

## Module # 12 Indigenous Crown Relations

### **ALL LEVELS OF CROWN HAVE FIDUCIARY OBLIGATIONS FEDERAL DEPARTMENTS, CROWN INDIGENOUS RELATIONS AND NORTHERN AFFAIRS CANADA, INDIGENOUS SERVICES CANADA**

In Module #8, Section e, Indigenous Law, the Fiduciary Duty of the Crown was considered in the immediate legal context without consideration of what application of the United Nations Declaration on the Rights of Indigenous peoples means in expanding and further defining the Fiduciary Duty of the Crown. At the end of that section, it was noted that First Nations groups increasingly are rejecting “consultation” as insufficient and are seeking to be engaged as governments with jurisdiction and stewardship responsibilities throughout their territories.

Naturally enough the 104 various federal departments, and their respective 35 ministries, must coordinate their gradual adoption of UNDRIP with other related Ministries. In an effort to expedite internal communications in 2017, Indigenous and Northern Affairs Canada (INAC) was dissolved and replaced by two new departments: Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) and Indigenous Services Canada (ISC).

Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) was created to renew the nation-to-nation, Inuit-Crown, government-to-government relationship between Canada and First Nations, Inuit, and Métis. The creation of this new ministry was intended to modernize Government of Canada structures to better enable Indigenous peoples to build capacity and support their own vision of self-determination and so be able to lead the Government of Canada's work in the North.

This Ministry handles the political hot potatoes that interface with the fiduciary duty of the Crown as relevant in other Ministries. These issues include; Treaties, Agreements and Negotiations, Reconciliation, Northern Affairs, Indian Residential Schools, Educational Resources for Indian, Inuit and Metis, Funding Programs for Indigenous and Northern Communities, and the Murdered and Missing Indigenous Women and Girls and Two Spirit Gay, Lesbian, Bisexual, Transgender, Queer, Questioning, Intersex, Asexual, and plus National Action Plan.

Indigenous Services Canada (ISC) works collaboratively with partners to improve access to services for First Nations, Inuit, and Métis. This ministry is intended to support and empower Indigenous peoples to independently deliver services and address the socio-economic conditions in their communities. This Ministry is responsible for Indian Status, Indigenous Health, Education, Social Programs (family and child services, family violence prevention, on-reserve income assistance, Jordan's Principle – timely delivery of services, urban programs, supporting Inuit children), Funding Programs, Water in First Nation Communities, First Nations housing, First Nations community infrastructure, Consultation, engagement and the duty to consult, Establishing a new fiscal relationship, Governance, Community Economic Development, Emergency management, Environment and natural resources.

### **BREAD CRUMB POLITICS**

The transition of Indian Affairs into two departments in 2017 was an attempt by the government to turn the ship of state. Like an ocean liner the large ship of state requires time and room to change course. Previous government services and engagement of Indigenous peoples has been rightly characterized as “Bread Crumb politics”, wherein Indigenous People have come to expect the table sweepings from the feast that the crown has made from our lands. Because Canadians have been trained on pre-conceptions of who Indigenous people are, this change has been abysmally slow.

**a. BC – MINISTRY OF INDIGENOUS RELATIONS AND RECONCILIATION**

The Ministry of Indigenous Relations and Reconciliation leads the B.C. Government in pursuing reconciliation with the First Nations and Indigenous peoples of British Columbia. This ministry administers the Declaration on the Rights of Indigenous Peoples Act, consulting First Nations on behalf of government and facilitation of project proponent consultation, Reconciliation and Impact Benefit Agreements, First Nation negotiations, Economic Development, Community Programs, First Nations Clean Energy Business Fund, and the First Citizens Fund.

Some provincial ministries and Crown corporations pursue their own consultation with First Nations. The Ministry of Jobs Economic Recovery and Innovation has the “Indigenous Business and Investment Council” (IBIC) who meet to consider issues and advise the minister. Community Living BC – a Crown Corporation, and The Justice Institute of British Columbia have their own Indigenous Advisory Committees. The other ministries consult with Indigenous peoples on an “as needs” basis.

