
Assembly of First Nations

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**SPECIAL CHIEFS ASSEMBLY
DECEMBER 4, 5, AND 6, 2018, OTTAWA, ON**

Resolution no. 94/2018

TITLE: **Reject Canada's Approach to Additions to Reserve Legislation**

SUBJECT: Additions to Reserve

MOVED BY: Chief Karen Batson, Pine Creek First Nation, MB

SECONDED BY: Reynold Cook, Proxy, Sapotaweyak Cree Nation, MB

DECISION Carried by Consensus

WHEREAS:

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

- i. Article 27: States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to the indigenous peoples' laws, traditions, custom 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 fully.

B. The federal Additions to Reserve (ATR) policy and process have consistently been an impediment to First Nations adding lands to reserve in a timely and efficient manner.

C. Beginning in 2009, the Assembly of First Nations (AFN) and Canada began a joint working group process (JWG) to review and renovate the federal ATR policy.

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- D. In 2012, the Chiefs-in-Assembly passed Resolution 26/2012, *Additions to Reserve Policy and Process Reform*, supporting the ongoing joint work between Canada and the AFN on ATR policy reform, and also calling for:
- i. A revised ATR process that would ensure that the implementation of all settlement agreements that include ATR commitments take precedence over other interests (e.g. municipal tax loss, etc.), uphold the honour of the Crown and respect the constitutional status of First Nations Aboriginal and Treaty Rights.
 - ii. The cooperative examination of legislation, in accordance with the standard of free, prior and informed consent, that would both expand the current legislative models available in Saskatchewan, Alberta and Manitoba to First Nations in other provinces and territories, and include other legislative measures that, in conjuncture with the revised ATR policy, make the process more efficient, effective and transparent.
- E. In 2014, the JWG submitted a final updated ATR policy to the Minister for acceptance. This policy was not immediately released. In 2016, the Chiefs-in-Assembly passed AFN Resolution 17/2016, *Call on Canada to Update the Additions to Reserve Policy*.
- F. In July 2016, the Minister of Crown Indigenous Relations Canada announced that the new policy would take effect. However, while the updated policy was released, Canada did not include the AFN in policy interpretation, implementation and oversight, leading to a general breakdown in communication and a period where no joint work was taking place.
- G. During the summer of 2018, Canada indicated that it would be tabling potential ATR legislation and presented potential options for ATR legislation through a series of presentations across Canada. This work was not undertaken jointly with the AFN.
- H. On October 29, 2018, Canada unilaterally introduced the *Addition of Land and Reserves and Reserve Creation Act* (the Act) within the omnibus *Budget Implementation Act, 2018, No. 2 (C-86)*.
- I. The development of the Act does not reflect a joint development model or approach and is therefore inconsistent with the United Nations Declaration on the Rights of Indigenous Peoples.

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

1. Reaffirm their support for Assembly of First Nations (AFN) Resolution 26/2012 *Additions to Reserve Policy and Process Reform*, which calls for:
 - a. A revised Addition to Reserve (ATR) process that would ensure that the implementation of all settlement agreements that include ATR commitments take precedence over other interests (e.g. municipal tax loss, etc.) and uphold the honour of the Crown and respect the constitutional status of First Nations Aboriginal and Treaty Rights.

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- b. The cooperative examination of legislation, in accordance with the standard of free, prior and informed consent, that would both expand the current legislative models available in Saskatchewan, Alberta and Manitoba to First Nations in other provinces and territories, and include other legislative measures that, in conjuncture with the revised ATR policy, make the process more efficient, effective and transparent.
2. Call on the AFN to immediately begin undertaking a comprehensive analysis of the *Budget Implementation Act, 2018, No. 2*, focusing specifically on the *Addition of Land and Reserves and Reserve Creation Act* (the Act) to determine how the Act might impact First Nation inherent rights.
3. Call on the AFN to immediately look for opportunities to intervene and comment on the Act, and where possible, outline First Nation concerns with the process through which the Act was developed and introduced.
4. Call on Canada to refrain from characterizing the development of the Act as being done in consultation or collaboration with First Nations or the AFN, and for Canada to immediately undertake a detailed explanation of its legislative intent to be presented to the AFN Chiefs Committee on Lands, Territories and Resources for further discussion.
5. Call on Canada to ensure that any future ATR legislation be subject to joint oversight implementation with First Nations.

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