



**BRITISH COLUMBIA
ASSEMBLY OF FIRST NATIONS**

***PRESENTATION TO THE ALTERNATIVE ENERGY FOR BC FIRST NATIONS
GATHERING – “POWER TO MOVE YOUR COMMUNITY FORWARD”***

PUGLAAS (JODY WILSON-RAYBOULD)

REGIONAL CHIEF

ROAD MAP TO SUCCESS - ADDRESS

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Gilakas'la, Greetings, Elders, Chiefs, ladies and gentlemen; I would like to thank you for this opportunity to speak to you today at this year's *Alternative Energy for BC First Nations Gathering – "Power to move your community forward"*.

My traditional name is 'Puglaas' and I come from the Musgamagw-Tsawateineuk/Laich-Kwil-Tach people of Northern Vancouver Island where I live, with my husband, in my village of Cape Mudge where I also serve as a member of Council.

I am very pleased to have the opportunity to speak with you today regarding opportunities for our Nations in the evolving alternative energy sector and specifically about developing a *Road Map to Success*. This is an opportunity to share information, our opportunities and our successes.

First Nations in British Columbia have entered an exciting period of Nation building, a period of transition. After years of litigation, lobbying and negotiation our Nations are now creating the legal and political space in which to take our rightful place as the proper title holders to our lands and territories which includes being involved in land and resource decisions that affect our territories and where appropriate to participate in the development of our resources - to participate in new economic opportunities and new energy alternatives on our lands.

Today I think it is fair to say that it would be next to impossible for a significant development project that affects our territories to be

undertaken without our involvement and in many cases our approval. Witness the recent decision regarding Taesko Mines proposed Prosperity Mine at Teztan Biny (Fish Lake). While I know the Tsilqhot'in people are not on principle opposed to mining or economic development within their territories, I also know they will not support development at any cost – development that is not sustainable or damages the environment to an unacceptable degree or adversely impacts their way of life. The Tsilqhot'in are certainly not alone in this view. And it is not just our people that share this view but many, many other Canadians who share it as well. In fact the international community is watching how Canada continues to develop its natural resources.

Creating the space for our advancement beyond the colonial period to once again have a meaningful and significant role over the land and resources within our territories creates new but welcome challenges. One of the biggest challenges is establishing strong and appropriate governance over our territories going beyond the *Indian Act* and beyond the small reserves that were initially set apart for us by BC and Canada.

The reality is that on the ground in our communities there is still a myriad of social malaise that needs to be eradicated and replaced with a new reality. The legal and political space that we have successfully created in court and at the negotiating table must now be acted upon as we further empower and strengthen our communities and our peoples. Instruments such as *United Nations Declaration on the Rights Indigenous Peoples* are only as strong as our ability to collectively act on

their promise. And thankfully we are gradually moving through the post-colonial door and are in a transitional period of new hope and renewed optimism.

At the BCAFN, we have developed an Action Plan with 4-key and inter-related pillars. The first and the second which I intend to speak about today are (1) Strong and Appropriate governance and (2) Fair access to Land and resources. The third and fourth pillars have to do with improved health and education for our citizenry. Our people can't take advantage of opportunities if they are not healthy and educated nor able to participate. Otherwise the lion's share of the on the ground benefits of our fight for our rights and title could ironically go to benefit others.

Interestingly in the early days of contact between our peoples and the settlers, our peoples were in fact, involved as partners in the developing economy. We were of course part of the fur trade economy and benefitted from this trade. In the early days we were also involved in other aspects of the resource economy such as ranching. In fact many of the best cowboys were Indians. We were also involved in the beginnings of the logging industry. But unfortunately for us this all changed when the number of newcomers began to increase in proportion to our numbers and the government passed legislation that restricted our participation in the developing economy of the province. Through policies of governor Trutch, the federal *Indian Act* and the policies and laws of the provincial government we were essentially removed and then excluded from participation in the growing

provincial economy that was predominantly resource development based, in favour of the newcomers.

We were moved onto the reserves that were unilaterally set aside for us and our political voice was silenced when our right to vote in provincial elections was taken away. We were disenfranchised and dispossessed. Wardship and dependency soon followed. Our *Indian Act* band governments were certainly not consulted when decisions were made about the uses of the lands and resources within our off-reserve territories.

When the major power related damming projects along the Peace were undertaken or when the trapping economy moved to a forest-based economy and rights and opportunities to access the forest resources were granted to third parties we had no say. But the record shows that Indian agents occasionally were consulted and usually passively agreed to what was considered in the interest of the 'greater good' at our expense. One of lasting legacies of our exclusion from society was that our peoples essentially missed out from participating in the resource based economy as the waves of economic development occurred in this province.

Fast forward to today, post Haida and Taku, and this can no longer be the case. As a new emerging player in the resource-based economy of our Province, the alternative energy sector now provides the opportunity for our people to be involved from the ground level up in the development of a new and necessary sector of the resource economy during its development and growth. This is already partially

recognized in the *Clean Energy Act* but there is room for improvement based upon the recommendations of the Green Energy Task Force.

