

First Nations Summit

RESOLUTION #0617.05

SUBJECT: SUPPORT “IN-PRINCIPLE” FOR OUTCOMES OF STRATEGIC DIALOGUE SESSION, “DEFINING A NEW FIRST NATIONS FISCAL RELATIONSHIP WITH THE CROWN” AND PRINCIPLES FOR A NEW FISCAL RELATIONSHIP

WHEREAS:

- A. The SCC in *Delgamuukw* has articulated that, “Three aspects of aboriginal title are relevant here. First, aboriginal title encompasses the right to exclusive use and occupation of land; second, aboriginal title encompasses the right to choose to what uses land can be put, subject to the ultimate limit that those uses cannot destroy the ability of the land to sustain future generations of aboriginal peoples; and third, that lands held pursuant to aboriginal title have an inescapable economic component.” Excerpt: *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at para. 166.
- B. Following this, in 2000, through Resolution #0600.06 the First Nations Summit (FNS) established the FNS Fiscal Relations Secretariat to support First Nations in the treaty process on tax and fiscal matters and to work with the Assembly of First Nations (AFN) Fiscal Relations Secretariat on information sharing and to provide input into the nations fiscal relations process. Many of the policy issues around tax and fiscal had Canada-wide implications and it was necessary to engage those who established the negotiation mandates for treaty negotiations.
- C. Through that work, it was identified that a First Nations-Crown fiscal relationship determines First Nation jurisdiction over taxation, ability to generate revenue and engage in revenue sharing, services and the transfer amounts from other governments to ensure First Nation services are delivered to national standards.
- D. The current First Nation fiscal relationship is not a nation-to-nation one because it does not recognize sufficient First Nation tax or service jurisdiction. Therefore, the current relationship is failing because it does not provide stable long term revenues to support First Nation services and infrastructure at national standards.
- E. In British Columbia, concern has been expressed in regard to statements made by the BC Government. In particular, by Minister John Rustad in regard to First Nations First Nations jurisdiction and authorities, “First Nations assertion of ownership within a geographic area, and associated requests for fees to operate on Crown lands, are not consistent with provincial laws of authority. To be clear, the Province maintains full jurisdiction on Crown lands, and does not view First Nation governments as possessing the authority to require companies to make access payments in return for being allowed to work in their respective territories. In addition, ***the Province does not support the imposition of revenue-generating processes on Crown lands and for Crown-authorized activities from any third party, and this includes First Nations.***” Excerpt: Letter from Minister John Rustad to Gavin Dirom, President and CEO, Association for Mineral Exploration B.C. June 2016.

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- F. Many of the fiscal financing issues remain impediments to achieving stable First Nations governments, treaties, agreements and other constructive arrangements and addressing such issues must be considered a high priority.
- G. Minister Wilson-Raybould has stated that, “As a government, we recognize that the fundamental purpose of Section 35 is reconciliation of the prior occupation of indigenous peoples with Crown sovereignty. And we are fully committed to fulfilling the constitutional promise made to indigenous peoples in 1982 ... [and] reconciliation actually requires laws to change and policies to be rewritten... [but] if we are to get rid of the *Indian Act*, we need to determine how First Nations transition away from band government to something which is reflective of the proper title and rights holder... Only indigenous peoples can determine their institutions and shape their future.” Excerpt: Address given by Minister Jody Wilson-Raybould, February 15, 2017, Ottawa, Ontario.
- H. On the national stage, it is acknowledged that Canada has initiated a nation-to-nation discussion with the AFN that includes discussions on a new fiscal relationship. Further, the Government of Canada and self-governing and negotiating Indigenous governments are engaged in a collaborative fiscal policy development initiative.
- I. On June 7, 2017 First Nations in BC participated in a province-wide strategic dialogue session on defining a new First Nations fiscal relationship with the Crown.
- J. At that session, a number of principles for a new First Nations fiscal relationship with the Crown (attached as appendix A) were discussed by First Nations in BC. A high-level overview of these principles include:
- i. Expanded Tax Powers and Clear Jurisdiction & Authorities
 - ii. Incentives for Economic Development
 - iii. Revenues Related to Service Responsibilities
 - iv. Comparability
 - v. Improved Statistics
 - vi. Institutional Support.
- K. First Nations in BC will continue to discuss the principles of a new fiscal relationship with the Crown within their respective communities and may amend or tailor the above noted principles to meet the specific, unique requirements of communities.

THEREFORE BE IT RESOLVED:

1. That the First Nations Summit Chiefs in Assembly:
 - a) support “in-principle” the attached document titled, “*Principles for a new First Nations–Crown Fiscal Relationship*” as discussed at the province-wide June 7, 2017 strategic dialogue session of First Nations in BC.

