

OUR LAND IS OUR FUTURE

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

FOUNDING HEAD OFFICE
209 - 345 Yellowhead Highway
Kamloops, B.C. V2H 1H1
Tel: 250-828-9746
Fax: 250-828-0319



VANCOUVER OFFICE
5th Floor, 342 Water Street
Vancouver, B.C. V6B 1B6
Tel: 604-684-0231
Fax: 604-684-5726
1-800-793-9701
Email: ubcic@ubcic.bc.ca
Web: www.ubcic.bc.ca

December 16, 2009

Honourable Colin Hansen
Minister of Finance and Deputy Premier, British Columbia

RE: Harmonized Sales Tax- Further Request to Consult and Accommodate BC First Nations

Dear Minister Hansen,

We are writing in response to your letter dated Dec 11, 2009, regarding your response to our letter dated Oct 22, 2009 on implications of the proposed Harmonized Sales Tax (HST).

In the letter you state that you understand Minister Flaherty responded to our letter on November 19th, 2009, and you “trust that this response addresses [our] concerns.” We are shocked and disappointed that you obviously did not take time to read the response from Minister Flaherty, on which you were cc-ed, passing specific issues on to you for response. Minister Flaherty wrote:

The Resolution attached to your letter also raised a number of other issues on how First Nations engaged in extractive industries such as mining and forestry might benefit from harmonization, and the transition of existing provincial environmental incentives under the harmonized regime. These are matters for the Government of British Columbia to respond to, and I note that you have also sent a copy of your letter to the Honourable Colin Hansen, the Minister of Finance of British Columbia.

Attached to this letter is our response to Minister Flaherty dated December 2, 2009, on which you were cc-ed, further demanding appropriate consultation.

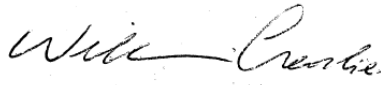
As you may be aware, on December 8, 2009, the Chiefs from across Canada passed a Resolution at the Assembly of First Nations Chiefs Assembly in Ottawa supporting the First Nations right to tax immunity and opposing the imposition of taxation from external governments. The Resolution calls for appropriate consultation, and pledges support from the Assembly of First Nations to any and all action plans from First Nations in response to the HST.

We request your timely response and commitment to meet regarding this important issue.

Regards,



Grand Chief Stewart Phillip
President



Chief William Charlie
Vice-President



Chief Robert Chamberlin
Secretary-Treasurer

CC: Honourable Jim Flaherty, Minister of Finance, Canada
Gordon Campbell, Premier, BC
Carole James, M.L.A., NDP

Encl. Letter from UBCIC to Ministers of Finance, Dec 2nd, 2009
Letter from UBCIC to Ministers of Finance, Oct. 22nd 2009
UBCIC Resolution #2009-41: Support for work re. Harmonized Sales Tax (HST) & related Tax Matters

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December 2, 2009

Honourable James Flaherty, Minister of Finance
Honourable Jeanne-Pierre Blackburn, Minister of National Revenue

Ministers,

RE: Harmonized Sales Tax- Duty to Consult and Accommodate BC First Nations

We are writing further to Minister Flaherty's letter dated November 19, 2009 whereby our request for an appropriate distinct consultation process was rejected by your Government as unnecessary.

Your Government has also stated that it does not see the value in non-derogation language to preserve the application s.87 of the *Indian Act* and has suggested that a public HST bulletin is sufficient to address our concerns regarding the interaction between HST and FNGST and FNST.

We do not accept your legal position. We consider your continued action, including the introduction of a Bill to enable the Memorandum of Agreement with BC to implement HST in British Columbia, to be contrary to your legal obligations to consult and accommodate Aboriginal rights.

HST affects First Nations' ability to earn a moderate livelihood, and it adversely affects our Aboriginal economic rights. Existing First Nations taxing authority under the FNGST and FNST is an affirmation of our self-governing right to tax. Vague assurances and tax bulletins are insufficient to accommodate. The Crown proposed action will adversely affect our affirmed Aboriginal rights and has not exercised any evidence of due diligence in its accelerated implementation of HST. To date all interactions between the Ministries of Finance has been to the exclusion of any representation.

Your actions to date are not honourable and represent a failure to treat First Nations as equals in a Government-to-Government relationship. We demand a distinct process, public tax bulletins will be a failure to consult and accommodate.

