BRITISH COLUMBIA
ASSEMBLY OF FIRST NATIONS

REGIONAL CHIEF'S
QUARTERLY REPORT TO THE CHIEFS OF BC

March 12, 2014

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PART ONE: BUILDING ON OUR SUCCESS – IMPLEMENTING THE PLAN

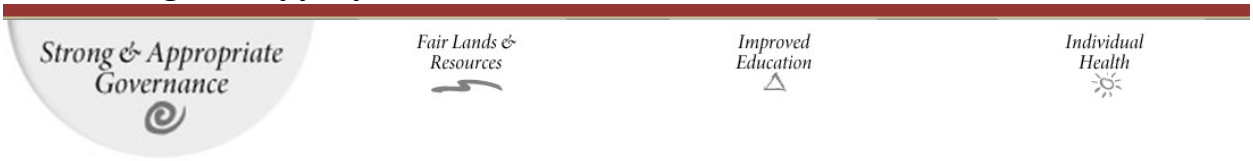
The focus of the British Columbia Assembly of First Nations (BCAFN) continues to be implementation of the *Building on OUR Success* platform (updated 2012) and consisting of four key and interrelated areas. These are:

1. **Strong and Appropriate Governance** in order to take advantage of our opportunities in implementing our Aboriginal title and rights, including treaty rights, and grow our economies by providing stable and sound governance that is transparent and accountable to our Citizens;
2. **Fair Access to Land and Resources** to ensure our peoples and our governments have access to the resources required to support our societies including both our traditional and modern economies;
3. **Improved Education** to ensure our Citizens are able to make informed decisions about change as well as participate in our growing economies and our governments; and,
4. **Individual Health** to address the colonial health legacies to ensure our Citizens are strong and can actually benefit from and enjoy their title and rights.

With respect to the four key areas, the following remains the basis for the Nation building/re-building Action Plan at the BCAFN:

1. **Understand and identify** the specific priorities for each of our Nations.
2. **Assist** each Nation in charting their own critical path in order to be able to benefit from opportunities, capitalize on success and ensure that the doors are open to move forward with their specific priorities.
3. **Support and facilitate** each Nation in developing and maintaining strong and open relationships with Ottawa and Victoria to ensure that they can advance their own issues directly with the Crown.
4. **Develop and implement** a province-wide participation and communication strategy to maintain networks between Nations and ensure that no single community is left out or behind.

1. Strong and Appropriate Governance



"Strong and appropriate governance is necessary if our Nations are to reach our full potential and maximize our opportunities. This is a prerequisite to sustainable and long-term economic development." *Building on OUR Success*

BCAFN Governance Toolkit – A Guide to Nation Building in Three Parts

The BCAFN is currently writing a second edition of *Part 1: The Governance Report,* of the BCAFN *Governance Toolkit.* We are working towards launching this new edition at our upcoming Annual General Meeting to be held on June 25-26, 2014, at the Sheraton Wall Centre in downtown Vancouver. The revised Governance Report will include newly updated material throughout, a more user-friendly digital version with expanded links to library materials, an update on recent legislative initiatives, and additional charts for our Nations highlighting new

agreements and other information. If you have ideas to strengthen the Toolkit, please do not hesitate to contact the BCAFN office. Also if you are interested in viewing or downloading any or all three parts of the Toolkit, they are available on our website at www.bcafn.ca/toolkit.

Self-Government Recognition Legislation

In accordance with the *Building on OUR Success* Action Plan and resolutions we continue to press the federal government to support First Nation-led self-government recognition legislation so that where a First Nation (either a band or group of bands) wants to transition away from the *Indian Act* it can be done without interminable negotiations with Canada, enabling the real and necessary focus to be on our work back home rebuilding our institutions and developing our own laws and policies. As you are all aware, our public members bill in the Senate, the Self-Government Recognition Act, fell off the order paper as it did not and still does not have the federal government's support – despite all our extraordinary efforts to provide solutions. However, in the spirit of moving upwards and onwards, instead of seeing this as an obstacle, we view it as an opportunity to strengthen the bill. When Parliament is ready for our solutions, our bill can be reintroduced, hopefully with all party support. We have already had some good feedback on the previous bill and more feedback is welcome. If you would like to discuss this initiative or ways your Nation can become more involved please contact me directly.

First Nations Finance Authority (FNFA)

FNFA is working towards the issuance of its inaugural First Nation's bond on the capital markets in the coming weeks. This is exciting news and will see our First Nations' governments borrowing on the bond/capital markets like all other governments in Canada and other reputable governments around the world. Critical to public financing of this nature is having a strong credit rating. The better the credit rating the lower the interest rate with more buyers for the bonds. In anticipation of its first bond, expected to be in the range of $100 million, on March 7, 2014, the FNFA received its credit rating. This is a first for Indigenous governments around the world. Dominion Bond Rating Service (DBRS) assigned an A (low) issuer rating and Moody's Investors Service assigned a debt rating of A3. This is "investment grade" which is great news. Of the 30 First Nations that have so far completed the steps/processes to become Borrowing Members of the FNFA, 21 are from BC. The other First Nations are represented from each province across Canada. For more information on FNFA borrowing membership please contact Ernie Daniels (President/CEO) at (250) 768-5253 or email at edaniels@fnfa.ca.

First Nation Land Management (FNLM) Regime

On March 3, 2014, Chief Robert Louie of the First Nations Land Advisory Board and Chief Austin Bear of the First Nations Land Management Resource Centre Inc., and the Honourable Bernard Valcourt, Minister of Aboriginal Affairs and Northern Development, officially welcomed 19 more First Nations into the First Nations Land Management Regime. By signing the Framework Agreement, these First Nation communities can now begin the process of opting out of 34 land-related sections of the *Indian Act* and assume greater control over their reserve land and resources.

The 19 First Nation communities that signed onto the Framework Agreement were:

New Brunswick: Madawaska Maliseet
Quebec: Abénakis de Wôlinak
Ontario: Long Lake, M'Chigeeng, Magnetawan
Manitoba: Nisichawayasihk (Nelson House), Norway House, Sagkeeng (Fort Alexander)
Saskatchewan: English River, Yellow Quill
British Columbia: ?akisq'nuk, Homalco, K'omoks, Lower Nicola, Malahat, Metlakatla, Nak'azdli, Tahltan, and Soowahlie

Congratulations to all of those First Nations.

Federal Government's Legislative Agenda

While our Nations seek to partner with Canada to support the implementation of our inherent right, and, where appropriate, to work with us to develop legislative alternatives to the *Indian Act,* Canada continues to legislate our future for us by drafting legislation that impacts core components of our inherent right to self-government. When they do "consult" with us on their legislative initiatives, they do not typically accommodate our suggestions. This is further evidenced when we do go to committee hearings to suggest changes to federal bills. Most of our suggestions are rejected even when based on reasoned consideration, practical experiences and our knowledge of the law. This is very frustrating and discouraging. The federal government seems to need constant reminding that its role is to provide the space and opportunity for our Nations to continue along their path towards rebuilding strong and appropriate governance. There role is not to impose legislative solutions which to the uninformed create the illusion of action but in reality creates confusion and unnecessary complexity and does not meet our policy objectives and aspirations. Again, their job is to create the space for our Nation rebuilding – not to govern over us.

Below you will find a summary of legislation recently before Parliament, which will impact the governance of our Nations. And I do mean "governance of our Nations" as it is not "us" governing "ourselves", but rather Canada still governing over us. For on-going updates as bills proceed through the parliamentary process, the national AFN provides weekly parliamentary updates that are available at www.afn.ca.

First Nation Financial Transparency Act: Bill C-27: *First Nation Financial Transparency Act* received Royal Assent on March 27, 2013. This act is now law and as of January 1, 2014, the provisions in this act requiring First Nation chiefs and councillors to publicly disclose their salaries and expenses are in effect. Of course, none of our Nations are against accountability. Our citizens demand it. On the face of it this act may sound like a good idea to the casual observers; however, on closer inspection, the reader soon realizes that this is not about empowering First Nations to develop broad accountability measures for their governments, but rather about Canada setting the rules. Political and financial accountability has to be, first and foremost, to our citizens and in accordance with our own laws. Secondly, financial accountability, in my experience, with our Nations is much more than just publishing financial information. It is actually about making financial decisions – budgeting, and much more.

Notwithstanding our general concerns with the top down heavy-handed approach to the bill, during committee we identified a number of issues with the way the law was drafted and what certain sections meant and, in particular, with respect to band related business income. This was important to raise because the publishing of chief and council salaries under this law includes income derived from band-owned businesses as well as from First Nations government revenues.

As the bill is now law, First Nations have 120 days following the end of the current fiscal year (ending on March 31, 2014) to publish their audited consolidated financial statements and schedules of chief and council remuneration for the 2013-2014 fiscal year on their website. If your Nation does not have a website, the legislation allows a First Nation to request another organization, such as another First Nations organization, to publish the financial statements online for them. You can also ask AANDC to post the information to their website on your behalf. For more information on compliance with this new legislation, you can visit the AANDC website or contact them directly, in addition, of course, to talking to your accountants.

Family Homes on Reserves and Matrimonial Interests or Rights Act: Bill S-2 applies to the division of family property on-reserve when there is a marriage breakdown, and also to the granting of protection orders for spouses and children living on-reserve. This bill is also now law having received Royal Assent on June 19, 2013. An Order in Council was passed on December 16, 2013 authorizing the provisions in the act related to the enactment of First Nations laws to come into force (sections 1-11 and 53). The act provides for a 12-month transition period intended to enable First Nations to enact their own matrimonial property laws before the provisional (default) federal rules apply. These provisional federal rules, including the application of provisional rules and ability for provincial courts to extend protection orders on reserve, will come into force on December 16, 2014.

To assist First Nations in developing their own matrimonial property laws, the National Aboriginal Land Managers Association (NALMA) has been designated as a "centre of excellence" for matrimonial property. Canada has stated that the intention of this Centre is to "operate at arm's length from the Government of Canada to support First Nations in developing their own matrimonial real property laws, effectively implement the provisional federal rules once in force, and provide assistance with creating alternative dispute resolution mechanisms." For more information on the new centre of excellence, you can visit their website at www.coemrp.ca. The BCAFN Governance Toolkit also has some useful information on what other Nations in BC have done in terms of enacting their own laws under the "Matrimonial Real Property" jurisdiction in our *Governance Report*. You can find this on our BCAFN website: www.bcafn.ca/toolkit.

In my last quarterly report, I noted how this legislation is not only going to significantly impact First Nations. Provincial governments, through this act, are now charged with implementing the federal provisional rules and First Nations' matrimonial property laws. The staff of the BCAFN, FNS and the UBCIC, have been working with staff from the Ministry of Justice and Ministry of Aboriginal Relations and Reconciliation in a Matrimonial Real Property Working Group to explore the impacts of this legislation, share information, assist one another and find ways to

collaborate. I understand there have been a number of successful meetings and I will continue to update you on the progress.

Bill C-9: First Nations Elections Act: Bill C-9, originally Bill S-6 in the previous Parliament, was introduced in the House of Commons on October 29, 2013, and pursuant to the Order made by the House of Commons on October 21, 2013, the bill was automatically deemed approved at all stages completed in the previous parliamentary session. Bill C-9 passed the report stage and third reading in the House of Commons and was introduced at 1st reading in the Senate on December 10, 2013. Bill C-9 has now completed debates at the 2nd reading in the Senate and has been referred for study by the Standing Senate Committee on Aboriginal Peoples.

Bill C-9 is opt-in legislation for First Nations that conduct their elections under the *Indian Act*, either through custom election codes or under the *Indian Band Election Regulations*. Bill C-9 extends the election term from two to four years, has provisions for a re-call mechanism, provides that elections can be contested in a court, and sets out offences and penalties related to the election of a chief or councillor.

In my submission to the *Standing Senate Committee on Aboriginal Peoples*, in February of 2012, I noted that selecting the governing body – elections – is a critical aspect of core governance and that the definition and endorsement of a system for selecting leadership needs to be supported by outside governments and not administered by them. This is a critical distinction. We cannot forget that legislation like Bill C-9 is not self-government. There are some First Nations, however, that support this bill and who may not be ready for self-government. With that in mind, I made clear my concerns with Section 3(1)(b) and (c) of the then-Bill S-6 with respect to the powers given to the Minister of AANDC. These provisions give the Minister authority to add a Nation under the provisions of the act if the Minister is satisfied that a) there is a leadership dispute that compromised governance or b) there is evidence of corruption. This would also apply to a First Nation that conducts their elections under a custom election code. Measures for ensuring the legitimacy of an election are key to a strong election process; however, resting this power with the Minister is paternalistic and counter to the fundamental elements of self-government.

