



# **BRITISH COLUMBIA ASSEMBLY OF FIRST NATIONS**

***PRESENTATION TO THE 6<sup>th</sup> ANNUAL WESTERN CANADA ABORIGINAL LAW  
FORUM***

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**KEYNOTE ADDRESS  
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## **6th Annual Western Canada Aboriginal Law Forum**

Gilakas'la, Greetings, Elders, Chiefs, ladies and gentlemen; I would like to thank you for this opportunity to provide you with this morning's key note address as part of this 6<sup>th</sup> Annual Western Canada Aboriginal Law Forum which is convening in the territories of the Squamish, Musqueam and Tsleil Waututh Nations. I appreciate the opportunity to speak at this event. It is an opportunity to be reflective, and opportunity to connect and share ideas.

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 am sure there is nobody in this room who does not appreciate our rich history. Since time lost in memory our Nations were here and existed in sophisticated societies that were self governing and self sufficient. The colonial period, while just a blip along our time line as First Nations, has been devastating, however we are moving into a post colonial period.

I find myself as the Regional Chief of BC Assembly of First Nations during a time of significant change and opportunity. Your agenda and its range of topics are reflective of our Nations' current realities, how far we have come and where we are going. There is a lot of work, community development work, ahead of us to empower and strengthen our diverse Nations. We must establish a new reality in the lives of our people. We all have an important role to play during this period of removing the final vestiges of colonialism.

To this end, we truly have come a long way in the last fifty years... Fifty years ago Canada was a long way from answering the legal question as to whether or not there was still Aboriginal title in British Columbia. Fifty years ago we did not know the scope and extent of the Crown's fiduciary relationship with us as Aboriginal people in the wake of the colonial legacy and the assumption by the Crown of legal responsibility for our affairs. We did not know the legal extent of our Aboriginal rights. The Canadian Constitution had not been amended to address our Peoples' rights in section 35 and there were no First Nations in Canada that were recognized as 'self-governing' - there were no settlements of comprehensive land claims and no comprehensive or sectoral self-government initiatives. Fifty years ago our Provincial Territorial Organizations in British Columbia were in their infancy or did not exist at all. And, for the most part there was no economic development on any reserves in BC, save for a handful of mobile home parks in a couple of communities in BC. There was no Assembly of First Nations – no office of the Regional Chief. For the most part our political voice was dispersed throughout our Nations and compared to today we were not as organized.

Today, we are in an exciting period of change, a period of Nation Building or Nation re-Building – with opportunities our people did not have fifty years ago or could only dream of. This change has occurred due to leadership and political pressure supported by significant advances in the courts, establishing the legal principles you discuss here and that now guide and shape our relationship with other Canadians. In fact fifty years ago there were no First Nation's lawyers because prior to 1951 the *Indian Act* defined a "person" as "an individual other than an Indian." Ten years after and with changes to the *Indian Act*, Hereditary Chief Alfred Scow, C.M., of the Qui'Qwa'Sot'Enox Nation on Gilford Island near Port Hardy, became the first

Aboriginal person in BC to graduate from law school (UBC) in 1961, then to become a member of the Bar, and to be appointed to the Bench.

The lawyers in the 1960s and 70s who advocated for our rights were, therefore, predominantly non-Aboriginal. The money was not lucrative and many did it out of political and moral conviction. Fifty years ago there were no conferences such as this and, if there had been, the agenda would have certainly been shorter and far less complicated. Fifty years ago advocacy supported the basic recognition of Aboriginal rights and title. *Calder v. Attorney-General of British Columbia*, 1973 CanLII 4 (S.C.C.), [1973] S.C.R. 313, took four days at trial. Juxtapose this with the 339 days of trial in the *Tsilhqot'in v. British Columbia* [2007] BCJ 1700 or *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 which heard 374 days of evidence and legal argument.

A lot has changed in fifty years – legally and politically. But while some progress has been made socially in improving the lives of our people, there still remains significant distance between the quality of lives of our people and other Canadians. This despite the advances made in recognition of our rights through the courts... So we must ask “why is this?” ... And... “what can we do about it?”

