



# ANTI-RACISM DATA LEGISLATION

BC First Nations Engagement Report

March 31, 2022



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# PREAMBLE

## Content Warning

This report covers topics including, but not limited to, colonial violence, systemic racism, and Indigenous-specific racism and inequity. The information and material presented in this document may trigger unpleasant feelings, thoughts, and responses. The KUU-US Crisis Line is available 24 hours a day, seven days a week, toll-free anywhere in BC at 1-800-588-8717.

## Disclaimer

The report was prepared by Quintessential Research Group Inc., a socio-economic, health research, environmental, and engagement consultancy comprised of Indigenous and non-Indigenous practitioners and experts in Victoria, and several remote offices throughout British Columbia. The report was prepared for the sole purpose of describing the results of engagement with First Nations peoples in British Columbia on the proposed anti-racism data legislation. Funding for this project was provided by the Ministry of Attorney General, Government of British Columbia. The material contained in this report reflects the best professional judgement of the researchers, based on the information gathered and available at the time of its completion, and as appropriate for the scope of work. Any use that a third party makes of this report, or any reliance, or any decision based on it, is at the discretion and responsibility of such third parties. The information contained herein should not be construed as to define, limit, or otherwise constrain First Nations peoples' self-determination, rights, and interests.

## Acknowledgments

We acknowledge that this engagement on anti-racism data legislation spans many First Nations' territories and treaty areas across British Columbia and we are grateful to work and live on these lands. We greatly appreciate all of the people who participated in generating the knowledge for this report. We would like to acknowledge and express our gratitude to BC First Nations groups and organizations for their involvement in this project, but especially to First Nations participants in British Columbia who shared their experiences of the harmful impacts of ongoing colonial practices, systemic racism, discrimination, and stereotyping. We acknowledge that it can be challenging to share personal stories and thank all of those who courageously shared their stories. We also acknowledge that First Nations is a colonial term and we recognize and honour the distinctiveness of each nation in BC. We are grateful to Elder Tina Erickson from Nak'azdli Whut'en for opening and blessing our engagement sessions. We are also thankful to Elder Temosun-THUT of Tsartlip First Nation, and Myrna Crossley of the Songhees Nation for providing us with spiritual strength and protection through the stories that lay within the artwork and medicines prepared for participants of this anti-racism data legislation engagement process. We are proud of this work but also recognize that this is a beginning step and there is still a lot more anti-racism work required in the implementation stages moving forward.

## About the Artwork



Temosen-THUT (Charles Elliott) is a Coast Salish artist and is from the Tsartlip First Nation on Southern Vancouver Island. As a young artist, Charles carved designs on cotton wood bark and styled his own small totem poles and model canoes coached by his father, uncles, and encouraged by his mother. Art and wood carving have been his focus for 55 years. Inspired by the love of his Salish art tradition, Charles' art shows his dedication to classic Coast Salish design as he recreates ancient utilitarian art objects and contemporary new works, all within the Coast Salish discipline. His work entitled ITOTELNEW (which means working with the people to learn together or "the people learning") is featured in this report. Temosen tells us that the image represents the importance of working with all Indigenous peoples and includes representations of First Nations, Inuit, and Métis people in the artwork.



Myrna Crossley is of Coast Salish and Settler descent, and is from the Songhees Nation. Myrna has lived on the Tsartlip Reserve in the WSÁNEĆ traditional territory on the Saanich Peninsula of Vancouver Island for the past 31 years, with her husband Charles Elliott and their children. Myrna previously worked for the Tsartlip Band for 14 years and food security was a major part of her job description. Myrna apprenticed under Elise Krohn, an Herbalist, Native Foods Specialist, Educator and Author from Washington State, through the sponsorship of the Tsartlip Band. Myrna harvests seasonally and has been establishing gardens on her property for food, medicine, and natural dyes. She uses the plants for tea, salves, tinctures, lip balm, body cream, and plant dyes. Myrna prepared the medicines that were gifted during the engagement work throughout the project.

