

## MEMORANDUM

**To: UBCIC CHIEFS COUNCIL**  
**From: UBCIC EXECUTIVE**  
**Date: MAY, 2021**  
**Re: UPDATE OF POLITICAL AND LEGAL ACTION PLAN TO IMPLEMENT UBCIC RESOLUTION 2016-25 “MOVING BEYOND THE BCTC PROCESS”**

---

Resolution 2016-02 instructed the UBCIC Executive to seek legal advice and advance the best legal action possible to uphold the Title and Rights and responsibilities of Indigenous peoples in BC not involved in the BC Treaty Commission Process (BCTC), and to work with non-treaty groups across the province, the BC Regional Assembly of First Nations Chief and Staff, and the Interior Alliance, to address this important matter.

Resolution 2016-25 instructed the UBCIC Executive and legal counsel to organize a full day, facilitated session at the UBCIC Annual General Assembly in September, 2016, on the BCTC Process and pathways and strategies for going forward, working collectively to develop principles and processes for negotiation based on recognition of Title and Rights and Proper Title and Rights holders that can be to the benefit of all First Nations in BC as they seek to achieve a just reconciliation with the Crown on a Nation to Nation and Government to Government basis.

In 2016, to implement those resolutions, a political and legal action plan was developed.

Since those resolutions there have been numerous shifts in the legal and policy landscape including:

- Adoption of the “10 Principles” by the federal and provincial governments.
- Completion of the *Commitment Document, 2018*.
- The passage of the *Declaration on the Rights of Indigenous Peoples Act*;
- The development, and potential passage, of federal Bill C-15.
- Innovation of new agreement models through completion of comprehensive agreements with BC outside of the BCTC process.
- Adoption of the new BCTC *Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia*.

Many of actions in the 2016 action plan have been completed, or our on-going. As well, many of the actions have been overtaken by the shifts that have occurred in the legal and political context. Reflecting the 2016 action plan, as well as the shifts that have occurred, much has been done , including the following:

- Meetings of leadership and legal experts to discuss issues and strategies.
- UBCIC intervention in *Gamlaxyeitxw v British Columbia (Minister of Forests, Lands and Natural Resource Operations)*.
- Preparation of multiple legal analyses by legal counsel, including of the new BCTC “Recognition of Rights” Policy.
- Presentation and dialogue of legal context of the BCTC Process and the “Recognition of Rights” Policy at multiple Chiefs Council meetings.
- Holding of 2 symposiums on negotiations outside the BCTC Process.
- Supporting the development and advancement of the UBCIC negotiation principles endorsed by the Chiefs Council.
- Advanced dialogue with BC about how to support Nations negotiating outside of the BCTC process.
- Participation and support in work under the *Commitment Document, 2018* involving supporting principled ways to address shared territories and overlaps in ways consistent with self-determination and Indigenous laws.
- On-going advocacy with BC and Canada about the inconsistency of the BCTC Process and the “Recognition of Rights Policy” with the UN Declaration.

Attached is an updated version of the 2016 Action Plan which notes changes or additions to the actions to reflect the work already accomplished and the changing context.

**Moving Beyond the BCTC Process and into Proper Negotiations Based on  
Recognition and Implementation of Aboriginal Title and Rights**

**UBCIC Political and Legal Action Plan**

**June, 2021**

***Strategy 1: Directly advocate for the Federal and Provincial Crowns to align their negotiations approaches with the United Nations Declaration on the Rights of Indigenous Peoples and the recognition of Indigenous Title and Rights***

**Context:** The BCTC Process remains out of step with the established law and standards of *Tsilhqot'in Nation* and UN Declaration. While the BCTC Recognition of Rights Policy states that it is aligned with the recognition of rights and UN Declaration there remain significant challenges. Specifically, inconsistent with UN Declaration and recognition, the BCTC process continues to allow negotiations and completion of treaties in ways that may infringe the rights of neighbouring Nations, including in particular through the Statement of Intent process.

