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MINISTRY PROFILE

Ministry:

The Declaration Act Secretariat supports the province in its efforts to establish true, lasting reconciliation with First Nations and Indigenous peoples in British Columbia. The Secretariat is charged with coordinating and assisting the cross-government efforts to work in consultation and cooperation with Indigenous Peoples to align laws with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as per section 3 of the Declaration on the Rights of Indigenous Peoples Act (the Declaration Act):

Measures to align laws with Declaration

3. In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.

Ministry Mandate:

The *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act) was unanimously passed by the Legislative Assembly in 2019. Section 3 of the Declaration Act requires the Province, in consultation and co-operation with Indigenous peoples, to take “all measures necessary” to ensure consistency between the laws of British Columbia and the *United Nations Declaration on the Rights of Indigenous Peoples*.

Since 2019, the Province has taken some measures pursuant to section 3. The most significant measure was the formation of the Declaration Act Secretariat, established in Budget 2022. The mandate of the Secretariat is to ensure legislation is consistent with the UN Declaration and is developed in consultation and cooperation with Indigenous Peoples, as required by Section 3 of the Declaration on the Rights of Indigenous Peoples Act.

Reporting directly to the Minister of Indigenous Relations and Reconciliation, the Secretariat guides and assists ministries in meeting the alignment of laws obligations, collaborates within government on changes to government’s legislative and policy processes, and helps establish government’s legislative priorities related to alignment of laws.

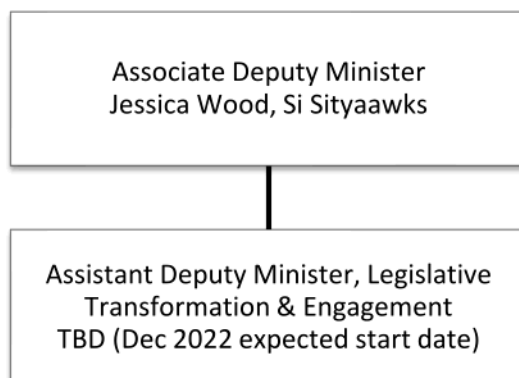
The Secretariat’s core functions are:

- provide guidance on consultation and cooperation and consistency of laws;
- develop processes and measures to support alignment of laws;
- inform government’s legislative agenda; and
- serve in an interlocutor role.

An Advisory Forum will provide advice to the Secretariat on legislative proposals and initiatives and provide a means for Indigenous expertise and experience with meeting the standards of the UN Declaration to be brought into government.

Full Time Equivalents (FTEs): 22 (work is ongoing with PSA to hire approved positions. Currently have 2 permanent roles)

Executive Organizational Chart:



Budget:

	2021/22	2022/23	2023/24	2024/25	Total
	\$000				
Operations	0.000	3.213	4.394	4.441	12.048
Total Base Budget	0.000	3.213	4.394	4.441	12.048
Contingency	0.000	1.071	0.000	0.000	1.071
Total Secretariat Budget	0.000	4.284	4.394	4.441	13.119

- Budget 2022 committed \$12.048M over the fiscal plan to implement the Declaration Act Secretariat (22 FTEs). In addition, \$1.071M in approval in principle contingencies was provided to fund the balance of the requested staffing costs in 2022/23 if expected hiring lag is not realized.
- Work is ongoing with PSA to get classifications, exclusions, and position numbers to hire approved positions.
- DAS was able to support 1 Indigenous Youth Intern (IYIP) position in the 2022/23 intake and has an MOU with the PSA to fiscally support a second Indigenous Youth Intern.

EXECUTIVE MEMBER BIOGRAPHY



Jessica Wood

Si Sityaawks

Associate Deputy Minister
Declaration Act Secretariat
BC Public Service Agency

Si Sityaawks – (Woman who creates change) is from the Gitxsan and Tsimshian First Nations, with extended roots among the Tahltan and Nisga’a Nations.

Currently serving as Associate Deputy Minister of the Declaration Act Secretariat, Jessica is leading British Columbia’s cross-ministry work to align provincial laws with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in consultation and cooperation with Indigenous Peoples.

Jessica previously served as Assistant Deputy Minister for the Reconciliation Transformation and Strategies Division with the Ministry of Indigenous Relations and Reconciliation. In that role she was responsible for the development and implementation of the BC Declaration Act, the Truth and Reconciliation Commission of Canada’s Calls to Action, and the implementation of learnings from relevant case law. Most recently, as part of this transformation, in collaboration Indigenous peoples, she led the development of the first BC Declaration Act Action Plan, released in March 2022. The Plan was developed with Indigenous Peoples to ensure it reflects the priorities of Indigenous Peoples and outlines 89 specific actions every ministry will take over a five-year period.

Jessica was recently the second Policy Practitioner Fellow at UBC’s School of Public Policy and Global Affairs. She is an experienced community developer whose portfolios have focused on issues related to race relations, residential schools, sexual health, sex work, Indigenous women, and gendered violence. She was the first Indigenous woman in Canada whose work as a municipal social planner focused solely on the health and safety of sex workers and impacted communities, gendered and racialized violence, and the prevention of youth sexual exploitation.

Jessica has previously held positions working on the Residential School Settlement Agreement and National Film Board Directory *Finding Dawn*, a film about missing and murdered Indigenous women in Canada. Jessica is a long-time organizer with the Vancouver DTES Women’s Memorial March Committee.

**Declaration Act Secretariat
Assistant Deputy Minister
Engagement and Legislative Transformation**

Victoria, BC (Other locations may be considered)

**Salary
ADM Level 1 range \$150,900.25 - \$192,500.16**

Ministry Overview

The Declaration Act Secretariat supports the province in its efforts to establish true, lasting reconciliation with First Nations and Indigenous peoples in British Columbia. The Secretariat is charged with coordinating and assisting the cross-government efforts to work in consultation and cooperation with Indigenous Peoples to align laws with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as per section 3 of the Declaration on the Rights of Indigenous Peoples Act (the Declaration Act):

Measures to align laws with Declaration

3. *In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.*

The Secretariat provides an important means for government to achieve this obligation. The Secretariat assists ministries to deliver substantive measures to support a coherent, consistent, and systemic implementation of the Declaration Act, especially the alignment of laws obligations in Section 3 of the Act.

Recognizing that implementation of the Declaration Act, the UN Declaration and Constitutionally protected title and rights requires an integrated, “whole of government” effort.

The Secretariat plays a central coordination role, to develop processes, and advise and guide ministries on consultation and cooperation with Indigenous peoples and on consistency of legislation with the UN Declaration.

Legislative planning must include Declaration Act implementation considerations, which the Secretariat will help to embed in government

Declaration Act Secretariat, Assistant Deputy Minister, Engagement and Legislative Transformation Profile

processes. The Secretariat will also work with ministries to establish legislative priorities for alignment with the UN Declaration.

Through engagement with Indigenous organizations and internal government discussions, the following principles will guide the Secretariat:

Capable

- The Secretariat will have the legal understanding and policy expertise to provide guidance to ministries in their policy and legislative work with regard to alignment with the UN Declaration
- The Secretariat will have the capacity to coordinate complex processes, and design and develop proposals for refinements and changes to aspects of the machinery of government for the purposes of facilitating implementation of the Declaration Act.

Credible

- The Secretariat will have the capacity and influence to be effective in supporting the implementation of the Declaration Act.
- The Secretariat will be staffed with public servants that have the necessary skills and knowledge to effectively implement its mandate.
- Indigenous professionals are a priority in the staffing of the Secretariat.

Accountable

- Secretariat processes (decision-making structure, engagement processes, prioritization decisions) will be transparent to First Nations, Indigenous organizations and peoples as well as to government decision-makers and stakeholders.

This work requires building new and lasting collaborative partnerships with First Nations and Indigenous communities, all levels of Government, industry, and stakeholders. A key component of these partnerships is to continue building a strong economy and a secure future so that all British Columbians, including First Nations and Indigenous peoples, are able to benefit from that economy. The vision is that British Columbia is a place where communities are healthy, prosperous, sustainable, and self-determining founded on positive, lasting

Declaration Act Secretariat, Assistant Deputy Minister, Engagement and Legislative Transformation Profile

relationships between First Nations and Indigenous peoples and all British Columbians.

Position

The Assistant Deputy Minister (ADM), Engagement and Legislative Transformation, will report to the Associate Deputy Minister and will fill a fundamental role supporting the cross-government efforts to work in consultation and cooperation with Indigenous Peoples to align laws with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as per section 3 of the Declaration Act.

The Secretariat's executive team is comprised of the Associate Deputy Minister and Assistant Deputy Minister who provides leadership to the Secretariat to uphold the guiding principles and shares the responsibility to implement legislative development in government.

The ADM must operate as a collaborative executive team member who is also an accountable cross-sector leader. In addition, the ADM must have the legal understanding and policy expertise to provide guidance to ministries in their policy and legislative work with regard to alignment with the UN Declaration (note – the Secretariat is not intended to provide legal advice).

The ADM must maintain a close working relationship with the Ministry of Indigenous Relations and Reconciliation, who is accountable for coordinating the development and implementation of the Declaration Act Action Plan, and the Annual Report required under the Declaration Act.

The position is accountable for developing a professional, motivated, highly engaged team, as well as building collaborative working relationships with First Nations, Indigenous peoples and organizations, other ministries, levels of governments, and stakeholders.

Declaration Act Secretariat, Assistant Deputy Minister, Engagement and
Legislative Transformation Profile

Responsibilities and Accountabilities

The Assistant Deputy Minister is responsible and accountable to:

- Develop mechanisms for, and oversee, the effective implementation and coordination of government's obligation to ensure that new legislation, and related policies, are consistent with the Declaration on the Rights of Indigenous Peoples Act.
- Deliver and oversee substantive processes, standards, and measures to ensure coherent, consistent, and systemic implementation of the Declaration Act, especially the alignment of laws obligations in section 3 of the Act.
- Provide guidance to Ministries on consultation and cooperation with Indigenous peoples and consistency of legislation with the UN Declaration.
- The ADM provides advice on important strategic, policy and legal issues to deputy ministers, ministers, and senior government officials, and works collaboratively with a wide range of First Nations, Indigenous Governing Bodies, Indigenous Organizations, other levels of government as well as internal and external partners and stakeholders.
- The ADM provides briefings, recommendations, and decision-making material for the Minister, Deputy Minister, Cabinet, and various committees.
- Represents the Secretariat on various inter-ministry and federal/provincial ADM Committees.
- Develop and maintain a strategic prioritization process and schedule, based on input from ministries and Indigenous peoples and organizations, that identifies existing laws for review and alignment with the UN Declaration.
- Lead, develop and enable a valued, high functioning, resilient and adaptable workforce.
- Adhere to budgetary accountabilities.
- Accountable for human resource leadership and management within the organization to:

Declaration Act Secretariat, Assistant Deputy Minister, Engagement and Legislative Transformation Profile

- Build capacity and succession management within the Secretariat;
- Participate as an executive team member to provide executive leadership within the organization and to further the strategic corporate agenda for government;
- Participate in government's estimates process;
- Organize, direct, and manage the performance of staff to meet operational requirements;
- Ensure that human resource management responsibilities that directly flow to them through legislation or labour contracts are discharged;
- Develop workforce plans and manage employee engagement;
- Ensure that human resource management responsibilities are carried out in a manner consistent with applicable legislation, collective agreements, terms and conditions of employment, and the Corporate Human Resource Management Policy Framework;
- Service planning, including development of service standards, and ensuring accountability processes and performance management systems are in place; and
- Identify underlying issues and implement effective solutions.

Qualifications

Applications for this position are limited to those who self-identify as Indigenous, with the required combination of education and experience.

- Significant senior management/executive experience working with First Nations, Indigenous peoples and organizations.
- Experience working with elected officials and/or ministers when dealing with complex and/or contentious issues, demonstrating an understanding of the political environment.
- Experience representing government and consulting with local and federal governments, stakeholders, interest groups.
- Significant recent experience at a senior executive level managing multi-disciplinary staff, project teams and budgets

Declaration Act Secretariat, Assistant Deputy Minister, Engagement and Legislative Transformation Profile

- A proven record of displaying and exercising sound judgment, diplomacy, tact and discretion in all relationships and interactions including in public forums.
- Experience in strategic financial management leveraging finance and corporate services.
- Experience in strategic planning, formulating policy, strategies and business plans
- Experience providing oversight of a major project(s) in a complex organization.
- Related university degree and/or significant senior progressive executive/senior management experience in leading and managing teams in a highly complex working environment. An equivalent combination of education and experience may be considered.

Knowledge, Skills & Abilities

- Knowledgeable in general government processes, legal and legislative proficiency, policy development acumen, engagement experience, and be capable of networking and relationship management.
- A depth of knowledge of the UN Declaration, Constitution Act Section 35 (1), legislative and policy development, Indigenous peoples, and the colonial history and legacy in BC.
- Demonstrated knowledge of Indigenous history, culture and jurisprudence, negotiations, and the treaty process.
- Committed to cross-government collaboration and dedicated to building and leading a highly effective, trusted, collaborative, professional and engaged teams.
- Proven progressive senior leadership skills, a strong business acumen, project management skills, and results orientation.
- Outstanding skills in influence, persuasion, problem-solving and conflict resolution.

The appointee will be required to consent to a criminal record check.

Declaration Act Secretariat, Assistant Deputy Minister, Engagement and Legislative Transformation Profile

Competencies

To achieve government's **Vision**, the ADM must position and structure their organization to maximize its effectiveness. ADM's practice **strategic thinking** in translating the vision to goals and strategies and support their accomplishment through facilitation and leading change.

The ADM demonstrates **change Leadership** in all of their responsibilities. ADM champions the achievement of intended, real change that advances Indigenous self-determination in British Columbia. It involves collaboratively developing and implementing progressive solutions. The ADM inspires others into new ways of thinking and doing business while energizing the transformation process and removing barriers to change.

In **leading People**, ADM must motivate, empower and lead employees to accomplish goals and objectives, rewarding high performance, promoting empowerment and developing their employees, providing opportunities for growth, and managing issues with their organization.

As a **credible champion** the ADM shows courage and conviction in advocating for change for the betterment through the implementation of the human rights of Indigenous peoples. This means stepping forward, from a place of respect and knowledge, to name and help advance needed change. This may mean challenging current business policies, practices and attitudes. A credible champion demonstrates outstanding performance as identified by Indigenous peoples and the public service.

Building a Trust Based Relationship requires the ADM to have a fundamental understanding that "relationship" is the foundation from which all activities happen and that building a good relationship takes both time and commitment. It relies upon demonstrated integrity and transparency. Building a trust-based relationship requires a high level of consciousness of the experience of Indigenous peoples with regards to Crown relations. It assumes that strengths,

Declaration Act Secretariat, Assistant Deputy Minister, Engagement and
Legislative Transformation Profile

leadership and knowledge about Indigenous peoples, cultures, and communities.

BC PUBLIC SERVICE LEADERSHIP EXPECTATIONS

- Be a model and advocate of the BC Public Service Values and Standards of Conduct in professionally serving government to the highest ethical standard.
- Be an active enabler of innovation and engagement as keys to maintaining and enhancing public trust and confidence.
- Demonstrate foresight and understanding of our modern, digital context to better service citizens.
- Be proactive, resilient, and nimble, taking thoughtful, calculated risks.
- Be biased to action and removing unnecessary complexity to deliver the best possible service and outcomes for citizens.
- Act to improve the corporate capacity, capability, and commitment of the public service.

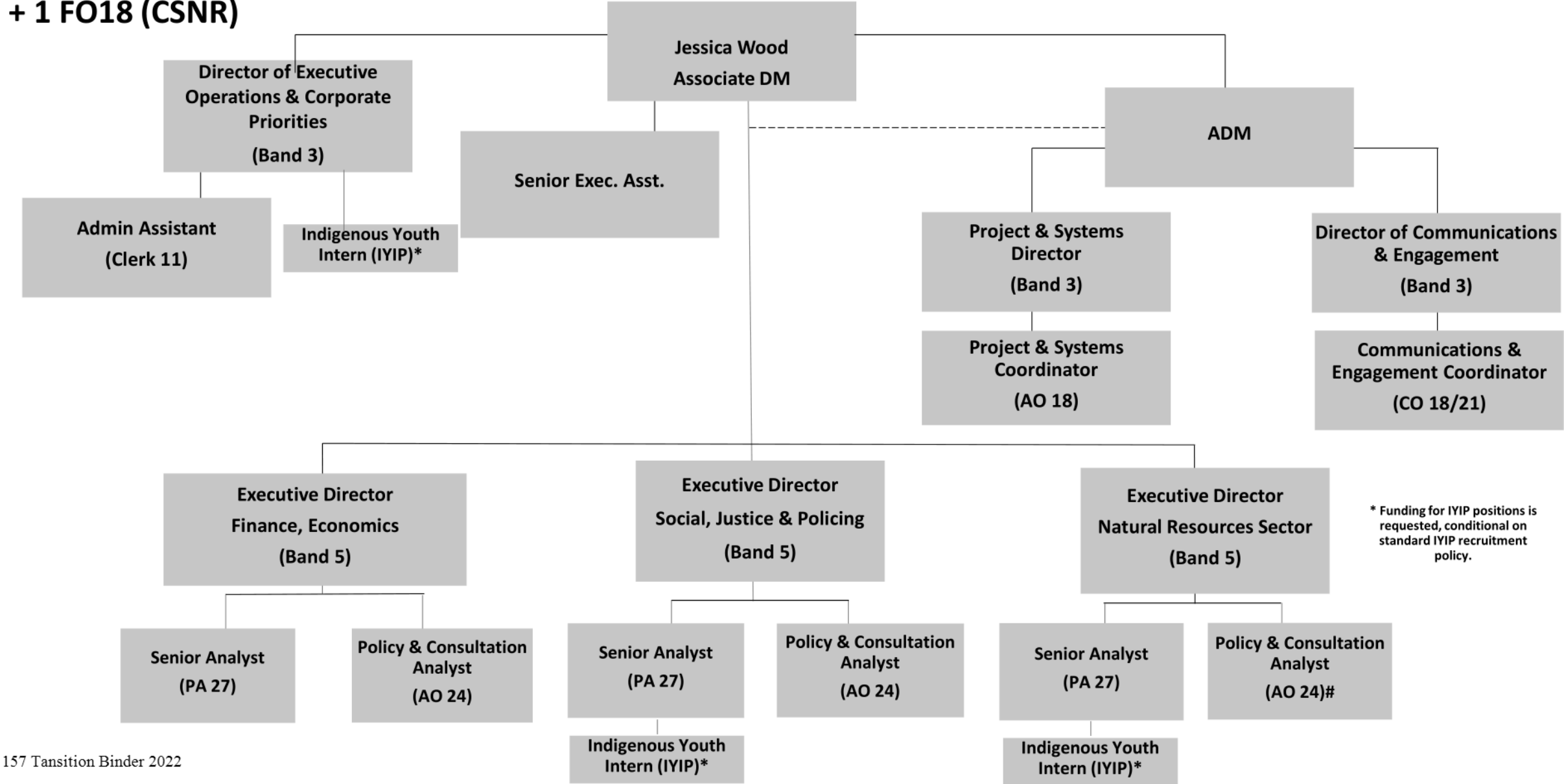
The professional values of the BC Public Service . . .

Courage, Teamwork, Curiosity, Service, Passion, Accountability

Always with integrity

Declaration Act Secretariat

18 regular staff + IYIP
+ 1 FO18 (CSNR)



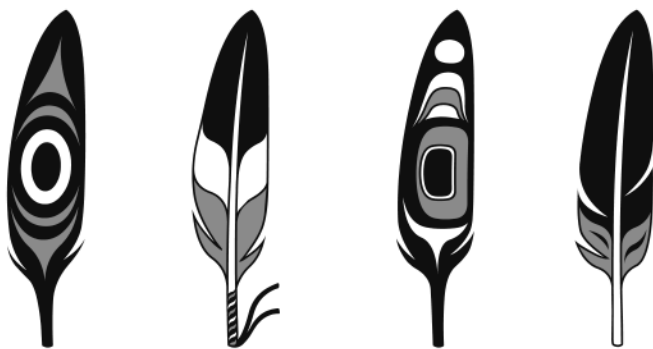
* Funding for IYIP positions is requested, conditional on standard IYIP recruitment policy.

Budget Overview- Declaration Act Secretariat

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Type of Position	Classification	# of FTEs
Associate Deputy Minister	Assoc DM	1.0
Senior Executive Assistant	SEA (15 plus 10%)	1.0
Director of Operations	Band 3	1.0
Assistant Deputy Minister	ADM level2	1.0
Admin Assistant	Clerk 11	1.0
Project & Systems Director	Band 3	1.0
Director of Communication and Engagement	Band 3	1.0
Project & Systems Coordinator	AO 18	1.0
Communications and Engagement Coordinator	CO21	1.0
Executive Director Finance, Economics	Band 5	1.0
Executive Director Social, Justice and Policing	Band 5	1.0
Executive Director Natural Resources Sector	Band 5	1.0
Senior Analyst (3 FTE's)	PA 27 +3.3% TMA	3.0
Policy and Consultation Analyst (3 FTE's)	AO24	3.0
IYP (3)	Grid 13	3.0
CSNR - Financial Analyst	FO18	1.0
		22.0



Declaration Act Secretariat

Purpose: To coordinate and assist the cross-government effort to work in consultation and cooperation with Indigenous peoples to align provincial laws with the UN Declaration as per section 3 of the Declaration Act:

Measures to align laws with Declaration

"In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration."

