PRESENTATION TO THE HOUSE OF COMMONS STANDING COMMITTEE ON ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT

Bill C-27: First Nations Financial Transparency Act

Speaking Notes
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Check against Delivery

It is my pleasure to appear here again and to speak to Bill C-27.

My name is Jody Wilson-Raybould. My traditional name is Puglaas. I come from the Musgamagw-Tsawateneuk people of northern Vancouver Island, where I live in my home community of Cape Mudge with my husband. I am also a member of council in my community.

I am here today as the Regional Chief for British Columbia and on behalf of the Assembly of First Nations as the national portfolio holder for First Nations' governance.

As I have said before – and I think this committee is well aware – First Nations are in an exciting period of transition and moving towards increased autonomy and self-government. This is good for First Nations and good for Canada.

Increased autonomy is occurring in those Nations that are considering and supporting the foundations of good governance, in order to transition our Nations from essentially administering federal programs and services on behalf of Canada or "self-administration" under the *Indian Act* to self-government with appropriate accountability to our citizens.

There is no issue that the governing bodies of our Nations must be transparent and accountable. The vast majority are, of course, and continue to demonstrate this to their citizens. In December 2010, the Chiefs passed a resolution affirming their commitment to transparency and accountability, in part in response to the Private Members Bill, C-575 that preceded C-27.

Chiefs were clear in their assertion that the proposed measures are both heavy handed and unnecessary and they suggest that First Nation governments are corrupt, our leaders are not transparent and consequently need to be regulated by Ottawa. It is not surprising that

many of our Chiefs have resented this approach and are turning the lens back on Canada suggesting that it is Canada that needs to develop more stringent accountability frameworks for their governing bodies and needs to be held more accountable for its treatment of First Nations.

However, rather than getting into a unproductive debate on whose government is more accountable to those whom they are supposed to serve, our collective task is to ensure that all systems of government in Canada are accountable and meeting certain standards while understanding that there are more than one way to "skin" the preverbal "accountability cat". And, with respect to our Nations, ensure appropriate political, legal as well as financial accountability as part of Nation building or rebuilding.

The bigger question before you today is really not about accountability at all but rather who should be responsible for determining the rules that apply to our governments and our governing bodies? The simple answer is our Nations should be. However, the answer to this question is more complicated given the evolving relationship between First Nation government in Canada and the Crown and the current *Indian Act* reality.

On Monday this committee heard from the Minister of AANDC, and my MP, the Honorable John Duncan, who was asked if he thought it was appropriate for the Minister to be telling First Nations how to be accountable to their own citizens? It was pointed out to him that Canada does not do this for the provinces so why for First Nations? In response the Minister suggested that as the senior government it was the government's responsibility but added that when a First Nations is self-governing, it is different. First Nations control accountability themselves.

And herein lies the dilemma for you as lawmakers, whether it be with respect to financial transparency and accountability, matrimonial property, safe drinking water and so on. What rules, what laws, if any, should you be

making for our peoples until such time as our Nations are once again self-governing, and how do you ensure, if you do legislate that such laws are appropriate, have our consent and support the long term vision of self-government and do not, in fact, hinder it?

It is troubling that during this period of transition as we move away from governance under the *Indian Act* that the federal government seems to increasingly want to design our governance for us despite the fundamental need for our Nations to undertake this work for themselves in order for it to be legitimate.

In my own community of We Wai Kai, when Bill C-575 was introduced a year and half ago we discussed how this politically motivated piece of legislation only addressed one small aspect of accountability. It really highlighted the need for our own community to take back control of the agenda and establish our own laws with respect to financial administration and accountability to our citizens.

From working in my own community, it was clear that it was not well understood among our citizens that in the absence of our Nations taking control of our own financial administration and establishing our own rules, there is very little, if anything, governing the financial administration of our Nations. There is nothing in the *Indian Act* which speaks to a First Nation government's budgeting process, accountability and/or reporting to its members on how we invest or borrow, use our monies and so on. For sure, when our communities sign funding agreements with Canada we contractually agree to audits and reports and so forth, but there is nothing above this or nothing governing our own sources of revenues unless we take control.

As a result of this conversation my community chose to develop a financial administration law (FAL) under the *First Nations Fiscal Management Act.* **Our** law – as directed and ratified by our Nation – is far more

comprehensive than Bill C-27 and, more to the point, legitimate in the eyes of our people.

Similarly for *Indian Act* bands that have implemented sectoral governance arrangements the accountability framework is built into those arrangements. For example, First Nations that have developed Land Codes under the *First Nations Lands Management Act* include a financial and political accountability framework with respect to lands.

Moving further along the governance continuum, for those former *Indian Act* bands, the 34 Nations, that are already self-governing, the accountability framework is typically built into the Nations laws as developed and ultimately approved by their citizens. The accountability framework varies from Nation to Nation depending on the nations' conventions, type of governance structures and the range of jurisdiction exercised.

What we really need to do is increase the options for our Nations to develop their own governance including their accountability frameworks, so they can build their own future within Canada rather than be legislated from above. We need to speed up this process so that where a Nation is ready, willing and able to proceed with reform it can move and where Canada does not act as gatekeeper.

