

Implementing Section 3 of the Declaration on the Rights of Indigenous Peoples Act

Overview of Some Expert Perspectives

The *Declaration on the Rights of Indigenous Peoples Act* requires that the human rights of Indigenous peoples in the *United Nations Declaration on the Rights of Indigenous Peoples* are fully upheld and respected. Achieving this requires a transformation in government laws, policies, and practices, and the further establishment of new relations between Indigenous peoples and British Columbia.

Since the passage of the Declaration Act in 2019, advancing shifts in laws, policies, practices and relationships has been taking place through multiple processes. These include:

- formal province-wide processes, such as the development of the Declaration Act Action Plan as required by section 4 of the Declaration Act;
- bilateral processes between title and rights holders and British Columbia to implement the UN Declaration in their direct relationship;
- the development of new structures within British Columbia, such as the Declaration Act Secretariat, to support processes to achieve consistency between the UN Declaration and the laws of British Columbia as required by section 3 of the Declaration Act;
- the passage of amendments to the *Interpretation Act* to confirm that the laws of British Columbia must be interpreted consistent with the UN Declaration; and
- on-going processes between British Columbia and the First Nations Leadership Council (FNLC) that support implementation on the Declaration Act, and which are reflective of mandates provided to the FNLC) through resolutions of the Union of BC Indian Chiefs, the First Nations Summit, and the BC Assembly of First Nations.

This report summarizes one step - the gathering of a cross-section of expert perspectives - taken by the FNLC and British Columbia to support the implementation of Section 3 of the Declaration Act.

Between October 2021 and April 2022, the FNLC and British Columbia asked a small number of Indigenous experts¹, as well as those with expertise in aspects of law and policy respecting Indigenous peoples, to share their insights and perspectives about approaches to implementation of section 3 of the Declaration Act. The intent in gathering and disseminating these perspectives through this Report is

¹ Expert advisors included: Geoffrey Bickert, Gib van Ert, Doug McArthur, Dr. Val Napoleon, the Honourable Steven Point, Dr. Judith Sayers and the Honourable Jody Wilson-Raybould.

to continue to support the direct work and decision-making by First Nations and their governments, and British Columbia, in implementing the Declaration Act.

This report provides a general overview of ideas that were shared through dialogue with the experts. The report has been prepared by an independent facilitator Dr. Roshan Danesh, KC and is not a statement of views of the expert advisors, First Nations, FNLC, or British Columbia. Rather, the report has been prepared to share ideas generated through dialogue with experts that may support the ongoing work between First Nations and British Columbia to implement section 3 of the Declaration Act.

Overview of Section 3 of the Declaration Act

With the passage of the Declaration Act in 2019 there is a growing focus and momentum on changing legislation to uphold the rights of Indigenous Peoples. While it has long been recognized that addressing the legacy of colonialism will require transformative legislative change – including because of the gross harms inflicted by the *Indian Act* – it has remained difficult, despite extensive advocacy by Indigenous Peoples, to see this work move forward. From this perspective, the Declaration Act, and its federal counterpart the *United Nations Declaration on the Rights of Indigenous Peoples Act*, represent a turning point, where the possibility of long-needed legislative reforms may become a reality.

One foundation for optimism about this potential turning point is section 3.

Section 3 creates a legal requirement on British Columbia to take action to ensure consistency between the laws of British Columbia and the UN Declaration:

In consultation and cooperation with the Indigenous Peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.

This requirement applies to all laws – those which already exist and are in force, as well as new legislation or legislative amendments that are being developed within government. This requirement also has a procedural element. achieving consistency must take place in “consultation and cooperation” with Indigenous Peoples.

In placing this requirement on British Columbia, section 3 seeks to uphold and implement a number of articles of UN Declaration including Article 19 and Article 38:

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 38

States in consultation and cooperation with Indigenous Peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Indigenous Peoples, British Columbia, as well as stakeholders and the public, have placed significant emphasis on the importance of the alignment of laws work, the process through which it takes place, and of moving forward in a coherent, consistent, and transparent manner. Core to this is the necessity

to ensure proper respect for the necessary roles of title and rights holders in the legislative development process.

