Dear Deputy Ministers Caul and Halls, Associate Deputy Ministers Byres and Richter, Dr. Henry, and Mr. Jock,

Thank you for the productive inaugural health table meeting. We are hopeful that this is the beginning of our working government-to-government to resolve the four conditions that are required before we will welcome visitors in our territories.

Attached is a list of action items and a summary of the discussion. As set out under condition #5, given the small window we currently have to prepare for the potential second wave of
COVID, we ask that this table proceed expeditiously. Kindly address the action items by July 24 and provide us with your availability to meet via teleconference (or videoconference) for three hours the following week. We appreciate that these timelines are very tight, and may be difficult for you to meet given summer schedules and COVID-related events. However, we are hopeful that we can move forward quickly.

Pauline Waterfall wished to express her gratitude for your attendance and participation at the health table meeting. She also provided for your further reading, “Precedented Times”, to give further context for our work together.

Sincerely,

_____________________________
Marilyn Slett,
Chief Councillor, Heiltsuk Tribal Council

_____________________________
Dr. Judith Sayers
President, Nuu-Chah-Nulth Tribal Council

_____________________________
Russell Myers Ross
Chief of Yuneṣit’in Government, Tšilhqot’in National Government Tribal Vice-Chair

Encls.

Cc: President Gaagwiis Jason Alsop, Council of the Haida Nation

Kim Goetzinger GidadGuudslíiyas, CHN Community Liaison/UC/IC, Skidegate Rep Council of the Haida Nation, Council of the Haida Nation

Linnaea Fyles, Executive Assistant, Haida Gwaii Protocol Table

Chief Councillor Linda Innes, Gitxaala Nation

Jennifer Melles, Assistant Deputy Minister, Ministry of Indigenous Relations and Reconciliation
Dr. Shannon McDonald, acting Chief Medical Officer, First Nations Health Authority

Sonia Isaac-Mann, VP Programs and Services, First Nations Health Authority

David Peterson, Assistant Deputy Minister, Emergency Management BC

Breanna Chandler, Executive Director, Ministry of Health

Darlene Therrien, Executive Director, Ministry of Health

United Coast Municipalities

[…]

A. Action items

Condition #1: Information Sharing

Action Item for BC:

1. Provide BC's legal rationale for the following:
   - BC declining to share the location (i.e. the community location) of proximate presumptive and confirmed cases;
   - BC declining to share the fact of whether a person confirmed as infected with COVID travels back and forth from the Nation's community(ies);
   - BC declining to share the identity of a person confirmed as infected within the Indigenous community for the purposes of community-based contact tracing.

   If the legal rationale is that location constitutes personal information under FIPPA (even when the person's name is not provided), please provide legal reasoning.

   For this request, if relying on legal rationales, please be specific, i.e., include sections of statutes, or citations for case authorities.

[…]

Condition #5: Systemic Racism in decision-making on COVID issues

Action Item for BC:

1. Working government-to-government to resolve the four health and safety conditions is key to making progress towards eliminating systemic racism and living up to the promise of the Declaration Act that BC laws will be brought in line with the principles of UNDRIP. To that end, the Nations ask to receive your written response by July 24th, and that we proceed to schedule the next meeting for the week of July 27th.
B. Summary of Key Points from Teleconference

[...]

**Issue 1: Covid-19 Information Sharing**

Marilyn Slett, Chief Councillor of Heiltsuk Nation:
- Request for disclosure - presumptive and confirmed cases within proximity of Bella Bella.
- Use of information for governance decisions (to protect members)
- Proximity means – communities connected by travel routes (for Heiltsuk, ex. is Klemtu)
- Disclosure means – in Bella Bella - identity of any person confirmed to have COVID-19 for contact tracing – otherwise fact of confirmed case for governance purposes
- Disclosure means - outside Bella Bella, but within proximity - location of presumptive or confirmed case, and whether person travels back and forth to Bella Bella
- BC has refused to share this information to date, giving us no reasons
- In media, provincial health office has cited stigma as a reason – this reason not supported.
- As a government, we do not use information to stigmatize members or others
- Request detail about FNHA-Nation agreements, BC reasons for non-disclosure
- Willing to enter into privacy and protocol agreement

Judith Sayers, President of Nuu-chah-nulth Tribal Council:
- Lack information vital to protection of our community - have repeatedly requested
- Need to know about proximate cases to take preventative measures
- Happy to sign agreement such as NDA

Jay Nelson, Executive Lead, Tsilhqot'in National Government:
- Information sharing of critical concern as look at possible second wave
- Need better information to act in best interests of community, take care of community
- Release of Mission inmate – leadership left in the dark, not given necessary information, undermined ability to protect community which is a fundamental responsibility
- Looking for real partnership with Health Authorities and BC on information sharing
- Willing to enter into protocol/agreement to protect privacy and confidentiality

Dr. Bonnie Henry, Provincial Health Officer:
- Need balance where First Nations have needed information, individuals in community not identified in way detrimental to them

Dr. Shannon McDonald, acting Chief Medical Officer, First Nations Health Authority:
- First Nations notification pathway means health director, community leadership informed of positive case in community
• Agreement with NTC is for communities to share case information with each other
• Privacy legislation means cannot tell Nations about cases in nearby communities or release names; FNHA also does not have this information; health professionals cannot release personal information

Marilyn Slett, Mariah Charleson, Jay Nelson (in reply):
• Need information requested, responses received today not satisfactory
• Request for specific legal reasons (including legislative references) why you cannot share information requested
• Request to continue discussion to explore issues in at a focused manner

David Byres, Associate Deputy Minister, Ministry of Health:
• Commitment to continue working on this, there are established forums
• Commitment to give legal reasons for non-disclosure in writing
• Communities can share case information with one another – can also outline that in writing

Jay Nelson:
• Established forums may not be appropriate – need specific conversation about this with right technical/legal support to follow through on good work done at table today
• Communities already share limited information they have - need is for better information

[…]

**Issue 5: Systemic racism in decision-making on COVID issues**

Marilyn Slett:
• Deeply concerned about underlying systemic reasons why BC has not worked with Nations towards joint decision-making
• Have experienced colonial top-down command structure, instead of collaboration
• Lack of attention to our history with pandemics
• Lack of understanding about the cultural differences of rural Indigenous communities
• Today request real commitment of BC to working with us to safeguard communities

Judith Sayers:
• Systemic racism shown by BC in moving to stage 3 without dialogue with First Nations
• No partnership, no dealing with our concerns, comments made detrimental to relationship
• Systemic racism roots go deep – this is a bigger conversation we need to have

David Byres:
• Mary Ellen Turpel-Lafond (“METL”) investigation underway to explore systemic racism in healthcare
• Long way to go, hope METL recommendations help us make meaningful improvement
Dr. Bonnie Henry:
• Overcoming systemic racism a continuous process, importance of ongoing dialogue

Lori Halls, Deputy Minister, Emergency Management BC
• Work underway to address racism, but recognize issue goes beyond health care system
• Committed to continuing to work on broader issues

Marilyn Slett:
• Support METL investigation, but does not address G2G discussions that are needed
• We are concerned with BC unilateral decision making on Covid-19 decisions such as
  • reopening when communities were not ready
• Need to address these issues in G2G manner

C. List of Attendees

First Nation Governments and Municipalities

Marilyn Slett, Chief Councillor of Heiltsuk Nation
Judith Sayers, President of Nuu-chah-nulth Tribal Council (NTC)
Mariah Charleson, Vice President, NTC
Jay Nelson, Executive Lead, Tsilhqot'in National Government
Pauline Waterfall, Heiltsuk Nation
Carmen Lawson, Economic Development Officer, Heiltsuk Nation
Evangeline Clifton, Contact Tracing Supervisor, Heiltsuk Nation
Maria Martin, Central Coast Rep, First Nations Health Council
Dr. Lauri-Ann Shearer, Medical Director of Bella Bella Medical Clinic and Physician Lead at
  R.W. Large Memorial Hospital
Dr. Stu Iglesias, predecessor of Dr. Shearer in Bella Bella.
Hemas Gary Housty, Heiltsuk Hemas
Councillor Ayla Brown, Councillor Denise Carpenter, Councillor Lorena White, and Councillor
  Louisa Housty-Jones, Heiltsuk Tribal Council
Lisa C. Fong, Q.C. and Savannah Carr-Wilson, counsel for Heiltsuk Nation
Kim Goetzinger  GidadGuudsliiyas, CHN Community Liaison/UC/IC, Skidegate Rep Council of the Haida Nation, Council of the Haida Nation; with representatives from the Haida Nation health team.

**British Columbia Government**

**First Nations Health Authority:**
1. Dr. Shannon McDonald, acting Chief Medical Officer
2. Grant Christoff, Legal counsel
3. Sonia Isaac-Mann, VP Programs and Services
4. Becky Palmer, Chief Nursing Officer

**Province of BC:**

1. Office of the Provincial Health Officer
   a. Dr. Bonnie Henry

2. Emergency Management BC
   a. Lori Halls, Deputy Minister
   b. David Peterson, Assistant Deputy Minister

3. Ministry of Indigenous Relations and Reconciliation
   b. Jennifer Melles, Assistant Deputy Minister

4. Ministry of Health
   a. David Byres, Associate Deputy Minister
   b. Breanna Chandler, Executive Director
   c. Darlene Therrien, Executive Director

5. Ministry of Transportation and Infrastructure
   a. Kevin Richter, Associate Deputy Minister
August 12, 2020

Dear Deputy Minister Halls, Associate Deputy Minister Byres, Assistant Deputy Ministers Melles and Peterson, Dr. Henry, Dr. Gustafson, and Dr. Wieman,

Thank you for the productive health table meeting this August 7, 2020. We appreciated the opportunity to continue our government-to-government dialogue regarding three of the four conditions required before we will welcome visitors in our territories.
Attached is a list of action items and a summary of the discussion. As set out at the top of the action items list, given the small window we have to prepare for a potential second wave of COVID, we ask that you respond to the listed action items expeditiously. Kindly address the action items by August 14, 2020. We appreciate that these timelines are short, and may be difficult for you to meet given summer schedules and COVID-related matters. However, we are hopeful that we can move forward quickly with this important work.

Sincerely,

____________________________________
Marilyn Slett,
Chief Councillor, Heiltsuk Tribal Council

____________________________________
Dr. Judith Sayers
President, Nuu-Chah-Nulth Tribal Council

____________________________________
Russell Myers Ross
Chief of Yuneși’t’in Government, Tșilhqot’in National Government Tribal Vice-Chair

Encls.

