

AFN Concept Paper:

Section 35 and Constitutional Matters

Prepared for the First Nations-First Ministers Meeting

For the consideration of First Nation Chiefs, without prejudice to any rights, title and jurisdiction of any First Nation

At a Glance

The First Nations-First Ministers Meeting (FN-FMM) discussions must be grounded in the affirmation and recognition of existing First Nations Treaty and inherent rights and jurisdiction, recognized and affirmed by section 35 of the *Constitution Act*, 1982. The Crown must work with First Nations on the recognition, implementation, and affirmation of section 35 rights consistent with domestic and international legal obligations. Informed by AFN Resolutions 09/2026, *First Nations Priorities for a First Nation-First Ministers Meeting*, and 67/2025, *Advancing the Recognition, Implementation, and Enforcement of Pre-1975 Treaties*, (Appendix 'A' – Resolutions) it is proposed that First Ministers:

- 1. Establish a Crown – First Nations Forum on Rights and Treaty Implementation.**

Such a forum is proposed between First Nations and the Crown to discuss novel mechanisms that may address the constitutional implementation of First Nations rights and jurisdiction, and Treaties.

1. Position Statement

Section 35 of the *Constitution Act*, 1982 recognizes and affirms Aboriginal and Treaty rights, but this recognition should not be framed as acceptance of extinguishment or of judicial tests that permit Crown infringements to be justified. Decisions including Sparrow and Badger have rejected or strictly constrained Crown assertions that rights can be unilaterally extinguished. The interaction between section 35 and the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) is continuing to develop in the courts, with *Kebaowek First Nation v. Canadian Nuclear Laboratories* illustrating how the Declaration may inform the scope of consultation, accommodation and consent obligations. Parliament's unqualified statutory commitment to implementation of the Declaration further reinforces the application of the honour of the Crown.

Section 25 of the *Canadian Charter of Rights and Freedoms* serves as an interpretive shield, preventing certain Charter rights from being construed so as to abrogate or derogate from Aboriginal, Treaty and other rights or freedoms pertaining to the

Aboriginal peoples of Canada.¹ Together, these provisions are foundational to the modern constitutional relationship between First Nations and the Crown — federal, provincial, and territorial alike.

Section 35 recognizes and affirms the Aboriginal and Treaty rights of all First Nations without distinction. Yet, the federal policy architecture does not fully reflect this universality. Provincial and territorial governments are also subject to obligations, yet their policy positions vary widely and are not addressed in federal frameworks.

While section 35 of the *Constitution Act, 1982* recognizes and affirms the existing Aboriginal and Treaty rights of all First Nations,² section 35 does not prescribe a single institutional model for the *implementation* of Aboriginal and Treaty rights.

The *1995 Inherent Right Policy* and the *2015 Cabinet Directive on the Federal Approach to Modern Treaty Implementation*, together with the *2017 Principles Respecting the Government of Canada's Relationship with Indigenous Peoples* and the *2019 Attorney General Directive on Civil Litigation Involving Indigenous Peoples*, have produced an implementation framework for some Crown obligations while leaving others without any comparable framework. The result remains a gap between the constitutional standing of Treaties and the Crown's implementation of them.

For example, the 2017 Principles expressly support recognition and implementation of self-determination, Crown honour, Indigenous jurisdiction, full and timely Treaty implementation, fiscal capacity, evolving processes, and action on the “unfulfilled constitutional promise” of section 35. The 2019 Litigation Directive supports resolution, settlement, Crown honour, and reconciliation. Canada should not accept litigation as the default implementation mechanism. First Nations rights are not sector nor program specific. Section 35 must ground all discussions at the FN-FMM. Every discussion, whether it involves economic development, health, education, lands, resources or policing, engages First Nations' inherent jurisdiction and the Crown – First Nation constitutional relationship. It therefore must be recognized that addressing Section 35 requires collaborative discussion including federal crown and provincial or territorial crown and First Nations to address gaps and overlaps in jurisdiction.

¹ *Dickson v Vuntut Gwitchin First Nation*, 2024 SCC 10. The Court confirmed that section 25 can shield collective Indigenous rights from incompatible Charter claims, but the analysis is contextual — section 25 is a protective interpretive provision, not an independent source of Aboriginal or Treaty rights.

² The constitutional treatment of the extinguishment of a right prior to 1982 is addressed in detail in the Legal and Rights Foundation section below.

2. Summary

This position paper argues that the Crown's (federal, provincial, and territorial) implementation of section 35 Aboriginal and Treaty rights is incomplete.