Bill C-10: Tackling Contraband Tobacco Act: Bill C-10 was previously Bill S-16 in the last Parliament and had completed 2nd reading in the House of Commons before Parliament was prorogued. The bill was re-introduced in the House of Commons on November 5, 2013 and has completed committee review without amendments – it is currently at the report stage in the House of Commons. The bill creates a new criminal office of trafficking in contraband tobacco, particularly "a tobacco product, or raw leaf tobacco that is not packaged, unless it is stamped" and creates a mandatory minimum sentence for repeat offenders. Some Nations have expressed concerns that the bill could potentially infringe on First Nations' jurisdiction over the trade and sale of tobacco.

Bill C-15: Northwest Territories Devolution Act: Although not directly impacting BC First Nations, Bill C-15 does have elements that are of interest to us in BC where our Nations are in the process of negotiating modern treaties or otherwise reconciling with the Crown and rebuilding our governance structures and institutions. Bill C-15 will transfer the administrative and

management of public lands, water resources, mineral resources and oil and gas management from the Government of Canada to the Government of the Northwest Territories.

Bill C-15 was introduced in the House of Commons on December 3, 2013. It has completed 2nd reading in the Senate and has been referred for study by the Standing Senate Committee on Energy, the Environment and Natural Resources. The bill looks to replace the *Northwest Territories Act* and contains four parts:

- Part 1 would enact the *Northwest Territories Act* and implement certain provisions of the Northwest Territories Lands and Resources Devolution Agreement;
- Part 2 would amend the *Territorial Lands Act* to modify the offence and penalty regime and create an administrative monetary penalty scheme, as well as adding inspection powers;
- Part 3 would amend the *Northwest Territories Waters Act* to make a number of changes including changes to the jurisdiction and structure of the Inuvialuit Water Board, to add a regulation making authority for cost recovery, to establish time limits with respect to the making of certain decisions, to modify the offence and penalty regime, and to create an administrative monetary penalty scheme; and,
- Part 4 would amend the *Mackenzie Valley Resource Management Act* to consolidate the structure of the Mackenzie Valley Land and Water Board, to establish time limits for environmental assessments and reviews and to expand ministerial policy direction to land use planning boards and the Mackenzie Valley Environmental Impact Review Board. Part 4 would also amend the administration and enforcement provisions of Part 3 of that act and establishes an administration and enforcement scheme in Part 5 of that act, including the introduction of enforceable development certificates. It also adds an administrative monetary penalty scheme to the Act. Part 4 provides for the establishment of regional studies and regulation-making authorities for consultation with Aboriginal peoples. It also has provisions for cost recovery and incorporates the water licensing scheme from the *Northwest Territories Waters Act* into the new act as part of the implementation of the Northwest Territories Lands and Resources Devolution Agreement.

This bill has been some time in the making and makes deep and sweeping changes to land and water boards and resource development in the Northwest Territories. The changes will have significant impacts on Aboriginal title and rights, including existing agreements with First Nations in the Northwest Territories. First Nations in the Northwest Territories have raised legal concerns, particularly with amendments being made to the *Mackenzie Valley Resource Management Act*, and changes to water management boards. While Bill C-15 contains specific provisions designed to ensure that devolution does not negatively affect Aboriginal rights or on-going land claims negotiations in the Northwest Territories, various components of the act have altered First Nation authorities set out in existing self-government agreements. This could result, in some cases, in an elimination of co-management boards meaning First Nations will no longer have equal decision-making power in water management and other projects. The national AFN is working with Northwest Territories Regional Chief Bill Erasmus to respond to this bill. I will provide further details on this bill in my next quarterly report.

Bill C-428: Indian Act Amendment and Replacement Act: Bill C-428 was first introduced on June 4, 2012 by Conservative MP Rob Clarke as a private member's bill and has now begun debates at 2nd reading in the Senate. It has the support of the government. The bill acknowledges that the *Indian Act* "does not provide an adequate legislative framework for the development of self-sufficient and prosperous First Nations' communities" – a reality I think we can all agree upon. Some of the changes, again on the face of it look good. However, once again this is not "self-government" nor is it comprehensive. The bill, as it has currently been amended, includes provisions removing the Minister's powers to approve or disapprove of a First Nation's by-law. A Nation's by-law, created under the *Indian Act*, would come into force on the day it is made accessible on a website or local newspaper. The bill would remove the words "residential school" and update an outdated provision which prohibited First Nations children from attending home school or missing school for reasons such as sickness, although, of course, these provisions were not, or at least were rarely, enforced. These are very small and simplistic changes when considering the entirety of the *Indian Act* and its continued impacts on our Nations. The bill also calls on the Minister of AANDC to report annually on efforts to replace sections of the *Indian Act* with modern amendments or legislation.

While I am encouraged that the bill is creating dialogue and could be an opportunity for our Nations to put forward our vision of governance, it does not do much and is a really another place marker for the problems a "Self-government Recognition Act" would actually fix. My fear is that, although well-intentioned, wasting time and money on this act is simply tinkering with the *Indian Act* and could actually have the negative affect of creating the illusion of progress. Simply amending small portions of the *Indian Act* does not fit with the vision of our Nations on self-government.

Also there is also little acknowledgement through this initiative that First Nations are already developing self-sufficient and prosperous communities outside the *Indian Act* through existing options such as sectoral initiatives or comprehensive governance arrangements. The conversation needs to shift to a fundamental question: what options, short of negotiating a comprehensive governance agreement, are available for our Nations to remove themselves from the *Indian Act* when they are ready willing and able to do so? As the bill is amended and debated, I will look to provide updates.

Water Governance

While fair access to water (Aboriginal title to water) is a critical component to resolving "the land (and in this case water) question", there is significant activity going on, with respect to the governance of water by both the provincial and federal governments that you need to be aware of. Provincially, the government introduced Bill 18: *Water Sustainability Act* on March 11th, 2014 and federally the *Safe Drinking Water on Reserve Act* with respect to governance of water (from source to tap) on-reserve which is now in force. Both initiatives will have an impact on First Nations notwithstanding issues relating to resolving the land question. And both initiatives will impact the ability of our Nations to govern water as part of our Nation rebuilding exercises. Needless to say we are monitoring these initiatives very closely.

Bill 18: Water Sustainability Act: Bill 18, the new *Water Sustainability Act* was introduced into the legislature on March 11, 2014.

The bill is the culmination of the work undertaken by the province based on its October 18, 2013 Legislative Proposal for a new Water Sustainability Act that was released for public comment until November 15, 2013. The *Water Sustainability Act* (WSA) updates and replaces the existing *Water Act*. Through funding from the Ministry of Environment, the BCAFN office retained Micha Menczer of the Arbutus Law Group to provide an analysis of the legislative proposal. At our BCAFN SCA, all Chiefs and proxies were provided with a copy of this legal analysis in the meeting kits and we had the opportunity to hear Micha report on his legal analysis and answer questions. A copy of the analysis can be found on our website and was provided to all of our BC leadership.

The analysis is divided into four sections. The first section provides a snapshot of the current institutional, jurisdictional and legal framework for water governance in Canada. This is followed by a more detailed description of the existing legislative framework in British Columbia under the *Water Act* and an examination of the implications for First Nations with respect to the governance of fresh water resources. The third section of the report explores the political context in BC, in particular, provincial commitments to reconciliation and shared decision making established under the New Relationship. The fourth section includes a summary of the proposed legislative framework and provides a legal analysis of the potential implications for First Nations. We will be examining the new act to see if any of the issues raised in our analysis (see below) were taken into consideration and come back to you with recommendations for next steps - including making formal submission to the province in committee as well as consider other steps as may be necessary.

The following is an outline of our initial analysis of the provinces' proposal as undertaken before the legislation was tabled this week. It is based on the "seven key areas" for improvement the province's initial proposal was trying to address in the new act.

> **1) Protecting Stream Health and Aquatic Environments:** The development of rules and standards for protecting stream health and aquatic environments must be developed with First Nations and must reflect constitutionally-protected Aboriginal title and rights, and treaty rights. Regretfully, the proposed WSA does not include provisions for serious consultation with First Nations, nor does it provide opportunity for shared decision-making. Rather, the proposed WSA suggests that the province will continue its practice of unilaterally imposing provincial standards and decision-making processes.
>
> **2) Considering Water in Land Use Decisions:** The legislative proposal does not include any mention of engaging First Nations on the determination of "water objectives" that will be used to guide decision-making under the WSA. This silence in the proposal suggests that the Province will continue to engage in unilateral decision-making on a strategic level. This is inconsistent with the legal duty of the Crown to consult and accommodate First Nations during strategic planning processes, given the potentially serious impacts on Aboriginal rights and title and treaty rights. Moreover, it is inconsistent with the primary commitment of the New Relationship to engage on a government-to-government basis on issues of mutual interest and concern, including land and resource use planning, management and decision-making.

3) Regulate and Protect Groundwater Use: According to the proposal, all existing groundwater uses (with the exception of domestic wells) will be granted water licences based on their historical use of water. This approach to groundwater regulation is particularly problematic given the fact that the current use of groundwater in BC is not ecologically sustainable. By accepting existing wells as a guaranteed basis for a water licence, the proposed WSA will be locking into an unsustainable use of groundwater. This approach to groundwater regulation continues the Crown's practice of legitimizing historical denial of Aboriginal rights and failing to consider First Nations' interests in strategic planning processes. There is potential, where water is scarce, that all sources will be allocated, leaving little room for the accommodation of First Nations' claims. Also, the proposed WSA fails to acknowledge existing Aboriginal rights and title, including treaty rights, and continues to assert unilateral jurisdiction to regulate and control access to groundwater including the authority to provide third parties with access to water resources.

4) Regulate During Scarcity: Planning for and responding to situations of drought and scarcity require direct engagement with First Nations and an incorporation of traditional ecological knowledge. However, the proposal falls short in this regard and makes little mention of Aboriginal interests or governance in the planning and response to situations of drought and scarcity. While there may be opportunities for First Nations to collaborate with the government, the public and stakeholders in the development of Water Sustainability Plans, the current proposal does not speak to how decision-making will be shared or how different interests will be balanced in the planning process. More detail is needed in forthcoming legislation and regulation.

5) Improve Security, Water Use Efficiency and Conservation: The proposed WSA will include a requirement that all water users use water beneficially. The understanding of "beneficial use" is not clearly defined in the proposal. The definition of "beneficial use" in the *Water Act* very narrowly defines beneficial use to be exclusively about the private use of water and thus affirms existing allocations. In doing so, this effectively excludes unlicensed users and uses, including First Nations and environmental flow needs. Again, the approach continues the Crown's practice of legitimizing historical denial of Aboriginal rights and failing to consider First Nations' interests in strategic planning processes. A broader definition of "beneficial use" (that takes into account, for example, Aboriginal rights to water, social benefits, efficiency and stream health) would clarify that a water license carries with it basic responsibilities to steward water resources and may facilitate legislative flexibility in addressing changing social and environmental needs through the reallocation of water resources.

6) Measure and Report Large-Scale Water Use: It appears that important details with respect to monitoring and evaluation will be established in the regulation development process. The regulation development must be undertaken in real consultation and collaboration with First Nations.

7) Enable a Range of Governance Approaches: While the expansion of planning provisions outlined in the proposal opens the door for possible delegation and sharing of responsibility for some water-management activities or decisions, the current proposal only provides a partial framework for ensuring that those most impacted by local water management issues will have a say in either initiating planning provisions or ensuring appropriate watershed-based solutions are available and made enforceable by law. More detail is needed in forthcoming legislation and regulation, including a clear articulation of accountability mechanisms and areas of responsibility, and a clear statement about what financial resources will be available for the performance of these duties. The proposal continues to assert provincial jurisdiction and suggests the potential for the province to delegate governance authority to third parties without any requirement to consult with First Nations. This delegated approach maintains the fundamental flaw of assuming that the province has sole jurisdiction over water and thus the authority to delegate water resources where there is a reasonable basis for Aboriginal jurisdiction.

Each of the seven key areas focuses in part on a concern that the WSA is lacking with respect to processes for joint decision making with First Nations and silent on the legal duty to consult and accommodate where Aboriginal rights and title may be impacted; this of course applies to water rights. As stated above, we are currently undertaking an analysis of the legislation as introduced and will report out on it as soon as possible and whether or not any of our issues we raised were addressed in the legislation as well as next steps.