Cc: President Gaagwiis Jason Alsop, Council of the Haida Nation
    Kim Goetzinger GidadGuudsiïiyas, CHN Community Liaison/UC/IC, Skidegate Rep Council of the Haida Nation, Council of the Haida Nation
    Linnaea Fyles, Executive Assistant, Haida Gwaii Protocol Table
    Sonia Isaac-Mann, VP Programs and Services, First Nations Health Authority
    Monica McAlduff, Executive Director, First Nations Health Authority
    Breanna Chandler, Executive Director, Ministry of Health
A short time window remains to address these conditions and ensure the Nations have the resources they need to protect their communities, prior to a potential second wave of Covid-19. Given this urgency, the Nations request that:

- **Conditions #1 and #2:** we receive your written response by August 14, 2020; and,

**Condition #1: Information Sharing**

Action Item for BC:

1. Advise when the Nations may meet with BC to continue the discussion regarding BC’s legal position regarding information sharing. We request that this meeting take place as soon as possible, and be set down for one hour. We are ready to meet with you.
B. Summary of Key Points from Teleconference

Opening remarks

Opening remarks by Judith Sayers, President of Nuu-chah-nulth Tribal Council
- Our main objective - preventing spread of virus in our communities, protecting our people; reason we developed the 4 conditions
- Increasingly concerned by rising case numbers due to opening of province
- Increasingly concerned by those passing checkpoints in middle of the night; numbers in grocery store lines, walking our streets; this is the impact of decision to re-open, threat is very real
- Need to act fast, need action now, need Province to respond to 4 conditions
- Today interested in finding answers and solutions; we need to be innovative and open our minds and hearts to find ways to protect our members and every life

Opening remarks by Marilyn Slett, Chief Councillor of Heiltsuk Nation
- Pleased to be here, along with members working on front lines to keep community safe
- Do not have a lot of time - rising cases; entering flu season; potential second wave - need to see tangible results and make progress and advances now

Opening remarks by Jay Nelson, Executive Lead, Tsilhqot’in National Government
- Appreciate opportunity to discuss these issues – currently among the most critical for the Tsilhqot’in Nation
- Tsilhqot’in Chiefs convey their regrets, unable to attend given short timelines of setting down meeting

Opening remarks by David Byres, Associate Deputy Minister, Ministry of Health
- We are all facing challenging times; lives have been lost due to the pandemic despite our collective efforts to minimize the effects of the virus
- Noting there has been excellent collaboration with respect to the Haida Gwaii outbreak
- Thank you for the opportunity to be here and continue our work together

Issue 1: Covid-19 Information Sharing

Lisa Fong, counsel for Heiltsuk Nation
- Seeking three types of information: (1) identity of person confirmed infected with Covid within Indigenous community, for purposes of community-based contact tracing; (2) location (i.e. community location) of proximate presumptive and confirmed cases; (3) information about whether person confirmed as infected with Covid travels back and forth from Nations’ communities
- In Canadian law, authority to make disclosure rests in section 25 of the Freedom of Information and Protection of Privacy Act (“FIPPA”)
S. 25 provides that head of public body must without delay disclose to an affected group such as Nations information about a risk of significant harm to health or safety of the Nations or information the disclosure of which is clearly in the public interest

Ms. Fiona Gow, counsel for BC, advises the Provincial Health Officer (“PHO”) has decided s. 25 not met – no risk of significant harm to health or safety of Nations, disclosure not in public interest

Asked Ms. Gow for disclosure of reasons; advised BC will not disclose reasons, and that Minister would not make a different decision from PHO

Wish to know if BC will depart from lawyer’s position; lots of room to do so

Risk of significant harm to health or safety of Nations encompasses broader considerations than what PHO may consider

Is BC able to move beyond lawyer’s position, disclose information?

David Byres

Ms. Gow unable to join meeting; he can continue to work with Ms. Gow and Nations’ legal team

Information regarding Alert Bay and Haida Gwaii was shared as a direct response to outbreaks that occurred, in alignment with pathway FNHA has developed

Pathway allows for disclosure of information within a circle of care, limited disclosure to circle of support, disclosure to First Nations leadership

Disclosure of proximate cases – our position is that we will not disclose that information; as referenced by Dr. McDonald in last call, may be possible for Nations to disclose certain information to one another

Remains our position that s. 25 of FIPPA does not operate to compel disclosure of information; it is within the discretion of the PHO under the Public Health Act (“PHA”) to consider risks and decide what disclosure is necessary in the public interest

Judith Sayers

Response deplorable – if information needs do not affect safety of our communities, do not know what does

Other jurisdictions like Saskatchewan – more specific information available about cases in communities and on reserve; do not understand why BC is approaching differently

Unsure why BC entrenched in this position, not in spirit and intent of what we are trying to accomplish, not in line with Declaration Act, UNDRIP

Unwillingness to share location information does not make sense; not seeking name; cannot identify one individual based on location information

BC’s approach maddening; idea need to have outbreak before action can take place unacceptable; prevention most important; do not know where to go from here

Seemed like this would be easy win for BC; would go a long way towards preventing virus in our communities; we would be willing to sign NDA

Provincial Health Officer Dr. Bonnie Henry

BC was responding to request for the identity of the person and their specific information

Not at all saying that there is no significant harm to health or safety of Nations
• Has responsibilities under the *PHA* to preserve individual personal health information; most important thing she must protect
• We share immediate information with every community/Nation as soon as we can, have a process for doing this, it is working
• Have committed to making sure we do everything we can to support you to protect your communities
• Will notify those who need to know, but also have responsibility to protect every individuals’ personal health information
• Need to build trust in our communities so people will get tested, be confident I will not tell someone else their information, if they come forward with TB, meningitis, Covid

**Lisa Fong**
• Dr. Henry said was only responding as PHO with respect to identity of persons – not community location; said not saying no risk of significant harm to health and safety of Nations
• Different than what Ms. Gow said about decision PHO made, which Minister will follow

**Dr. Bonnie Henry**
• What she said was totally aligned with Minister and Ms. Gow
• In small communities very important to protect identity information
• Nothing stopping your communities from sharing information

**Lisa Fong**
• Why do you think there is no significant harm to health and safety of Nations, if have discussed and made decision?

**Dr. Bonnie Henry**
• S. 25 of *FIPPA* is not applicable; the *PHA* requires me to protect personal information
• S. 25 does not apply because of concerns and responsibilities under the *PHA*
• It’s the interplay between s. 25 of *FIPPA* and provisions of the *PHA*
• The *PHA* determines what information can be released and protection of personal health information; it’s the *PHA* I must adhere to
• Not saying no significant harm; it’s how do I mitigate those harms and protect personal health information

**Lisa Fong**
• Believe we have fundamental legal disagreement about interpretation of this legislation
• May not be much more to say now that you have declined disclosure

**Marilyn Slett**
• Great deal of risk to our communities – no information, no screening in place, yet increased travel as people understand this is authorized and approved by BC
• Working so hard to keep our communities safe; need information sharing as part of this
• Appreciate legal considerations; must also understand this is a Nation to Nation dialogue, must meet in the middle
Judith Sayers
- Why is telling NTC there is one case in, for example, Port Alberni, different than BC announcing outbreak at care home, winery, without names – are these not the same?

Dr. Bonnie Henry
- Formula exists for how we classify an outbreak
- Process is in place, ex. for when annual influenza outbreaks occur at care facilities – we designate the facilities, announce outbreak
- Single case in a community or workplace not an outbreak
- Some First Nations communities with cases have asked BC not to label as outbreak, not to publicly locate community
- Cormorant Island – asked us not to label it an outbreak, worried it would be stigmatizing
- Haida – in partnership with Haida, decision that formal declaration of outbreak would help communities come together to manage situation on island
- It is a collaborative process with the community involved; varies depending on situation
- Not that we don’t disclose; it’s what information we disclose, how, to whom, governed by my work to ensure personal health information only shared with those who need to know
- Rationale for developing FNHA protocol – to ensure people who need to know to take action know

Lisa Fong
- Suggest helpful for Dr. Henry, Ms. Gow, Mr. Byres, Lisa Fong to meet and continue discussion
- S. 79 of FIPPA – if FIPPA is inconsistent or in conflict with another Act, provisions of FIPPA prevail; do not think there is inconsistency; however, if you think there is inconsistency, and your duties under PHA are inconsistent, FIPPA takes priority
- Do not see interplay between two as problematic; still an obligation under FIPPA s. 25

Dr. Bonnie Henry
- Would be happy to have more discussion
- Do not feel PHA and FIPPA are in conflict; it’s what information and how it is disclosed to address the issues under s. 25
- What you ask for – personal identifiable information – is not what I can release under the PHA, but can ensure you have information needed to address health and safety concerns

Pauline Waterfall, Heiltsuk Nation
- Struggling to find common ground
- Keep in mind – while important to have legal interpretation, also very important to have cultural interpretation

David Byres
- Want to acknowledge – did reach some common ground through this process
• The pathway that exists – notification to Chief/President, guidance we are following – occurred with engagement with First Nations Health Council through collaborative work
• Have not reached agreement on this item, but have progressed from where we first started
• Can continue to have this dialogue, happy to participate in this

[The Nations note that the statement we did reach common ground through this process is not correct. The Nations were not involved in the creation of the FNHA “COVID-19 – Notice and Follow-up Process for a Confirmed Case in a First Nations Community” pathway, and this pathway does not provide the information the Nations are requesting].

Pauline Waterfall
• All want same outcome –best for all people regardless of who they are & where they live
• Is there anything we can do to contribute more to this conversation?
• Circulated document – cultural safety and mindfulness during a pandemic – advise reading to give context

[...]