Before licenses or rights are granted to rivers, streams or areas for wind generation, given the current state of Canadian law our people do need to be consulted and accommodated. Indeed we can go so far as to say in the spirit of shared decision-making our Nations need to be involved in approving licenses to third parties wishing to become involved in alternative energy projects within our territories. Eventually our Nations need to share in the resource rents and taxes generated from the use of the resources in our territory. Equally important, today we have the opportunity to initiate our own projects through our own re-emerging governance structures and become partners in development where we see potential.

To put it into some perspective, in Ontario and Quebec, targets for First Nations' involvement in independent power projects have initially been set at 250 mega-watts. No formal targets have yet been set in BC but the opportunities are equally significant. Nationwide, estimates put the current total potential First Nations equity involvement in IPPs at over one billion dollars with equity participation ranging anywhere from 5% to 100% of the projects. The potential yearly income to First Nations will be significant and for many could potentially exceed transfer payments from Canada.

Of course this reality is known to the many of our leaders in this room who have already developed partnerships or are considering partnerships to participate in independent power related projects.

Many of the early success stories have been discussed in this forum from Hupacasath, Canoe Creek to Tsleil Waututh and Kwadacha.

It is also not surprising that many alternate energy companies, many of them relatively new companies, some private...others public, are approaching our Nations to seek their views on their proposed activities in our territories, and in some cases asking our Nations to recognize their exclusivity to operate within our territories. While this is good to the extent that it shows that third parties wanting to invest in the alternative energy sector are obviously aware of the role of First Nations, it is also exposing some of the gaps in our First Nations' structures of governance.

While we may have legally created the space to ensure fair access to lands and resources to fuel our economies, this access and how it is implemented is very dependent upon having strong and appropriate governments.

The current governance structures for the majority of our Nations are still, for the most part, based on the *Indian Act* which is neither an appropriate governance framework for making decisions on-reserve nor an appropriate structure for off-reserve within our traditional territories. As part of our Nation building exercise, every single one of our *Indian Act* bands will at some point need to go through a process, if it has not already started, to deconstruct its *Indian Act* governance system and move beyond this system and replace it with appropriate structures of government...to deal with both on-reserve governance and off-reserve governance. What replaces the *Indian Act* will also

need to be reflective of traditional structures if not necessarily recognized broadly - our hereditary systems. This is no easy task.

Sometimes I think it was easier for us to simply send our lawyers into court to fight for our self-determination or to go to Ottawa or the UN to seek declarations of our rights than to translate the principles of governance set out in documents like the UNDRIP into functioning and orderly government on the ground in our communities. When we ask the court to recognize our rights or to have our rights affirmed in international covenants we are really asking the state to prick the *Indian Act* balloon for us. When the balloon of the *Indian Act* is pricked, as one Chief described it to me, what replaces it? Whether it is to provide services on-reserve or to engage in decision-making within the broader traditional territory there needs to be legitimate and strong governance to ensure strong partnerships and to ensure certainty of decision-making. So what are we doing about this reality? ... the elephant in the room to capitalizing on our opportunity and ensuring fair access to lands and resources?

Well, there were high hopes that the BC treaty process would provide some solutions as to how land-use decisions were made both on- and off-reserve. How our Nations would govern both within their settlement lands as well as within their broader traditional territories. But unfortunately this process has come to a slow crawl and is not delivering the results we all need. Quite frankly the process has been overtaken by the advancements made in the courts and the directions provided by the court. So today twenty years on we are seeing other types of agreements being entered to between the provincial Crown

and our Nations dealing with predominantly decision-making off our reserves but within our broader traditional territories. It is through these reconciliation agreements or similarly named agreements that opportunities originally created because of court decisions but now with political will are giving meaningful expression with tangible benefits to our people on the ground. These reconciliation agreements are encouraging and a positive step but are still limited in scope and do not involve all our Nations.

Central to the success of these reconciliation agreements, or indeed treaties which may follow is sorting out the question of 'proper title holder'. Having established that there is the legal concept of Aboriginal title in *Delgamuukw* the next big task was proving it on the ground for a particular Nation. This necessarily meant determining which Aboriginal group still speaks to that title after the intervening years of colonial administration and imposed governance of the band under the *Indian Act*. Again no easy task. In fact this issue has been exploited by those that would seek to delay the full recognition of Aboriginal title or try to mock overlaps and shared territory as in some way the fault of our Nations. We need a way to address questions of proper title holder more openly and honestly and any road map must include a process for resolving this issue, both between First Nations and between First Nations and the Crown. We need to undertake this work. Aboriginal title is no longer just some abstract legal concept. It is real.

Each community will need to develop its own exit-strategy or road map that will include both how it deals with governance on existing reserves and how the community or Nation will deal with proposed new land

and resource initiatives within its broader traditional territory and what requirements there might be for third party approvals.

