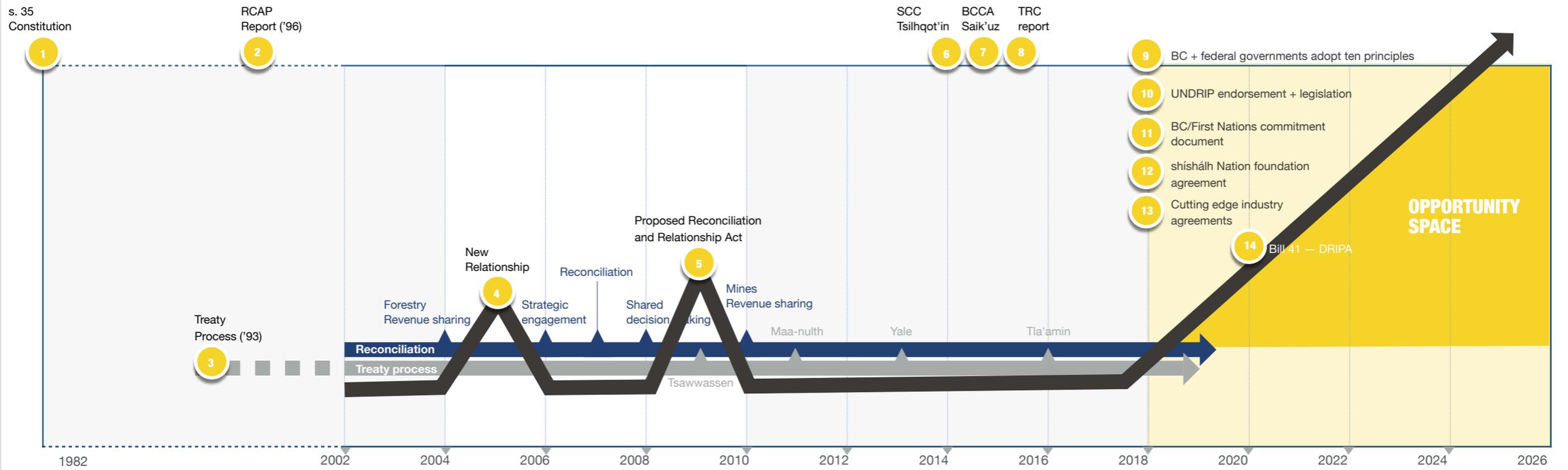
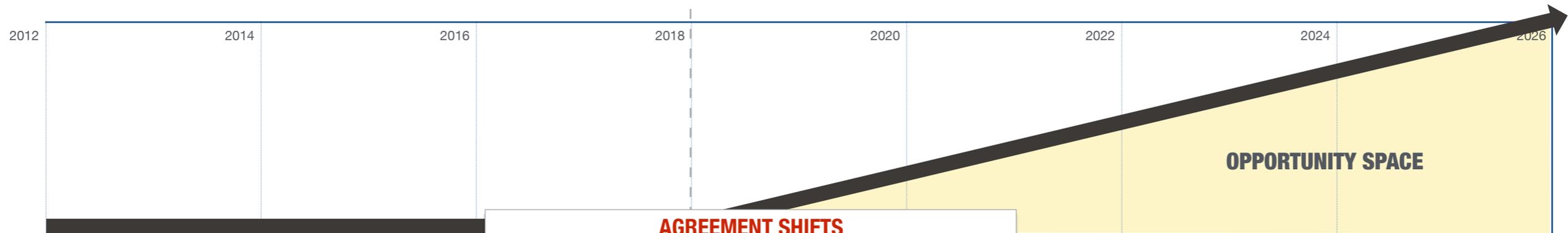


OPPORTUNITY SPACE





AGREEMENT SHIFTS	
Limited recognition of title and rights, or Indigenous laws, governments, or jurisdictions.	All relations are based on the right to self-determination, including the inherent right to self-government, and respectful of Indigenous laws, governments, and jurisdictions. Renewed focus on Indigenous governance capacity, responsibilities, and accountabilities.
Limited design or implementation of joint or consent-based decision making.	New structures and processes for government-to-government decision making and dispute resolution grounded in UNDRIP.
Economic sharing is not based the economic value of title and rights.	Principled economic sharing and support for Indigenous governments as governments.
Focus on legal certainty by releases about consultation/accommodation and infringements of rights.	Predictability through principled and structured relations.
Agreements structured around procedural aspects of the duty to consult.	More aligned with recognition of title and rights, UNDRIP and the Draft 10 Principles.
Limited scope of topics, benefits and measures.	Comprehensive but not final agreements.
Province sets priorities, defines parameters and models of agreement, and then 'negotiates'.	Negotiations guided by the priorities and visions of First Nations. No bias or preference for any particular process or model.
Discussions about comprehensive relations reserved for the treaty process.	Emerging comprehensive pathways and new possibilities inside and outside the treaty process.
Limited focus on impacts on neighbouring Nations.	Increasing focus on supporting resolution of relationship between Nations pursuant to Indigenous laws and processes.
Agreements are transactional or final.	Agreements are adaptable, flexible, and evolve over time.

