



## All Chiefs Meeting

# Re: Proposed Recognition and Implementation of Rights Follow-up Session

June 26, 2018 | Richmond Executive Inn

## *Summary of Proceedings*

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Recognition and Implementation of Rights Follow-up Session**

**June 26, 2018 | Richmond Executive Inn**

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The All Chiefs Meeting commenced at approximately 9:18 a.m.

## Welcome and Introductions

*Debra Hanuse, Facilitator*

Chair Hanuse welcome Delegates to the meeting and acknowledged the territory of the Musqueam First Nation.

## Opening Prayer

*Howard Grant, Musqueam First Nation*

Elder Grant welcomed Delegates to the territory of the Musqueam First Nation and reflected on the day's agenda. New policies have been created that have laid the foundation in BC. We are warriors and each Delegate needs to recognize and understand their role and responsibility.

## Opening Remarks

*Cheryl Casimer, First Nations Leadership Council*

Ms. Casimer acknowledged the territory of the Musqueam First Nation and expressed appreciation that to the Musqueam for opening their doors and land to do this work. She expressed appreciation to Elder Grant for the warm welcome to the territory. Appreciation was expressed for the Delegates' attendance. It was noted that many meetings are occurring concurrently, including the Major Projects Coalition in the North, and the Department of Canadian Heritage, which are hosting engagement sessions on ancestral remains, and the First Nation Land Management Council engagement sessions. It is a great day to be Indigenous.

Ms. Casimer noted her privilege and honour to celebrate National Indigenous Day with her community, Nations, friends, and family. Celebrations in her community wrapped up with a powwow to celebrate the final ownership of the casino, golf club, and resort, which is housed in a former residential school. The powwow also honoured residential school survivors.

Celebration of National Aboriginal Day took many years of lobbying and advocating of many leaders. Through perseverance, Indigenous people celebrate who they are in their ancestral homelands and share that with their neighbours and country. It is not yet a national statutory holiday, but one day it will be. Who we are and what we contribute as Indigenous people has yet to be fully recognized.

We are here today, like our ancestors, to sit together, work, strategize, and make tough decisions for the betterment of future generations. There will always be the element of the unknown and questions about whether we are doing the right thing. What will it look like at the end? How will it impact me? My family? My community? My Nation? These are legitimate questions and fears. Our ancestors asked the same questions when they decided to sail across the ocean to seek justice, when they went to war, or held up a feather against all odds.

The opportunity is before us in this short window of time to embrace change. It is time to get the work done.

## Update – Current Environment

*Melissa Louie, Legal Counsel, First Nations Summit*  
*Louise Mandell, Q.C. Mandell Pinder*

Ms. Louie acknowledged the territory of the Musqueam First Nation. She provided an overhead presentation titled “Recognition and Implementation of Rights ‘Background and Context’”, and offered comments regarding:

- The April 2018 Recognition and Implementation of Rights Session
  - 18 recommendations developed from discussions
  - Implications of recognizing self-government and self-determination without title, which allows control of the government relative to how Indigenous people live and govern
  - Government exploitation of divisions between communities and Nations, which hampers economic development
- History of the 2009 Recognition and Reconciliation Legislative Initiative
- Summary of the 2009 Recognition and Reconciliation Legislative Initiative
  - Potential for the Indigenous Nation Commission to address territory issues
  - The dispute mechanism was not flushed out
- Recent developments supporting the shift to recognition
  - The Truth and Reconciliation (TRC) 94 Calls to Action and TRC’s Reconciliation Principles
  - *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP)
  - *Bill C-262* – it needs to be determined whether focus needs to be on Bill C-262
  - Federal Recognition and Implementation of Indigenous Peoples Engagement – provides opportunity to participate in shaping legislation
  - BC’s efforts towards recognition of Indigenous rights – Section 35 was removed from reference and a response has yet to be forthcoming
  - First Nations “Four Principles” (2014) – used as the foundation for all work
  - April 2018 Recognition and Implementation of Rights session – further input is needed from BC communities on the draft document
- Common Ground (Amongst First Nations Chiefs and Leadership in BC)
  - High-level principles arising from the internal April 2018 Recognition and Implementation of Rights Session
  - High-level Principles (developed from internal April 2018 Recognition and Implementation of Rights Session):
    - Aboriginal Title and Rights are inherent, not contingent
    - Self-determining
    - A new fiscal relationship – funding is determined by how First Nations exercise rights
    - Recognition of legal pluralism
- Gap analysis
- Mechanisms and approaches to close the gap
  - Endorse the four principles
  - For litigation mandates
  - For negotiation mandates – extinguishment is not an option going forward
  - Recognition legislation – it would be helpful to revisit BC’s perception on Section 35.

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Ms. Mandell acknowledged the territory of the Musqueam First Nation and expressed appreciation to Elder Grant for his opening comments. She referenced the circulated document titled “Next Steps Document: Engagement on a new Recognition and Implementation of Rights Framework”, and offered comments regarding:

- Time of transformation from the colonialism mindset to an era of recognition
- Climate of change of uncertainty caused by Crown governments to make shifts that the law requires
- Confirmation by the Supreme Court of Canada (SCC) that Aboriginal rights were never extinguished
- Continued obligation of government and industry to consult First Nations when seeking to do business in First Nations’ territory
  - The provincial government was compelled to enter into discussions, which resulted in a discussion paper
  - This discussion paper stated that the government was prepared to enter into a relationship based on the recognition of title through the province without proof or strength of claim
- Opportune time to pursue a Recognition and Implementation of Rights Framework with the mandate of UNDRIP, the TRC’s Calls to Action, and the Tsilhqot’in decision
- April 11-13, 2018 meeting of Chiefs and leaders to generate the rolling draft document
- The federal government perspective expressed on April 13, 2018 by Minister Jody Wilson-Raybould in an address to the Business Council of BC
  - Need for Canada and Indigenous peoples to get their houses in order
  - Canada’s internal implementation includes shifting litigation and negotiation mandates
  - Extinguishment will no longer be the driver of agreements
  - Canada is prepared to recognize title and is seeking long-term certainty on who speaks for the Nation
  - Free Prior and Informed Consent (FPIC)
- Areas of common ground between Canada and First Nations
- Gaps in the positions expressed by Canada and the rolling draft
  - Litigation mandates
  - Negotiation mandates
  - Jurisdiction, laws, and legal orders recognition
  - The economic component
  - Compensation and restitution for the past
- Mechanisms and approaches to close the gap
  - Endorsement of the four principles based on the law and UNDRIP
  - Agreement that litigation and negotiation mandates must change
  - Drafting of Recognition Legislation that includes a preamble, a purpose section, an interpretation section, and mechanisms.

