



## RIGHTS, RECONCILIATION, AND THE WELL-BEING OF INDIGENOUS PEOPLES

Union of BC Indian Chiefs Pre-Budget Submission to the House of Commons Standing Committee on Finance in Advance of the 2018 Budget

### INTRODUCTION

Unaddressed Indigenous rights perpetuate inequality and create economic uncertainties for Indigenous Nations and Canadians. In this submission, we address the Pre-Budget Consultation themes of productivity and competitiveness in relation to the political and territorial rights of Indigenous Nations. Full recognition and enactment of these rights (including the right to self-determination) is an international obligation of Canada under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Further, these rights are essential to the well-being and productivity of Indigenous Nations.

We identify ten recommendations for the 2018 budget within four themes:

1. Indigenous rights and reconciliation,
2. Protection and education of Indigenous children,
3. Joint oversight and protection of lands and resources, and
4. Security and well-being of Indigenous communities.

#### About the Union of BC Indian Chiefs

The Union of BC Indian Chiefs (UBCIC) is a not-for-profit organization that supports Indigenous Nations in asserting and implementing their Aboriginal Title, Rights, Treaty Rights, and Right of Self-Determination as Peoples. We are directed by the resolutions from our Chiefs Council Meetings and Annual General Assemblies. Based on these resolutions and input from our Executive, we have identified priorities of our member Nations for the 2018 budget.

### THEME 1: Indigenous rights and reconciliation

#### RECOMMENDATION 1: Fully implement the UN Declaration on the Rights of Indigenous Peoples

In May 2016, Canada announced its unqualified adoption of the UNDRIP, the universal international human rights instrument explicitly addressing the economic, social, cultural, political, spiritual, and environmental rights of Indigenous peoples. Canada must fulfill its legal obligations and engage with Indigenous peoples through a meaningful and substantive process to implement the UNDRIP. **The 2018 budget must provide funding for the full engagement of Indigenous regional organizations, as well as Indigenous Nations, as proper rights holders, to develop a legislative framework for the unqualified implementation of the UNDRIP, focusing on:**

- **Reforming federal laws, regulations, and policies to ensure that the free, prior, and informed consent of Indigenous Peoples is required for any decisions that could have an impact on Indigenous Title and Rights and Treaty Rights;**
- **The development of an independent oversight body to review and report on implementation progress.**

## RECOMMENDATION 2: Implement the 94 “Calls to Action” of the Truth and Reconciliation Commission

The Truth and Reconciliation Commission’s final report identified 94 “Calls to Action,” involving all levels of government, which must be implemented as the bare minimum to advance reconciliation. **Necessary resources must be provided for Canada to uphold its commitment to fully implement all calls to action in the summary of the final report of the TRC (including implementing the UNDRIP in full and meaningful partnership with Indigenous peoples and Nations).**

## RECOMMENDATION 3: Enable reform of the specific claims process as per the recommendations of the Office of the Auditor General and the Standing Committee on Public Accounts

The specific claims process is Canada’s approach to redress of historical wrongs related to the illegal alienation of Indigenous lands, mismanagement of Indigenous assets, and the non-fulfillment of treaties. Such redress is a key element of reconciliation, and unresolved claims perpetuate social and economic inequality.

In a November 2016 report to Parliament, the Office of the Auditor General identified the need for substantial reform of the specific claims process.<sup>1</sup> The Standing Committee on Public Accounts has given Indigenous and Northern Affairs Canada (INAC) until April 30, 2018 to meet five recommended actions related to the OAG’s findings.<sup>2</sup> In response, Canada has struck a “Joint Technical Working Group” (JTWG) with the Assembly of First Nations to address the inequalities, bias, and barriers within the specific claims process.

**CREATION OF AN INDEPENDENT PROCESS:** The JTWG must initiate a Nation-to-Nation, rights-based approach to eliminate systematic power imbalances and conflict of interest, entailing long-term vision and commitment. Canada must support claims reform, including the creation of a truly independent claims process, over several years. **In the 2018 budget, Canada must continue to support the work of the JTWG to bring about essential reforms and involve and directly support Indigenous Nations and regional organizations in building these reforms as equal partners.**

**SUSTAINABLE RESEARCH FUNDING:** Indigenous Nations’ access to the specific claims process is dependent on their ability to fully research, prepare, and advance claims. Research funding is essential in providing access to justice. **The 2018 budget must include sufficient, sustainable, multi-year funding for Indigenous**

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<sup>1</sup> Office of the Auditor General of Canada, *Report 6—First Nations Specific Claims—Indigenous and Northern Affairs Canada*, November 2016.

<sup>2</sup> Standing Committee on Public Accounts, *Report 6—First Nations Specific Claims—Report of the Standing Committee on Public Accounts*, May 2017.

**Nations and organizations to research and develop specific claims, while the work of developing a sound methodology for administering research funding continues.**

## THEME 2: Protection and education of Indigenous children

### RECOMMENDATION 4: Uphold the Canadian Human Rights Tribunal Ruling in *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada*

In January 2016, the Human Rights Tribunal found that the Canadian government is racially discriminating against 163,000 Indigenous children and their families by providing deeply flawed and inequitable child welfare services. Canada provides Indigenous child and family services agencies with fewer resources than their provincial counterparts and its funding formulas and policies create a perverse incentive to place Indigenous children in foster care and do not address the cultural needs of children. **The 2018 budget must enable Canada to immediately comply with the Canadian Human Rights Tribunal Ruling, including implementing the measures put forth by the First Nations Child and Family Caring Society and the Assembly of First Nations.**<sup>3</sup>

