

Opening Remarks at "Raising the Bar: Indigenous Women's Impact on the Law-scape"

From: Department of Justice Canada

Speech

Notes for an address by:

The Honourable Jody Wilson-Raybould, PC, QC, MP
Minister of Justice and Attorney General of Canada

Ottawa, Ontario

October 30, 2018

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Gilakas'la. Good afternoon.

Before I begin I want to acknowledge the traditional territory of the Algonquin people. I also want to express my thanks to the Public Policy Forum for organizing this event, and for inviting me to say a few opening remarks. It is truly an honour to be here with all of you, and, in particular, with such leading Indigenous women scholars, authors, and thinkers. I see many friends, colleagues, and peers are here today, and I always find it a source of enlightenment and energy to be in such company.

The challenge of "Raising the Bar", of transforming "Indigenous Women's Impact on the Lawscape", cuts to the core of the past, present, and future of this country.

Indigenous women have had experiences of the Canadian legal order like no other peoples – including that of being invisible. Throughout Canada's history, in various ways, Indigenous women have not been seen by the Canadian legal order. Sometimes this invisibility has been express, including not having basic political, legal, or economic rights. This has included being deprived of some of those rights that have been held by Indigenous men, or non-Indigenous women. Sometimes, including more recently, this invisibility has been through how our legal order perceives, treats, and responds to the actions, claims, and realities of Indigenous women and girls – including experiences of violence.

There are many forces and factors that have contributed to this invisibility. A powerful one has been the effects of colonialism on Indigenous legal orders. This denial has resulted in an erosion of roles, responsibilities, and authorities for Indigenous women. It has contributed to the specific forms of marginalization and disempowerment that Indigenous women continue to confront, and has affected ways of thinking about women as legal actors and agents.

I know this from my own reality – and I know many of you do as well from your own realities. My Nation is the Kwakwaka'wakw of the Kwak'wala-speaking peoples of northern Vancouver Island, in the province of British Columbia, on the west coast of Canada. Within my Nation, I come from the Musgamagw Tsawataineuk and Laich-Kwil-Tach tribes. I am from the Eagle clan.

I come from a matrilineal society with hereditary Chiefs. Being matrilineal means that descent is traced through the mother and our maternal ancestors. Power and inheritance flows through the mother's line. For me, this was typified by my grandmother, Pugladee, which is the highest-ranking name in our clan. Her name means "a good host" – a name that was given to my older sister, Kory. My name,

Puglaas, means "a woman born to noble people." The names were given in a naming potlatch when I was five and my sister six.

In my peoples' worldview, which animates our laws and legal order, all things are in their greatest state of well-being when there is balance. This includes balance between humans and the natural world, between genders, between groups of peoples, within a family or community, or in how we live and organize our own lives. Balance is viewed as the proper state of things where conditions of harmony and justice flourish, while imbalance is what gives rise to conflict, contention, and harm.

In this worldview, if women are not playing their needed roles in leadership, in law, in family – in all aspects of society – then there is an imbalance and all suffer. A society imbalanced in this way is like a bird with an injured wing. It cannot fly, its purpose and potential cannot be met, and all are held back.

But the reality since colonization has been that the matrilineal political and legal order of which I am a part of as an Indigenous woman – and which has been in place since time immemorial – has been largely incomprehensible to the Canadian legal order. The Indian Act system imposed on my peoples, like other Indigenous peoples across the country, is based on a different legal order – or tradition – that is totally foreign to the roles of women, balance, integration, and harmony that my ancestors had lived according to for countless generations. It imported a patriarchal system with an understanding of law rooted in force, power, and control – and which the majority of Indigenous peoples across this country continue to bear the burdens of today.

This is why when we talk about building the future as we all do – a future of reconciliation, of Nation-to-Nation relationships – I see a fundamental litmus test of progress being around the topics you are discussing tonight. Because any meaningful effort to address our colonial reality must revolve around Indigenous peoples determining their futures, including re-building their Nations and governments, and their legal orders and jurisdictions in the contemporary world.

