
Assembly of First Nations

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Assemblée des Premières Nations

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**ANNUAL GENERAL ASSEMBLY
JULY 11, 12, & 13, 2023; HALIFAX, NS**

Resolution no. 54/2023

TITLE: Demand Consultation on Section 50 Policy Amendments under the Indian Act

SUBJECT: Rights and Lands

MOVED BY: Chief Byron Louis, Okanagan Indian Band, BC

SECONDED BY: Judy Wilson, proxy, Osoyoos Indian Band, BC

DECISION Carried by Consensus

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
- i. Article 18: Indigenous Peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to obtain and develop their own indigenous decision-making institutions.
 - ii. 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.
 - iii. 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.
- B. The Indian Act is an assimilationist and colonial piece of legislation intended to “rid Canada of the Indian Problem,” is itself a perpetuation of colonial policies and ideals and is in direct conflict with First Nations’ inherent rights to manage their own lands, membership, citizenship, and identities.

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JOANNA BERNARD, INTERIM NATIONAL CHIEF

54- 2023
Page 1 of 3

- C. Section 50 of the Indian Act requires Indigenous Services Canada (ISC) to ensure lands bequeathed to non-members are not transferred to non-members but auctioned among members.
- D. ISC is proposing policy changes in its Section 50 Land Sale Policy ("Section 50 Policy") that would allow non-member heirs to seek to prove entitlement to membership before a sale of land under section 50 sale occurs. This would allow a non-member heir to receive the lands instead of the proceeds of the sale. This would guide the application of Section 50 of the Indian Act in a manner which puts non-member rights before the rights of First Nations peoples to collectively use and control their lands and is contrary to the intention of the Act to preserve reserve lands for the use of the band.
- E. The Government of Canada passed Bill C-15, An Act Respecting the United Nations Declaration on the Rights of Indigenous Peoples" on June 21, 2021, requiring all federal legislation, policies, and regulations to be amended to align with the UN Declaration.
- F. The Government of Canada has a duty to consult Indigenous groups when it considers conduct that may adversely impact potential or established Aboriginal or Treaty rights.
- G. ISC has failed to obtain First Nations' free, prior, and informed consent to the proposed changes to the Section 50 Policy, which constitutes a failure by the Government of Canada to uphold its fiduciary obligations to First Nations,
- H. ISC has not engaged in formal consultation with First Nations and has therefore failed to uphold the duty to consult or the Honour of the Crown throughout the amendment process.
- I. ISC's proposed Section 50 Policy could be detrimental to the interests of First Nations' collective rights to their reserve lands.

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 consult directly with First Nations before any and all proposed policy changes to the *Indian Act* and specifically on the Section 50 Policy.
- 2. Direct the AFN to support First Nations in their consultation processes with the Government of Canada regarding proposed policy changes on the interpretation and application of Section 50 of the *Indian Act*.
- 3. Call on Canada to adhere to the principle of free, prior, and informed consent in accordance with the United Nations Declaration on the Rights of Indigenous Peoples when developing any proposed Section 50 Policy.

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JOANNA BERNARD, INTERIM NATIONAL CHIEF

54 – 2023
Page 2 of 3

4. Direct the AFN to call on Canada to adequately and appropriately fund First Nations to participate in formal consultation and to undertake extensive community engagement on any proposed policy changes on the interpretation and application of Section 50 of the *Indian Act* and any other proposed changes to the Indian Act.
5. Direct the AFN to call on ISC to refrain from establishing any new policies relating to the interpretation of the *Indian Act* until such time that all First Nations have been adequately consulted.

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54 – 2023
Page 3 of 3