There is no question much work remains to be done in advancing Aboriginal title and rights and improving the lives of our people. Not the least of which is actually having a court issue the first declaration of Aboriginal title in this province. But despite the work that remains in advancing our broad rights and title issues and getting governments on side, I am going to be so bold as

to suggest it is we, First Nations, who have the greatest responsibility to act on our opportunities – We are now in the driver’s seat.

Two weeks ago I was fortunate to have participated on a panel at the ninth United Nations’ Permanent Forum on Indigenous issues in New York. The big news at the session was New Zealand had declared its support for the Declaration, the United States saying that they have decided to conduct a formal review of the Declaration on the Rights of Indigenous Peoples with the expectation that they would sign and Canada indicating that they were taking steps to endorse the United Nations Declaration on the Rights of Indigenous Peoples in a manner that is fully consistent with Canada’s Constitution, laws and in a “timely manner”. The United Nations Declaration is, of course, an important landmark in the advancement of Indigenous Peoples’ rights globally. It is particularly important for those countries where Indigenous Peoples remain legally, politically and socially marginalized and where their actual existence is threatened by the state. It becomes very obvious when you participate in these Forums just how far First Nations’ people in Canada have come in terms of addressing our issues compared to other Nations.

While I felt proud of our accomplishments at the same time I could not help but feel somewhat guilty when it came to other Indigenous Peoples and how we represented ourselves as being in their same shoes. What did the Indigenous delegates think about Canada? For example what did they think when they heard that the Government of Canada spends over \$10 Billion on Aboriginal people in addition to the general government expenditure on Canadians, not taking into account provincial expenditure or the three billion dollars that our Nations generate in our own revenues?

I couldn't help but think that for these people the United Nations' Declaration probably means considerably more for their future where their rights are not recognized in their States' Constitution or where the courts simply ignore them or rule against their arguments and where there is very limited financial support. I can hear some of you thinking "What is she saying?" Is she saying she does not support the UN Declaration or that everything is perfect in Canada, or the courts have given us all that we need? Of course I'm not that naive. I fully support the UN Declaration and everything is far from perfect in Canada. The courts have not given us all that we need. But what I am saying is that we have opportunities and are demonstrating our success. Our situation is certainly a lot better than what some of our political leaders from across Canada would suggest and it is on this note that I want to turn to the issues that confront us today in BC. Issues that are as much about getting our people in a position to implement their rights and empowering them, as much as it is about advocating abstract legal concepts of Aboriginal rights and title.

We must work to ensure the people who actually live in our communities can benefit directly from the advancements that we have collectively made and which we can celebrate and be proud of.

As I sat in the General Assembly Hall of the United Nations, I also could not help but wonder what would the average person living in our communities think about the relative merits of the endorsement of the Declaration? What would it mean to them? For most of our people who live on reserves, I would suggest important legal covenants such as UN Declaration or even section 35 of the Canadian Constitution and the reams of Aboriginal title and

rights cases flowing from it, means very little as they personally struggle to make ends meet. As they try to make do in the backward political chaos of *Indian Act* government and the confused and contradictory relationships we still have with Canada as both colonial authority and a partner.

I have been trying, as I am sure many of you have been trying, to figure out what it is we need to do to empower and facilitate 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 enjoy their title and their rights. So that no one can argue the only people who benefit from the 'system' are those that get elected to council, their family, or those who work for the band or those who have chosen or have been forced to live and work away from our communities.

I would respectfully suggest that there is currently a large disconnect between the rights we have established and our ability to actually take advantage of our opportunities. We have to ask why? Ask why some of our communities are doing better than others - particularly where they have similar demographic and geographic profiles. The answer is, at least in part, due to leadership. In part it could be due to a community facing a crisis or an issue. For others it might be because of special relationships with third parties. In all cases I would suggest there is a level of understanding throughout that Nations' membership 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 needs to be done to translate Aboriginal rights and title into benefits on the ground we actually have to start in our communities with our people. Basic community development. 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 as I shall explain.

What I have learned in my 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 rights and title 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. Our own people, depressingly, often hide behind that reality to their own detriment. This is not their fault.