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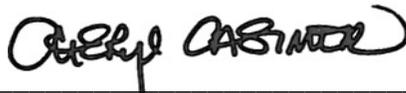
- b) direct the First Nations Summit Task Group to advance the “*Principles for a new First Nations–Crown Fiscal Relationship*” with the Assembly of First Nations (AFN) representatives on the AFN-Canada Fiscal Relations Working Group for their consideration.
2. That the First Nations Summit Chiefs in Assembly encourage First Nations to:
- a. review and discuss the principles for a new First Nations–Crown Fiscal Relationship within our respective communities; and
 - b. amend or refine the principles as necessary to meet the unique needs and circumstances of each community.

MOVED BY: Chief Joe Bevan, Kitselas First Nation
SECONDED BY: Cliff Sampare, Gitxsan Hereditary Chiefs

DATED: June 9, 2017

Passed by consensus.

ENDORSED BY:



Cheryl Casimer



Robert Phillips



Grand Chief Edward John

Appendix A

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SUPPORT “IN-PRINCIPLE” FOR OUTCOMES OF STRATEGIC DIALOGUE SESSION, “DEFINING A NEW FIRST NATIONS FISCAL RELATIONSHIP WITH THE CROWN” AND PRINCIPLES FOR A NEW FISCAL RELATIONSHIP

“PRINCIPLES FOR A NEW
FIRST NATIONS-CROWN FISCAL RELATIONSHIP”

Musqueam Community Centre, Vancouver, BC
June 7, 2017

Principles of a New Fiscal Relationship

1. **New Relationship to reflect the United Nations Declaration on the Rights of Indigenous Peoples, in particular, Article 4**
2. **Expanded Tax Powers and Clear Revenue & Service Jurisdiction**
3. **Incentives for Economic Development**
4. **Revenues Related to Service Responsibilities**
5. **Comparability**
6. **Improved Statistics**
7. **Institutional Support**

1. New Relationship to reflect the United Nations Declaration on the Rights of Indigenous Peoples, in particular, Article 4

A new First Nations – Crown fiscal relationship must reflect Article 4 of the United Nations Declaration on the Rights of Indigenous Peoples provides that,

“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.”

2. Expanded Tax Powers and Clear Revenue & Service Jurisdiction

- i. Protected and certain (direct or shared) tax powers, not delegated by Canada or BC.**
- ii. Clear First Nation jurisdictions that are on similar terms as other orders of government.**
- iii. When First Nations assume revenue jurisdictions, other governments will coordinate according to negotiated terms (wholly or partially in a tax-sharing arrangement).**
- iv. Legislative framework for the transfer payment system that provides autonomy & flexibility.**
- v. First Nations must be consulted on any legislation from other orders of government that may impact on the First Nations fiscal relationship.**

3. Incentives for Economic Development

- i. First Nations need broader and more certain transfers and tax jurisdictions so that:
 - a) they are not forced into commercial enterprises to generate revenues, and**
 - b) are incentivized to develop better quality services and seek service efficiencies.****
- ii. The relationship between own source revenues (“OSR”) and transfers must create incentives and not unduly penalize First Nations for developing their revenue base.**
- iii. First Nations need clear and secure revenue jurisdiction to support access to capital to engage in economic development.**
- iv. The measurement of OSR capacity must be respectful of cultural land uses, community land uses, community aspirations and environmental limitations.**
- v. OSR capacity must factor in decisions made by other orders of government and market conditions that can affect the economic potential of First Nation lands.**
- vi. The new arrangements need to reflect and respect the “inescapable economic component” of Aboriginal title as recognized by the Supreme Court of Canada.**

4. Revenues Related to Service Responsibilities

- i. Tying the exercise of specific First Nation revenue jurisdictions to assumption of specific service responsibilities leads to better services and infrastructure and supports accountability from all governments to our members.**
- ii. First Nations should have a clearly defined bundle of service responsibilities and a related bundle of clearly defined revenue options to help meet the costs of these services.**
- iii. A core of services and direct revenues should be revenue based. These First Nation revenues should be exempted from transfer offsets and revenue caps, and associated First Nation services should be exempt from reporting requirements and conditions of other governments.**

5. Comparability

- i. First Nations must be recognized, respected and treated as an order of government within the federation of Canada.**
- ii. First Nation jurisdictions and revenue authorities need protections comparable to the provinces.**
- iii. First Nations should have comparable standard of living to other Canadians.**
- iv. First Nations should have comparable quality and access to government services.**
- v. First Nations need the revenues to be able provide services up to national standards in order to “catch up” and “keep up” to the quality of life enjoyed by other Canadians.**
- vi. There must be no reduction in transfers related to the development of OSR until some mutually agreed upon measure of “comparability of services or socio-economic outcomes” is achieved.**

6. Improved Statistics

- i. The quality of and access to First Nations statistics must be improved.**
- ii. First Nations need independent capacity (institutional support) to develop statistics to support a new fiscal relationship.**

7. Institutional Support

- i. First Nations require our own institutions to support, protect and expand jurisdictions**
- ii. First Nations require our own institutions for capacity development, training and advice**
- iii. First Nations require our own institutions to establish standards and tools, and carry out research, advocacy and government-to-government relationship building.**