

PROPOSED RECOGNITION AND RECONCILIATION ACT

INFORMATION BULLETIN

In March 2005, the provincial government and First Nations entered into a positive era of co-operation, called the New Relationship. At the core of this relationship was a commitment to recognize Aboriginal title and rights, to respect each other's laws and responsibilities, and to reconcile both Aboriginal and Crown titles and jurisdictions.

Since the New Relationship began we have worked honourably, thoughtfully and collaboratively through many issues, mindful and hopeful that we would reach a moment where our rights would be recognized in law.

This year, in the 2009 Speech from the Throne, read by Lieutenant Governor Steven L. Point (Xwě li qwěł těł), the government promised to introduce recognition and reconciliation legislation that will "further the implementation of the New Relationship" and acknowledge that "Indigenous People have long lived throughout British Columbia and that this fact does not require proof."

In the coming months, we expect the government will fulfill its commitment by introducing legislation that recognizes Aboriginal title within our traditional territories and affirms our right to share the benefits and revenues that the resources in these territories can provide.

This is an historic step forward for our people. It represents the culmination of generations of struggle since the day that James Douglas unilaterally declared, 150 years ago, that "all the lands in British Columbia, and all the Mines and Minerals therein, belong to the Crown in fee."

The legislation will also create a greater degree of certainty for business activity and foster additional economic opportunities for our communities across the province. It will enable First Nations of British Columbia to take a real and meaningful role in the decision making of planning, management and tenuring over lands and resources.

Enclosed is some additional information on the proposed legislation – where we have come from and where we are today. We want to ensure that our communities and all British Columbians are better aware, appreciate and understand the importance of this legislation. We invite you to take the time to review this information, and we encourage you to engage in dialogue with the other leaders of the BC Assembly of First Nations, the First Nations Summit and Union of BC Indian Chiefs to address any outstanding questions while also gaining a stronger knowledge of the legislation.

Thank you



1. WHAT IS THE LEGISLATION ABOUT?

The proposed legislation will implement commitments contained in the New Relationship Agreement that was reached in 2005 between First Nations and the BC government. The legislation will recognize Aboriginal title and rights and set out mechanisms for ongoing reconciliation of Crown and Aboriginal titles and jurisdictions.

2. WHAT IS THE PURPOSE OF THE LEGISLATION?

This legislation recognizes that Aboriginal title and rights exists in BC. It allows First Nations of British Columbia to move away from consistent and institutionalized denial of our rights. It means that First Nations will not have to appear in court to prove our existence or strength of claim to the provincial government. It means the legislation will create mechanisms for shared decision making over lands and resources and provide for the completion of revenue sharing agreements.

3. WHY IT IS NEEDED NOW?

This legislation is the next step in the ongoing recognition of Aboriginal title and rights in BC, which Canadian courts have affirmed repeatedly over the last two decades. The legislation is the progression in reconciling the relationship between First Nations and the provincial government.

4. WHY WAS THE RECOGNITION LEGISLATION NOT INTRODUCED INTO THE LEGISLATURE IN SPRING 2009? WHAT IS THE NEW TIMELINE?

The provincial government, with support by First Nations, decided to postpone the introduction of the Recognition and Reconciliation Act until after the May 12 election. This additional time will provide more opportunity to ensure that our communities and all British Columbians are aware, appreciate and understand the importance of this legislation. We anticipate that the legislation will be introduced in the weeks following the election.

5. HOW WILL IT WORK?

The proposed legislation is intended to apply to all ministries and provincial agencies, especially those that have direct or indirect role in the management of lands and resources. The legislation would take priority over all other provincial statutes dealing with these subject matters. A clear and open process will be established to support shared decision making and revenue and benefit sharing.