Many of our people are very unhealthy and still suffer from post-colonial trauma; a result of the residential school experience, the establishment of the reserve system, government defining citizenship, the historical racism and the marginalization of our economies. So how do we develop healthy communities with well-educated and well-rounded citizenry that is sufficiently beyond the colonial experience to be able to participate in referendums and vote out a system that is suffocating? It is a bit of a chicken and egg situation and this is why the work we are all involved in to support social change in our communities is so difficult and at times so unforgiving. But it is this basic community development that we must all embrace and take on the challenge with vigour... With conviction and based on principle.

When I ran for BC AFN Regional Chief I did so with my eyes wide open. I believe I was elected because there are many leaders across BC who are open to the challenge and are fighting to open the ‘door’ in their own communities to the opportunities we now have. I believe our leaders are concerned that despite the fact the door has now been opened, 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 takes money to mount a movement for social change and effect social change - it is not just about money - there will never be enough money. It will 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.

When we look at the level of resources available to our people both federally, 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.

In this province we currently have three Provincial and Territorial Organizations. The first established in 1969 was the Union of British Columbia Indian Chiefs to address the land question. The First Nations Summit was established in 1991 to also address the land question, ostensibly through treaty making, and thirdly the BC Assembly of First Nations part of the national Assembly of First Nations structure. As time has passed there is now considerable blurring between the functions and support for each of these organizations. Some First Nations belong to one; some two and some First Nations belong to all three of these organizations while some belong to none.

A few years back the leadership of these organizations came together and established something called the 'Leadership Council' that was supported by

the membership of each of the respective organizations. For some of us this signalled recognition that we were really coming together and planning our post-colonial strategy and how to collectively advance our Aboriginal title and rights. The advancements made in the duty of the Crown to consult and accommodate where there is a presumption of Aboriginal title has really forced, in a good way, the province of British Columbia to consider how the government can recognize our Aboriginal rights and begin sharing in natural resource wealth through Accommodation and Benefits agreements... What has happened in this regard over the last year has been very interesting and informative in our struggle for social change and how we organise politically.

Last year the Leadership Council and the Provincial government through their legal teams developed a proposed Recognition and Reconciliation Act that was soundly rejected by each of the three PTOs' membership. I believe the framework for reconciliation and recognition did not properly account for the on-going struggle at our community level and the reality that before we can walk through the door to a post colonial world we actually have to empower our communities and our people from the ground up. The failure of the Leadership Council and the Province to advance a province-wide framework for reconciliation and recognition that could be supported by the Chiefs precipitated a review of our provincial political institutions. A First Nations' Task Force was struck comprised of leaders representing the diversity of our province and this Task Force is preparing a report for our communities to consider on the best way to politically organize ourselves moving forward.

Personally I think that there is too much duplication of work among the three organizations. This duplication, combined with a desire by our leaders to

work together as more and more of us appreciate the amount of work we each need to do in our own communities in order to be able to walk through the post colonial door, means it is time to consider merging our political organisations. This will help us share our experiences, both good and bad, maximize our limited resources and help each other so that the bulk of the resources can be dedicated to community development on the ground. It will be interesting to see what the Task Force proposes and how the chiefs in assembly respond to the report. I look forward to the debate.

I was elected on a platform of empowerment and community development. Our plan focuses on four key and interrelated areas. All are based upon a fundamental principle of community empowerment that assumes that at some point every community in our Province will be voting to walk through the door to a post colonial world. That each will need to develop a strategy, an exit strategy, to move beyond the *Indian Act*.

The first part of the plan is, not surprisingly, 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. All the academic work and experience shows that if our Nations are to reach our full potential and maximize our opportunities we need to govern ourselves appropriately. Without it there is too much political and legal uncertainty, leading to wasted energy and money. Energy and money we don't have for fights often fought locally. Basically the dysfunction that plagues *Indian Act* band offices across the country needs to end.

At the BC AFN, for our part as a political organisation that supports our constituent members, we are developing what we are calling a “Governance Engagement and Self-assessment Tool” to assist communities in developing appropriate government as part of a social change movement and to stimulate discussion; a discussion that needs to take place around our Council tables, in staff meetings and, most importantly, at band meetings and around the kitchen tables of the citizens in our communities.

Our plan also includes working in the area of fair lands and resource settlements. Our communities need own source revenue. There are now opportunities for revenue sharing agreements and accommodation agreements that you are discussing at this event. We need to work towards all our communities having access to resource revenue sharing. Available to all and not just those that can afford the lawyers 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. We need to share and help communities that may not have as easy access to the resources needed to begin to benefit from their land and resource rights.

