

OUR LAND IS OUR FUTURE

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Open Letter to Minister Carolyn Bennett: Indigenous and Northern Affairs Managers and Staff Must Recognize Validity of Band Council Resolutions

November 1, 2017

RE: Indigenous and Northern Affairs Managers and Staff Again Declaring Band Council Resolutions Invalid

Dear Minister Bennett,

We are writing to respectfully urge you to address an important matter which is impeding the ability of First Nations to access information from your ministry for the purposes of filing specific claims.

Once again, managers and staff working in information services at INAC are denying researchers access to records necessary for submitting specific claims. The denial of records in this instance is based on an internal policy that states that Band Council Resolutions (BCRs) “expire” and are no longer valid after a one or two-year period, even if no expiry date is listed on the BCR. This policy has been communicated to research staff informally through email without reference to any statutory or regulatory provision. It appears that it was developed unilaterally by information management staff without any consultation with Indigenous Nations.

Specific claims deal with Canada’s failure to fulfill historical lawful obligations relating to treaties and to protect Indigenous reserve lands and assets from illegal alienation and mismanagement. BCRs are the mechanism through which a First Nation community authorizes centralized claims research units (CRUs) to conduct specific claims research on their behalf and access records that provide supporting evidence for specific claims.

There is no statutory or other regulatory justification for INAC managers and staff to refuse access to records on the basis that BCRs expire after two years unless otherwise indicated on the BCR. BCRs are legal instruments that reflect a band council’s decisions; there is no expiration provision in the Indian Act and Regulations that states that BCRs become invalid or “expires” after any period of time unless at the explicit direction of the Indigenous government.

This “expired BCR policy” creates an additional administrative burden, adding significant delay and expense to the research process, as BCRs must be continually updated and renewed for our researchers to access information on behalf of communities to support their claims. In the meantime, research lies dormant, documents cannot be

ordered and legal work cannot take place. This policy also undermines the authority and legitimacy of Indigenous governments to make decisions as elected representatives acting upon the wishes of their communities. The unilateral development and implementation of arbitrary policies without statutory or regulatory validity contradicts the recommendations made by the Office of the Auditor General in 2016 to remove existing substantial barriers to the specific claims process that impede First Nations' access to justice in resolving their claims. INAC's practices also contravene the Government of Canada's commitment to reconciliation with Indigenous Nations and hinders efforts by Canada to meet the standards of redress for historical wrongs articulated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as it significantly undermines First Nations' existing rights of access to information.

In keeping with Canada's commitments to reconciliation and to implement the appropriate articles of UNDRIP, as well as ensuring access to justice for Indigenous Nations, we urge you to immediately communicate to INAC managers and staff that BCRs do not by default expire, that there is no basis in law for such a policy, and that, as such, the policy has no validity and that all attempts to implement it must stop.

Please find attached a May 3, 2016 legal review of the "expired BCR policy" which provides background on the issue and outlines the implications of continuing to adhere to such a flawed approach.

On behalf of the UNION OF BC INDIAN CHIEFS



Grand Chief Stewart Phillip
President



Chief Robert Chamberlin
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CC:

Jody Wilson-Raybould, Minister of Justice and Attorney General
Mélanie Joly, Minister of Canadian Heritage
Pierre Desrochers, Acting Director, Corporate Information Management Directorate, INAC
BC Specific Claims Working Group
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First Nations Summit