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## Assembly of First Nations

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## Assemblée des Premières Nations

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**ANNUAL GENERAL ASSEMBLY  
JULY 11, 12, & 13, 2023; HALIFAX, NS**

**Resolution no. 48/2023**

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**TITLE:** Revitalization of Indigenous Laws and Legal Orders

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**SUBJECT:** Justice

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**MOVED BY:** Chief Byron Louis, Okanagan Indian Band, BC

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**SECONDED BY:** Judy Wilson, proxy, Osoyoos Indian Band, BC

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**DECISION** Carried by Consensus

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### WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
- i. Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, and social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.
  - ii. Article 11(2): States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.
  - iii. Article 17(1): Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
  - iv. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

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- v. 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.
  - vi. Article 40: Indigenous peoples have the right to access and to 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 the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.
- B.** The Summary of the final Truth and Reconciliation Commission (TRC) Report stated:
- i. Aboriginal peoples must be recognized as possessing the responsibility, authority, and capability to address their disagreements by making laws within their communities. This is necessary to facilitating truth and reconciliation within Aboriginal societies.
- C.** The TRC defines reconciliation as follows:
- i. An ongoing process of establishing and maintaining respectful relationships. A critical part of this process involves repairing damaged trust by making apologies, providing individual and collectives reparations, and following through with concrete actions that demonstrate real societal change. Establishing respect relations also requires the revitalization of Indigenous law and legal traditions.
- D.** The TRC's Call to Action 50 states:
- i. In keeping with the United Nations Declaration on the Rights of Indigenous Peoples, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada.
- E.** The National Inquiry into Missing and Murdered Indigenous Women and Girls' Call to Justice 5.11 states:
- i. We call upon all governments to increase accessibility to meaningful and culturally appropriate justice practices by expanding restorative justice programs and Indigenous Peoples' courts.

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- F. On June 21, 2021, the federal United Nations Declaration on the Rights of Indigenous Peoples Act (Act) received Royal Assent. The Act commits Canada to immediately to undertake three key actions to proceed with implementing the UN Declaration, in consultation and cooperation with Indigenous Peoples, to:
- i. Take all measures necessary to ensure the laws of Canada are consistent with the UN Declaration, per Section 5.
  - ii. Prepare and implement a National Action Plan, within two years of the Act receiving Royal Assent, to achieve the UN Declaration's objectives, which must include: measures for monitoring, oversight, recourse or remedy or other accountability measures with respect to the implementation of the UN Declaration, per Section 6.
  - iii. Prepare within 90 days of the end of each fiscal year an Annual Report on the measures Canada has taken under the Act, and to table that Annual Report in Parliament, per Section 7.
- G. On June 21, 2023, Canada released The United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan (Action Plan). The Action Plan states:
- i. Chapter 1, Measure 28: Canada will increase access to justice for Indigenous peoples, strengthen communities and advance self-determination by:
    - a. Finalizing an Indigenous Justice Strategy, in consultation and cooperation with Indigenous, provinces and territories, that will provide the framework for concrete actions to address systemic discrimination and the overrepresentation of Indigenous people in the Canadian justice system. (Justice Canada and various departments).
    - b. Providing on-going support for community-led work and initiatives related to revitalization and enforcement of Indigenous laws and legal orders. (Justice Canada, Public Safety Canada, and various departments).
  - ii. Chapter 1, Measure 61: Canada will support the safe and successful reintegration of Indigenous people in the criminal justice system into the community by:
    - a. Looking to reduce overrepresentation of Indigenous people in the criminal justice system by supporting rehabilitation and safer communities (including through culturally appropriate interventions), through the Federal Framework to Reduce Recidivism.
    - b. Collaborating with stakeholders to provide tailored supports for community reintegration.
    - c. Continuing to invest in Indigenous-led community corrections programming, through the Indigenous Community Corrections Initiative, to address the overrepresentation of

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Indigenous people in corrections and the criminal justice system by supporting community-led alternatives to custody and reintegration projects responsive to the unique circumstances of Indigenous people in Canada.

- d. Continuing to support culturally appropriate programs, led and designed by Indigenous organizations, to ensure appropriate attention and accountability towards Indigenous issues in the correctional systems and addressing overrepresentation of Indigenous offenders (particularly women). (Public Safety Canada).
- iii. Chapter 2, Measure 1: Canada will continue work underway with First Nations partners on a new fiscal relationship to provide sufficient, predictable and flexible funding in support of closing socioeconomic gaps and advancing self-determination. (Indigenous Services Canada)
- H. Canada's justice system and legal institutions are rooted within colonial systems that result in various forms of systemic injustice, such as the overincarceration of Indigenous Peoples and disproportionate rates of apprehension among Indigenous children. Canada's failure to recognize and accommodate Indigenous laws, traditional justice systems, Indigenous methods of justice, and Indigenous institutions, along with imbedded systemic racism are key contributors to harm and prevent the healing of First Nations.
- I. Indigenous legal systems and methods of justice are diverse and resilient. The scope of Indigenous laws, legal orders, and legal traditions are derived from sources such as sacred law, natural law, deliberative law, positivistic law, and customary law.
- J. Indigenous laws and legal orders pre-date and exist independently of Canada's Aboriginal law, though these sources of law are interconnected. Aboriginal law is a body of law, made by Canada's courts and legislatures, that largely deals with the unique constitutional rights of Aboriginal Peoples and the relationship between Indigenous peoples and the Crown. Aboriginal law is found in colonial instruments and the decisions of Canada's courts, but in some cases includes sources of Indigenous laws and legal orders.
- K. Traditional justice systems are being used internationally as a mechanism to implement transitional justice and culturally appropriate judicial forums. Traditional systems are often referred to by other terms, such as "customary", "informal", "community-based", "grassroots", "Indigenous", and "local".
- L. The knowledge of First Nations traditional justice and healing processes often comes from Knowledge Keepers, who obtained this knowledge through oral traditions and transmit it for use by future generations. True healing for vulnerable First Nations communities must come from the grassroots level and must revitalize and integrate traditional and historic First Nations justice practices, cultures, and traditions.

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- M.** The decolonization and indigenization of justice is a legal evolution that is required to make space for Indigenous laws and jurisdictions to operate alongside Canada's common law and civil law systems. Indigenous peoples require capacity to support this transformation beyond existing oppressive regimes. Traditional justice and healing practices that intertwine with modern justice practices could provide that space.
- N.** First Nations have Modern Treaties that are nation to nation agreements recognized and affirmed under the *Constitution Act, 1982*, and nothing in this resolution is meant or shall be interpreted so as to diminish, limit, impact, or supersede the ability of First Nations to exercise their inherent jurisdictions, to exercise and fulfill their rights and authorities under Modern Treaties, or to engage in their unique relationship with Canada.

**THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:**

1. Call upon the Government of Canada to support First Nations initiatives to revitalize their traditional justice practices by adequately funding an innovative First Nations-led approach to justice and healing that is meaningfully informed by the sacred Knowledge Keepers and oral traditions of First Nations.
2. Direct the Assembly of First Nations to continue engagement with First Nations and national or regional Indigenous organizations to determine options to support all First Nations as they seek to revitalize their legal practices and traditions and, where requested, by working with all First Nations and required internal and external partners in their co-development of processes that will revitalize Indigenous laws and traditional justice systems where mandated to do so.

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