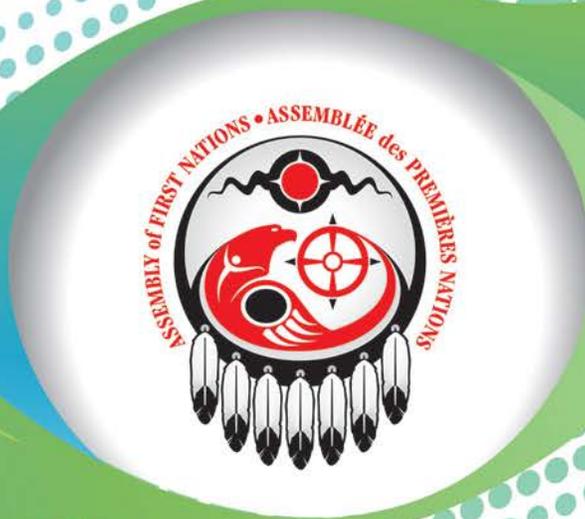


Closing the Gap: Seeking Reconciliation, Advancing First Nations Well Being and Human Rights



Submission to Canada's Premiers
July 15, 2015

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The Assembly of First Nations (AFN) welcomes the opportunity to meet with Premiers of the Provinces and Territories at your annual meeting. This is the 13th time we have met in this way and we recognize the commitment of Premiers to meet and discuss our common priorities – including First Nations’ education, economic participation, ending violence, housing, disaster mitigation, and children in care.

However, we all know that this table needs to demonstrate tangible change in all of these areas. We will identify some tangible action items in this submission, and these include broader inclusion of First Nations in ministerial meetings that lead to, and inform, this meeting. We cannot be and should not be restricted to meeting with Aboriginal Affairs Ministers.

A common thread running through all of these pressing subject matters is the need for action that will meet the fundamental human rights of Indigenous peoples – and which include our inherent rights, title and jurisdiction. Our collective rights as Indigenous peoples **are** human rights and are intimately connected to the enjoyment of fundamental human rights by First Nations people.

As noted by the UN High Commissioner for Human Rights, “The rights-based approach must be the starting point for all our endeavours ... in both the public and private sectors. ... [T]his is an approach that involves human rights strategies of governance, namely, that we take the basic human rights as the starting point for governmental programmes and the programmes of national, regional and international institutions.” (Commission on Human Rights, *Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights*, UN Doc. E/CN.4/2003/14 (26 February 2003), para. 53.)

The Truth and Reconciliation Commission has identified this linkage and has put forward implementation of the *UN Declaration on the Rights of Indigenous Peoples* (the UN Declaration) as a first and guiding principle for reconciliation across the many topics that they addressed and that are on our agenda today – education, child welfare, Indigenous languages, violence against Indigenous women and girls and the socio-economic gap as a whole.

We point out that the UN Declaration reflects existing international human rights law. It does not create new rights. This has implications for provinces as well as the federal government because the Charter of the United Nations requires all States, including all the constituent elements of a federal State like Canada, to respect and promote human rights. It is a duty. Neither federalism nor fear can be used as an excuse for any government in



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Canada to not take action to fulfill our fundamental human rights. Federal and provincial laws must uphold the minimum standards of the Declaration and also must be interpreted in a manner consistent with it. We recognize the efforts of Alberta Premier Notley in committing to implement the Declaration and pledge our support in achieving this goal.

It is also clear in reviewing the policy challenges examined by the Aboriginal Affairs Working Group and reported out to us here, that the individual human rights of First Nations children with respect to education, child welfare and the right to life and personal security of Indigenous women and children are daily infringed upon by the actions and inactions of governments. All governments including First Nations governments bear responsibility for addressing this collective failure.

