

A person wearing a blue denim jacket and a dark cap is seen from the side, looking out over a vast, mountainous landscape. The terrain is rugged with patches of snow and green vegetation. The sky is clear and blue.

INDIGENOUS LEADERSHIP INITIATIVE

Good for the Land Good for the People Good for the Economy

A Call to Action to Recognize, Support and Implement Indigenous Protected and Conserved Areas and Indigenous Guardians in British Columbia

PREPARED BY:

Estella White - hińačacišt
West Coast Environmental Law

DATE:

January 2022



Photo: Taylor Roades

ACKNOWLEDGEMENTS

łeekoo łeekoo (thank you) to all of the BC First Nations' leaders, elders and knowledge-holders for contributing your time, support and expertise in the creation of this Discussion Paper. łeekoo łeekoo to the Indigenous Leadership Initiative ("ILI") and First Nations Energy and Mining Council for your leadership and vision of ensuring that the Discussion Paper was and continues to be Indigenous-led and driven, with special thanks to Dave Porter, Bev Sellars, łáłíyá sila – Frank Brown and Valérie Courtois from the ILI Leadership Team for your dedication to advancing Indigenous-led conservation and stewardship in meaningful ways. łeekoo łeekoo to West Coast Environmental Law for providing guidance and support throughout the process. We thank you all for your incredible contributions, we could not have prepared this Discussion Paper without your support, knowledge and vision.

Table of Contents

| | |
|---|-----------|
| FOREWORD | 4 |
| 1: INTRODUCTION: A COLLECTIVE VISION FOR INDIGENOUS-LED CONSERVATION & STEWARDSHIP | 6 |
| IPCAs: Indigenous-Led Conservation..... | 6 |
| Indigenous Guardians: Indigenous-Led Stewardship | 7 |
| Potential to Reality: A Collective Movement for Recognizing IPCAs and Indigenous Guardians..... | 7 |
| 2: UNDOING THE HARM | 9 |
| Law Used to Dispossess Indigenous Peoples from Territories | 9 |
| Law Used to Eradicate Indigenous Cultures, Governance, Ways of Life | 10 |
| Indigenous Advocacy for Land Rights and Self-Determination | 10 |
| Failure to Recognize and Implement Indigenous Rights..... | 10 |
| 3: ADDRESSING THE HARM TO RECOGNIZE AND RESTORE RIGHTS | 12 |
| Restoring Indigenous Rights and Responsibilities through IPCAs and Indigenous Guardians | 12 |
| <i>Right to Territories</i> | 13 |
| <i>Right to Conservation and Protection of Territories</i> | 13 |
| <i>Right to Decision-Making in Relation to Territories</i> | 14 |
| Advancing IPCAs and Indigenous Guardians Through the <i>Declaration on the Rights of Indigenous Peoples Act</i> | 14 |
| <i>Giving Effect to Legal Pluralism</i> | 15 |
| 4: IPCAs AND INDIGENOUS GUARDIANS: GOOD FOR THE LAND, GOOD FOR THE PEOPLE, GOOD FOR THE ECONOMY | 17 |
| Business Case for Indigenous Guardians | 17 |
| Business Case for IPCAs and Indigenous Guardians..... | 18 |
| Broad Support for IPCAs and Indigenous Guardians..... | 19 |
| 5: THE WAY FORWARD: KEY RECOMMENDATIONS FOR THE RECOGNITION OF IPCAs AND INDIGENOUS GUARDIANS IN BC | 21 |
| Short Term Recommendations | 21 |
| Long(er) Term Recommendations | 22 |
| Conclusion: Moving Forward Together..... | 24 |
| REFERENCES | 26 |

Photo: Taylor Rodes



Foreword

“

It is the Spirit that can help us define the direction we need to go in as we take care of the land, to be the voice of the land as we share messages from Nature itself.

The land wants to talk to us, to remind us of the original instructions as were given by our Great Creator.

Elder Dr. Dave Courchene

As the first peoples of these lands and waters, we as Indigenous peoples have exercised our rights, title, and responsibilities to nurture biodiversity across what is now known as Canada for millennia. Our rights, title and responsibility are all based on an interdependent relationship with the land, water, and resources for sustenance. Indigenous-led conservation and stewardship may be new concepts to some, but for Indigenous peoples the right and responsibility to care for our territories has been a core function of our existence for countless generations.

The Indigenous Leadership Initiative (ILI) supports First Nations in their efforts to uphold their rights, title, and responsibilities to care for their territories. As Senior Advisors to the British Columbia ILI campaign on Indigenous Protected and Conserved Areas (IPCAs) and Indigenous Guardian programs, we are proud to present this paper as a statement of our commitment to supporting BC First Nations in Indigenous-led conservation and stewardship.

We introduce this paper remembering the words of the late Elder Dr. Dave Courchene, Spiritual Advisor to the Indigenous Leadership Initiative: “It is the Spirit that can help us define the direction we need to go in as we take care of the land, to be the voice of the land as we share messages from Nature itself. The land wants to talk to us, to remind us of the original instructions as were given by our Great Creator.” This paper reminds us all that Indigenous peoples remain as dedicated as we always have been in following these instructions.

For too long, Federal and Provincial approaches to establishing and maintaining Parks and protected areas have ignored the contributions of Indigenous knowledges and communities within conservation efforts. Torn from our own lands, First Nations communities have been excluded from management decisions and cast as obstacles to both development and conservation.

Meanwhile, many of our communities have felt the devastating effects of the climate and ecological crisis first-hand. We have also often carried the burden of managing the impacts. Recent

droughts, heat waves, floods, and wildfires demonstrate the urgent need for governments at all levels to embrace Indigenous-led action.

Indigenous-led conservation tackles these needs head-on. It places Indigenous peoples and First Nations communities at the forefront of innovative approaches to conservation, biodiversity preservation, and environmental stewardship efforts. Together, Indigenous-led conservation and stewardship represent one of the most important movements for addressing the dual challenges of biodiversity loss and climate change.

Indigenous-led conservation and stewardship also advances a path to reconciliation and self-determination in environmental management. For our people, stewardship responsibilities are a fundamental aspect of our relationship with the land and the environment, and they are at the heart of our culture and identity as place-based people. Indigenous-led conservation and stewardship is about the actions taken by Indigenous peoples to care for our lands and waters informed by millennia of experience and traditional teachings.

We are pleased to present this discussion paper to catalyze the change needed to advance Indigenous-led conservation and stewardship, as given practical effect through IPCAs and related Indigenous Guardian programs. The discussion paper presents the urgent need for these initiatives to “undo the colonial harms” related to land dispossession and the destruction of Indigenous rights, cultures, governance structures, and ways of life. It presents the case for IPCAs that are supported by Guardians programs, and it sets out the path forward through a series of key recommendations for action in BC.

This path includes a call for the government of BC to recognize and unlock the full potential for IPCAs and Indigenous Guardians, and to support the restoration of Indigenous rights and relationships to territories. It calls on the Province to follow through on its ground-breaking commitments to uphold the rights of Indigenous peoples by being the first province to work with First Nations in co-developing a clear and firm framework for supporting IPCAs and Indigenous Guardians. It is time to cast unilateral decision-making on conservation issues firmly into the history of colonial harms. Now is the time to undo those harms, now is the time work together for the good of the people, the land, and the economy.

The discussion paper is a product of an Indigenous-led engagement process. In 2021, ILI engaged with First Nations Chiefs in BC and with leaders of Indigenous Guardians initiatives and emerging IPCAs. Over 100 First Nations communities convened to discuss Indigenous-led conservation and IPCAs in BC. This included workshopping this discussion paper and its set of key recommendations, as well as strategic engagement with First Nations leading the charge in establishing their own Indigenous-led and managed protected areas or tribal parks. We are grateful for the expertise and knowledgeable input of the Indigenous Leaders and Guardians who took part in our discussions.

We are indebted to Ms. Estella White, who listened, challenged us, and crafted the discussion paper. Ms. White has eloquently set out a clear roadmap to advance Indigenous-led conservation as a central part of overall post-pandemic planning. Her paper lays down an important call to action: it is time for First Nations communities and leadership to take the reins in conservation efforts and it is time for BC to embrace and support these efforts. It is time to build a clear Indigenous-led and managed process together – one that clears the way for self-determination in conservation management across the province.

