

# FIRST NATIONS LEADERSHIP COUNCIL



BRITISH COLUMBIA  
ASSEMBLY OF  
FIRST NATIONS

1004 Landooz Rd.  
Prince George, BC  
V2K 5S3

Ph: 778-945-9910  
Fx: 778-945-9916



FIRST  
NATIONS  
SUMMIT

1200-100 Park Royal South  
West Vancouver, BC  
V7T 1A2

Ph: 604-926-9903  
Fx: 604-926-9923  
Toll Free: 866-990-9939



UNION OF  
BRITISH COLUMBIA  
INDIAN CHIEFS

401 - 312 Main Street  
Vancouver, BC  
V6A 2T2

Ph: 604-684-0231  
Fx: 604-684-5726

**TO: BC FIRST NATIONS LEADERSHIP**

**FROM: FIRST NATIONS LEADERSHIP COUNCIL**

**DATE: OCTOBER 11, 2019**

**RE: UPDATE ON *UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES* LEGISLATION IN BC**

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## PURPOSE

To provide an update on the status and progress of the commitment from the Government of British Columbia to introduce legislation on the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) in BC.

## BACKGROUND

In the February 2019 Speech from the Throne, the Government of BC committed to introducing UN Declaration legislation in the Fall 2019. First Nation Chiefs supported the development of UN Declaration legislation in BC through resolutions of the BC Assembly of First Nations (BCAFN), the First Nations Summit (FNS) and the Union of BC Indian Chiefs (UBCIC) (collectively the First Nations Leadership Council (FNLC)). The resolutions mandated the FNLC to advance the legislation with the Province, with regular reports provided to First Nations at their respective assemblies. Since February 2019, political representatives from the FNLC, along with a legal and technical team, worked with the Ministry of Indigenous Relations and Reconciliation (MIRR) to jointly develop draft legislation to implement the UN Declaration in BC.

## CURRENT STATUS

A consultation bill has been prepared and First Nation Chiefs and Leaders have been invited to view the bill, based on the process of entering into a non-disclosure agreement (NDA) with the Government of BC, as it remains confidential until introduced in the Legislative Assembly. The commentary and feedback will be gathered from each session and put forward to the legislative technical working group to ensure documentation and submission to the province.

First Nation Leadership had the opportunity to sign an NDA and view the bill during the UBCIC Annual General Assembly on October 3<sup>rd</sup>, and will have another opportunity during the morning of Thursday October 17<sup>th</sup>, in a side room at the First Nations Summit meeting, which is taking place at the Musqueam Community Centre.

It is expected that the Government of BC will introduce the bill at the fall session of the Legislative Assembly, which opened this week.

## ANALYSIS

The importance of the UN Declaration as the framework for reconciliation has been emphasized in numerous reports and in work led by First Nations in BC. The 2016 Truth and Reconciliation Commission's (TRC) Calls to Action included Action #43 that called upon the federal, provincial, territorial, and municipal governments to fully adopt and implement the UN Declaration as the framework for reconciliation. The Government of BC, working with First Nations, has committed to respond to that Call to Action.

The Government of BC took the position that a provincial bill to implement the UN Declaration should be modeled after the federal Bill C-262, *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration (the UN Declaration) on the Rights of Indigenous Peoples*. Bill C-262 was a private members bill put forward by NDP MP Romeo Saganash which was adopted by the House of Commons but was stalled during the Senate Committee review stage resulting in endless delay, eventually preventing the bill from receiving royal assent.

The UN Declaration was already woven into the work of the Government of BC through the several sources, including Premier Horgan's Ministerial Mandate Letters, the 2017 Confidence and Supply Agreement between the BC Green Caucus and the BC NDP Caucus, the Commitment Document: *Shared Vision, Guiding Principles, Goals and Objectives* ("Vision"), and *Concrete Actions: Transforming Laws, Policies, Processes and Structures* ("Concrete Actions").

In the 2019 Throne Speech, the Government of BC committed to jointly design, construct and implement legislation to implement the UN Declaration in BC and discussion has been underway for some time on this based on advocacy from First Nations. There have already been many citations and references to the UN Declaration by the courts, federal and provincial governments to date, including several recent agreements for reconciliation between First Nations and BC, and the new legislation that has begun to reference it in relation to specific areas of joint work.

