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DELIVERED BY EMAIL

BC First Nations Chiefs

First Nations Leadership Council

Re: First Nations Health Council

The First Nations Health Council ("**FNHC**") is working to make progress on the social determinants affecting First Nations' health as it relates to children, youth and families. We have been asked to provide a legal opinion on whether the FNHC's objective to make progress on the social determinants of health is within its mandate.

The FHNC's vision statement, as set out on its website, is as follows:

> The FNHC share the following vision statement with its respective partners the FNHA and the FNHDA:
>
> *Healthy, Self-Determining and Vibrant BC First Nations Children, Families and Communities.*

1. Executive Summary

We are of the opinion that the work that the FNHC has done on the social determinants of health falls within its mandate - specifically a mandate to provide political leadership with respect to making progress on the social determinants of health as established by the Consensus Paper adopted by the BC Chiefs at Gathering Wisdom IV in 2011.

In its current work on the social determinants of health, the FNHC is striving to create a collaborative platform with government through which First Nations Chiefs and regional leaders may participate in meaningful discussions with the appropriate government officials - it is creating space for the First Nations to do the work for themselves. This collaborative platform both promotes individual health and wellness of First Nations, and fosters strategic alliances with the government - two express duties the FNHC is obligated to carry out in the furtherance of its mandate.

The FNHC is an independently organized unincorporated association comprised of First Nation's leaders appointed by each region of British Columbia. Its current mandates come from its own terms of reference along with the 2011 Consensus Paper, British Columbia First Nations Perspectives on a New Health Governance Arrangement and Resolution from Gathering Wisdom IV (the **"Consensus Paper"**). This Consensus Paper also confirms that the FNHC is not subservient to the First Nations Leadership Council ("FNLC").

In respect of its work on the social determinants of health, the FNHC has signed two memoranda of understanding. One with the government of British Columbia and the other with the Federal Government. In each, the role of the FNHC is that of a facilitator that assists First Nations in securing government engagement in their initiatives.

The work contemplated by the MOU's is squarely within the FNHC's mandates, both in respect of the mandate in the TOR to provide political leadership as opposed to being a service delivery organization, and in respect of making progress on the social determinants of health as set out in the 2011 Consensus Paper.

This opinion will review the FNHC's organizational characteristics, the nature of its work in relation to the social determinants of health, and provide our analysis in respect of our conclusion that such work is within the FNHC's mandate.

2. Background Information

(a) Background to the FNHC

The FNHC is an unincorporated association comprising fifteen members, three members appointed by each of the five regions in BC reflecting the provincial health authority regions. Each region determines its own selection process for its members, including their length of term and appointment procedure.

When first established, the FNHC members comprised three appointees from the First Nations Summit, three appointees from the Union of BC Indian Chiefs and one appointee of the BC Assembly of First Nations. In 2010 these bodies agreed to change the membership of the FNHC to the fifteen members described above. The resolutions that set out this revised structure stated that "[The FNHC] will be responsible for reporting to Nations within their regions". The resolutions also stated that the transitional structure was to last for two years.

In 2011, the BC First Nations gave a direct mandate to the FNHC by way of the Consensus Paper. This Consensus Paper was adopted and ratified by BC Chiefs at the fourth annual Gathering Wisdom for a Shared Journey Forum. Under the Consensus Paper the BC Chiefs agreed to continue the FNHC "as a provincial-level political and advocacy organization that is representative of and accountable to BC First Nations". Accountability is primarily achieved through the Regional Caucuses and Gathering Wisdom Forums. In our opinion, the Consensus Paper supersedes the resolutions passed in 2010 and clearly establishes the FNHC as an ongoing organization, directly accountable to BC Chiefs through Regional Caucuses and Gathering Wisdom. With the passage of the Consensus Paper, the FNHC ceased to be accountable or subservient to the FNLC, and was directly charged with making progress on the social determinants of health.

(b) The FNHC Work to Progress the Social Determinants of Health

On March 3, 2016, the FNHC and the BC Minister of Aboriginal Relations and Reconciliation signed a memorandum of understanding ("**MOU 1**") outlining a regional engagement process and partnership to develop a shared ten-year social determinants strategy for First Nations. This will result in five regional multi-year social determinant strategies that reflect regional priorities and perspectives and support holistic models of health child and family development as a shared priority regionally and provincially. MOU 1 recognizes the many aspects of health and well-being, such as spiritual, mental, economic, emotional, environmental, social and cultural wellness. MOU 1 notes that the FNHC is mandated to advocate on First Nations' health and wellness matters.

