



**ASSEMBLY OF FIRST NATIONS**  
**2018 SPECIAL CHIEFS ASSEMBLY ON FEDERAL LEGISLATION – GATINEAU, QC**  
**MAY 1& 2, 2018**  
**FINAL DRAFT RESOLUTIONS**

Following the AFN Resolutions Procedures revised by Executive in October 2013, resolutions to be considered at Chiefs Assemblies are required the Friday a full two weeks prior to the first day of the Assembly. Notices of this deadline and related procedures are distributed to all First Nations via broadcast fax and posted on the AFN website.

Resolutions are provided in this package for review by Chiefs-in-Assembly. The Resolutions Committee will receive late resolutions related to federal legislation until 1:00 pm ET on Tuesday, May 1, 2018.

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#	Title
01	Implementing Canada's Recognition and Implementation of Indigenous Rights Framework and clarifying the role of the AFN
02	First Nations Role in Changes to the Fisheries Act
03	First Nations Oceans Working Group and the Oceans Act and Marine Protected Areas
04	Engaging First Nations on Marine Vessels and Salvage Operations
05	Addressing First Nations Rights, Title, and Jurisdiction in Bill C-69: Impact Assessment Act, Canadian Energy Regulator Act, and the Navigation Protection Act
06	Develop First Nations-Specific Solutions for the Green House Gas Pollution Pricing Act
07	First Nations Led Process to Develop New Federal Safe Drinking Water Legislation
08	Resources for Engagement on Distinct First Nations Accessibility Legislation
09	Federal Recognition of First Nations Jurisdiction over Recreational and Medicinal Cannabis



# DRAFT RESOLUTION # 01 / 2018

## AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC

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**TITLE:** Implementing Canada's Recognition and Implementation of Indigenous Rights Framework and clarifying the role of the AFN

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**SUBJECT:** Legislation

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**MOVED BY:** Chief Mike McKenzie, Uashat mak Mani-Utenam, QC

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**SECONDED BY:** Chief Cathy Merrick, Cross Lake Band of Indians, MB

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### WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (the UN Declaration) states:
- i. Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
  - ii. Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
  - iii. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
  - iv. Article 38: States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.
- B. On February 14, 2018, the Government of Canada reaffirmed its full support for the UN Declaration, without qualification, and committed to its full implementation, including government support for Bill C-262, *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*.
- C. Also on February 14, 2018, the Government of Canada launched a national engagement strategy to develop a Recognition and Implementation of Indigenous Rights Framework that would ensure the Government of Canada respects Indigenous rights and provides policies and mechanisms for Indigenous Peoples to exercise their rights.
- D. As part of this work, new federal laws, policies and operational practices will be developed to support the rebuilding of Indigenous nations and governments, and advance Indigenous self-determination, including the inherent right of self-government.

- E. The current engagement materials were launched without adequate participation and direction by First Nations rights holders. Additionally, through the inclusion of other partners and stakeholders, current engagement by the Government of Canada does not adequately respect First Nations rights-holders.
- F. Feedback from early engagements indicates First Nation rights-holders are concerned about the current process lacking accountability and transparency, with the Government of Canada acting unilaterally.
- G. Inherent Aboriginal and Treaty rights are constitutionally protected and guaranteed to First Nations, rather than political organizations and it is the duty of the Crown to consult directly with rights-holders in order to obtain their free, prior and informed consent when contemplating actions affecting them.
- H. Government engagement processes with non-rights holders and organizations, such as the Assembly of First Nations (AFN), do not constitute consultation and accommodation and cannot be used to obtain free, prior and informed consent.