The Panel invited questions and comments (Q/C) from delegates and provided responses (R), where appropriate:

Q/C: I know that you always start with working and communicating with the federal and provincial governments. Even though the federal government is going into an election year, which should not disrupt our business. We need to set the stage and inform elected officials that we will still be here and need to move forward. We need to resolve the issue around the land question. We talk about title. Canada does not recognize that it jeopardizes sovereignty. We need to understand

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that. We need to take that into consideration in our function as this is advanced during the election. Let us get it better for the new government. Let us prepare for who will be elected so that they have the proper information they need for their mandate. If we do that leading into the election, it will shift their platform whether it is federal or provincial.

You are doing great work. We are being treated like lobbyists. But we are people of the land and they need to treat us as such. We need to stop using the language of overlap. There needs to be protocol agreements so that all First Nations across BC are united.

Q/C: You spoke about the de facto assumption of jurisdiction of the Crown and the proper rights and titleholders. Has consent been defined in UNDRIP?

R: It is defined as “free prior and informed consent”.

Q/C: But does consent mean “yes” or “no”?

R: Yes, but also as outlined in the vision Minister Wilson-Raybould discussed in her address to the Business Council of BC on the building of institutions, that consent is capable of being received. How do you share information? How are priorities featured and how are they addressed? And how do we provide accommodations along the way?

What we have now is the Crown making decisions. They determine the process. That is the place that work needs to be done. We need to build institutions so that consent is part of decision making on lands. There are two legal orders: Indigenous governments and Crown governments. They both make decisions on how land can be used. The mechanism needs to be built so that they can talk to each other collaboratively.

Q/C: But does consent mean “yes” or “no”?

R: The work is not about vetoing. The standard of FPIC was expressed in UNDRIP. We need institutions to make it a reality.

Q/C: I cannot speak to other traditional systems on the Coast. When we look at Indigenous rights where I am from, it comes from the authority of our Hereditary Chiefs. Our Hereditary Chiefs were missing from the engagement sessions in April 2018. In other Bands, the Hereditary Chiefs are not on Council. How do we rectify that?

R: That is an interesting dynamic. When we talk about self-determination of rights, each community has the right to determine what that looks like. Your internal decision-making structure is yours alone. The First Nation Leadership Council (FNLC) does not have the authority to organize that can come to the table. If you want Hereditary Chiefs at the table, which is an internal dialogue about whom you decide is the proper title and rights holder.

Q/C: Since Delgamuukw, we did not hear about how the different governments received ownership of our lands. We did not hear that we gave up those lands. It seems like we are on different mindsets. We already proved that we exist. We are not going away. Why are we still trying to prove that the

land belongs to us? Who gave the government the right to impose the *Indian Act* on us? We should be on the other side of government. We should be suing them to prove how they got ownership of the land. They should prove to us where they came from. We can say, “go back to where you came from”. If it was not for our resources, they would not be coming and taking over. I resent the injustices imposed on us. They only have their hand in our pockets. Our people were sharing and trusting. They survived. Why are we not suing them instead of begging them? We are not supposed to be beggars. We are supposed to be the richest, but we are the poorest. They do not own the land.

R: That issue requires further discussion. We do own the land. No one disputes that.

Q/C: My understanding of self-determination is the unencumbered ability to make decisions in the Nation that I live in. It includes the definition of consent to “yes” or “no” as defined in UNDRIP. We need to define what “free” means. “Free” means no cost. We need to define “cost”. It is not just monetary. It means being well all the time. We need time to heal ourselves in order to make the decisions that are free. We need to rebuild our governments and determine whether they are hereditary or elected. That is the cost to making decisions in the way that was passed down to us. That is what I see as part of FPIC. These are the costs incurred to rebuild Nations. We need to define that as part of consent. That has to be free. And Canada has to provide all these things so that there is no cost to carry out business in the way it is meant to.

## Plenary Dialogue 1 – Chiefs and Leadership

Chair Hanuse referenced an overhead presentation, and provided comments regarding:

- Situational analysis
  - 10 principles issued by the federal government guiding its relationship with Indigenous peoples
  - 2019 election year
  - Need for federal mandates and priority identification to be in place by September/October 2018
  - BC is the only province moving forward on a Recognition and Implementation of Rights Framework
  - Need to identify top priorities outlined in the recommendation paper
  - Potential next step to consolidate all interest into an options paper and table it with Canada in the fall of 2018 to get federal mandates to establish working groups
- Goals and objectives
  - Identify 5-7 priority issues set out in the recommendation paper
  - Obtain approval of those strategies at the upcoming meeting in October 2018
  - Obtain consent on next steps
- Recommendation paper
  - How are these recommendations accomplished?
- Considerations in assessing priorities and options
  - Urgency – what in the community or First Nation is an obstacle in dealing with poverty, title and rights recognition, and resources from land?
  - Alignment with the 10 Principles document
  - Whether priorities/options are in the federal jurisdiction.

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The Panel invited questions and comments (Q/C) from delegates and provided responses (R), where appropriate:

Q/C: What is the update from Gatineau?

I work with many First Nations, which gives me a perspective on how things shift to accommodate the needs of people. I also teach in five universities. I have had the opportunity to hear what young people say, and to learn about the influences on how programs are shaped. Our problem is that we have not organized ourselves on who, what, where we govern. We have to do that.

I work in a system that enables me to participate in the greatest arenas of government. Our problem is not who the Ministers are or the federal government. The problem is the bureaucrats that implement the programs. I spoke with a senior bureaucrat in the federal government and asked how things have changed since Prime Minister Trudeau was elected. Their answer was “nothing – it is the same”. We have the opportunity right now through legislation to change that. Public servants get their mandates from the laws of the land. Legislation is critical and informs how those bureaucrats react and respond to us in tables that matter to us. This is an important part to remember.

Q/C: An update from the Assembly of First Nations (AFN) regarding Gatineau occurred in early May 2018. Approximately 14 resolutions were passed, one of which is included in the agenda package on page 46. There were concerns raised from Ontario and other provinces on the impacts to historical treaties. The resolution was supported and now sits at the main office in Ottawa. The AFN is in election mode right now.

