



BUILDING ON SUCCESS

A National Conversation on First Nation Self-Government
September 14 – 16, 2010

BRITISH COLUMBIA ASSEMBLY OF FIRST NATIONS

Presentation to the
2010 CONFERENCE: BUILDING ON SUCCESS
ASSEMBLY OF FIRST NATIONS YUKON REGION
A NATIONAL CONVERSATION ON FIRST NATION SELF-GOVERNMENT

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KEYNOTE ADDRESS
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Gilakas'la, Greetings, Elders, Chiefs, ladies and gentlemen. My traditional name is 'Puglaas' and my other name is Jody Wilson-Raybould. I come from the Musgamagw-Tsawateineuk/Laich-Kwil-Tach people of Northern Vancouver Island and I live, with my husband Tim Raybould, in my village of Cape Mudge where I also serve as a member of Council.

I would like to thank my friend and colleague Regional Chief Eric Morris and the Self-Governing Yukon First Nations for the invitation to this timely and important conference hosted by the Assembly of First Nations Yukon Region entitled 'Building on Success' – A National Conversation on First Nation Self-Government. I am pleased to have the opportunity to provide you with this afternoon's keynote address and to build on the words of the National Chief.

First Nations across Canada are truly in an exciting period of Nation building or Nation re-building and especially so in the BC Region. While the vast majority of First Nations across Canada still remain under the Indian Act and are not self-governing, this will change – with political will, hard work and perseverance. It is so very important that as we move forward that we learn from the experiences of those First Nations that have gone through a process of re-building their Nations and build on your success and learn from your experiences. Your experiences here in the Yukon, both good and not so good, are important to share and understand.

Change is never easy and we are all very interested in listening to the conversation surrounding the implementation of the Yukon Final Agreement and the more than fifteen



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years of experience and the experiences of other Nations here today who are developing and implementing their own institutions of self-government. What institutions have been created and for what purposes and what lessons can we learn? What laws have been passed and what jurisdictions have been drawn down? What land tenure systems are in place? How is property registered and transferred? How is infrastructure built? How is the government financed? What has worked well and what has not worked so well? Is life better after governance reform and claims? Is the standard of living improving and is the culture being practiced and celebrated? Which, at the end of the day, are the only questions that really matter.

These are the types of questions that every leader across Canada will ask. At some point they will be the same questions that are asked by community members from coast to coast to coast as they too engage in their own conversation about moving beyond the Indian Act - in local Band Halls and across the kitchen tables as they talk about change and the initial fear of self-government - particularly when they are asked to vote on new arrangements with Canada; in fact it is a conversation that has already started within the Assembly of First Nations.

It was with a great sense of optimism and pride that I listened to our National Chief, Shawn (A-in-Chut) Atleo, indicating the desire that we should get rid of the Indian Act within five years. This is, of course, not a new idea. Rather an idea whose time may have come. While some are saying the AFN is being overly optimistic in this agenda there is no question in my mind that working together and building on our experience and our success, that an acceptable approach can be developed so that our communities, when they so choose, can all begin moving beyond the Indian Act. And in a relatively short time when the trigger is pulled. Maybe not five years but within a generation there will be more First Nations governing outside the Indian Act than those under it. Certainly we should be able to develop the framework for change within five years.

It is, of course, not as if we are starting from scratch. In fact we have to ask ourselves when developing a framework for change why attempts to move beyond the Indian Act have not worked in the past and what is different today? And why is now the time?

Recently Tim and I were moving our resource library to our office in Vancouver and it struck me just how much has been written on self-government and just how many initiatives there have been to move beyond the Indian Act. In moving our books, reports and files I could not help but notice the various governance initiatives the AFN has been involved in over the years...many, interestingly, in response to initiatives of the federal government.



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Of course there were the initial Constitutional discussions around s.35 in the early 80s and the Constitutional conferences of which I am quite familiar - although a child at the time, my father was heavily involved. In the late 1980s, the Conservatives tried a process called “community-based self-government” negotiations which no doubt some of you here remember as well. Despite considerable engagement with many communities across Canada and millions of dollars spent, this process only resulted in a handful of agreements of which only one was ratified and we will be learning more about this agreement from our friends at Westbank First Nation.