Reconciliation is an extremely complex issue that challenges the self-identity of Canadians and British Columbians. The colonial society that created Canada and British Columbia was driven by economic incentives reserved only for Europeans, especially the British, and which deliberately, explicitly, and systematically excluded Indigenous people. Those past decisions, a legacy of racism, are now entrenched in the law, and the psychology of Canadians.

Government policy makers are limited in their abilities to work with Indigenous people by historic perceptions of Indigenous peoples. Equally constraining to government policy makers is their own perception of self. Society will not change because a government law or policy changes. Society will change when enough individuals change their perception of Indigenous people and themselves to reach a tipping point for the collective Canadian and British Columbian self-identity.

To advance reconciliation beyond bread crumb politics the dialogue and the process must move out of the constraints which are the legacy of colonialism and the context for the discussion of reconciliation. Without an alternate identity there is no possibility of a paradigm shift in government policy makers. Basically, the government policy makers either have not accepted, or will not accept, that accomplishing implementation of the United Nations Declaration on the Rights of Indigenous Peoples means the end of their position of privilege.

To incentivize the necessary change in self-identity government policy makers need public validation of their new function and duties. That validation can only come from the electorate. The electorate will only support and validate changes in government policy if those changes are seen to benefit not only indigenous peoples but also, and most importantly in the electorates perception, themselves and their family.

### **b. BC TREATY COMMISSION**

The BC Treaty Commission is an independent body that advocates for and facilitates the recognition and protection of Indigenous rights and title through the negotiation of treaties and agreements, including the implementation of the UN Declaration. Its work encompasses three main roles across a broad range of activities: facilitating negotiations including assisting the Parties in finding solutions and resolving disputes, allocating negotiation support funding to enable First Nation participation in the negotiations, and educating the public about treaty negotiations.

The Treaty Commission is the only tripartite statutory body in the country whose mandate is to support reconciliation. The BCTC Agreement and associated legislation states that the primary role of the Treaty Commission is to assist the Parties and the Principals as an independent facilitator of the negotiations. As an independent facilitator, the BCTC assists in advancing reconciliation through the made-in-BC treaty negotiations process by ensuring the work of the Parties is effective and is making progress.

To do this, the Treaty Commission:

- assists the Parties in developing solutions and in resolving disputes
- observes and reports on negotiations progress and encourages timely negotiations
- chairs key meetings at negotiating tables
- reports publicly on key opportunities and obstacles
- works with the Principals on improving the treaty negotiations process
- monitors and reports on progress and encourages timely negotiations
- In 2018 this mandate was expanded to include supporting negotiating Parties in implementing the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration), the Truth and Reconciliation Commission of Canada: Calls to Action (TRC Calls to Action), the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples, and the recognition of First Nations title and rights.
- Commissioners and staff are involved in an increasing variety of facilitation initiatives.
- This increased demand has arisen from a number of circumstances, including: intensified treaty negotiations at Stage 5 and Stage 4 tables, completion of final agreement negotiations and the ratification requirements for First Nations, stalled treaty negotiations, intensified inter-First Nation dialogue on overlapping and shared territories and complex consultations between the Crown and First Nations affected by overlaps, as well as intensified internal First Nations dialogue, especially in multi-community First Nations with respect to issues of shared territory, governance, and capacity.
- In recent years, the Treaty Commission has begun to take on special initiatives to support treaty negotiations and provide First Nations with more tools. These have included hosting forums that create a venue for sharing knowledge, experiences, and best practices, especially between First Nations currently negotiating and First Nations that are implementing modern treaties

- publishing resources, such as the Ratification Guide, created to assist First Nations with community approval and ratification votes, and the Human Resource Capacity Tool Kit, to support First Nations in preparing for self-government

**C. INDIGENOUS ORGANIZATIONS, THE SUMMIT, BC ASSEMBLY OF FN, UBCIC, METIS NATION**

**THE SUMMIT**

In October 1990, leaders of First Nations met with the Prime Minister of Canada and then with the Premier and Cabinet of British Columbia urging the appointment of a tripartite task force to develop a process for modern treaty negotiations in BC. The federal and provincial governments agreed and on December 3rd, 1990, the BC Claims Task Force was established by agreement of the Government of Canada, the Government of British Columbia, and representative leadership of the First Nations.