Implementation of the Safe Drinking Water for First Nations Act: The *Safe Drinking Water for First Nations Act* came into force on November 1, 2013. The act provides for the federal government to establish and then enforce standards to ensure the safety of drinking water on-reserves; similar to some extent to those that exist in the rest of the country between a provincial government and water utilities/local governments (however established under province statute). In terms of implementation, standards will be developed on a regional basis within the next two years and some regions have already begun this work. In the federal budget, renewed funding was announced in the amount of $323.4 million over two years for the implementation of the Federal First Nations Water and Wastewater Action Plan.

Safe drinking water is, of course, a shared objective between our Nations and the federal government. However, it is not clear how this new federal act is going to work in practice for our Nations which, as governments, will have little or no actual determination of the rules including the governance framework for water management on our lands. At the end of the day we will essentially be administering Canada's new system for water management on our reserves for us through our existing chief and council governance framework but with no jurisdiction in this area recognized.

To build a system for safe drinking water, whether in a First Nations community or not, requires clear law on the issue (appropriate water quality standards, governance arrangements and ways to enforce the law) in combination with ensuring access to the resources, both human and financial (fees, taxes, transfers, public financing), to reach the operational levels identified and required by the standards. To support the development of standards and systems to build

water systems to the standards that will ensure safe drinking water on-reserve requires supporting the governance and Nation building exercises of our Nations and not simply through unilaterally imposed legislation. Under the system being imposed on First Nations today, it will be the First Nation administering the federal government's rules, typically without adequate financial resources and little federal political accountability but where, for the most part, our Nations will be held responsible for poor water quality and where fault will be laid at the feet of our people. This form of devolution without authority is very unfair.

Notwithstanding our broad concerns with the off-loading of responsibility to our people without the adequate governance framework in place and without the financial tools to pay for it, we will work with AANDC BC Region to develop regulations. This is because we know this act will be implemented and, in the short term, we have an obligation to our people to try and make it work (to the degree we can) until such time as self-government is a reality or we are in a position to see the federal legislation amended.

BC First Nations' Water Strategy: To help formulate our collective strategy with respect to water governance and water matters generally, and as I have reported in previous quarterly reports, the FNLC has been engaged in developing a BC First Nations' Water Strategy. This high-level strategy document was created based on feedback from BC Chiefs at the FNLC BC First Nations' Right to Water Workshop last March. The strategy was endorsed through *Resolution 06(a)/2013 – BC First Nations Water Rights Strategy* at our BCAFN SCA on November 26, 2013.

The strategy is organized into four areas: 1) political; 2) legal; 3) community support; and 4) education. To implement the strategy, the FNLC will coordinate an inter-organization working group to develop work plans and create a process for measuring success. Staff within each FNLC organization continues to meet and work on water related issues. One of the ways that we are engaging on the issue of water is through on-going discussions with the Ministry of Environment (MOE) to develop an MOU. The MOU would formalize open and ongoing dialogue between the FNLC and MOE on topics related to the environment, such as water and environmental assessment. We are currently in the final stages of this MOU development and anticipate that it will be finalized and signed within the next couple of months. I will continue to update you as this work progresses.

Watersheds 2014: Towards Watershed Governance in British Columbia and Beyond: In order to share our message with respect to Nation rebuilding and developing appropriate governance regimes with respect to water and the role of First Nations in governing water and watersheds, it is important that we get our message out and work with other groups that have responsibility at some level for water management. On January 28th, I had the pleasure of providing some remarks to a forum being hosted by the POLIS Water Sustainability Project, the University of Victoria's Department of Geography, and Brock University's Environmental Sustainability Research Centre which was held at Quw'utsun' Cultural and Conference Center in Duncan in partnership with Cowichan Tribes, the Real Estate Foundation of BC, and the Ministry of Environment. The purpose of the event was to support skills development and capacity building for watershed groups, First Nations and community watershed champions. A number of key principles were identified at the forum, including: Water for Nature, Connected Systems, and Transparency & Collaboration. For my part, I explained how title and right issues interact with

governance and the role that Indigenous legal traditions will play as water management and watershed stewardship is practiced in the future. A copy of my speaking notes can be found on the BCAFN website. I was pleased to be provided the opportunity to share some thoughts as well as witness and learn more about the great things that Cowichan and its partners are doing in the area of watershed governance.

2. Fair Access to Lands and Resources

"Settlement of the land question remains fundamental to the overall success of our Nations in BC. Without adequate access to land and resources our Nations will never reach our full potential. In addition to sustaining our traditional practices, access to land and access to resources provides our capital – our equity – and therefore our ability to build our economies and support our government." *Building on OUR Success*

The Need for Reconciliation

As I mentioned in my last quarterly report, there is a perfect storm on the horizon where the coming together of various factors provide the opportunity to make significant progress in resolving the land question in British Columbia over the next few years. There is so much going on, in fact, that sometimes it may be hard to see the forest for the trees, or to discern a strategy. In thinking about the plan to ensure fair access to lands and resources, consider the following factors that are contributing to the perfect storm:

1. The Supreme Court of Canada is going to rule sometime later this year with respect to the test to prove Aboriginal title. They will do so in the *William* case, where the Tsilhqot'in are seeking a declaration of Aboriginal title over an undisputed portion of their territory. The driving objective of the court should be to jump start and stimulate true reconciliation between Indigenous Peoples and the Crown;

2. *William* and other court cases characterize Aboriginal title as being owned collectively by a Nation. Consequently, the Nation is only the legitimate political body representing the proper title holder that can settle the land question (i.e., make agreements with the other governments). Resolving disputes between our Peoples regarding exclusive and shared territory issues cannot be avoided and must be resolved;

3. The BC treaty process was meant to be the vehicle to settle the land question in British Columbia, but the process has been overtaken by legal developments, most notably the requirement for recognition that it is the proper title holder that must negotiate a land-based treaty. The BC treaty process is consequently imploding and therefore must be transformed;

4. Many of our First Nations are entering into reconciliation agreements with the province irrespective of the BC treaty process as our Nations and government try to resolve title issues on a case by case, issue by issue, one-off basis. This has been particularly prevalent where Liquidfied Natural Gas (LNG) projects are concerned – because it is certainly the provincial government's priority;

5. There is an unprecedented push for major resource development in our province, including two controversial pipelines, a major dam and more than half a dozen LNG projects;

6. Canada's economy is dependent on natural resource development and needs infrastructure to access resources and get them to market;

7. There is a shortage of labour in Canada to work in the resource sector and many companies as well as governments are looking at our people to fill that gap;

8. The environmental assessment processes of both Canada and BC are in the spotlight with recent recommendations of a federal panel to reject New Prosperity II (Taesko) and a federal panel decision to support Northern Gateway (Enbridge) but with 209 conditions;

9. The current federal government is seen by many to have mismanaged the resource development file by failing to meaningfully address environmental and First Nations issues and, consequently, it has lost the confidence of the country as being able to best handle the economy. Stated another way, if environment and First Nations issues are not meaningfully addressed our economy will be seriously jeopardized;

10. Prime Minister Harper appointed Doug Eyford as his Special Representative on West Coast Energy to try to make sense of the pending storm and how to seek shelter from it;

11. Our citizens have become empowered through movements like Idle No More and are demanding all governments, including our own, be proper stewards and ensure that the peoples' voice is respected;

12. Canada is in the international spotlight with its reputation on the line as decisions are made regarding accessing or delivering our natural resources, which includes the upcoming decision by President Obama on whether or not to approve Keystone; and,

13. There is greater public awareness of the impact of the outstanding land question and how it affects everyone: personally as individual citizens, the economic impact and as a vision for BC. The land question is no longer just some issue that government has to deal with, that does not affect me that is being handled, and that can be ignored. Resolving this issue is in everybody's interest, particularly where Indigenous voices are seen as a welcome and necessary contribution to the difficult conversation about what is sustainable resource development for the future, not just what constitutes so called 'responsible resource development' today.

An appreciation of these factors and how they are interrelated is important when developing a strategy moving forward. Of course, our Nations have been pursuing multiple strategies to settle the land question and following these strategies is now paying off. The question now is: how do we continue to share our experiences and coordinate our activities so that ultimately all of our Nations have fair access to lands and resources so that our respective citizens benefit?

Each of our Nations will be making important strategic decisions over the coming months with respect to advancing Aboriginal title and rights and, in particular, with respect to proposed resource development projects in their territories and what these projects bring both in terms of opportunities and risk.

I know it is a challenge to address issues of proper title holder and strong and appropriate governance within our broader territories because, for the most part, our reserve based band governments, are focused on administering programs and services through *Indian Act* Band Councils. There is no question governance decision-making within our traditional territories remains a challenge until we are truly self-governing again. I also know many of our leaders felt that these issues would be resolved through the negotiation of treaties but as we all appreciate this is not proving so – in part because Canada and the province (now to a lesser degree) approach treaty negotiations as 'claims' where issues of governance and land ownership are dealt with as an outcome of the land negotiations and are not recognized upfront. This approach, however, does not work where Aboriginal title is found to exist on the ground because it is no longer a question of a First Nation making a 'claim' under a one-sided federal or provincial policy but rather a need for true reconciliation between Aboriginal and Crown title.

To help make sense of this relatively simple concept, but one that seems hard for some people to grasp, we have been pushing Canada to develop a broad "reconciliation framework" that would guide all its departments and ministries in their dealings with our peoples. Specifically, this would deal with the land question that in the past was addressed in accordance with the federal Comprehensive Claims Policy. To accept this approach, Canada requires a conceptual shift in thinking away from one where our Nations make 'claims' to one of recognition and reconciliation. This is proving difficult to achieve. Our work in this respect is further discussed below under the report on the Senior Oversight Committee.

Federal Comprehensive Claims Policy and the Senior Oversight Committee (CCP SOC): Following the January 11, 2013, meeting with the Prime Minister in the wake of the Idle No More protests, there was an agreement between the leaders in attendance to establish a high level joint process to review Canada's existing approach to 1) treaty implementation, and 2) settling the land question, and further to provide recommendations to the Prime Minister on reforming Canada's Comprehensive Claims Policy (CCP). Two Senior Oversight Committees (SOC) were formed. One focused on Treaty Implementation (Treaty SOC) and the other on CCP (CCP SOC). Each SOC had representatives from the AFN, the Prime Minister's Office, the Privy Council's Office, and AANDC.

The CCP SOC has now completed its work. On December 1, 2013 the Terms of Reference for the CCP SOC expired and the SOC met for the last time on December 6th. At this meeting, the SOC

approved recommendations to be put before the Prime Minister and the National Chief for their consideration.

One of the outcomes of the CCP SOC and reflected in the recommendations, was to push Canada towards developing principles respecting the recognition and reconciliation of section 35 rights as well as looking to operationalize the principles across-government (or what I have been calling a Reconciliation Framework). As a result, draft principles have been developed but not yet adopted by Canada. A discussion on these draft principles was held at the BCAFN Special Chiefs' Assembly (SCA) in November and then again at the AFN SCA in December. To be clear, these are not principles to be adopted by the AFN, but rather are ones that Canada would adopt to guide its future engagement with First Nations. It was our contention that these federal principles would be used by Canada as the foundation for the development of a broad, government-wide (horizontal) reconciliation framework that would apply to all federal departments and officials and guide Crown conduct in engagement with our Nations. There is currently no such policy to coordinate a whole of government approach to reconciling with First Nations. Such a framework could theoretically be used to inform mandates across government departments, resulting in fewer silos and in more tangible results on the ground.

Unfortunately, at this point, we are still waiting for the Prime Minister's Office (PMO) to put the recommendations before the Prime Minister. For our part, we have distributed copies of the draft Principles to our Chiefs, received feedback and will be working to ensure that the perspectives of our leadership are brought forward to the federal government. Moving forward on all the recommendations, which include issues around legal reconciliation techniques, governance and shared territory, is now really up to the PMO. The ball is in their court. Whether we are successful in advancing our vision of an approach to settling the land question based on principles of recognition and reconciliation , we will know that we did not turn away from a chance to advance our cause at the highest level. We have left no room for others to suggest that we did not show up with solutions.

What can be said for certain is that this work has stimulated the on-going discussion amongst our Chiefs on topics of governance, shared territories/overlap and legal reconciliation techniques, among others. The need to resolve these issues will not go away and our Nations will, irrespective of this government's actions, continue to develop means of addressing our Aboriginal title and rights, including treaty rights, and advancing recognition and reconciliation.

Treaty Implementation on the National Stage: At our BCAFN Special Chiefs' Assembly in November, at the request of our Chiefs, the BCAFN hosted an evening break-out session for our Nations in BC with historic treaties or final agreements. We had the pleasure of having Regional Chief Cameron Alexis from Alberta, the co-portfolio holder on treaty implementation at the national AFN, attend the session to hear the perspectives of our BC treaty leadership on the issue of treaty implementation. I would like to thank all those who attended and participated in what was a focused and productive dialogue. As follow up and in speaking with my colleague Regional Chief Bellegarde, the AFN is working towards hosting a gathering of BC Treaty Nations sometime in early spring 2014.