Since the passage of the Declaration Act there has been some dialogue and effort to move the implementation of section 3 forward. A primary focus of these efforts has been on how to address law-making that was already taking place as part of the on-going legislative calendar, and ensure that steps were being taken to align new laws that were already being developed with the UN Declaration. This work has been challenging both procedurally and substantively – including with respect to developing proper processes for consultation and cooperation with title and rights holders. There has been some constructive progress from these efforts including amendments to the *Interpretation Act 2021*, and the *Anti-Racism Data Act 2022*.

At the same time, Indigenous Peoples have made clear the priority and urgency for moving forward with the systematic review of existing laws. In that regard, there are a few on-going or soon to be launched review processes. Two examples of this are in relation to cultural heritage matters² – and specifically efforts to change the *Heritage Conservation Act* – and with respect to children and families³, which has seen the passage of new federal legislation and on-going work to reform the *Child, Family, and Community Service Act*⁴. While these processes have not yet yielded tangible change in all the ways that are needed for consistency with the UN Declaration, they do reflect some of the first forums where efforts are being made to change existing laws to achieve consistency with the UN Declaration. As well, industry and other stakeholders are also watching the implementation of section 3 closely, seeking information about what steps have been, and will be, taken.

² Joint Working Group on First Nations Heritage Conservation

³ The Tripartite First Nations Working Group on First Nations Child and Family Wellbeing. See: <https://www.fnlcchildrenandfamilies.ca>

⁴ https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96046_01

Critical Context for Implementing Section 3

Several key ideas were shared by experts as critical context for implementation of Section 3.

1. Upholding Indigenous self-determination and self-government

Indigenous self-determination and self-government, including as expressed in articles 3, 4, and 5 of the UN Declaration, are part of developing measures to implement section 3 in relation to both new and existing laws. Self-determination includes the right to autonomy or self-government in matters relating to internal and local affairs, and the right of Indigenous Peoples “to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”

These standards reflect how the UN Declaration upholds a focus on structuring proper relations between State (Crown) and Indigenous governments and jurisdictions, including for the operation of Indigenous laws. This is one lens for thinking about the involvement of Indigenous Peoples in legislative processes – that measures are needed for structured interaction with Indigenous governments and their legal orders, with the Crown’s development of legislation. Of course, this also speaks to the importance of on-going work that Indigenous Peoples are doing to re-build their Nations and governments, and revitalizing their legal orders, including for the purpose of facilitating such structured interaction with Crown governments.

2. Respecting democratic principles of parliamentary supremacy and privilege

There are norms and standards of Canada’s parliamentary system of democracy and model of responsible government that are integral to the law-making process and must inform the consideration of measures to implement section 3.

Parliamentary sovereignty (supremacy) is the principle that Parliament (including provincial legislatures) has absolute power to make or unmake any law. Parliamentary privilege refers to the rights, immunities, and procedures of parliament to be able to do its work, including legislating, without undue interference. Parliamentary sovereignty and privilege were explained by the Supreme Court of Canada as the reason why a duty to consult was not triggered in the law-making process. Such a duty would act as an improper constraint on the legislature’s “ability to control their own processes.”⁵

This reasoning highlights that, in designing measures to implement Section 3, there will be a need to ensure that both Indigenous rights are respected and upheld while also respecting constitutional principles integral to the functioning of the Canadian system of responsible and representative government.

⁵ *Mikisew Cree*, paragraph 38.

Beyond the operation of Parliament, consideration in designing measures will have to be given to the roles of Cabinet confidentiality and solicitor-client privilege, while also upholding the honour of the Crown and meeting other Crown obligations to Indigenous Peoples.