EXAMPLES	
Incremental treaty agreements; most about transfer of land before final treaty.	shísháhl Foundation Agreement (October 2018)
Program agreements: transactional agreements related to forestry, minerals, LNG, etc. that provide a form of 'accommodation' and/or economic opportunity.	Explicit statements of title and rights, UNDRIP, and shísháhl jurisdiction and laws.
Decision-making agreements: agreements about how land-use decisions are made, also known as strategic engagement agreements, framework agreements, and shared decision-making agreements.	Provides immediate benefits and compensation not available under previous models.
Reconciliation/Government-to-Government agreements: some address specific matters, others establish overarching framework to pursue reconciliation of Aboriginal title and rights. Some include decision-making.	Targets and milestones for all aspects of the relationship to implemented in stages over 25 years.
	Explicit commitments to consent-based decision making and new dispute resolution mechanisms supported by new structures and processes.
	Commitment to a joint land use plan.
	No conventional releases for legal certainty.
	Flexible and long-term; will continue to grow over time.
	Letter of Understanding about aquaculture in the Broughton Archipelago (June/December 2018)
	Recognition of Indigenous laws, jurisdictions, title and rights.
	Transition from current aquaculture practices to practices aligned with UNDRIP, and measures to protect wild salmon.
	Consent-based decision-making and dispute resolution grounded in UNDRIP.
	Measures to address economic and environmental aspects of the transition.

COLLECTIVE EFFORTS

REPORT OF THE BC CLAIMS TASK FORCE (1991)

In many instances, traditional territories of First Nations overlap one another. To the extent that these overlaps may affect negotiations, it is the responsibility of First Nations to resolve them.

Preparation for negotiations must include discussions with neighbouring First Nations on the issue of overlapping territories. Because treaties will identify specific territories, it is not necessary to settle such issues prior to beginning the negotiations, but a process for resolution should be in place before conclusion of the treaty. In exceptional cases, the parties may agree to implement the provisions of a treaty in all but the disputed territory.

The commission, where requested by First Nations, will provide advice on dispute resolution services available to resolve overlap issues. It should be noted that First Nations may require funding from the commission to carry out the necessary studies to assist in resolving overlaps.

The Task Force Recommends that: 8. First Nations resolve issues related to overlapping traditional territories among themselves.

ALL CHIEFS FORUM — ALL OUR RELATIONS (2007)

We acknowledge the interdependence we have with one another and respectfully honour our commitment with one another where we share lands, waters and resources. We commit to resolving these shared lands, waters and resources based on our historical relationship through ceremonies and reconciliation agreements.

[We affirm and commit to] recognize and respect each other's autonomy and support each other in exercising our respective title, rights and jurisdiction in keeping with our continued interdependency.

ALL CHIEFS FORUM GUIDING PRINCIPLES (2014)

1. **Inherent legal traditions and jurisdiction.** Since time immemorial, First Nations in BC have lived by and implemented their own Indigenous laws which govern their relationships with one another and to the land and resources;
2. **Honour and Respect.** As First Nations, when we reach a resolution of overlap and shared territory issues, it is important that we each honour and uphold the protocols/MOUs/resolution agreements entered into;
3. **Decolonization and Recognition.** All First Nations in BC are engaged in the common effort to achieve decolonization, and seek full recognition of our inherent laws, jurisdiction, Aboriginal Title, and Rights and we acknowledge the autonomy of our nations;
4. **Cooperation and Partnership.** As First Nations, we must co-operatively engage with one another, to educate each other on how our respective Indigenous laws would apply to the issue and we must do this at the earliest possible opportunity, at the outset of any negotiations or discussions of economic development or opportunities. As First Nations, we each have a responsibility to exercise political discipline and respect for one another;
5. **First Nations Driven Process.** It is acknowledged that the resolution of overlap and shared territory issues is primarily a matter for First Nations to resolve among themselves, through processes grounded in First Nations' customs, cultural teachings and practices and laws;
6. **Traditional Language.** where possible, in our discussions with one another, our traditional language should be incorporated into the dialogue because our language, our laws and our lands are intimately linked to one another;
7. **Community Input.** We must each do our own important internal work by engaging with our community members/citizens of our Nations and seek their input on principles to guide our engagement with our neighbours;
8. **Innovation.** We will be open to considering new approaches and tools in the resolution of overlaps and shared territory issues and consider incorporating flexibility and adaptability for use by other Nations who are facing similar challenges; and
9. **Capacity.** all First Nations impacted by overlap and shared territory issues need to be adequately funded at the outset of any engagement. All parties need to have access to funding to allow each Nation to build the capacity to fully participate in such important discussions. Without such funding, there is a real and significant risk of creating an unlevel playing field.