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

1. Declare that the Assembly of First Nations (AFN) and any regional organizations cannot negotiate, support or agree to any changes to Canada's federal laws, policies and operational practices as part of the Recognition and Implementation of Rights Framework or otherwise, without the free, prior and informed consent of First Nations rights-holders.
2. Call on Canada to consult and cooperate in good faith with First Nations through their own representative institutions before adopting and implementing any legislative or administrative measures that may affect First Nations in order to obtain their free, prior and informed consent.
3. Call on Canada to ensure that the comprehensive engagement and consultation process of the Recognition and Implementation of Indigenous Rights Framework respect the United Nations Declaration on the Rights of Indigenous Peoples and be committed to the full implementation of Aboriginal and Treaty rights.
4. Call on Canada to ensure that the national engagement strategy on the Recognition and Implementation of Indigenous Rights Framework fulfills the duty of the Crown to ensure First Nations rights-holders' free, prior and informed consent.
5. Call on Canada to ensure that the Recognition and Implementation of Indigenous Rights Framework process is transparent, accessible, takes into account regional perspectives and priorities, and is supported by rights-holders.
6. Call on Canada to provide the necessary financial resources to engage directly with First Nations as rights-holders on the Government of Canada's Recognition and Implementation of Indigenous Rights Framework and any federal legislation.
7. Call on Canada to work with First Nations rights holders to ensure engagement materials are sufficient, accessible and transparent to support the process.

# DRAFT RESOLUTION # 02 / 2018

## AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC

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TITLE: First Nations Role in Changes to the Fisheries Act

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SUBJECT: Bill C-68; Fisheries

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MOVED BY: Chief Dalton Silver, Sumas First Nation, BC

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SECONDED BY: Chief Scott McLeod, Nipissing First Nation, ON

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### WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples states:
- i. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
  - ii. Article 19: States shall consult and cooperate in good faith with 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.
  - 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.
  - iv. Article 38: States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.
- B. The Assembly of First Nations (AFN) has passed three resolutions directly related to the current legislative review of the Fisheries Act: AFN Resolution 21/2017, *Respecting Inherent Rights-Based Fisheries in Parallel with the Review of Canada's Fisheries Act*; AFN Resolution 35/2017, *Clarify the Mandate and Scope of the Ministerial Law and Policy Working Group*; and AFN Resolution 74/2017, *Fisheries Legislative Amendments and the Ten Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*.
- C. The House of Commons Standing Committee on Fisheries and Oceans (SCOFO) has begun its study of Bill C-68: *An Act to Amend the Fisheries Act and other Acts in consequence*.
- D. Since Bill C-68 introduces changes to the Fisheries Act that will directly impact First Nations rights, the AFN submission to the SCOFO Committee intends to address this and the dire need to hold the Government of Canada accountable in addressing the legislative impacts of Bill-68 and any accompanying regulation and policy development for First Nations.

## **D R A F T   R E S O L U T I O N   # 0 2 / 2 0 1 8**

### **AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC**

- E. The regulation and policy developments that will follow the legislative amendments to the *Fisheries Act* must be done in collaboration and in good faith with First Nations from the outset, in order to address and prevent any infringements to s. 35 rights as outlined and protected by the *Constitution Act*.
- F. There have been numerous commitments by the current government to engage with First Nations in the development of the Fisheries Act regulations and policies, and it is imperative that these commitments be fixed into core funding agreements to work with First Nations nationally, regionally, and directly with First Nations as rights holders.
- G. Bill C-68 provisions for “recognizing social, economic and cultural factors, as well as the preservation or promotion of the independence of licence holders in commercial inshore fisheries” are meant to be taken into consideration in decisions. These are meant to provide clear regulatory authorities to support independent inshore licence holders.
- H. The regulation and policy developments must consider the impacts on First Nations fisheries workers, including the impacts of fisheries closures and their lack of eligibility for Employment Insurance benefits in comparison to non-Indigenous fisheries workers.

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

1. Call on the Assembly of First Nations (AFN) to urge the Government of Canada to properly fund the work with First Nations as it relates to regulation and policy development with respect to legislative amendments to the Fisheries Act.
2. Direct the AFN to engage with the Department of Fisheries and Oceans (DFO) to release information to First Nations in a timely manner as it pertains to plans for regulations and policies that may impact or infringe on First Nations rights and fisheries.
3. Call on the AFN to continue its work with the DFO, and any other related federal government department as needed, to address issues with respect to: upholding First Nations rights and to hold the Government of Canada accountable to its work concerning the rights and recognition framework; the law and policy review; the ten principles respecting the Government of Canada's relationship with Indigenous peoples; and the full and unqualified implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* as it relates to the *Fisheries Act* and other legislation, regulations, and policy.
4. Call on the AFN to continue to advocate that any legislative, policy, and program reforms to the Fisheries Act must include equitable employment insurance benefits for First Nations fishermen.