Core Functions:

- Focus on Section 3 of the Declaration Act by providing assistance and guidance to ministries to:
 - Meet consultation and cooperation obligations in the development and reform of legislation
 - Ensure alignment of provincial legislation with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- Develop processes and measures to support the alignment of laws.
- Inform government's legislative agenda.
- Engage with Indigenous Peoples to gather input on:
 - their experiences working with ministries in the alignment of laws, and
 - to facilitate systemic shifts to ensure the obligations under Section 3 can be met.

Organizational Structure:

- Reports to the Minister of Indigenous Relations and Reconciliation
- Independent - **Distinct from Ministry of Indigenous Relations and Reconciliation**
- Estimated 18-22 staff - **Focused on Indigenous recruitment**
- Budget is 12M over 3 years
- Supported by Advisory Forum

Initial Priorities:

1. **Develop cross-government guidance and advice on consultation and cooperation**
 - Includes development of an interim process on involving Indigenous Peoples in legislative and policy development.
2. **Establish a framework for advancing both “cross-statute” and “statute-specific” legislative priorities**
 - “Cross-statute” examples: Interpretation Amendment Act 2021, Anti-Racism Data Act 2022.
 - “Statute-specific” examples: Heritage Conservation Act, Police Act, Section 7 enabling.
 - In addition, the Secretariat is expected to be engaged on select legislative initiatives as “demonstration projects”.
3. **Develop measures and processes through which a review of laws will take place**
4. **Recommend for Cabinet approval which laws to prioritize for comprehensive alignment with the UN Declaration**
 - Together with Ministries, and
 - In consultation and cooperation with Indigenous Peoples.
5. **Maintain a schedule**, based on input from ministries, Indigenous peoples and organizations, that identifies the existing laws that are a priority for review and alignment with the UN Declaration.

Achieve Priorities:

The Secretariat will be focused on creating pathways forward through complexity.

The Secretariat will do this by:

- **Developing a three-year plan**
- **Engaging with First Nations** regarding the Secretariat and the process for alignment of laws, and for consultation and cooperation.
- **Developing and advancing a framework for alignment of laws**
 - Cross-statute alignment
 - Statute-specific or sector-specific alignment
 - Supporting legislative initiatives and progress
 - Proactive alignment through a set of priority statutes
- **Seeking and developing guidance and clarity**
 - Standards, processes, tools for consultation and cooperation
 - Distinctions-based guidance
- **Building relationships and credibility**
 - Including Indigenous-exclusive hiring
 - Direct engagement with First Nations and Indigenous Organizations.

Contact us:

Email: DeclarationActSecretariat@gov.bc.ca

Mail: PO Box 9104 STN PROV GOVT Victoria BC V8M9B1



Primary Partners – Who Do We Interact With?

Key Partner List

Branch	Organization	Contact	Description	Key Focus
Political Organization	BC Assembly of First Nations (BCAFN)	Terry Teegee Regional Chief 250-981-2151 regionalchief@bcafn.ca	The BCAFN is a regional arm of the National AFN and represents 203 First Nations in BC. The Regional Chief represents the regional concerns of the BCAFN constituents at the provincial and national level.	<ul style="list-style-type: none"> • Aboriginal title, rights and treaty rights • Representative of Indian Act bands in BC • Economic Development
Political Organization	First Nations Summit (FNS)	Executive team: Robert Phillips 778-875-4463 rphillips@fns.bc.ca Cheryl Casimer 778-875-2157 ccasimer@fns.bc.ca Hugh Braker 604-812-2632 hbraker@fns.bc.ca	One of the principals of the treaty negotiations process, the FNS is comprised of First Nations in BC and provides a forum for First Nations in BC participating in the BC Treaty Process, to address treaty negotiations and other issues.	<ul style="list-style-type: none"> • Treaty negotiations

Primary Partners – Who Do We Interact With?

Branch	Organization	Contact	Description	Key Focus
Political Organization	Union of BC Indian Chiefs (UBCIC)	<p>Grand Chief Stewart Phillip President Vancouver office: 604-684-0231 Kamloops office: 250-828-9746 president@ubcic.bc.ca (re-elected Sept 15, 2022)</p> <p>Chief Don Tom Vice-President chief@tsartlip.com 250-813-3315</p> <p>Kukpi7 Judy Wilson Secretary-Treasurer judy@ubcic.bc.ca (604) 785-3014</p>	The UBCIC is a political organization representing First Nations in BC (largely those First Nations which do not participate in the treaty process). The UBCIC has consistently opposed the BC Treaty Process and the federal government's Comprehensive Claims Policy arguing that these are processes to extinguish and modify Aboriginal rights.	<ul style="list-style-type: none"> Non-treaty negotiations and interests, Aboriginal title and rights. Not participants in treaty process
Political Organization	First Nations Leadership Council (FNLC)	Contact info listed above for each separate organization	The FNLC is a coalition comprised of the separate political executives of the BC Assembly of First Nations, the First Nations Summit and the Union of BC Indian Chiefs. While the members of the FNLC work together to engage with the Province and others to reach agreements on areas of mutual concern, they remain separate legal entities with overlapping membership.	<ul style="list-style-type: none"> Aboriginal title and rights, reconciliation of Aboriginal and Crown titles, children and families and jurisdictions Declaration Act Implementation Commitment Document Climate change and clean growth

Primary Partners – Who Do We Interact With?

Branch	Organization	Contact	Description	Key Focus
Political Organization	Métis Nation BC (MNBC)	Lissa Dawn Smith President lsmith@mnhbc.ca 250-213-5171 Colette Trudeau CEO 604-557-5851 kbrow@mnhbc.ca	Created in 1996, the MNBC is the governing nation for Métis people living in British Columbia and represents one of five governing members of the Métis National Council.	Implementation of Métis Nation Relationship Accord II
Political Organization	Alliance of BC Modern Treaty Nations (ABCMTN)	Alison Butler, Alliance Coordinator AllianceAdmin@Nvisiongroup.ca	The Alliance was established in 2018 for Modern Treaty Nations in BC to collectively engage at the provincial level. Membership includes each of the eight Modern Treaty Nations in BC: <ul style="list-style-type: none"> • Tsawwassen First Nation • Tla'amin Nation • Huu-ay-aht First Nations • Ka:'yu:'k't'h'/Chek'tles7et'h' First Nations • Nisga'a Nation • Toquaht Nation • Uchucklesaht Tribe • Yuułu?it?atḥ Government 	Implementation of modern treaties in BC

Primary Partners – Who Do We Interact With?

Priority Call List

TIER I		
Organization	Contact	Phone
Métis Nation British Columbia (MNBC)	Lissa Smith, President lsmith@mnbc.ca	(250) 213-5171
Modern Treaty Alliance AllianceAdmin@Nvisiongroup.ca abutler@Nvisiongroup.ca	Nisga'a Lisims Government President Eva Clayton evac@nisgaa.net robertac@nisgaa.net	(250) 633-3000
	Tsawwassen Interim Chief Valerie Cross (election Oct 15) VCross@tsawwassenfirstnation.com	(604) 943-2112
	Tla'amin Hegus John Hackett John.Hackett@tn-bc.ca	(250) 961-4350
	Maa-nulth Yuułuʔiłʔatḥ First Nation (Ucluelet) President Charles McCarthy Charles.mccarthy@ufn.ca Director of Operations, Suzanne Williams: suzanne.williams@ufn.ca	(250) 735-1305
	Ka:'yu:'k't'h'/Chek'tles7et'h' First Nations (Kyuquot) Chief Michael (Tony) Hansen tonyh@kcfirstnations.com Chief Administrative Officer, Cynthia Blackstone: cynthiab@kcfirstnations.com	(250) 332-5259

	<p>Toquaht Nation taayii Һaʔwii (Chief) Anne Mack annem@toquaht.ca</p> <p>Angela Polifroni, Director of Operations angelap@toquaht.ca</p>	(250) 726-4230
	<p>Uchucklesaht Tribe Chief Charlie Cootes charlie.cootes@uchucklesaht.ca</p>	(604) 997-1186
	<p>Huu-ay-aht First Nations Chief Robert Dennis Sr. robert.d@huuayaht.org</p>	(250) 203-2566
<p>First Nations Leadership Council*</p> <p>*together these three organizations make up the First Nations Leadership Council; however, they are unique, stand-alone organizations</p>		
<p>First Nations Summit (FNS)</p> <p>*Can work with Colin to organize a conference call</p>	<p>Cheryl Casimer, Political Executive ccasimer@fns.bc.ca</p>	(778) 875-2157
	<p>Robert Phillips, Political Executive rphillips@fns.bc.ca</p>	(778) 875-4463
	<p>Hugh Braker, Political Executive hbraker@fns.ca</p>	(604) 812-2632
	<p>Colin Braker, Comms. Director cbraker@fns.bc.ca</p>	
	<p>Leah George-Wilson, Co-Chair lgeorge-wilson@fns.bc.ca</p>	
	<p>Ray Harris, Co-Chair rayharris@fns.bc.ca</p>	
	<p>Howard Grant, Exec. Director hegrant@fns.bc.ca</p>	
	<p>Marilyn Teneese, Exec. Assistant mteneese@fns.bc.ca</p>	

BC Assembly of First Nations (BCAFN)	Terry Teegee, Regional Chief regionalchief@bcafn.ca	(250) 981-2151
	Vanessa West, Chief of Staff Vanessa.West@bcafn.ca	
	Victoria Austin, Exec. Assistant Victoria.Austin@bcafn.ca	
	Jaime Sanchez, Advisor to the Regional Chief jaime.sanchez@bcafn.ca	250-945-9911
	Maureen Buchan, Senior Policy Director Maureen.Buchan@bcafn.ca	
Union of BC Indian Chiefs (UBCIC) *Can work with Andrea to organize a conference call	Grand Chief Stewart Phillip, President president@ubcic.bc.ca	(604) 684-0231 (250) 828-9746
	Chief Don Tom, Vice President vp@ubcic.bc.ca	(250) 813-3315
	Jody Woods, A/Director of Operations jwoods@ubcic.bc.ca	
	Kukpi7 Judy Wilson, Secretary/treasurer judy@ubcic.ca	(604) 812-5972
	Andrea Glickman, Policy Director Andrea@ubcic.bc.ca	
TIER II		
BC First Nations Justice Council (BCFNJC)	Doug White, Chair Doug@bcfnjc.ca	778-940-1520
	Rosalie Yazzie, Vice-Chair rosalie@bcfnjc.ca	
	Curtis Bedwell, Sr. Policy Analyst curtis@bcfnjc.com	Personal Information
First Nations Education Steering Committee (FNESC)	Tyrone McNeil, President tmcneil@fnesc.ca	(604) 925-6087 (604) 925-6097
	Marlene Erickson, VP merickson@fnesc.ca	
	Deborah Jeffrey djeffrey@fnesc.ca	

First Nations Emergency Services Society (FNESS)	Anthony Moore, President amoore@fness.bc.ca	604-669-7305
	Heather McKenzie, VP hmckenzie@fness.bc.ca	
	Wayne Schnitzler, A/Executive Director wschnitzler@fness.bc.ca	250-377-7600
First Nations Energy and Mining Council (FNEMC)	Dave Porter, CEO dave.porter@fnemc.ca	(604) 924-3844
	Paul Blom, Executive Director paul.blom@fnemc.ca	(604) 921-4401
First Nations Fisheries Council (FNFC)	Jordan Point, ED jordan@fnfisheriescouncil.ca	(778) 379-6470 (778) 379-6469
	Hugh Braker, President hbraker@tseshaht.com	
	Ken Malloway, VP kenmalloway@shaw.ca	
	Karl Dhillon, CFO karl@fnfisheriescouncil.ca	
First Nations Forestry Council (Forestry Council)	Keith Atkinson, A/CEO	604-971-3448
	Sandra Atkinson, Director of Operations and Finance info@forestrycouncil.ca	
First Nations Health Authority (FNHA)	Richard Jock ,CEO Richard.Jock@fnha.ca	(604) 693-6589 (604) 913-2081
	Naomi Williams, ED Naomi.Williams@fnha.ca	
	Peter Eckert, CFO Peter.Eckert@fnha.ca	
	Stuart Bourhill, CIO & VP Stuart.Bourhill@fnha.ca	
First Nations Health Council (FNHC)	Wade Grant, Chair sharedsecretariat@fnha.ca	(604) 693-6500 (604) 913-2081
	Kukpi7 Wayne Christian (Wenecwtsin), Deputy Chair	

First Nations Housing and Infrastructure Council	Chief Mark Point, Chair mabrampoint@outlook.com	
	Krystal Scheck, Admin Assistant administrative.assistant@fnhic-bc.ca executive.director@fnhicbc.ca	
First Nations Public Service Secretariat (FNPSS)	Jehan Casey jcasey@fnps.ca	(604) 926-9903
	Jacqueline Armstrong, Exec Assistant jarmstrong@fnps.ca	
First Nations Technology Council (FNTC)	Denise Williams, CEO (Leaving Fall 2022) denise.williams@fntc.info	(604) 921-9939 (604) 313-0375
	Natasha Valecha, Director of Operations Natahsa@technologycouncil.ca	604 313-0375
BC Aboriginal Child Care Society (BCACCS)	Karen Isaac, Executive Director karen@acc-society.bc.ca	(604) 913-9128 ext: 222
	Mona Bill, Admin. Assistant reception@acc-society.bc.ca	
Indigenous Tourism Association of BC (ITBC)	Paula Amos, Chief Marketing and Developing Officer paula@indigenoussbc.com	(604) 921-1070
	Henry Tso, CFO henry@indigenoussbc.com	
	Brenda Baptiste, Chair of BoD brenda@indigenoussbc.com	

Primary Partners – Who Do We Interact With?

First Nations Leadership Council – Roles and Profiles

The First Nations Leadership Council (FNLC) is a coalition comprised of the separate political executives of the BC Assembly of First Nations, the First Nations Summit and the Union of BC Indian Chiefs.

- While the members of the FNLC work together to engage with the Province and others to reach agreements on areas of mutual concern, they remain separate legal entities with overlapping membership.
- Members of the FNLC work together to develop coordinated approaches to issues relevant to First Nations communities throughout the province.
- The Joint Core Working Group (JCWG) is a collective staff table of the Province and the FNLC that collaborates on strategic direction to support implementation of the 2018 Commitment Document and associated Joint Agenda.
- Joint Core Political Table (JCPT) is the Political table that JCWG reports to, and is chaired by the Minister of MIRR, with attendance of the AG and other ministers as required.

BC Assembly of First Nations (BCAFN)

- BCAFN is a regional arm of the Assembly of First Nations (a national advocacy organization representing First Nation citizens in Canada), and is a Provincial Territorial Organization (PTO) representing the 203 First Nations in BC.
- The Regional Chief represents the regional concerns of the BCAFN constituents at the national level.
- BCAFN is inclusive and extends to First Nations currently engaged in the treaty process, those who have signed modern treaties, and those who fall under historic treaty agreements which include the Douglas Treaties and Treaty 8.
- Contact: Regional Chief Terry Teegee

First Nations Summit (FNS)

- FNS is one of the principals of the treaty negotiations process, comprised of a majority of First Nations and Tribal Councils in BC and provides a forum for First Nations in BC to address treaty negotiations and other issues of common concern.
- The Summit's original mandate is to advance discussions with the governments of Canada and BC to support First Nations in conducting their own direct treaty negotiations with Canada and BC.
- Approximately 150 First Nations participate in First Nations Summit assemblies and bring forward, discuss and provide political direction on issues of common concern.
- Contacts: Robert Phillips; Cheryl Casimer; Hugh Braker

Primary Stakeholders, Partners, and Clients – Who Do We Interact With?

Union of BC Indian Chiefs (UBCIC)

- UBCIC is a non-profit political organization representing First Nations in BC (largely those First Nations which do not participate in the treaty process).
- UBCIC has consistently opposed the BC Treaty Process and the federal government's Comprehensive Claims Policy arguing that these are processes to extinguish and modify Aboriginal rights.
- Contacts: Grand Chief Stewart Phillip, President; Chief Don Tom, Vice-President; Kukpi7 Judy Wilson, Secretary-Treasurer

Primary Partners– Who Do We Interact With?

Alliance of BC Modern Treaty Nations

- The Alliance of BC Modern Treaty Nations (Alliance) formed in 2018 as a collective of modern treaty nations (MTN) to work collaboratively and caucus regularly on common treaty matters.
- The MTN members of the Alliance are Tla'amin Nation, Tsawwassen First Nation, the five Maa-nulth Treaty Nations (Huu-ay-aht First Nations, Ka:'yu:k't'h'/Chek'tles7et'h' First Nations, Toquaht Nation, Uchucklesaht Tribe and Yuułu?it'ath Government) and Nisga'a Nation.
- Two Premier's Forums have been held between the Alliance members' leadership and the Premier and members of Cabinet in June 2020 and May 2022. All parties are interested in regularizing an annual BC-Alliance leadership forum.
- The *Declaration on the Rights of Indigenous Peoples Act* Action Plan (Action Plan) includes a separate section on modern treaties that affirms the importance of implementing the Declaration Act in a manner consistent with distinct modern treaty rights.

Primary Partners– Who Do We Interact With?

Métis Nation BC

Background

- First Nations, the Métis, and Inuit are the Indigenous Peoples of Canada, with Aboriginal rights recognized and affirmed in section 35(1) of the *Constitution Act*, 1982 and Indigenous human rights affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples*. They have distinct rights that derive from, and are tied to, their unique histories, cultures, laws, legal orders, traditions, practices, political, social, economic structures, and relationships to land.
- Bill-41, the *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act) through a distinctions-based approach is opening new opportunities for more meaningful engagement with the Métis peoples, affirming their unique Constitutional rights.
- While BC's current position is that no Métis community is legally capable of successfully asserting site-specific Section 35 rights in British Columbia, under the *Declaration Act* Implementation Plan, BC is committed to build strong partnerships together to address the specific social, cultural and economic needs of Métis people in BC.
- BC does not participate in "land-based rights" discussions with the MNBC or any other Métis organization at this time. In relation to land and resource issues, BC consults with the Métis as an interested party or stakeholder, not as a rights holder.
- According to the 2021 Census, 97,865 people living in British Columbia (BC) identified as Métis.
- The Ministry has relationships with the following organizations that represent Métis communities:
 - Métis Nation BC,
 - BC Métis Federation, and
 - Métis Financial Corporation of BC.
- Métis Nation BC (MNBC) is a political organization representing 39 Métis chartered communities that is the recognized governing body for Métis in BC by the provincial and federal governments.
- MNBC citizens must be Métis, meaning a person who self-identifies as Métis, is of historic Métis Nation ancestry, is distinct from other Aboriginal Peoples, and is accepted by the Métis Nation.
- The 2021 Census identified 25,580 people reported being registered in MNBC and living in BC. Another 1,555 members of MNBC lived outside the province, bringing the total MNBC registrations up to 27,135.
- The governing body of MNBC is their Métis Nation Governing Assembly consisting of locally elected representatives from seven provincial regions, elected representatives from 39 Chartered Communities, an elected President and Vice-President, a Women's Chairperson, and a Youth Chairperson.
- MNBC is also one of four members of the Métis National Council, the national representative body for the Métis Nation in Canada that is supported by the federal government through their Permanent Bi-lateral Agreement.

Primary Stakeholders, Partners, and Clients – Who Do We Interact With?

- On October 27th, 2021, the Province, and MNBC signed a Letter of Intent that sunsets the 2016 *Metis Nation Relationship Accord II* and commits the Parties to formalize dialogue and integrate engagement on Métis priorities across all of government through a new Métis Relations Working Table.
- To date, BC has no protocol, MOU, or ongoing funding relationship with the BC Métis Federation. This position is consistent with the federal position that only recognizes the MNBC as the legitimate political voice for Métis in British Columbia.

Outcomes and Opportunities

- The Province's relationship with Métis peoples is moving from shorter term, transactional arrangements to a transformational approach that is a more formal and strategic government to government relationship which aligns with the principles of the *Declaration Act*.

LETTER OF INTENT

Dated for reference October 27, 2021

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
("British Columbia")

AND

THE MÉTIS NATION BRITISH COLUMBIA
("MNBC")

(Collectively, the "Parties")

WHEREAS:

- A. The Parties entered into the Métis Nation Relationship Accord in September of 2006 and renewed the Accord in November 2016, committing to strengthen relationships between the provincial government and Métis people.
- B. The purpose of this Letter of Intent is to outline the Parties' understanding that British Columbia and the MNBC are advancing their relationship and are proposing a new "whole of government" approach to Métis relations as a partnership between MNBC and British Columbia respecting Métis self-determination.

COLLABORATIVE PRIORITIES:

With this Letter of Intent, the Parties intend to create a new collaborative, accountable, cross government approach to Métis relations incorporating an Assistant Deputy Minister's Committee to help coordinate the framework and vision in step with ongoing programs and initiatives of other ministries with MNBC.

