



COMMUNIQUE TO FIRST NATIONS

Declaration on the Rights of Indigenous Peoples Act: BC's Consultation Draft Action Plan

To: First Nations in BC
From: First Nations Leadership Council (BC Assembly of First Nations, First Nations Summit, Union of BC Indian Chiefs)
Date: July 21, 2021

On June 11, 2021, the Province released a consultation draft of the action plan required under section 4 of the Declaration of the Rights of Indigenous Peoples Act ("Declaration Act") with a deadline for input of July 30, 2021.

By way of resolutions adopted by Chiefs and leaders at BCAFN, FNS and UBCIC meetings, the FNLC was directed to work with the Province on this draft Declaration Act action plan, emphasizing the mandates provided by Chiefs through resolutions, submissions from BC First Nations, and a summary of submissions provided by First Nations Organizations. While the FNLC contributed ongoing input and perspectives to the action plan, it is a document that is owned by the Province and developed and endorsed by its Ministries and Cabinet – not the FNLC.

Resolutions also called on the Province, in partnership with the FNLC, to hold dialogue session(s) directly with Title and Rights Holders on the action plan consultation draft. **Given the pressures of wildfires, residential school recoveries, and that the gathering season is upon us, the FNLC has called on BC to extend the timeline for consultation with title and rights holders and First Nations Organizations into the fall.** Enclosed is the correspondence issued to BC on this matter, which also includes some preliminary feedback from the FNLC on the consultation draft, which includes the following high-level points:

- Include a straightforward acknowledgement of the fact that colonialism was attempted genocide of First Nations in BC.
- Prioritize actions specifically to make proper space for First Nations legal orders and exercise of self-government and self-determination, reflecting a Nation-based approach and that support Indigenous Governing Bodies to assume their rightful place in law-making and decision making and exercising Indigenous laws, legal orders, jurisdiction and management of the lands and resources in their territories.
- Be edited to remove any suggestion that any Indigenous people apart from BC First Nations hold any title or associated territorial rights.
- Include a clear list of year one priorities which will be updated on an annual basis, and in fact to immediately commence action on a number of these actions as a demonstration of the provincial government's commitment and good faith.
- Eliminate previously-announced commitments from the action plan to provide better accountability for delivering results against actions specifically designed to advance Indigenous human rights.
- Implement clearer and more direct language throughout the action plan, replacing soft commitments to "continue", "engage" or "explore" with clear and measurable action statement commitments.

First Nations are encouraged to actively participate in this process. This work is not only important within BC but also nationally, given that the Government of Canada will also be required to develop an action plan under the *Act respecting the United Nations Declaration on the Rights of Indigenous Peoples* which passed third reading in the Senate on June 16.

The FNLC will continue to urge an extension and will ensure that time is set aside at our upcoming assemblies to discuss the consultation draft action plan.

FIRST NATIONS LEADERSHIP COUNCIL

July 15, 2021

Premier John Horgan
Via: premier@gov.bc.ca

Minister Murray Rankin
Via: IRR.Minister@gov.bc.ca

Dear Premier and Minister Rankin,

We write to provide our strategic preliminary written feedback to the consultation draft of the Declaration Act action plan released on June 11, 2021. We also urge you to extend the deadline for consultation for title and rights holders and First Nations Organizations and enclose relevant resolutions from the First Nations Summit and Union of BC Indian Chiefs.

While the First Nations Leadership Council and our officials provided input at various stages of the consultation draft's development, we must emphasize that many of our proposals were not accepted, and/or were significantly adjusted through the process of line Ministry review. This resulted in significant softening of all language, to the point where many hard commitments have been shaped into soft commitments to 'engage', 'explore' or 'consider' – this is insufficient and hardly constitute *actions* to achieve the objectives of, or uphold the human rights affirmed in, the *United Nations Declaration on the Rights of Indigenous Peoples*. Much of the feedback provided herein focuses on restoring boldness, precision, and clarity throughout the action plan document.

