



## BC ASSEMBLY OF FIRST NATIONS

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Website: www.bcafn.ca

**BCAFN ANNUAL GENERAL MEETING**  
**September 21, 22, & 23, 2022**  
**Hybrid - In person & online via Zoom**

**Resolution 20/2022**

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**SUBJECT:                   DISTINCTIONS BASED APPROACH TO RECOGNITION AND IMPLEMENTATION  
OF THE INHERENT RIGHTS OF FIRST NATIONS PEOPLES AND GOVERNMENTS**

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**MOVED BY:               KUKPI7 JUDY WILSON, NESKONLITH INDIAN BAND**

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**SECONDED BY:         CHIEF DON TOM, TSARTLIP FIRST NATION**

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**DECISION:               CARRIED**

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**WHEREAS:**

- A.     the historical actions illegally undertaken by the colonial government of British Columbia (BC) and successive governments of Canada have resulted in the dispossession of First Nations, including the illegal alienation of our lands; the failure to protect Indian reserves, villages, hunting, fishing & harvesting areas; the systematic denial of rights to fish and access to water; and the illegal disruption and removal of sacred sites, land use and occupancy structures & areas and grave sites;
  
- B.     these historical losses and the ongoing fallout and harm caused to First Nations are the result of fictional, racist concepts such as *terra nullius* and the *doctrines of discovery, domination and denial* which provided colonial and Canadian governments justification for alienating land through organized systems of pre-emption and land grants to accelerate non-Indigenous settlement on Indigenous lands and territories, and later through systems of land alienation legalized and exploited under the *Indian Act* and often in clear violation of the minimal protections contained in colonial or federal law;

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**Terry Teegee, BC Regional Chief**

- C. redress of these historical wrongs is necessary through recognition of the rights of First Nations, including territorial and marine or water rights, and respectful and legally sound processes for resolving conflicts arising from the denial of rights era. Furthermore, Canada's lawful obligation and the honour of the Crown necessitates just action on the part of the federal and provincial governments, that takes into account the key distinctions between First Nations and Metis and does not lump together Indigenous peoples for convenience as this is confusing, degrading and recreates further colonial difficulties;
- D. the rights of First Nations, as the territorial rights holders, are distinct from those of the Metis in British Columbia as a matter of law and principle and this has been recognized in jurisprudence, constitutional law and through the application of international human rights and customary law'
- E. the provincial government's relationship and engagement with First Nations, Métis and Inuit peoples will require different approaches to the substance and the process of reconciliation so that it is meaningful, accurate and responds to the distinct circumstances of First Nations, and does not create new rights by extension to those who never had such rights;
- F. grouping all Indigenous peoples together in government policies and approaches, without proper regard for distinctions between peoples who each have their own unique cultures, histories, rights, territories, laws, and governments, is inappropriate and not consistent with constitutional law or international human rights law, including the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration).
- G. all policy must be based on the recognition that First Nations were the pre-existing societies using and occupying lands and resources prior to contact and who have inherent Title and Rights and constitutionally protected rights in relation to their lands and resources, and international legal protections in the UN Declaration that require governments recognize and align their work properly with a distinctions-based approach. There must also be recognition that there are distinctions among individual and distinct First Nations, such as those who are inherent Title and Rights holders as well as those who are Treaty and Modern Treaty Nations.
- H. a distinctions-based approach recognizes that Indigenous peoples and their rights are distinct, and all matters engaging lands and resources give rise to legal obligations owing to First Nations, and this must be a priority to resolve colonial conflicts. Furthermore, the Métis are not first peoples in British Columbia with a territory or scope of rights in any way equivalent or similar to First Nations, as Métis rights and presence in British Columbia occurred after colonization and settlement;
- I. the UN Declaration, which the government of Canada has adopted without qualification, and has, alongside the government of British Columbia committed to implement, affirms:

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**Article 8(2):** States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration.

**Article 19:** States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**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;  
**(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.

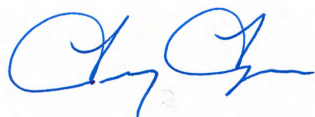
**Article 27:** States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights 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; and

- J. all governments must explicitly have policies that acknowledge and take into account distinctions through the application of a distinctions-based approach when reviewing or aligning laws, policies and practices with UN Declaration and the rights and interests of diverse and distinct Indigenous peoples, including First Nations in BC, in line with the federal *UN Declaration on the Rights of Indigenous Peoples Act* and the provincial *Declaration on the Rights of Indigenous Peoples Act* which impose an obligation to do so.

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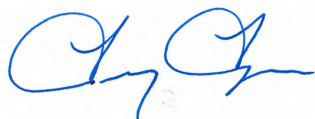
**Terry Teegee, BC Regional Chief**

**THEREFORE BE IT RESOLVED THAT:**

1. the BCAFN Chiefs-in-Assembly calls upon all governments to adopt a distinctions-based approach to ensure the distinct rights, interests, histories, and contexts of First Nations as the first occupants and owners of their respective territories are recognized, while also ensuring that there is a recognition that First Nations, as territorial rights holders in British Columbia (BC), are distinct from Métis and/or other Indigenous peoples who are visitors to our territories;
2. the BCAFN Chiefs-in-Assembly calls upon all governments to work with the BCAFN, working alongside the Union of BC Indian Chiefs and the First Nations Summit as the First Nations Leadership Council to co-develop and affirm a distinctions-based approach in all of its work to recognize, affirm, implement and respect the rights of First Nations; and
3. the BCAFN Chiefs-in-Assembly directs the Regional Chief and staff to seek funding and/or necessary resources to advocate for and assist in the development of a distinctions-based policy to all aspects of action planning on the implementation of the UN Declaration at the federal, provincial and municipal levels of government that is reflective of the distinctions among Indigenous peoples in order to strengthen future policy and law making.

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