



**INDEPENDENT LEGISLATIVE REVIEW OF THE  
*NORTH ISLAND-COAST DEVELOPMENT INITIATIVE TRUST ACT 2006***

**REPORT OF THE 2022 LEGISLATIVE REVIEW COMMITTEE**

**Judith Sayers  
Sarah Morales  
Wayne Rowe  
Frank Leonard**

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### **Acknowledgements**

Committee members would like to thank Line Robert, Denice Regnier and Board Chair Aaron Stone for their assistance with this project.

## Introduction

The purpose of this report is to provide an independent assessment of the *North Island-Coast Development Initiative Trust Act (the Act)*. Such an assessment is required to be done every 5 years, by an independent committee appointed under section 26 of the Act.

Based on its review of the act and its own independent research and consultations this independent committee has concluded that:

1. The current legislation has worked well but it is past time that indigenous governments be given a defined role in Trust governance.
2. The BC government should work with First Nations in Vancouver Island-Coast region pursuant to s. 3 of the *Rights of Indigenous Peoples Act* to align the ICET legislation with United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
3. The North Island Coast Development Initiative Trust, more commonly known as Island-Coastal Economic Trust (ICET) plays a useful role in regional economic development. ICET provides important local level intelligence to economic development investments that are a valuable supplement to any work done by the provincial government, individual or collective local government organizations and individual or collective indigenous government organizations;
4. After 15 years, the time has come for the provincial government to remove the legislative cap on provincial contributions and make a significant investment in recapitalizing the trust.
5. There is an opportunity to combine recapitalization with a renewed vision for the Trust that sees it as a 3-way partnership between Indigenous governments, local governments and the provincial government;
6. As the B.C. government works with Island and Coastal First Nations to align the ICET legislation with UNDRIP the committee believes a potential useful starting point for these discussions could be based on the following principles:
  - Any legislative action should be preceded by sufficient consultation with Indigenous governments within the region and should receive their prior consent before being put before the legislative assembly;
  - In starting the consultative process, the provincial government should recognize that
  - participation in Trust governance should remain a decision of each First Nation;
  - the form of Indigenous participation in Trust governance should respect the way in which individual First Nations have chosen to govern themselves;
  - The Island Coast Economic Trust is a creation of the provincial government and as such the province has authority to determine how it is governed, although that authority is influenced by the *Declaration of the Rights of Indigenous Peoples Act*, which requires the provincial government to develop an action plan to bring provincial laws into conformity with the UN Declaration of the Rights of Indigenous Peoples and to annually report on progress towards achieving the action plan.

7. No other legislative changes are required. However, some provisions could be modernized. These changes are relatively minor matters of clarification and it is the committee's view that they would have little to no impact on Trust operations.

## **Background**

In 2006, the government of British Columbia passed North Island-Coast Development Initiative Trust Act (the Act) creating the \$50 million North Island Coastal Development Initiative Trust, better known as Island Coastal Economic Trust (ICET).

The purpose of the ICET (based on section 20 of the Act) is to support investment within the North Island Coast region in the following sectors:

1. forestry;
2. transportation;
3. tourism;
4. mining;
5. Olympic opportunities;
6. small business;
7. economic development;
8. energy;
9. agriculture.

Under the Act, ICET is required to conduct a review of the Act every 5 years. The first legislative review was conducted in 2011 and the second in 2016.

The legislative provisions governing this committee's review of the act are set out below.

### ***Review of this Act***

**26 (1)** *Subject to section 10 (3), on or before the fifth anniversary of the coming into force of this section, and on or before every fifth anniversary after that, the directors must, if the North Island-Coast Development Initiative Trust has not by that date been dissolved and disestablished under section 23, appoint a committee of qualified individuals to review this Act and evaluate how it is functioning.*

*(2) The review committee may consult with business, labour, education providers, government and any other person or organization it considers appropriate.*

*(3) If a review committee is appointed, it must publish a report of its findings in a manner that can reasonably be expected to bring the report to the attention of the public.*

This independent committee was created in December, 2021 and consisted of:

- Judith Sayers
- Sarah Morales
- Wayne Rowe
- Frank Leonard

### **Process and Key Observations**

In the course of its work the committee considered:

- the results of an interview with the current ICET Board Chair;
- comments from the current ICET CEO;
- the reports of past legislative reviews done for both the ICET and other B.C. economic Trusts;
- earlier reviews of the economic trusts including the Auditor -General's 2011 Report and the Ministry of Finance 2012 Internal Audit;
- the important contextual change that has occurred with the passage of the *Declaration of the Rights of Indigenous Peoples Act*; and,
- the members own experience with the ICET.

