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## Assembly of First Nations

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## Assemblée des Premières Nations

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**ANNUAL GENERAL ASSEMBLY**  
**JULY 11, 12, & 13, 2023; HALIFAX, NS**

**Resolution no. 64/2023**

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<b>TITLE:</b>	<b>Support for FSIN's Health Equity Test Case to Address Healthcare Inequities for First Nations</b>
<b>SUBJECT:</b>	Health
<b>MOVED BY:</b>	Chief Rachel Manitowabi, Wikwemikong Unceded First Nation, ON
<b>SECONDED BY:</b>	David Pratt, proxy, James Smith Cree Nation, SK
<b>DECISION</b>	Carried; 1 abstention, 1 opposed

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### WHEREAS:

A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:

- i. 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.
- ii. Article 21 (1) Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
- iii. Article 23: Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.
- iv. Article 24 (1): Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals.

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Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

- v. Article 24 (2): Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.
- vi. Article 37 (1) Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
- vii. Article 38: States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.
- viii. Article 39: Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

**B. The Assembly of First Nations (AFN) Resolution 16/2023, Distinctions-Based Indigenous Health Legislation, calls on Canada to:**

- i. Ensure First Nations have reasonable time and opportunity for adequate and meaningful dialogue to consider the following guiding principles in the development of distinctions-based Indigenous health legislation and sustainable healthcare models, including:
  - a. Recognition, respect and inclusion of Inherent rights to traditional healthcare systems, including traditional medicines, knowledge and healing practices;
  - b. Recognition, respect and inclusion of the Treaty right and human right to health;
  - c. Recognition, respect and inclusion of the particular visions of self-determination and self-government of every First Nation; and,
  - d. Recognition, respect and inclusion of the standards in the United Nations Declaration on the Rights of Indigenous Peoples;
- ii. Engage the active and meaningful participation of representatives of Crown-Indigenous Relations and Northern Affairs Canada, in the engagement and discussions towards distinctions-based Indigenous health legislation with proper title holders in accordance with Inherent title and rights and Treaty rights, and the United Nations Declaration on the Rights of Indigenous Peoples;

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- iii. Consider in the process of co-drafting the legislation the analysis and recommendations of Canada's Royal Commission on Aboriginal Peoples (1996) in its final report;
  - iv. Strictly adhere to its legal obligations under international customary law as adopted in the common law of Canada and as set out in the 2000 General Comment on Article 12 of the International Covenant on Economic, Social and Cultural Rights as set out in the preamble of this resolution; and
  - v. Delegate the Chiefs' Committee on Health (CCoH) to coordinate, inform, and make recommendations on all aspects of distinctions-based Indigenous health legislation and report back to the AFN Executive Committee periodically and the First Nations-in-Assembly for final vetting before going through the parliamentary process; and
  - vi. Put conditions into place on transfer payments to provinces, on condition that provinces must pass laws so that there is no discrimination in the operation of hospitals or health systems licensed by the province.
- C. Aligned with the ongoing work on Indigenous health legislation and health transformation processes, the AFN is mandated to support First Nations across Canada in the work to protect and promote the Inherent and Treaty Rights to health and wellness.
- D. While First Nations have taken proactive steps to transform their systems of health and wellness, gaps and inequities persist in the provision of services for First Nations, including under Canada's Non-Insured Health Benefits (NIHB) Program.
- E. The chronic underfunding has contributed to the critical gaps and inequities in health services and the urgent health crisis for First Nations.
- F. Aligned with the protection and promotion of First Nations inherent, Treaty and Charter Rights, the Representative Plaintiffs, Chief Jamie Wolfe, Muskowekwan First Nation and Chief Norma Catarat, Buffalo River Dene Nation, and the Federation of Sovereign Indigenous Nations (FSIN), have prepared a Health Equity Test Case (the Test Case).
- G. A test case (just as Taku and Haida were national test cases for the duty to consult) can be important to establish the key elements of First Nations inherent, and Treaty rights, Charter and equitable rights to First Nations health and wellness.
- H. The test case is to be filed before the Saskatchewan Court of King's Bench as a court with concurrent jurisdiction with the Federal Court. The test case will claim that Canada and the province of Saskatchewan have breached Sections 7 and 15 of the Charter of Rights and Freedoms, Treaty promises, and Crown fiduciary duties upheld by s.35 of the Canadian Constitution.

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- I. A precedential test case in favour of the First Nations will be a key part of addressing the health crisis nation-wide.
- J. The test case will provide First Nations added protection to demand that the federal government address the health crisis through law and policy that better aligns with The United Nations Declaration on the Rights of Indigenous Peoples Act, S.C., 2021, c. 14.
- K. The Representative Plaintiff First Nations and the FSIN are supported by First Nations across Saskatchewan and now seek the broader advocacy and support from the First Nations-in-Assembly. FSIN will be securing its own financial resources to undertake this work.

**THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:**

- 1. Support the need to address:
  - a. the health crisis and to ensure protection and promotion of the Inherent and Treaty Rights to health and wellness;
  - b. the gaps in the provision of health services and discriminatory practices and impacts; and
  - c. the chronic underfunding of First Nation health services.
- 2. Provide advocacy and political support for the filing of the health equity test case by the representative plaintiffs and the Federation of Sovereign Indigenous Nations (FSIN) in the effort to call on Canada to improve the health care crisis and to assist First Nations across Canada with a meaningful precedent.

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