- 1. The Parties acknowledge the opportunity to sunset the previous Métis Nation Relationship Accord II, and move to a reconciliation agreement in an emerging landscape of reconciliation as being framed by the *Declaration Act on the Rights of Indigenous Peoples*, the Truth and Reconciliation Commission Calls to Action and the National Inquiry into Missing and Murdered Indigenous Women and Girls Calls to Justice.
- 2. The Parties propose to co-develop a new Métis Relations Working Table as the hub of engagement for MNBC and government with an approach to relations that

formalizes dialogue and integrates engagement on Métis priorities across all of government.

ADDITIONAL MATTERS:

3. Upon signing on this Letter of Intent, the Parties agree to immediately begin developing the technical requirements needed to formalize the table.
4. This Letter of Intent may be executed in counterparts and facsimile by the Parties.

On Behalf of the Métis Nation BC:



Lissa Dawn Smith
Acting President
Métis Nation BC

**On Behalf of the Province of British
Columbia:**



Hon. Murray Rankin, QC
Minister of Indigenous Relations and
Reconciliation

What Do We Do? – Highlights

Declaration on the Rights of Indigenous Peoples Act 101

The *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act) was unanimously passed by the British Columbia Legislative Assembly in November 2019. This made B.C. the first jurisdiction in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration).

The Declaration Act established the UN Declaration as the Province's framework for reconciliation, as called for by the Truth and Reconciliation Commission. The UN Declaration is a "universal framework of minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of Indigenous Peoples.

The Declaration on the Rights of Indigenous Peoples Act contributes to the implementation of the UN Declaration in B.C. by enabling legislative, regulatory and policy changes to be made over time to support implementation. The Act:

- requires the Province, in consultation and cooperation with Indigenous Peoples to take all measures necessary to ensure the laws of B.C. are consistent with the UN Declaration (section 3);
- requires the development and implementation of an action plan, in consultation and cooperation with Indigenous Peoples, to achieve the objectives of the UN Declaration (section 4);
- requires the Province to report annually on progress made toward alignment of laws and achievement of the goals in the action plan (section 5); and
- enables agreements with Indigenous governing bodies, including joint or consent-based decision-making agreements that reflect free, prior and informed consent (sections 6 and 7).

Alignment of Laws (section 3) (Declaration Act Secretariat)

- The alignment of laws requires a whole-of-government approach, with each ministry responsible for ensuring their legislation meets these Declaration Act obligations.
- The Province is developing processes and protocols to ensure consultation and cooperation with Indigenous Peoples so that the alignment of laws is efficient, effective and comprehensive.
- In 2021 and 2022, the Province has introduced legislation that demonstrates tangible progress on the alignment of laws to the UN Declaration, including legislation upholding Indigenous human rights through the BC Human Rights Code and amending the *Interpretation Act* to include a universal non-derogation clause which makes it explicit that provincial laws uphold, and do not abrogate or derogate from, the rights of Indigenous peoples under section 35 of the *Constitution Act, 1982* and to provide that all provincial acts and regulations must be read to be consistent with the UN Declaration.
- The 2022 Budget Speech announced the creation of the Declaration Act Secretariat that will guide and assist the Province in meeting its obligation to ensure legislation is consistent with the UN Declaration, and is developed in consultation and cooperation with Indigenous peoples.

What Do We Do? – Highlights

Action Plan (section 4) (Refer to MIRR for more details)

- After two years of intensive engagement, the Province released the first Declaration Act Action Plan on March 30, 2022
- Developed in consultation and cooperation with Indigenous Peoples, the action plan includes collectively identified goals and outcomes that provide the long-term strategic vision for achieving the objectives of the UN Declaration.
- It outlines 89 tangible, achievable actions in the areas of self-determination and self-government, rights and title, ending anti-Indigenous racism and enhancing social, cultural and economic well being

Annual Report (section 5) (Refer to MIRR for more details)

- The Province has tabled 3 annual reports since the passage of the Declaration Act.
- Each report has covered progress made on the alignment of provincial laws with the UN Declaration, the development of an action plan to achieve the objectives of the UN Declaration as well as work to advance the implementation of the UN Declaration more broadly.
- The next annual report will be the first that will report on the implementation of the action plan.

Agreements with Indigenous governing bodies (sections 6 and 7) (Refer to MIRR for more details)

- On June 6, 2022, the Tahltan Central Government and the Province announced that they had entered into the first consent-based decision-making agreement under the Declaration Act.
- The Tahltan agreement outlines consent-based decision-making related to the environmental assessment of the Eskay Creek Revitalization Project.
- On August 2, 2022, the Province announced that the shíshálh Nation and the Province of British Columbia are starting negotiations on the first joint decision-making agreement to be negotiated under section 7 of the Declaration Act.
- The shíshálh Nation agreement will support ongoing work to achieve long-term comprehensive reconciliation and land-use predictability by providing transparent requirements for dock applicants, mitigating ecological impacts to the foreshore, protecting archeological resources, and advancing collaborative management of shíshálh swiya (territory/birthplace/world).

INTERIM APPROACH TO IMPLEMENTING
THE REQUIREMENTS OF SECTION 3 OF THE
**Declaration on the Rights
of Indigenous Peoples Act**

Prepared by the Declaration Act Secretariat



BRITISH
COLUMBIA





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Purpose

Section 3 of the *Declaration on the Rights of Indigenous Peoples Act* requires that Province “in consultation and cooperation with Indigenous Peoples” take “all measures necessary” to ensure consistency between the laws of British Columbia and the *United Nations Declaration on the Rights of Indigenous Peoples*.

Implementing section 3 means that the Province must work to ensure better consistency and clarity of process for involving Indigenous Peoples¹ in policy and legislative development. The Province is developing measures to achieve this through multiple venues, including working directly with First Nations on a government-to-government basis, implementing treaties, agreements, and other constructive arrangements, as well as through on-going work with the Alliance of BC Modern Treaty Nations² (ABCMTN), First Nations Leadership Council³ (FNLC), and Métis Nation BC⁴ (MNBC).

This includes measures that were evolving through current ministry-specific policy and legislative development processes. All of this work must be distinctions-based, including as stated in the Draft 10 Principles, the Declaration Act, and the Declaration Act Action Plan.

The Declaration Act Secretariat⁵ supports routine cross-government measures, that will ultimately constitute a reformed process, for including Indigenous Peoples in policy and legislative development. It is also recognized that while those measures are being fully developed, interim guidance for public servants is needed as the obligations in section 3 of the Declaration Act are in force.

This document provides **interim guidance** for implementing section 3 of the Declaration Act and, in particular, regarding approaches for involving Indigenous Peoples in policy and legislative development. This is an interim document; it may be updated periodically to incorporate additional information and guidance from the Declaration Act Secretariat. All ministries needing guidance and advice regarding the understanding and implementation of the policy contained in this document should contact the *Declaration Act Secretariat*.

-
- 1 Consistent with Section 35(1) of the Constitution Act, 1982 and section 1 of the Declaration Act, the term “Indigenous Peoples” includes First Nations, Métis and Inuit Peoples in Canada.
 - 2 The Shared Priorities Framework, signed in March 2022 between British Columbia and the members of the Alliance of BC Modern Treaty Nations, renews a commitment to timely, effective and appropriately resourced implementation of modern treaties with broad outcomes that included meaningful involvement of modern treaty nations in legislative and policy initiatives.
 - 3 The First Nations Leadership Council acts pursuant to mandates provided by Title and Rights Holders, including through resolutions passed through the member organizations of the FNLC.
 - 4 The October 27, 2021, Letter of Intent between Métis Nation British Columbia (MNBC) and the Province proposes a new whole-of-government approach to Métis relations as a partnership between MNBC and British Columbia that respects Métis self-determination.
 - 5 The development of the Secretariat is directed in the mandate letter (2020) of the Minister of Indigenous Relations and Reconciliation.



Context

The UN Declaration is the most comprehensive international human rights instrument to explicitly address the human rights of Indigenous Peoples.

The UN Declaration:

“...emphasizes the rights of Indigenous Peoples to maintain and strengthen their own institutions, cultures and traditions and to pursue their development in keeping with their own needs and aspirations. It establishes an important standard for eliminating human rights violations against Indigenous Peoples worldwide and for combating discrimination and marginalization.”⁶

The UN Declaration has 46 articles that constitute the “minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world” and “elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of Indigenous Peoples”. The UN Declaration is to be read as a whole; the rights and standards within it are interconnected. They cannot be isolated from one another or chosen between.

The UN Declaration also contains direction to States (e.g. Crown governments), on how to develop policy and legislation.

Article 19:

States shall consult and cooperate in good faith with the Indigenous Peoples concerned 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.

Article 38:

States in consultation and cooperation with Indigenous Peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

The importance of the UN Declaration was reinforced in 2015 in the Truth and Reconciliation Commission of Canada’s Call to Action 43:

43. We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.

6 https://www.un.org/esa/socdev/unpfii/documents/Declaration_ip_pressrelease.pdf



The Declaration Act reflects the role of the UN Declaration as the framework for reconciliation.⁷

The purposes of the Declaration Act are to:

- Affirm the application of the UN Declaration to the laws of B.C.;
- Contribute to the implementation of the UN Declaration in B.C.; and
- Support the affirmation of, and develop relationships with, Indigenous governing bodies.

The Declaration Act requires the Province, in consultation and cooperation with Indigenous Peoples, to:

- Ensure provincial laws are consistent with the UN Declaration (section 3);
- Develop and implement an action plan to achieve the objectives of the UN Declaration (section 4); and
- Monitor progress through public annual reporting (section 5).

Key terms in the Declaration Act include:

“Indigenous Peoples” has the same meaning as Aboriginal Peoples in section 35 of the *Constitution Act, 1982* (note that this term includes First Nations, Inuit and Métis peoples);

“Indigenous governing body” means an entity that is authorized to act on behalf of Indigenous Peoples that hold rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

The Declaration Act sets out a process for the Province to enter into agreements with Indigenous governing bodies, including joint or consent-based decision-making agreements (sections 6 and 7). The following link provides guidance on *Indigenous governing bodies*.

The phrase “consultation and cooperation” in the Declaration Act is taken from the UN Declaration and its meaning has been the subject of advice from the United Nations Expert Mechanism on the Rights of Indigenous Peoples:

“Use in the [UN] Declaration of the combined terms ‘consult and cooperate’ denotes a right of Indigenous Peoples to influence the outcome of decision-making processes affecting them, not a mere right to be involved in such processes or merely to have their views heard. It also suggests the possibility for Indigenous Peoples to make a different proposal or suggest a different model, as an alternative to the one proposed by the Government or other actor.”⁸

As such, the Province must approach policy and legislation development that may affect Indigenous Peoples in a manner that ensures Indigenous Peoples are fully involved partners in the process and have opportunities to influence the outcome of matters that may affect them.

.....
⁷ The federal United Nations Declaration on the Rights of Indigenous Peoples Act also reflects the role of the UN Declaration as the framework for reconciliation, as called for by the Truth and Reconciliation Commission Call to Action 43.

⁸ United Nations, General Assembly, Human Rights Council, *Study of the Expert Mechanism on the Rights of Indigenous Peoples: Free, prior and informed consent: a human rights-based approach*, A/HRC/39/62 (10 August 2018) at para. 15.



Interim Approach for Implementing Section 3

The guidance in this section focuses on the process for developing policy and legislation to ensure the requirements in section 3 of the Declaration Act are met. As the Province is continuing to develop measures to implement section 3, the guidance in this section should be considered interim. It will be updated and supplemented as the work of implementing the Declaration Act in consultation and cooperation with Indigenous Peoples continues. The Declaration Act Secretariat supports ministries in implementing this guidance, as well as the development of additional measures for implementing section 3. Additionally, ministries should seek guidance from the Indigenous Legal Relations Solicitors Unit (NATRIL) within the Legal Services Branch (MAG), as well as ministry-specific legal counsel, throughout the application of this interim process.

The interim process has been developed through on-going efforts to effect consultation and cooperation with Indigenous Peoples during the development of policy and legislation. The experiences of ministries in working with Indigenous Peoples on policy and legislative change since the passage of the Declaration Act have informed the development of this guidance.⁹

The following diagram (Appendix 1) illustrates the interim process for working with Indigenous Peoples in the development of policy and legislation. This interim process is intended to support new approaches to collaboration, information sharing and drafting that bring in the Indigenous perspectives to build a shared understanding of the effect of the policy and legislation on Indigenous people's rights or interests and ensure that policies and laws are developed or amended to be consistent with the UN Declaration.

See *Appendix 1*.

The diagram identifies five points in time where involvement of Indigenous Peoples takes place in the development of policy and legislation.

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⁹ Some examples of recent processes that have illustrated certain current effective practices include: MCFD's "Letter of Commitment" of how they will work with the FNLC; the process for the development of the Anti-Racism legislation; and the process used to develop the Declaration Act itself.



1: Initiate Policy Exploration and Establish Consultation and Cooperation Plan

At the earliest stage of policy development for potential legislation – when the Province is identifying the problem statement (what is the issue or problem we are trying to address or solve through potential policy and legislation?) – dialogue with Indigenous Peoples is required. Dialogue at this stage is to identify priorities, begin to consider how the policy and potential legislation may affect Indigenous Peoples, and begin to identify how it may be consistent with the UN Declaration.

There is no single, prescriptive approach to how this vitally important early engagement may take place. What is required will vary, depending on how the policy being developed and how potential legislation may affect Indigenous Peoples. It may be that early engagement will include a range of measures (e.g., meetings, workshops, correspondence) to share information and dialogue with First Nations, other Indigenous Peoples, and Indigenous organizations, taking the required distinctions-based approach.¹⁰ For example, it may often be appropriate to also work not only with Indigenous Peoples, but also in collaboration with political and advocacy organizations established by Indigenous Peoples, and sectoral organizations, with whom the Province has established relationships and processes that continue to evolve.¹¹

It is important to understand that legislation or policy of “general application” may affect Indigenous Peoples, as indicated by the United Nations:

It would be unrealistic to say that the duty of States to consult directly with Indigenous Peoples through special, differentiated procedures applies literally, in the broadest sense, whenever a State decision may affect them, since almost all legislative and administrative decisions that a State adopts may affect the Indigenous Peoples of the State along with the rest of the population in one way or another. Rather, ...it applies whenever a State decision may affect Indigenous Peoples in ways not felt by others in society. Such a differentiated effect occurs when the interests or conditions of Indigenous Peoples that are particular to them are implicated in the decision, even when the decision may have a broader impact, as in the case of certain legislation.¹²

.....

10 The distinctions-based approach requires that the Province's dealings with First Nations, Métis and Inuit Peoples be conducted in a manner that acknowledges the specific rights, interests, priorities and concerns of each, while respecting and acknowledging these distinct Peoples with unique cultures, histories, rights, laws, and governments. Section 35 of the Constitution Act, 1982, recognizes and affirms the rights of Aboriginal Peoples of Canada, while all Indigenous Peoples have human rights that are expressed in the UN Declaration. However, not all rights are uniform or the same among or between all Indigenous Peoples. In many cases, a distinctions-based approach will require that the Province's relationship and engagement with First Nations, Métis and Inuit Peoples include different approaches or actions and result in different outcomes.

11 Ministries should seek guidance from MAG and MIRR at this stage on any MOU's or established protocols or processes that may be engaged by the evolving policy proposal, including those with First Nations, FNLC, First Nations Organizations, ABMTN, MNBC, and urban Indigenous organizations.

12 United Nations, General Assembly, Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, *A/HRC/12/34* (15 July 2009) (*Report of the Special Rapporteur 2009*) at para. 43.



For example, land and resource policy and legislation may affect First Nations in particular ways due to their rights and interests relating to land in their traditional territories (see Articles 26 and 29 of the UN Declaration) and identifying and addressing these impacts will require a distinctions-based approach. As well, legislation dealing with children in care affects Indigenous Peoples in particular ways, given the ongoing impact of colonialism on Indigenous societies and relevant UN Declaration standards relating to children (see, for example, UN Declaration Article 7.2 and TRC Calls to Action 1 to 5).

The potential to affect Indigenous Peoples gives rise to the need to engage in dialogue with Indigenous Peoples to determine whether and how they wish to be involved in developing policy or laws, to ensure consistency with their human rights set out in the UN Declaration, which may include co-development of proposed policy and legislation, through actions in the other points in time in the interim legislative process.

Once it is determined that the proposed policy or legislation may affect Indigenous Peoples, effective processes for Indigenous Peoples to participate in developing policy and legislation must be implemented. There is no single model for this consultation and cooperation. How processes may look will vary depending on the nature, scope, and potential effects of the proposed policy or legislation and what Indigenous Peoples have indicated are substantive or process priorities through early engagement. As well, a distinctions-based approach must always be followed.

Approaches to consultation and cooperation are informed by, but not limited to, the following:

- The subject-matter of the policy or legislation being developed and how it relates to Indigenous Peoples or their rights (e.g. engagement relating to land and resources is often more specific to First Nations, while engagement on social sector initiatives will include not only First Nations, but potentially First Nation organizations, Inuit or Métis Peoples);
- The level of interest in the proposed policy and legislation indicated by Indigenous Peoples;
- The desired degree and form of engagement as indicated by Indigenous Peoples and partners;
- Existing commitments, treaties, agreements or other constructive arrangements with Indigenous Peoples and Indigenous governing bodies, which include obligations and must be considered when relevant to the policy issue or situation;¹³ and
- Crown obligations under section 35(1) of the Constitution Act, 1982 (e.g. upholding the honour of the Crown).

In situations where mechanisms and processes for engagement are not in place, they should be jointly determined with Indigenous partners. It is important to establish clear expectations around matters such as process, mandates, development of documents, tracking of outcomes, and funding. Ensure there is adequate time for consultation and cooperation.

.....

13 The Government of B.C.'s website provides a list of *modern treaties*, historic treaties and *reconciliation and other agreements*. In addition, historic treaties (the "Douglas" or "pre-confederation" treaties on Vancouver Island and Treaty 8 in the northeast) and modern treaties contain treaty rights that are protected under section 35 (1) of the Constitution.



Determining who should be involved in consultation and cooperation is also vitally important. Indigenous Peoples, as rights holders, must be the focus of consultation and cooperation. However, not all Indigenous Peoples will choose to be involved in the same way. Issues that are priorities for some, and priorities for the Province, may be determined by some Indigenous Peoples to not be a priority for them. As well, a distinctions-based approach must be applied. For example, there will be circumstances and contexts, such as with respect to land and resource matters, where only First Nations will be part of the process of development of the policy and legislation.

As a general practice as well, any process of consultation and cooperation should accommodate multiple ways for Indigenous Peoples to be involved. It should never be presumed (or imposed) that Indigenous Peoples will all choose to be involved in the same way, and it is not for the Province to impose modes of involvement.

To establish who should be involved in the consultation and cooperation, consider the following:

- Determine how both Indigenous Peoples and their organizations should be involved. For instance, in some cases First Nations' political leadership collaborate with First Nation organizations for technical and subject matter expertise. Be sure to understand how Indigenous organizations relate to leadership and the peoples they represent.
- Seek internal advice from those who understand the complexities and dynamics of collaborating with Indigenous Peoples on policy and legislation – this includes the Declaration Act Secretariat, regional staff that work closely with Indigenous partners or Indigenous Relations and Affairs units across ministries.
- Seek internal advice on required protocols and practices in place through treaties, agreements, and other constructive arrangements.
- Seek guidance from Indigenous partners on how to respect any Indigenous protocols, traditions, governance processes, laws and jurisdiction.
- Seek internal advice on any legal matters that may have to be addressed through working with the Indigenous Legal Relations Solicitors Unit (NATRIL) within the Legal Services Branch (MAG), as well as ministry-specific legal counsel.
- While some ministries will have existing relationships with Indigenous partners, others may not. Seek cross-ministry dialogue across relevant sectors to learn more about established relationships where they exist, and to support this collaborative work in an effective and efficient way.
- Seek clarity and understanding of how to appropriately engage the diversity of voices among engaged Indigenous partners. This includes opportunities beyond governance structures (e.g. hereditary and elected leaders) to an intersectional approach that could engage Indigenous women, Elders and youth, persons with disabilities and 2SLGBTQQIA+ organizations that serve urban Indigenous populations and other subject matter experts and impacted peoples within an Indigenous community. This helps ensure that all relevant Indigenous Peoples have participated.
- Seek guidance from other subject matter experts (e.g. youth) of the Indigenous Peoples you have determined should be involved in your process.
- Always apply a distinctions-based process.



Finally, it is critically important to remember that any consultation and cooperation plan ministries develop must contemplate what might be done throughout the entire development of policy and legislation – through all of the points in time outlined in the interim approach for implementing section 3 (see *Appendix 1 – Interim Legislative Process*). As such, all the points in time must be considered in developing the consultation and cooperation plan.

2: Development of Request for Decision

Based on the early development of policy and the on-going implementation of the consultation and cooperation process a “Request for Decision” (RFD) will be developed. A request for decision must be informed by the early exploration of policy ideas with Indigenous Peoples, provide clarity on the particular policy areas engaged by the proposed policy or legislation, examine how the proposed policy may affect Indigenous Peoples and is consistent with the UN Declaration, and provide clarity on the expected legislative timeline.

