Engagement guide:

Co-developing federal distinctions-based Indigenous health legislation

About the engagement guide

The Government of Canada is committed to co-developing distinctions-based Indigenous health legislation with First Nation, Inuit and Métis Nation partners.

This engagement guide was designed for:

- Individuals, Indigenous Governments, organizations or communities to help guide their engagement sessions regarding the co-development of distinctions-based Indigenous health legislation, and
- Those who wish to contribute to Indigenous health legislation engagement but cannot attend a planned session.

This engagement guide contains:

- Background information,
- A short list of existing literature,
- Proposed engagement questions, and
- A template for submitting feedback from your session to the Government of Canada.

Please visit canada.ca/indigenous-health-legislation for the latest updates and information about co-developing distinctions-based Indigenous health legislation.

Tips for using the engagement guide

If you would like to organize your own engagement session within your own association, group, or community you are welcome to consult the engagement questions listed below. These engagement questions are available to help frame the discussion, however should not be considered an exhaustive list. You and your participants are welcome to explore other related subject areas.

The engagement reporting template shows how to summarize feedback from your session in a way that can be included in the Government of Canada's reporting and analysis, and that will be taken into consideration in the co-development of the legislative options. Once completed, please submit your ideas in the reporting template and send to sac.lsa-ihl.isc@canada.ca where input will be received by Indigenous Services Canada officials.

Group sessions – in person or virtually (depending on local public health guidelines) – are encouraged as they can bring out a wealth of knowledge, expertise and wisdom, and allow for active discussion.

Federal representatives are available if you wish to include them in your engagement sessions to answer any questions or make a presentation. To invite a federal representative to your session, please send a request to sac.lsa-ihl.isc@canada.ca.

The list of existing literature provides useful information that may help to inform your input.

A message from the Minister of Indigenous Services

"The longstanding inequities between Indigenous and non-Indigenous people in Canada in accessing high-quality, culturally relevant health services that remain in Canada are unacceptable. We must continue to speak up and most importantly, take action to address the systemic discrimination still existing in Canada's healthcare system.

This is a huge task. We cannot address this, each of us, alone. It is an undertaking that we must face together. And it starts with open dialogue, listening, and understanding what are Indigenous Peoples' priorities when it comes to health and wellness. Our collaborations throughout this co-development effort, will ultimately be reflected in a distinctions-based Indigenous health legislation, one that serves to improve access to high-quality, culturally relevant health services – one that is responsive to the distinct needs of all Indigenous people, no matter where they live. "

Co-developing distinctions-based Indigenous health legislation

In 2019, the Prime Minister of Canada mandated the Minister of Indigenous Services to "co-develop distinctions-based Indigenous health legislation, backed with the investments needed to deliver high-quality health care for all Indigenous Peoples[1]". The September 2020 Speech from the Throne affirmed the Government of Canada's commitment to "expediting work to co-develop distinctions-based Indigenous health legislation with First Nations, Inuit, and the Métis Nation." In support of this work, the 2020 Fall Economic Statement announced $15.6 million over two years, starting in 2021. To co-develop distinctions-based Indigenous health legislation, Indigenous Services Canada will work collaboratively with First Nations, Inuit, and Métis Nation partners. Engaging provinces and territories and their main health authorities will also be a necessary aspect of the co-development process.
Engagement for the co-development of distinctions-based Indigenous health legislation was officially launched at the January 27-28, 2021 National Dialogue on Addressing Anti-Indigenous

[1] In the context of this document, the term 'Indigenous Peoples' is used to refer to First Nations, Inuit, and Métis. Wherever possible, correct names for distinct groups/communities are provided.

Racism in Canada's Health Systems. This was the second national dialogue held following the death of Joyce Echaquan in September 2020, and the harrowing reminder of the racism faced by Indigenous Peoples, including First Nations, Inuit, and Métis, in Canada's health systems.

Current status of Indigenous health in Canada

Significant and long-standing gaps persist between Indigenous and non-Indigenous people in Canada in accessing high-quality, culturally relevant health services. The factors underlying these gaps and the ability to address them are multi-faceted. Although the health of Indigenous Peoples in Canada has been improving in recent years, First Nations, Inuit, and Métis continue to experience considerably lower health outcomes than non-Indigenous people in Canada. Despite having access to federal, provincial and territorial health resources, First Nations, Inuit, and Métis face disproportionate burdens of disease or health disparities, including high rates of infant mortality, injury, death by suicide, chronic and communicable diseases, and rank among the lowest in various social determinants of health. Although not an exhaustive list, these gaps have been well documented in reports, commissions, audits, and evaluations.