Supreme Court jurisprudence requires the Crown to act honourably, to interpret Treaties liberally and purposively, and, where the honour of the Crown engages a solemn constitutional or Treaty obligation, to pursue its fulfilment diligently. Yet, while Canada has developed increasingly robust whole-of-government machinery for modern Treaties and defined claims, the implementation of many historic Treaty and other section 35 rights continue to depend on fragmented programs, discretionary mandates, and litigation. The result is a structural gap between constitutional standing and lived policy support.

The paper grounds this argument in the Royal Proclamation of 1763 and subsequent domestic jurisprudence defining section 35 to demonstrate that Treaty and inherent rights arise from nation-to-nation agreements between Treaty partners, demand purposive and liberal interpretation, and engage the honour of the Crown. It contends that litigation is a costly, piecemeal route. The courts have repeatedly encouraged negotiation and reconciliation as the superior institutional path to implementing section 35 rights, though they have not made a permanent national forum for such negotiation a universal constitutional requirement. Negotiation should be understood as the superior institutional response, grounded in values of constitutional stability, reconciliation, and the renewal of the Treaty relationship itself.

Grounded in the affirmation and recognition of First Nations Treaty, inherent, and section 35 rights and jurisdiction, and in Canada's own statutory and policy commitments, the paper recommends establishing a Crown – First Nations Forum on Rights and Treaty Implementation, with terms of reference set by First Nations. Consistent with AFN Resolution 67/2025, *Advancing the Recognition, Implementation, and Enforcement of Pre-1975 Treaties*, participation would be opt-in and the forum would not negotiate or implement inherent treaty rights on behalf of rights holders. First Nations advance the position that durable, rights-holder-directed, and Treaty-responsive implementation mechanisms are required to close this implementation gap. Such mechanism must preserve direct nation-to-nation and Treaty relationships, respect distinctions among rights-holders, engage each Crown government whose authority or conduct is implicated, and provide measurable accountability, and effective recourse.

3. Background and Context

Section 35 Rights Architecture

The original draft of the *Constitution Act, 1982*, failed to reference the inherent and sovereign rights of First Nations. The entrenchment of section 35 within the supreme law of Canada resulted from the collective action of First Nations Chiefs and citizens to recognize and affirm the existing, inherent, and sovereign rights of First Nations.³

For both First Nations and the Crown, the full scope of section 35 remains subject to litigation and negotiation. Section 35 recognizes and affirms the Aboriginal and Treaty rights flowing from treaties, promises, and other lawful agreements made nation-to-nation with the Crown. These rights must be interpreted flexibly so as to permit their evolution over time.⁴ Further, while section 35 does not prescribe one institutional model for the implementation of those rights, Supreme Court jurisprudence requires the Crown to act honourably in all dealings with First Nations and, where a solemn constitutional or Treaty obligation is engaged, to pursue its fulfilment diligently.⁵ This obligation binds federal, provincial, and territorial governments alike.

Federal, provincial, and territorial policy must reflect these constitutional imperatives. Despite the clear direction provided by jurisprudence and federal commitments, the current policy architecture does not extend comparable mechanisms for the recognition, implementation, and enforcement of every Treaty relationship. Canada has built increasingly robust implementation mechanisms for modern Treaties — including the 2023 *Collaborative Modern Treaty Implementation Policy*, leaders' forums, whole-of-government direction, and the proposed independent commissioner under Bill C-10. These actions demonstrate that implementation institutions are both possible and necessary, and that Canada has pursued such implementation reform for modern agreements. Meanwhile, historic Treaty relationships lack comparable whole-of-government support and implementation mechanisms. There is a strong institutional

³ This advocacy can be traced to the Constitution Express, delegations to the United Kingdom, the United Nations, and the 1981 National Indian Brotherhood's *A Declaration of the First Nations*, November 1981, <https://primarydocuments.ca/joint-council-of-the-national-indian-brotherhood-a-declaration-of-the-first-nations-18-november-1981/>.

⁴ *R v Sparrow* [1990] 1 SCR 1075.

⁵ *Ontario (Attorney General) v Restoule*, 2024 SCC 27, at paras 196-202, 219-226, 240-258. The honour of the Crown required diligent implementation of the Robinson Treaties' augmentation promise; Crown discretion was constrained and reviewable; prolonged failure was dishonourable and required effective relief and honourable negotiation. *Restoule* is the strongest modern authority for diligent Treaty implementation, though it addresses Treaty obligations specifically and does not establish that every right requires identical national machinery. For the broader proposition that the Crown must act diligently to fulfil solemn constitutional obligations to Indigenous peoples, see *Manitoba Metis Federation Inc v Canada (AG)*, 2013 SCC 14, at paras 66, 73-79, where the Court held that the honour of the Crown required a broad, purposive approach and diligent pursuit of fulfilment of the constitutional promise at issue.

case for equitable access to effective, distinctions-based, and Treaty-responsive implementation machinery, developed in direct collaboration with First Nation rights-holders, consistent with domestic and international legal obligations.

