

**INDIGENOUS AND NORTHERN AFFAIRS CANADA  
RESPONSE TO MEDIA**

**(not for external distribution - for use by spokespersons)**

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**ISSUE: FNFTA compliance measures (12/10/15)**

**POSITIONING STATEMENT**

Indigenous and Northern Affairs Minister's overarching goal is to renew the relationship between Canada and Indigenous Peoples. This renewal must be a nation-to-nation relationship between Canada and Indigenous peoples – one based on recognition, rights, respect, co-operation and partnership.

**KEY MESSAGES:**

- The Government of Canada is committed to having a nation-to-nation relationship that is respectful to First Nation communities and their members.
- We will be working with First Nations and others to determine how to best achieve accountability and transparency for First Nation members.
- Indigenous and Northern Affairs Canada will continue to support First Nations through capacity development and community building initiatives.

**If asked about repealing the Act:**

- I have been asked to undertake, along with my colleague the Minister of Justice, in full partnership and consultation with First Nations, Inuit, and the Métis Nation, a review of the laws to ensure that the Crown is fully executing its obligations in accordance with its constitutional and international obligations.

**If asked about suspension of compliance measures:**

Refer to Statement

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**Background**

On March 27, 2013, the *First Nations Financial Transparency Act* received Royal Assent in Parliament. The legislation has resulted in basic First Nations financial

information being published on the Indigenous and Northern Affairs Canada website as of July 2014. According to the legislation, First Nations have 120 days after the end of the financial year to publish the documents online.

The *First Nations Financial Transparency Act* requires that 581 First Nations, defined as an Indian band under the Indian Act, make their audited consolidated financial statements and a Schedule of Remuneration and Expenses of chief and council available to their members as well as publish it on a website. These financial documents include:

- audited consolidated financial statements
- the Schedule of Remuneration and Expenses
- the auditor's written report respecting the consolidated financial statements
- the auditor's report or the review engagement report, as the case may be, respecting the Schedule of Remuneration and Expenses.

As well, starting in 2014-2015 and in compliance with the legislation, the Minister of Indigenous and Northern Affairs Canada is now required to publish, on the departmental website, the audited consolidated financial statement and the Schedule of Remuneration and Expenses of chief and council for each First Nation, when received.

This legislation was part of the Government's commitment in the 2011 Speech from the Throne to support democratic, transparent and accountable First Nation governments by requiring the public disclosure of remuneration and expenses of chiefs and councillors and First Nations' audited consolidated financial statements.

**DESIGNATED SPOKESPERSONS :**

<b>Media Relations</b>
<b><u>PRIMARY HQ CONTACT</u></b>
Media Inquiries Line Media Relations (819) 953-1160

**INDIGENOUS AND NORTHERN AFFAIRS CANADA**

**Questions and Answers**

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**Q1. When will the Government release withheld funding to First Nations that have not complied with the FNFTA?**

**A1.** Departmental staff are working to identify funding withheld as a result of non-compliance with the *First Nations Financial Transparency Act* and will be processing for payment as soon as possible.

**Q2. When and how will the Government consult with First Nations on a review of FNFTA?**

**A2.** Details of the engagement process will be worked out in the coming months in partnership, and with the full cooperation of, First Nation participants.

**Q3. How will the Government ensure First Nation members can have transparent access to information about a First Nation's finances in the absence of the FNFTA compliance measures?**

**A3.** The Department will continue to work closely with First Nations in the interim period. It is expected that First Nations that have not yet reported under FNFTA will continue to make efforts toward finalizing their audited consolidated financial statements, that these statements will be provided to the Department and that they will be made available to their First Nations membership.

**Q4. How much money will be released? Will the Government release all funding currently being withheld from First Nations?**

**A4.** Based on current estimates, \$X (CFO to input) will be released that are being held as a result of non-compliance with FNFTA. Note that there may be additional funding that continues to be withheld due to other outstanding reporting requirements.

**INDIGENOUS AND NORTHERN AFFAIRS CANADA  
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- We will be working with First Nations and others to determine how to best achieve accountability and transparency for First Nation members.
- Indigenous and Northern Affairs Canada will continue to support to First Nations through capacity development and community building initiatives.

**If asked about repealing the Act:**

- I have been asked to undertake, along with my colleague the Minister of Justice, in full partnership and consultation with First Nations, Inuit, and the Métis Nation, a review of the laws to ensure that the Crown is fully executing its obligations in accordance with its constitutional and international obligations.

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## INDIGENOUS AND NORTHERN AFFAIRS CANADA

### Questions and Answers

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**A2. Details of the engagement process will be worked out in the coming months in partnership, and with the full cooperation of, First Nation participants.**

**Q3. How will the Government ensure First Nation members can have transparent access to information about a First Nation's finances in the absence of the FNFTA compliance measures?**

**A3. The Department will continue to work closely with First Nations in order to encourage compliance with the financial reporting requirements in the interim period. It is expected that First Nations that have not yet reported under FNFTA will continue to make efforts toward finalizing their audited consolidated financial statements, that these statements will be provided to the Department and that they will be made available to their First Nations membership.**

**Under the default provisions in the funding agreements, the Department may take action to remediate the situation, as appropriate, where a First nation is not meeting this requirement.**

**Q4. How much money will be released? Will the Government release all funding currently being withheld from First Nations?**

**A4. Based on current estimates \$ will be released that are being held as a result of non-compliance with FNFTA. Note that there may be additional funding that continues to be withheld due to other outstanding reporting requirements.**

**Page 7**  
**is not relevant**  
**est non pertinente**

**REVIEW OF LAWS, POLICIES AND OPERATIONAL PRACTICES**

Decision by the Deputy Minister

**DATE:** February 25, 2016

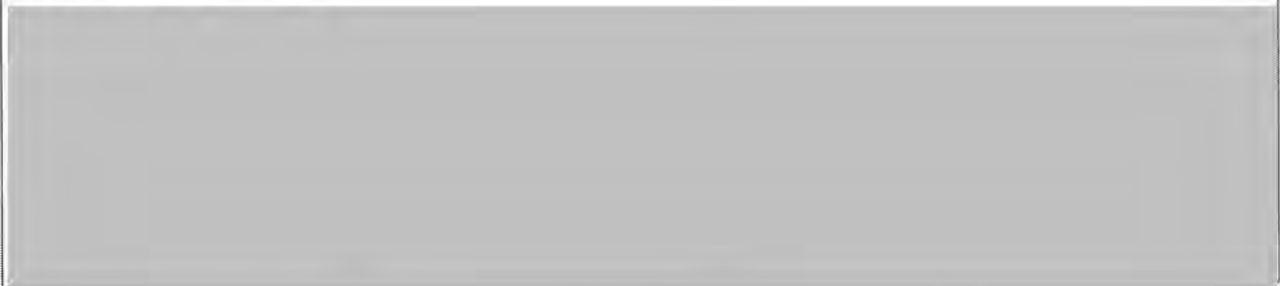
**SUMMARY**

- The current mandate for the Minister includes the task to:  
 “Undertake, with advice from the Minister of Justice, in full partnership and consultation with First Nations, Inuit, and the Métis Nation, a review of laws, policies, and operational practices to ensure that the Crown is fully executing its consultation and accommodation obligations, in accordance with its constitutional and international human rights obligations, including Aboriginal and Treaty rights.”



practices.

**RECOMMENDATION**



I concur

I do not concur

I wish to discuss further

Deputy Minister/  
Associate Deputy Minister: \_\_\_\_\_ Date: \_\_\_\_\_



## BACKGROUND

- Each federal department and agency is responsible for meeting their consultation and accommodation obligations and, as such, need to understand how and when their business could impact Indigenous groups.
- INAC continues to support departments and agencies by developing policy, tools and training for federal officials to fulfill the duty to consult. This includes recent engagement work undertaken with Indigenous groups, provincial/territorial officials and industry proponents in summer 2015, with a view toward revising the 2011 Guidelines for Federal Officials to Fulfill the Duty to Consult and draft guidance to industry proponents.
- Mr. Bryn Gray, the former Minister's Special Representative has submitted a draft report on his engagement meetings with Indigenous groups, provinces and territories and industry proponents that was circulated, for comment, to the Assistant Deputy Ministers of federal departments and agencies. A final report is due by March 31, 2016. The final report may inform our work as we move forward to build a renewed relationship with Indigenous Peoples – one based on recognition of rights, respect, cooperation, and partnership.

## CONSIDERATIONS

- Many Indigenous groups perceive that Canada's approach to consultation is to meet a legal minimum standard, rather than to consult and accommodate meaningfully.
- Many Indigenous groups have expressed that they would like to enter into a dialogue with Canada to explore how free, prior and informed consent can be adopted as the standard for consultation and accommodation policies and practices.
- On the legislative front, as a matter of good practice, INAC aims to work in continuous partnership with its stakeholders, in order to ensure proposed policies and legislation is informed by a diversity of viewpoints and responds to identified needs, while respecting the Government of Canada's prerogative to introduce legislation.
- Other government departments often look to INAC for confirmation that they have fulfilled the duty to consult. INAC does not provide this determination. Final determination of consultation and accommodation adequacy remains the decision of the relevant department or agency, with their legal counsel, if needed.
- In recent months, other government departments have been looking to INAC for advice on how to proceed in light of the Minister's mandate to review laws, policies and operational practices, and to clarify what a proposed review will involve.