And a measure of success in Nations doing this work, will be if the roles, responsibilities, and authorities of women in the political, social, and legal work of their Nations, and the well-being of Indigenous women and girls in Canadian society as a whole, is steadily increased. If this is not occurring then the work of self-determination, and the work of transforming our colonial reality, is not being advanced and achieved – as it surely must.

Building this future means accepting that Canada has always been a country of legal pluralism – the coming together of different legal orders that learn to co-exist and operate together. This was true at the founding of the country 150 years ago in relation to our common law and civil law heritage. At that time the Indigenous legal orders were ignored, and repairing that is core to the work we are doing today. While Indigenous peoples must lead this work, the Crown has a responsibility to affirm the appropriate space for the operation and application of Indigenous laws and legal orders through changes to our own existing laws – including getting rid of the Indian Act – and creating new models of relations. This requires moving beyond the practice of denying the operation of Indigenous laws and legal orders and creating patterns of legal pluralism that recognizes them and includes their roles.

Let me be clear, there is little or no chance for Indigenous legal traditions to find their full expression within our system of multi-level governance in Canada while the Indian Act remains so prevalent. The Indian Act is the antithesis of self-government as an expression of self-determination and, moreover, is an ongoing detriment to nation rebuilding and strong and appropriate Indigenous governance. We must

all stop trying to make the square peg of the Indian Act fit into the round hole of Indigenous rights, and then somehow think we can rely on the courts to figure it all out. Rather we must recognize the plurality of legal traditions in this country and in so doing create the space for Indigenous nation rebuilding as part of our evolving system of cooperative federalism.

As I said in a speech in Saskatoon last month, the justice and equality for Indigenous peoples that Canada needs cannot be advanced or achieved by "half-measures, good intentions, or lofty rhetoric." What is required are "hard choices, innovative actions, transformations in laws and policies, and new understandings and attitudes, new patterns of behaviour". In that talk I called for vigilance by all of us across the country who have advocated for the real and necessary changes to take place in the face of initiatives that may be confused, ill-thought out, and not up to the task despite best intentions. I remain vigilant every day in demanding we do what must be done, and not what seems expeditious, palatable, or merely incremental.

Now I should say that I do believe important progress is being made, and Indigenous women are taking a leadership role. I think evidence of that is seen in the work and achievements of your panellists tonight and those of many in the audience. From the launching of degree programs on Indigenous legal orders; to trying to effect a comprehensive and systematic approach to the disproportionate impacts of the legal system on Indigenous peoples; to doing the vital Nation re-building work and revitalization of laws; to the elucidation and education of diverse peoples across the country through the power of words and stories;... we have some powerful exemplars in our midst. And I know how hard, how relentless, how resilient, one must be in this work.

In my experience, it is typically the women in our communities who are leading the charge to decolonize and rebuild our governance models as our nations move away from colonial systems. It is the work I was doing before I moved into my current role. A role I take – of course – incredibly seriously, although at times it can be a challenge and incredibly frustrating.

Indeed in my own experience serving as the first Indigenous person to be Canada's Minister of Justice and Attorney-General, I have unfortunately had it reinforced that when addressing Indigenous issues, no matter what table one sits around, or in what position, or with what title and appearance of influence and power, the experience of marginalization can still carry with you. But this does not deter me. It only makes my resolve stronger and more determined.

As I believe – like I am sure all of you do – that our toil today is not only helping create the pivotal space and opportunity for nation rebuilding but also creating the space for the countless Indigenous girls who will fill leadership roles today and many others in the future, in contexts ever more receptive and supportive of their talents, capacities, and remarkable contributions to the well-being of our society, country, and world. My belief that progress is being made, and that the fruits of the sacrifices of today will often appear more concrete tomorrow – this is what assists in me carry on despite the obstacles – this and my deeply rooted sense of who I am, where I come from, my teachings – my rights and responsibilities.

So while there remains much work to be done – and the work goes on – events like tonight remind me of why we are doing it, what must be done, and that it is in our shared efforts and the contributions that each of us can make that the pathways of change are laid.

I thank you again for the opportunity to share a few remarks. Thank you for the dialogue. And thank you for all your future endeavours transforming the impact of Indigenous women in the legal life of our country.

Gilakas'la.