4. Legal and Rights Foundation

The Royal Proclamation of 1763

The Royal Proclamation of 1763 (the Royal Proclamation) is a foundational constitutional instrument and an important source of Crown-Indigenous legal relations. While its territorial reach and legal effect are specific, and it is not the source or a universal recognition instrument for every inherent or Treaty right, the Royal Proclamation remains a significant instrument in the constitutional relationship. Treaties, as recognized and affirmed by section 35, are *sui generis* solemn agreements which, through the inherent powers of both parties, create enduring, multi-generational compacts between Treaty partners.

Section 35

Section 35 represents the domestic constitutional recognition and affirmation of existing First Nations treaty rights, inherent rights, and jurisdiction.

As recognized and affirmed by section 35, First Nations Aboriginal and Treaty rights require both purposive and liberal interpretations and the honour of the Crown in all dealings with First Nations. In *Sparrow* [1990], the Court held that the nature of Aboriginal and Treaty rights are to be interpreted in a purposive way and that a “generous, liberal interpretation of the words in the constitutional provision is demanded.”⁶

The courts have held that the sovereign relationship between First Nations and the Crown, flowing from treaties and other lawful agreements, necessitates that: (i) the honour of the Crown is at stake, (ii) that the Crown intends to fulfil its solemn promises⁷, and (iii) when in doubt, the application of Treaties and other documents must be resolved in favour of First Nations.⁸ The honour of the Crown flows from the inherent

⁶ *Sparrow*, supra note 2, at 1106. See also *R v Marshall*, [1999] 3 SCR 456, at paras 14, 78. Treaty interpretation seeks the parties' common intention and considers historical and oral context, not only the written text. This supports Treaty-specific design and the rejection of one-size-fits-all administration.

⁷ *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69, at paras 51, 54-55. The honour of the Crown governs Treaty performance; contemplated Crown conduct affecting Treaty rights may require consultation and accommodation. This moves the analysis from interpretation to ongoing Crown performance obligations.

⁸ *R v Badger* [1996] 1 SCR 771 at para 41.

expression of power of the Treaties, the Crown's special relationship with First Nations, and extends to the fair dealings between the Crown and First Nations.⁹

The discussions before the FN-FMM are grounded in the legal and rights architecture, flowing from the enduring nation-to-nation relationship from treaties and other agreements, recognized and affirmed by section 35 of the Constitution, including the honour of the Crown. Recent jurisprudence has also been supportive of legislative recognition and space for Indigenous jurisdiction.¹⁰

Importantly, however, while the honour of the Crown remains constitutionally significant, the courts have held that the duty to consult does not extend to the parliamentary law-making process. As such, while enacted laws remain reviewable under s. 35,¹¹ the manner in which Parliament or a provincial legislature came to enact that law is not. This reinforces the case for negotiated implementation machinery that operates before and beyond litigation or legislative processes.¹²

The strongest modern expression of these principles is *Ontario (Attorney General) v Restoule*, 2024 SCC 27. In *Restoule*, the Supreme Court of Canada considered the Robinson-Huron and Robinson-Superior Treaties of 1850 and the Crown's obligation to augment the annuities promised to the signatory First Nations. The Court held that the honour of the Crown is a constitutional principle with concrete consequences for the implementation of solemn Treaty promises: where the principle gives rise to a duty of diligent implementation, the Crown must take a broad and purposive approach to the promise and pursue its fulfilment diligently. Crown discretion in performing a Treaty obligation is not unfettered; it must be exercised honourably and is subject to judicial review. The Court found that the Crown's prolonged failure — spanning generations —

⁹ *Manitoba Metis Federation Inc v Canada (AG)*, 2013 SCC 14, at paras 66, 73-79. For solemn constitutional obligations to Indigenous peoples, the Crown must take a broad, purposive approach and act diligently to fulfil the promise.

¹⁰ *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44, at paras 73-77, 89-92 (Aboriginal title includes collective decision-making and economic benefits); *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 (Parliament may create a cooperative statutory framework that affirms Indigenous jurisdiction). See also *Chief Heidi Cook et al. v. The Government of Manitoba et al.*, 2026 MBKB 65, at paras 461, 677, 688, in which the Manitoba Court of King's Bench recognized a collective Aboriginal right of self-government in relation to child and family services, applying a framework that asks whether the claimed right goes to the cultural security, continuity, and survival of the Indigenous peoples asserting it.

