

**British Columbia – First Nations
Proposed Commitment Document
2015**



To: First Nations Leaders and Members of the BC Cabinet

Over a year has passed since the historic *Tsilhqot'in* decision by the Supreme Court of Canada, and we are now about to hold the 2nd Annual BC Cabinet-First Nations Leaders Gathering to bring our respective leadership together to engage in common issues before us. We also celebrate the 10th anniversary of the New Relationship vision document that the Province and First Nations reached in 2005.

Today, we find ourselves with new circumstances and new opportunities informing this relationship. We are experiencing changes on the landscape of social issues, lands and resources, the economy, technology and case law such as the *Tsilhqot'in* decision. The *Tsilhqot'in* decision confirms that we must revitalize our efforts to build new relations grounded in the recognition of Aboriginal title and rights.

Over the past year, our shared understanding has deepened that change is needed and the status quo cannot continue. The future of our children, families, the environment and the economy depend on it.

Concrete action, and new and creative approaches, at all levels is required – in direct government-to-government relationships, negotiations, policies and laws, fiscal relations and decision-making.

To help move this fundamental change forward, the First Nations Leadership Council and the Province have developed a proposed Commitment Document setting out a proposed joint agenda and action plan for significant work to be done.

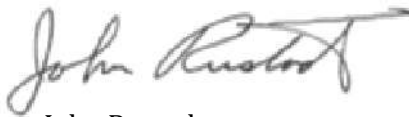
We are seeking your review, input and guidance on the Commitment Document and confirmation that it represents appropriate courses of action required to guide our mutual work.

The Commitment Document will be presented at the September 8th – 10th BC Cabinet–First Nations Leaders Gathering and will be the subject of follow-up dialogue and approvals through our respective processes.

If the direction proposed is supported, the work will begin in earnest, with a robust process of engaging First Nations and a commitment to inclusivity and transparency.

This is not intended to be a long, drawn-out process. It is meant to be about real action and change, in real and tangible ways, that will set us collectively on course to a revitalized relationship and a positive future grounded in recognition of Aboriginal title and rights, and reconciliation of our respective titles and jurisdiction.

Sincerely,



John Rustad

Minister of Aboriginal Relations and Reconciliation

First Nations Leadership Council



Grand Chief Stewart Phillip
Union of BC Indian Chiefs



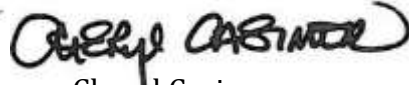
Chief Bob Chamberlin
Union of BC Indian Chiefs



Chief Judy Wilson
Union of BC Indian Chiefs




Grand Chief Edward John
First Nations Summit



Cheryl Casimer
First Nations Summit



Robert Phillips
First Nations Summit



Regional Chief Shane Gottfriedson
BC Assembly of First Nations

We are all here to stay.

These are the words spoken by the Supreme Court of Canada in 1997, and the starting words of our mutual acknowledgement in the New Relationship vision document, developed in 2005.

Ten years later, we find ourselves with new circumstances and new opportunities informing this relationship. We are experiencing changes on the landscape of social issues, lands and resources, the economy, technology and case law such as the *Tsilhqot'in* decision.

Over the past ten years, we have experienced both successes and challenges. Many strong relationships have been built between the Province and First Nations through agreements and community initiatives, which have supported First Nations to strengthen their communities and culture and have led to partnerships in economic development. However, there is still much work to be done. We have yet to come to a common understanding of what it means to engage in a government-to-government relationship based on recognition of aboriginal title and rights as is evidenced by our different perspectives on the Four Principles which were presented by Chiefs to the Province for endorsement at the inaugural September 2014 BC Cabinet-First Nations Gathering.

Maintaining the *status quo* is not an option. Acknowledging our challenges and building on our successes from the past ten years, it is critical that we find a way forward with real and concrete actions so we can together build a bright future for our children.

Commitment

We remain committed 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”, as we agreed in the New Relationship.

As articulated by the Supreme Court of Canada, reconciliation of pre-existing Aboriginal societies with the assertion of Crown sovereignty is an imperative set out in section 35 of the *Constitution Act, 1982*. The section 35 framework permits a principled reconciliation of Aboriginal rights with the interests of all Canadians. The courts have provided some guidance on how to advance reconciliation, but have encouraged the Crown governments and First Nations to work out the

details of advancing reconciliation on the ground. Aboriginals and non-Aboriginal people are “all here to stay” and must of necessity move forward in a process of reconciliation.

We commit to jointly design a creative, constructive, pragmatic and organized approach to giving life to the section 35 framework in British Columbia, with tangible milestones to demonstrate progress.