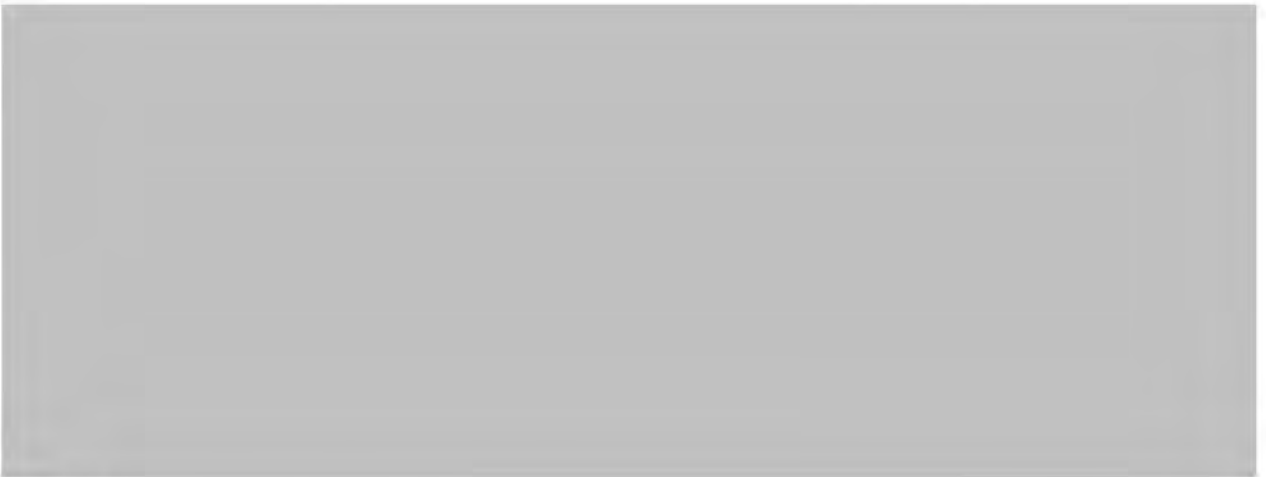




**COMMUNICATIONS CONSIDERATIONS**



**NEXT STEPS**



**ANNEX**

Annex A: Deck "Strengthening Aboriginal Consultation – Moving Forward on Priorities"



Indigenous and  
Northern Affairs Canada

Affaires autochtones  
et du Nord Canada



**Indigenous and  
Northern Affairs Canada**

**Affaires autochtones  
et du Nord Canada**



# **Strengthening Indigenous Consultation**

## **Moving Forward on Priorities**

### **February 2016**

**Canada**



- Implementing the United Nations Declaration on the Rights of Indigenous Peoples, including aligning the duty to consult with free, prior and informed consent.
  - Implementing recommendations of the Truth and Reconciliation Commission.
  - Advancements to the section 35 Policy Framework, including implementation of modern treaties.
  - Collaborating with lead departments to support amendments to environmental assessment legislation to enhance the consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects.
- ...and ...
- **Reviewing laws, policies and operational practices to ensure that the Crown is fully executing its consultation and accommodation obligations.**



## Background: What INAC Does

- For a number of years, INAC has led a whole-of-government approach to Indigenous consultation with the following elements:
  - Management of up-to-date information on Indigenous and treaty rights assertions with region-specific expertise and advisement using two services – the Consultation Information Service and the Aboriginal and Treaty Rights Information System.
  - Delivering consultation-related policy development, training modules, department/agency-specific training sessions and providing support to departments and agencies, tools for consistency and policy development.
  - Outlining processes for consultation by negotiating and implementing consultation protocols with provinces and Indigenous groups.
  - Forming relationships with provinces and territories through memoranda of understanding.
  - Establishing and maintaining interdepartmental structures (Headquarters and regions) and points of contact to support and advise departments and agencies involved in Indigenous consultation and accommodation.
- INAC is also responsible for meeting the duty to consult when triggered by INAC activities.
- In 2015, INAC started to explore ways to adjust and improve upon the whole-of-government approach to Indigenous consultation through an engagement process led by a Ministerial Special Representative.





# Nurturing Nation-to-Nation Rapport

## *Consultation Builds Relationships*

- Canada has made important strides in building relationships with Indigenous groups and will continue this work:
  - On behalf of Canada, INAC has entered into eight consultation protocols (covering 47 communities) to strengthen and clarify consultation processes – four more are in the final stages of negotiation.
  - Canada is moving to greater collaboration with provinces and territories through memoranda of understanding – one is being implemented and four are ready for approval.
  - Supports implementation of comprehensive land claims agreements through the Modern Treaty Implementation Office.
  - In the North, Treaties have established co-management boards that are tasked with undertaking joint land use planning, and integrating consultation into the review of major resource development and infrastructure projects.
- Departments and agencies, including INAC, are meeting their consultation obligations according to their responsibilities.
- Certain departments and agencies have built positive, effective and long-standing relationships with Indigenous groups (e.g. Parks Canada) by undertaking early and continuous engagement across all business lines, etc.





## What is the Duty to Consult?

**The Crown has a duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Indigenous or treaty rights.**

- The duty to consult is a Crown responsibility, primarily triggered by lands and resource-related activities.
- Given jurisdictional responsibilities (e.g. natural resources), provincial and territorial activities trigger the duty to consult significantly more often than federal government activities.
- Each department and agency is responsible for meeting their consultation obligations.
- Departments and agencies need to understand their business, and how and when their business could have an adverse impact on Indigenous and treaty rights.
- Good consultation, when done properly, results in strengthened relationships and partnerships with Indigenous Peoples. Trying to reach agreement between the parties is the objective of consultation and supports the broader reconciliation objectives.



# At the Federal Level: How Does the Duty to Consult Work on the Ground?

## *The Basics – the Federal Government*

- At the federal level, a spectrum of activities can trigger the duty to consult: from major projects such as interprovincial pipelines and mines, disposals of Crown assets, various small regulatory decisions, decisions related to park lands, etc.

## *The Basics – Indigenous and Northern Affairs Canada*

- INAC activities that trigger the duty to consult include consulting on overlapping land claims, additions to reserve, decisions of northern land and water boards, etc.
- In addition to meeting its own obligations, INAC provides advice and support (e.g. guidelines, training, information on potential and established Indigenous and treaty rights, etc.) to other government departments and agencies.



# Partner Perspectives on the Duty to Consult

## *Indigenous groups*

- Canada's approach to consultation is to meet a legal minimum standard (i.e. a "check-the-box" exercise).

## *Provinces and Territories*

- Generally, they have similar approaches to consultation but with different positions on some key issues (e.g. consulting with Métis groups).

## *Industry*

- Seeks clarity of roles and responsibilities of all parties to a consultation process with proper government oversight.

## *Other Government Departments*

- Other government departments will often look to INAC for advice of whether they have fulfilled the duty to consult; however, the Department does not provide such determinations – this remains the decision of the relevant department or agency.



## **Review of laws, policies and operational practices to ensure that the Crown is fully executing its consultation and accommodation obligations**

### ***Considerations***

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]



**Review of laws, policies and operational practices to ensure that the Crown is fully executing its consultation and accommodation obligations (continued)**





## Annex A - Evolution of the Duty to Consult



- Since 2010, the courts have further defined how the duty to consult applies and via these decisions, are generally supportive of Canada's approach.
  - In certain circumstances, boards and tribunals can carry out consultation activities (*Rio Tinto*, 2010).
  - Treaty provisions and the duty to consult can co-exist (*Little Salmon/Carmacks*, 2010).
  - Reiterated that strategic, higher-level decisions can be subject to the legal duty (*Rio Tinto*, 2010).
  - Compensation can be a potential remedy for past consultation failures (*Rio Tinto*, 2010).
- In 2014, the Supreme Court of Canada granted Aboriginal title for the first time.
  - When Aboriginal title is established, the Crown must comply with its procedural duties and must also justify any incursions on title lands; allegations of infringement or failure to adequately consult can be avoided by obtaining the consent of the interested Aboriginal groups (*Roger William*, 2014).





# Annex B: Progress Report

## Consultation Protocols

### COMPLETED:

- Dene Tha' First Nation Consultation Protocols (2007)
- Algonquins of Ontario Tripartite Consultation Process Interim Measures Agreement (2009)
- Terms of Reference for a Mi'kmaq-Nova Scotia-Canada Consultation Process (2010)
- Mi'kmaq-Prince Edward Island-Canada Consultation Agreement (2011)
- Mi'gmaq-Quebec-Canada Interim Tripartite Agreement on Mi'gmaq Consultation and Accommodation (Gaspé region) (2011)
- Canada, Province of New Brunswick and Mi'gmaq and Maliseet of New Brunswick Interim Agreement (2013)
- Lax kw'alaams and Metlakatla-Prince Rupert Port Authority protocol
- Canada-Métis Nation of Ontario Agreement (2014)

### UNDER NEGOTIATION:

- Nisga'a Nation (British Columbia)
- Sto:lo Nation (British Columbia)
- Stoney Nation (Alberta)
- Manitoba Metis Federation (Manitoba)
- Nation Huronne-Wendat (Quebec)
- Grand Conseil Waban-Aki (Quebec)

## Memoranda of Understanding

### COMPLETED

- ✓ Nova Scotia

### COMPLETED BUT NOT SIGNED

- ✓ British Columbia
- ✓ Alberta
- ✓ Manitoba

### UNDER NEGOTIATION

- ✓ New Brunswick

## Joint Training

- ✓ Canada and Nova Scotia
- ✓ Exploring joint training with Ontario and New Brunswick



## Annex C – Duty to Consult

- Three elements are required:
  - contemplated Crown conduct (e.g. divestiture of real property, permitting and licensing for resource projects);
  - potential or established Indigenous or treaty rights (e.g. hunting, fishing, trapping, other cultural practices related to land, water, air); and
  - potential adverse impact (e.g. limitations on Indigenous group's ability to exercise various rights and cultural practices, could be related to a disruption in wildlife migration patterns and habitat).
- Where the duty arises, the Crown will be required to:
  - carry out a fair and reasonable process for consultations; and
  - demonstrate reasonable efforts to respond and, if required, accommodate.
- Consultation is not a rights-determination exercise.
- Indigenous groups must participate in the process — reasonable consultation is a two-way street.
- Consultation needs to occur early.

### Tools for Federal Officials

- Moving forward with revisions to Updated Guidelines for Federal Officials to Fulfill the Duty to Consult.
- A draft Public Statement to Clarify Canada's Approach to Consultation and Accommodation.
- A draft Consultation and Accommodation Advice for Proponents.