### RECOMMENDATION 5: Support the Tripartite Education Framework Agreement

Indigenous Nations seek to improve educational outcomes for all Indigenous students and have established a solid basis for a comprehensive, well-supported Indigenous education system, founded on Indigenous Nations' languages, cultures, and values. Contributing to this system is the Tripartite Education Framework (TEFA), signed in 2012 by Canada, BC, and the First Nations Education Steering Committee (FNESC), which initiated a new funding model for Indigenous schools in BC. As the Liberal government has committed to working with Indigenous Nations in an equal partnership and to investing significantly in Indigenous education, **the 2018 budget must include implementation of the funding measures within TEFA to continue to support Indigenous learners in achieving improved educational outcomes.**

## THEME 3: Joint oversight and protection of lands and resources

### RECOMMENDATION 6: Support Indigenous Nations' and organizations' full and equal participation in processes of legislative and regulatory review

Under Section 35 of the Constitution Act, 1982, Indigenous Nations have legally recognized rights and responsibilities to protect their territories; as such, in any Nation-to-Nation framework, regulatory structures governing resource allocation and use must be jointly developed. Indigenous Nations must be full and equal partners in processes of legislative review, such as the review of the National Energy Board, the Navigable Waters Act, the Fisheries Act, and the Canadian Environmental Assessment Agency. However, the capacity and resources of Indigenous organizations tasked with contributing to these reviews are stretched thin, and the timelines for participation are too short. **The 2018 budget must include allocations to support the full and equal participation of Indigenous Nations in processes of legislative and regulatory review.**

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<sup>3</sup> *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada* 2016 CHRT 2 at paras. 476-478.

## RECOMMENDATION 7: Protect wild salmon

Indigenous Nations have an inherent obligation and constitutionally protected right to defend and protect the well-being of their communities through the protection of wild salmon within our territories. However, the long-term decline of wild salmon continues due to cumulative impacts from multiple environmental stressors. These cumulative effects must be addressed via a multi-pronged approach, including investments across multiple conservation, research, and regulatory programs. **The 2018 budget must provide full funding for:**

- **Necessary investments for the protection and conservation of wild salmon as set out in the 75 recommendations of the Cohen Commission’s report, including an application of the report’s principles coast-wide;**
- **Meeting Canada’s obligations under the Pacific Salmon Treaty;**
- **Freshwater habitat and stewardship programs run by Indigenous Nations and watershed societies;**
- **The work of the Strategic Salmon Health Initiative (under Genome BC), the Pacific Salmon Foundation’s Salish Sea Marine Survival Project, and Indigenous Nations conducting interval sampling—and for data sharing and collaboration across these initiatives.**

## RECOMMENDATION 8: Support Indigenous Nations’ participation in international trade negotiations

The non-recognition of Aboriginal Title and the non-implementation of Treaty Rights constitutes an international subsidy to industry. Before any Nation-to-Nation relationship can exist, Indigenous title and jurisdiction over lands must be recognized and respected, yet Global Affairs does not allow Indigenous Nations, as proper rights holders, to participate in trade negotiations. **In the 2018 budget, Indigenous Nations must be supported to develop their own governance frameworks, based on their individual Nation’s laws, and to participate in international trade negotiations.**

## THEME 4: Security and well-being of Indigenous communities

### RECOMMENDATION 9: Support protection of Indigenous women

Systemic violence against Indigenous women and girls must be eliminated. Indigenous women and girls must have their rights upheld and protected, including the right to participate fully in all decisions that affect their lives. Many people, especially family members of missing or murdered Indigenous women and girls, are frustrated by the current National Inquiry into Missing and Murdered Indigenous Women and Girls, which can now be said to be in crisis. At the same time, the Inquiry is the result of decades of advocacy by families and survivors. **The 2018 budget must include full funding for:**

- **Indigenous women’s groups and frontline organizations to immediately address gaps and inadequacies in supports provided to families and children in vulnerable situations;**
- **Creating necessary additional shelters in Indigenous communities and ensuring the effective operation and maintenance of all existing and new shelters;**
- **Reviewing the National Inquiry such that it can adequately and effectively fulfill its mandate, particularly by ensuring all affected families and survivors are heard (for example, by holding a**

gathering in advance of the release of the Interim report)—this will require a substantial increase in funding;

- **Indigenous women’s organizations to work with provincial and territorial governments to develop a comprehensive action plan on violence against women informed by existing research and in response to interim and final reports of the National Inquiry.**

## RECOMMENDATION 10: Support regional fire-related mitigation efforts, training, and response planning

Indigenous Nations in BC are on the frontlines of 2017 wildfire crisis, facing evacuations and defending and supporting their communities. As wildfire intensity will increase in the future due to hotter, drier conditions as a result of climate change, Indigenous Nations need resources, capacity, and training to continue to plan their individual responses to fires and improve their abilities to protect themselves. Organizations such as the First Nations Emergency Services Society of BC (FNESS) provide vital emergency services for Indigenous Nations, including forest fuel management, fire education, firefighter training, fire department administrative training, and emergency planning. **The 2018 budget must fully support regional Indigenous emergency services organizations (such as FNESS) in spearheading community mitigation efforts and providing fire-related training and response planning, such as the measures identified by FireSmart.**

## SUMMARY

Funding allocations must respect and support the right to self-determination by Indigenous Nations, which is a prerequisite of a Nation-to-Nation relationship. Simultaneously, Indigenous Nations and organizations must be adequately funded to support Indigenous community members’ well-being, security, resilience, and productivity. By adopting these recommendations in its final report, the standing committee can send a clear message to the federal government that reconciliation requires significant, long-term investments and collaboration with Indigenous Nations for the reconfiguration of legislation as well as multiple policies and processes.

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