We cannot be handcuffed or wait on the national office to take direction or lead the way. BC is the only jurisdiction that has both the federal and provincial governments at the table. We would like to see, as a result of this session, recommendations to the federal and provincial governments regarding a Recognition Framework. We need to plan out to the end of October 2018.

Another thing in play is the provincial legislature. This fall, the Member of the Legislative Assembly (MLA) from Nanaimo will run for Mayor. This will leave their seat open. With a minority provincial government, if a by-election is necessary and the seat is taken over by the Liberals, it would trigger another provincial election.

We should be planning over the next 6-7 months on how far we can get with legislation. We are also looking to get a language placeholder for federal legislation. We are also drafting instruction and intentions for an environmental legislation paper. There is also other legislation that we need to be aware of. A legislation team should be developed to look at all relevant legislation and seize the opportunity to participate in drafting legislation.

There is an opportunity for all communities to participate. Communities need to define who makes decisions. If you follow the clan system, representatives need to be identified in terms of who makes those decisions.



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Q/C: During the last couple of weeks, I had the opportunity to attend Gathering Wisdom for a Shared Journey. We were able to meet with Satsun (Herb George). He talked about stepping away from *Indian Act* Councils. He talked about Sections 35, 91, and 92 of the *Constitution*.

When we talk about stepping away from Section 91 and 92, we need to understand what we are stepping away from. That knowledge would come from the legislation review as previously suggested. We need to be knowledgeable about what we are stepping away from. One question that was asked earlier was “what can we do for the near future?” Not thinking about what it will look like down the road but thinking about what is happening today.

I had the opportunity to sit with some judges in a talking circle in which we discussed the judicial system and how it does not work for First Nation people. As First Nations, we have adapted to nature around us. We have learned to live with the federal and provincial governments. At an operational level, we need to make strategic changes.

I heard comments regarding language use. I sat in a room with the Department of Fisheries and Oceans (DFO) during engagements with the Haida. Not only were they engaging, they were learning the Haida way of life.

Changes need to be made at the operational level. Frontline workers can go to leadership and inform where there are struggles and look at legislation review to understand where it can be changed.

Q/C: Prior to his passing, my grandfather told of how First Nations were rich living off the land. He spoke of the Hereditary Chief system, potlatch houses, and how no one went hungry. Poverty has arisen through the *Indian Act*, and the Sixties Scoop. Where did everything start falling apart? We need to look at these things. I worked as a drug and alcohol counsellor and witnessed many people drink themselves to death due to the Sixties Scoop and residential schools. We have to move beyond that.

As Chief and Councils, we are receiving requests from our community members. There is a young woman in my community whose mother was part of the Sixties Scoop. She was given up for adoption and married a non-Native man. We are now receiving requests for help for this spouse. Governments were raised on the paternal lineage. First Nation communities were raised in the matriarchal system. When someone marries into our community, they are never left out. They can be adopted into another clan separate from their partner's. We would like to do this in our home communities. But the government has put obstacles in our way.

I recommend that those who have married someone from our community receive the same rights. There was already an example of this in my community. Staff from Service Canada stated that if a young lady's spouse took her last name, he would be entitled to the same rights. If she took his last name, she would lose all her rights. It is not a stable system to follow. There are too many pros and cons for each side.

It has been 10 years since housing applications moved forward. With new housing programs started in Gatineau, we need to start building right away. We have Elders who are 63 years old

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that sleep under bridges and are homeless. The thinking is if they have children, they should not be homeless, but they chose to live that way as they do receive much for income assistance whether or not they live on reserve.

Q/C: I am speaking in favour of the Legislation Initiative option. The key issue is the rebuilding of trust. There are things that we know that the Crown can do to put some momentum around the desire to recognize our rights. That would be an easy win to build trust.

I speak in favour of Recommendation 7. We had discussions with the Vancouver Island region on our desired options. We spoke in favour of the legislative framework. A key for Vancouver Island is to keep it simple and not get bogged down. For us, it needs to recognize our inherent right to the land and calls for the implementation of laws into governmental operation. Government departments work in silos. They need a common framework to be held to the same standard. The *Constitution* should do that, but they need legislation.

Canada needs to be reminded that leaving policy up to staffers and their discretion is not an option. It needs to be simple and focus on rebuilding trust.

Q/C: I recommend that an agreed upon map be adopted to understand Nation boundaries, which precludes external maps and clearly outlines the various external Nation boundaries. We need to resolve our external Nation boundaries. As a priority, we need to demonstrate that we can sit down and resolve our overlapping and shared territory. When the *Indian Act* reshuffled bands, referrals became confusing. The province exacerbates that overlap. We need to identify our referrals people and then look at the thresholds to determine what is the threshold and at what point an item exists without a centralized Nation. We need to establish our national government, but we need to establish our national identify first. The threshold for notice and consultation requires maps being resolved at the BC Assembly of First Nations (BCAFN), Union of BC Indian Chiefs (UBCIC), and First Nations Leadership Council (FNLC) level. If we do not resolve national boundaries, the status quo will continue.

Q/C: I have looked at the short timeline. My top five priorities are:

- Four principles that the All Chiefs meeting drafted following the Tsilhqot'in case, which would address recommendations 9-10
- Denounce and reject colonial doctrines such as Terra Nullius and the Doctrine of Discovery
- First Nations governance rebuild
- Legal pluralism
- First Nation international autonomy.

We all have an origin story. We just happen to share a language. Each Nation is a Nation unto itself. It is the basis of our culture and our relationship to the land and identity. It is a non-negotiable item. Then we can have a discussion on territory.

Q/C: We need to take opportunities to advance our rights. If legislation is an option, it is important. We also need to look at the options that we have not explored yet. We cannot assume that government is doing this in good faith. *Bill C-252* states that everything will be developed in consultation with First Nations. We need to be careful and know who our enemy is.

This new fiscal management relationship does not change anything other than agreements are made for 10 years. Accountability factors will be developed by government, a committee, and the First Nations Financial Management Board (FMB). This is not a new relationship. Revenue sharing and revenue from the land are things that are not consistent with UNDRIP Articles. It would be nice to have a good faith gesture from government.

