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FIRST NATIONS SUMMIT

FRAMEWORK FOR RECOGNITION & RECONCILIATION

**PRESENTED TO PREMIER CAMPBELL
& MEMBERS OF THE BRITISH COLUMBIA CABINET**

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I. INTRODUCTION

Your government deeply regrets the mistakes that were made by governments of every political stripe over the course of our province's history. It regrets the tragic experiences visited upon First Nations through years of paternalistic policies that fostered inequity, intolerance, isolation and indifference.

Throne Speech, February 11, 2003

We acknowledge this apology. It is an important step for First Nations and for the Crown. There is common ground between the objectives set out in the Provincial Throne Speech and those First Nations have advanced for many years. That alone is something to celebrate, but unless the British Columbia Government, along with First Nations, proactively implements a strategy to overcome the continuing inequity and existing intolerance, isolation and indifference experienced by First Nations people, these words will have been wasted.

In its February 2003 Throne Speech, the BC Government committed to address the legacies of the historical Crown-Aboriginal relationship through recognition and reconciliation. The "hallmarks of despair" –inadequate education, health care and housing; high unemployment; substance abuse; high rates of incarceration; infant mortality and suicide have disproportionately affected First Nations communities and people. These unacceptable circumstances must change. We, as First Nations communities and leaders, given our limited resources, have the responsibility to do our best. And we do.

Our history has shown, unfortunately all too well, that Canada's aboriginal peoples are **justified in worrying about government objectives that** may be superficially neutral but which constitute de facto threats to the existence of aboriginal rights and interests.

C.J. Lamer and J. La Forest, Delgamuukw (SCC)

The issue of reconciliation between the British Crown and Indigenous populations is not a new one. Colonialism has occurred throughout the world and many countries are now engaged in processes of reconciliation to improve the lives of Indigenous peoples dispossessed, suppressed, disadvantaged and marginalized in their homelands. There are lessons to be learned from these countries (e.g. Australia, New Zealand and South Africa). There is no need to completely re-invent the wheel on reconciliation. We should consider their ideas and approaches and tailor reconciliation to circumstances here.

Understanding our history

Native British Columbians still have too little access to the means of making a reasonable living, while non-native British Columbians are the continuing beneficiaries of the colonial processes that displaced the prior inhabitants of this land.

Cole Harris, Making Native Space: Colonialism, Resistance, and Resistance in British Columbia, 2002

How did the Crown come to assume it owns our land? The history of Canada and, more particularly British Columbia, is modern history, not ancient history. The Aboriginal-Crown relationship, constituting a relatively short and recent period in the long history of Aboriginal peoples on this land, has been a history of denial, dispossession, suppression and exclusion of Aboriginal people. Government legislation and policies, as outlined in the attached article entitled “Conspiracy of Legislation: the Suppression of Indian Rights in Canada” by the late respected Chief Joe Mathias and Gary R. Yabsley, are “seen to be the **root cause of much of the injustice and inequity that continues to permeate the Indian presence in Canada.**”

Non-Aboriginal society must recognize that it **has benefited and continues to benefit** from these historical wrongs. It cannot distance itself from this history. While the intent is not to assign blame to individuals and foster an atmosphere of guilt, it is important to honestly acknowledge the past and the fact that the events of the past continue to have effects and consequences today.

Today, denial and dispossession continue in various forms, including non-recognition and non-implementation of the many court decisions which recognize and uphold Aboriginal and treaty rights in Canada. Governments instead interpret the cases to serve their own interests. In not implementing cases such as *Sparrow*, *Delgamuukw* and *Council of the Haida Nation*, governments deny First Nations that which they have won through the courts.

British Columbia needs to pull itself out of colonial times. The Premier of the Yukon Territory, for example, has committed to “formalizing government-to-government relationships with Yukon First Nations” and working with them “to make them full partners in economic development of the territory”. The Yukon Government is taking new approaches to working with First Nations and is expressly recognizing rights, title and interests in the lands and resources. The United Nations Draft Declaration on Indigenous Rights also illustrates how British Columbia falls short of emerging international norms.

The cumulative impacts of past and present government legislation and policy (e.g. disenfranchisement, land pre-emption, discrimination, residential schools and the “60s scoop”) must be addressed. We do not want governments to do things for us; we want them to work with us.