3. Recognizing the need to move towards decolonized and inclusive legislative and policy development processes in the context of legal pluralism

Indigenous Peoples and their governments have not historically been involved in the development of Crown legislation. Legislation has historically played a role in implementing colonization (including most directly the federal *Indian Act*), or reflected the belief or perspective that Indigenous rights do not exist or are not substantive. There have been a few exceptions to this historic pattern, with some notable ones in recent years including in the co-development of the Declaration Act.

One aspect of this historic reality is that policy and legislative development has not occurred within a recognition of a context of legal pluralism where Indigenous governments and legal orders also exist and operate, and have roles, responsibilities, and authorities. This relates to the law-making process, which has designed processes for interaction with Indigenous governments, as well as the substance of law-making which has not considered how legislation may be designed to operate within a legally plural context that recognizes the necessary space and roles for the operation of Indigenous laws.

4. Building on experience and narratives of success

There are some “narratives of success” in the work between Indigenous Peoples and British Columbia. It can be helpful and important to identify these and build upon them.

For example, the development of the Declaration Act included an approach to co-development of legislation that was unique in the history of British Columbia. Within that effort one witnessed a more intense and effective capacity for the political and technical representatives of British Columbia and, for example, the FNLC to work together on a common agenda, the building of a better understanding of the political and systemic realities of each other, and how to support one another in addressing those realities. As well, the process reinforced the central necessity of building regular and consistent mechanisms for consultation and cooperation with the proper title and rights holders.

Narratives of success in work between Indigenous Peoples and British Columbia are inclusive of stories of change – how new understandings, practices, and relational dynamics emerged that supported success. A number of First Nations and British Columbia have stories of successful change in their relationships through their negotiations and agreement implementation. The implementation of section 3 similarly, needs to be supported by critical shifts that will help propel effective co-operative action.

For government these shifts involve reorienting the public service, and political decision-making, to practices that recognize there are roles for Indigenous governments and jurisdictions in the legislative development process, as well as gaining understanding and knowledge of how the standards in the UN Declaration can be practically reflected and upheld in legislation. For First Nations, these shifts involve further advancing protocols and practices within, between and amongst themselves for work with other governments in processes of legislative development that are, by their very nature, global. This includes the building of mechanisms and expertise that First Nations authorize and trust to be relied upon, with potential application to all First Nations, in enduring and long-term processes.

Critical Foundations for Implementation of Section 3

The following were identified by experts as critical foundations for implementing section 3.

Foundation 1: Adopt a Principled Approach to Co-Development

A set of shared principles should be adopted and endorsed politically to guide and shape the processes for implementation of section 3 in relation to both existing and new laws. The specific focus of the principles would be to define what is meant by co-development of legislation. Doing this would assist in maintaining the political will necessary to support the process, and ensuring mechanisms and steps taken are consistent with the approach. This would also help address the reality that legislative development does not occur centrally within government – it occurs Ministry by Ministry – and requires a consistency of approach. Similarly, it would form a foundation on which First Nations could rely as their technical representatives engage in advancing this work.

Adopting shared principles would also reflect the orientation that in implementing section 3 we are in a moment of transition to greater shared jurisdiction and acknowledgement of the reality of legal pluralism. At the same time, through a principled approach, understanding could be built about how issues of Cabinet and Parliamentary confidentiality and privilege will be respected.

Examples of principles of co-development that were discussed by experts include the following:

- *Co-development begins at the earliest stage of the development of potential ideas for policy and legislation*
 - Engagement begins at earliest stage of development of policy ideas.
 - Development of plans for consultation and cooperation and early exploration of the relationship of policy ideas to standards of the UN Declaration also begins at earliest stage.
- *Co-development requires a diversity of approaches to working together, that respects and reflects the continuum of government re-building being undertaken by Indigenous Peoples*
 - A kaleidoscope of approaches to Indigenous Peoples being involved in the co-development should always be available, ranging in intensity of involvement (e.g., everything from letters and website portals, to potentially being involved in joint development of drafting instructions and review of draft language).
 - The goal is to ensure Indigenous Peoples can determine freely how they wish to be involved, based on their own capacities and priorities.

