

**Notes for an address by**

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**B.C. Cabinet and First Nations Leaders' Gathering**

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**FINAL**

*Gilakas'la*. Good morning, Elders, Chiefs, Minister Garneau, Premier Clark, members of the Cabinet of British Columbia, ladies and gentlemen.

I would like to acknowledge the Coast Salish Nation – Musqueam, Tsleil-Waututh and Squamish – on whose ancestral lands we are gathering.

I am very pleased to be here at the request of our Prime Minister and to bring greetings on behalf of the Government of Canada.

First, it goes without saying that these types of political gatherings are an important opportunity for leaders to meet face-to-face, deal with pressing issues and build partnerships. Equally, they are also an important opportunity for leaders to reflect, to hold each other to account and, in so doing, speak truth to power.

It was just under a year ago that I was elected Member of Parliament for Vancouver Granville. I did not attend this gathering last year given that we were in the midst of the election campaign.

I was, however, pleased to speak at the first of these gatherings two years ago – as Regional Chief – immediately in the aftermath of the *Tsilhqot'in* decision. At that time, BC's First Nations' leadership shared a vision – expressed through the Four Principles – that had been developed by consensus in the lead up to the first meeting to shift into a new pattern of relations grounded in recognition, respect, and reconciliation of Aboriginal title and rights, including treaty rights.

The Four Principles were intended to be the basis for building a new framework for how partnerships, dialogue and negotiations, and relations between governments and Indigenous Nations in BC would advance – a framework that would move away from an adversarial approach and conflict, to one of innovation, collaboration, and building new capacities and, for Indigenous peoples, the assumption of new responsibilities.

I was pleased to learn this morning about the work in progress that is the Commitment document. Certainly there is more that can be done and there is a role for the federal government.

The approach and goals of the Four Principles are consistent with the message that I have carried forward as Minister of Justice and Attorney General of Canada – and they are reflected in the commitments made by Prime Minister Trudeau and our government.

Our government has been very open. We want to establish a new relationship with Indigenous peoples in this country, a principled relationship based on recognition where getting to this goal will require us to renew the nation-to-nation relationship, based on recognition of rights, respect, co-operation and partnership.

The pathway to reconciliation is to establish proper relations between Indigenous peoples and the Crown that is no longer focused on fighting about “who is an Aboriginal people” or “whether Aboriginal title and rights exist” – but rather is focused on collaboratively recognizing and implementing those rights.

But walking this pathway together challenges all of us – both the Crown provincial and federal and Indigenous peoples. It can no longer be business as usual and it is not simply about politics. It means we must push past our established patterns and ways of thinking, acting, and relating.

And that is never easy, but it is absolutely essential. It means deconstructing the colonial reality community-by-community. It means understanding the transformative nature of what recognition actually demands. It means not fighting battles that have already been won – or reinventing the wheel where progress has been, or is being, made. It means *BUILDING ON OUR SUCCESS*. Above all else, it means rolling up our collective sleeves to rebuild fractured and fragmented nations and the institutions to support them.

Experience and history have shown us that there is a direct correlation between economic prosperity and healthy communities following recognition and nation rebuilding. Efforts to stimulate economic development and create jobs within Indigenous communities that fail to address the relationship issues and that shortcut the ground work that needs to be done to actually reconcile rarely have the results that the government intended. There is no shortcut to getting at the root causes of Indigenous poverty.

And internationally we are not alone in these efforts.

Last night I returned from an official visit to New Zealand. Throughout the visit, I was impressed by how the Māori and the New Zealand government have been settling outstanding treaty issues and how the New Zealand government has been integrating Māori perspectives into public policy and governance.

Like us, in recent years, New Zealand has been in a national conversation aimed at redefining the relationship between the Crown and the Māori. I was able to see first-hand how this has materialized at the *iwi* or “tribal” level during community visits with the Tuhoe and the Ngai Tahu.