Requests for Decision can be jointly prepared with Indigenous Peoples (also known as co-development), and the work done at points 1 and 2 will determine when it is necessary and appropriate to undertake this joint development. In some instances, such as where document for Cabinet are being developed and shared, confidentiality protocols will be necessary.¹⁴

It may also be the case that First Nations organizations may play a direct role in supporting how consultation and cooperation takes place in the development of the Request for Decision, based on their mandates from First Nations. For example, often this may include the legal and policy teams of the First Nations Leadership Council (FNLC) being actively engaged in the joint development of the Request for Decision to Cabinet. You may also work collectively with the Alliance of BC Modern Treaty Nations respecting individual modern treaties, and the Shared Priority Framework with Alliance of BC Modern Treaty Nations (ABCMNTN), and Treaty Nations as required by treaties, agreements and other constructive arrangements, and with Métis Nation BC (MNBC) as appropriate. A distinction-based approach must always be applied.

Based on your consultation and cooperation process, there may also be on-going dialogue, engagement, and work with Indigenous Peoples throughout the development and consideration of a Request for Decision.

.....

14 If your efforts involve the sharing of legislation or confidential documents associated with legislation, a new confidentiality agreement has been developed that can be used across all provincial ministries. These agreements are valid for a calendar year and should be used in situations where the individual you’re consulting with is someone you plan on interacting with more than once in a calendar year. Once an agreement has been signed by an individual, any ministry official is able to share legislation or associated documents with them, being mindful that the specific documents you intend on sharing should be confirmed by your solicitor.



3: Development of Request for Legislation

Subsequent to the approval of a Request for Decision, the development of a “Request for Legislation” (RFL) will take place. A central aspect of this will be the development of a “three-column document” that identifies the proposed contents of the legislation and their policy rationale. The three-column document must reflect the outcome of the Request for Decision, must be informed by the on-going exploration of policy ideas with Indigenous Peoples, and reflect how the proposed policy may affect Indigenous Peoples and is consistent with the UN Declaration.

Requests for Legislation can be jointly prepared with Indigenous Peoples (also known as co-development), and the work done at points 1 and 2 will determine when it is necessary and appropriate to undertake this joint development. In some instances, such as where documents for Cabinet are being developed and shared, confidentiality protocols will be necessary.

As with the RFD, it may also be the case that First Nations organizations, and in particular the FNLC and the ABCMTN, may play a direct role in supporting how consultation and cooperation takes place in the development of the Request for Legislation, based on their mandates from First Nations. This may include the legal and policy teams of the FNLC being actively engaged in the joint development of the Request for Legislation. You may also work collectively with the Alliance of BC Modern Treaty Nations respecting individual modern treaties, and the Shared Priority Framework with ABCMTN, and Treaty Nations as required by treaties, agreements and other constructive arrangements, and with MNBC as appropriate. A distinctions-based approach must always be applied.

Based on your consultation and cooperation process, there may also be on-going dialogue, engagement, and work with Indigenous Peoples throughout the development and consideration of a Request for Legislation to Cabinet.





4: Legislative Drafting

Legislative drafting takes place by legislative counsel working under the direction of a directing official. The three-column document developed under 3 above guides the legislative drafting.

The current policy and practice of British Columbia is that co-development does not include Indigenous Peoples drafting together with legislative counsel or the sharing of legal advice relating to the policy or legislation.¹⁵ However, it can include, with confidentiality protocols in place, the sharing of consultation drafts of legislation with Indigenous Peoples, the joint review of those drafts, and the directing official taking proposals for change to the legislative council based on that consultation and cooperation. In some instances, this process of reviewing and proposing change(s), may take place multiple times.¹⁶

As well, additional guidance and measures regarding legislative drafting are being discussed with the Declaration Act Secretariat, through processes in place with the ABCMTN, the FNLC based on their mandates from First Nations, and with MNBC as appropriate.

5: Introduction of Bill – Parliamentary process

Once the Bill (legislation) has been tabled for debate in the legislature, there may sometimes be additional opportunities for reviewing, and potentially amending, the proposed legislation in collaboration. However, currently this is subject to the Parliamentary process and decisions made by provincial elected officials during the Parliamentary process. Some of the many opportunities that may exist, as determined by the Parliamentary process and political decision-making, include: meetings and briefings for Indigenous representatives with Ministers and the public service; public forums about the legislation; and legislative committee hearings and processes. As well, during the Parliamentary process statements and documents may be made public about how the legislation was developed, the consultation and cooperation that took place, and how the legislation is consistent with the UN Declaration.

It is important to continue to engage with Indigenous Peoples and partners as the Bill proceeds through the legislative process and to advise them of any issues that may arise during the debate or committee process, and especially if any amendments to the Bill arise.

For further information:

Please contact the Declaration Act Secretariat at DeclarationActSecretariat@gov.bc.ca

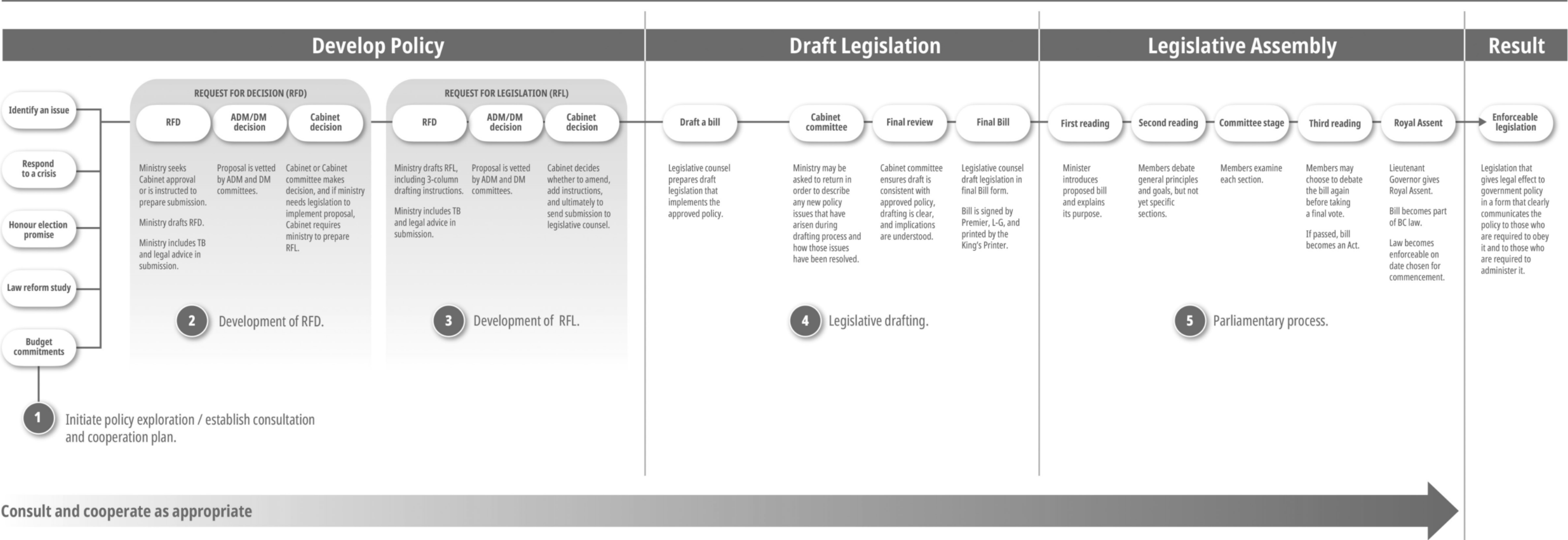
.....
15 If you are unsure about what can be shared, seek advice from your advising solicitor in the Indigenous Legal Relations Solicitors Unit (NATRIL) within the Legal Services Branch (MAG).

16 In some instances, such as was the case in the development of the Declaration Act, this may take the form of “joint instructions” for drafting.



Appendix 1 – Interim Legislative Process

Approach to Implementing Section 3 of the Declaration on the Rights of Indigenous Peoples Act





Appendix 2 – External guidance documents

United Nations Guidance

- Duty of States to consult with Indigenous Peoples on decisions affecting them
 - » <https://undocs.org/A/HRC/12/34> (starting on page 12)
- The requirement that consultations be in good faith, with the objective of achieving agreement or consent (FPIC)
 - » <https://undocs.org/A/HRC/12/34> (starting on page 16)
- Free, prior and informed consent: a human rights-based approach
 - » <https://undocs.org/A/HRC/39/62>

Indian Residential School History and Dialogue Centre

- Implementing *UNDRIP in BC: A Discussion Paper Series*
 - » *A Commentary on the Federal Government's Legislation to Implement the United Nations Declaration on the Rights of Indigenous Peoples*
 - » *Emergencies, Indigenous Governance and Jurisdiction*
 - » *Indigenous Rights in Times of Emergency*
 - » *Operationalizing Free, Prior, and Informed Consent*
 - » *Co-operatively Resolving Conflicts Through the Application of UNDRIP*
 - » *"Indigenous Governing Bodies" and advancing the work of Re-Building Indigenous Nations and Governments*
 - » *Achieving Consistency between the United Nations Declaration on the Rights of Indigenous Peoples to the Laws of British Columbia*
 - » *Taking "All Measures Necessary" to Ensure Laws are Consistent with the United Nations Declaration on the Rights of Indigenous Peoples*



Appendix 3 – Internal guidance documents

- *Alliance of BC Modern Treaty Nations Shared Pathways Framework agreement*
- *BC Declaration Act*
 - » *General Website: Home 2022 | A New Path Forward*
 - » *Declaration on the Rights of Indigenous Peoples Act*
- *BC Declaration Act Action Plan*
- *Commitment Document: Concrete Actions: Transforming Laws, Policies, Processes and Structures*
- *Commitment Document: Shared Vision and Guiding Principles*
- *Draft 10 Principles*
- *MNBC and BC Letter of Intent*



Implementing Section 3 of the Declaration on the Rights of Indigenous Peoples Act

Overview of Some Expert Perspectives

The *Declaration on the Rights of Indigenous Peoples Act* requires that the human rights of Indigenous peoples in the *United Nations Declaration on the Rights of Indigenous Peoples* are fully upheld and respected. Achieving this requires a transformation in government laws, policies, and practices, and the further establishment of new relations between Indigenous peoples and British Columbia.

Since the passage of the Declaration Act in 2019, advancing shifts in laws, policies, practices and relationships has been taking place through multiple processes. These include:

- formal province-wide processes, such as the development of the Declaration Act Action Plan as required by section 4 of the Declaration Act;
- bilateral processes between title and rights holders and British Columbia to implement the UN Declaration in their direct relationship;
- the development of new structures within British Columbia, such as the Declaration Act Secretariat, to support processes to achieve consistency between the UN Declaration and the laws of British Columbia as required by section 3 of the Declaration Act;
- the passage of amendments to the *Interpretation Act* to confirm that the laws of British Columbia must be interpreted consistent with the UN Declaration; and
- on-going processes between British Columbia and the First Nations Leadership Council (FNLC) that support implementation on the Declaration Act, and which are reflective of mandates provided to the FNLC) through resolutions of the Union of BC Indian Chiefs, the First Nations Summit, and the BC Assembly of First Nations.

This report summarizes one step - the gathering of a cross-section of expert perspectives - taken by the FNLC and British Columbia to support the implementation of Section 3 of the Declaration Act.

Between October 2021 and April 2022, the FNLC and British Columbia asked a small number of Indigenous experts¹, as well as those with expertise in aspects of law and policy respecting Indigenous peoples, to share their insights and perspectives about approaches to implementation of section 3 of the Declaration Act. The intent in gathering and disseminating these perspectives through this Report is

¹ Expert advisors included: Geoffrey Bickert, Gib van Ert, Doug McArthur, Dr. Val Napoleon, the Honourable Steven Point, Dr. Judith Sayers and the Honourable Jody Wilson-Raybould.

to continue to support the direct work and decision-making by First Nations and their governments, and British Columbia, in implementing the Declaration Act.

This report provides a general overview of ideas that were shared through dialogue with the experts. The report has been prepared by an independent facilitator Dr. Roshan Danesh, KC and is not a statement of views of the expert advisors, First Nations, FNLC, or British Columbia. Rather, the report has been prepared to share ideas generated through dialogue with experts that may support the ongoing work between First Nations and British Columbia to implement section 3 of the Declaration Act.

Overview of Section 3 of the Declaration Act

With the passage of the Declaration Act in 2019 there is a growing focus and momentum on changing legislation to uphold the rights of Indigenous Peoples. While it has long been recognized that addressing the legacy of colonialism will require transformative legislative change – including because of the gross harms inflicted by the *Indian Act* – it has remained difficult, despite extensive advocacy by Indigenous Peoples, to see this work move forward. From this perspective, the Declaration Act, and its federal counterpart the *United Nations Declaration on the Rights of Indigenous Peoples Act*, represent a turning point, where the possibility of long-needed legislative reforms may become a reality.

One foundation for optimism about this potential turning point is section 3.

Section 3 creates a legal requirement on British Columbia to take action to ensure consistency between the laws of British Columbia and the UN Declaration:

In consultation and cooperation with the Indigenous Peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.

This requirement applies to all laws – those which already exist and are in force, as well as new legislation or legislative amendments that are being developed within government. This requirement also has a procedural element. achieving consistency must take place in “consultation and cooperation” with Indigenous Peoples.

In placing this requirement on British Columbia, section 3 seeks to uphold and implement a number of articles of UN Declaration including Article 19 and Article 38:

Article 19

States shall consult and cooperate in good faith with the Indigenous Peoples concerned 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.

Article 38

States in consultation and cooperation with Indigenous Peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Indigenous Peoples, British Columbia, as well as stakeholders and the public, have placed significant emphasis on the importance of the alignment of laws work, the process through which it takes place, and of moving forward in a coherent, consistent, and transparent manner. Core to this is the necessity

to ensure proper respect for the necessary roles of title and rights holders in the legislative development process.

Since the passage of the Declaration Act there has been some dialogue and effort to move the implementation of section 3 forward. A primary focus of these efforts has been on how to address law-making that was already taking place as part of the on-going legislative calendar, and ensure that steps were being taken to align new laws that were already being developed with the UN Declaration. This work has been challenging both procedurally and substantively – including with respect to developing proper processes for consultation and cooperation with title and rights holders. There has been some constructive progress from these efforts including amendments to the *Interpretation Act 2021*, and the *Anti-Racism Data Act 2022*.

At the same time, Indigenous Peoples have made clear the priority and urgency for moving forward with the systematic review of existing laws. In that regard, there are a few on-going or soon to be launched review processes. Two examples of this are in relation to cultural heritage matters² – and specifically efforts to change the *Heritage Conservation Act* – and with respect to children and families³, which has seen the passage of new federal legislation and on-going work to reform the *Child, Family, and Community Service Act*⁴. While these processes have not yet yielded tangible change in all the ways that are needed for consistency with the UN Declaration, they do reflect some of the first forums where efforts are being made to change existing laws to achieve consistency with the UN Declaration. As well, industry and other stakeholders are also watching the implementation of section 3 closely, seeking information about what steps have been, and will be, taken.

² Joint Working Group on First Nations Heritage Conservation

³ The Tripartite First Nations Working Group on First Nations Child and Family Wellbeing. See: <https://www.fnlcchildrenandfamilies.ca>

⁴ https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96046_01

Critical Context for Implementing Section 3

Several key ideas were shared by experts as critical context for implementation of Section 3.

1. Upholding Indigenous self-determination and self-government

Indigenous self-determination and self-government, including as expressed in articles 3, 4, and 5 of the UN Declaration, are part of developing measures to implement section 3 in relation to both new and existing laws. Self-determination includes the right to autonomy or self-government in matters relating to internal and local affairs, and the right of Indigenous Peoples “to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”

These standards reflect how the UN Declaration upholds a focus on structuring proper relations between State (Crown) and Indigenous governments and jurisdictions, including for the operation of Indigenous laws. This is one lens for thinking about the involvement of Indigenous Peoples in legislative processes – that measures are needed for structured interaction with Indigenous governments and their legal orders, with the Crown’s development of legislation. Of course, this also speaks to the importance of on-going work that Indigenous Peoples are doing to re-build their Nations and governments, and revitalizing their legal orders, including for the purpose of facilitating such structured interaction with Crown governments.

2. Respecting democratic principles of parliamentary supremacy and privilege

There are norms and standards of Canada’s parliamentary system of democracy and model of responsible government that are integral to the law-making process and must inform the consideration of measures to implement section 3.

Parliamentary sovereignty (supremacy) is the principle that Parliament (including provincial legislatures) has absolute power to make or unmake any law. Parliamentary privilege refers to the rights, immunities, and procedures of parliament to be able to do its work, including legislating, without undue interference. Parliamentary sovereignty and privilege were explained by the Supreme Court of Canada as the reason why a duty to consult was not triggered in the law-making process. Such a duty would act as an improper constraint on the legislature’s “ability to control their own processes.”⁵

This reasoning highlights that, in designing measures to implement Section 3, there will be a need to ensure that both Indigenous rights are respected and upheld while also respecting constitutional principles integral to the functioning of the Canadian system of responsible and representative government.

⁵ Mikisew Cree, paragraph 38.

Beyond the operation of Parliament, consideration in designing measures will have to be given to the roles of Cabinet confidentiality and solicitor-client privilege, while also upholding the honour of the Crown and meeting other Crown obligations to Indigenous Peoples.

3. Recognizing the need to move towards decolonized and inclusive legislative and policy development processes in the context of legal pluralism

Indigenous Peoples and their governments have not historically been involved in the development of Crown legislation. Legislation has historically played a role in implementing colonization (including most directly the federal *Indian Act*), or reflected the belief or perspective that Indigenous rights do not exist or are not substantive. There have been a few exceptions to this historic pattern, with some notable ones in recent years including in the co-development of the Declaration Act.

One aspect of this historic reality is that policy and legislative development has not occurred within a recognition of a context of legal pluralism where Indigenous governments and legal orders also exist and operate, and have roles, responsibilities, and authorities. This relates to the law-making process, which has designed processes for interaction with Indigenous governments, as well as the substance of law-making which has not considered how legislation may be designed to operate within a legally plural context that recognizes the necessary space and roles for the operation of Indigenous laws.

4. Building on experience and narratives of success

There are some “narratives of success” in the work between Indigenous Peoples and British Columbia. It can be helpful and important to identify these and build upon them.

For example, the development of the Declaration Act included an approach to co-development of legislation that was unique in the history of British Columbia. Within that effort one witnessed a more intense and effective capacity for the political and technical representatives of British Columbia and, for example, the FNLC to work together on a common agenda, the building of a better understanding of the political and systemic realities of each other, and how to support one another in addressing those realities. As well, the process reinforced the central necessity of building regular and consistent mechanisms for consultation and cooperation with the proper title and rights holders.

Narratives of success in work between Indigenous Peoples and British Columbia are inclusive of stories of change – how new understandings, practices, and relational dynamics emerged that supported success. A number of First Nations and British Columbia have stories of successful change in their relationships through their negotiations and agreement implementation. The implementation of section 3 similarly, needs to be supported by critical shifts that will help propel effective co-operative action.

For government these shifts involve reorienting the public service, and political decision-making, to practices that recognize there are roles for Indigenous governments and jurisdictions in the legislative development process, as well as gaining understanding and knowledge of how the standards in the UN Declaration can be practically reflected and upheld in legislation. For First Nations, these shifts involve further advancing protocols and practices within, between and amongst themselves for work with other governments in processes of legislative development that are, by their very nature, global. This includes the building of mechanisms and expertise that First Nations authorize and trust to be relied upon, with potential application to all First Nations, in enduring and long-term processes.

Critical Foundations for Implementation of Section 3

The following were identified by experts as critical foundations for implementing section 3.

Foundation 1: Adopt a Principled Approach to Co-Development

A set of shared principles should be adopted and endorsed politically to guide and shape the processes for implementation of section 3 in relation to both existing and new laws. The specific focus of the principles would be to define what is meant by co-development of legislation. Doing this would assist in maintaining the political will necessary to support the process, and ensuring mechanisms and steps taken are consistent with the approach. This would also help address the reality that legislative development does not occur centrally within government – it occurs Ministry by Ministry – and requires a consistency of approach. Similarly, it would form a foundation on which First Nations could rely as their technical representatives engage in advancing this work.

Adopting shared principles would also reflect the orientation that in implementing section 3 we are in a moment of transition to greater shared jurisdiction and acknowledgement of the reality of legal pluralism. At the same time, through a principled approach, understanding could be built about how issues of Cabinet and Parliamentary confidentiality and privilege will be respected.

Examples of principles of co-development that were discussed by experts include the following:

- *Co-development begins at the earliest stage of the development of potential ideas for policy and legislation*
 - Engagement begins at earliest stage of development of policy ideas.
 - Development of plans for consultation and cooperation and early exploration of the relationship of policy ideas to standards of the UN Declaration also begins at earliest stage.
- *Co-development requires a diversity of approaches to working together, that respects and reflects the continuum of government re-building being undertaken by Indigenous Peoples*
 - A kaleidoscope of approaches to Indigenous Peoples being involved in the co-development should always be available, ranging in intensity of involvement (e.g., everything from letters and website portals, to potentially being involved in joint development of drafting instructions and review of draft language).
 - The goal is to ensure Indigenous Peoples can determine freely how they wish to be involved, based on their own capacities and priorities.

