

BRITISH COLUMBIA ASSEMBLY OF FIRST NATIONS



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BRIEFING NOTE

TO: BCAFN Regional Chief and Board of Directors
FROM: Matthew Norris, Senior Policy Analyst, BCAFN
DATE: Feb 01, 2024
RE: UNDA NAP SP52 – Canada Border Service Agency

PURPOSE

To provide an update and seek direction from the BCAFN Board of Directors on the ongoing implementation of UNDA NAP Shared Priority #52, as being led by the Canada Border Services Agency.

RECOMMENDATIONS

1. Invite CBSA to present during the BCAFN SCA
2. Consider a Resolution calling on DoJ to extend the consultation timeline and provide funding to BCAFN to engage its memberships in the development of a shared position on legislative and policy reform.
3. In the absence of funding BCAFN staff could prepare an engagement package to FNs to assist in the development of their own review and submissions to CBSA.
4. Send a letter to CBSA expressing concerns with short-time frames and lack of engagement funding, informing CBSA of the BC-Specific Bilateral Process for UNDA NAP implementation.

DISCUSSION/BACKGROUND

Collectively Canada Border Services Agency (CBSA) and Immigration, Refugees and Citizenship Canada (IRCC) have begun work on developing Canada's Response to the United Nations Declaration Act (UNDA) Action Plan Measure Share priorities #52.

Shared Priority #52 states, that the Government of Canada will take the following actions in consultation and cooperation with Indigenous peoples:

Pursue legislative amendments to the *Immigration and Refugee Protection Act*, amendments to relevant Regulations and revisions to policies in order to address complex border crossing and migration challenges faced by Indigenous peoples divided by Canada's international borders, including options to amend Canada's right of entry provisions, and work and study permit requirements.

Engagement with Indigenous peoples and their representative organizations to implement the action plan measure is being initiated in 2023, with a view to advancing amendments and policy reforms in 2024. In parallel, the Government of Canada will continue discussions with international partners on

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Indigenous border crossing issues. **(Canada Border Services Agency and Immigration, Refugees and Citizenship Canada).**

In fulfillment of this action, CBSA and IRCC have begun to host regional roundtables with First Nations on potential amendments to the right to enter and remain in Canada, traveller modernization, travel documentation and other accompanying issues, including trade and entry of goods, and training of border service agents.

The CBSA is responsible for managing and enforcing over 100+ Acts of Parliament for Canada's international borders and Ports of Entry. CBSA's Indigenous Affairs Secretariat was established in February 2018 to address border crossing issues for Indigenous peoples, including the facilitation of Indigenous travellers and their sacred goods.

The IRCC's Indigenous Border Crossing Division is responsible for right to enter and remain in Canada under the *Immigration and Refugee Acts*.

CURRENT STATUS

From October 2023 to January 2024, CBSA and IRCC have held seven regional roundtables to garner input from Indigenous organizations on border-related issues. These regional roundtables were by invitation only.

January – Virtual
January – BC
January – Northwestern
January – Prairies
November – Quebec
November – Ontario
October - Atlantic

CBSA and IRCC's intention is to develop a "What we Heard" report based on this engagement. This report will be distributed to First Nations by the end of February who will have a month to provide feedback and input into the report. By the end of the spring, likely June 1st, CBSA and IRCC will develop a proposal to the Minister which will include legislative, policy and procedural amendments based on the feedback received during the Regional Roundtables and feedback from the Jay Treaty Working Group. CBSA and IRCC officials expect legislative amendments to then be introduced in the summer or fall of 2024.

ANALYSIS

International borders have seriously affected Indigenous Peoples living on their traditional territories. Legislation and policy related to border and mobility rights have an important impact on:

- Families;
- governance;
- traditional practices;
- language preservation;
- kinship;
- Access to traditional food and medicines



- cultural ties; and
- economic opportunities.

The United Nations Declaration on the Rights of Indigenous Peoples state a number of principles related to these issues, which include:

Article 9: Indigenous peoples and individuals have the right to belong to an indigenous community or nation in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from exercising such a right.

Article 10: Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 12:

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 24:

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 36:

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.



2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

As a result of the numerous potential impacts border legislation and policy decisions will have on the rights of First Nations, it is critical that First Nations are engaged in the development and implementation of legislative or policy amendments.

It is the BCAFN staff's concern that the engagement and development processes utilized by CBSA and IRCC, identified previously, are woefully inadequate to achieve this due to their lack of engagement, lack of funding, and short timelines. In addition, there has been no commitment to the co-development of legislative amendments as required under UNDA NAP-SP #66 and #67.

NEXT STEPS

1. Invite CBSA to present during the BCAFN SCA
2. Consider a Resolution calling on DoJ to extend the consultation timeline and provide funding to BCAFN to engage its memberships in the development of a shared position on legislative and policy reform.
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