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3 IN THE COURT OF APPEALS  
4 OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
5 OF THE FLATHEAD INDIAN RESERVATION, PABLO, MONTANA

6 JAMES RICHARD SMITH,

7 CAUSE NO. AP-99-227-CV.

8 Plaintiff-Appellant.

9 vs.

10 **OPINION**

11 SALISH KOOTENAI COLLEGE,  
12 a Montana Corporation.

13 Defendant-Appellee.

14 Appeal from the Tribal Court of the Confederated Salish and Kootenai Tribes,  
15 Hon. Winona Tanner, presiding.

16 Rex Palmer, Attorneys, Inc., P.C. and Lon Dale, Milodragovich, Dale, Steinbrenner  
& Binney, Missoula, Montana, for Appellant James Richard Smith.

17 Robert Phillips, Phillips & Bohyer, Missoula for Appellee Salish Kootenai College.

18 Before: MATT and DESMOND, Justices.<sup>1</sup>

19  
20 DESMOND:

21 I. INTRODUCTION AND PROCEDURAL BACKGROUND

22 The central question before us is whether federal Indian law precludes the  
23 Tribal Court of the Confederated Salish and Kootenai Tribes from exercising  
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26 <sup>1</sup> Former Chief Justice Patrick L. Smith, who was originally on the panel, resigned his position effective October 22, 2002. No substitute judge has been appointed because §1-2-805, CSKT Laws Codified, provides for a decision to be made by a majority of the panel.

1 jurisdiction over a tort action involving three students of the Tribes' Salish  
2 Kootenai College ("SKC") who were riding in a college vehicle as a part of their  
3 regular studies at the college when it crashed. We hold it does not.

4 On May 12, 1997, as part of their coursework in heavy equipment operation,  
5 three SKC students, Appellant James Smith, Shad Burland and James Finley, were  
6 traveling in a dump truck owned by the college on U. S. Highway 93, a state  
7 highway within the exterior boundaries of the Flathead Indian Reservation.

8 Appellant Smith was driving. Tragically, a single vehicle rollover occurred. Shad  
9 Burland was killed and both James Finley and Appellant Smith were injured.  
10 Appellant Smith is a member of the Umatilla Tribe. Shad Burland was, and James  
11 Finley is, enrolled in the Confederated Salish and Kootenai Tribes ("Tribes").  
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14 On September 1, 1999, Mr. Burland's estate filed a civil complaint in the  
15 Tribal Court naming as defendants the Confederated Salish and Kootenai Tribes,  
16 Salish Kootenai College and Appellant Smith. On December 1, 1999, the  
17 complaint was amended and the Tribes were dismissed pursuant to stipulation,  
18 having raised the defense of sovereign immunity. On January 31, 2000, SKC cross-  
19 claimed against driver Smith. On February 17, 2000, passenger Finley sued SKC  
20 and Smith. On February 23, 2000, Smith cross-claimed against SKC. The Finley  
21 suit was consolidated with the Burland suit. Following settlement negotiations, the  
22 parties stipulated to the dismissal of all parties except Smith and SKC.  
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1 Both the Proposed Pretrial Order signed by SKC and Smith and Tribal Trial  
2 Judge Winona Tanner's final Pretrial Order described the issues of fact to be tried  
3 regarding liability as follows:

4 (1) Was Defendant Salish-Kootenai College negligent and, if so, was  
5 its negligence a cause of Plaintiff's damages, if any?

6 (2) Was Plaintiff [Smith] contributorily or comparatively negligent and  
7 if so, was his negligence a cause of his damages, if any?

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9 As proposed by Smith and SKC, the final Pretrial Order realigned the remaining  
10 designating Appellant Smith as the Plaintiff and SKC as the Defendant.

11 On September 29, 2000, after a weeklong trial, the jury returned a verdict in  
12 favor of SKC. On October 13, 2000, the Tribal Trial Court entered its judgment on  
13 the verdict. On the same day, Smith filed a motion in the Tribal Trial Court to  
14 vacate the verdict for lack of subject matter jurisdiction. While the post-trial  
15 motions were pending before the Tribal Trial Court, Smith filed a Notice of Appeal  
16 to this Court on October 27, 2000. On November 1, 2000, the Tribal Trial Court  
17 announced that it would stay consideration of the pending motions in light of the  
18 appeal having been filed. Therefore, it did not rule on the motion to dismiss for  
19 lack of subject matter jurisdiction. On December 21, 2000, Appellant Smith filed a  
20 motion with this Court challenging the subject matter jurisdiction of the Tribal  
21 Court. We remanded the matter back to the tribal court to allow it to rule on the  
22 jurisdictional challenge and to establish a factual record on jurisdiction. On April 6,  
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1 2001, the Tribal Trial Court ruled that it did possess subject matter jurisdiction over  
2 the matter and Appellant Smith renewed his appeal to this Court.

