

OUR LAND IS OUR FUTURE

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

FOUNDING HEAD OFFICE
209 - 345 Chief Alex Thomas Way
Kamloops, B.C. V2H 1H1
Tel: 250-828-9746
Fax: 250-828-0319



VANCOUVER OFFICE
401 - 312 Main Street
Vancouver, B.C. V6A 2T2
Tel: 604-684-0231
Fax: 604-684-5726
1-800-793-9701
Email: ubcic@ubcic.bc.ca
Web: www.ubcic.bc.ca

UNION OF B.C. INDIAN CHIEFS ANNUAL GENERAL ASSEMBLY OCT 2ND TO 4TH, 2018

MOCCASIN SQUARE GARDENS, Tk'emlúps te Secwépemc Territory

Resolution no. 2018-36

RE: Recognition and Implementation of Indigenous Rights - Support for Rolling Draft and Conceptual Drafting Instructions

WHEREAS Crown denial of our unextinguished Aboriginal Title, Rights, and treaty rights is rooted in the Doctrine of Discovery and *terra nullius*, and, among other things, is manifested in:

- a. Laws, regulations and policies, which are developed unilaterally by the Crown, that adversely affect our Aboriginal Title, Rights, and treaty rights.
- b. Crown negotiation mandates and Crown litigation mandates that deny the existence of Indigenous nations.
- c. Crown failure to reflect the jurisdictional component of Aboriginal Title, evidenced in part by decisions regarding Indigenous lands and resources made unilaterally by the Crown through Crown consultation processes that are not grounded in the standard of free, prior and informed consent, or through shared decision-making mechanisms or processes.
- d. Discrepancies between statements made by Ministers versus actions of Crown bureaucrats and public servants.
- e. Crown failure to implement our Aboriginal Title, Rights, and treaty rights.
- f. Crown failure to reflect the inescapable economic component of Aboriginal Title in Canada's fiscal relationship with Indigenous nations.
- g. Crown minimizing court decisions and failing to fully implement direction provided by the Courts to direct Crown-Indigenous relations;

WHEREAS the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration), which the government of Canada has adopted without qualification and has, alongside the government of BC, committed to implement, affirms:

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Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions;

WHEREAS on February 14, 2018, Prime Minister Justin Trudeau announced Canada’s intention to embark on a nation-wide engagement strategy to discuss the development of a new Recognition and Implementation of Rights Framework (RIRF). Specifically, the Prime Minister stated:

“For too long, Indigenous Peoples in Canada have had to prove their rights exist and fight to have them recognized and fully implemented. To truly renew the relationship between Canada and Indigenous Peoples, the Government of Canada must make the recognition and implementation of rights the basis for all relations between Indigenous Peoples and the federal government...[A]s a starting point, it should include new legislation and policy that will make the recognition and implementation of rights the basis for relations between Indigenous peoples and the federal government going forward”;

WHEREAS from March to September 2018, the federal department of Crown-Indigenous Relations and Northern Affairs (CIRNA) produced three documents: (1) *What We Heard*, (2) *Engagement Document* and (3) *Overview Document*, which the federal government suggests are intended to reflect discussions and input of First Nations across Canada following five months of engagements;

WHEREAS the political executives of the Union of BC Indian Chiefs, the First Nations Summit, and the BC Assembly of First Nations, working together as the First Nations Leadership Council (FNLC), hosted with Canada and BC three All Chiefs’ Forums on April 11-13, June 26 and July 23, 2018 (the Forums) to discuss RIRF;

WHEREAS Chiefs and Leadership in attendance at the Forums:

- a. developed a high-level rolling draft principles and recommendations document (Rolling Draft) setting out principles, the scope and minimum requirements for a new RIRF which was supported in-principle by the UBCIC Chiefs Council by Resolution 2018-30;
- b. instructed representatives of the FNLC, as a priority, to develop a framework for federal recognition legislation as part of the new RIRF for review and discussion;

WHEREAS as mandated, the FNLC developed conceptual drafting instructions (Conceptual Draft) for proposed recognition legislation which was presented to and endorsed by Chiefs and Leadership at the July 2018 Forum. This Conceptual Draft has since been revised based on input from BC Chiefs and Leadership at the Forum and an ad hoc group of legal and other experts;

WHEREAS any recommendations, principles, proposals, options or other materials developed at the Forums and any legislative proposals, drafting instructions or draft recognition legislation, if any, developed in collaboration with the Government of Canada are not intended to, nor should they, limit or detract from:

- a. RIRF work or approaches currently under development by the Government of Canada with individual First Nations or at negotiating tables; or
- b. the development and advancement of RIRF options or proposals by individual First Nations or any direct engagements between First Nations and the Crown;

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WHEREAS on September 7, 2018, the Minister of Crown-Indigenous Relations and the Government of Canada released the Overview Document. This document provides Canada’s draft plan for the development of legislation and policies to ensure and uphold the rights of Indigenous peoples, treaties, and other agreements;