# DRAFT RESOLUTION # 03 / 2018

## AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC

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**TITLE:** First Nations Oceans Working Group and the Oceans Act and Marine Protected Areas

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**SUBJECT:** Bill C-55; Fisheries

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**MOVED BY:** Chief Dalton Silver, Sumas First Nation, BC

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**SECONDED BY:** Chief Scott McLeod, Nipissing First Nation, ON

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### WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples states:
- i. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
  - ii. Article 19: States shall consult and cooperate in good faith with 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.
  - 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.
  - iv. Article 38: States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.
- B. The Assembly of First Nations (AFN) has passed AFN Resolution 34/2017, *First Nation Engagement and Consultation on Bill C-55 Oceans Act and Marine Protected Areas*.
- C. The First Nations Oceans Working Group has held its first meeting with the Department of Fisheries and Oceans, Oceans Management Program to initiate the joint working group led by First Nations as described in AFN Resolution 34/2017.
- D. The Prime Minister's mandate letters to the Minister of Fisheries, Oceans and the Canadian Coast Guard directs the Minister to "... increase the proportion of Canada's marine and coastal areas that are protected to 5% by 2017 and to 10% by 2020." The direction provided to the Minister included the work with "provinces, territories, Indigenous Peoples, and other stakeholders to better co-manage our three oceans."

## **D R A F T   R E S O L U T I O N   # 0 3 / 2 0 1 8**

### **AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC**

- E. Since Bill C-55 amendments have been tabled, there have been concerns raised by First Nations in how the work related to Marine Protected Areas has been handled in the absence of First Nations input and participation, and the overall lack of consultation and engagement by the federal government.
- F. First Nations inherent jurisdiction, First Nations led marine plans, relevant research and studies have not been properly recognized and integrated into the Marine Protected Areas Network.

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

1. Direct the Assembly of First Nations (AFN) National Fisheries Committee to oversee the work of the First Nations Oceans Working Group and address the partnership between First Nations and the Government of Canada in relation to the development of the Marine Protected Areas (MPA) network.
2. Direct the AFN to call on the Department of Fisheries and Oceans to identify how they plan to implement an engagement strategy with First Nations concerning the regulation and policy development as a result of changes to the Oceans Act, including the MPA network.
3. Mandate the AFN National Fisheries Committee and the First Nations Oceans Working Group to inform the Canadian Council of Fisheries and Aquaculture Ministers (CCFAM), specifically the Oceans Task Group, of the issues related to the changes to Bill C-55, the *Canada Petroleum Resources Act*, and related regulations and policies that First Nations must be fully engaged in and co-develop where the rights of First Nations may be impacted or infringed upon.



# DRAFT RESOLUTION # 04 / 2018

## AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC

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TITLE: Engaging First Nations on Marine Vessels and Salvage Operations

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SUBJECT: Bill C-64; Fisheries

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MOVED BY: Chief Dalton Silver, Sumas First Nation, BC

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SECONDED BY: Chief Scott McLeod, Nipissing First Nation, ON

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### WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples states:
- i. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
  - ii. Article 19: States shall consult and cooperate in good faith with 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.
  - 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.
  - iv. Article 37: Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
  - v. Article 37 (2). Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.
  - vi. Article 38: States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.
- B. The House of Commons Standing Committee on Transport, Infrastructure and Communities has begun its study of Bill C-64, *An Act respecting wrecks, abandoned, dilapidated or hazardous vessels and salvage operations*.
- C. Bill C-64 is an attempt at closing an important gap to enhance vessel owner responsibility and liability and strengthen federal leadership in protecting and restoring Canada's marine ecosystems and health/sustainability of our coasts and shorelines

## **D R A F T   R E S O L U T I O N   # 0 4 / 2 0 1 8**

### **AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC**

- D. Bill C-64 is meant to meet Canada's commitment under the Nairobi Convention, an international instrument for governing vessel owner liability with respect to wrecks caused by maritime casualties.
- E. Salvage operations can serve as part of rewards for First Nations who rescue under the Peace and Friendship Treaty of 1752 between the Crown and the Mi'kmaq people which has not been considered in the original drafting of this legislation.
- F. The Pacific Coast First Nations have experienced many issues with abandoned and other vessels such as the Nathan E. Stewart and the Vicky Lyne II that have become derelict and are spilling hazardous materials, such as oil, diesel, or gas into the ocean along the coast of British Columbia, which negatively impacts First Nations fisheries.
- G. The Prime Minister announced the Oceans Protection Plan in November 2016, stating that it "includes a comprehensive package of measures that address abandoned, derelict and wrecked vessels and makes owners responsible and liable for clean-up costs."