The message from the Minister and the introductory sections of the action plan are an opportunity to set the tone for your government's commitment to respecting and upholding Indigenous human rights and meeting the constitutional imperative of reconciliation – which must be founded on truth and justice. This is particularly important given the recent confirmation of unmarked graves on the site of the former Kamloops Indian Residential School. We encourage you, in the introduction, not to use the term "cultural genocide" but to clearly state that colonialism has entailed genocide of First Nations people in BC.

Another critical understanding is that the action plan must respect and uphold the rights of sovereign Nations and support proper space for their legal orders and exercise of self-government and self-determination. Section 1 of the action plan



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must emphasize a deep commitment and deference to Nation-based approaches, and the role of Indigenous Governing Bodies, as the foundation for a reset relationship and reconciliation. This section currently includes a number of province-wide initiatives, policy frameworks, and social and health programming actions that are not focused on or framed as fundamentally recognizing First Nations as governments. Each action in this section must reflect a Nation-based approach and, as a whole, this section must include clearer, more specific actions that reflect Indigenous Governing Bodies' rightful place in law-making, decision-making, and management of the lands and resources in their territories.

The above commentary requires a strong understanding of the distinct rights held by First Nations in BC. Other Indigenous peoples residing in BC do not hold these rights. The action plan must be corrected to remove any suggestion that any Indigenous people apart from BC First Nations hold any title or associated rights. This means removing terms such as "Indigenous communities", "Indigenous nations", "Indigenous governments" and "Métis self-determination" and adjusting actions such as, but not limited to, actions 1.13 and 4.24 which each erroneously suggest that other Indigenous persons or groups have territorial history and rights in BC.

We are concerned that this action plan includes a long list of commitments over a five-year timeframe, with no indication of specific timeframes or even initial priorities. We believe this timeframe is too long, as is the list of unprioritized actions in that timeframe. We have observed in our shared agenda under the Commitment Document Concrete Actions and your government's implementation of the *Declaration on the Rights of Indigenous Peoples Act* that progress can be slow without clearly established timeframe accountabilities. We urge you to include a clear list of year one priorities which will be updated on an annual basis, and in fact to immediately commence action on a number of these actions as a demonstration of your commitment and good faith. Immediate priorities include:

- Enable implementation of section 6 and 7 agreements (actions 1.3 and 2.5)
- Implement a non-derogation clause and further enabling provisions for section 7 agreements in the *Interpretation Act* (action 2.4)
- Immediately adopt guidelines for civil litigation involving Indigenous peoples that is in alignment with the *Declaration Act* (action 2.3)
- Launch a review of racism in the education sector (action 3.4)

- Align the *Heritage Conservation Act* with the UN Declaration as a priority (action 4.25)

These are examples of concrete and understandable actions that importantly contribute *new* thinking and commitment to advance implementation of the UN Declaration. Currently, the action plan includes very significant repetition of existing or previously-announced commitments. We suggest a clear statement at the beginning of the document about continued importance of those commitments, and elimination of those from the action plan itself. This will provide better accountability for delivering results against actions specifically designed to uphold Indigenous human rights. A small number of examples of existing commitments include, but are not limited to: 1.1, 1.3, 1.7, 1.8, 1.9, 2.1, 3.6, 3.7, 4.7, 4.10, 4.11, 4.18, 4.26.

There is a pressing need to implement clearer and more direct language throughout the action plan. General statements such as those in 2.7 to “Co-develop and enhance strategic-level policies, programs and initiatives reflecting collaboration and cooperation on stewardship of the environment, land and resources” provide no clarity about what success and accountability for results looks like. This also applies to statements such as “strengthen”, “build on”, “continue”, “expand support” (for example, in 4.8, 4.9, 4.13, 4.14, 4.18). Similarly, commitments to “engage” or “explore” (for example, in 2.8, 2.9, 3.3, 3.9, 4.34, 4.35) are not clear actions and provide no confidence they will ultimately result in change – these should be rephrased into clear and measurable commitments.

Finally, we urge you to extend the timeline for consultation with First Nations and First Nation Organizations. The summer is a challenging time, and this year brings the added emergencies of unmarked graves on residential ‘school’ grounds, heat waves, wildfires and unrolling of re-opening/re-start plans. You must ensure space for effective and meaningful dialogue with title and rights holders on this important document, including at our respective assemblies scheduled for the fall. We believe that this feedback is critical to producing a high-quality action plan that can still be finalized before the end of the year. In the meantime, we urge you to review the consultation draft with a critical eye towards a tighter, bolder, and more concrete set of actions with a clear set of initial priorities for year one, which will be adjusted and rotated on an annual basis.

