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**TITLE:** Role of Judges and Appointments to the Specific Claims Tribunal

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**SUBJECT:** Specific Claims

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**MOVED BY:** Bob Bruyere, Proxy, Kitchenuhmaykoosib Inninuwug, ON

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**SECONDED BY:** Chief Titus Tait, Sachigo Lake First Nation, ON

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**DECISION:** Carried by Consensus

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**WHEREAS:**

- A. The Specific Claims Tribunal Act (SCTA), which came into force on October 16, 2008, established a Specific Claims Tribunal that is set up to act as an adjudicative body with the express mandate of deciding First Nations' specific claims, including breaches of treaties, fraud, illegal disposition, or inadequate compensation, related to reserve lands or other assets.
- B. Specific claims, including Treaty disputes have been an ongoing source of tension between First Nations and the federal government, and the SCTA was developed jointly with the Assembly of First Nations (AFN) and the Government of Canada as a means to expeditiously and fairly resolve most outstanding specific claims.
- C. AFN entered into a Political Accord with the Minister of INAC, dated November 27, 2007, which provided that "the National Chief will be engaged in the process for recommending members of the Tribunal."
- D. Section 6(1) of the SCTA states that six (6) Superior Court judges are to be appointed to act as full-time members of the Specific Claims Tribunal for a term not exceeding five years and as long as the Justice appointed remains a Superior Court judge.
- E. Without meaningful engagement of the AFN, on November 27, 2009, the Minister of Justice announced the appointment of three Superior Court Justices to the Specific Claims Tribunal, for a one year term, effective immediately.

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- F. Justice Patrick Smith, one of the Judges appointed to the Specific Claims Tribunal, presided over proceedings involving Platinex and Kitchenuhmaykoosib Inninuwug (KI), in a dispute over mining exploration activities within KI traditional lands. The dispute arose as a result of the Ontario Crown's failure to engage in proper and meaningful consultation and accommodation with KI regarding the Platinex mining activities, as required by decisions of the Supreme Court of Canada.
- G. In the Platinex and KI litigation, Justice Smith issued an injunction in favor of Platinex. That injunction was defied by KI leadership, on the basis of their Aboriginal and treaty rights, which resulted in contempt proceedings against them. In the contempt proceedings, Justice Patrick Smith imposed a jail sentence of six months on the KI leadership, which was overturned with consent on appeal by the Ontario Court of Appeal.
- H. While counsel for KI stated that Justice Smith's efforts to resolve this dispute were appreciated, nevertheless, the six month jail sentence he imposed on the KI leadership was excessive and gives cause for concern, particularly with respect to his appointment as a member of the Specific Claims Tribunal.

**THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:**

1. Express their position on the KI situation, the role of Judges and appointments to the Specific Claims Tribunal and assert that it is inappropriate for the Crown to ignore the existence of First Nations' constitutional rights and then use the justice system to oppress First Nations people and to suppress the exercise of Aboriginal and treaty rights. It is wrong and indefensible to imprison First Nations people, including our leaders, for asserting and exercising their Aboriginal and treaty rights, recognized and affirmed in the Canadian Constitution.
2. While the Crown's failure to recognize and implement Aboriginal and treaty rights is putting judges in the situation where they are asked to issue injunctions and contempt orders against First Nations people, Judges have an independent duty to recognize and give due weight to the Aboriginal and Treaty Rights of First Nations peoples, which are part of the supreme law of the land.
3. In light of the foregoing, and the particular situation of the KI leadership, express their concern over the appointments to Specific Claims Tribunal without meaningful consultation.
4. Urge the federal government to ensure that there is a more meaningful engagement of AFN with respect to all subsequent and further appointments to the Specific Claims Tribunal, in accordance with the Political Accord entered into between AFN and INAC.
5. Mandate the AFN to take steps to promote First Nation involvement in appointment processes for Courts, Tribunals, Commissions and bodies that impact on the Constitutional rights of First Nations people, to ensure that members of such bodies give due weight to Aboriginal and Treaty Rights and the Aboriginal perspective, and the National Chief is requested to report back to the Chiefs-in-Assembly at the next Chiefs Assembly.

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