
Assembly of First Nations

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Assemblée des Premières Nations

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**ANNUAL GENERAL ASSEMBLY
DECEMBER 8 & 9, 2020, OTTAWA, ON**

Resolution no. 09/2020

TITLE: Jointly Develop a Fully Independent Specific Claims Process

SUBJECT: Specific Claims

MOVED BY: Kukpi7 Judy Wilson, Stat'skin te Secwépemc Neskonalith, BC

SECONDED BY: Chief Lance Haymond, Kebaowek First Nation, QC

DECISION: Carried; 3 objections; 3 abstentions

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 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.
- ii. Article 28 (1): Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied, used or damaged without their free, prior and informed consent.
- iii. Article 28 (2): Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

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- iv. Article 40: Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.
- B. Assembly of First Nations (AFN) Resolution 91/2017, *Support for a Fully Independent Specific Claims Process*, support(s) the work of the Assembly of First Nations – Canada Joint Technical Working Group and call(s) on Canada to commit to jointly develop a fully independent specific claims process with the goals of eliminating Canada's conflict of interest and achieving the just resolution of Canada's outstanding lawful obligations through good faith negotiations.
- C. Resolution 91/2017 mandates the AFN to advocate for a more transformative approach to specific claims reform and resulted in a 2017 federal Memorandum to Cabinet (MC) and funding to support engagement with First Nations.
- D. In 2019, the AFN carried out a national dialogue process with First Nations on what a fully independent specific claims process should look like, resulting in a draft Summary Report outlining First Nations input.
- E. Based on the dialogue process and the Summary Report, the AFN is developing a draft proposal for a new independent body to facilitate the resolution of specific claims through negotiation or adjudication.

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

1. Call on Canada to work directly with the Assembly of First Nations (AFN) and the Chiefs Committee on Lands, Territories and Resources (CCoLTR) to develop a fully independent specific claims process consistent with the United Nations Declaration on the Rights of Indigenous Peoples and based on the following principles identified by First Nations during the 2019 AFN dialogue process:
 - a. The Honour of the Crown: the specific claims process must be consistent with the Honour of the Crown;
 - b. Independence of all Aspects of Claims Resolution: specifically including funding and oversight of claims and their resolution that must be handled independent of Canada;
 - c. Recognition of Indigenous Laws: Support the recognition of the laws, legal orders, and dispute resolution mechanisms as articulated by participating First Nations. The recognition of First Nations' laws may impact the conduct of adjudication, dispute resolution and negotiation; and,

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- d. No Arbitrary Limits on Compensation: there will be no financial constraints, such as the 150 million dollar cap on the jurisdiction of the Tribunal or the Commission. First Nations should have access to a fair process of redress that fits their needs and priorities.
2. Call on Canada to compel the provinces to participate actively in the specific claims processes.
3. Declare that efforts to reform the specific claims process will not prejudice claims currently under negotiation or at the specific claims tribunal.

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