Another common thread running across all of the topics on our agenda today is the persistent and unacceptable gap in outcomes on all social, economic, political and human rights measures. Federal statistics show the Gap in well-being between First Nations and Canada has not changed since 1981. When measured against Canada's standing on the UN Human Development Index, the gap in socio-economic conditions is also starkly evident. This is the result of a relationship that has not been fulfilled; of Crown partners that have neglected the Treaties and ignored or subverted Indigenous rights.

The gap is well known and internationally acknowledged. We remind Premiers that the United Nations Special Rapporteur on the Rights of Indigenous Peoples noted in the report on his visit to Canada in 2013:

80. But despite positive steps, daunting challenges remain. Canada faces a continuing crisis when it comes to the situation of indigenous peoples of the country. The well-being gap between aboriginal and non-aboriginal people in Canada has not narrowed over the last several years, treaty and aboriginal claims remain persistently unresolved, indigenous women and girls remain vulnerable to abuse, and overall there appear to be high levels of distrust among indigenous peoples towards government at both the federal and provincial levels.

81. The numerous initiatives that have been taken at the federal and provincial/territorial levels to address the problems faced by indigenous peoples have been insufficient. Aboriginal peoples' concerns and well-being merit higher priority at all levels and within all branches of government, and across all departments. Concerted measures, based on mutual understanding and real partnership with aboriginal peoples, through their own representative institutions, are vital to establishing long-term solutions. To that end, it is necessary for Canada to



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arrive at a common understanding with aboriginal peoples of objectives and goals that are based on full respect for their constitutional, treaty and internationally-recognized rights.

82. The United Nations Declaration on the Rights of Indigenous Peoples, which has been endorsed by Canada, provides a common framework within which the issues faced by indigenous peoples in the country can be addressed.

Closing the Gap and fulfilling human rights will be achieved by restoring the nation-to-nation relationship; fiscal fairness, commitment to the lands, waters and environmental protection, protecting First Nations human rights and implementing reconciliation.

Nation-to-Nation Relationship

Proposed Commitments:

- All Provinces and Territories commit to establishing bilateral processes with First Nations to monitor and ensure the Crown's consultation, accommodation and consent obligations are met; and support the inclusion of First Nations in discussions with the federal Crown to identify the mechanisms required to ensure Crown duties to consult, accommodate or seek consent are fully met.
- All Provinces and Territories commit to a discussion table at the AAWG to discuss perspectives and status of implementation of the UN Declaration on the Rights of Indigenous Peoples.

Fiscal Fairness – Addressing Chronic Underfunding of Essential Services

We seek your support and commitment to work with us on a new fiscal arrangement between First Nations and the Government of Canada. Two essential things need to happen: 1) the federal government lifting its 2% cap (the short-term measure that has been in place since 1996) and 2) new one-time investments to be made such that First Nations get to an equitable starting place. At the same time, moving toward a new fiscal relationship with all governments needs to be undertaken in a concerted manner, as all governments have constitutional obligations to ensure equality of access and quality of service to First Nations comparable to what Canadians enjoy.



Protecting First Nations human rights

Proposed Commitments:

- All Provinces and Territories commit to adopting equality of service as a standard for First Nations and commit to increased and focused efforts in prevention and addressing root causes, systems development and support for families to reduce the stark over-representation of First Nations children in care and ensure that First Nations are directly involved in all work forward.
- All Provinces and Territories commit to implementing Jordan's Principle.
- All Provinces and Territories commit to reconciling the jurisdictional quagmire where child welfare service administration exists; a starting point is co-creating data information and case management systems.
- All Provinces and Territories commit to being fully informed of the upcoming Canadian Human Rights Tribunal decision and its implications for child welfare service delivery to all First Nations families.
- All governments commit to take direct action to address the socio-economic roots of the unacceptable rates of violence experienced by Indigenous women and girls. Movement towards a socio-economic action plan as directed by Premiers and National Leaders in 2014 is a first step, but this must be supported by tangible investments in all PT budgets, to support shelters, child care, health and wellness for children, women and men, addictions programming and housing, among others.
- Premiers commit their continued support for Indigenous peoples and their representatives organizations to be engaged in the development of tangible actions to prevent and end violence – including a national prevention and awareness campaign as committed to in the 2015 National Roundtable and to continue calls for a National Inquiry.
- Province and Territories commit to ensure that police within their jurisdictions place priority on the prevention of violence against Indigenous women and girls and be held to the highest standards of investigation and due diligence where women have gone missing or are murdered, and to develop and adhere to clear communication plans with families and First Nation leadership pertaining to all investigations.



