



Assembly of First Nations

The 2nd AFN Indigenous Laws Gathering

*Holding Space: Elevating Indigenous Laws
to Address Historical Wrongs*

June 11-12, 2024 | Wendake, Quebec





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I. ACKNOWLEDGEMENTS

The Assembly of First Nations (AFN) acknowledges the Huron Wendat Nation for allowing us to host the Indigenous Laws Gathering (the Gathering) on their territory. The AFN also expresses its gratitude to Knowledge Keeper Diane Andicha Picard for introducing us to the appropriate protocols and for providing an opening prayer. The AFN wishes to provide special thanks to Aroussen Gros-Louis and George Trapper for sharing their traditional Huron Wendat dancing. The AFN also wishes to acknowledge Aroussen Gros-Louis for providing a closing prayer. These contributions allowed the Gathering to proceed respectfully and in accordance with the appropriate protocols and customs of the Huron Wendat Nation.

The AFN expresses its gratitude to Mi'kmaq Grand Council Hereditary Chief Stephen Augustine and Grand Chief Dr. Wilton Littlechild for providing keynote addresses. The AFN is deeply grateful to the members of the Council of Experts in Indigenous Laws (CEIL) for their support for all aspects of the AFN's work on advancing the recognition of Indigenous laws. CEIL members Stephen Augustine, Heidi Kiiwetinepinesik Stark, and Sarah Morales took part in a panel discussion on creating an Independent Centre for the Resolution of Specific Claims (the Independent Centre). Our work would not be possible without your tireless and dedicated support.

The AFN extends its gratitude to Naa Shaáde Háni Eric Morris for providing opening remarks, Eva Ottawa and Dr. Kathy Bellefleur for participating on a panel providing regional perspectives on Indigenous laws from Quebec. The AFN also recognizes the contributions of Cactus Cook-Sunday and Elder Larry McDermott for participating on an Indigenous laws and institutions panel discussion. The AFN is grateful to Garima Dwivedi, an Assistant Deputy Minister with Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), for joining AFN staff and AFN External Legal Advisor Kathleen Lickers to discuss specific claims reform. The AFN provides many thanks to Chief Dalton Silver, chair of the British Columbia Specific Claims Working Group, for providing closing remarks.



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II. EXECUTIVE SUMMARY

As part of its ongoing efforts to secure the recognition of Indigenous laws in the resolution of specific claims, the AFN held its second annual Indigenous Laws Gathering in Huron Wendat territory in Wendake, Quebec. This Gathering provided an opportunity for Knowledge Keepers, First Nations leadership, community members, academics, and legal experts to share perspectives on the recognition of Indigenous laws in claims resolution and in the creation of institutions. This Gathering was grounded in the territory of the Huron Wendat Nation and incorporated local customs and protocols throughout.

Keynote addresses and presentations highlighted the significance of Indigenous legal traditions, spiritual laws, and the need for an independent, impartial, and transparent claims resolution process. Hereditary Chief Stephen Augustine emphasized the foundational role of creation stories in Indigenous laws and the necessity of incorporating these laws into Canadian legal frameworks. Grand Chief Dr. Wilton Littlechild discussed the efforts of Indigenous peoples in seeking recognition of their rights under international legal frameworks. Several Indigenous legal experts provided presentations on their work related to Indigenous laws. Eva Ottawa presented on the development of a customary legal framework on child welfare among the Atikamekw Nehirowisiwok of Manawan. Dr. Kathy Bellefleur then presented on re-defining the concept of ownership to reflect on how we relate to the land. CEIL members Stephen Augustine, Heidi Kiiwetinepinesik Stark, and Sarah Morales took part in a panel discussion on creating an Independent Centre and reflected on the challenges and opportunities associated with this effort.

Participants also discussed the ongoing work to establish an Independent Centre for the Resolution of Specific Claims, which would recognize First Nations' laws and customs throughout the claims resolution process. The Gathering addressed the shortcomings of the current Specific Claims Policy and process, highlighting the conflict of interest inherent in the Government of Canada's review of claims for validity based on its own legal advice. Participants expressed that there must be a new, fully independent process that respects Indigenous laws and traditions, as mandated by Article 27 of the *United Nations Declaration on the Rights of Indigenous Peoples* (the UN Declaration).

The event concluded with reflections on the challenges and potential solutions for recognizing Indigenous laws in the specific claims process. Recommendations included the establishment of an Indigenous Laws Commission, creating co-management agreements, and incorporating flexibility to include Indigenous protocols and ceremonies in the claims process. The AFN committed to continue relying on the CEIL for guidance and fostering dialogue by hosting annual gatherings.



