude, irrespective of whether the conduct on which the conviction is based occurred before or during the Judge's current term of office.
  - c. **Lack of Qualifications.** Automatic Removal shall occur if the Judge does not possess a qualification for office set forth in this Ordinance, irrespective of whether the lack of qualification arises from events which occurred before or during the Judge's current term of office.

- d. **Confirmation by Constitutional Court.** An Automatic Removal shall not take effect until it is confirmed by the Constitutional Court as provided in this subsection d:
- i. Upon receiving advice it deems reliable that indicates that a Judge ("Respondent") stands convicted of a felony as described in subsection a above or a Misdemeanor Involving Moral Turpitude as described in subsection b above, or lacks any qualification for office as described in subsection c above, the Constitutional Court shall, as a matter of highest priority, proceed with dispatch to determine whether such ground for Automatic Removal in fact exists, and if it does, to confirm the Automatic Removal of the Respondent, in the following manner. Such proceedings shall not be delayed or suspended because judicial proceedings to reconsider, vacate or appeal a conviction described in subsection a or b are pending.
  - ii. The Constitutional Court shall issue a written notice to the Respondent, Tribal President and Tribal Secretary advising that the Constitutional Court will convene a hearing to determine whether the Automatic Removal of Respondent from office must be confirmed. The notice shall state the date, time and place of the Constitutional Court hearing, and summarize the indicated grounds for Automatic Removal, and shall include a copy of this Ordinance. The hearing shall be held as promptly as possible but no sooner than 10 days from the date of issuance of the written notice.
  - iii. At the hearing, the Respondent shall be accorded an adequate opportunity to be heard on the matter, and may be represented by an attorney or advocate at his or her own expense. Conviction of a felony or a Misdemeanor Involving Moral Turpitude must be evidenced either by a copy of the judgment of conviction certified by the court in which the Respondent was convicted or by Respondent's sworn admission to such conviction. The Constitutional Court may consider any additional factual or legal materials, information or submissions it deems relevant.
  - iv. After considering the materials, information and submissions before it, the Constitutional Court shall decide, as the case may be, whether the Respondent stands convicted of a felony as described in subsection a or a Misdemeanor Involving Moral Turpitude as described in subsection b, or lacks any requisite qualification for office as described in subsection c. If the Court decides that such ground for Automatic Removal in fact exists, it shall be dutibound to immediately confirm Respondent's Automatic Removal from office, effective immediately. The Constitutional Court's decision shall be in writing.
  - v. The decision of the Constitutional Court on Automatic Removal shall be

final, binding on the Tribe and all branches of Tribal government, and not subject to review in any court.

- vi. While Automatic Removal proceedings are pending, the Constitutional Court may suspend or otherwise limit Respondent's status or authority as a Judge.
- e. **Effect of Subsequent Vacation of Conviction.** An Automatic Removal based on a conviction described in subsection a or b, which is confirmed by the Constitutional Court as provided in subsection d, shall not be suspended or reversed because of a subsequent decision rendered in any judicial proceeding to vacate the conviction. However, as provided in sections 17.4.a and b, if the conviction is vacated it will not disqualify Respondent from later serving as a Judge.

**17.3 Removal by Complaint.** In addition to Automatic Removal under section 17.2, any Judge may be removed from office by complaint ("Removal by Complaint") as provided in this section 17.3:

- a. **Complaint.** Proceedings for Removal by Complaint shall be initiated by a written complaint ("Complaint") seeking removal of a single Judge only ("Respondent"). The Complaint shall specify the grounds for removal, allege the facts supporting such grounds in reasonable detail, and be sworn to and signed by one or more enrolled members of the Tribe who are at least 18 years old ("Complainants"), provided that any Judge, irrespective of tribal membership, may be a Complainant. The Complaint, accompanied by a \$25 filing fee, shall be filed with the Court Clerk ("Filing"), who promptly shall provide a true copy thereof to the Respondent, each member of the Constitutional Court, the Tribal President, and the Tribal Secretary. The Constitutional Court shall have continuing authority to adjust the filing fee to account for inflation or other factors.
- b. **Grounds.** Removal by Complaint may be sought and effected on the ground that the Respondent:
  - i. has grossly or repeatedly failed to competently perform the duties of office;
  - ii. while performing the duties of office, has used alcohol, drugs or other mind-altering substance, or engaged in immoral behavior, unethical conduct, or corruption or abuse of power, provided that where such misconduct has resulted in a conviction as described in section 17.2.a or b, the convicted Judge shall be Automatically Removed in the manner described in section 17.2;
  - iii. suffers from physical or mental incapacity preventing the competent performance of the duties of office, including the loss of essential physical or mental capabilities due to illness, injury, or addiction to alcohol, drugs or