WHEREAS several concerning factors indicate that the purpose of the document is not to facilitate processes of self-determination, implement the UN Declaration, or afford the recognition of Title to Indigenous peoples;

WHEREAS the premise of the Overview Document does not overlap or align with the Rolling Draft compiled by Chiefs and Leadership in attendance at an internal dialogue session held on April 12, 2018. This document has since been circulated, amended, and added to by First Nations and leadership, and has been supported-in-principle by the UBCIC Chiefs Council in Resolution 2018-30; and

WHEREAS the BC Region discussed the Overview Document at the AFN National Forum in Gatineau, Quebec from September 11th to September 12th, 2018, producing a document of concerns titled “Summary of BC Region Discussion on Federal Recognition and Implementation of Indigenous Rights Framework.” These concerns include:

1. The Overview Document is not reflective of true self-determination and proposes that First Nations will apply to the federal government for recognition as a Nation and the government will decide who is a Nation to advance claims of Title. This approach is not consistent with the government “getting out of the way” and clearing a path toward self-determination.
2. The inadequate articulation and reflection of section 35, completely avoiding the recognition of Aboriginal Title and recognizing that section 35 is a full box of rights.
3. The federal consultation process is flawed and fails to adequately and respectfully consult with Indigenous peoples.
4. Recognition of Aboriginal Title must be a legislative element, not a policy piece, due to the fact that policy is discretionary and subjective and Aboriginal Title is an inherent right.

THEREFORE BE IT RESOLVED the UBCIC Chiefs-in-Assembly endorse the attached:

- a. rolling draft document titled, “Recognition and Implementation of Rights Dialogue Sessions: BC Chiefs’ and Leaderships’ Principles and Recommendations” (dated September 5, 2018) for submission to Canada;
- b. “Conceptual Drafting Instructions for Recognition and Implementation of Rights Legislation” (dated September 6, 2018) as a basis for the co-development of Recognition and Implementation of Indigenous Rights legislation with Canada;

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs-in-Assembly reject Canada’s Overview Document and the paternalistic approach it takes to the RIRF, as it is contrary to the inherent human rights Indigenous peoples hold that are affirmed by the UN Declaration, does not recognize Aboriginal Title, and fails to create space for self-determination;

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs-in-Assembly direct the UBCIC Executive to work with the First Nations Summit and the BC Assembly of First Nations, as the First

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Nations Leadership Council, to host further All Chiefs' and Leadership Forums or other assemblies, dependent on funding, if the RIRF process continues, for the purposes of:

- a. facilitating discussion of new RIRF options or the refinement of existing options currently set out in the Rolling Draft;
- b. providing progress reports and seeking input from First Nations on elements of legislative drafting and/or Recognition Legislation that are co-developed with the Government of Canada; and
- c. providing updates to the UBCIC Chiefs Council for any legislative proposal, legislative drafting instructions and/or Recognition Legislation, if any, that is developed in collaboration with the Government of Canada.

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs-in-Assembly acknowledge that the FNLC operates under terms of reference endorsed through resolution at each of the BCAFN, FNS and UBCIC Chiefs assemblies. The Terms of Reference set out:

- 1.9. The FNLC is not a Nation, and therefore does not hold Aboriginal Title, Rights or Treaty Rights; and, the FNLC acknowledges that any government-to-government relationship is between individual Nations and the Crown.
- 1.10. The Crown's duty to consult is with individual Nations and not with the FNLC.

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs-in-Assembly affirm that any document arising out of these processes led by the FNLC is not to be interpreted as a complete response from First Nations communities in BC, but rather as an initial step which does not replace the requirement of the Crown to engage on a nation-to-nation level with First Nations in BC;

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs-in-Assembly recognize that as directed by Resolution 2018-30, the UBCIC Executive has re-confirmed with Canada and British Columbia that:

- a. Engagement and dialogue on the federal initiative on a Recognition and Implementation of Rights Framework will not serve as a barrier to progress on:
 - i. Any work or approaches currently underway with individual First Nations or negotiating tables; or
 - ii. Any potential work arising from Nation-to-Nation discussions;
- b. The participation of First Nations in the Recognition and Implementation of Rights Forum and follow-up session does not replace or constrict First Nations' opportunities to request their own respective meetings with Canada and BC, or their respective decisions to advance their own First Nation-driven priorities and recommendations through their own stand-alone documents; and,

THEREFORE BE IT FINALLY RESOLVED that in the event that the Government of Canada's version of the RIRF does not reflect the BC Chiefs' and Leaderships' Rolling Draft and Conceptual Drafting Instructions, then the UBCIC Chiefs-in-Assembly direct the UBCIC Executive to prepare an action plan for the UBCIC members and the BC region's consideration to challenge and oppose any unilateral federal version of the RIRF policies or legislation.

Moved: Chief James Hobart, Spuzzum First Nation

Seconded: Chief Clifford White, Gitxaala Nation

Disposition: Carried

Opposed: 1

Date: October 4, 2018

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