OUR LAND IS OUR FUTURE

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

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March 30, 2021

Honourable Murray Rankin, Minister of Indigenous Relations and Reconciliation
Via email: abr.minister@gov.bc.ca

Re: Equitable Engagement with First Nations in BC

Dear Minister Rankin,

The Union of British Columbia Indian Chiefs ("UBCIC") is writing to inform you of concerns and perspectives regarding how First Nations are engaged regarding legislative and administrative measures that may affect them, particularly those First Nations who do not participate in the BC Treaty Commission process. The concerns we express are ones we have heard consistently from our member Nations. We ask that once you have considered this letter, we have further dialogue on this critically important matter.

The *Declaration on the Rights of Indigenous Peoples Act* ("Declaration Act") affirms the application of the *United Nations Declaration on the Rights of Indigenous Peoples* ("UN Declaration") to the laws of British Columbia (section 2) and commits to the implementation of the UN Declaration in BC. Among the standards in the UN Declaration is Article 19 which requires States to consult and cooperate with representatives of the Indigenous peoples through their own representative institutions, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

We acknowledge that implementing the Declaration Act, including meeting the standard in Article 19, is new and hard work, that requires innovation, courage, and change. Certainly, our member Nations have raised concerns about the pace of change and had hoped that the historic passage of the Declaration Act would have resulted in more tangible and meaningful shifts to date. We know you are well aware of this and have heard directly the concerns of our Chiefs Council in this regard.

In addition, and more specifically, we hear increasing concerns that in relation to engagement on legislative and administrative measures since the adoption of the Declaration Act, the government has not significantly altered past practices in regards to how it engages with First Nations. The main elements of this engagement is that it is inconsistent, ad hoc, and rarely inclusive. There is not a clear process through which all First Nations governments are informed and engaged on administrative and legislative measures in a coherent manner, and certainly no mechanism of consultation and co-operation in order to receive their free, prior, and informed consent.

Additionally, UBCIC is aware that there is sometimes a separate and prior engagement process with modern treaty First Nations, while engagement is not readily available to other First Nations governments that represent Title and Rights holders. While the UBCIC does not oppose engagement with any First Nation on matters that may affect them, UBCIC is strongly of the view that BC must be pursuing the implementation of the standards of the UN Declaration, including Article 19, in ways that are inclusive, equal, and non-discriminatory.
We note as well that this matter may in some ways relate to one we have raised with you previously - your view that modern treaties are the "highest form of reconciliation".

Again, we ask you to deeply consider, and hopefully change, this colonial perspective.
We know from *Tsilhqot'in Nation* and other decisions of the courts, that Title and Rights are not contingent upon agreement by the Crown, or a court declaration. Rather, Title and Rights exist as a result of the pre-existing sovereignty of Indigenous peoples and the connection to our lands and resources historically, and today. This is why, for example, the Supreme Court of Canada cautions governments in *Tsilhqot'in Nation* that even absent a court declaration, if governments wish to avoid the liabilities and risks of infringing Title and Rights, they should obtain consent before using any lands and resources. Consent from the proper Title holders must be obtained prior to issuing any further permits or licenses allocating further use of any lands and resources.

Given the clear jurisprudence, we struggle to see how the assertion that a treaty is the "highest form of reconciliation" can be other then an opinion rooted in a perspective of denial. It suggests a lack of recognition that Title and Rights exist because of who we are as First Nations, and how we have lived on the land and regulated our territories for millenia. And it further implies to us a view that it is an act of the Crown – agreeing that a section 35 right exists through a treaty – that results in the existence of a Title and Right.

In the age of the UN Declaration, we must – together – move past old ways of thinking, and old practices that do not meet the basic human rights standards that we are all committed to. While existing forums or tables may exist and be rightfully utilized, an inclusive and consistent approach should guide the engagement with all First Nations governments in British Columbia on administrative and legislative measures, with meeting the standard in Article 19 as our shared goal and guide.

We look forward to discussing further when you join our Executive meeting on April 7.

On behalf of the UNION OF BC INDIAN CHIEFS



Grand Chief Stewart Phillip	Chief Don Tom	Kukpi7 Judy Wilson
President	Vice-President	Secretary-Treasurer

CC: Premier John Horgan
Hon. David Eby, Attorney General of BC