- *Co-development processes must recognize and account for the reality that we are in a time of transition in the re-building of Indigenous governments and Nations, and that the accountability approaches and mechanisms for Indigenous governments within the process continue to evolve and may take multiple forms*
 - It is recognized that as Indigenous governance re-building continues to occur there will be multiple ways in which Indigenous Peoples may be represented within co-development processes, and that these will change over time and may not be identical from process to process.
 - These may range from mandating through province-wide organizations and directing roles of FNLC and FNOs, to different Title and Rights holders being represented in a range of ways.⁶
 - The Indigenous Governing Body Policy⁷ must be applied and respected when working with Indigenous Peoples and their representative governments.
- *Government should take an over-inclusive approach to understanding how potential policy or legislative development may affect Indigenous Peoples or their rights*
 - Article 18 and Article 19⁸ of UNDRIP are guiding standards for how Indigenous Peoples participate in decision-making, including legislative and policy development.
 - The approach to determining what “affects” Indigenous Peoples or their rights should be based on working with Indigenous Peoples and understanding their views and priorities, not through technical/legal determinations made within government.
- *Co-development processes must recognize and support legal pluralism, and how Indigenous legal orders operate*
 - Indigenous Peoples are in various stages of their own processes of law development, and examining and determining how their own laws may interact with and inform Crown development of legislation and policy.
 - Co-development should include a focus on how space and mechanisms are being created for coherent, consistent, and principled relations between Indigenous laws/legal orders and those of the Crown.
- *Co-development requires reciprocity, including mechanisms for Indigenous Peoples to bring forward their priorities for policy and legislative development, and respecting the law-making processes being undertaken by Indigenous Peoples*

⁶ Multiple examples could be cited from the Declaration Act process and others.

⁷ This is a reference to the IGB policy already developed and operational within government.

⁸ Article 18 and 19 would be included in the description of the principle to ground the understanding of “affect” to include section 35(1) rights.

- Initiation of potential legislative and policy development does not only begin within the BC government. It can also begin with Indigenous Peoples bringing forward their priorities.
 - Similarly, a co-development process is not only about seeking views on ideas or proposals of the BC government – it must include mechanisms and opportunities for Indigenous Peoples to bring forward how those subjects must be dealt with, and design and build the approach together.
- *Co-development must be “free”, “prior”, and “informed”⁹*
 - “Free” includes that Indigenous Peoples can choose how to participate, and are not coerced to be involved or support a certain outcome.
 - “Prior” includes that co-development is occurring throughout the process and before decisions are made about outcomes.
 - “Informed” includes that full information is provided to Indigenous Peoples.
 - *Co-development can include the development of joint legislative drafting instructions and joint review of draft language to ensure the intent of the drafting instructions is met*
 - Joint development of legislative drafting instructions is an approach that can be taken with Indigenous Peoples, with confidentiality protocols (eg. NDAs) being used as necessary.
 - Where joint development of legislative drafting instructions occurs the intent of legislation as developed through a co-development process should be documented and be made public, so that government and Indigenous Peoples can advance, defend, and support the implementation of the statute consistent with its purposes.
 - *Co-development requires an attitude and practice of cultural humility*
 - It is important to recognize that the policy and legislative process as it has evolved and been implemented over generations, includes many culturally specific practices and assumptions.
 - Co-development involves challenging and changing some of those practices and assumptions. Cultural humility is an approach to doing this. Cultural humility is a life-long process of self-reflection and self-critique. Undertaking cultural humility allows for Indigenous voices to be front and centre and promotes relationships based on respect, open and effective dialogue and mutual decision-making. Relatedly, it is necessary to

⁹ There is guidance on the meaning of free, prior, and informed as defined in the UN Declaration (eg. from Special Rapporteur etc.) which would be included in the explanation of the principle.

create a culturally safe process that requires positive anti-racism stances, tools and approaches and the continuous practice of cultural humility.¹⁰

- *Successful co-development requires cultivating deepening relational continuity and stronger layers of trust*
 - Trust needs to be continually built at the political, institutional, and interpersonal levels to support effective co-development practices.
 - As such, co-development processes should be supported by multiple efforts to build relational continuity – some of them intermittent and separate from any specific co-development process (eg. political dialogue and relationship-building), and some of them tied to each specific co-development process (eg. roles for senior officials, joint technical working groups, and other mechanisms).
- *Co-development is a learning process, which will continually be evolved and improved, including through acknowledging, celebrating, and building on success*
 - The effectiveness and utility of co-development processes needs to be continually reviewed, including with Indigenous Peoples, so that learning and adjustments can take place.
 - Opportunities for such learning should take place during a co-development process, as well as more regularly apart from any specific process of co-development.
 - To support this learning, and build positive momentum, recognition should be given to initiatives that work, and how working together in different ways leads to new and constructive outcomes.
- *A distinctions-based approach must guide all efforts at co-development, from the beginning of the process until the end*
 - Consistent with the Declaration Act, Draft 10 Principles, and section 35(1) a distinctions-based approach must always be applied to how co-development occurs.
 - This includes recognizing that all co-development processes will not involve all Indigenous Peoples (eg. some/many will be only relevant to First Nations because of subject-matter).

¹⁰ Definitions adapted from *In Plain Sight*.

Foundation 2: Consultation and Cooperation Must Be Diverse, Inclusive and Reflect Rights and Responsibilities in Different Legal Orders

Processes of consultation and cooperation need to be specifically designed for the purposes of engagement with proper title and rights holders on a province-wide scale with respect to legislative change. The following insights were shared by experts as guidance for thinking about approaches to consultation and cooperation and some of the challenges experienced in engagement processes.

- **Diversity and inclusiveness:** There are different modes that can be identified through which Indigenous Peoples have related, and continue to relate, to Crown governments in the context of colonization. For example, there are different strategies of “navigation”, “negotiation”, “confrontation”, and “stepping outside” that we see employed. When designing mechanisms of consultation and cooperation it should be recognized that all of these modes continue to exist, and that mechanisms should be designed that understand this reality and seek to be open and accessible to all, and not exclude any.
- **Transition and transformation:** The current moment in time is one of transition – where Indigenous Peoples are re-building and revitalizing their governments and legal orders – and of where transformation where Indigenous-Crown relations are being reset on a principled foundation, including the standards in the UN Declaration. Mechanisms for consultation cooperation need to acknowledge this time of transition, and have a fluidity, flexibility, and adaptability to the distinct ways Indigenous Peoples are advancing this transition and what that means for the “who”, “when”, and “how” they may choose to relate to the Crown. It also requires acknowledging that while we must also learn from “narratives of success” about what has worked in the past and the present, we are also in a time where new mechanisms and practices are needed to reflect the shifts.
- **Structural and cultural shifts:** Legislative processes were designed, implemented, and structured over time without consideration of the role of Indigenous governments and laws. This has resulted in entrenched structures, as well as a culture of legislating, that has significant barriers to consultation and cooperation. As such, establishing mechanisms of consultation and cooperation to meet the requirements of section 3 and the standards of the UN Declaration necessitates both structural and cultural shifts within government, as well between Indigenous Peoples and the Crown.
- **Rights and responsibilities in different legal orders:** There is often a conflation of what is meant by Indigenous “rights” and “responsibilities” in section 35(1) of the *Constitution Act* or the UN

Declaration, and the “rights” and “responsibilities” that exist and are held within Indigenous governing systems and legal orders. Mechanisms of consultation and cooperation need to be cognizant of, and respect, these different forms of rights and responsibilities.

- No quick fixes: Consultation and cooperation, when it has occurred, has always been challenging, hindered by structural, cultural, and process barriers, and layered by relational difficulties and mistrust. These challenges will not simply go away. Addressing them occurs through sustained efforts at change, over a sustained period of time, that result in changed outcomes. Mechanisms of consultation and cooperation need to be designed in recognition of this, with a learning orientation, that pursues continuous improvement.

Based on these insights, the following design concepts for mechanisms for consultation and cooperation were discussed:

- *Jointly design* the consultation and cooperation mechanism itself. By building it together it will be more effective and trusted.
- Be *transparent* about the steps and stages of work with Indigenous Peoples. What the process will look like, and what can be expected, at the beginning, middle and end.
- Establish *clarity* about what is joint Crown-Indigenous work within the process, and what is internal work to Indigenous Peoples.
- Ensure there is a *backbone* (an infrastructure) to the mechanism that supports it to be maintained and carry forward with consistency. This may include joint infrastructure, Crown infrastructure, and Indigenous Peoples infrastructure.
- Establish *resourcing* for Indigenous participation that is clear, and can be used “up” and “down” at local, regional, and province-wide ways.
- Adopt an *adaptable* approach that can adjust to changing circumstances, pressures, and contexts as consultation and cooperation takes place.
- Use an *anti-racist* orientation from the outset, and do not underestimate the ways in which stereotypes and racist attitudes or behaviours may arise in efforts at consultation and cooperation.
- Acknowledge and build the recognition of *value* in the approach to consultation and cooperation as it is implemented, and through that create encouragement and trust for more Indigenous Peoples to be involved in it.

- Take steps to *simplify and standardize* the use of tools that may be required in some consultation and cooperation process. For example, the utility, nature, scope, and use of non-disclosure agreements should be considered. Similarly, the joint development of “three column documents” and “drafting instructions” should be coherent across ministries.

Foundation 3: Co-design of Review Processes for Existing Laws Can Build on Previous Models of Law Reform while Recognizing the Unique Context of Section 3

The co-design of a review of laws process for existing laws is helpfully framed through consideration of the following insights:

- *Draw on Existing Practices:* We have a lot of experience in implementing international law (eg. international treaties) into domestic law. We have done this for many decades, including with human rights instruments. Such processes follow general stages that are well established: developing an understanding of what is required by the international instrument; reviewing domestic law to identify gaps with those understandings; developing options and solutions for filling those gaps; and amending legislation as required. While the UN Declaration is not an international treaty, by virtue of section 3 it effectively requires a similar type of legal process to achieve consistency.
- *Recognize the Unique Requirement of Consultation and Cooperation:* While there is an existing practice to draw on from the implementation of existing treaties, we must also recognize the unique context of section 3 – it requires that ensuring consistency must be done in “consultation and cooperation” with Indigenous Peoples. The standards of the UN Declaration also require legislative measures to be developed in partnership (see for example Article 18 and 19). This means that processes will look different than those used previously for the implementation of international treaties. Indigenous Peoples must be at the table, and the process must be designed and implemented with them.
- *Adopt a Legally Sound and Principled Approach:* Achieving consistency between the laws of British Columbia and the UN Declaration has an inescapable legal dimension. There will need to be legal opinions provided on the meanings of the articles of the Declaration, and the implications of those meanings for legislative change.

Of course, we already have significant resources to draw on to discern the meaning of the articles of the UN Declaration including: documents and records from its multi-decade history of development; past and current interpretations and applications by the United Nations, Indigenous Peoples, as well as by some States around the world; the views of experts; and the application of international legal norms. At the same time, while there is some emerging judicial

interpretation of the UN Declaration in Canada, it is very minimal – we should expect far more in the future, including interpretations that will inevitably have to inform the work of achieving consistency.

Consideration needs to be given about how this legal opinion work done. While the legal work is essential, there is a long history of differing legal perspectives between the Crown and First Nations being a source of conflict, delay, and confusion. Consideration should be given to whether it is possible to solicit legal opinions that would inform First Nations as well as British Columbia. Options may include roles for an independent expert or body - whether informally by drawing on particular individuals, or more formally through a new entity such as an “Indigenous ombudsperson” or an existing entity such as the Human Rights Commission.

- *Draw on Expertise:* While some jurisdictions around the globe have been implementing the UN Declaration, including making legal changes to reflect certain standards, no jurisdiction has thus far pursued as audacious and bold an effort as is required by section 3 (or section 5 of the federal *United Nations Declaration on the Rights of Indigenous Peoples Act*). The expertise on the UN Declaration that exists in Canada and around the world will need to be drawn on. Government and First Nations need to consider shorter- and longer-term strategies and approaches for drawing on this expertise, and how it may be used. The new Declaration Act Secretariat established by BC has one structure through its “advisory committee” of experts. Other measures that may be considered include specialized training and education programs, hiring of external experts, and establishment of joint mechanisms for drawing on expertise with First Nations. The FNLC has, and continues, to consider how to draw on additional expertise in its work related to the Declaration Act, including how to further co-ordinate aspects of legal work amongst and between First Nations as has been done on some critical legislative, policy, and litigation initiatives in the past.
- *Build on Early Successes:* The implementation of section 3 is a bold endeavour. Consideration should be given to adopting a staged approach that begins with priorities that are viewed as potentially “easier” to achieve successfully. As a few legislative areas are changed to achieve consistency the lessons from those efforts can be used to refine and further develop approaches for the harder topics. This is consistent with the current approach that appears to be emerging. The *Heritage Conservation Act* has been identified as one priority for early development of a section 3 process. There has already been over a decade of joint work between First Nations and British Columbia through the Joint Working Group on First Nations Heritage Conservation on the challenges with the Heritage Conservation Act, and potential areas of change. Other near-term priorities that may be early successes need to be identified in the near future.

Foundation 4: Alignment of Laws Must be Supported by Structural and Cultural Shifts

Structural change will be required within government and between and amongst First Nations to implement section 3. Government will require the ability for clarity of accountabilities internally to implement standards that cut across ministry portfolios. The example was given of struggles at both Canada and BC to implement modern land claims and treaty agreements because of a lack of internal accountability structures. Absent such structures, political will cannot translate into tangible and practical change. For First Nations, structural change involves the furthering improvement of standing structures for how their collective work regarding legislative change will take place – as distinct from determining and forming collective structures and processes in response to specific legislative realities emerging.

So far, BC has implemented one structural shift – the development of the Declaration Act Secretariat. There were also many ideas offered about further structuring the collective organization of First Nations around legislative development. One idea was the development of First Nations legislative council, building on some of the other Councils developed by First Nations in BC, that would support the coordination of the collective work of First Nations on legislative development with government. Developing such a council would draw on best practices from work done by existing First Nations' councils, the process of the development of the Declaration Act, and the collective organization and work done by First Nations over many years on advancing legislative change.

Experts also emphasised the need for changes in organizational culture, as well as the culture of relations between Indigenous Peoples and British Columbia. It was recognized that some of the obstacles and challenges to implementation of section 3 will be hidden and intangible – attitudes and norms that have long been in place and influence choices and behaviours. Some of these obstacles and challenges have long been known including lack of trust, and racist stereotypes and discriminatory behaviours. Others are related to coming to an understanding of what working as true partners actually looks like, and how to consciously transition into that based on principles of recognition, respect, and implementation of Indigenous title and rights. Yet another form of obstacle is lack of understanding of each others governance and legal systems, and how to advance together in the context of legal pluralism.

Adopting and implementing a process of change in organizational culture will require measures that range from continuing to advance diversification of the public service, cross-ministry learning and training programs, and modelling and empowering cultural change by organizational leaders. Some of the specific perspectives shared on how to advance this cultural change included the following:

- There are always barriers in government to implementing new and novel policy. Overcoming these barriers requires effective planning, visioning, mission developing, policies and specifics, and accountability. Having a supportive organizational culture is critical to addressing these

barriers. If we don't address an organizational culture that is dated, then we cannot move forward.

- When thinking through how organizational culture may change it is helpful to talk specifically, rather than generally – to ask, what kind of culture is needed to support UN Declaration implementation, not generally how organizational culture should change. The Declaration Act does represent a transformational shift. If we look at the requirement for consistency of laws or the action plan, these are new initiatives in ambition or scope. We need a supportive culture in order to be able to achieve these things. This also requires recognizing that there are a diversity of organizational cultures within the public service – within different ministries etc. We need to have a lens and approach that also addresses dynamics at those specific levels.
- How does organizational culture sometimes operate as a barrier? In two ways: 1: We are often upsetting how we do things and views, practices and conventions unless addressed, and as such we should expect “resistance”. 2. When doing something new there may not be common understandings about what we are trying to do, why we are doing it, consult and engagement process, and changing relationships.
- We need to build on strengths. Nothing is static in the public service. There has been change from decade to decade. The public service has changed over time with respect to understanding how to work with Indigenous Peoples. It continues to change now. For example, anti-Indigenous racism, like throughout society, has been a challenge. Many initiatives have been implemented and are continuing to be implemented to help address this. At the same time, racism does remain a challenge that has to be addressed. A culture must be built that upholds the highest standards of inclusion, respect, and understanding. At the same time, where racist behaviour is occurring it needs to be addressed and confronted – based on the principle of zero tolerance.
- There is a connection between how organizational culture has readiness for implementing the UN Declaration, and political direction and will. Political direction is a driver for change – it helps focus, motivate, and support the changes in organizational culture that are being advanced. When government requires the public service to do something different, momentum in shifts that are already being pursued can accelerate. Ultimately, the signpost of success in changing organizational culture is evidenced in action.
- Another driver for changes in organizational culture can be “shocks” to the system – such as the adoption of the 10 Draft Principles, the passage of the Declaration Act, or the impact of broader societal events like the realization of the existence of mass graves and unmarked burials. Such events accelerate learning, understanding, and acting in new ways by individuals and groups within the public service, including more feeling responsible for being agents of change. Such shifts and shocks can also reveal where the challenges lie, including the levels of racism or ignorance that may still exist.

- Changing organizational culture also involves continuing to build a public service that reflects all of British Columbia. This is true at the leadership level, and at all levels within the public service.
- We need to have a methodology for change. Is there a method that the public service follows? Does it work? The methodology and process must have an urgency. The timing is now, we have the urgency to deliver. Consideration should be given to structuring a change coalition within the public service, and that includes Indigenous Peoples. This includes having clear change-minded and focused leadership. We do a good job of vision statements and setting principles. We now need to be more specific: Decolonization – do we share a vision of what that looks like? We also need a methodology that addresses the fragility and elements of “fear”. Partnerships with Indigenous Peoples are also needed to support the change: a clear method, coalition, and clear direction, and which also accepts, supports, and gives permission innovation.

Moving Forward

These perspectives and ideas from dialogue with experts are being shared in the hope that they can support the fundamental, direct, work between Indigenous Peoples and British Columbia to implement Section 3. There is a readiness to discuss these ideas, and any others, as part of this work. As well, as the newly formed Declaration Act Secretariat advances its mandate to support the implementation of Section 3, it will continue to gather, advance, and generate ideas about what needs to be done to effectively implement Section 3.