Closing remarks

Marilyn Slett
• Thank you to everyone for frank conversations today – needed to ensure we can fulfill our responsibilities as community leaders
• Must consider how future generations will look back at what we did to protect our communities
• Information sharing is key, we must be working from the same dataset
• We must get to the point of joint decision making on these types of issues – to the point where decisions are not made by outsiders, but rather made by us
• Will remain steadfast in taking care of our people, want to work together with BC
• Need to roll up our sleeves and get it done; do not have a lot of time
• Let’s make sure we do this right – look back on this and say this is how reconciliation is done in BC’s healthcare system, incorporating the knowledge of Indigenous peoples

David Byres
• Appreciate Pauline Waterfall’s wise and respectful guidance
• Thank you to all for continued collaboration as we move forward on challenging topics
• We all have the same goal of protecting our communities across the Province
• Have made gains in some areas
• Province committed to continuing work and conversation with all of you
• Dr. Henry and I available to continue conversation around information sharing
• FNHA will continue its work around advancing testing and increasing capacity in rural/remote communities
• Had good conversation about advancing CSCT, now have some steps in place to move forward and execute on that
• Gratitude to all for wise advice and respectful comments
Pauline Waterfall

- In closing, reminder of circulation of cultural safety article
- Talks about trauma informed care – important in context of what we are trying to accomplish here
- First Nations have traumatic lived experiences but also live with trauma of the past; continues to impact our relationship with our healthcare providers and government
- We are trying to form a relationship with a colonial system originally designed to break down our systems as First Nations governments
- As we move forward, must commit to working in a culturally safe and respectful way
- We are beginning to find common ground and build on strength
- We are starting to heal the pain of the past and frame hope for the future

C. List of Attendees

First Nation Governments

Marilyn Slett, Chief Councillor of Heiltsuk Nation

Judith Sayers, President of Nuu-chah-nulth Tribal Council (NTC)

Mariah Charleson, Vice President, NTC

Jay Nelson, Executive Lead, Tsilhqot’in National Government

Connie Jasper, Health Director, Tsilhqot’in National Government

Pauline Waterfall, Heiltsuk Nation

Councillor Ayla Brown, Councillor Denise Carpenter, Councillor Randy Carpenter, Heiltsuk Tribal Council

Carmen Lawson, Economic Development Officer, Heiltsuk Nation

Evangeline Clifton, Contact Tracing Supervisor, Heiltsuk Nation

Lisa C. Fong, Q.C. and Savannah Carr-Wilson, counsel for Heiltsuk Nation

British Columbia Government

First Nations Health Authority:

Dr. Nel Wieman, Acting Deputy Chief Medical Officer

Sonia Isaac-Mann, VP Programs and Services
Monica McAlduff, Executive Director

**B.C. Centre for Disease Control**

Dr. Reka Gustafson, BCCDC

**Office of the Provincial Health Officer**

Provincial Health Officer Dr. Bonnie Henry

**Ministry of Health**

Associate Deputy Minister David Byres

Executive Director Breanna Chandler

Executive Director Darlene Therrien

**Emergency Management BC**

Deputy Minister Lori Halls

Assistant Deputy Minister Dave Peterson

**Ministry of Indigenous Relations and Reconciliation**

Assistant Deputy Minister Jennifer Melles

Executive Director Cam Filmer

**D. List of Documents**

1. Health Table organization & meeting schedule document, including Rules of Engagement
2. Email exchanges regarding information sharing (July 31, 2020-August 6, 2020 between Fiona Gow and Savannah Carr-Wilson; July 28, 2020 between Breanna Chandler and Savannah Carr-Wilson/Lisa Fong)
3. Letter of July 21, 2020 from Nations regarding initial July 17, 2020 Health Table meeting (action items & summary)
4. Culturally Safe Contact Tracing: Importance, Implementation & Required Resources (from Nations)
5. Cultural Safety Mindfulness During a Pandemic (UBC Faculty of Medicine CPD)
Dear Ms. Carr-Wilson:

I am afraid that you misunderstood my email. The point of which was that section 25 of FIOPPA does not come into play in the circumstances at hand and, therefore, no obligation under it arises on the part of the Minister of Health. That being the case, there is no need for a decision to be made under section 25.

Fiona Gow

Fiona Gow, Legal Counsel
Justice Health & Revenue Group
Legal Services Branch, Ministry of Attorney General
Phone: 250-356-8453
Pronouns: she / her / hers

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For government recipients: prior to any disclosure of this communication outside of government, including in response to a request under the Freedom of Information and Protection of Privacy Act, the individual in possession of this communication must consult with the lawyer responsible for the matter to determine whether it is subject to privilege.
Dear Ms. Gow,

Thank you for your reply.

In addition, thank you for acknowledging that the issue is whether section 25 of FIPPA mandates disclosure of the information sought, that a decision has been made in this regard by the Provincial Health Officer to the effect that disclosure is not mandated under this section, and that the Minister of Health agrees with this decision.

Given this decision has been made, please kindly provide us with this decision in writing including specific reasons with reference to each of the Nations. While we appreciate this is a busy time given Covid matters, we request to please receive this decision prior to tomorrow’s Health Table meeting to facilitate our discussion.

Thank you, and best regards,

SAVANNAH CARR-WILSON
Ng Ariss Fong | Lawyers

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From: "Gow, Fiona S AG:EX" <Fiona.Gow@gov.bc.ca>
Date: Thursday, August 6, 2020 at 12:39 PM
To: Savannah Carr-Wilson <savannah@ngariss.org>
Cc: "Chandler, Breanna HLTH:EX" <Breanna.Chandler@gov.bc.ca>, "Therrien, Darlene HLTH:EX" <Darlene.Therrien@gov.bc.ca>
Subject: RE: July 17th United Coastal FN Health Table meeting - Condition #1 followup

Dear Ms. Carr-Wilson:

Thank you for your email setting out your views on this matter.

In response, I would like to clarify that in our view the issue is not whether section 25 of the FOIPPA trumps the provisions of the Public Health Act and the Reporting Information Affecting Public Health Regulation but, rather, that under the circumstances section 25 does not operate to compel disclosure of the requested information. The Public health officer has considered the risks and whether disclosure is clearly in the public interest in accordance with her statutory authority under the Public Health Act. Her view is that disclosure is not in the public interest, and disclosure would not address the risk contemplated in s. 25(a) of FOIPPA.

The reason that we take this position is based upon the interplay between section 25 of the FOIPPA and the provisions of the Public Health Act and the Regulation. The latter legislation vests in the Provincial health officer responsibility for determining what information should or should not be disclosed about an infected person for the purpose of preventing or addressing potential harms to the public posed by a infected person. Once the Provincial health officer has made a decision that the disclosure of certain information is not necessary in order to address a risk of significant harm to the public, or a group of people, posed by an infected person, it is difficult to imagine on what basis the Minister of Health could arrive at the conclusion that it was clearly in the public interest to disclose this information. Accordingly, it is our opinion that in light of the considered decision of the Provincial health officer that the disclosure of the requested information is not necessary for the purpose of preventing or addressing potential harms to the communities requesting it, section 25 would not operate to compel the disclosure requested.

We hope that the above provides you with the explanation which you were seeking with respect to our approach to the matter from a legal perspective.

Fiona Gow

Fiona Gow, Legal Counsel
Justice Health & Revenue Group
Legal Services Branch, Ministry of Attorney General
Phone: 250-356-8453
Pronouns: she / her / hers

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Dear Ms. Gow,

Thank you for responding to our initial email. We appreciate hearing your legal views on behalf of the Ministry of Health, and any further thoughts that you may have after reviewing this email. Respectfully, we continue to disagree and feel that your email does not address the key points which we have raised, namely:

- how any discretion under s. 14 of the Public Health Act, S.B.C. 2008, c. 28, or the Reporting Information Affecting Public Health Regulation, BC Reg 167/2018, can override a duty under s. 25 of the FIPPA; and
- why information owed under s. 25 of the FIPPA should not include
  
  1. the identity of a person confirmed as infected with COVID within an Indigenous community for the purposes of community-based contact tracing;
  
  2. the location of presumed or confirmed COVID cases in areas near First Nations communities (without personal information, except for location, i.e., without their name, their specific address, or their contact information); and
  
  3. information about whether a person confirmed as infected with COVID travels back and forth from the Nation's community(ies),

Respectfully, we cannot reconcile the province's refusal to provide this information, as a matter of discretion, where the province has already been disclosing instances of COVID relating to specific businesses, or relating to specific locations like Alert Bay or Haida Gwaii.

We also cannot reconcile your legal position, that s. 25 of FIPPA does not require disclosure of information, with the statutory rule that FIPPA overrides any discretion or duty under any other enactment, unless the legislature has expressly provided otherwise.

A. A duty under FIPPA generally overrides other enactments

FIPPA s. 25 establishes a non-discretionary duty of the "head of a public body" to provide, to an affected group of people, "information" (not merely any "record") about a risk of significant harm to the health or safety of that group of people, regardless of any other provision in the FIPPA:

**Information must be disclosed if in the public interest**

25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
(b) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

[Subsections (3) and (4) omitted.]

The Public Health Act does not appear to conflict with s. 25; it does not purport to confer discretion on the "head of any public body", as distinct from a medical health officer or provincial health officer. However, even if the Public Health Act did confer discretion on the head of a relevant public body, any conflict between s. 14 of the Public Health Act (or that statute’s regulations) and the FIPPA would generally be resolved in favour of FIPPA pursuant to FIPPA s. 79.

FIPPA s. 79 provides that any obligation under the FIPPA supersedes any inconsistent or conflicting provision under any other statute, unless the other statute expressly provides that it applies despite the FIPPA:

"79. If a provision of this Act is inconsistent or in conflict with a provision of another Act, the provision of this Act prevails unless the other Act expressly provides that it, or a provision of it, applies despite this Act."

Section 79 creates "an unequivocal and absolute expectation of express reference before an inconsistent or conflicting statutory provision will prevail." College of Physicians and Surgeons of British Columbia v. British Columbia (Information and Privacy Commissioner), 2001 BCSC 726 at para. 119.

B. No part of the Public Health Act overrides a duty under FIPPA s. 25

Only one part of the Public Health Act may expressly override the FIPPA, and that is Part 5 (sections 51-60), pursuant to s. 53.

In Part 5, two provisions in Part 5 might possibly impact a duty to provide information under FIPPA s. 25: sections 54(1)(b) and 57(3). On closer examination, however, neither provision appears to create an emergency discretion that conflicts with the duty of a "head of a public body" to disclose information under FIPPA s. 25.

1. An emergency exemption for health officers giving notices

First, s. 54(1) of the Public Health Act provides, "A health officer may, in an emergency, do one or more of the following: ... (b) not provide a notice that is otherwise required." However, this emergency exemption only applies to a "health officer" (meaning a medical health officer or a provincial health officer, pursuant to s. 1 of the Public Health Act), and not to the head of a public body:

- Pursuant to FIPPA Schedule 1, the "head" of a public body means (a) if the public body is a ministry or office of the government of British Columbia, the member of the Executive Council who presides over it, or (b) if the public body is listed in FIPPA Schedule 2, the person designated as the head of that public body in that Schedule or by regulation, or (c) the person or group of persons designated under FIPPA s. 77.
- The "head" of the Ministry of Health is the Minister of Health (the Honourable Adrian Dix), as distinct from the provincial health officer (Dr. Henry).
• The "head" of the **Provincial Health Services Authority** is its "chair" pursuant to FIPPA Schedule 2.

• The "head" of the **British Columbia Centre for Disease Control and Prevention Society Branch** is its "chair" pursuant to FIPPA Schedule 2.

• The "head" of **Vancouver Coastal Health Authority** for FIPPA purposes is its Chief Executive Officer (Vivian Eliopoulos), pursuant to s. 2.4.1 of the Authority's Policy BA 1700, *Transparency and Freedom of Information*, and not VCH's chief medical officer (Dr. Patricia Daly).

• **Vancouver Island Health Authority** does not list a "head" for FIPPA purposes, but whether this designation applies to VIHA's President and CEO (Kathy MacNeil), or to its Vice-President, Strategy & Chief Information Officer (Catherine Claiter-Larsen), or to someone else, the designation does not appear to fall on VIHA's chief medical officer (Richard Stanwick).

• **Interior Health Authority** does not list a "head" for FIPPA purposes, but whether this designation applies to IHA's President and CEO (Susan Brown), or to its Vice-President, Clinical and Corporate Services (Donna Lommer), or to someone else, the designation does not appear to fall on IHA's chief medical officer (Dr. Albert de Villiers).