Why do we need a Recognition and Implementation of Rights Framework? We have had the courts say what our rights are. We have fisheries cases that state we have a reasonable right to a livelihood, but we have not negotiated what that means. The Tsilhqot'in decision came down and yet we have not defined what that is. We need to finish negotiations. We need to do the recognition of rights work with them and then pass a law to implement our rights. But how will we get them to do that? How will things happen on the ground? What mechanisms do we need after the legislation?

There is an issue with reconstitution. The new relationship fails. That was not self-determination. Defining our own political status is self-determination, whether we are *Indian Act* Bands, Tribal Councils, or Hereditary Chiefs. Governments will allow us to do that.

There are a few items that I would like to highlight from the recommendations paper:

- The failure of the New Relationship was because it did not define revenue sharing. When we talk about co-development or joint decision-making, what is that from our perspective?
- We need to define FPIC. It is not a veto, but what is it? It is key and critical for our future
- We cannot have self-determination off of our land base
- Some of the core commitments that need to be addressed include FPIC of the people
- We need to insist that any proposed changes need our consent
- We need more input by sitting on committees
- Timelines need to be associated with some of these items
- Land use plans should include water
- We need to respect one another and not fight one another on things like Kinder Morgan; everyone has the right to make their own decisions in their territories and that should be respected
- We need to ensure that Canada is including in treaties the right to participate in international commerce; this should be included in free trade agreements.

There are some good recommendations. We need to do further work to provide more weight to them. We need to be careful with this government's agenda. We can be assertive in what we need and how we get there.

## Plenary Dialogue 2 – Chiefs and Leadership

*Regional Chief Terry Teegee, First Nations Leadership Council*

Chair Hanuse provided an overview of the previous plenary dialogue's discussions and highlighted the following:

- General support for legislative review and acknowledgement that not all laws respect rights and title
- Strong prioritization needs to be undertaken amongst ourselves including:

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- Definition of territory
- Address shared territory and overlap issues
- Indigenous autonomy and respect for each other
- Indigenous rights definition
- Rebuilding of Indigenous Nations
- Dispute resolution
- Need for infusion of federal funding for work to be done.

Regional Chief Teegee reflected on comments made on behalf of the FNLC and how the Recognition Framework would enact true governance. Some thoughts discussed included recognizing jurisdictions. The negotiation of resources, fishing, and forestry resources is up to individual communities. This Framework will provide the legislation for that to occur.

Grand Chief Stuart Phillip stated that a way for communities and organizations to work with others is to open the door and come here to define what governance means and what your people, Hereditary Chiefs or communities define how to move forward. Some are doing it already through environmental assessments and/or water management plans that stem from language. Laws were not needed to do that. First Nations have their own laws and took their own initiative to bring those forward to the two levels of government.

Federal and provincial laws need to be examined to ensure that they recognize title. The previous government drafted a white paper. Previous work has been done on how rights and title is recognized. It is now the perfect storm. Both the Province of BC and Canada are at the table. BC is the only region in the country moving on this initiative. BC is leading the way.

The Tsilhqot'in decision was four years ago. Many important decisions have originated in BC: Delgamuukw, Haida, Calder, and Sparrow. These decisions were supported by all. Now is the opportunity to bring it further. Progress has been slow. There is an opportunity to move forward the recognition of rights in what BC is doing. This is a testament to the leaders and communities of BC to push it forward.

Moving forward, legislation is being developed in the next month. We have the ability to provide instruction on this legislation.

The Panel invited questions and comments (Q/C) from delegates and provided responses (R), where appropriate:

Q/C: I take issue with the reliance of the words from UNDRIP to define consent. There is no definition of consent in UNDRIP. It states, "free informed and prior consent". No one knows what that means. I have been doing research with a professor who is looking at this definition. There is nothing that has been adopted by other Nations. They have left it up to the Nations who are adopting UNDRIP to define consent.

I have tried to discover whether any Nation in the world has given substance on what Articles 19 and 32-2 mean. We are left trying to understand the meaning according to the internal law in Canada, but we are not finding any help there.

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First, you need to plead for agreement and discussion. If you do not have a foundation for the suggestion of the preamble and meaning of Articles 19 and 32-2, we will be in the same position. When we had negotiated the Constitutional Amendment, we felt pleased with ourselves that we got recognition and affirmation into the Constitution. Six or seven years later, with the Sparrow case, that section of the *Constitution* did not mean anything. We did not have agreement at the table with governments on the meaning of Section 35. It was just a political expression.

We stated that it had legal substance. Fortunately, the SCC agreed. We do not want the same problem should Canada proceed with the adoption of UNDRIP. We do not have a foundation and we have not had those internal discussions on what that means. We have not gotten to the point that this has happened. There is not unanimity amongst countries, not even Canada, on what Articles 19 and 32-2 mean. Governments must consult and agree, in good faith, on what it means.

I like the ideas. We need to do more internal work to lay the foundation to put UNDRIP in any legislation that we support. First, we need certainty and agreement amongst ourselves. Second, we need to understand amongst ourselves the scope. We have had long discussion about the proposed legislation and our approach to it.

Q/C: Our First Nation is part of a larger Nation. I have been on Band Council for many years. We thought the British Columbia Treaty Commission (BCTC) would be the answer to our issues, but it did not take long for First Nations to be discouraged by that. The promise of self-determination and self-government, and the recognition of title to our lands, is not easy. We have been colonized for over 150 years. It has been part of our lives, but we need to get away from that.

We are gaining inspiration within our membership to move forward with their full support of rights and title. But there our big challenges. Within our Nation, when Prime Minister Trudeau stated that he wanted to recognize Nations, we took that on. We had Nation gatherings talking about what a contemporary Nation would look like. There are lots of challenges. It is difficult to go back to strict traditional governance. What would a law look like today?

Having gone around the table, a number of pieces have emerged. We have looked at stories and language and examined conceptually what a law would look like. It is coming together. There is a lot of optimism. We see this kind of activity when we come together with other First Nations peoples. In BC, we are gaining traction on what it means as Indigenous people when we talk about self-determination and how we stand up for ourselves and make our people strong.

We have to make it real for our communities. When we say we need resources, we need to have resources to have those discussions at our tables. It would not take a lot of money. That would be a real priority. We need to continue to provide resources for larger First Nations to do the same thing.

In terms of the recommendations, we need to push hard that Canada complies with the minimum standards set out in UNDRIP. Through that, we would make a great deal of progress.