There was, of course, another big Constitutional initiative in the early 1990s with the failed Charlottetown Accord and the associated protocol dealing with Aboriginal self-government. This would have been a momentous achievement but unfortunately did not have either the support of Canadians in general or, for that matter, our own people. Then there was the controversial Liberal governance initiative and the introduction of the ill-fated First Nations Governance Act which I will come back to.

Today, the Conservatives are still using the policy developed by the Liberals on implementing the inherent right to self-government; a policy which many First Nation leaders are urging Canada to review. Despite the limitations of the policy, there are, if you include BC Treaty Negotiations, some 200 tables across Canada where self-government is being discussed and negotiated in some form or another - quite an industry but still with little result or major breakthrough.

From our side, many communities have led their own self-government initiatives – mostly sectoral. Such initiatives have had to do with lands or fiscal relations or education, oil and gas and the like and have resulted in federal legislation to remove parts of the Indian Act. These are all optional. Still other communities are attempting to build their institutions of governance outside of any formal engagement process with Canada at any negotiating table - the ‘just do it’ philosophy. Presumably they will argue in Court their inherent right to self-government if their governance or their jurisdiction is ever challenged by their own people or third parties.

So despite all of these efforts and the millions of dollars spent and hours and hours of debate and negotiations the vast majority of First Nation are still governed the same way they were forty years ago. With the same limited powers under the same paternalistic relationship with Canada. In fact, there are some of our leaders who will still argue that somehow the Indian Act in its entirety is their right. While there are aspects of the Indian Act that respect our rights, I must respectfully say, this orthodoxy neither serves their people well nor Canada.



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self-government the only recognized self-governing communities are those where self-government was negotiated as part of modern claims such as here in the Yukon, with the exception of – Westbank and Sechelt. While the sectoral self-government initiatives I have already mentioned such as lands, fiscal relations and education are important they do not address questions of core governance and are not comprehensive in scope. Again, we have to ask ourselves why?

Part of the reason is that there are still differing legal and academic perspectives on what self-determination or what self-government means. On the one extreme, is it self-determination in the form of sovereignty that could ultimately lead to the eventual breakup of Canada? That is going beyond even what the United Declaration on the Rights of Indigenous peoples tells us self-determination is? Or, on the other extreme, is it delegation by another order of government and only municipal in nature that some critics of First Nations' rights would advocate? This is the 64,000 foot political, academic and legal debate into which our leaders often get lost. The truth, of course, lies somewhere in between which is what we see in all the self-government agreements to date. Quite frankly, and speaking now as a Councillor in my own community and a resident in one of our villages, the need for strong and appropriate governance cannot remain a question of political posturing and ideology, but rather must be grounded in what is required practically to effectively govern our lands and peoples and to create the foundation for improved quality of life and thriving and practicing cultures. As important a conversation it has been over the years for the academics and the legal scholars, and where we as First Nations have made significant progress in recognition of the inherent right of self-government under section 35 of the Constitution Act, what our people need now are the practical solutions, on the ground, that will work and that build on our success. This is, after all, about making the lives of our people better.

So what is different today as we look to move beyond the Indian Act than in our recent history? Firstly, we are no longer talking about First Nations' governance in the abstract. We do have some practical experience now – albeit limited. Despite the failed attempts at comprehensive change and empowering all our First Nations we do have pockets of success to learn from. We also have lessons to be learned from our neighbours in the south who have been implementing Indigenous governance at the same time - albeit under a somewhat different legal framework where a recognized Tribe can enact its own constitution and assume self-government at its own pace.

Secondly, we also have clearer legal parameters for implementing our rights - the inherent right of self-government. The Courts in Canada have basically said there is an inherent right of self-government and that in certain circumstances it is constitutionally protected. (2) The United Nations Declaration on the Rights of Indigenous peoples has now been passed and provides guidance on the scope of Indigenous self-determination



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within a state such as Canada. Canada has indicated it may sign on to the Declaration and we must hold the government to this commitment. Let us hope they do. We need this to happen in order to collectively move forward on what are the more practical issues surrounding transition from the Indian Act.