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III. BACKGROUND

For generations, First Nations have called for an independent, impartial, and transparent process to resolve their historical grievances against the Crown. In November 2022, the AFN and the Government of Canada held a public ceremony to initiate the joint development of an Independent Centre for the Resolution of Specific Claims.

As part of the ongoing AFN-Canada Specific Claims Co-Development Process, the AFN held its first Indigenous Laws Gathering on June 13, 2023, in unceded Musqueam, Squamish, and Tsleil-Waututh territory (Vancouver, British Columbia). The 2023 Gathering brought together local Knowledge Keepers, First Nations leaders, community members, claims practitioners, and academics to discuss the recognition of Indigenous laws, legal orders, and systems of land tenure in the specific claims process.

The first annual Gathering provided an initial opportunity for the CEIL, which was established early in 2023, to share perspectives on Indigenous laws and their application to the resolution of specific claims. Throughout 2023 and 2024, as the AFN-Canada Specific Claims Implementation Working Group (SCIWG) met to co-develop an Independent Centre, the role of the CEIL grew significantly. The CEIL continued to provide guidance and advice to the SCIWG on how to properly recognize Indigenous laws in the resolution of specific claims.

The AFN heard from participants at the 2023 Gathering that the work to advance the recognition of Indigenous laws must accelerate. Participants expressed interest in a subsequent Gathering, which would continue to focus on claims resolution while potentially expanding to other areas where Indigenous laws must be recognized. Following this input, the AFN set in motion plans for a second Gathering.



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IV. GATHERING SEQUENCE OF EVENTS

Ceremonial Opening and Introduction

Knowledge Keeper Diane Andicha Picard provided an opening prayer and offered participants a smudging using cedar, sweetgrass, and tobacco. Aroussen Gros-Louis and George Trapper then provided participants with a display of traditional Huron Wendat dancing. Master of Ceremony Puglid, the Executive Director of Indigenous Initiatives and Partnerships at the British Columbia Institute of Technology, and Chair of the BC First Nations Justice Council, provided introductory remarks to participants and reviewed the Gathering agenda.

Territorial Welcome, Regional Chief Ghislain Picard & Grand Chief Remy Vincent

AFN Regional Chief Ghislain Picard and Grand Chief Remy Vincent provided territorial remarks to ground the gathering within the laws of the Huron Wendat Nation. Regional Chief Picard reflected on the challenges First Nations in Quebec face in working with the provincial government. First Nations continue to be adversely impacted by the provincial government's refusal to properly recognize First Nations' inherent rights and jurisdictions over their lands. Regional Chief Picard noted the unfinished business with the Canadian Constitution due to its failure to recognize Indigenous land rights and jurisdiction. Regional Chief Picard also highlighted the need for the federal and provincial governments to cooperate in elevating Indigenous governance.

Grand Chief Remy Vincent opened his remarks by emphasizing the need for the Government of Canada to properly elevate Indigenous Laws in the context of specific claims. Grand Chief Vincent continued by reflecting on the responsibility of the Government of Canada to work jointly with First Nations to resolve specific claims. Regional leadership concluded by uplifting the role of the AFN and regional First Nations governments, including the AFN Quebec and Labrador, in raising awareness about specific claims, Indigenous Laws, and related challenges.

Introductory Remarks, Naa Shaáde Háni Eric Morris

Naa Shaáde Háni (Chief) Eric Morris and member of the AFN Chiefs Committee on Lands, Territories, and Resources (CCoLTR) provided opening remarks on behalf of the CCoLTR and set the context for the gathering. Naa Shaáde Háni Morris congratulated the Huron Nation on the recent resolution of



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their specific claim and acknowledged the increased social and economic development and independence opportunities for the Nation. Naa Shaáde Háni Morris emphasized the need for a fair, transparent, and independent specific claims resolution process that recognizes the participating nations and their laws. Naa Shaáde Háni Morris urged participants to share their perspectives on the recognition of our laws and to learn from each other.

For far too long, Canadian legal processes have excluded First Nations' laws. To be truly fair, the Specific Claims process must recognize the laws of participating First Nations.

– Naa Shaáde Háni Eric Morris

Naa Shaáde Háni Morris further discussed the significance of Indigenous Laws in transforming the specific claims process for First Nations. For generations, First Nations have called for the elimination of Canada's conflict of interest in reviewing claims for validity based on its own legal advice, and that an independent centre, that recognizes First Nation Laws will establish a fair, independent, impartial, and transparent process. The creation of an independent process is essential to Canada realizing Article 27 of the *United Nations Declaration on the Rights of Indigenous Peoples* (the UN Declaration) and recognizing Indigenous Laws.