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

1. Call on the Assembly of First Nations (AFN) to continue to advocate that any legislative, policy, and program reforms related to Bill C-64, *An Act respecting wrecks, abandoned, dilapidated or hazardous vessels and salvage operations*, must recognize First Nations' inherent and everlasting responsibilities to their traditional territories.
2. Direct the AFN to call on the federal government to provide First Nations with long-term capacity funding that goes beyond cursory Indigenous participant funding and recognize the joint nature of the responsibilities that the federal government shares with First Nations in protecting all coasts in Canada and First Nations fisheries.
3. Direct the AFN to call on the federal government to recognize and respect First Nations' jurisdiction over their traditional marine areas and to engage them as equal partners in all future endeavors in this marine coast protection.
4. Direct the AFN to work with Transport Canada and the Department of Fisheries and Oceans Canadian Coast Guard in securing core and capacity funding for First Nations community and regional level work associated with the Oceans Protection Plan as it relates to First Nations.

## DRAFT RESOLUTION # 05 / 2018

### AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC

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**TITLE:** Addressing First Nations Rights, Title, and Jurisdiction in Bill C-69: Impact Assessment Act, Canadian Energy Regulator Act, and the Navigation Protection Act

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**SUBJECT:** Bill C-69; Environment

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**MOVED BY:** Chief Ron Ignace, Skeetchestn Indian Band, BC

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**SECONDED BY:** Chief Byron Louis, Okanagan Indian Band, BC

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#### WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples states:
- i. 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.
  - ii. 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.
  - iii. Article 32 (3): States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measure shall be taken to mitigate adverse environmental, economic, social, cultural, or spiritual impact.
- B. The Assembly of First Nations (AFN) has passed seven resolutions concerning this process: AFN Resolution 73/2017 *Environmental and Regulatory Reviews – Phase 3*; AFN Resolution 20/2017 *Respecting Inherent Jurisdiction over Waters Parallel to the Review of Canada's Navigation Protection Act*; AFN Resolution 19/2017: *Resetting the Role of First Nations in Environmental and Regulatory Review*; AFN Resolution 86/2016 *Meaningful Consultation and Engagement with First Nations in the Environment and Regulatory Review*; AFN Resolution 64/2016 *Support for Stk'emlupsemc te Secwepemc Nation Project Assessment Process*; AFN Resolution 12/2016: *Moving Beyond Federal Legislation to Establish a Nation-to-Nation Relationship*; and AFN Resolution 35/2016: *First Nations' inclusion in the review of Environmental and Regulatory processes*.
- C. Prime Minister Justin Trudeau has publicly committed "to a renewed nation-to-nation relationship with First Nations (...) one that is based on recognition of rights, respect, cooperation and partnership" and to "conduct a full review of the legislation unilaterally imposed on Indigenous peoples by the previous government."

## DRAFT RESOLUTION # 05 / 2018

### AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC

- D. Instead of engaging First Nations in the review of legislation unilaterally imposed on Indigenous Peoples by the previous government, on June 20, 2016, the Government of Canada announced a broad public review of various environmental and regulatory processes that includes:
  - i. Reviewing federal environmental assessment processes;
  - ii. Modernizing the National Energy Board; and
  - iii. Restoring lost protections and introducing modern safeguards to the Fisheries Act and the Navigation Protection Act.
- E. The modernization of the National Energy Board (NEB) and review of the Canadian Environmental Assessment Act (CEAA 2012) went through expert panel processes, and the Fisheries Act and Navigation Protection Act went through Standing Committee processes.
- F. Despite calls for full-inclusion of First Nations in drafting processes, on June 29, 2017, the Government of Canada unilaterally released a discussion paper pertaining to all four Environmental and Regulatory Reviews with a 60-day window for comment, and some opportunities for additional funding for Indigenous Nations.
- G. It remains unclear whether the Minister of Fisheries and Oceans and the Minister of Transport will use the Ministerial Working Group set out to ensure the Crown is meeting its constitutional obligations with respect to Aboriginal and Treaty Rights.
- H. First Nations cannot only rely on "common law" or the *Navigation Protection Act* for the protection of our waterways.
- I. On February 8, 2018, the Minister of Environment and Climate Change introduced Bill C-69: *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*.
- J. Canada is willing to engage in a process of reviewing policies, regulations and guidelines relating to Bill C-69. This process is expected to take between twelve and eighteen months.
- K. Canada has released consultative papers for comment until June 1, 2018, on two regulations pertaining to the Impact Assessment Act: Regulations Designating Physical Activities (Project List); and Information Requirements and Time Management Regulations.