Thirdly what is different today is that we now have a substantial body of research that shows that if our Nations are to be economically and socially successful then self-determination or self-government is a must. First Nations with good governance do better than those with weaker government. Many of you are familiar with the Harvard study on Tribal Economic Development?...and there is plenty of more evidence to back up their finding. Part of the answer comes down to creating a culturally appropriate environment conducive to investment and providing a stable government for those who live and invest in our communities, including first and foremost, our own citizens.

Fourthly, and linked to the other three reasons why it is different today is that there is a growing movement in our communities for change being led by a younger, healthier and a more educated population who simply do not accept the status quo anymore. This is inspiring.

So how do we harness this climate for change and harness a growing energy?

I have been trying, as I am sure many of you have been trying, to figure out what we can do to empower and facilitate widespread social change in our communities so more of our Nations are ready to move beyond the Indian Act - where change is reflective of our Aboriginal rights and title and is also practical - so our people can actually benefit from and enjoy their title and their rights. So that no critics can argue that the only people who benefit from the 'reserve system' or the so-called 'Indian Problem' are those that get elected to council, their family, or those who work for the band or the consultants and lawyers. Meanwhile many of our people have chosen or have been forced to live and work away from their communities.

I often talk to my peers in the legal profession and other professions and ask why they do not live or work in their communities. They often reply because there is no work or the politics is too unstable. I don't know how many times people in the past have said "I would never work in my band office!" This is sad, but changing. When questioned further many of our best and brightest minds that could be encouraged to work for our communities want to but find it difficult...for a host of reasons. Many would like to come back. To give back.

In looking for ways to move forward I would suggest that there is still a significant disconnect between the rights we have established and our ability to actually take



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advantage of our opportunities. Some of our communities seem to be doing better than others - particularly when we compare communities with similar demographic and geographic profile. Governance is important. In all cases I would suggest that where communities are doing well there is a level of understanding throughout that Nations' citizenship that there is life beyond the Indian Act and opportunities for the taking if the community is prepared and healthy enough to support social change.

In looking forward to what we can do to translate Aboriginal title and rights, including treaty rights, into benefits on the ground we actually have to start in our communities with our people. That is basic community development work. This reality is actually not all that complicated or radical a thought. It is just hard to accomplish, and not always politically expedient for government to support although ultimately necessary to formally end the colonial period. Let me explain what I mean.

What I have come to appreciate in my relatively short time in regional and national politics and working in my own community, is that before there can be any significant social change on the ground in implementing our Aboriginal title and rights, including treaty rights, our people have to support it, not just verbally and politically through electing leaders that share the same vision, but they actually have to exercise their franchise and vote in favour of change. They have to vote for social change. The twisted reality of our post-colonial transition is that our people have to vote the colonizer out. As you are all aware, this is because the colonizer, in our case Canada, has a fiduciary relationship to our people and cannot simply legislate the Indian Act away until our people tell them it is ok to do so. Perverse but true.

No other segment of Canadian society had to decolonize or go through this process to establish basic structures of governance or create the tools for economic and social development. The legal framework and institutional structure for good government and creating the legislative framework to support economic development is in place for the rest of Canada, but not for us...unless we vote yes to change. While many of our communities have traditional systems still intact, they nevertheless remain overshadowed – at least on reserve – by the Indian Act reality.

This is perhaps the greatest contradiction in the relationship we have with the Crown – as both colonial authority and partner. In fact, this is such a problem some have suggested Canada ought to separate Indian Affairs into two offices – one that deals with the colonial management of reserves and one that does not. I am not sure how practical this would be but thinking about the contradiction does highlight the legal and administrative challenges we have as being both wards of the state and also peoples with an inherent right of self-government.