For those of you in the room who represent the burgeoning alternative energy sector either as owners of companies or employees or their representatives there is no greater investment you can make in your own future as a company expanding during this period of new opportunities in the alternative energy sector than investing in the post-colonial transition of our peoples. For you to be successful our Nations need to be successful in re-establishing appropriate governance over our territories and not just within our reserve. It is not just the responsibility of the government of Canada or the province whom at times may have competing or differing interests than our Nations, but the responsibility of all of us to end the colonial period. This will be accomplished through the strengthening of our systems of governance and our way of life and our cultures and by creating partnerships and thereby ensuring our collective future.

So where your company is engaged or wishes to engage in a project within one of our Nations' territories please consider how you can support that Nation in its re-building.

Through fair access to land and resources our Nations or their corporate entities are increasingly being offered to become equity partners in the initial stages of project developments with significant potential for capital gains and secured revenue streams into the future. We therefore need to ensure that our Nations or their corporate entities have the capacity both legally, politically and financially to be

active and true partners in these opportunities. It would be unfortunate if opportunities to participate in the equity involvement in supported projects within our traditional territories could not be acted upon because the First Nation was unable to secure financing or did not have the legal capacity to engage in the project or the political stability through its institutions of governance to see the project through from the vision, to development and ultimately to construction and the benefits.

I have been talking for the most part in abstract or general terms, so let me give you a couple of concrete examples of what a First Nation may need to undertake in terms of activities to support strong and appropriate governance and I will speak from the perspective of my own community. Our Chief and Council are currently involved in exploratory discussions with a number of alternative energy partners but we are also undertaking internal governance reform to support our efforts to ensure fair access to lands and resources and the capacity to manage our involvement once access has been secured. We are developing our own financial management systems.

Under the *Indian Act* there are no rules that govern the financial administration of a First Nation. There are no requirements for budgets, there are no rules regarding investing or borrowing and there is no legal basis for strategic planning although by convention most of our Nations do. Our Nations receive funding from Canada by way of agreements that create contractual obligations to budget and report on those monies but these contracts have nothing to do with how we use or make decisions about our own source revenues or with respect to

our business decisions within our territories. By making our own financial administration laws we fill gaps in our governance systems and demonstrate to our own people as well as others, including third parties with whom we do business, that we have and follow sound financial administration practices. This has benefits. One example is where a community has made a financial administration law they also have the opportunity to borrow through the First Nations Finance Authority to finance equity participation in completed independent power projects.

So building appropriate governance, in this case with respect to financial administration, can open the doors to finding the resources to support our Nations' vision and the vision of our leaders such as Chief Ralph Dick, my chief, to participate in the alternative energy sector.

While many of our First Nations are aware of their opportunities others are not fully aware of all that is going on in their territories sometimes because of a lack of capacity to assess referrals or are simply not consulted. This conference is an excellent way in which to help facilitate awareness and learn from our individual and collective experiences.

While there are a number of sectoral governance initiatives that our communities may look to as they develop their own road map to move forward beyond the *Indian Act* not all of the necessary roads have been built.

For communities that want to move beyond the *Indian Act* in a comprehensive way we still need to create that opportunity, where

Nations can focus on developing their own Constitutions and develop and implement their institutions of government and not spend their usually limited resources, both in terms of time and money, on interminable negotiations with Canada or BC. A framework needs to be created so communities can, at our own pace, and when ready, move away from the *Indian Act* without Canada or for that matter BC playing gatekeeper to our emancipation.

I hope to work with our Nations and with the Minister and our National AFN executive on developing such a legislative framework that would see Canada backing out of our affairs once a Nation has developed its own Constitution... a process that is grounded on the principles enshrined in the UN declaration and the promise of section 35 of the Canadian Constitution.

In order to assist our communities in their governance journey the BCAFN is developing a toolkit to help communities navigate the bends and potholes in the road to post-colonialism. The toolkit considers the opportunities that now exist but also highlights for our leaders and policy makers where the gaps still exist and where further work is required.

Finally I want to come back to the question of proper title holder. We cannot complete our governance reform until we address the proper title holder question. This is the reality. It is encouraging that our Nations are beginning to work through these issues with support of bodies like the BC Treaty Commission, the provincial government and, of course, our own PTOs.

In closing, First Nations' involvement as full partners in the BC economy is central to our plans for facilitating real change in our communities. For real change to occur in a meaningful and broad way, all our communities must go through their own process of local transformation, healing, rebuilding, call it what you may, our colonial period must officially end.

The process of change won't be led by the federal government, the provincial government or any other external organization. At the core it is a political process of change that has started with us. Change will be supported by the people who are directly and most significantly affected. This means the citizens of our communities, the business leaders who have a mutual interest in seeing stable and appropriate government and other Canadians.

Ultimately enduring and successful partnership between First Nations the Crown and industry will only be ensured when the issues of proper title holder combined with appropriate governance are resolved and access to land and resources secured. We must build on our success not look backwards but continue to look forward in ensuring we create stronger and healthier First Nations which in turn will ensure a stable and growing provincial economy as a whole.

And finally, in moving forward with governance reform we should never lose sight of the underlying objective. Participating in resource development, alternative energy and achieving business success is not the end in itself but is rather a means to an end. That end being

healthier and more prosperous First Nations' communities with our people enjoying a higher standard of living with practicing and thriving cultures.

Gilakas'la