¹¹ *Mikisew Cree First Nation v Canada (Governor General in Council)*, 2018 SCC 40. The duty to consult does not apply to the parliamentary law-making process as such, although the honour of the Crown remains constitutionally significant and enacted laws remain reviewable. This prevents overclaiming consultation as a complete route to legislative implementation and supports the case for negotiated machinery before and beyond litigation.

¹² *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73, at paras 16-18, 25, 32, 42. The honour of the Crown is a constitutional principle directed to reconciliation; it can require consultation and accommodation before final proof of rights. Good faith is required, but there is no duty to agree.

to implement the augmentation promise was dishonourable and attracted an effective remedy, including time-bound negotiation under judicial supervision.

Restoule does not, however, create a universal constitutional right to an identical federal implementation framework. It does not hold that every section 35 right automatically attracts the same implementation duty or remedy, and it does not order a permanent national Crown–First Nations institution. What it does establish is the doctrinal bridge from solemn Treaty promise to diligent Crown performance.

Section 35(3) provides, for greater certainty, that the Treaty rights referred to in section 35(1) include rights that now exist by way of land claims agreements or may be so acquired. It confirms the constitutional status of modern Treaty rights alongside historic Treaty rights. Modern Treaties are constitutional agreements whose implementation remains informed by the honour of the Crown; detailed treaty processes matter and continuing implementation duties attach to agreed procedures.¹³

Extinguishment

The question of extinguishment is central to any discussion of section 35 implementation. As previously stated, section 35 recognizes and affirms Treaty and Aboriginal rights that existed at the time of the repatriation of the Canadian Constitution in 1982.

Three distinct periods and concepts must be distinguished as a result of this fact.

First, the courts have recognized that the Crown could extinguish rights in the time period prior to 1982 through the common-law doctrine of extinguishment. However, to do so, the Crown is required to demonstrate a clear and plain intention to extinguish an Aboriginal or Treaty right. The standard is demanding: ambiguity was resolved in favour of the continued existence of the right, and extinguishment would not be lightly implied.

Second, section 35 of the *Constitution Act*, 1982 constitutionally recognized and affirmed those Aboriginal and Treaty rights that were existing — that is, unextinguished — at the time the *Constitution Act*, 1982 came into force. The effect of constitutional entrenchment was to place those rights beyond the reach of unilateral Crown action. After 1982, the Crown can no longer extinguish Aboriginal or Treaty rights by ordinary legislation or executive act.

¹³ *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53, at paras 10, 42, 54. Modern Treaties are constitutional agreements whose implementation remains informed by the honour of the Crown; detailed treaty processes matter. This authority shows continuing implementation duties and the value of agreed procedures, supporting the comparative argument between modern and historic Treaty machinery.

Third, after 1982, government action that affects Aboriginal or Treaty rights is assessed through the framework of infringement and justification established in *Sparrow*. Where the Crown's conduct constitutes a *prima facie* infringement of a section 35 right, the Crown bears the burden of justifying that infringement by demonstrating a compelling and substantial legislative objective and consistency with the honour of the Crown and its fiduciary obligations. Consensual Treaty arrangements may define, modify, or give effect to rights within constitutional limits, but any such arrangement must be the product of informed consent by the rights-holder, not unilateral Crown action.

This paper does not suggest that every historical right has already been judicially proven or that section 35 resolved every question of scope and content. What section 35 did resolve is that the rights it recognizes and affirms are constitutional in character and cannot be diminished or eliminated without constitutional justification. The proposed Forum must operate within this constitutional framework: its processes, agreements, and outcomes must not be used — directly or indirectly — to extinguish, surrender, or diminish rights, title, or jurisdiction.

United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration)

First Nations inherent rights and jurisdiction are further recognized and affirmed by international instruments, including the UN Declaration, which has been implemented into Canadian domestic law by Parliament.

In 2021, the Parliament of Canada adopted the *United Nations Declaration on the Rights of Indigenous Peoples Act* (the Act). Section 5 of the Act requires Canada, in consultation and cooperation with Indigenous peoples, to take all measures necessary to ensure that the laws of Canada are consistent with the UN Declaration. Sections 6 and 7 require the development and implementation of an action plan with monitoring, oversight, recourse and remedy mechanisms, accountability measures, and annual reporting to Parliament.¹⁴

The UN Declaration and the Act, as legal instruments respecting the inherent rights and jurisdiction of First Nations, complement section 35's recognition and affirmation of existing Aboriginal and Treaty rights of First Nations. UN Declaration Article 37 is of particular relevance to the international recognition of First Nations treaties and other lawful agreements with the Crown:

Article 37¹⁵

(1) Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements

¹⁴ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c14.

¹⁵ UN Declaration, Art 37 and UN Declaration Act, annex.

- concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
- (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.