other mind-altering substance: or

- iv. has grossly or repeatedly violated the Code of Judicial Conduct.
- c. **Withdrawal of Complaint.** At any time prior to the commencement of a hearing under subsection g below, any Complainant may withdraw his or her signature on the Complaint by filing with the Court Clerk a signed and sworn certificate of such withdrawal. If all signatures on a Complaint are so withdrawn, all further proceedings on the Complaint shall terminate. The Court Clerk promptly shall provide true copies of any signature withdrawal(s) to the Respondent, any other Complainant(s), each member of the Constitutional Court, the Tribal President, and the Tribal Secretary
- d. **Review by Tribal Secretary.** Within 7 days after the Filing of the Complaint, the Tribal Secretary shall make best efforts to review the Complaint and any signature withdrawal(s) filed to date, determine the validity and sufficiency of all signatures thereon, and report the results of this review in writing to the Respondent, the Complainant(s), the Court Clerk, each member of the Constitutional Court, and the Tribal President.
- e. **Review by Constitutional Court.** If the report of the Tribal Secretary states that the Complaint is supported by valid signature(s), the Constitutional Court, under such procedures as it considers appropriate, promptly shall review the Complaint and determine: (i) if it meets the formal and procedural requirements of this Ordinance; and (ii) if it alleges grounds and sufficient supporting facts which, if proven to the satisfaction of the Court, would justify Removal by Complaint. The Constitutional Court shall make best efforts to report its determinations on items (i) and (ii) in writing to the Respondent, Complainant(s), Tribal President and Tribal Secretary within 21 days after the Filing of the Complaint. If the Court reports negatively on either item (i) or (ii), the Complaint shall thereupon be deemed dismissed and no further action shall be taken on it. If the Court reports positively on items (i) and (ii), the Court shall make best efforts to schedule a hearing on the Complaint to be commenced within 35 days after the Filing of the Complaint. Pending such a hearing and its decision on the Complaint, the Constitutional Court may suspend or otherwise limit Respondent's status or authority as a Judge.
- f. **Timelines.** On a case-by-case basis, the Constitutional Court may adjust any time period specified in paragraphs d or e above, as it deems warranted.
- g. **Hearing.** If the Constitutional Court determines to hold a hearing on the Complaint, the hearing shall be conducted as follows:
  - i. At least 10 days before the hearing, the Court Clerk shall issue a written notice to the Respondent, Complainant(s), Tribal President and Tribal

Secretary which states the date, time, place and purpose of the hearing, and includes a copy of this Ordinance.

- ii. The hearing shall be conducted in accordance with such procedures and evidentiary standards as the Constitutional Court considers necessary to afford fair and reasonable opportunity to the Complainant(s) and the Respondent to support and refute the Complaint, and to enable the Court to make an informed and fair decision on the Complaint. The Complainants collectively and the Respondent may each be represented by an attorney or advocate at the hearing at their own expense.
- iii. The hearing shall be conducted in public and on the record. A verbatim stenographically or electronically recorded transcript of the hearing shall be maintained.
- h. **Decision.** After the hearing, the Constitutional Court shall issue a decision on the Complaint. The decision shall be in writing and shall set forth findings of fact, conclusions as to whether grounds for Removal by Complaint have been established, and the Court's decision with respect to such removal. The Constitutional Court may dismiss the Complaint, or may decide that Respondent shall be removed as Judge, that Respondent's status as Judge shall be suspended for no more than 90 days, or may impose conditions on Respondent's continued status or activities as Judge. The decision of the Constitutional Court shall be final, binding on the Tribe and all branches of Tribal government, and not subject to judicial review in any court.

#### 17.4 **Effect of Removal on Future Eligibility for Judge.**

- a. **Automatic Removal – Felony.** A Judge Automatically Removed from office due to a felony conviction as provided in section 17.2, shall thereafter not be eligible for election or appointment as a Judge unless the conviction has been vacated and such person possesses all other qualifications for such office set forth in this Ordinance.
- b. **Automatic Removal – Misdemeanor Involving Moral Turpitude.** A Judge Automatically Removed from office due to conviction of a Misdemeanor Involving Moral Turpitude as provided in subsection 17.2, shall not be eligible for election or appointment as a Judge during the 10-year period following such conviction, unless the conviction has been vacated and such person possesses all other qualifications for such office set forth in this Ordinance.
- c. **Removal by Complaint.** A person who has been removed as a Judge by Complaint as provided in section 17.3, shall not be eligible for election or appointment as a Judge during the three-year period following such removal.

### CHAPTER 18. FUNDING FOR JUDICIAL BRANCH

- 18.1 **Per Regular Tribal Budget.** The Tribal Council shall provide funding for the operations of the Judicial Branch in the regular Tribal budget, after consulting with the Chief Trial Judge, the Chief Appellate Judge, and the Court Clerk about funding needs.
- 18.2 **Independent Fund Raising.** With the prior approval of the Tribal Council, the Judicial Branch may independently raise funds for its operations, provided that funds shall not be sought from parties who have, or reasonably may in the future have, matters in litigation within the Judicial Branch. Any funds so raised shall be remitted to the Tribal Treasurer for administration for the benefit of the Judicial Branch and for accountability.
- 18.3 **Remittance of Court Revenues to Treasurer.** Northern Cheyenne Court filing fees, copying charges and other charges, fines and penalties, and other sums paid to the Judicial Branch, shall be remitted to the Tribal Treasurer for administration for the benefit of the Judicial Branch and for accountability.