## **Annex D: Examples of Consultation Obligations of Indigenous and Northern Affairs Canada**

- Many of the Department's activities have the potential to adversely impact potential or established Indigenous or treaty rights and, thus, may trigger the duty to consult\*:
  - Lands and Economic Development Sector:
    - Additions to Reserve
    - Reserve Creation
    - Environmental management activities on reserve lands
  - Treaties and Aboriginal Government Sector:
    - Consultation/engagement provisions in land claims agreements
    - Negotiating and signing agreements in regions with overlapping claims
  - Northern Affairs Organization:
    - Contaminated Sites remediation activities
    - Approval of Type A Water Licenses
    - Licences to prospect and prospecting permits, mineral leases, mineral claims

\* This is not an exhaustive list

**Page 24**  
**is not relevant**  
**est non pertinente**

**Pages 25 to / à 34  
are withheld pursuant to sections  
sont retenues en vertu des articles**

**21(1)(a), 21(1)(c)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

**Pages 35 to / à 36  
are withheld pursuant to sections  
sont retenues en vertu des articles**

**69(1)(g) re: , 69(1)(g) re: (c), 21(1)(a), 21(1)(c)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**



**Page 37**  
**is not relevant**  
**est non pertinente**



2016 Spring Assembly of Treaty Chiefs  
Treaty No. 6 – Treaty No. 7 – Treaty No. 8  
OFFICIAL RESOLUTION #R04-25-06-2016



**Subject:** A Review of Laws and a Repeal of Bill C-27 (First Nations Financial Transparency Act)

**Moved by:** Chief Randy Ermineskin, Ermineskin Cree Nation

**Seconded by:** Proxy Chief Sydney Halcrow, Kapawe'no Nation

**Decision:** Carried by Unanimous Consensus

**WHEREAS:**

1. The Assembly of Treaty Chiefs (AOTC) of Treaty No. 6, Treaty No. 7, Treaty No. 8 (Alberta) did meet in a duly convened meeting in the Tsuut'ina Nation on May 24, 25, 26, 2016;
2. The Chiefs derive their authority from the Creator and the citizens of their respective Nations/Tribes, and in the exercise of their inherent authority and Treaty rights are beneficiaries of all aspects of international law, including but not limited to the Charter of the United Nations, the United Nations Declaration on the Rights of Indigenous Peoples, and ILO Convention 169, and from time to time pass Resolutions and provide directives to their representative organizations; and
3. That under international law in Article 1 of the International Covenant on Civil and Political Rights states "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development"; and
4. The United Nations Declaration on the Rights of Indigenous Peoples states in Article 3 "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. The Chiefs in Assembly received a presentation from Minister Bennett on issues impacting First Nations and Treaty Peoples"; and
5. The United Nations Declaration on the Rights of Indigenous Peoples states in 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."; and

OFFICIAL RESOLUTION #R04-25-06-2016

CERTIFIED CORRECT BY: \_\_\_\_\_

Bobbi Herrera - Resolution Chair

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6. The Government of Canada under Minister Bennett of Indigenous and Northern Affairs was directed by Prime Minister Justin Trudeau in her mandate letter to "Undertake, with advice from the Minister of Justice, in full partnership and consultation with First Nations, Inuit, and the Métis Nation, a review of laws, policies, and operational practices to ensure that the Crown is fully executing its consultation and accommodation obligations, in accordance with its constitutional and international human rights obligations, including Aboriginal and Treaty rights." ; and
7. The Government of Canada continues to have Bill C-27 (First Nations Financial Transparency Act) in place despite widespread opposition by First Nations across Canada

**THEREFORE BE IT RESOLVED that the Assembly of Treaty Chiefs:**

1. Direct Minister Bennett of Indigenous and Northern Affairs to follow through with the Government of Canada's commitment to review all laws, policies and operational practices that were made during the previous Conservative Government's tenure.
2. Direct Minister Bennett to immediately repeal Bill C-27 (First Nations Financial Transparency Act) as an act of good faith in following through with the Liberal Government's commitment to have a respectful and renewed relationship with First Nations that honours the treaty.

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**OFFICIAL RESOLUTION #R04-25-06-2016**

**CERTIFIED CORRECT BY:**



**Bobbi Herrera - Resolution Chair**

**Page 40**  
**is not relevant**  
**est non pertinente**

# OUR LAND IS OUR FUTURE

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

FOUNDING HEAD OFFICE  
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May 10, 2016

Right Honourable Justin Trudeau  
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Via email: [Justin.Trudeau@parl.gc.ca](mailto:Justin.Trudeau@parl.gc.ca);  
[pm@pm.gc.ca](mailto:pm@pm.gc.ca)

Honourable Jody Wilson-Raybould  
Minister of Justice and Attorney General of  
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Honourable Dr. Carolyn Bennett  
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[Minister@aadnc-aandc.gc.ca](mailto:Minister@aadnc-aandc.gc.ca)

**RE: Canada's Commitment to Legislative Review re. Indigenous Peoples**

Dear Prime Minister Trudeau, Minister Bennett, and Minister Wilson-Raybould:

We are writing to request an update regarding the status of Minister Bennett and Minister Wilson-Raybould's mandate to undertake, in full partnership and consultation with First Nations, Inuit and the Métis Nation, a review of laws and policies and operational practices to ensure that the Crown is fully executing its consultation and accommodation obligations, in accordance with its constitutional and international human rights obligations, including Aboriginal and Treaty Rights.

We anticipate that this also includes your election commitment to “reverse measures in conflict with Aboriginal or Treaty rights, or that are inconsistent with good governance”. We would also like the update to reflect your commitment to undertake a full review of regulatory law, policies, and operational practices, in full partnership and consultation with First Nations to ensure that the Crown is fully executing its consultation, accommodation and consent obligations, including on resource development and energy infrastructure project reviews and assessments, in accordance with Canada’s constitutional and human rights obligations.

Given the abysmal failure of the Harper Government to successfully work with Indigenous communities throughout Canada, we are looking forward to the advancement of a full legislative review with extensive engagement and consultation with Indigenous groups, in accordance with the Crown’s obligations and the full implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*. Please provide a detailed timeline and process for this work going forward.

**On behalf of the UNION OF BC INDIAN CHIEFS**



Grand Chief Stewart Phillip  
President



Chief Robert Chamberlin  
Vice-President



Kukpi7 Judy Wilson  
Secretary-Treasurer

CC: National Chief Perry Bellegarde, Assembly of First Nations  
Regional Chief Shane Gottfriedson, BC Assembly of First Nations  
First Nations Summit Task Group  
UBCIC Chiefs Council



**From:** Matthew Norris <matthew@ubcic.bc.ca>  
**To:** "justin.trudeau@parl.gc.ca" <justin.trudeau@parl.gc.ca>, "pm@pm.gc.ca" <...>  
**Date:** 5/11/2016 5:16 PM  
**Subject:** May 11, 2016 UBCIC letter re. Canada's Commitment to Legislative Review re. Indigenous Peoples  
**Attachments:** 2016May10\_UBCICtoCan\_LegislativeReviewUpdate\_final.pdf

Prime Minister Trudeau, Minister Dr. Bennett and Minister Wilson-Raybould,

Please find attached the May 11, 2016 UBCIC letter re. Canada's Commitment to Legislative Review re. Indigenous Peoples.

Têniki,

Matthew Norris

Junior Policy Analyst

Union of B.C. Indian Chiefs

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**Pages 44 to / à 46  
are withheld pursuant to sections  
sont retenues en vertu des articles**

**69(1)(c), 69(1)(g) re: (c), (e) and (f), 69(1)(e)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

## C. Review of Legislation

**3. With the advice from the Minister of Justice, and “in full partnership with First Nations, Inuit and the Métis Nation,” your mandate letter requires you to undertake a review of federal laws, policies and operational practices affecting these groups.**

- **What is the status of this legislative and policy review?**

As the Prime Minister has said – No relationship is more important to him and to Canada than the one with Indigenous Peoples. The Government is deeply committed to renewing the relationship between the Crown and Indigenous Peoples in Canada based recognition, rights, respect, co-operation, and partnership. A key aspect of this renewal is ensuring Indigenous peoples are involved in the development and review of laws and policies that affect their rights. However, at this time I have not reached out to Indigenous representatives to engage them on the design of a review process.

- **What role and specific responsibilities will “First Nations, Inuit and the Métis Nation” have in reviewing relevant federal laws and policies? To what extent will these groups have a role in determining which laws, if any, should be repealed?**

The specific roles and responsibilities of Indigenous representatives will be determined via a cooperative engagement on the design of the review process. Until I have heard the views of Indigenous groups I cannot comment on how the review will unfold, or which specific laws are priorities for review or repeal from the perspective of Indigenous stakeholders.

- **Will the Minister be consulting directly with affected individual First Nation, Métis and Inuit communities or simply national representative organizations, such as the Assembly of First Nations?**

It would not be appropriate for me to determine who can speak on behalf of Indigenous peoples. Details about the design of a review process will be determined in partnership with Indigenous representatives via a cooperative engagement on the design of the review process.

- **Which existing legislation, if any, is the Minister intending to repeal and why?**

I know from what I have been hearing that there are concerns with some pieces of legislation, and I am committed to ensuring that a review process is undertaken in full partnership with Indigenous groups to address these concerns. Given that discussions with Indigenous groups have not begun it would be premature to speculate on which acts or provisions of acts might be repealed.

Having said that, I have also been mandated to work with colleagues to ensure that environmental assessment legislation is amended to enhance consultation, engagement, and participatory capacity of Indigenous peoples in reviewing and monitoring major resource development projects.

The Government is committed to working in partnership with First Nations in the Northwest Territories and the territorial Government to address concerns related to the restructuring of land and water

boards in the Mackenzie Valley as well as with Yukon First Nations and the Yukon Government to address the four contentious provisions of *Yukon Environmental and Socio-economic Assessment Act*.

# Statement by the Honourable Carolyn Bennett on the First Nations Financial Transparency Act

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OTTAWA, ONTARIO (December 18, 2015) - The Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs, issued the following statement today in regards to the *First Nations Financial Transparency Act*:

"Today, I directed my Department to cease all discretionary compliance measures related to the *First Nations Financial Transparency Act* and to reinstate funding withheld from First Nations under these measures.

Furthermore, in keeping with our commitment to a renewed, nation-to-nation relationship, the Government of Canada will suspend any court actions against First Nations who have not complied with the Act.

Transparency and accountability are paramount to any government, whether it is municipal, provincial, federal or First Nation. We will work in full partnership with First Nations leadership and organizations on the way forward to improve accountability and transparency. This cannot be achieved without the engagement of First Nations and its members.

I have been asked to undertake, along with my colleague the Minister of Justice and Attorney General of Canada, and in full partnership and consultation with First Nations, Inuit, and the Métis Nation, a review of the laws to ensure that the Crown is fully executing its obligations in accordance with its constitutional and international obligations.

These initial steps will enable us to engage in discussions on transparency and accountability that are based on recognition of rights, respect, co-operation, and partnership and that build towards a renewed, nation-to-nation relationship with Indigenous Peoples."