II. PRINCIPLES

The future will be forged in partnership with First Nations –not in denial of their history, heritage and culture, It will be won in recognition of First Nations’ constitutional rights and title –not lost for another generation because we failed to act.

–*Provincial Throne Speech, February 11, 2003*

The Throne Speech embraces the concepts of recognition and reconciliation, which First Nations and the courts have been highlighting and pressing for years. The public agenda now includes the need for recognizing and reconciling with First Nations in British Columbia. But to realize this, the government must work with First Nations to develop a comprehensive strategy. A unilaterally developed Crown agenda will not achieve these results.

Recognition and reconciliation

Two fundamental purposes underlying the recognition and affirmation of aboriginal rights by s. 35(1) have been identified: the recognition of the prior occupation of North America by aboriginal peoples and the reconciliation of aboriginal prior occupation with the assertion of the sovereignty of the Crown.

–*J. Daigle, Bernard (NB CA) at para 53, citing Van der Peet, Gladstone, and Delgamuukw*

Recognition is an integral part of the ongoing journey towards reconciliation and therefore any process of reconciliation must build on a foundation of recognition. Without this recognition, a reconciliation process, though well intentioned, will be doomed to fail.

What does recognition mean?

Recognition means recognizing First Nations as “Peoples” and as the original owners and occupants of the land now known as British Columbia. It also means recognizing that this prior occupation of the land carries special and unique rights that are now recognized, affirmed and protected by the *Canadian Constitution Act, 1982*.

Aboriginal and treaty rights are legitimate, legal and constitutional rights. As First Nations have always maintained, and the Supreme Court of Canada has agreed, these rights must be defined and explained by reference to the First Nations’ own pre-existing laws, values, cultures and perspectives. British Columbia needs to respect and implement these courts decisions.

Recognition of and respect for First Nations as self-determining and distinct nations with their own spiritual values, histories, languages, territories, political institutions and ways of life must be the hallmark of the new relationship.

The Throne Speech and numerous BC Government initiatives focus on the “heartlands” of British Columbia and their potential for supporting economic prosperity. Before that potential can be fully realized, British Columbia must recognize that those lands are First Nations’ “homelands” and the key to achieving social justice, economic prosperity and certainty lies in working cooperatively with First Nations.

What is reconciliation?

Reconciliation is about building bridges to a new and ongoing relationship. There will always be a Crown-Aboriginal relationship. The goal is to achieve a more positive and peaceful co-existence that is no longer rife with conflict, denial, exclusion and suppression.

The term “relationship” is meant to be all-encompassing. It is not limited to land and resource issues, nor does it only capture social issues.

What advances recognition and reconciliation?

The clearest way to advance recognition is to end the denial. The BC Government must take serious steps to undo the damage of the past. It needs to **build trust and** credibility with First Nations. Expressly recognizing First Nations as Peoples with constitutionally-protected rights, including Aboriginal title, arising from their prior occupation of the province is an essential step.

Recognition is the foundation upon which reconciliation can take place.

To me there are three essential elements in achieving a lasting reconciliation between Indigenous and non-Indigenous Australians:

- Honest and realistic acknowledgment of the injustices of the past;
- Shared commitment to overcoming Indigenous disadvantage and providing equality of opportunity for all Australians; and
- Mutual acceptance of the importance of working together to ensure that our differences do not prevent us from sharing equally in a common future.

- *Senator John Herron, Minister for Aboriginal and Torres Strait Islander Affairs (1996)*

In the Throne Speech, the BC Government acknowledges:

We must move beyond the old approaches and flawed policies of the past. It is up to us to accord First Nations the respect, support and social and economic opportunities to which they are entitled.

Provincial Throne Speech, February 11, 2003

These words need to be supported by goodwill and good faith actions.

Changing mindsets

No one party can achieve reconciliation. The concept of reconciliation must take root in our hearts and minds. As noted by the Australian Council for Aboriginal Recognition:

Reconciliation had to take place in the hearts and minds of all Australians, and through people working together to change communities, workplaces, sectors and organizations around the country.

– Council for Aboriginal Reconciliation Final Report, December 2000

Education is a critical element to advancing reconciliation. People need to know about the history of British Columbia and the state of the law on Aboriginal issues. First Nations and the BC Government can work together, and with other groups, to increase cultural awareness and understanding to promote a vision of reconciliation.

