

BRIEFING NOTE

TO: BCAFN Chiefs-in-Assembly
FROM: UBCIC
DATE: SEPTEMBER 16, 2022
RE: FIRST NATIONS HEALTH GOVERNANCE, RESOLUTION 2022-XX

PURPOSE

To provide the Chiefs Council an overview of First Nations health governance and developments since the passing of resolutions on First Nations Health Governance Renewal in spring 2021.

RECOMMENDATIONS

1. Consider Resolution 2022-XX.

BACKGROUND

First Nations have an undeniable sovereign responsibility and mandate to ensure the health, safety, and well-being of their members. In 2021, the First Nations Health Governance Structure Renewal Committee (Committee) was mandated by Title and Rights Holders through UBCIC Resolution 2021-14, BCAFN Resolution 2021-02 and FNS Resolution #0621.11. These resolutions called for:

- 1) A comprehensive engagement and decision-making process among the Chiefs to review the First Nations health governance structure's mandate and performance and alignment with the 7 directives, and make decisions regarding necessary structural changes and potential legislation in light of the *Declaration on the Rights of Indigenous Peoples Act*;
- 2) The engagement and decision-making process to be immediately initiated, and for a renewed mandate and structure to be agreed upon by First Nations throughout BC including co-developing legislation as described in section 9.1 of the Tripartite Health Framework Agreement prior to renewal of the First Nations Health Authority's (FNHA) Canada Funding Agreement; and
- 3) The engagement and decision-making process to include all First Nations in B.C., and be developed and overseen by an arms-length group from the FNHA, including but not limited to a sub-set of representatives of the First Nations Health Council and the First Nations Leadership Council organizations, and other Chiefs and leaders identified through an open process who will communicate with all First Nations in B.C. in a public and transparent way.

Following the spring 2021 resolutions, FNLC corresponded with FNHA and the Ministry of Health regarding the governance review. The Ministry of Health encouraged FNLC and FNHA to work together on this issue, while FNHA stated that it has expanded engagements in recent years and participated in other evaluations. After FNLC's July 2021 call for leadership to participate, FNHC sent FNLC a letter disputing FNLC's mandate to carry out the review, as 2010 resolutions passed the health mandate to the FNHC regional structure, and calling on FNLC to "cease and desist from political interference."

In November 2021, the newly created Committee submitted a funding application to the Ministry of Health for the arms-length review. In February 2022, the Fraser Salish Region of the FNHC wrote a letter to Minister Dix, stating that "the First Nations Leadership Council does not have a mandate in health and has not since 2010. Perhaps more on point, if your government funds the FNLC for this dubious enterprise, your action will breach the 2011 BC Tripartite Framework Agreement on First Nations Health

Governance.” The FNHC letter contended that the Tripartite Framework Agreement (Framework Agreement) is protected under Article 37 of the UN Declaration and the BC Government is risking political and legal consequences if it funds a review.

FNLC responded to these allegations in a letter to Minister Dix, outlining the clear mandate for the review. FNLC also disputed that the Framework Agreement falls under Article 37 of the UN Declaration, stating that it “is in no way comparable to treaties or other arrangements directly on a Nation-to-Nation basis,” and that Chiefs’ support was “predicated upon the understanding that this Agreement was without prejudice to First Nations Rights, Title, and interests.” Following this exchange, the Ministry of Health became unresponsive to requests for the Minister to meet with the Committee or respond to the funding application. In August 2022, FNLC policy staff spoke to a Ministerial Advisor and were informed that the Minister will not meet with the Committee and will not fund the review, although no rationale or formal letter of rejection has been received. In September 2022, after being informed of Resolution 2022-XX, the Minister agreed to meet with FNLC, although no date has been set.

CURRENT STATUS

The Committee’s work is stalled. FNHA has not provided necessary documents for the review and, together with FNHC, is insisting to the Minister of Health that the review is not mandated and would breach Article 37 of the UN Declaration. The Minister of Health has not met with the Committee and, although it has not been formally rejected, will not fund the review.

In September 2022, the Committee met and discussed next steps, including:

- 1) Briefing FNLC on the current situation
- 2) Requesting that FNLC meet with the chairs of FNHA
- 3) Holding a province wide virtual meeting with First Nations to hear and publicly share concerns and suggestions on First Nations health governance
- 4) Encouraging for Title and Rights Holders to raise their concerns and provide feedback on the current health governance structure directly with the BC government and/or FNHA, both publicly and in closed forums
- 5) Corresponding further with FNHA and FNHC regarding their rationale
- 6) Submitting the funding proposal to the Ministry of Indigenous Relations and Reconciliation

ANALYSIS

Although the Committee has prospective next steps, it is unlikely that any change will occur without significant pressure from Title and Rights Holders. FNHA exists to deliver services for First Nations, and the need for change stems from the lack of involve or input from First Nations in the current governance and decision-making. If Title and Rights Holders direct further action and exert pressure on government and FNHA, there may be an increased willingness to act and allow the review to move forward.

