

United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA)

BC First Nations Leadership Council (FNLC) – Department of Justice Canada Bilateral Engagement Table on the Implementation of the UNDA

FNLC-DOJ Political Table

Terms of Reference

May 2024

A. BACKGROUND AND CONTEXT

On June 21, 2021, the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA) received Royal Assent and came into force. The UNDA requires the Government of Canada to work in consultation and cooperation with Indigenous peoples to take necessary measures to ensure federal laws are consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration), to develop and implement an action plan to achieve its objectives and to develop annual reports on progress. On June 20th, 2023, the Department of Justice tabled in Parliament the UNDA Action Plan, as mandated by Section 6 of the UNDA.

On February 16, 2023, the Minister of Justice and Attorney General of Canada (the “Minister”) signed a Letter of Understanding with the First Nations Leadership Council (FNLC) (the “Parties”) committing to the establishment of a British Columbia-specific bilateral process between Canada (represented by the Minister) and the FNLC to identify priorities and actions for UNDA implementation taking into account direction provided by First Nations in BC, and to set out our mutual commitment of working together.

This bilateral process consists of, but is not limited to, the following:

- 1) A Political Table consisting of the Minister and Political Executives of the FNLC, to:
 - a. Identify priority issues, confirm a shared agenda for the implementation of UNDA and identify whether other federal Ministers should participate in the process for any identified priority issues;
 - b. Determine and direct follow-up work that will be jointly undertaken regarding priority issues and the advancement of a shared agenda; and
 - c. Discuss any other issues related to the effective implementation of this process.
- 2) A Technical Table consisting of senior representatives of the FNLC and the Department of Justice, which will carry out the direction of and report to the Political Table. The Technical Table will be responsible for developing a work plan to advance the shared agenda for approval by the Political Table. The Technical Table will prepare its own terms of reference for approval by the Political Table.

These Terms of Reference set out the purpose, guiding principles, composition, meeting frequency, and review and amendment for the bilateral FNLC-DOJ Political Table. They

do not replace or affect the Parties' internal decision-making processes and are not intended to create legal obligations. All discussions undertaken in accordance with these Terms of Reference are without prejudice and may be subject to any separate confidentiality agreement that may be signed.

The work undertaken under the Terms of Reference set out below is among the processes that contribute to engagement and cooperation with Indigenous peoples under the UNDA.

B. PURPOSE

The purpose of the FNLC-DOJ Political Table is to advance and support the implementation of UNDA, including by, working together in cooperation to:

1. Identify and make recommendations on priorities, including potential legislative amendments, to ensure the consistency of the laws of Canada with the UN Declaration;
2. Coordinate processes for the involvement of the FNLC in the development of legislative amendments;
3. Identify priorities for implementation of Action Plan measures;
4. Provide direction to the technical table on annual reports on progress;
5. Provide input on the development of a process to review and amend the Action Plan;
6. Direct the work of the Technical Table related to specific UNDA Action Plan measures or implementation matters as required; and
7. Facilitate dialogue with First Nations in BC on the implementation of the UNDA.

C. GUIDING PRINCIPLES

Parties agree to undertake this work in accordance with the following principles:

- **Distinctions-based:** A distinctions-based approach means that the Federal Government's work with First Nations, Inuit and Métis will be conducted in a manner that acknowledges the specific rights, interests, priorities and concerns of each, while respecting and acknowledging these distinct Peoples with unique cultures, histories, rights, laws, and governments.
- **Collaborative and Cooperative approach:** The FNLC-DOJ Political Table will be based on a collaborative and cooperative approach between Parties working in good faith to jointly identify and develop solutions. This approach includes:

- **Transparency and openness:** The process must be guided by transparency and openness between the Parties wherever possible, while respecting each other's decision-making processes, which may at times require confidential internal discussions.
- **Active leadership, political engagement and direction:** The Parties will actively seek engagement from their respective political leadership in dialogue about their respective goals and objectives and jointly determine as early as their respective processes allow what may or may not be achievable within the scope of a given initiative.
- **Acting in good faith and upholding the honour of the Crown:** The Parties will act in good faith, and the Minister will act in a manner which upholds the honour of the Crown. Parties will engage in meaningful discussions, including sharing adequate and relevant information, without pre-determining measures or outcomes.
- **Consensus-based approach:** The Parties will strive to achieve consensus by working in good faith to explore options and solutions that everyone actively supports. The Parties will work together to resolve impasses or disputes, should these arise. Regular check-ins will help to optimize results. Both federal and FNLC views (including objections) shall be clearly reflected in materials for decision by leaders, where consensus cannot be reached at the Technical Table.
- **Embracing innovation:** The Parties will use flexible and innovative approaches to advance implementation of the UNDA, including the Action Plan, even if they differ from the status quo or do not easily fit into existing regimes, laws, programs, policies or structures.

D. COMPOSITION

The FNLC-DOJ Political Table will consist of the FNLC members (the political executives of the BC Assembly of First Nations, the First Nations Summit, the Union of BC Indian Chiefs), and the Minister.

The Parties may, by agreement, appoint an individual to chair and facilitate meetings.

The Parties may, by agreement, invite others to participate in FNLC-DOJ Political Table discussions where additional or specific input, perspectives or expertise is required, such as the Minister of Crown-Indigenous Relations and Northern Affairs Canada and/or Ministers of other federal departments (or their delegates).

E. ROLES AND RESPONSIBILITIES AND MEETING FREQUENCY

To carry out the Table's mandate, the FNLC-DOJ Political Table representatives will:

- Meet once a year, subject to urgent need with additional meetings as agreed in any format or combination of formats (e.g., virtual, hybrid or in person), and further as agreed, to identify priorities and establish a shared and focused agenda, monitor progress, and address any disputes or issues requiring political discussion and direction, and
- Direct the FNLC-DOJ Technical Table to carry out work to support the Political Table's discussions, including developing a workplan to advance the shared agenda and effective communication mechanisms.

F. REVIEW AND AMENDMENT

These Terms of Reference may be amended by agreement of the Parties. The Parties may review and amend the Terms of Reference as needed and agreed to by the Parties, to ensure they are effective in advancing the mandate of the FNLC-DOJ Political Table.