

Disclaimer: This document is without prejudice and is a rolling draft for discussion and should not be interpreted as the complete response from Chiefs and Leadership in BC. This document will be finalized at the follow-up All Chiefs and Leadership forum on June 26, 2018.

RECOGNITION AND IMPLEMENTATION OF RIGHTS FORUM RECOMMENDATIONS GENERATED BY BC CHIEFS AND LEADERSHIP

**Thursday, April 12, 2018 7:30 am – 4:30 pm | Coast Salish Territories
Pinnacle Hotel Harbourfront – 1133 West Hastings Street, Vancouver BC**

Chiefs and Leadership in attendance at this session identified a number of initial, high-level recommendations regarding principles, minimum requirements and scope of what a recognition and implementation of rights framework must include. These recommendations have been compiled into this rolling draft document. Be advised that this is considered to be a rolling draft for further discussion and input by First Nations communities who are interested in doing so.

The First Nations Leadership Council has clearly articulated to Canada and BC that the document is not be interpreted as a complete response from First Nations communities in BC. As Chiefs and Leadership return to their respective communities and continue this important discussion, additional recommendations and input may be generated. With this in mind, the First Nations Leadership Council has informed Canada and BC that First Nations communities may choose to request their own respective meetings with Canada and BC, and may choose to advance their own community-driven priorities and recommendations through their own stand-alone documents.

Members of the First Nations Leadership Council participated in the organization of this initiative, in accordance with resolutions adopted by the Chiefs in Assembly at meetings of the BC Assembly of First Nations, First Nations Summit, and Union of BC Indian Chiefs, which mandated us to do so. Further, the First Nations Leadership Council has consistently reiterated to Canada and BC that it is not a title and rights holder, nor does it speak on behalf of any community.

I. SETTING THE STAGE

The First Nations Leadership Council provided key messages in support of the Chiefs and Leadership dialogue. A high-level summary of these messages includes:

Inherent Nature of Indigenous Rights:

Our title and rights as Indigenous Peoples are inherent and have been cared for and passed along to us by our ancestors. Our title and rights are tied to our unique and deep connection to our homelands, water and other resources. Indigenous Nations and peoples pre-existed the arrival of settlers, and continue to exist today with their own laws, governments, political structures, social orders, territories and rights inherited from their ancestors. Included among these are the inherent rights of self-determination and self-government.

Our rights are not contingent on recognition by the Crown or others and are not dependent on the Constitution, court declaration or agreement for their existence or application. Rather, they are reflected in and supported by section 35 of the *Constitution Act, 1982* and other key instruments such as the United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples.

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By virtue of these rights, Indigenous Peoples freely determine their political status, organization and freely pursue their economic, social and cultural development.

Arising from our inherent rights and title to the lands is a solemn responsibility to care for the lands and resources. Further, the land held collectively includes jurisdiction and an inescapable economic component.

The Meaning of Recognition:

Recognition of rights means Crown governments organizing themselves to properly and fully respect our inherent Aboriginal title and rights, including our constitutionally-protected section 35 rights, and to end the denial that exists in Crown laws, policies, and practices.

This includes implementing Aboriginal title and rights without proof of strength of claim, and fully implementing historic and modern-day treaties consistent with their spirit and intent. It also means moving beyond the limitations of the duty to consult and accommodate about inherent rights and shifting into true relations based on free, prior and informed consent, joint decision-making, respect for Indigenous laws, authorities and jurisdictions, and proper resource revenue-sharing and fiscal relationships.

International Instruments and Laws:

There are numerous international instruments for us to rely upon and utilize as frameworks for reconciliation, including the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration), and the American Declaration on the Rights of Indigenous Peoples.

There must be full, and unqualified implementation of the UN Declaration, carried out in full partnership with Indigenous Peoples.