We look forward to working with you to finalize this action plan, and most importantly to quickly move to implementation.

Sincerely,

FIRST NATIONS LEADERSHIP COUNCIL

On behalf of the FIRST NATIONS SUMMIT



Cheryl Casimer



Robert Phillips



Lydia Hwitsum

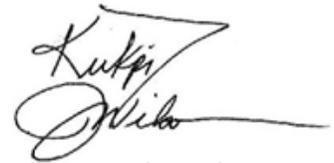
On behalf of the UNION OF BC INDIAN CHIEFS



Grand Chief Stewart Phillip



Chief Don Tom



Kukpi7 Judy Wilson

On behalf of the BC ASSEMBLY OF FIRST NATIONS:



Regional Chief Terry Teegee

Encl.

First Nations Summit

RESOLUTION #0621.04

SUBJECT: IMPLEMENTATION OF THE *DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT* – ACTION PLAN AND ALIGNMENT OF LAWS

WHEREAS:

- A. The *United Nations Declaration on the Rights of Indigenous Peoples* ("UN Declaration") was adopted by the General Assembly in September 2007, after more than 20 years of discussions and is the most comprehensive, universal international human rights instrument explicitly addressing the economic, social, cultural, political, spiritual and environmental rights of Indigenous Peoples.
- B. The Government of Canada has adopted the UN Declaration without qualification and along with the Government of BC, has committed to implement the UN Declaration, which affirms:
- Article 1:** Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.
- Article 2:** Indigenous peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular based on their indigenous origin or identify.
- C. On November 28, 2019, Bill 41 *Declaration on the Rights of Indigenous Peoples Act* ("the *Declaration Act*") received Royal Assent in the British Columbia Legislature.
- D. The *Declaration Act* establishes the UN Declaration as the framework for reconciliation, enabling new decision-making agreements between the Province and Indigenous governing bodies, and requires the provincial government to:
- i. ensure that new and existing laws are consistent with the UN Declaration;
 - ii. develop and implement an action plan in consultation and cooperation with Indigenous peoples to achieve the objectives of the UN Declaration; and
 - iii. monitor progress through public annual reporting.
- E. Informed by dialogue with BC First Nations and First Nations Organizations, and mandated by previous resolutions at each of the UBCIC, BCAFN and FNS assemblies, the First Nations Leadership Council has been working with and informing the efforts of the Province in its obligations under the *Declaration Act*, including alignment of laws and the development of an action plan.



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RESOLUTION #0621.04

SUBJECT: IMPLEMENTATION OF THE *DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT* – ACTION PLAN AND ALIGNMENT OF LAWS

- F. The Province plans to issue a consultation draft of the *Declaration Act* action plan in the summer of 2021 for review and input primarily from Indigenous peoples in BC and has opened an online platform to receive this feedback.
- G. The Province continues to advance legislation that is not consistent with its obligations under the *Declaration Act* to ensure that legislative initiatives are aligned with the standards set out in the UN Declaration. A report, *Taking “All Measures Necessary” to Ensure Laws are Consistent with the United Nations Declaration on the Rights of Indigenous Peoples*, issued in April 2021 by the University of British Columbia Indian Residential School Dialogue Centre proposed seven strategies to advance progress in the alignment of laws:
1. A requirement placed on the Attorney General to make a statement of the legislature that a proposed Bill, upon its introduction in the legislature, is consistent with the UN Declaration.
 2. Establish a non-derogation clause through the *Interpretation Act* to confirm that all enactments are to be construed as upholding the rights of Indigenous Peoples in both section 35(1) and the UN Declaration, and not abrogating or derogating from them.
 3. Establish an advisory committee made up of experts in Indigenous rights, UN Declaration, and constitutional law to provide recommendations to both Indigenous and Crown governments on the development of a process for review of existing laws for consistency, and/or reviewing proposed new laws and providing recommendations on whether they are consistent with the UN Declaration.
 4. Upon tabling of a Bill, release a public opinion by an advisory committee or independent legal expert on whether a Bill is consistent with the UN Declaration, and what steps may be taken now or in the future to further advance consistency with regards to that legislation.
 5. Establish a joint law review and reform process made up of leading experts, who would undertake to provide recommendations on legal changes to achieve consistency.
 6. Establish a policy on working in partnership with Indigenous Peoples in the legislative development process.
 7. Establish new mechanisms and forms of dispute resolution, and approaches to avoid adversarial litigation including a litigation directive similar to that of the federal government and mechanisms such as the use of mediation rosters, the creation of dispute resolution institutions, and the establishment of new oversight and accountability mechanisms.

