

# United Nations Declaration on the Rights of Indigenous Peoples Sub-Committee (UN Declaration Sub-Committee) Terms of Reference

March 9, 2022

## BACKGROUND

The Health, Safety and Reclamation Code for Mines in British Columbia (Code) provides the detailed regulation and standards for mining in the province.

In order to review the Code, the Minister of Energy, Mines and Low Carbon Innovation appoints a Code Review Committee (CRC) under section 34 of the Mines Act. In order to support the CRC, the Code Review Secretariat (CRS) of the Ministry acts as recording secretary, liaison and legislative manager for the CRC and/or sub-committees. The CRC Chair is responsible for making recommendations to the Minister following drafting of amendments by the CRC. The Minister brings forward recommended amendments to the Code to Cabinet for consideration and approval.

As part of the Code review process, sub-committees or task groups with specific focuses are formed to review the technical aspects of proposed amendments to the Code or the adoption of technical standards. The role and purpose of sub-committees is to conduct an in-depth and detailed technical study of specific areas and to bring recommendations back to the CRC with supporting rationale justifying amendments to the Code. Sub-committees may be tasked with assessing and recommending multiple amendments within a general topic area.

## PURPOSE

The CRC has acknowledged the need to align its work with the Declaration on the Rights of Indigenous Peoples Act (Declaration Act) which affirms the application of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) to the laws of British Columbia.

## PRINCIPLES

In fulfilling its purpose and responsibilities, and in alignment with the CRC's Strategic Framework, the UN Declaration Sub-Committee will uphold the following guiding principles:

- **Reconciliation:** The UN Declaration Sub-Committee will conduct itself in a manner that reflects and advances reconciliation between the Crown and Indigenous peoples. This means recognition of Indigenous rights, acknowledging Crown-Indigenous history, and working together to ensure the Code is consistent with the UN Declaration.
- **Confidentiality:** Members will protect confidential legislative and proprietary information in communication with constituent groups **which include Indigenous communities, labour unions and industry associations**. When engaging with or requesting feedback from constituent groups, confidential documents will not be shared, but rather will be summarized in engagement-support documents provided by the Code Review Secretariat (e.g. briefing documents and PowerPoint presentations) to support sub-committee members in their discussions. In order to ensure that all constituent groups receive consistent information, Sub-Committee members must determine common key messaging prior to engaging beyond the Sub-Committee membership.

## RESPONSIBILITIES

The UN Declaration Sub-Committee is expected to have the following responsibilities:

- Review of all other CRC sub-committee and task group recommendations for revision to the CRC, prior to their submission to the CRC, for the purpose of providing input and considerations for alignment with the UN Declaration. Review final draft Code revisions prior to finalization by the CRC.
- Receive requests from the CRC for Sub-Committee input on matters not addressed by a sub-committee or task group. These requests may be related to topic-specific revisions, general input on areas of priority for future Code revision, or other matters as they arise.

## SCOPE OF WORK

The scope of work of the UN Declaration Sub-Committee will include matters regarding the UN Declaration and the Declaration Act as they relate to the Code.

## MEMBERSHIP

### Members

Membership of the Sub-Committee is as follows:

- The CRC Chair and a representative from the First Nations Energy and Mining Council are co-chairs
- Three new Indigenous members
- Up to four, minimum of two, Indigenous members from the CRC
- Two labour members
- Two industry members

CRC members may attend UN Declaration Sub-Committee meetings as observers and may review materials prepared for and by the UN Declaration Sub-Committee. The UN Declaration Sub-Committee co-chairs may permit other observers from time to time.

### Responsibilities of All Members

- Make best efforts to attend all meetings and come prepared, having pre-read any meeting material
- If a member is absent from two consecutive meetings of the UN Declaration Sub-Committee without an acceptable reason they may be removed from the committee at the discretion of the Co-Chairs
- Collaboratively engage in all discussions and focus on providing action-oriented feedback and timely decision-making
- Consult with other members within their respective constituency or organization to inform UN Declaration Sub-Committee discussions and recommendations

### Role of Co-Chairs

- Chair meetings on an alternating basis and facilitate dialogue to reach consensus wherever possible