Ms. White has laid out an invitation to develop this partnership between BC’s First Nations and public governments. We urge British Columbia to accept this invitation, we invite Provinces across Canada to join us in this transformation of conservation agendas, and we implore the Federal government to firmly support these initiatives now and into the future.



Dave Porter
Senior Advisor
Indigenous Leadership Initiative



Heiltsuk Hereditary Chief Frank Brown
Senior Advisor
Indigenous Leadership Initiative



Bev Sellars
Senior Advisor
Indigenous Leadership Initiative

Photo: Tanya Ball



Introduction:

A Collective Vision for Indigenous-Led Conservation and Stewardship in British Columbia

The right and responsibility to determine the future of traditional territories is at the root of Indigenous Nationhood and the highest expression of Indigenous rights. Indigenous peoples have successfully taken care of their territories for millennia. Prior to contact and colonization, Indigenous peoples managed and maintained healthy, abundant and biodiverse ecosystems throughout British Columbia.

In the brief period of time since then, however, colonial laws and policies have been used to dispossess Indigenous peoples of their lands, criminalize Indigenous cultures and ways of life, infringe Indigenous inherent rights, and forcefully disrupt Indigenous governance systems, legal orders, social structures and economies, to enable settler colonialism. Not only has this caused harm to Indigenous peoples' cultures, territories, and ways of life, it has enabled the destructive and unsustainable development that has led to the ecological and climate crises we all face today.

Indigenous Protected and Conserved Areas ("IPCA," also referred to as Indigenous Protected Areas or Tribal Parks) and Indigenous Guardians represent one of the most promising ways forward to help reverse both environmental and colonial harms.

IPCA: INDIGENOUS-LED CONSERVATION

IPCA place Indigenous peoples in the leadership role when it comes to managing, protecting and making decisions concerning their territories.¹ The Indigenous Circle of Experts define IPCA as "lands and waters where Indigenous governments have the primary role in protecting and conserving ecosystems through Indigenous laws, governance and knowledge systems."² While IPCA can take a variety of forms based on the priorities of each Nation, they share these common elements:

- They are Indigenous-led;
- They represent a long-term commitment to conservation;
- They elevate Indigenous rights and responsibilities;³
- They are a practical expression of the rights set out under the *United Nations Declaration on the Rights of Indigenous Peoples* ("UN Declaration"), including free, prior and informed consent ("FPIC").

Although the concept of IPCAs – that Indigenous peoples have the right and responsibility to take care of their territories – seems like common sense to most Indigenous peoples, here in BC there are significant barriers that stand in the way of BC First Nations being able to do that. A key purpose of this paper is to offer recommendations and priorities for addressing those barriers.

INDIGENOUS GUARDIANS: INDIGENOUS-LED STEWARDSHIP

Indigenous Guardians are individuals who monitor and protect the lands and waters in their territories,⁴ acting as the “eyes and ears on the ground” that carry out stewardship responsibilities.⁵ Guardians’ responsibilities include monitoring (the land, water, wildlife and development), patrolling, responding to climate impacts and other issues, implementing restoration initiatives, providing education opportunities for Indigenous youth, community members and the broader public, and gathering necessary information for informed decision-making.⁶

Together IPCAs and Indigenous Guardians create wide-ranging social, cultural and economic benefits to Indigenous communities and beyond, while also providing an effective model for responding to and mitigating climate change, biodiversity loss and other environmental issues. Perhaps most importantly, they are effective in restoring Indigenous peoples’ leadership roles, rights, and responsibilities within their territories by connecting peoples to their lands and waters.

A closer look at these benefits will be set out further under *Part 4. IPCAs and Indigenous Guardians: Good for the Land, Good for the People, Good for the Economy*.

POTENTIAL TO REALITY: A COLLECTIVE MOVEMENT FOR RECOGNIZING IPCAs AND INDIGENOUS GUARDIANS

The time has come for BC to recognize and support Indigenous Nations’ rights to manage and protect their territories. We are past the point of having to prove that Indigenous peoples have the ability to manage their territories. We are past the point of having to prove that Indigenous peoples have the rights to do so. These rights are inherent to Indigenous peoples, as well as being recognized by international law,⁷ Canada’s highest laws,⁸ highest courts,⁹ and BC provincial law.¹⁰

Recognizing and supporting IPCAs and Indigenous Guardians is not only the right thing to do in terms of implementing Indigenous rights, it is the smart thing to do if BC wants to begin to address the serious social, environmental and justice issues that have arisen from the way that land and resources have been managed in BC.

The purpose of this paper is to provide a foundation for transforming our collective understandings of the value and potential of Indigenous-led conservation and stewardship into our collective movement towards the provincial recognition and support needed to make it a reality.

This paper will offer insight and recommendations on how BC, with the support of Canada, should move forward to recognize and support IPCAs and Indigenous Guardians in a manner that avoids further colonial harm, restores Indigenous rights and relationships to territories, and unlocks the full potential that IPCAs and Indigenous Guardians have to offer.

Photo: Dave Porter, Kaska Dena Territory



“

The right and responsibility to determine the future of traditional territories is at the root of Indigenous Nationhood and the highest expression of Indigenous rights. Indigenous peoples have successfully taken care of their territories for millennia.



Photo: Mamalilikulla First Nation

| Undoing the Colonial Harm

We begin by bringing into focus the province’s recent commitment to “undo 150 years of colonial harms that continue to be felt to this day.”¹¹ We welcome this commitment and agree that addressing the colonial harm is important and necessary, and will be a critical aspect of restoring Indigenous rights and recognizing IPCAs and Indigenous Guardians in BC.

In order to undo the harm, it is important for BC to understand how its conduct has and continues to harm Indigenous peoples.

LAW USED TO DISPOSSESS INDIGENOUS PEOPLES FROM TERRITORIES

There is a unifying thread in the colonial harm inflicted upon Indigenous peoples and that is the ongoing and explicit use of Crown law to dispossess Indigenous peoples from their lands and sever their relationships to their territories.

The harm is particularly acute here in BC, where despite clear instructions set out in the Royal Proclamation of 1763 to seek treaty or other arrangements to secure land from First Nations,¹² the province simply assumed ownership of the land without entering into treaties or any other form of agreement with the majority of First Nations in BC or compensating First Nations for taking their land.

Instead BC initiated a reserve creation process that relegated First Nations to tiny pieces of land called reserves while enacting laws to encourage settlement of larger pieces of land by non-Indigenous people.¹³ For example, BC employed an “exclusion and containment” strategy, which contained First Nations to small reserves while excluding them from the benefits offered to non-Indigenous settlers.¹⁴ This was done by enacting the *Pre-emption Ordinance, 1866* (in place until 1953), which opened up land for non-Indigenous families to acquire while expressly excluding Indigenous people from being able to do the same.¹⁵ The practical effect of this was that non-Indigenous families were eligible to receive 320 acres per family while the total land surveyed for Indian reserves in BC amounted to less than 1 acre of land per Indian, without opportunities for acquiring more.¹⁶

Efforts by First Nations to have reserves enlarged were largely unsuccessful. In 1913, a Royal Commission began to address Indian reserve issues,¹⁷ but rather than address First Nations’ concerns, the Commission resulted in a further reduction of over 36,000 acres of land from reserves all across BC. This was done by enacting the *British Columbia Indian Lands Settlement Act of 1920*, which gave BC the authority to take these lands without consulting or compensating First Nations, effectively circumventing the requirements set out under the *Indian Act*.¹⁸

LAW USED TO ERADICATE INDIGENOUS CULTURES, GOVERNANCE, WAYS OF LIFE

In response to having practically all of their land base taken away, Indigenous peoples tried to pursue land claims to have their land rights recognized. Rather than negotiate with First Nations however, the Crown simply made it illegal for First Nations to hire lawyers to pursue land claims.¹⁹ This prohibition was in effect between 1927-1951. At this time it was also illegal for First Nations to engage in the most important aspects of their legal systems and cultures (from 1880-1951); First Nations were stripped of their traditional governance systems, children were being taken from their communities and forced into residential schools (from 1867-1984 in BC),²⁰ and all of this was taking place while the province severely restricted Indigenous hunting and fishing, expressly prohibiting First Nations from using traditional harvesting methods and means.²¹

INDIGENOUS ADVOCACY FOR LAND RIGHTS AND SELF-DETERMINATION

Once the bar against hiring lawyers was finally removed – after large tracts of land in BC had been taken for settlement – First Nations continued to seek recognition of land rights and self-determination in every possible way - through submissions to the House of Commons,²² Aboriginal rights and title litigation,²³ development of international Indigenous human rights, and grass-roots movements, including what is now known as the Constitution Express which successfully brought about the inclusion of Aboriginal rights in the repatriated Constitution, 1982.

