
Assembly of First Nations

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Assemblée des Premières Nations

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SPECIAL CHIEFS ASSEMBLY
December 5, 6 & 7, 2017, Ottawa, ON

Resolution no. 73/2017

TITLE: Environmental and Regulatory Reviews

SUBJECT: Environment

MOVED BY: Kukpi7 Ron Ignace, Skeetchestn Indian Band, B.C.

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

DECISION Carried; 1 abstention

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples states:
- i. Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, and coastal seas and other resources and to uphold their responsibilities.
 - ii. Article 32 (2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
 - iii. Article 32 (3): States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measure shall be taken to mitigate adverse environmental, economic, social, cultural, or spiritual impact.

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- B. The Assembly of First Nations (AFN) has passed six resolutions concerning the environmental and regulatory reviews: 19/2017: *Resetting the Role of First Nations in Environmental and Regulatory Review*; 86/2016: *Meaningful Consultation and Engagement with First Nations in the Environment and Regulatory Review*; 64/2016: Support for Stk'emlupsemc te Secwepemc Nation Project Assessment Process; 12/2016: *Moving Beyond Federal Legislation to Establish a Nation-to-Nation Relationship*; 35/2016: *First Nations' Inclusion in the Review of Environmental and Regulatory Processes*; 24/2012: *Consultation and Engagement on Amendments to the Fisheries Act*; and 47/2012: *Opposition to Unilateral Changes in Fisheries Management in Canada*.
- C. In 1998, then Minister of Environment, David Anderson, established an Aboriginal Working Group to the Species-at-Risk Act (SARA) that allowed First Nations' full, direct, and unfettered participation to the legislative process, including reviewing clause-by-clause the precursors to the SARA.
- D. Prime Minister Justin Trudeau has publicly committed "to a renewed nation-to-nation relationship with First Nations (...) one that is based on recognition of rights, respect, cooperation and partnership" and to "conduct a full review of the legislation unilaterally imposed on Indigenous peoples by the previous government."
- E. Instead of engaging First Nations in the review of "legislation unilaterally imposed on Indigenous Peoples by the previous government", on June 20, 2016, the Government of Canada announced a broad public review of various environmental and regulatory processes that includes:
- i. Reviewing federal environmental assessment processes.
 - ii. Modernizing the National Energy Board.
 - iii. Restoring lost protections and introducing modern safeguards to the *Fisheries Act* and the *Navigation Protection Act*.
- F. The modernization of the National Energy Board (NEB) and review of the *Canadian Environmental Assessment Act* (CEAA 2012) went through expert panel processes, and the *Fisheries Act* and *Navigation Protection Act* went through Standing Committee processes.
- G. Despite calls for full-inclusion of First Nations in drafting processes, on June 29, 2017 the Government of Canada unilaterally released a Discussion Paper pertaining to all four Environmental and Regulatory Reviews with a 60-day window for comment, and included some opportunities for additional funding for Indigenous nations.
- H. It remains unclear whether the Minister of Fisheries and Oceans and the Minister of Transport will use the Ministerial Working Group as set out to ensure the Crown is meeting its Constitutional obligations with respect to Aboriginal and Treaty Rights.

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- I. First Nations cannot, only rely on “common law” or the *Navigation Protection Act* for the protection of our waterways.
- J. Given this challenge, the AFN has taken the initiative to prepare its own First Nations-specific discussion paper that draws on the hundreds of submissions from First Nations and their representative organizations made to Canada, and included information from technical sessions.
- K. The Government of Canada has since submitted a Memorandum to Cabinet on the environmental and regulatory processes, looking to have a Draft Bill tabled either at the end of this December sitting of Parliament or during the beginning of the January sitting of Parliament.
- L. Following the tabling of this legislation, Canada appears willing to engage in a joint process of reviewing legislative amendments, policies, regulations and guidelines relating to the four environmental and regulatory processes. This process is expected to take between twelve and eighteen months.
- M. Prime Minister Trudeau reflected this commitment in his letter sent on November 22, 2017 to the Advisory Committee on Climate Action and the Environment (ACCAE) Co-Chairs.
- N. The Chiefs-in-Assembly resolved in Resolution 20/2017 “... *that the current engagement process cannot be construed as “consultation” and fails to meet the free, prior and informed consent standard and that additional time must be afforded to consult directly with rights holders in a manner that is respectful of their unique protocols, processes, and elements*”.

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

- 1. Direct the Assembly of First Nations (AFN) to pursue the commitment from Canada for co-development of legislative amendments, policies, regulations, and guidelines for the environmental and regulatory processes, and the creation of a body which combines technical discussions, political oversight, and regional representation.
- 2. Call upon Canada to meet or exceed the precedent set in the development and eventual passage of the Species-at-Risk Act, which involved full, direct, and unfettered participation of First Nations.
- 3. Direct the AFN to continue supporting and coordinating, where possible, the interventions and participation of First Nations, regional organizations, and provincial/territorial organizations in the co-development process mentioned above, including creating regionally specific processes to address specific concerns, as well as support provisions as part of nation-to-nation relationships.
- 4. Call on all responsible Ministers to provide adequate funding directly to individual First Nations for their full and effective participation in the environmental and regulatory reviews.
- 5. Mandate the AFN to conduct regional information sessions to support First Nations, regional organizations, and provincial/territorial organizations in the process.

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