FNLC Shared Territories/Overlap Forum

As I have said publicly on many occasions, the shared territory issue is tied to questions of proper title holder and is one of the biggest impediments to ensuring fair access to lands and resources. The issue of shared territories/overlap issues was an important part of the dialogue at CCP SOC and is one example of discussions that will continue with and amongst our Nations.

Historically, First Nations shared territory and more than one First Nation enjoyed Aboriginal title to the same lands. More often than not, when disputes occurred, traditional protocols were in place to resolve disagreements based on agreed upon terms. In many ways these principles guide existing modern day shared territory protocol agreements. However, while the 1991 BC Claims Task Force Report speaks to resolution of these issues being the responsibility of First Nations, in practice this does not always occur and we often see governments moving ahead with negotiations and reaching agreements while there are outstanding shared territory issues.

How do we settle disputes when Canada or BC is prepared to sign an agreement where one or both neighboring Nations are not satisfied that shared territory/overlap issues have been resolved? Would the creation of a tribunal for dispute resolution be beneficial? If so, would it be governed by First Nations or an independent third party? What policies exist whereby Canada decides the proper title holder for a final agreement? These are but a few of the challenging questions before our Nations. BC Chiefs have committed to addressing these questions and passed two BCAFN resolutions on shared territories/overlap at our BCAFN Annual General Meeting in June of 2013, *Resolution 03(b) – Support for the Protection of Rights and Title by First Nations in Overlapping Territories and Resolution 03(c) – 2013 Support for the Establishment of Dispute Resolution Mechanism for Overlapping Claims and Shared Territories Issues*.

Building on the discussion at our BCAFN Strategic Dialogue Session on May 9-10, 2013 and panel discussions at our respective organizations' assemblies, the First Nations Leadership Council has agreed to jointly host a BC Chiefs' Forum on the issue of Shared Territories/Overlap on March 24-25, 2014 at Musqueam. The agenda for the forum and information on how to register is posted on our website (www.bcafn.ca). The focus of the forum will be on developing joint outcomes sharing best practices and creating resources for our Nations. I hope that you will be able to attend this important forum.

Specific Claims

One of the "trees" that sometimes gets in the way of seeing the "forest" with respect to fair access to lands and resources is the category of claims referred to as "specific claims." Specific claims are an artificial category of 'land' and other claims resulting from actions taken by the Crown. For the most part, these claims deal with treaty violations, although in BC they are used more generally to deal with the actions of the Crown with respect to reserve creation (or lack thereof) and – notwithstanding the broader issue of Aboriginal title and rights – more fundamentally arising out of having unextinguished Aboriginal title and rights. Having said this, when addressing certain grievances "specific claims" are an option that can provide benefits to the claimant group.

In 1982, Canada carved out specific claims from 'comprehensive claims' and released "Outstanding Business", its first formal policy on Specific Claims. The following 25 years resulted in a large number of specific claims being filed and produced a significant backlog of unaddressed claims. In 2007, Canada released its "Justice at Last" Action Plan to address problems with its Specific Claims process and to eliminate this backlog. The Action Plan included the creation of the Specific Claims Tribunal of Canada (the "Tribunal"), an independent body that adjudicates Specific Claims valued up to $150 million where a negotiated settlement could not be reached between Canada and the First Nation. Since the Tribunal began in June 2011, more than 46 claims have been filed. The decisions of the Tribunal are final, subject only to Judicial Review. The AFN worked with Canada to jointly implement Justice At Last, including the joint development of the *Specific Claims Tribunal Act*.

A 5-year legislative review is expected to take place over the coming year as Canada evaluates the *Specific Claims Tribunal Act* and Justice At Last. While many feel the Tribunal has been working well, a number of serious concerns have been expressed about the Specific Claims Branch's processing of claims. While AANDC's *Progress Report – Specific Claims 2012-2013* states that 77% of claims have been concluded under Justice At Last – which, on the face of it, suggests that the new process is an efficient one – "concluded" does not mean "settled". More than half of these "concluded" claims were rejected by AANDC based on "no legal obligation", a quarter of these "concluded" claims were "file closures" and only 15% represent settled claims. It has been suggested that claims under Justice At Last have a poorer chance of being negotiated and settled than claims filed prior to 2007.

Also of particular concern is Canada's application to the Federal Court of Appeal for an expansive judicial review of the Tribunal's second substantive decision in *Kitselas* (2013), the scope of which far exceeds the original understanding of the judicial review provisions developed jointly as part of the *Specific Claims Tribunal Act*. This review will be heard by the federal court of appeal on April 7-8, 2014 in Vancouver. The facts of this case are that when setting out the Kitselas reserve, reserve commissioners omitted a 10.5 acre village site. The Tribunal found that the Crown had a legal obligation to include the village site in the Kitselas reserve. Canada disagrees with this, arguing that the Kitselas' interest in the village site was not specific enough and that it needed provincial co-operation and could not act unilaterally at the time. This is the first judicial review of a decision by the Tribunal. At this judicial review, the federal court of appeal will determine the level of deference to show the Tribunal – also known as setting the "standard of review". Canada argues that the standard of review is whether the decision was correct – in other words, whether a Court would have decided the same way as the Tribunal. Kitselas (and the Tribunal acting as an intervenor) argue that the standard is whether the decision was reasonable and falls within the range of acceptable outcomes on the facts of the claim. Canada's approach to this judicial review appears to challenge the very scope and mandate of the Tribunal. The Tribunal was established jointly as an alternative to court proceedings and was to make final and binding decisions when a negotiated settlement could not be reached. This case will be very important as the standard of review, as established by the federal court of appeal, will thus apply to any subsequent judicial reviews of the Tribunal. The AFN is working in coordination with the UBCIC and others to advocate on behalf of the integrity of the Tribunal process and those First Nations who have come into this process in good faith. I will update you on this judicial review in my next quarterly report.

On February 28, 2014 the Specific Claims Tribunal released its decision in the case of the *Williams Lake Indian Band v. Her Majesty the Queen in Right of Canada,* 2014 SCTC 3. Prior to Confederation, under colonial law, First Nations village sites were to be protected for the benefit of the First Nation. Settlers were prohibited by law from taking up lands that were village sites or settlements. The Williams Lake Indian Band (WLIB) had a village site, in what is now known as Williams Lake. This should have been but was not reserved by the magistrate in the area. Settlers began to register pre-emptions to the WLIB's village lands. Officials did nothing to stop it and eventually the WLIB was forced off their lands by settlers. The Tribunal held that the colony failed to follow its own laws and policy and unlawfully allowed settlers to encroach upon and settle the WLIB's village lands, and held that Canada was responsible for the failure by the colony because Canada knew, after Confederation, that the WLIB had been improperly dispossessed of its lands and did nothing to right this wrong. This is the first pre-Confederation claim to be considered by the Specific Claims Tribunal. I congratulate the WLIB on this significant victory and urge the federal government to implement this decision so as to not further deny the WLIB from the justice and restitution that they deserve.

On February 19, 2014, Claims Research Associations across Canada were notified by AANDC that there would be massive funding cuts to specific claims research and development beginning on April 1, 2014. Cuts to annual budgets for these associations are in the range of 40-60 percent. These drastic funding cuts signal the federal government's lack of commitment to actually ensuring that justice is done for hundreds of outstanding specific claims where Canada neglected to fulfill its lawful obligation to First Nations. This lack of commitment will certainly lead to further uncertainty on the ground with regard to economic and natural resource development. I join with the countless Nations across the country in voicing my strong objection to these cuts and to the undermining of our ability to seek justice for these past infringements. The Union of BC Indian Chiefs has put together an online petition which you can find on our website (www.bcafn.ca). I encourage you to take a look at this petition.

On March 4, 2014, I attended the AFN Specific Claims Gathering in Vancouver. A number of our Chiefs and representatives from BC and across Canada were there to discuss all of these issues and share their experiences and concerns with Justice At Last. There were some very informative presentations throughout the day and I would like to thank the organizers for putting this forum together to provide a space for us to discuss these critical issues.

For me, I am interested in how, moving forward, addressing specific claims that arose from Canada's suspect actions of unilaterally creating reserves in the first place will work with the need to reconcile with First Nations based on proven Aboriginal title. At some point the artificial distinction between specific and comprehensive claims, indeed the need to stop talking about claims but rather recognition and reconciliation, will need to be confronted head on. Yes, there will always be actions against the Crown for specific breaches of duty but all these actions are, legally, secondary to the Crown's major breach in failing to address Aboriginal title and rights.

Additions to Reserve

Another important "tree", albeit easy not to see the "forest" through, is additions to reserve (ATR). ATR is a tool to add land to existing reserve lands, again notwithstanding Aboriginal title

or the broader issues of reconciliation. However, ATR, are, of course, seen by our leaders as part of reconciliation. As with the federal comprehensive claims policy, and the specific claims policy, the ATR policy should come under a broader and principled framework for reconciliation with First Nations as discussed above.

First Nations continue to be one of the fastest growing demographics in Canada, while the total square footage of lands designated as "reserves" is unpractically small. Across Canada, in total, reserve lands amount to the size of Vancouver Island. Comparatively, this is the size of only half of the Navajo Nation's reservation lands in the U.S. This does not meet the needs of our growing communities nor does it provide our Nations with much needed viable land bases to support a growing economy. So even though we enjoy Aboriginal title, we still have to ask for Canada to add lands formally to our existing reserves that they unilaterally set aside for us.

To date, Canada's ATR policy on has operated under the assumption that adding more reserve lands is not a good thing. This is simply not true. Though the basis for the origin of the reserve system was colonial, on a practical level all communities require options for expanding their land base to meet community needs, for economic development purposes, or, in some cases, to address historic legal obligations.

In 2009, The AFN-Canada Joint Working Group was established to examine Canada's ATR policy with the intent to accelerate and improve ATR or potentially draft an entirely new policy. Based on recommendations from the Working Group, on July 26, 2013, Canada released a new Draft ATR policy. Public feedback and comments on the draft were received until October 31, 2013. The changes have resulted in a new policy clarifying the types of categories for new reserve creation and it now clearly includes reserves for economic development purposes. The new categories are:

1. Legal obligations and agreements (removes the restrictive category of "New Reserve/Other" in the former ATR policy);
2. Community additions (this expressly includes reserves for economic purposes and culturally significant sites); and,
3. Specific claims tribunal decisions.

Unlike the previous policy, the criteria to assess proposals would be the same for each category. This prevents any bias that would result in more reserves being created under the broadest category (Category 2) and makes for a more efficient review process. The proposal process was also updated to cut down on lengthy and costly back and forth between a Nation and AANDC by allowing a Nation to submit a band council resolution and proposal at which point AANDC will give an early decision on the proposal. If the proposal is accepted, a letter of support is written expressing Canada's commitment to work with the First Nation towards completing their proposal. This addresses previous concerns that lengthy delays resulted in lost economic opportunities. The Nation and AANDC will then create a joint-workplan to clearly outline roles, responsibilities, and timelines.

On January 20, 2014, the FNLC wrote a letter to Minister Valcourt to express our support for the proposed changes to Canada's ATR policy. AANDC has signalled that the new ATR policy

would be operational by March 2014; however, a finalized ATR policy has not yet been released. The FNLC also expressed concern about comments provided by third party interests, e.g., municipalities. The new policy suggests that AANDC will take a clearer facilitative role in resolving disputes over third party interests. Some municipal leaders chose to air their concerns that it would be too easy for reserve lands to be created and this would then run the possibility of impeding on municipal lands. While recognizing the challenge in managing multiple interests, the FNLC reminded the Minister that municipalities and other third parties do not have a veto on ATR and urged Canada to not be swayed in this regard. The FNLC accepts the new policy which seeks to address the gaps which have led to arguably over-consideration of third party interests over the needs of our communities.

For those concerned about the transition, any Nation currently in the ATR process will be able to decide whether to continue or shift to the new policy. AANDC has promised guides and resources to assist with the transition. The BCAFN will continue to work with the AFN to provide information and act as a resource for our leaders regarding ATR.

The AFN/Canada Joint Working Group will be reconvening soon to review comments received on the new policy. AANDC is still projecting the new policy will be operational in March 2014. We will continue to hold Canada to this date and will provide updates to our membership on any significant changes from the proposed Draft ATR policy.