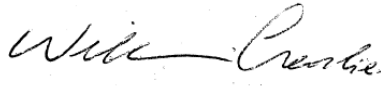
We strongly advise you to give respectful consideration to our rights. We assure you that we are considering all options to ensure our Aboriginal rights are protected in strict compliance with the law. You can expect that our opposition to any legislation will become more vocal and focused on appropriate legal and parliamentary procedures.

Please govern yourself accordingly.

Yours respectfully,



Grand Chief Stewart Phillip
President



Chief William Charlie
Vice-President



Chief Robert Chamberlin
Secretary-Treasurer

CC: Stephen Harper, Prime Minister, Canada
Colin Hansen, M.L.A., Minister of Finance and Deputy Premier (BC)
Gordon Campbell, Premier, BC
Dr. Keith Martin, M.P., Liberal Party
Jack Layton, Leader, NDP
Carole James, M.L.A., NDP
Gilles Duceppe, Leader, Bloc Québécois
Michael Ignatieff, Leader, Liberal Party

Encl. Letter from UBCIC to Ministers of Finance, Oct. 22nd 2009

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October 22, 2009

Honourable Jim Flaherty
Minister of Finance, Canada

Honourable Colin Hansen
Minister of Finance and Deputy Premier, British Columbia

Dear Ministers:

RE: OPEN LETTER: UBCIC Resolution no. 2009-41, Support for work regarding Harmonized Sales Tax (HST) and related Tax Matters

We are writing to express concern with the current implementation process of the Harmonized Sales Tax (HST), and would like to meet to ensure that our communities' current tax benefits are unimpeded and uninterrupted by the potential passage of this legislation.

As you know, First Nations in Canada have tax exemption for personal and real property situated on reserves under section 87 of the *Indian Act 1985*. To date, BC First Nations have not been consulted in any way about the potential HST legislation, although it stands to impact our communities, lands and resources. Because of this lack of consultation and inclusion, we are not clear how the HST will affect and impact First Nations bands, individuals and companies.

The UBCIC Chiefs' Assembly, by Resolution 2009-41, has directed the UBCIC Executive to raise concerns with the Ministries of Finance of the provincial and federal governments regarding the HST and its impacts on BC First Nations, and to call for meaningful consultation and accommodation including:

- Commitments to develop appropriate information packages regarding the application of HST to First Nations
- Inclusion of specific non-derogation language regarding the preservation of Section 87 of the *Indian Act* tax exemption and continuing rights of First Nations taxation rights under the *First Nations Goods and Services Tax Act* and First Nations Sales Tax prior to BC and Canada signing the Comprehensive

Integrated Tax Coordination Agreement (CITCA). Given that September 30 is upon us, we are asking that you include specific non-derogation language, arrived at with the appropriate consultation of First Nations, into the CITCA immediately, and well before the passage of the CITCA through legislature.

The UBCIC Chiefs Assembly has struck an HST Committee, with three appointed members. These are: Chief Don Moses, Chief Keith Matthew, and Chief Mike LeBourdais. The UBCIC HST Committee is mandated to engage in follow-up work around HST and other related issues.

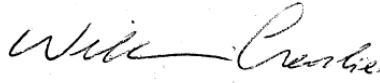
We request an initial meeting to discuss this initiative, and follow-up meetings to discuss distinct consultation mechanisms and processes for inclusion of First Nations in all implementation.

Thank you for your support. If you have any questions or comments, with respect, please contact Andrea Glickman, Policy Analyst at andrea@ubcic.bc.ca or at (604) 684-0231.

On behalf of the Union of BC Indian Chiefs,



Grand Chief Stewart Phillip
President



Chief William Charlie
Vice-President



Chief Robert Chamberlin
Secretary-Treasurer

Encl.: UBCIC Resolution #2009-41- Support for work regarding Harmonized Sales Tax (HST) and related Tax Matters

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UNION OF B.C. INDIAN CHIEFS
40TH ANNIVERSARY ANNUAL GENERAL ASSEMBLY
SEPTEMBER 16TH – 18TH, 2009
HARRISON HOT SPRINGS, B.C.

