

Investing in Canada's Future: The Next 150 Years

From: Department of Justice Canada

Speech

Notes for an address by

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Thank you for that kind introduction. Kim [Baird, Former Chief, Tsawwassen First Nation; Member of the Board, Public Policy Forum; and Master of Ceremonies] and I have been friends for many years.

First of all, *gilakas'la*; bonjour, tout le monde. It's my incredible honour to be here to speak to this policy forum. I just want to acknowledge Elder Commanda and everyone that's here: chiefs, leaders, matriarchs, ladies and gentlemen, thank you for the invitation. And I want to acknowledge my new parliamentary secretary, Marco Mendicino, who is going to be working with me very closely when it comes to Indigenous issues. Again, I'd like to thank the Public Policy Forum for inviting me to speak here. And I would also like to acknowledge the traditional territory of the Algonquin people, whose ancestral lands we are gathered on.

I'm pleased to be here this afternoon, and certainly it is a testament, given the numbers, to the increasing recognition of the role that Indigenous peoples in Canada are playing, and will play, that so many of our country's leading thinkers on issues of public administration and governance are eager to come and discuss what reconciliation and inclusive growth can mean for First Nations, Métis, and Inuit peoples and all Canadians. I also want to thank the National Aboriginal Economic Development Board and the National Aboriginal Capital Corporation for partnering with our government on this important event. It is really good to see a lot of familiar faces here, many from the west coast of British Columbia, old friends and colleagues.

So, many of you who have heard me speak before have heard me discuss the issues that I'm going to touch on today in other venues, in particular when I was the Regional Chief of the BC Assembly of First Nations and as well, on the council in my home community of We Wai Kai. While I may be in a different role, my perspective on Indigenous nations and rebuilding has not changed. As a country, we know we have much work ahead of us in moving forward to ensure that Indigenous peoples can take their rightful place within Confederation. And there is no question that Indigenous peoples are in a tremendous period of transformation, of transition, rebuilding their nations.

Today's session, "Expanding the Circle," is particularly meaningful. It speaks to how Indigenous peoples have not been included, at the same time negatively impacted, in much of the evolution of Canada. "Expanding the Circle" embodies the need for Canada's society and economy to expand to provide opportunities for more Indigenous communities to become prosperous, healthy, and culturally thriving.

For far too long in Canada, colonial legislation, policies, and attitudes have worked to hinder the economic potential of Indigenous nations. For far too long, First Nations, Inuit, and Métis peoples have been excluded from the opportunities that most Canadians take for granted. To me, today is an opportunity to talk about how our government's commitment to a true nation-to-nation relationship with Indigenous peoples will enable that expansion.

At the same time, through the work that we are doing – work that is imperative to the future economy and society of Canada as a whole – we acknowledge the economic dimensions of Aboriginal title and rights, and recognize the need to build a collaborative climate of predictability and clarity. It is an opportunity for me to share with you some of my thoughts on our collective journey, in particular, as we reflect on Canada 150. While I recognize that many Indigenous peoples feel that there is little to celebrate with regard to the past 150 years of our country's history, I truly believe that there is optimism and hope for the next 150 years. Let us not forget that this year also marks the 35th anniversary of the adoption of the Canadian Charter of Rights and Freedoms, and section 35 of the Constitution Act, 1982, both incredibly important in charting the path for the next 150 years.

As a government, we recognize that the fundamental purpose of section 35 is reconciliation of the prior occupation of Indigenous peoples with Crown sovereignty. And we are fully committed to fulfilling the constitutional promise made to Indigenous peoples in 1982. And personally, I would add that my cultural teachings and my previous work have always spoken about being optimistic. And this optimism is not just tied to my current role and the constitutional provisions just cited, but it is an optimism rooted in the resilience and work of Indigenous peoples who have sought justice through reconciliation for generations. Accordingly, as we look back – but more importantly look forward – this year marks an especially fitting occasion to envision the role that Indigenous nations will have, and indeed must have, in Canada, where the outcome of true reconciliation must be to ensure that Indigenous peoples are finally accorded the opportunity to fully participate in the economic and social fabric of our country.

So, in keeping with the conference theme and focus, I will speak to how, in my view, reconciliation will support economic growth for First Nations peoples. But before I do, I need to say something about the commitments our government has made and the pace of change. Rightfully so, a lot has been made of the commitments we have made to Indigenous peoples and to resetting the relationship with Indigenous peoples in this country, a principled relationship based on the "recognition of rights, respect, cooperation, and partnership."