Why legislation?

While a range of instruments are available for accomplishing federal policy objectives, legislation offers certain benefits. Legislation can provide an opportunity to seek to address systemic issues in a positive, lasting way to support creative solutions to be put forward in collaboration with First Nations, Inuit and Métis to ensure health services meet their needs. It can offer a concrete framework in which agreements and partnerships can occur, across the country, according to communities' distinct needs, with the backing of stable resources. Legislation can create a stable framework for change. Because of its public nature, and the open, transparent, formal Parliamentary process engaged in its creation, the provisions of a law are more enduring than ordinary government policy.

On the other hand, legislation is not set in stone. It can be amended through the Parliamentary process, which is open to the scrutiny of the public. In this way, legislation balances the creation of a stable framework with the flexibility necessary to make adjustments as circumstances demand. It does not freeze a legal relationship in time or preclude opportunities to create better solutions in the future. It is also important to note that the creation of new legislation to address how Canada delivers services to Indigenous Peoples will not extinguish or undermine existing Aboriginal and Treaty rights, which are protected by section 35 of the *Constitution Act, 1982*. Neither will legislation prevent Indigenous Peoples from continuing to exercise Aboriginal rights that may be protected under section 35, or from negotiating the implementation of rights in future modern Treaties, agreements, or other constructive arrangements.

A law is open and public. It can offer a transparent and concrete tool for achieving specific objectives. Among other things, it can serve to translate policy goals into legally enforceable obligations. For example, it can be used to make government obligations clear and public, and create a path for holding the government to account through the courts if necessary. Legislation can also provide the federal government with the necessary legal authority to be more responsive to the goals and aspirations of Indigenous Peoples, including First Nations, Inuit, and Métis, for example, by removing some existing legal barriers on information sharing.

Finally, legislation has deep symbolic value. A preamble, which appears at the beginning of a law, can be used to recite and therefore document the circumstances and considerations that gave rise to the need for legislation. This can be used to clearly state the historical context, the pressing need for change, the values that must inform this change, and the goals sought to be achieved. A preamble is considered an integral part of a law and receives serious attention from courts in interpreting the law. A preamble to Indigenous health legislation could incorporate the shared values and aspirations that emerge from engagement and the co-development process.

Objectives

The co-development of distinctions-based Indigenous health legislation is an opportunity to:

- Establish overarching principles as the foundation of health services for Indigenous Peoples, including First Nations, Inuit and Métis;
- Support the transformation of health service delivery through collaboration with Indigenous Peoples, provinces, territories, and affiliate organizations in the development, provision and improvement of services to increase Indigenous-led health service delivery; and
- Advance the Government of Canada's commitment to reconciliation and a renewed nation-to-nation, Inuit-to-Crown and government-to-government relationship with First Nations, Inuit and Métis Nation partners based on the recognition of rights, respect, co-operation and partnership.

Co-development will:

- Build on lessons learned from previous engagement efforts with First Nations, Inuit and Métis Nation partners, provinces and territories, for example:
    - the Blueprint on Aboriginal Health as part of the Kelowna Accord Process;
    - the Common Statement of Principles on Shared Health Priorities which included a commitment to working with First Nations, Inuit and the Métis Nation to improve access to health services and health outcomes for Indigenous Peoples;
    - Build upon existing national and regional First Nations, Inuit and Métis Nation plans and priorities; and
    - Complement existing provincial and territorial health systems, and/or self-government, or tripartite models already in place.

Definitions

Distinctions-based:

- The Government of Canada recognizes First Nations, Inuit and the Métis Nation as the Indigenous Peoples of Canada, consisting of distinct, rights-bearing communities with their own histories, including with the Crown. A distinctions-based approach ensures that the unique rights, interests and circumstances of First Nations, Inuit and Métis are acknowledged, affirmed, and implemented.

