

Assembly of First Nations

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Assemblée des Premières Nations

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ANNUAL GENERAL ASSEMBLY
September 3-4-5, 2025, Winnipeg, MB

Resolution no. 05/2025

TITLE:	Support for Recognition of the Inherent Right of First Nations and Tribal Citizens to Freely Cross the Canada-United States Border
SUBJECT:	Border Mobility
MOVED BY:	Chief Lance Haymond, Kebaowek First Nation, QC
SECONDED BY:	Chief Brent Niganobe, Mississauga First Nation, ON
DECISION	Carried; 1 Opposition; 7 Abstention

WHEREAS:

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

- i. Article 9: Indigenous peoples and individuals have the right to belong to an Indigenous community or nation in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from exercising such a right.
- ii. Article 36(1): Indigenous people, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
- iii. Article 36(2): States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

B. Canada's international borders have divided First Nations' territories, communities and families across Canada and the United States (US). First Nations divided by international borders face unique challenges, including loss of culture, access to food, familial division, loss of membership and a loss of access to territory, land and resources.

C. The 1794 Jay Treaty, signed by the US and Great Britain recognized the Inherent right of free passage by First Nations and their personal goods across what is now the Canada-US border. Though recognized by the US, Canada has not recognized that Inherent right, restricting movement of First Nations from the US into Canada.

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- D. The Jay Treaty Border Alliance (JTBA) was formed in 2017 by tribal governments and First Nations communities to collaborate on efforts to protect our rights preserved in the Jay Treaty, create effective working relations with the United States Customs and Border Protection and Canadian Border Services Agency (CBSA), and address issues unique to the Canada-US border.
- E. Assembly of First Nations (AFN) Resolution 73/2016, *Explore Practical Solutions for Canada-U.S. Border Crossing by First Nations Citizens*, directs the AFN to seek resources from the Government of Canada to develop possible solutions for Canada-US border crossing by First Nations including the development of secure Indigenous border security identification cards.
- F. The *Immigration and Refugee Protection Act* (IRPA) considers Indigenous Peoples outside of Canada to be "foreign nationals". This means that they do not have the same rights, obligations, and privileges as Canadian citizens, registered Indians, or permanent residents.
- G. The IRPA must be amended to remove First Nations as 'foreign nationals' and uphold the Inherent and Treaty rights of First Nations as original peoples of this land.
- H. Immigration, Refugees, and Citizenship Canada (IRCC) and the CBSA have publicly committed to undertake the following actions in consultation and cooperation with Indigenous Peoples through the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA) Action Plan - Shared Priority Action Plan Measure (APM) #52:
 - i. Pursue legislative amendments to the *Immigration and Refugee Protection Act*, amendments to relevant regulations and revisions to policies in order to address complex border crossing and migration challenges faced by Indigenous Peoples divided by Canada's international borders, including options to amend Canada's right to entry provisions, and work and study permit requirements.
 - ii. Engagement with Indigenous Peoples and their representative organizations to implement the action plan measure is being initiated in 2023, with a view to advancing amendments and policy reforms in 2024. In parallel, the Government of Canada will continue discussions with international partners on Indigenous border crossing issues.
- I. IRCC and CBSA hosted regional roundtables with First Nations on potential amendments to the right to enter and remain in Canada, traveler modernization, travel documentation and other accompanying issues, including trade and entry of goods, and training of border service agents.
- J. The CBSA is responsible for managing and enforcing over 100+ Acts of Parliament for Canada's international borders and Ports of Entry. CBSA's Indigenous Affairs Secretariat was established in February 2018 to address border crossing issues for Indigenous Peoples, including the facilitation of Indigenous travelers and their sacred goods.
- K. CBSA and IRCC are preparing to develop legislation to address Indigenous Border Mobility Issues, which could:
 - i. Recognize the right of entry to members of First Nations and US federally recognized tribes;
 - ii. Provide the ability to work and study without a permit; and

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- iii. Ensure that Indigenous persons with a right of entry are no longer considered 'foreign nationals.'
- L. As legislation is being developed, the Government of Canada has implemented a number of Interim Measures to address the immediate needs of First Nations persons divided by Canada's borders to reunite with family members who already have a right of entry to Canada.
- M. To date, IRCC and CBSA have not provided adequate funding for First Nations to meaningfully engage in the joint development of legislation to amend the IRPA. This lack of funding is not aligned with Canada's duty to consult or commitments made under the UNDA.

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

1. Direct the Assembly of First Nations (AFN) to call on the Government of Canada to:
 - a. Respect First Nations Treaty and Inherent rights, title and sovereignty with respect to Border Mobility by removing First Nations from the *Immigration, Refugees and Protection Act* and developing a new Act to respect First Nations' Treaty and Inherent rights, title and jurisdiction and support First Nations and their goods crossing the United States (US) border.
 - b. Immediately recognize the right of US federal recognized Tribes and Tribal citizens to cross the border.
2. Direct the AFN to call on the Government of Canada to meaningfully engage directly with First Nations rights holders on the development and implementation of legislative, policy or regulatory measures on border mobility that recognizes the Inherent Rights of all First Nations and the spirit and intent of the Jay Treaty.
3. Direct the AFN to advocate for resources from the Government of Canada for the Jay Treaty Border Alliance (JTBA) and any First Nations who want to participate in the joint development of permanent solutions for Canada – US border crossing by First Nations.
4. Direct the AFN to support the JTBA in their efforts to develop implementation mechanisms consistent with First Nations' Inherent and Treaty rights, for recognized rights of entry that supports First Nations' self-determination.

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