Turning back to the business at hand, if Canada insists on pursuing and passing Bill C-27, notwithstanding the strong objections of First Nations, there are some specific questions that must be answered and responses needed to problems that have been identified with. On this note it is unacceptable that that there have not been any consultations with our Nations on this Bill that I am aware of.

First, I would like to reiterate the commitment demonstrated by First Nations to accountability and transparency. Most of the accountability

measures in the bill are similar to those found in any First Nation Constitution or its laws. In fact, First Nations are already required to report on the matters covered in the bill through contribution agreements with the federal government. Whether an *Indian Act* band or not, our Nations follow the handbook respecting public sector accounting prepared by the Canadian Institute of Chartered Accountants.

This does not negate the fact that there are serious issues in how this bill has been drafted, specifically 1) in the treatment of government business enterprises, 2) in disclosure to non-members, 3) in enforcement provisions and 4) conflict with other statues and First Nations' law making authority.

Firstly, while the public sector accounting standards do deal with "government business enterprises", Bill C-27 seems to go further by adding definitions of "Consolidated Financial Statements" and "entity", as well as its own interpretation of what it means for an entity to be controlled by a First Nation government in sub-section 2(2). It is not clear what the intention is here? Why not just make the public sector accounting standards apply?

We would like clarity and need to ensure that this Bill does not inappropriately modify the rules that currently apply to all other governments in Canada with respect to government business enterprises.

Secondly, a bigger but related, issue for many of our First Nations is the proposed new disclosure requirements which requires the audited consolidated financial statements of each First Nation be made public by posting on a website. This is not the case today unless a Nation has chosen to do so.

There is, of course, no concern where those receiving the audited consolidated financial statements are our citizens. This is however not the case where there is a requirement for public dissemination. This is a

material departure from what was proposed in Bill C-575 and the precedent set under the *First Nations Fiscal Management Act*. For some First Nations, and in particular those with significant government business enterprises, this poses a number of concerns. Chief Darcy Bear will be appearing later and I understand he will be proposing a number of amendments to the Bill to address these concerns.

Thirdly, with respect to enforcement, the provisions seem costly and mostly unnecessary legal proceedings wherein the Minister is authorized to apply to superior court for enforcement. Within their own accountability frameworks First Nations use different enforcement mechanisms. These include the calling of community meetings, internal appeal processes and other alternate dispute resolution mechanisms, as well as in some cases recall provisions for officials who breech the nation's laws. Where outside courts are used our Nations may choose to use a superior court; in some cases it is provincial court or federal court.

Fourthly, with respect to conflict of laws, the bill correctly does not apply to First Nations with self-government agreements. However, it appears, perhaps unintentionally, that it does apply to First Nations with Financial Administration Laws (FAL) made under the *First Nations' Fiscal Management Act*. To have Bill C-27 apply will create issues if there is ever a conflict between a FAL and the Bill. Politically it also sends the wrong message that a First Nation, such as my own, that has developed a FAL is still being regulated by her Majesty. Nations that have enacted FALs or Land Codes need to be recognized and respected for the hard work they have done and which represents a level of community engagement resulting in political legitimacy for their institutions and laws.

It should also be made clear what happens in the event of a conflict between this proposed legislation and any other federal legislation or laws of a First Nation developed in respect of sectoral governance initiatives.

Finally, I want to remind this committee that in 2005, the AFN and the Government of Canada embarked on a joint "Accountability for Results" Initiative. This led to promising work but was halted in 2006.

As part of this initiative, the AFN and Canada agreed to a number of common principles for furthering the accountability relationship. These were:

1. The primary accountability of any government is to its citizens;
2. For policies, programs and services to First Nations, the primary objective is to improve results for First Nations citizens;
3. Accountability is shared between Government of Canada and First Nation governments;
4. Accountability is mutual between Government of Canada and First Nation governments.
5. There is a shared vision of adopting and adapting the five principles for accountability of the Auditor General of Canada as part of a collaborative process to establish a new model of accountability for results that supports the aspirations of communities while assuring every one of the effective management of resources.

In light of renewed commitments for action stemming from the January 2012 Crown-First Nations Gathering, particularly the review of financial arrangements as part of pursing a renewed relationship, there is opportunity to revisit and move forward on these principles as we support our Nations.

The solutions that are working are being found by working together– by creating the space and tools for communities to rebuild and to move beyond the *Indian Act* – to decolonize and to rebuild government.

I would urge you to pursue approaches that truly support First Nation governments. One proposal as directed by our Chiefs is to create an office of a First Nations Auditor General. Such an office can examine and apply

the commonly held principles of accountability, support the capacity and recognition of good practices and provide an ombuds-function for those First Nation citizens seeking help.

I would also encourage you to continue to visit First Nation communities directly, to truly understand how their governments are struggling with and addressing the constraints under the *Indian Act* and how those communities that are moving beyond it are accomplishing this by taking a classic community development approach. They are the ones who have the solutions and I urge you to consider ways that they can be supported.

Instead of further sandbagging and shoring up the archaic and inadequate framework of *Indian Act* governance, such an approach lets us build a bridge together to support First Nations in their work towards self-determination and, what I hope, is still our collective vision for Canada.