

**INDIGENOUS RELATIONS: CHALLENGES, POSSIBILITIES, AND THE FUTURE OF
COLLABORATIVE GOVERNANCE**

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Reece Harding and Julia Tikhonova

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A note on terminology: In this paper, the term “Aboriginal” will be used in the legal and historical context of Aboriginal rights, to align with the wording used in Canada’s Constitution. Throughout the remainder of the paper, the terms “Indigenous” and “First Nations” will be used interchangeably. In doing so, we acknowledge that these terms are not exclusive and that different Indigenous groups may have different preferences in relation to the above.

I. INTRODUCTION

On June 3, 2021, the federal government passed Bill C-5, making September 30th a federal statutory holiday known as the National Day for Truth and Reconciliation.¹ This national initiative is a reminder of the ongoing importance for Canadians and their governments to reflect on the legacy of residential schools and to commit to reconciliation. In light of these goals, this session will explore the current and future role of local governments in reconciliation and collaborative governance with First Nations.

In this paper, we will first provide an overview of the legal framework of Aboriginal rights and the role of local governments in relation to the Crown’s duty to consult with Indigenous peoples. Secondly, we will examine recent developments to BC’s *Declaration on the Rights of Indigenous Peoples Act* (“DRIPA”) legislation and its potential impacts on local governments. Thirdly, we will outline the Truth and Reconciliation Commission’s (“TRC”) calls to action that refer specifically to local governments. Lastly, we will discuss recent collaborative initiatives between local governments and First Nations in BC that embrace the aims of DRIPA and the TRC calls to action. We hope this session encourages local governments to continue being proactive in finding opportunities for reconciliation and meaningful collaboration with First Nations groups.

II. OVERVIEW OF ABORIGINAL RIGHTS

A. Section 35 of the Constitution

Canada’s *Constitution Act* is the supreme law of Canada that sets out the principles of democratic government, including those in the Charter of Rights and Freedoms.² Section 35(1) of the Constitution provides constitutional protection to Aboriginal interests to ancestral lands

¹ Bill C-5, An Act to amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code (National Day for Truth and Reconciliation), 2nd Session, 43rd Parliament (as passed by the House of Commons on June 3, 2021).

² *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

by recognizing and affirming the aboriginal and treaty rights of the aboriginal peoples of Canada.³ The important purpose of s. 35 was articulated by Chief Justice Lamer in *R. v. Van der Peet*, as follows:

In my view, the doctrine of Aboriginal rights exists, and is recognized and affirmed by s.35(1), because of one simple fact: when Europeans arrived in North America, Aboriginal peoples were already here, living in communities on the land, and participating in distinctive cultures, as they had done for centuries. It is this fact, and this fact above all others, which separates Aboriginal peoples from all other minority groups in Canadian society and which mandates their special legal, and now constitutional, status.

More specifically, what s.35(1) does is provide the constitutional framework through which the fact that Aboriginals lived on the land in distinctive societies, with their own practices, traditions and cultures, is acknowledged and reconciled with the sovereignty of the Crown. The substantive rights which fall within the provision must be defined in light of this purpose; the Aboriginal rights recognized and affirmed by s. 35(1) must be directed towards the reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown.⁴

Though not expressly defined within section 35, Aboriginal rights are the collective rights deriving from an Aboriginal group's continuous use or occupation of an area. These rights are broad and diverse, and they include practices, customs and traditions that were integral to the distinct culture of each group.⁵

One important Aboriginal right is Aboriginal title, which is an Aboriginal group's right to its land. Given that Aboriginal title arises from possession of land before British occupation, it is not defined by reference to common law property law concepts.⁶ Rather, it is defined as a *sui generis* title that encompasses the right to exclusive use and occupation of land for a variety of purposes.⁷ The uses of the land must be connected to the nature of the group's attachment to the land.⁸ A significant element of Aboriginal title is its collective nature, meaning that it is collectively held by all members of a Nation and it is protected for its succeeding generations.⁹

³ *Ibid.*, section 35.

⁴ *R. v. Van der Peet*, [1996] 2 S.C.R. 507, at paras 31-32.

⁵ *Ibid.*, at para 46.