- *Co-development processes must recognize and account for the reality that we are in a time of transition in the re-building of Indigenous governments and Nations, and that the accountability approaches and mechanisms for Indigenous governments within the process continue to evolve and may take multiple forms*
 - It is recognized that as Indigenous governance re-building continues to occur there will be multiple ways in which Indigenous Peoples may be represented within co-development processes, and that these will change over time and may not be identical from process to process.
 - These may range from mandating through province-wide organizations and directing roles of FNLC and FNOs, to different Title and Rights holders being represented in a range of ways.⁶
 - The [Indigenous Governing Body Policy](#)⁷ must be applied and respected when working with Indigenous Peoples and their representative governments.

- *Government should take an over-inclusive approach to understanding how potential policy or legislative development may affect Indigenous Peoples or their rights*
 - Article 18 and Article 19⁸ of UNDRIP are guiding standards for how Indigenous Peoples participate in decision-making, including legislative and policy development.
 - The approach to determining what “affects” Indigenous Peoples or their rights should be based on working with Indigenous Peoples and understanding their views and priorities, not through technical/legal determinations made within government.

- *Co-development processes must recognize and support legal pluralism, and how Indigenous legal orders operate*
 - Indigenous Peoples are in various stages of their own processes of law development, and examining and determining how their own laws may interact with and inform Crown development of legislation and policy.
 - Co-development should include a focus on how space and mechanisms are being created for coherent, consistent, and principled relations between Indigenous laws/legal orders and those of the Crown.

- *Co-development requires reciprocity, including mechanisms for Indigenous Peoples to bring forward their priorities for policy and legislative development, and respecting the law-making processes being undertaken by Indigenous Peoples*

⁶ Multiple examples could be cited from the Declaration Act process and others.

⁷ This is a reference to the IGB policy already developed and operational within government.

⁸ Article 18 and 19 would be included in the description of the principle to ground the understanding of “affect” to include section 35(1) rights.

- Initiation of potential legislative and policy development does not only begin within the BC government. It can also begin with Indigenous Peoples bringing forward their priorities.
 - Similarly, a co-development process is not only about seeking views on ideas or proposals of the BC government – it must include mechanisms and opportunities for Indigenous Peoples to bring forward how those subjects must be dealt with, and design and build the approach together.
- *Co-development must be “free”, “prior”, and “informed”⁹*
 - “Free” includes that Indigenous Peoples can choose how to participate, and are not coerced to be involved or support a certain outcome.
 - “Prior” includes that co-development is occurring throughout the process and before decisions are made about outcomes.
 - “Informed” includes that full information is provided to Indigenous Peoples.
- *Co-development can include the development of joint legislative drafting instructions and joint review of draft language to ensure the intent of the drafting instructions is met*
 - Joint development of legislative drafting instructions is an approach that can be taken with Indigenous Peoples, with confidentiality protocols (eg. NDAs) being used as necessary.
 - Where joint development of legislative drafting instructions occurs the intent of legislation as developed through a co-development process should be documented and be made public, so that government and Indigenous Peoples can advance, defend, and support the implementation of the statute consistent with its purposes.
- *Co-development requires an attitude and practice of cultural humility*
 - It is important to recognize that the policy and legislative process as it has evolved and been implemented over generations, includes many culturally specific practices and assumptions.
 - Co-development involves challenging and changing some of those practices and assumptions. Cultural humility is an approach to doing this. Cultural humility is a life-long process of self-reflection and self-critique. Undertaking cultural humility allows for Indigenous voices to be front and centre and promotes relationships based on respect, open and effective dialogue and mutual decision-making. Relatedly, it is necessary to