- Guide the UN Declaration Sub-Committee to determine recommendations to the Code Review Committee
- Establish principles and guidance for the sub-committee to inform the approach to reviewing proposed revisions and ensure a clear, efficient review process is in place
- Work with the Code Review Secretariat to confirm meeting agendas and ensure decision items are brought forward for voting and are subsequently accurately recorded
- Actively participate in discussions and decisions
- Report back to the CRC with updates, recommendations, and key issues

#### **Role of Code Review Secretariat (Secretariat)**

- Manage UN Declaration Sub-Committee communications
- Draft and distribute meeting agendas
- Manage meeting logistics (time, date, location) and communications with attendees
- Manage any expenses and financial accounts
- Record meeting minutes and record decisions/recommendations
- Fulfill reporting requirements
- Provide guidance, research, advice and expertise as appropriate

### **GOVERNANCE**

#### **Term**

The UN Declaration Sub-Committee is a standing body of the CRC. These terms of reference will be reviewed at the discretion of the Code Review Committee and UN Declaration Sub-Committee Co-Chairs.

The Terms of Reference, processes and overall functioning of this sub-committee will be reviewed and revised as necessary from the perspective of continuous improvement after 12 months of sub-committee operation. The co-chairs will lead this review, seek input from sub-committee and CRC members, and present recommendations to the CRC.

#### **Decision Authority and Process**

All UN Declaration Sub-Committee members will be engaged for input and will be consulted on decisions related to UN Declaration Sub-Committee activities. Any decisions that cannot be made by consensus will be referred to the CRC for guidance and final decision. On occasion, decisions may be made via email correspondence.

All decisions related to recommending amendments to the Code remain under the responsibility of the CRC. The UN Declaration Sub-Committee may provide recommendations but does not have final decision-making authority on Code amendments.

### **MEETING OPERATIONS**

#### **Agenda**

Agendas will be drafted by the Secretariat in consultation with the UN Declaration Sub-Committee Co-Chairs, and with the CRC where appropriate. Agendas will be distributed prior to each meeting. UN

Declaration Sub-Committee members may submit proposed agenda topics to the Secretariat or the Co-Chairs at least one week prior to a regularly scheduled meeting.

### **Frequency**

UN Declaration Sub-Committee meetings will be scheduled by the Secretariat. Meetings will occur either online or in-person on an approximately monthly basis for a full or half day or as agreed upon as determined by the Co-Chairs.

Ad hoc meetings may be called by the Secretariat or Co-Chairs in the instance of a pressing issue or if required by the CRC. These meetings will be held via teleconference.

### **Communications**

Meeting agendas, minutes, and other materials will be distributed by email by the Secretariat.

Formal communications and recommendations to the CRC will be subject to prior agreement and consent from all UN Declaration Sub-Committee members. If consensus cannot be reached, communications or recommendations will be brought to the CRC with all oppositions noted in detail.

### **Attendance**

Members must make every effort to attend all UN Declaration Sub-Committee meetings. Alternates may be delegated at the discretion of the Co-Chairs and must be authorized and pre-briefed to be able to represent member interests and make decisions.

If a member is frequently absent without reason satisfactory to the members of the UN Declaration Sub-Committee, the Co-Chairs or Secretariat will work with the member, if a labour or industry member, to identify an alternate member or if an Indigenous member, work with the First Nations Energy and Mining Council to identify an alternate member.

### **Record-Keeping**

The Secretariat will maintain all records of the UN Declaration Sub-Committee including meeting minutes, attendance for meetings, notes from discussion, decisions, voting results, briefing materials and any research or background materials provided.

Sub-Committee membership

Member name	Title	Nominated by/ Constituent Group
Michelle Miller	Co-Chair	FNEMC
Tania Demchuk	Co-Chair	EMLI
Charlie Allison	Upper Similkameen Indian Band	CRC
Tamlyn Botel	Citxw Nlaka'pamux Assembly	CRC
Aaron Bruce	Principal, Aaron Bruce Law Corp. Member of the Squamish Nation	FNEMC
Sue Craig	Tintina Consultants	Industry
Sheryl Lightfoot	Canada Research Chair of Global Indigenous Rights and Politics, UBC  North American member, UN Expert Mechanism on the Rights of Indigenous Peoples  Member of Lake Superior Band of Ojibwe at Keweenaw Bay	FNEMC
Julia McKay	Vice President, United Steelworkers Union Local 9346	Labour
Dani Miller	Mainland Construction	Industry
Kyle Penner	Tahltan Nation	CRC
Maya Stano	Partner, Gowling WLG	FNEMC