⁶ *Delgamuukw v. British Columbia*, 1997 CanLII 302 (SCC), [1997] 3 SCR 1010, at para 190.

⁷ *Ibid.*

⁸ *Ibid.*, at para 117.

⁹ *Ibid.*, at para 115.

Consequently, the land cannot be alienated to third parties or encumbered in ways that might prevent future generations of the Aboriginal group from using the land.¹⁰ In order to make out a claim for Aboriginal title, the group asserting title must satisfy a three-criteria test in court.¹¹

Unlike other levels of government, local governments have no direct constitutional relationship with First Nations. In other words, section 35 does not impose any direct duties on local governments in relation to consulting or engaging with First Nations, as will be explained below.

B. Duty to Consult & Accommodate

1. Federal and Provincial Governments

The Crown's duty to consult and accommodate an Aboriginal group arises where the Crown has "knowledge, *real or constructive*, of the *potential existence* of an Aboriginal right and contemplates conduct that *may* adversely affect it."¹² The elements of this duty are worth emphasizing:

- *Real or constructive knowledge*: the Crown's duty arises both when it knows of an Aboriginal rights claim *and* when it reasonably should have known of a potential claim;
- *Potential existence*: it is not necessary for the Aboriginal right to have been proven; and
- Conduct that *may* adversely affect the Aboriginal right: the Crown owes a duty to consult where its conduct could potentially infringe upon an Aboriginal right, not only where its conduct *will* infringe upon it.

The scope of the Crown's duty to consult ranges on a spectrum from an obligation to provide notice to an obligation to accommodate the interests of the group, depending on the seriousness of its potential infringement.¹³

2. Local Governments

Simply put, the duty to consult and accommodate is the responsibility of the Crown. Given that local governments are not the Crown, this independent duty does not extend to them.¹⁴ This was exemplified in the decision of *Neskonlith Indian Band v. Salmon Arm*, 2012 BCCA 379, where the City of Salmon Arm had granted a development permit for the development of a

¹⁰ *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 (CanLII), [2014] 2 SCR 257, at para 74.

¹¹ *Supra* note 6 at para 143.

¹² *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 (CanLII), [2004] 3 SCR 511, at para 35.

¹³ *Ibid.*, at para 43.

¹⁴ *Neskonlith Indian Band v. Salmon Arm*, 2012 BCCA 379.

shopping mall on lands near the Neskonlith Indian Reserve #3. Although the Neskonlith had not initiated a claim for Aboriginal title, the reserve was widely regarded as their traditional territory. The Neskonlith objected to the development on the basis that they were not consulted, arguing that the Crown's duty to consult should extend to all government bodies including the City.

Justice Newbury for the Court of Appeal dismissed the Neskonlith's arguments, and clarified that there are legal and practical reasons that militate against inferring a duty to consult on the part of local governments.¹⁵ Specifically, the Court held that local governments lack the sufficient remedies and practical resources to consult and accommodate Aboriginal groups every time a decision affects that group's rights.¹⁶ In addition, the Crown cannot simply delegate its duty to consult to local governments, as, pursuant to section 2(2)(b) of the *Community Charter*, the Province must not assign responsibilities to municipalities unless there is provision for resources required to fulfill the responsibilities.¹⁷

In sum, the duties of local governments to consult with Indigenous groups are rooted within the parameters of their enabling statutory obligations, such as subsections 434(2)(c) and 475(2)(b)(iv) of the *Local Government Act*, dealing with consultation during the development of regional growth strategies and official community plans, respectively. Therefore, in the absence of a statutory obligation to do so, local governments do not currently have a duty to consult in making decisions such as the issuing of permits or amending their bylaws. Nevertheless, because local governments are the closest level of government to their communities, it remains important for local governments and First Nations alike to engage and collaborate in positive ways that advance reconciliation. As we will discuss below, there is a diverse array of possibilities to do so.

III. DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT ("DRIPA")

The *Declaration on the Rights of Indigenous Peoples Act*, S.B.C. 2019, c. 44 ("DRIPA") is a historic legislative initiative that came into force in 2019. British Columbia is the first jurisdiction in Canada, and among the first in the world, to adopt this sort of legislation, which aims to formally incorporate the Indigenous rights instrument, *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP"), into law. The purpose of DRIPA is to facilitate the alignment of provincial laws with UNDRIP and to increase reconciliation efforts by collaborating with Aboriginal peoples in decisions that impact their communities and territories.¹⁸

¹⁵ *Ibid.*, at para 66.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, at para 18.