Co-development:

- Is a collaborative and participatory approach that supports the concept of "nothing about us without us", acknowledges the distinct nature, and lived experience of First Nations, Inuit and Métis.
- It supports Canada's Constitutional relationship with Indigenous Peoples, recognized and affirmed under section 35 of the *Constitution Act*, *1982*.
- It is guided by the Truth and Reconciliation Commission's Calls to Action and the Missing and Murdered Indigenous Women and Girls Inquiry's Calls to Justice.
- Is guided by the *Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.*
- Represents reconciliation in action and can only be achieved through open and transparent engagement.

Co-development in the context of health legislation:

- Given the complexity of the Canadian legal and constitutional landscape, in-depth, structured engagement with First Nations, Inuit, and the Métis Nation, provinces and territories, subject matter experts and other groups is needed to ensure a successful outcome for all Indigenous Peoples.
- As a first step, the Government of Canada will work collaboratively with national and regional First Nations, Inuit, and Métis organizations and provinces and territories to reach agreement on an engagement structure for the co-development of options.
- The agreed upon structure will guide us as we move forward through the stages of co-development of a legislative approach that supports the vision expressed through various federal commitments, and that sets the stage for high-quality, culturally relevant health care for all Indigenous Peoples, backed with needed investments.

Legislation:

- Legislation refers to written laws, often referred to as Acts or statutes, which, at the federal level, are enacted by Parliament, as well as associated regulations. Draft legislation, called a bill, is introduced to Parliament and requires the approval of the House of Commons, the Senate and the Crown (usually the Governor General) to become law.
- Learn more about how legislation is developed:
    - How new laws and regulations are created

About the engagement process

In recognition of the right to self-determination, engagement is being led primarily by First Nations, Inuit and Métis Nation partners at the national, regional and sub-regional levels.

Indigenous Services Canada (ISC) is also hosting sessions to supplement the First Nations, Inuit, and Métis Nation-led sessions. Individuals and groups unable to attend engagement sessions can provide their feedback:

- At roundtables
- By email: sac.lsa-ihl.isc@canada.ca
- By mail: Indigenous Services Canada
  Distinctions-based Indigenous Health Legislation

10 Rue Wellington Suite 1455
Mail Stop 1921C
Gatineau, Quebec K1A 0H4
Canada

Canada's relationship with Indigenous Peoples, including First Nations, Inuit and Métis

First Nations, Inuit and the Métis Nation have a relationship with the Crown that is guided by Constitutional principles including the honour of the Crown, as well as the constitutional protection of Aboriginal and Treaty rights. This relationship, including existing Aboriginal and Treaty rights, is recognized and affirmed in section 35 of the *Constitution Act, 1982*. A fundamental purpose of section 35 of the *Constitution Act, 1982* is reconciliation. This is an ongoing process through which First Nations, Inuit, the Métis Nation and the Crown work cooperatively to establish and maintain a mutually respectful framework, with a view to fostering strong, healthy, and sustainable Indigenous communities.

The Government of Canada's approach to reconciliation is also guided by the *Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*, the Truth and Reconciliation Commission's Calls to Action, the Missing and Murdered Indigenous Women and Girls Calls to Justice, the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples, the aforementioned special constitutional relationship First Nations, Inuit and Métis Nation have with the Crown, and collaboration with First Nations, Inuit and Métis Nation, as well as provincial and territorial governments.

Treaties and Agreements

The Government of Canada recognizes that Treaties (both historic and modern), Land Claim Agreements, and other constructive arrangements exist with Indigenous Peoples, including First Nations, Inuit, and the Métis Nation. Honouring the Treaty relationship and agreements and negotiating new Treaties and agreements based on respect, co-operation and partnership, is key to achieving lasting reconciliation with Indigenous peoples. It is acknowledged that Treaty partners and those who have existing Agreements with Canada may have different interests and views of others. The engagement process seeks to include the views of as many Indigenous voices, leadership, and communities to ensure that the legislation is compatible with and respectful of the rights and law-making powers described in their Treaties and Agreements.

The Government of Canada recognizes 70 historic Treaties in Canada signed between 1701 and 1923. These Treaties include, Treaties of Peace and Neutrality (1701 to 1760), Peace and Friendship Treaties (1725 to 1779), Upper Canada and the Williams Treaties (1764 to 1862 and 1923), Robinson Treaties and Douglas Treaties (1850 to 1854), and The Numbered Treaties (1871 to 1921). Historic Treaties are honoured as frameworks for living together, including the modern expression of our ongoing mutual relationships. In accordance with the Royal Proclamation of 1763, many Indigenous nations and the Crown historically relied on Treaties for mutual recognition and respect to frame their relationships. Across much of Canada, the Treaty relationship between Indigenous Nations and the Crown is a foundation for ongoing cooperation and partnership with First Nations, Inuit and the Métis Nation.