Leaders from First Nations across British Columbia appointed three members to the BC Claims Task Force at a meeting called the First Nations Summit. Two members were appointed by the Government of Canada, and two by the Province of British Columbia. Following more than five and half months of deliberations, the 1991 Report of the BC Claims Task Force recommended that First Nations, Canada and British Columbia establish a new relationship based on mutual trust, respect and understanding – through political negotiations.

The First Nations Summit is an action and solutions oriented First Nations-driven organization. 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. The foundation for the Summit's mandate arises from:

- the tripartite 1991 BC Claims Task Force Report jointly developed by the First Nations, Canada and BC,
- the 1992 agreement to create the BC Treaty Commission as the independent body to “facilitate” treaty negotiations, and
- subsequent federal and provincial legislation and the First Nations Summit Chiefs resolutions implementing the 1992 agreement and establishing the BC Treaty Commission as a distinct legal entity.

Approximately 150 First Nations participate in First Nations Summit assemblies and bring forward, discuss and provide political direction on issues of common concern.

In carrying out its mandate, the First Nations Summit does not participate as a negotiating party at any First Nations specific negotiations. Over time and through the collective decisions by First Nations Chiefs and leaders, as directed by resolutions, the Summit has been instructed to take a leadership and advocacy role on the full range of issues of concern to First Nations, including negotiations and implementation issues of treaties, agreements and other constructive arrangements and day-to-day social and economic issues which affect First Nations.

A critical element of the First Nations Summit's work includes identification of concrete steps to overcome negotiation barriers. In First Nations-Crown treaty negotiations in BC, we are facing a number of process and substantive issues that pose significant challenges and must be overcome in order to reach treaties, agreements and other constructive arrangements.

Although the First Nations Summit remains committed to the made-in-BC approach to negotiations and to assisting First Nations in achieving full and comprehensive treaties as a primary objective,

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they fully respect and support decisions of any First Nation to enter into alternative agreements and other constructive arrangements to advance the interests and priorities of their respective nations.

### BC Assembly of First Nations,

The British Columbia Assembly of First Nations (BCAFN) is a Provincial Territorial Organization representing and advocating for the 203 First Nations in British Columbia. BCAFN representation and advocacy 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. The BCAFN also represents and advocates for First Nations in BC that are not in treaty negotiations.

### Mission Statement

BCAFN will ensure that:

- First Nations title, rights, and jurisdictions are recognized and respected;
- First Nations cultural identities, systems of government and approaches to self-determination are the foundation of our success;
- First Nations jurisdiction, laws, territories and traditions are respected by governments, industry and the public;
- First Nations are empowered by governmental legislation, policies, programs and processes; and,
- Our efforts support nation building, collective action and a focus on solutions.

### Vision Statement

First Nations governments exercising title, rights', and jurisdiction for our lands, resources and peoples in harmony with our customs, languages and laws.

### The Union of British Columbia Indian Chiefs (UBCIC)

The Union of British Columbia Indian Chiefs is a First Nations political organization founded in 1969 in response to Jean Chrétien's White Paper proposal to assimilate Status Indians and disband the Department of Indian Affairs.

Since the disbanding of the Allied Tribes of British Columbia in 1927, there had been many attempts to create a unified provincial organization, but conflict between the Native Brotherhood of British Columbia and the National American Indian Brotherhood had been too great.

At a three-day meeting in November 1969 in Kamloops, 175 provincial chiefs unanimously voted to create the UBCIC. In 1971, the UBCIC adopts its Constitution and By-laws and is incorporated under the BC Societies Act.

### Metis Nation of British Columbia (MNBC)

There are more than 20,000 registered MNBC Citizens. MNBC represents thirty-nine Métis communities in British Columbia. MNBC's mandate is to develop and enhance opportunities for Métis communities by implementing culturally relevant social and economic programs and services. Métis Nation BC is recognized by the Métis National Council, Provincial Government of British

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Columbia, and the Federal Government of Canada, as the Governing body for Métis in BC. The Metis in BC have no Indigenous or Canadian legal basis for a land claim.