3 On July 17, 2001, the Tribal Court of Appeals held oral argument on pending  
4 motions regarding scheduling, the transcript and Smith's motion to dismiss for  
5 lack of jurisdiction.<sup>2</sup> On October 25, 2001, this Court ordered briefing on the  
6 merits to proceed and requested that "if there are additional facts relevant to  
7 subject matter jurisdiction that have not been called to the Court's attention  
8 in previous briefings, the Court encourages the parties to identify these facts  
9 in the upcoming briefing with appropriate citation to the trial transcript or  
10 other records before the trial court."<sup>3</sup> Upon completion of the transcript,  
11 Appellant filed his opening brief on April 15, 2002 and the Appellee filed its  
12 response brief on June 13, 2002. Appellant Smith then requested, and this Court  
13 approved, an unopposed motion to allow Smith until September 20, 2002 to file  
14 his final Reply brief. Because neither party has accepted this Court's  
15 invitation to develop further the factual or legal arguments regarding subject  
16 matter jurisdiction, that aspect of the briefing has concluded and this Court is  
17 now prepared to rule on its jurisdiction.  
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25 <sup>2</sup> At the time of the oral argument a complete transcript of the trial was not available. Both parties  
26 supported staying the requirement of ordering the complete transcript until the ruling on  
jurisdiction.

<sup>3</sup> This would allow for the full transcripts to be prepared regarding any jurisdictional factual issues.



## II. SUBJECT MATTER JURISDICTION

### A. Tribal Law

The Tribal Trial Court correctly ruled that Tribal law authorizes it to exercise jurisdiction over this matter. Title II, §1-2-104, CSKT Laws Codified, provides in relevant part:

#### **Civil Jurisdiction.**

...

(2) To the fullest extent possible, not inconsistent with federal law, the Tribes may exercise their civil, regulatory and adjudicatory powers. To the fullest extent possible, not inconsistent with federal law, the Tribal Court may exercise subject matter and personal jurisdiction. The jurisdiction over all persons of the Tribal Court may extend to and include, but not by way of limitation, the following:

(a) All persons found within the Reservation.

(b) All persons subject to the jurisdiction of the Tribal Court and involved directly or indirectly in:

(i) The transaction of any business within the Reservation;

(ii) The ownership, use or possession of any property, or interest therein, situated within the Reservation;

(iii) The entering into of any type of contract within the Reservation or wherein any aspect of any contract is performed within the Reservation;

(iv) The injury or damage to property of the Tribes or a Tribal member.

1 (3) As used in this section, "person" means an individual, organization,  
2 corporation, governmental subdivision or agency, business trust,  
3 estate, trust, partnership, association, joint venture, or any other  
4 legal or commercial activity.

5 Title II. CSKT Laws Codified.

6 When we apply this provision to this matter, the result is that the Tribal Court  
7 may exercise subject matter jurisdiction. Specifically, the SKC is a person within  
8 the meaning of § 1-2-104 (3); the events leading to the accident and this lawsuit  
9 arguably fall within each of § 1-2-104 subsections (2)(b) (i) –(iv).  
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11 B. Federal Indian Law  
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13 The Tribal Trial Court was also correct in ruling that federal Indian law does not  
14 preclude it from exercising jurisdiction. Tribal interests significant under federal  
15 Indian law support tribal jurisdiction here. Educating tribal members is an  
16 important component of self-government as is the adjudication of disputes arising  
17 on the reservation. This case is about what forum will determine whether a tribal  
18 college committed a tort or torts in the course of its instructional program.  
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20 This is not a case that is “distinctly non-tribal in nature”. Strate v. A-1  
21 Contractors, 520 U.S. 438, 457 (1997). Nor is it a “run-of-the-mill [highway]  
22 accident.” Id. Rather, this is a case that arose in a distinctly tribal context, i.e., that  
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1 of a tribally-established college<sup>4</sup> created to provide advancement for tribal members  
2 through education. The case involves three students in the college, two of whom  
3 were tribal members. The third, Appellant Smith, a member of the Umatilla Tribe,  
4 testified that he enrolled in the Tribal college, "To better my life" and the life of  
5 "my family". Transcript, Vol 4, at 32. Assertions and allegations as to causation  
6 extend far beyond an accident on a state highway to earlier events at the college  
7 pertaining to supervision of the students and control and maintenance of the  
8 vehicle.  
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11 Historically, federal Indian law has evolved to reflect changes in federal policy,  
12 congressional directive and judicial decision-making as well as to respond to a more  
13 complex world. As a result, tribal authority has been narrowed in scope from its  
14 breadth prior to European contact. Worcester v. Georgia, 31 U.S.(6 Pet.) 515  
15 (1832); United States v. Wheeler, 435 U.S. 313 (1978). Oliphant v. Suquamish  
16 Tribe, 435 U.S. 191 (1978). Yet we must remember to review each narrow  
17 situation in light of the unchanging, broad, basic principles of Federal Indian law,  
18 which include sustained federal recognition of and support for tribal self-  
19 government. Decisional law has been especially deferential to tribal authority  
20 when it is found to be necessary to the preservation of tribal self-government.  
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24 See, e.g., Williams v. Lee, 358 U.S. 217 (1959). As we discuss below, this case  
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<sup>4</sup> We take judicial notice that the SKC campus is located on tribal land in Pablo, the tribal center of government.