States shall establish and implement, in conjunction with Indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of Indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

– Article 27 of the UN Declaration

Naa Shaáde Háni Morris concluded his remarks by uplifting the role of the Council of Experts in Indigenous Laws in guiding this work and reaffirming the six principles identified at the June 2023 Indigenous Laws Gathering.¹

¹ The six principles identified are: Maintain flexibility, respect diversity, recognize Indigenous laws throughout claims resolution, honour protocols and ceremonies, restore kinship and harmony, support the restoration of Indigenous laws. [*Indigenous Laws Gathering: Recognition of Indigenous Laws in the Specific Claims Process, June 2023.*](#)



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Keynote Address, Hereditary Chief Stephen Augustine – Negotiation for Survival

Stephen Augustine, Hereditary Chief on the Mi'kmaq Grand Council and the newest member of the CEIL, delivered a keynote address to participants on the role of traditional laws and spirituality in Indigenous survival. Hereditary Chief Augustine reflected on how Indigenous Laws guide relationships between community members and the natural world, drawing a distinction from the Eurocentric legal focus on enforcement and punishment:

We did not have jails, prisons, police, prosecutors, lawyers or judges. Families and Clans were responsible for our security and survival. Spirituality and the influences of sacred entities were vital in negotiating our survival.

– Hereditary Chief Stephen Augustine

Hereditary Chief Augustine emphasized that creation stories are the foundations of First Nations' laws. Hereditary Chief Augustine also highlighted the intersection between First Nations' languages, which reflect connections to lands and waters, and First Nations' laws. Creation stories are the basic form of law and articulate First Nations' understandings of their connection and their relationship to Mother Earth. Hereditary Chief Augustine shared that creation stories highlight that we do not own the land or the elements, the lands do not belong to us and are not something to be controlled, but rather, we are part of the balanced environment.

Our moral conduct, the principles of our actions, ethics, and protocols are very important for meaning to put everything back into its proper place.

– Hereditary Chief Stephen Augustine

Hereditary Chief Augustine proposed the creation of an Indigenous Laws Commission to ensure that Indigenous laws and perspectives of law inform the resolution of specific claims, as well as the broader Canadian legal system. Hereditary Chief Augustine emphasized that an Indigenous laws framework in specific claims needs to include and be informed by creation stories.



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Panel Discussion: Quebec Regional Perspectives, Eva Ottawa and Dr. Kathy Bellefleur

The Gathering engaged in a panel discussion with Eva Ottawa and Dr. Kathy Bellefleur on Indigenous Laws and concepts of being that originate in the Quebec Region. Ms. Ottawa provided a presentation on the customary legal framework of child protection and welfare among the Atikamekw Nehirowisiwok of Manawan. Ms. Ottawa used the development of this legal framework as an example of the deliberative process used by First Nations in developing their own laws. Ms. Ottawa emphasized harmony and balance with the environment through – *Nehirowisiw* – a holistic concept involving physical, mental, emotional, and spiritual elements; a term to reconnect ourselves and to the work of Indigenous rights and laws. Ms. Ottawa reflected on the fundamental differences between Indigenous languages and the English language, that in the language of her people, there is no term for Indigenous rights because rights originate from the land that is living.

Dr. Kathy Bellefleur of Nutashkuan First Nation discussed the power of photography in illustrating Indigenous concepts of rights. Dr. Bellefleur also described the importance of re-appropriating the definition of ownership, emphasizing a connection to the territory rather than Eurocentric concepts of ownership. Dr. Bellefleur uplifted the importance of oral traditions and the legal teachings of the Innu people, noting that stories are not simply narratives, but contain teachings and sets of rules that are shared intergenerationally. Stories are a way in which we understand the territory as a living entity. These teachings are legal teachings. Dr. Bellefleur affirmed the value of Indigenous legal traditions and that they should not be discredited by, or through, state law.

The Land is a living entity that possess its own set of rules and normativity, which is being transmitted from generation to generation, including its cycles and deterrent mechanisms.

– Dr. Kathy Bellefleur (translation)

Specific Claims Reform Perspectives

The AFN and the Government of Canada provided technical updates on co-development efforts to create a fully independent specific claims resolution process inclusive of Indigenous Laws.

The AFN discussed the fundamental need for an independent process to remove the Government of Canada's conflict of interest in the existing specific claims process. Currently, the Government of Canada reviews the validity of claims based on its own legal advice, administers the funding for the research and development of claims, and controls the pace of negotiations. The AFN reiterated the generational calls for a fully independent process to address the Government of Canada's conflict of



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interest. The UN Declaration and Canada's legal obligations under the *United Nations Declaration Act* underpin this work, emphasizing the need for a fair, independent process that recognizes Indigenous laws. The AFN and the Government of Canada have committed to jointly developing the Independent Centre.