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

1. Call upon the Assembly of First Nations (AFN) to advocate that Bill C-69 includes, among other things:
  - a. Protections of First Nations inherent and constitutionally-protected rights;
  - b. Joint decision-making with First Nations governing authority;
  - c. Reducing excessive Ministerial discretion;
  - d. Strengthening the protection of Indigenous Knowledge Systems; and

## **D R A F T   R E S O L U T I O N   # 0 5 / 2 0 1 8**

### **AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC**

- e. Including direct reference to Canada's commitments to the United Nations Agenda 2030 Sustainable Development Goals and the United Declaration on the Rights of Indigenous Peoples.
2. Reaffirm their position that the current federal legislative process must not be construed as meaningful "consultation", does not meet the standard of free, prior and informed consent, and that additional time must be afforded to consult directly with rights holders in a manner that is respectful of their unique protocols, and processes.
3. Direct the AFN to continue supporting and coordinating, where possible, the interventions and participation of First Nations, regional organizations, and provincial/territorial organizations in the co-development process, including creating regional-specific processes to address regions with specific concerns including support provisions as part of a nation-to-nation relationship.
4. Call on all responsible federal Ministers to provide adequate funding directly to individual First Nations for their full and effective participation in the regulatory and policy development of Bill C-69.
5. Call on the AFN to continue conducting regional information-sessions to support First Nations, regional organizations, and provincial/territorial organizations in the process.



# DRAFT RESOLUTION # 06 / 2018

## AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC

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**TITLE:** Develop First Nations-Specific Solutions for the Green House Gas Pollution Pricing Act

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**SUBJECT:** Bill C-74; Environment

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**MOVED BY:** Chief Aaron Sumexheltza, Lower Nicola Indian Band, BC

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**SECONDED BY:** Chief Calvin Sanderson, Chakastapaysin Band of the Cree Nation, SK

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### WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples states:
- i. Article 32 (1): Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
  - ii. 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.
  - iii. Article 32 (3): States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measure shall be taken to mitigate adverse environmental, economic, social, cultural, or spiritual impact.
- B. In the Paris Agreement, signed by Canada in April 2016, parties agreed that they should, when taking action on climate change, recognize and respect the rights of Indigenous Peoples.
- C. The First Ministers adopted the Pan-Canadian Framework on Clean Growth and Climate Change (PCF) outlining four pillars: pricing carbon pollution; complementary mitigation actions to reduce emissions across all sectors; adaptation and climate resilience; clean technology, innovation, and jobs; also agreeing to recognize, respect, and safeguard the rights of Indigenous Peoples.
- D. A central pillar of the PCF is carbon pricing – requiring all Canadian jurisdictions to have a carbon pricing system in place by 2019. Those jurisdictions without a carbon pricing regime will be subject to the Federal Carbon Pricing Backstop, which will be comprised of two key elements: i) a levy on fossil fuels; and ii) an output based pricing system for facilities producing greater volumes of carbon emissions.
- E. Several provinces (such as British Columbia, Alberta, Quebec, Ontario, and Manitoba) have or are expected to implement carbon pricing regimes. Several others (such as Yukon, New Brunswick, and Saskatchewan) are expected to see the Federal Backstop applied within their jurisdictions.