Partnership:

Co-development and partnership with Indigenous Peoples must guide all Crown legislative and policy reforms and processes. In particular, any provincial and federal legislative frameworks for the implementation of the UN Declaration must be fully co-developed with First Nations and fully implemented with the free, prior and informed consent of all impacted First Nations.

Path Forward:

We are at a point in our collective history - where the law has developed and commitments have been made – to finally move into a new era of recognition and implementation of Indigenous rights, and Indigenous Peoples operating fully as a distinct order of government within this country.

Now is the time to work together in an entirely different way – with openness and transparency.

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Over the years, Indigenous Nations of BC have repeatedly built and presented an agenda for reconciliation, inclusive of the key systemic and practical shifts required to achieve honourable reconciliation, to eradicate poverty, to implement the right to self-determination and to close the socio-economic gaps. Key elements of this agenda include:

- A shared principled framework for reconciliation, embedded in solemn and binding agreements, legislation, policy and practice, and the free, prior and informed consent of Indigenous Nations;
- Indigenous Nations & Governance Building, and the application and recognition of Indigenous laws and legal systems;
- Legislation, Policy and Practice Review and Reform;
- A new Fiscal Relationship / new Jurisdictional Relationship and Responsibilities;
- Co-Development of a Dispute Resolution Mechanism;
- Co-Development of an Independent Indigenous Human Rights Commission to monitor and report on the progress of the implementation of these principles;
- New Approaches to Effective Negotiations and Dispute Resolution;
- Investing in Indigenous quality of life;
- Reconciliation as a public and social responsibility, requiring cultural and attitudinal shifts, mutual understanding, and partnerships; and
- Achieving a national culture of awareness and reconciliation.

II. RECOMMENDATIONS

As an initial step in this important dialogue, First Nations Chiefs and Leadership engaged in plenary facilitated dialogue sessions on the recognition and implementation of rights from April 11 – 13, 2018 in Vancouver, BC. As a result of that session, the following initial, high-level recommendations were identified for discussion and consideration. It was clearly articulated that as Chiefs and Leadership return to their respect communities and continue this important dialogue, additional recommendations may be generated over the coming weeks. And further, it was also made clear that First Nations communities may choose to prepare their own stand-alone documents setting out community-driven priorities and recommendations, which may or may not include some parts or all of the following recommendations set out below:

Recommendations: Principles for Reconciliation

1. **Four Principles as a foundation:** On September 11, 2014, following the Supreme Court of Canada's decision in *Tsilhqot'in Nation*, First Nations Chiefs and Leadership in BC identified "Four Principles" as the basis of recognition and reconciliation work, which have been endorsed through resolution. The Four Principles must be the foundation for any Recognition Framework, including a legislative initiative. New Crown legislation and policy regarding Indigenous rights must take the Four Principles as its foundation. The Four Principles state:
 - a. Acknowledgement that all our relationships are based on recognition and implementation of the existence of Indigenous Peoples' inherent title and rights, and pre-confederation, historic and modern treaties throughout BC.

