
To: Chief and Council
From: Stephanie Charlie

Throughout the document, anything in red is my own thoughts on needs or questions we should be considering in our work and moving forward with what has been presented at these meetings.

Recognition and Implementation of Rights – Follow-up Session

June 26, 2018

Richmond, BC

Opening statements and Welcome

1. Presentation – Melissa Louie
 - Today is a follow up to the April 2018 meeting.
 - In May 2018 a meeting was held to work on action items from the April 2018 meeting. This meeting (June 26) was called due to the direction that was given at the May 2018 meeting.
 - Slide Presentation “Background and Context” – copy provided
 - By not recognizing title the government still controls how we as FN govern
 - They control the revenue and how we govern
 - Without revenue, we can not govern over land and self
 - Bill C-262 – is this enough for us to move forward? Is the recognition legislation and Bill C-262 together enough?
 - *Recommendations drafted in April were sent to each nation for feedback – did Cowichan Tribes review?*
2. Presentation – Louise Mandell
 - Overview the history of court cases and where we are now
 - Identified areas of unity between the Nations and Governments
 - Use the values and principles we all agree on to help close the identified gaps
 - Common points:
 - Recognition has to work or both jurisdictions
 - Nations should be doing their own work on self-determination and government needs to financially support the work
 - Need to move beyond consultation and accommodation
 - Free and prior informed consent – also requires new tools
 - Legislative and policy shift to make space for recognition
 - Gaps:
 - Litigation mandates need to change – example: nations have recognized rights and title but end up in court to have it confirmed. Crown pleadings are rooted in denial and title is acknowledged over small area and recognition over a larger area because they do not want to give up control etc and share management.
 - Jurisdiction – inherent title and jurisdiction are not recognized. They do not support the exercise of title and jurisdiction over the land. Justification jurisdiction – the government reserve the jurisdiction to justify their lack of free and prior informed consent. By not recognizing title means the economic opportunity is non-existent.
 - Compensation and restitution of the past – nothing about addressing the wrongs of past treaties to right past wrongs in extinguishing rights and title.
 - Recommendations
 - Shift litigation mandates – crown recognizes title over territory without strength of claim rulings where there are no overlapping claims. The government can get rid of strength of claim cases by admitting title.
 - Negotiation shifts – get a list of priorities to begin – recognition of the past

- Recognition legislation – preamble includes the Calls to Action and the UN Declaration. State that all recognition will be read constantly with the Calls to Action and the UN Declaration. Bring all Canadian laws in line with the declaration.
- Develop a mechanism for nations to work together on overlapping issues to move title to the next level.

Q – What is the definition of consent in UNDRIP?

A – *Defined as free, prior and informed consent. We need to build the processes so consent is built into decision-making. Currently, Government makes a decision over land and then consult. Decision making means working together*

Q – Concern for indigenous rights (governance) is different nation to nation. Nuu-cha-nulth is a hereditary chief system but they have not been at the table. How do you rectify that?

A – *each community has a right to determine who comes to the table and the nations determine who to send for the discussions*

Comment – We need to define what free is. The costs are not just monetary; it's the cost to heal and rebuild our communities. What is the free part of "free, prior and informed consent"?

3. Goals and Objectives

- Federal Government released their 10 principles that show a commitment – the issue is 2019 is another election so if there is nothing put in place by September to move forward then we potentially miss this opportunity.
 - BC is the only region taking on this work for the Recognition and Reconciliation legislation.
- We need to take the 18 recommendations that were listed out in the April meeting and pick a few we can put forward now. Another option is to consolidate the recommendations and put together an options paper
- Recommendations Paper (listed out the 18 listed) – need to find the top few to prioritize what we move forward
 - What is an obstacle in our own individual nations to get title, out of poverty etc? Those will help agree on priorities.
 - Canada has given us a hint of what they are willing to do in their 10 principles. We could align with their principles to get some quick wins
 - Some items in the paper are not under federal jurisdiction.

4. Plenary Dialogue – Chiefs and Leadership

Michelle Corfield – speaking on behalf of Lake Cowichan

- What was the outcome of Quebec?
- The issues we are facing are not the ministers; the problem is at the public service level. Legislation can inform how we are responded to on the ground and at the tables we sit at. We need to consent to do this work together and we need to get this done for our children.

Resolution [on page 46 of the meeting package] at the AFN special meeting in Quebec

- Concerns from some nations who wondered how this new legislation would affect their historic treaties. In the end, all consented.
- BC Region is the only region moving on this work.
- AFN National Chief election causing no movement on the resolution
- From today moving to end of October we need to work to put something together

Haida Representative

- Had thoughts and comments on moving away from the Indian Act and currently what is happening in her community.

Wetsuwutun FN

- Recommendation that partners that marry into communities receive the same rights no matter the last name.
- Housing – they were put on a freeze list for the past 10 years. With the new housing program announced we need to start building right away.

Shana Manson

- Rebuilding of Trust – the government can immediately help this and it should be a focus
- April meeting VI Region said they wanted the legislation is simple and not get bogged down by the small community level issues. At first get the big items legislated
- The objective is to get legislation to recognize title and rights then leave it to individual nations to implement it as needed for each nation.

