

United Nations Declaration on the Rights of Indigenous Peoples and In Plain Sight: Addressing Indigenous-Specific Racism and Discrimination in B.C. Health Care

The *In Plain Sight* independent review of Indigenous-specific racism in B.C.'s health care system¹ expressly sought to reinforce Indigenous human rights in its mandate to review evidence, analyze findings, and make recommendations. The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) is a universal framework of minimum standards for the survival, dignity and well-being of Indigenous Peoples worldwide. It is central to efforts to address Canada's legacy of colonialism, highlighted by the Truth and Reconciliation Commission as "the framework for reconciliation."

There are three critical themes in the UN Declaration as related to health, which informed the *In Plain Sight* report. Most notably, the UN Declaration re-affirms the right of Indigenous peoples to health in *Article 24* (emphasis added):

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.***
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.***

Article 22 stresses that "Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities", including that "indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination."

Additionally, the Indigenous right to health includes full access to health care services in ways that reflect and are responsive to Indigenous worldviews and conceptions of health, without discrimination, hindrances or obstacles. Ultimately, the health care system must be one which Indigenous individuals feel trust and confidence to access, without reservation, and that their culture, worldview and individual integrity will be reflected and respected in the services they use. The human rights of Indigenous people are important to emphasize as the need to reinforce basic human rights is a necessary aspect of achieving cultural safety in health care. Indigenous peoples need to access culturally safe and respectful care, and to experience services that break with the colonial history of segregation and inferior treatment.

¹ Independent Reports can be accessed at <https://engage.gov.bc.ca/addressingracism/>

Finally, the Indigenous right to health, such as the individual rights described above based on Article 24, is inextricable from the Indigenous right of self-determination and the inherent right of self-government. Self-determination speaks to control by Indigenous peoples over their health and well-being, including through their own governing institutions, jurisdiction and laws. These rights are specifically upheld in the context of Indigenous peoples in Articles 3, 4 and 5:

- Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
- Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Canadian governments have begun to act upon the centrality of the UN Declaration in advancing the reconciliation and the health and well-being of Indigenous peoples. BC has been at the forefront of this process, in November 2019, passing the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA).

DRIPA affirms the application of UNDRIP to the laws of B.C. (s. 2), meaning that the Province and public institutions must consider the human rights of Indigenous peoples when determining how to act in accordance with B.C.'s laws, including in health. DRIPA also requires the alignment of B.C.'s laws with the UN Declaration – there is an obligation on B.C. to review existing laws, as well as new laws prior to adoption, for alignment with the UN Declaration, including laws related to health. Section 4 of DRIPA requires the Province to conclude an action plan to meet the objectives of the UN Declaration and therefore must include measures to end discrimination against Indigenous peoples in health and uphold the Indigenous right to health. Finally, DRIPA confirms legislative space for agreements that recognize Indigenous governing bodies and implement the standard of free, prior and informed consent in the UN Declaration (s. 6 and 7).

The findings of the *In Plain Sight* review highlighted critical observations where Indigenous peoples' rights to health as described in UNDRIP are not being met in BC's health care system. This includes widespread prejudicial beliefs about Indigenous peoples leading to discriminatory experiences in health settings, and poorer health outcomes (Findings 1-5), the particular impacts on Indigenous women (Finding 3), the lack of full integration of Indigenous practices in the health care system (Finding 8), and insufficient presence and "hardwiring" of Indigenous leadership and roles in decision-making on matters affecting them (Findings 9-11).

To advance the implementation of UNDRIP and compliance with DRIPA in BC, *In Plain Sight* advanced recommendations designed to support Indigenous peoples to utilize culturally safe health services free of discrimination, access services reflecting of their integrative and

interconnected Indigenous understandings of health, and to support Indigenous self-determination in health care – including through changes in laws, policies and practices, as well as roles for Indigenous senior officials and institutions. This includes:

- Alignment and co-creation of legislation and policy to require anti-racism and “hard-wire” cultural safety (Recommendations 2, 5, 8, 9, 11, 18, 20, 21)
- Establishment of new strategic Indigenous positions and alignment of existing Indigenous institutions to support properly structured relations with the Province and Indigenous peoples (Recommendations 3, 4, 6, 7, 13, 14)
- Culturally appropriate services and health care settings that reflect Indigenous definitions of health and healing (Recommendations 8, 10, 15, 16, 17, 19, 23)

Additionally, all recommendations were carefully crafted to uphold the requirements in DRIPA to “consultation and cooperation” with Indigenous peoples and to create space for shared decision-making and other agreements with “Indigenous governing bodies” – bodies duly authorized to act on behalf of Indigenous peoples by proper title and rights holders. Consistent with this understanding, each recommendation carefully identified where consultation and collaboration is required with Indigenous peoples, and/or which Indigenous entities must be involved in its implementation, in some cases specifying: First Nations governing bodies; First Nations representative organizations; and/or Indigenous organizations such as FNHA, FNHC, and MNBC.

The focus of *In Plain Sight* on Indigenous human rights poises the BC health sector to be at the forefront of transformative change, by using UNDRIP as the “framework for reconciliation” and carefully considering the tools now available under DRIPA. There are therefore strong opportunities for the action plan and annual reports required under DRIPA to further reinforce the Province’s commitment to *In Plain Sight* and propel similar required changes to other sectors in BC society.

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