## **D R A F T   R E S O L U T I O N   # 0 6 / 2 0 1 8**

### **AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC**

- F. Given that all revenue will remain in the jurisdiction of origin, there are no existing mechanisms that can ensure First Nations' full and meaningful participation in the transition to a clean energy economy – including in direct investment to First Nations to pursue energy security.
- G. On January 15, 2018, the federal government released the Draft Legislative Proposals to Implement the Federal Carbon Pricing System as well as the Draft Regulatory Framework for the Output-Based Pricing System for comment. Comments on the draft legislative proposals were due February 12, 2018. Due to the limited timelines and no funding to engage, First Nations were not able to participate meaningfully.
- H. On March 27, 2018, the federal government tabled Bill C-74, an Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018, and other measures (Budget Implementation Act, 2018, No. 1) in which the *Greenhouse Gas Pollution Pricing Act* is a large component.
- I. Bill C-74 has now been referred to the Standing Committee on Finance (FINA) for study.
- J. The Government of Canada has launched the Clean Growth Hub as a mechanism to help make finding government programs to fund clean growth projects easier.

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

1. Call upon the Assembly of First Nations (AFN) to advocate that the *Greenhouse Gas Pollution Pricing Act* (Bill C-74) respect:
  - a. First Nations inherent rights, Treaties, title and jurisdiction, and recognize First Nations inherent responsibilities to their traditional territories;
  - b. The United Nations Declaration on the Rights of Indigenous Peoples, including reference to the standard of free, prior, and informed consent; and
  - c. First Nations right to self-determination.
2. Direct the AFN to pursue the commitment from Canada for the co-development of policies, regulations, and guidelines for the Carbon Levy and Output-Based Pricing Framework, in order to respect First Nations inherent rights, Treaties, title and jurisdiction, and recognize First Nations inherent responsibilities to their traditional territories.
3. Reiterate the call for the Ministers of Environment and Climate Change Canada, Finance, and other departments to provide adequate financial support for First Nations to explore the implications of carbon pricing on their territories, as well as opportunities for their participation in the clean energy economy.
4. Direct the AFN to engage with First Nations, regional organizations, federal/provincial/territorial organizations and governments to develop innovative solutions to address the unique circumstances of First Nations.



# DRAFT RESOLUTION # 07 / 2018

## AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC

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**TITLE:** First Nations Led Process to Develop New Federal Safe Drinking Water Legislation

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**SUBJECT:** Drinking Water

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**MOVED BY:** Chief Lance Haymond, Kebaowek First Nation, QC

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**SECONDED BY:** Chief Dan George, Burns Lake Indian Band/Ts'il Kaz Koh, BC

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### WHEREAS:

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

- i. Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
- ii. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
- iii. 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 or implementing legislative or administrative measures that may affect them;
- iv. 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.
- 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 38: States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

B. The *Safe Drinking Water for First Nations Act* (SDWFNA) came into force on November 1, 2013. The Act purports to enable the government to develop enforceable federal regulations to ensure access to safe, clean, and reliable drinking water, the effective treatment of wastewater, and the protection of sources of drinking water on First Nations lands.

## DRAFT RESOLUTION # 07 / 2018

### AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC

- C. The SDWFNA provisions effectively remove the moral and legal responsibilities of the Government of Canada concerning safe drinking water for First Nations and gives the Crown sweeping liability protection from injury and death associated with unsafe drinking water in First Nations.
- D. The SDWFNA fails to address the continuing financial resource gap for First Nations while granting sweeping enforcement, legislative and judicial powers as well as the ability to confer those powers to any person or body including private corporations.
- E. At the 2015 Assembly of First Nations (AFN) Annual General Assembly, Justin Trudeau, as the Liberal Party Leader, indicated that the SDWFNA was an example of “the Government dictating terms rather than working in partnership to support First Nations governance.”
- F. Justin Trudeau further promised, at the AFN Special Chiefs-in-Assembly on December 8, 2015, to conduct a full review of legislation imposed on First Nations, and indicated that any legislation that was in conflict with rights, inconsistent with the principles of good governance, or made no public policy sense, would be repealed.
- G. Despite AFN Resolution 76/2015, passed by the Chiefs-in-Assembly, calling for the repeal of the SDWFNA, the Government of Canada, under Prime Minister Trudeau, has failed to repeal the Act.
- H. AFN Resolution 26/2017, further called for the repeal of the SDWFNA and called for the federal government to work directly with First Nations in developing next steps to deliver safe drinking water for First Nations.
- I. The Government of Canada responded positively to AFN Resolution 26/2017, and agreed that the AFN should assist in First Nations leading the process of conceptualizing, elaborating, designing and implementing a new engagement process for safe drinking water legislation.
- J. Subsequently, AFN Resolution 88/2017, *First Nations led Engagement Process for Safe Drinking Water Legislation*, called for First Nations to take the lead in determining and developing priorities and strategies for safe drinking water legislation, including the co-development of a draft framework for new legislation and a framework for a First Nations Water Commission, all of which must include multi-year funding to support First Nations engagement sessions.
- K. First Nations continue to face urgent drinking water safety issues. As of April 1, 2018, there were no fewer than 78 Long Term Drinking Water Advisories (DWAs) in First Nations south of the 60<sup>th</sup> parallel - excluding the Saskatoon Tribal Council and systems with five connections or less. The AFN, in keeping with the direction of the Chiefs-in-Assembly contained in Resolutions 76/2015 and Resolution 88/2017, has prepared a concept paper that outlines a proposed First Nations led co-development process to develop a new Federal Bill on Safe Drinking Water for First Nations.