¹⁸ Government of B.C., "Info for Local Government: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/bc_declaration_act-factsheet-local-government.pdf."

While DRIPA does not directly impact either the *Local Government Act* or the *Community Charter* at present, it will surely affect local governments over time as BC laws align with the goals of UNDRIP. In fact, the province has expressly committed to engaging with local governments in this process: “future changes will take time and will be done in collaboration with Indigenous peoples. Local governments and key stakeholders, including business, will have a role in this process.”¹⁹

Two significant aspects of DRIPA that will impact local governments over time are its requirement for a provincial “action plan” in section 4, and its provision of legal authority for agreements between the Province and Aboriginal groups in sections 6 and 7. We will summarize recent developments in these two areas.

A. BC’s Draft Action Plan

On June 11, 2021, pursuant to section 4 of DRIPA, the Province released a draft action plan for the implementation of DRIPA, consisting of “action items” to be implemented over the next five years.²⁰ The action items, which were identified in collaboration with Indigenous peoples in BC, are organized into “themes” of (a) self-determination and self-governance; (b) Indigenous title and rights; (c) ending Indigenous-specific racism and discrimination; and (d) social, cultural, and economic well-being. Each theme prioritizes specific actions and policies in order to achieve the objectives of UNDRIP. Given that the Province intends to implement these priorities in the next five years, local governments should be aware of the action and more specifically the following action items that will directly impact them:

- Action 1.13: “Support inclusive regional governance by advancing Indigenous participation in regional district boards.”
- Action 3.1: “Provide essential training across the B.C. public service and other public institutions and corporations to build foundational competence and understanding of the rights of Indigenous peoples, the UN Declaration, the Declaration Act, Indigenous history, treaties, Indigenous-specific racism, the dynamics of proper respectful relations and meaningful reconciliation.”

¹⁹ *Ibid.*, at pg. 2

²⁰ Government of B.C., Draft Action Plan: <https://engage.gov.bc.ca/declaration/>

In July 2021, the Union of BC Municipalities (the “UBCM”) published a submission providing feedback on the action plan on behalf of its members.²¹ Recognizing the importance for local governments in working toward reconciliation with Indigenous peoples in their communities, the UBCM voiced its support for the above action item 1.13. The submission also recognized several action items that may benefit from increased engagement with local governments, such as conservation policy, policing reform, and a cross-governmental review of services for Indigenous peoples. These items include:

- Action 2.9: Engage with Indigenous partners on issues related to conservation and biodiversity in BC including the protection of species at risk;
- Action 2.10: Lead work with the federal government to develop new strategies to protect and revitalize BC’s wild salmon populations, including the development and implementation of a cohesive BC Wild Pacific Salmon Strategy;
- Action 2.11: Reform forest policy in consultation with First Nations to ensure shared prosperity while protecting the environment;
- Action 3.12: Develop and implement comprehensive policing reforms to address widespread concerns about systemic biases and racism within policing, including updating the *Police Act* to reflect today’s challenges and needs, implementing updated Provincial Policing Standards, contributing to the modernization of the federal First Nations Policing Program, and enhancing community-based prevention programming for at-risk individuals;
- Action 4.16: Create a provincial urban Indigenous advisory table to address priorities identified by urban Indigenous communities that represent the interests of Elders, youth, women and persons with disabilities;
- Action 4.17: Undertake a cross-government review of provincial supports and services for Indigenous peoples in urban settings and develop a plan that will provide greater collaboration and coordination to meet needs.

UBCM’s feedback highlights the important unique perspectives that local governments bring to reconciliation. Being the closest level of government to their citizens, local governments are particularly attuned to the needs and circumstances of First Nations relations in their communities in ways that provincial and federal governments are not. Accordingly, as articulated by the Supreme Court of Canada:

²¹ Union of BC Municipalities Submission on the *Declaration on the Rights of Indigenous Peoples Act* Draft Action Plan, July 30, 2021: <https://www.ubcm.ca/sites/default/files/2021-08/DRIPA%20Action%20Plan%20Submission.%20Jul%2030.pdf>.