Reconciliation is a journey. There is a multitude of ways to express what reconciliation means, and how it may be achieved through ongoing processes. The following are examples of the many articulations and dimensions of reconciliation:

“Reconciliation requires constructive action on addressing the ongoing legacies of colonialism that have had destructive impacts on Aboriginal peoples’ education, cultures and languages, health, child welfare, the administration of justice, and economic opportunities and prosperity.” (Truth and Reconciliation Commission, 2015)

“Reconciliation must create a more equitable and inclusive society by closing the gaps in social, health, and economic outcomes that exist between Aboriginal and non-Aboriginal Canadians.” (Truth and Reconciliation Commission, 2015)

“Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith...” (UNDRIP)

“As Delgamuukw explains, the process of reconciling Aboriginal interests with the broader interests of society as a whole is the raison d’être of the principle of justification. Aboriginals and non-Aboriginals are “all here to stay” and must of necessity move forward in a process of reconciliation (para. 186).” (SCC, Tsilhqot’in, para. 82)

“What is at stake is nothing less than justice for the Aboriginal group and its descendants, and the reconciliation between the group and broader society.” (SCC, Tsilhqot’in, para. 23)

We acknowledge there is a need for - and commit to jointly developing, advancing and implementing - additional concrete actions and creative approaches that better reflect our circumstances today, and which support reconciliation and this government-to-government relationship.

The process used to shape and develop our work moving forward must be inclusive, open, transparent and timely. Specifically, it is proposed that the engagement process:

- must provide for effective and informed input from First Nations leaders and communities;
- will engage all levels of the BC Government;
- will include business, industry and advocacy groups; and
- will include the Government of Canada.

Joint Agenda: Core Elements of the Work

The Province and the First Nations Leadership Council (BC Assembly of First Nations, First Nations Summit and Union of BC Indian Chiefs) (the “FNL”) have developed the following proposed joint agenda and action plan for advancing the Crown-First Nation relationship in British Columbia and to come up with a principled framework for reconciliation, including concrete actions, measures and steps, in a manner that is appropriate for a post-*Tsilhqot’in* environment, and with a clear timeline that identifies tangible progress.

It is envisioned that this work will achieve a principled and substantive approach to reconciliation that will include:

1. Vision

A joint updated vision for the Crown-First Nation relationship in British Columbia, which builds from New Relationship, in the context of social issues, lands and resources and the economy. The vision may also reflect on the role of the Government of Canada.

2. Guiding principles

Guiding principles for reconciliation, building from those set out in the New Relationship. It is anticipated this will include or reflect principles about the relationship and reconciliation as articulated by the courts, as well as principles agreed to in political accords to date in BC between the Province and First Nations (e.g. *Tsawwassen Accord*, *Transformative Change Accord*).

3. Goals and objectives

Mutual and respective goals and objectives for reconciliation, and associated actions, measures and steps. It is anticipated these would include achieving predictability and stability in the economy, and closing the socio-economic gap that persists between First Nations and non-First Nations.

4. Partnerships and Cultural Understandings

Measures to build partnerships and strengthen cultural understandings between First Nations and the Crown, as well as with others (e.g. industry). The objective of advancing and achieving reconciliation is not an issue limited to the Crown and First Nations. It is an imperative of society as a whole and there are many potential partners to help successfully achieve this objective.

5. Processes and structures

Action with regard to:

- a. Identifying and establishing new institutions, processes, and structures to support or facilitate reconciliation efforts;
- b. Designing new negotiation and dispute resolution approaches;
- c. Supporting First Nations capacity and governance development; and
- d. Determining and advancing strategies and actions to ensure the Government of Canada fulfills the federal Crown's obligations.

6. Systemic Supports: Legislation, Policy and Other Options

Concrete legislative, policy or other options and ideas for facilitating and supporting an improved and constructive relationship. These may initially focus on key legislation, policies or practices that have given rise to conflict in the relationship (e.g. environmental assessment, online mineral staking). It is anticipated that options will include a process for improved and effective engagement on the collaborative development of new legislation, policies and practices, or reform of existing ones.

Themes to Address

The work will require dialogue about a number of key themes, including:

Reconciliation and Recognition – Aboriginal rights and title exists in British Columbia. First Nations, the Province and Canada must find ways to reconcile our respective jurisdictions, governance, laws and responsibilities.

Strengthening the Economy – Having a strong and resilient economy is a shared interest and is critical to our mutual success. First Nations must be full partners in economic development and growth.

