SPECIAL CHIEFS ASSEMBLY
DECEMBER 4, 5 & 6, 2012,GATINEAU, QC

Resolution no. 74/2012

TITLE:	*William v. British Columbia* decision (Tsilhqot'in) (2012 BCCA 285)
SUBJECT:	Doctrine of Discovery and Comprehensive Claims
MOVED BY:	Arthur Manuel, proxy, Neskonlith Indian Band, BC
SECONDED BY:	Chief Madeleine Paul, Eagle Village First Nation – Kipawa, QC
DECISION:	Carried by Consensus

WHEREAS:

A. Former Chief Roger William, brought legal proceedings on his own behalf and on behalf of all other members of the Xeni Gwet'in First Nations Government and on behalf of all other members of the Tsilhqot'in Nation, claiming Tsilhqot'in Aboriginal rights and Aboriginal title in an area comprising approximately 438,000 ha. (4,380 km^2) in the Chilcotin region of the west central interior of British Columbia.

B. The B.C. Supreme Court, after five years of trial, found that the Tsilhqot'in had proven Aboriginal title to a substantial area of land in and around the claim area and, for the first time by a Canadian court, delineated the area where Aboriginal title was proven on the evidence, both inside and outside the Claim Area, including core Tsilhqot'in hunting, trapping, gathering and fishing areas that were exclusively controlled by the Tsilhqot'in and exploited year after year, season after season, pursuant to traditional Tsilhqot'in laws and practice, passed down over generations by the teachings, oral histories and stories of their ancestors.

C. The BC Court of Appeal overruled the trial judge on this issue in *William v. British Columbia (Tsilhqot'in decision),* on June 27, 2012, holding instead that "semi-nomadic" Indigenous peoples can only establish Aboriginal title to site-specific, "postage stamp" parcels of land within their traditional territories, such as a salt lick or a particular rock used intensively to gaff salmon, but not to core hunting, trapping and gathering areas.

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D. The BC Court of Appeal's ruling on Aboriginal title is legally and morally offensive, because it is based on the racist assumption that the distinctive ways that (so called "semi-nomadic") Indigenous peoples used, occupied, governed and related to their traditional lands at the time the Crown asserted sovereignty are not sufficient to support Aboriginal title at law.

E. In the *Tsilhqot'in decision,* the BC Court of Appeal said that this "postage stamp" notion of Aboriginal title was consistent with "reconciliation".

F. The *Tsilhqot'in decision* is based on a modified version of the doctrine of discovery or *terra nullius,* according to which Indigenous lands in the Americas, Australia and elsewhere were considered "empty lands" even though they were occupied by Indigenous peoples, because Indigenous peoples were somehow considered to be less than human and their systems of governance and land use to be illegimate and unworthy of recognition at law.

G. In the *Mabo* decision (1992), the High Court of Australia, rejected as discriminatory the doctrine of terra nullius, noting that it was condemned by the International Court of Justice in the *Advisory Opinion on the Western Sahara*.

H. The High Court in the *Mabo* decision concluded that: If the international law notion that inhabited land may be classified as *terra nullius* no longer commands general support, the doctrines of the common law which depend on the notion that native peoples may be "so low in the scale of social organization" … can hardly be retained.

I. The Royal Commission on Aboriginal Peoples recommended the rejection of the doctrines of terra nullius and discovery; and also recommended that such doctrines no longer form the basis of law-making or argument presented to the courts (see RCAP, *Renewal: a Twenty Year Commitment*, Vol. 5, 1996, p. 130).

J. The doctrine of terra nullius is against the principles of the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the UN and has now been endorsed by Canada.

K. In particular, Article 26(2) of the United Nations Declaration on the Rights of Indigenous Peoples provides that "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".

L. The United Nations Committee for the Elimination of Racial Discrimination (the "CERD") has formally expressed concern about "the difficulties which may be encountered by Aboriginal peoples before courts in the establishment of Aboriginal title over land", and noted that "to date, no Aboriginal group has proven Aboriginal title" in Canada. The CERD has also said that it "views with concern the direct connection between Aboriginal economic marginalisation and the ongoing dispossession of Aboriginal people from their land" (*Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada.* 11/01/2002; A/57/18, paras. 330-31).

M. The Plaintiff Roger William has sought leave to appeal the *Tsilhqot'in decision*, on behalf of the Xeni Gwet'in and the Tsilhqot'in Nation, to the Supreme Court of Canada on the issue of Aboriginal title.

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

1. Condemn the *Tsilhqot'in decision* of the BC Court of Appeal as racist and denigrating to First Nations peoples in Canada, and contrary to international law.
2. Reject any notion that the principle of "reconciliation" includes the so-called "postage stamp" theory of Aboriginal title, or any aspect or connection whatsoever to the doctrines of tera nullius and discovery.
3. Call on the governnments of Canada and BC and the Courts to reject the doctrines of terra nullius and discovery as recommended by the Royal Commission on Aboriginal Peoples.
4. Call on the Governments of Canada and BC to respect and recognize the legitimacy of Indigenous laws, governance and systems of land use and occupation, and to refrain from making any arguments in court based on the racist theories of tera nullius and discovery.
5. Call on the governnments of Canada and BC to honour and implement the United Nations Declaration on the Rights of Indigenous Peoples;
6. Support an AFN intervention in the appeal of the BC Court of Appeal's decision in *William v. British Columbia* if this decision proceeds to the Supreme Court of Canada, and authorize the national Chief to ensure coordination with the Xeni Gwet'in First Nations Government and the Tsilhqot'in Nation and their legal counsel.

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