## Key Terms

**Disaggregated data** is data that provides sub-categories of information – for example, by ethnic group, race, gender, occupation, or educational status. This information is usually anonymized or de-identified; that is, stripped of personal information such as name or date of birth, and used in statistical analysis.<sup>1</sup>

**Indigenous data sovereignty** can be understood as the right of a nation, group of people, or individual to exert control over the governance of data collection, application, and ownership.<sup>2</sup> Data governance is the responsibility that goes along with assertion of the aforementioned right.

**Indigenous self-determination** refers to the fundamental right of all Indigenous peoples to freely decide their own political status and to freely pursue their own cultural, economic, and social development.<sup>3</sup>

**Indigenous-specific racism** refers to the unique nature of stereotyping, bias, and prejudice about Indigenous peoples in Canada that is rooted in the history of settler colonialism. This ongoing race-based discrimination, negative stereotyping, and injustice experienced by Indigenous peoples perpetuate power imbalances, systemic discrimination, and inequitable outcomes stemming from colonial policies and practices.<sup>4</sup>

**Race** refers to a group of people who share the same physical characteristics such as skin tone, hair texture, and facial features. Race is a socially constructed way to categorize people and is used as the basis for discrimination by situating human beings within a hierarchy of social value. Racial categories may vary over time and place, and can overlap with ethnic, cultural, or religious groupings.<sup>5</sup>

**Racial Equity** is the systemic fair treatment of all people. It results in equitable opportunities and outcomes for everyone. It contrasts with formal equality where people are treated the same without regard for racial differences. It is a process (meaningful engagement) and an outcome (equitable treatment in policies).<sup>6</sup>

**Systemic Racism** refers to routine and societal systems, structures, and institutions such as requirements, policies, legislation, and practices that perpetuate and maintain avoidable and unfair inequalities across racial groups, including the use of profiling and stereotyping.<sup>7</sup>

<sup>1</sup> British Columbia's Office of the Human Rights Commissioner, 8.

<sup>2</sup> British Columbia's Office of the Human Rights Commissioner, *Disaggregated demographic data collection in British Columbia: The grandmother perspective*, 2020, 86.

<sup>3</sup> British Columbia's Office of the Human Rights Commissioner, 89.

<sup>4</sup> Turpel-Lafond, *In Plain Sight: Addressing Indigenous-Specific Racism & Discrimination in B.C. Health Care*, 2020, p8.

<sup>5</sup> Turpel-Lafond, *In Plain Sight: Addressing Indigenous-Specific Racism & Discrimination in B.C. Health Care*, 2020, 8.

<sup>6</sup> Government of BC, "Anti-Racism Data Legislation Engagement Questions," 2021.

<sup>7</sup> Turpel-Lafond, *In Plain Sight: Addressing Indigenous-Specific Racism & Discrimination in B.C. Health Care*, 2020, p8.

# EXECUTIVE SUMMARY

## Anti-Racism Data Legislation

BC First Nations have gathered and used data to govern and steward their territories, and to direct the health and well-being of their people since time immemorial. They have continued to assert their data sovereignty, including developing data governance principles and protocols, to protect their rights in the use of data and information about their peoples and territories. Data sovereignty includes the use of data to illuminate how racism and colonialism unjustly impact and oppress their people. For this reason, BC First Nations have called for greater access to, and use of, race and identity data, and have also insisted that greater access to, and use of, data *about* them, be led, governed, and controlled *by* them.<sup>8</sup>

Data collection initiatives about First Nations have been part of an ongoing process of colonialism, and experienced as an act of violence and genocide. In fact, the impacts of colonialism are widespread and persist through provincial systems and policies; they are embedded in the justice system, education system, health care system, and child welfare system, amongst others.

In the fall of 2020, the Ministry of Attorney General and Minister Responsible for Housing and the Ministry of Citizens' Services were mandated to work with the Office of the Human Rights Commissioner to create legislation to reduce systemic racism by enabling the collection of race-based data – identifying and illuminating inequalities, gaps, and barriers in sectors such as, but not limited to, policing, healthcare, and education. In addition to anti-racism data legislation, the government also plans to introduce a broader piece of anti-racism legislation in 2023.

In providing this mandate, the Province of British Columbia is responding to recommendations from two key reports: *In Plain Sight: Addressing Indigenous Specific Racism and Discrimination in B.C. Healthcare* and *Disaggregated demographic data collection in B.C.: The grandmother perspective*.

