



# FIRST NATIONS LEADERSHIP COUNCIL

## CONFIDENTIAL MEMORANDUM

**To:** Gaming Policy & Enforcement Branch (GPEB), Ministry of Public Safety and Solicitor General  
**From:** First Nations Leadership Council (FNLC)  
**Date:** 9 September 2022  
**Subject:** Proposed Amendments to the *Gaming Control Act*

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### PURPOSE

To provide feedback on the proposed amendments to the *Gaming Control Act (GCA)* to ensure consistency and alignment with the *United Nations Declaration on the Rights of Indigenous Peoples* (the UN Declaration) and the *Declaration on the Rights of Indigenous Peoples Act* (the Declaration Act) and its Action Plan, as mandated by Chiefs in BC. This feedback is being provided on an expedited basis to meet internal provincial deadlines. The FNLC requests that the GPEB continue to seek consent and consult and cooperate with First Nations in BC as this work progresses.

### DISCUSSION

Please find below an overview of the FNLC's concerns to the *GCA* and the proposed amendments.

The UN Declaration, specifically Articles 2-5, supports the right of Indigenous peoples to pursue, conserve and reinforce their economic, social, and cultural development. Gaming, and the regulation of it, is a right held by First Nations in BC. However, there is no independent First Nations regulatory authority recognized by the province, nor any provisions in the *GCA* which recognize or uphold this inherent right and jurisdiction.

In its current form, the legislation is not reflective of a multi-jurisdictional approach to the regulation of gaming in BC, and unilateral and discretionary provincial decision-making prevails, specifically through representatives such as the Minister, the LGIC, the General Manager, and the Grant Manager. There are no opportunities for First Nations to participate in the decision-making process, nor are there any consent or consultation requirements in matters that may affect First Nations.



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The legislation also does not reflect a distinctions-based approach. The Declaration Act Action Plan describes a distinctions-based approach as follows:

The Province is committed to a distinctions-based approach. This requires that the Province's dealings with First Nations, Métis and Inuit Peoples 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. Section 35 of the Constitution Act, 1982, recognizes and affirms the rights of Aboriginal Peoples of Canada, while all Indigenous Peoples have human rights that are expressed in the UN Declaration. However, not all rights are uniform or the same among or between all Indigenous Peoples. In many cases, a distinctions-based approach may require that the Province's relationship and engagement with First Nations, Métis and Inuit Peoples include different approaches or actions and result in different outcomes.

The FNLC is concerned that the legislation's conception and application of "Indigenous nation" is not reflective of the above. For example, at section 21, the *GCA* notes that an "Indigenous nation that has authority over land use planning at the site of the project" is considered a "host local government" under the provincial gaming development projects provisions. This note not only fails to consider First Nations as governments with inherent Title, Rights and jurisdiction, but it also fails to recognize the traditional territories held by diverse and distinct First Nations, some of which may be shared or intersecting. As a result, the provisions under Part 2, Division 3, do not address instances where this may occur.

Part 2, Division 3, is also concerning for the FNLC because it may not provide a just and fair process for objection and dispute from First Nations who may object to a provincial gaming development project that has been approved by the "host local government". Section 25 is restrictive in who can make an objection and the process for doing so may be challenging. Subsection (8) highlights that the fees and reasonable expenses of a mediator for the purposes of a non-binding dispute resolution process must be paid by the lottery corporation, but the FNLC is questioning whether that is enough when considering diverse capacities of First Nations in BC.

Finally, as a whole, the *GCA* lacks transparency and information sharing with First Nations. There are no legislative reporting obligations owed to First Nations to require decision-makers and authorities to share data and information such as lottery corporation reports and the General Manager's annual report. It is important that First Nations are informed of the activities that are taking place on their territories in order to meaningfully participate in any decision-making process and/or to raise objections to impactful action. In the event that there is activity which has



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environmental, economic, social, cultural, or spiritual impact on First Nations and their lands, territories, and resources, there are no mechanisms to access just and fair redress under the legislative scheme.

## RECOMMENDATIONS

Article 38 of the UN Declaration and section 3 of the Declaration Act requires the Province, in consultation and cooperation with Indigenous peoples, to take the appropriate measures, including legislative measures, to achieve the ends of the UN Declaration. Below you will find a list of recommendations to ensure the *GCA* is better aligned and consistent with the UN Declaration.

1. Strengthen opportunities for First Nations to regulate gaming on their traditional territories through the recognition of First Nations as self-determining and self-governing, through their own governing institutions, with inherent jurisdiction. (Articles 1-5, 23 and 32 of the UN Declaration).
2. Engage in joint decision-making with First Nations through an entity (e.g. Indigenous Governing Body), authorized to act on behalf of the Nation. This may involve including a defined term for “Indigenous Governing Body”. (Articles 18, 19, 20 and 21 of the UN Declaration and the Declaration Act Action Plan).
3. Ensure the *GCA* recognizes the possibility of shared or multiple First Nations’ traditional territories and jurisdictions being affected, and that this consideration is reflected throughout the Act, specifically at Part 2, Division 3 and the definition and use of the term “host local government”. (Articles 25 and 26 of the UN Declaration and “Distinctions-Based Approach” which the Province is committed to under the Declaration Act Action Plan).
4. Ensure accessible and prompt decision-making through just and fair procedures in the *GCA*’s objections and dispute resolution provisions, specifically at Part 2, Division 3. This includes considering and supporting First Nations’ capacities to meaningfully participate in such processes. (Articles 39 and 41 of the UN Declaration).
5. Legislate reporting requirements owed to First Nations under the legislative scheme, specifically at ss 27 (Article 18 of the UN Declaration).



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6. Explicitly note that the use of funds received by the First Nations Revenue Sharing Limited Partnership as part of the revenue sharing agreement will not be determined or restricted by the provincial government. (Articles 3 and 4 of the UN Declaration).
7. Reduce unilateral and discretionary decision-making by legislating government-to-government consultation and cooperation requirements for the Minister, General Manager, Grant Manager and other relevant decision-makers to consult with First Nations in matters that will affect them. (Articles 18 and 19 of the UN Declaration).
8. Require the Minister, General Manager, Grant Manager and other relevant decision-makers to consider and meaningfully address impacts to First Nations, recognizing diversity, distinctiveness, and traditional territories, in making decisions and using their powers under the *GCA* (Articles 18 and 19 of the UN Declaration).
9. Legislate consultation and cooperation requirements for the LGIC to engage with First Nations as part of its regulatory making powers found at Part 12. (Articles 18 and 19 of the UN Declaration).
10. Provide mechanisms for just and fair redress for decisions and activities which have environmental, economic, social, cultural, or spiritual impact First Nations and their lands, territories, and resources. (Articles 28, 32 of the UN Declaration).
11. Strengthen language in Part 8 to ensure First Nations continue to have the opportunity to enter into future revenue-sharing agreements with the provincial government and that such agreement will be recognized under the *GCA* so that First Nations can access stable and long-term funding past the end of the current 25-year term.