

# OUR LAND IS OUR FUTURE

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### UNION OF B.C. INDIAN CHIEFS CHIEFS COUNCIL

FEBRUARY 26<sup>TH</sup>-27<sup>TH</sup>, 2020

MUSQUEAM COMMUNITY CENTRE, X<sup>w</sup>MƏƏK<sup>w</sup>ƏY<sup>ə</sup>M (MUSQUEAM TERRITORY)

**Resolution no. 2020-11**

#### **RE: Full Recognition and Integration of Indigenous Laws in Specific Claims Processes**

**WHEREAS** the historic actions illegally undertaken by the colonial government of British Columbia and successive governments of Canada since BC entered confederation in 1871 have resulted in the dispossession of our Indigenous Nations, including the illegal alienation of our lands; the failure to protect Indian reserves, villages and fishing areas; the systematic denial of rights to fish and access to water; and the illegal disruption and removal of sacred sites and grave sites;

**WHEREAS** the compensation and redress for these illegal actions has either been improperly administered or systematically denied and these illegal actions continue to impact Indigenous Peoples economically, socially, culturally, and spiritually;

**WHEREAS** for more than 50 years Indigenous Nations and their representative organizations have been seeking a fair and independent process, with BC Nations always at the leading edge of calls for reform;

**WHEREAS** the current specific claims process is built on a conflict of interest wherein (a) Canada functions as the decision-maker in claims against itself and (b) all rules and norms are based on Canadian law and legal traditions, to the exclusion of the laws and legal traditions of all Indigenous Nations participating in the process;

**WHEREAS** a Nation-to-Nation approach and true redress for historical wrongs requires a shared approach to justice, based equally on the laws of claimant Nations and of Canada;

**WHEREAS** the *United Nations Declaration on the Rights of Indigenous Peoples*, which the government of Canada has adopted without qualification, and has, alongside the government of BC, committed to implement, affirms:

**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.

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(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.

(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.

**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.

**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 or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

(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;

**WHEREAS** the Truth and Reconciliation Commission Call to Action 45(iv) calls for the recognition and integration of Indigenous laws and legal traditions in processes involving land claims;

**WHEREAS** in 2016, the Office of the Auditor General of Canada released its report on INAC's management of Justice at Last, and found that Canada had grossly mismanaged the process and created numerous barriers for First Nations seeking resolution of their specific claims;

**WHEREAS** in keeping with one of the OAG's recommendations, the AFN and Canada formed a Joint Technical Working Group (JTWG) that seeks to address the systemic problems within the process. The JTWG is currently developing proposals for a new and fully independent model for specific claims resolutions, and UBCIC Research Director, Jody Woods, sits on the JTWG to articulate and advance the concerns of Indigenous Nations in BC;

**WHEREAS** the AFN has held two sets of engagement sessions (2017 and fall 2019) to solicit feedback from Indigenous community members on their priorities for reforming the specific claims process;

**WHEREAS** BC Nations have been unequivocal in articulating the need to fundamentally transform the process to fully eliminate Canada's conflict of interest by creating a fully independent body to manage and evaluate claims and to integrate Indigenous laws and legal principles into all aspects of a new, jointly developed claims resolution process;

**WHEREAS** the BC Specific Claims Working Group has forwarded the views of BC Nations in two written submissions to the AFN JTWG process;

**WHEREAS** the BC Specific Claims Working Group's December 18, 2019 submission to the AFN JTWG process strongly recommended the establishment of an independent body to manage and oversee all aspects of a new specific claims resolution process and in developing this body, to prioritize convening an advisory committee made up of Indigenous legal scholars and community experts to give full consideration and make

recommendations regarding the integration of Indigenous laws into a new independent claims resolution process, and to form a permanent advisory committee to provide continuing structural guidance and oversight;

**WHEREAS** the UBCIC Chiefs Council passed Resolution 2017-44 calling on Canada to “establish a truly independent process for the administration, assessment, and adjudication of specific claims that eliminates Canada’s conflict of interest and that includes ongoing joint reviews and oversight”;

**WHEREAS** the Assembly of First Nations passed Resolution 91/2017 supporting the work of the JTWG and calling on Canada to “commit to jointly develop a fully independent specific claims process with the goal of achieving just resolution of Canada’s outstanding lawful obligations through good faith negotiations”; and

**WHEREAS** the recognition and integration of Indigenous laws and legal principles must be included in any just, fair process for the resolution of specific claims, allowing space for each Nation to activate its own laws in its own ways, with emphasis given to the following:

- Creating equal space for a plurality of Indigenous legal traditions
- Recognizing the ongoing nature of resolution
- Foregrounding Indigenous worldviews and understandings of loss
- Expanding acceptable forms of restitution
- Undertaking shared deliberations and decision-making
- Expanding what constitutes valid evidence.

**THEREFORE BE IT RESOLVED** the UBCIC Chiefs Council directs the UBCIC Executive to continue to call for a fully independent process for the resolution of specific claims that includes the recognition and integration of the laws and legal traditions of Indigenous claimant Nations in accordance with Articles 26, 27, and 28 of the *UN Declaration on the Rights of Indigenous Peoples* and all other international instruments that Canada is a signatory to, as well as international obligations, international legal principles and international customary law regarding the rights of Indigenous Peoples;

**THEREFORE BE IT FURTHER RESOLVED** the UBCIC Chiefs Council directs the UBCIC and like-minded organizations to continue to engage Indigenous Nations and community experts in Indigenous laws about the integration of Indigenous laws into resolution of specific claims; and

**THEREFORE BE IT FINALLY RESOLVED** the UBCIC Chiefs Council calls on Canada to publicly commit to the creation of a fully independent specific claims process and an Indigenous legal advisory committee to ensure the recognition and integration of Indigenous laws.

**Moved:** Kukpi7 Ron Ignace, Skeetchestn Indian Band

**Seconded:** Chief Chad Eneas, Penticton Indian Band

**Disposition:** Carried

**1 Abstention:** Chief William Schneider, Samahquam First Nation

**Date:** February 27, 2020