
Assembly of First Nations

55 Metcalfe Street, Suite 1600
Ottawa, Ontario K1P 6L5
Telephone: 613-241-6789 Fax: 613-241-5808
www.afn.ca

**SPECIAL CHIEFS ASSEMBLY
May 1 & 2, 2018, Gatineau, QC**



Assemblée des Premières Nations

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Ottawa (Ontario) K1P 6L5
Téléphone: 613-241-6789 Télécopieur: 613-241-5808
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Resolution no. 07/2018

TITLE: Addressing First Nations Rights, Title, and Jurisdiction in Bill C-69: Impact Assessment Act, Canadian Energy Regulator Act, and the Navigation Protection Act

SUBJECT: Bill C-69; Environment

MOVED BY: Bonnie Leonard, Proxy, Skeetchestn Indian Band, BC

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

DECISION: Carried by Consensus

WHEREAS:

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

- i. Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, and coastal seas and other resources and to uphold their responsibilities.
- ii. Article 32 (2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
- iii. Article 32 (3): States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measure shall be taken to mitigate adverse environmental, economic, social, cultural, or spiritual impact.

B. The Assembly of First Nations (AFN) has passed seven resolutions concerning this process: Resolution 73/2017, *Environmental and Regulatory Reviews – Phase 3*; Resolution 20/2017,

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PERRY BELLEGARDE, NATIONAL CHIEF

07 - 2018
Page 1 of 3

Respecting Inherent Jurisdiction over Waters Parallel to the Review of Canada's Navigation Protection Act; Resolution 19/2017, Resetting the Role of First Nations in Environmental and Regulatory Review; Resolution 86/2016, Meaningful Consultation and Engagement with First Nations in the Environment and Regulatory Review; Resolution 64/2016, Support for Stk'emlupsemc te Secwepemc Nation Project Assessment Process; Resolution 12/2016, Moving Beyond Federal Legislation to Establish a Nation-to-Nation Relationship; and Resolution 35/2016, First Nations' inclusion in the review of Environmental and Regulatory processes.

- C. Prime Minister Justin Trudeau has publicly committed "to a renewed nation-to-nation relationship with First Nations (...) one that is based on recognition of rights, respect, cooperation and partnership" and to "conduct a full review of the legislation unilaterally imposed on Indigenous peoples by the previous government."
- D. Instead of engaging First Nations in the review of legislation unilaterally imposed on Indigenous Peoples by the previous government, on June 20, 2016, the Government of Canada announced a broad public review of various environmental and regulatory processes that includes:
 - i. reviewing federal environmental assessment processes;
 - ii. modernizing the National Energy Board; and
 - iii. restoring lost protections and introducing modern safeguards to the *Fisheries Act* and the *Navigation Protection Act*.
- E. The modernization of the National Energy Board (NEB) and review of the Canadian Environmental Assessment Act (CEAA 2012) went through expert panel processes, and the *Fisheries Act* and *Navigation Protection Act* went through Standing Committee processes.
- F. Despite calls for full inclusion of First Nations in drafting processes, on June 29, 2017, the Government of Canada unilaterally released a discussion paper pertaining to all four Environmental and Regulatory Reviews with a 60 day window for comment, and some opportunities for additional funding for Indigenous Nations.
- G. It remains unclear whether the Minister of Fisheries and Oceans and the Minister of Transport will use the Ministerial Working Group set out to ensure the Crown is meeting its constitutional obligations with respect to Aboriginal and Treaty Rights.
- H. First Nations cannot only rely on "common law" or the *Navigation Protection Act* for the protection of our waterways.
- I. On February 8, 2018, the Minister of Environment and Climate Change introduced Bill C-69: *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*.
- J. Canada is willing to engage in a process of reviewing policies, regulations and guidelines relating to Bill C-69. This process is expected to take between twelve and eighteen months.

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- K. Canada has released consultative papers for comment until June 1, 2018, on two regulations pertaining to the *Impact Assessment Act*: Regulations Designating Physical Activities (Project List); and Information Requirements and Time Management Regulations.

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

1. Call upon the Assembly of First Nations (AFN) to advocate that Bill C-69 be amended to include, among other things:
 - a. protections of First Nations inherent and constitutionally protected rights;
 - b. enabling joint decision-making with First Nations governing authority within the Act;
 - c. reducing excessive Ministerial discretion by increasing transparency and stronger requirements to protect s.35 rights;
 - d. strengthening the protection of Indigenous knowledge systems and ecosystems, which are the repositories of ecological knowledge and required for the transference of knowledge to future generations; and
 - e. including direct reference to Canada's commitments to the United Nations Agenda 2030 Sustainable Development Goals, the United Nations Declaration on the Rights of Indigenous Peoples, and the Convention on Biological Diversity.
2. Reaffirm their position that the current federal legislative process must not be construed as meaningful "consultation", does not meet the standard of free, prior and informed consent, and that additional time must be afforded to consult directly with rights holders in a manner that is respectful of their unique protocols, and processes.
3. Direct the AFN to continue supporting and coordinating, where possible, the interventions and participation of First Nations, regional organizations, and provincial/territorial organizations in the co-development process, including creating regional-specific processes to address regions with specific concerns including support provisions as part of a nation-to-nation relationship.
4. Call on all responsible federal Ministers to provide adequate funding directly to individual First Nations for their full and effective participation in the regulatory and policy development of Bill C-69.
5. Call on the AFN to continue conducting regional information-sessions to support First Nations, regional organizations, and provincial/territorial organizations in the process.

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