So our government is now some 15 months into our mandate, and there are those who have questioned the strength of our commitment to Indigenous issues. Let me say this: Our commitment is as strong as ever. Our Prime Minister has made it very clear that we need an all-of-government approach based on recognition of Indigenous peoples and their rights to address the colonial legacy in a substantive and meaningful way that will be transformative. We have been laying the internal groundwork to advance this shift, and we will be taking more publicly visible and bold action. In December, Prime Minister Trudeau announced that he will be establishing a new and important working group of ministers who will be tasked with reviewing federal laws, policies, and operational practices related to Indigenous peoples and their rights. It is anticipated that this working group will work with a broad range of partners and experts – and, of course, with Indigenous peoples and communities – to assess and recommend what statutory changes and new policies are needed to best meet our constitutional obligations and international commitments to Indigenous peoples.

As some of you have heard me say before when speaking about reconciliation, we should remember the words of the late Nelson Mandela, who, reflecting on his own country, stated that – and I paraphrase – beyond the necessary healing and truth telling, reconciliation actually requires laws to change and policies to be rewritten. By making these systemic shifts, we will be setting ourselves on a new path and course which breaks from past patterns and secures a new future for Indigenous peoples and all Canadians. As a starting point, there is a need to take a principled approach to the review of laws and policies based on the recognition of Indigenous peoples and their rights. To this end, the United Nations Declaration on the Rights of Indigenous Peoples provides a framework for our reconciliation efforts. And by implementing it, we can create the space for real and practical shifts in the economic, social, and human well-being of Indigenous peoples across Canada. The Declaration has been, and will continue to be, instrumental in informing our work as we develop a Canadian framework for reconciliation rooted in our unique constitutional and legal structures, which I view as the strongest way to ensure the dignity of Indigenous peoples and thriving communities.

As I've said before, and as anticipated by Article 38 of the United Nations Declaration, implementing the United Nations Declaration will require a set of new laws, policies, institutions, structures, and patterns of relationships that fit together and acknowledge and integrate Indigenous knowledge, perspectives, and legal traditions. Our government is committed to undertaking this important work here in Canada, to ensure the necessary mechanisms are put in place to actually do it. It will not be easy, and at times it will be contentious. This is because deconstructing Canada's colonial past, the last 150 years, requires both the federal government (and our provincial partners, where appropriate) and Indigenous peoples and their governments to be self-reflective, ask some incredibly difficult questions, and, more importantly, come up with solutions to the challenges that in the past have seemed to be too insurmountable to overcome.

For example, given that this forum is speaking specifically to First Nations, let us consider for a moment the interplay between the United Nations Declaration and the Indian Act. The UN Declaration points us to how fundamental the work of nation rebuilding with Indigenous peoples is as a critical part of recognition and reconciliation. Accordingly, this must be a central part of our work. Two of the most important articles, in my view, of the Declaration are Articles 3 and 4. Article 3 states, "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Article 4 states "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal or local affairs, as well as ways and means for financing their autonomous functions." In stark contrast to the Declaration, the Indian Act imposes a system of band council government. Obviously, on the face of it, to have a federal statute such as the Indian Act determining the political status of a group of Indigenous peoples is contrary to Article 3 and 4 of the Declaration.

Another example of how the Indian Act is at odds with the Declaration would be Article 33, which speaks to Indigenous peoples determining for themselves the membership of their nations. Yet, in Canada, only those Indigenous nations which are recognized as self-governing truly determine their citizenship. For persons that are constitutionally recognized as Indians, this represents still only approximately 40 former Indian Act bands, including Tsawwassen, which my good friend Kim Baird is a member of. So, for all other First Nations, everyone else who is not self-governing, the Indian Act continues to impose a system of government and rules. The challenge is for each of the nations to truly self-determine how they are going to govern themselves, how they are going to organize, and who they are.