Q/C: I was frustrated at the meeting in April 2018 when we created the recommendations. Joe Wild, Senior Assistant Deputy Minister, Treaties and Aboriginal Government, Indigenous and Northern

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Affairs Canada (INAC), was in the room when we canned his 25 questions. So, why in the middle of July 2018 would he start his process with those 25 questions? Why, if he is taking us seriously, would he not start with the document created in this room? I am offended by that.

I also think that we should forward all 18 recommendations to Canada. Why do we soften it for Canada? I brought this back to my community. Everyone approved and felt that all were important. My community has 1,200 members living on 400 acres. We are small and surrounded by \$4 million homes. We have no land for industry. If we are going to say what is important for change in our community, then we need to change that fiscal relationship.

Art Manuel came into our community and discussed the property transfer tax in relation to our underlying title to the territory. When a home is built, government takes 12%. I have asked for that property transfer tax for the title of land. It is on the table for consideration.

If we change the fiscal relationship, it puts us at the decision-making table as owners. Push the government hard. 18 recommendations are not too many. Do not make it easy, make it difficult.

Q/C: When looking at the priorities, how many of them listed could be managed or handled through Romeo Saganash's private member's bill? If we are using that mechanism, we can remove them from our priority list, so it is not such a substantive piece of work.

I have heard the importance of having First Nations present in drafting legislation. We need to ensure that the outcome of this meeting and any future meetings is to be very concise in that direction. If they do not provide concise direction to the technical team, we will be upset with the outcomes.

Q/C: My part has to do with consent. We need a process where consent is coming from the rightful titleholders – our members. In our territory, there have been many issues brought up by a person or a family making the decision and other members being left out. There needs to be a process of getting confirmation that consent was received from the rightful title holders.

Q/C: What is disturbing to me is that we have to go to governments to recognize us. Is there a way to do that without making them change legislation? How can we do that? In the absence of that, in all my time as a leader in my community, we have never had two governments say all the nice words that we want to hear. But I do not see the delivery or substance of how we can actually take those words to get meaningful action from them. We now have Indigenous and First Nations peoples in positions of power in government. We have governments that say they respect and recognize us. There is an opportunity here.

The federal government has a process. If we are going to use that system, we have to respect the timeline. It is shrinking fast. It is not happening at the bureaucrat level. Nothing will change in their actions until there are laws, regulation, and policy changes. Bureaucrats cannot change anything.

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All 18 recommendations are priorities. My community has more. We need to make a small step. We need a strategy. Start with the Recognition Framework. Its foundation is in UNDRIP and title recognition. Everything flows out of that. If you cannot do it on its own, utilize Section 35.

The four principles are close to that part of the Framework. You need that common foundation to move forward. My number one priority is for each of us to get our houses in order. If we cannot do that, then we are fools and confusing people and governments that we are negotiating with. We need to do that not just for ourselves, but for future generations.

If they had the Tsilhqot'in decision in the past, there was no revenue sharing, what would they have done with it? Something more than what we would have done?

Q/C: We come from a long line of warriors and my passion comes from my heart. We need this to be a new affirmation law. It needs to supersede current legislations. The 18 recommendations need to be drafted into legislation to provide clear direction to technicians. We need to discuss that if there is an infringement to your rights or title, it is illegal. We have not talked about that.

When we think about these things, if we do it right, it will impact child welfare, education, and anything that impacts not only our collective rights, but our individual rights as Indigenous people in this country. We have to do the best we can with the time we have.

Q/C: I am in support of this legislation. We see it as an opportunity for government to change the rules in its house to benefit us. A piece of wisdom I learned is that it is important for us to understand where we are trying to achieve more influence and control in our territory. If we get that, we get more power. We want more influence and control from the federal and provincial governments. We need to be clear on where to draw that line.

In Squamish, we are dealing with the issue of the Port, which is a \$3 billion enterprise in which we have little influence or control over in terms of when it expands, or new projects go through. We receive no revenue from that. We are also uniquely positioned in a way that is a benefit and a curse. We have to be the sacrifice zone for colonization. My grandfather's elk hunting grounds are now downtown Vancouver. Our issue is real estate. When thinking of legislation, there is a need for a mandate to come down from the highest level. When engaging with the federal government, ministers are unaware of discussions until real issues arise. For example, the accommodation on the sale of Crown assets – what percentage of accommodation is for titleholders? Our position is that the land belongs to us. The province and Canada say that they own it. When they decide to sell Crown assets, we need to be given 50%.

I see this as an opportunity to set a high level that can trickle down to have changes in broad legislation. We need to have long-term change. It is hard to undo legislation once it is done. It is an opportunity to expand the window of when to get it done.

Our Nation needs to be on the Port Authority in our territory. The federal government appoints Board members. The province is waiting for Canada to take the lead, so this is an opening for change at the federal and provincial levels.

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There has been much discussion regarding a Nation rebuilding exercise. We have a lot of responsibility, whether through engagement or consultation with members. We need to also hold Canada to account to resource Nations to do that rebuilding. They broke the house and they need to be responsible to repay us.

Q/C: We have always had the right to self-determination and government. If we do not have title to the land, it does not matter. We have that right as Canadians. In the Charter of Rights, those rights are not tangible. They are something that we can carry. We have those rights collectively as Indigenous people.

If we look at all the recommendations, recommendation number four is the most critical. Whatever mechanism is used to achieve title, whether through the modern-day treaty process, title case process, or reconciliation agreements, they are all good mechanisms. We need to have complete jurisdiction over our lands. The Doctrine of Discovery needs to be removed. That needs to be fixed. Everything else can be done simultaneously.

We have been colonized for over 150 years. We need to be decolonized. We are not Nations, we are villages within tribes. Collectively, we are a Nation, but not Indian bands. I am doing my best to protect my territory. I have to use the best mechanisms that work. We have to define our own laws. Similar to Land Code, it is a process that adopts municipal law. Canada is still exercising rules of that process, but they do not have jurisdiction of the land. We need to Indigenize everything, including the Land Code process. Get the Doctrine of Discovery fixed.

BC has led the way and BC continues to lead the way from a litigation perspective. I am worried that when we go to the FMB it will pass a resolution on the floor and get opposition from the rest of the country. What are those Regional Chiefs doing in other provinces? We do not want to be delayed because other provinces are not doing their homework.