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In addition to having our communities on side for supporting change we, of course, also need to have the federal government on side as well. Short of a court decision repealing the Indian Act in favour of the inherent right of self-government, Canada must take action to remove the paternalistic legislative framework. Canada has tried this in the past but with different policy objectives. The 1969 White Paper called for the repeal of the Indian Act but without replacing it with First Nations' governance rather to simply assimilate Indians and effectively complete the transition that was the original intention of the Indian Act. The original Indian Acts were not intended to be around for that long...only until such time as the majority of Indians had enfranchised and joined 'white society' with the eventual elimination of the reserves – the land set aside for Indians. This obviously did not happen as the reserve system actually did more, ironically, to isolate rather than assimilate our people.

More recently, as I mentioned earlier, the previous Liberal government of Canada tried to pass the First Nations Governance Act recognizing this time that there would be a separate governance structure for First Nations. The proposed First Nations Governance Act was widely rejected by First Nations and also confused with sectoral legislative initiatives that were, at the time, actually being led by First Nations. In looking back at that attempt to bring about change beyond the Indian Act and the work that the AFN and our communities were doing parallel to the Liberal initiative it is not hard to see what went wrong.

Quite simply the First Nations Governance Act was not our initiative. No peoples, no society, no group that has been subjugated such as our peoples are going to be led or told what to do by the subjugator no matter how well intentioned. The role of the federal government is to facilitate our transition and take the necessary legal steps to allow and empower each of our Nations to move beyond the Indian Act when they are ready. Actually, that is also the role of the AFN - to create the opportunity and the space for our Nations to re-establish their own governance and to deal directly with the Crown and to move beyond the Indian Act at their own pace.

What the Liberal First Nations Governance Act proposed was a wholesale revision to the Indian Act with new and imposed default rules for our governance until such time as each First Nation developed its own rules. Rather than focussing on developing our own rules for things such as elections, law-making, financial management and procedures of governance our communities would have had been required to figure out and implement the default rules based on policy established by senior federal bureaucrats and drafted by justice lawyers. This approach, from a community empowerment and development economics perspective, could never work and was doomed from the start. It was also not the approach taken where self-government has actually been implemented successfully in Canada.



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In addition under the proposed First Nations Governance Act the powers of our governments, the areas over which we would have jurisdiction, were not broad enough. Certainly a lot less than the powers set out in the Yukon self-government arrangements and in fact in subsequent self-government arrangements.

So for real change to occur the process of change must come from us, from our communities, from our desire to take back control of our lives and move away from the paternalistic relationship with the Crown. People need to come to their own realisation, community-by-community, of what they can do and what will happen when they take control before change will be supported.

So what is the trigger for that change to occur? What is the flame that lights the fire of social change? Does the flame come from a crisis, a breakdown in governance on a reserve under the Indian Act? This was certainly the case in Westbank. Is the change due to strong leadership and determination as was the case with the Nisga'a? Or is the change led by outside interests who may want to invest in a community but cannot do so due to the restrictions of the governance structure as was the case in some of the sectoral land and finance initiatives? Or is it simply led by the people who can see a better way of life through the sharing and dissemination of information and ask why some communities are healthier and doing better than theirs?

When I ran for BC AFN Regional Chief I did so with my eyes wide open. At the BCAFN we have developed a plan based on four pillars that are designed to empower our communities. The first pillar, and relevant to the discussion here today, is, not surprisingly, the need for strong and appropriate governance. Each community, either individually or in groups depending upon cultural and social ties and issues of proper title holder will need to determine how they will govern themselves and build their contemporary institutions of governance. Strong and appropriate governance is truly necessary to be successful.

The second pillar of the BCAFN plan is for fair access to land and resources – the recognition that our communities need access to resources to fuel their economies and support their governments. Our communities need own source revenue. There are now opportunities for revenue sharing agreements and accommodation agreements in BC. We are working towards all our communities having access to resource revenue sharing. Available to all and not just those that can afford the lawyers, are 'hotspots', or maybe have the political connections to engage with the Crown. It is key – fair land and resource settlements that fund the rebuilding of our societies, help pay for our governments and help provide towards the cost of programs and services our people develop and deliver in our own communities.