<sup>8</sup> There is diversity and difference between rights and title holders among BC First Nations. For example, the Indigenous peoples that live in BC now, who are originally from other territories outside of BC, have not had the same experiences as BC First Nations. BC First Nations have few historic treaties and little formal recognition as individual nations. We respect and honour the distinctiveness of each First Nation in BC.

## Engagement with BC First Nations

The Ministry of Attorney General commissioned Quintessential Research Group (QRG) to undertake engagement with BC First Nations on the proposed anti-racism data legislation (see Appendix A for methodology). An engagement process with BC First Nations was conducted from December 2021 to March 2022, led by QRG. A discussion paper entitled *Anti-Racism Data Legislation: A Discussion Paper for First Nations in BC* (see Appendix B) supported the engagement process. The discussion paper synthesized relevant resolutions and mandates adopted by BC First Nations into five draft conditions necessary for BC First Nations support of the development and implementation of the anti-racism legislation:

1. The legislation must fully align with the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA).
2. The legislation must increase First Nations Ownership, Control, Access, and Possession (OCAP®).
3. The legislation must embed a distinctions-based approach.
4. The legislation must enable First Nations-led efforts to develop institutional data capacity.
5. The legislation must not result in any degradation of data quality.

Discussion questions embedded in the paper sought to elicit feedback on these conditions and related perspectives, such as key interests, potential risks, and additional engagement expectations.

QRG worked with the Ministry of Attorney General, the First Nations Leadership Council (FNLC), and other First Nations organizations to distribute the anti-racism data legislation discussion paper to every First Nation in BC, with an invitation to attend engagement sessions from December 2021 to March 2022. Additionally, QRG held individual meetings with BC First Nations upon request, key advisor interviews with First Nations data experts, and met with First Nations organizations. The Ministry of Attorney General and Parliamentary Secretary, Rachna Singh, also invited First Nations leaders to meet on a nation-to-nation basis to review the policy document directing draft legislation during several technical briefing sessions in February 2022. These will be followed by sessions with the Parliamentary Secretary and BC First Nations to review the draft legislation in April 2022.

QRG followed principles of confidentiality and privacy in the gathering of information during the engagement process. For this reason, the findings presented in this report are not attributed to individuals and have been compiled, synthesized, and presented according to themes.



## Summary of What We Heard

Overall, the conditions in the anti-racism data legislation discussion paper and the questions used to guide the engagement sessions were well received and supported among participants. After each session, and then again after all engagements were complete, QRG processed the data using qualitative data analysis software to identify the key themes which were triangulated with interpretive analysis.<sup>9</sup>

Throughout the engagement process, it was noted that the Province already has access to data about BC First Nations, and this access has not necessarily led to policy changes. There is a need to ensure that new data collected under the proposed anti-racism data legislation comes with accountability, and that all of this is done with the full respect of BC First Nations governance and self-determination. New Indigenous committees, working groups, and similar processes must not be prescribed without the endorsement of BC First Nations.

Resourcing and capacity to work with First Nations data must be provided directly to BC First Nations, to manage their own data, establish properly structured relations with the Province, and establish infrastructure and institutions for Ownership, Control, Access, and Possession (OCAP®). The Province must clearly understand the existing standards, indicators, and reports that First Nations have developed over several years. Adjustments cannot be made to existing data standards and indicators in the rush to address the gaps for other racialized groups.

BC First Nations participants expressed interest in extended and ongoing consultation and cooperation on the legislation and all subsequent aspects – including on data standards, regulations, and policies and directives.

The key themes that emerged from the engagement sessions include:

- First Nations data sovereignty and data governance
- First Nations data ownership and rights to control access and possession
- Distinctions-based approach
- Alignment of data with UNDRIP and DRIPA
- Actioning of data and existing commitments to combat racism
- Co-development of legislative processes with BC First Nations
- Institutional data capacity
- Data collection, data standards, and data quality

<sup>9</sup> All data were analyzed using NVivo qualitative coding software for thematic relationships. Please see Appendix A for details on the coding schema and structure.