The Council for Aboriginal Reconciliation in Australia determined that it was necessary to establish “a baseline of community attitudes” in order to “hold up a mirror to the nation”. This was part of the Council’s attempts to breathe life into the reconciliation process and make it an issue that the nation embraced.

Learning from this approach, a first step can be a mutual commitment by the BC Government and First Nations to embark on a journey of reconciliation and to demonstrate the leadership that is required for this process to be successful.

What undermines recognition and reconciliation?

Continued non-recognition and denial of First Nations as the original Peoples of the province with constitutionally protected Aboriginal rights and title undermine recognition. First Nations seek honest and genuine recognition of who they are, the rights they hold and the contribution they have made and continue to make in British Columbia. Insincerity does not assist recognition, nor do hollow expressions of recognition.

A number of other approaches, actions and behaviour undermine reconciliation, including:

- Adversarial, confrontational and “cheerfully aggressive” approaches;
- Unilateral or arbitrary action;
- Unilateral determination of issues and imposition of policies (e.g. land selection model, consultation policy);
- Inconsistency and contradictions;
- First Nations’ dependency on loans to negotiate treaties;
- Undermining progress at treaty tables (e.g. leaking information to media); and
- A “take it or leave it” approach.

The Attorney General's statement at the Open Cabinet meeting on November 22, 2002 that the BC Government's "new approach to achieving certainty rejects the use of extinguishment of rights" suggested there was political will to build a better relationship. However, this commitment was limited to eliminating only the use of the phrase "cede, release and surrender." Government negotiators continue to advance other terminology to achieve the *effect* of extinguishment. This approach serves only to question the BC Government's commitment and credibility.

In its Statement of Defense in the Haida title case, BC specifically refuses to admit that the Haida "are indigenous to the Queen Charlotte's, or that the Queen Charlotte's are the territory of the Haida Nation". The Statement of Defense also denies, "that prior to and since 1846, the Queen Charlotte's has been occupied and possessed by a unified, single Aboriginal group, whether known as the Haida Nation or otherwise." This is entirely inconsistent with the BC Government's stated commitment to recognition and reconciliation.

The unilateral offer to the Haida to entice them back to the treaty negotiation table made it clear that litigation can result in seemingly better deals for First Nations. This has put into question approval processes for First Nations who have recently concluded, but not yet ratified, agreements in principle.

The BC Government's contradictory statements and inconsistent actions have further weakened its credibility and trustworthiness in the eyes of First Nations. Therefore, a critical step to advancing reconciliation is to **develop positions, policies and mandates consistent with the principles of recognition and reconciliation.** This would significantly advance reconciliation, both in the context of treaty negotiations and elsewhere.

Over the last year, the BC Government has tabled a number of unilaterally developed policies and initiatives designed to address First Nations concerns and/or to meet the province's legal obligations (e.g. consultation guidelines, revenue sharing proposals and the Federal/Provincial Joint Task Group on Post-Treaty Fisheries) which serve only their own interest.

The BC Government also insists that First Nations agree that their legal interests have been fully satisfied in order to access certain benefits, through accommodation agreements and interim measures arrangements. Some First Nations feel compelled to sign these agreements to obtain access to resources or other benefits that are sorely needed in their communities. Other First Nations refuse to participate in government initiatives that could benefit them because they do not want to risk putting their long term rights at risk. These provincial approaches, inconsistent with reconciliation, only foster mistrust and frustration and increase uncertainty.

III. WHERE TO FROM HERE?

A clear and comprehensive set of objectives is needed to determine where we want to go and how to get there. To measure and mark our progress on the path towards reconciliation, we will also have to establish benchmarks. These will need to be developed jointly.

Reconciliation will be achieved by focusing on the full range of issues from social to economic and political to cultural. These issues must be addressed from a substantive and, in some cases, a symbolic perspective.

First Nations have long advocated reconciliation. In fact, our presentation to the BC Cabinet last year stressed this point. By committing to reconciliation, the BC Government will join First Nations on this path. The commitments in the Throne Speech will be achieved by moving from exclusion, denial and suppression of First Nations rights and interests to inclusion, recognition and reconciliation of these rights and interests.