COLLECTIVE EFFORTS

FOUR PRINCIPLES (2014)

1. Acknowledgement that all our relationships are based on recognition and implementation of the existence of Indigenous peoples' inherent Title and Rights, and pre-confederation, historic and modern treaties throughout British Columbia.
2. Acknowledgement that Indigenous systems of governance and laws are essential to the regulation of lands and resources throughout British Columbia.
3. Acknowledgement of the mutual responsibility that all of our government systems shall shift to relationships, negotiations and agreements based on recognition.
4. We immediately must move to consent-based decision-making and Title based fiscal relations, including revenue sharing, in our relationships, negotiations and agreements.

UBCIC PRINCIPLES (2019)

1. **Self-Determination.** Negotiations and agreements must support and advance the right of self-determination.
2. **Indigenous governments, laws, and jurisdictions.** Negotiations and agreements should prioritize structuring proper relations between Indigenous governments, laws, and jurisdictions and Crown governments, laws, and jurisdictions.
3. **Recognition and Implementation of Title and Rights.** Negotiations and agreements should have as a priority the co-operative and systematic recognition and implementation of the fundamental aspects of Title, including consent-based decision-making and title-based fiscal relations, such as revenue-sharing.
4. **Nation and government re-building.** Nation and government re-building, determined and led by First Nations, must be appropriately supported and advanced through negotiations and agreements.
5. **Unity.** The historic practice of the Crown has been to promote division and conflict between First Nations, especially through the development and implementations of negotiations and agreements.
6. **Redress.** The right to redress must be respected as part of true reconciliation – building the future requires acknowledging and addressing the wrongs of the past.
7. **Flexible and Adaptable.** The imperatives of recognition, respect, and self-determination necessitates approaches to negotiations and agreements that are open, fluid, co-designed, adaptable and flexible.
8. **Legislative Change.** Governments must explicitly recognize that legislative change is urgently needed to design and implement agreements that meet basic standards of recognition and the UN Declaration, and to meet Canada's commitment to have renewed relations with Indigenous peoples.
9. **Transparency.** A perpetual challenge and obstacle to negotiations is transparency about how and why governments make decisions about negotiations and agreements.
10. **Political involvement.** There has long been a disparity between the roles played by Indigenous leaders and those played by government ministers and senior executive officials in negotiations.
11. **Third Party Assistance.** There has long been a resistance to seeking help from experts, mediators, facilitators, and others to help guide, advance, and accelerate negotiations and achieve success in agreement implementation.

COLLECTIVE EFFORTS

COMMITMENT DOCUMENT (2018)

First Nations have long identified the need for support to rebuild and strengthen their Nations and to evolve their governance. This work is required to support a robust, constructive and progressive government-to-government relationship with the Crown.

GOAL 1

Establish an Indigenous commission: designed, established and driven by First Nations, to provide certain supports to First Nations, respectful and reflective of, and consistent with, First Nations' rights of self-government and self-determination. The commission would provide a range of processes and options that First Nations may opt-in to use, from non-binding to binding outcomes. The commission would support First Nations upon request with respect to:

- i) boundary resolution, in accordance with First Nations' respective laws, customs, and traditions; and
- ii) nation and governance building including:
 - a. constitution development,
 - b. territory decision-making and land use/territory planning,
 - c. law-making,
 - d. policy development, and
 - e. development of political institutions, consistent with principles of the proper title and rights holder.