Commitment to the lands, waters and environmental protection

Indigenous knowledge keepers have deep connection with the natural environment that has sustained our Peoples from time immemorial. First Nations have established relationships, protocols and clear responsibilities to the lands, waters and animals in their traditional territories. Canadian common law reflects core principles that establish consultation, accommodation and consent obligations of the Crown in certain circumstances including decision-making affecting aboriginal title lands. The *Tsilhqot'in Nation case (William v. Canada, 2014)* clearly recognized and affirmed aboriginal title.

Proposed Commitments:

- All Premiers commit to establishing a dialogue with First Nations within each province and territory to articulate the core principles of a respectful relationship with First Nations based on Treaties and Indigenous rights and jurisdiction over the land, in order to facilitate resources-focused discussions.
- Premiers commit to ensure meaningful First Nation participation and input at inter-jurisdictional sector tables such as the Council of Energy Ministers, the Canadian Council of Forest Ministers, and the Energy and Mines Ministers Conference.
- Premiers commit to convening a Ministers meeting on First Nation resource development matters, revenue options, and wealth sharing based on the Treaty relationship and respect of inherent rights, title and jurisdiction.
- Each Province and Territory commits to making issuance of all resource development permits and licenses contingent on companies developing meaningful strategies to ensure First Nations inclusion and benefits: these could include strategies for First Nations employment and procurement, and strategies to recruit First Nations people as board members.
- The AFN will be convening an Indigenous Energy and Resources Development Forum in 2016. All Premiers are invited and encouraged to attend. We welcome your participation in this critical national conversation.

Implementing Reconciliation

- All Provinces and Territories commit to working with First Nations to develop and deliver curricula that provide an accurate reflection of our Nations, inherent Aboriginal and Treaty rights, and the colonial legacy in Canada, including imposition of the Indian Act and Indian Residential Schools system.



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- All Provinces and Territories commit to designating Indigenous languages as official languages and to publicly recognize the importance of Indigenous languages. While they are valuable in and of themselves, research shows that those who are fluent in their respective indigenous language from a young age are not only more successful in school; they are more successful in life. Government recognition of Indigenous languages increases the likelihood of their viability.

Closing the Gap means making a true commitment to addressing long standing inequities between our peoples and taking substantive action now. We believe that all Governments must commit to working together with First Nations to Close the Gap.

The work of the TRC gives Canadians an opportunity to understand their role in our shared history and our shared future, and provides governments an opportunity to work with us as partners in reconciliation. The federal government must be urged to join us in immediate action to address the legacy, and to explore the adoption of mechanisms to re-store the relationship.

Meeting with Canada's Premiers and the work undertaken through the Aboriginal Affairs Working Group provides a valuable platform for dialogue and sharing, but discussions alone will not Close the Gap or move to reconciliation.

The AFN reiterates the absolute necessity of moving beyond dialogue. We must develop specific targets, and hold ourselves accountable to working with our partners to achieve these targets. To better gauge our work, and to benchmark our targets, the AFN asks Provinces and Territories to join us to assess the disparities in funding levels for essential services to First Nations, and to quantify the real costs borne by our communities and borne by Provinces and Territories. We will be seeking formal response and commitment from each PT to the recommendations contained in this paper to advance tangible action for First Nations.

First Nations are committed to action and change. It is time to restore our original relationship of mutual respect, peaceful co-existence and sharing. It is time for reconciliation.