Recommendation to sit down and resolve the overlapping land issues – get the maps resolved at the leadership tables

Bob Chamberland

- 5 priorities to summarize the list of priorities that came out of the April meeting
 - 4 principles from the All Chiefs meeting post Delgamuukw
 - Doctrine of Discovery and Doctrine of Terra nullius
 - FN governance rebuild
 - Legal pluralism
 - FN – inter-nation autonomy

Judith Sayers

- Need to take any options to further our rights and if legislation is the way we need to go through the process; we will start there
- What are the mechanisms we need to put things in place after the legislation is passed? How are we going to realize our rights as we define them? Self Determination is how you define that and if the government is going to live up to those definitions will depend on how we enforce the change.
- In the paper, one of the failures is we did not define what shared decision making is – we need to define that.
- We need to define what free, prior and informed consent is – according to Government it is not a veto on things on the land.
- We need to be sure that anything changed on the draft we help develop comes back for our approval. We have to have a bigger role than input in the legislation; we need say on the final draft.
- We need timelines and deadlines
- We can't leave out water – we don't want to be only involved in land use planning
- We need to respect other nations free, prior and informed consent – we need to work better together and we respect their decision on what is happening in their territory.

5. AFN BC Regional Chief – reflection on comments regarding the legislative work

- Looking at the federal laws and the provincial laws – looking at title to have true control over laws
- We have always fought for our rights and title but the change now is the fed. and prov. governments are at the table with us to discuss recognizing our rights.

6. Plenary Dialogue – Chiefs and Leaders – further recommendations on proposed legislation

- Meaning for articles 32 (2) and article 19 need to be defined or we will be in the same situation as with article 35 in the constitution
- The government must talk to us in good faith – what does “good faith” mean?
- We need to understand amongst ourselves the scope – our conversations have been focused in title but for the legislation what else is within the scope (i.e. does it effect and apply to the other legislation such as the education legislation that is being developed).
- Need a process around consent – needs to come from the community members.
- If we don't have title to the land the recognition of our rights to govern etc doesn't matter. Recommendation #4 is the most important to move forward with the other stuff.
- Concern with the other provinces not doing their job on this work and the potential of them not agreeing with what we put forward or slowing this down.

Joni Olsen - Tsartlip

- Why is Joe Wild still planning on moving forward with his 25 questions when in April we decided we would not do the questions and instead developed the 18 recommendations – it is insulting.
- Important for Tsartlip is a change in the fiscal relationship to recognize land ownership – underlying title to that land. Owners get to make management decisions.
- If had to support a few top priorities the top would be - #1, #3, #7 but feel that 18 priorities are not too many to push forward.

Bob Chamberland

- How many of the priorities are being handled outside of this process? Those items should be removed so we do not put the focus there.
- Anything decided here needs to be clear for our technical staff to move forward to do the work we direct to be done.

Michelle Corfield

- This legislation needs to be at the top and the first referred to in law.
- We have to talk about infringement on land and title it is illegal.
- This will impact all other legislation and how things are done in our communities

Dustin Rivers – Squamish Nation

- Reviewed priorities with Squamish and retaining ownership again

Shana Manson

- At the April meeting, we spoke about a working group for each of the regions to appoint someone to the working group.

Gordon Sabastian - Gitxsan

- 62 hereditary chiefs with watershed issues affecting the fish. The Gitxsan have a fear of governance
- No one is looking at the individual rights of the people. We have to do this work – no one is protecting our rights to fish and hunt.
- We have a fear of conflict so let others on the land and do not fight against trespassing.

Next Steps:

- Work together to develop, refine and finalize options identified to date. All recommendations are important.
 - Recognition legislation is being developed and we want to collectively input
 - A technical team will review the 18 recommendations to see if the recognition legislation addresses the 18
 - Can put all the 18 into an options paper for the next meeting
 - Other legislative initiatives will be informed by this work
 - Internal work and work among ourselves – shared territory, overlapping issues, dispute resolution. There is funding needs to help do this work. We need to secure the funding to do the work while the government is in their election year so our work continues and we are ready.
 - The 4 principles are mandatory in how we move forward
 - Conduct an analysis of what is covered in Bill C-262
 - Support for development of legislation
 - Support for legislative review in alignment with our values and priorities the UNDRIP and other initiatives.
- The current recommendations will be refined based on today's discussion
- Interest for input into the legislation
- Follow up session for all chiefs and leadership will be planned
- Staff will work to refine and circulate and next draft for input by email.

Cowichan Tribes next steps: Recommendations

1. Chief and Council review the documents that came out of the following meetings:
 - a. April 2018 meeting held in Vancouver
 - b. May 1&2 meeting in Quebec
 - c. May 2018 - Nanaimo
 - d. June 26th meeting
2. Follow up on the recommendation to appoint someone to the working group and get a seat at the table
3. Chief and Council review:
 - a. 18 recommendations
 - b. provincial and federal 10 principles and the response paper from the leadership council
4. Chief and Council determine priorities and direction for the individual on the working group