The AFN provided a technical update on progress in co-development, including the consensus reached on the functions of the proposed Independent Centre. These key functions include a registrar, a funding division, a resource hub, an alternative dispute resolution body, and access to the Specific Claims Tribunal.

Kathleen Lickers, External Legal Advisor to the AFN, emphasized the importance of incorporating First Nation laws into the claims process. It is essential that the joint efforts to reform the specific claims process do not perpetuate a process that is devoid of First Nations' laws and traditions. There is a need for the Independent Centre to provide a bridge that connects Western systems of law to First Nations laws, traditions, ceremonies, and territory. Ms. Lickers encouraged the development of an Independent Centre that fully recognizes and respects Indigenous laws and traditions, highlighting the need for a fair, transparent, and impartial process that promotes respectful dialogue with active listening and reciprocity.

Our laws have survived, and they have endured, and we have much to contribute in a reimagined, forward-looking claims centre that respects, creates, and sustains the space for our languages, ceremonies, procedures, and laws to help in the resolution of disputes.

– Kathleen Lickers, External Legal Counsel to the AFN

Garima Dwivedi, Assistant Deputy Minister (ADM) with Crown-Indigenous Relations reflected on the Government of Canada's participation in specific claims co-development, acknowledging the need for a fair process and faster resolution of claims. ADM Dwivedi discussed co-development progress, reflecting on the AFN's technical presentation and acknowledged outstanding issues including the cap on financial compensation at the Specific Claims Tribunal.

An open discussion followed in which participants discussed concerns over the unfairness of the arbitrary \$150 million cap on compensation at the Specific Claims Tribunal and concerns regarding the considerable delays in the current process.



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Council of Experts in Indigenous Laws – Panel Discussion

CEIL members took part in a panel discussion and reflected on a series of questions related to the creation of an Independent Centre.

Question 1: How can we bring local Indigenous laws into the specific claims process through the Independent Centre? Do we need to create specific roles within the Independent Centre to ensure that local protocols will be respected, and First Nations know what to expect?

Hereditary Chief Augustine emphasized the importance of local protocols and traditions and expressed a need for the Independent Centre to have a liaison that would assist First Nations. The Independent Centre would need to respect First Nations diversity and perspectives and recognize the importance of knowledge holders and other legal experts.

Dr. Sarah Morales emphasized the importance of relationship building and fostering understanding and that a transformed specific claims process must reflect the legal systems, orders, and dispute resolution principles of First Nations while ensuring power imbalances are addressed. Resolving past harms involves more than just monetary compensation, and is about ongoing obligations and future relationships.

Dr. Kiiwetinepinesiik Stark discussed how Indigenous laws may inform moving beyond monetary compensation to restore positive relationships between First Nations and Canada. Dr. Stark suggested ideas such as the Independent Centre facilitating co-management agreements and facilitating other forms of restorative justice, informed by First Nations' legal systems and principles.

Question 2: How do we support the restoration of laws for communities doing this work now and into the future?

Dr. Morales discussed the need to transform institutions and rethink decision-making processes. Existing institutions often have ingrained understandings of the law and legal principles that may be inconsistent with Indigenous ways of being. Dr. Morales challenged the idea of transforming Indigenous laws to fit the Canadian legal system, advocating instead for expanding minds and institutions to accommodate new ways of thinking. There must be a dismantling and rebuilding of institutions to include Indigenous conceptions of justice. The Independent Centre could serve as a hub for capacity building, dialogue, and sharing of resources.



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We have a very holistic approach to law. Our elders have a hard time separating law from their lived experience; it's their way of life.

– Dr. Sarah Morales

Dr. Stark reflected on experiences in recent ceremonies and the importance of understanding and adapting legal traditions to the changing needs of the community. The Independent Centre must be flexible in creating space for legal traditions and cannot place rigid or fixed limits in how Indigenous laws are framed or articulated. Canada must let go of its security and stability built upon the colonial foundation of Eurocentric legal traditions. Instead, Canada must be willing to sit in discomfort for genuine negotiation and resolution of claims.

To really engage in a process of negotiation that can be about finding resolution, requires the state to take seriously all the ways in which its own legal traditions have been deeply impacted by colonialism.

– Dr. Kiiwetinepinesiik Stark

Question 3: What is needed for First Nations to be able to revitalize their own Indigenous laws?