#### CHAPTER 19. AMENDMENT OR REPEAL.

- 19.1 **Two-Thirds Council Vote.** This Ordinance may be amended, repealed or suspended only by affirmative vote of two-thirds of all Tribal Council seats (whether such seats are filled or vacant), i.e., by affirmative vote of 8 Tribal Council members.

\* \* \* \* \*

REVISIONS:0063:  
JUN 20 11 01 AM



4. I understand that, if the Constitutional Court accepts this certification and adjudicates the Constitutional Claim, the adjudication will be conducted in accordance with all rules, procedures and standards set forth, referred to or authorized in Chapter 6 of the Tribe's Separation of Powers Ordinance, which I have reviewed before making this request.

\* \* \* \* \*

# Bibliography

## Articles, Journals, and Working Papers

Absolute Bank, "Georgia" *World Economic Analysis: Supplement to Euromoney: IMF/World Bank Issue 1997*, 46-47.

Emily Barker, "Point of Impact," *The American Lawyer* (January 1997).

Robert J. Barro, "Determinants of Economic Growth: A Cross-Country Empirical Study" (NBER Working Paper, No. 5698, August 1996), 1-31.

Fergus M. Bordewich, "How to Succeed in Business: Follow the Choctaws' Lead," in *Smithsonian*, March 1996, Volume 26, No. 12, 70-81.

Aymo Brunetti, et. al., "Credibility of Rules & Economic Growth" (Policy Research Working Paper 1760, World Bank, April 1997).

Stephen Cornell and Joseph P. Kalt, "What Can Tribes Do? Strategies and Institutions in American Indian Economic Development," in *American Indian Manual and Handbook Series No. 4* (Los Angeles: University of California at Los Angeles, 1992), 2-59.

David Crisp, "Indians Advised to Learn About White Economy," *Billings Gazette*, April 3, 1996, C6.

Garry Evans, ed., "An End to Easy Money," *Euromoney: IMF/World Bank Issue 1997*, 319.

"First Brief Filed in Coal Tax Case: Tribe to Respond By End of Month," *Big Horn County News*, December 3, 1997, 1.

Melissa L. Gedachian, "Safeguarding Sovereignty with Tax Free Bonds," *American Indian Report*, July 1997, 18-20.

Shannon H Jahrig, "Indian Banker: Gerald Sherman," *Montana Business Quarterly*, Summer 1996, Volume 34 No. 2, 5-7.

Miriam R Jorgensen, "Taking up the Challenge: Fundamental Principles of Economic Development in Indian Country," in *American Indian Studies: An Interdisciplinary Approach to Contemporary Issues*, ed. Dane Morrison (New York: Peter Lang, 1997).

Steven Paul McSloy, "Back to the Future: Native American Sovereignty in the 21st Century," *New York University Review of Law & Social Change* Vol. XX No. 2 (1993).

Rich Oppel, Editorial, "More and More, Crow Tribe Behaving Like a Nation," *Austin American Statesman*, August 25, 1996, D3.

Jaret Seiberg, "Reno Targets Unintended Lending Bias for Action," *The American Banker*, July 25, 1997.

Members of the 107 Committee. December 5, 1997. Crow Agency, Montana.

John J.V. Pereau, General Manager, Little Bighorn Casino. December 4, 1997. Crow Agency, Montana.

Lanny Real Bird, Central Director, Learning Lodge Institute. December 4, 1997. Crow Agency, Montana.

David Schecker, Regional Counsel of the Federal Deposit Insurance Corporation: Boston. Phone interview, January 20, 1998.

Gerald Sherman, Community Development Officer, First Interstate Bank of Commerce. December 3, 1997. Billings, Montana.

Jacquiline Sparboe, Deputy General Manager, Little Bighorn Casino. December 4, 1997. Crow Agency, Montana.

Steve Stevens, Crow Tribal Planner, November 12, 1997. Cambridge, Massachusetts.

Donald A. Stewart, Sr., Associate Judge, Crow Tribal Court. December 5, 1997. Crow Agency, Montana.

Tyrone Ten Bear, President of ACE Board, Little Bighorn Casino. November 12, 1997. Cambridge, Massachusetts, and December 4, 1997. Crow Agency, Montana.

Robin Vallie, CEO, I'tchik Herbs. December 4, 1997. Crow Agency, Montana.

Jim Wefso, Stockman's Financial Corporation: Rushville, Nebraska. Phone interview, January 20, 1998.

Various anonymous sources. December 3-6, 1997. Miscellaneous locations throughout Montana.

## **Internet Resources**

Legal Information Institute, Cornell Law School: <http://www.law.cornell.edu/ucc/ucc.table.html>

US Department of the Interior: <http://doi.gov/bia/foia/foia.htm>