⁹ There is guidance on the meaning of free, prior, and informed as defined in the UN Declaration (eg. from Special Rapporteur etc.) which would be included in the explanation of the principle.

create a culturally safe process that requires positive anti-racism stances, tools and approaches and the continuous practice of cultural humility.¹⁰

- *Successful co-development requires cultivating deepening relational continuity and stronger layers of trust*
 - Trust needs to be continually built at the political, institutional, and interpersonal levels to support effective co-development practices.
 - As such, co-development processes should be supported by multiple efforts to build relational continuity – some of them intermittent and separate from any specific co-development process (eg. political dialogue and relationship-building), and some of them tied to each specific co-development process (eg. roles for senior officials, joint technical working groups, and other mechanisms).

- *Co-development is a learning process, which will continually be evolved and improved, including through acknowledging, celebrating, and building on success*
 - The effectiveness and utility of co-development processes needs to be continually reviewed, including with Indigenous Peoples, so that learning and adjustments can take place.
 - Opportunities for such learning should take place during a co-development process, as well as more regularly apart from any specific process of co-development.
 - To support this learning, and build positive momentum, recognition should be given to initiatives that work, and how working together in different ways leads to new and constructive outcomes.

- *A distinctions-based approach must guide all efforts at co-development, from the beginning of the process until the end*
 - Consistent with the Declaration Act, Draft 10 Principles, and section 35(1) a distinctions-based approach must always be applied to how co-development occurs.
 - This includes recognizing that all co-development processes will not involve all Indigenous Peoples (eg. some/many will be only relevant to First Nations because of subject-matter).

¹⁰ Definitions adapted from *In Plain Sight*.

Foundation 2: Consultation and Cooperation Must Be Diverse, Inclusive and Reflect Rights and Responsibilities in Different Legal Orders

Processes of consultation and cooperation need to be specifically designed for the purposes of engagement with proper title and rights holders on a province-wide scale with respect to legislative change. The following insights were shared by experts as guidance for thinking about approaches to consultation and cooperation and some of the challenges experienced in engagement processes.

- **Diversity and inclusiveness:** There are different modes that can be identified through which Indigenous Peoples have related, and continue to relate, to Crown governments in the context of colonization. For example, there are different strategies of “navigation”, “negotiation”, “confrontation”, and “stepping outside” that we see employed. When designing mechanisms of consultation and cooperation it should be recognized that all of these modes continue to exist, and that mechanisms should be designed that understand this reality and seek to be open and accessible to all, and not exclude any.
- **Transition and transformation:** The current moment in time is one of transition – where Indigenous Peoples are re-building and revitalizing their governments and legal orders – and of where transformation where Indigenous-Crown relations are being reset on a principled foundation, including the standards in the UN Declaration. Mechanisms for consultation cooperation need to acknowledge this time of transition, and have a fluidity, flexibility, and adaptability to the distinct ways Indigenous Peoples are advancing this transition and what that means for the “who”, “when”, and “how” they may choose to relate to the Crown. It also requires acknowledging that while we must also learn from “narratives of success” about what has worked in the past and the present, we are also in a time where new mechanisms and practices are needed to reflect the shifts.
- **Structural and cultural shifts:** Legislative processes were designed, implemented, and structured over time without consideration of the role of Indigenous governments and laws. This has resulted in entrenched structures, as well as a culture of legislating, that has significant barriers to consultation and cooperation. As such, establishing mechanisms of consultation and cooperation to meet the requirements of section 3 and the standards of the UN Declaration necessitates both structural and cultural shifts within government, as well between Indigenous Peoples and the Crown.
- **Rights and responsibilities in different legal orders:** There is often a conflation of what is meant by Indigenous “rights” and “responsibilities” in section 35(1) of the *Constitution Act* or the UN

Declaration, and the “rights” and “responsibilities” that exist and are held within Indigenous governing systems and legal orders. Mechanisms of consultation and cooperation need to be cognizant of, and respect, these different forms of rights and responsibilities.