Under MOU 1 the FNHC is tasked with evaluating the progress of regional strategies aimed at social determinants of heath. A structured approach is identified in MOU 1 whereby a platform is to be created for collaboration between the provincial government and First Nation communities (as represented by their respective Chiefs and leaders). Specifically, the parties are to work together through the engagement and approvals pathway as described in a Consensus Paper titled "Navigating the Currents of Change 2012" to build consensus and inform the development of a 10 year strategy. The Minister of Aboriginal Relations and Reconciliation's and FNHC's obligations under MOU 1 are to be carried out in a manner that upholds the 7 Directives, being:

1. Community-driven, Nation-based
2. Increase First Nations Decision-making
3. Improve Services
4. Foster Meaningful Collaboration and Partnership
5. Develop Human and Economic Capacity
6. Be without prejudice to First Nations Interests
7. Function at a High Operational Standard.

(the "**7 Directives**")

The purpose of MOU 1 is to confirm the Minister's and the FNHC's commitment to:

> 2.1 Define the initial engagement framework from which the Parties will determine mutual priorities and interests related to the social determinants of health.
>
> 2.2 Establish and define bilateral structures regionally and provincially that builds from the First Nation health governance structure and supports First Nation communities in each of the five (5) regions to engage in an ongoing process of planning, priority-setting, decision-making and reporting that is shared and reflects the authorities and accountabilities of the partners involved regionally and provincially.
>
> 2.3 Develop a tripartite ten-year social determinants strategy that sets out pragmatic, effective, responsive and culturally appropriate actions to address the social determinants of health with clear outcomes and agreed upon measures to track and report on progress.
>
> 2.4 Set out expectations for engagement of the Provincial Government and BC First Nations with the Government of Canada in developing the tripartite ten-year social determinants strategy.

Furthermore, on February 14, 2017, the FNHC entered into another memorandum of understanding ("**MOU 2**") with the federal Minister (the "**Minister**") of Indian Affairs and Northern Development whereby they agreed "to work together to make progress on the social determinants of health". Specifically, MOU 2 was created with the aim to work towards improving the health and well-being of First Nations children, youth and families.

In carrying out MOU 2's aim, Indigenous and Northern Affairs Canada ("**INAC**") and the FNHC agreed to uphold the principles set out in a Consensus Paper 2011 titled "British Columbia First Nations Perspective on a New Health Governance Arrangement" as endorsed by the British Columbia First Nations. The INAC and the FNHC agreed to employ the 7 Directives in carrying out their obligations under MOU 2. The express goals of MOU 2 are to:

> 1 Collaboratively develop a new funding and accountability framework in BC that addresses existing inequities, provides increased investment and greater flexibility in the design,

management and delivery of community-based prevention services, and establishes mechanisms for reciprocal accountability.

2 Collaboratively develop new structures that recognize First Nation decision-making and service delivery capacity at local, regional and provincial levels, and provide opportunities for First Nations to partner in the design, planning, funding and delivery of culturally appropriate and safe services accessed by First Nation children, youth and families.

3 Find constructive and collaborative processes for the reform of child and family services policies as it applies to First Nation children, youth and families in BC.

4 Develop strategies that strengthen linkages between agencies that provide services to First Nation children, youth and families in BC, including, but not limited to, the health, education, justice, public safety, employment and training, social services and child welfare systems.

5 Develop strategies that increase the integration and coordination of early childhood development services, ensuring First Nation children, youth and families have equitable access to a system of responsive, high quality, culturally safe and increasingly integrated services.

6 Develop approaches that address the root causes that contribute to the disproportionate rate of Indigenous children being taken into care, including mental wellness and substance use, intergenerational trauma, and poverty.

7 Support First Nations to build capacity to design local systems that reflect and promote the values, traditions and cultures of their Nations.

It is through the obligations and goals of MOU 1 and MOU 2 that the FNHC strives to advance the social determinants of health for First Nations in a manner that will positively impact the health of First Nations children, youth and families.

