

The First Nation perspective is that representations and oral promises were made in all of the numbered Treaty negotiations to provide medical services by the Crown to the First Nation citizens. In addition, they say the principle of equal treatment for the numbered treaties means that all the treaties were intended to be considered as one complete agreement.

Legal history

Several court rulings have broadly interpreted the medicine chest clause to mean the generous provision of medicines, drugs, and medical supplies. However, the Treaty right to health has not been successfully argued outside of Treaty 6, with findings that there are not enough facts to prove the right applies more widely.

Nevertheless, other court rulings bolster the First Nations position. Courts have recognized the importance of looking at Indigenous oral histories when interpreting the Treaties. They have acknowledged that Treaties represent what the Supreme Court has described as an “exchange of solemn promises” between the Crown and Indigenous Peoples and have found that any

ambiguities must be resolved in favour of the Indigenous parties to the Treaty.² These findings are intended to preserve the integrity of the original intentions of the Treaties and correct historical disadvantages experienced by Indigenous people as the result of laws, policies, and actions of the Government of Canada and Canadian society at large.

A broader perspective

Aboriginal and Treaty rights are constitutionally protected rights under Section 35 of Canada’s Constitution Act, 1982. That means these rights carry the highest power in Canadian law. Canada has also signed numerous international treaties and agreements outlining its commitment to the human rights of Indigenous Peoples. For example, in 2010, Canada endorsed the *United Nations Declaration on the Rights of Indigenous People* (UNDRIP). UNDRIP states that Indigenous people are entitled to full enjoyment of all human rights and freedoms. It makes specific statements for recognizing and enforcing Treaties and recognizing the rights to health for Indigenous Peoples.

The Truth and Reconciliation Commission (TRC) of Canada recommended UNDRIP as the framework for reconciliation. The federal government has committed to enacting the recommendations of the TRC’s report, which deplored the state of Indigenous health in Canada. The TRC called on all levels of governments to “acknowledge that the current state of Aboriginal health in Canada is a direct result of previous Canadian government policies ... and to recognize and implement the health care rights of Aboriginal people as identified in international law, constitutional law, and under the Treaties.”³

The federal government’s own *Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples* includes the statement that “treaties, agreements and other constructive arrangements between Indigenous Peoples and the Crown have been and are intended to be acts of reconciliation based on mutual recognition and respect.”⁴ However, Indigenous Peoples in Canada continue to suffer from inequality, including poor health outcomes and significant health inequities compared to non-Indigenous people.

² Starblanket, G., & Hunt, D. (2020). *COVID-19, the numbered treaties & the politics of life: Special report*. Yellowhead Institute, p. 19.

³ Truth and Reconciliation Commission of Canada. (2015). *Truth and Reconciliation Commission of Canada: Calls to action*, p. 2.

⁴ United Nations General Assembly. (2007). *United Nations Declaration on the Rights of Indigenous Peoples*. Resolution 61/295.



Conclusion

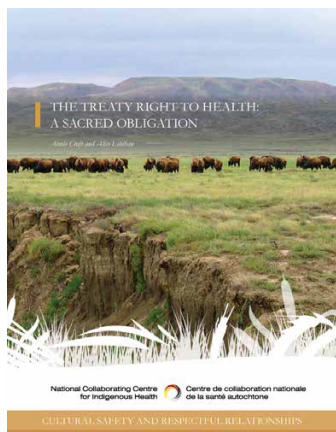
There are strong arguments to support the Treaty right to health in Canada. Even though Treaty 6 is the only historic treaty to contain a written agreement for the provision of a medicine chest, there is evidence that oral promises to health and health care have been made in all the numbered Treaties. The right to health and health care as an important part of Canada's agreement with First Nations is further affirmed by the Canadian constitution, various court rulings, the federal government's commitment to UNDRIP and to enacting recommendations of the TRC, and its own *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*.

The federal policy of denying the Treaty right to health hampers efforts to achieve health equity, resolve health jurisdiction disputes, and establish Nation-to-Nation relationships. The Government of Canada has committed to each of these – and each is necessary if reconciliation is to be accomplished.

The federal government's stated commitment to these goals would seem to make it imperative that it give the Treaty right to health a new, modern meaning that reflects both the original intention of the numbered Treaties and also the statement by the government that “by doing justice to the Treaties, it may honour the past and enrich the future.”⁵

⁵ Boyer, Y. (2014). *Moving Aboriginal health forward: Discarding Canada's legal barriers*. Purich Publishing Limited, p. 153.

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For further information, or to obtain printed copies of the full report, please contact:

National Collaborating Centre for
Indigenous Health (NCCIH)
3333 University Way
Prince George, BC,
V2N 4Z9 Canada

Tel: (250) 960-5250
Fax: (250) 960-5644
Email: nccih@unbc.ca
Web: nccih.ca



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for Indigenous Health
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de la santé autochtone

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