Reconciliation will have to be a central issue on the political, social and economic agendas. It must not simply be a peripheral issue dealt with from time to time when confrontation seems inevitable.

If history has taught us anything, surely it is this: we are always stronger as a country and as a province when we work together.

Throne Speech, February 11, 2003

IV. IMPLEMENTATION

There are many opportunities to advance reconciliation. Some of these are set out below.

General

As mentioned, adopting policies, positions and mandates that reflect recognition and reconciliation would significantly move the relationship forward in the context of treaty negotiations and elsewhere. They would provide for consistency in Crown-Aboriginal relations, a principled foundation for building a new and better relationship and a more level playing field.

Social and cultural

Recent statistics compiled by the Native Court workers indicate that charges laid against Aboriginal people have increased dramatically from 2002 to 2003 (see attached). The numbers have close to doubled in virtually all categories. These statistics reflect a growing

sense of hopelessness and the worsening socio-economic conditions brought upon in part by cuts to social services. These cuts, which were mirrored by Canada, have had a disproportionate negative impact on our people and communities. Some of the social and cultural issues that need to be addressed are:

- improving social circumstances (such as health, education, children and family and poverty statistics) for First Nations people;
- raising First Nations people's standard of living (Canada has fallen on the Human Development Index from 1st to ~ place in large part due to the disparity of standards of living between First Nations people and other Canadians);
- establishing community-driven programs and services (in the areas of education, health, housing, justice, employment and infrastructure);
- addressing capacity issues;
- examining the reasons for the disparities and monitoring progress to guide the development of strategies;
- working to protect and preserve First Nations' cultures and languages;
- increasing public knowledge and awareness; and
- developing cultural awareness models and approaches and demonstrating that racism is unacceptable.

Specific opportunities include:

- The **Seniors and Youth Congress** proposed by the BC Government should include guaranteed representation for First Nations elders and youth.
- Benefits should be provided to elders prior to the conclusion of treaties. Otherwise, they may never share in any treaty benefits.
- The First Citizens' Fund should be used to help preserve First Nations' languages and, as Premier Campbell stated to us, "get them off life support".
- Recognize and use First Nations' place names and establish a joint panel to address this issue.
- Work in all areas of education to include First Nations' languages and cultures and to improve the educational success rates of First Nations students in the provincial education system.
- Integrate the Aboriginal perspective into the provincial curriculum and develop more Aboriginal **educational resources**.
- Follow-up on the Education Memorandum of Understanding signed on July 24, 2003 that establishes a framework that will enable First Nations to exercise jurisdiction and authority over their students attending First Nations schools, as well as provide them with opportunities to exercise greater control over the education of their members off-reserve.
- The First Nations Education Steering Committee is working with its Education Partners to develop an anti-racism strategy (including an anti-racism tool kit that would be available for use in schools and other organizations).
- **Justice:** determine why incidents of serious crime have risen dramatically over the last year and address the causes.

- Policing: with Aboriginal people, establish a process to review the disproportionate number of Aboriginal people who die in police custody or as a result of police actions.
- Children and Families: need to establish Aboriginal regional authorities to implement the Children and Families Memorandum of Understanding signed September 9, 2002.
- Assist in the reintegration of First Nations people, who were taken into care by the provincial government, back into their communities.
- Health: it is becoming increasingly difficult for First Nations people to access health care in their own regions.

Political

On the political front, steps need to be taken to:

- recognize First Nations' title to their lands and resources;
- recognize First Nations governments;
- break down legislative and policy barriers to progress;
- counter the acts of specific exclusion of First Nations people in the past; and
- increase Aboriginal representation in the institutions of the Crown, including the government, the judiciary and Crown corporations.

Specific opportunities include:

- The Citizens Assembly will soon be beginning its examination of **electoral reform**. The terms of reference for this initiative can include a review, an assessment of and consultation with First Nations on models for increasing the involvement of First Nations in the legislative assembly.
- First Nations must be involved in **federal-provincial** agreements and arrangements that affect us to identify opportunities to minimize negative impacts and foster positive impacts on First Nations (e.g. participation in Social Union Framework Agreement, discussions on social assistance rates).
- We need to establish a First Nations Public Policy Institute to monitor developments and progress on First Nations issues. The government committed to establishing various chairs and this should be one of them.