FAILURE TO RECOGNIZE AND IMPLEMENT INDIGENOUS RIGHTS

Despite the constitutional recognition of Aboriginal rights, the province has yet to meaningfully recognize or implement those rights. This is reflected in the overall lack of Crown-recognized Indigenous land ownership and governance rights associated with those lands across BC.

Since 1982, legal recognition of Indigenous land rights in BC in Canadian law has been extended to less than 0.4% of BC's entire land base (with Treaty Settlement Lands making up 0.2% and Aboriginal title lands making up less than 0.2%); in each case taking First Nations decades to negotiate and litigate and costing millions in legal fees. The lack of recognition however, is not because BC doesn't have the land base. To the contrary, BC continues to assert ownership over 93.8% of the entire land base in BC as Crown land (15% of which is designated as Parks or Protected Areas), while recognizing less than 1% of First Nations' owned lands.²⁴

Indigenous governance rights are also largely disregarded in provincial land and resource use legislation, including protected area legislation, resulting in a situation where BC "holds all the power" to make decisions for activities within First Nations' territories, with little to no say by Indigenous peoples.²⁵

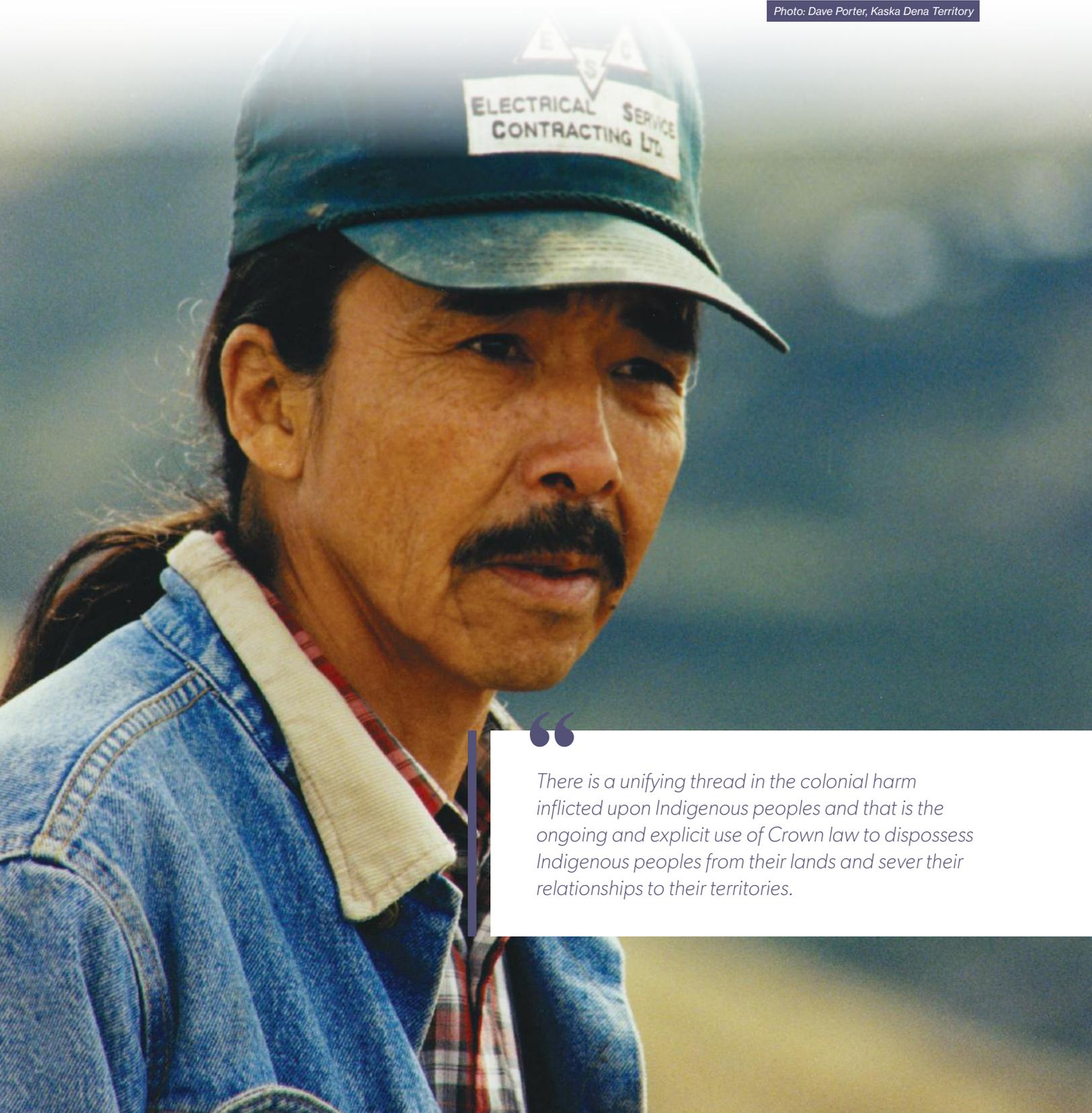
The situation is so dire that Kwikwetlem First Nation has sued the province for breaching their Charter rights under section 15, arguing that it is discriminatory for BC to offer timely and effective means of recognizing non-Indigenous property rights while not offering similar processes to recognize Indigenous property rights.²⁶

Even when Aboriginal rights are proven in court or recognized by a treaty, BC still refuses to implement them. This remains true after the enactment of the *Declaration on the Rights of Indigenous Peoples Act*. The most recent example can be found in the 2021 decision of *Yahey v. BC* ("Blueberry River"), whereby the court concluded that the "tipping point had been reached" and that Blueberry's treaty rights "have been significantly and meaningfully diminished" by extensive Crown authorizations within Blueberry River's territory without due regard for Blueberry River's treaty rights.²⁷ And again in the *Ahousaht et al* decision, whereby the five Nations went through more than 18 years of litigation to prove their rights to fish and that those rights are being infringed by the Crown. The litigation finally came to an end in April 2021, instructing the Crown to address the infringements, but conflict on the ground persists because the Crown continuously prevents the Nations from meaningfully exercising their rights.²⁸

Since its inception, the government of BC has unjustly enriched itself at the expense of Indigenous peoples. The mechanisms of doing so continue to have devastating historical and present day impacts on Indigenous peoples in BC. Statistics continue to show how First Nations suffer from disproportionate rates of poverty, homelessness, unemployment, incarceration, child apprehension, violence, suicide, and continue to face discrimination in every sector of society – all of which are direct consequences of being displaced from families, cultures, communities, territories, and the ability to fulfill the roles and responsibilities therein.

Recognition and support for IPCAs and Indigenous Guardians is a direct way of beginning to mend this harm. By recognizing and supporting IPCAs and Indigenous Guardians, the province can recognize and support Indigenous rights and relationships to territories, as well as the languages, cultures, laws and governance systems that are foundational to IPCAs and Indigenous Guardians programs.

Photo: Dave Porter, Kaska Dena Territory



There is a unifying thread in the colonial harm inflicted upon Indigenous peoples and that is the ongoing and explicit use of Crown law to dispossess Indigenous peoples from their lands and sever their relationships to their territories.

Photo: Jordan Melograna

Addressing the Harm to Recognize and Restore Rights

Much of the harm noted above is rooted in the belief that Indigenous peoples are inferior to non-Indigenous peoples, calling into question Indigenous cultures, governance systems, abilities to manage territories, and forcefully disrupting them in favour of Euro-Canadian ways. This ideology was planted in colonial law across Turtle Island with the Doctrine of Discovery, which justifies Crown sovereignty based on the assumption that Indigenous peoples were not governing their territories.²⁹ Although we should all know by now that this is false, BC has yet to relinquish power and control over First Nations' territories and thus, still clings to the paternalistic (and racist) belief that the Crown knows better than Indigenous peoples.

Undoing the harm will require BC to let go of those beliefs and instead, offer the meaningful recognition and support needed to restore First Nations' relationships to territories, restore First Nations' collective visions for caring for their lands and waters, and restore First Nations' traditional laws and governance structures that successfully governed them. IPCAs and Indigenous Guardian programs are one important way to do so.