THEREFORE BE IT RESOLVED:

1. That the First Nations Summit Chiefs in Assembly call on the Province of British Columbia, working in partnership with the First Nations Summit, BC Assembly of First Nations and Union of BC Indian Chiefs (working collaboratively as the First Nations Leadership Council), to hold dialogue session(s) directly with Title and Rights Holders on the Declaration on the Rights of Indigenous Peoples Act (“the *Declaration Act*”) action plan consultation draft.

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RESOLUTION #0621.04

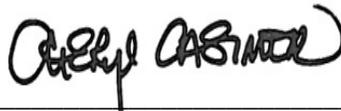
SUBJECT: IMPLEMENTATION OF THE *DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT* – ACTION PLAN AND ALIGNMENT OF LAWS

2. That the First Nations Summit Chiefs in Assembly call on the Province of British Columbia to confirm how the views and input of Title and Rights Holders will take priority and precedence in the finalization of the *Declaration Act* action plan.
3. That the First Nations Summit Chiefs in Assembly call on the Province of British Columbia to:
 - a. implement immediate interim improvements to ensure that laws planned to be tabled in the fall are consistent with the UN Declaration; and
 - b. ensure that interim improvements reflect the advice described in the report *Taking "All Measures Necessary" to Ensure Laws are Consistent with the United Nations Declaration on the Rights of Indigenous Peoples*.
4. That the First Nations Summit Chiefs in Assembly call on the Province of British Columbia, to work in partnership with the First Nations Summit, BC Assembly of First Nations and Union of BC Indian Chiefs (working collaboratively as the "First Nations Leadership Council"), to engage with BC First Nations and legal experts on additional measures to ensure that all new and existing provincial laws are consistent with the UN Declaration and are developed in consultation, cooperation and collaboration with BC First Nations.

MOVED BY: Kathryn Teneese, Ktunaxa Nation
SECONDED BY: Robert Dennis, Chief Councillor Huu-ay-aht First Nation
DATED: June 10, 2021

Passed by consensus.

ENDORSED BY:



Cheryl Casimer



Robert Phillips



Lydia Hwitsum

OUR LAND IS OUR FUTURE

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UNION OF B.C. INDIAN CHIEFS
CHIEFS COUNCIL
JUNE 30TH, 2021
VIRTUAL MEETING

Resolution no. 2021-34

RE: Implementation of the *Declaration on the Rights of Indigenous Peoples Act* - Action Plan and Alignment of Laws

WHEREAS the *United Nations Declaration on the Rights of Indigenous Peoples* ("UN Declaration") was adopted by the General Assembly in September 2007, after more than 20 years of discussions and is the most comprehensive, universal international human rights instrument explicitly addressing the economic, social, cultural, political, spiritual and environmental rights of Indigenous peoples;

WHEREAS on November 28, 2019, Bill 41 *Declaration on the Rights of Indigenous Peoples Act* ("the Declaration Act") received Royal Assent in the British Columbia Legislature;

WHEREAS the UN Declaration, which the government of Canada has adopted without qualification, and has, alongside the government of BC, committed to implement, affirms:

Article 1: Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity;

WHEREAS the Declaration Act establishes the UN Declaration as *the* framework for reconciliation, enabling new decision-making agreements between the Province and Indigenous governing bodies, and requires the provincial government to: ensure that new and existing laws are consistent with the UN Declaration; develop and implement an action plan in consultation and cooperation with Indigenous peoples to achieve the objectives of the UN Declaration; and, monitor progress through public annual reporting;