Based on this work the committee observed that both Trust leadership and the independent legislative review committees had consistently reported that:

- the Trust has performed an important and valuable role in the area of regional economic development;
- the current Trust governance structure has provided effective decision making within the constraints the current legislation creates for representation on ICET advisory and governing bodies;
- the primary deficiency is the lack of a defined role for Indigenous governments;
- the Trust has been successfully operating for over 15 years and at this point there is a need for the provincial government to make a significant investment towards its recapitalization.

The committee was intrigued as to why, in the context of repeated recommendations from independent legislative review committees, no action had been taken by the provincial government to create a defined role for Indigenous governments. It concluded that it's most valuable work could be, to set out principles that could govern the creation of a pathway to greater Indigenous government engagement in trust governance. Such changes to governance could be part of a renewal of the ICET and other economic trusts that includes a significant new provincial investment to recapitalize the trusts.

## Key Messages

### The Trust Does Good Work and Needs to be Recapitalized

The North Island Coast Development Initiative Trust and the Southern Interior Development Initiative Trust Acts were legislated in 2006. Previously the Northern Development Initiative Trust had been created as part of the sale of BC Rail.

The Trusts have become an important part of the economic development landscape in B.C and play an important role in linking provincial, Indigenous and local governments.

Since their creation there have been 8 independent legislative reviews of the trusts. This will be the ninth. All have affirmed the usefulness of the Trusts.

As well, Trust governance was the subject of 2011 review by the Office of the Auditor General and the ICET was the subject of an internal audit by the Ministry of Finance. Both found the Trusts play a useful role in regional economic development and concluded that their governance was substantially sound.

ICET has itself developed a number of decision-making tools creating an institutional infrastructure that has value.

Finally, the need for the ICET has not diminished. The Vancouver Island and Coastal economy is still in the midst of a challenging transition. Managing these transitions will require significant investment in order to build a strong, sustainable future for Island and Coastal communities. The impacts of climate change will drive the need for economic adjustment. The forest sector continues to change, as evidenced by recent news of the coming closure of the Powell River pulp mill. Key policy changes such as old growth deferrals and changes to aquaculture policy bring with them economic transitions that will need to be managed at the community and regional level. As well, reconciliation calls for greater engagement by Indigenous governments in regional economic decision making and in charting a sustainable economic future for their communities as well as influencing economic development through-out their traditional territories.

In all these areas ICET can play an important role.

Recapitalizing the Trust, with a significant infusion of capital that is sufficient to support the needed adjustments in the Vancouver Island Coastal economy in a way that builds on the lessons learned since 2006 should be an important part of the continuing transition of the Vancouver Island and Coastal economy.

## It is Time for a New Vision that Provides a Defined Role for Indigenous Governments

### **Current ICET Governance**

#### *Regional Advisory Committee's (RACs)*

Current legislative provisions dealing with governance provide for two regional advisory committees (RACs). Each of these (the North Island Sunshine Coast Regional Advisory Committee and the Central South Island Regional Advisory Committee) is made up of: municipal mayors and regional district chairs; and, provincial MLA's who represent areas within that region (which is defined in regulation).

Each of the RACs have the capacity to adjust their membership to include municipal elected officials who are not Mayors or Chairs but this does not extend to including individuals who are not elected municipal officials. The job of each RAC is to provide advice to the Board and to appoint board members.

The RACs play a key role in appointing members to the ICET Board as each RAC appoints 4 of its members to the 13-member Board.

#### *The Board*

A 13-member Board of Directors includes 8 members who are elected by the Regional Advisory Committees, 4 elected by the Central South Island Region and 4 elected by the North Island-Sunshine Coast Region. Five are appointed by BC's Lieutenant Governor in Council.

The Board of Directors is the final decision-making voice for the organization, and usually meets seven to 10 times per year.

#### Commentary

This governance is out of step with the current context created by the passage of the *Rights of Indigenous Peoples Act*.