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Finally, the third and fourth pillars are focussing on the individual because the collective is only as strong as the individuals that make it up. We need individual health. We need healthy individuals to participate in our new beginning; individuals that are free from or can deal with the trauma of the colonial experience. This is one of our biggest challenges as there is still a lot of healing required. We need to ensure those that are entrusted to assist our communities in the healing process understand the link between healing and governance reform; the need to establish appropriate governance and how we can benefit from lands and resource settlements that we are increasingly entering into. It is all linked. Our objective is not just to treat the symptoms of colonialism but to eradicate the disease completely.

We also need individuals that are educated. There is a need to ensure we continue the progress we have made in education. To have an educated population, not just post-secondary education, but rounded in terms of their knowledge of public policy issues we face and the important decisions our people will be asked to make in the next ten years. As I indicated earlier, our people, unlike other Canadians, are going to be asked to vote on important aspects of social change before their community can pass through, what I like to call, the post-colonial door. The door is there to open but if our people do not understand what is being asked of them, or why, they will inevitably vote ‘no’ to change and the door will remain shut or worse left tantalisingly open a crack to peek through to a better future.

I believe I was elected because there are many leaders across BC who share these views and are open to the challenge and are fighting to open the ‘door’ in their own communities to the opportunities we now have. They can see, as I can see, the door opening. I believe our leaders in BC are concerned that despite the fact the door is opening, far too few of our people and our communities are being able to pass through it. To open that door fully and walk through it, we still need Canada and BC to assist us. It is still far too difficult and far too expensive and complicated for communities to navigate their way to the other side of the post-colonial door – all of which is compounded if communities are not healthy or ready to vote ‘yes’ to change.

While it will take a significant investment of time and money to mount a true movement for social change and effect that social change - it is not just about needing money. In truth there will never be enough money. It will therefore take conviction and it will take dedication; with local champions of change that understand that without such change First Nations will continue to be mired by the challenges of the colonial period. In fact it will take all of us.



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provincially and our ever increasing own sources of revenue we need to be more efficient and more strategic in the types of investments we make in our own future. We need to ensure that Canadian and where applicable provincial policies support the investment in community empowerment and development. We need to take control and we need to set the direction.

There are a number of factors that go into creating social change and any initiative to move beyond the Indian Act must be led by our people with strong political support.

It was George Manuel the founding President of the National Indian Brotherhood who used the phrase the “fourth world” to describe our political reality as the third world locked within a first world Nation. This profound insight is as valid today as it was 40 years ago and is a simple reminder of the type of struggle we have to move beyond the Indian Act and how we need to view the activity more in terms of social and community development rather than a legalistic exercise and the political bantering of political elite.

At the BCAFN in recognition that the flame for change has been lit and that we are ready to tackle, once again, the question of governance of First Nation, we are developing a governance community engagement and self-assessment tool. Building on similar initiatives and taking them a step further, the Tool will be piloted in BC and then available to all First Nations in BC (and beyond) for free. It is being designed to stimulate a conversation and a process within the Chief and Council, the administration and at the community level that will hopefully empower a community to move forward where there is a desire to do so and a readiness to proceed.

The Tool will not only help a community assess the effectiveness of its governance practices under whatever legal framework the community is currently operating under – for most of course this will be the Indian Act - but will also provide other governance options to consider, whether sectoral or comprehensive. In this regard the Tool can become as complicated or as simple as community wants to make it.

It has though been a challenge developing the tool because, unfortunately given our current legal relationship with the Crown, we do not have a clean slate for rebuilding or building our Nations. This is because the legal options available for moving beyond the Indian Act are still limited and for the most part still require significant and costly engagement with the Crown the need to enter into some level of negotiation leading to a self-government agreement. This also needs to change.