... law-making and implementation are often best achieved at a level of government that is not only effective, but also closest to the citizens affected and thus most responsive to their needs, to local distinctiveness, and to population diversity.²²

This is certainly relevant in the context of DRIPA: for example, local governments will have more informed knowledge of the work that needs to be done in relation to their municipal police forces for the purpose of action item 3.12, as well as the state of biodiversity and fish habitats in their communities for items 2.9 and 2.10. Therefore, engaging with the views of local governments in relation to the above action items will very likely enhance the effectiveness of DRIPA.

As of September 15, 2021, the feedback period for BC's draft action plan has closed, and the action plan is in its feedback analysis phase. The Province aims to release the final action plan in early 2022. If UBCM's recommendations are incorporated into the final plan, local governments should be prepared for increased involvement in policy creation and reconciliation efforts.

B. Section 6 & 7 Agreements

Another significant tool introduced by DRIPA is its provision for joint decision-making between the provincial government and Indigenous groups. Section 6 of DRIPA allows a member of the Executive Council to enter into an agreement with an Indigenous governing body on behalf of the government while section 7 allows the Province to enter into joint decision-making agreements with Indigenous governing bodies. Section 7 agreements may relate to either a joint exercise of authority, or may require the consent of the Indigenous governing body before the exercise of a statutory power of decision.

Not only will section 6 and 7 agreements facilitate collaboration with Indigenous groups in decision-making, but they will also assist with the goal of recognizing Indigenous self-government and self-determination, which in itself is an imperative aspect of reconciliation. In fact, one of the priorities identified in BC's draft action plan is to ensure the use of sections 6 and 7 of DRIPA to create agreements.²³ While the legislation so far does not seemingly permit local governments to be parties to these agreements, local governments will nevertheless be indirectly impacted and play a role in their implementation.

The first Section 7 agreement is currently in its negotiation phase. On June 15, 2021, the Province announced that it is collaborating with the Tahltan Nation on a joint decision and consent agreement in relation to environmental assessment approvals for two mining projects

²² *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40 (CanLII), [2001] 2 SCR 241, at para 3. See also *1193652 B.C. Ltd. v. New Westminster (City)*, 2021 BCCA 176 at para 10.

²³ Government of B.C., Draft Action Plan: <https://engage.gov.bc.ca/declaration/>, item 1.3

in Tahltan territory.²⁴ As the impact of DRIPA and particularly the draft action plan evolves, the writers anticipate that more section 6 and 7 agreements will be implemented and that local governments will be impacted by their implementation.

IV. TRUTH AND RECONCILIATION COMMISSIONS CALL TO ACTION

In 2015, the National Centre for Truth and Reconciliation (the “TRC”) released 94 calls to action, calling on governments, institutions, and Canadians generally in order to advance reconciliation efforts in Canada in relation to the legacy of residential schools. Five of the calls to action directly refer to local governments:

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.

47. We call upon federal, provincial, territorial, and municipal governments to repudiate concepts used to justify European sovereignty over Indigenous peoples and lands, such as the Doctrine of Discovery and terra nullius, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts.

57. We call upon federal, provincial, territorial, and municipal governments to provide education to public servants on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

75. We call upon the federal government to work with provincial, territorial, and municipal governments, churches, Aboriginal communities, former residential school students, and current landowners to develop and implement strategies and procedures for the ongoing identification, documentation, maintenance, commemoration, and protection of residential school cemeteries or other sites at which residential school children were buried. This is to include the provision of appropriate memorial ceremonies and commemorative markers to honour the deceased children.

77. We call upon provincial, territorial, municipal, and community archives to work collaboratively with the National Centre for Truth and Reconciliation to identify and collect copies of all records relevant to the history and legacy of

²⁴ News Release, “Province, Tahltan Nation begin talks on shared decision-making,” June 15, 2021: <https://news.gov.bc.ca/releases/2021IRR0029-001165>.

the residential school system, and to provide these to the National Centre for Truth and Reconciliation.²⁵

While the above calls to action refer directly to local governments, they are certainly not the only calls to action in which local governments play a role in advancing reconciliation. Several other calls to action by the TRC either indirectly affect local governments or have directly inspired various collaborative initiatives between local governments and First Nations. Some examples are demonstrated below.