6. WHAT ARE THE KEY PRINCIPLES OF THE LEGISLATION?

There are both legal and practical realities that everyone in British Columbia must be aware of and respect. One is that both the Crown and Aboriginal people in the province have rights that are affirmed in law and must be recognized. The second reality is that we all have to work together to move forward. We committed to one another in the New Relationship agreement that Aboriginal title and rights would be recognized; that each other's laws and responsibilities would be respected and both Aboriginal and Crown titles and jurisdictions would be reconciled.

7. HOW WILL FIRST NATIONS BE INVOLVED IN THESE DISCUSSIONS?

With support from legal counsel appointed by individual First Nations from across BC, we are actively preparing the legislation and developing the mechanisms that will be put in place to ensure that the legislation functions properly. To ensure that First Nations across the province are engaged, All-Chiefs Assemblies have been held with more planned in the weeks and months ahead. Leaders from the BC Assembly of First Nations, the First Nations Summit and the Union of BC Indian Chiefs will continue provide regular updates to all Tribal Councils and bands. Importantly, for the legislation to go forward, First Nations of British Columbia will have to agree on its substance.

8. WHAT WILL IT MEAN FOR FIRST NATIONS OF BRITISH COLUMBIA?

This legislation will help First Nations build a stronger economic future as it paves the way for joint decision making over lands and resources, along with revenue sharing, which together would enable First Nations to address issues around poverty, quality of life and economic and social development.





9. HOW WILL THE LEGISLATION IMPACT ABORIGINAL TITLE AND RIGHTS AND TREATY RIGHTS?

The legislation recognizes Aboriginal title and does not modify existing treaty rights or any other rights.

10. WHAT WILL IT MEAN FOR EXISTING TREATIES?

The proposed legislation formally recognizes that there are existing treaty rights in BC. The Act will provide for the recognition of these treaty rights and require honourable implementation of these treaties, and those yet to be concluded.

11. WILL THE LEGISLATION PREVENT FIRST NATIONS FROM GOING TO COURT TO PROVE ABORIGINAL TITLE?

No. First Nations will retain the right to prove Aboriginal title if it is not properly or adequately recognized. However, the legislation should prevent the need for First Nations to appear in court to prove our existence or strength of claim to the provincial government.

12. WHAT IS THE ROLE OF AND IMPLICATIONS FOR THE FEDERAL GOVERNMENT?

There is nothing in the proposed legislation that alters the existing federal and provincial division of powers.

13. WHAT IS SHARED DECISION MAKING AND HOW WILL IT WORK?

The intent of shared decision making is to create a unified, clearly defined process to make planning, management and tenuring decision over lands and resources. Shared decision making will provide for greater certainty for communities, industry and other governments as there will be a process in place, which serves to harmonize Crown and Indigenous law, processes and decisions.

14. WHAT DO YOU MEAN BY REVENUE AND BENEFIT SHARING AND HOW WILL WORK?

While the details of revenue sharing are to be worked out, the principle of revenue sharing is been established and the framework will be included in the legislation. In essence, First Nations will share in the revenues that derive from economic activities that take place on our traditional territories, such as tourism, mining and forestry. Already, revenue and benefit sharing occurs in many regions throughout the province. The legislation will require that this occurs in all instances.

15. WHAT IS NATION RE-BUILDING? HOW WILL THE LEGISLATION FACILITATE NATION RE-BUILDING? DOES THE MAP APPENDED TO THE DISCUSSION PAPER SET OUT HOW WE HAVE TO RE-CONSTITUTE?

Historically, Indigenous Nations in BC were organized within their territories, in accordance with our own laws. Federal Indian Acts were designed to break up the strength of tribal organizations, and imposed a western system of governance. The courts have now said that Indigenous Nations have the right to determine their own political forms of governance and that the Province must engage with Indigenous Nations in terms of shared decision-making and revenue and benefit sharing. For example, in the Tsilhqot'in decision, the court identified the Tsilhqot'in Nation as an Indigenous Nation because its communities shared a common language, customs, traditions and history. Indigenous Nations can be composed of a number of Indian Bands.

