

LAND CLAIMS AGREEMENTS COALITION



Council of Yukon First Nations
Grand Council of the Crees (Eeyou Istchee)
Gwich'in Tribal Council
Inuvialuit Regional Corporation
Kwanlin Dun First Nation

Maa-nulth First Nations
Makivik Corporation
Naskapi Nation of Kawawachikamach
Nisga'a Nation
Nunatsiavut Government

Nunavut Tunngavik Incorporated
The Sahtu Secretariat Incorporated
Tlicho Government
Tsawwassen First Nation
Vuntut Gwitchin

c/o The Consilium Consulting Group, 488 Gladstone Ave., Ottawa, ON, K1R 5N8
Tel: (613) 237-3613 Fax: (613) 237-3845 www.landclaimscoalition.ca

Background Brief: AANDC Fiscal Harmonization Initiative

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The members of the Land Claims Agreements Coalition have grave concerns about the proposal recently put forward by AANDC officials in their Fiscal Harmonization Initiative (FHI) policy paper and in engagement sessions that have been held across Canada. We feel strongly that the federal proposal is a large step backwards in the fiscal relationship between our governments, and undermines our treaty relationships.

This submission outlines:

- 1) Our specific concerns related to the contents of the Fiscal Harmonization Initiative;
- 2) Our concerns related to the FHI engagement process to date;
- 3) Critical issues that must be addressed in order to substantively attend to fiscal concerns faced by LCAC Members; and
- 4) A way forward to resolve issues related to the fiscal process.

1) Specific Concerns related to the Fiscal Harmonization Initiative

The proposed federal initiative would be extremely damaging to fiscal relationships between Coalition members and the Crown, for the following reasons:

- **Any formula-based approach to modern treaty funding is in direct breach of our Constitutionally-protected agreements.** Modern treaties, as Constitutionally-protected agreements, trump federal policy every time. Thus, it remains unclear how the formula-based approach that is being proposed could ever accommodate the requirements for

negotiated financial arrangements which are vested in our agreements. Furthermore, the imposition of a dictated formula for all other nations cannot help but impact the Crown's negotiation abilities with those nations who currently have a negotiation commitment enshrined in their agreements.

- **The Fiscal Harmonization Policy as currently proposed must not apply to fiscal relationships with modern treaty signatories.** AANDC has made it clear that it intends to remove the negotiation requirement from future agreements, but this cannot be applied retroactively. There must be a clear distinction between the treatment of current, signed modern treaty agreements that contain the negotiation requirement; and unsettled or future agreements that do not contain it.
- **Substantive issues raised have not been addressed.** The FHI proposal does not address substantive issues raised repeatedly by Coalition members during the engagement process. These include funding adequacy, comparability, and approaches to own-source revenue contributions.
- **The proposed national forum structure is flawed.** The proposed national advisory process will not provide Coalition members, as individual nations, with an equal voice in the process. The advisory process, as loosely described by AANDC in their proposals to date, does not address in any meaningful way the negotiation commitment enshrined in Agreements. Coalition members will only be able to make recommendations to change the existing policy. Indeed, the proposed process will not even meet basic standards of consultation. While the governance structure of the forum is still unclear, it is plainly apparent that the ability of individual governments to argue on behalf of their respective agreements will be severely diluted under the new arrangement, due to the aggregation of various representative voices present at the national forum.
- **FHI imposes additional and unnecessary reporting requirements.** The reporting requirements described in the AANDC proposals will impose an additional and unnecessary burden on Coalition members. Members are already accountable to their citizens and to the federal government through the terms of existing financial arrangements. The Government of Canada does not require specific accounting and reporting on funds provided through equalization or the Territorial Formula Financing Agreements and has no reason to apply additional conditions to aboriginal financing arrangements.

- **The lack of federal negotiating mandates lie at the root of the current fiscal renewal challenges.** A recurring issue which has protracted negotiations for all fiscal renewals is that federal mandates are not broad enough to cover the scope of negotiations needed, nor have they allowed for innovative solutions proposed by Aboriginal signatories. Unless AANDC addresses the underlying mandate issue, delays in the fiscal renewal process will continue to waste the time and resources of all parties. The FHI Policy does nothing to address this issue; rather its unilateral approach continues to jeopardize an already deteriorating treaty relationship. The only way in which modern land claim and self-government agreements can be honoured, respected and complied with is to have genuine, good faith negotiations dealing with fiscal matters that seek to fulfill the treaty objective of ensuring our nations can provide comparable programs and services.
- **The FHI proposal ignores our nation-to-nation relationship:** The FHI proposal erodes our nation-to-nation, negotiation-based fiscal relationship into a dictated, formulaic process that reduces Coalition members to stakeholder status in a multi-party consultation process. This is an unacceptable approach. It reduces holders of signed modern treaty agreements—who are entitled to have the unique relationships with the Crown which are described in their agreements—to a stakeholder negotiating on the basis of a policy put forward unilaterally by a federal agency. This runs counter to binding commitments that have been made in our existing modern treaty agreements.