Some years ago when self-government negotiations broke down in the Alberta community of Sawridge, the late Senator Walter Twinn, then Chief of his community,



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proposed an Act providing for the Crown's Recognition of Self-Governing First Nations of Canada. The Act would have set out a process that facilitated the transition from the Indian Act so that where a First Nation was ready to develop their own Constitution and govern outside of the Indian Act they could do so with a range of jurisdictions similar to those found in the self-government arrangements here in the Yukon and without significant negotiation with the Crown. When Senator Twinn passed away his Bill was kept alive in the Senate by subsequent Aboriginal senators and most recently by Senator St. Germaine in the 40th Parliament. While the proposed Bill had its limitations and we have learned quite a bit since its first introduction it is, nevertheless an approach we should consider again. Maybe we are ready for it today?

Many years ago a leader in one of our communities told his members that if they did not establish their own self-government that ultimately the federal government would design it for us. In many ways his prophecy is coming true as the federal government is now tinkering with the Indian Act to remove the more egregious parts since there is no consensus or process in place for First Nations to efficiently and effectively establish comprehensive governance beyond the Indian Act.

While we as leaders may be critical of federal initiatives such as those dealing with issues of clean water, or division of matrimonial property on-reserve, or even who is status, it is not really surprising that legislators are taking the action they are. Our communities do need to have water standards. We need ways to deal with a matrimonial property disputes. And so on. Our people deserve no less. But the truth is we must be designing these systems. In the absence of First Nations taking control and the government working with us to facilitate this control, then parliament will decide what is best for us- without the same level of accountability for these decisions as our leaders would face if we were making the rules ourselves under our own jurisdiction.

So the recent government led legislative initiatives if successful must only be interim until full self-government. They will not apply, for instance, here in the Yukon or to Westbank, or to Tsawwassen or to the Nisga'a or Sechelt and so on. Interestingly when I was before the Senate Committee speaking to Bill S-4 the Matrimonial Real Property Act, I was aggressively challenged by one of the Aboriginal senators suggesting that because I was critical of aspects of the policy behind the Bill that somehow I was against woman's rights! I respectfully replied that that could not be further from the truth – but that it should be our people making the rules and implementing our jurisdiction not Canada and that there were, consequently flaws in the Bill. But of course we have to be in a position to be able to exercise our jurisdiction.

So coming back to a more appropriate framework or space where First Nations can take up the challenges of moving beyond the Indian Act, we need to consider supporting



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an initiative that will provide the legal space within Canada that practically can assist communities moving beyond the Indian Act and provide certainty of governance.

Communities can assess where they are and where they want to go using tools like the one we are developing at the BCAFN, but at the end of day a more appropriate framework for decolonisation needs to be developed, building upon the work that has already been done. Any initiative must be consistent with the current state of law and must be based upon the recognition of the inherent right of self-government. It must recognize and respect the diversity of our Nations and the ability of Nations to rebuild based on their priorities that are reflective of their cultures and traditions. The initiative must ensure that where a community is ready to move it can do so at its own pace and without the requirement for interminable negotiations with Canada. External negotiations only makes lawyers and consultants rich and from my experiences as the Acting Chief Commissioner of the BC Treaty Commission focuses the discussion on abstract legal principles and not the practical necessities of re-building a Nation and creating strong and effective governance. What I liked most about the proposed the late Senator Twinn's proposed Self-government Recognition Act was that it was not prescriptive as to how a community would govern and make laws within its range of powers. Each community would go through its own process of deconstruction and re-building creating the foundations of its own government starting, in most cases, with developing a Community Constitution.

This is all challenging but rewarding work that is, at its core as I have said, community development work. We are, I hope, beyond abstract legal and political debate recognizing that we have come a long way and now need to establish a de-colonizing framework that our First Nations can embrace where our communities determine their own future without political or administrative interference by Canada or other First Nations and where the new relationships are based upon partnerships, trust and respect.

So in closing what we are discussing here this week and what we learn from one another with respect to our experiences will play into the broader national conversation and debate that is re-emerging about moving beyond the Indian Act. In this regard this is a very timely and important conference. Let us recognize the significant ground we have made, let us take the opportunities that lie before us, and seek to empower; individual-by-individual, community-by-community, Nation-by-Nation so that no single person, no single community and no single Nation is left out or behind.

Gilakas'la



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