**Actions:**

- A. UBCIC executive send a detailed letter challenging the Federal and Provincial Crowns to take action regarding the limitations and infringements of the BCTC Process, including the BCTC 'Recognition of Rights Policy' and pose specific legal and policy questions, and propose alternatives and solutions. Emphasis to be placed on how the BCTC policy and process must change if the Declaration Act and Bill C-15 are to be respected.
- B. Develop a template letter to be sent by individual Nations to the Crown reinforcing the same messages.
- C. Develop an explicit alternative to the Statement of Intent process that is aligned with the UN Declaration, and present it to the Crown as a necessary and pragmatic change in the BCTC process if UN Declaration is to be respected.
- D. Implement a media strategy to publicize the need for new and proper approaches.
- E. Prepare a clear visual – or set of visuals – which demonstrates the large extinguishment zones that would be created across British Columbia if the Crown continues within the current limitations of the BCTC Process, contrasted with what it would look like if basic legal standards were applied.

***Strategy 2: Directly and publicly inform people of the challenges of the current BCTC Process for the purposes of recognition and reconciliation based on Tsilhqot'in Nation and UN Declaration and for meeting government obligations in the Declaration Act and Bill C-15***

**Context:** Despite the fact that the BCTC Process has not effected reconciliation over much of the province, governments have been unwilling to abandon it. The process continues to create a convenient vehicle for governments to maintain the appearance of taking action, even while it has not produced results for most First Nations and has been expensive and divisive.

Given the legal requirements to implement UN Declaration in the Declaration Act and Bill C-15, and the increased public focus on these laws, the public should increasingly be informed that maintaining the BCTC process in its current form is not aligned with UN Declaration, and can be a source of conflict.

**Actions:**

- A. UBCIC to develop a media strategy to consistently reinforce the message that the BCTC process is not consistent with the UN Declaration, the Declaration Act, or Bill C-15.

***Strategy 3: Support on-going legal actions, and consider new legal challenges, to elements or aspects of the BCTC Process***

**Context:** Legal actions challenging treaties through the BCTC Process – like all legal actions – take significant time to advance through the courts. There are also certain legal obstacles to challenging policies or negotiation practices themselves. UBCIC has a long-standing practice of continually assessing options for legally challenging the BCTC Process, or supporting the legal actions being brought by First Nations impacted by the negotiations of neighbouring Nations.

**Actions:**

- A. UBCIC Executive to convene a legal strategy meeting of legal counsel for Nations in current litigation along with their legal counsel to explore options for UBCIC or Nations intervention or other support.
- B. UBCIC to commission a legal opinion on new potential legal challenges to the BCTC process as a result of the passage of the Declaration Act and Bill C-15 (if passed).

***Strategy 4: Continue to advance the implementation of the UBCIC negotiation principles developed in 2019 and the negotiations strategies that came out of the UBCIC Negotiations Symposiums***

**Context:** In 2019 and 2021 UBCIC held two negotiations symposiums. The Chiefs Council has endorsed a set of UBCIC negotiations principles, and strategies to advance these with the Crown.

**Actions:**

- A. Implement the Negotiations Strategies Report as endorsed by the UBCIC Chiefs Council.

***Strategy 5: Establish options and approaches for advocacy and resolution of territorial boundary issues through collaborative work between First Nations.***

**Context:** There is an intensifying need for the resolution of long outstanding issues of 'overlaps' and 'shared territories'. The proposed establishment of an independent, First Nation designed, governed, and operated Indigenous Commission pursuant to the *Commitment Document, 2018* is one path that should help with this into the future. Similarly, work with the Federal Crown on a reconciliation framework could also include some avenues for addressing these challenges. Many First Nations are facing current pressures to advance collaborative relations with neighboring Nations, including demands for consultation from the Crown. Strategies and tools for First Nations to use in the current context are needed when overlap/shared territory issues arise as a result of negotiations through the BCTC Process and more generally.

In March, 2020 a step was taken in this work through the Overlap and Shared Territories Forum.

**Actions:**

- A. UBCIC Executive to advocate and work with FNLC partners to fulfil the *Commitment Document, 2018* commitment to establish a Indigenous Commission.
- B. UBCIC to compile and distribute a set of models, tools, and examples of treaty protocols and treaty making between First Nations.