2) FHI Process Concerns

- **The Fiscal Harmonization engagement process is disrespectful of the “new relationship” promised in modern treaty agreements.** Modern treaties are intended to clarify and reinforce a respectful government-to-government relationship between Aboriginal signatories and the Government of Canada. Aboriginal governments are integral to the long term stability and viability of Aboriginal communities. Rather than a thoughtful, creative and collaborative approach which is based on a foundation of goodwill and honours the new relationship promised in our treaties, AANDC has presented us with a bureaucratic engagement exercise which, at its core, is another example of the Government of Canada trying to discharge its obligations under these agreements in a narrow and technical manner.
- **The Fiscal Harmonization Initiative provides a Government of Canada-centric view of the issues related to fiscal renewals, and ignored all input provided by Aboriginal signatories.** Related to the point above, the current engagement process has shown to

be completely unresponsive to the concerns raised by our members during each of the three engagement meetings held to date. While the federal government has painstakingly acknowledged receipt of submissions, AANDC has, to date, failed to address directly and openly any of the numerous questions, concerns, and comments made by Coalition members during the engagement process. They have also failed to demonstrate that any comments have been considered or have had an impact on how AANDC is proceeding with the FHI initiative. We can only assume that the FHI process was not intended as a good-faith two-way dialogue designed to come to real solutions for all parties; rather it is designed only to address internal AANDC management and administrative issues. The consequences of which, if implemented as proposed, will be a direct breach of our agreements, and a further erosion of trust and goodwill between the Government of Canada and Aboriginal signatories.

- **Substantive details have not been revealed.** AANDC has, through two rounds of engagement, failed to reveal any substantive details of the formula they are proposing. They have listed various factors they may take into consideration, but have not provided any indication of specific elements, or how they will be applied. This lack of transparency provides no basis for Coalition members to understand or knowledgeably comment on the proposal itself, other than to comment on the extent to which a formula will abrogate negotiated commitments in various Agreements. There remains a complete lack of transparency as to the details of the proposed formula; and to the best of our knowledge, AANDC does not intend to provide Coalition members with a substantive opportunity to provide feedback once they have issued a proposed specific formula.
- **AANDC’s process has been an “engagement”; not a meaningful “consultation”.** They have intended that these first two rounds of ‘engagement’ are the majority of their discussions with Coalition members. AANDC will not use the term ‘consultation’ as they recognize that their interaction with members does not fit a proper definition of that concept.

3) Critical Issues

The following critical issues must be addressed in any discussion related to modern treaty funding arrangements. These include:

- **Collaboration on a Model Implementation Policy is needed.** The Coalition continues to promote a Model Implementation Policy, which it first issued in 2008, and as yet has received no formal acknowledgement or reply. The federal government’s adoption or attention to this policy would ensure that our Constitutionally-protected nation-to-nation relationships are stronger and more effective. Full and effective implementation of modern treaties would alleviate the need for any ‘fiscal harmonization’ process.
- **Funding for Self Government is inadequate for delivery of services comparable to other regions in Canada.** The principle of revenue adequacy has been left out of the Fiscal Harmonization proposal; however this is a key underlying issue affecting the ability of modern treaty organizations to fulfill their objectives. Current funding parameters do not adequately recognize the cost of government, and do not compare with the level of funding for programs delivered by provincial and municipal jurisdictions. The result is that we cannot provide programs and services at a level sufficient to build the strength of our communities and our people. By leaving this critical issue out of the FHI proposal, AANDC is again attempting to discharge the Government of Canada’s financial obligations under the agreements. In other words, AANDC is not complying with the agreements unless it provides funding that is adequate to fully implement them. Auditor General Reports and other independent research have stated repeatedly that self government programs and services are chronically underfunded, and have been for years. In the interim health, education, social programs and housing in our communities continue to deteriorate. This is a national embarrassment to Canada, and undermines the spirit and intent of the agreements to build self reliance in our communities.
- **Own-Source Revenue:** Own-Source Revenue (OSR) has been an element of the funding arrangements of many Coalition Members. Since the creation of OSR by AANDC, Coalition members have advised that it is an ill-considered and inefficient tax whose design and application reduces incentives to create wealth and contribute to the national economy. Nevertheless, AANDC is intent on broadening the jurisdictions and organizations who will be faced with an OSR-type approach. Coalition members agree with the principle of contributing to their own success and increasing financial responsibility over time; however, the implementation aspects of OSR must be revisited in order to provide an environment for Coalition members to be successful.

4) Resolving the Fiscal Process

There is a way forward that will resolve the issues outlined above, and move our modern treaty relationship toward a more productive and respectful footing. We continue to advocate for the development, along with the Government of Canada, of a comprehensive modern treaty implementation policy, a draft of which we submitted to the AANDC Minister in 2008.

We believe that the issues related to our fiscal relationship can be most effectively addressed within the broader context of an implementation policy which reaffirms the Government of Canada’s commitment to the modern treaties to which it is bound.

Fully implemented Modern Treaties benefit all Canadians. The purpose and intent of land claims agreements is to encourage self-reliance and economic development as well as cultural and social well-being in Aboriginal communities in Canada. Our members continue to work diligently towards that goal; there are many “good news” examples across the country of how our agreements are working, and how resources on Aboriginal lands are being used and co-managed to the great benefit of all Canadians. Our treaties represent a major commitment – both by Aboriginal signatories and the Government of Canada. It is in our collective best interest to see them succeed.