Fundamental problems of the Indian Act system from a recognition-of-rights perspective aside, and speaking from a pragmatic one of supporting economic development and growing Indigenous economies, it is very clear that governing Indians and lands reserved for the Indians under subsection 91(24) of the Constitution, separate and apart from other Canadians under the paternalistic Indian Act, has contributed to the lack of economic activity on reserves. Indeed, the very limitations of Indian Act reserve-based government that hindered the ability of First Nations to develop economies on reserve lands are now the same impediments to engaging with industry and businesses off reserve within the broader traditional territories, and therefore impacting the broader economy. The Indian Act is not an appropriate framework for governance for First Nations people, nor for any people, for that matter.

With respect to on-reserve management and administration as part of the transition to self-government, thankfully this is changing, but too slow and perhaps not evenly. Over the past 30 years – again, as many of you in this room who were involved in many of the First Nations-led governance initiatives are fully aware – there have been a number of attempts to at least improve some aspects of governance on reserve. And here I'm not just thinking about the more high-profile modern treaties or self-government arrangements, but also sectoral governance initiatives such as the First Nations Land Management Act or the First Nations Fiscal Management Act. With respect to the FNLMA, in my previous life I had the honour to be elected to the Lands Board, given that my home community has a land code. I am also very well aware of the Fiscal Management Act and the importance of the initiatives to strengthen the ability of First Nations to raise revenues, as well as to borrow monies on the bond market, and generally establish sound financial administrative systems. The roles of the First Nations Finance Authority, the Financial Management Board, and the First Nations Tax Commission are very critical. And, in my opinion, there is a need to consider how we can support additional Indigenous institutions that support nation rebuilding.

But here is the challenge, as I see it: While there are a number of very important First Nations-led governance initiatives, their foundation in terms of core governance is still the Indian Act. They are all initiatives that have the band as established under the Indian Act as an imposed system of government at their core. Further, they really only address a small amount of reserve lands that were historically set aside for Indians and do not deal with shared, collaborative, or consensus-based decision making or multi-level governance beyond the reserve boundaries. To be clear, what I am saying is not to in any way diminish the importance of these initiatives or the advancements that have been made to develop strong and appropriate governance for the communities that have set them up. On the contrary, what I am saying is that, if we are to get rid of the Indian Act, we need to determine how First Nations transition away from band government to something which is reflective of the proper title and rights holder, Indigenous modes of governance, and legal traditions, which is truly an expression of self-determination, whether those communities are part of a historic treaty or whether they have not entered into a treaty.

Again, to be clear, the Government of Canada cannot do this. It is not appropriate, nor is it the role of the Government of Canada, to determine, impose, or direct what these Indigenous modes and systems of government should be. Only Indigenous peoples can determine their institutions and shape their future. What I can say, however, is that the government can no longer be an obstacle to nation rebuilding by imposing a system of government through instruments such as the Indian Act. So, if we are to reset the relationship based on recognition, this is one of the fundamental institutional challenges we face and will need to address in determining a path forward.

While we may all now agree that we need to move away from the Indian Act towards self-government – and I do not need to tell anyone in this room what a challenge that has become, especially given that for some the Indian Act has become entrenched as a part of life – in finding the path to self-determination that includes moving away from the Indian Act, the reality of our post-colonial transition to date has been that, short of a court saying Indigenous peoples have the right over land or the right to govern themselves, Indigenous peoples have had to negotiate self-government with the Crown and then, community by community, vote to remove the government's paternalistic role in their lives. This approach has been slow, marked with adversarialism that often runs contrary to reconciliation, and is not nearly as effective, principled, or collaborative as it could and should be. No other segment of Canadian society has had to decolonize and then go through this process to establish basic structures of governance, to create tools for economic and social development.

So, in terms of the review of laws and policies, it is my expectation that we will start with those policies that speak to the fundamental principle of recognition and that reflect our unique legal situation in Canada, section 35. Through recognition, we will create an environment where the real work of nation building and rebuilding and reconciliation can advance in significant and innovative ways. For example, this means looking at the comprehensive claims policy, a series of policies and mandates dealing with land matters, as well as the inherent right of self-government policy that deals with governance matters. We will also be looking at existing legislation that applies to Indigenous peoples with an expectation that there will be significant changes to some of that legislation, taking into consideration of course the need to continue to support federal legislation that was jointly developed with Indigenous peoples.