V. IMPACT OF DRIPA AND TRC CALLS TO ACTION ON COLLABORATIVE GOVERNMENT

The Province has recognized that many local governments in BC have “already embraced the principles of the UN Declaration and have built solid relationships with Indigenous peoples.”²⁶ Indeed, DRIPA and the TRC Calls to Action have contributed to an array of recent projects and other relationship-building initiatives between local governments and First Nations, with or without the involvement of the Province. This section of the paper will explore these initiatives, which include funding agreements, economic partnerships, land planning, educational initiatives, and many others.

A. Initiatives Between the Province, Local Governments and First Nations

The provincial government plays an important role in facilitating and strengthening initiatives between local governments and Indigenous groups. Some examples of particularly noteworthy recent projects are detailed below.

In June of 2020, the Sk̓wx̓wú7mesh (Squamish) and Lílwat Nations entered into an agreement with the Province, the Resort Municipality of Whistler and Whistler Blackcomb for the purpose of creating new economic opportunities in the region.²⁷ The agreement provides a framework for establishing government-to-government relations and provides the First Nations with development opportunities, a land exchange, and collaborative employee housing.²⁸

In order to address the overrepresentation of Indigenous peoples in the justice system, as well as to restore First Nations law and justice system into the criminal justice system, the Province has partnered with the BC First Nations Justice Council (BCFNJC) to create Indigenous justice centres in municipalities throughout the province, which will focus primarily on criminal law

²⁵ Truth and Reconciliation Commission of Canada Calls to Action: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf

²⁶ *Supra* note 18, at page 1

²⁷ Ministry of Municipal Affairs and Housing, “Historic agreement focuses on economic development and reconciliation,” June 29, 2020: https://archive.news.gov.bc.ca/releases/news_releases_2017-2021/2020MAH0035-001180.htm

²⁸ *Ibid.*

and child protection issues.²⁹ The justice centres provide legal advice, representation, advocacy, referrals, and restorative justice options.³⁰ So far, justice centres have opened in Merritt, Prince George and Prince Rupert, and an Indigenous Court has opened in Williams Lake. Moving forward, the Province and BCFNJC plan to develop up to 15 centres throughout the province.³¹

Of further significance to local governments, the Province provides assistance with funding of projects in relation to reconciliation. For example, \$50,000 of annual funding is available for the Regional Community to Community Forum (C2C), which assists local governments with connecting to Indigenous nations. The C2C has assisted with the funding and development of community events, protocols, and other agreements between First Nations and local governments.³² In fact, many of the initiatives described in the next section of this paper have received funding from avenues such as the C2C.

B. Initiatives Between Local Governments and First Nations

In our view, a fundamental step toward reconciliation between local governments and First Nations is establishing a mutual understanding and respect toward one another's communities, governance structures, and goals. This may be accomplished through formal agreements, protocols, workshops and various other relationship-building forums. These agreements not only establish commitment to ongoing mutual respect, but also the working relationship of the local governments and First Nations. This paves the foundation for identifying opportunities for collaboration, problem-solving, and the future of ongoing collaborative governance, which may take the form of joint initiatives, and community agreements, such as economic development partnerships, servicing agreements, collaborative land planning projects, tourism initiatives, or educational initiatives. Some examples of current initiatives are discussed below.

1. Protocols and Communication Agreements

The Town of Ladysmith and the Stz'uminus First Nation have collaborated on a wide range of projects together.³³ Their positive working relationship began with the Councils of both governments signing a Naut'Sa Mawt (Working) Accord, an MOU, and a Co-operation Protocol, all of which set a foundation for the Councils to regularly meet and work on pursuing their common goals. Since establishing these agreements, over 55 joint initiatives have been undertaken, such as joint bylaws, collaborative water management, and service agreements.