- No quick fixes: Consultation and cooperation, when it has occurred, has always been challenging, hindered by structural, cultural, and process barriers, and layered by relational difficulties and mistrust. These challenges will not simply go away. Addressing them occurs through sustained efforts at change, over a sustained period of time, that result in changed outcomes. Mechanisms of consultation and cooperation need to be designed in recognition of this, with a learning orientation, that pursues continuous improvement.

Based on these insights, the following design concepts for mechanisms for consultation and cooperation were discussed:

- *Jointly design* the consultation and cooperation mechanism itself. By building it together it will be more effective and trusted.
- Be *transparent* about the steps and stages of work with Indigenous Peoples. What the process will look like, and what can be expected, at the beginning, middle and end.
- Establish *clarity* about what is joint Crown-Indigenous work within the process, and what is internal work to Indigenous Peoples.
- Ensure there is a *backbone* (an infrastructure) to the mechanism that supports it to be maintained and carry forward with consistency. This may include joint infrastructure, Crown infrastructure, and Indigenous Peoples infrastructure.
- Establish *resourcing* for Indigenous participation that is clear, and can be used “up” and “down” at local, regional, and province-wide ways.
- Adopt an *adaptable* approach that can adjust to changing circumstances, pressures, and contexts as consultation and cooperation takes place.
- Use an *anti-racist* orientation from the outset, and do not underestimate the ways in which stereotypes and racist attitudes or behaviours may arise in efforts at consultation and cooperation.
- Acknowledge and build the recognition of *value* in the approach to consultation and cooperation as it is implemented, and through that create encouragement and trust for more Indigenous Peoples to be involved in it.

- Take steps to *simplify and standardize* the use of tools that may be required in some consultation and cooperation process. For example, the utility, nature, scope, and use of non-disclosure agreements should be considered. Similarly, the joint development of “three column documents” and “drafting instructions” should be coherent across ministries.

Foundation 3: Co-design of Review Processes for Existing Laws Can Build on Previous Models of Law Reform while Recognizing the Unique Context of Section 3

The co-design of a review of laws process for existing laws is helpfully framed through consideration of the following insights:

- *Draw on Existing Practices:* We have a lot of experience in implementing international law (eg. international treaties) into domestic law. We have done this for many decades, including with human rights instruments. Such processes follow general stages that are well established: developing an understanding of what is required by the international instrument; reviewing domestic law to identify gaps with those understandings; developing options and solutions for filling those gaps; and amending legislation as required. While the UN Declaration is not an international treaty, by virtue of section 3 it effectively requires a similar type of legal process to achieve consistency.
- *Recognize the Unique Requirement of Consultation and Cooperation:* While there is an existing practice to draw on from the implementation of existing treaties, we must also recognize the unique context of section 3 – it requires that ensuring consistency must be done in “consultation and cooperation” with Indigenous Peoples. The standards of the UN Declaration also require legislative measures to be developed in partnership (see for example Article 18 and 19). This means that processes will look different than those used previously for the implementation of international treaties. Indigenous Peoples must be at the table, and the process must be designed and implemented with them.
- *Adopt a Legally Sound and Principled Approach:* Achieving consistency between the laws of British Columbia and the UN Declaration has an inescapable legal dimension. There will need to be legal opinions provided on the meanings of the articles of the Declaration, and the implications of those meanings for legislative change.

Of course, we already have significant resources to draw on to discern the meaning of the articles of the UN Declaration including: documents and records from its multi-decade history of development; past and current interpretations and applications by the United Nations, Indigenous Peoples, as well as by some States around the world; the views of experts; and the application of international legal norms. At the same time, while there is some emerging judicial

interpretation of the UN Declaration in Canada, it is very minimal – we should expect far more in the future, including interpretations that will inevitably have to inform the work of achieving consistency.