## For more information, please contact:

### Media Relations

Indigenous and Northern Affairs Canada  
819-953-1160

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**ONION LAKE FIRST NATION (RECIPIENT #344)**

<b>DATE</b>	<b>SASK CIDM #</b>	<b>DOCUMENT</b>
September 24, 2013	592478	letter to Minister re: treaty nations working group on contribution funding agreements (Z58559)
October 2, 2014		email requesting response to September 24 <sup>th</sup> letter
November 4, 2013		follow up letter re: meeting on September 24, 2013
March 27, 2013		letter from Minister to all Chief & Councils re: FNFTA
March 17, 2014		letter to Chief re: meeting on March 6, 2014
August 6, 2014		email exchange re: status of 13/14 audit
August 8, 2014		email exchange re: status of 13/14 audit
September 2, 2014		30 day letter re: FNFTA
September 25, 2014		email recording conversation had with First Nation re: signing an amendment
September 29, 2014		email update on amendment signing, Council's receipt of audit, status of trust funds, request for meeting
September 30, 2014		email to First Nation with the 30 & 60 letters re: FNFTA attached
September 30, 2014		60 day letter re: FNFTA
October 14, 2014		email exchange between AANDC re: update on status of 13/14 audit
October 14, 2014		email exchange with First Nation re: update on status of 13/14 audit
October 16, 2014		email exchange between AANDC re: update on status of 13/14 audit

October 22, 2014		email recording conversation with Director of Finance re: update on status of 13/14 audit
October 27, 2014	735583	90 day letter re: FNFTA
November 4, 2014		email between AANDC re: notes from November 4 <sup>th</sup> meeting with First Nation
November 14, 2014		email from Evelyn Netmaker re: faxing a copy of the audit
November 17, 2014		email noting receipt of un-audited schedules
November 17, 2014		email to First Nation indicating receipt of incomplete audit and requesting consolidated audited financial statements
November 18, 2014		email exchange between AANDC re: FNFTA/funding issues from Onion Lake
November 18, 2014		email to First Nation requesting conversation re: audit
November 19, 2014		email exchange between AANDC re: notification of non submission of consolidated audited financial statements
November 19, 2014		email documenting conversation with First Nation re: financial statements; attached deck on funding agreements and 90 day letter
	737140	AANDC funding agreements and processes deck
November 24, 2014		fax received from Onion Lake with 2 letters addressed to the Minister; one re: contribution funding agreement sessions and the second re: obtaining legal counsel to commence proceedings concerning treaty rights and FNFTA
November 25, 2014		email exchange re: the posting on Onion Lake website re: C-27 legislation
November 26, 2014		email circulating receipt of civil litigation with Onion Lake
November 27, 2014	743016	120 day letter re: FNFTA

December 2, 2014	739537	draft letter re: follow up on November 4 <sup>th</sup> meeting (SK1389)
December 4, 2014		email exchange between AANDC re: receipt of fax from Onion Lake on November 24 <sup>th</sup>
<hr/>		
December 12, 2014	743531	decision note for RDG approval re: release of trust funds
December 22, 2014		letter to FN re: release of trust funds (includes signed version of December 12, 2014 decision note by RDG)
December 30, 2014		box information note for DM (SK1399)
December 31, 2014		email exchange between AANDC officials re: trust funds
December 31, 2014		email exchange between AANDC officials re: judicial review
January 14, 2015		incoming letter from FN re: BCR to release capital dollars
January 14, 2015		letter to MP re: members concerns on FN & FNFTA
January 29, 2015		thank you letter to FN for meeting on November 4, 2014
February 10, 2015		information note for SADM (SK1403)
February 13, 2015		RDG response to FN January 14, 2015 letter
April 20, 2015	<b>NEED RESPONSE?</b>	incoming letter to RDG re: withheld funds
April 20, 2015		Minister's response to FN's November 17, 2014 letters (FN's incoming letters attached)
August 14, 2015		letter to FN re: notice of action on FNFTA non-compliance
October 26, 2015		letter to RDG re: federal court decision C27



November 5, 2015	incoming letter to Minister (T43)
November 6, 2015	RDG response to letter dated October 26, 2015
November 17, 2015	FSIN letter to RDG in support of Onion Lake
November 19, 2015	letter to Minister re: halted non-essential funds (T370)
January 6, 2016	incoming letter to Minister from AFN re: meeting requests (TZ353)
January 25, 2016	email exchange re: response to docket TZ353
March 19, 2016	email exchange between region & HQ re: response to dockets T43 & T370 (including draft response)

**Pages 54 to / à 97  
are not relevant  
sont non pertinentes**

**Page 98**

**is withheld pursuant to sections  
est retenue en vertu des articles**

**21(1)(c), 23**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

**Pages 99 to / à 105  
are not relevant  
sont non pertinentes**



# ASSEMBLY OF FIRST NATIONS

## Alberta Regional Chief's Office

Box 1688 Maskwacis, AB T0C 1N0  
Office 780-585-4238 Fax 780-585-4297 cmakinaw2@afn.ca

The Honourable Carolyn Bennett, P.C., M.P.  
Minister of Indigenous and Northern Affairs  
Government of Canada  
Ottawa K1A 0H4

January 6, 2016

14-01-16 P01:04 OUT

Dear Hon. Minister Bennett:

### Meeting Requests – Onion Lake Cree Nation and Assembly of Treaty Chiefs

I would like to thank you for taking the time to meet with our Chiefs caucus during the Assembly of First Nations Special Chiefs Assembly on December 9<sup>th</sup>, 2015.


The purpose of this letter is to follow up on some meeting requests.

Firstly, I have been asked by Okimaw Fox and Council for Onion Lake Cree Nation, to formerly request a meeting with you to discuss the long-term impacts of the former First Nations Financial Transparency Act (FNFTA) on their Nation, as well as other band matters.

Secondly, the Assembly of Treaty Chiefs are looking forward to an opportunity to meet with you once again, and have asked if you could provide an indication of dates that you may be available to meet with them here in Alberta.

I look forward to working in partnership with you, your department and the federal government in facilitating a Nation-to-Nation relationship with Alberta First Nations.

Sincerely,

  
Regional Chief Craig Makinaw  
Assembly of First Nations (Alberta)

Cc. Assembly of Treaty Chiefs (AOTC)  
AFN National Chief Perry Bellegarde  
Okimaw Fox and Onion Lake Cree Nation Council

**From:** Cathy Huber  
**Sent:** 1/25/2016 1:07:38 PM  
**To:** Noreen.Kotowich@aandc-aadnc.gc.ca  
**CC:** Kevin.Lysak@aandc-aadnc.gc.ca; Kirby.Korchinski@aandc-aadnc.gc.ca; Tracy.Stevens@aandc-aadnc.gc.ca  
**BCC:**  
**Subject:** Fwd: SK support Re: Docket TZ353

Agree, we should recommend a meeting. The items you list below are correct. If you need me to complete an action sheet, let me know. Thank you.

>>> Noreen Kotowich 1/25/2016 12:42 PM >>>

Hi Cathy - will the input/consult below work as our SK support to Alberta for this docket?

The incoming docket is attached to refresh our memory banks. Thanks in advance. SK support role is due and Alberta needs to finalize their draft action sheet for their RDG approvals. Thanks again.

Noreen Kotowich  
Manager, Executive Services  
Indigenous & Northern Affairs Canada  
Saskatchewan Region  
1827 Albert Street  
Regina, SK S4P 2S9  
Blackberry: 1-306-539-0234

>>> Judy Fowler 1/25/2016 12:30 PM >>>

Thanks, Noreen.

>>> Noreen Kotowich 1/25/2016 11:08 AM >>>

Hi - I haven't heard back from the SK content experts and they are in meetings most of the day. I will ask again but as discussed...SK region is on the same page w/AB region on that we should recommend this mtg should the Minister's schedule permit since the new government is moving forward on a renewed relationship w/Indigenous peoples.

In addition, Onion Lake Cree Nation has a linked docket (Refer: T43/T370) about FNFTA, halted funds and MLGs and the draft is currently in mino for approvals (RO-HQ lead and SK support). So hopefully that draft will be finalized and sent by the Minister so it can be annexed as part of the mtg scenario note...should this mtg from the AFN VC from Alberta take place.

Thanks and hope this helps for now...nk-

>>> Judy Fowler <Judy.Fowler@aandc.gc.ca> 1/25/2016 12:53:48 PM >>>

Noreen,

Will you have your input today?

Sent from my BlackBerry 10 smartphone on the Rogers network.

<<File: TEXT.htm>>

# RECOMMENDATION FOR MEETINGS/INVITATIONS

## MAXIMUM 3-DAY TURNAROUND

**DOCKET NUMBER** TZ353

<b>Date received</b>	January 14, 2016
<b>Signatory</b>	Regional Chief Craig Makinaw
<b>Organization</b>	Assembly of First Nations (Alberta)
<b>Date of Event or Meeting</b>	TBD
<b>Topic(s) of discussion or Event:</b>	Meeting w' Onion Lake First Nation (FNFTA) and the Assembly of Treaty Chiefs
<b>Location of Event/Meeting (Mandatory - to be completed by Sector/Region)</b>	

<b>1.</b>	Do you recommend that the Minister attend this Event or Meeting?	<b>YES</b>	X	<b>NO</b>
-----------	--	------------	---	-----------

**2.** Please provide your rationale

**Alberta Region:**

Assembly of First Nations Regional Chief Makinaw has invited the Minister to two meetings: one with the Assembly of Treaty Chiefs of Alberta and one with the Chief and Council for Onion Lake Cree Nation.

The Assembly of Treaty Chiefs of Alberta is a gathering of all Alberta First Nation Chiefs in which First Nations and Governments share information and vies that inform development of policy and strategies to make real and positive impacts for First Nations people. Onion Lake Cree Nation is a signatory to Treaty 8, has reserve lands in both Saskatchewan and Alberta, and participates in the Assembly of Treaty Chiefs of Alberta.

Meeting with the Assembly of Treaty Chiefs of Alberta would demonstrate the Minister's commitment to a renewed, nation-to-nation relationship based on recognition of rights, respect, cooperation and partnership.

**Saskatchewan Region:**

The Chief of Onion Lake Cree Nation has written to the Minister on several occasions in regard to FNFTA, halted funds and MLGs (reference dockets T43/T370). The Saskatchewan Region manages the funding and relationship with Onion Lake Cree Nation.

Should the Minister's schedule permit, a meeting with the Onion Lake Cree Nation would establish a renewed relationship with the First Nation.