3. Discussion

(a) Social Determinants of Health and the First Nations Health Council's Mandate

The 2011 Consensus Paper referred to above sets out the mandate for the FNHC, including a mandate to "develop relationships and alliances with other First Nations organizations, government Ministries and Departments, and others, to achieve progress in the social determinants of health". "Social determinants of health" should be broadly interpreted as it would be in the ordinary course as the language is not restricted by subsequent modifiers or special definitions.

In our view, MOU1 and MOU2 fall within this mandate. Their purpose is the development of relationships with both the provincial and federal governments to assist First Nations in addressing social circumstances that impact the health of families and children. What is clear from MOU 1 and MOU 2 is that the FNHC is not taking control of children and family services. Rather, the FNHC is working with the appropriate government bodies to provide a platform for collaborative discussions about how social determinants of health may be improved to in-turn improve the health of First Nations children, youth and families. As such, the FNHC can be seen as setting the stage for open, transparent and meaningful collaboration between Chiefs and regional First Nations leaders and government decision making bodies.

The FNHC's Terms of Reference ("**TOR**") were created with the purpose of setting out the mandate, structure, roles and responsibilities, accountabilities, and processes of the FNHC. Within the TOR the FNHC's mandate is identified as the following:

1 Dedicated political leadership for the implementation of Health Plans

2 Support to First Nations in achieving their health priorities and objectives

3 Health Advocacy and Relationships

4 Politically oversee the transition of FNIH to a new First Nations Health Authority

The TOR provide narrow examples of duties the FNHC has to carry out in order to fulfill its mandate. In the second mandate (Support to First Nations in achieving their health priorities and objectives) the TOR states that the FNHC must "[p]romote individual health and wellness responsibilities, including self-care and health literacy". The third mandate (Health Advocacy and Relationships) expressly provides the FNHC with a duty to "[d]evelop relationships and alliances with other First Nations organizations, government Ministries and Departments, and others, to achieve progress in the social determinants of health".

As can be seen, the FNHC's work to progress the social determinants of health falls squarely within the purview of the second and third mandates of the FNHC's TOR. Social determinants of health are the external conditions that negatively affect individual health and wellness. The FNHC's focus on social determinants can be classified as an attempt to improve health through a proactive and preventative approach. MOU 1 and MOU 2 make it clear that the FNHC aims to address the social determinants of health through development of strategic alliances and the fostering of relationships with government Ministries and Departments.

(b) Agreements with other First Nations Organizations on Social Determinants of Health

On October 1, 2015 the FNHC signed a Protocol on Social Determinants of Health with the First Nations Leadership Council (FNLC) under which the parties agreed to work together to address social determinants of health. This protocol was approved by a resolution of the First Nations Summit passed on September 30, 2015 and by the Union of British Columbia Indian Chiefs. This protocol recognizes that both the FNHC and the FNLC "share the objective to improve health and wellness outcomes by improving the overall quality of life for First Nation children, families and communities in BC" and that both organizations are working together as separate entities in this area. The Protocol stated:

> The Parties acknowledge and respect that each Party has respective agreements and accountabilities, and take direction from BC First Nations through their respective governance structures and processes.

Under the section of the protocol headed "Commitments to Ongoing Collaboration", section B states that "the FNHC will provide direction regarding the social determinants of health to the FNLC". Later at section D, the protocol states that "the FNHC will track progress in the implementation of regional strategies and plans related to the social determinants of health".

On October 16, 2015 the First Nations Summit passed a resolution to call for a meeting with the BC Premier, the BC Minister of Children and Family Development, the FNHC and the FNLC to "develop a

"Call to Action Strategy for protecting vulnerable children and families" as a first focus of the Ten-Year Tripartite Social Determinants Strategy".

The work of the FNHC on the social determinants of health generally and specifically in connection with children and families has therefore been endorsed by the FNLC and the First Nations Summit.

4. Conclusion

In conclusion, we confirm our opinion that the work being undertaken by the FNHC in relation to social determinants of health, including the entering into of MOU1 and MOU2, fall within the mandate of the FNHC.

In this respect, we recall the FNHC's vision:

> *Healthy, Self-Determining and Vibrant BC First Nations Children, Families and Communities.*

Sincerely,
DLA Piper (Canada) LLP
Per:

DLA Piper (Canada) LLP

Elizabeth Mayer

EZM

cc: Grand Chief Doug Kelly

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