Dr. Stark reflected on the need to restore community roles and practices to ensure intergenerational transmission of laws and teachings. Similarly, Dr. Morales noted that gatherings and discussions enable community members to engage with and revitalize their Nation's laws. Dr. Morales further noted that First Nations need to confidently take up space to assert their laws and legal systems. Finally, Hereditary Chief Augustine focused on the need for reconciliation in Canadian society, but also within and between First Nations. Hereditary Chief Augustine also reflected on the need to respect and support traditional systems of governance.

Panel Discussion: Indigenous Laws and Institutions, Elder Larry McDermott and Cactus Cook-Sunday

Participants listened to an insightful panel discussion on the challenges and successes in including Indigenous Laws in institutions. The discussion was designed to support further insights into the development of the proposed Independent Centre to ensure the integration and Indigenous Laws within an institution designed and led by First Nations.



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Elder Larry McDermott discussed the concept of ethical space and integrating oral traditions with written governance systems. Elder McDermott shared how the power of spiritual intentions, ceremonies, and the land can be key in creating a paradigm shift towards harmony with nature and Indigenous Laws.

Cactus Cook-Sunday, Director of the Akwesasne Justice Department, shared the history of the creation of the Mohawk Council of Akwesasne's Court and the path forward. Recognizing, reclaiming, and integrating Mohawk Law enables institutions to balance traditional customs and modern legal systems. This purposeful, woven integration of Mohawk Law and Canadian legal principles acknowledges the duality of operating within imposed legal frameworks while upholding and recognizing First Nation laws, values, and languages.

We see benefits to having our own court, moving away from adversarial approaches back toward Haudenosaunee values of keeping a good mind.

– Cactus Cook-Sunday

Keynote Address, Grand Chief Dr. Wilton Littlechild – Upholding Indigenous Laws

Grand Chief Dr. Wilton Littlechild provided a closing keynote address that uplifted the generational contributions of Indigenous peoples to the recognition of Indigenous rights and laws in international spaces. Indigenous contributions led to the recognition of spiritual rights as a new bundle of rights at the United Nations, alongside economic, social, cultural, civil, and political rights. The concept of the extended family, integral to many Indigenous cultures, was also included in international law, specifically in the Organization of American States *Declaration on the Rights of Indigenous Peoples* (OAS Declaration).

The UN Declaration is the floor, not the ceiling.

– Grand Chief Dr. Wilton Littlechild

Dr. Littlechild spoke about how Indigenous laws are recognized under international law, including their instrumental inclusion in the OAS Declaration. This recognition helps in preserving and respecting the traditional legal systems of Indigenous communities. Dr. Littlechild discussed how the extensive development of the international legal framework, particularly related to land, the environment, and the principles of reconciliation from Canada's Truth and Reconciliation Commission (TRC) have been adopted globally by the United Nations Human Rights Council. Dr. Littlechild



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stressed the importance of honouring and enforcing Treaties according to their true intent and as understood by Indigenous peoples. Dr. Littlechild also suggested the need to reference key instruments such as the OAS Declaration and refer to the recognition of Indigenous laws under international law in the specific claims process.

Closing Reflections and Prayer

Chief Dalton Silver provided closing remarks on behalf of the British Columbia Specific Claims Working Group and the AFN Chiefs Committee on Lands Territories and Resources. Chief Silver thanked the Huron Wendat participants of the Gathering who provided crucial protocols, including dancing, singing, and prayers. Chief Silver acknowledged the depth of the contributions from Knowledge Keepers and legal experts during the Gathering. To bring the Gathering to a close, Aroussen Gros-Louis and George Trapper both demonstrated Huron Wendat dancing. Finally, Aroussen Gros-Louis provided a closing prayer.

V. CONCLUSION AND NEXT STEPS

This Gathering provided an important opportunity for Knowledge Keepers, First Nations leaders, community members, academics, and representatives of the AFN and the Government of Canada to actively consider the recognition of Indigenous laws in the specific claims process. The Gathering provided a space for wide-ranging discussions on Indigenous laws, ceremonies, and protocols. The Gathering also enabled participants to share perspectives on how the specific claims process must change in order to reflect the diverse array of Indigenous laws across the country.

The Assembly of First Nations (AFN) will continue to rely on the guidance of the Council of Experts in Indigenous Laws (CEIL) to determine how to effectively and responsibly ensure the recognition of Indigenous laws in the reformed specific claims process. In coordination with its Chiefs Committee on Lands, Territories, and Resources (CCoLTR), the AFN looks forward to furthering these important discussions on the recognition of Indigenous laws well into the future through such gatherings and other initiatives aimed at restoring the rightful place of Indigenous law in contemporary society.



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