²⁹ Ministry of Attorney General, "New Centres Improving Access to Justice for Indigenous Peoples," September 6, 2020: <https://news.gov.bc.ca/releases/2020AG0056-001672>; BC First Nation Justice Council: <https://bcfnjc.com/indigenous-justice-centres-in-british-columbia/>

³⁰ *Ibid.*

³¹ *Declaration on the Rights of Indigenous Peoples Act*, Annual Report, 2020/2021, at pg. 13: https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/declaration_act_annual_report_30jun21_final.pdf

³² *Supra* note 18, at page 2.

³³ UBCM Pathways to Collaboration, Town of Ladysmith and the Stz'uminus First Nation: https://www.ubcm.ca/sites/default/files/2021-08/Ladysmith_Stzumimus_20190909.pdf

The 2019-2022 City of Kamloops Strategic Plan expressly includes direction to strengthen its relationships with the Nation of Tk'emlúps te Secwépemc.³⁴ The purpose of this direction is to ensure continued collaboration throughout future changes to the elected leaders in both communities.

The Islands Trust Council and the Snuneymuxw First Nation signed a Protocol Agreement and a First Nations Engagement Principles policy for the purpose of furthering their government-to-government relationship and establishing opportunities for collaboration.³⁵ More recently, the Islands Trust published its own 2019-2022 Reconciliation Action Plan (the "Plan") for the purpose of implementing reconciliation at an organizational level.³⁶ The Plan expressly engages with UNDRIP and the relevant TRC recommendations as outlined above. The Plan's action items are categorized into education/training, standardization of reconciliation standing resolutions, policy and procedures, cultural, naming and recognition work, liaison and engagement, and communications. Each action item includes a specific timeline for implementation.

The City of Nanaimo and the Snuneymuxw First Nation's Protocol Agreement was renewed in 2019 to recognize their government-to-government relationship and establish their duty to work together in a spirit of reconciliation and trust.³⁷ Prior to the renewal of the Protocol, these communities have entered into several servicing agreements relating to the provision of essential services to the Snuneymuxw First Nation, and have collaborated on a business plan regarding Indigenous and tourism product development on Newcastle Island.

2. Economic Development Initiatives

In 2018, the District of Squamish and Squamish Nation created the Squamish Community Forest Corporation, which is a partnership agreement between the Nation and the District for the joint management of local forests.³⁸ The Corporation's board has equal representation from the District and the Nation. The Corporation directly oversees forestry operation, and its timber harvesting is operated by Squamish Forestry, a company owned by Squamish Nation.

³⁴ UBCM Pathways to Collaboration, Kamloops and Tk'emlúps te Secwépemc:

https://www.ubcm.ca/sites/default/files/2021-08/UBCM-PATHWAYS_Tkemplups_Kamloops.pdf

³⁵ Protocol Agreement – Islands Trust and Snuneymuxw First Nation, December 4, 2008:

<https://islandstrust.bc.ca/document/protocol-agreement-snuneymuxw-first-nation/>; Islands Trust Policy 6.6.1, "First Nations Engagement Principles:" <https://islandstrust.bc.ca/document/policy-6-1-1-first-nations-engagement-principles/>

³⁶ Islands Trust, Reconciliation Action Plan 2019-2022, May 30, 2019: https://islandstrust.bc.ca/wp-content/uploads/2020/05/tas_2019-05-10_reconciliationactionplan_pl_final.pdf

³⁷ UBCM Pathways to Collaboration, Nanaimo and the Snuneymuxw First Nation:

https://www.ubcm.ca/sites/default/files/2021-08/UBCM-PATHWAYS_Snuneymuxw_Nanaimo.pdf

³⁸ UBCM Pathways to Collaboration, Squamish and Squamish Nation

https://www.ubcm.ca/sites/default/files/2021-08/UBCM-PATHWAYS_Squamish_Squamish%5B1%5D.pdf

Recently, the Province granted the largest community forest license in BC to a partnership between the Northern Rockies Regional Municipality and the Fort Nelson First Nation for the joint control, protection and management of their forest resources. According to the Province, this grant represents a “new level of collaboration” between the two local governments, and will provide jobs and social benefits for both communities.³⁹ The two governments have collaborated over the last three years to develop the community forest and the partnership structure in order to operate the licence.