In addition to the historic Treaties, a number of First Nations, Inuit and Métis Nation rights holders in Canada have signed modern Treaties, comprehensive land claims, or self-government agreements. These include, but are not limited to:

- the *James Bay and Northern Quebec Agreement, 1975*;
- the *Western Arctic (Inuvialuit) Claims Settlement Act, 1984*;
- the *Nunavut Land Claims Agreement Act, 1993*;
- the *Labrador Inuit Land Claims Agreement Act, 2005*;
- the *Métis Government Recognition and Self-Government Agreements between Canada and the Métis Nation of Alberta*; the *Métis Nation of Ontario; the Métis Nation-Saskatchewan, 2019;*
- the *Manitoba Métis Self-Government Recognition and Implementation Agreement* signed with the Manitoba-Metis Federation, 2021; and
- the *Sahtu Dene and Métis Comprehensive Land Claim Agreement*.

Some agreements include provisions relating to health. Certain agreements also include law-making jurisdiction over matters relating to health and traditional healing.

Permanent Bilateral Mechanisms

Other important advances to the relationship with Indigenous Peoples, including First Nations, Inuit, and Métis, include Permanent Bilateral Mechanisms with First Nations, Inuit and Métis Nation leaders to identify joint priorities, co-develop policy and monitor progress. These new mechanisms were announced in December 2016 as part of the federal government's commitment to advancing reconciliation with Indigenous Peoples. There are four Permanent Bilateral Mechanisms in place:

- Assembly of First Nations–Canada Memorandum of Understanding on Joint Priorities
- Inuit-Crown Partnership Committee
- Canada-Métis Nation Accord
- Self-Governing and Modern-Treaty

List of existing literature

Literature that may help to inform you or your participants' input:

- Co-developing distinctions-based Indigenous health legislation
- Government of Canada actions to reduce anti-Indigenous racism in healthcare systems
- Canada's Health Care System
- *Canada Health Act, 1985*
- Section 35 of the *Constitution Act, 1982*
- Treaties, agreements, and negotiations
- Highlights from the Report of the Royal Commission on Aboriginal Peoples, *1996*
- Aboriginal Roundtable to Kelowna Accord: Aboriginal Policy Negotiations, 2004-2005
- Blueprint on Aboriginal Health: A 10-Year Transformative Plan, Prepared for the Meeting of First Ministers and Leaders of National Aboriginal Organizations
- A Common Statement of Principles on Shared Health Priorities
- Principles Respecting the Government of Canada's Relationship with Indigenous Peoples
- Truth and Reconciliation Commission of Canada: Calls to Action

- Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls
- United Nations Declaration on the Rights of Indigenous Peoples
- Assembly of First Nations, Resolution no. 69/2017 – Exploring a Legislative Base for First Nations Health
- First Nations Health Transformation Agenda
- Indian Health Policy 1979
- Aboriginal Healing Foundation
- Comprehensive Report On The Social Determinants Of Inuit Health
- 2017 Canada-Métis Nation Accord

Questions to guide engagement

These questions are intended to guide discussions on distinctions-based Indigenous health legislation and may be adapted to reflect the priorities of those attending the engagement sessions. Not all questions may apply, please use those that are most relevant. Lastly, this list is not exhaustive.

Principles

1. What are some of the values or core principles that might guide the process of co-development?
2. How can the spirit of Joyce's Principle[2] inform the co-development of distinctions-based Indigenous health legislation?
3. What are some of the values or principles that should guide the relationship between First Nations, Inuit and Métis Nation and the Government of Canada with respect to Indigenous health?

Goal and objectives

1. What is the overall goal of distinctions-based Indigenous health legislation, from your perspective?
2. What do you view as the essential objective(s) of distinctions-based Indigenous health legislation?

Health services

1. What would transformative change in the area of First Nations, Inuit and Métis Nation health look like to you? How can the federal, provincial and territorial governments work collaboratively with First Nations, Inuit and Métis to support transformative change in health?