<b>3.</b>	Regional recommendation	ATTACHED		<b>OR</b>	NOT REQUIRED	
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**4.** If you are recommending that the Minister **NOT** attend or meet, please provide a replacement

	name and contact information		
	<p><b>Please ensure that the replacement name has been contacted and then check the box</b> <input type="checkbox"/></p>		
5.	<p>If you are recommending that the Minister <b>attend or meet</b> but, in the event where the Minister <b>is not able</b> to meet or attend, please provide a replacement name and contact information</p>		
	<p>For the meeting with the Assembly of Treaty Chiefs of Alberta, the recommended alternate is Jim Sisson, INAC Regional Director General, Alberta Region.</p>		
	<p>For the meeting with Onion Lake Cree Nation Chief and Council, the recommended alternate is Anna Fontaine, INAC Regional Director General, Saskatchewan Region.</p> <p><b>Please ensure that the replacement name has been contacted and then check the box</b> <input type="checkbox"/></p>		
<b>Contact</b>			
<b>Date</b>		<b>Signature</b>	



**Noreen Kotowich - Re: Fwd: T43/T370**

SK support  
re: revision  
to update  
from MO  
March 19/16  
JK.

**From:** Noreen Kotowich  
**To:** Cathy Huber; Kevin Lysak; Brett Currie; Leland Parisian  
**Date:** 3/19/2016 1:19 PM  
**Subject:** Re: Fwd: T43/T370  
**CC:** Kirby Korchinski <Kirby.Korchinski@aadnc-aadnc.gc.ca>; Tracy Stevens <Tr...

Hi - I recommend that we do this revision via WebCIMS vs email as that is what the system is for so pls let SK Exec Svcs coordinate on Monday in consult w/the content experts. We shall follow up w/HQ Secretariat officials so this activity is reflected in WebCIMS. Typically the Region gets 2 days to revise as per direction from mino. Thx...nk-

>>> Cathy Huber 3/19/2016 1:06:16 PM >>>

Hey guys, this response letter has yet to go out to Onion Lake and now HQ would like us to provide any updates. A quick scan of CIDM looks like the FN was deemed eligible for an MLG but not sure if they've been notified? If you can provide me with an update on what's happened since December 16 I can provide some updated wording to HQ. And just to confirm, Leland would remain the contact on MLG info.

Thanks.

C

-----Embedded Message-----

**From:** Mandy Crow <Mandy.Crow@aadnc-aadnc.gc.ca>  
**To:** Cathy Huber <Cathy.Huber@aadnc-aadnc.gc.ca>  
**Sent:** Fri Mar 18 11:58:28 2016  
**Subject:** T43/T370

Hi Cathy - we had worked together on a response to the above noted dockets a while back in a single letter of response. It has since come back down for updating because it has apparently not yet been actioned; Can you take a look at this and make sure there sin't anything that requires updating from your perspective (e.g. para on MLG application - perhaps status of this has changed?; contact information?). Thanks - as always, this is a quick turnaround!

Mandy

Mandy Crow

Analyste principale des opérations  
Affaires autochtones et Développement du Nord Canada, Gouvernement du Canada  
mandy.crow@aadnc-aadnc.gc.ca 613-864-6706

Senior Business Analyst  
Aboriginal Affairs and Northern Development Canada, Government of Canada  
mandy.crow@aadnc-aadnc.gc.ca 613-864-6706

-----End of Embedded Message-----

**Noreen Kotowich - Re: T43/T370**

---

**From:** Cathy Huber  
**To:** Mandy Crow  
**Date:** 3/19/2016 11:42 AM  
**Subject:** Re: T43/T370

---

Updated paragraph for the MLG -

With respect to your request that the ministerial loan guarantee be processed, I understand a review of your First Nation's annual consolidated financial statements was completed by departmental officials in the Saskatchewan Region on December 16, 2015. This allows federal officials to now complete their eligibility assessment of the Onion Lake Cree Nation for a ministerial loan guarantee and process the relevant documentation for approval and have confirmed the Onion Lake Cree Nation is eligible for a ministerial loan guarantee and are now working with your community to put in place the required paperwork for the guarantee to be issued.

>>> Mandy Crow 3/18/2016 9:58 AM >>>

Hi Cathy - we had worked together on a response to the above noted dockets a while back in a single letter of response. It has since come back down for updating because it has apparently not yet been actioned; Can you take a look at this and make sure there isn't anything that requires updating from your perspective (e.g. para on MLG application - perhaps status of this has changed?; contact information?). Thanks - as always, this is a quick turnaround!

Mandy

Mandy Crow

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**Pages 112 to / à 114  
are not relevant  
sont non pertinentes**



Affaires autochtones et  
Développement du Nord Canada

Aboriginal Affairs and  
Northern Development Canada



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Aboriginal Affairs and  
Northern Development Canada



## ***First Nations Financial Transparency Act***

Ministerial Briefing  
TBD

Canada



## BACKGROUND

- First Nations have long had an obligation under their Funding Agreements to provide audited consolidated financial statements, which include own source revenues, and schedule of remuneration and expenses of Chiefs and councilors to the Department and to their membership.
- The Department would only publish the Schedule of Federal Funding on the First Nations' Community Profiles web page.
- First Nations membership has not always had easy access to the full consolidated financial statements and have requested the Department to make this information available to them.
- *First Nations Financial Transparency Act* came into force March 27, 2013. The Act:
  - requires consistent, timely, public access to First Nation governments' financial information;
  - requires most First Nations to publish their audited consolidated financial statements, schedule of remuneration and expenses for Chief and Council, as well as auditor's reports, on an internet site;

2

The requirement for First Nation governments to provide the Department and their membership audited consolidated financial statements and schedule of remuneration and expenses of Chiefs and Councilors is not new – it has been an obligation under their Funding Agreements for many years. However, only the audited schedule of federal government funding was published on the Department's website.

First Nation membership has not always been able to access the full consolidated statements, and have had to come to the Department to ask for this information.

*The First Nations Financial Transparency Act* came into force March 27, 2013.

The Act applies to the 581 First Nations that are *Indian Act* bands, but not to First Nations that are party to a comprehensive self-government agreement.

The Act:

- Allows for consistent and timely public and membership access to financial information;
- Requires First Nations governments to prepare annual audited consolidated financial statements and schedules of remuneration and expenses paid to chiefs and councilors, as well as auditor's reports, and publish them on an internet site. **The Minister** must also publish these documents on its website (the Community Profiles website) "without delay ..."; and
- Applies the same principles of transparency as are required from other levels of government.



## BACKGROUND (cont'd)

- applies the same principles of transparency to First Nation governments as other governments in Canada, (e.g. under the *Alberta Public Service Compensation Disclosure Policy*, compensation information of employees is posted online. Similarly, the *Public Sector Salary Disclosure Act* requires Ontario municipalities and organizations providing municipal services to publicly disclose their salary information)
- requires Minister to publish these documents on the INAC website as soon as received.
- Under the Act, the following measures can be used in cases of non-compliance:
  - First Nation members, any person, and the Minister can apply to a superior court for an order requiring the council to carry out the prescribed requirements of the Act;
  - The Minister may request an action plan indicating the reason for the delay, and the actions and timelines for compliance for those First Nations who had yet to provide one; and
  - The Minister may halt funding to a First Nation or terminate the funding altogether.
- The Department has also posted names of non-compliant First Nations on its website.

3

Key differences between before and after the implementation of the Act:

Before the Act, First Nations were required to prepare and submit to Canada audited consolidated financial statements as part of their funding agreement; the only recourse available to First Nation members wanting access to their First Nations financial statements was through the Minister; and, there was lack of consistency and clarity regarding guidelines and timelines for financial reporting. If First Nation members specifically requested for the financial information of a First Nation's Own Source Revenue, they would receive all of the financial statements submitted to the Department.

Currently, there is a legislated requirement to prepare audited consolidated financial statements and schedules of remuneration and expenses for chiefs and councilors; financial information must be made available to members and published on websites; and there are consistent, legislated rules based on public sector accounting.

The Act lists a number of measures the Minister can take in the event a First Nation is non-compliant:

Apply to a superior court for an order requiring the council to carry out the prescribed duties within the period specified by the court;

Require the council to develop an appropriate action plan to remedy the breach;  
Withhold or terminate funding.

The Department has also posted names of non-compliant First Nations on its website





### **First Nations Financial Transparency Act Implementation**

- First Nations are required to post their financial information 120 days after the fiscal year-end.
- In 2015, First Nations were notified that non-essential funding would be halted as of September 1, 2015. This is in line with the Department's authority under the funding agreement, to withhold funds payable for non-essential programs and services when terms and conditions of the agreement are not met.
- INAC has continually worked closely with First Nations to promote compliance and identify capacity issues requiring support.
- As of November 25, 2015, 534 (92%) First Nations submissions are published on the Department's website, compared to 90% at this time last year.
- Three First Nations continue to be granted administrative extensions due to extenuating circumstances (such as fires, flooding, etc.)
- Court action was taken against seven First Nations deemed willfully non-complaint last year:
  - Athabasca Chipewyan and Sawridge First Nations in Alberta;
  - Thunderchild, Ochapawace and Onion Lake First Nations in Saskatchewan;
  - Barriere Lake First Nation in Quebec; and
  - Roseau River First Nation in Manitoba.

4

In June 2014, the Department sent/faxed/emailed letters to eligible First Nations reminding them that they were required to post their financial information by July 29, 2014.

On August 6, 2014, AANDC announced that First Nations had a further 120 days (to November 26, 2014) to comply with the Act before it would take enforcement measures.

The Department sent 30, 60 and 90 day letters to non-compliant First Nations, outlining measures that would be taken for non-compliance. For example, on November 27, 2014, AANDC notified non-compliant First Nations that all non-essential funding would be halted as of December 1, 2014.

The most common reasons for non-compliance were administrative delays (due to capacity issues or issues with consolidation of Band enterprises) followed by extenuating circumstances (flood, fire, etc.).

However, court action continued to be taken against seven First Nations that were deemed willfully non-complaint during the first year of implementation:

Athabasca Chipewyan and Sawridge First Nations in Alberta  
Thunderchild, Ochapawace and Onion Lake First Nations in Saskatchewan  
Roseau River First Nation in Manitoba  
Barriere Lake First Nation in Quebec

In spring 2015, the Department sent (faxed/emailed/mailed) letters to 581 First Nations reminding them that they were required to post their financial information by July 29, 2015, and informing them that the names of non-compliant First Nations would be posted on the Department's website on July 30, 2015.

On August 14, 2015, AANDC notified non-compliant First Nations that all non-essential funding would be halted starting September 1, 2015. This is in line with the Department's authority under the funding agreement, to withhold funds payable for non-essential programs and services when terms and conditions of the agreement are not met.

Three First Nations have been granted administrative extensions due to extenuating circumstances (such as fires, flooding, etc.) and the following four First Nations have indicated they are willfully non-compliant this year:

Athabasca Chipewyan First Nation and Sawridge First Nation (Alberta)  
Onion Lake First Nation (Saskatchewan)  
Barriere Lake First Nation (Quebec)

Onion Lake Cree Nation, Sawridge First Nation and Ochapowace First Nation have initiated constitutional challenges against the Government. On October 23, 2015 the Court decided in favour of Onion Lake Cree Nation and Sawridge First Nation to stay the Crown's Federal Court Application seeking to enforce the *First Nations Financial Transparency Act* until further order of the Federal Court.



