
Assembly of First Nations

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Assemblée des Premières Nations

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SPECIAL CHIEFS ASSEMBLY
December 5, 6 & 7, 2017, Ottawa, ON

Resolution no. 76/2017

TITLE: Establishment of a National Secretariat for the Negotiation and Implementation of Supreme Court Decisions regarding Fisheries

SUBJECT: Fisheries

MOVED BY: William Gladstone Sr., Proxy for Heiltsuk Nation, B.C.

SECONDED BY: Chief Dalton Silver, Sumas First Nation, B.C.

DECISION: Carried by Consensus

WHEREAS:

A. The United Nations *Declaration on the Rights of Indigenous Peoples* (UN Declaration) states:

- i. Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
- ii. Article 20: Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities; Indigenous peoples deprived of their means of subsistence are entitled to just and fair redress.
- iii. Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

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- iv. Article 29: Indigenous peoples have the right to the conservation and protection of the environment and productive capacity of their lands or territories and resources. States shall establish and implement assistance programs for indigenous peoples for such conservation and protection, without discrimination.
 - v. Article 32 (2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
 - vi. Article 32 (3): States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.
 - vii. Article 40: Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.
- B.** Indigenous peoples have constitutionally protected Aboriginal and Treaty rights, which include the right to traditional and customary governance of traditional lands, waters, and resources including fisheries.
- C.** There have been significant Supreme Court of Canada ("SCC") decisions such as *Gladstone*, *Marshall*, *Ahousah*t, *Delgamuukw*, *Haida Nation*, and *Sparrow* that have recognized First Nations' right to participate and exercise governance over traditional fisheries.
- D.** The Government of Canada has not honourably upheld, implemented, or acted in good faith to fulfill its legal duties to fully implement SCC court decisions with respect to First Nations' fisheries.
- E.** The 2015 mandate letter to the Minister of Justice states:
- i. As Minister of Justice and Attorney General of Canada, your overarching goal will be to ensure our legislation meets the highest standards of equity, fairness and respect for the rule of law.
 - ii. Review our litigation strategy. This should include early decisions to end appeals or positions that are not consistent with our commitments, the Charter, or our values.
- F.** In July 2017, the Justice Minister announced the Ten Principles respecting the Government of Canada's relationship with Indigenous peoples, which include:

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- i. The Government of Canada recognizes that the honour of the Crown guides the conduct of the Crown in all of its dealing with Indigenous peoples.
 - ii. The Government of Canada recognizes that respecting and implementing rights is essential and that any infringement of section 35 rights must by law meet a high threshold of justification which includes Indigenous perspectives and satisfies the Crown's fiduciary obligations.
 - iii. The Government of Canada recognizes that reconciliation is an on-going process that occurs in the context of evolving Indigenous-Crown relationships.
 - iv. The Government of Canada recognizes that a distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of the First Nations, the Metis Nation and Inuit are acknowledged, affirmed, and implemented.
- G. The Assembly of First Nations (AFN) has passed AFN Resolution 83/2008 *Strengthened and Renewed Mandate for the National Fisheries Strategy to Fully Share in Economic Opportunities*, and AFN Resolution 67/2010 *Establishment of a National Mechanism for the Negotiation and Implementation of Supreme Court Decisions regarding Fisheries*. Both direct the AFN with a strengthened mandate to examine new initiatives, including the support for the development of new supportive bodies and undertake a review and assessment of First Nations court decisions.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Direct the Assembly of First Nations (AFN) to call on the Minister of Fisheries and Oceans, the Ministerial Working Group on Law & Policy, to ensure that any new or reformed federal legislation regarding fisheries respects and advances Supreme Court of Canada (SCC) fisheries decisions to uphold Aboriginal and Treaty rights.
2. Call on the AFN to support discussions amongst First Nations who wish to participate in the development of a mandate, and framework for a National Secretariat to promote the implementation of all successful SCC decisions related to all fisheries.
3. Call on the AFN to provide political and technical support to the National Secretariat to assist its work in integrating strategies for the benefit of First Nations at negotiation tables on fisheries management, including increased economic access.
4. Call on the AFN to support a national strategy to assess, facilitate, and promote the development and enactment of federal legislation to implement Aboriginal Title, Rights and Treaty Rights confirmed by successful SCC decisions.
5. Call on the AFN to support the development of First Nations mechanisms that can bridge the gaps between SCC decisions, First Nations negotiation, and Crown implementation processes to ensure that SCC decisions are honored and implemented effectively.

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