1 involves an important component of the preservation of tribal self-government,  
2 specifically tribally-controlled education.

3 Another important component of tribal self-government is that placed in the  
4 tribal judiciary, the power to resolve disputes arising on the reservation. This  
5 power is derived from tribal inherent authority and has long been recognized and  
6 supported by the federal government. Fisher v. District Court, 424 U.S. 382 (1976),  
7 Wheeler, infra. For example, the Indian Reorganization Act of 1934, legislation  
8 intended to revitalize tribal governments, recognized as an existing power of Indian  
9 tribes the power to provide for tribal law and order. Ch. 576, 48 Stat. 984 (codified  
10 at 25 U.S.C. §§ 461-479); Powers of Indian Tribes, 55 Interior Dec. 14 (1934).

13 Continuing federal support, legislative, executive and judicial, for tribal court  
14 jurisdiction and responsibility since the 1960s has encouraged tribes to make  
15 significant strengthening changes in their court systems. For example, Congress  
16 acted directly in this regard when it enacted "The Indian Child Welfare Act of  
17 1978", affirming broad tribal court authority over child welfare matters involving  
18 Indian children both on and off the reservation. Pub. L. No. 95-608, 92 Stat. 3069  
19 (codified at 25 U.S.C. §§ 1901-1963). Then in 1986 Congress increased the  
20 maximum allowable criminal sentences tribal courts can impose. Pub. L. 99-570,  
21 100 Stat. 3207(codified as amended at 25 U.S.C. § 1302). The executive branch  
22 supported tribal justice systems in its policy and leadership. United States Supreme  
23 Court decisions have recognized and supported tribal judicial authority. See, e.g.,  
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1 Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978); National Farmers Union Ins.  
2 Cos. v. Crow Tribe of Indians, 471 U.S. 845 (1985); Iowa Mutual Insurance Co. v.  
3 LaPlante, 480 U.S. 9 (1987).

4       However, the Supreme Court has also ruled that in some instances tribal court  
5 authority is limited, generally in cases in which a tribal court has exercised  
6 jurisdiction over a non-Indian or an Indian who is not a member of the Tribes. See  
7 e.g. Oliphant, Strate, *infra*. Broadly, the Tribal Court has found a limitation on  
8 tribal jurisdiction when, in the view of the Court: (1) the exercise of that jurisdiction  
9 is inconsistent with the tribe's limited sovereignty resulting from the incorporation  
10 of Indian tribes into the United States and (2) the exercise of that jurisdiction is not  
11 necessary to the preservation of tribal self-government. The greater the Indian and  
12 tribal interests involved in a case the more likely exercise of judicial authority will  
13 be found to be necessary to self-government. Here, the Tribes have significant  
14 interests in the education of tribal members as well as in regulation of the manner in  
15 which that education is delivered.

#### 20                                   1. Defining the Parties: the Status of SKC

21       The legal status of SKC is relevant for purposes of determining subject matter  
22 jurisdiction. Essentially Smith argues that because SKC is not a "member" of the  
23 Tribes, *ipso facto*, it must be treated as a "nonmember."<sup>5</sup> Smith then concludes that

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26 <sup>5</sup> See, e.g., Smith December 21, 2000 Memorandum in Support of Motion to Dismiss at 10, ("Because SKC is not and could never be a tribal member, the subject matter jurisdiction requirements of Strate are not met."); Smith January 12, 2001 Reply Brief at 8, ("Pursuant to Strate the absence of tribal membership is dispositive of Smith's motion").

