

August 31, 2016

To: First Nations Leaders and Members of the BC Cabinet

In September 2015, we jointly presented the Proposed Commitment Document, articulating our commitment to a government-to-government relationship based on respect, recognition and accommodation of aboriginal title and rights and to the reconciliation of Aboriginal and Crown titles and jurisdictions.

Subsequently, based on feedback received from the BC Cabinet and First Nations Leaders Gathering (2015), the BC Cabinet and the First Nations Leadership Council (FNLC) confirmed endorsement of the Document and the mandate to move forward with the work committed to.

First Nations and BC have agreed we will work towards a strong, sophisticated and valued government-to-government relationship with clear principles, mutual and respective responsibilities, and accountabilities.

We have a choice on where we are going, in partnership, and **we are jointly seeking your review, input and guidance on this work.**

Attached are the following:

1. A draft document prepared by the FNLC setting out a proposed vision, guiding principles, goals and objectives, which speaks to the first three actions committed to in the Commitment Document. This draft is under active review by the Province. The FNLC and BC intend to finalize the vision, guiding principles, goals and objectives **by October 31**; and
2. A multi-year draft workplan to address the other actions committed to in the Commitment Document, including outcomes that can be expected in the first year of work. A terms of reference to guide this work is intended to be **completed for November 1, 2016**.

If endorsed, BC and FNLC would report out at the 2017 BC Cabinet and First Nations Leaders Gathering on the progress achieved against the outcomes.

Achievement of the actions will support First Nations and BC to make tangible progress on our path to a positive future grounded in reconciliation of our respective titles and jurisdiction.

Sincerely,



John Rustad

Minister of Aboriginal Relations and Reconciliation

FIRST NATIONS LEADERSHIP COUNCIL

On behalf of the **FIRST NATIONS SUMMIT**



Grand Chief Edward John



Robert Phillips



Cheryl Casimer

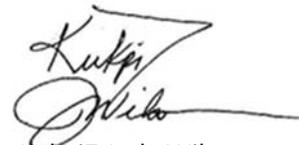
On behalf of the **UNION OF BC INDIAN CHIEFS**



Grand Chief Stewart Phillip



Chief Bob Chamberlin



Kukpi7 Judy Wilson

On behalf of the **BC ASSEMBLY OF FIRST NATIONS**



Regional Chief Shane Gottfriedson



Draft Joint Agenda: Implementing the Commitment Document (2015)

Vision, Guiding Principles, Goals and Objectives

*****This document was prepared by the FNLC and is under active review by the Province***

Vision 2016

As in 2005, we remain determined to achieve a government-to-government relationship based on respect, recognition and exercise of aboriginal title and rights, and to the reconciliation of Aboriginal and Crown titles and jurisdictions. In light of the changing legal, political, economic and social landscape, we are updating our shared vision and framework of an effective Crown-First Nation relationship in British Columbia, that includes concrete actions and measures for ensuring tangible and real change to the status quo.

We will jointly design, construct and implement a principled, pragmatic and organized approach to implement the section 35 *Constitution Act, 1982* framework in British Columbia, informed by the *Tsilhqot'in* decision and other established law, the *United Nations Declaration on the Rights of Indigenous Peoples* and the Truth and Reconciliation Commission's Calls to Action, and with tangible milestones to demonstrate progress.

First Nations and the Crown will work toward a strong, sophisticated and valued government-to-government relationship, with clear principles, mutual and respective responsibilities, and accountabilities. This modernized relationship will include space for the exercise of our respective jurisdictions (i.e. legal pluralism) through new processes and institutions, with the aim of benefitting from the strengths of Indigenous and Crown systems - for the benefit of all British Columbians - in terms of environmental stewardship, sustainable development, appropriate needs-based service delivery, and a robust economy.

This shared vision for the Crown-First Nation relationship has First Nations as an integral part of the social, cultural, political and economic fabric of British Columbia.

We will achieve this vision through guiding principles of reconciliation, that will inform and facilitate innovative approaches to negotiations and agreement-making, the development of new mechanisms for decision-making and economic relations, changes to legislation and policy, and collaborative engagement with partners to support and contribute to our success.

