

Section 7

Next up was a presentation regarding an upcoming agreement being forged between the shíshálh Nation and the Province taking place behind closed doors under the auspices of Section 7 of the Declaration on the Rights of Indigenous Peoples Act.

This process began with the signing of what is known as the Foundation Agreement between the Province and shíshálh Nation in 2018. It was a framework for shared decision-making between the two parties and related to several areas of governance, including docks in Pender Harbour. That process is comprised of a shared review board, which issues recommendations and the government looks at those recommendations and then decides whether to adopt them or not. Most importantly, this is just an advisory board. The government remains the final statutory decision-maker.

A little background. UNDRIP is United Nations Declaration on the Rights of Indigenous People. This is a United Nations mandate, which has been adopted in Canada. DRIPA, which is the Declaration of Rights of Indigenous People Act of BC. The latter is the BC government's implementation of the UNDRIP mandate. And this implementation drastically changes the relationship between First Nation governments and seeks to give much more government power to First Nations.

Section 7 of DRIPR will enable the government to negotiate and enter into an agreement with an Indigenous governing body that changes from a shared decision-making process to a joint decision making system. Under this system, the BC government will give up its statutory decision-making right, and if the First Nation wants to block a decision or an application, the BC government will no longer be able to do anything about it. *As far as we know, this is to be the first joint decision-making agreement to be negotiated in Canada under Section 7 of*

DRIPA. And as we know, historically, the government's not very good at firsts.

At this point, the government tells us that their mandate is for this to apply this only to docks. When we asked if this will apply to anything else, they just say that right now, their mandate is just to apply to docks. However, the government is spending a lot of time and effort on this, and once a precedent is set, it's going to be very easy to apply this to all other types of applications and decisions that are made in our area here.

We're not confident that the government will be transparent. We don't know exactly where negotiations are at or exactly what's been negotiated or agreed to. We have a number of concerns around these negotiations and the lack of consultation. So far, we're largely in a dark.

We're concerned that similar to other decisions that have been made when we've been consulted (i.e. the DMP), we're just going to get told what the outcome is and be given 30 or 60 days to provide comments and reviews on something that's going to have a profound impact on how decision applications are made in our community.

In January, we sent a letter to relevant government entities, including the local government ministers, bureaucrats, the shíshálh Nation and other parties asking how final decisions will be made. We raised 22 important questions regarding how this new process will be implemented. How will our rights be protected. How will this be a fair and transparent process and how will it be implemented. If you're interested in seeing these 22 questions, they're on the phara.ca website.

We did receive a response to our questions letter from Minister Mari Rankin, Minister of Indigenous Relations and Reconciliation.

Unfortunately, that letter did not address any of those questions. They basically just told us that they received our questions, they're aware of them. They told us that there's a lot of complex issues at play within these negotiations, but they didn't actually directly answer any of those questions. It's clear to us that since this appears to be the first agreement of its kind in Canada, the government has a lot of work to do to implement this process—especially if they want to implement it correctly.

In February and May, PHARA had two informal meetings with government representatives who were working on Section 7 negotiations. These two meetings were not considered official consultation, but they did provide us with an informal dialogue between PHARA and the Province. We understand that the negotiations are ongoing, however, no group representing residents has a seat at the negotiating table—neither PHARA nor the SCRD.

We think it is really important to understand that the BC government is giving away their statutory decision-making authority. Effectively, that means that residents will have to seek permission from two governments in order to apply for various things. We don't know what they will apply to in the future. And either one of those governments can essentially veto that application. There's a lot of uncertainty in what the process will look like.

Right now, this is primarily a Pender Harbor issue. We believe we need to think beyond that, because what happens here, will set a precedent. This is only the tip of the iceberg for all of British Columbia. It's really important that residents are educated on what this means and its various implications. More information and links are posted on our website.