

DRAFT RESOLUTION # 02 / 2021

AFN Special Chiefs Assembly, December 7-9, 2021

TITLE:	Supporting First Nations Participation in the development of distinctions-based Health Legislation
SUBJECT:	Health
MOVED BY:	Chief Andrea Paul, Pictou Landing First Nation, NS
SECONDED BY:	Chief George Cote, Cote First Nation, SK

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
- 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.
 - 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.
 - 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.
 - 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.
- B. 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 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.
- C. The Crown holds an obligation to First Nations health as a result of Treaties, including the Medicine Chest clause in Treaty Six as well as section 35 of the *Constitution Act*, 1982.
- D. The Canadian Government has never formally acknowledged its legal and Treaty obligations to First Nations health.

DRAFT RESOLUTION #02/2021

AFN Special Chiefs Assembly, December 7-9, 2021

- E. The lack of legislative base outlining the federal government's obligation towards First Nations health leaves health services vulnerable to the political will of the government of the day.
- F. In 2015, the federal government promised a new relationship with Indigenous Peoples – one that would help deliver a better quality of life for their families and communities. In the *Walking the Road of Reconciliation* section of the Prime Minister's 2019 Speech from the Throne and the Minister of Indigenous Services' subsequent Mandate Letter it states,
 - i. co-develop new legislation to ensure that Indigenous people have access to high-quality, culturally relevant health care and mental health services.
- G. The 2021 Supplementary Mandate Letter from the Minister of Indigenous Services states,
 - i. expedite work to co-develop distinctions-based Indigenous health legislation with First Nations, Inuit and the Métis Nation, as well as a distinctions-based mental health and wellness strategy, and work with partners to address systemic racism in the healthcare system.
- H. In the *Supporting Canadians and Fighting COVID-19 Fall Economic Statement 2020*, the Minister of Finance Chrystia Freeland states,
 - i. To move forward with this commitment, the government proposes an initial investment of \$15.6 million over 2 years, starting in 2021-22, to support the co-development of distinctions-based health legislation with First Nations, Inuit and Métis Nation partners. This will begin the process of transforming health care delivery in Indigenous communities by ensuring Indigenous control over the development and delivery of health services.
- I. The National Inquiry into the Missing and Murdered Missing Indigenous Women and Girls Calls for Justice states,
 - i. 3.1: We call upon all governments to ensure that the rights to health and wellness of Indigenous Peoples, and specifically of Indigenous women and girls, and 2SLGBTQQIA people, are recognized and protected on an equitable basis.
- J. AFN Resolution 69/2017, *Exploring a Legislative Base for First Nations Health*, directs the Assembly of First Nations (AFN) to examine options related to federal First Nations health legislation that would articulate federal obligations towards First Nations' health, reflective of inherent, Treaty and international legal obligations, as well as the nation-to-nation relationship.
- K. The AFN has drafted a discussion paper examining the issues related to First Nations health legislation.
- L. The COVID-19 pandemic has shown that decisions impacting the health and well-being of First Nations are best made when First Nations are part of the decision-making processes with the federal government, provinces and territories.

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

DRAFT RESOLUTION # 02 / 2021

AFN Special Chiefs Assembly, December 7-9, 2021

1. Call on Canada to orient their approach to the development of distinctions-based health legislation by recognizing First Nation peoples' inherent right to self-determination over First Nations health matters.
2. Call on Canada to ensure that support will be provided to First Nations to make free and informed decisions of how best to care for and establish law, policies, and practices to support the health and well-being of First Nations.
3. Direct the Assembly of First Nations (AFN) to call upon Indigenous Services Canada (ISC) to engage in a focused dialogue with First Nations to substantively identify, recognize and engage the protocols, elements and processes under which to conduct legislative co-development.
4. Direct the AFN to call upon ISC to ensure that the timelines for engagement and co-development of health legislation are reflective of First Nations' needs and capacities and not those of the federal government.
5. Direct the AFN to call upon ISC to ensure that provincial and territorial governments are included the tri-partite discussions related to co-development.
6. Direct the AFN to call upon ISC to ensure individual First Nations are fully and sustainably funded to allow for their full, direct, and unfettered participation in all legislative co-development process and implementation.
7. Direct the AFN to support the participation of First Nations, regional organizations, and provincial/territorial organizations in their regional engagement processes and to lead national level dialogue and engagement.