Whatever discretion s. 54(1) confers on a "health officer", such a discretion is not a discretion conflicting with a duty under FIPPA applying to a different person. This principle is apparent from the Information and Privacy Commissioner having recently confirmed that a statute limiting the ability of "directors" to disclose information despite the FIPPA, where "directors" are people designated as directors under the *Child, Family and Community Services Act* ("CFCSA"), that does not modify the application of FIPPA in relation to other employees of the Ministry of Children and Family Development: *Order F15-57 (Ministry of Children and Family Development)*, 2015 BCIPC 60 at para. 25.

Furthermore, the emergency exemption under s. 54(1) of the **Public Health Act** only applies to "a notice" (by a health officer), and not to "information" (to be provided by the head of a public body) about a risk of significant harm to the health or safety of a group of people.

2. An emergency exemption for reports under the **Public Health Act**

Second, s. 57(3) of the **Public Health Act** provides, "If a person is required to make a report under this Act, the provincial health officer may in an emergency order the person exempt from the requirement, or vary the requirement." However, this section only relates to a duty to report under the **Public Health Act**. This power does not extend to a duty of the head of a public body to provide information pursuant to a different statute.

C. The duty under FIPPA s. 25

The Information and Privacy Commissioner addressed the "test" under FIPPA s. 25 extensively in her **Investigation Report, F16-02** (June 29, 2016), 2016 BCIPC No. 36 (CanLII). In relation to FIPPA s. 25(1)(a) (and without prejudice to a duty arising under s. 25(1)(b)), information about:

• (1) the identity of a person confirmed as infected with Covid within an Indigenous community for the purposes of community-based contact tracing;

• (2) the location of presumed or confirmed COVID cases in areas near First Nations communities; and

• (3) information about whether a person confirmed as infected with Covid travels back and forth from the Nation's community(ies),

is clearly information that would (a) disclose the existence or nature of a prospective risk, and (b) allow such communities to take action necessary to meet the risk or mitigate or avoid harm.

An assessment of whether information would allow a group of persons to meet the risk or mitigate or avoid harm, for purposes of applying FIPPA s. 25, must take into account the **United Nations Declaration on the Rights of Indigenous Peoples** (UNDRIP), and the B.C. **Declaration on the Rights of Indigenous Peoples Act**, which recognize the rights of Indigenous peoples.
to self-determination and self-government (Article 4);
• to participate in decision-making in matters which would affect their rights (Article 18);
• to be actively involved in developing and determining health programs (Article 23); and
• to effective measures by the state to ensure that programmes for maintaining the health of Indigenous peoples are duly implemented (Article 29(3)).

Indigenous governments have already publicly addressed why Indigenous governments need this information to self-govern, and to address the risks relating to proximate cases of COVID. See, for example, here:

https://www.theglobeandmail.com/opinion/article-how-bc-health-authorities-are-undermining-indigenous-governments/

And also see here:


If you wish to provide us with further legal reasoning that you would like us to consider, we would welcome receiving that prior to this Friday’s Health Table meeting. We appreciate this is a very busy time given Covid matters and we are thankful for your assistance at this table.

Best regards,

SAVANNAH CARR-WILSON
Ng Ariss Fong | Lawyers

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see our blogs, suite210: www.ngariss.com/blogs/suite-210/ and inDispute: www.ngariss.com/blogs/in-dispute/

This e-mail and any attachment(s) are confidential and may be privileged. If you are not the intended recipient, please notify us immediately by return e-mail, delete this e-mail and do not copy, use or disclose it.
Dear Savannah:

I am one of the lawyers who advises the Office of Indigenous Health at the Ministry of Health and, as such, am responding to your email of July 28, 2020 to Breanna Chandler.

In response to your suggestion that section 25 of the Freedom of Information and Protection of Privacy Act supports disclosure of the information you are seeking about an infected person, I have reviewed the applicable provisions of both the Public Health Act and the Reporting Information Affecting Public Health Regulation - in particular section 14 of the Act and sections 13 and 17 of the Regulation - and would advise that it is our position that since the legislature has conferred statutory discretion upon the medical health officers and the Provincial health officer to determine what disclosure of information about an infected person is warranted to address harms to public health, it is highly unlikely that there is a basis to support the existence of an obligation on the head of a regional health authority, or the minister of health, to disclose information about an infected person to the public, or a group of people, under the authority of section 25 of the FOIPPA. This is because it is the statutory role of the medical health officers and the Provincial health officer to assess risks and make decisions about the appropriate communication of information to protect the public health.

With respect to releasing information about the location of an infected person in a First Nations community, I would refer you to https://www.fnha.ca/Documents/FNHA-COVID-19-Pathway-for-Confirmed-Cases.pdf, which provides that both the Chief of a First Nations community and the community health director will be informed of the presence of an infected person in their community.

In response to your question about the legal authority of medical health officers and the Provincial health officer (the “health officers”) not to disclose information about an infected person, we would suggest that it is actually a question of to whom these officers are authorized to disclose information about an infected person, and what information they are authorized to disclose, rather than a question of what the health officers are authorized not to disclose.

Our position in this regard, is that the persons to whom the health officers are authorized to disclose information about an infected person are those persons identified in section 13 of the Regulation and section 14 (1) (a) to (e) of the Act. What the health officers are authorized to disclose to these persons is information which, in the opinion the health officers, it is necessary to disclose for the purpose of preventing or addressing potential harms to public health which may arise from an infected purpose. You will find section 13 of the Regulation and section 14 (1) (a) to (e) of the Act printed below for your ready reference. In our opinion, this means that the health officers are not authorized to disclose information about an infected person which they do not believe it is necessary to disclose in order to prevent or address potential harms to public health.

Reporting Information Affecting Public Health Regulation
13 (1) The provincial health officer or a medical health officer who receives a report under this regulation may disclose information contained in the report, including personal information, to a person referred to in subsection (2) for the purpose of preventing or addressing potential harms to public health that may arise from an infected person, an infected thing or a health hazard.

(2) Disclosure under subsection (1) may be to any of the following persons:
   (a) another person who is an infected person;
   (b) a person having custody or control of an infected person or infected thing;
   (c) a person listed in section 14 (1) (a) to (e) of the Act;
   (d) a person in charge of an institution or a workplace within the meaning of section 4 (1) [persons in charge must report exposed persons];
   (e) a registrant under the Social Workers Act;
   (f) a person in charge of a designated agency within the meaning of the Adult Guardianship Act;
   (g) a member of a law enforcement agency in any jurisdiction;
   (h) a director of the Workers' Compensation Board appointed under the Workers Compensation Act.

(3) A person who receives personal information under subsection (2) must not use or further disclose the information except for the purpose for which the information was disclosed.

14 (1) For the purposes of health promotion or health protection, a health officer and a prescribed person may, if permitted by the regulations, request information from, and disclose information to, the following persons:
   (a) a person who makes or receives a report under this Division;
   (b) a person who is the subject of a report under this Division;
   (c) health professionals, including persons authorized in other jurisdictions to practise a health profession;
   (d) public officers responsible for health, including public officers responsible for health in other jurisdictions;
   (e) persons employed by a health authority, hospital or laboratory;
   (f) prescribed persons.
I trust this responds to your questions about the legal basis for the non-disclosure of information about an infected person.

Yours truly,

Fiona Gow, Legal Counsel
Justice Health & Revenue Group
Legal Services Branch, Ministry of Attorney General
Phone: 250-356-8453
Pronouns: she / her / hers

This communication (both the message and any attachments) may be confidential and protected by privilege. This communication is intended only for the use of the person(s) to whom it is addressed. If you received this communication in error, please destroy this communication immediately and notify me by telephone or by email.

For government recipients: prior to any disclosure of this communication outside of government, including in response to a request under the Freedom of Information and Protection of Privacy Act, the individual in possession of this communication must consult with the lawyer responsible for the matter to determine whether it is subject to privilege.

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From: Savannah Carr-Wilson <savannah@ngariss.org>
Sent: July 28, 2020 7:21 PM
To: Chandler, Breanna HLTH:EX <Breanna.Chandler@gov.bc.ca>
Cc: Lisa Fong, Q.C. <lisa@ngariss.org>; Therrien, Darlene HLTH:EX <Darlene.Therrien@gov.bc.ca>; Melles, Jennifer IRR:EX <Jennifer.Melles@gov.bc.ca>; Andrea Kreutz <andrea@ngariss.org>
Subject: Re: July 17th United Coastal FN Health Table meeting - Condition #1 followup

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Breanna,
Thank you for your email. We appreciate you providing this response in a timely way, given the urgency of this matter. We understand from your email that you have not yet sought legal advice regarding this matter, but wished to contact us expeditiously to further necessary dialogue.

Respectfully, we believe the rationale you have provided for non-disclosure is not legally sound, including for the following reasons:

- Section 91 of the *Public Health Act*, which you cite, states that “A person... must not disclose the personal information to any other person except as authorized under this or any other enactment” (emphasis added). We direct your attention to section 25 of BC’s *Freedom of Information and Protection of Privacy Act, RSBC 1996, c 165 (“FIPPA”), which supports disclosure of the information sought. We further note that section 79 of *FIPPA* states that “If a provision of this Act is inconsistent or in conflict with a provision of another Act, the provision of this Act prevails unless the other Act expressly provides that it, or a provision of it, applies despite this Act.”

- You provide a specific rationale for non-disclosure of only one of the three types of information sought (i.e. the location [community location] of proximate presumptive and confirmed cases). You state that the reason for not disclosing this location information is “that there is a risk that person who is ill could be identified as having COVID-19 if the specific location is mentioned, thereby breaching the confidentiality requirements.” We do not see it as reasonable to infer that disclosing the presence of a case in a community, for example Campbell River, allows identification of a specific individual. We note that the BC Centre for Disease Control’s website “Public Exposures” page contains far more specific information, for example regarding specific flights with confirmed cases of COVID-19, while Regional Health Authority websites such as Vancouver Coastal Health’s “Public Exposures” page contain information about specific places, dates, and times at which there have been confirmed cases of COVID-19, such as Sandman Suites on Davie Street.

Once again, we appreciate that you have expeditiously provided us with an interim response. We request that if you have a further response to provide, you do so as soon as possible given the urgency of this matter.

Further, now that we have a preliminary understanding of your basis, it would be helpful to proceed to schedule a meeting of the Health Table. Kindly work with Ms. Melles to provide availability of persons who can engage on this topic. We would respectfully suggest legal counsel would be of assistance.

