

SPEAKING POINTS FOR SADM JOE WILD

**Lands Advisory Board Meeting
River Rock Casino Resort
Richmond, BC
June 26, 2018; 2-2:30pm**

Location: River Rock Casino Resort (8811 River Road, Richmond, BC)

Context

- The Lands Advisory Board is holding its Annual General Meeting on June 26-27 and have asked that you provide an update on work underway to develop the Recognition and Implementation of Indigenous Rights Framework.
- Specifically, the Board is interested in hearing how different mechanisms or expressions of self-determination may be enabled by the Framework, and how the Framework may provide a frame for arrangements that are more reflective of Indigenous groups' relationships to their traditional territories.
- You have been allocated a 20 minute time slot from 2:00-2:20pm. You will therefore have 10 minutes to present, followed by approximately 10 minutes of discussion.
- The speaking points below provide approximately 10 minutes of prepared remarks so as to provide you with some discretion regarding the content and length of your presentation.

INTRODUCTION AND BACKGROUND

- Good afternoon and thank you for having me here today.
- I want to acknowledge that we are on the traditional territory of the Musqueam.
- I am going to begin by reflecting on where we have been and how far we have come.
- In the last 3 years, ground breaking changes have occurred in the Crown-Indigenous relationship.
- You would have heard about the many steps we have taken – engaging in Recognition of Indigenous Rights and Self-Determination discussions, launching annual meetings with National Indigenous Organizations, and establishing the Working Group of Ministers on the Review of Laws and Policies.
- And of course, in 2017 Canada committed to fully implementing the *United Nations Declaration on the Rights of Indigenous Peoples*.

- The culmination of all this progress came on February 14, 2018, when the Prime Minister made a statement in the House of Commons that the Government of Canada would develop a Recognition and Implementation of Indigenous Rights Framework.
- This Framework will pull together the tools we need to ensure that the recognition and implementation of Indigenous rights is the basis of all relations between the federal government and Indigenous peoples.
- The Framework will be a collection of laws, policies and practices developed through engagement with Indigenous partners.
- It will speak directly to Indigenous peoples' priorities – making progress on what matters to First Nations, Inuit and Métis communities.
- What this means is that Canada is moving out of the way, no longer hindering the implementation of inherent and treaty rights.

- This is about living up to our constitutional obligations under section 35, but more importantly about honouring the terms of our relationships – relationships that must be founded on the recognition of rights, respect, cooperation and partnership.
- But before I get any further into where we're going, I would like to briefly touch on where we're coming from.

INDIGENOUS RIGHTS – WHERE WE CAME FROM

- In September 2017, the Prime Minister stood before the United Nations General Assembly and acknowledged that the “failure of successive Canadian governments to respect the rights of Indigenous peoples in Canada is our great shame.”
- We know that the historical denial of the rights of Indigenous peoples in Canada is directly linked to poor health outcomes and to glaring socio-economic gaps.
- Indigenous peoples have always maintained that they have inherent rights – these rights are a function of their identities and their connections to the land.

- Whenever we discuss Indigenous rights in Canada, we begin by recognizing that there are inherent rights as well as those established in treaty.
- Section 35 of the *Constitution Act, 1982*, along with the UN Declaration, provide constitutional and international frameworks that recognize and affirm these rights.
- It is important to understand that when section 35 was introduced, we understood it as an affirmation that Indigenous people *might* have rights that they would need to prove.
- It was this perspective that shaped the *Comprehensive Land Claims Policy*, introduced in 1986. Almost a decade later, the *Inherent Right Policy* followed in a similar line of thought.
- These policies set us on the path that we have been on for the past thirty years, a path that led us to top-down approaches to the Crown-Indigenous relationship, to repeated rights-related litigation, and to progress that is real, but hard-won.
- Because Canada saw section 35 as an empty box, we had to define rights in full and final ways in treaty. Modern treaties

have worked for some, but communities with treaties made huge sacrifices and compromises to get to where they are.

- Over the years, we started hearing critiques from Indigenous communities across the country – primarily that our policies were not working to support Indigenous peoples in their journey towards self-determination.
- Indigenous advocates in leadership and at the grassroots have been clear that their rights must be recognized, respected and implemented if we want to move forward together.
- We know that if we want to chart a new course for Canada's next 150 years, we would have to respond to the longstanding concerns of Indigenous peoples, and move forward based on the recognition of rights, respect, cooperation and partnership.

OUR EVOLVING APPROACH – TOWARDS THE IMPLEMENTATION OF RIGHTS

- These new perspectives and approaches were first reflected in Recognition of Indigenous Rights and Self-Determination discussions that were initiated in 2015.