RESTORING INDIGENOUS RIGHTS AND RESPONSIBILITIES THROUGH IPCAS AND INDIGENOUS GUARDIANS

It is crucial for all work to advance IPCAs and Indigenous Guardians programs to be grounded in Indigenous rights to own, use, develop, protect and make decisions with respect to their territories.

Practically, it makes sense in the IPCA context because it is First Nations and their people who are most connected to their territories, carrying responsibility-based expertise of the ecological systems and cycles of their territories. This reality is proven in various ways, such as through Indigenous Guardians programs where it is Indigenous citizens who are on the ground caring for, restoring and protecting the lands and waters. Therefore, it is First Nations who should hold the pen when lines are drawn on the map and who should be at the table when decisions are made.

Right to Territories

The rights set out in the UN Declaration represent the minimum standards required for the survival, dignity and well-being of Indigenous peoples.³⁰ IPCAs and Indigenous Guardians represent a practical and effective way of implementing those rights based on the goals, priorities, laws and governance of each Nation and their territories.

The UN Declaration clearly stipulates that Indigenous peoples have the right to own their territories and that states should legally recognize those ownership rights. Article 26 provides that:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.³¹

The right of territorial land ownership has also been confirmed by the Supreme Court of Canada, wherein the Court concludes that Aboriginal title includes “the right to decide how the land will be used; the right of enjoyment and occupancy of the land; the right to possess the land; the right to the economic benefits of the land; and the right to pro-actively use and manage the land.”³²

BC has also committed to recognizing Aboriginal title and rights in its most recent *Declaration on the Rights of Indigenous Peoples Act Action Plan* (“Action Plan”), as follows: “Goal: Indigenous peoples exercise and have full enjoyment of their rights, including the rights of First Nations to own, use, develop and control lands and resources within their territories in BC.”³³

Right to Conservation and Protection of Territories

The UN Declaration states that Indigenous peoples are entitled to protection and conservation of their territories. Article 29 provides that:

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.³⁴

Similarly, the Constitution aims to protect Aboriginal rights and territories by constraining Crown decision-making in consideration of those rights. The courts have held that the honour of the Crown is a constitutional principle which is always at stake in its dealings with Aboriginal peoples. This is achieved by imposing the duty to consult, and where necessary accommodate, any time the Crown contemplates a course of action that has the potential to adversely impact Aboriginal or treaty rights, even when those rights have yet to be “proven” or otherwise resolved;³⁵ by imposing a fiduciary duty on the Crown in relation to Aboriginal rights in some circumstances;³⁶ and by requiring Crown justification for conduct or decisions that infringe or deny “proven” Aboriginal rights.³⁷

The honour of the Crown recognizes that “Aboriginal peoples were here first, and they were never conquered” and that “when the Crown claimed sovereignty over Canadian territories... it did so in the face of pre-existing aboriginal sovereignty and territorial rights.”³⁸ Indigenous Nations have successfully used court challenges focused on the Crown’s failure to act honourably and uphold its constitutional duties of consultation and accommodation to prevent harmful development or secure negotiated outcomes, including, in some cases, strategic land use agreements resulting in establishment and co-management of new protection areas. However, too often the reality on the ground for Indigenous peoples continues to be pro-forma referrals and limited comment opportunities before resource approvals are granted anyway, with no clear pathway to strategic land use

negotiations or to the recognition of IPCAs. In short, the current approach to Crown consultation falls far short of the substantive right to conservation and protection of territories set out in the UN Declaration.

Right to decision-making in relation to territories

Indigenous peoples have the right to be involved in decision-making, including the right to give or withhold their free, prior and informed consent for matters that impact their rights and territories.³⁹ This understanding must be the foundation for the way forward.

These rights are also recognized and protected by the Constitution whereby section 35 acknowledges the constitutional authority of Indigenous peoples to govern themselves and their territories, just as sections 91 and 92 provide the federal and provincial governments with governance authority to govern their respective territories.⁴⁰

ADVANCING IPCAS AND INDIGENOUS GUARDIANS THROUGH THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

In 2019, BC became the first jurisdiction in Canada to enshrine the objectives of the UN Declaration into law by enacting the *Declaration on the Rights of Indigenous Peoples Act*. In doing so, they committed to working cooperatively with Indigenous groups to:

- take all necessary measures to ensure the laws of BC are consistent with the UN Declaration;⁴¹
- develop and implement an Action Plan to achieve the objectives of the UN Declaration;⁴² and
- report annually on progress made.⁴³

Pursuant to its obligations under *Declaration on the Rights of Indigenous Peoples Act*, the province released a draft Action Plan on June 11, 2021. Despite calls for the province to recognize IPCAs and Indigenous Guardians,⁴⁴ the draft Action Plan fails to mention IPCAs, Indigenous Guardians, or any form of Indigenous-led conservation or stewardship initiatives.⁴⁵ Nor does it contain any action items for recognizing Nations' rights to exercise their rights and responsibilities within their territories. Instead, the Action Plan expresses BC's goal of recognizing Aboriginal rights and title without actually tying action items to make that goal a reality.

The Indigenous Leadership Initiative ("ILI") responded by providing submissions to BC, which identified the shortcomings of the Action Plan and offered key recommendations for amending the Action Plan to properly recognize and support IPCAs and Indigenous Guardians moving forward. In doing so, the ILI called upon BC to heed the directions given by the BC Court in *Blueberry River*,⁴⁶ which calls for change in the way that BC's regulatory regime interacts with Aboriginal treaty rights:

*Delay in dealing with these matters and the continuation of the status quo has benefitted the Province. While interim measures can be helpful, they are only so if permanent measures are developed in a timely way. In the end, these processes are at the discretion of the Province and its agencies, with no clear ability for Blueberry to enforce its treaty rights. **That has to change... The Province continues to have all the power, and ultimately little incentive to change the status quo. There is a clear need for timely, definitive, enforceable legal commitments that recognize and accommodate Blueberry's treaty rights. The delay in implementing such legally enforceable commitments must therefore come to an end.***⁴⁷ [emphasis added]

In this decision the Court widely criticizes BC's regulatory regime for not adequately considering or addressing the cumulative impacts to treaty rights, thereby contributing to significant adverse impacts to Blueberry River's rights or "death by a thousand cuts."⁴⁸

Although the decision dealt specifically with Blueberry River's treaty rights, the Court's findings regarding the failures of BC's regulatory regime and BC's overall approach to recognizing Aboriginal rights are applicable to First Nations across BC.

At present there are simply no avenues for Nations to enforce their rights in timely or cost-effective ways, and the regulatory processes charged with protecting those rights when BC makes decisions in First Nations' territories are failing to do so.

BC has the opportunity to change this and to heed the direction given in *Blueberry River* to improve its approach for recognizing and protecting Indigenous rights. The *Declaration on the Rights of Indigenous Peoples Act* provides a direct avenue and tremendous opportunity for doing this work.

As a first step, BC should use its Action Plan to enact clear, timely and legally enforceable ways of recognizing IPCAs and Indigenous Guardians, as a practical way of giving effect to Indigenous peoples' rights to manage and protect their territories.

Giving Effect to Legal Pluralism

Combined with BC's "prove it" approach to Indigenous rights, where BC limits the extent and scope of Indigenous rights to those rights that can be proven by First Nations based on colonial legal tests, these approaches are failing to protect Indigenous rights and are creating more uncertainty and conflict in the courts and on the ground.

Fortunately, there are ways to repair BC's relationship with Indigenous peoples, including the commitment by BC to give effect to legal pluralism through the Action Plan, stating:

*The action plan is grounded in the affirmation, consistent with the UN Declaration, that upholding the human rights of Indigenous peoples includes recognizing that within Canada there are multiple legal orders, including Indigenous laws and legal orders with distinct roles, responsibilities and authorities.*⁴⁹

We welcome BC's commitment to give effect to Indigenous laws and jurisdiction, and to work with Indigenous peoples to address the barriers that impede that important work.