5. The Issue

The fora and policy architecture currently available to First Nations cannot deliver durable, enduring recognition and implementation of section 35 Aboriginal and Treaty rights. Litigation imposes extraordinary economic and moral costs on rights-holders to prove rights that section 35 already affirms while resolving one claim at a time. Further, legislative recognition remains reversible via future legislative action or a change in political priorities.

The disparity is sharpened by Canada's own developments: the 2023 Collaborative Modern Treaty Implementation Policy provides principles, an Intergovernmental Leaders Forum, an Intergovernmental Policy Circle, whole-of-government direction, and a commitment to independent oversight for modern Treaty relationships. Bill C-10, the *Commissioner for Modern Treaty Implementation Act*, would establish an independent commissioner to review and audit federal institutions' modern-Treaty implementation and report to Parliament.

Together, these instruments demonstrate that Canada accepts the need for structured implementation mechanisms — yet their scope excludes the majority of historic Treaty and other section 35 relationships. The courts have repeatedly encouraged negotiation and reconciliation as the path to realizing section 35 rights, and the renewal of the Treaty relationship itself.¹⁶

Furthermore, this issue is not only one that involves the federal government. The provincial and territorial governments' role in the implementation of section 35 rights is essential. Section 35 constrains both federal and provincial governments within their constitutional spheres. Many lands, resources, services, and regulatory matters implicated by Treaty and inherent rights fall within provincial and territorial jurisdiction¹⁷ and cannot be implemented by Canada alone.

The Natural Resources Transfer Agreement issues across the Prairie provinces are a case in point. A forum that excludes provincial and territorial participation where their

¹⁶ Delgamuukw v. British Columbia, [1997] 3 SCR 1010 at para 186 and Restoule, supra note 3.

¹⁷ Grassy Narrows First Nation v Ontario (Natural Resources), 2014 SCC 48, at paras 31-36, 50-53. A province exercising Crown authority in relation to Treaty lands must respect Treaty limits and the honour of the Crown.

authority, conduct, assets, laws, services, or Treaty responsibilities are engaged will be unable to deliver complete implementation. Provincial and territorial participation should be structured around objective triggers linked to the subject matter, rather than through a generic standing invitation to every government.

6. Strategic Considerations

The enduring recognition, affirmation, and implementation of section 35 recognized and affirmed Aboriginal and Treaty rights will likely come through negotiated, jointly governed processes.

The FN-FMM is the opportunity to establish an enduring First Nations – Crown Forum on Treaty Implementation to advance discussions on the equal implementation of rights recognized and affirmed by section 35 with capacity to facilitate coordination among participating First Nations rights-holders on an opt-in basis.

The First Nations – Crown Forum on Treaty Implementation should be composed of representatives from both political governance and technical support levels. The recommended institutional model is a permanent federal-First Nations core, coupled with mandatory and structured provincial and territorial participation whenever the subject engages their jurisdiction, conduct, assets, regulatory powers, or Treaty obligations. Provincial and territorial representatives should ***not*** hold a standing veto over federal implementation or over a Nation's bilateral Treaty relationship; rather, their participation should be triggered by objective criteria linked to the subject matter.

Political representation for First Nations requires rights-holder recognition and must be determined by rights-holders. The technical support for the governance process would ensure the political-level forum is provided with the appropriate policy, legal, and preparatory work.

Importantly, the First Nations – Crown Forum on Treaty Implementation and any associated technical processes shall not be interpreted as replacing, limiting, or diminishing the direct nation-to-nation relationship between the Crown and First Nations and Treaty Nations, or Canada's constitutional obligation arising from Treaties, section 35, and the honour of the Crown. **It may be that issues particular to specific Treaties require dedicated forums flowing from the national process.** At the same time, it will be incumbent upon the parties to ensure equal and fair representation of all Treaty nations. Such a representation requirement shall be determined by the First Nations.

7. Strategic Policy Recommendations

1. Establish a Crown – First Nations Forum on Rights and Treaty Implementation

Such a forum is proposed between First Nations and the Crown to discuss novel mechanisms that may address the constitutional implementation of Treaties. The Crown – First Nations Forum shall advance constitutional discussions that support the recognition, affirmation, and implementation of First Nations inherent and Treaty rights, and jurisdiction. The broad parameters, including federal, provincial, and territorial commitments to participate in this forum should be an outcome of the FN-FMM.

First Nations shall determine the terms of reference and other matters for discussion at this forum. The Forum shall be established within six months of the FN-FMM under jointly approved founding terms that cannot be amended without the consent of all parties.. It should be composed of technical working groups that carry out work on a continuing basis between FN-FMMs. The Forum should meet at least once annually between Chiefs and the First Ministers to receive and direct that work. The Forum should be supported with stable, multi-year funding and capacity to enable First Nations direct participation, including in associated technical tables as may be determined by the political leadership.

