

**SPECIAL CHIEFS ASSEMBLY****December 5,6,7, 2023, Ottawa, ON****Resolution no. 79/2023**

TITLE:	Reconsider Proposed Distinctions-Based Indigenous Health Legislation Process
SUBJECT:	Health
MOVED BY:	Chief Sheldon Kent, Black River First Nation, MB
SECONDED BY:	Chief Allan Polchies Jr, St. Mary's Wolastoqiyik First Nation, NB
DECISION	Carried by Consensus

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

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A handwritten signature in blue ink that reads 'Cindy Woodhouse'.

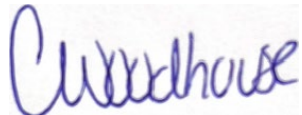
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- v. Article 24 (2): Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of 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. Article 24 of the Organization of the American States (OAS) American Declaration on the Rights of Indigenous Peoples (2016) states:
- i. Indigenous peoples have the right to the recognition, observance, and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, in accordance with their true spirit and intent in good faith and to have States honor and respect same. States shall give due consideration to the understanding of the indigenous peoples as regards to treaties, agreements and other constructive arrangements.
 - ii. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.
- C. Call to Action #18 of the Truth and Reconciliation Commission of Canada calls upon the federal, provincial, territorial, and Aboriginal governments to acknowledge that the current state of Aboriginal health in Canada is a direct result of previous Canadian government policies, including residential schools, and to recognize and implement the health-care rights of Aboriginal people as identified in international law, constitutional law, and under the Treaties.
- D. In 2019 and 2020, the Speech from the Throne and mandate letters from the Prime Minister affirmed the Government of Canada's commitment to co-develop new legislation to ensure that Indigenous Peoples have access to high-quality, culturally relevant health care and mental health services.
- E. Assembly of First Nations (AFN) Resolution 69/2017, *Exploring A Legislative Base for First Nations Health*, mandated the AFN to examine options and federal obligations towards First Nations health and to develop tools to aid interested First Nations in developing their own positions on federal First Nations health legislation.
- F. AFN Resolution 18/2021, *Supporting First Nations Participation in Dialogue on Health Legislation*, directed the AFN to advocate for regional engagement processes in relation to health legislation, promote First Nations participation, lead national level dialogue and engagement, and to call upon Indigenous Services Canada (ISC) to ensure that the timelines for engagement on health legislation are reflective of First Nations' needs and capabilities and not those of the federal government.

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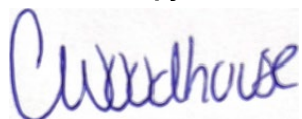
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- G. AFN Resolution 16/2023, *Distinctions-based Indigenous Health Legislation*, directed the AFN to make recommendations to the federal government on what should be included in any proposed health legislation. This work is guided by the Chiefs' Committee on Health with an obligation to report back to the AFN Executive Committee periodically, and to First Nations-in-Assembly for final vetting before going through the parliamentary process.
- H. The Government of Canada has committed to introducing the new distinctions-based Indigenous Health Legislation in the Winter of 2024.
- I. ISC released a 'Key Elements Document' In late August 2023. The purpose of the document is to anchor the contents of the proposed legislation. Both the AFN and regions analyzed the document and found it inadequate and misguided, lacking specific guarantees and detail in terms of legislative content, and failing to ease the pre-existing concerns of First Nations, created through conditions under which the proposed legislation's development has been operating to date. Concerns outlined include, but are not limited to:
- i. Timeline: First Nations capacity to respond to the scheduled release of benchmark documents from ISC to support distinctions-based Indigenous health legislation places First Nations at a disadvantage for meaningful and precise contributions into legislative drafting.
 - ii. Funding: First Nations have not been adequately and equitably funded to formulate strategic and thorough assessments of the proposed legislation based on traditional health frameworks consistent with First Nations worldviews and aspirations. National funding for engagement was \$1 million in total. This amount did not cover the costs of even one region's engagement funding request. As a result, participation from community and regional level engagement is insufficient to affirm comprehensive free, prior, and informed consent.
 - iii. Jurisdiction: ISC has not respected the jurisdictional rights and realities of First Nations. There is no demonstrated commitment to ensure necessary work with the provinces and territories is incorporated. Transparent agreements from the provinces and territories are necessary to strengthen engagement credibility and implementation viability.
 - iv. Treaty and Inherent Rights: the Key Elements Document is in opposition to the full implementation of and adherence to the Treaty Right to Health. It is inconsistent with the international, constitutional, and inherent rights of First Nations, undermining efforts for a renewed nation-to-nation relationship and First Nation self-determination specific to the area of health.

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

1. Call on Canada to suspend the proposed distinctions-based Indigenous health legislation process to address unreasonable timelines, lack of appropriate funding, and lack of opportunities for active and meaningful dialogue between and amongst First Nations as proper rights and title holders in accordance with their Inherent and Treaty Rights.
2. Call on Canada to fund and support First Nations-led engagement, including with Inherent and Treaty rights-holders, required for Nations-based health legislation excluding the Métis.

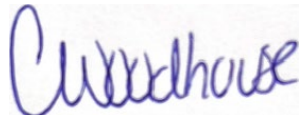
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3. Call on Canada to ensure if resumed, distinctions-based health legislation, is adequately informed by principles identified by First Nations regions. Principles include, but are not limited to, equitable distribution, respect for Inherent and Treaty rights of First Nations Peoples, upholding human rights standards, honouring regional considerations, and prioritizing meaningful engagement, including ensuring grassroots perspectives are included.
4. Call on Indigenous Services Canada, Crown Indigenous Relations and Northern Affairs Canada, and provinces and territories to work with First Nations, with the technical support of the AFN, the AFN Chiefs' Committee on Health, and the AFN Executive Committee, to ensure active and meaningful engagement with First Nations on the legislation.
5. Call on the AFN and Canada, in consultation with First Nations, to develop a fair and equitable fiscal arrangement that is appropriate for each region to ensure adequate and sustained funding for implementation of a Nations-based health legislation excluding the Métis.
6. Call on Canada to join the global call at the Conference of the Parties (COP) 29 to the United Nations Framework Convention on Climate Change to make the essential link on the impacts of climate change on the health of First Nations Peoples.
7. Direct the AFN to call on the federal, provincial, and territorial governments to develop and implement, in cooperation and collaboration with First Nations, a First Nations Health Ombudsperson to address discrimination in the health care system.

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