1 the suit is between two “nonmembers” arising on a State highway, and therefore the  
2 holding in Strate, precludes tribal court jurisdiction. We disagree.

3 To treat SKC as a nonmember for purposes of jurisdiction would be to deny both  
4 the fundamental nature and identity of the college and the complexity of federal  
5 Indian law. The Tribes created SKC for the education and benefit of their members.  
6 The name of the college itself—Salish Kootenai College<sup>6</sup>—clearly denotes its  
7 specific Tribal nature: it is a college of the Salish and Kootenai people. The Tribes  
8 incorporated SKC under Tribal law on November 18, 1977. (McDonald Affidavit,  
9 October 29, 1999, ¶3) SKC was later incorporated under state law in 1978.<sup>7</sup> (Id.,  
10 ¶4). While on the surface its methods of incorporation may indicate a dual identity,  
11 from its inception SKC has maintained a Tribal character. Its governing Bylaws—  
12 which apply regardless of whether SKC is acting under its tribal or state charter—  
13 provide that all members of the Board of Directors must be enrolled members of the  
14 Tribes. (SKC Bylaws, Art. III.) The Tribal Council appoints all members of the  
15 Board of Directors. Id. The Tribal Council may only remove a board member for  
16 just cause by a two-thirds vote of a legal quorum of the council. Id. When a  
17 vacancy occurs on the board, the Tribal Council appoints the successor for the  
18 remainder of the term. Id. The Board of Directors is required to report to the  
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25 <sup>6</sup> The Salish Kootenai Community College, Inc. does business as the Salish Kootenai College. (McDonald affidavit, October 29, 1999, ¶2)

26 <sup>7</sup> The record does not include an explanation for incorporating under both tribal and state law. The fact that the functioning bylaws for the College continue to be the Bylaws adopted at the time that the college was originally tribally-chartered, and the fact that the bylaws continue to vest ultimate control over the selection and removal of the Board of Directors with the Tribal Council are solid indications that the College is functioning primarily under its tribal charter, though possibly not exclusively.



1 Tribal Council on a regular basis and inform Tribal members of pertinent activities  
2 of the Board. (SKC Bylaws, Art II.) The College is to assure job preference in  
3 accordance with tribal personnel hiring procedures. *Id.*

4 The respected and successful SKC is the pride of the Salish-Kootenai people.  
5 The mission of the SKC is to provide quality postsecondary educational  
6 opportunities for Native Americans locally, and from throughout the United States.  
7 *See*, Exhibit A, SKC's July 12, 2000 Brief in Support of Partial Summary  
8 Judgment, at 1. In performing its educational purpose, the SKC seeks to maintain  
9 "the cultural integrity of the Salish and Kootenai people." *Id.* The college is a  
10 major educational institution on the Flathead Reservation, with 38 full-time  
11 instructors and 50 part-time instructors. It has over 850 full-time students and  
12 another 300 part-time students. *Id.* at 2. Most of the students are Indians from the  
13 Flathead Reservation. *Id.*

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17 This Court finds that SKC is a tribal entity closely associated with and controlled  
18 by the Tribes. For purposes of determining jurisdiction, it must be treated as a tribal  
19 entity.<sup>8</sup> To equate SKC's status with that of a non-member when significant tribal  
20 interests are present would be neither reasonable nor in keeping with federal Indian  
21 law.  
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25 <sup>8</sup> Our holding is consistent with the Montana Federal District Court's characterization of SKC in *Bartell v. American Home*  
26 *Assurance Company*, i.e., that the "Salish-Kootenai College is incorporated as a Tribal non-profit corporation located within the  
Flathead Reservation." August 10, 2001, Slip Op at 10. In certifying a state law question arising out of the Bartell case to the  
Montana Supreme Court, the federal court stated "this court has determined that the Salish Kootenai College, Inc. is a  
governmental agency...." *See*, also *Bartell v. American Home Assurance Company*, 310 Mont. 276 (2002).