[2] Statement of Joyce's Principle: Joyce's Principle aims to guarantee to all Indigenous people the right of equitable access, without any discrimination, to all social and health services, as well as the right to enjoy the best possible physical, mental, emotional and spiritual health. Joyce's Principle requires the recognition and respect of Indigenous people's traditional and living knowledge in all aspects of health. (Council of the Atikamekw of Manawan and the Council de la Nation Atikamekw).

2. What are some of the main gaps or barriers faced by First Nations, Inuit and Métis in accessing equitable, high-quality, culturally relevant health services, that are free from discrimination and racism?
3. Are there particular gaps that could be addressed through federal distinctions-based Indigenous health legislation? If so, how?
4. In keeping with Joyce's Principle, how might resources be best used or directed to:
    a. Support equitable access for Indigenous Peoples, including First Nations, Inuit and Métis, to all social and health services without discrimination?
    b. Further respect for Indigenous Peoples traditional and living knowledge in all aspects of health?
    c. Support the equal enjoyment of the highest attainable standard of physical and mental health for Indigenous Peoples, including First Nations, Inuit, and Métis?
5. What works well within current health systems at the federal, provincial, territorial, and municipal levels in your respective jurisdiction? What are some examples?
6. Can some of these successes be applied to other areas that are working less well? Where might this occur?
7. What is needed to support opportunities for Indigenous Peoples, including First Nations, Inuit and Métis to enhance their capacity and collaborate in the design, delivery and management of federally funded health services?

Funding

1. What funding obstacles do you face in accessing health care services?
2. Are there specific funding models (for example, needs-based model, distinctions-based models) that should be considered? If so, what are they?
3. How can funding be better designed to meet the unique needs of different First Nations, Inuit and Métis Nation communities?

Accountability

1. How might resources be best used or directed to support accountability for accessibility and equality in health care?

Engagement reporting template

The engagement reporting template suggests items to consider when summarizing your engagement activities. Your report can be customized based on your findings but try to provide a summary of the key themes.

Submit the following information to sac.lsa-ihl.isc@canada.ca:

- Overview of engagement
    - Date
    - Location
    - Purpose and objectives
    - Scope (local, regional or national)
    - Number of participants, and if applicable, the stakeholder groups and/or organizations represented

    - Current context, if applicable (for example events, surrounding engagement)
- Summary of feedback
    - Provide a summary of the feedback received from participants in the engagement session, for example analysis of the feedback, outline of key points, themes, issues or trends that emerged

ANNEX A - BACKGROUND

CANADA'S HEALTH CARE SYSTEM

The organization of Canada's health care system is largely determined by the Canadian Constitution, in which roles and responsibilities are divided between the federal and provincial/territorial governments. Generally, provinces/territories have primary jurisdiction over the administration and delivery of health care services. This includes setting their own priorities, administering their health care budgets, and managing their own resources. The federal government exercises a role in health care primarily through the use of the federal spending power. The *Canada Health Act*, Canada's legislation imposing national standards on provincial health care insurance plans as a condition of accepting a federal contribution to the cost of those plans, is an example of the use of the federal spending power.

In order for provinces/territories to receive their full federal cash contribution under the Canada Health Transfer, provincial/territorial health insurance plans must meet national principles established under the Act (i.e., public administration, comprehensiveness, universality, portability, and accessibility). The Act requires that all medically necessary hospital, physician and surgical dental services (i.e., insured health services) be covered by provincial/territorial health care insurance plans for all eligible residents of the province/ territory, including Indigenous Peoples. Although the Act establishes broad, national principles that govern the Canadian health care insurance system as a whole, the Act does not set standards for the delivery of insured health services, such as timeliness or the quality of care received. It is the responsibility of the provinces/territories to manage the operation of their health care systems. Provinces/territories also provide a wide range of services that fall outside the Act's definition of insured health services, such as dental/vision care services, residential long-term care, and chronic home care services, at their discretion, and on their own terms and conditions. As such, the scope of services, level of coverage and eligibility criteria vary from one province/territory to another.

With respect to health care for First Nations, Inuit and Métis Nation, the federal, provincial, and territorial levels share some degree of jurisdiction. The Canadian health system is a complex patchwork of policies, legislation, and relationships. Indigenous Peoples, including First Nations, Inuit and the Métis Nation, are included in the per capita allocations of funding from the federal fiscal transfer and are entitled to access insured provincial and territorial health services as residents of a province or territory. Indigenous Services Canada funds or directly provides services for First Nations and Inuit that supplement those provided by provinces and territories, including primary health care, health promotion and supplementary health benefits.