## CONSIDERATIONS

- Support has been expressed by some First Nations and their members:
  - “I want the public to know that the membership knew nothing about [the Chief’s salary]. And if it wasn’t for this Transparency Act, I don’t think we ever would have known.” - Kwikwetlam band council member Joe Marvin to the National Post August 25, 2015
- While compliance has improved, some First Nations have alleged that:
  - Act breaches consultation and accommodation obligations, in accordance with Government of Canada constitutional and international human rights obligations.
  - Disclosing Own Source Revenue and the Schedule of Remunerations and Expenses may result in competitive disadvantage and overrides Privacy Act provisions;
  - Withholding funds otherwise payable under funding agreements causes financial harm.

Many First Nations and their membership have expressed support for the Act.

However, some First Nations have alleged that the Act breaches consultation and accommodation obligations, in accordance with GoC constitutional and international human rights obligations, to name a few.

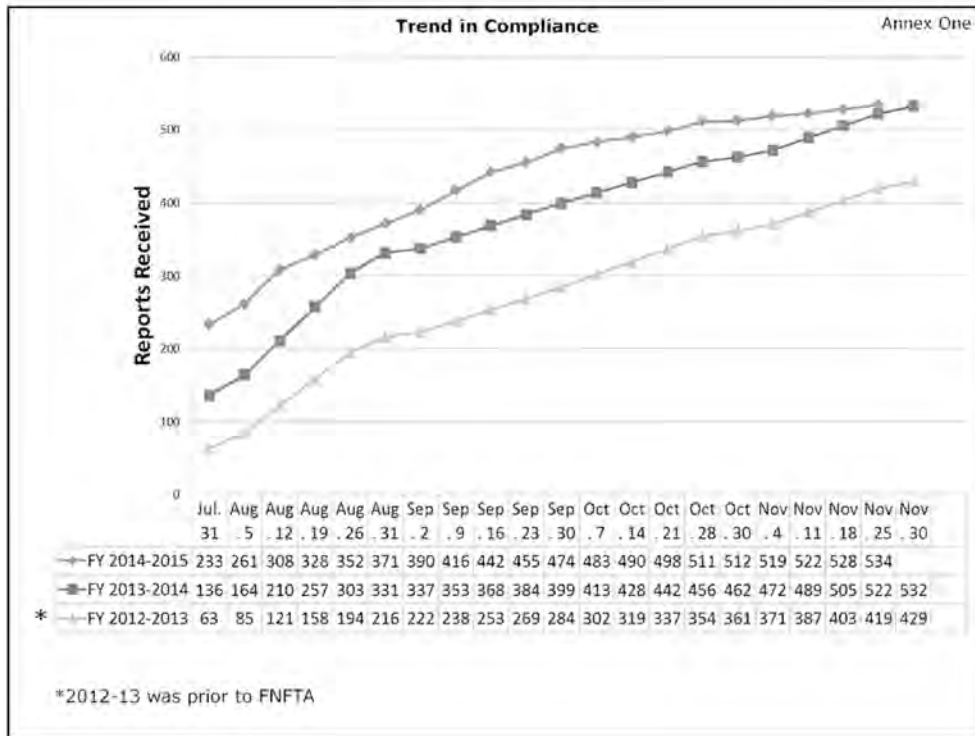
Some have also alleged that disclosing Own Source Revenue and the Schedule of Remunerations and Expenses may result in competitive disadvantage, overrides Privacy Act provisions, and that withholding of any funds may cause financial hardship.

**Pages 122 to / à 125  
are withheld pursuant to sections  
sont retenues en vertu des articles**

**21(1)(a), 21(1)(c)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**





- Graph illustrating increased level of compliance since the passing of the Act.

**Page 128**

**is withheld pursuant to sections  
est retenue en vertu des articles**

**21(1)(a), 21(1)(c)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

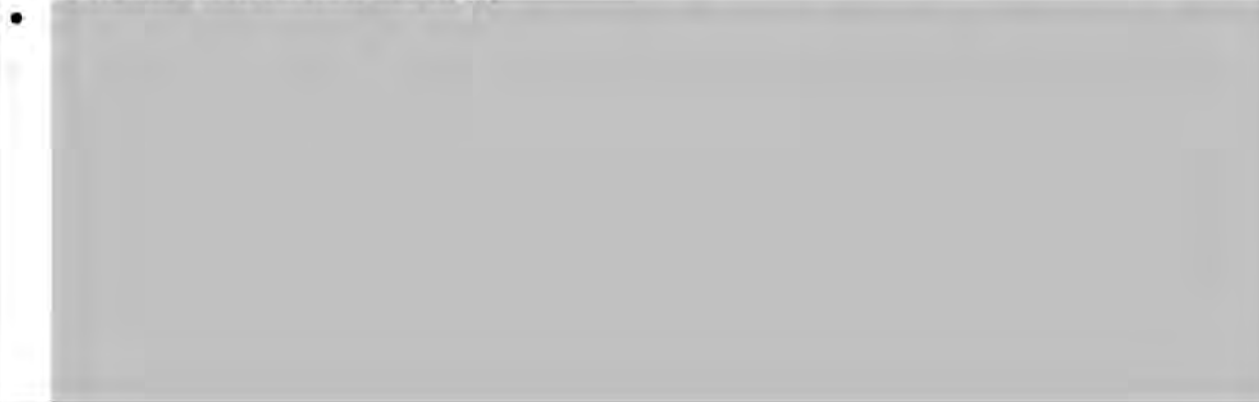


**IMPLEMENTATION OF MINISTER'S DECISION RE: FIRST NATIONS FINANCIAL  
TRANSPARENCY ACT**

Box Information for the Associate Deputy Minister

**DATE:** January 8, 2016**SUMMARY**

- You requested a status update on the implementation of the Minister's decision to suspend all discretionary compliance measures under the Act, and to initiate a consultative review of the legislation, and determine a way forward on accountability and transparency.
- As of December 18, 2016 any funds that had been withheld due to non-compliance with the Act were processed for payment. (CFO lines to be inserted)
- (LMRB lines to be inserted with respect to status of court applications)
- With respect to the decision to remove the list of First Nations who remain non-compliant from the Departmental website, this is not a compliance measure listed in the Act, and was not included in the Briefing Note to the Minister. However it is considered a compliance measure, and on the direction of the Minister's Office, the list was removed from the website. The Chief Financial Officer Sector and Regional Operations are working together to track the receipt and publishing of FNFTA documents, to support media and other information requests.
- With respect to other next steps, we will be prepared to brief the Minister on Options [REDACTED] later this month. This should be aligned with briefing on the proposed consultation strategy.



**ONION LAKE CREE NATION:  
LETTER AND BACKGROUND**  
Box Information for the Minister

**DATE:** January 11, 2016

**SUMMARY**

- On October 26, 2015, Okimaw (Chief) Wallace Fox of the Onion Lake Cree Nation sent a letter to the Saskatchewan Region requesting the release of halted funds related to non-compliance with the *First Nations Financial Transparency Act* and the provision of a ministerial loan guarantee for 15 housing units.
- Follow-up letters, addressed to you, were sent on November 5 and November 19, 2015, highlighting the impact of withholding band employee benefits funding on the First Nation as well as their ministerial loan guarantee request.
- The Onion Lake Cree Nation also filed a motion regarding these two issues, which the court declined due to a lack of sufficient evidence (Annex B).
- The letter (Annex A) confirms that you have directed the Department to release non-essential funding in the amount of \$2,144,320 that was held as a result of non-compliance with the *First Nations Financial Transparency Act*.
- Regarding the ministerial loan guarantee issue, the letter supports a flexible approach to addressing the eligibility criteria with respect to the provision of audited consolidated financial statements, as the First Nation has provided departmental officials access to these statements at their offices.

**ANNEXES**

- Annex A: Draft Letter of response to the Onion Lake Cree Nation
- Annex B: Chronology of Court Applications and Decision



Affaires autochtones et  
Développement du Nord Canada

Aboriginal Affairs and  
Northern Development Canada

Draft

Advice to Director General



Affaires autochtones et  
Développement du Nord Canada

Aboriginal Affairs and  
Northern Development Canada



## ***First Nations Financial Transparency Act***

Briefing  
TBD

Canada



## BACKGROUND

- *First Nations Financial Transparency Act* came into force March 27, 2013:
  - increases accountability and transparency for First Nations citizens
  - requires consistent, timely, public access to First Nation governments' financial information
  - requires most First Nations to publish their audited consolidated financial statements, schedule of remuneration and expenses for Chief and Council, as well as auditor's reports, on an internet site
  - applies the same principles of transparency and accountability to First Nation governments as other governments in Canada
  - requires Minister to publish these documents on the AANDC website
- First Nations have long had an obligation under their Funding Agreements to provide this information – but their membership has not always had ready access



## **BACKGROUND (cont.)**

- Minister may take one or more of the following measures in cases of non-compliance:
  - s.11. If a First Nation fails to publish copies any member of that First Nation, any person including the Minister may apply to a superior court for an order requiring the council to carry out the prescribed duties within the period specified by the court;
  - s.13.1 (a) require the council to develop an appropriate action plan to remedy the breach;
  - s.13.1 (b) withhold moneys payable as a grant or contribution to the First Nation under an agreement that is in force on the day on which the breach occurs and that is entered into by the First Nation and Her Majesty in right of Canada as represented by the Minister, solely or in combination with other ministers of the Crown, until the First Nation has complied with its duty; or,
  - s.13.1 (c) withhold or terminate funding.
- The Department has also posted names of non-compliant First Nations on its website



Advice to Director General

***First Nations Financial Transparency Act YEAR 1 (2014-2015)***

- 582 First Nations (of 617), were subject to the FNFTA (the Act does not apply to self-governing First Nations)
- First Nations required to post their financial information by July 29, 2014
- August 6, 2014, AANDC announced further 120 days (to November 26, 2014) to work with non-reporting First Nations before taking enforcement measures
- AANDC worked closely with First Nations to promote compliance and identify capacity issues requiring support
- November 27, 2014, AANDC notified non-compliant First Nations that all non-essential funding would be halted as of December 1, 2014
- Court action taken against the First Nations deemed willfully non-complaint during the first year of implementation:
  - Athabasca Chipewyan and Sawridge First Nations in Alberta
  - Thunderchild, Ochapawace and Onion Lake First Nations in Saskatchewan
  - Roseau River First Nation in Manitoba
  - Barriere Lake First Nation in Quebec