For me, I will be watching closely to see if the new policy results in faster additions and greater quantum. I will also participate in the ongoing conversation about having reserve lands (s.91(24) lands) versus other lands in the context of resolving the broader land question and how the ATR policy can be squared with the current federal policy on comprehensive claims which, on its face, does not support the concept of 'reserves' in the first place. This is more commonly referred to as the issue of "status of lands" and, to say the least, has been difficult to overcome in BC treaty negotiations and is fundamentally tied to the governance of First Nation lands.

Major Resource and Energy Infrastructure Development

Much has transpired since my last report and this is testament to the pace at which Canada and the province are pursuing their respective agendas on major resource and energy infrastructure development.

Issues of environmental assessment have received increased public attention with major decisions on Taseko's New Prosperity Mine and the Joint Review Panel (JRP) on Enbridge's Northern Gateway Pipeline having recently been announced. In addition, a number of reports, both by government and by independent bodies, have been released outlining challenges and approaches to garnering support from First Nations on energy infrastructure projects. At the same time, senior federal officials continue to voice their desire to discuss the potential opportunities of major resource development for First Nations communities here in BC and across Canada. Often the question they are ultimately asking is, "how do we get to a yes"? In some cases, the answer will be "no". But where the answer could be "yes", the real question we have all been asking is, "How will projects be governed/regulated to ensure sustainability

and how will final approvals be given?", and, assuming the first question is answered satisfactorily, "What will be the long-term benefits to our Nations?"

It is clear that First Nations today have great leverage and the general public now realize this in a way that was not the case previously. For many people this leverage is seen as a good thing as it is changing the way the country looks at natural resource development and the environment and governance generally. It should go without saying that this leverage we have needs to be used wisely as we are in a period of rediscovery ourselves.

The fact is, if governments are seeking to tap into what they are calling a potential $650 billion worth of investment in Canada's economy, then the federal government cannot afford to push aside the Crown–First Nations relationship and settlement of the land question any longer. This leverage represents an opportunity to advance our causes, but the decisions before First Nations with respect to rapid major resource and energy infrastructure development are not easy ones to make. In my experience, most First Nations in BC are not positioning themselves to oppose development outright, but rather they are taking a hard stance on ensuring that resource development projects are done in such a way that respects both the environment and the culture and economy of their citizens.

In meeting with what seems like dozens of senior government officials, I have been consistent in my messaging and adamant that the governments (BC and Canada) need to deal with the proper title and rights holder and, therefore, must support our Nations' rebuilding efforts. Otherwise, legal uncertainty will be compounded by potential 'deals' which are subsequently proven to be unsound because the party that made the deal did not have the authority to do so (was not the representative of the proper title or rights holder). I continue to say we are not opposed in principle to development but that this means some projects will be required to be scaled back, better governed, and in some cases not proceed at all.

In fact, while some projects will not proceed, the right project can result in the economic opportunities that are often required to support and build thriving and healthy First Nations communities. Many of you stated, and we all believe, that in order to support our communities and citizens, we require revenue sources to support our Nation building efforts and to invest in our cultures, health, and education initiatives. However, every opportunity before us needs to be weighed carefully to ensure that if a project is to go forward, it is done sustainably and does not unduly compromise our traditional territories and way of life. Many First Nations in BC are prepared to discuss the right project where there is reasonable benefit to the community resulting from a positive relationship with the project proponent, Aboriginal rights and title are respected, and the community and citizens are confident that the best environmental protections are in place.

The pace at which major resource and energy infrastructure is being proposed and developed presents a challenge as does the sheer number of project proposals being generated. BC and Canada are in a race to tap into energy markets and warn the public and our First Nations that the window of opportunity is small. In my view, with the proper reconciliation framework in place, these issues could be approached at a much more efficient pace and in a way that ensures our voices are heard. Some have commented that the recent push to engage with First

Nations comes at the eleventh hour; whereas addressing the land question and reconciling with First Nations have long required the current level of mobilization and political will demonstrated by both governments. The truth is, reaching agreements with First Nations on specific resource projects cannot be separated from the need to achieve broader reconciliation. There is no expedited process for getting to 'yes' if yes is a possibility. If the federal government is serious about reconciliation, steps need to be taken to provide a horizontal reconciliation framework in order to set direction and improve cross-government understanding of what type of agreements might be reached with concurrence from all ministries that are affected. While many of the initiatives underway are promising, we need to ensure that these processes do not continue to function independently of one another.

Canada's Responsible Resource Development (RRD) Plan: Everyone should be aware of Canada's RRD plan. One of the focuses of Canada's RRD Plan has been to make legislative changes to achieve a "one project, one review" environmental assessment and regulatory regime. In 2012, through the omnibus Bill C-38 budget bill, sweeping changes and amendments were made to the environmental review process resulting in the new *Canadian Environmental Assessment Act, 2012* (CEAA 2012). Legislation such as the *Fisheries Act*, *Navigable Waters Protection Act*, and *Species at Risk Act* were also significantly amended.

One of the new features under CEAA 2012 is expanded authority for federal cabinet and Ministers through Section 52(2), which reads: "If the decision maker decides that the designated project is likely to cause significant adverse environmental effects referred to in subsection 5(1) or (2), the decision maker must refer to the Governor in Council the matter of whether those effects are justified in the circumstances." In practice this means that following an environmental assessment, for example under a national JRP, the Minister of Environment has the final decision on whether or not a project proceeds. This has raised concerns from many that Section 52 (2) could create space for project decisions to be unduly impacted by the politics of the day. Recent project announcements such as the JRP report on Enbridge's Northern Gateway Pipeline and the rejection of Taseko's New Prosperity Mine project have received much public attention as we continue to examine how the new CEAA 2012 will impact the assessment of projects and how First Nations' interests will be addressed under the new regime.

Canada's Special Federal Representative on West Coast Energy Infrastructure: In March of 2013, Doug Eyford was appointed as the Prime Minister's special envoy on West Coast energy issues. Eyford's role was to "identify approaches that could meet Canada's goals of expanding energy markets and increasing Aboriginal participation in the economy". Many of our Nations and leaders, including myself, were able to meet with Doug Eyford to discuss the issues and raise our concerns and the challenges we see or have experienced in relation to Canada's approach to consultation and accommodation on major resource projects and energy infrastructure. Doug Eyford's report, "Forging Partnerships, Building Relationships: Aboriginal Canadians and Energy Development" (the "Report") was completed in June of 2013, and included 29 recommendations to the Prime Minister. This report was originally intended to remain undisclosed to the public, but thanks in large part to the advocacy of many First Nations leaders, the Report was made public on December 5, 2013. The 29 recommendations are organized into four overarching themes:

- Building Trust – which identifies the efforts needed to establish constructive dialogue about energy development, to demonstrate commitment to environmental sustainability, and to enhance understanding of and participation in pipeline and marine safety;
- Fostering Inclusion – proposes focused efforts to realize Aboriginal employment and business opportunities, to establish collaborations among Aboriginal communities that allow for better outcomes, and to facilitate the financial participation of Aboriginal communities in energy projects;
- Advancing Reconciliation – recommends targeted efforts to build effective relationships including refinements to Canada's current approach to consultation and engagement, to explore mutually beneficial initiatives that support reconciliation, and to encourage Aboriginal communities to resolve shared territory issues; and,
- Taking Action – recommends the establishment of a Crown-First Nations tripartite energy working group to create an open and sustained dialogue and action on energy projects. Also identified is the need for Canada to build its internal capacity and to adopt an integrated approach to address Aboriginal interests in relation to west coast energy projects.

The Report made a number of significant comments noting such issues as "process fatigue" experienced by communities facing numerous consultation demands. Also, Eyford articulated that that CEAA 2012 is not viewed by First Nations as an adequate form of consultation and accommodation and that both industry and First Nations express interest in Canada taking a stronger leadership role in addressing First Nations' concerns.

The Report's recommendations, in my view, echo many of the issues that were expressed through the CCP SOC process, especially the need for an overarching policy framework to guide the Crown's engagement with First Nations. The Report supports increased use of non-treaty government-to-government arrangements and incremental treaty agreements, a coordinated federal framework and timeframe for Crown engagements with First Nations on major projects. It further recommends the establishment of a working group with Aboriginal leaders, senior officials, and BC to create space for dialogue on issues and interests including the recommendations in the report. In speaking to Mr. Eyford, I expressed my concern that due attention needs to be made to ensure these multiple initiatives underway – be it on energy infrastructure or other – do not serve to deepen silos or duplicate efforts.

Interestingly, the Report also contains a number of recommendations on Canada's role in shared territory/overlap issues where major projects are concerned. The Report includes a recommendation supporting strength of claim assessments and a federal policy framework and guidelines on shared territory disputes. These, of course, will be important discussion points for our leaders at the upcoming BC Chiefs Forum on Shared Territories and Overlap Issues on March 24-25. Eyford's full Report is available at https://www.nrcan.gc.ca.

Meeting with Deputy Ministers: Beginning in December and leading into January 2014, AANDC hosted information and engagement sessions throughout BC between BC Chiefs and First Nations representatives and relevant federal Deputy Ministers and Associate Deputy Ministers

with responsibilities touching on natural resources. The meetings were chaired by the Associate Deputy Minister of Natural Resources Canada, Michael Keenan, and were classified as discussions on "moving forward on the report of the Special Federal Representative on West Coast Energy Infrastructure, pipeline safety and world class tanker safety system measures". The objectives of the meetings were to solicit feedback as the Government prepares to develop its next steps on Doug Eyford's Report as well as review Canada's pipeline safety regime and the Tanker Safety Expert Panel's first report on Canada's Ship-source Oil Spill Preparedness and Response Regime. The BCAFN attended the meetings that were held in Vancouver and I was pleased that quite a number of Chiefs and leaders attended to voice their comments and concerns regarding the Eyford report and the issues of pipeline and tanker safety.

Canada has not formally indicated how and when implementation of the Eyford Report will begin; however, through the Budget 2014, the federal government announced its commitment to respond to both the recommendations made by the Tanker Safety Expert Panel and the Special Representative on West Coast Energy Infrastructure. It is my understanding that the federal government will be responding to and acting on some of the Eyford recommendations in the coming days and weeks.

Liquefied Natural Gas Development in BC and the Province's Development Agenda: In 2012, the BC provincial government signaled its desire to establish BC as a future leader in natural gas supply and export. Some have likened the race to extract LNG, establish the infrastructure, and tap into global energy markets as a "modern day gold rush". This is in large part because forecasts show that there will be a significant increase in energy demand from Asia in the upcoming years. Countries such as Australia, Russia, and the United States are competing to tap into that global market. Whether BC can become a competitive global leader in LNG in the face of other LNG markets opening up remains to be seen and the jury is still out according to those close to the industry.

Currently there are 12 pending export projects in BC by companies such as Kitimat LNG, Douglas Channel Energy (BC LNG), and the Pacific Trail Pipeline, to name a few. Each project has reached various levels of project approval. When LNG exports begin depends largely on when companies make their final investment decisions. The BC government has embarked on a number of initiatives to create the fiscal, environmental, and social frameworks to prepare should decisions come in 2014.

Fiscally, the province currently collects royalty payments, a portion of revenues, from the natural gas industry and has expressed an interest in developing another BC LNG Tax regime. In the BC Budget, announced on February 11, 2014, limited details about this tax were announced. It will be structured on a facility-by-facility basis and will be under a two-tier system. Questions still remain on the exact figures and the income tax rate. BC Premier Christy Clark has commented that gathered revenue will be put towards a BC Prosperity Fund.

The Minister of Energy and Mines recently stated that because BC is already undertaking forestry and mining revenue sharing that he expects that natural gas revenue sharing will be a straightforward 'negotiation'. The Minister of Aboriginal Relations and Reconciliation recently stated that forestry and mining tax sharing should be seen as incremental steps to a broader

process of sharing revenues. While on the face of it this is good news, according to a number of First Nations, the sharing of this benefit does not come close to the impacts of the resource extraction. The question is, of course, what is the benefit versus the risk? The only one who can determine that is the proper title and rights holder making a decision based on sound information and after careful consideration. The province has stated that further details on the LNG tax will be made available by the end of March 2014.

First Nation LNG Summits: For our part, efforts are currently underway in BC to create a First Nations LNG Strategy. LNG Summits coordinated by First Nations have now taken place in Prince Rupert and Prince George. The most recent Summit was hosted by the Treaty 8 Tribal Association on February 17-19, 2014 in Fort St. John. These LNG Summits have been hosted by and for BC First Nations leaders along what is called the "energy corridor". The energy corridor refers to the stretch of land in Western Canada from LNG extraction point to the export facility. For me, the LNG Forums are a place where First Nations are actively addressing the very challenging question of how to measure, decide, and balance decisions on major resource development. There is much to consider, not least of which are questions about proper title holder.

