



## BC ASSEMBLY OF FIRST NATIONS

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### BCAFN 17<sup>th</sup> ANNUAL SPECIAL CHIEFS MEETING

March 3 & 4, 2021

Online via Zoom

**Resolution 18/2021**

**SUBJECT: SUPPORT FOR THE OKANAGAN INDIAN BAND IN THEIR FIGHT TO UPHOLD FIRST NATION JURISDICTION AND RIGHTS ON RESERVE**

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**Moved BY: CHIEF BYRON LOUIS, OKANAGAN INDIAN BAND**

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**SECONDED BY: CHIEF HARVEY MCLEOD, UPPER NICOLA INDIAN BAND**

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**DECISION: CARRIED**

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#### WHEREAS:

- A. The Okanagan Indian Band is part of the Okanagan Nation, and administers the Okanagan Reserve #1 as lands reserved for its members under the *Indian Act*, RSC 1985, c I-5 (the "Indian Act"), and as a part of the traditional lands of the Syilx people;
- B. The Okanagan Indian Band is also a "band" within the meaning of the *Indian Act*, with the authority to create by-laws applying to Okanagan Reserve #1, including in relation to wildlife;
- C. In October 1956, the Okanagan Indian Band validly enacted a wildlife by-law under the Indian Act regulating hunting and protecting wildlife on Okanagan Reserve #1, the effect of which generally prohibits the broad imposition of provincial wildlife regulation by virtue of the Indian Act's federal nature;
- D. On November 16, 2019, the British Columbia Conservation Officer Service ("COS"):
  - a. trespassed onto the Okanagan Reserve #1;

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- b. ignored the jurisdiction, by-laws, and explicit direction of the Okanagan Indian Band requiring to COS refrain from entering the reserve;
  - c. attempted to apply the provincial *Wildlife Act*, RSBC 1996, c 488 (the “Wildlife Act”);
  - d. confronted and took property of a Syilx person, member of the Okanagan Indian Band (the “Okanagan Member”), stopping them from exercising their hunting rights on reserve in a well-known hunting area and confiscated their property; and
  - e. recommended charges to the BC Prosecution Service under the provincial Wildlife Act undermining the jurisdiction of the Okanagan Indian Band on reserve;
- E. In November 2020, the BC Prosecution Service accepted the recommendation of the COS and formally laid charges against the Okanagan Member;
- F. Article 13 of the *British Columbia Terms of Union, 1871*, transferred control and management of reserve lands from British Columbia to Canada and stated that Canada would follow “a policy as liberal as that hitherto pursued” by BC;
- G. The *Okanagan Nation Declaration, 1987* affirms:

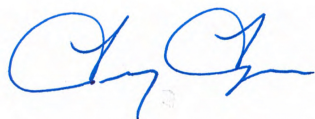
*We are the unconquered aboriginal peoples of this land, our mother;*

*The creator has given us our mother, to enjoy, to manage and to protect;*

*We have never given up our rights to our mother, our mother’s resources, our governments and our religion; we will survive and continue to govern our mother and her resources for the good of all for all time;*
- H. The decision of the Supreme Court of Canada in *Delgamuukw v British Columbia* [1997] 3 SCR 1010 at 1116-18, established that Aboriginal title lands are within exclusive federal jurisdiction because they are encompassed by the words “[l]ands reserved for the Indians” in s. 91(24) of the *Constitution Act, 1867*.
- I. In November 2019, the BC provincial government passed the BC Declaration on the *Right of Indigenous Peoples Act*, SBC 2019, c 44 to implement the *United Nations Declaration on the Rights of Indigenous Peoples*, which the Truth and Reconciliation Commission confirms as the framework for reconciliation;
- J. The *United Nations Declaration on the Rights of Indigenous Peoples* affirms:

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Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions;

Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, 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;

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;

**THEREFORE BE IT RESOLVED THAT:**

1. The BCAFN Chiefs-in-Assembly fully support the Okanagan Indian Band in their fight to uphold First Nation jurisdiction on reserves and will call on British Columbia to acknowledge the general jurisdiction of First Nations over wildlife management, hunting and other resource management issues on their reserves, and discontinue any outstanding criminal or regulatory prosecution at odds with this jurisdiction; and
2. The BCAFN Chiefs-in-Assembly specifically call upon British Columbia to discontinue the prosecution of Johnny Lee Bonneau of the Okanagan Indian Band for charges related to the exercise of Syilx harvesting rights on the reserve land of the Okanagan Indian Band.

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**Terry Teegee, BC Regional Chief**