Q/C: When looking at the New Relationship and the common table of shared work, the language is always the same. One of the things that came out of the April 2018 session was the need to set up technical working groups for all regions to have representatives at the table that can serve as a conduit between technicians and leadership. The conversations that occur happen so far apart, it is not fair to put the burden on leadership from all communities. They need to rely on someone.

Each region could appoint one or two representatives to be a think tank to put all the stuff together to bring back to leadership. It would be reflective of the hard work.

A word of caution – we need to be careful of taking on the colonizers' identity. Take the notion of nationhood. The *Indian Act* did not create those Nations. The *Indian Act* was the legislative framework to strangle those Nations. Do not buy into western political science about what defines a Nation. The construct that colonizers live in is foreign to our people. They try to rationalize it and make sense of it. They are trying to take our teaching and apply it in a foreign way.

Each community has its own creation story. That does not mean that they have to be part of something else to be legitimate. They have the authority to govern themselves and determine for themselves. If you look at the global world, you are not a Nation if you are less than 1,000 people.



When I hear about Nation rebuilding, I think, where will I go? Our ancestors are from various Nations. What Nation do I get to be a part of? We need to be careful of that. We are all related. Identity does not eliminate authority or integrity of nationhood. It does not take away from who we are. We may have aligned ourselves in time of war, but that does not eliminate each band. I caution to think about those terms. Their constructs are foreign and different and will not fit these ways. It is okay that our identities do not match up.

Canada's legitimacy as a Nation is hanging by a thread. It is seeking for this to be done so it can solidify its legitimacy as a Nation. All international literature states that Canada is hanging by a thread, as these unresolved issues will question everything this country does. Other than the Doctrine of Discovery, it does not have anything on how it got here.

Q/C: The Gitksan cannot wait for this process to get underway. We have to strategize for the work now. We have 62 Hereditary Chiefs. We have forests to take care of and people to look after. Our main problem is fear. We are afraid of this governance. This legislation has appeared to have failed many years ago. We cannot wait, and I do not think anyone else can wait. We need to look at legislation that will provide guarantees in the future. We are told that we need a foundation for it to work. What we are looking for is certainty in the future. We cannot predict what will happen in the future. We are hoping that Ms. Mandell can develop a process so that we can be a government that owns the land.

The Gitksan have 62 Hereditary Chiefs, 33,000 square kilometres of territory, and 14,000 people. We talk about governing our own territory. We can only do the best we can with what we have. We cannot bite off more than we can chew. We cannot deal with the overlaps.

We need to look at two things. First, no one is protecting the individual rights of individual people. We have to do that ourselves individually. We have the right to fish, food, water, and the land. We all say that and then go home. No one is protecting it. Secondly, they trespass on our land all the time. When we stand up to them, they state that they are our friend, and why are we stopping them from fishing.

There is a fear of conflict. We have 62 Hereditary Chiefs, 33,000 square kilometres of land, and the Skeena Watershed that goes from Lake Babine down to the Coast. We had enough nerve to say "no more fishing" and "no more trespassing on our territory". If you get a permit, you still are not allowed to fish. We have land tenure. We have one fishing site that says no trespassing. We are afraid to be a government on our land. We have fear.

Ms. Mandell is not our saviour. She will help us with the legislation. We have to do what we have to do ourselves. First, protect the individual rights of people. And second, no more trespassing. Protect the areas in our territories where we feel strong. Then we will be a government. There is no certainty in what Ms. Mandell is doing. We cannot predict whether it will be good.

## Reflection on What We Have Heard and Next Steps

Chair Hanuse provided a summary of what was heard during the forum to obtain a clear understanding on the direction provided. She provided a brief presentation and highlighted the following:

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- Priority Issues
  - All issues/recommendations are important
  - Recognition Legislation is being developed and we want collective input; it affords an opportunity to address many of the 18 recommendations
  - Other Legislative Initiatives: this work can inform other federal and provincial legislative initiatives currently being undertaken
  - Internal work and work amongst Nations: shared territory/overlaps, dispute resolution, etc.; funding needs to be secured to do that work and resources to do internal work
- Priority Issues identified by Panel
  - Four principles of BC Chiefs and leadership following Tsilhqot'in
  - Conduct an analysis of what is covered off by Bill C-262 to avoid duplication
  - Support legislative review in alignment with values and priorities, UNDRIP and other initiatives
  - Support development of legislation
- Additional priorities – need for definitions and research to put in options paper
- Next steps
  - Current recommendations refined
  - Staff will work to refine and circulate a next draft of input by email
  - A follow-up session for all Chiefs and Leadership will be planned.

Ms. Mandell referenced a presentation titled “Elements of a Framework of Recognition Legislation”, and offered comments regarding:

- Ensure there is a foundation for a government shift specific to the way bureaucrats carry out the decisions of Canada
- Alignment of legislation to be described in the purpose section
- Clarity to be provided on the definition of “consent”
- Mechanisms to include provisions for accepting the need for Indigenous jurisdiction to be exercised with shared and overlapping territories, consulting with the proper title and rights holder; there is need for Canada to fund the “fix” as it created the problem
- Inclusion of a dispute resolution mechanism
- Need to identify the mechanism to resolve problems, and decision-makers to facilitate solutions
- Including in legislation remedies to compel the Crown’s alignment to UNDRIP
- Whether there are additional mechanisms that could address perceived conflicts and solutions.

Chair Hanuse acknowledged the short timeline to accomplish the research and work. Completion of the draft Framework is dependent on the length of time needed for technicians to complete the work. Additional considerations were funding issues, which could be mitigated by scheduling an All Chiefs meeting to coincide with the AFN General Assembly. Leadership is mindful of the time constraints and is working to put something forward prior to the end of summer. Further input is welcome.

The Panel invited questions and comments (Q/C) from delegates and provided responses (R), where appropriate:

Q/C: My Nation borders two other Nations. When it comes to border issues and discussions with industry, a cultural heritage study should be funded to provide a comprehensive study on borderlands and to sort out those issues. We have our own protocols and ways to deal with each

other, which is the essence of our nationhood. Resolving issues begins with the borderlands. I support removing the overlap from the document. Marriage rights with neighbouring territories is a shaded line. The rights line is firm. We need to make that line as firm as possible. We need funding to conduct a comprehensive heritage study starting on the borderlands and including the entire territory.