If a Nation does support a project, and indeed makes the next step to choose to partner on that project, how do they know they are getting the maximum reasonable benefits for their community? What are the benefits they are receiving as the proper title and rights holder (to the tribal government) and what are the opportunities for investment/participation in the business itself (either through the Tribal government or the corporate arm of the Nation)? Likewise, how are First Nations to ensure that agreements as a whole are not just one time lump sums but rather support transformative change? More broadly, how do we begin to establish a coordinated network to support Nations who choose to partner on projects but also support a Nation when a project is rejected? If a Nation agrees to partner on a project, what best practices exist for managing the social impacts of an energy boom? The provincial government anticipates rapid economic development and population growth, especially for municipal services that support health, education and public safety.

It is important, given the implications of these and other questions, that we share our experiences and work jointly to address common challenges, which is why I am so encouraged by the work of our Nations to come together. Each First Nation LNG Forum has gathered signatories for a "First Nations Declaration to work together on Natural Gas Projects." The next LNG Summit will be hosted by Fort Nelson First Nation on April 14-16, 2014 and will provide invaluable insight into, what is a critical piece of any discussion on LNG development, the cumulative impacts of LNG extraction and land use planning. Information and an opportunity to participate in the ongoing dialogue on LNG is available online at http://fnlngstrategy.ca/.

Enbridge Northern Gateway Pipeline Proposal: After much anticipation, on December 19, 2013 the JRP on Enbridge's Northern Gateway Project released its final report. The JRP Report included 209 required conditions before certificates of public convenience should be issued and made a number of comments on the environmental impacts and national importance of the project. Regarding the potential for environmental damage, the panel ruled that the construction and routine operation of the project would cause no significant adverse

environmental effects and any effects would be justified or could be mitigated or avoided, with the exception of impacts to woodland caribou and grizzly bear populations. Given the measures in place by the company, the JRP also concluded that the chances of a large oil spill were very low. How and if the project would be deemed "in the public interest" was a highly anticipated element of the report given the new authorities under CEAA 2012. As noted previously, the Governor in Council is now afforded the authority to approve or reject a project depending on the perceived national interest. In its final ruling, the JRP stated that, if built and operated in compliance with the conditions set out in its report, Canadians and Canada would be better off with the project than without. With respect to the 209 conditions, analysis continues. Many, if not all, the recommendations regarding First Nations focused on ensuring Enbridge reports on consultation and accommodation measures, including a percentage of employment in various sectors, as well as incorporating traditional Aboriginal knowledge.

The report has raised concerns from many First Nations on the inadequate use of the joint review process to address consultation and accommodation concerns. On the one hand, the Crown has stated that it intended to use the joint review process "to the extent possible" to meet the Crown's duty to consult. On the other hand, the JRP stated that it had a limited-to-no role in Crown consultation. As noted previously, this was a concern raised by First Nations and articulated in Doug Eyford's report on west coast energy infrastructure. Participating in a joint review process can come at a high financial and human resource cost and there is no assurance that First Nations' concerns will be meaningfully addressed, as many are saying is the case with respect to the JRP report.

Needless to say, our leaders have fundamentally disagreed with the findings that suggest limited-to-no environmental impacts and have taken a very narrow view of appropriate consultation and accommodation measures. While dismayed by the report, the final decision now rests with the Governor in Council. If the project is ultimately accepted, it is anticipated that some First Nations may choose to pursue legal challenges to halt the project. There is already legal action underway with respect to the JRP though judicial review proceedings. It is, no doubt, a very challenging exercise to measure the national interest of a project. I echo the need, addressed in the Eyford Report, to build trusting relationships with First Nations in British Columbia. Therein lies a heavily weighed factor in assessing what is in the best interests of the country. The report has been sent to the Minister of Natural Resources. The Governor in Council has 180 days, approximately 6 months, following the JRP submission of the report to issues its decision.

BC's Requirements for Heavy Oil Pipelines: Apart and distinct from the JRP, last year, in an effort to address growing public environmental concerns with Northern Gateway, Premier Clark announced the Province's *Requirements for British Columbia to Consider Support for Heavy Oil Pipelines* (the "five conditions"). One of the conditions was:

> "Legal Requirements regarding aboriginal and treaty rights are addressed and First Nations are provided with the opportunities, information, and resources necessary to participate in and benefit from the Northern Gateway Project."

I think it is safe to say that the five conditions were not well-received by the province of Alberta. The Northern Gateway Pipeline crosses between the provinces and these conditions were viewed as barriers to this project. Nevertheless, in November 2013, the two provinces were able to reach an agreement to discuss opportunities to coordinate efforts to address BC's five conditions. The result was a Working Group led by BC Deputy Minister Steve Carr of the Ministry of Natural Gas Development and Alberta Deputy Minister Greg Sprague of the Ministry of Energy. The working group produced recommendations on five topics: Responsible Development and Public Engagement, Marine and Terrestrial Spillage, Transportation, Fiscal and Economic Benefits, and First Nations. Unfortunately, the recommendations respecting First Nations are very limited. The working group recommended the development of First Nations Engagement Principals for Energy Development and Exports and requested further study to develop directions for industry and the provinces on engagement. As far as I am aware, there are no current discussions between BC First Nations' leadership and the BC government about how these engagement principles with our peoples might be developed, despite our numerous requests for a clarification.

William v. British Columbia

All of our work around reconciliation, including the SOC, meeting with provinces, and resolving issues of shared territory etc., is guided by court decisions that have, over the years, been gradually establishing the ground rules. Part of our multi-pronged strategy to achieving fair access to lands and resources has been to support the most important court cases with the best facts to get before the judges.

At our BCAFN Special Chiefs' Assembly on November 25th, 2014, I was pleased to welcome Chief Roger William from the Tsilhqot'in Nation to present on the *William* case which is now in the hands of the Supreme Court of Canada with a decision expected later this year. His presentation, and that of their legal counsel, Jay Nelson, was moving and inspiring and I was so pleased to be able to present to him, on behalf of the BCAFN, a donation towards their legal costs for taking this important case to the Supreme Court of Canada.

William is the most recent case, following *Calder* and *Delgamuukw*, to seek a declaration of Aboriginal title. At the hearing of this appeal on November 7, 2013, the AFN joined a long list of interveners supporting the Tsilhqot'in and, in my opinion, the hearing went extremely well. While it is not usually wise to speculate on the outcome of this case, I think that it is safe to say that some form of a declaration of Aboriginal title should be forthcoming, whether it comes out of this case or another one. It is not a matter of "if" but rather a matter of "when".

I base this assertion on the actions of the Supreme Court of Canada Justices at the hearing. As the day progressed, the questions seemed to move away from the scope and extent of Aboriginal title lands and beyond whether title had, in fact, been proven (it seemed that most, at least outwardly, felt that Justice Vickers at trial got it right, having gone into great detail and after hearing mounds of evidence), and towards the next question that needs to be answered if-and-when Aboriginal title is declared. That is 'what laws are going to govern the title lands so declared?' Those in the courtroom may not have been able to answer that question directly but suffice to say the answer is really quite simple, although its implementation much harder. In the initial period of transition, it will be a combination of our Indigenous laws, provincial laws and

federal laws that over time will need to be reconciled through a negotiated agreement. This is not to be feared because it is a welcomed necessity and I am sure our Nations will be up to the task. The real question is will Canada and BC be up to the task? All the more reason for Canada to develop a "reconciliation framework" and do away with its current approach to 'claims' under the comprehensive claims process.

Questions regarding whose laws apply, the operation of laws and "inter-jurisdictional immunity" that were raised but not dealt with in *William*, are expected to be addressed in another upcoming appeal to the Supreme Court of Canada: *Andrew Keewatin v. Minister of Natural Resources et al*. The AFN is looking to join with the Federation of Saskatchewan Indian Nations (FSIN) to apply to intervene in this case. The hearing for this case is currently set for May 15, 2014.

Finally, to close off this section on fair access to lands and resources, I must say I truly hope the Supreme Court will do the right thing in *William*, because resetting the table for true reconciliation, which will inevitably follow a declaration of title, is the only way to achieve certainty and ensure all parties can come to the table with confidence that justice will be served.

Fisheries

In BC we are fortunate to have a First Nations Fisheries Council (FNFC) and I continue to support them as they implement their Strategic Plan which includes:

1. Protection of Sustainable fisheries, ensuring the priority access for section 35(1) fisheries;
2. Capacity development for joint-management and a coordinated technical and science process;
3. Enhanced First Nation Economic performance; and,
4. Strategic Outreach through effective communications and legitimate processes.

I would like to acknowledge the newly elected Directors of the FNFC and congratulate FNFC President Ken Malloway.

Over the past few months there have been some important development respecting fish and fish management which are discussed below.

Commercial Roe Herring Fishery: *Last* fall, the Department of Fisheries and Oceans Canada (DFO) introduced a "Herring Rebuilding Strategy" to consider how to reopen the herring fishery in three re-building areas which have been closed since 2006 due to low stocks. Stocks off the coast of Haida Gwaii, the central coast, and the west coast of Vancouver Island were left alone to rebuild. The Haida, Heiltsuk and Nuu-chah-nulth began working with DFO to develop an appropriate strategy for each of these areas. On December 23, 2014 DFO Minister, Gail Shea, made a surprising announcement authorizing a commercial herring fishery in these three rebuilding areas. This announcement, not surprising, was of great concern to the three Nations as it is their governments' opinion that the stocks in these three areas have not been sufficiently re-built in order to support a sustainable herring fishery. This is in contrast to the Strait of Georgia and the Prince Rupert area where herring stocks are more abundant and can

support a sustainable fishery. The FNLC raised this issue at a meeting with Minister Shea on February 17, 2014.

The Nuu-chah-nulth Tribal Council went to court last month to file a judicial review of Minister Shea's decision to open the commercial herring fishery in the three areas, and to seek an injunction to stop it. During the course of proceedings, media outlets, reporting on federal documents, revealed that the Minister approved the opening of the herring fishery in the rebuilding areas despite internal recommendations not to from scientists and BC herring managers. On February 21, 2014, a Federal Court Judge gave the injunction against re-opening the fishery on the West Coast of Vancouver Island. The Haida Nation and Heiltsuk Tribal Council have both signaled that they may also seek an injunction for the central coast and Haida Gwaii.

In an open letter, United Fishermen and Allied Workers' Union- Unifor has cautioned fishers against roe herring fishing the remaining two areas and has also commented publically on the need for DFO to engage in proper consultations with First Nations to avoid such situations in the future. From our perspective, our governments need to be involved in the political process of deciding what is permitted and what is not permitted with respect to this fishery and fisheries generally, and that we cannot let the arbitrariness of the federal system potentially harm fish management.

Needless to say, whether "consultation" or true governance (shared or otherwise), the decision to ignore First Nations is a mistake. Our Nations know first-hand the sustainability factors within their territories, and also respect scientific advice. We all applaud the Nuu-chah-nulth, Heiltsuk and Haida Nations for challenging the discretions of the Minister.

Changes to the Fisheries Act: On November 25, 2013, changes to the federal *Fisheries Act*, stemming from the *2012 Jobs, Grant and Long-term Prosperity Act,* came into force. The FNFC has since coordinated five meetings throughout BC to discuss the impacts and changes to the Fisheries Protection Program (FPP). These meetings took place in Nanaimo, Williams Lake, Merritt, Vancouver, and Terrace. The range of changes to the *Fisheries Act* is significant, including an amendment of the "Purpose" and "Factors" sections of the act that set out the objectives of DFO. The act has changed from protecting "fish and fish habitat" to providing for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries. Under the revised act, the Minister has increased powers in regards to designating ecologically significant areas for fish, creating regulation to support enhanced compliance and protection, and authority to enter partnerships/agreements with other federal departments or provinces respecting the power to issue authorizations. More details on the changes to the act are available at http://www.dfo-mpo.gc.ca/pnw-ppe/changes-changements/index-eng.html.

Ahousaht v. Canada (Attorney General), 2013 BCCA 300: On January 30, 2014, the Supreme Court of Canada released its decision on Canada's application for leave to appeal the BC Court of Appeal's ruling in *Ahousaht et al. v. Canada* (2013 BCCA 300). This is the second time that the Supreme Court of Canada has denied leave to appeal in this case and essentially confirms the BC Court of Appeal's affirmation of the Nuu-chah-nulth's Aboriginal right to "fish and sell fish"; a right that was originally affirmed by the Supreme Court of British Columbia in 2009. Congratulations to the Ahousaht and all Nuu-chah-nulth people on this significant legal victory.