The Squamish-Lillooet Regional District (SLRD) and its northern St’át’imc communities entered into an Intergovernmental Relations Working Group (IRWG) in order to facilitate collaborative regional economic development.⁴⁰ The IRWG has organized a forum in 2016 which resulted in an action plan for coordinated economic development in relation to tourism, agriculture and local food security. The IRWG also developed a protocol agreement providing for further collaboration in the above areas.

3. Servicing Agreements

The City of Kamloops and the First Nation of Tk’emlúps te Secwépemc have collaborated on various projects and collaborative heritage conservation initiatives.⁴¹ First, they signed a formalized Community Transit Partnership Agreement to address transit service issues within the Nation’s community. This partnership facilitated the establishment of a new transit route with service through the Nation’s Lands. Second, the communities have developed a joint operating agreement in 2019 for the creation of a cultural heritage site. Third, they have signed a Letter of Understanding (LOU) in order to preserve their future cultural heritage resources. This led to the creation of the Tk’emlúps te Secwépemc Joint Culture and Heritage Committee to enable the protection of cultural heritage.

The Village of Pemberton and the Lil’wat Nation have collaborated on a range of projects, including servicing agreements, joint economic initiatives, adopting a Territory Acknowledgment into all Council meetings, and a community forest initiative.⁴² In addition, Pemberton and Lil’wat Nation agreed to enter into a service agreement in which Pemberton Fire Rescue provides services to the residents of the Lil’Wat Nation.

³⁹ Fort Nelson & District Chamber of Commerce, “FNFN/NNRM News Release on Community Forest,” June 29, 2020: <https://www.fortnelsonchamber.com/news/details/news-release-6-29-2020>

⁴⁰ UBCM Pathways to Collaboration: Northern St’át’imc, District of Lillooet, Squamish-Lillooet Regional District (SLRD), https://www.ubcm.ca/sites/default/files/2021-08/NorthernStatimc_Lillooet_SLRD_20190909.pdf

⁴¹ *Supra* note 34.

⁴² UBCM Pathways to Collaboration: Lil’Wat Nation and Village of Pemberton https://www.ubcm.ca/sites/default/files/2021-08/Lilwat_Pemberton_20190909.pdf

In 2016, the City of Pitt Meadows and the Katzie First Nation signed service agreements for sewer, water and fire protection services, and entered into a new communications protocol.⁴³ As this collaborative relationship continues to evolve, a servicing agreement in relation to policing services and public safety is in the process of negotiation. Additionally, the City permitting process involves the Nation by permitting Katzie archaeological crews and protocol in relevant projects. In the land development process, City staff also require a response to the question of how a proposed development will impact the Katzie First Nation.

4. Land Planning

One particularly noteworthy initiative of the Town of Ladysmith and the Stz'uminus First Nation is their 2018 joint Ladysmith Waterfront Area Plan.⁴⁴ The Area Plan, which was the result of over a year of collaboration, planning and design by the two Councils, will help to revitalize and restore the area and to create economic development, new housing and recreation. The plan was recognized with a provincial planning award in 2018.

The City of Powell River and Tla'amin Nation have collaborated on various land planning initiatives.⁴⁵ For example, in 2018, the City consented to designate two parcels of land in its historic townsite area to the Tla'amin, granting the Nation with full governance over the parcels. Additionally, the City has collaborated with the qathet Regional District and Tla'amin Nation on various planning initiatives, such as a Sustainability Charter, a Regional Emergency Plan, a Regional Transportation Plan, a Regional Trails Plan, a Regional Recreation Initiative, and, most recently, a flood mapping initiative.

5. Educational and Cultural Engagements

Acting in response to the TRC Calls to Action, the City of Victoria partnered with the Esquimalt and Songhees Nations' Councils to establish the Witness Reconciliation Program, which provides ongoing reconciliation dialogues for the public.⁴⁶ The program initiated the removal of the statue of Sir John A. Macdonald from the Victoria City Hall. The removal of the statue was a gesture of reconciliation that aimed to promote reflection on Sir John A. MacDonald's role in mandating residential schools in Canada, as well as Canada's colonial past more generally.⁴⁷

⁴³ UBCM Pathways to Collaboration: Katzie First Nation and Pitt Meadows, https://www.ubcm.ca/sites/default/files/2021-08/UBCM-PATHWAYS_Katzie_PittMeadows.pdf

⁴⁴ *Supra* note 33.