# INTRODUCTION

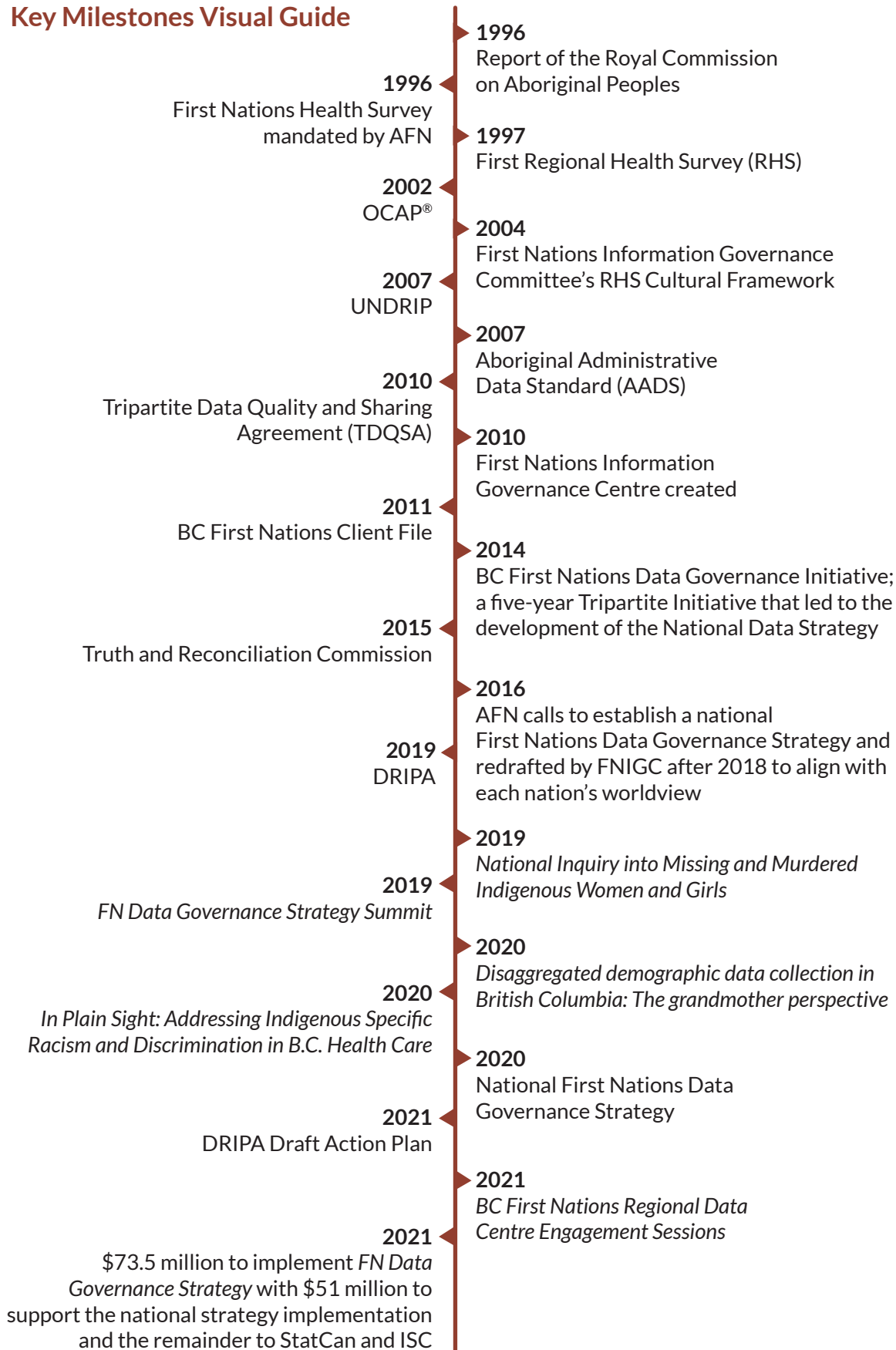
## Context for BC First Nations Data

BC First Nations have utilized data, information, and knowledge to govern and protect their territories, and advocate for the well-being of their communities since time immemorial. Indigenous data sovereignty is a fundamental human right which is inherently linked with the rights to self-determination and self-governance. Since the onset of colonialism, Indigenous rights have been violated, and data has been used against Indigenous peoples to depict them as disorganized and inferior in order to justify continued colonial occupation of their lands and waters.

Colonialism is ongoing and continues to impact BC First Nations through Canadian governmental institutions and policies. BC First Nations have tremendous intergenerational resilience and have acted on their inherent rights to self-determination and data sovereignty by developing data governance principles and protocols to protect their rights. Since 1996, BC First Nations have clearly described their needs regarding the use of data and information (see page 10 for key data milestones achieved by First Nations since 1996).

One of the needs expressed by BC First Nations is the use of data as a tool to uncover how racism and colonialism unjustly impacts and oppresses First Nations peoples. For this reason, BC First Nations have called for greater access to, and use of, race and identity data. BC First Nations have also insisted that greater access to, and use of, data *about* them be led, governed, and controlled by *them*.

## Key Milestones Visual Guide



## Proposed Anti-Racism Data Legislation

There are currently gaps in law and policy, and a lack of consistency in the ways provincial entities collect and use race-based data. While race-based data as it pertains to “personal information” is regulated by Part 3 of the *Freedom of Information and Protection of Privacy Act* (FIPPA), much of the de-identified race-based data used by the Province is not offered the same level of regulatory protection. The proposed anti-racism data legislation will provide greater protection and standardization regarding the collection, use, and disclosure of de-identified race-based data, which will help provincial entities and BC First Nations better identify and address systemic racism in public sector services including policing, health care, and education.

In the fall of 2020, the Province of British Columbia mandated the Ministry of Attorney General and Minister Responsible for Housing and the Ministry of Citizens’ Services to work with the Office of Human Rights Commissioner to create legislation dedicated to reducing systemic racism by enabling the collection of race-based data. In addition to the proposed anti-racism data legislation, the Province also plans to introduce a broader piece of anti-racism legislation in 2023. In providing this mandate, the Province is responding to recommendations from two key reports:

*In Plain Sight: Addressing Indigenous Specific Racism Discrimination in B.C. Healthcare*

*Disaggregated demographic data collection in B.C.: The grandmother perspective*

The Province states that the need for anti-racism data legislation arises from several factors, such as the need to collect race, ethnicity, and Indigenous-specific data to identify, measure, and monitor systemic racism and discrimination in government policies, programs, and services. Specifically, the objectives of the proposed legislation are intended to:

- Develop trust, support, and accountability for data use in racialized communities.
- Create alignment with the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) and ensure Indigenous involvement.
- Create protections for those who provide data.
- Provide oversight and standards for data collection, use, disclosure, and possession.

# ENGAGEMENT APPROACH

The engagement approach on the anti-racism data was shaped by what has already been expressed by BC First Nations. The existing mandates and principles adopted by BC First Nations were reviewed and synthesized into a set of draft conditions for support for this legislation, and served as the centrepiece of the engagement discussion paper entitled “*Anti-Racism Data Legislation: A Discussion Paper for First Nations in BC*” (see Appendix B). These draft conditions were as follows:

***The legislation must be in full alignment with the United Nations Declaration on the Rights of Indigenous Peoples and the Declaration on the Rights of Indigenous Peoples Act.***

- Indigenous rights to data sovereignty and governance must be clearly and prominently upheld within the legislation.
- The tools under DRIPA for shared decision-making agreements between the Province and Indigenous Governing Bodies, as related to data about their Citizens and members, must be explicitly enabled.
- First Nations title and rights holders must be included as key decision-makers in the development of legislation, standards, and regulations.

***The legislation must increase First Nations Ownership, Control, Access, and Possession (OCAP®) of data about their citizens.***

- There must be a full inventory prepared of existing First Nations data held by BC and be subsequently disclosed to BC First Nations.
- Agreements must be negotiated between the Province and BC First Nations describing:
  - First Nations ownership of the data identifiers, such as status numbers
  - First Nations decision-making related to the data
  - First Nations access to the data
  - Any provisions for stewardship, virtual possession, or possession of the data.
- First Nations must be supported to collectively and individually establish the research and data collection agenda related to anti-racism and their Peoples, and the Province cannot unilaterally act to conduct new surveys, research, or studies involving Indigenous Peoples.