Q/C: We need space to allow that group to come together to work on how it is interpreted or used. One mechanism of these institutions is the table that has the federal, provincial, and First Nation governments with the ability to address the interpretation of the UNDRIP. Mechanisms need to be at the highest level to avoid litigation. It can be avoided through open and frank discussions to resolve issues. We do need to create space and funding where there is the ability to have those discussions.

Q/C: When we get into situations like this, we tend to talk very high level, very legislative talk. And then I need to try to interpret what we talked about to inform my community. It may be different than what was discussed. It is important that we fully understand what we are talking about. There is a lot of work that needs to happen. We have to understand that for the last few years, we have been trying to be free from colonization – from where we were taken care of to instead be free from government. It is a painful process. People in our communities want to be free from it. I stand here full of fear of what we are talking about. That is coming from a good way and ensuring that my fear will show up in discussions in how we move forward. I am not sure what that will look like, but we need to work.

Another fear I have is how are we going to work with one another. How we, as Nations, can have discussions with communities on how to live side by side. We have not had that yet. We still operate in our little pockets holding on to the little bit that we have. It makes it difficult to open our arms and have an open dialogue to coexist with one another. I see this process as setting the table to have that discussion.

It was mentioned in April 2018 that it was something we need to do in our business. We have not sat down to make it a priority.

I really like the work that was done today. I will be confident to share it back home. This is how we will move forward. It is the people back home that carry out the law and implement the law. It is not me, but them. We are just in the infancy stage to look at the law. We are looking at creation stories. It is all encompassing in how we form our own law. We are starting to do it now with confidence.

This is a good way to end the day to see that something is going to happen. We will have a clear picture of what that looks like and we will get support from home to make the changes that we have been desperately wanting for over 100 years.

Q/C: I am grateful for all the hard work of the technical staff. Regarding Recommendation 15, one thing that I hope to see is something similar to what was done in the Royal Commission on Aboriginal Peoples (RCAP) specific to Nation rebuilding. Nations are based on culture, history, and language.

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That is what constitutes a Nation. It also refers to an Indigenous House of Parliament. I do not want to lose sight of this. This is what it will take to rebuild Nations.

One thing debated by RCAP is that, should there be a third House of Parliament, changes would need to be made to the *Constitution*. I am not saying we should focus on that. When it comes to revitalizing and reconstituting Nations, it will take time and will come from an incremental approach. If that third order of government is realized, there would be no need for provincial, federal, or regional lobby organizations.

I am really excited about where we can go moving forward. Next year will be the 50-year anniversary of the White Paper. I cannot wait for the government to do the right thing because I am not convinced they will. We have to be proactive in rebuilding Nations with pride and ownership, and to do what needs to be done to rebuild Nations to be proud again. Our Nation has been fractured. I look at other Nations in BC such as Tsilhqot'in. No one is in a perfect place. There are things that need to be worked on. I look at other Nations and am hopeful that we are going to take what is happening now and take steps to rebuild our Nation.

It is happening very slowly, but I am appreciative that leadership organized meetings this week to have those discussions. I encourage other leaders or community members to attend those meetings. Let us start having those hard discussions. I believe that we need to work together.

Q/C: There has been a long history in which First Nations have not been consulted or entered into any agreements. Land was stolen and was used for other purposes. They treat us as less than children. From that context, we are determined to establish the principles that will guide relationship from our ancestors that will form future relationships. These principles show how we can work together and make steps forward towards the recognition of our inherent title and rights.

Q/C: There is still much work to do. Timelines need to be assigned to the work. Minister Philpott made a commitment to work with First Nations to address the high number of children in care. The Tripartite Working Group is addressing that. But that is not to take away from what Nations are doing. There are currently 10 tables holding jurisdictional discussions or that have indicated an interest. There are tight timelines. I am confident that we can meet those timelines. We have a lot of expertise in this province. We also have a lot of knowledge within BC amongst our leadership to do the work.

Indigenous institutions and the section under mechanisms is not the only space where that is being discussed. The commitment document being worked on by FNLC with the province includes a section that states the importance of UNDRIP. It discusses the option of jointly developing legislation. It also includes an action on Nation building and establishing an Indigenous Commission. This Commission would provide a range of processes that First Nations can opt to use. The Commission would support First Nations to resolve boundary issues, develop constitutions, and to do territory planning and policy development, etc.

I point that out because this is a long-time discussion. In some of the sessions that I participated in during the environment assessment revitalization, the issue of the Commission was raised. I wanted to explore that as well. The Justice Council indicated that it wanted an Indigenous

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Commission as well to discuss children and family. It is crossing all sectors. It is an important initiative by First Nations and I do not want to lose sight of the importance of it.

When discussing shared and overlapping territories, it will be important. We face challenges when we sit down with our neighbours. We cannot make advances on work that needs to be done. That is the reality. We need to embark down our own road to strengthen relationships to do the work. We need to strengthen as a Nation. It is important to hold each other up to make us stronger.

Q/C: What I am hearing today sounds like we are getting it together. We are doing it because we are not alone. I wrote a letter dated June 26, 2018, which states that my community has been engaged with the Kinder Morgan pipeline for the past five years. We are not supporting the pipeline moving into construction. We are asserting our title and rights. This is our land and resources and we are saying “no”.

It was asked earlier if consent is real. It is a process. As this letter states, you have to assert your rights and title. It needs to be put in writing. Silence is not a position. The Crown will use your silence against you. Assert your rights whether it is in agriculture, mining, etc. Make a decision.

Recognition legislation is coming. It took 20 years to recognize our right to fish. May 2016 produced UNDRIP. We are at a perfect storm. Do not be afraid. Ms. Mandell will help us. Take this opportunity to take a breath. This is our opportunity to do something right. Do not make it empty. Do not make it a political statement. Make it strong enough that the Crown cannot wiggle out of it. It is recognition based.

Let us get along. We just need the four principles. Aboriginal rights and title are recognized and confirmed. Title is in the land and jurisdiction is in how the land and resources are used. Use every opportunity today. Canada’s jurisdiction is hanging by a thread. They need us.

Q/C: Government has created division and overlap with this process. We did not want any institution or process impeding on our own Nation’s laws, jurisdiction, and titleholders. That has to be clear. If we have a Commission or an institution, their laws cannot override our Indigenous laws. We were in a session regarding overlaps. We recognize each other. We have our own Indigenous process. Our Nation has many declarations and accords. We have historical laws already laid down and ancestral Chiefs laid out. If a Nation had dealings with another Nation, there was a process for that.