Best regards,

SAVANNAH CARR-WILSON
Ng Ariss Fong | Lawyers

T: 604.331.1155  F: 604.677.5410  E: savannah@ngariss.org

Randall Building
8th Floor, 555 West Georgia Street
Good morning Lisa,

My name is Breanna Chandler and I am the Executive Director of the Office of Indigenous Health. In conversation with Jennifer Melles, we thought it easiest if I just reached out to you directly. I wanted to share with you a pull of the information from the attached letter for your immediate reference. Due to vacations, I have not been able to connect with our colleagues at FNHA prior to sending this to you, but wanted to ensure we are supporting advancement of this conversation in the interim. I would also confirm that we have not at this point sought legal rational and position, but are at this point highlighting the applicable sections of the Public Health Act for consideration.

**Extract from Attached Letter:**

“Condition #1: Information Sharing

**Action Item for BC:**

Provide BC's legal rationale for the following:

- BC declining to share the location (i.e. the community location) of proximate presumptive and confirmed cases;
- BC declining to share the fact of whether a person confirmed as infected with COVID travels back and forth from the Nation's community(ies);
- BC declining to share the identity of a person confirmed as infected within the Indigenous community for the purposes of community-based contact tracing.
If the legal rationale is that location constitutes personal information under FIPPA (even when the person's name is not provided), please provide legal reasoning. For this request, if relying on legal rationales, please be specific, i.e., include sections of statutes, or citations for case authorities.”

RESPONSE:

The legal rationale for declining to share the requested information is as follows:

Public Health Act Section 9 limits disclosure “only if it is necessary” for very specific reasons:

Purposes for collection, use and disclosure of personal information

9  (1) A person may collect, use or disclose personal information for the purposes of this Division, but only if it is necessary for one or more of the following purposes:

(a) to identify an individual who needs or is receiving health services;

(b) to provide health services to, or facilitate the care of, an individual;

(c) to identify a person who is providing health services;

(d) to prevent or manage chronic conditions, at the individual or population level;

(e) to assess and address public health needs;

(f) to engage in health system planning, management, evaluation or improvement, including

   (i) health service development, management, delivery, monitoring and evaluation,

   (ii) the compilation of statistical information,

   (iii) public health surveillance, and

   (iv) the assessment of the safety and effectiveness of health services;

(g) to conduct or facilitate research into health issues;

(h) to assess and address threats to public health.
In addition, there is a specific requirement in the *Public Health Act* to not disclose personal information except as authorized:

**Confidentiality of personal information**

91  (1) A person who has custody of, access to or control over personal information under this Act *must not disclose the personal information to any other person except as authorized* under this or any other enactment.

(2) A person referred to in subsection (1) is not, except in a proceeding under this Act, compellable to disclose or provide evidence about personal information the person has custody of, access to or control over.

The reason for not disclosing location of individual cases is that there is a risk that person who is ill could be identified as having COVID-19 if the specific location is mentioned, thereby breaching the confidentiality requirements.

I do hope this is helpful to initiate the conversation further, and I look forward to any follow-up questions that you might have.

**Breanna Chandler**

Executive Director | Office of Indigenous Health | Ministry of Health
PO Box 9646 | Stn Prov Govt BC | Victoria, B.C. V8W 9P1 | Tel: 250-952-1821 Cel: 250-217-0530

*Administrative Support: April Smith | 778-974-6119 | April.A.Smith@gov.bc.ca*

*I would like to acknowledge with respect the Esquimalt and Songhees Nations on whose land I am grateful to work and play.*
September 9, 2020

VIA COURIER & EMAIL (datarequest@bccdc.ca) VIA EMAIL (Privacyandfoi@phsa.ca)

BC Centre for Disease Control
655 West 12th Avenue
Vancouver, BC V5Z 4R4

ATT’N: BCCDC Chair

Provincial Health Services Authority
200 – 1333 West Broadway
Vancouver, BC V6H 4C1

ATT’N: Senior Director, Information Access & Privacy Services

Dear BCCDC Chair and Senior Director,

RE: Section 25 FIPPA Information Notice

I am counsel for Heiltsuk First Nation, Nuu-chah-nulth Tribal Council (representing 14 First Nations) and Tsilhqot'in National Government (representing 6 First Nations). I write to notify your public body that disclosure should be made of the following information pursuant to s. 25 of the Freedom of Information and Protection of Privacy Act ("FIPPA"). I believe that Ms. Breanna Chandler, the Executive Director of the Office of Indigenous Health of the Ministry of Health is reaching out to your Health Authority to meet with the Nations on this issue in a teleconference. It’s unclear to me whether she has advised you as to the Nations’ requests and the ongoing discussions. Accordingly, the Nations are setting out their request that your public body comply with s. 25 of FIPPA by disclosing the following to them:

- location of proximate presumptive and confirmed COVID cases (see below for the proximate communities)
- A yes or no answer to whether a person who is a proximate presumptive or confirmed case has in the last 14 days travelled to the particular First Nation’s territory
- 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-sensitive 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).

These Indigenous governments seek information about proximate COVID cases because they, like many other rural Indigenous communities, face substantial risks of significant harm to their health and safety from COVID infections:

- First Nations elders are at high risk of contracting and dying from COVID. These elders are critical to their Nations' survival as they carry the cultural knowledge, language, and
memories of these Indigenous peoples. Indigenous communities also have significant populations of seniors with serious health issues including respiratory illnesses.

- First Nations generally are already at a lower level of health than other Canadians. They suffer more respiratory, cardiac and other serious health issues than other Canadians. They also suffer a higher level of mental health issues than other Canadians.
- Rural Indigenous communities have small populations where members live in close proximity to each other, so the spread of disease can occur very quickly. For example, many members live in one house with both their immediate and extended family, and some live with multiple, intergenerational families. In the case of the outbreak in Alert Bay, in Namgis territory, within one week, there were 29 cases, resulting in the death of one elder. In the recent case of the outbreak in Haida Gwaii, within a week, there were over 20 cases.
- Past pandemics, including smallpox and Spanish flu, and more recently H1N1, have resulted in significant harms, including death of significant parts of their populations.
- Community medical resources are very limited and would not be sufficient to address an outbreak of COVID. Many of these communities are only accessible by air or boat.

To manage the significant risks posed by COVID infections to Indigenous communities, First Nations leadership need information in order to decide:

- if curfews are necessary;
- if stay-at-home orders are necessary;
- if elders and others with medical issues must isolate, and the community must provide essential services to them (e.g., food, medication, and other necessities);
- if prohibitions on travel through their territories or their reserves are necessary (e.g., prohibiting the entry of vehicles, vessels or passengers from ferries or air crafts);
- if prohibitions on local businesses which attract tourists are necessary (e.g., vacation businesses including fishing or hunting lodges);
- if testing or contact tracing should be conducted (e.g. because members have recently travelled in an affected community - this is particularly important during trade season, which is the summer and the fall);
- if families need separate lodgings while isolating (e.g. given their possible contact with a member who has recently travelled in an affected community, or who is infected); and
- if requests from other nearby communities for the sharing of resources (e.g. food, fuel, pharmaceuticals, and medical resources) can be met and how that can be arranged safely.

Indigenous governments cannot effectively govern without knowing the proximity of COVID cases. Indigenous governments may apply knowledge of proximate cases to reduce risks of significant harm to the health and safety of their communities.

The proximate communities are as follows:

Proximate communities to Heiltsuk First Nation are Port Hardy, Klemtu, Bella Coola, Ocean Falls, Shearwater, Prince Rupert, Haida Gwaii, Campbell River, and Vancouver. Regarding Vancouver, we appreciate that currently there is sufficient information about infections but seek that information when your public body ceases publicly reporting on Vancouver presumptive or confirmed COVID cases.
Proximate communities to Nuu-chah-nulth Tribal Council are Bamfield, Port Alberni, Ucluelet, Tofino, Gold River, Campbell River, Duncan, and Tahsis.
Proximate communities to Tsilhqot'in National Government are Williams Lake and Quesnel.

For your convenience, s. 25 of FIPPA provides that the head of a public body "must" disclose information about a risk of significant harm:

**Information must be disclosed if in the public interest**

25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
(b) the disclosure of which is, for any other reason, clearly in the public interest.
(2) Subsection (1) applies despite any other provision of this Act.

S. 25 of FIPPA and any BC laws (whether legislative or case law) regarding your public body must be read consistently with the BC Declaration on the Rights of Indigenous Peoples Act ("DRIPA"). Under section 3 of DRIPA "...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 (Article 4);
- to participate in decision-making in matters which would affect their rights (Article 18);
- to be actively involved in developing and determining health programs (Article 23); and
- to effective measures by the state to ensure that programmes for maintaining the health of Indigenous peoples are duly implemented (Article 29(3)).

You may make your disclosure to my office, which will distribute the information to my clients, or we can arrange for a direct distribution. If your public body refuses to make the requested disclosure, we ask that you set out the reasons in writing.

Sincerely,

NG ARISS FONG
Per: [Signature]

Lisa C. Fong, QC
LCF/ak

Cc: Clients
September 9, 2020 (FIPPA@interiorhealth.ca)

VIA EMAIL

IH Freedom of Information Office
505 Doyle Avenue
Kelowna, BC V1Y 0C5

ATT’N: Susan Brown, President and CEO

Dear Ms. Brown,

RE: Section 25 FIPPA Information Notice

I am counsel for Heiltsuk First Nation, Nuu-chah-nulth Tribal Council (representing 14 First Nations) and Tsilhqot’in National Government (representing 6 First Nations). I write to notify your public body that disclosure should be made of the following information pursuant to s. 25 of the Freedom of Information and Protection of Privacy Act (“FIPPA”). I believe that Ms. Breanna Chandler, the Executive Director of the Office of Indigenous Health of the Ministry of Health is reaching out to your Health Authority to meet with the Nations on this issue in a teleconference. It’s unclear to me whether she has advised you as to the Nations’ requests and the ongoing discussions. Accordingly, the Nations are setting out their request that your public body comply with s. 25 of FIPPA by disclosing the following to them:

- **location** of proximate presumptive and confirmed COVID cases (see below for the proximate communities)
- A **yes or no** answer to whether a person who is a proximate presumptive or confirmed case has in the last **14 days travelled** to the particular First Nation’s territory
- **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-sensitive 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).

These Indigenous governments seek information about proximate COVID cases because they, like many other rural Indigenous communities, face substantial risks of significant harm to their health and safety from COVID infections:

- First Nations elders are at high risk of contracting and dying from COVID. These elders are critical to their Nations’ survival as they carry the cultural knowledge, language, and
memories of these Indigenous peoples. Indigenous communities also have significant populations of seniors with serious health issues including respiratory illnesses.

- First Nations generally are already at a lower level of health than other Canadians. They suffer more respiratory, cardiac and other serious health issues than other Canadians. They also suffer a higher level of mental health issues than other Canadians.
- Rural Indigenous communities have small populations where members live in close proximity to each other, so the spread of disease can occur very quickly. For example, many members live in one house with both their immediate and extended family, and some live with multiple, intergenerational families. In the case of the outbreak in Alert Bay, in Namgis territory, within one week, there were 29 cases, resulting in the death of one elder. In the recent case of the outbreak in Haida Gwaii, within a week, there were over 20 cases.
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- Community medical resources are very limited and would not be sufficient to address an outbreak of COVID. Many of these communities are only accessible by air or boat.