Our shared guiding principles for reconciliation are as follows:

1. Indigenous peoples pre-existed the arrival of settlers, and continue to exist as societies today. They formed the first governments in what is now British Columbia, having their own laws, political structures, territories and rights, inherited from their ancestors. These continuing legal orders regulate their societies and their connections to the land.
2. First Nations in British Columbia have existing Aboriginal rights, including title, and historic and modern treaties have been concluded between some First Nations and the Crown establishing treaty rights. Aboriginal rights and treaty rights give rise to Crown obligations, and are recognized and protected under the Constitution.
3. Indigenous peoples' inherent right of self-government is an Aboriginal right recognized under the Constitution, and Indigenous Peoples' right of self-determination is described in the *United Nations Declaration on the Rights of Indigenous Peoples*. For Indigenous Peoples, the standard of free, prior and informed consent is an element of the exercise of the right of self-government, as well as the Indigenous human right of self-determination as defined in international law.
4. Reconciliation includes the work of implementing Aboriginal title and rights, and treaty rights, including utilizing the framework for reconciliation established by section 35 of the *Constitution Act, 1982*. Aboriginal title, which includes economic and jurisdictional components, is not dependent upon Court declaration or recognition by the Crown for its existence.
5. It is important and autonomous work of First Nations to determine their structures of governance, including to implement Aboriginal title and rights through the proper title and rights holders, and to clarify relationships, boundaries and protocols with neighbouring Nations.
6. Both Crown and First Nation Governments require decision-making responsibilities, management structures, partnerships with other governments, and sources of revenue.

7. The best outcomes are when Crown and First Nation decisions are aligned, in harmony, and a source of collaboration and not conflict. As such, models of shared and joint decision-making are needed which structure common and shared outcomes and decisions on how Aboriginal title and rights are considered, addressed, accommodated, and respected.
8. The socio-economic gap between First Nations and other British Columbians must be closed as a matter of law, reconciliation and social justice.
9. We have a shared and mutual interest in achieving and maintaining a strong, robust and diverse economy at the provincial, regional and community levels, with increasing participation by First Nations at all levels.
10. Meaningful First Nations participation in the economy is integral to our collective success. A strong economy will assist in closing socio-economic gaps and building strong First Nations governments.
11. Resource development will be carried out in an environmentally sustainable manner, informed by science and First Nations traditional knowledge. We can better steward the land if we commit to better understand our respective perspectives, approaches and practices.
12. Innovative approaches to negotiations, problem-solving and collaboration are required to advance reconciliation, including opportunities for short, medium, and long term agreements, development of new models of clarity and predictability that are achieved through stronger relationships, processes, and structures that advance the implementation of Aboriginal Title and Rights.
13. Reconciliation is an ongoing journey and our relationship will continue to evolve and change. This evolution must be constructive and progressive so that reconciliation is not undermined or regressed, which includes ensuring there is flexibility in agreements that are reached, laws and policies that are developed, and mechanisms for adjusting or improving on what has already been achieved.
14. Healthy relationships require respect, openness, and a willingness and effort to communicate and understand each other's perspectives, and this includes ensuring a greater understanding and respect Indigenous cultures, languages, and worldviews within and between governments and among the general public.

15. Reconciliation is a societal imperative, requiring awareness, understanding, and participation of everyone. All British Columbians will benefit from reconciliation.

Goals and Objectives

Reconciliation is a journey, achieved through a multitude of ongoing processes and substantive and concrete actions that shift the status quo. To achieve our shared vision of a new landscape and reconciled relationship in British Columbia, we share the following mutual and respective goals and objectives for reconciliation:

- Close the chapter of colonial legacies that have had profound impacts on First Nations with respect to their territories, education, cultures and languages, health, child welfare, the administration of justice, and economic opportunities and prosperity.
- Achieve a more equitable and inclusive society by proactively closing the gaps in social, health and economic outcomes that exist between Aboriginal and non-Aboriginal Canadians. Specifically, restore, revitalize and strengthen First Nations and their communities and families to eliminate the gap in standards of living with other British Columbians, and substantially improve the circumstances of First Nations people in areas which include: education, children and families, and health, including restoration of habitats to achieve access to traditional foods and medicines.
- Revitalize and preserve First Nations cultures and languages and restore literacy and fluency in First Nation languages to ensure that no First Nation language becomes extinct, and as a component of First Nations capacity building and cultural survival.
- Achieve and nurture harmonious and cooperative relations between the Crown and First Nations, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith.
- Achieve strong First Nation Governments and self-determination through the exercise and implementation of their Aboriginal title, including realizing the economic component of aboriginal title, and exercising their jurisdiction over the use of the land and resources through their own governance and decision-making structures.