If you would like to further discuss the perspectives and ideas in this report, contact the Declaration Act Secretariat through the following email: DeclarationActSecretariat@gov.bc.ca

Further information can be found at www.declaration.gov.bc.ca

Corporate Services for the Natural Resource Ministries

ADM Responsible: Sonja Martins (FOR and LWRS) and Ranbir Parmar (AF, EMLI, ENV and MIRR)

Core Business/ Program Area Description/Critical Business Processes:

Corporate Services for the Natural Resource Ministries (CSNR) is a corporate services organization providing services for approximately 7,000 employees in the natural resource ministries in over 100 locations throughout the province. We serve the following ministries:

- Agriculture and Food (AF)
- Energy, Mines and Low Carbon Innovation (EMLI)
- Environment and Climate Change Strategy (ENV)
- Forests (FOR)
- Indigenous Relations and Reconciliation (MIRR)
- Land, Water and Resource Stewardship (LWRS)

CSNR Services:

Facilities, Fleet & Corporate Security

- Facilities – Workspace accommodation, project and issue management for all six natural resource ministries
- Fleet and Assets – Planning, analysis, reporting, maintenance and procurement for AF, ENV, FOR and LWRS
- Risk and Corporate Security – Planning, response and recovery assistance for business disruptions and physical security issues for all six natural resource ministries

Financial Services

- Budgeting, forecasting and financial analysis/reporting and support; expenditure, revenue management and recovery processing and reporting
- Financial planning and reporting
- Financial operations
- Accounting
- Financial systems and data entry
- Financial policy, compliance and procurement

Strategic Human Resources

- Leadership Development
- Health & Well-being
- Change Leadership
- Workforce Planning
- Diversity & Inclusion
- Employee Engagement
- Recruitment Strategy
- Workforce Intelligence & Research
- Culture & Engagement

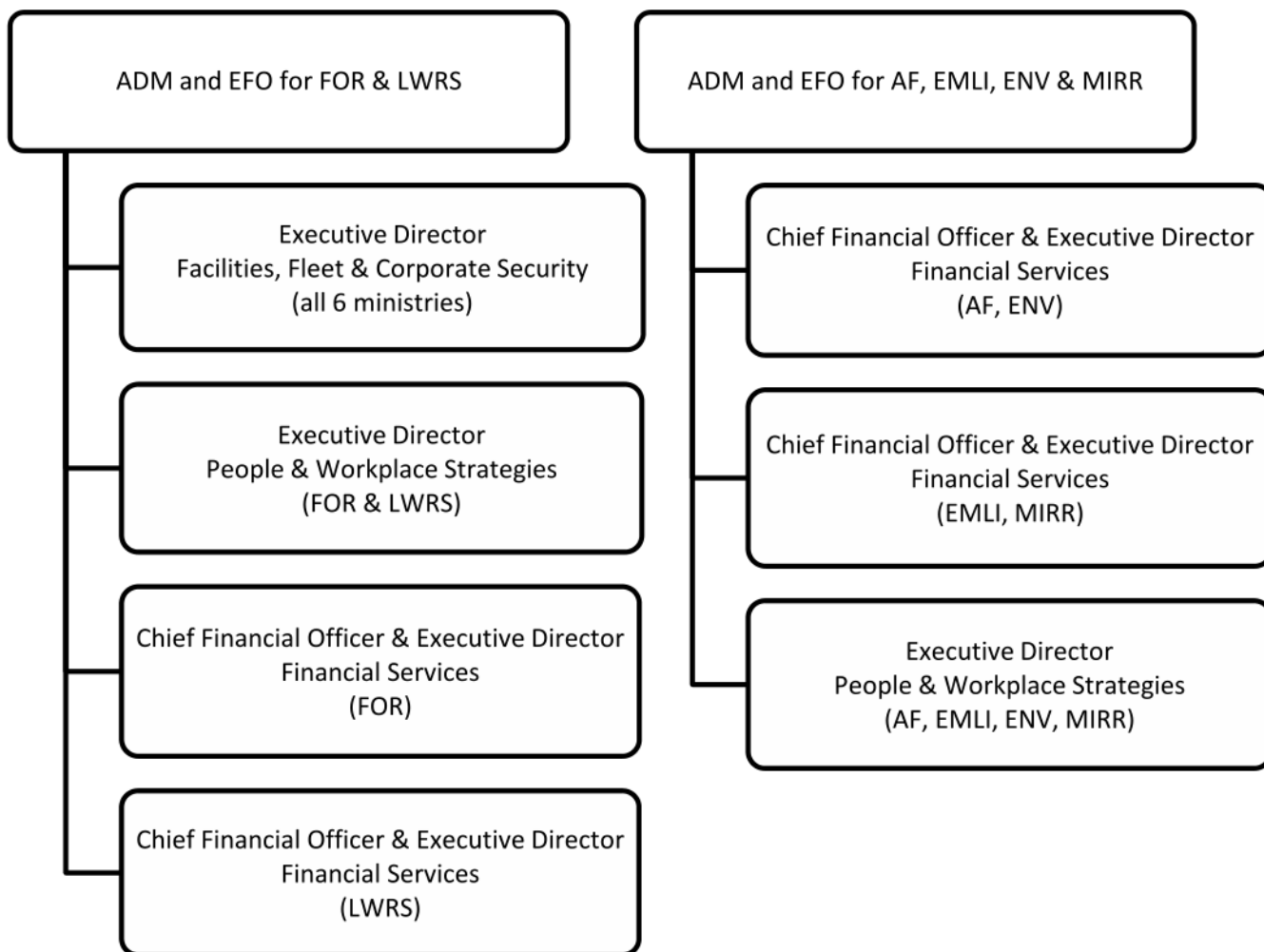
- Learning & Development

Budget: Govern

Full Time Equivalents (FTEs): 337 (as of September 1, 2022)

Related Legislation: N/A

Organizational Chart:



Organization – Who Are We? – Government Communications and Public Engagement (GCPE)

Indigenous Relations and Reconciliation Communications Office

Communications Director Responsible: Leanne Ritchie

Government Communications and Public Engagement (GCPE) is a central agency whose primary role is to inform the public about government programs, services, policies and priorities through media, direct engagement and online services. GCPE Executive set government-wide: communication priorities, communications and event scheduling, corporate messaging and provide GCPE communications teams with advice, direction and Premier's office-set communications objectives for government.

Each government minister has a GCPE communications team who provide advice, communications briefings, media preparation and creates materials for their use, such as speeches, key messages and social media.

As well as supporting a minister, the communications teams also support ministries, secretariats or agencies attached to the minister's office. This support includes strategic communications advice, issues management, media relations, copy editing all content for public consumption and coordination of announcements and events. A range of communications materials supports government communications objectives, including communications and events plans, key messaging, speeches, news releases, backgrounders, factsheets, issues notes, media responses, social media and web content.

The Indigenous Relations and Reconciliation communications office is comprised of five staff and currently supports the Declaration Act Secretariat and helps to fulfil communications objectives, provides communications advice and acts a conduit to other GCPE services (such as graphic design or marketing).

The team also supports all communications teams across GCPE with guidance on the Declaration Act and Action Plan, as well as Indigenous cultural protocols, including territorial acknowledgements.

Declaration Act Secretariat

Communications Opportunities: Fall 2022 - Winter 2023

Introduction

Section 3 of the *Declaration on the Rights of Indigenous Peoples Act* requires that the Province “in consultation and cooperation with Indigenous peoples” take “all measures necessary” to ensure consistency between the laws of British Columbia and the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration).

Implementing section 3 means that the Province must work diligently to ensure better consistency, transparency and clarity of process for involving Indigenous people in policy and legislative development.

The creation of the Declaration Act Secretariat (the Secretariat) directly supports the Declaration Act’s section 3 purpose and was created within the Budget 2022. The secretariat is led by Associate Deputy Minister Jessica Wood/ Si Sityaawks.

Key accomplishments to date include the creation of the Secretariat during Budget 2022, the appointment of Jessica Woods/ Si Sityaawks, who has led the creation of both the Declaration Act and Declaration Act Action Plan, and the launch of the report “Interim Approach to Implementing the Requirements of Section 3 of the Declaration on the Rights of Indigenous Peoples Act,” a document which provides guidance and advice for B.C.’s public service, ministers and political staff on section 3.

Overview of upcoming activities

There are a number of significant announcement opportunities, with accompanying engagement and issues management requirements, on the horizon. The Secretariat and the Interim Approach are expected to be one of the main focuses of the upcoming First Nations Leadership Gathering in November 2022. The Secretariat is planning potential events with First Nations and Indigenous Peoples throughout B.C. to help support them in the context of section 3, and the eventual the appointment of the Secretariat’s three-member advisory board and reports on legislative alignment of specific laws to the Declaration Act, ongoing introduction of legislative initiatives through the spring and fall session, will provide further and ongoing opportunities for communications.

Tentative Date <i>(all TBC)</i>	Announcement/ Topic	Partner(s) Involved	Description	Proposed products	DAS Engagement with partners/stakeholder	Approvals required	Notes/considerations/vulnerabilities
November 29-30	First Nations-Cabinet Leaders' Gathering: November 29-30	First Nations Leadership Council (BC Assembly of First Nations, First Nations Summit, Union of BC Indian Chiefs)	<p>The BC Cabinet and First Nations Leaders' Gathering is organized in partnership between the First Nations Leadership Council and the Ministry of Indigenous Relations and Reconciliation.</p> <p>The Gathering offers numerous opportunities for First Nations leaders to meet with B.C. Cabinet Ministers and ministry executive on issues of importance to your communities, and to build relationships with leaders from other communities.</p> <p>Reconciliation is a cross-government priority. This gathering offers us all face-to-face opportunities to continue on the path towards building a fair, just and equitable partnership where we are working together to advance respectful government-to-government relationships that support reconciliation and self-determination.</p>	<ul style="list-style-type: none"> • Comms plan • KM for cabinet binders regarding section 3 • Speaking notes for Ministers (TBD) • General Declaration Act Secretariat materials 	n/a	n/a	Advice/Recommendations
Nov. 28	Third anniversary of Declaration on the Rights of Indigenous Peoples Act becoming law	First Nations Leadership Council (BC Assembly of First Nations, First Nations Summit, Union of BC Indian Chiefs)	<p>B.C. was the first province to pass legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration on the Rights of Indigenous Peoples Act, developed in collaboration with the First Nations Leadership Council (FNLC), came into force through Royal Assent on Nov. 28, 2019.</p> <p>The legislation requires aligning provincial laws with the UN Declaration; developing an action plan for implementing the UN Declaration, and tabling an annual report on progress – all in consultation and cooperation with Indigenous peoples. It also enables agreement-making with a broader range of Indigenous governments and mechanisms for shared decision-making.</p> <p>Advice/Recommendations</p>	<ul style="list-style-type: none"> • Joint statement or joint news release <i>tbc</i> • KM/QA • Social media 	n/a	n/a	Advice/Recommendations

Tentative Date <i>(all TBC)</i>	Announcement/ Topic	Partner(s) Involved	Description	Proposed products	DAS Engagement with partners/stakeholder	Approvals required	Notes/considerations/vulnerabilities
			Advice/Recommendations				
Jan 2023 onward	Section 3 information events with Indigenous communities	Provincewide		<ul style="list-style-type: none">• Event plan• Joint news release with nations• Speaking notes		n/a	Advice/Recommendations
Nov. 2022 onward	Appointment of advisory panel	DAS, PO, advisory panel members	The advisory panel will help support the Secretariat in their routine cross-government measures, legislative review process and guidance for the B.C. public service, ministers and political staff that will ultimately constitute a reformed process, for including Indigenous Peoples in policy and legislative development	<ul style="list-style-type: none">• News Release• Fact sheet(s)• KMQA	BCLI, Bar Association, UVic Law School	Assoc. DM Jessica Wood, MIRR Minister	
Nov. 2022 onward	Three-year workplan		Advice/Recommendations	<ul style="list-style-type: none">• TBD	Once completed, engage with UBCM, Federal Gov't, and stakeholders such as AME, MABC, BCFed etc.		Maintaining transparency of the work of the Secretariat is key to showing progress on the systemic implementation of Section 3.

Tentative Date <i>(all TBC)</i>	Announcement/ Topic	Partner(s) Involved	Description	Proposed products	DAS Engagement with partners/stakeholder	Approvals required	Notes/considerations/vulnerabilities
			This plan will guide how the Secretariat will help the B.C. Government achieve its obligation under section 3 of the Declaration Act.				
Nov. 2022	Declaration Act Secretariat website	GCPE, DAS, outside contractors	The Declaration Act Secretariat will have a place within the Declaration Act website where it can house reports, guidance documents and information related to section 3 and any work the Secretariat is undergoing.	<ul style="list-style-type: none">• Website• KMQA	Resource for ongoing communications with partners and stakeholders.		Central communication tool.
Nov. 2022 onward	MIRR Minister/ Assoc. DM speaking opportunities	DAS, GCPE	<p>As the head of the Declaration Act Secretariat, Associate Deputy Minister Jessica Wood is a complementary speaker alongside the MIRR Minister regarding the implementation of the UN Declarations and BC’s Declaration Act Action Plan and the Act itself.</p> <p>Any opportunity for Assoc.DM Wood to speak on behalf the government and the Secretariat is a chance to further government’s messages on reconciliation and section 3 of the Declaration Act.</p>	<ul style="list-style-type: none">• SN• SM	FNO gatherings, all chief gatherings, UBCM, Natural Resource Forum.	<p>MIRR Minister</p> <p>Assoc. DM Jessica Wood</p> <p>CD Leanne Ritchie</p>	Minister speaking to commitments of government on advancing the commitments in UNDRIP.

KEY MESSAGES – Declaration Act Secretariat:

- We are deeply committed to advancing reconciliation in B.C. – guided by the UN Declaration and the Declaration Act, and with meaningful consultation and cooperation with Indigenous Peoples.
- With the Declaration Act Ministries are engaging with Indigenous Peoples on policy and legislation earlier and more deeply, and it makes sense this work is supported centrally.
- To ensure success, we created the Declaration Act Secretariat as a dedicated body to support government's reconciliation efforts by ensuring laws, policies and practices are consistent with the Act.
- Now, after more than 150 years of a colonial approach to law and policy making, we have for the first-time guidance for public servants on how to work with Indigenous Peoples on the development of laws and policies.
- As we approach the 3rd anniversary on the adoption of the Declaration on the Rights of Indigenous Peoples Act, this is progress.
- It brings together what we have learned on co-developing laws since 2019 and will help government transition towards an approach of law making is thoughtful, consistent, and supports our legal commitments to affirm Indigenous rights.



Declaration Act Legislative Requirements

This section speaks to progress made over the reporting period to implement the Declaration Act, namely the alignment of provincial laws with the UN Declaration (Section 3) and the development of an action plan to achieve the objectives of the UN Declaration (Section 4).

Alignment of Laws (Section 3)

Section 3 of the Declaration Act requires government, in consultation and cooperation with Indigenous Peoples, to take all measures necessary to ensure new and existing laws are consistent with the UN Declaration. As such, where legislation affects Indigenous Peoples, ministries must demonstrate through their legislative proposals that their legislation is consistent with the UN Declaration and that they have worked with those Indigenous Peoples affected by the legislative measures on development and/or reform.

"The UN Declaration sets out the minimum standards for the survival and dignity of Indigenous Peoples. Indigenous Peoples are facing major threats to the survival of our peoples and our way of life. In many areas of law and policy this has not been fully understood, leaving us exposed to incredible risk in the face of health pandemics, climate change, removal of our peoples from our traditional territories and waters, and the lingering discrimination and sexism faced by Indigenous women and girls, LGBTQ2S+. The Union of BC Indian Chiefs supports the new reforms to the Interpretation Act and Human Rights Code, but we know we have to double down on the hard work to make real progress and switch from simply promoting the rights of Indigenous Peoples, to implementing the rights of Indigenous Peoples every day in all areas of life in British Columbia."

.....
Kukpi7 Judy Wilson,
Union of BC Indian Chiefs



The alignment of laws requires a whole-of-government approach, with each ministry responsible for ensuring their legislation meets these Declaration Act obligations, while also advancing a distinctions-based approach.²

Aligning provincial laws requires B.C. and Indigenous Peoples to determine mechanisms and processes for the review of existing legislation, and the development of new legislation that is collaborative, constructive, efficient and effective.

New/Amended Laws Aligned with the UN Declaration

Ensuring provincial laws are consistent with the UN Declaration and that new and amended bills are developed in consultation and cooperation with Indigenous Peoples relies on strong collaboration between the Province and Indigenous Peoples.

The Province is developing processes and protocols to ensure consultation and cooperation with Indigenous Peoples so that the alignment of laws is efficient, effective and comprehensive. For example, in August 2021 the Ministry of Children and Family Development (CFD) and FNLC finalized a *Letter of Commitment* to confirm the principles, processes, roles and responsibilities that CFD will implement to work with Indigenous governments and FNLC as it undertakes legislative and policy changes to transform CFD services and systems. The Province is committed to consultation and cooperation with First Nations rights and title-holders on a government-to-government level.

For the reporting period of 2021-2022, B.C. has made tangible progress on the alignment of laws to the UN Declaration.

Below is a list of highlighted legislation.

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- 2 The distinction-based approach requires that the Province's dealings with First Nations, Métis and Inuit Peoples be conducted in a manner that acknowledges the specific rights, interests, priorities and concerns of each, while respecting and acknowledging these distinct Peoples with unique cultures, histories, rights, laws, and governments. Section 35 of the *Constitution Act, 1982*, recognizes and affirms the rights of Aboriginal Peoples of Canada, while all Indigenous Peoples have human rights that are expressed in the UN Declaration. However, not all rights are uniform or the same among or between all Indigenous Peoples. In many cases, a distinctions-based approach may require that the Province's relationship and engagement with First Nations, Métis and Inuit Peoples include different approaches or actions and result in different outcomes.



ACCESSIBLE BRITISH COLUMBIA ACT

The *Accessible British Columbia Act* establishes the legal framework to identify, prevent and remove barriers to accessibility. The Ministry of Social Development and Poverty Reduction worked with Indigenous partners to identify opportunities to strengthen the legislation's alignment with the UN Declaration.

Ongoing consultation and cooperation with Indigenous Peoples will be critical to ensure that regulations developed under the Act align with the UN Declaration in accordance with the Declaration Act and reflect the input received from Indigenous Peoples.

AMENDMENTS TO THE ADOPTION ACT

October 2021 amendments to the *Adoption Act* authorized information-sharing under the Act and provided the legal authority for directors to share adoption information with the Government of Canada that would support adult adoptees seeking status under the federal *Indian Act*. The changes established this authority to support First Nation adoptees in obtaining their status so they can gain access to federal health, dental and other benefits.

CHILD, FAMILY AND COMMUNITY SERVICE ACT

Amendments to the *Child, Family and Community Service Act* (CFCSA) in October 2021 more closely aligned the Act with the information-sharing requirements of the federal statute, *An Act respecting First Nations, Inuit and Métis children, youth and families* which, among other things, sets out a commitment to implementing the UN Declaration. Partner engagement is currently underway on broader child and family service reform to understand, for example, how best to align the CFCSA with the UN Declaration.





EDUCATION STATUTES AMENDMENT ACT

On November 2, 2021, the *Education Statutes Amendment Act* passed into law, amending the *First Nations Education Act*, the *Teachers Act*, and the *Criminal Records Review Act*, all in support of First Nations' control over First Nation education

Through these amendments, the Province will support First Nations' jurisdiction over education on First Nation land. The changes to legislation enable the Minister of Education and Child Care to make agreements with the First Nations Education Authority (FNEA) for services that support teacher certification and regulation by FNEA. The Ministry of Education and Child Care (ECC) consulted and cooperated with Negotiating First Nations (NFN) in the development of an approach for the supports provided by the Province, which will involve the ECC providing operational support to the FNEA's own teacher certification and regulation processes.

In addition, the legislation changes the composition of the British Columbia Teachers' Council, which is the provincial body responsible for setting teacher education program approval standards, approving teacher education programs and establishing certification, conduct and competence standards for provincial teaching certificate holders. The change will ensure representation and a voice for FNEA on the Council.

ECC co-developed the legislative amendments with the First Nations Education Steering Committee (FNESC), which was acting under direction of NFN. Specifically, ECC engaged in extensive discussions with FNESC to co-develop a model for teacher certification to support the jurisdiction over education initiative. Once there was general agreement on the overarching model, ECC formed a technical working group comprised of ECC and FNESC staff. The working group reported out to a larger bilateral table, which included NFN representatives.





These bilateral meetings started in 2019 and were held approximately every two months. Of note, NFN appointed FNEC to negotiate with ECC, under their direction. FNEC sought direction on decision points from NFN.

Through the technical working group, ECC worked with FNEC, acting under the direction of the NFN, to co-develop the documents seeking Cabinet approval. FNEC and ECC presented jointly on this initiative at the Assistant Deputy Ministers' Committee.

ECC sent notification letters and background information, developed in collaboration with FNEC, to Treaty Nations and all First Nations in August 2021. ECC sent letters to all Treaty and non-Treaty First Nations explaining the amendments and inviting dialogue. While the timing was tight, the legislation was still under development and there were still opportunities to make changes. Further to the notification letters, there were follow-up discussions with several treaty and non-treaty First Nations and there were no resulting changes to the draft legislation.

This has represented a different way of working, in line with the Declaration Act. ECC will continue to build on the experiences and lessons learned in this initiative moving forward.

FORESTS STATUTES AMENDMENT ACT

The *Forests Statutes Amendment Act* received Royal Assent in November 2021, which amended the *Forests Act*, *Forest and Range Practices Act* and *Forest Practices Code of British Columbia Act*. The amendments introduced transformative shifts to the forest and range planning in B.C., by establishing the framework for an approach that is more focused on ecological and cultural values. A key part of this will be replacing forest stewardship plans, which are currently developed by industry, with forest landscape plans developed by the Province with First Nations, local communities and stakeholders. Through the development of forest landscape plans, the amendments will create new opportunities for shared decision-making between the Province and First Nations.

The amendments also enhance the Province's ability to have management control over forest roads to protect public safety and the environment, improve wildfire management and update compliance





and enforcement authorities. Improvements made under these amendments were informed by the introduction of the Declaration Act and represent a step towards bringing provincial laws into harmony, over time, with the UN Declaration.

While this does signal progress, the amendments were considered by some First Nations and First Nation leadership organizations as not going far enough to sufficiently recognize First Nation jurisdiction over the full scope of decision-making under the *Forest and Range Practices Act*.

Most of the provisions must be enacted through regulations. The Ministry of Forests anticipates that the associated regulatory changes will be developed, and enacted, in phases from spring 2022 through to spring 2024, and is committed to moving forward on this transformative work in consultation and cooperation with First Nations partners.

HUMAN RIGHTS CODE AMENDMENT ACT

In November 2021, B.C. passed Bill 18, the *Human Rights Code Amendment Act* to further uphold Indigenous human rights and advance reconciliation with Indigenous Peoples by adding Indigenous identity as a protected ground against discrimination under the B.C. Human Rights Code. This amendment will help combat anti-Indigenous racism and protect Indigenous Peoples from discrimination.

Bill 18 responded to recommendations to add Indigenous identity as a protected ground by Ardith Walpetko We'dalx Walkem in her report, *Expanding our Vision: Cultural Equality and Indigenous Peoples' Human Rights*, and by Mary Ellen Turpel-Lafond, in her report *In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in B.C. Health Care*. Bill 18 was developed in consultation and cooperation with Indigenous representative organizations.





Interpretation Amendment Act

Bill 29 brought changes to the *Interpretation Act* through the addition of a universal non-derogation clause which makes it explicit that provincial laws uphold, and do not abrogate or derogate from, the rights of Indigenous Peoples under Section 35 of the *Constitution Act, 1982*. Bill 29 also amended the *Interpretation Act* to provide that all provincial acts and regulations must be read to be consistent with the UN Declaration. Bill 29 represents an important step forward in the alignment of the laws of B.C. with the UN Declaration.