The biggest barrier continues to be the disregard of Indigenous jurisdiction in all of the provincial land and resource-use legislation, including protected area legislation, which continues to vest ultimate decision-making authority in the provincial Crown. For examples, refer to the *Park Act*,⁵⁰ *Mineral Tenure Act*, *Oil and Gas Activities Act*,⁵¹ *Petroleum and Natural Gas Act*,⁵² *Forest Act*,⁵³ *Forest and Range Practices Act*,⁵⁴ *Ecological Reserve Act*,⁵⁵ *Heritage Conservation Act*,⁵⁶ *Water Sustainability Act*,⁵⁷ and *Land Act*⁵⁸ which all afford the Crown sole decision-making authority, with minor exceptions for discrete situations involving First Nations with modern treaty agreements or other Crown recognized arrangements. Even the new provincial *Environmental Assessment Act*, which explicitly recognizes inherent Indigenous jurisdiction and makes provision for Indigenous-led assessment and Indigenous consent, leaves final project approval in the hands of the Crown.⁵⁹

There is also a lack of provincial legislation that recognizes IPCAs (or prompts BC to take steps when First Nations wish to establish IPCAs), the authority of Indigenous Guardians, or the rights of Indigenous peoples to govern their territories in accordance with their own laws and jurisdiction. Instead, the regulatory and legislative frameworks allow the province to simply say no, or choose not to act when First Nations seek Crown recognition and support for establishing IPCAs or Indigenous Guardian programs.

The finding in *Blueberry River*, that "the Province continues to have all the power, and ultimately little incentive to change the status quo," is thus reflected and perpetuated by provincial land and resource-use legislation and the province's approach to recognizing Indigenous rights.

In order to change this to properly recognize Indigenous rights and jurisdiction, BC must relinquish and redistribute power that was appropriated during its efforts to colonize and assimilate Indigenous peoples and put it back where it belongs – with the First Nations who want to manage, protect and benefit from their territories. Recognizing IPCAs and Indigenous Guardians is a practical way of giving effect to legal pluralism because they are grounded in Indigenous laws, governance and authority.

Photo: Dave Porter, Kaska Dena Territory



“

BC has yet to relinquish power and control over First Nations' territories and thus, still clings to the paternalistic (and racist) belief that the Crown knows better than Indigenous peoples. Undoing the harm will require BC to let go of those beliefs and instead, offer the meaningful recognition and support needed to restore First Nations' relationships to territories, restore First Nations' collective visions for caring for their lands and waters, and restore First Nations' traditional laws and governance structures that successfully governed them.



Photo: Taylor Roades

IPCAs & Indigenous Guardians:

Good for the land, good for the people, good for the economy

There is a growing consensus that Indigenous peoples' knowledge and experience governing their lands and waters is more effective than Crown government-led conservation approaches.⁶⁰ International and domestic reports also recognize that land and waters managed by Indigenous peoples are healthier with higher rates of biodiversity.⁶¹

Research also shows that IPCAs and Indigenous Guardians are enormously successful in enhancing the social, cultural and economic well-being within Indigenous communities and beyond.

It has also been widely reported that IPCAs and Indigenous Guardians are excellent investments. The “business case” for IPCAs and Indigenous Guardians programs shows that investments in IPCAs and Indigenous Guardians yield immediate economic benefits, significant returns on investment, and lead to more stable and diversified economies, which is particularly noteworthy in an era of global economic instability (which has been exasperated by the COVID-19 pandemic).

Finally, research and Indigenous experiences show that IPCAs and Indigenous Guardians programs are not just good ideas on paper, but in practice are shown to be good for the people, good for the land, and good for the economy.⁶² All of which, signals the need for greater recognition and support for IPCAs and Indigenous Guardians as a way of addressing the ecological and climate crises we all face, a way of supporting sustainable and diversified economies, a way of supporting Indigenous well-being, and most importantly, a way of implementing Indigenous rights.

BUSINESS CASE FOR INDIGENOUS GUARDIANS

Here in BC a business case analysis was conducted by looking at some of the oldest and most well-established Indigenous Guardian programs on the North and Central coast of BC.⁶³ A key finding in that report was that:

investments in Coastal Guardian Watchmen programs generate significant value for their Nations and communities. When net value generation is calculated across affected Nation-held values [Taking Care of Territory, Governance

Authority, Community Wellbeing, Cultural Wellbeing, Community Capacity, Economic Opportunity], Coastal Guardian Watchmen programs achieve, at the low end, **a 10 to 1 annual return** on investment for the Nations that have the programs. In other words, for each dollar invested in a Guardian Watchmen program on an annual basis, the respective First Nation benefits at least 10 times that amount. On the high end, some Nations experience **a 20 to 1 return on investment each year.**⁶⁴ [emphasis and language added for clarity]

Indigenous Guardians across Canada have also proven to be excellent investments. In another report canvassing Indigenous Guardians programs across Canada, it was reported that Indigenous Guardians provide meaningful jobs, often in small communities where jobs are scarce and most needed, enhance economic opportunities, and contribute to overall community health, well-being and pride.⁶⁵

One example is the Kitasoo/Xai'xais Nation in BC, who operate a Guardian Watchmen program through their integrated Stewardship Department. The Nation's stewardship activities aim to demonstrate that there are "sustainable economic options available to the community," including in ecotourism and wildlife viewing. With over 50% of Kitasoo/Xai'xais territory set aside in protected areas, the Nation shifted to non-extractive industries, including the operation of Spirit Bear Lodge, a world class ecotourism and adventure travel business that employs many people in the community in a variety of capacities.⁶⁶ The Nation also works with all ecotourism operators in their territory by negotiating tourism protocol agreements, which involves a nightly fee per person.

In addition to providing economic opportunities, the report highlights the many benefits of Indigenous Guardians, including:

- protecting and restoring natural and cultural resources;
- providing social, economic, health, cultural and educational benefits to Indigenous communities;
- enhancing capacity for Indigenous self-governance;
- providing significant net economic benefits to society as a whole; and
- enhancing understanding and respect between Indigenous people and governments.⁶⁷

Overall Indigenous Guardians across BC and Canada have yielded significant benefits for Indigenous communities, the environment, while leading to increased economic opportunities that align with Indigenous values and vision.⁶⁸

BUSINESS CASE FOR IPCAS AND INDIGENOUS GUARDIANS

Another study was conducted in the Northwest Territories with respect to the Łutsël K'é Dene and Dehcho Guardian programs. The study found that an initial investment of \$4.5 million in the Łutsël K'é and Decho Guardian programs generated \$11.1 million in social, economic, cultural, and environmental value, along with a profound positive effect on the Indigenous people, communities, governments and other stakeholders involved.⁶⁹ Overall, the study reported a **2.5 return on 1** of investment with the likelihood of increasing over time.⁷⁰

Since the report the Łutsël K'é Dene First Nation went on to designate the Thaidene Néné Indigenous Protected Area in 2019, which is one of the largest protected areas in Canada spanning 26,376 square kilometres across the boreal forest and tundra. In September 2020, the Łutsël K'é Dene received the 2020 Equator Prize from the UN Development Programme in recognition of their "strategies for sustainably protecting, restoring and managing ecosystems to mitigate greenhouse gas emissions, help communities adapt to climate change, and create a green new economy."⁷¹ Moving forward the Thaidene Néné continues to create job opportunities, circulate money through the local economy, and promote a "booming conservation and tourism economy" while maintaining the integrity of their territories, cultures and ways of life.⁷²

Similar studies conducted in Australia indicate that, with government recognition and support, Indigenous Protected Areas and associated Guardians programs ("Indigenous Rangers") yield significant benefits for Indigenous communities, government and stakeholders, while also achieving large scale conservation outcomes.⁷³ Indigenous conservation and stewardship efforts in Australia has resulted in the creation of 78 Indigenous protected areas, covering over 74 million hectares of land and sea (comprising 46.53% of the National Reserve System), with many of these areas being effectively managed by Indigenous Rangers.⁷⁴ Researchers have measured the benefits of these initiatives and concluded that **for every \$1 spent, these programs return more than \$3 in social, economic and cultural values.**⁷⁵

The Australian government continues to invest in Indigenous Protected Areas and Indigenous Rangers, stating that:

IPAs [Indigenous Protected Areas] deliver more than environmental benefits. Managing IPAs helps Indigenous communities protect the cultural values of their country for future generations and results in significant health, education, economic and social benefits. IPAs create jobs for Indigenous men and women - working and looking after their land. IPA rangers' employment helps provide financial stability in the community and they are a positive role model for youth.⁷⁶

In addition to creating immediate jobs and boosting local economies, investments in IPCAs and Indigenous Guardians also offer savings to governments and taxpayers through reduced pressure on the judicial, social service and health care systems. Studies in Australia indicate reduced welfare costs and increased tax revenue when it funds IPA and Indigenous Ranger initiatives.⁷⁷

Creating IPCAs with Indigenous Guardians to manage them can also bring economic certainty to resource companies wishing to operate in Indigenous territories. Indigenous Guardian programs strengthen communication between First Nations' leadership, community members and resource companies. They also create the conditions necessary for Nations to exercise free, prior and informed consent, which in turn alleviates conflict and uncertainty concerning resource-use within Indigenous territories.