I think it is fair to say that they have built their success less on ideology and more on trying to build a framework that endures. They clearly believe in trial and error when it comes to figuring out the relationship with the Crown. They believe that settlements are not “full and final,” but require on-going maintenance and dialogue to be enduring. They do not try and foresee everything or where they might end up on their journey. I think we can learn from this.

But what really hit home to me was a conversation we had with a Maori community leader when answering a question about implementing the UNDRIP. She basically told our delegation that, in her opinion, rights are essentially nothing if you do not have the will, or the power, to act on them – to get as she said “out of bed” in the morning. She said the UNDRIP and the settlement laws were just words – that they are somewhere else. Rather she talked about memories that bring pride. About sharing in the vision of a better future – a vision that all can share.

I know she was not saying that international declarations and laws are not important. After all, her community’s settlement was brought into effect by a state law. What she was saying is that it does not mean much to people back home if they are just someone else’s words.

And she is right.

So while I was, of course, incredibly proud to be in New York last May to speak to the UN Permanent Forum, and attend with my colleague Carolyn Bennett, as Canada endorsed the UNDRIP without qualification, I know that the words alone will not change the reality of Indigenous peoples.

Our collective challenge now is to implement the UNDRIP and to make those words our words – and to turn words into action – to translate them into practical benefits on the ground in communities.

Yes, it will require changes in legislation, new forms of agreements, new structures and processes, and new approaches to decision-making. New mechanisms. But it will, above all else, require new attitudes and a freeing from the past in favour of a new hope for a better and shared future. This will require experimentation with new ideas. It will also require trust. How we are going to walk this path together? It will require all levels of government to take action. But, moreover, it will also require Indigenous leadership to take action. The work here today continues the walk along this path.

Moving forward, a principled approach to a Nation-to-Nation relationship based on recognition does raise some very fundamental questions that must be answered in order to proceed. Questions that I posed at the AFN AGA in Niagara Falls earlier this summer.

First and foremost, it begs the question, “What are the Indigenous Nations that are to be recognized”?

That is, “How will **you** define yourself as Nations?” “What are the structures through which you will deliver programs and services?” And, then, “What will your relationship with Canada, the Province, with your neighbours, and with other Indigenous nations, look like? “How will you resolve your differences between and amongst yourselves?”

In answering these questions, I think we can all agree that the federally-imposed *Indian Act* is not the answer even though it is, as a result of the colonial legacy, necessarily a starting point for conversations in communities. This is because the *Indian Act* system is, in most cases, currently the primary system of administration in place, despite being imposed by the federal government and fundamentally inconsistent with the UNDRIP.

The hard and sometimes painful truth is that many of our current realities do not align with the standards of UNDRIP and, as such, they must be systematically and coherently dismantled.

So we have to ask ourselves, how do existing *Indian Act* bands in BC want to move to new models of self-government, and out of *Indian Act*, models based on what it means to be a Nation? What are the concrete steps to take to get to that end?

It is critical, therefore, especially in this context that we all – all of us – regardless of our roles – appreciate that the UNDRIP requires a thoughtful and sound commitment for implementation.

We have seen other countries where international human rights instruments are adopted, but then fail to translate into real change for their citizens. We cannot let that happen in Canada.

This is why, with respect to the UNDRIP, it is important to appreciate how come it cannot be simply incorporated, word for word, into Canadian law.

First, the Declaration itself contemplates that it is to be implemented in many different ways through various instruments.

Second, the federal government simply does not have the jurisdiction to unilaterally address all of the minimum standards and principles set out in the Declaration. Many issues will benefit from a national approach that reflects federal, provincial and territorial, and Indigenous governments each playing their parts. Still others are specifically aimed at the United Nations itself and other international bodies.

Third, and in truth, every party involved in implementation needs the time to develop practical and effective approaches to issues such as free, prior and informed consent – when it comes to resource development, addressing issues such as the proper title holder, for instance.

Again, these approaches could mean amending legislation, or developing new policies, depending on which element of the Declaration we are concerned with. All parties need to be involved in identifying the most appropriate and effective mechanisms.