Now that the litigation has come to an end, it is absolutely imperative that DFO enter into good faith negotiations with the Nuu-chah-nulth to develop a process to meaningfully engage and implement these now-affirmed Aboriginal rights. This was a key issue that the FNLC brought up with Minister Shea at our February 17, 2014 meeting. The federal government needs to start taking the implementation of court-affirmed Aboriginal rights seriously, and this is not limited to the *Ahousaht* case.

There are a number of examples where Canada has either refused to enter into meaningful negotiations with First Nations to implement rights, or Canada has not entered into negotiations in good faith because they had no intention of seeing the negotiations through to any reasonable and fair outcome that would benefit First Nations. For fish, as with any other area, Canada's approach must be based on the recognition of Aboriginal rights, closely followed by a reconciliation process where the honour of the Crown is upheld. As discussed above, it is absolutely essential that Canada develop a reconciliation framework to guide and frame its engagement with those Nations whose Aboriginal rights are affirmed by provincial and federal courts, including the Supreme Court of Canada. I will continue to press the Minister and Prime Minister's Office for a commitment to develop a cross-government reconciliation framework to guide engagements such as these and to ensure that our past and future court victories result in meaningful change in policy and on the ground.

3. Improved Education

"To make the most of opportunities resulting from fair land and resource settlements and true self-determination we need well educated and well trained citizens." *Building on OUR Success*

Federal First Nations Education Legislation

As you will recall, on October 22, 2013 Canada released a draft legislative proposal, *Working Together for First Nation Students: A Proposal for a Bill on First Nation Education*. Each region reacted differently to the proposal based on their experiences with addressing education. Notwithstanding regional diversity, the overwhelming view of First Nations across Canada was that the federal proposal was deficient, ill-conceived and a step backwards in many respects.

In BC, in addition to our self-governing Nations that already have recognized jurisdiction over education, we have the *First Nations Jurisdiction over Education in BC Act (2006)* for those Nations that want sectoral self-government in this area. In addition to our Nations' jurisdictional initiatives, we also have in BC a unique BC Tri-partite Education Agreement. A five-year agreement that came into effect in 2012 that speaks to roles, responsibilities and commitments of our Nations, BC and Canada, relating to the improvement of educational outcomes for students in First Nation Schools in BC.

For BC First Nations, an adequate national proposal coming from Canada would require at the very least, that 1) the work already well underway in our province with respect to jurisdiction not be undermined, 2) that funding models are properly defined and based on need and do not compromise our BC tripartite agreement, and 3) that language and cultural programs are reflected, among others.

The First Nations Leadership Council, working closely with FNESC and FNSA, will do everything we can to ensure that the work our Nations have done in the area of education in BC is supported in any potential new legislation; essentially that a national legislative framework respects regional diversity.

Not surprisingly, there was much debate about the federal education proposal on the floor of the AFN SCA last December. Based on that debate, *Resolution 21/2013 – Outlining the Path Forward: Conditions for the Success of First Nations Education* was passed. This resolution rejected the current First Nations Education legislation proposal and outlined and supported conditions that the Chiefs-in-Assembly agreed were essential for achieving success for First Nations schools and students. These conditions were reflective of the five conditions set out by the National Chief in an open letter, dated November 25, 2013, to Minister Valcourt. These five conditions are:

1. **First Nation control and respecting inherent and Treaty rights**: First Nation control of the education of our children must be the overriding, paramount principle of all our work. It is at the core of reconciliation and, furthermore, is key to achieving improved outcomes and success for our students. First Nations must retain all options to advance their education through Treaty implementation, self-government, partnerships or other agreements, and all such agreements must be fully respected, enabled and supported by the federal government within a framework that honours and respects our rights, affirms federal fiduciary obligations, supports and enables First Nation control and ensures accountability to our families first and foremost. In doing so, First Nations will uphold our duty to ensure access to quality education that achieves strengthened outcomes and results.

2. **Funding**: As set out and mandated by all First Nations in resolution in 2010 – there must be a full statutory guarantee for funding for education for our children. This is a fundamental matter and requirement of reconciliation. For over a decade, First Nations have engaged in the pre-budget consultation process and every year we have taken forward this need for fundamental transformation – for stable, sustainable and needs-based funding. The Auditor General of Canada clearly stated that current funding practices are completely inappropriate and are failing our children and Canada. We are today tabling a clear and detailed statement of funding requirements to Minister Flaherty. A clear statutory commitment must be advanced and must be reflected in the upcoming Federal Budget 2014.

3. **Languages and Culture:** The interim report of the Truth and Reconciliation Commission notes that as survivors move forward in their healing, they bring clarity and focus to

what must happen now. First Nations children must now be nurtured in an environment that affirms their dignity, rights and their identity, including their languages and cultures. First Nations education systems must be enabled, supported and funded in a way that ensures they can design programming that achieves this imperative. Moreover, as a country, and as part of reconciliation, Canada must recognize the importance of First Nations languages and cultures as foundational to this land.

4. **Oversight:** Achieving the elements described here means that there must not be and cannot be unilateral federal oversight and authority vested in the Canadian bureaucracy. First Nations children deserve fully accountable and successful systems that achieve clear outcomes. The oversight required and remedies to achieve this must be jointly determined and fully respect First Nation rights and responsibilities.

5. **Ongoing process of meaningful engagement**: To address these conditions, we must ensure meaningful engagement including through commitment to co-development and shared oversight including evaluation.

A similar resolution was also passed at our BCAFN SCA in November, *Resolution 04/2013 Canada's Proposal for a First Nations Education Act*. Both outlined conditions for First Nations' support of an act respecting First Nations Education, which included setting aside the act as currently proposed and engaging with Nations in an agreed upon process to co-develop any new education legislation.

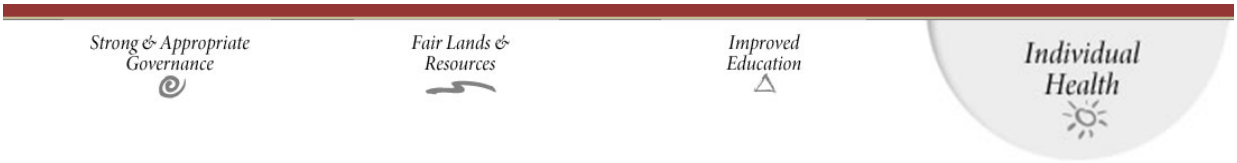
In part a response to the AFN's and other resolutions, on February 7, 2014, Prime Minister Harper and Minister Valcourt made an announcement on First Nations education in Kainai, Treaty No. 7 territory in Alberta. The National Chief, along with other First Nation leaders, was in attendance and spoke at this announcement. At the announcement, the Prime Minister and Minister Valcourt confirmed that they are proceeding with legislation respecting First Nations education but that now the 'five conditions' will be built into and reflected in that legislation. They also confirmed $1.9 billion in new funding for First Nations education. This was further confirmed in a letter received from Minister Valcourt, dated March 10, 2013, addressed to the AFN Executive. A copy of that letter can be found on the BCAFN website.

Shortly after the Minister's and the PM's announcement, the 2014 Federal Budget included the new core funding of $125 billion in support of First Nations education from 2016-17 to 2018-19 with an annual growth rate of 4.5%. The Budget also included an Enhanced Education Fund of $160 million over four years starting in 2015-16, and a new First Nations Education Infrastructure Fund of $500 million over seven years beginning in 2015-16. While this is less than what the Kelowna Accord would have provided, adjusting for inflation and growth, it is, nevertheless, an important contribution that will bring the per capita funding levels available per First Nation student (at least in theory), to approximately the equivalent level spent on other Canadian kids. While I am pleased that the federal government has made a substantial financial investment into First Nations education, I am not so sure about how the legislation is developing.

From what I can gather, and based on the recent correspondence received from the Minister, unfortunately it is clear that the federal government has no plans to jointly develop and draft the legislation with us. Rather, Canada prefers to move ahead with the legislation unilaterally. I am told the legislation is expected to be tabled in the coming few weeks but with federal regulations respecting regional diversity being required before the act comes into force. The idea being Canada will, after the legislation is made, work with our First Nations to develop the federal regulations within the framework designed by Canada. We are seeking confirmation of this. What is of immediate concern is how Canada intends to incorporate the five very broad conditions into the new legislation and what will be moved to, or required to be addressed in, future regulations. It would be better if we were in the room when the drafting is taking place and/or contributing to the drafting instructions.

Accordingly, if this situation does not change, we will need to look at how Canada ultimately chooses to incorporate the five conditions in the new act after it is drafted/introduced, and assess how it may affect BC given our regional initiatives and our perspectives. We will then need to develop a strategy moving forward from that point. I will continue to work with the national AFN office, FNESC and the FNLC as events unfold and keep you all posted.

4. Individual Health



"In order to take advantage of our very real opportunities arising from the settlement of land claims and self-determination we need strong families and healthy citizens."

BC First Nations Health Care Delivery

On October 1, 2013, health services to our people were transferred from Health Canada to the First Nations Health Authority (FNHA). FNHA is now fully engaged in the hard work of designing and developing health delivery systems to offer improved and culturally appropriate programs and services to First Nations citizens and communities while, of course, maintaining core functions such as providing non-insured health benefits. This is no simple task. FNHA is responsible for the planning, design, delivery and funding of First Nation health programs and services. As a part of the second phase of the transfer, FNHA has now assumed responsibility for the BC region staff, budget, and regionally delivered programs and services.

One of many tasks following the transfer has been ensuring that communities experience limited-to-no service delays due to the transfer, including with respect to contribution agreements between the FNHA and service providers, health benefits, or health services. The FNHA has also announced that the hiring of Regional Directors is now complete. The first role of the Regional Directors will be to build their regional teams and support the development of interim regional health and wellness plans. Also with the transfer of the Non-Insured Health Benefits (NIHB) from the BC Region to the FNHA, the program is now called the FNHA Health Benefits program. An interactive webinar is available online for more information on non-

insured health benefits at www.youtube.com/watch?v=54rOh3WLs9A. These are only a few examples of the work underway at the FNHA.

As you can imagine, the historic health transfer has and will continue to receive wide spread attention from other parts of Canada where First Nations are looking to assume increased control over their lives. On this note, I was asked to present at the AFN-Quebec and Labrador Chiefs' forum on Health Governance on February 18, 2014 in Montreal. The AFN-QL delegation hosted this governance forum in line with their goals through the *Quebec First Nations Health and Social Services Blueprint, 2007-2017*. The overall intent of the forum was to foster mobilization on changes needed with respect to First Nations health and social services. The delegation was very keen to hear about what has happened and is happening here in BC. I was happy to bring forward messages on behalf of the FNHA and FNHC. For those interested in the story of the historic transfer, a narrative "*Our Story: The Made-in-BC Tripartite Health Transformation Journey"* has been developed by the FNHA. This report was presented at the AFN SCA last fall and can be found at: http://www.fnha.ca/Documents/FNHA_Our_Story.pdf

Violence Against Aboriginal Women and Girls

Federal Parliamentary Committee Report on Missing and Murdered Aboriginal Women: On March 7, 2014, the special parliamentary committee set up to examine the issue of missing and murdered Indigenous women in Canada that began its work in March 2013, tabled its final report, entitled "*Invisible Women: A Call to Action…..".* The study focused on three themes: violence and its causes; front-line assistance; and, preventing violence against Aboriginal women and girls. The report set out 16 recommendations. The primary recommendations centered around the need to create a federal/provincial/territorial public awareness and prevention campaign, implement a national DNA based missing person's index, and the possibility of the collection of police data that includes an ethnicity variable. Many of the recommendations echoed the existing Conservative government's legislative agenda, including tough on crime recommendations for repeat offenders, action to reduce harm associated with prostitution, and a victim's bill of rights. One of the recommendations committed to continue to support K-12 education development and jobs/skills training for Aboriginal people. There was also a recommendation supporting "First Nations childcare agencies in their responsibility to ensure effective and accountable service delivery". Notably missing from the report was a response to the increased calls for a national public inquiry into violence against Aboriginal women and children.

The list of those advocating for a national public inquiry in addition to Indigenous organizations, continues to grow and includes: James Anaya, the UN Special Rapporteur on the Rights of Indigenous Peoples; Sue O'Sullivan, the federally appointed victim's ombudsperson; BC Premier Christy Clark and other premiers, who signalled support for an inquiry at the Council of the Federation last July; as well as the opposition parties in Parliament.