To manage the significant risks posed by COVID infections to Indigenous communities, First Nations leadership need information in order to decide:

- if curfews are necessary;
- if stay-at-home orders are necessary;
- if elders and others with medical issues must isolate, and the community must provide essential services to them (e.g., food, medication, and other necessities);
- if prohibitions on travel through their territories or their reserves are necessary (e.g., prohibiting the entry of vehicles, vessels or passengers from ferries or air crafts);
- if prohibitions on local businesses which attract tourists are necessary (e.g., vacation businesses including fishing or hunting lodges);
- if testing or contact tracing should be conducted (e.g. because members have recently travelled in an affected community - this is particularly important during trade season, which is the summer and the fall);
- if families need separate lodgings while isolating (e.g. given their possible contact with a member who has recently travelled in an affected community, or who is infected); and
- if requests from other nearby communities for the sharing of resources (e.g. food, fuel, pharmaceuticals, and medical resources) can be met and how that can be arranged safely.

Indigenous governments cannot effectively govern without knowing the proximity of COVID cases. Indigenous governments may apply knowledge of proximate cases to reduce risks of significant harm to the health and safety of their communities.

The proximate communities are as follows:

Proximate communities to Heiltsuk First Nation are Port Hardy, Klemtu, Bella Coola, Ocean Falls, Shearwater, Prince Rupert, Haida Gwaii, Campbell River, and Vancouver. Regarding Vancouver, we appreciate that currently there is sufficient information about infections but seek that information when your public body ceases publicly reporting on Vancouver presumptive or confirmed COVID cases.
Proximate communities to Nuu-chah-nulth Tribal Council are Bamfield, Port Alberni, Ucluelet, Tofino, Gold River, Campbell River, Duncan, and Tahsis. Proximate communities to Tsilhqot' in National Government are Williams Lake and Quesnel.

For your convenience, s. 25 of FIPPA provides that the head of a public body "must" disclose information about a risk of significant harm:

**Information must be disclosed if in the public interest**
25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
(b) the disclosure of which is, for any other reason, clearly in the public interest.
(2) Subsection (1) applies despite any other provision of this Act.

S. 25 of FIPPA and any BC laws (whether legislative or case law) regarding your public body must be read consistently with the BC Declaration on the Rights of Indigenous Peoples Act ("DRIPA"). Under section 3 of DRIPA "...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 (Article 4);
- to participate in decision-making in matters which would affect their rights (Article 18);
- to be actively involved in developing and determining health programs (Article 23); and
- to effective measures by the state to ensure that programmes for maintaining the health of Indigenous peoples are duly implemented (Article 29(3)).

You may make your disclosure to my office, which will distribute the information to my clients, or we can arrange for a direct distribution. If your public body refuses to make the requested disclosure, we ask that you set out the reasons in writing.

Sincerely,

NG ARISS FONG
Per:

Lisa C. Fong, QC
LCF/ak

Cc: Clients
September 9, 2020

VIA EMAIL (FOI@viha.ca; privacy@viha.ca; CEOExecutiveAssistant@viha.ca)

Island Health Information Stewardship,
Access and Privacy Office
1952 Bay Street
Victoria, BC  V8R 1J8

ATT’N: Kathy MacNeil, President & CEO

Dear Ms. MacNeil,

RE:  Section 25 FIPPA Information Notice

I am counsel for Heiltsuk First Nation, Nuu-chah-nulth Tribal Council (representing 14 First Nations) and Tsilhqot’in National Government (representing 6 First Nations). I write to notify your public body that disclosure should be made of the following information pursuant to s. 25 of the Freedom of Information and Protection of Privacy Act (“FIPPA”). I believe that Ms. Breanna Chandler, the Executive Director of the Office of Indigenous Health of the Ministry of Health is reaching out to your Health Authority to meet with the Nations on this issue in a teleconference. It’s unclear to me whether she has advised you as to the Nations’ requests and the ongoing discussions. Accordingly, the Nations are setting out their request that your public body comply with s. 25 of FIPPA by disclosing the following to them:

- **location** of proximate presumptive and confirmed COVID cases (see below for the proximate communities)
- A **yes or no** answer to whether a person who is a proximate presumptive or confirmed case has in the last **14 days travelled** to the particular First Nation’s territory
- **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-sensitive 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).

These Indigenous governments seek information about proximate COVID cases because they, like many other rural Indigenous communities, face substantial risks of significant harm to their health and safety from COVID infections:

- First Nations elders are at high risk of contracting and dying from COVID. These elders are critical to their Nations’ survival as they carry the cultural knowledge, language, and
memories of these Indigenous peoples. Indigenous communities also have significant populations of seniors with serious health issues including respiratory illnesses.

- First Nations generally are already at a lower level of health than other Canadians. They suffer more respiratory, cardiac and other serious health issues than other Canadians. They also suffer a higher level of mental health issues than other Canadians.
- Rural Indigenous communities have small populations where members live in close proximity to each other, so the spread of disease can occur very quickly. For example, many members live in one house with both their immediate and extended family, and some live with multiple, intergenerational families. In the case of the outbreak in Alert Bay, in Namgis territory, within one week, there were 29 cases, resulting in the death of one elder. In the recent case of the outbreak in Haida Gwaii, within a week, there were over 20 cases.
- Past pandemics, including smallpox and Spanish flu, and more recently H1N1, have resulted in significant harms, including death of significant parts of their populations.
- Community medical resources are very limited and would not be sufficient to address an outbreak of COVID. Many of these communities are only accessible by air or boat.

To manage the significant risks posed by COVID infections to Indigenous communities, First Nations leadership need information in order to decide:

- if curfews are necessary;
- if stay-at-home orders are necessary;
- if elders and others with medical issues must isolate, and the community must provide essential services to them (e.g., food, medication, and other necessities);
- if prohibitions on travel through their territories or their reserves are necessary (e.g., prohibiting the entry of vehicles, vessels or passengers from ferries or air crafts);
- if prohibitions on local businesses which attract tourists are necessary (e.g., vacation businesses including fishing or hunting lodges);
- if testing or contact tracing should be conducted (e.g. because members have recently travelled in an affected community - this is particularly important during trade season, which is the summer and the fall);
- if families need separate lodgings while isolating (e.g. given their possible contact with a member who has recently travelled in an affected community, or who is infected); and
- if requests from other nearby communities for the sharing of resources (e.g. food, fuel, pharmaceuticals, and medical resources) can be met and how that can be arranged safely.

Indigenous governments cannot effectively govern without knowing the proximity of COVID cases. Indigenous governments may apply knowledge of proximate cases to reduce risks of significant harm to the health and safety of their communities.

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Proximate communities to Heiltsuk First Nation are Port Hardy, Klemtu, Bella Coola, Ocean Falls, Shearwater, Prince Rupert, Haida Gwaii, Campbell River, and Vancouver. Regarding Vancouver, we appreciate that currently there is sufficient information about infections but seek that information when your public body ceases publicly reporting on Vancouver presumptive or confirmed COVID cases.
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Sincerely,

NG ARISS FONG
Per:

[Signature]

Lisa C. Fong, QC
LCF/ak

Cc: Clients
Dear Ms. Ulrich,

**RE: Section 25 FIPPA Information Notice**

I am counsel for Heiltsuk First Nation, Nuu-chah-nulth Tribal Council (representing 14 First Nations) and Tsilhqot'in National Government (representing 6 First Nations). I write to notify your public body that disclosure should be made of the following information pursuant to s. 25 of the Freedom of Information and Protection of Privacy Act (“FIPPA”). I believe that Ms. Breanna Chandler, the Executive Director of the Office of Indigenous Health of the Ministry of Health is reaching out to your Health Authority to meet with the Nations on this issue in a teleconference. It’s unclear to me whether she has advised you as to the Nations’ requests and the ongoing discussions. Accordingly, the Nations are setting out their request that your public body comply with s. 25 of FIPPA by disclosing the following to them:

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These Indigenous governments seek information about proximate COVID cases because they, like many other rural Indigenous communities, face substantial risks of significant harm to their health and safety from COVID infections:

- First Nations elders are at high risk of contracting and dying from COVID. These elders are critical to their Nations' survival as they carry the cultural knowledge, language, and
memories of these Indigenous peoples. Indigenous communities also have significant populations of seniors with serious health issues including respiratory illnesses.

- First Nations generally are already at a lower level of health than other Canadians. They suffer more respiratory, cardiac and other serious health issues than other Canadians. They also suffer a higher level of mental health issues than other Canadians.
- Rural Indigenous communities have small populations where members live in close proximity to each other, so the spread of disease can occur very quickly. For example, many members live in one house with both their immediate and extended family, and some live with multiple, intergenerational families. In the case of the outbreak in Alert Bay, in Namgis territory, within one week, there were 29 cases, resulting in the death of one elder. In the recent case of the outbreak in Haida Gwaii, within a week, there were over 20 cases.
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- Community medical resources are very limited and would not be sufficient to address an outbreak of COVID. Many of these communities are only accessible by air or boat.

To manage the significant risks posed by COVID infections to Indigenous communities, First Nations leadership need information in order to decide:

- if curfews are necessary;
- if stay-at-home orders are necessary;
- if elders and others with medical issues must isolate, and the community must provide essential services to them (e.g., food, medication, and other necessities);
- if prohibitions on travel through their territories or their reserves are necessary (e.g., prohibiting the entry of vehicles, vessels or passengers from ferries or air crafts);
- if prohibitions on local businesses which attract tourists are necessary (e.g., vacation businesses including fishing or hunting lodges);
- if testing or contact tracing should be conducted (e.g. because members have recently travelled in an affected community - this is particularly important during trade season, which is the summer and the fall);
- if families need separate lodgings while isolating (e.g. given their possible contact with a member who has recently travelled in an affected community, or who is infected); and
- if requests from other nearby communities for the sharing of resources (e.g. food, fuel, pharmaceuticals, and medical resources) can be met and how that can be arranged safely.

Indigenous governments cannot effectively govern without knowing the proximity of COVID cases. Indigenous governments may apply knowledge of proximate cases to reduce risks of significant harm to the health and safety of their communities.

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You may make your disclosure to my office, which will distribute the information to my clients, or we can arrange for a direct distribution. If your public body refuses to make the requested disclosure, we ask that you set out the reasons in writing.

Sincerely,

NG ARISS FONG
Per: [Signature]

Lisa C. Fong, QC
LCF/ak

Cc: Clients
September 9, 2020

VIA COURIER

Vancouver Coastal Health
Corporate Office
601 W. Broadway, 11th Floor
Vancouver, BC V5Z 4C2

ATT’N: Vivian Eliopoulos, Interim President and CEO

Dear Ms. Eliopoulos,

RE: Section 25 FIPPA Information Notice

I am counsel for Heiltsuk First Nation, Nuu-chah-nulth Tribal Council (representing 14 First Nations) and Tsilhqot’ín National Government (representing 6 First Nations).

