SPECIAL CHIEFS ASSEMBLY
DECEMBER 8, 9 & 10, 2009, OTTAWA, ON

Resolution no. 38/2009

TITLE:	Federal Approach to the McIvor Decision of the BC Court of Appeal
SUBJECT:	Indian Act Status / First Nation Citizenship
MOVED BY:	Chief Maureen Chapman, Skawahlook First Nation, British Columbia
SECONDED BY:	Grand Chief Doug Kelly, Proxy, Soowahlie First Nation, British Columbia
DECISION:	Carried -- 9 Opposed

WHEREAS:

A. As previously asserted and affirmed by Chiefs-in-Assembly, most recently in resolution no. 01/2009, First Nations have inherent and unextinguished jurisdiction to make laws to define who belongs to our respective Nations.

B. The Government of Canada has exceeded its jurisdiction under s. 91(24) of the Constitution Act, 1867, through unlawfully controlling the definition of "Status Indian" through the *Indian Act* which has had an adverse discriminatory impact on First Nations women and their families.

C. The imposition of the status and registration provisions of the *Indian Act* is a violation of Indigenous Rights of Self Determination, and the continuing operation of this legislation and Canada's unilateral control over Indian Status will lead to the ultimate elimination of individuals eligible under the law to be classified as "Status Indians".

D. Canada's ongoing interference in the determination of Indian Status contravenes international conventions, most notably Article 33 of the United Nations Declaration of the Rights of Indigenous Peoples, which states: *1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live. 2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures*.

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SHAWN A-IN-CHUT ATLEO, NATIONAL CHIEF

E. On June 7, 2007 the British Columbia Supreme Court ruled in *McIvor v. The Registrar, Indian and Northern Affairs Canada* that the Government of Canada had breached its own *Charter of Rights and Freedoms* through its application "Status Indian" designations under the *Indian Act*. This decision was appealed by Canada to the British Columbia Court of Appeal (BCCA).

F. On April 6, 2009, the BCCA maintained that section 6 of the *Indian Act* was discriminatory, but found so on much narrower grounds. The BCCA struck down sections 6 (1)(a) and 6 (1)(c) and suspended its decision for one year, to allow Parliament time to amend the legislation to bring it into compliance with the *Charter of Rights and Freedoms.*

G. The BCCA did not address issues of the 6(2) second generation cut-off, nor did it consider discrimination in the *Indian Act* in regards to granting of Status to persons who trace their ancestry matrilineally rather than patrilineally, which were integral to the original ruling.

H. Sharon McIvor sought leave to appeal the BCCA decision to the Supreme Court of Canada (SCC) to ensure that all aspects of discrimination under s. 6 were examined by the court and struck from the *Indian Act.* The SCC dismissed this application on November 5, 2009, and consequently, the decision of the BCCA stands.

I. The Government of Canada and the Minister of Indian Affairs have set forward a unilateral process to amend section 6 of the *Indian Act* to respond to the BCCA's narrow interpretation of discrimination.

J. The substance, scope and conscribed timelines of this process are unacceptable to First Nations and are not reflective of the government-to-government relationship.

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

1. Re-assert that jurisdiction to determine citizenship rests with First Nations, and it is not within the powers of the Government of Canada to define who belongs to their Nations.

2. Reject the Government of Canada's current process to amend the *Indian Act* to respond to the British Columbia Court of Appeal Decision (BCCA) decision in *McIvor v. The Registrar, Indian and Northern Affairs Canada*.

3. Demand that the Government of Canada engage a government-to-government reconciliation process with First Nation governments and their designated representative organizations for the full recognition and implementation of First Nation citizenship laws.

4. Call upon the Government of Canada to strike a Special Parliamentary Committee to review the systemic barriers presented to our communities by the *Indian Act's*,intrusion in First Nations

jurisdiction, and to put forward mechanisms for the recognition and staged and supported implementation of First Nation jurisdiction.

5. Mandate the Assembly of First Nations to address the current process being pursued by Canada to respond to the McIvor decision of the BCCA by:
   a. Preparing public education materials to help inform First Nation communities and individuals about the amendments to the *Indian Act* proposed by Canada, and, but not limited to, the potential impacts of these amendments;
   b. Launching an advocacy campaign aimed at educating federal Members of Parliament, Members of the Senate and the general public on the full range of problems created through *Indian Act* determination of status;
   c. Supporting actions taken by First Nation communities in response to this process;
   d. Continuing to pressure the Federal Government to fully and meaningfully address the restoration of First Nations inherent right to determine who their citizens are, including through the creation of a Special Parliamentary Committee;
   e. Exploring opportunities to support First Nations to articulate Indigenous laws about citizenship as an alternative to the status based process that Canada currently follows; and,
   f. Ensuring that the United Nations is fully accessed as an international venue for lobbying efforts, particularly at the Fifty-fourth session of the Commission on the Status of Women, March 1-12, 2010 and the Ninth session of the UN Permanent Forum on Indigenous Issues, April 19 – 30, 2010.

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