

Hard truths for First Nations

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Justice Minister qualifies support of UN declaration

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Comment

It's been the prettiest love story in recent Canadian political history — the romancing of the Assembly of First Nations by the Liberal government.

But there are early signs that the relationship between the star-crossed lovers could be fraying.

Jody Wilson-Raybould, the justice minister, spoke at the AFN's general assembly in Niagara Falls Wednesday, where she dropped the bombshell that adopting the United Nations Declaration on the Rights of Indigenous Peoples as Canadian law is "unworkable."

She went further. "Respectfully, it is a political distraction to undertaking the hard work required to actually implement it," she said.

This will have come as news to Perry Bellegarde, the AFN's national chief, who celebrated the Trudeau government's "unqualified support" for UNDRIP as a historic day on the path to reconciliation.

Strangely, the AFN's response to Wilson-Raybould's distinctly qualified support for UNDRIP was muted — a reaction that may or may have something to do with the \$96 million handed to groups representing aboriginal interests in the federal budget.

But native activists and the NDP portrayed the news as another broken Liberal promise. Adoption of UNDRIP in the first place was "smoke and mirrors," said NDP MP Romeo Saganash, who sponsored a private member's bill that called for full implementation of UNDRIP's articles in the last parliament.

It is certainly hard to reconcile previous Liberal comments on the far-reaching

UN declaration with the more reserved position advanced by Wilson-Raybould.

In opposition, the Liberal campaign platform pledged to enact the 94 recommendations of the Truth and Reconciliation Commission, starting with implementation of the UNDRIP.

But MPs in opposition take a very different view than those in government who have to deal with the fallout.

Wilson-Raybould's statement that UNDRIP will be implemented over time through a mixture of legislation, policy and action initiated by indigenous nations is simply an acknowledgment of realpolitik.

In her speech, the justice minister omitted perhaps the most influential actors on the stage — the courts.

Section 35 of the Constitution has evolved into a duty to consult native populations. Yet the UNDRIP goes further and requires governments to secure "free, prior and informed consent" in any given area of policy. As retired Supreme Court justice Frank Iacobucci noted this week, "future legislation and judicial interpretation" will determine whether UNDRIP ... differs significantly from Canada's existing jurisprudence on duty to consult."

Cathy McLeod, the Conservative indigenous affairs critic, welcomed the news.

"The fact remains that certain provisions cannot be reconciled with the existing Canadian legal framework, specifically if 'free, prior and informed consent' is advanced as a right of veto," she said.

Full implementation of

the declaration is not just problematic from the point of view of constitutional and judicial niceties. As a report for the Macdonald-Laurier Institute by former Plains Cree chief Blaine Favel and Canada Research Chair Ken Coates pointed out, it could make the country ungovernable.

Consulting First Nations on all matters that affect them could result in "legislative gridlock," they added.

The decisive voice in the Liberal volte-face on the UNDRIP was likely the finance minister. The Trudeau government committed \$8.4 billion for aboriginal issues in the last budget. But the "great unknown number" of addressing the UNDRIP's commitments would "dwarf" this year's budget commitment, the MCI report suggested.

In short, Wilson-Raybould has done the right thing, calling for patience and a lowering of expectations while the goal of implementing the 42 articles in the UNDRIP are achieved over time, through a variety of legal and legislative means.

But that wasn't what indigenous leaders thought they were buying into.

In his closing remarks, Bellegarde said the AFN has a good relationship with the Liberal government but will not sit back if ministers infringe on indigenous rights and title.

"We will challenge and push back," he said.

Wilson-Raybould noted in her speech that trust must be earned, and it can just as easily be lost. Some native leaders must now be feeling they were sold a bill of goods.

Their real problem is not disillusionment; it's that they had illusions in the first place.

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Jody Wilson-Raybould backed away from the United Nations Declaration on the Rights of Indigenous Peoples