These amendments arose from long-standing and more recent calls for change from Indigenous Peoples and were developed and drafted in consultation and cooperation with Indigenous representative organizations and interested rights-bearing communities.

"The Interpretation Act amendments ... are a critical step in supporting meaningful implementation of the Declaration Act. We look forward to continued work with B.C. in our collective and ongoing efforts to take all measures necessary to ensure all new and existing laws and regulations in B.C. are consistent with the Declaration Act. This will require joint and strategic work to audit and update laws and regulations to bring them into alignment with Indigenous human rights standards. In particular, the critical work to eradicate all forms of racism, denial and discrimination against Indigenous Peoples is particularly pressing."

.....
Cheryl Casimer
First Nations Summit



Declaration Act Secretariat

The Declaration Act ensures that embedding the UN Declaration into B.C.'s laws, policies and practices is a cross-government responsibility, and that this work must be undertaken with Indigenous Peoples. This effort will require significant shifts in government standards, processes and measures for legislative and policy development and signals the need for a centralized and dedicated body to drive this all-of-government, collaborative approach. Murray Rankin, Minister of Indigenous Relations and Reconciliation, was instructed in his 2020 Mandate Letter to bring forward a plan for a dedicated secretariat by the end of 2021.

The 2022 Budget Speech announced the creation of the secretariat that will guide and assist the Province in meeting its obligation to ensure legislation is consistent with the UN

Declaration, and is developed in consultation and cooperation with Indigenous Peoples.

"The shifts needed to align B.C.'s laws with the UN Declaration are challenging. Provincial laws must now meet a new commitment to achieve consistency with the UN Declaration.

The work ahead requires B.C. and Indigenous Peoples to work together to identify an approach for both the review of existing legislation as well as the development of new legislation – an approach that is collaborative, efficient and constructive.

The Declaration Act Secretariat will guide and assist government to meet these obligations."

.....
Murray Rankin
B.C. Minister of Indigenous
Relations and Reconciliation



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NEWS RELEASE

For Immediate Release

Declaration Act Secretariat

2022IRR0061-001581

Oct. 24, 2022

New guidance on legislation supports Indigenous rights

VICTORIA – New guidance for the B.C. government from the Declaration Act Secretariat provides best practices for working with Indigenous Peoples on the development of provincial laws and policies, which advance Indigenous rights.

The Interim Approach to Implement the Requirements of Section 3 of the Declaration on the Rights of Indigenous Peoples Act (Interim Approach) is a world-leading project released by the Province's new Indigenous-led Declaration Act Secretariat.

"After 150 years of a colonial approach to law and policy-making, we have, for the first time, guidance for government on how to work co-operatively and consistently with Indigenous Peoples in the law-making process," said Murray Rankin, Minister of Indigenous Relations and Reconciliation and Minister Responsible for the Declaration Act Secretariat. "As we approach the third anniversary of the adoption of the Declaration on the Rights of Indigenous Peoples Act, this is a very important step. It brings together what we have learned through legislative and policy initiatives since 2019 and will help government further transition to an approach that involves working together to meet our reconciliation objective to implement the UN Declaration on the Rights of Indigenous Peoples."

The Interim Approach is the first outcome delivered by the Declaration Act Secretariat, which was formed earlier this year. The secretariat is led by associate deputy minister Jessica Wood/Si Sityaawks, and was created to co-ordinate and assist cross-government actions to ensure provincial laws align with the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) as set out in Section 3 of B.C.'s Declaration on the Rights of Indigenous Peoples Act (Declaration Act).

This new approach provides every ministry and sector of government with clear, transparent processes for how they work together with Indigenous Peoples in developing provincial laws, policies and practices, as required under the Declaration Act.

The Interim Approach will help government fulfil its law-making commitments under the Declaration Act, as the Province is committed to approaching policy and legislation development that may affect Indigenous Peoples in a manner that ensures Indigenous Peoples are fully involved partners in the process and government has met the obligation to their seek consent.

This approach directly responds to the UN Declaration, which emphasizes the rights of Indigenous Peoples to influence the outcome of decision-making processes, not only the right to be heard, on matters affecting them.

While the Interim Approach was created by the Declaration Act Secretariat, it was developed in

consultation and co-operation with Indigenous leadership, ensuring Indigenous rights are affirmed through this work.

The secretariat may update the Interim Approach periodically to incorporate new information and advice from Indigenous Peoples, as well as developments to implementing the Declaration Act.

Quotes:

Grand Chief Stewart Phillip, president, Union of BC Indian Chiefs –

“The interim process is another critical step forward, and we recognize the collective efforts, particularly by the Declaration Secretariat, for co-developing a transparent, system-wide process on how to align provincial laws with the UN Declaration. We cannot underestimate how challenging it is to effect systemic change and we welcome this new process, which identifies clear roles for Indigenous Peoples in alignment of laws and will facilitate implementation of the Declaration on the Rights of Indigenous Peoples Act.”

Regional Chief Terry Teegee, BC Assembly of First Nations –

“We accept all steps forward as positive and incremental steps. In this vein, we welcome the implementation of the interim legislative process and greater whole-of-government mechanism that the secretariat may represent. These achievements are tangible but also bitter sweet. Our Peoples, all British Columbians expect this government to advance reconciliation not just on paper but in concrete and measurable steps.”

Cheryl Casimer, political executive, First Nations Summit –

“We are pleased to see some concrete direction finally being rolled out across the provincial government on how to work co-operatively with Indigenous Peoples on law development and reform. This is a critical step in our collective work to decolonize Crown processes, and build new ones that respect legal pluralism and the fact that our Nations have inherent jurisdiction and governance authority in our territories. It is also a critical step in creating consistency in how provincial ministries engage with our Nations and organizations and will point us all in the same direction toward our shared objectives in ensuring provincial laws are consistent with the UN Declaration.”

Chief Murphy Abraham, Lake Babine Nation –

“This guidance document will ensure that Indigenous Nations get to participate in overdue law and policy reform. Lake Babine Nation looks forward to providing recommendations and helping the Province shed its colonial past in favour of a legal framework that includes and respects Indigenous governance, rights and cultures.”

Colette Trudeau, CEO, Métis Nation British Columbia –

“Métis Nation British Columbia (MNBC) supports the development of a distinctions-based approach to creating new legislation, which includes MNBC representing the interests of the close to 100,000 self-identified Métis people in British Columbia in order to deliver on the requirements of Section 3 of the Declaration of the Rights of Indigenous Peoples Act. Through the new Interim Approach, MNBC looks forward to greater consultation by British Columbia to

create clarity of process for involving Indigenous peoples in policy and legislative development. MNBC also congratulates the provincial government on the formation of the new Declaration Act Secretariat to provide guidance to public servants and support ongoing engagement with Indigenous partners as the process fully reforms.”

Rosalie Yazzie, acting chair, BC First Nations Justice Council –

“On behalf of the BC First Nations Justice Council, we welcome the announcement of the Interim Approach as another step forward in the long journey of reconciliation. For 150 years, law- and policy-making has happened to Indigenous Peoples and had no meaningful role in shaping those laws and policies that affect us. Alongside the Province’s commitment to fully implement the BC First Nations Justice Strategy, we recognize the fundamental importance of the B.C.’s Interim Approach to recognize legal pluralism and accelerate reconciliation in all areas of policy and legislative development. We congratulate the Indigenous-led Declaration Act Secretariat on this accomplishment.”

Quick Facts:

- Announced in Budget 2022, the Declaration Act Secretariat is an independent office that operates to provide guidance for every ministry across government. It has a budget of \$12.05 million over three years.
- The Declaration Act Secretariat will help ministries to align their laws with the UN Declaration, for examples of this work see the 2021-22 Annual Report on the Declaration on the Rights of Indigenous Peoples Act (link below in Learn More).
- The UN Declaration includes the following articles related to Indigenous rights and legislative development:
 - Article 19: States shall consult and co-operate in good faith with the Indigenous Peoples concerned 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.
 - Article 38: States in consultation and co-operation with Indigenous Peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Learn More:

To learn more about the Declaration Act and the Declaration Act Secretariat, visit:

<https://declaration.gov.bc.ca>

View the Interim Approach:

<https://www2.gov.bc.ca/assets/download/5311E7CE28434979B5BAFAA0945E0ECE>

View the United Nations Declaration on the Rights of Indigenous Peoples:

www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

2021-22 Annual Report on the Declaration on the Rights of Indigenous Peoples Act, chapter 3: Declaration Act Legislative Requirements (page 6):

<https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples/annual-reporting>

Contact:

Ministry of Indigenous Relations and

Reconciliation

Media Relations

236 478-0966

Connect with the Province of B.C. at: news.gov.bc.ca/connect

Confidential Issues Note - ADVICE TO MINISTER

Declaration Act Secretariat Date: Nov. 21, 2022 Minister Responsible: Hon. Murray Rankin	Consultation and Cooperation and the Duty-to-Consult
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KEY MESSAGES:

- We respect the rights of Indigenous Peoples, and want to create a future where First Nations, Métis and Inuit people can thrive.
- New guidance for the B.C. government from the Declaration Act Secretariat provides best practices for working with Indigenous Peoples on the development of provincial laws and policies, which in turn advances Indigenous rights.
- The 'Interim Approach to Implement the Requirements of Section 3 of the Declaration on the Rights of Indigenous Peoples Act' (Interim Approach) is a world-leading project released by the Province's new Indigenous-led Declaration Act Secretariat.
- On the third anniversary on the adoption of the Declaration on the Rights of Indigenous Peoples Act, this is progress.
- It brings together what we have learned on co-developing laws since 2019 and will help government transition towards an approach of law making is thoughtful, consistent, and supports our legal commitments to affirm Indigenous rights.

Role of Secretariat

- Establishing a Declaration Act Secretariat recognizes that implementation of the Declaration Act, the UN Declaration and constitutionally protected title and rights requires an integrated, "whole of government" effort.
- The Declaration Act Secretariat guides and assist government to meet its obligation to ensure legislation is consistent with the UN Declaration on the Rights of Indigenous Peoples and is developed in consultation and co-operation with Indigenous Peoples.
- The Declaration Act Secretariat has brought together Indigenous rights experts to provide guidance on how Ministries can apply the principles of "consultation and co-operation" to the process of legislative development.
- Together with Indigenous Peoples, the Secretariat provides recommendations on laws to prioritize for comprehensive alignment with the UN Declaration.

Confidential Issues Note - ADVICE TO MINISTER

- And they work to co-develop measures through which a review of laws will take place.
- While their initial focus is on legislation, I expect the Secretariat's work will be transformative and deepen all of government's relationships with Indigenous peoples.

Legislative Alignment

- Several bills were passed in the last two sessions that amend existing legislation to align with the UN Declaration. For example, we passed:
- The Anti-racism data act, which charts a new path forward in partnership with Indigenous Peoples and racialized communities to use and share data safely to help address systemic racism and make government programs and services work better for more people.
- And we've changed provincial laws to support Indigenous Peoples in exercising their inherent right of self-determination in decisions around child and family services.

BACKGROUND

Advice/Recommendations

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Q&A – Declaration Act Secretariat:

1. You announced the creation of the Declaration Act Secretariat over two years ago – why has it taken so long to get up and running?

- My 2020 mandate letter was to “bring forward for cabinet consideration, a plan to create a dedicated secretariat by the end of 2021”.
- I did just that when I presented the plan for the secretariat to Cabinet in the fall of 2021.
- As with any new office, it takes time to get up and running; staff need to be hired, space needs to be acquired.
- Now that the Secretariat is established, it has begun the important work of supporting government’s reconciliation efforts.
- Specifically, they will be working to ensure legislation is consistent with the UN Declaration and is developed in consultation and cooperation with Indigenous Peoples, as required by Section 3 of the Declaration on the Rights of Indigenous Peoples Act.

2. Has the Secretariat worked on any legislation? If not, why not?

- Yes, the Secretariat has been actively involved in supporting legislative and policy development. Examples of relevant amendments include the Interpretation Act, Forest and Range Practices Act, FOIPPA, Emergency Program Act, the development of the Anti-Racism Data Act and other legislative proposals are anticipated this session.

3. What does the Secretariat do?

- The Declaration Act Secretariat guides and assists ministries in meeting the alignment of laws obligations, collaborates within government on changes to government’s legislative and policy processes, and helps establish government’s legislative priorities related to alignment of laws.
- The Secretariat’s core functions are:
 - provide guidance on consultation and cooperation and consistency of laws;
 - develop processes and measures to support alignment of laws;
 - inform government’s legislative agenda; and
 - serve in an interlocutor role.

4. Why is the Secretariat needed?

- Across government, ministries are engaging with Indigenous Peoples on policy and legislation earlier and more deeply, and it makes sense this work is supported centrally.
- To ensure success, the Declaration Act Secretariat was established as a dedicated body to support government’s reconciliation efforts by ensuring laws, policies and practices are consistent with the UN Declaration.
- As we created the secretariat, we listened to First Nations leadership and legal experts on how the new office could effectively coordinate and support this cross-government work.

5. What is the structure of the Secretariat?

- Si Sityaawks (Jessica Wood) has been appointed as the Associate Deputy Minister of the Declaration Act Secretariat.
- The Secretariat reports to me as the Minister of Indigenous Relations and Reconciliation.
- The Secretariat is an independent office and distinct from Ministry of Indigenous Relations and Reconciliation – similar to the Ministry of Environment and the Environmental Assessment Office.
- Once fully staffed, it is expected the Secretariat will have an estimated 18-22 staff, with a focus on Indigenous recruitment.
- As announced in Budget 2022, the Secretariat has a budget of \$12M over three years. The Secretariat is supported by an Advisory Forum.

6. What are the initial priorities?

- Initial priorities for the Secretariat include work to:
 - Develop cross government guidance and advice on consultation and cooperation.
 - Establish a framework for advancing both “cross-statute” and “statute specific” legislative change priorities.
 - Develop measures and processes through which a review of laws will take place.
 - Recommend for Cabinet approval which laws to prioritize for comprehensive alignment with the Declaration Act.
 - Maintain a schedule, based on input from ministries, Indigenous Peoples and organizations, that identifies existing laws that are a priority for review and alignment with the UN Declaration.

7. How will the Secretariat be evaluated? (accountability)

- The Secretariat will be reviewed in three years for potential improvements in structure and function.

8. You say you are making progress on reconciliation, what else are you doing?

- We are delivering on the actions promised in the Declaration Act Action Plan, a five-year, cross-government action plan that will guide our work to implement the UN Declaration in B.C.
- We are advancing agreements that share decision-making with First Nations, and are shifting from short-term transactional arrangements to co-development of long-term agreements that support reconciliation, self-determination, decision-making, and economic independence.
- We are co-developing a new forestry revenue sharing model with First Nations as the next step toward a new fiscal framework.
- In addition, we are continuing our work on reconciliation in many important areas such as forestry, gaming revenue, language, housing, justice and as well as working to advance treaties and government-to-government agreements.
- We are proving that by working together, we are building an even stronger, more inclusive, and more just British Columbia – one that will create a better future for everyone.

9. How will you measure progress on this work?

- The Province is reporting progress through the Declaration Act’s annual report.
- As required under the Act, the annual reports are developed in consultation and cooperation with Indigenous Peoples and publicly released by June 30 of each year. The reports ensure government’s work is transparent and accountable.
- We will update the action plan within five years – again in consultation and cooperation with Indigenous Peoples – to capture emerging opportunities, build on progress made, and ensure the government’s work advancing reconciliation remains in alignment with the priorities of Indigenous Peoples.

10. You say you are upholding Indigenous rights but why are you still fighting Nuchatlaht in court?

- The Province is committed to advancing reconciliation through negotiated agreements, rather than through adversarial court processes.
- I can confirm that we have made a formal offer to Nuchatlaht to enter negotiations and seek a mutually agreeable resolution to this litigation.
- The Province acknowledges there may be instances when we do not agree. We also are determined to respectfully acknowledge these differences together while also finding areas of unity.
- Of course, when we cannot reach agreement, the courts can be there to assist.
- While Nuchatlaht’s Aboriginal title claim is before the courts, it is best that any discussion about the Province’s legal response happen in that forum.
- We remain open to a collaborative dialogue outside the courts, however, we respect the right of Nuchatlaht to pursue their interests through litigation.

11. You say you are upholding Indigenous rights but what about Wet’sewe’ten chiefs opposed to the Coastal GasLink Pipeline?

Communication contact: Leanne Ritchie

- We are working hard to engage community leaders and do the unfinished business of reconciling Wet'suwet'en law with provincial law and implementing the Delgamuukw-Gisday-wa decision from over 20 years ago.
- We remain resolute in our determination to undertake this work at the rights and title table, together with the Wet'suwet'en and Government of Canada.
- Indigenous self-determination is a key tenet of UNDRIP and a key objective of the Declaration Act.
- Resolving these issues will help avoid conflicts on the land, heal the community, and support work together that will benefit everyone who lives in the region.

Communication contact: Leanne Ritchie



Q&A – Interim Approach:

1. Why is “interim approach” needed? What even is it?

- The Declaration Act Secretariat was created to guide and assist ministries in the alignment of laws with the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration).
- This includes meeting the legal requirement to consult and cooperate with Indigenous Peoples on changes to the province’s legislative and policy processes and development.
- Aligning provincial laws with the UN Declaration will take time. This interim guidance was created to help inform the work being done now across government with Indigenous Peoples.
- This guidance provides clear, transparent processes for how public servants are to work together with Indigenous Peoples in developing provincial laws, policies and practices.
- This new guidance is the one of the first keys actions from the Secretariat that was formed earlier this year.

2. Has this guidance been created in consultation and cooperation with Indigenous Peoples?

- Yes. The interim approach has been co-developed working directly with Indigenous experts.
- Previous and ongoing experiences from cross-government engagement with Indigenous Peoples on policy and legislation has also helped create this interim guidance.
- This includes work on the Forest and Range Practices Act, Freedom of Information and Protection of Privacy Act, Emergency Program Act, the Interpretation Act and the development of the Anti-Racism Data Act.
- The guidance may be updated periodically to incorporate additional information and advice from the Secretariat.

3. How will public servants use this information?

- This interim guidance is intended to help public servants find new approaches to consultation and cooperation, information sharing as well as legislative and policy development with Indigenous Peoples, as required by the Declaration Act, and Section 35(1) of the Constitution



Declaration Act Secretariat
30-60-90

Issue	Status/Key Milestones/Next Steps
30 Days	
Involving Indigenous Peoples in Policy and Legislation Development	<ul style="list-style-type: none"> Follow up to launch including NR, Social media, website
Section 3 Wrap up Report	<ul style="list-style-type: none"> Follow up to final report to be released
s.13	
First Nations Leaders' Gathering (FNLG)	<ul style="list-style-type: none"> Legislative Alignment plenary session Dates: November 28-30
60 Days	
90 Days	

MAJOR CORPORATE ISSUE NOTE

Ministry/Ministries: Declaration Act Secretariat

Issue

Alignment of laws as required by section 3 of the *Declaration on the Rights of Indigenous Peoples Act*

Background

The *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act) was unanimously passed by the Legislative Assembly in 2019. Section 3 of the Declaration Act requires the Province, in consultation and co-operation with Indigenous peoples, to take “all measures necessary” to ensure consistency between the laws of British Columbia and the *United Nations Declaration on the Rights of Indigenous Peoples*.

Since 2019, the Province has taken some measures pursuant to section 3. The most significant measure was the formation of the Declaration Act Secretariat, established in Budget 2022. The mandate of the Secretariat is to ensure legislation is consistent with the UN Declaration and is developed in consultation and cooperation with Indigenous Peoples, as required by Section 3 of the Declaration on the Rights of Indigenous Peoples Act.

Reporting directly to the Minister of Indigenous Relations and Reconciliation, the Secretariat guides and assists ministries in meeting the alignment of laws obligations, collaborates within government on changes to government’s legislative and policy processes, and helps establish government’s legislative priorities related to alignment of laws.

The Secretariat’s core functions are:

- provide guidance on consultation and cooperation and consistency of laws;
- develop processes and measures to support alignment of laws;
- inform government’s legislative agenda; and
- serve in an interlocutor role.

An Advisory Forum will provide advice to the Secretariat on legislative proposals and initiatives and provide a means for Indigenous expertise and experience with meeting the standards of the UN Declaration to be brought into government.

The Secretariat also provides guidance and advice on how to ensure required consultation and co-operation with Indigenous peoples takes place. This Examples of relevant amendments include, the *Interpretation Act*, *Forest and Range Practices Act*, *FOIPPA*, *Emergency Program Act* and the development of the *Anti-Racism Data Act*.

Additionally, through internal learning processes since the passage of the Declaration Act, as well as work with Indigenous partners, co-developed guidance on “*Involving Indigenous Peoples in Policy and Legislation*” has been created. This guidance tool, (or what is being referred to as the *Interim Policy*) has been presented across government and is informing on-going processes. The formal release of the *Involving Indigenous Peoples in Policy and Legislation* by the Declaration Act Secretariat will take place in Fall 2022.