Lands and Resources – Aboriginal people have a unique connection to the land and resources in British Columbia and sustainable resource development is a key component of British Columbia's economy. Collaborative environmental stewardship can ensure our lands and resources are used sustainably and into the future.

Social and Economic Gaps – Closing the social and economic gap between Aboriginal peoples and other British Columbians to achieve healthy and strong Aboriginal communities is a shared objective and priority.

Advancing Successful Negotiations – Negotiation offers a path to collaboration and finding creative ways to address our respective interests, and the preferable path to reconciliation.

In addressing these themes, the work should reflect upon and consider lessons learned since 2005, including:

- progress and opportunities that have been made;
- a frank assessment of what has and has not worked;
- the implications, challenges, and opportunities for implementing the principles and standards of *Tsilhqot'in* across British Columbia, including recognizing the proper Title and Rights holders;
- the respective work that First Nations and Crown governments must do to effect a transformation in relations; and
- reflect on strengths and how to address gaps in the relationships.

Acknowledging that a large body of work already exists and should be built upon moving forward, the work should consider relevant materials including the following:

- New Relationship Vision;
- Transformative Change Accord;
- The Supreme Court of Canada's decision in *Tsilhqot'in* and other jurisprudence;
- The Four Principles developed by First Nations Chiefs in 2014;
- The strategic objectives of the Premier and Cabinet;
- The *United Nations Declaration on the Rights of Indigenous Peoples*;
- Truth and Reconciliation Commission Reports;
- Recognition Working Group materials;
- Recognition and Reconciliation legislative initiative;
- All Chiefs Task Force Report (2009);
- Materials developed by the Union of BC Indian Chiefs, First Nations Summit, and BC Assembly of First Nations that inform the development of a reconciliation framework, and movement to a post-*Tsilhqot'in* environment;
- Royal Commission on Aboriginal Peoples Report;
- First Nations Leadership Council report on shared territories and overlaps;
- Industry and business reports and publications;
- Government reports and publications.

Proposed Implementation & Engagement Process

The implementation of this joint agenda will be overseen by the Members of the Provincial Cabinet and the FNLC, who will jointly determine milestones/timelines to be met, as informed by input gathered through the engagement process.

A Joint Core Working Group will be established to undertake this work in accordance with this proposed commitment document.

We recognize that meaningful engagement and information sharing will be critical in making progress in the coming year. We commit to developing a joint engagement workplan that is based on an inclusive, open, transparent and timely process.

First Nations Engagement

The FNLC proposes the following processes for First Nations engagement:

- Two All Chiefs Assemblies, in addition to regularly scheduled BCAFN, UBCIC and FNS assemblies;
- Team/working group to present in any Nation;
- Regional sessions; and
- First Nations Organizations (sectoral councils);
- Legal advisory team (to which any First Nation can send a representative).

BC Government Engagement

The Premier and Cabinet provide the policy direction of Government and will be informed by:

- Policy and legal working group to include and encourage advice from cross-government; and
- Premier's office involvement and linkage to core working group.

The following components are engagement pieces that will be approached jointly:

Business and Industry Engagement

The engagement process will create diverse opportunities for outreach and engagement with business and industry. Engagement with business and industry will occur through existing associations and groups including Business Council of British Columbia, sector associations such as Clean Energy BC, Mining Association of BC, AME-BC, COFI, etc. Engagement may take a variety of forms including dialogue sessions, presentations, written, etc and may be joint or bilateral.

Federal Government Engagement

The Federal government has a critical role to play in reconciliation and engaging on a Nation-to-Nation basis with BC First Nations. The FNLC and Province of BC agree that it's important to jointly approach the Federal Government and ensure the Federal government fulfills the federal Crown's obligations.

Public Awareness and Other Stakeholders

We jointly agree there will be other relevant stakeholders such as social service agencies that may want input and information regarding this work. This will be considered as part of the overall engagement workplan.

Consideration will be given to finding ways to raise public awareness and understanding of the unique and important nature of the relationship between First Nations and the Provincial Crown.

The actions in this proposed Commitment Document now form the agenda for the coming year between First Nations Leadership Council and the Province, with milestones/timelines to be jointly determined, and informed by input from the engagement process, as a priority step. It is proposed that the Province be represented by members of the BC Cabinet. This will include an Annual meeting on progress to include the Premier.

A formal report out will occur at the next annual BC Cabinet First Nations Leaders Gathering in September 2016, with other reporting as set out in the proposed Implementation and Engagement Process.

Province commits to resourcing the joint work and engagement process.

A proposed engagement and reporting structure is attached.

Ratification processes will be implemented as appropriate.

DRAFT

ENGAGEMENT WORKPLAN:

