

BRIEFING NOTE FOR UBCIC AGA (SEPT 29-30, 2020)

COVID-19 CASE INFORMATION SHARING WITH FIRST NATIONS: HEILTSUK NATION, NUU-CHAH-NULTH TRIBAL COUNCIL, TSIHQOT'IN NATIONAL GOVERNMENT COMPLAINT TO BC INFORMATION AND PRIVACY COMMISSIONER

*Presentation Sept 29, 2020 by: President Judith Sayers, Nuuchahnulth Tribal Council
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PURPOSE

The purpose of this briefing note is to inform leaders and others attending the UBCIC AGA of recent efforts by the Heiltsuk Nation, Nuuchahnulth Tribal Council (“NTC”), and Tsihqot’in National Government (“TNG”) (collectively, the “Nations”) to have BC disclose life-saving COVID-19 case information to First Nation governments amidst the COVID-19 pandemic.

BACKGROUND

Information requested

- The Nations are requesting that BC disclose the following three types of COVID-19 case information to them as First Nation governments:
 - the location (not the personal identity) of proximate presumptive and confirmed COVID cases;
 - whether the proximate case involves a person that has travelled to one of the Nations, e.g., a yes or no answer to whether the person has travelled to a particular Nation's territory within the last 14 days; and,
 - the name of a person infected by COVID who is a member of one of the Nations, to be used only for the purposes of culturally-safe contact-tracing (where the contact tracer is a member of the infected person's Nation, and will need to know the name of the infected person to conduct contact-tracing).
- “Proximate” refers to cases located in specific areas near to the rural communities of the Nations, in terms of transportation links, e.g., highway, ferry, or air transport, with which members of one of the Nations may have significant contact. For Heiltsuk, an example is Port Hardy; for NTC, an example is Campbell River; for TNG, an example is Williams Lake.
- The Nations need the first two types of information to decide on the level and type of emergency governance measures needed to keep our communities safe, such as travel restrictions. The Nations need the third type of information to ensure our contact tracing teams can carry out effective and culturally-safe contact tracing. Without this information, we are working blindfolded in our efforts to protect our communities during the pandemic.

Chronology of Nation efforts to obtain information

- Throughout the summer of 2020, the Nations have repeatedly requested that the Ministry of Health (the "Ministry") disclose the above three types of information.
- The Nations have made these requests pursuant to s. 25(1)(a) of the BC *Freedom of Information and Protection of Privacy Act* ("FIPPA"), which says in part that "...whether or not a request for access is made, the head of a public body must, without delay, disclose to... an affected group of people... information: (a) about a risk of significant harm to... the health or safety of... a group of people..."
- Since July, the Nations have met with the Ministry and FNHA on two occasions about this and other matters at a government-to-government Health Table. BC has refused to disclose any of this information to the Nations.
- Driven by BC's refusal to disclose the information, on September 14, 2020, the Nations filed a complaint with the BC Information and Privacy Commissioner (the "Commissioner") concerning the Ministry of Health's failure to disclose the three types of information under section 25(1)(a) of FIPPA. The Commissioner has now set a written hearing, with an exchange of written submissions to take place early this fall.
- After the Nations filed the complaint, deputy minister Doug Caul reached out to the Nations to seek resolution of this issue; the Nations will meet with Doug Caul, representatives of the Ministry, and FNHA on September 24 to further discuss their information sharing requests.

DISCUSSION

- The Nations are greatly concerned by BC's refusal to disclose the above information to them as First Nation governments.
 - BC's top-down, inflexible approach to COVID-19 information sharing with First Nations is inconsistent with the BC government's commitments to reconciliation.
 - It is also inconsistent with BC's own *Declaration on the Rights of Indigenous Peoples Act*, section 3 of which states in part that "... the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration." Under the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), Indigenous peoples have rights to self-determination and self-government, and to be actively involved in developing and determining health programs.
- Further, the Nations are concerned as to why the First Nations Health Authority has stayed silent amidst their efforts to obtain the above information (despite attending the government-to-government meetings), which the Nations see as inconsistent with FNHA's stated intent to work with First Nations, government and others to improve health outcomes for First Nations people in BC.
- For First Nation governments to keep our communities safe amidst the pandemic, BC must treat us as real partners in healthcare, which includes government-to-government sharing of the above information. The Nations will continue in our efforts to see the Province disclose this live-saving information to us as First Nations governments.