Consideration needs to be given about how this legal opinion work done. While the legal work is essential, there is a long history of differing legal perspectives between the Crown and First Nations being a source of conflict, delay, and confusion. Consideration should be given to whether it is possible to solicit legal opinions that would inform First Nations as well as British Columbia. Options may include roles for an independent expert or body - whether informally by drawing on particular individuals, or more formally through a new entity such as an “Indigenous ombudsperson” or an existing entity such as the Human Rights Commission.

- *Draw on Expertise:* While some jurisdictions around the globe have been implementing the UN Declaration, including making legal changes to reflect certain standards, no jurisdiction has thus far pursued as audacious and bold an effort as is required by section 3 (or section 5 of the federal *United Nations Declaration on the Rights of Indigenous Peoples Act*). The expertise on the UN Declaration that exists in Canada and around the world will need to be drawn on. Government and First Nations need to consider shorter- and longer-term strategies and approaches for drawing on this expertise, and how it may be used. The new Declaration Act Secretariat established by BC has one structure through its “advisory committee” of experts. Other measures that may be considered include specialized training and education programs, hiring of external experts, and establishment of joint mechanisms for drawing on expertise with First Nations. The FNLC has, and continues, to consider how to draw on additional expertise in its work related to the Declaration Act, including how to further co-ordinate aspects of legal work amongst and between First Nations as has been done on some critical legislative, policy, and litigation initiatives in the past.
- *Build on Early Successes:* The implementation of section 3 is a bold endeavour. Consideration should be given to adopting a staged approach that begins with priorities that are viewed as potentially “easier” to achieve successfully. As a few legislative areas are changed to achieve consistency the lessons from those efforts can be used to refine and further develop approaches for the harder topics. This is consistent with the current approach that appears to be emerging. The *Heritage Conservation Act* has been identified as one priority for early development of a section 3 process. There has already been over a decade of joint work between First Nations and British Columbia through the Joint Working Group on First Nations Heritage Conservation on the challenges with the Heritage Conservation Act, and potential areas of change. Other near-term priorities that may be early successes need to be identified in the near future.

Foundation 4: Alignment of Laws Must be Supported by Structural and Cultural Shifts

Structural change will be required within government and between and amongst First Nations to implement section 3. Government will require the ability for clarity of accountabilities internally to implement standards that cut across ministry portfolios. The example was given of struggles at both Canada and BC to implement modern land claims and treaty agreements because of a lack of internal accountability structures. Absent such structures, political will cannot translate into tangible and practical change. For First Nations, structural change involves the furthering improvement of standing structures for how their collective work regarding legislative change will take place – as distinct from determining and forming collective structures and processes in response to specific legislative realities emerging.

So far, BC has implemented one structural shift – the development of the Declaration Act Secretariat. There were also many ideas offered about further structuring the collective organization of First Nations around legislative development. One idea was the development of First Nations legislative council, building on some of the other Councils developed by First Nations in BC, that would support the coordination of the collective work of First Nations on legislative development with government. Developing such a council would draw on best practices from work done by existing First Nations' councils, the process of the development of the Declaration Act, and the collective organization and work done by First Nations over many years on advancing legislative change.

Experts also emphasised the need for changes in organizational culture, as well as the culture of relations between Indigenous Peoples and British Columbia. It was recognized that some of the obstacles and challenges to implementation of section 3 will be hidden and intangible – attitudes and norms that have long been in place and influence choices and behaviours. Some of these obstacles and challenges have long been known including lack of trust, and racist stereotypes and discriminatory behaviours. Others are related to coming to an understanding of what working as true partners actually looks like, and how to consciously transition into that based on principles of recognition, respect, and implementation of Indigenous title and rights. Yet another form of obstacle is lack of understanding of each others governance and legal systems, and how to advance together in the context of legal pluralism.