BROAD SUPPORT FOR IPCAS AND INDIGENOUS GUARDIANS

Given the broad range of benefits created by IPCAs and Indigenous Guardians, it should come as no surprise that there is broad support for these initiatives.

Recent polling shows broad public support for the creation of IPCAs in BC as well as for government investment in Indigenous stewardship.⁷⁸ The poll found that:

- 67% of people support the creation of IPCAs in BC.
- 69% support funding and investment in Indigenous stewardship as part of the government's economic recovery measures.
- From a list of potential types of activities within IPCAs, support is highest for tourism such as canoeing and guide-outfitting (80%). There is also majority support for conservation (70%), expansion of Indigenous Guardians programs (67%) and hunting, fishing and trapping (59%).
- 76% agree that land-use planning could help reduce conflicts over pipelines, dams and other such developments.⁷⁹

This is in addition to the broad support from Indigenous Nations across Canada and BC, who continue to call upon the governments to recognize and support IPCAs and Indigenous Guardians.⁸⁰ This includes key recommendations from the Indigenous Circle of Experts in 2018 calling upon all levels of governments to recognize and support IPCAs and Indigenous Guardians. It also includes the work of the ILI, with direction from the Assembly of First Nations,⁸¹ which was successful in securing \$25 million in the federal budget 2017 to establish a pilot program for Indigenous Guardians initiatives in Canada, and based on that success, led to an additional \$340 million in new federal funding over five years to support Indigenous-led conservation and stewardship. This investment includes more than \$173 million for Indigenous Guardians programs and the First Nations National Guardians Network, and \$166 million for IPCAs.⁸²

While the new funding commitment is a step in the right direction, it still falls short of what is required to achieve BC First Nations' collective vision of ensuring that every First Nation in BC has the opportunity to establish IPCAs and Indigenous Guardians programs if they choose to. To achieve that, we need legal recognition and sustained support from BC moving forward.

As both Indigenous and public support grows for IPCAs, Indigenous Guardians, and a green post-COVID 19 recovery, now is the time for BC to act. Recognition and sustained support for IPCAs and Indigenous Guardians can help lay the groundwork for more resilient economies and communities, environmental sustainability, and improved Nation-to-Nation relationships premised on the recognition of Indigenous rights.

Photo: Dave Porter, Kaska Dena Territory

“

IPCAs and Indigenous Guardians programs are not just good ideas on paper, but in practice are shown to be good for the people, good for the land, and good for the economy.



Photo: Qatuwas Brown

The Way Forward:

Key recommendations for the recognition of IPCAs and Indigenous Guardians in BC

The opportunity for recognizing and supporting IPCAs and Indigenous Guardians is greater now than ever. There is mounting pressure shared by First Nations, the Canadian public, as well as the BC courts to properly recognize and enforce Indigenous rights in order to “undo the harm.”

IPCAs and Indigenous Guardian programs are the ultimate expression of Indigenous rights (including inherent rights, Aboriginal rights and title), while providing widespread benefits for Indigenous peoples, Crown governments and broader society. These benefits cannot be fully realized however, without clear, meaningful support and recognition from BC.

To achieve clear, meaningful support and recognition of IPCAs and Indigenous Guardians programs, we make the following recommendations.

SHORT TERM RECOMMENDATIONS

We call upon BC and Canada to:

Recommendation 1: Endorse and embrace the concepts of IPCAs and Indigenous Guardians; acknowledge, encourage and support their value and benefits, including their potential for addressing climate change, biodiversity loss and other ecological crises, their ability to enhance the social, cultural, and economic well-being of Indigenous peoples, and their ability to restore Indigenous rights to territories.

Recommendation 1.1: Acknowledge, encourage and support IPCAs and Indigenous Guardians in creating more resilient conservation economies and communities, particularly in a post COVID-19 world.

Recommendation 2: Work cooperatively with BC First Nation to foster ongoing learning and development of IPCA and Indigenous Guardians tools and initiatives, and provide BC First Nations with the necessary resources to do this work.

Recommendation 3: Work cooperatively with BC First Nations, where requested to do so, to establish and/or implement proposed IPCAs and Indigenous Guardian programs, including by providing the necessary resources, employing interim protection measures and implementing mechanisms for Crown legal recognition to support this work. This includes but is not limited to:

Recommendation 3.1: negotiating agreements under the *Declaration on the Rights of Indigenous Peoples Act* (ss. 6-7) to recognize, support and implement proposed IPCAs, where a BC First Nation has requested to do so.

Recommendation 3.2: negotiating joint governance or co-governance agreements to recognize, support and implement proposed IPCAs and Indigenous Guardians programs, where a First Nation has requested to do so, along with opportunities, support and capacity development for First Nations to move towards full Indigenous governance in the long-term.

Recommendation 3.3: providing opportunities for BC First Nations to create and/or amend existing BC-First Nation agreements, land use plans, and/or management plans for conservancies, parks and other protected areas that are located within a First Nations' territories, where a BC First Nation has requested to do so, to bring them in alignment with the First Nations' IPCA and Indigenous Guardians goals and interests.

Recommendation 3.4: providing opportunities, tools and support for existing and proposed Indigenous Guardian programs to exercise greater stewardship, monitoring and enforcement responsibilities within IPCAs and their territories, along with opportunities, support and capacity development for interested First Nations to move towards exercising full stewardship, monitoring and enforcement responsibilities within IPCAs and their territories.

Recommendation 3.5: legally recognizing and implementing First Nations' land-use plans and processes, where a BC First Nation has requested to do so.

Recommendation 4: For IPCAs or other protected areas, such as Tribal Parks, already declared by BC First Nations, we call on BC and where appropriate, Canada, to formally respond to and immediately begin working with these Nations to align Crown tenures and decision-making with the Indigenous designation, including deployment of effective interim protection measures, and sufficient resourcing for negotiations regarding long-term Crown legal recognition of the IPCA and Indigenous management of the area.

Recommendation 5: Implement the *Declaration on the Rights of Indigenous Peoples Act* and work cooperatively with BC First Nations to ensure that Action Plan(s) include mechanisms for enacting clear, timely and legally enforceable action items that advance recognition and support for IPCAs and Indigenous Guardians.

Recommendation 6: Jointly with BC First Nations leaders, assemble a team tasked specifically with advancing IPCAs and Indigenous Guardians initiatives at the provincial level, and to ensure that provincial team members are given the mandate and decision-making authority to meaningfully advance IPCAs and Indigenous Guardians in BC in full cooperation with BC First Nations. This team will have demonstrable interest, knowledge and/or experience with Indigenous-led conservation and Indigenous rights, and shall be free from any conflicts of interests.

LONG(ER) TERM RECOMMENDATIONS

Recommendation 7: Work with BC First Nations to co-develop a legal framework for recognizing and supporting IPCAs and Indigenous Guardians in BC. Such a framework will:

- a) be Indigenous-led and driven;
- b) recognize and enable the diverse range of interests and priorities amongst BC First Nations in managing and protecting their territories;
- c) recognize and give effect to Indigenous rights, which includes the right to own, use, manage, protect and benefit from one's territories;
- d) recognize and give effect to the inherent rights and jurisdiction of BC First Nations with respect to their territories;

- e) recognize and give effect to Indigenous legal orders, ways of knowing, and governance systems with respect to their territories;
- f) recognize and restore Indigenous knowledge systems, languages, relationships and responsibilities in caring for the land and waters.

Recommendation 8: Work cooperatively with BC First Nations to identify and address the legal and political barriers in the way of IPCA and Indigenous Guardian recognition and support – for example: addressing tenures within existing and proposed IPCAs and BC’s overall approach to granting resource extraction tenures within BC First Nations’ territories without the free, prior and informed consent of potentially affected First Nations; addressing the need to give effect to Indigenous rights and jurisdiction in legally enforceable ways; addressing the absence of legislative and regulatory mechanisms that meaningfully recognize and protect Indigenous rights and territories.