Finally, at the BCAFN we are focussing on the individual because the collective is only as strong as the individuals that make it up. 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 resources 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 the 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 the post-colonial door. If they do not understand what is being asked of them, or why, they will inevitably vote 'no' to change.

This is an important point that is often overlooked. As First Nations in a wardship relationship with the Crown – part of the colonial legacy - we can't remove the remaining shackles of colonialism until our people vote in favour – until and unless we work together to ensure that we all understand and are a part of the positive social change. 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 problems we have as being both wards of the state and also peoples with an inherent right of self-government.

Those of you who work or live in our communities know what I am talking about. You recognize how challenging the local politics and the reality of our community life can be. Some of you have moved away from your community. You may go back occasionally. To visit relatives, to participate in cultural activities. Maybe to work? In many cases you probably left because of work and the opportunities that now exist for our people away from home.

But as Indigenous People we all have a home ...we all have a Nation...and we all have a language and a unique culture. When many of us move to the city or take on roles outside of our community, including the professional role as a lawyer or a consultants or working for other governments, we are still participating in the building of a better future for our people but do so within a safe distance away from the reality and often poverty of our reserves: within the safety net of our professions and the institutions that we work for. While some pundits may criticize us whether as politicians, lawyers or consultants that we are now part of an 'Indian industry' enriching ourselves on the backs of the suffering of our people who live back home, I do not subscribe to this condemnation of our collective aspirations to better the lives of our people.

Having said that it is not hard to see why the pundits, perhaps egged on by the dispossessed in our communities have a perception of us as elites. We need to overcome this perception by ensuring our Nations are supported in their rebuilding. We all need to think like a community development worker first.

For the First Nations' people in this room I don't need to tell you how we all share a responsibility to give back to our people and we all do so in different ways. For those of you who belong to a community consider what it is that you are doing or could do to assist your own community in walking through the door to a post-colonial world? Perhaps not just in advocating Aboriginal rights and title in court but how you can influence opinion around the kitchen tables of your reserve? Regardless of local politics and family divisions, in what ways can you safely work with those of like mind to empower your fellow citizens to move beyond the stagnation of *Indian Act* reality? I guess I am asking you to become part of a growing movement for social change that our people are demanding and that is founded on implementing our hard fought struggle for Aboriginal rights and title so new opportunity is not lost or only benefits a few. When citizens of one community begin to ask why another community is doing better than their community our citizens will want answers and will want us to work together. Success begets success.

For those of you that are not First Nations you too continue to have a significant role in supporting our people passing through the post-colonial door. Ask yourself what is it that your company, your business or your legal firm and what you individually are already doing or can do to assist in community development work. Many of you are tireless and are passionate about what you do and spend hours working on our issues. For that we thank you.

So I ask what can I, as Regional Chief, do politically to help channel your collective compassion and your energy to support our community development work so that our resources and our time is maximized. So that

we improve the chances of success for all our efforts and to make a significant difference in more than just a handful of communities as we move forward?

I also challenge our leadership. We have many pulls on our limited financial resources. However, in some of our communities own source revenues are finally being generated so I ask, if we expect the other governments to support our post colonial ambitions...are we dedicating enough of our own resources to kicking down the post colonial door down? There is no better investment a community can make into its future than investing in social change. Sometimes, perhaps unknowingly, I think we simply perpetuate a neo-colonial system through adopting policies and directions that do not support self-sufficiency and therefore prosperity? We sometimes copy the coloniser.

What I can say with confidence is that communities that have kicked down the post-colonial door are doing better than those who have not. Sure they have struggles but they are different struggles...struggles that are fought with the confidence of empowerment and the ability to make decisions and take responsibility for one's own actions.

The very fact that all of you are here today and most of you have chosen a career in Indian country to support the advancement of our Peoples' quality of life is honourable. And I include those of you that work for non-Aboriginal governments. It is our job as politicians to ensure the space is available for you to excel, to champion our interests and to continue to improve the lives of our people. Not just to be equal but to excel.

So in closing let us recognize the significant ground we have made in the last fifty years, 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.

As our National Chief has stated, "It is OUR Time!"

*Gilakas'la.*