*The legislation must embed a distinctions-based approach.*

- The rights of First Nations must be acknowledged as unique and distinct, arising from their prior occupation, use, and title to the land.
- The data sovereignty of each BC First Nation must be respected.
- The specific racism, stereotyping, discrimination, and oppression experienced by First Nations peoples due to settler colonialism must be acknowledged as different than that faced by other racialized populations.

*The legislation must enable First Nations-led efforts to develop institutional data capacity.*

- The concept of a BC First Nations data governance centre established by, and for, BC First Nations must not be inhibited or restricted in any way.
- The concept of a BC First Nations data governance centre, once properly mandated and established by and for BC First Nations, can be positioned as a future key partner in support of BC First Nations data sovereignty and governance related to race-based data.
- New pan-Indigenous committees, working groups, and similar processes must not be prescribed without the endorsement of BC First Nations.
- Resourcing and capacity to work with First Nations data must be provided directly to First Nations to manage their own data, establish properly structured relations with the Province of British Columbia, and establish infrastructure and institutions for Ownership, Control, Access, and Possession.

*The legislation must not result in any degradation of data quality.*

- There must be a clear understanding of the existing standards, indicators, and reports that First Nations have developed over many years.
- Adjustments cannot be made to existing data standards and indicators in the rush to address the gaps for other racialized groups.
- There must be consideration paid to the need for data comparability through time.
- The legislation must require full co-development of any regulations, standards, and processes.

Discussion questions embedded in the paper sought to elicit feedback on these conditions and related perspectives, such as key interests, potential risks, and additional engagement expectations.

## Methods of Engagement

QRG provided multiple and varied ways for First Nations and First Nations organizations to share insights and perspectives on the anti-racism data legislation.

A key component of the planned engagement approach was to have a presentation and discussion at the annual First Nations Leadership Gathering (FNLG) between BC First Nations and Provincial Cabinet members on December 1, 2021. However, emergency circumstances related to major flooding throughout the province resulted in the cancellation of the FNLG. Following this shift in the engagement process, QRG planned alternate ways to engage First Nations. QRG worked with the Ministry of Attorney General, the First Nations Leadership Council (FNLC), and several First Nations organizations to distribute the anti-racism data legislation discussion paper to every First Nation in BC, with an invitation to attend discussion sessions from December 2021 to March 2022, and to also meet on a nation-to-nation basis to review the draft legislation.

In addition to preparing and distributing the discussion paper, QRG held numerous focus group sessions, interviews, presentations, and dialogue sessions with interested First Nations participants. QRG also provided technical support as requested to community-level





engagement sessions for Tsleil-Waututh Nation, who successfully applied for funding (see Appendix C for the Tsleil-Waututh Nation status update), as did Tla'amin Nation, to lead their own community engagement process.

QRG organized focus group sessions from December 2, 2021 to January 28, 2022, to provide an opportunity for First Nations to share their knowledge and provide input into this process. The focus group sessions included a total of nine participants.

In an effort to increase outreach beyond the focus group sessions, QRG identified several key advisors and experts in the field of data sovereignty, and invited interviews with these individuals. Interviews were held with 11 participants between December 1, 2021 and March 1, 2022.

QRG also offered a presentation on the anti-racism data legislation with First Nations Chief and Councils or management teams. QRG conducted three Council presentations from December 1, 2021 to March 1, 2022.

As another method for engagement, QRG communicated with First Nations to ascertain their interest by conducting a presentation on the anti-racism data legislation with their Chief and Council or management team. QRG conducted three Band Council and First Nation/Band Council presentations from December 1, 2021 to March 1, 2022. QRG also reached out to eight First Nations-mandated organizations. Four of these are First Nations leadership organizations in BC and the other four are sector-specific entities. QRG held meetings with all eight First Nations sector-serving organizations. As there are approximately 200 Councils and 34 nation groups, additional technical briefing sessions have been scheduled for April 2022 on a nation-to-nation basis. It is also important to continue further engagement with BC First Nations during the implementation of the anti-racism data legislation.

As the policy framework for the legislation was being developed, QRG coordinated four technical briefing sessions hosted by Parliamentary Secretary, Rachna Singh, staff from the Ministry of Attorney General and Minister Responsible for Housing, and the Ministry of Citizens' Services, with First Nations leadership. The sessions were held from January 31, 2022 to February 10, 2022, and were 90 minutes in duration. In each meeting, First Nations Chiefs, Council members, and administrators provided input into the key policy document that was used to guide the drafting of the anti-racism legislation. Parliamentary Secretary Singh also provided a presentation on the anti-racism data legislation initiative at a First Nations Summit meeting on February 17, 2022.