Indigenous Services Canada also funds or directly provides certain health care services to First Nations communities, and funds the provision of certain community health programs for Inuit living in Inuit Nunangat. This is in addition to federal funding provided to territorial governments.

ISC also funds non-insured health care benefits to eligible First Nations and recognized Inuit regardless of where they live in Canada. Health Canada and the Public Health Agency of Canada provide funding for programs that target, in part, Indigenous Peoples who live in urban settings or in northern communities. The Public Health Agency of Canada is also responsible for promoting and protecting the health of all Canadians, which includes Indigenous Peoples, regardless of where they reside and offers an array of grants and contribution funding aimed at promoting health, as well as preventing and controlling chronic diseases, injuries and infectious diseases. Federal funding for First Nations and Inuit health services is provided through annual appropriations and is subject to discretionary increases or reductions by the federal government. This is in contrast with the main federal transfer to provinces/territories for health (i.e., the Canada Health Transfer), which is protected in legislation.

For Métis, off-reserve First Nations and non-status First Nations, services and benefits are primarily provided for by provinces and territories. Federal funding for First Nations and Inuit health services is provided through annual appropriations and is subject to discretionary increases or reductions by the federal government. This is in contrast with the main federal transfer to provinces/territories for health (i.e., the Canada Health Transfer), which is protected in legislation.

Provinces have broad powers under the Constitution in relation to the provision of health care to all individuals in the province; territories enjoy powers of a parallel scope. Acting under these authorities, provinces/territories have enacted legislation governing matters such as the regulation of health care professionals. Provinces/territories provide universally accessible and publicly insured health services to all residents, including First Nations, Inuit and Métis.

Coordinated approaches to address the health needs of First Nations, Inuit, and Métis and health care delivery amongst all levels of government including Indigenous governments, remain an ongoing challenge. Improved clarity and a shared understanding of the role of various levels of government is needed, including for Métis, off-reserve First Nations and urban Inuit populations.

INDIGENOUS HEALTH IN FEDERAL, PROVINCIAL AND TERRITORIAL LEGISLATION AND POLICY

Provincial/Territorial Legislation

Many provinces and territories have enacted legislative provisions recognizing matters such as the value and role of Indigenous groups in the planning and delivery of health services in their communities or the importance of culture and of traditional healing practices. For example, some provincial/territorial legislation:

- Highlights the importance of partnerships with Indigenous groups (YT);
- Seeks to identify and address the health needs of particular groups within the population, including Indigenous Peoples (BC);
- Recognizes the values and/or role of Indigenous groups in the planning and delivery of health services in their communities or noted that the Minister could enter into agreements with Indigenous organizations/bodies (BC, AB, SK, ON, NS, NB, NU);
- Ensures Indigenous representation on various health-related boards, committees, regional health authorities, etc. (NB, YT);
- Provides that self-government agreement shall prevail in a conflict (NL, YT);

- Includes provisions related to traditional healing practices (PEI, YT, NU) or recognition that Aboriginal midwives should be exempted from control specified under the Code of Professions (MB, ON, QC, PEI, YT, NU), Ontario extends this exemption to traditional healers;
- States that culture should be taken into account during mental health assessment (e.g. consultation with an elder or cultural advisor) (NWT, NU);
- Exempts traditional Aboriginal spiritual or cultural practices or ceremonies from regulations under tobacco control acts (BC, NWT);
- References role of Indigenous people in health information, privacy and management and/or noted that the Province can disclose health information to an Indigenous government for the development of health programs and services (MB, PEI, YT, NWT); and/or
- Includes provisions to negotiate additional jurisdiction (AB, SK, ON, QC, NL, NB), or provisions to make bylaws to promote the health, safety and welfare of the residents within defined area and enhance Indigenous control over issues such as health (AB).

Self-Governing First Nations, Inuit and Métis Governments

Canada recognizes that First Nations, Inuit and Métis have an inherent right of self-government protected by section 35 of the *Constitution Act, 1982*. Canada recognizes that First Nations, Inuit and Métis have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources. Canada also recognizes that the inherent right to self-government may find expression in different ways, including through Treaties and through agreements with federal and provincial governments.