This issue is very time sensitive, as FNHA receives its funding for community health services, health benefits and other activities through the Canada Funding Agreement, a 10-year agreement which expires on March 31, 2023. The annual [Gathering Wisdom for a Shared Journey](#) forum is the established mechanism for input in this agreement, but First Nations have reported a lack meaningful input and involvement through this and other forums, and the 2021 resolution specifically stated that FNHA’s renewed structure and mandate must be agreed upon by First Nations prior to the renewal of the Canada Funding Agreement. Additionally, the Tripartite Data Quality & Sharing Agreement, which is critical for Indigenous data sovereignty, expires in April 2023. Some First Nations have also reported a lack of input in this agreement renewal and insufficient engagement from FNHA. It is of grave concern

that FNHA is entering into new long-term agreements without sufficient engagement or input by Title and Rights Holders.

There is also an urgent need to clarify the relevance of Article 37 of the UN Declaration, which states that “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,” to the Framework Agreement. FNHC’s correspondence appears to elevate the Framework Agreement to the level of treaties and other Nation-to-Nation agreements. This perspective is likely palatable to the Ministry of Health, as it simplifies working with and justifies not directly consulting with First Nations and allows the FNHA-Ministry relationship to perform the function of Nation-to-Nation relationships. There is a pressing need for Title and Rights Holders to establish with FNHA, FNHC and the Ministry of Health whether this is an accurate portrayal of the Framework Agreement.

APPENDIX: Current BC First Nations Health Governance Structure

The FNHA has been mandated to work with BC First Nations, government partners and others to improve health outcomes for BC First Nations people through several health agreements, including the Transformative Change Accord: First Nations Health Plan (2006), Tripartite First Nations Health Plan (2007), and the Tripartite Agreement on First Nations Health Governance (2011).

The First Nations Health Governance Structure is comprised of three main entities:

- 1) **First Nations Health Council (FNHC):** Unincorporated association of 15 members focused on political representation, leadership, and advocacy
- 2) **First Nations Health Directors Association (FNHDA):** A society under the *Societies Act* focused on technical advice, research, policy, and capacity development on behalf of First Nations community Health Directors and Health Managers
- 3) **First Nations Health Authority (FNHA):** Incorporated society under the *Societies Act* focused on service delivery and associated partnership and leadership ([2021 FNHA Bylaws](#))

The First Nations Health Governance Structure is informed by Regional Caucuses, first formed in 2008, and Tables representing First Nations in the province. The province is divided into five regions; Interior, Fraser, Vancouver Coastal, Vancouver Island, and Northern to provide a space for community-driven, nation-based decision making and for First Nations to share perspectives, set political direction on regional health matters, advocate on behalf of communities and Nations, and appoint representatives to the FNHC. The current health governance arrangement is supported by and comprised of a number of tripartite agreements: the legal Framework Agreement; a number of issue-specific sub-agreements; a Health Partnership Accord; and, Implementation Plan. The FNHC and FNHA have overlapping membership and a close working relationship, as the FNHC appoints the Board of Directors of the FNHA.

In 2011, First Nations in BC developed seven directives to establish fundamental standards and instruct work towards a new health governance arrangement. These directives inform the health governance agreement and reflect the will of BC First Nations. Directives are for: 1) Community-driven, Nation-based, 2) Increase First Nations Decision-Making, 3) Improve Services, 4) Foster Meaningful Collaboration and Partnership, 5) Develop Human and Economic Capacity, 6) Be Without Prejudice to First Nations Interests, 7) Function at a High Operational Standard.

First Nations are intended to provide input and guidance to political agreements through the annual [Gathering Wisdom for a Shared Journey](#) forums, while the FNHA, FNHC, and FNHDA also receive direction from community leadership and Nations throughout five regions of the province through community engagement sessions.

In 2019, there was a change in leadership at the FNHA resulting in a shift in how the FNHA operates that has been to the detriment of First Nations communities, particularly when it comes to honouring First Nations sovereignty and governance, the provision of services and the management the COVID pandemic response. First Nations communities have found an increase in decisions being made by First Nations Health Authority (FNHA) and health systems organizations without the involvement of, or input from, the communities.

The 2020 *In Plain Sight* report into anti-Indigenous racism in BC's health care system described a set of issues in Finding #10 related to the need for the First Nations Health Plans and structures to be renewed

and strengthened, and made Recommendation #6 calling for an engagement process with BC First Nations to establish expectations, the concept of legislation, and changes to the First Nations health governance structure to align with the standards of the UN Declaration and utilize the tools available under the *Declaration on the Rights of Indigenous Peoples Act*.