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| TITLE: | Comprehensive Claims Policy Reform |
| SUBJECT: | Aboriginal Rights, Title and Treaties |
| MOVED BY: | Chief Wayne Christian, Kukpi7, Splatsin First Nation, BC |
| SECONDED BY: | Grand Chief Konrad H. Sioui, Huron Wendat Nation, Wendake, QC |
| DECISION: | Carried by Consensus |

WHEREAS:

A. Resolution No. 40/2009, adopted by consensus at the Special Chiefs Assembly on December 9, 2009, reaffirmed the strong priority that the AFN places on the protection and advancement of Aboriginal Title and Rights, and directed the National Chief to seek input from affected First Nations to establish a process to reform the Comprehensive Claims Policy (CCP).

B. Pursuant to Resolution No. 40/2009, on March 11-12, 2010, the AFN convened a meeting in Winnipeg, on First Nation-Crown Relations, which resulted amongst other things, in the establishment of an *ad hoc* working group on CCP reform and the ad hoc working group met in Calgary on June 8, 2010, to consider the CCP reform process.

C. The original and ongoing relationship between the Crown and First Nations, as confirmed in the *Royal Proclamation of 1763* and other longstanding Crown policies, is a nation-to-nation relationship, according to which the Crown recognised the land rights of First Nations. The Crown also undertook to protect the land rights of First Nations by making their lands inalienable to anyone but the Crown, and in doing so, the Crown imposed upon itself a fiduciary obligation to act in the best interests of First Nations. The *Royal Proclamation of 1763* established an historic treaty process for sharing and coexistence on First Nations lands based on First Nation free and informed collective consent.

D. The CCP is inconsistent with the *Royal Proclamation of 1763,* the historic treaty process and the nation-to-nation relationship. It is also contrary to existing international standards, including the United

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Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which the federal government committed to take steps to endorse in the March 3rd Speech from the Throne.

E. The federal government's method of addressing Aboriginal Title and Rights through the CCP is inconsistent with section 35 of *Constitution Act, 1982*, which recognizes and affirms existing Aboriginal and Treaty rights and the nation-to-nation relationship, as articulated by the Supreme Court of Canada in numerous decisions including *Sparrow*, *Sioui, Delgamuukw* and *Haida*.

F. The following reports, among others, have identified serious problems with the CCP:

- the Report of the Royal Commission on Aboriginal Peoples;
- the legal opinion prepared by Mark Stevenson and Albert Peeling, which was commissioned by the AFN and tabled with the federal government in February 2002;
- Reports of the Auditors General of Canada and BC; and
- the *Common Table Report* released by the BC Treaty Commission on August 1, 2008.

G. The inability of Canada to move beyond its CCP is preventing the just and fair resolution of First Nation Aboriginal Title and Rights issues across Canada. The failure to comprehensively resolve Aboriginal Title and Rights issues perpetuates economic, political and social uncertainty and unduly punishes First Nations who hold Aboriginal Title and Rights by keeping their members in poverty and denying them reasonable benefit from their traditional lands and resources.

H. Canada must work cooperatively with the First Nations to develop a fair and honest policy and process for addressing Aboriginal Title and Rights, one that is consistent with the *Royal Proclamation of 1763*, the historic treaty process, a nation-to-nation relationship, international standards, the *Constitution Act, 1982* and Canadian jurisprudence.

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

1. Endorse the establishment of a CCP Working Group with national representation composed of political and technical representatives from groups inside and outside current negotiations:
   - to work in consultation with the AFN Executive, and
   - to coordinate AFN efforts to overhaul the CCP.
2. Direct that the CCP be reformed to reflect the original treaty process, the nation-to-nation relationship, international and Canadian jurisprudence, and the evolving fiduciary relationship between the Crown and First Nations where the honour of the Crown must ensure that the Rights and Title of First Nations are protected.
3. Mandate the National Chief to take steps to engage the federal government in a joint policy review of the CCP, modelled on the successful aspects of the Specific Claims reform initiative; in particular, to obtain a commitment for federal engagement at a senior level with effective participation from key central agencies and federal departments.

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4. Recommend that the joint policy review include a review of the process issues, and the establishment of an independent tribunal to deal with disputes in negotiations, so as to ensure that Aboriginal Title and Rights issues are dealt with in an equitable and expeditious manner.
5. Direct the AFN to seek and dedicate adequate resources from the federal government to support the essential work of reforming the CCP.
6. Direct the CCP Working Group to develop a strategic plan with the objective of fundamental change to the federal CCP and process, which would build on previous work and focus on:
    - the development of realistic and fair policy and process alternatives to the CCP;
    - securing the engagement of the government of Canada in discussions on substantive reform to the CCP and process, consistent and in conjunction with steps envisioned to endorse and implement UNDRIP;
    - building understanding and support in the wider society, including the international community, through public education and political action, as well as advocating all federal political parties;
    - promoting, facilitating and coordinating effective participation by First Nations, tribal councils and PTOs, including First Nations that have been involved in negotiating resolution of their Aboriginal Title and Rights under the CCP, in efforts to bring about reform to the CCP and process; and
    - facilitating and enabling effective First Nation participation in the policy reform process.
7. Direct the National Chief and the CCP Working Group to report back to the next Assembly on the progress to reform the CCP and process.

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