⁴⁵ UBCM Pathways to Collaboration: Tla'amin Nation and City of Powell River https://www.ubcm.ca/sites/default/files/2021-08/Tlaamin_PowellRiver_20190909.pdf

⁴⁶ City of Victoria: Witness Reconciliation Program: <https://www.victoria.ca/EN/main/city/reconciliation.html>

⁴⁷ *Ibid.*

In October of 2021, Tsleil-Waututh and Metro Vancouver Regional District announced that the Regional District's Belcarra Park will restore its name to "təmtə́míxwtən /Belcarra Regional Park," which means "biggest place for all the people," a name reflecting the park's historical role as the Tsleil-Waututh Nation's largest ancestral village. The name restoration brings greater public awareness to the Nation's ancestral connection to its lands and assists with the Nation's mandate of telling its story and "putting the face of the Nation back on the territory."⁴⁸ This re-naming initiative is one of the projects resulting from an ongoing collaboration agreement signed between the Nation and the Regional District in 2020.⁴⁹

In 2011, the District of Tofino, Tla-o-qui-aht First Nations, the District of Ucluelet, and the Yuuʔuʔitʔath Government developed an MOU with the aim of diversifying their education-based economy.⁵⁰ This collaboration eventually led to the development of the West Coast Nature, Education, Sustainability, Transformation (N.E.S.T.) program, an outdoor-based learning program that provides locals and tourists with learning opportunities throughout the region. West Coast NEST provides culturally-grounded workshops, field schools, and courses for locals and tourists on topics such as Indigenous customs and history, wildlife, and sustainability.

6. Statutory Developments

On October 26, 2021, the provincial legislature tabled Bill 26 – the Municipal Affairs Statutes Amendment Act (No. 2), 2021. If passed, one of the proposed changes will amend the *Islands Trust Act* (the "Act") to formally recognize the Islands Trust's reconciliation efforts by including a reference to ongoing cooperation with "First Nations" in section 3 of the Act.⁵¹

VI. CONCLUDING COMMENTS

Section 35 of the *Constitution Act* protects Aboriginal rights, and the Crown's fiduciary duty to consult and accommodate First Nations is one fundamental way of ensuring the protection of these rights and to facilitate reconciliation. Given that local governments are creatures of statute that have no direct constitutional relationship with First Nations, local governments have no direct duty to consult First Nations in relation to Aboriginal rights and title. However, as we have highlighted, recent developments such as the passing of DRIPA, the evolution of BC's Draft Action Plan, and the TRC Calls to Action provide a variety of avenues for local governments to meaningfully collaborate with First Nations in order to foster reconciliation. In

⁴⁸ Tsleil-Waututh Nation, "New name announced for təmtə́míxwtən /Belcarra Regional Park,"

<https://twnation.ca/new-name-announced-for-t%C9%99mt%C9%99mixwt%C9%99n-belcarra-regional-park/>

⁴⁹ Global News: "Indigenous name restored to Metro Vancouver's Belcarra Regional Park," October 8, 2021:

<https://globalnews.ca/news/8255120/indigenous-name-restored-to-metro-vancouvers-belcarra-regional-park/>

⁵⁰ UBCM Pathways to Collaboration: Tofino and Tla-o-qui-aht First Nations

<https://www.ubcm.ca/sites/default/files/2021-08/Tla-o-qui>

aht_Yuu%C5%82u%CA%94i%C5%82%CA%94ath_Ucluelet_Tofino_20190909.pdf

⁵¹ Ministry of Municipal Affairs, "Introduction of Municipal Affairs Statutes Amendment Act (No. 2), 2021," October 26, 2021: <https://news.gov.bc.ca/releases/2021MUNI0062-002036>

fact, local governments are uniquely positioned to identify opportunities for collaboration with the First Nations in their communities that are grounded in the specific goals of each community. We hope that local governments are motivated by the promising evolution of DRIPA, as well as the initiatives taken by various local governments around BC, to undertake further collaboration with First Nation communities.

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