Adopting and implementing a process of change in organizational culture will require measures that range from continuing to advance diversification of the public service, cross-ministry learning and training programs, and modelling and empowering cultural change by organizational leaders. Some of the specific perspectives shared on how to advance this cultural change included the following:

- There are always barriers in government to implementing new and novel policy. Overcoming these barriers requires effective planning, visioning, mission developing, policies and specifics, and accountability. Having a supportive organizational culture is critical to addressing these

barriers. If we don't address an organizational culture that is dated, then we cannot move forward.

- When thinking through how organizational culture may change it is helpful to talk specifically, rather than generally – to ask, what kind of culture is needed to support UN Declaration implementation, not generally how organizational culture should change. The Declaration Act does represent a transformational shift. If we look at the requirement for consistency of laws or the action plan, these are new initiatives in ambition or scope. We need a supportive culture in order to be able to achieve these things. This also requires recognizing that there are a diversity of organizational cultures within the public service – within different ministries etc. We need to have a lens and approach that also addresses dynamics at those specific levels.
- How does organizational culture sometimes operate as a barrier? In two ways: 1: We are often upsetting how we do things and views, practices and conventions unless addressed, and as such we should expect “resistance”. 2. When doing something new there may not be common understandings about what we are trying to do, why we are doing it, consult and engagement process, and changing relationships.
- We need to build on strengths. Nothing is static in the public service. There has been change from decade to decade. The public service has changed over time with respect to understanding how to work with Indigenous Peoples. It continues to change now. For example, anti-Indigenous racism, like throughout society, has been a challenge. Many initiatives have been implemented and are continuing to be implemented to help address this. At the same time, racism does remain a challenge that has to be addressed. A culture must be built that upholds the highest standards of inclusion, respect, and understanding. At the same time, where racist behaviour is occurring it needs to be addressed and confronted – based on the principle of zero tolerance.
- There is a connection between how organizational culture has readiness for implementing the UN Declaration, and political direction and will. Political direction is a driver for change – it helps focus, motivate, and support the changes in organizational culture that are being advanced. When government requires the public service to do something different, momentum in shifts that are already being pursued can accelerate. Ultimately, the signpost of success in changing organizational culture is evidenced in action.
- Another driver for changes in organizational culture can be “shocks” to the system – such as the adoption of the 10 Draft Principles, the passage of the Declaration Act, or the impact of broader societal events like the realization of the existence of mass graves and unmarked burials. Such events accelerate learning, understanding, and acting in new ways by individuals and groups within the public service, including more feeling responsible for being agents of change. Such shifts and shocks can also reveal where the challenges lie, including the levels of racism or ignorance that may still exist.

- Changing organizational culture also involves continuing to build a public service that reflects all of British Columbia. This is true at the leadership level, and at all levels within the public service.
- We need to have a methodology for change. Is there a method that the public service follows? Does it work? The methodology and process must have an urgency. The timing is now, we have the urgency to deliver. Consideration should be given to structuring a change coalition within the public service, and that includes Indigenous Peoples. This includes having clear change-minded and focused leadership. We do a good job of vision statements and setting principles. We now need to be more specific: Decolonization – do we share a vision of what that looks like? We also need a methodology that addresses the fragility and elements of “fear”. Partnerships with Indigenous Peoples are also needed to support the change: a clear method, coalition, and clear direction, and which also accepts, supports, and gives permission innovation.

Moving Forward

These perspectives and ideas from dialogue with experts are being shared in the hope that they can support the fundamental, direct, work between Indigenous Peoples and British Columbia to implement Section 3. There is a readiness to discuss these ideas, and any others, as part of this work. As well, as the newly formed Declaration Act Secretariat advances its mandate to support the implementation of Section 3, it will continue to gather, advance, and generate ideas about what needs to be done to effectively implement Section 3.

If you would like to further discuss the perspectives and ideas in this report, contact the Declaration Act Secretariat through the following email: DeclarationActSecretariat@gov.bc.ca

Further information can be found at www.declaration.gov.bc.ca