



BRITISH COLUMBIA ASSEMBLY OF FIRST NATIONS

***PRESENTATION TO THE FIRST NATIONS PUBLIC SERVICE
SECRETARIAT'S SYMPOSIUM FOR BC FIRST NATIONS—SKILLS
BUILDING FOR GOVERNING***

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Richmond- October 29, 2012

Gilakas'la, Greetings, Elders, Chiefs, ladies and gentlemen; I would like to thank you for this opportunity to speak to you today at the First Nations Public Service Secretariat's Symposium for BC First Nations: Skills Building for Governing, convening in the territories of the Squamish, Musqueam and Tsleil Waututh Nations.

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 Tim, in my village of Cape Mudge and where I also serve as a member of Council.

Today we have an emerging and growing First Nations' Public Service that exists to support our Nations to both govern and to provide programs and services. Programs and services either provided on behalf of our governments or on behalf of other governments. The First Nations Public Service Secretariat exists to strengthen and enhance capacity in First Nations' communities and organizations, on an individual and Nation level. With this broad objective in mind, we are here to talk about the road ahead – to drive forward the project of Nation building and rebuilding.

The work that we are all involved with is so important. Our Nations are truly in an amazing period of transition. For years suppressed under colonial administration, our peoples are beginning to re-establish ourselves as we move towards self-determination – and self-government. After years of litigation, negotiations and lobbying, we now find ourselves with the legal and political space to actually begin to

define our own future as strong Nations – Nations reborn from the ashes of colonialism.

The Canadian Constitution, and with it section 35, that recognizes and affirms our Aboriginal and treaty rights is this year 30 years old. There are now over 170 court cases in our favour defining those rights. The United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) is now five years young, a document that had been in the works for over 25 years.

Many of our Nations are now beginning to generate their own-source revenues through emerging economies that, increasingly are, and will, support the transformation from despair and poverty to a time of empowerment and prosperity.

But while the opportunities are truly here, there are, of course, many challenges. Nation building and rebuilding is no easy task. Change is never easy and translating rights so hard fought for into practical and meaningful benefits on the ground in all our communities, not just some – where no community is left out or behind – is now our collective responsibility.

It is not easy to make the transition as a subjugated peoples and to walk through, what I like to call, the post-colonial door. The colonial legacy is a heavy burden – the poverty, the health and social issues, the breakdown of our institutions of social order and the general dysfunction that still plagues many of our communities – basically the crippling legal and economic dependency of the *Indian Act* system and

the impoverished notion of governance under that system. But despite this reality we are having success and taking back control of our own destiny.

To support our Nation building or rebuilding efforts at the BCAFN we have organized around four critical and interrelated pillars: firstly, the need for strong and appropriate governance; secondly, the need for fair access to lands and resources – particularly important in our province where there are, for the most part, no treaties, and; thirdly and fourthly – focussing on the individual – the need for improved individual health and education.

At some point, each Nation, if it has not already done so, will be developing its own 'exit strategy' to get out from under the *Indian Act* and from Canada's control. Each Nation will need to plan and rebuild its own governance structures from the community up. This is challenging work – fundamentally it is community development work – which requires leadership and the dedication of resources and time. And we do not have time to delay.

Somewhat troubling during this transition period as we move away from governance under the *Indian Act*, is that Canada is attempting to design our post-*Indian Act* governance despite the need for us to undertake this work ourselves. This is problematic and counter-productive – however, well intentioned. At the Crown/First Nations gathering last January we told the Prime Minister this approach was "neo-colonial" and strongly warned against it. This is why we must organize and take control of the governance agenda. We must take

responsibility for – Nation-by-Nation – our own governance reform – and speed up the transition from the *Indian Act* in accordance with the principles of the UNDRIP.

As a result of First Nation led initiatives there are today already a number of options for Nations to engage in sectoral governance initiatives that strategically begin to remove the application of parts of the *Indian Act*. For instance, 25% of the *Indian Act* can be removed through the Framework Agreement on First Nations Land Management where a First Nation makes its own land code in respect of land management. Across Canada, 37 Nations now have Land Codes of which 22 are in BC and we are working on ensuring all those that want to develop a Land Code can (11/25 on list).

Or with respect to financial administration a First Nation can make its own financial administration law under the *First Nations Fiscal and Statistical Management Act*. Or another example from BC is the First Nations education initiative where a First Nation can make laws in relation to education and again remove parts of the *Indian Act*.