Of tragic irony, the Parliamentary Committee's report comes on the heels of the heart-breaking news regarding the murder of Loretta Saunders, a 26 year old Inuk student from Halifax. She was in the midst of writing her thesis on murdered and missing women when she was killed. An online petition coordinated by Loretta's family has, as of March 10, 2014, gathered 146,896 signatures calling for a national inquiry. If you would like to sign the petition it can be found

here: http://www.change.org/en-CA/petitions/hon-kellie-leitch-minister-for-the-status-of-women-call-a-public-inquiry-into-hundreds-of-missing-and-murdered-aboriginal-women-like-my-cousin-loretta-saunders

Needless to say, First Nations organizations as well as opposition MPs have not responded favourably to the report, stating the recommendations only serve to continue the status quo. The National Chief has noted that a meeting with the Native Women's Association of Canada (NWAC), the Metis National Council, and the Inuit Tapiriit Kanatami will take place to discuss next steps and to set a plan for action on this critical matter. NWAC and others continue to press the federal government for the inquiry noting that it will dig deep into the root causes of pressing issues and encourage witnesses to come forward and testify. The federal government has responded that it does not see a national inquiry as an effective means of addressing the issue; however, it has 120 days to respond to the report. You can find a copy of the report at: http://www.parl.gc.ca/Content/HOC/Committee/412/IWFA/Reports/RP6469851/412_IWFA_Rpt01_PDF/412_IWFA_Rpt01-e.pdf

The root cause of the problem is poverty and marginalization, and inequality. The government's approach to the problem is to be tough on crime (catch and punish the offenders, which means tougher sentences, more police and more prisons, etc.). And while for the victims of crimes justice can be served by ensuring those that those who commit crimes are punished, what we really need to do is change the circumstances that create the environment in which the crimes are committed in the first place. Where the work needed is preventative, not simply to act tough after the fact. We need to ensure our women and girls are not living in a world where this type of violence flourishes. With strong and healthy Nations – with a return to culture and our values – and by rebuilding our Nations, we can, with partners, build a world in which all our women and girls, indeed all our citizens, are safe and can flourish. This is how we will address the murdered and missing women and girls tragedy. A national inquiry would set out the plan forward, making the necessary links between cause and symptom – where the symptom of the tragedy of violence is that we have not completed the process of decolonization and rebuilt our society.

Aboriginal Affairs Working Group (AAWG): The AAWG is a national body comprised of Provincial and Territorial Ministers of Aboriginal Affairs as well as the five National Aboriginal Organizations (the AFN, the Congress of Aboriginal Peoples, Inuit Tapiriit Kanatami, the Metis National Council, and NWAC). The group examines issues and coordinates efforts on a range of matters including: education, economic development, housing, ending violence against women and girls, and emergency management. AAWG has also joined the list of those vocalizing support for a national public inquiry and are for their part developing a *draft Framework for Action to End Violence Against Aboriginal Women and Girls*. The framework will be a planning tool for provinces and would provide a structure for implementing actions in a coordinated matter. The next AAWG meeting will take place in May 2014.

Federal/Provincial/Territorial Ministers responsible for Justice and Public Safety: As with the Aboriginal Affairs minsters, so too do the provincial Ministers responsible for Justice and Public Safety meet. This working group met in November 2013 and is looking for opportunities to collaborate their efforts on issues of justice including: cyberbullying, family justice, victims'

rights, as well as First Nations specific issues such as First Nations representation on juries and the First Nations' Policing Program. On the issue of violence against Aboriginal women, the Ministers released a draft justice framework, *Justice Framework to Address Violence Against Aboriginal Women and Girls*, to support the coordination and collaboration of efforts between federal, provincial, and territorial justice officials, Aboriginal organizations, and other partners. Engagement will occur with Aboriginal groups and committees to refine the framework in the hopes of submitting it to the Minister in the fall of 2014. The link for the draft justice framework can be found here: http://www.scics.gc.ca/english/conferences.asp?a=viewdocument&id=2119

Murdered and Missing Women Memorial March 2014: This year marked the 23rd Annual Women's Memorial March on February 14, 2014 in Downtown Vancouver. The march is an important day for the families and friends of missing and murdered women on the downtown eastside and every year thousands of people join them in remembrance. Each year, while it is empowering to see families and friends come together, it is equally disheartening to know that Aboriginal women continue to experience unacceptably higher rates of violence. This year's march included a press conference to highlight the need for a national inquiry and action as well as a chance to share personal stories. Since its beginnings in 1991, the memorial march has inspired nearly 20 other cities to hold such events.

National Truth and Reconciliation Commission (TRC)

The BC Supreme Court has approved the request of all parties to extend the TRC's mandate to June 30, 2015. This will allow the TRC the necessary time to conclude its final report and receive documents that have been held at the Library and Archives Canada. Since its establishment in 2008, the TRC will have funded and hosted seven National Events, including the TRC event in Vancouver last September, which brought out nearly 70,000 people to the Walk for Reconciliation. On March 27-30, 2014, Edmonton will be the location of the seventh and final National Event for the TRC. A national closing ceremony will follow in Ottawa.

Children and Families

On November 6, 2013 the Representative for Children and Youth, Mary Ellen Turpel-Lafond, released her important report entitled "*When Talk Trumped Service: A Decade of Lost Opportunity for Aboriginal Children and Youth in B.C.*" and subsequently submitted it to the BC Legislative Assembly. The report offered critical observations on how both Aboriginal organizations and BC's Ministry of Children and Family Development (MCFD) have failed to meet the needs of children through what she has stated is a system of "fractured accountability". Within the report was an analysis over the cost of this broken system and a list of the names of several Aboriginal organizations.

It is a must read for all First Nation leaders and speaks to some of the challenges in rebuilding our governance and institutions, in this case working with the province on transitional measures to take back control of child welfare. In this process of transition our children must be looked after and not fall between the cracks.

The report has resulted in a challenging, sobering, and at times divisive conversation; but a necessary one all the same. These are, of course, very difficult observations to hear; however, the report also included a number of proposed solutions. While, critical self-reflection only

serves to make us more effective at our work, the response from the province has been more direct as it is now taking a step back from its "Indigenous Approaches" initiative.

In direct response to the report, the provincial Ministry of Children and Family Development (MCFD) family announced that on January 31, 2014, that eighteen Indigenous Approaches Programs would have their funding cut, affecting nearly 84 First Nations communities. The First Nations Child and Family Wellness Council (FNCFWC) also lost all their funding as of January 31st. So while FNCFWC still exists, a product of the FNLC and supported by resolutions from our three organizations, it has no funding. Questions still remain as to how MCFD will address the significant gaps in services that will result due to the funding cuts. MCFD has stated that Indigenous Approaches contractors will be able to apply for funding by submitting business plans that clearly outline measurable targets for providing services to children.

The decision by the provincial government to cut IA programs and the FNCFWC is of course troubling. We need to build on the solutions Mary Ellen has put forward recognizing that as First Nations we must be able to look after our own children through our own institutions, in partnership with the Province. To address both the concerns in the Representative for Children and Youth Report, and concerns expressed by First Nations in BC, there is clearly a need to develop a policy framework to move forward together. These abrupt cuts have left a void, however bad the Indigenous Approaches programs might have been evaluated, and this cannot be the way to ensure that vulnerable children receive the services that they so desperately deserve.

PART TWO: RELATED ACTIVITIES

BC Cabinet and Premier – All Chiefs Meeting

At our BCAFN Annual General Meeting on June 26-27, 2013, the Chiefs-in-Assembly passed *Resolution 03 (p) – 2013 Support for BCAFN to Engage Immediately with Premier Clark and the New BC Cabinet*. The Premier has agreed to a meeting between herself, her Cabinet colleagues and all BC Chiefs. Planning is underway to confirm a date this fall and develop an agenda for the meeting. The intent is to focus on shared issues and building mechanisms for improved and continued engagement.

Joint Gathering 2013 – AANDC BC Region Engagement

The Joint Gathering is becoming an annual event for First Nations and AANDC BC Regional representatives. The BC Joint Gathering took place on October 15-17, 2013 at the Marriott Vancouver Pinnacle Hotel downtown. We heard from speakers on a number of important topics such as Shared Territories/Overlap Issues, Comprehensive Claims Policy/SOC, and welcomed keynote speakers Chief Robert Joseph and Duncan McCue. I would like to again thank all of those that participated in the forum and to note that the BC Joint Gathering Summary 2013 Report will be available soon and posted to our website at www.bcafn.ca.

Liberal Biennial Convention, February 20-23, 2014

I recently co-chaired the national Liberal Biennial Convention held in Montreal, on February 20-23 2014. I would like to thank Justin Trudeau and his team for the invitation. I was honoured

also to be able to deliver a keynote speech in which I highlighted our *Building on OUR Success* Action Plan and our strategy for moving forward. It is, of course, important that all political parties and potential future decision-makers be aware of our issues and our efforts at Nation rebuilding to secure our proper place within confederation. We need partners. The themes in my remarks centred upon Aboriginal issues, my vision for Canada and how the two coalesce. Also, I spoke to the need for a non-partisan federal policy towards Aboriginal peoples where I used examples of solutions we have proposed around recognition and reconciliation as an illustration of how to proceed. I also made the case for how rebuilding Indigenous governments is good for all Canada in resetting our national balance. It was a message well received and supported. There were numerous resolutions passed addressing Indigenous issues at the convention, including a call to fully implement the Kelowna Accord and to have a national inquiry into murdered and missing Aboriginal women and girls. Of note, too, was the resolution passed that, once and for all, formally rejected the 1969 white paper. If anyone would like a copy of text of my keynote remarks please contact me directly.

2013 State of the Federation: Aboriginal Multilevel Governance

The Queen's University Institute of Intergovernmental Relations is one of Canada's premier university-based centres for research on all aspects of federalism and intergovernmental relations. On November 29th, 2013, their annual "State of the Federation" conference was held in Kingston, Ontario and focused on the changing nature of Aboriginal-federal-provincial relations. The conference looked at practical challenges and recent, concrete developments in Aboriginal governance in economic/land management as well as social policies. I was honoured to have been asked to participate as a keynote speaker to share some ideas about how First Nations are currently developing their own approaches to governance and reinventing the way they are governing themselves, and in turn, how this is changing the way Canada is governed.

PART THREE: BC ASSEMBLY OF FIRST NATIONS' OPERATIONS

BCAFN Constitution, By-laws, and Governance Manual

At our BCAFN Special Chiefs' Assembly on November 26th, our BCAFN Board of Directors addressed our Chiefs-in-Assembly to provide an update on ongoing efforts to revise the BCAFN Constitution and By-laws and presented a document with the proposed changes on it. These documents were found by the Board of Directors to be outdated and not properly reflect the practices or direction of the BCAFN. The Board will be presenting these revised documents at a special meeting during our upcoming Annual General Meeting in June, for consideration by the Chiefs-in-Assembly and to ultimately be endorsed by our membership. If you have any questions or concerns with the proposed changes, please contact Courtney Daws, Director of Operations, at our office at: courtney.daws@bcafn.ca or 604-922-7733.

BCAFN Elder Representative

Hereditary Chief Robert Joseph	Kwakwaka'wakw elder and the Regional Chief's Elder Advisor

BCAFN Women's Representative

Chief Glenda Campbell	Tzeachten First Nation

BCAFN Youth Council Representatives

Erralyn Thomas	Snuneymuxw First Nation	femaleyouth@bcafn.ca
Hjalmer Wenstob	Tla-o-qui-aht First Nation	maleyouth@bcafn.ca

BCAFN Board of Directors

Chief Trish Cassidy	Qualicum First Nation
Chief Maureen Chapman	Skawahlook First Nation
Chief Nelson Leon	Adams Lake Indian Band
Tribal Chief Liz Logan	Treaty 8 Tribal Association
Chief Bruce Underwood	Pauquachin First Nation

BCAFN Staff

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Information Sharing/Webpage

The BCAFN website continues to hosts the "BCAFN Governance Toolkit" where *Part 1 - The Governance Report, Part 2 – The Governance Self-Assessment, and Part 3 - A Guide to Community Engagement*, are accessible online along with related tools, reference documents and other resources (www.bcafn.ca). In addition the webpage includes individual profile pages for each of our Nations. Our office will continue to work with First Nations that wish to contribute to, and update their individual profile page to share information and highlight their successes with others. If you would like to provide any feedback, contribute to the site, or update your First Nation's profile, please contact us by email at reception@bcafn.ca.

NOTICES

March 24-25, 2014

BC Chiefs' Shared Territories/Overlap Forum

Musqueam, B.C.

For more information see www.bcafn.ca

June 25-26, 2014

BCAFN Annual General Meeting

Sheraton Wall Centre, Vancouver, B.C.

For more information see www.bcafn.ca

TBD, 2014

Premier/Cabinet and All Chiefs' Gathering

For more information see www.bcafn.ca

Up to date information can be accessed on our website: www.bcafn.ca.