WHEREAS informed by dialogue with BC First Nations and First Nations Organizations, and mandated by previous resolutions at each of the UBCIC, BCAFN and FNS assemblies, the First Nations Leadership Council has been working with and informing the efforts of the Province in its obligations under the Declaration Act, including alignment of laws and the development of an action plan;

WHEREAS the Province plans to issue a consultation draft of the Declaration Act action plan in the summer of 2021 for review and input primarily from Indigenous peoples in BC and has opened an online platform to receive this feedback; and

WHEREAS the Province continues to advance legislation that is not consistent with its obligations under the Declaration Act to ensure that legislative initiatives are aligned with the standards set out in the UN Declaration. A report *Taking “All Measures Necessary” to Ensure Laws are Consistent with the United Nations Declaration on the Rights of Indigenous Peoples* issued in April 2021 by the University of British Columbia Indian Residential School Dialogue Centre proposed seven strategies to advance progress in the alignment of laws:

1. A requirement placed on the Attorney General to make a statement of the legislature that a proposed Bill, upon its introduction in the legislature, is consistent with the UN Declaration.
2. Establish a non-derogation clause through the *Interpretation Act* to confirm that all enactments are to be construed as upholding the rights of Indigenous Peoples in both section 35(1) and the UN Declaration, and not abrogating or derogating from them.
3. Establish an advisory committee made up of experts in Indigenous rights, UN Declaration, and constitutional law to provide recommendations to both Indigenous and Crown governments on the development of a process for review of existing laws for consistency, and/or reviewing proposed new laws and providing recommendations on whether they are consistent with the UN Declaration.
4. Upon tabling of a Bill, release a public opinion by an advisory committee or independent legal expert on whether a Bill is consistent with the UN Declaration, and what steps may be taken now or in the future to further advance consistency with regards to that legislation.
5. Establish a joint law review and reform process made up of leading experts, who would undertake to provide recommendations on legal changes to achieve consistency.
6. Establish a policy on working in partnership with Indigenous Peoples in the legislative development process.
7. Establish new mechanisms and forms of dispute resolution, and approaches to avoid adversarial litigation including a litigation directive similar to that of the federal government and mechanisms such as the use of mediation rosters, the creation of dispute resolution institutions, and the establishment of new oversight and accountability mechanisms.

THEREFORE BE IT RESOLVED the UBCIC Chiefs Council reiterates that First Nations in BC have their own Indigenous legal orders and laws and ways of being that take precedence over any provincial laws and processes, and that any First Nations engagement on the provincial for the Declaration Act action plan consultation draft is in no way a substitute for First Nations providing their consent;

THEREFORE BE IT RESOLVED the UBCIC Chiefs Council calls on the Province of British Columbia, in partnership with the UBCIC, BC Assembly of First Nations and First Nations Summit, working collaboratively as the First Nations Leadership Council, to hold dialogue session(s) directly with Title and Rights Holders on the Declaration Act action plan consultation draft;

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs Council calls on the Province of British Columbia to confirm how the views and input of Title and Rights Holders and their own Indigenous laws will take priority and precedence in the finalization of the Declaration Act action plan;

THEREFORE BE IT FURTHER RESOLVED that the UBCIC Chiefs Council calls on the Province of British Columbia to implement immediate interim improvements to ensure that laws planned to be tabled in the fall are consistent with the UN Declaration. These interim improvements must consider the advice described in the report *Taking “All Measures Necessary” to Ensure Laws are Consistent with the United Nations Declaration on the Rights of Indigenous Peoples*; and

THEREFORE BE IT FINALLY RESOLVED that the UBCIC Chiefs Council calls on the Province of British Columbia, in partnership with the UBCIC, BC Assembly of First Nations, and the First Nations Summit, working collaboratively as the First Nations Leadership Council, to engage with BC First Nations and legal experts on additional measures to ensure that all new and existing provincial laws are consistent with the UN Declaration and are developed in consultation, cooperation and collaboration with BC First Nations.

Moved: Chief Greg Gabriel, Penticton Indian Band
Seconded: Kukpi7 James Hobart, Spuzzum First Nation
Disposition: Carried
Date: June 30, 2021