
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. 39/2023

TITLE: Repeal or Amend Legislation that Breaches First Nations Inherent and Treaty Rights to Natural Resources

SUBJECT: Economic Development, Rights, Treaties

MOVED BY: Sharman Fourhorns, proxy, Star Blanket Cree Nation, SK

SECONDED BY: Chief Sheldon Kent, Black River, MB

DECISION Carried; 4 abstentions

WHEREAS:

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

- i. Article 26 (1): Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
- ii. Article 26 (2): Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
- iii. Article 26 (3): States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.
- 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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- B.** The following resolutions were passed by the Assembly of First Nations (AFN) First Nations-in-Assembly asserting Inherent and Treaty rights to natural resources:
- i.** Resolution 56/2016, Natural Resource Transfer Act (NRTA) Violation of Inherent Aboriginal and Treaty Rights, directs the Government of Canada to conduct a thorough review of the NRTA and provincial acts that impact the inherent and Treaty Rights to hunt, fish and trap and ensure free, prior and informed consent in the review process and calls upon Canada to ensure that the principle of free, prior, and informed consent is followed in the review process on the NRTA.
 - ii.** Resolution 31/2017, Natural Resource Transfer Act, directs the AFN Secretariat to support First Nations interested in challenging NRTA.
 - iii.** Resolution 54/2022, Political and Financial Support for the Western Treaty Nations on the Natural Resource Transfer Agreement Summit, supports Western Treaty Nations in their efforts to re-establish First Nations jurisdiction, authority, and management over lands, water, wildlife, and natural resources.
- C.** First Nations have inherent and Treaty Rights that flow from the land prior to what is now Canada and beyond the United States border.
- D.** The federal government has delegated jurisdiction to provinces and territories over Crown lands and natural resources.
- E.** As per Resolution 56/2016, Natural Resource Transfer Act (NRTA) Violation of Inherent Aboriginal and Treaty Rights, the 1930 Natural Resources Acts have four basic effects:
- i.** It gave constitutional protection to the Indians' right to hunt, trap and fish for subsistence.
 - ii.** It removes the Indians' Treaty right to hunt and fish commercially.
 - iii.** It expanded the harvesting territory from the lands described in the Treaties. As a result, the Indians' right to hunt, trap, and fish became a province-wide right on all occupied Crown lands or any other lands to which the Indians have right of access. Because all three Prairie Provinces have identical protection, it really means that the Indians' right is a prairie-wide right.
 - iv.** The NRTA expands the definition of "Indians" who can hunt in the Prairie provinces. Any Indian from anywhere can harvest for subsistence anywhere on the Prairie provinces.
- F.** Many acts passed by the Parliament of Canada transfer control over Crown lands and natural resources from the Government of Canada to provincial and territorial governments, including but not limited to:
- i.** The Natural Resources Acts (NRTA), 1930:

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- a. The Saskatchewan Natural Resources Act
 - b. The Alberta Natural Resources Act
 - c. The Manitoba Natural Resources Act (which also applies to Lake of the Woods and Lac Seul in Ontario)
 - ii. The Indian Lands Act (Ontario), 1924
 - iii. The Environmental Act S.N.S. 1994-95 (Nova Scotia) Section 103 regarding water courses
 - iv. The Indian Reserves of Nova Scotia Act – Mines and Minerals
 - v. The Navigable Waters Act (Ontario), and
 - vi. The British Columbia Indian Reserves Minerals Resources Act.
- G.** NRTAs were concluded without First Nations consultation or the consideration of First Nations Inherent and Treaty Rights. This is an egregious breach of Treaty.
- H.** As per the NRTAs, “the foregoing provisions of this agreement may be varied by agreement confirmed by concurrent statutes of the Parliament of Canada and the Legislature of the Province.”
- I.** First Nations in Alberta, Saskatchewan, and Manitoba deem NRTAs as illegal, unconstitutional, and a breach of Treaty.
- J.** On April 5, 2023, at the 2023 AFN Special Chiefs’ Assembly, Federal Justice Minister David Lametti “commit(ted) to looking at the 1930 Natural Resources Acts”.
- K.** In response to criticism from premiers, on April 13, 2023, Prime Minister, Justin Trudeau stated, “natural resources are constitutionally directed to be the purview of the provinces. We’re not putting that into question.” This contravenes Canada’s commitment to the United Nations Declaration on the Rights of Indigenous Peoples Act and Canada’s Action Plan, Actions 32 and 33, to develop guidelines for free, prior, and informed consent regarding natural resources projects and commit to increasing the economic participation of Indigenous Peoples and their communities in natural resource development.

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

1. Direct the Assembly of First Nations (AFN) to identify the funds for work to be done by First Nations to conduct research to identify legislative and regulatory instruments where the federal government has delegated

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jurisdiction to provinces and territories over crown lands and natural resources that restrict or extinguish the inherent, Treaty and constitutional rights of First Nations.

2. Call on the Prime Minister of Canada and the provinces and territories to repeal or amend legislative and regulatory instruments that breach First Nations' Inherent and Treaty Rights, including the 1930 Natural Resources Acts.
3. Call upon Canada to ensure that the principle of free, prior, and informed consent or permission, is followed in any repeal or amendment of legislative and regulatory instruments that breach First Nations' inherent and Treaty Rights, including the 1930 Natural Resources Acts.

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