Recommendation 9: Work cooperatively with BC First Nations to review and, where necessary, amend and/or create legislation, policies, mandates, tools and institutional support required for the legal recognition of IPCAs and Indigenous Guardians. Some examples include but are not limited to:

Recommendation 9.1: Take immediate steps to establish a mandate that commits BC to working collaboratively with BC First Nations to recognize and support IPCAs and Indigenous Guardians.

Recommendation 9.2: Work cooperatively with BC First Nations to ensure that IPCAs and Indigenous Guardians are legally recognized and included as a critical and essential tool for marine stewardship and management in BC’s new Coastal Marine Strategy.

Recommendation 9.3: Work cooperatively with BC First Nations to ensure that IPCAs and Indigenous Guardians are legally recognized and included as a critical and essential tool for enhancing biodiversity and ecosystem health in BC’s new overarching ecosystem health and biodiversity law, as committed to by BC in the Old Growth Strategic Review panel report.

Recommendation 9.4: Work cooperatively with BC First Nations to ensure that the rights and objectives set out in the UN Declaration are being upheld and implemented in all processes concerning IPCAs and Indigenous Guardians in BC.

Recommendation 10: Apply a whole of government approach and mandate to ensure that Crown decision and policy-making across all sectors aligns with the goal of recognizing and supporting IPCAs and Indigenous Guardians as an essential foundation for upholding Indigenous rights, cultures, economies, and the process of Nation-building.

Recommendation 11: Work with BC First Nations to develop and implement effective interim protection measures that prevent development in proposed IPCAs while those areas are being considered or when an IPCA is declared by an Indigenous Nation as a matter of its own laws and jurisdiction.

Recommendation 12: Acknowledge that IPCAs and Indigenous Guardians are good investments and take immediate steps to provide sustained funding to BC First Nations and Indigenous-led organizations for the development and implementation of IPCAs and Indigenous Guardians, as well as funding for Indigenous-led capacity development, institutional development, and training needed for creating and maintaining an IPCA and Indigenous Guardian framework.

Recommendation 13: Work cooperatively with BC First Nations to review existing and proposed marine and terrestrial parks and protected areas, including conservancies, to determine what role IPCAs and Indigenous Guardians will play within them. This work should aim to correct the wrongdoings committed by the Crown when parks and protected areas were created, which appropriated lands and waters from BC First Nations without the free, prior and informed consent of affected First Nations, excluded First Nations’ access to their territories and resources, and prohibited the exercise of Indigenous rights.

Recommendation 13.1: Ensure that any designation of new provincial and federal parks and protected areas is not done without the free, prior and informed consent of potentially affected BC First Nations and is done in a way that aligns with BC First Nations' IPCA and Indigenous Guardians interests.

Recommendation 13.2: Where BC First Nations have IPCA and Indigenous Guardian interests that involve or coincide with established or proposed parks or protected areas, including conservancies, work with those First Nations to determine how to give effect to their IPCAs and Indigenous Guardian programs, including by providing the necessary resources, employing interim protection measures and implementing mechanisms for Crown legal recognition to support this work.

Recommendation 13.3: Heed the direction given in Article 28 of the UN Declaration to provide redress to affected BC First Nations for appropriating lands and waters for the purpose of creating or maintaining parks or protected areas without their free, prior and informed consent: "Redress can include, restitution, or when this is not possible, just, fair and equitable compensation for lands, territories and resources which have been... taken, occupied, used or damaged without their free, prior and informed consent. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress."

Recommendation 14: Acknowledge, encourage and support the potential of Indigenous-led conservation as the most effective and equitable way to safeguard habitat, address climate change, and reverse wildlife and biodiversity loss, and take immediate steps to provide sustained funding for IPCAs and Indigenous Guardian programs to safeguard, restore and remediate habitat, species and ecosystems in the face of past damage from resource extraction and development, as well as future threats such as climate change.

Recommendation 14.1: Work collaboratively with interested BC First Nations to support the development and implementation of IPCAs and Indigenous Guardian programs that contribute to global efforts, as well as BC and Canada's commitments and/or targets, to address biodiversity loss and climate change.

For greater certainty, all references to IPCAs include marine and terrestrial IPCAs, recognizing that many BC First Nations have both marine and terrestrial areas within their territories and have an interest in protecting both.

CONCLUSION

BC's commitment to reconciliation and "undoing the harm" must address the forced removal of Indigenous peoples from their lands, the exclusion of First Nations from decisions about how their traditional territories were and are managed, and the persistent disregard for Indigenous rights.⁸³ In this context, recognizing and supporting IPCAs and Indigenous Guardians represents a significant opportunity for BC to advance reconciliation by implementing Indigenous rights, honouring FPIC and improving the environmental, social, cultural and economic well-being within Indigenous communities and beyond.

BC has shown tremendous leadership in being the first to legally enact the principles of the UN Declaration through the *Declaration on the Rights of Indigenous Peoples Act* and can lead the way once again by being the first province to work with BC First Nations to develop a framework for recognizing and supporting IPCAs and Indigenous Guardians.

Now is the time work together for the good of the people, the good of the land and the good of the economy. We look forward to working with you and moving forward together in a good way.

Photo: Dave Porter, Kaska Dena Territory



“

The opportunity for recognizing and supporting IPCAs and Indigenous Guardians is greater now than ever.

References

- 1 Indigenous Circle of Experts (2018), “We Rise Together: Achieving Pathway to Canada Target 1 through the Creation of Indigenous Protected and Conserved Areas in the Spirit and Practice of Reconciliation” retrieved at: [ICCA Consortium <iccaconsortium.org/wp-content/uploads/2018/03/PA234-ICE_Report_2018_Mar_22_web.pdf>](https://www.iccaconsortium.org/wp-content/uploads/2018/03/PA234-ICE_Report_2018_Mar_22_web.pdf).
- 2 Ibid.
- 3 Ibid at pp 5-6.
- 4 UVic Environmental Law Center (2020), “The Case for a Guardian Network Initiative” - retrieved at: <http://fnemc.ca/wp-content/uploads/2015/07/The-Case-for-a-Guardians-Network-July-2020.pdf>
- 5 Indigenous Leadership Initiative, A National Indigenous Guardians Network Backgrounder, – retrieved at: <https://www.ilinationhood.ca/publications/backgrounder-a-national-indigenous-guardians-network>
- 6 Ibid.
- 7 UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, Preamble and Article 26, accessed online on March 8, 2021 at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf
- 8 *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11: 35 (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- 9 *Tsilhqot’in Nation v British Columbia*, 2014 SCC 44 [“Tsilhqot’in”]
- 10 *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44.
- 11 BC Ministry of Indigenous Relations and Reconciliation (June 11, 2021), “Province seeks input from Indigenous peoples to shape future of reconciliation”, retrieved from: https://archive.news.gov.bc.ca/releases/news_releases_2020-2024/2021IRR0028-001139.htm
- 12 George R, Proclamation, 7 October 1763, reprinted in RSC 1985, App II, No. 1 (“Royal Proclamation”): “any lands whatever, which, not having been ceded to or purchased by us,...are reserved to the ...Indians”
- 13 *Indian Reserve Ordinance*, 1869, R.S.B.C 1871, c. 125.
- 14 Michael Begg (2007), “Legislating British Columbia: A History of BC Land Law, 1858-1978,” University of British Columbia.
- 15 *Pre-emption Ordinance: An Ordinance to amend and consolidate the Laws affecting Crown Lands in British Columbia*, 31 March 1866 ,(29 Victoria).
- 16 Supra note 13.
- 17 British Columbia, “Report of the Royal Commission on Indian Affairs for British Columbia.” Victoria: Acme Press, 1916. 4 vols, known as the McKenna-McBride Commission Report.
- 18 *The British Columbia Indian Lands Settlement Act* S.C. 1920, c. 51
- 19 *Indian Act*, R.S.C. 1927, s. 141.
- 20 *An Act Further to Amend The Indian Act*, 1880, S.C. 1884, c. 27.
- 21 *Salmon Fishery Regulations for British Columbia, 1888* states: Fishing by means of nets or other apparatus without leases or licences from the Minister of Marine and Fisheries is prohibited in all waters of the Province of British Columbia. Provided always that Indians shall, at all times, have liberty to fish for the purpose of providing food for themselves but not for sale, barter or traffic, by any means other than with drift nets, or spearing.
- 22 In 1960 Secwepemc leader George Manuel and Nisga’a leader Frank Calder presented a brief to the Joint Committee of the Canadian Senate and House of Commons advocating for Aboriginal title recognition and compensation.
- 23 In 1969 the Nisga’a initiated litigation, leading to the 1973 Calder decision (*Calder et al. v. Attorney-General of British Columbia*, [1973] SCR 313), where the Supreme Court of Canada recognized that the Nisga’a held title to their land before BC was established.
- 24 British Columbia, Ministry of Forests, Lands and Natural Resource Operations (2011) “Crown Land: Indicators & Statistics Report”, retrieved from: [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land_indicators_statistics_report.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/crown_land_indicators_statistics_report.pdf)

25 *Yahey v. British Columbia*, 2021 BCSC 1287 [“Blueberry River”].