Resolution no. 2009-41

RE: Support for work regarding Harmonized Sales Tax (HST) and related Tax Matters

WHEREAS First Nations affirm our rights as Indigenous Peoples to be involved in all decisions regarding our Aboriginal Title lands and resources;

WHEREAS given our proprietary and inherent rights to our respective territories, lands and resources, First Nations have a right to be involved in the development of policies and decisions that impact our communities, lands and resources;

WHEREAS the *United Nations Declaration on the Rights of Indigenous Peoples* provides in Article 18 that Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, and in Article 19 that 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;

WHEREAS the Supreme Court of Canada has clearly stated in *Haida* that the Crown owes a duty of consultation to a First Nation when the Crown contemplates conduct that might adversely affect rights or title claimed by the First Nation;

WHEREAS the provincial government of British Columbia announced its intentions on September 1, 2009 to adopt the proposed Harmonized Sales Tax ('HST') which combines B.C.'s 7% provincial sales tax (PST) with the 5% federal Goods and Services Tax (GST), and would be applied to the same tax base as GST is currently applied to;

WHEREAS on July 22, 2009 the provincial government of British Columbia signed a Memorandum of Agreement (MOA) with the Government of Canada concerning a Canada-British Columbia Comprehensive Integrated Tax Co-ordination Agreement (CITCA); and according to the MOA, Canada and B.C. will use their best efforts to enter into the CITCA on or before September 30, 2009 and subject

to both parties signing and subject to legislative approval, the implementation date for HST will be July 1, 2010;

WHEREAS the proposed HST will create increased savings for businesses and industry, while increasing costs for consumers because all goods and services currently subject to the 5% GST would be subject to an additional 7% provincial tax under the HST, with exceptions;

WHEREAS First Nations in Canada have a tax exemption for personal and real property situated on reserves under section 87 of the *Indian Act 1985*;

WHEREAS according to current federal policy and the *First Nations Goods and Services Tax Act*, First Nations are exempt from paying any tax on goods and services sold on reserves except for those that have implemented the First Nations Sales Tax (FNST) or the First Nations GST (FNGST), and HST will not be applied where FNST and/or the FNGST apply, although a continuation of this policy has not been confirmed;

WHEREAS it is not clear how the HST will affect and impact on First Nation bands, individuals and companies;

WHEREAS neither the federal government nor the provincial government consulted with B.C. First Nations on the implementation of HST and are working to quickly put the HST into place without consultation with B.C First Nations;

WHEREAS given that exploitative industries such as mining and forestry will benefit through financial savings from the proposed HST, First Nations should also benefit as these developments often occur on First Nations lands; and

WHEREAS many current PST exemptions to environmentally sustainable goods and services will not be continued under HST, but instead will be subject to the full 12% HST, and this shift in policy signifies a step away from provincial commitments to environmental preservation and sustainability;

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly direct the UBCIC Executive to take immediate action to raise concerns with the Ministries of Finance of the provincial and federal governments regarding the HST and its impacts on BC First Nations and to call for meaningful consultation and accommodation, including:

- commitments to develop appropriate information packages regarding the application of HST to First Nations;
- inclusion of specific non-derogation language regarding the preservation of section 87 of *Indian Act* tax exemption and continuing rights of First Nations taxation rights under the *First Nations Goods and Service Tax Act* and First Nations Sales Tax prior to B.C. and Canada signing the Comprehensive Integrated Tax Co-ordination Agreement (CITCA) on September 30, 2009;

THEREFORE BE IT FURTHER RESOLVED that the Chiefs-in-Assembly direct the UBCIC Executive to take immediate action to raise concerns with the Ministries of Finance of the provincial and federal governments respectively regarding the prospective implementation of a CITCA and call for the establishment of distinct consultation mechanisms and processes for inclusion of First Nations in all implementation;

THEREFORE BE IT FINALLY RESOLVED that the Chiefs-in-Assembly direct the UBCIC Executive to strike a representative Chiefs Committee and seek adequate resources to support its work, and engage technical advisors to:

- 1) prepare a report analysing the HST and its potential impact on First Nations, including the impact on business developments being advanced by First Nations on lands off-reserve,
- 2) prepare a discussion paper analysing other adverse tax policies affecting First Nations;

And request that the representative Chiefs Committee report to the next UBCIC Chiefs Council in November 2009 with recommendations.

Moved: Chief Ko'waintco Michel, Nooaitch Indian Band
Seconded: Chief Joe Dennis, Lower Similkameen Indian Band
Disposition: Carried
Date: September 18, 2009