SUMMARY OF PRINCIPLES (2020)

1. The sovereign and inherent right of First Nations to self-determination, including political, social, and economic self-determination
2. The centrality and diversity of Indigenous laws and cultures, which are founded on the ways of life, traditions and values of our ancestors, and include systems of governance, law and social organization
3. Full recognition of our inherent laws, jurisdiction, Aboriginal Title, and Rights and the autonomy of our nations
4. The need for a range of flexible and adaptable approaches that are First Nations-led, and are not "one size fits all" approaches
5. The importance of honour and respect for agreements/protocols/resolutions that are reached
6. The right to compensation and redress with regard to territories, lands and resources which have been confiscated, taken, occupied, used or damaged without our free, prior and informed consent. Consistent with articles 8, 11, 20 and 28 of the UN Declaration, negotiations and agreements must include pathways and measures for redress. Approaches to redress through agreements will vary and reflect the specific historic experiences of First Nations, the impacts those continue to have today, and how a First Nation has determined its future vision and priorities.
7. The fact of interdependence among Nations and the strength of unity. Partnership and cooperation amongst nations promotes unity in the face of colonial divide and conquer tactics. Mutual, early engagement and information sharing on how our respective Indigenous laws apply demonstrates respect.
8. The need to incorporate our languages as our languages, laws, and lands are intimately linked
9. It is importance for First Nations and the Crown to be open to innovation, and new approaches that evolve, and are open, fluid, co-designed, adaptable and flexible. Processes cannot be prescriptive, pre-determined, or unilateral.
10. All Nations must have capacity to engage in resolving shared territory and overlap issues
11. Each Nation must do their own internal work to gain community input and ensure that leaders represent the collective interests of the proper title and rights holders
12. Negotiations and agreements should prioritize structuring proper relations between Indigenous governments, laws, and jurisdictions and Crown governments, laws, and jurisdictions. This includes recognizing the roles and responsibilities of Indigenous governments, as well as the structures, processes, and mechanisms between Indigenous Crown and governments.
13. Nation and government re-building, determined and led by First Nations, must be appropriately supported and advanced through negotiations and agreements.
14. Shared territory and overlap issues are to be resolved by First Nations, without third party interference
15. The Crown has an obligation provide resourcing support for First Nations to address shared territory and overlap issues,
16. The Crown must make legislative amendments in alignment with commitments to reconciliation and the UN Declaration, and must be transparent, involve Ministers and senior officials in processes with First Nation political leaders
17. The importance of being open to third party assistance, such as an Indigenous-led commission or institution

BUILDING AN INDIGENOUS INSTITUTION TO HELP RESOLVE TERRITORIAL BOUNDARY ISSUES

			
<p>STARTING PRINCIPLES</p> <ol style="list-style-type: none"> Unique. Will necessarily be a unique type of institution, unlike those we have seen before. Grounded in Indigenous legal traditions. Created by First Nations in BC to meet specific aspects of the work of decolonization at this moment in time, and grounded in Indigenous legal traditions. Consistent with UNDRIP. Consistent with the United Nations Declaration on the Rights of Indigenous Peoples, particularly the right of self-determination. 	<p>FOUNDATIONS</p> <ol style="list-style-type: none"> First Nations control. Independent. Trust. Voluntary. Flexible, Adaptable and Integrative. Indigenous Legal Orders and Legal Pluralism. Unique. Not Adversarial or Court-like. Educative. 	<p>DESIGN TOPICS TO EXPLORE</p> <p>Establishing the Institution</p> <ol style="list-style-type: none"> How will First Nations establish the institution? What will the role of the Crown be in the establishment of the institution? Are there comparable entities or analogies to the institution? Is Crown legislation necessary or a good idea? <p>Purpose and Function</p> <ol style="list-style-type: none"> What are the specific purposes of the institution? What powers does the institution need over its own functioning? What structures will support the institution in meeting its purposes? How will the institution remain accountable? <p>Qualifications and Appointments</p> <ol style="list-style-type: none"> What are the qualifications for appointment? What are their specific roles? How many appointments will there be? How will individuals be appointed? 	<p>MOVING FORWARD</p> <ol style="list-style-type: none"> Foundations and principles. Work to articulate and affirm First Nation consensus on core foundations and principles for a institution. Committee of experts. Consider establishing a committee of experts in Indigenous laws and legal orders who could provide guidance and input at all stages. Process roadmap. Consider collectively establishing a “process roadmap”. <p>Develop consensus foundations and principles.</p> <p>Create preliminary design of proposed institution elements (First Nations and the Crown).</p> <p>Develop First Nations consensus on institution elements.</p> <p>Develop founding instruments of institution (including, for example, resolutions, legislation, agreements).</p> <p>Establish institution.</p>

QUESTIONS FOR TABLE DISCUSSION

At your tables, share your perspectives on the following questions.

Try to work as much as possible to common points or themes.

Do you think it would be helpful to have an Indigenous institution to support First Nations address shared territories and overlaps?

1

What do you think should be the role and purpose of an Indigenous institution in addressing shared territories and overlaps?

2

Are there examples of processes, institutions, or mechanisms that are helpful in thinking about the model and design of an Indigenous institution?

3

How should First Nations lead the creation of an Indigenous institution? What should the process be?

4