- Achieve respectful, valued and effective government-to-government relationships, with respective responsibilities and accountabilities, supported by new collaborative and shared structures and institutions.
- Achieve improved and more peaceful relations, and reduce conflict on the ground and in the courts. Specifically, ensure that lands and resources are managed in accordance with Indigenous laws, knowledge and values and that resource development is carried out in a sustainable manner including the primary responsibility of preserving healthy lands, resources and ecosystems for present and future generations.
- Achieve a strong, robust and dynamic economy for the province, regions and communities.
- The First Nations Leadership Council are guided by a Terms of Reference, which recognize that Aboriginal Title, Rights and Treaty Rights are held at the Nation Level. Each Nation has the authority to make decisions to suit the unique circumstances of their particular Nation and the right to a government-to-government relationship with the Crown. Individual Nations are the proper Aboriginal Title, Rights and Treaty Rights holders.



Draft Joint Agenda: Implementing the Commitment Document (2015)

Concrete Actions: Processes, Structures, and Legislative and Policy Change

To implement this framework First Nations and British Columbia (BC) need to establish new institutions, processes and structures to support/facilitate reconciliation efforts, enable new negotiations and dispute resolution approaches, and provide capacity and governance development support to First Nations and BC. To enable and enact new processes and structures, systemic shifts will be needed (i.e. legislation, policy, practice). In addition, the Government of Canada has roles to play which must be engaged.

Simply stated, reconciliation and change will occur through concrete action, not mere verbal commitments.

The following concrete **actions** have been identified as *initial* priorities for development and implementation and address the following themes agreed to in the commitment document: Indigenous Nations & Governance Building; Legislative, Policy and Practice Review and Reform; New Approaches to Effective Negotiations and Dispute Resolution; and, Reconciliation in BC. These actions will be implemented through joint processes agreed to by First Nations and BC, and will engage Canada and other stakeholders as appropriate. This multi-year work is focused primarily on systemic change and is laid out below with concrete outcomes proposed for the next three years of work.

Action 1: Indigenous Nations & Governance Building

First Nations have long identified the need for support to rebuild and strengthen their Nations and to evolve their governance. This work is required to support a robust, constructive and progressive government-to-government relationship with the Crown.

Goal 1: Establish an Indigenous commission: designed, established and driven by First Nations, to provide certain supports to First Nations, respectful and reflective of, and consistent with, First Nations' rights of self-government and self-determination. The commission would provide a range of processes and options that First Nations may opt-in to use, from non-binding to binding outcomes. The commission would support First Nations upon request with respect to:

- i) boundary resolution, in accordance with First Nations' respective laws, customs, and traditions; and
- ii) nation and governance building including:
 - a. constitution development,
 - b. territory decision-making,
 - c. law-making,
 - d. policy development, and
 - e. development of political institutions, consistent with principles of the proper title and rights holder.

Once established, it is expected that both the federal and BC provide the necessary, sustainable resources/funding for the effective functioning of the independent commission.

Outcomes: Provide First Nations leadership with models for the creation of the independent commission by end of Year One. Establishment of independent Commission by Year Three.

Goal 2: Strengthening the Economy/ Jurisdictional Relationship and Responsibilities

The Commitment Document identifies a key theme of strengthening the economy. A new government-to-government relationship requires new approaches and models to the co-existence and exercise of our respective jurisdictions, and for the sharing and distribution of revenues. This relationship is important for all levels of government, municipal, provincial and federal.

- Design and implement new model(s) of fiscal relations, including a systemic fiscal mechanism, consistent with the guiding principles of this framework, including:
 - Recognizing the economic component of Aboriginal title;
 - Recognizing First Nations as key players and drivers in the economic landscape;
 - Recognizing that all governments require multi-streams of revenues to support their capacity to be strong and effective in serving their citizens and, so, a full range of options are to be identified;
 - Recognizing that accountabilities associated with government operations;
 - The shared objective of achieving and maintaining strong local, regional and provincial economies;
 - The shared objective of closing the socio-economic gap.

Outcomes: By end of Year Two, provide possible model(s) of jurisdictional relations with options for implementation for review by the parties.

Action 2: Legislation, Policy and Practice Review and Reform:

The evolution of section 35 and the objective of advancing reconciliation requires systemic shifts that reflect the existence of Aboriginal title and rights. These shifts will broaden the space for government-to-government relationships and for both Indigenous and Crown decision-making.