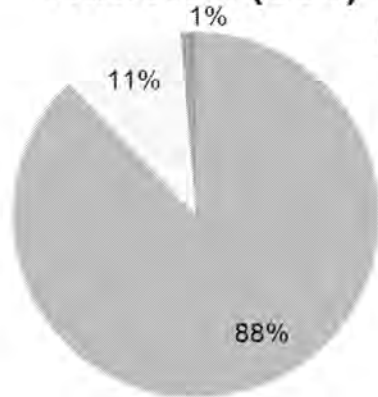
## ***First Nations Financial Transparency Act YEAR 2 (2015-2016)***

- 581 First Nations (of 617), were subject to the FNFTA
- July 30, 2015, the names of 424 non-compliant First Nations published on the Department's website
- August 14, 2015, AANDC notified non-compliant First Nations that all non-essential funding would be halted starting September 1, 2015
- AANDC also asked for an action plan indicating the reason for the delay
- As of October 30, 2015, 512 First Nations submissions published on the Department's website (88% compliance)
- Five First Nations have been granted administrative extensions due to extenuating circumstances (such as fires, flooding, etc.)
- Four First Nations indicated they will not comply with the Act:
  - Athabasca Chipewyan First Nation and Sawridge First Nation (Alberta)
  - Onion Lake First Nation (Saskatchewan)
  - Barriere Lake First Nation (Quebec)



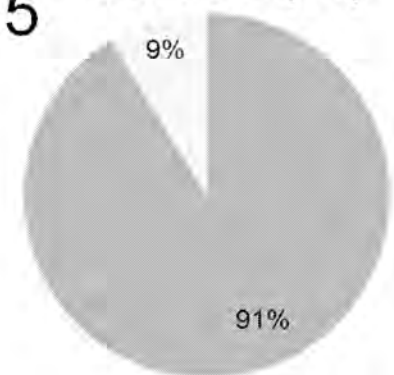
# Compliance as of October 26, 2015

## National (581)

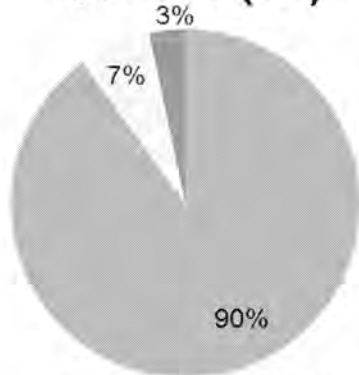


- Complied to Date (510)
- Late administrative (capacity issues) (63)
- Late extenuating circumstances (fire, flood, illness) (4)
- Indicated currently unwilling (4)

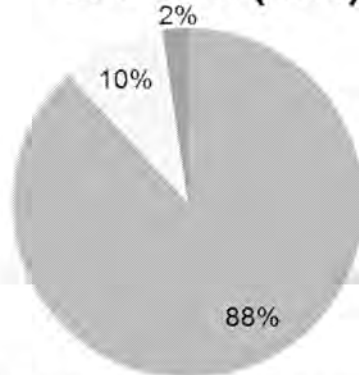
## Atlantic (34)



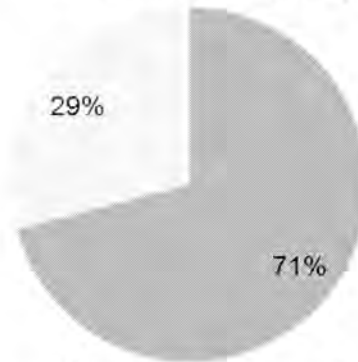
## Quebec (30)



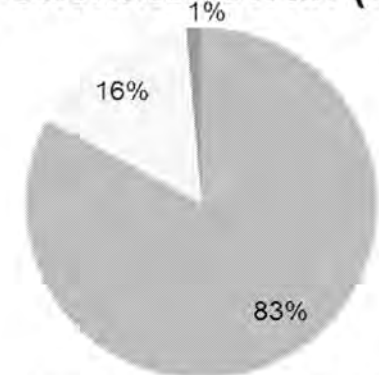
## Ontario (126)



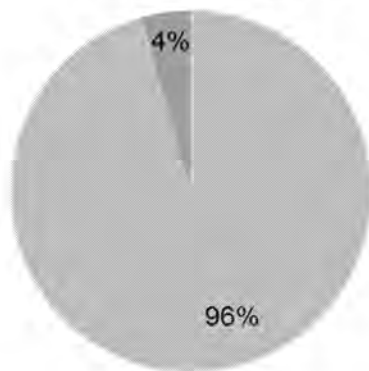
## Manitoba (63)



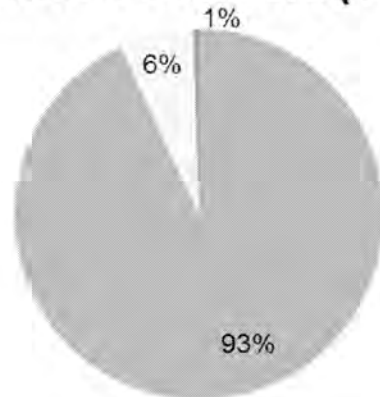
## Saskatchewan (70)



## Alberta (45)



## British Columbia (186)



## Yukon (6)



## North West Territories (22)







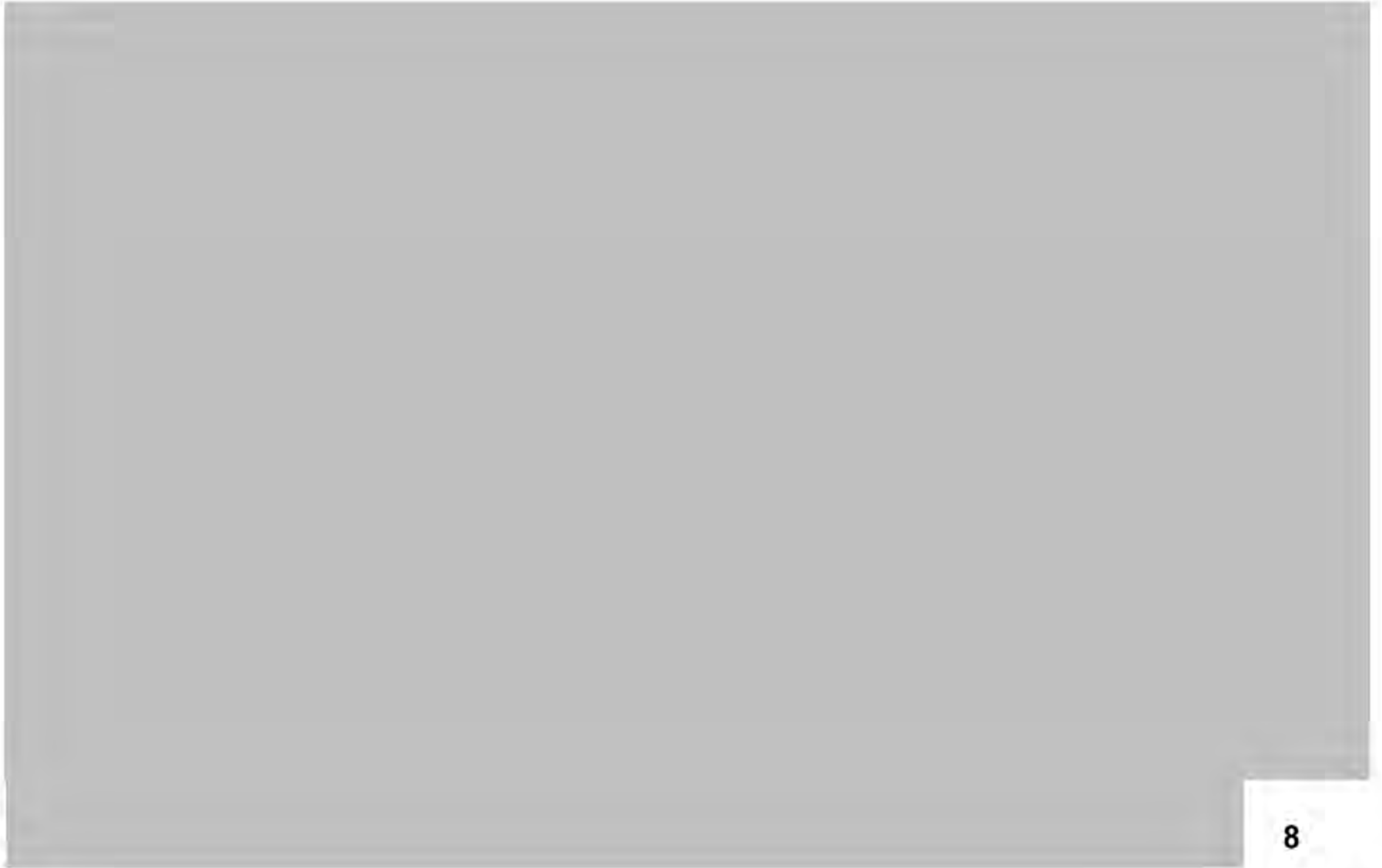
## Advice to Director General

# CONSIDERATIONS

- While compliance is improving, some First Nations still have concerns with the Act.
- Some First Nations who refuse to comply with the Act allege the following breaches:
  - Fiduciary duties (the Crown has discretionary control over First Nations' interests and assets which it is bound to exercise for their benefit)
  - Honour of the Crown (requires the Crown to deal honourably with Aboriginal peoples and obliges the Crown to respect Aboriginal and Treaty rights)
  - s.15 of the *Canadian Charter of Rights and Freedoms* – “every individual is equal before and under the law...” (concern the Act overrides Privacy act provisions given the need to disclose own source revenue and treats First Nations in a manner different from non-First Nations)
  - s.35 Treaty Rights under the Constitution (as it interferes with the right to self-government)
  - Duty to Consult (Act imposed without adequate consultation with First Nations)
  - That withholding funds otherwise payable under funding agreements causes financial and other harms