Negotiated agreements put decision-making power into the hands of First Nations, Inuit and Métis governments who make their own choices about how to deliver programs and services to their communities. Negotiated agreements can serve to better define the roles and responsibilities for program service and delivery. Not all self-government agreements include health. For those that do, some examples of health related provisions include:

- An Indigenous government may make laws and/or has jurisdiction in respect of health services;
- An Indigenous government may make laws and/or has jurisdiction with respect to traditional healing services, including maintenance of the practice and training of persons providing the traditional health services (e.g., traditional healers);
- Self-government negotiations shall address, and self-government agreements may include, matters related to health; and
- The Indigenous government is responsible for the administration of health services.

In Quebec, Newfoundland and Labrador, and Yukon, provincial/territorial legislation contains provisions related to existing self-government agreements, thereby clarifying the roles and responsibilities of these provinces and territories in health in the areas included in these self-government agreements.

Promising Models and Emerging Pathways

With the 1979 Indian Health Policy and the 1988 Health Transfer Policy framework, First Nations and Inuit have realized enhanced control of health services. While self-government and land claim agreements have also created unique models and can set out law-making authority in many areas including health, there are many emerging trends in Indigenous health transformation, jurisdictional coordination, and collaborative processes, which are helping to provide some coherence to Canada's complex health care system.

In Quebec, the health care needs of Nunavik Inuit and James Bay Cree are served through unique structures under the James Bay and Northern Quebec Agreement. These are co-funded by federal and provincial governments, managed by First Nations and Inuit authorities (the Cree Board of Health and Social Services of James Bay and the Nunavik Regional Board of Health and Social Services), and linked to the provincial health care system. Quebec legislation (Chapter S-5—*An Act respecting health services and social services for Cree Native persons, 1991)* gives the Health Minister the ability to exercise their power to work collaboratively with citizens within the territory of James Bay to improve health services and infrastructure within the territory. The Act also ensures the rights of citizens within the territory to receive fair, equitable and in some cases specific health services of their choosing.

While more administrative in nature, similar co-funding arrangements by federal and/or provincial governments also support Indigenous health authorities in Saskatchewan. The Athabasca Health Authority serves several First Nations and Métis communities, and the Northern Inter-Tribal Health Authority that serves nearly half of all First Nations within the province.

Within British Columbia, a new era in First Nations health was forged in 2011 with the signing of the BC Tripartite Framework Agreement in First Nation Health Governance. This Agreement created a new province-wide First Nations Health Authority in 2013 with a direct leadership role for the design, delivery and management of health programs and services for First Nation communities in BC. The Tripartite Partners work closely together to improve health outcomes for BC First Nations communities through a First Nations health governance structure that addresses health and other inequities experienced by First Nations and works to identify opportunities for stronger coordination with provincial programs and services.

In other parts of Canada, including Manitoba, Ontario, and Quebec, the Government of Canada is supporting First Nations-led institutions/organizations to increase their control over the design and delivery of First Nations health services and to advance Indigenous cultural safety and self-determination in health care. These health transformation projects aim to improve health outcomes and access to services for First Nations. Each project is unfolding in a unique way depending on the priorities of First Nations communities. Efforts are underway to create organizational capacity, engage community members to identify health priorities, create provincial and federal partnerships, explore and develop governance and service models, and work towards service delivery improvements on the path to full transfer of control. This work has resulted in some promising developments:

- A tripartite Memorandum of Understanding was signed in 2019 by the First Nations Health and Social Services Commission of Quebec and Labrador, Canada and Quebec that committed the partners to work towards a new health and social services governance model.

- In Ontario, the Nishnawbe Aski Nation has actively worked with their communities to identify key health priorities requiring immediate action in conjunction with explore new models of health service delivery that will bring services closer to home and build capacity in northern communities to access, and deliver more culturally responsive services.
- The Manitoba Keewatinowi Okimakanak has established the Keewatinohk Inniniw Minoayawin, which is an aggregated Northern First Nations led-health entity, who is explore new innovative primary care services models tailored specifically for Northern communities and preparing to assume the responsibility for service delivery of programming.
- The Southern Chiefs Organization and Canada signed a Memorandum of Understanding to establish a new health governance model focussed on equitable and culturally appropriate health care for First Nations in southern Manitoba.