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

1. Direct the Assembly of First Nations (AFN) to immediately communicate to the federal government that, in keeping with the Government’s commitments to reconciliation with First Nations, a joint legislative process will be initiated in full partnership with First Nations, including the development of a Joint Working Group on Safe Drinking Water for First Nations.

## **D R A F T   R E S O L U T I O N   # 0 7 / 2 0 1 8**

### **AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC**

2. Direct the AFN to immediately appoint a Chief's Committee on First Nations Safe Drinking Water Legislation that will advise and support the development of a Terms of Reference for the creation of the Joint Working Group on Safe Drinking Water for First Nations.
3. Direct the AFN to produce a framework for safe drinking water legislation for First Nations, aligned with the phased approach recommended in the concept paper, for consideration at the AFN Annual General Assembly in July 2018.
4. Direct the AFN and the Chief's Committee on First Nations Safe Drinking Water Legislation to develop a draft framework for the creation of the First Nations Water Commission.
5. Direct the AFN to immediately develop and convey a funding proposal to the federal government that will ensure that the Chief's Committee on First Nations Safe Drinking Water Legislation and the Joint Working Group on Safe Drinking Water for First Nations have the resources required to participate in this joint legislative process in full partnership with the federal government.



# DRAFT RESOLUTION #08/2018

## AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC

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TITLE: Resources for Engagement on Distinct First Nations Accessibility Legislation

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SUBJECT: Accessibility; Disabilities

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MOVED BY: Chief Byron Louis, Okanagan Indian Band, BC

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SECONDED BY: Chief Randall Phillips, Oneida Nation of the Thames, ON

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### WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples states:
- i. Article 21 (1): Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
  - ii. Article 21 (2): States shall take the effective measure and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and person with disabilities.
- B. The Convention on the Rights of Persons with Disabilities states:
- i. Article 21 (b): Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions.
  - ii. Article 21 (e): Recognizing and promoting the use of sign languages.
  - iii. Article 27: States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia.
  - iv. Article 30 (4): Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.
- C. International treaties and human rights standards serve to support First Nations Persons with Disabilities and provide them with an unprecedented opportunity to develop and implement full and meaningful legislation.
- D. Recent Assembly of First Nations (AFN) resolutions have included: AFN Resolution 98/2017, *Distinct First Nations Accessibility Legislation*; AFN Resolution 105/2016, *Establish an Office of Disabilities Unit at the AFN and develop a Regional Advisory Disability Task Force*; AFN Resolution 55/2016, *First Nations Federal Accessibility Legislation*; AFN Resolution 75/2015, *Support the Economic, Social and*

## **D R A F T   R E S O L U T I O N   # 0 8 / 2 0 1 8**

### **AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC**

*Cultural, Spiritual, Civil and Political Rights of Indigenous Persons with Disabilities; and AFN Resolution 48/2014, Support for Persons with Disabilities.*