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- b. Acknowledgement that Indigenous systems of governance and laws are essential to the regulation of lands and resources throughout BC.
 - c. Acknowledgement of the mutual responsibility that all of our government systems shall shift to relationships, negotiations and agreements based on recognition.
 - d. We immediately must move to consent based decision-making and title based fiscal relations, including revenue sharing, in our relationships, negotiations and agreements.
2. Rebuilding of Trust: There is a lack of trust between Crown – Indigenous Peoples. The Crown governments must demonstrate their commitment to this new era of recognition and implementation of Indigenous rights by taking immediate steps to rebuild trust and set the table for a new relationship. Specifically, it was recommended:
 - a. to confirm treaty loan forgiveness in writing and overhaul treaty and other negotiation mandates to further support a contribution only funding approach;
 - b. to change conduct of litigation; and
 - c. that the relationships between Crown governments and Indigenous Peoples must include a commitment to obtaining the free, prior and informed consent of First Nations on all matters impacting their title and rights, must flow from open, transparent, and accountable dialogue and must respect the timelines and processes of Indigenous peoples.
3. Core Commitments and Policy and Mandate Transformation: Canada and British Columbia must clearly and promptly identify their respective core commitments in building a new Crown – Indigenous Relationship through a recognition framework and legislative initiative which is jointly and collaboratively drafted with Indigenous Peoples. In particular, policies and mandates must be transformed to reflect the recognition of rights, and this should be reflected immediately in all ongoing negotiations. Necessary changes include:
 - a. explicit affirmation of continuing Indigenous legal orders;
 - b. recognition of Indigenous decision-making within a collaboratively developed process;
 - c. jointly and collaboratively identifying and sharing revenue streams;
 - d. addressing title and rights infringements, mechanisms and restitution;
 - e. support for the development of dispute resolution mechanisms established by First Nations; and
 - f. supporting capacity development and jurisdictional shifts.
4. Denounce and reject colonial doctrines such as Terra Nullius, Doctrine of Discovery, including mandates, standards and practices premised upon such doctrines: That Canada and the provinces, consistent with the preamble of the UN Declaration ensure that any federal or provincial recognition framework or legislative initiative:
 - a. denounce and reject the Doctrines of Discovery and Terra Nullius as “racist, legally invalid, morally condemnable and socially unjust”;

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- b. explicitly reject any existing federal and provincial policies, mandates and practice standards which are developed from these colonial doctrines [see: Truth and Reconciliation Commission (TRC) Calls 45, 46, 47, 52]; and
 - c. reinstate the papal bull, Sublimus Dei on the Enslavement and Evangelization of Indians.
5. Reference to the Supreme Court of Canada (SCC): That Canada, together with Indigenous Peoples, undertake a reference to the SCC for a consent order to include: a rejection of the Doctrines of Discovery and Terra Nullius; and a confirmation that Indigenous Peoples' original titles, rights and authorities, as legal and constitutional rights, to their respective homelands, territories, waters and resources exist in law without requirement of proof, strength of claim or Crown infringements.
6. Develop a new Royal Proclamation: That Canada and BC, together with Indigenous Peoples, and consistent with and building on the Royal Proclamation of 1763 (which confirms a "nation to nation relationship") and consistent with TRC Call to Action #45, develop a new Royal Proclamation for Recognition, Reconciliation, Redress and Peace.

Recommendations: Legislative Framework

7. Recognition Framework and Legislative Initiative: Denial must be replaced by recognition throughout Crown legislation. Any recognition framework or legislative initiative must:
- a. entrench the standard of recognition of inherent title and rights without proof of strength of claim, and the full implementation of historic and modern treaties consistent with their intent;
 - b. provide mechanisms for the full implementation of inherent title and rights, and historic and modern-day treaties, agreements and other constructive arrangements, including rights affirmed in judicial decisions;
 - c. comply with the minimum standards set out in the UN Declaration, and the principles of the TRC;
 - d. be developed jointly and collaboratively with the free, prior and informed consent of First Nations;
 - e. First Nations must be at the drafting table and be fully resourced to participate in the development of a legislative framework.
 - f. recognize agreements based on, or reflective of Indigenous legal orders;
 - g. affirm what the Courts have already confirmed, that Aboriginal title exists everywhere in BC and return title lands within a reasonable time frame;
 - h. affirm that any mechanism that in form or result, supports or leads to extinguishment of Aboriginal title and rights is not acceptable and will not feature in any new recognition and implementation of rights framework or legislative initiative;
 - i. commit the Crown to full implementation of, and adherence to, common law and decisions;
 - j. establish joint structures and processes to monitor the alignment of Crown actions, as well as establishing a process for judicial oversight of court decisions;