I you further to our letter to Ms. Daly dated May 7, 2020 and write to notify your public body that disclosure should be made of the following information pursuant to s. 25 of the Freedom of Information and Protection of Privacy Act (“FIPPA”). I believe that Ms. Breanna Chandler, the Executive Director of the Office of Indigenous Health of the Ministry of Health is reaching out to your Health Authority to meet with the Nations on this issue in a teleconference. It’s unclear to me whether she has advised you as to the Nations’ requests and the ongoing discussions. Accordingly, the Nations are setting out their request that your public body comply with s. 25 of FIPPA by disclosing the following to them:

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These Indigenous governments seek information about proximate COVID cases because they, like many other rural Indigenous communities, face substantial risks of significant harm to their health and safety from COVID infections:

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memories of these Indigenous peoples. Indigenous communities also have significant populations of seniors with serious health issues including respiratory illnesses.

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- if requests from other nearby communities for the sharing of resources (e.g. food, fuel, pharmaceuticals, and medical resources) can be met and how that can be arranged safely.

Indigenous governments cannot effectively govern without knowing the proximity of COVID cases. Indigenous governments may apply knowledge of proximate cases to reduce risks of significant harm to the health and safety of their communities.

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You may make your disclosure to my office, which will distribute the information to my clients, or we can arrange for a direct distribution. If your public body refuses to make the requested disclosure, we ask that you set out the reasons in writing.

Sincerely,

NG ARISS FONG
Per:

[Signature]

Lisa C. Fong, QC
LCF/ak

Cc: Clients
May 7, 2020

Dr. Patricia Daly, Vice President, 
Public Health, Chief Medical Health Officer 
Vancouver Coastal Health 
Corporate Office 
601 West Broadway, 11th Floor 
Vancouver, BC V5Z 4C2

Dear Dr. Patricia Daly,

RE: DISCLOSURE OF COVID-19 CASES TO First NATIONS

I write on behalf of the leaderships of the Central Coast First Nations, Heiltsuk Nation, Nuxalk Nation, Wuikinuxv Nation, and Kitasoo/Xai’xais Nation to address the Health Authority’s decision to not disclose the location of COVID cases to Indigenous governments.

In a CBC interview on April 22, 2020, Dr. Shannon McDonald, Deputy Chief Medical Officer of FNHA, stated that there is no disclosure of where COVID cases are occurring because patients have told her they fear being treated badly if such information became public. In addition, Dr. Bonnie Henry, Provincial Health Officer stated that non-disclosure was to ensure that those infected are protected from stigma that could keep them from reporting infection.

Respectfully, and in the spirit of reconciliation, it is our view that these rationales are based on a lack of understanding of the role of Indigenous government and result in putting Indigenous lives at risk. Very sadly, even as I pen this letter the outbreak at Cormorant Island (Alert Bay) has worsened with 29 confirmed cases and the death of a female elder of the Namgis First Nation.

First, and simply put, disclosing information to Indigenous governments is not the same as disclosing information to the public, and one cannot presume that Indigenous governments will make such information public. Heiltsuk's leadership, Heiltsuk Tribal Council and Heiltsuk Hemas, compiles, receives, and works with sensitive and confidential personal information every day.
As with all governments, including British Columbia, Heiltsuk leadership has protocols for how such information is used and secured. Presuming that an Indigenous government will not act responsibly undermines the legitimacy of Indigenous self-government and is backward step away from reconciliation.

Second, information about the specific communities where COVID has taken hold, without disclosure of specific identities, is important information for Indigenous governments. Rural Indigenous communities like Bella Bella, Bella Coola, Oweekeno, and Klemtu are disproportionately vulnerable to COVID:

- Each of our Nations have elders who are at high risk of contracting and dying from COVID. They are critical to our Nations' survival as they carry the cultural knowledge, language, and memories of our peoples. Apart from elders, each of our communities have a significant population of seniors with serious health issues including respiratory illnesses.
- Our communities have small populations where our members live in close proximity to each other so the spread of disease can occur very quickly. Many members live in one house with both their immediate and extended family, and some live with multiple, intergenerational families.
- Our communities' medical resources are also limited and would not be sufficient to address an outbreak of COVID. While our Nations are fortunate to be served by air ambulance, the efficacy of the air ambulance can be hampered by availability and weather. Most importantly though is that by this time, preventing the spread of COVID will be very difficult.

Given the high risks relating to COVID-19, our Nations need information on the location of COVID cases to make informed decisions on the level of our emergency measures. On Monday, Dr. Bonnie Henry confirmed that Indigenous governments may exercise their rights of self-government to deny tourists entry into their territories as part of addressing COVID. As part of exercising self-government, First Nations leadership must decide

- if curfews are necessary;
- if stay-at-home orders are necessary;
- if prohibitions on travel through our territories or our reserves are necessary;
- if prohibitions on local businesses which attract tourists are necessary;
- if testing or contact tracing should be conducted (because members recently travelled in an affected community);
- if families need separate lodgings while isolating (given their possible contact with a member who recently travelled in an affected community); and
- if requests from other nearby communities for the sharing of resources (food, fuel, and pharmaceuticals) can be met and how.

Indigenous governments cannot, however, effectively exercise their rights and governance powers without knowing the proximity of COVID cases.
A further significant issue is the recreational boaters and fishermen who are beginning to arrive, despite COVID. These Nations need information on the location of COVID cases to make decisions about the risks of addressing such visitors. Annually, hundreds of recreational boaters and fishermen visit the Central Coast.

Reconciliation requires that Canadian governments and government actors recognize the role of Indigenous governments to govern their communities. This means that health authorities should work with Indigenous governments to share information responsibly. This is reconciliation. VCHA's justification of causing stigma to individuals is short-sighted. Non-disclosure to Indigenous governments perpetuates the historic social and legal stigma that Indigenous peoples, societies and legal orders are illegitimate. Holding back information undermines the ability of Indigenous governments to govern and maintains a colonial relationship.

We ask you to step back for a moment to recognize and examine how vital it is to work with Indigenous governments. Working with Indigenous governments means recognizing and honouring their history, traditions and cultures, and being able to address the profound impacts of past and current harms. The BC Declaration on the Rights of Indigenous Peoples Act (DRIPA) which requires the laws of BC be consistent with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Calls to Action of the Truth and Reconciliation Commission of Canada and the final report an Calls to Action of the Truth and Reconciliation Commission of Canada need to inform the Authority’s decisions about withholding information from Indigenous governments.

Perhaps the outbreak on Cormorant Island and the death of the elder of Namgis could have been avoided if the Health Authority had worked with and disclosed proximate COVID-19 cases to the Namgis First Nation.

Our Nations need the information to save Indigenous lives. This is a course correction that is especially important now as BC is reducing the restrictions on gatherings and travel.

We request that FNHA and VHA meet with the leadership of Heiltsuk, Nuxalk, Wuikinuxv, and Kitasoo/Xai’xais to discuss disclosure and protocols for use of information. As part of that discussion, we can inform you now that Heiltsuk's privacy protocols would not allow it to disclose personal information about specific patients.

We look forward to your response as soon as possible.
Please contact Chief Marilyn Slett at marilyn.slett@heiltsuk.ca or at (1) 250-957-2381.

Sincerely,

Marilyn Slett,
Chief Councillor, Heiltsuk Nation

Wally Webber
Chief Councillor, Nuxalk Nation

Roxanne Robinson
Chief Councillor, Kitasoo Xai’xais Nation

Danielle Shaw
Chief Councillor, Wuikinuxv Nation

Cc: Richard Jock, FNHA
Nuu-chah-nulth Legislative Assembly

Nuu-chah-nulth Statement on access to the Ḥahuuli

June 9, 2020

Port Alberni, BC – The Nuu-chah-nulth Tribal Council met with our Board of Directors on June 9th, 2020 regarding access to Nuu-chah-nulth Ḥahuuli (territories). Directors were very clear, the health, safety, and well-being of our people come as a priority, before economics. Mariah Charleson, Vice President of the Tribal Council stated: “As Nuu-chah-nulth, we must take extraordinary measures, that go far above and beyond Provincial and Federal Health guidelines, to protect our communities and members from this devastating disease-COVID-19.”

President Judith Sayers elaborated further and says “Nuu-chah-nulth Tribal Council strongly opposes the opening of the Canada border for the duration of the COVID-19 pandemic and until Nuu-chah-nulth leaders advise otherwise. The risk is simply too high and we are not willing to put the health of our members to the side simply to benefit the economy. The health and well-being of all Nuu-chah-nulth-aht will continue to be the priority as BC begins to Re-Open.”

The Nuu-chah-nulth Tribal Council Board of Directors unanimously passed the following Motion on June 9, 2020 regarding access to Nuu-chah-nulth Ḥahuuli and has the complete support of Nuu-chah-nulth Tribal Council:

Whereas the Province of British Columbia and the Nuu-chah-nulth Nations have recognized and declared ongoing states of emergency due to the Covid-19 pandemic;

Whereas the provincial, federal and Nuu-chah-nulth governments have each recognized that indigenous people and communities are particularly vulnerable to the transmission and effects of the Covid-19 virus;

Whereas Article 24.2 of the United Nations Declaration on the Rights of Indigenous Peoples states: “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;”

Whereas the Nuu-chah-nulth Nations have each implemented extensive measures to protect our elders and our communities, despite economic cost to our communities;

Whereas provincial public health officials have warned that the importation of the virus to Vancouver Island communities, including to remote and indigenous communities, is a continuing and prominent risk;

Whereas the re-opening of the Ḥahuuli of the Nuu-chah-nulth Nations must be contingent upon the free prior and informed consent of the Nuu-chah-nulth Nations as set out in the United Nations Declaration on the Rights of Indigenous Peoples and the British Columbia Declaration on the Rights of Indigenous Peoples Act;

Therefore be it resolved that:

1. The Nuu-chah-nulth Nations affirm that the protection of the health of the Nations’ members and citizens is of the highest priority, and must be assured before recreational and non-essential economic activities are expanded in our Nations’ Ḥahuuli, including but not limited to, the opening of: Provincial Parks, Federal Parks, and other activity that attracts non-residents into Nuu-chah-nulth Ḥahuuli.
2. Access to the Hahuuli of the Nuu-chah-nulth Nations shall remain restricted to Hahuuli residents and essential service providers until:

   a. Testing of Hahuuli residents is confirmed to be readily and consistently available in accordance with current provincial health guidelines, including the guideline that residents of remote and indigenous communities should be prioritized for testing;

   b. Screening of non-residents seeking to enter the Hahuuli is established to ensure individuals are not currently symptomatic or known to be infected with the virus, and have been conducting themselves in accordance with public health orders and guidelines during the 14-day period preceding their intended trip into Nuu-chah-nulth Hahuuli;

   c. Contact tracing measures are in place to ensure that Hahuuli residents will receive prompt notification, support, testing and care in the event of possible exposure to the Covid-19 virus;

   d. Communications protocols are established between the Nuu-chah-nulth Nations and Vancouver Island and Provincial Health Authorities to ensure the early and prompt reporting by the Health Authorities to the Nuu-chah-nulth Nations, under appropriate confidentiality protections, of all relevant information relating to suspected and confirmed cases of Covid-19 in Vancouver Island communities, including indigenous communities;

3. The Nuu-chah-nulth Tribal Council is hereby authorized to advise the federal and provincial governments that:

   a. Nuu-chah-nulth consent to the re-opening of our Nations’ Hahuuli will be contingent on each of the factors set out in this resolution being fully addressed; and

   b. Only when each Nuu-chah-Nulth Nation determines that all conditions are fulfilled and their consent given, can the federal and provincial governments open up recreation and other non-essential economic activities within the Nuu-chah-nulth Hahuuli.