**The current legislation needs to be brought into conformity with the Declaration of Indigenous Peoples Act. Accordingly, the BC government should work with First Nations in the Vancouver Island Coast region, pursuant to section 3 of the Declaration of the *Rights of Indigenous Peoples Act*, to align the ICET legislation with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).**

An effective approach needs to provide an appropriate balance between the 50 indigenous governments in the trust area, the 35 local governments in the Trust area and the interest of the provincial government. This requires an inclusive decision-making process that achieves buy-in from each of the three partners.

The following principles could represent a starting point for such a discussion:

1. Any legislative action should be proceeded by sufficient consultation with indigenous governments within the region and should receive their prior consent before being put before the legislative assembly.
2. In starting the consultative process, the provincial government should recognize that:
  - participation in Trust governance should remain a decision of each indigenous government;
  - the form of First Nation participation in Trust governance should respect the way in which individual indigenous nations have chosen to govern themselves.
3. The Island Coast Economic Trust is a creation of the provincial government and as such the province has authority to determine how it is governed, although that authority is influenced by the *Declaration of the Rights of Indigenous Peoples Act*, which requires the provincial government to develop an action plan to bring provincial laws into conformity with the UN Declaration of the Rights of Indigenous Peoples and to annually report on progress towards achieving the action plan.

## **Appendix 1 - Committee Member Biographical Information**

### **Kekinusuqs, Dr. Judith Sayers**

Kekinusuqs, Dr. Judith Sayers is a Strategic Adviser to First Nations and Corporations, providing advice on many issues including relationship building and negotiating equitable agreements. She was named Vancouver Island University's (VIU's) third chancellor on October 24, 2020.

Judith has been the Visiting National Aboriginal Economic Development Chair and an Assistant Professor at the Faculty of Business and Law at the University of Victoria.

Judith served fourteen years as Chief of the Hupacasath First Nation. As Chief of her First Nation, she focused on capacity building and sustainable development. Judith was instrumental in several sustainable development projects and put in place mechanisms to help protect the territory.

### **Dr. Sarah Morales — Associate Professor, Faculty of Law, University of Victoria**

Sarah Morales (*Su-taxwiye*), JD (UVic), LLM (University of Arizona), PhD (UVic), PostDoc (Illinois) is Coast Salish and a member of Cowichan Tribes. She is an Associate Professor at the University of Victoria, Faculty of Law, where she teaches torts, transsystemic torts, Coast Salish law and languages, legal research and writing and field schools. Prior to joining the faculty at the University of Victoria, she taught at the University of Ottawa, Faculty of Law where she taught Aboriginal law, Indigenous legal traditions and international human rights with a focus on Indigenous peoples. Sarah's research centres on Indigenous legal traditions, specifically the traditions of the Coast Salish people, Aboriginal law and human rights. She has been active with Indigenous nations and NGOs across Canada in nation building, inherent rights recognition and international human rights law.

### **Wayne Rowe**

Wayne Rowe is a resident of the Sunshine Coast. Mr. Rowe has operated a private legal practice based in Gibsons since 1981. He graduated with a BA from Queen's University in 1975 followed by an LLB from the University of British Columbia in 1979. He also obtained a civil law diploma from the University of Sherbrooke in 1978. He is a member of the Law Society of British Columbia and the Canadian Bar Association. Mr. Rowe served as a Councilor for the Town of Gibsons from 2009 to 2011 and as Mayor from 2011 to 2018.

### **Frank Leonard**

Frank Leonard was Mayor of Saanich and Chair of the Police Board from 1996-2014 after serving as a Councillor from 1986. While in public office, Frank chaired the Municipal Finance Authority of BC, was President of the Union of BC Municipalities and a Director of the Federation of Canadian Municipalities. He has also served as Chair of the Capital Regional District, the Hospital District and the region's Housing Corporation.

Frank Leonard comes from a family business background, having managed Victoria Tire Ltd.'s three Kal Tire stores prior to their sale in 1996. While in business, Frank served as a Director of the BC Chamber of Commerce, President of the Victoria Chamber of Commerce, and on the boards of local tourism and economic development groups. Frank has a B.A. (Honours) and M.A. from the University of Victoria, and has completed the Institute of Corporate Directors Program (ICD.D).

Frank Leonard is currently Chair of Parkbridge Lifestyles Communities and a Director of Coast Capital Savings and of the Victoria Airport Authority. He is a business instructor at the University of Victoria and has previously served as a Director of the BC Investment Management Corporation, Chair of the Municipal Pension Plan and Chair of the BC Agricultural Land Commission.