Goal: Establish a joint legislative and policy review table to oversee initial subject-matter priorities as identified below: The table will identify priority legislative, policy and practice barriers that are systemic obstacles to reconciliation (e.g. prevent certain shared decision-making models from taking place, prevent or hinder effective engagement, limit available tools for reconciliation or accommodation). Initial subject-matters where substantive work is underway and which can create space for reconciliation and achieving progress include child welfare, environmental assessment and forestry:

1. *Indigenous Child and Family Jurisdiction and Self-Government:* BC is prepared to engage in a process with First Nations for designing and implementing First Nations exercise of jurisdiction over Indigenous children and families . The process will necessarily include First Nations, Delegated Aboriginal Agencies and other service providers, including those created through the previous Indigenous Approaches program, as well as the Federal government. The work will take into account the work underway by the First Nations Health Council through their MOU with BC, on regional strategies and priorities related to the social determinants of health, as developed and approved by each Regional Caucus, to identify key outcomes for joint review and action with the FNLC.
2. *Environmental Assessment:* The need for innovation and change in environmental assessments has been long identified as an area where reconciliation may be advanced. This will take into account work underway by the First Nations Energy and Mining Council and the EAO and direction that has been provided by First Nations

leadership. Environmental assessment processes must be reflective of First Nations title and rights. The Government of Canada is embarking on reform of the *Canadian Environmental Assessment Act*, and related statutes.

3. *Forestry*: Consider statutes and policy in the forestry sector, taking into account work underway by the Forestry Council and BC and direction that has been provided by First Nations leadership, and evaluate options for reform.

Outcomes: By end of Year One: Key strategies for implementation of changes to legislation or published policies in the three (3) identified priority areas, and preliminary components for an implementation plan in each of the three (3) identified priority areas. Subject to progress, identify future priority areas to be addressed.

Action 3: New Approaches to Effective Negotiations and Dispute Resolution

First Nations, BC, and all citizens will all benefit from “better” outcomes from negotiations and consultation/engagement processes. Better outcomes include outcomes that may be reached more expeditiously and with less expense, have more flexibility, be more substantive and fair, and be more responsive to specific needs, interests and issues. To support this, new approaches to negotiations and associated dispute resolution options will be designed and implemented, incorporating and borrowing from both western and Indigenous models of interaction and resolution. The following specific initiatives will be advanced:

Goal: Design and establishment of a range of negotiation and dispute resolution models:

Reflecting on existing reports discussing the barriers and challenges to successful negotiations, assess gaps and possibilities for new approaches that will be more appropriate, effective, constructive, and successful.

Outcomes: By end of Year One: Development of a joint set of innovative and creative principles for how negotiations may be conducted in new ways and collating existing material.

Action 4: Reconciliation in BC

Section 35 of the *Constitution Act, 1982* calls for a principled reconciliation of Aboriginal rights with the interests of all Canadians. While this is primarily a task of the Crown and First Nations, there is an important role for the rest of society to also support and be engaged in reconciliation efforts. Issues of racism and discrimination hinder reconciliation. Reconciliation is a societal imperative: everyone has something to contribute and everyone will benefit. With key partners we will build understandings, bridges and partnerships.

Goal: Jointly promote the education of British Columbians to recognize the history and contributions of First Nations: Priority areas include but are not limited to: curriculum enhancement in the K-12 system; promotion of retention of Indigenous languages and culture; education and cultural initiatives targeting the general public. This work will draw on partnerships with the First Nations Education Steering Committee, the First Peoples Cultural Council, and Reconciliation Canada.

Outcomes: By end of Year One: Comprehensive multi-year strategy that can be shared publicly and tracked consistent with the priority areas.

Implementation & Engagement

The Commitment Document sets out a proposed implementation and engagement process which includes First Nations engagement, BC Government engagement, Business and Industry Engagement, Federal Government Engagement, and Public Awareness and Other Stakeholders.

A Joint Core Working Group has been established comprised of senior officials from BC and the First Nations Leadership Council, and is seeking active participation from the federal government.

The Joint Core Working Group will develop a Terms of Reference and a budget by November 1, 2016, to advance work on all actions identified and ensure achievement of the outcomes. The Working Group may draw on additional expertise as needed and may establish sub-committees as needed to carry out the work.