- We now have over 65 of these discussions underway with First Nations, Inuit and Métis across the country.
- Discussions focus on a citizen-centred design as we sit down with Indigenous groups based on how they want to organize themselves, start from a place of recognizing their rights, and allow us to co-develop agreements and negotiation mandates that act as bridges between Indigenous systems – of governance, laws, knowledge, traditions and community – and Canadian systems.
- These conversations are also informing the much broader work that is underway to develop a Recognition and Implementation of Indigenous Rights Framework.

WHAT WE HEARD

- Since Minister Bennett's national engagement began in February, more than 85 sessions have been held with over 1,300 people representing over 400 First Nation, Inuit and Métis communities and groups.

- We heard that section 35 of the *Constitution Act* and the UN Declaration do not establish rights - they recognize and affirm them.
- The UN Declaration, Truth and Reconciliation Commission Calls to Action, and Royal Commission on Aboriginal Peoples must be the foundation of any Framework.
- Our partners are clear that their rights are inherent, they are distinct and they can evolve over time.
- Where we have treaties and self-government agreements, they are the living framework for Crown-Indigenous relations. We must implement them, and Indigenous rights more broadly, in a full and meaningful way.
- We have heard very clearly that the Framework cannot codify or define rights as it would reduce their scope. Understanding and implementing rights has to happen through dialogue and negotiation.
- We have also heard that we need concrete tools to hold Canada to account and ensure that rights are given full effect.

- Indigenous leaders, youth, women and Elders articulated views about supporting and strengthening Indigenous governance, legal traditions and traditional ways of knowing. This includes decision making over who is a citizen of an Indigenous government, rather than Canada making these decisions.
- We have also heard that the existing Crown-Indigenous fiscal relationship does not support the aims and goals of Indigenous communities. Many called for a new fiscal relationship that respects Indigenous nations as owners of their lands, resources, and waters and provides them with economic benefits.
- There was also a broad acknowledgement of the opportunity for change and that more time is required to continue developing elements of the Framework with Indigenous partners.

MOVING FORWARD: THE FRAMEWORK

- The Framework will be one means for implementing the UN Declaration and responding to the Truth and Reconciliation

Commission – both specific provisions, and their broader spirit and intent.

- Based on what we have heard through engagement so far, we envision the Framework having legislative and policy elements.

Potential Legislative Elements

- Currently, Canada does not have legislation with tools in place to ensure that rights are implemented – the legislative part of the Framework could fill this gap.
- The idea is to clarify the understanding of certain rights and set out Crown duties and responsibilities for giving them full effect.
- There has also been a lot of interest around how the Framework will support nation (re)building and recognition, and what Canada's intentions are.
- When we talk about nation recognition, we are talking about recognizing the self-determined representative entities of First Nation, Inuit and Métis peoples.

- If we want a renewed relationship, we need mechanisms to allow Canada to recognize our partners on a Nation-to-Nation and government-to-government basis.
- Recognition would allow us to come to the table on more equal footing and work together to advance shared priorities.

Potential Policy Elements

- The Prime Minister has also committed to replacing the *Comprehensive Land Claims Policy* and the *Inherent Right Policy* with a new policy to guide discussions and negotiations with our Indigenous partners.
- For years, we have heard from Indigenous peoples that internally developed, federally imposed negotiation mandates are inappropriate and counter-productive.
- Our approach has constrained creativity at the table, depriving us of opportunities to come up with solutions that are better for everyone.

- The way forward is to develop mandates together, and to be open to experimentation. We have seen the great potential of this approach at Recognition of Indigenous Rights and Self-Determination discussion tables.
- We also need to be able to develop agreements that don't define rights forever – our relationships and our agreements need to evolve and better reflect Indigenous groups' relationship to their traditional territories.
- A new policy will reflect all of this – an emphasis on working in partnership, and flexibility at the table and in agreements.
- This doesn't mean that we are abandoning groups who still want to negotiate modern treaties or self-government agreements – our range of options is widening, not narrowing.

CONCLUDING REMARKS

- We are listening to feedback from Indigenous partners. In response to timing concerns, we will continue working closely over the summer to develop elements of the Framework with our Indigenous partners.

- The Prime Minister committed to have the Framework introduced later this year and implemented by October 2019, and we are working hard to deliver on this promise.
- Working together with Indigenous partners to define how we recognize and implement their rights in federal law and policy is vital to overcoming the legacy of colonialism and achieving better outcomes for all Canadians.
- Ultimately, through the Framework, we hope to make the recognition and implementation of Indigenous rights as foundational and meaningful to the Canadian identity as Medicare.
- Thank you.