# OPTIONS





## OPTIONS cont'd





## NEXT STEPS

- 

- 

- 

-

**Pages 141 to / à 144  
are withheld pursuant to sections  
sont retenues en vertu des articles**

**21(1)(a), 21(1)(c)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

**Pages 145 to / à 147  
are withheld pursuant to sections  
sont retenues en vertu des articles**

**69(1)(g) re: (a), 69(1)(g) re: (c), 21(1)(a), 21(1)(c)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

**Page 148**

**is withheld pursuant to sections  
est retenue en vertu des articles**

**21(1)(a), 21(1)(c)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

**Page 149**

**is withheld pursuant to sections  
est retenue en vertu des articles**

**69(1)(g) re: (c), 21(1)(a), 21(1)(c)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**



**Pages 150 to / à 152  
are withheld pursuant to sections  
sont retenues en vertu des articles**

**21(1)(a), 21(1)(c)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

**Pages 153 to / à 156  
are withheld pursuant to section  
sont retenues en vertu de l'article**

**69(1)(g) re: (f)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

**Pages 157 to / à 163  
are withheld pursuant to sections  
sont retenues en vertu des articles**

**21(1)(a), 21(1)(c)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

**Page 164**

**is withheld pursuant to sections  
est retenue en vertu des articles**

**69(1)(g) re: (c), 21(1)(a), 21(1)(c)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

UNCLASSIFIED - ROS4346

**ENGAGEMENT APPROACH REGARDING THE  
FIRST NATIONS FINANCIAL TRANSPARENCY ACT**  
Decision by the Minister

**DATE:** April 13, 2016

**SUMMARY**

- The Government of Canada has committed to undertaking a review of laws, policies and operational practices in full consultation with First Nations, Inuit, and the Métis Nation. Options and objectives on how to engage Indigenous stakeholders in the design of this particular mandate commitment are currently being developed for your consideration.
- The *First Nations Financial Transparency Act*, which was created, in part, to allow First Nation members easy access to their communities' financial information, has been the subject of criticism by some First Nations and other organizations.
- On December 18, 2015, you committed to work with First Nation leadership and organizations on the way forward to improve accountability and transparency. The legislation continues to apply until such time as this work is complete and recommendations are implemented through amendment or repeal.
- The engagement strategy will strive to group similar issues together for efficiency and completeness. A forthcoming note will elaborate more on this. Once it is launched, this work will also inform the review of laws, policies and operational practices, which the Government of Canada has committed to undertake.

**RECOMMENDATION**

•

Deputy Minister/  
Associate Deputy Minister:

*[Signature]*

*[Signature]*

Date:

*14 April 2016*



I concur



I do not concur



I wish to discuss further

Minister:

*[Signature]*

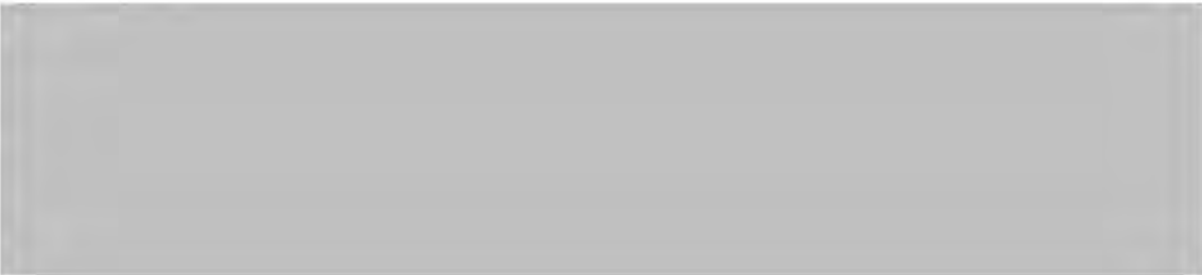
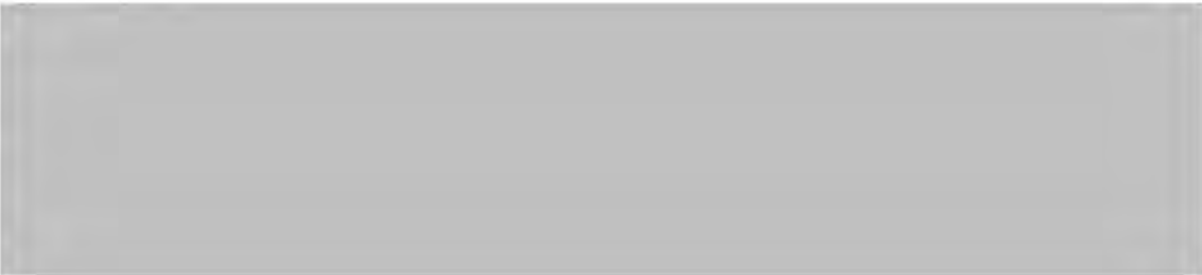
Date:

*16 April 2016*

## BACKGROUND

- *The First Nations Financial Transparency Act* emerged from a private member's bill introduced in the House of Commons in 2010, and was later reintroduced by the Government of Canada in 2011.
- The Act was intended to respond, in part, to requests and complaints from individual band members who had experienced difficulties in accessing basic financial information from their leaders.
- The *First Nations Financial Transparency Act* came into force on March 27, 2013. The Act requires that:
  - all non-self-governing First Nations publish their audited consolidated financial statements, schedules of remuneration, and expenses for their Chief and Councillors, as well as auditor's reports on an Internet site; and
  - the Minister publishes these documents on the Department's website as soon as they are received from the First Nation or the First Nation publishes them.
- Most First Nations have had a long-standing obligation under the Department's funding agreements to provide their audited consolidated financial statements and Schedule of Remuneration and Expenses of Chiefs and Councillors to the Department and to their membership. Therefore, the *First Nations Financial Transparency Act* mandated reporting has not increased the reporting burden of those First Nations with funding agreements. The *First Nations Financial Transparency Act* has brought forth the additional requirement for First Nations to publish or cause this financial information to be published on an internet site.
- The requirements of the Act are also linked to funding agreements through parallel language and requirements in the agreements and the National Reporting Guide.
- The overall compliance with the Act has been good.
- A small number of First Nations have alleged through court action against the Government of Canada that the Act breaches consultation and accommodation obligations, disclosing own-source revenues may result in a competitive disadvantage, and withholding funds otherwise payable under funding agreements causes financial harm. As well, First Nations have expressed concerns regarding: full public disclosure, rather than disclosure to only membership and the Minister; scope of financial information disclosed to the public; and the timing of submission.

## CONSIDERATIONS

- You have committed to work in partnership with First Nations on a course of action with respect to the shared objective of accountability and transparency to First Nation members.
- 
- 

[REDACTED] This would reflect your commitment to engage First Nations on transparency and accountability that are based on the recognition of rights, respect, cooperation, and partnership.

- The means by which these principles will be implemented could include:



- The timing of the engagement is critical. The legislation continues to apply, including to First Nations, until such time as this work is complete and recommendations are implemented through amendment or repeal. While discretionary compliance measures may be suspended, the Act remains in force, and any person may still take court action to compel a First Nation to publish its audited consolidated financial statements and schedule of remuneration for Chief and Councillors.
- This timing pressure must be balanced against the need to allow adequate time for First Nations and other stakeholders to be properly engaged.

- [REDACTED]



**COMMUNICATIONS CONSIDERATIONS**

- The *First Nations Financial Transparency Act* has had extensive traditional and social media coverage at the national level since it came into force. Coverage has been both positive and negative. Lobby groups that represent tax payers (e.g. Canadian Taxpayers Federation) and some media outlets have publically advocated for the Act, while some First Nation communities and groups publicly criticized the Act and launched court actions against it.



**RECOMMENDATION**



**NEXT STEPS**

Should you agree with the recommendation, the next steps are as follows:

- engage with First Nations on accountability and transparency;
- 
- in the interim, continue to suspend all discretionary compliance measures related to the Act.



## PUBLIC OPINION RESEARCH INDIVIDUAL PLAN

### Summary Public Opinion Research Project

Project Title	Public opinion research on the <i>First Nations Financial Transparency Act</i>
Project Overview and Research Objectives	<p>On March 27, 2013, the <i>First Nations Financial Transparency Act</i> (FNFTA) received Royal Assent in Parliament.</p> <p>The FNFTA requires that 581 First Nations, defined as an Indian band under the <i>Indian Act</i>, make their audited consolidated financial statements and a Schedule of Remuneration and Expenses of chief and council available to their members as well as publish it on a website.</p> <p>As of 2014-2015 and in compliance with the legislation, the Minister of Indigenous and Northern Affairs is required to publish, on the departmental website, the audited consolidated financial statement and the Schedule of Remuneration and Expenses of chief and council for each First Nation, when received. Since its introduction, the FNFTA has been the subject of some criticism from First Nations.</p> <p>On December 18, 2015, the Minister released a statement which directed the department to cease all discretionary compliance measures related to the FNFTA and to reinstate funding withheld from First Nations under these measures. In addition to this, the Minister committed to, in full partnership and consultation with First Nations, Inuit, and the Métis Nation, a review of the laws to ensure that the Crown is fully executing its obligations in accordance with its constitutional and international obligations. She also committed to work collaboratively on a way forward to improve accountability and transparency.</p> <p>These commitments support a Government of Canada commitment to undertake a review of laws, policies and operational practices in full consultation with First Nations, Inuit, and the Métis Nation.</p> <p>In keeping with these commitments, on May 2, 2016, the <i>Engagement Approach Regarding the First Nations Financial Transparency Act</i> was approved by the Minister. As per this approach, from July until the end of September 2016, Indigenous and Northern Affairs Canada (INAC) will hold in-person cross-country engagement sessions with First Nations and other interested parties on the FNFTA.</p>

<b>Information Needs</b>	
<b>Rationale and Intended Use of Research<sup>2</sup></b>	The Minister and the Government of Canada have made several commitments related to engaging on a way forward on accountability and transparency.
<b>Target Audience</b>	First Nations members across Canada and stakeholders who are interested in and/or affected by the FNFTA.
<b>Proposed Methodology</b>	
<b>Projected Timeframe</b>	July until the end of September 2016.
<b>Single or Multi-year Project</b>	Single year project.
<b>Use of Internal Resources (Y/N)</b>	Y

Partnerships and Resources Involved	N/A
Maximum Budget (including taxes)	N/A

## Contact Information:

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Project manager	Mandy Crow 10 Wellington St., Gatineau, Quebec, K1A 0H4 Indigenous and Northern Affairs Canada Telephone: 613-864-6706 Fax: 819-953-3594 Email: <a href="mailto:Mandy.Crow@aadnc-aandc.gc.ca">Mandy.Crow@aadnc-aandc.gc.ca</a>

Recommended By:

Approved By:

\_\_\_\_\_  
Head of Communications\_\_\_\_\_  
Date\_\_\_\_\_  
Associate Deputy Head\_\_\_\_\_  
Date