26 *Giesbrecht v British Columbia (Attorney General)*, 2020 BCSC 174 at para 11; *Kwikwetlem First Nation v. British Columbia (Attorney General)*, 2021 BCCA 311 [“Kwikwetlem”].

27 *Blueberry River* at para 1116.

28 *Ahousaht Indian Band and Nation v. Canada (Attorney General)*, 2021 BCCA 155 (CanLII).

29 Borrows, J. (2015). “The durability of terra nullius: *Tsilhqot’in Nation v British Columbia*.” *UBC Law Review*, 48(3), 701–742 – “Indigenous peoples across the world have long critiqued the idea that their lands were legally vacant when Europeans arrived on their shores. Nevertheless, many countries with significant Indigenous populations were subject to legal regimes that confiscated Indigenous lands and destabilized their decision-making powers. Though never perfected, the so-called doctrine of discovery was deployed to justify these actions. It was premised on the notion that Indigenous peoples were inferior to other peoples. Under this doctrine, lands were declared to be legally empty, allowing European law to control Indigenous peoples.”

30 *ibid*, Article 43.

31 *UN Declaration*, Article 26.

32 *Tsilhqot’in*, at paras 73, 88.

33 Action Plan, Section 2: “Title and Rights of Indigenous Peoples” at p. 7.

34 *UN Declaration*, Article 29.

35 *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73.

36 *Guerin v. The Queen*, 1984 CanLII 25 (SCC).

37 *Tsilhqot’in* at para 119.

38 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14 at para 67.

39 *UN Declaration*, Articles 11, 18, 19, 28, 29, 32.

40 Kent McNeil (2004), “The Inherent Right of Self-Government: Emerging Directions for Legal Research”.

41 *Declaration on the Rights of Indigenous Peoples Act*, section 3.

42 *Declaration on the Rights of Indigenous Peoples Act*, section 4.

43 *Declaration on the Rights of Indigenous Peoples Act*, section 5.

44 *Supra* note 1. The Ice Report sets out 29 key recommendations for all levels of government to take action to recognize and support IPCAs and Guardian programs, at pp 56-67; various resolutions also call upon BC to recognize and support IPCAs and Indigenous Guardians, see Assembly of First Nations Special Chiefs Assembly, December 2015, Resolution no. 60/2015; Assembly of First Nations, Annual General Assembly, December 2020, Resolution no. 17/2020; UBCIC, Chiefs Council June 2021, Resolution no. 2021-38.

45 *Declaration on the Rights of Indigenous Peoples Act Action Plan*, retrieved at: https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/indigenous-relations-reconciliation/declaration_act_action_plan_for_consultation.pdf

46 2021, BCSC 1287

47 At paras 1416-1417.

48 *Ibid*, at para 1780.

49 At p. 4.

50 RSBC 1996, c 344, s. 3(1) the minister has jurisdiction over, and must manage and administer, all matters concerning parks, conservancies and recreation areas and public and private use and conduct in them...”

51 SBC 2008, c 36, s. 4.

52 RSBC 1996, c 361.

53 RSBC 1996, c 157.

54 SBC 2002, c 69.

55 RSBC 1996, c 103.

56 RSBC 1996, c 187.

57 SBC 2014, c 15, s.5(1): “The property in and the right to the use and flow of all the water at any time in a stream in British Columbia are for all purposes vested in the government..”

58 RSBC 1996, c 250.

- 59 SBC 2018, c 51.
- 60 Indigenous Laws in the Context of Conservation (March, 2021), Innes, Lloyd-Smith and Conservation Through Reconciliation. Retrieved at: https://wcel.org/sites/default/files/publications/indigenoulawsinthecontextofconservation_mar2021_final_web.pdf
- 61 The United Nations' Global Assessment Report on Biodiversity and Ecosystem Services, retrieved at: <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/> ; "Biodiversity highest on Indigenous-managed lands" UBC Science, Health & Technology (2019), retrieved at: <https://news.ubc.ca/2019/07/31/biodiversity-highest-on-indigenous-managed-lands/>
- 62 The Case for a Guardian Network Initiative, UVic Environmental Law Centre (2020) - retrieved at: <http://fnemc.ca/wp-content/uploads/2015/07/The-Case-for-a-Guardians-Network-July-2020.pdf>
- 63 Valuing Coastal Watchmen Programs: a Business Case (2016), prepared by EcoPlan International Inc. for the Coastal Steward Network and TNC Canada.
- 64 Ibid at p. 3.
- 65 The Case for a Guardians Network, University of Victoria Environmental Law Centre, (2020).
- 66 Ibid at pp 66-67.
- 67 The Case for a Guardians Network, University of Victoria Environmental Law Centre, (2020).
- 68 Supra note 55.
- 69 Ibid at p. 5.
- 70 Analysis of the Current and Future Value of Indigenous Guardian Work in Canada's Northwest Territories, 2016.
- 71 Łutsël K'é Dene First Nation Honoured at 2020 Equator Prize Award Ceremony for its Work on Thaidene Nënë (2020), retrieved at: <http://www.landoftheancestors.ca/latest-news/lutsel-ke-dene-first-nation-honoured-at-2020-equator-prize-award-ceremony-for-its-work-on-thaidene-nene>
- 72 Thaidene Nënë Strategic Plan, 2020-2025, retrieved at: <http://www.landoftheancestors.ca/resources.html>
- 73 Consolidated report on Indigenous Protected Areas following Social Return on Investment analyses (2016), commissioned by the Department of the Prime Minister & Cabinet.
- 74 National Indigenous Australians Agency, Indigenous Protected Areas (IPAs), (2020) – Retrieved from: <https://www.niaa.gov.au/indigenous-affairs/environment/indigenous-protected-areas-ipas>
- 75 Ibid at p. 30.
- 76 Australian Government, Department of Agriculture, Water and the Environment – "Indigenous Protected Areas", retrieved from: <https://www.environment.gov.au/land/indigenous-protected-areas>
- 77 Supra note 65 at pp 16-19.
- 78 BC Poll Report on Indigenous-led Conservation (December, 2020), retrieved from: https://static1.squarespace.com/static/5a2ef5702278e792c098cc02/t/5fdd2aaad85ca26442e32f2b/1608329899599/BC+syndicated+OMNI_2020+W3_IBCC_ILI+Report.pdf
- 79 Ibid.
- 80 The Ice Report sets out 29 key recommendations for all levels of government to take action to recognize and support IPCAs and Guardian programs, at pp 56-67; various resolutions also call upon BC to recognize and support IPCAs and Indigenous Guardians, see Assembly of First Nations Special Chiefs Assembly, December 2015, Resolution no. 60/2015; Assembly of First Nations, Annual General Assembly, December 2020, Resolution no. 17/2020; UBCIC, Chiefs Council June 2021, Resolution no. 2021-38.
- 81 Assembly of First Nations Special Chiefs Assembly, December 2015, mandates ILI to pursue support for Indigenous Guardians Network.
- 82 The Government of Canada, Environment and Climate Change Canada (August 12, 2021), "Government of Canada announces \$340 million to support Indigenous-led conservation". Retrieved at: <https://www.canada.ca/en/environment-climate-change/news/2021/08/government-of-canada-announces-340-million-to-support-indigenous-led-conservation.html>
- 83 David Suzuki Foundation (2018), "Tribal Parks and Indigenous Protected and Conserved Areas: Lessons Learned from B.C. Examples and Let us Teach You – Exploring Empowerment for Indigenous Protected and Conserved Areas in B.C".



Photo: Dave Porter, Kaska Dena Territory / Back Cover Image: Jordan Melograna

“

Recognizing and supporting IPCAs and Indigenous Guardians represents a significant opportunity for BC to advance reconciliation by implementing Indigenous rights, honouring FPIC and improving the environmental, social, cultural and economic well-being within Indigenous communities and beyond.