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- k. Canada, BC and Indigenous Peoples jointly establish a structure and process to monitor the alignment of Crown action with rights and responsibilities to Indigenous Peoples;
 - l. establish a mechanism to support Indigenous Peoples who have lost total or partial possession of their homelands to have opportunity to preserve rights and have preferential rights to recover them, even lands in the hands of third parties. Further, that Indigenous Peoples have the right to restitution of homelands of which Indigenous Peoples have been deprived without their consent;
 - m. unless otherwise freely agreed upon by impacted Indigenous Peoples, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress;
 - n. commit Crown governments to a full review of all legislative, policy and operational practices impacting Indigenous title and rights.
8. Collaborative legal review: That as part of the new mandates of Canada and BC, and as part of understanding the historical political and constitutional foundations between the Crown and Indigenous Peoples, Canada and the provinces, together with Indigenous Peoples undertake a thorough legal review of the implications of the Doctrines of Discovery and Terra Nullius.
9. New Fiscal Relationship: Aboriginal title includes an inescapable economic component. The existing Crown – Indigenous fiscal relationship is inappropriate and does not support the aims and work of our communities. A new fiscal relationship must respect, acknowledge and be implemented upon the foundation that Indigenous Peoples are owners of our homelands, resources and waters, and reflect the acknowledgement that Indigenous Peoples have a right to economic benefits generated from our homelands, resources and waters, including compensation for historic economic loss. In this context, Canada and BC must work in collaboration with First Nations to identify and develop resource revenue sharing opportunities and mechanisms. The relationship should include ensuring Indigenous governments have revenue streams necessary to fully support their work.
10. Land Use Planning: The development of land use plans will assist First Nations in territorial planning of activities in our homelands, provide support for making informed decisions and addressing development activities. Land use plans are an ongoing priority for Indigenous Peoples to support us in meaningfully participating in and operationalizing free, prior and informed consent. The development of such plans requires predictable, sustained funding which can be included as a priority item within federal and provincial frameworks or legislative initiatives.
11. Regional sessions & All Chiefs Forum: Indigenous Peoples require regional engagement sessions and a follow-up All Chiefs Forum. Indigenous Peoples call on Canada and BC to provide the necessary funds for these activities.

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12. Public education and awareness: Crown governments must establish an extensive and comprehensive public education program about the history and the inherent title and rights of Indigenous Peoples.

Recommendations - Indigenous Nation-to-Nation

13. Inter-Nation autonomy and respect: That each First Nation fully acknowledge and respect the inherent title, rights and autonomy of each other as First Nations in our respective homelands. This includes respect for the right of each First Nation in determining their own futures, governing structures, organization and arrangements. In doing so, First Nations require that Canada and BC support Indigenous Peoples in addressing key legal and political issues that may exist among neighbouring Nations; this includes seeking resolution of overlap or shared territory issues. Crown governments should similarly respect the priorities that Nations set, consistent with the right of self-determination.
14. Resources and support: Crown governments must adequately resource and support the development of First Nations' capacity to develop and implement their own governance, legal and citizenship systems necessary for the reconstitution of Nations.
15. Recognition of Legal Pluralism: Crown governments must recognize Indigenous legal systems and jurisdictions as a third order of government.

Recommendations - International Focus

16. Participation at the United Nations: That Indigenous Peoples and Canada work together to:
 - a. advance Indigenous Peoples' increased participation as sovereign Indigenous Nations at the United Nations General Assembly, including in all UN agencies, funds and programmes as well as including with the following modalities;
 - b. attend and participate as Indigenous governments, not as NGOs;
 - c. full accreditation with the right to speak and; participate in resolutions which affect Indigenous Peoples.
17. International Commerce and Agreements: That Indigenous Peoples have a right to participate in and engage in international commerce and in negotiation and implementation of international agreements.
18. Lawsuits of foreign and domestic companies: That Canada and the provinces introduce federal and provincial legislation, regulations and policies that prohibit opportunities for foreign and domestic companies and governments from bringing lawsuits in pursuit of legal and economic remedies involving Indigenous Peoples' homelands, resources and waters.