## 2. Tribal jurisdiction under Montana v. United States

1           What is now considered to be the most significant contemporary United States  
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3 Supreme Court statement of the scope of a tribe's civil jurisdiction over  
4 nonmembers is found in Montana v. United States, 450 U. S. 544 (1981). In what  
5 at first appeared to be a somewhat narrow view of retained inherent sovereignty, the  
6 Court stated, the "exercise of tribal power beyond what is necessary to protect tribal  
7 self-government or to control internal relations is inconsistent with the dependent  
8 status of the tribes, and so cannot survive without express congressional  
9 delegation." 450 U.S. at 564. Or, absent a controlling treaty or other federal  
10 enactment, the inherent sovereign powers of an Indian tribe do not extend to the  
11 activities of nonmembers of a tribe on non-Tribal land. *Id.*<sup>9</sup> In this case, the parties  
12 have not identified any controlling treaty provision or federal statute that would  
13 confer civil jurisdiction over nonmembers such as Smith. The question, then, is  
14 whether the Tribal Court has jurisdiction under the Tribes' inherent authority.

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18           In Montana, the United States Supreme Court reviewed the Ninth Circuit's  
19 decision, United States v. Montana, 604 F.2d 1162 (1979), which had upheld the  
20 right of the Crow Tribe to regulate all hunting and fishing within the Crow  
21 reservation. The Ninth Circuit's decision was based partly on its conclusion that  
22 Crow authority over Indians and non-Indians on both Indian and non-Indian land  
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<sup>9</sup> Nevada v. Hicks, 533 U.S. 353 (2001), indicates that the Montana rule applies even on Tribal land. Our result would be the same because it is based on this case fitting within both Montana exceptions.

1 was an incident of the tribe's inherent sovereignty over the entire Crow reservation.  
2 604 F.2d at 1170. The Supreme Court did not disturb the Ninth Circuit's holding  
3 that the Crow Tribe could prohibit hunting and fishing on Indian lands or condition  
4 entry by charging fees and imposing regulations. But after examining relevant  
5 treaties and federal legislation, the Supreme Court concluded that the reach of  
6 inherent tribal authority over activities conducted by non-Indians on fee land was  
7 limited.  
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9 The Montana Court then delineated two now well-known "exceptions" to its  
10 general rule:  
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12 To be sure, Indian tribes retain inherent sovereign power to exercise some  
13 forms of civil jurisdiction over non-Indians on their reservations, even on  
14 non-Indian fee lands. A tribe may regulate, through taxation, licensing, or  
15 other means, the activities of nonmembers who enter consensual relationships  
16 with the tribe or its members, through commercial dealing, contracts, leases,  
17 or other arrangements. [citations omitted] A tribe may also retain inherent  
18 power to exercise civil authority over the conduct of non-Indians on fee  
19 lands within its reservation when that conduct threatens or has some direct  
20 effect on the political integrity, the economic security, or the health or  
21 welfare of the tribe.

22 450 U.S. at 565-566.

23 Our examination of Montana's "first exception" results in a determination that  
24 Appellant Smith has a "consensual relation" with the Tribes within the meaning of  
25 that exception. Smith chose to enroll in the college for the purpose of being  
26 educated and trained to be a heavy equipment operator and to obtain his commercial  
driver's license ("CDL"). Thus he voluntarily engaged in a consensual relationship



1 with the SKC, a tribal entity within the exterior boundaries of the Flathead  
2 Reservation. Appellant Smith acknowledges that he, “was driving the truck as part  
3 of his educational requirements as a student at Salish-Kootenai College.” Smith  
4 Complaint, ¶ 5. All three occupants of the dump truck were enrolled at SKC and  
5 studying to become heavy equipment operators. Pretrial Order, ¶ 1. As part of  
6 Appellant Smith’s requirements to graduate, he had to obtain a CDL and become  
7 knowledgeable in operating heavy equipment such as the dump truck that was  
8 involved in the accident. Transcript, Vol. 4, at 33-34. The requirements for the  
9 CDL involved both course work and operation of heavy equipment. The course  
10 work, included classes, conducted on the SKC campus, such as truck driving laws  
11 and regulations, heavy machinery operation, and safety instruction. Transcript, Vol.  
12 4, 65.