There are also opportunities for our Nations to negotiate more comprehensive governance arrangements beyond the *Indian Act* although these options are very limited. Currently there is no simple mechanism for a community to undertake the work to become self-governing that does not involve significant expenditure of time and money in complex negotiations with Canada which, may or may not, ultimately be successful.

What we need is an efficient and legally appropriate mechanism that supports the transition from the *Indian Act* to self-government. We need an appropriate federal legislative framework for Canada to back out of our affairs in a controlled way and in a way that recognizes the process for change must be First Nations' driven and legitimate in the eyes of our citizens.

Where a First Nation is ready, willing and able, that Nation should have the option to move beyond the *Indian Act* towards full self-government, implementing aspects of the inherent right, without Canada acting as a 'gatekeeper', where Canada can say "no" or worse, simply not negotiate.

Various commissions and committees, including the Royal Commission on Aboriginal Peoples and the Penner Committee on Self-Government recommended that Canada enact self-government "recognition legislation". In fact, self-government legislation has been introduced into Parliament in the past but has never been supported by the government of the day or widely endorsed by our leadership.

However, it is an idea whose time has come – both legally and politically. As many of you are aware for the past three years, with the support of the chiefs in assembly – although I know it does make some of my closest colleagues and friends anxious – we have been working with our allies in the Senate – and we have many – to develop and introduce a private member's Bill that would require Canada to recognize a self-governing First Nation.

The concept is simple. Where, at its sole option, an *Indian Act* band or group of bands, develops a self-government proposal (including that Nation's Constitution), and where the citizens of the Nation have ratified that proposal, Canada would be required to "recognize" that Nation. By removing control of the self-government agenda in favour of our Nations, Canada would be removed as a gatekeeper. The Bill would require Canada to work with a recognized First Nation as a self-governing entity and to negotiate fiscal transfers on that basis.

Once introduced into the Senate, which could be soon, there is, of course, no guarantee the Bill will become law in this Parliament – odds are it will not. The Bill is not government sponsored nor government supported.

It will, however, provide a substantial and real alternative to the legislative agenda that Canada is proposing for us. Following introduction, the Bill will need to be amended based on the further feedback we receive from our Nations and from others and following the committee hearings. Once the Bill is in a form that we are comfortable with we will need to lobby hard for it to become law. Ultimately, on the strength of our collective efforts, it eventually will.

One of the biggest challenges we face in moving forward, and that I hear regularly when presenting before Parliamentary Committees and elsewhere, is the question "Can they actually govern themselves?"... "Do they have the capacity?"... To which I reply, I have no doubt we can and will, as evidenced by the fact many of our Nations already are. We need to build on this success.

It is, of course, not realistic to expect that many of our smaller communities, for the most part *Indian Act* bands, would be able to reinvent themselves or want to assume jurisdiction over the full range of subject matters that ultimately need to be governed or that we, as First Nations, have the right to govern. For example, it is not feasible that each community would want to or could design curricula, certify teachers or set standards for education. Some form of broader institutional support is required. This is why in BC with respect to education we established a First Nations Education Steering Committee (FNESC) – a body that Christa Williams helped establish before moving to the FNPSS.

What is important is that as our Nations take on more governance responsibility and exercise their rights, there is the appropriate institutional support and, where so desired, the ability to delegate authority to other bodies.

There are now, as most in this room are well aware, a number of national First Nations' institutions providing support to our Nations. These include the First Nations Financial Management Board that sets standards for financial administration and the First Nations Tax Commission which oversees the levying and collection of property taxes. There are others dealing with sectoral governance matters such as the First Nations Lands Advisory Board.

In addition to First Nations' institutions there are also now professional organizations, such as the Aboriginal Financial Officers Association, that

provides professional training and designations for financial officers, the First Nations Tax Administrators Association, the Indigenous Bar Association and so on.

To help to sort through the incredible amount of work that is on-going to rebuild our Nations in BC, and to begin to "connect the dots," at the BCAFN, one of the initiatives we have undertaken and completed is the development of a Governance Toolkit. The toolkit is in three parts.

In Part One, *The Governance Report*, we set out to describe what each of our Nations in BC are doing with respect to governance reform and to locate that work within the context of the current legal and political framework in which post-*Indian Act* governance is being established along the continuum of governance options.