The following institutional elements are essential:

- (a) Federal ministers, central agencies, and departments must participate, produce implementation plans, identify legal and fiscal barriers, and respond to recommendations in writing within fixed periods.
- (b) An independent implementation and accountability office shall be created or expanded, with access to relevant departmental information, performance-audit authority, and public reporting, coordinated with the proposed Commissioner for Modern Treaty Implementation under Bill C-10 while addressing historic Treaty and other section 35 gaps.
- (c) A dispute-resolution protocol shall be adopted with mediation, expert determination, consensual arbitration, and court or tribunal recourse, together with limitation-period standstills and interim-protection rules.
- (d) Participation, proposals, funding, and interim arrangements shall not define, surrender, extinguish, modify, or prejudice rights, title, jurisdiction, or litigation positions unless a rights-holder expressly agrees.
- (e) Court access shall be preserved: no mandatory exhaustion before urgent relief, no ouster of superior court jurisdiction, and judicial review and enforcement shall remain available.

The Forum should deliver a first national gap assessment and action plan within twelve months, inclusive of division of powers between federal, provincial, and territorial issues, jointly agreed upon by the parties. Annual public progress reports, formal government responses, and a political review at each FN-FMM shall be required.

The Forum will not abrogate or derogate from nation-to-Crown and Treaty-based governance and implementation processes, but rather exist as a national mechanism for dialogue and coordination on the recognition, affirmation, and implementation of section 35 Treaty rights. The Forum shall create objective triggers for provincial and territorial participation where their authority, conduct, assets, laws, services, or Treaty responsibilities are engaged, and shall establish parallel regional or Treaty-specific tables where needed.

Consideration should also be given to establishing a Treaty Tribunal as an adjunct to the Forum. Courts are institutionally suited to authoritative declarations, legality review, injunctions and enforceable remedies, but are poorly suited to designing multi-year budgets, coordinating departments, managing evolving Treaty relationships and producing Nation-specific implementation plans. A Treaty Tribunal could serve as a specialised body capable of resolving implementation disputes, auditing Crown performance and providing binding determinations where the Forum's political processes reach an impasse, while preserving superior court jurisdiction for matters of constitutional interpretation and urgent relief.

8. Conclusion

The FN-FMM will be grounded in the affirmation and recognition of First Nations Treaty and inherent rights and jurisdiction, recognized and affirmed by section 35. The FN-FMM is the historic opportunity for First Nations and the Crown to move beyond incremental measures to the recognition of First Nations as partners in implementing and affirming rights. Supreme Court jurisprudence requires the Crown to act honourably and, where solemn Treaty obligations are engaged, to pursue their fulfilment diligently. Canada's own statutory and policy commitments call for recognition-based relationships, full and timely Treaty implementation, effective mechanisms, and accountability. Against this legal and policy setting, the absence of durable mechanisms for historic Treaty and other section 35 relationships is a serious and demonstrable implementation gap that this Forum is designed to address. The constitutional obligations recognized and affirmed by section 35 give rise to the obligation for an enduring process with measurable outcomes that carry on from this meeting. This meeting is a starting point, not an endpoint, as the work must continue between First Ministers Meeting.

APPENDIX 'A' - Resolutions

Assembly of First Nations

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ANNUAL GENERAL ASSEMBLY
July 14-15-16, 2026, Ottawa, ON

Resolution no. 09/2026

TITLE: First Nations' Priorities for a First Nations–First Ministers' Meeting

SUBJECT: Rights

MOVED BY: Ogimaa Tim Ominika, Wikwemikong Unceded First Nation, ON

SECONDED BY: Chief Leroy Denny, Eskasoni First Nation, NS

DECISION Carried by Consensus

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 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.
- 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 and implementing legislative or administrative measures that may affect them.
- iv. Article 23: Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programs affecting them and, as far as possible, to administer such programs through their own institutions.

B. First Nations and the Crown have entered into sacred Treaty relationships with mutual, perpetual obligations and commitments and these cannot be swept away or modified without the express consent of affected First Nations.