Lands and resources

On the lands and resources front, steps need to be taken to:

- protect lands and resources and to promote rehabilitation where they have been negatively impacted;
- recognize First Nations' jurisdiction over allocation and management decisions; and
- **compensate and share** revenues with First Nations.

Specific opportunities include:

- Forestry: First Nations have a right to benefit economically and to participate in the management of forests;
- Aquaculture: First Nations' concerns with respect to the environmental and economic impacts of aquaculture need to be addressed.
- **Offshore oil and gas:** First Nations' environmental concerns, as well as the potential impact on First Nations' coastal activities, need to be recognized and full consultation and accommodation are required.
- **Order-in-Council 1036:** issues with respect to rights-of-way established under this order-in-council, which are valued in the millions of dollars, must be resolved. This would provide an opportunity to demonstrate good will by accommodating First Nations.

Economic

From an economic perspective, it is important:

- for First Nations to have access to land and resources;
- to create economic opportunities;
- to assist First Nations in becoming economically independent; and
- to work to make First Nations a strong economic partner and effective part of Confederation.

Specific opportunities on the economic front include:

- Closing the **digital divide:** the divide is becoming wider and deeper.
- **2010 Games:** the Olympics present an ongoing opportunity to involve First Nations from across the Province in ways that are more than just symbolic.
- Labour: anticipated shortages of skilled workers can be addressed by training and employing First Nations people (who live in communities where the unemployment rate can be as high as 90%), rather than looking to immigration.

The attached Harvard Project on American Indian Economic Development deserves our serious consideration. It outlines key determinants of success in tribal economic initiatives.

V. MOVING TOWARD RECONCILIATION

The BC Government/First Nations Summit Government-to-Government Protocol signed today, provides a unique opportunity "to reaffirm [our] commitment to the government to-government relationship and the cooperative resolution of issues."

Greater efforts are required to implement this agreement. The Premier should direct all ministries and agencies of government to observe and comply with the Protocol.

Today's meeting is an opportunity to determine the next steps required to implement the 'First Nations Summit-Government of BC Policy Forum'.

In particular, what is needed includes:

- establishing measurable benchmarks and timelines;
- putting in place necessary information systems to monitor progress and performance;
- establishing a regular reporting process that ensures that the BC Cabinet and the First Nations Summit receive annual progress reports; and
- making effective use of the Independent Progress Board that has been established to carry out this monitoring and reporting. A sub-committee of this Board could be established to track reconciliation activities.

The Protocol provides an opportunity to move away from the unilateral development of government policy regarding or affecting First Nations, to a joint effort by the Province and First Nations in partnership with one another.

As First Nations, we now have the authority to unilaterally and legitimately exercise our Aboriginal rights and title –our legal interests in land –on a collective basis. We must have a say over what happens in our territories. One way or another, we will realize our rights and protect what is ours.

VI. CONCLUSION

The challenge to you as members of the BC Cabinet is to live up to your respective commitments in the Provincial Throne Speech and take the concrete, necessary steps to achieve recognition and reconciliation.

The BC Government needs to consider:

- recognizing First Nations as Peoples and the original occupants of what is now British Columbia;
- recognizing that this prior occupation gives rise to legitimate, legal Aboriginal rights, including title, protected under section 35 of the *Constitution Act, 1982*;
- recognizing that First Nations have an inherent right to govern themselves, through their hereditary or other systems; and
- acknowledging that past injustice gives rise to present disadvantage and commit to working with First Nations to help them overcome disadvantage and achieve social justice and economic independence.

The *Government-to-Government Protocol* must be implemented by:

- taking concrete steps to form a partnership to work on building new approaches that will materially improve First Nations' quality of life, both before and after treaties are concluded, and
- establishing a committee of senior officials of the First Nations and the BC Government, as contemplated in the Protocol, to:
 - develop a workplan that focuses on reconciliation activities and includes strategies on how to involve other segments of the broader society,
 - undertake or direct technical analysis, research and development activities designed to promote reconciliation,
 - track issues and coordinate follow-up activities,
 - develop options and recommendations on how to advance reconciliation, and
 - deliver progress reports back to the Summit Chiefs and to the Premier and Cabinet.