

# Policy Brief

## AN ANALYSIS OF RECONCILIATION AGREEMENTS IN BRITISH COLUMBIA

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## Background

In 2005, the province of British Columbia, along with BC First Nations leadership, developed a **NEW RELATIONSHIP VISION** that was based on three core tenets:

- 1) Respect, recognition and accommodation of rights and title;
- 2) Respect for each other's laws and responsibilities;
- 3) The reconciliation of Aboriginal and Crown titles, and jurisdictions.

This Vision, along with judicial direction to settle sovereignty issues outside of the courts, were the basis for a new set of negotiated agreements within BC that engage First Nations who were not interested in the BC treaty process, and remain uninterested. These new 'Reconciliation' Agreements seek to:

- 1) Facilitate ongoing reconciliation of Crown and Aboriginal Titles and rights;
- 2) Develop and maintain joint and shared decision making and management;
- 3) Create a negotiation framework for further Government to Government agreements.

In 2015, the BC government, BC Assembly of First Nations, and Union of BC Indian Chiefs reaffirmed their commitment to this government to government relationship.

## Objectives

This policy brief provides results and recommendations from a qualitative document analysis on current Reconciliation Agreements, and Reconciliation Framework Agreements, that determine their ability to meet the following three interests of First Nations governments:

- 1) To cooperatively manage the natural and cultural resources within an asserted territory with the Province in an environmentally and culturally appropriate manner
- 2) To benefit from the resources within asserted territory
- 3) To obtain legal rights to key cultural significant areas of the territory for social and/or economic benefit

This policy brief, funded by a grant from the **Rural Policy Learning Commons**, will be used to disseminate information from this study to better inform First Nations governments and Tribal Councils on the content, purpose and possibilities offered through these resource and environmental management institutions.

## Reconciliation Agreement Provisions

The document analysis found that most agreements had consideration for community development provisions. These provisions are action areas or goals that are based on the interests of the First Nation community entering into the agreement, with the notion that reconciliatory action must be made through the support of these specific community imperatives:

| Action Area                          | Community Provision  |
|--------------------------------------|--|
| <b>Strong Governance</b>             | <ul style="list-style-type: none"> <li>Recognize and reconcile respective jurisdictions, governance, laws and responsibilities</li> <li>Ability to self-govern and create law pursuant to that Nations governance structures, laws and values</li> </ul>   |
| <b>Language and Culture</b>          | <ul style="list-style-type: none"> <li>Increase awareness, appreciation, understanding and fluency of that Nation’s culture, history and language</li> <li>Preserving language beliefs and oral histories</li> </ul>   |
| <b>Healthy Children and Families</b> | <ul style="list-style-type: none"> <li>Develop health indicators and provide adequate support delivered and managed by Communities with laws and values based in self-governance</li> </ul>  |
| <b>Healthy Communities</b>           | <ul style="list-style-type: none"> <li>Standards of living on par or exceeding non-Aboriginal communities in BC, including housing, infrastructure, roads, and access to clean water</li> <li>Economic self-sufficiency</li> </ul>   |
| <b>Justice</b>                       | <ul style="list-style-type: none"> <li>Access to appropriate education and support related to the criminal justice system</li> <li>Engage in options to improve policing</li> <li>Creation of a culturally appropriate First Nation court for the region</li> </ul>                                    |
| <b>Education and Training</b>        | <ul style="list-style-type: none"> <li>Education funding and outcomes on par/exceeding non-Aboriginal communities</li> <li>Education programs developed and delivered by Nation communities</li> <li>Meaningful opportunities for Nation citizens for post-secondary education and training</li> </ul> |
| <b>Lands and Resource Management</b> | <ul style="list-style-type: none"> <li>Negotiate lands and resource management in the areas of watershed, wildlife, fisheries, forestry</li> <li>Environmental assessment improvements</li> <li>Develop a land management plan for the territory</li> </ul>  |
| <b>Economic Development</b>          | <ul style="list-style-type: none"> <li>Set up protocol to negotiate further revenue sharing and consider future community economic opportunities</li> </ul>  |

## RA Implementation

The implementation structure of RAs may differ, but they generally follow a hierarchical structure, where there is a high-level decision-making table, forum or council that sets the strategic plan and makes decisions based on information compiled by working groups and sub-tables tasked with carrying out specific priorities.