Clearly, as we move forward, we should build on our success, on your success, and what we have learned, both in terms of governance and of establishing effective mechanisms to support economic development on reserve. We need to make more opportunities available to communities that are ready, willing, and able to move forward. For there to be reconciliation, and for the transition to be transformational and enduring, communities both individually and collectively as peoples need to self-determine their governing structures and institutions and completely embrace Articles 3 and 4 of the Declaration and what is meant by the inherent right of self-government as protected under section 35.

As we move forward, in my opinion, we also need to give more consideration to how we support Indigenous-controlled institutions that advance nation rebuilding so that it is Indigenous peoples that govern these institutions with a vested interest in the outcome of the work they do and the decisions they make. Nation rebuilding is the real work ahead of us, ahead of all of you: the foundational work, based on recognition, where Indigenous nations are providing their own proposals or solutions for how they seek to organize and be recognized and where the role of the federal government is to support that work and move away from its current role of administering Indian reserves for First Nations.

As we implement the Declaration, we need to look to the lands and resources that Indigenous peoples have rights to and that can further support their economies and their ability to raise money to provide programs and services to meet the needs of their citizens. We need to consider what the courts have referred to as the inescapable economic component of Aboriginal title in *Delgamuukw*, and how we can broaden the applicability of that concept to the ancestral lands of our nations.

Meanwhile, as we look to develop new tools and mechanisms with respect to the relationship, governance, access to lands and resources, and the new fiscal relationship, we also have to ensure that the pressing and of course immediate health, social, and education needs are also being addressed. It's somewhat of a Catch-22. As the relationships around governance, land, and fiscal matters between the

Crown and Indigenous peoples are dealt with, more opportunities will be created. But without healthy or educated citizens in Indigenous communities, the ability to act on those opportunities can and may be hindered. There are basic needs that must be met now: clean water, safe housing. There are issues of suicide, children and families that must be addressed. We do have parallel work to do. But moving forward, we need leadership, vision, and goodwill. And, of course, we need trust, which is perhaps the hardest to come by, given the colonial legacy. But because I know that there have been successes, and I know that there are good people like my colleague and friend, the Minister of Indigenous and Northern Affairs, Carolyn Bennett, that are truly committed to reconciliation, I have the confidence that we can finally meet the great challenge of our generation that has for so long remained quite elusive for so many.

Change is truly occurring, but of course we are not going to solve all of the challenges facing Indigenous communities overnight. For some First Nations, the transition will happen relatively quickly if the mechanisms for the transition are put in place, as we have seen in communities that have already begun to rebuild their governing institutions, and in some cases where a new generation of First Nations people has never known life under the Indian Act. For some communities, however, it will take a little more time than others to rebuild, and before there is comparability in social indicators and outcomes. In some cases there are challenges of remoteness and geography; in others, there is the question of size and the need for aggregation and cooperation, where there is a need to look beyond the nation, and for nations to work together.

What we can do as a government – based on an approach founded on recognition and regardless of the nation's current situation – is to set our country on a path that cannot be reversed, and where the systemic limitations to change that is reflected in laws and policies are removed. This is a new vision for our country. And while we may not have all of the answers as to what an approach based on recognition will mean in all cases, nor is it likely that every step we take in this transformational time will be perfect, what is certain is that the vision of reconciliation based on recognition will change our country, and for the better. It will create the space where colonialism and paternalism give way to recognition, responsibility, and opportunity, and where, working together, we can develop solutions and build a future jointly.

So, to conclude, Canada's economy and First Nations and our collective future are intertwined. It is essential we undertake this work of reconciliation that will enable us to build a future together. In expanding the circle, clearly, if we want to unlock our collective social, cultural, and economic potential, it is needed. Personally, as a proud Kwakwaka'wakw woman and an incredibly proud Canadian, I am optimistic. But, at the same time, I know the challenge that is ahead of us. I firmly believe that the recognition of Indigenous rights and economic growth are not mutually exclusive. To the contrary, I believe that reconciliation founded on recognition is the sure path to economic growth, not just for First Nations, but for all Canadians. Evidence clearly shows that, where governance reform has been successful, economic opportunity has followed. And as I have stated before, unlocking the economic potential and business success of First Nations is not the end itself, but rather the means to an end, the end being healthier and more prosperous First Nations communities with our peoples enjoying a better quality of life, with practising and thriving cultures. As we reflect on 150 years of Confederation, and as we look forward to the next 150 years, we must never lose sight of this objective. And I look forward incredibly to doing this work together. Gilakas'la. Thank you very much.