And in order for that involvement to happen, Indigenous nations must be organized and empowered to contribute to these discussions – that is, being able to participate in developing approaches according to their own aspirations and needs as Nations.

Fourth and finally, and I think most importantly, the implementation of the Declaration has to take into account our specific constitutional and legal context here in Canada. That includes our federal system, our Constitution – particularly Section 35 of the *Constitution Act*, and the *Charter of Rights and Freedoms*. Accordingly we will want to identify which laws, policies and practices need to be changed to give full effect to both Section 35 and the UN Declaration.

Moreover, how we, as a society, choose to balance the various rights and interests protected by our Constitution, set out in our *Charter of Rights*, or expressed in the UN Declaration, is also a decision we have to make together.

And without going through every article in the Declaration, we can think about the important clarification that the combination of section 35 and Canadian common law has brought to our understanding of Aboriginal title and rights in the Canadian context.

I cannot see us simply setting aside the important guidance we have from our courts – from *Tsilhqot'in* for example – and starting afresh from the Declaration's articles.

The actions we take to implement the UN Declaration must be guided by the important advances that have been made within the framework of s. 35 of the Constitution.

Recognizing Aboriginal and treaty rights in this section was a turning point in our history. One we can truly be proud of.

It was a promise to Indigenous peoples that their presence in Canada and Aboriginal rights would no longer be denied, that assimilation and marginalization were colonial relics of the past, and that all Canadians were ready to work together to build a better Canada.

Our primary task today is to fulfill the constitutional promise made in 1982 through practical solutions.

For our part, the federal government, for one, is mandated to review laws, policies and practices to ensure that we are living up to the unfulfilled constitutional promise of Section 35 and the mutually respectful relationship that the courts have rightly called for. This work is on-going. As an example, this includes actively moving away from federally-imposed systems of governance and administration and making the transition to systems and fiscal relationships focused on Indigenous control and delivery.

For the Indigenous leaders in this room, for your part, you are of course responsible for looking at how best to organize yourselves to play your role as partners in Confederation, and having your nations and legitimate institutions of government recognized. Our government needs you to answer the questions I posed earlier.

As for the Crown, both provincial and federal, it means supporting nation rebuilding and ensuring that Indigenous nations have the tools they need.

During this transition, the Government of Canada is committed to working in full partnership with nations looking to rebuild. We also, at the same time, recognize the on-going role of the government and the need to ensure that communities continue to receive the necessary programs and services until they are in a position to take back control or where there are agreed to alternatives – so no community is left behind. It goes without saying, the transition has not and will not be easy.

But here in British Columbia, we are starting to see the results of how self-determination can result in social and economic success.

And there will be no going back as we work together to provide a clear and predictable path for Indigenous peoples to be part of a genuine nation-to-nation relationship.

Yes, there will be tough decisions that will need to be made prior to the full implementation of the Nation-to-Nation relationship.

My role as Minister of Justice is to help build the framework for reconciliation in accordance with our Constitution. Over the past year, the Federal Crown has been inviting and asking Indigenous peoples to bring forward their ideas and models about how to make the shifts into this new era of Nation-to-Nation relations – including what work needs to be supported to help build the capacity to assume and exercise greater self-government powers and jurisdictional responsibilities.

In closing, let me say this, making this positive change in Canada's relationship with Indigenous peoples is the only way to reach true reconciliation.

So I welcome and challenge the Indigenous leadership in this room to continue to collectively put forward substantive ideas about what a new framework of relations would look like based on your Four Principles.

And I challenge all parties to take a principled approach to reconciliation. This is the commitment of our government and we will continue to do the necessary work to get our own house in order - to be a progressive force for substantive change.

Meeting these challenge will be good for Indigenous peoples and good all of Canada – for our collective future and the strength of our economy.

So my message to all of us is this – we need to act like we mean what we say. And to take some calculated risks. I challenge everyone to walk together to move to a new era of Crown – Indigenous relationships.

It is a challenge that I know that we are up for and that I embrace in this what some are calling the age of recognition.

*Gilakas'la.* Thank you.