- **The Executive level:** the board of directors or executive committee of the First Nations & the Provincial Ministers meet on an as needed basis to monitor progress on implementation of the protocol and perform any high-level problem solving if necessary.
- **Management Level or Working Group:** senior representatives of each party will meet quarterly or as needed to oversee and manage implementation of the Protocol, including disputes that may arise at the technical level.
- **Technical Team(s) or Sub-tables:** technical representatives of each party will meet on an as needed basis to address technical aspects of the implementation of the protocol and to deal with specific projects at the discretion of the Working Group. This level provides the opportunity for the incorporation of *technical western science* as well as *traditional ecological knowledge* (TEK) from the community.

## Funding and Revenue

Reconciliation Agreements and Framework Agreements acknowledge that the agreement is for the benefit of both parties, and that the implementation should be jointly funded. The BC Governments share of the cost is provided through funding for the negotiation and initial implementation of these agreements, with performance based or termly (annual) stipulations. As most agreements state that the cost of implementation is a shared responsibility, revenue received by the Nations through further revenue sharing agreements must first go toward the Nations share of the implementation costs. Any residual funding will then go back to the Nation.

RAs, Protocols and Frameworks all allow for future negotiation of economic development and revenue sharing agreements. Economic opportunities include: forestry, alternative energy development, tourism/ecotourism, responsible mining, ranching, agriculture and food systems, and carbon offsets. Some economic opportunities such as tourism, ranching and agriculture are Nation lead economic initiatives and are the focus of goals set as part of the RA, where others specific to natural resource development require further negotiation of revenue sharing. These come in the form of:

- First Nations Clean Energy Business Fund Revenue Sharing Agreements
- Forest Consultation & Revenue Sharing Agreements
- Atmospheric Benefit Sharing Agreements
- Economic & Community Development Agreements

## Land Management Outcomes

The majority of agreements mention that land management outcomes will be negotiated through the shared-decision making processes created within the agreement. This might be due to the need to gain knowledge and build capacity to share knowledge and information between parties. This responsibility would fall onto the working group and sub-tables responsible for land and cultural resource management, and implementation funding would typically be provided to build the capacity and knowledge necessary to make informed, shared-interest based decisions. Further, the development of this knowledge can result in a Land-Use Management Plan for the Nation that takes into account significant cultural and heritage sites, watershed and ground water management, wildlife management goals and protected areas while designating appropriate sites for development.

## Conclusions

Reconciliation Agreements set out a process for collaborative decision-making in an attempt to incorporate Traditional Knowledge and laws. First Nations representatives are involved in every aspect of implementation, from information sharing and collaborative fact finding at the technical level, to the higher-level decision-making tables that create plans and resolve disputes.

The process for negotiation helps to facilitate future revenue sharing agreements between BC and First Nations governments. The Leadership table and working groups negotiate revenue sharing initiatives; set aside funding for carbon emission reduction feasibility studies for Atmospheric Benefit Agreements; and maintain a collaborative decision-making framework for mineral development, energy projects, and other economic strategies within the territory.

The Reconciliation Agreements and Frameworks described in this policy brief are an attempt by the Government of British Columbia to provide support to First Nations communities, and in return, benefit from the continued development of natural resources through their partnership with First Nations.

These agreements may be effective interim co-management tools that promote self-governance, however **they do not lead to First Nation's sovereignty and decision-making authority** over asserted lands and resources as the Province maintains their claim.

## Recommendations for First Nations Governments

Considering the conclusions of this report and that several Nations that have Reconciliation Agreements or Framework Agreements are continuing their own title cases, it is recommended that First Nation governments continue to build a strong title case outside of these agreements in order to protect culturally-sensitive locations from development.

Despite this limitation, the funding provided through these agreements can offer a financial avenue for the First Nation's community to build capacity and strengthen their own land management processes based on values, principles, and laws of their community.