The First Nations approach to UN Declaration legislation in BC was that the legislative framework must have particular focus to:

- 1) Review and/or reform laws, regulations and policies to ensure that they are compliant with the UN Declaration based on a new collaborative process;
- 2) Provide Indigenous Peoples the necessary resources and capacity to fully participate in the review of laws and policies and to engage First Nations title and rights holders;
- 3) The development of an independent oversight and meaningful process to review and report on progress on implementation and create a clear action plan for the work required to shift from the colonial laws and policies imposed on First Nations peoples and governments in BC to one of collaboration and cooperation;
- 4) A public education component providing information and knowledge of the UN Declaration and Indigenous peoples' rights to BC Public Service Employees and the BC public at large.

The legislation would also allow for agreements between the Government of BC and First Nations for decision making on matters addressed in provincial statutes. This will create space for First Nations to have shared or sole decision making in key areas based on agreements with the Province, overcoming an impediment that has held back progress on many areas and has been identified as a priority at several negotiation tables.

## **NEXT STEPS**

The FNLC wants to ensure that all First Nation Chiefs and Leaders who want further information on the consultation bill can be provided that information. Briefing sessions to view the draft or consultation bill have been underway, and many Chiefs and leaders have participated to date. If you were not available to attend the UBCIC session and are not available to participate in the session scheduled for next week's FNS meeting, and are interested in a briefing, please contact the FNLC and we can support you to be briefed and request government make appropriate arrangements in your circumstances..

The FNLC will be doing public education on the UN Declaration and the bill and wants to ensure that all First Nation Chiefs and Leaders are supported to explain and advance the importance of the UN Declaration at the local and community level, with your partners, other governments, business and civil society organizations.

## **FOR FURTHER INFORMATION:**

Colin Braker, Communications Director, First Nations Summit  
([cbraker@fns.bc.ca](mailto:cbraker@fns.bc.ca))

Maureen Buchan, Senior Policy Advisor, BC Assembly of First Nations  
([maureen.buchan@bcafn.ca](mailto:maureen.buchan@bcafn.ca))

Andrea Glickman, Policy Director, Union of BC Indian Chiefs  
([andrea@ubcic.bc.ca](mailto:andrea@ubcic.bc.ca))

Attach. Copy of PowerPoint presentation for the October First Nations Summit meeting – "United Nations Declaration on the Rights of Indigenous Peoples: BC Legislative Framework"

*United Nations  
Declaration on the  
Rights of Indigenous  
Peoples:*  
BC Legislative  
Framework

PRESENTATION TO  
THE FIRST NATIONS  
SUMMIT CHIEFS IN  
ASSEMBLY

OCTOBER 16, 2019

MUSQUEAM  
COMMUNITY  
CENTRE,  
X<sup>w</sup>MƏθK<sup>w</sup>ƏYƏM  
(MUSQUEAM  
TERRITORY)



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## ACKNOWLEDGEMENTS

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- Acknowledge unceded lands of the x<sup>w</sup>məθk<sup>w</sup>əyəmə (Musqueam) where we gather today
- Acknowledge Chiefs, Leaders, Elders and Youth
- Acknowledge Minister Fraser and ADM Jessica Wood and staff

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## BACKGROUND: HOW WE GOT HERE

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- Acknowledge Grand Chief Edward John (Akile Ch'oh) for his tireless work, with support of the FNS Chiefs, to achieve the UNDRIP as a foundational tool for our use
- Context:
  - Section 35 *Constitution Act, 1982*
  - Chiefs' Four Principles (implementing *Tsilhqot'in*)
  - Court Cases
  - Truth and Reconciliation Commission
  - 10 Principles respecting the Government of British Columbia's Relationship with Indigenous Peoples
  - BC Throne Speech (2019)
  - *And so much more...*
- We have reached a "moment" in our shared history in British Columbia

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## Background: Advancing UNDRIP