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- C. International human rights law, including but not limited to the UN Declaration, has affirmed repeatedly the international status of First Nations as peoples, our collective rights of First Nations as peoples and including the right to self-determination.
- D. Free, prior, and informed consent (FPIC) is a key aspect of the right to self-determination under international law, as affirmed by the UN Declaration, resolutions of the United Nations General Assembly, as well as specific guidance, observations and recommendations from UN human rights bodies respecting Canada's binding obligations under the UN Covenant on Civil and Political Rights, the UN Covenant on Economic, Social, and Cultural Rights, the UN Convention on the Elimination of Racial Discrimination and other international instruments.
- E. The Crown holds many other binding consent obligations and consultation obligations under Treaty, the Constitution of Canada, and the common law of Canada.
- F. First Nations have inherent rights and Treaty rights affirmed and entrenched in the Constitution of Canada.
- G. First Ministers' Meetings (FMM) are meetings convened by the Prime Minister that include the Premiers of the provinces and territories. They are meant to foster collaboration on matters of federal, provincial, and territorial importance. First Nations have historically been excluded from these meetings despite the fact that many of the discussions often impact First Nations rights and interests.
- H. There has never been a First Nations specific FMM. Previous FMM meetings, such as the Kelowna or Charlottetown Accords included some participation of First Nations, Inuit and Métis organizations.
- I. In the summer of 2025, National Chief Cindy Woodhouse Nepinak met with the Council of the Federation (COF) which is a yearly meeting of the Premiers of the provinces and the territories. Through strong advocacy, National Chief Woodhouse Nepinak secured a commitment from the Premiers to request that the Prime Minister hold the very first First Nations-specific FMM.
- J. During the 2025 AFN Special Chiefs Assembly, the Prime Minister announced that a First Nations-First Ministers Meeting (FNFMM) would be convened in 2026 and confirmed that First Nations would set the agenda, with the process intended to support dialogue and establish shared priorities between First Nations, the federal government, and provincial and territorial governments on issues of national significance.
- K. In anticipation of a Fall 2026 FNFMM, the AFN organized a series of virtual townhalls, attended regional assemblies, and met with AFN Councils and Chiefs Committees to solicit input from First Nations on the structure, content, and outcomes of an FNFMM.
- L. First Nations leadership underscored the importance of grounding the FNFMM in ceremony and to seek the guidance of Knowledge Keepers and Elders in the planning of the FNFMM.
- M. First Nations leaders stressed that the FNFMM should be a start to an ongoing conversation and not a one-time event, and that key objectives at the FNFMM would be to ensure First Nations' exercise of their rights and responsibilities, improving their quality of life, and participation in decision-making.
- N. There was consensus among many that a strategic outcome of the FNFMM would be to secure commitment to a renewed process of addressing multi-jurisdictional issues with clear accountability and implementation mechanisms and timelines.

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Cindy Woodhouse

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

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- O. First Nations leadership expressed the importance of ensuring balanced representation and the need to ensure inclusive representation of Knowledge Keepers, Youth, Women, 2SLGBTQQIA+ and communities facing crises.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Support a First Nations First Ministers' Meeting (FNFMM), to be convened in Fall 2026 in Ottawa, Ontario, as an initial discussion with federal, provincial, and territorial leaders.
2. Direct the Assembly of First Nations (AFN) to ensure that FNFMM discussions are grounded in affirmation and recognition of First Nations Treaty and inherent, unextinguished, and s.35 rights and jurisdiction.
3. Direct the AFN to ensure that the primary agenda item at the upcoming FNFMM is the establishment of a jointly governed process with First Nations to develop a national First Nations-Crown table on confederation and constitutional change, including both political and technical tables, to advance constitutional discussions that support the recognition, affirmation, and implementation of First Nations inherent, Treaty, and human rights.
4. Direct the AFN to advocate for the inclusion of federal fast-tracking legislation, pipeline development, major project approvals, the Canada-Alberta Memorandum of Understanding and associated Implementation Agreement, environmental oversight, and the upholding of First Nations' Free, Prior and Informed Consent (FPIC) as priority issues for discussion at the 2026 FNFMM and, where such issues are not addressed at the meeting, to pursue appropriate opportunities to advance First Nations priorities on these matters with federal, provincial, and territorial government.
5. Affirm that the role of the AFN will be relegated to coordination and administrative duties only, with no authority to negotiation or discuss First Nations Treaties, rights, lands, jurisdiction, or Crown relationships independently of affected First Nation rights holders.
6. Direct the AFN to advocate at the FNFMM for sustained and adequate regional funding to support ongoing constitutional discussions.
7. Direct the AFN to ensure that First Nations are represented with full inclusion in other FMMs on matters of national importance and any other matters which First Nations identify a need to participate in fully.
8. Direct the AFN to ensure government representatives participate in ceremony, guided by Knowledge Keepers and Elders in the FNFMM process.
9. Affirm that the proposed separation of Alberta or another province, or other restructuring of Canada, requires a distinct First Nations-Crown process separate from the FNFMM.