- E. AFN Resolution 55/2016 *First Nations Federal Accessibility Legislation* instructs AFN to work with Employment and Social Services Development Canada (ESDC) to develop a First Nations specific engagement process to parallel the Minister's broader consultation process with provinces and territories in creating federal accessibility legislation that is specific and distinct to First Nations' needs.
- F. Disability Rights in Canada are protected by the Canadian Charter of Rights and Freedoms and the Canadian Human Rights Act. Section 15 of the Canadian Charter of Rights and Freedoms clearly articulates that every individual in Canada – regardless of race, religion, nationality or ethnic origin, colour, sex, age or physical or mental disability – is to be considered equal. This means that governments must not discriminate based on any of these grounds in its laws or programs. Further, it allows for certain laws or programs aimed at improving the situation of disadvantaged individuals or groups.
- G. The Honorable Kirsty Duncan, Minister of Science and the Minister of Sport and Persons with Disabilities, is mandated by the Prime Minister to “lead an engagement process with provinces, territories, municipalities, and others that will lead to the passage of a *Canadians with Disabilities Act*” (now referred to as *Federal Accessibility Legislation*), which the federal government plans to table by early summer 2018.
- H. ESDC has confirmed some additional funding for fiscal year 2018-2019 to support further activities, however, more funding is required to establish a Regional Advisory Task Force on Disabilities (Task Force) to help build a national framework, regionalize funding for regional capacity building; develop a policy paper to advocate for culturally safe programs and services, and consider initiatives such as a centre of excellence.

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

1. Direct the Assembly of First Nations (AFN) to work with Employment and Social Services Development Canada (ESDC) towards legislation supporting First Nations Persons with Disabilities, including meaningful resources for regional capacity building.
2. Direct the AFN to secure appropriate resources from the federal government for the development of a First Nations Regional Advisory Disability Task Force, and to explore initiatives, such as a Disabilities Centre of Excellence, to support promising practices, evidence-based resources in meeting the unique needs of First Nations Persons with Disabilities, service users, and their families.
3. Direct the AFN to support American Sign Language (ASL) as part of the communications theme in this legislative work, and call on ESDC to provide resources to support First Nations sign languages and include ASL as part of its future conferences and/or assemblies.

# DRAFT RESOLUTION # 09 / 2018

## AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC

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**TITLE:** Federal Recognition of First Nations Jurisdiction over Recreational and Medicinal Cannabis

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**SUBJECT:** Bill C-45; Cannabis; Economic Development

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**MOVED BY:** Chief Glen Hudson, Peguis First Nation, MB

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**SECONDED BY:** Chief Delbert Wapass, Thunderchild First Nation, SK

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### WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
  - i. Article 21: Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the area of education, employment vocational training and retraining, housing, sanitation, health and social security.
- B. First Nations have inherent jurisdiction over economic development initiatives, both federally and provincially, and possess the authority to manage production, licensing and distribution of legalized cannabis.
- C. In April 2017, the federal government introduced Bill C-45, *An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts* that, if passed, starting in July 2018, would legalize and regulate recreational cannabis in Canada, and would create rules for producing, using and selling cannabis across Canada.
- D. As it currently stands, Bill C-45 makes no room for the inclusion of First Nations governments within the proposed Act.
- E. The federal and provincial governments must recognize and respect First Nations sovereignty and jurisdiction over their reserves and traditional territories.
- F. In December 2017, the federal government reached a deal with the provinces to divide the excise duty collected on the sale of cannabis, a 75-25 split in favour of the provinces, owing to the costs they will incur with legal cannabis.
- G. The federal government has committed to a new First Nations fiscal relationship based on First Nations fiscal powers to implement First Nations jurisdiction in areas such as cannabis regulation. However, the lack of First Nations inclusion in the cannabis tax framework is a missed opportunity for the federal government to demonstrate its commitment to a nation-to-nation relationship that incorporates First Nations governments into the federation.

**D R A F T   R E S O L U T I O N   # 0 9 / 2 0 1 8**

**AFN Special Chiefs Assembly, May 1-2, 2018, Gatineau, QC**

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

1. Direct the Assembly of First Nations to inform Canada that First Nations must be consulted by the federal and provincial governments to ensure their full involvement in the design of licensing, production, distribution, and sale of legalized cannabis.
2. Call upon Canada to amend Bill C-45 to recognize that First Nations jurisdiction supersedes provincial legislation and regulation as it pertains to cannabis licensing, production, distribution and sale of legalized cannabis.