

## **Systemic Failures in BC Laws: OIPC Ruling on COVID Info Sharing Shows Continuing Failure of Government to Recognize First Nations and Their Unique Needs**

Ruling shows the limit of BC's legislative and institutional framework to understand and respect the information needs of First Nations governments.

**HEILTSUK & NUU-CHAH-NULTH TERRITORIES** (December 17, 2020) – First Nations leaders issued a joint statement in response to the OIPC Commissioner's ruling this morning on their application for an order for the Ministry of Health to disclose COVID-19 information under section 25(1)(a) of the Freedom of Information and Protection of Privacy Act (FIPPA):

"We are angry and disappointed by today's ruling which will continue to allow the Ministry of Health to withhold the life-saving information we have been requesting since the COVID-19 pandemic began. The situation is more urgent than ever given the exponential jump in infections, hospitalizations and deaths that are occurring to Indigenous peoples.

BC's colonial system of government has failed us yet again by failing to recognize us as the self-governing nations we are. We filed this application because we vowed to use every legal tool to protect our people. Today's ruling shows us the limits of these tools, because BC and its laws won't recognize us, or work with us, on a true government-to-government basis, despite saying the right words and passing legislation like the Declaration on the Rights of Indigenous People (DRIPA).

If the Ministry of Health and British Columbia have any interest in doing the right thing, they will come to the table immediately and work with us to develop information sharing agreements that can help keep our people safe. Today's ruling underlines the urgency of this need:

1. The Commissioner at several points in his ruling, highlights the need to enact legislation to provide for information sharing that facilitates self-government for First Nations. He quotes heavily in his ruling from Mary Ellen Turpel-Lafond's recent report on systemic racism, *In Plain Sight*.
2. The decision underscores the inability of the Freedom of Information and Privacy Protection Act (FIPPA) - in its current form - to facilitate nation-to-nation information sharing that meets the needs of First Nations.

While we won a hollow legal victory (the Commissioner rejected the Ministry of Health's arguments that, during an emergency, the *Public Health Act* overrides the Ministry's duty to comply with the disclosure duty under section 25(1)(a) of the Freedom of Information and Protection of Privacy Act), the ruling lays bare the woeful inadequacies of BC's current information sharing and privacy legislation.

We will continue our fight for justice, dignity and recognition. We will utilize everything in our power to protect ourselves.

- Marilyn Slett & Judith Sayers

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