Part Two is the *Governance Self-Assessment* that is in two modules. Module One can be used to evaluate the effectiveness of a Nation's governing body and Module Two the effectiveness and capacity of its administration. The evaluation is an important exercise that any Nation can undertake to identify what is working well and what not so well. Part 2 is still being piloted and refined and will be released on next month on November 26th.

The third part of the toolkit is ***A Guide to Community Engagement***, written from a community development perspective that recognizing the challenges of de-colonization, it can be used to assist a Nation to begin or continue discussions with its citizens about the importance of

strong and appropriate governance and options for governance reform, including moving beyond the *Indian Act*.

When looking at Part Two, the Self-Assessment, and in particular the module for the administration, it is really designed to help a Nation's public service meet the growing demand for excellence in management and administrative practices and is very much complimentary to the work of FNPSS. First Nations completing self-assessments such as the one we have developed at the BCAFN will now have the benefit of organizations such as the FNPSS, AFOA and FMB to help further strengthen their management and administrative systems and practices. This was not the case 20 years ago.

The BCAFN survey and guide for the self-assessment of the Administration looks at five areas of key management responsibility:

1. Building a Strong Administration

Addresses the structure and management systems needed to build a strong administration. This includes human resources and performance-management systems and physical environment and information-system infrastructure required to support the governing body in performing its functions and meeting its goals and objectives

2. Supporting an Efficient Law-making Process

Addresses the systems and processes needed to support the governing body in exercising its law-making and decision-making functions.

3. Delivering Quality Programs and Services

Addresses the systems and processes needed to design and deliver high quality programs and services and achieve the community's vision and the governing body's goals and objectives.

4. Managing and Allocating Resources Prudently

Addresses the effectiveness of the administration in managing and allocating resources to meet the needs and interests of the Nation.

5. Successfully Managing Change

Addresses the effectiveness of a Nation's government in responding to change. Reductions in funding, service cutbacks and resource developments are among the many changes Nations regularly face. This is particularly important for Nations who are undergoing significant change in the way their offices operate as a result of taking on increasing program and service delivery on behalf of other governments (Canada and BC) or as a result of efforts to expand their jurisdiction and design and deliver their own programs and services under this jurisdiction.

Unfortunately, at this time when we need to develop our capacity the most in order to capitalize on our new opportunities, there is a very real risk that the existence of many of our relatively new and necessary institutions and professional organizations are being threatened. This is because they have no or limited means to survive on their own and rely almost exclusively on federal grants.

As you know, there has recently been a wave of federal funding cuts to First Nations organizations during this period of national austerity. All

provincial Aboriginal organizations have been cut back, the National Centre for First Nations Governance is on life support with no more federal funding after March 31st next year, the FFPSS has been gutted, First Nations Statistics is being wound down having been surgically removed without consultation from the *First Nations Fiscal and Statistical Management Act* in the previous omnibus Budget Bill. And so it goes on.

Over time, as our Nations increase their own-source of revenue by gaining fair access to lands and resources, including revenue sharing, we will be in a better position to support our own institutions. However it is a bit of a chicken and egg situation. To grow our resources and develop economies we need to develop capacity – but to develop capacity we need the resources.

Consequently we need to ensure Canada provides the necessary supports we require for our Nations and the institutions that support our Nations. This is both in our and Canada's interest; although at times one wonders whether Canada appreciates this. We also need to support our own institutions to the extent we can today. It is an investment in our own future – to support institutions such as the FNPSS and others that provide for professional development.

As well, we need to ensure that we have students enrolled in quality public administration programs at Universities where courses are offered in First Nations' public administration. Our students need to learn the skills and best or wise practices that are applicable to any

public service, but also need to know the legal framework of First Nations' government along the evolving governance continuum. We need to do all we can to ensure a strong public service.

Over the coming years our governance will certainly be tested as the debate over major industrial development projects within our traditional territories heats up. Projects such as the Enbridge and Kinder Morgan Pipelines, the Site C dam, and the Prosperity mine are of great concern to our peoples. In the face of these very real threats to our communities and traditional territories, the need for strong and appropriate governance has never been so great.

In a time when the federal government is cutting back funding to First Nations and First Nations' organizations, we need to remain steadfast and passionate in communicating that self-government and developing governing capacity are priorities for our Nations. Indeed—investing in strong and appropriate governance is an investment in all other priorities. Developing a professional and quality First Nations public service is an integral part of that investment.