Moved by Chief Robert Dennis, seconded by Director Archie Little
-30-

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About Nuu-chah-nulth Tribal Council

The Nuu-chah-nulth Tribal Council (NTC) provides programs and services to over 10,000 registered members. The role of the NTC is to represent 14 First Nations in three regions stretching 300 kilometers of the Pacific Coast of Vancouver Island from Brooks Peninsula in the north to Point-no-Point in the south. The NTC represents Ahousaht, Ditidaht, Ehattesaht/Chinehkint, Hesquiaht, Hupacasath, Huu-ay-aht, Kyuquot/Checklesaht, Mowachaht/Muchalaht, Nuchatlaht, Tla-o-qui-aht, Toquaht, Tseshahaht, Uchucklesaht and Ucluelet First Nations and provides a variety of programs and services to them.

For more information, please visit www.nuuchahnulth.org.
As governments around the world grapple with the COVID-19 crisis, the critical importance of testing, contact tracing, information sharing and co-ordinated community response right now and as we move ahead is clear. Countries have experienced different results with different approaches, and as Canadian provincial governments begin to announce their plans to reopen, experts have been focused on the best way to deploy those tools using the information they have, so that the safest approach is taken.

And yet, here in British Columbia, the First Nations Health Authority, which operates under Vancouver Coastal Health (VCH), continues to not disclose to Indigenous governments where COVID-19 cases are occurring, citing the potential social harm to patients. Provincial Health Officer Bonnie Henry has stated that this non-disclosure is intended to ensure that people who are infected are protected from stigma that could keep them from reporting it. That’s in the spirit of the federal government’s even vaguer approach: Indigenous Services Canada reports only the cumulative number of positive cases, rather than deaths and recoveries.

Respectfully, and in the spirit of reconciliation, it is our view that this rationale misunderstands the role of Indigenous governments, and that this policy of non-disclosure puts Indigenous lives at risk. Indeed, according to Yellowhead Institute researcher Courtney Skye, the lack of data being shared with Indigenous communities is actually helping to create stigma, as a vacuum of even basic information cultivates a “vigilante mentality” among people. Now, as the B.C. government contemplates loosening the province’s restrictions on gathering and travel in the near term, and since the tragedy on Cormorant Island (Alert Bay) – where the ‘Namgis First Nation recently lost a 57-year-old elder to COVID-19 while enduring 29 confirmed cases – that policy must be reconsidered urgently. That’s
why the leaders of the Central Coast First Nations are calling on health authorities like VCH to share information about which communities have presumptive and confirmed COVID-19 cases so we can better protect our people.

Disclosing information to Indigenous governments is not the same as making it public. Our governments compile, receive and work with sensitive and confidential information every day. As with all governments, including British Columbia’s, our governments have protocols for how such information is used and secured. What appears to be the premise of the policy is the presumption that Indigenous governments could act irresponsibly – and that undermines the legitimacy of Indigenous self-government.

Furthermore, information about specific communities where COVID-19 has taken hold – without disclosure of identities – is important for Indigenous governments to have. Rural communities such as Bella Bella, Bella Coola, Oweekeno and Klemtu are disproportionately vulnerable to COVID-19 because they have small populations where members live in close proximity to each other with limited medical resources. And crucially, each of our nations have elders who are at high risk of contracting the disease and dying. This is of grave concern, because elders are critical to our nations’ survival. They carry the cultural knowledge, language and memories of our peoples.

Given the high stakes, our nations need information on the location of COVID-19 cases to make informed decisions on the level of our emergency measures. Recently, Dr. Henry confirmed that Indigenous governments may exercise their rights of self-government to deny tourists entry to their territories as part of addressing COVID-19, but to truly exercise our rights and governance powers, First Nations leaders need to be empowered to do more. We cannot decide the necessity of stay-at-home orders, prohibitions on travel through our territories or reserves, closing businesses, testing or contact tracing, the provision of separate lodging, and resource-sharing around food, fuel and pharmaceuticals, if we are working blindfolded.

Ultimately, holding back potentially life-saving information only maintains a colonial relationship. Non-disclosure to Indigenous governments perpetuates the historic social and legal stigma that Indigenous peoples, societies and legal orders are illegitimate. It also runs counter to the calls to action of the Truth and Reconciliation Commission of Canada, as well as the B.C. Declaration on the Rights of Indigenous Peoples Act, which requires that the province’s laws be consistent with the UN Declaration on the Rights of Indigenous Peoples.

True reconciliation requires that government actors, including health authorities like VCH, step back and recognize how vital it is to work with Indigenous governments. This means recognizing and honouring our history, traditions and cultures, and working together to address the effects of past and present harms, especially pandemics.

It is possible that the events on Cormorant Island would have unfolded differently if the health authority had worked with, and disclosed proximate COVID-19 cases to, the ’Namgis First Nation. And so we call on all health authorities to share COVID-19 information that could help save Indigenous lives.

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B.C.’s COVID-19 reopening plans continue to put Indigenous people at risk

JOE ALPHONSE, JUDITH SAYERS AND MARILYN SLETT
CONTRIBUTED TO THE GLOBE AND MAIL
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Marilyn Slett is chief councillor of the Heiltsuk Tribal Council. Dr. Judith Sayers is president of Nuu-chah-nulth Tribal Council. Chief Joe Alphonse is Tribal Chair of the Tŝilhqot’iın National Government.

Earlier this month, thousands of cases of racism against Indigenous peoples in B.C. health care were made public. Among the repugnant and infuriating allegations: some emergency-room staff played a game to guess the blood-alcohol level of Indigenous patients. Premier John Horgan and Health Minister Adrian Dix have decried these actions, and Mary Ellen Turpel-Lafond, B.C.’s former representative for children and youth, is investigating the claims.

These allegations are unfortunately unsurprising. They are symptoms of a bigger problem: a system that incorporates racist and colonial values and assumptions into its operations, and governance, and risks Indigenous lives. Such is the nature of systemic racism.
But it’s not enough to litigate past injustice. As the province marches forward with its “Phase 3” reopening plans around the COVID-19 pandemic, without any true consultation or consent from Indigenous leaders, we must stop the injustices that are happening now, and prevent those yet to come.

British Columbia has received international plaudits for rapidly flattening the curve in the face of the first wave of COVID-19 – a commendable outcome. But what British Columbians don’t know is that Indigenous communities have suffered close calls and real tragedies all the same. The ‘Namgis tragically lost an elder and experienced a major outbreak in Alert Bay. Neighbouring nations were not notified and had no chance to take precautions. There have also been cases of infected individuals travelling through Indigenous territory without any heads-up to our governments.

Since the pandemic began, Indigenous leaders have exhorted government officials in vain to give us more information and resources to protect our communities. To date, our requests have been ignored.

So when Provincial Health Officer Dr. Bonnie Henry asks us to philosophically accept that “absolutely we are going to have more cases” as part of B.C.’s “fine balance” in reopening, understand that it is Indigenous nations that are being asked to bear the brunt of that risk, because to date, we are still waiting for four basic safety measures.

We do not have an information-sharing agreement to ensure early reporting of suspected and confirmed cases in nearby regions to Indigenous governments; we do not have screening methods to ensure travellers seeking to enter Indigenous territory are not symptomatic or infected with the virus; there are no rapid-testing mechanisms available that can prioritize Indigenous and remote communities – in fact, there are currently just two rapid testing kits for all Indigenous communities in B.C. And finally, there has not yet been funding for culturally safe contact-tracing that can increase the likelihood of effective tracing in the event of an outbreak, and reduce the risk of racist interactions with the health care system of the sort the government has decreed.

Failure to provide these measures, while moving full steam ahead to reopen the province, puts our people at risk. First Nations are among the most vulnerable populations in B.C., with the most to lose – the loss of an elder represents a loss of language, culture and history.

Additionally, we have not given our consent to open up our territories, let alone been consulted on the province’s plans to reopen. Some of our nations have relaxed our closings to allow for some travel and essential visitors, while some have remained closed owing to the risks assessed by leadership. For all of us, we value the livelihoods of our people and will act with their best interest in mind.

Although the B.C. government has committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples, recognizing our rights to self-determination, and being actively involved in developing health programs that affect us, the government’s words are hollow if it fails to root out the systemic racism, stereotypes and lack of respect for Indigenous peoples that result in the kind of risk calculation the government is now making – what Dr. Shannon McDonald, chief medical officer of the First Nations Health Authority, recently
called a “political decision,” made at other tables.

While many British Columbians take comfort from soothing mantras to “be kind, be calm and be safe,” B.C. First Nations communities are being put at risk by immovable bureaucrats and paternalistic policy makers. We see a government steadfastly administering health care policies that are developed without us, and we cannot assume they are not based on racist assumptions.

We firmly believe that during the first wave, Indigenous lives were put at risk. But like any crisis, COVID-19 represents a potential turning point and an opportunity for change.

To prepare for a second and potentially more dangerous wave, we have called on the B.C. government to meet with us immediately to begin implementing the four basic safety measures. In response, the Premier has said the province will be disclosing “more information” but he remains silent on the measures. He also said on Friday that implementing UNDRIP means “enormous strides forward for genuine reconciliation,” but that there will be days when First Nations disagree about the adequacy of consultation or disclosure, and that’s “just the way it’s gonna go.” This dismissive rhetoric is in sharp contrast to Dr. Henry and Dr. McDonald’s insistence that the province supports First Nations who are not ready to receive visitors, and whose paramount focus is on protecting their communities, especially their elders.

We continue to call on the B.C. government to consult and meet with us, on a nation-to-nation basis, to begin implementing the four safety measures on an urgent basis, and to discuss the underlying issue of systemic racism, which appears to be driving the status quo of putting Indigenous lives at risk. If we don’t learn from lessons of the past, the history and devastation of past pandemics will only repeat themselves.

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