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- UNDRIP:
  - Sets out the **minimum standards** for the survival and dignity of Indigenous peoples.
  - Indigenous rights are **human rights** in an Indigenous context
  - Canada endorsed UNDRIP without qualification
  - BC endorsed UNDRIP and committed to its implementation
- The right of **self-determination** critical in all of UNDRIP and section 35 rights
  - Indigenous peoples are title and rights holders, and are decision-makers with inherent jurisdiction
  - This is the basis for meaningfully addressing 150 years of colonialism and achieving reconciliation
- Legislation supports a **shift to relations with proper title and rights holders** on a G2G basis
  - Bill 262 was not passed (despite support), but work must continue federally and in British Columbia
  - Advances key part of Commitment Document vision – to "achieve a strong and valued G2G relationships"

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## Calls to Action / FNS Mandate

### TRC Calls to Action - especially Call to Action #43

- “provincial government to fully adopt the declaration on the rights of indigenous peoples as **the framework for reconciliation**”.

### Following presentations and dialogue, the FNS Chiefs in Assembly provided support and direction through resolutions for:

- The adoption of TRC and UNDRIP and to ensure that standards of UNDRIP support First Nations self-determination in British Columbia.
- The FNS (working with BCAFN and UBCIC) to engage with the Province on the Commitment Document (2015) and a provincial legislative framework to implement UNDRIP (Action 1/Goal 1)

Other recent federal and provincial legislation acknowledge UNDRIP (e.g. C91 (Indigenous Languages), C92 (Children and Families), BC EA legislation). Other laws acknowledge Indigenous “rights” (C68 (Fisheries); C69 (Impact Assessment))

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## Consultation Draft (Bill): Process

- Chiefs’ resolutions (BCAFN, FNS and UBCIC) mandated FNLC engagement with the Province in 2018 to implement UNDRIP in provincial legislation, with regular reports made to First Nations at each of the subsequent assemblies
  - Action 1/Goal 1: Commitment Document Joint Agenda (Concrete Actions)
- Collaborative process to develop an UNDRIP Bill for BC:
  - A lot of technical work, supported by political dialogue
  - Now – a consultation draft is ready for review by the Chiefs
- First Nations need to each decide if the draft Bill is acceptable.
  - Political process has constraints as this is provincial legislation.
- **KEY: the Action Plan on implementation** and the shaping of that Action Plan by First Nations title and rights holders and their governments.

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## UNDRIP BC Legislation: What can it do?



Confirm that UNDRIP has full application to the laws of BC



Confirm that recognition and respect for Indigenous rights is foundation for shift in relationship and implementation must be aided by a public, coherent and transparent process where all play the role



Support predictability and range of reconciliation (social, economic, etc.)

Get out of the adversarial circumstances that perpetuate conflict.



Set a new course for public and transparent action plan and government accountability to implement UNDRIP.

Provincial legal foundation for BC to work with First Nations to align law with UNDRIP.

Support implementation of existing reconciliation agreements.

First Nations recognized as *governments* representing inherent title and rights holders and not simply band councils, corporations or charitable societies or organizations under federal/provincial laws

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## Key Things UNDRIP Legislation Can Do

- Action Plan and Reporting (Accountability)
- Confirms non-derogation of inherent aboriginal and treaty rights and title
- Respect for diversity of Indigenous peoples, rights and territories
- Alignment of provincial laws with UNDRIP
  - Require Province to take all necessary measures
- Making space for consent-based decision making with Indigenous governing bodies and Provincial authorities
- Addresses Article 38: “States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.”

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## Next steps

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Sharing information and keeping title and rights holders at the forefront of all work

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Reporting to Chiefs and making space for Chiefs to be informed and advise on their views and feedback

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Leadership dialogue

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Outreach to business, public, civil society groups

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Bill passage

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Development of implementation of Action Plan

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Reporting to the Legislature of BC and public examination of progress

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## For further information

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Maureen Buchan, BCAFN Senior Policy Advisor- [Maureen.buchan@bcafn.bc.ca](mailto:Maureen.buchan@bcafn.bc.ca)

Colin Braker, FNS Communications Director- [cbraker@fns.ca](mailto:cbraker@fns.ca)

Andrea Glickman, UBCIC Policy Director – [andrea@ubcic.bc.ca](mailto:andrea@ubcic.bc.ca)

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