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Assembly of First Nations

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SPECIAL CHIEFS ASSEMBLY
December 2-3-4, 2025, Ottawa, ON

Resolution no. 67/2025

TITLE: Advancing the Recognition, Implementation, and Enforcement of Pre-1975 Treaties

SUBJECT: Treaties, Lands, Justice

Moved BY: Chief Kelsey Jacko, Cold Lake First Nation, AB

SECONDED BY: Eric Tootosis, Proxy, Poundmaker First Nation, SK

DECISION: Carried by consensus

WHEREAS:

- A. The *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) states:
- i. Article 26(1): Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
 - ii. Article 26(2): Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
 - iii. Article 37(1): 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.
 - iv. 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.
- B. The *Royal Proclamation of 1763* recognizes First Nations land rights and title, establishing general principles for Treaty-making and affirming First Nations' rights to the land and self-governance.
- C. The *United Nations Declaration on the Rights of Indigenous Peoples Act* Action Plan Measure #2 (First Nations' priorities), commits Crown and Indigenous Relations and Northern Affairs Canada to:

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- i. Re-affirm pre-1975 Treaty relationships based on the principles of mutual respect, self-determination and the nation-to-nation relationship; and
 - ii. Engage Treaty Nations in co-developing approaches, including reconvening Treaty Councils if Nations wish to do so, for the renewal and honourable implementation of pre-1975 Treaties and Treaty relationships, including a shared vision to guide actions and a common understanding of the spirit and intent of pre-1975 Treaties.
- D. Prior to 1982, pre- and post-Confederation Treaties were signed between the British Crown and First Nations.
- E. In 1982, Canada repatriated the Canadian Constitution, resulting in the *Constitution Act, 1982*. Section 35 of the *Constitution Act, 1982* recognizes and affirms the existing Aboriginal and Treaty rights of the Aboriginal Peoples of Canada.
- F. First Nations assert and reaffirm that they are sovereign Nations with Inherent rights and title to their lands, as recognized under international law. It has never been suggested or established that Canada held sovereignty over First Nations and First Nation-lands prior to its establishment as a country.
- G. Pre-1975 Treaties between First Nations and the Crown are, and always have been, agreements between sovereign Nations, as affirmed by principles of international law and the UN Declaration.
- H. Canada's signing of agreements with organizations or corporate bodies is within Canada's prerogative but does not alter the nature or status of First Nation Treaties with the Crown.
- I. Many pre-1975 Treaty First Nations continue to report that their Treaties are not being fully honoured, respected, or implemented, highlighting significant gaps in Canada's fulfillment of its Treaty obligations.
- J. The full implementation of Treaty rights – forming the cornerstone of Crown-First Nations relationships – remains incomplete, as Canada has yet to embrace a truly comprehensive nation-to-nation approach that fully recognizes and upholds First Nations' Treaties. Instead, existing frameworks continue to subordinate First Nations' authority and Treaty rights to federal, provincial and territorial systems, undermining Treaties and the principles of self-determination and mutual respect.
- K. Canada has a Cabinet Directive on the Federal Approach to Modern Treaty Implementation, which outlines an operational framework for the management of the Crown's Modern Treaty obligations, guiding federal departments and agencies to fulfill the Crown's obligations. No similar Cabinet Directive exists for pre-1975 Treaties.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Call on Canada to convene a First Ministers' Conference with pre-1975 Treaty First Nations who opt-in to create a legitimate, collaborative platform for the honouring and implementation of Treaties and to support the implementation of Aboriginal and Treaty rights recognized and affirmed under Section 35 of the *Constitution Act, 1982*, as this process would address historical gaps and challenges that hinder the recognition, realization, and exercise of First Nations' Treaty rights.
2. Direct the Assembly of First Nations (AFN) to work collaboratively with Canada and participating First Nations to support pre-1975 Treaty First Nations who wish to work with the AFN in a process that ensures

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the full honouring, recognition, implementation, and enforcement of pre-1975 Treaties, establishing a renewed relationship based on mutual respect and adherence to the rule of law.

3. Call on Canada to work with pre-1975 Treaty First Nations to support the creation of a comprehensive framework for the recognition, implementation, and enforcement of pre-1975 Treaties, similar to the Cabinet Directive on Modern Treaty Implementation, ensuring all Treaty obligations, including those made with First Nations, are fulfilled with fairness, accountability, and transparency.
4. Direct the AFN to collaborate with Canada and pre-1975 Treaty First Nations who opt-in to co-develop and co-draft a Cabinet Directive that provides a framework for the recognition, implementation, and enforcement of pre-1975 Treaties.
5. Call on Canada to formally recognize the status of pre-1975 Treaties as agreements between sovereign Nations and to reaffirm its obligations to fully honour and implement these Treaties in alignment with First Nations Inherent rights, the *United Nations Declaration on the Rights of Indigenous Peoples*, and the principles of international law.

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