The legislation will support First Nations in re-building their historic Indigenous Nations. The legislation will make it clear that it will be First Nations and not the Province who will determine what constitutes an Indigenous Nation.

The map was included for illustrative purposes only, to demonstrate that, prior to the Indian Act and the creation of Indian Bands, there were a smaller number of Indigenous Nations, with larger territories and populations. The map does not accurately reflect the traditional territory boundaries of Indigenous Nations.

16. WHAT IS THE PURPOSE OF THE INDIGENOUS NATION COMMISSION?

The legislation will establish an Indigenous Nation Commission. First Nations will provide direction on the terms of reference for the Commission, which may include facilitating the identification, formation and reconstitution of the political structures of Indigenous Nations in BC, and providing assistance and capacity to First Nations in undertaking the further development of their political structures.

TIMELINE OF KEY EVENTS

2004 NOVEMBER

The Supreme Court decision in *Haida* and *Taku* confirms the BC government must consult with, and if necessary, accommodate First Nations before proceeding with development that may have an impact on their traditional territories, even where Aboriginal title and rights have not yet been proven.

2005 MARCH

First Nations of British Columbia and the Province of BC enter into a New Relationship, agreeing to a new government-to-government relationship based on respect, recognition and accommodation of Aboriginal title and rights and reconciliation of co-existing titles and jurisdictions.

MAY

A Special Joint Assembly of First Nations Chiefs in BC is held on the New Relationship document; a resolution is passed supporting the further development and implementation of the New Relationship document.

JUNE

FNS resolution is passed also supporting further development and implementation of the New Relationship document.

2006 NOVEMBER

UBCIC resolution is passed supporting legislative change to advance recognition of Aboriginal Title, Rights and Treaty Rights and reconciliation.

2007 MARCH

FNS resolution directs First Nations Leadership Council to begin a process to set out standards of conduct for the Province in its dealings with First Nations.

SEPTEMBER

FNS and UBCIC resolutions are passed supporting the First Nations Leadership Council to engage with the Province to develop Recognition legislation as a means to implement the New Relationship.

NOVEMBER

BC First Nations leaders develop the First Nations Unity declaration – “All Our Relations” – in which First Nations affirm their unity and commitment to support each other in exercising title, rights and jurisdiction in keeping with the continued interdependency.

FNS resolution supporting the All Our Relations declaration.

2008 FEBRUARY - MARCH

FNS, BCAFN and UBCIC pass resolutions directing the First Nations Leadership Council to secure a commitment from the Province of BC to develop and introduce Recognition legislation in the Spring or Fall of 2008.

NOVEMBER

All-Chiefs Assembly with First Nations leaders on the proposed Recognition Act held to review and provide direction on the potential legislation.

A positive decision for the Tsilhqot'in Nation (*Tsilhqot'in Nation v British Columbia*) to protect their rights in response to forestry activities in their traditional territory. This trial was one of the longest civil trials in Canadian history lasting 339 days over five years, at enormous financial and human cost.

2009 FEBRUARY

All Chiefs' Forum on proposed Recognition legislation to review the joint First Nations Leadership Council – Province of BC “Discussion Paper on Instructions for Implementing the New Relationship”.

Speech from the Throne, read by Lieutenant Governor Steven L. Point (Xwě li qwěł tēł), in which the BC government committed to introduce Recognition and Reconciliation legislation that will “further the implementation of the New Relationship” and acknowledge that “Indigenous People have long lived throughout British Columbia and that this fact does not require proof.”

MARCH

Statement from the Province of BC, supported by the First Nations Leadership Council, to delay the introduction of the Recognition and Reconciliation Act to allow time for further consultation and discussions with First Nations communities and industry.

FNS and UBCIC resolutions supporting the legislation framework presented in the discussion paper, the process for drafting the legislation and the requirements and processes for involvement and approval of the legislation by First Nations.



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