Issue/Opportunity

Three years have elapsed since the passage of the Declaration Act. Efforts to date to implement section 3 have illustrated the need for a coherent and systematic approach to the alignment of laws that is transparent to Indigenous peoples, other levels of government, stakeholders, and the general public. The steps that the Province has taken, and in particular the formation of the Declaration Act Secretariat, have set the foundation for advancing such an approach.

Next Steps

In addition to the Interim Process, other tools and strategies will need to be developed to support ministries and Cabinet advance legislative proposals that align with the UN Declaration on the Rights of Indigenous Peoples, in consultation and cooperation with Indigenous Peoples as required by Section 3 of the Declaration Act.



February 25, 2022

Honourable Murray Rankin
Minister of Indigenous Relations and Reconciliation
Parliament Buildings
Victoria, British Columbia V8V 1X4

Dear Minister Rankin:

Thank you for agreeing to serve British Columbians as Minister of Indigenous Relations and Reconciliation.

In this past year, as a member of Cabinet, your work has contributed to this government's efforts to support British Columbians as they face the impacts of COVID-19. People throughout the province continue to work together to stay safe and rebuild their lives and communities from the effects of the pandemic. Our government remains committed to getting through the pandemic and its after effects by building on this resilience and focusing on what matters most to people.

British Columbians voted for a government focused on their priorities: providing better health care for people and families, delivering affordability and security in our communities, and investing in good jobs and livelihoods in a clean-energy future.

I expect you –with support of your ministry – to focus on the commitments detailed in our platform, *Working for You*, along with the following foundational principles:

- **Putting people first:** Since 2017, our government has focused on making decisions to meet people's needs. That focus drove our work in our first term and will continue to be our priority. British Columbians are counting on the government to keep them safe and to build an economic recovery that works for everyone, not just those at the top. Keeping people at the centre of everything we do means protecting and enhancing the public services people rely on and working to make life more affordable for everyone.

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**Office of the
Premier**

Web Site:
www.gov.bc.ca

Mailing Address:
PO Box 9041 Stn Prov Govt
Victoria BC V8W 9E1

Location:
Parliament Buildings
Victoria

- **Lasting and meaningful reconciliation:** Reconciliation is an ongoing process and a shared responsibility for us all. The unanimous passage of the *Declaration on the Rights of Indigenous Peoples Act* was a significant step forward in this journey. True reconciliation will take time and ongoing commitment to work with Indigenous peoples as they move toward self-determination. Our government – and every ministry – must remain focused on creating opportunities for Indigenous peoples to be full partners in our economy and providing a clear and sustainable path for everyone to work toward lasting reconciliation.
- **Equity and anti-racism:** Our province's history, identity and strength are rooted in its diverse population. Yet racialized and marginalized people face historic and present-day barriers that limit their full participation in their communities, workplaces, government, and their lives. Our government has a moral and ethical responsibility to tackle systemic discrimination in all its forms – and every ministry has a role in this work. While our caucus elected a record number of women, more work remains to address gender equity. Delivering on our commitments to address racial discrimination will require a commitment by all of government to ensure increased IBPOC (Indigenous, Black and People of Colour) representation within the public service, including in government appointments. Our efforts to address systemic discrimination must also inform policy and budget decisions by reviewing all decisions through a Gender-Based Analysis Plus (GBA+) lens.
- **A better future through fighting climate change:** In 2018, our government launched our CleanBC climate action plan. CleanBC puts British Columbia on the path to a cleaner, better future by building a low-carbon economy with new clean-energy jobs and opportunities, protecting our air, land and water and supporting communities to prepare for climate impacts. It is every Minister's responsibility to ensure your ministry's work continues to achieve CleanBC's goals.
- **A strong, sustainable economy that works for everyone:** We will continue our work to support British Columbians through the pandemic and the economic recovery by investing in health care, getting people back to work, helping businesses and communities, and building the clean, innovative economy of the future. Our plan will train the workforce of tomorrow, help businesses hire and grow and invest in the infrastructure needed to build our province.

The pandemic has reminded us that we're strongest when we work together. Delivering on our commitments to people will require a coordinated effort with your cabinet and caucus colleagues, supported by the skilled professionals in the public service. You will also support your cabinet colleagues to do their work, particularly where commitments cross ministry lines.

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British Columbians expect their elected representatives to work together to advance the broader public good despite their partisan perspectives. That means seeking out, fostering, and championing good ideas, regardless of their origin. I expect you to reach out to elected members from all parties as you deliver on your mandate. Further, you will build thoughtful and sustained relationships through public and stakeholder engagement plans that connect with people to incorporate their perspectives early in the policy development process. These plans must include measurable outcomes and ensure active dialogue and ongoing outreach in your ministry's actions and priorities.

Over the course of our mandate, I expect you will make progress on the following items:

- Work with your cabinet colleagues and Indigenous partners to address the needs of Indigenous communities through our government's COVID-19 response and recovery efforts.
- In collaboration with Indigenous partners, deliver the action plan required under the *Declaration on the Rights of Indigenous Peoples Act* to build strong relationships based on recognition and implementation of the inherent rights of Indigenous peoples protected in Canada's constitution.
- Coordinate government's reconciliation efforts and ensure new legislation and policies are consistent with the *Declaration on the Rights of Indigenous Peoples Act* through the dedicated Secretariat.
- Improve our government's relationships with Indigenous peoples by moving from short-term transactional arrangements to long-term agreements that recognize and support reconciliation, self-determination, and economic independence – and do so with your cabinet colleagues.
- Facilitate partnership with First Nations around key decisions on regional land and resource use allocation through evolving shared decision making, building on the *Declaration on the Rights of Indigenous Peoples Act*, to provide a clear, stable and sustainable path for everyone to work together – and do this with your cabinet colleagues.
- Extend our support for cultural preservation and revitalization by funding key projects designed to preserve and respect Indigenous cultures, including the retention and revitalization of First Nations languages.
- Expand our government's support for Aboriginal Friendship Centres that serve the needs of local Indigenous communities while playing a vital role in connecting urban Indigenous peoples from across the province to their home communities.

- With support from the Attorney General and Minister responsible for Housing, lead work to bring the federal government to the table to match our funding to build much-needed housing for Indigenous peoples both on and off reserve.
- Support the work of the Minister of Education and Child Care to put more Indigenous languages into BC's curriculum.
- Support the work of the Minister of Environment and Climate Change Strategy to reflect Indigenous peoples' history and cultures in provincial parks and wilderness areas.

Our work as a government must continually evolve to meet the changing needs of people in this province. Issues not contemplated in this letter will come forward for government action and I ask you to bring such matters forward for consideration by the Planning and Priorities Committee of cabinet, with the expectation that any proposed initiatives will be subject to the usual cabinet and Treasury Board oversight. Your ministry's priorities must reflect our government's overall strategic plan as determined by cabinet.

All cabinet members are expected to review, understand and act according to the *Members' Conflict of Interest Act* and conduct themselves with the highest level of integrity. As a minister of the Crown, your conduct will reflect not only on you, but on cabinet and our government.

You are responsible for providing strong, professional, and ethical leadership within cabinet and your ministry. You will establish a collaborative working relationship with your deputy minister and the public servants under their direction who provide the professional, non-partisan advice that is fundamental to delivering on our government's priorities. You must ensure your minister's office meets the highest standards for integrity and provides a respectful and rewarding environment for all staff.

My commitment to all British Columbians is to do my level best to make sure people's lives are better, safer, and more affordable. I believe the challenges we face can and will be overcome by working together. By way of this letter, I am expressing my faith that people can expect the same commitment from you.

Sincerely,



John Horgan
Premier

This Act is current to October 12, 2022

See the Tables of Legislative Changes for this Act's legislative history, including any changes not in force.

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

[SBC 2019] CHAPTER 44

Assented to November 28, 2019

Contents

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- 2 Purposes of Act
- 3 Measures to align laws with Declaration
- 4 Action plan
- 5 Annual report
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- 8 *Offence Act*
- 9 Power to make regulations
- 10 Commencement

Schedule

Interpretation

1 (1) In this Act:

"Declaration" means the United Nations Declaration on the Rights of Indigenous Peoples set out in the Schedule;

"Indigenous governing body" means an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the *Constitution Act, 1982*;

"Indigenous peoples" has the same meaning as aboriginal peoples in section 35 of the *Constitution Act, 1982*;

"statutory power of decision" has the same meaning as in the *Judicial Review Procedure Act*.

(2) For the purposes of implementing this Act, the government must consider the diversity of the Indigenous peoples in British Columbia, particularly the distinct languages, cultures, customs, practices, rights, legal traditions, institutions, governance structures, relationships to territories and knowledge systems of the Indigenous peoples in British Columbia.

(3) For certainty, nothing in this Act, nor anything done under this Act, abrogates or derogates from the rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

(4) Nothing in this Act is to be construed as delaying the application of the Declaration to the laws of British Columbia.

Purposes of Act

2 The purposes of this Act are as follows:

- (a) to affirm the application of the Declaration to the laws of British Columbia;
- (b) to contribute to the implementation of the Declaration;
- (c) to support the affirmation of, and develop relationships with, Indigenous governing bodies.

Measures to align laws with Declaration

3 In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.

Action plan

- 4 (1) The government must prepare and implement an action plan to achieve the objectives of the Declaration.
- (2) The action plan must be prepared and implemented in consultation and cooperation with the Indigenous peoples in British Columbia.
- (3) The action plan must contain the date on or before which the government must initiate a review of the action plan.
- (4) After the action plan is prepared, the minister must, as soon as practicable,
- (a) lay the action plan before the Legislative Assembly if the Legislative Assembly is then sitting, or
 - (b) file the action plan with the Clerk of the Legislative Assembly if the Legislative Assembly is not sitting.
- (5) The government may prepare a new action plan in accordance with this section.

Annual report

- 5 (1) Each year the minister must prepare a report for the 12-month period ending on March 31.
- (2) The report must be prepared in consultation and cooperation with the Indigenous peoples in British Columbia.
- (3) In the report under subsection (1), the minister must report on the progress that has been made towards implementing the measures referred to in section 3 and achieving the goals in the action plan.

(4) On or before June 30 in each year, the minister must

- (a) lay the report prepared for the 12-month period ending on March 31 in that year before the Legislative Assembly, if the Legislative Assembly is then sitting, or
- (b) file the report prepared for the 12-month period ending on March 31 in that year with the Clerk of the Legislative Assembly, if the Legislative Assembly is not sitting.

Agreements

6 (1) For the purposes of this Act, a member of the Executive Council, on behalf of the government, may enter into an agreement with an Indigenous governing body.

(2) Subsection (1)

- (a) is subject to section 7, and
- (b) does not limit a power of the member to enter into an agreement under any other enactment.

Decision-making agreements

7 (1) For the purposes of reconciliation, the Lieutenant Governor in Council may authorize a member of the Executive Council, on behalf of the government, to negotiate and enter into an agreement with an Indigenous governing body relating to one or both of the following:

- (a) the exercise of a statutory power of decision jointly by
 - (i) the Indigenous governing body, and
 - (ii) the government or another decision-maker;
- (b) the consent of the Indigenous governing body before the exercise of a statutory power of decision.

(2) A member authorized under subsection (1) to negotiate an agreement may enter into the agreement without further authorization from the Lieutenant Governor in Council unless the Lieutenant Governor in Council restricts the initial authorization to only the negotiation of the agreement.

(3) Within 15 days after the Lieutenant Governor in Council authorizes the member to negotiate an agreement under subsection (1), the member must make public a summary of the local governments and other persons the member intends to consult before or during the negotiation.

(4) An agreement entered into under subsection (1)

- (a) must be published in the Gazette, and
- (b) is not effective until the agreement is published in the Gazette or a later date specified in the agreement.

(5) For certainty, subsection (4) applies to an agreement that amends an agreement entered into under subsection (1).

Offence Act

8 Section 5 of the *Offence Act* does not apply to this Act.

Power to make regulations

9 The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

Commencement

10 This Act comes into force on the date of Royal Assent.

Schedule

(Section 1)

United Nations Declaration on the Rights of Indigenous Peoples

Resolution adopted by the General Assembly

[without reference to a Main Committee (A/61/L.67 and Add.1)]

61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,¹ by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

107th plenary meeting

13 September 2007

1. See Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53), part one, chap. II, sect. A.

Annex

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights,² as well as the Vienna Declaration and Programme of Action,³ affirm the fundamental importance of the right

to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

2. See resolution 2200 A (XXI), annex.

3. A/CONF.157/24 (Part I), chap. III.

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

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 Rights⁴ and international human rights law.

4. Resolution 217 A (III).

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.

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.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and

after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned 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.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.



Ref. 55434

June 14, 2022

Dear Chiefs and Council Members:

The *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act) was brought into force in November 2019. Among several important obligations, the Declaration Act requires government to work in consultation and cooperation with Indigenous peoples in British Columbia to take all measures necessary to ensure the laws of British Columbia are consistent with the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UN Declaration).

As part of my 2020 Mandate letter, I committed to establishing a standalone Secretariat office, dedicated to supporting Indigenous consultation and cooperation on provincial policy and legislation. In developing the plan for the new Secretariat, the Province heard from First Nations leadership and legal experts on how the Secretariat can best coordinate, guide, and advance this cross-government responsibility to align our laws, policies, and practices with the UN Declaration.

I am happy to share that as of April 1, 2022, the new Declaration Act Secretariat has been formalized with the mandate to guide and advance the cross-government efforts to work in consultation and cooperation with Indigenous Peoples to align laws with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), per section 3 of the Declaration Act.

.../2

Ministry of
Indigenous Relations
and Reconciliation

Office of the
Minister

Mailing Address:
Box 9151 Stn Prov Govt
Victoria BC V8W 9E2
email: IRR.Minister@gov.bc.ca
website: www.gov.bc.ca/irr

Telephone: 250 953-4844
Facsimile: 250 953-4856

Jessica Wood (Si Sityaawks) has been appointed as the Associate Deputy Minister leading the Declaration Act Secretariat. While the Declaration Act Secretariat reports to me as Minister, it is a separate and distinct body from the Ministry of Indigenous Relations and Reconciliation. Associate Deputy Minister Jessica Wood, as all Deputy Ministers, reports to the Deputy Minister of the Premier and works directly with me as the Minister responsible for the Secretariat. An Assistant Deputy Minister role is also being established and is currently posted [here](#). I encourage you to share this opportunity with your networks. Please note, the position is open exclusively to qualified Indigenous candidates.

Through engagement with Indigenous organizations and internal government discussions, the following principles will guide the Secretariat:

Capable

- The Secretariat will have the legal understanding and policy expertise to provide guidance to ministries in their policy and legislative work with regard to alignment with the UN Declaration.
- The Secretariat will have the capacity to coordinate complex processes and design and develop proposals for refinements and changes to aspects of the machinery of government to facilitate implementation of the Declaration Act.

Credible

- The Secretariat will have the capacity and influence to be effective in supporting the implementation of the Declaration Act.
- The Secretariat will be staffed with public servants that have the necessary skills and knowledge to effectively implement its mandate.
- Indigenous professionals are a priority in the staffing of the Secretariat.

Accountable

- Secretariat processes (decision-making structure, engagement processes, prioritization decisions) will be transparent to First Nations, Indigenous organizations and peoples as well as to government decision-makers and stakeholders.

The Secretariat's initial areas of priority include:

- Developing cross-government guidance and advice on consultation and cooperation.
- Establishing a framework for advancing both “cross-statute” and “statute-specific” legislative change priorities.
 - “Cross-statute” examples: *Interpretation Amendment Act 2021*, *Anti-Racism Data Act 2022*.
 - “Statute-specific” examples: *Heritage Conservation Act*, *Police Act*, Section 7 enabling.
 - In addition, the Secretariat is expected to be engaged on select priority legislative initiatives as “demonstration projects”.
- Developing measures and processes through which a review of laws will take place.
- Recommending for Cabinet approval which laws to prioritize for comprehensive alignment with the UN Declaration.
- Maintaining a schedule based on input from ministries, Indigenous peoples and organizations, that identifies the existing laws that are a priority for review and alignment with the UN Declaration.
- Staff the Secretariat, including a focus on Indigenous-exclusive positions and postings.

Please refer to the attached *Declaration Act Secretariat Overview* to learn more about how the Secretariat will achieve these initial priorities.

In addition, the Secretariat will be supported by an Advisory Forum that I will chair. This Forum will include at least three Indigenous members who are external to government and have expertise in the UN Declaration. The Advisory Forum will ensure that additional Indigenous expertise and experience is brought into the provincial government in its efforts to meet the standards in the UN Declaration.

I am looking forward to continuing to see progress on this important component of my mandate letter. If you have any questions, please do not hesitate to contact the Declaration Act Secretariat directly at DeclarationActSecretariat@gov.bc.ca.

Sincerely,



Murray Rankin, QC
Minister of Indigenous Relations and Reconciliation

CC: Jessica Wood | Si Sityaawks, Associate Deputy Minister
Declaration Act Secretariat

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Indigenous Governing Bodies in the Declaration on the Rights of Indigenous Peoples Act



BRITISH
COLUMBIA



Purpose

This guidance is intended to support Indigenous Peoples, communities, leaders, organizations, and the public in understanding the ongoing implementation of the *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act), specifically in relation to sections 6 and section 7, which speak to agreements between the provincial government and “Indigenous governing bodies”.

The Declaration Act establishes the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) as the Province’s framework for reconciliation, as called for by the Truth and Reconciliation Commission’s *Calls to Action*.

The Declaration Act aims to create a path forward that respects the human rights of Indigenous Peoples while introducing better transparency and predictability around work supporting reconciliation.

Background

The Declaration Act includes the following provisions:

“Indigenous governing body” means an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the Constitution Act, 1982.

“Indigenous peoples” has the same meaning as aboriginal peoples in section 35 of the Constitution Act, 1982.

6 (1) For the purposes of this Act, a member of the executive council, on behalf of the government, may enter into an agreement with an **Indigenous governing body**.

7 (1) For the purposes of reconciliation, the Lieutenant Governor in Council may authorize a member of the executive council, on behalf of the government, to negotiate and enter into an agreement with an **Indigenous governing body** relating to one or both of the following:

- a. the exercise of a statutory power of decision jointly by
 - i. the Indigenous governing body, and
 - ii. the government or another decision-maker;
- b. the consent of the Indigenous governing body before the exercise of a statutory power of decision.



The definition of “Indigenous governing body” in the Declaration Act is a broad one that may include many forms of governing structures. Government can enter into agreements with Indigenous governing bodies through two mechanisms in the Declaration Act. These may be decision-making agreements that implement free, prior, and informed consent under section 7 of the Act, or other agreements under section 6 of the Act.

Who constitutes an Indigenous people that “holds rights recognized and affirmed by section 35 of the Constitution Act, 1982” is a matter that has been answered through the evolution of the law under section 35. The jurisprudence tells us the proper title and rights holder is rooted in the laws, histories, cultures, and traditions of Indigenous Peoples.

For example, in the trial decision in Tsilhqot’in Nation, the test for proper title and rights holder was articulated by the court as being the “historic community of people sharing language, customs, traditions, historical experience, territory and resources” (paragraph 470).

The Act does not seek to (nor could it) alter or change, or define, who the proper title and rights holder may be – rather it reflects the established understanding and answer to this question in evolving section 35 jurisprudence.

What constitutes an “entity authorized to act on behalf of Indigenous Peoples” is a matter of Indigenous self-determination, as articulated in the UN Declaration including in articles 3, 4, and 5:

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.

Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.



Guidance

The idea of “authorization” in the definition of Indigenous governing bodies must be read as a form of “authorization” pursuant to Indigenous legal processes, traditions, and standards, consistent with the UN Declaration, that are undertaken as part of Nation’s expressing, re-building, and implementing their governance systems.

Given this definition, it is for Indigenous Peoples – not the Province – to determine what entity constitutes an Indigenous Governing Body. This has to be determined by Indigenous Peoples as part of their internal work, including the processes and mechanisms they use in establishing the authorization for that entity.

The Province does have an interest in achieving agreements with Indigenous governing bodies under sections 6 and 7 of the Act that deepen co-operation, develop innovative, accountable, practical and predictable processes of shared, joint, or consent-based decision-making, and support a principled approach to reconciliation consistent with the UN Declaration. In the course of negotiation of these agreements, it is for Indigenous governing bodies to share information regarding their authorization to act on behalf of an Indigenous people(s).

Working with Indigenous Peoples, as well as through engagement with other governments and stakeholders, the Province will co-develop approaches, models, and policies regarding new models of decision-making that will support negotiations and agreements with Indigenous governing bodies. This work will proceed in collaboration and cooperation with Indigenous Peoples in accordance with the UN Declaration and the Declaration Act.

Additional Support

For questions specific to the Province’s approach to Indigenous governing bodies in the Declaration Act, please contact the Ministry of Indigenous Relations and Reconciliation through the office of the assistant deputy minister for negotiations and regional operations.

Additional information

“Indigenous governing bodies” and advancing the work of Re-Building Indigenous Nations and Governments is a useful background document that is housed within UBC’s Indian Residential Schools History and Dialogue Centre.

Background on the Declaration Act and the Declaration Act Action Plan is also available online at <https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples>.