Canada still has the Doctrine of Discovery and Terra Nullius. Indigenous foundation needs to be first. Looking at foreign constructs and in trying to react and provide input, we need to remember that our strongest foundation is what we have. We need to have restitution and funding to rebuild our Nation for ourselves so that no other governments can impede us.

Moving forward, we have to sort out who the proper titleholders are. Governments do not have any deeds. They cannot show how they took the land from us. If we turn it around, what would the government do if we filed a class action lawsuit – what would they show? They could not show anything. They are trying to sever rights from title. But rights flow from title. We have to make sure moving forward that it is paramount that we are shaped by those things. If we rely on Canada,

they are looking at the public interest rather than ours. We have to look after each other's interests in making laws stronger.

Q/C: Everything that we have talked about has peaked my interest. Legislation is something that First Nations need to be engaged in. We cannot allow the federal and provincial governments to do this for us. Laws are on the land. Those laws of the land are the ones we have to stand up to. We need to revive those agreements from the past that hereditary leaders put in front of us. They stem from the land. Where we go from here is up to us.

When it comes to developing the shared territory issue, you have to keep in mind that it is an overlap issue when grassroots people say it is. It is the grassroots people that need to meet and go over these issues. Not two leaders sitting at a table. As we start to move forward from that as Nations in BC, there are two different types of First Nations peoples in BC: rural and urban. I am part of the rural community. They are doing this because of economics. There are impacts for First Nations in urban settings. We have to keep that in mind when drafting legislation. At the end of the day, the grassroots people will be the ones to suffer. We need to keep them in mind. We cannot leave them behind.

We also cannot forget about water. It will be a huge commodity in the future. Waters, streams, and springs in our backyards will be valuable. Water is something that we need to roll into the framework.

Q/C: A lot of hard work has been done. We need to take this beyond consent. We need to engage properly through formal agreements or nothing moves. We need proper engagement, not just consent. That is where we have to end, whether we are ready or not. We have to act like we are ready, or they would not be talking to us. The problem with consent is that there is a timeframe attached. If it is missed, they say they can proceed. They only have to worry about their 60 days. This needs to change. There needs to be proper engagement with us. Principle four needs to change. We need to tell them "no". They are not coming here to look for government support. Pull out our agreements and have lawyers look at them.

## Closing Remarks

*Chief Bob Chamberlin, First Nations Leadership Council*

Chief Chamberlin reflected on the journey to date including all the SCC decisions that political leaders use as tools against the government. The government has proved that it will not do what is right for Indigenous people. First Nations have the opportunity to lay the foundation. It needs to be clear come election time that this legislation will not solve all of First Nations' issues, but it will lay the foundation for Nations to do the work at home. Government is building a new wing on its house for us; we need to ensure that the windows are big enough for members to see the future.

We need to face our fears and uncertainties to move beyond the discomfort within the *Indian Act* and Band Councils. Canada has put First Nations in a place of dysfunction. But First Nations need to explore and understand how interconnected they are and respect one another. Family is everywhere and needs to be understood to overcome the position of tension that the government instituted.

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An announcement is forthcoming regarding the Songhees First Nation fish farm issues. It will be signing a Letter of Intent to formalize the process for FPIC for tenures on the land. The Songhees First Nation had unity amongst its communities, traditional leaders, and elected leaders who worked together to address overlap issues in one another's territories. This made it difficult for the government not to bring FPIC.

First Nations in BC need to accept the responsibility of the opportunity in front of them. Take the time to be informed prior to attending the AFN Assembly in July 2018. The technical team will gather the words and ideas expressed at the meeting to provide a presentation on the concepts discussed for the path forward. Everyone must do the work and accept the responsibility.

There is a clear opportunity to build upon the generations that have fought Canada. Consultation and engagement will continue prior to submission of documents to the federal government in September 2018.

Appreciation was expressed to attendees for their presence at the meeting.

The All Chiefs Meeting concluded at approximately 4:05 p.m.

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# ACRONYM LIST

## Acronym List

The following acronyms are used throughout these proceedings:

AFN	Assembly of First Nations
BCAFN	BC Assembly of First Nations
DFO	Department of Fisheries and Oceans
FNLC	First Nations Leadership Council
FNMB	First Nations Management Board
FNS	First Nations Summit
INAC	Indigenous and Northern Affairs Canada
MLA	Member of the Legislative Assembly
SCC	Supreme Court of Canada
TRC	Truth and Reconciliation Commission of Canada
UBCIC	Union of BC Indian Chiefs
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

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## Reference Materials

The following reference materials were provided in the agenda package and at the meeting:

- Agenda of the Recognition and Implementation of Rights Follow-Up Session scheduled June 26, 2018
- First Nations Leadership Council Memorandum to the BC First Nations Chiefs' and Leaders from the First Nations Leadership Council dated June 26, 2018 regarding Preliminary analysis of the 10 Provincial and Federal principles of reconciliation
- Presentation titled "Recognition and Implementation of Rights, 'Background and Context'" dated June 26, 2018
- Next Steps Document: Engagement on a New Recognition and Implementation of Rights Framework
- Recognition and Implementation of Rights Forum Recommendations Generated by BC Chiefs and Leadership (April 12, 2018) with FLNC cover letter to BC First Nations dated May 18, 2018
- Draft Summary of the 2009 Recognition and Reconciliation Legislative Initiative
- Principle Respecting the Government of Canada's Relationship with Indigenous Peoples
- Draft Principles that Guide the Provincial of British Columbia's Relationship with Indigenous Peoples
- The Four Principles Developed at BC Chiefs Meeting – September 2014
- AFN Resolution #08/1018 – *Implementing Canada's Recognition and Implementation of Indigenous Rights Framework and clarifying the role of the AFN*
- First Nations Resolution #0618.03 – *Support-In-Principle for the Rolling Draft Document "Recognition and Implementation of Rights Forum Recommendations Generated by BB Chiefs and Leadership"*
- FNLC letter to BC and Canada dated June 6, 2018 re: Recognition and Implementation of Rights Forum Recommendations from April 2018
- Government of Canada, *Engagement Towards a Recognition and Implementation of Rights Framework 2018 – Public Engagement Guide*
- *The Ghost Walks the Walk: The Illusive Recognition and Reconciliation Legislation* – Louise Mandell