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16 Further, the record establishes a direct nexus between the voluntary,  
17 consensual relationship between Smith and SKC and the civil complaint filed by  
18 Smith. His allegations against the college are a direct outcome of the relationship  
19 of student-college that he chose to establish.  
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21 Since we find that the Tribal Court has jurisdiction over this matter under  
22 Montana’s first exception, we need go no further. However, because the parties  
23 have argued that Strate controls, we will discuss that case below. Before turning to  
24 Strate, we will address why this case also fits within the second Montana exception.  
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26 The Tribal endeavor encompassed in SKC is essential to tribal self-government and

1 internal relations thus impacting "the political integrity" of the Tribes within the  
2 meaning of Montana. In establishing SKC the Tribes were both implementing and  
3 sustaining their self-governing powers. As outlined above, the more significant a  
4 particular interest is to a tribe the more likely regulation of that interest will be  
5 essential to tribal self-government. The competing forum here, the State of  
6 Montana, does not appear to have a significant interest in how a tribal college  
7 conducts its affairs.  
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9 The Tribal Council has decided the availability of higher education to tribal  
10 members is important enough to that governing body that it has supported and  
11 strengthened SKC for over 25 years. What better measure of the significance of  
12 this Tribal activity to the Tribe and its political integrity can there be?  
13

14 The federal government, 100, has underscored the significance of tribal colleges.  
15 One year after the Tribes established SKC, the United States Congress recognized  
16 the value of the Tribes' educational policy when it enacted, "The Tribally  
17 Controlled Community College Assistance Act of 1978", P.L.95-471, 25 U.S.C.  
18 1801 et seq. Congress stated that its purpose was, "to provide grants for the  
19 operation and improvement of tribally controlled community colleges to insure  
20 continued and expanded educational opportunities for Indian students." § 25 U.S.C.  
21 1802.  
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1 It is difficult to argue that an educated citizenry is not essential to self-  
2 government, whether of a tribe or of another government. Therefore, we conclude  
3 that jurisdiction in this case can be sustained under the second Montana exception.

### 4 3. Tribal jurisdiction under Strate v A-1 Contractors

5 Smith argues that the Tribes lack jurisdiction in this case under the Supreme  
6 Court's holding in Strate. Strate is not controlling. In Strate, a vehicle owned by a  
7 non-Indian collided with another vehicle driven by a non-Indian and owned by non-  
8 Indian entities on a state highway running through the Fort Berthold Reservation.  
9 The injured non-Indian sued the non-Indian driver and owner of the other vehicle in  
10 tribal court. In its opinion, applying Montana, the Supreme Court equated the state  
11 highway to non-Indian fee lands. It noted (quoting the lower court) that the dispute  
12 "arose between two non-Indians involved in a [a] run-of-the-mill [highway]  
13 accident." 520 U.S. at 457. The Court also found that the dispute was "distinctly  
14 non-tribal in nature." *Id.*

15 Here, as pointed out above, Appellant Smith's allegations of fault extend far  
16 beyond the accident itself. For example, he asserts there were not adequate seat  
17 belts for all three passengers in the dump truck and that the truck encountered  
18 mechanical failure causing the accident. The Smith complaint alleges numerous  
19 negligence claims against SKC arising from the alleged duty on behalf of SKC "to  
20 provide a safe and reasonable educational environment," including (1) a duty to  
21 regularly inspect the heavy equipment and vehicles; (2) a duty to provide a vehicle  
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1 that was safe and a driver with adequate knowledge and experience to handle the  
2 dump truck, and (3) a duty to adequately inspect, maintain, or repair the dump  
3 truck. Complaint, ¶¶ 3,5,6. Further, in the pretrial order, Smith stated he intended  
4 to prove at trial that Smith's lack of experience in driving the dump truck was "due  
5 to improper or inadequate training," lack of and/or improper supervision of Smith,  
6 improper tires, a defective/cracked leaf spring and lack of and/or improper  
7 maintenance of the dump truck. Pretrial Order, at 3. Extensive evidence and  
8 witness testimony was offered at trial regarding the SKC's alleged breach of duty to  
9 provide a safe environment. Thus Strate is distinguishable from this case.  
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### 15 III. CONCLUSION

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17 In conclusion, the Tribal Trial Court was correct in its determination that it  
18 properly exercised jurisdiction over this matter.  
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20 The parties have ably briefed the merits of the appeal. The merits were not  
21 addressed at oral argument. Unless either party requests oral argument within 20  
22 days, we will proceed to rule on the merits of the appeal.  
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DATED this 17<sup>th</sup> day of February, 2003.



*Clayton Matt*  
Clayton Matt, Justice

*Brenda C Desmond*  
Brenda C. Desmond

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CERTIFICATE OF MAILING

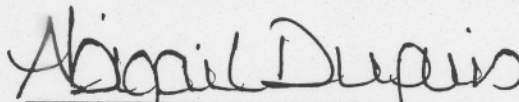
I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed true and correct copies of the *OPINION* to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, or hand-delivered this 7 day of February, 2003.

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