QRG will also coordinate three additional sessions that are scheduled in April 2022, again hosted by Parliamentary Secretary Singh, staff from the Ministry of Attorney General and Minister Responsible for Housing, and the Ministry of Citizens' Services, with First Nations leadership. In these 90-minute sessions First Nations leaders will have an opportunity to review the draft legislation prior to its introduction in the Legislature. Appendix A outlines the engagement methods and activities in more detail.

# SUMMARY OF FINDINGS

## BC First Nations Participation

Between early December 2021 and March 2022, QRG engaged 58 First Nations participants during 26 events. We hosted five different types of engagements: (1) focus groups; (2) key advisor interviews; (3) First Nation/Band Council presentations; (4) dialogue with First Nations organizations; and (5) technical sessions with First Nations leaders and the Province. Participants included First Nations leaders, First Nations government officials, Chiefs, Councillors, staff, as well as Elders and community members.

Method of Engagement	Number of Sessions held	Number of Participants
Focus Groups	5	9
Key Advisors	11	11
First Nations Governments	3	11
Technical Sessions	4	9
First Nation Organizations	3	18
<b>Total</b>	<b>26 engagements</b>	<b>58 people</b>



## Key Themes

The intention of the various engagement sessions was to provide an opportunity for BC First Nations participants to share knowledge and provide input into the anti-racism data legislation, based on the discussion paper circulated.

In the interest of protecting participants' identity, individuals were quoted anonymously and by method of engagement, unless QRG was granted permission specifically by individual participants.

After each session, and then again after all engagements were complete, QRG processed the data with qualitative data analysis software to identify key themes which were then triangulated with interpretive analysis. These themes, which are related and interconnected with one another, are as follows:

- First Nations data sovereignty and data governance
- First Nations data ownership and rights to control access and possession
- Distinctions-based approach
- Alignment of data with UNDRIP and DRIPA
- Actioning of data and existing commitments to combat racism
- Co-development of legislative processes with BC First Nations
- Institutional data capacity
- Data collection, data standards, and data quality

# First Nations Data Sovereignty and Data Governance



**This legislation needs to recognize that Indigenous data sovereignty is about each Nation taking control of their own identity, their intellectual property and their data. It can't just be a one off and needs to support systemic change across the whole of government and help educate civil society.**



Gwen Phillips, Ktunaxa Nation

From a First Nations perspective, First Nations data sovereignty and data governance must underpin this legislation. As clearly stated by one participant, the legislation must “really clearly state Indigenous data sovereignty as a core principle of the legislation.”

Nearly all participants voiced concerns about the use of the data: who collects it, who shares it, and who is making decisions based on the data. As one participant stressed, “it is important that First Nations are in charge of data [and] what is shared. We don't have to share it.” As described by another participant: “Data needs to be aligned with community ethics and protocols.”

This perspective in part responds to the historic misuse of data: “Government uses our data to inform decision making about us and has been problematic.” Many participants clearly stated that they do not trust the Province to collect, use, and act upon data about First Nations peoples, and that this legislation must advance and support First Nations data sovereignty and governance.

The legislation must enhance First Nations governance of First Nations data, and this will both build trust and create higher quality data. First Nations participants noted that this recognition of data sovereignty must be done with a view not just at the provincial level, but with First Nations individually; the legislation must recognize that rights rest with nations and help enable proper and practical data governance relationships.

In summary, in order to ensure Indigenous data sovereignty and Indigenous data governance as an outcome, participants stressed that the legislation must:

- Be enabling and not prescriptive.
- Address systemic racism and the structures, systems, and ideologies that perpetuate racism – recognize this as a colonial problem, not a First Nations problem.

- Uphold the shared interests between the Province and BC First Nations in affirming Indigenous human rights – including First Nations data sovereignty, intellectual property ownership, and self-determination.
- Create ways for BC First Nations to interpret and implement their expressions of sovereignty in different ways as appropriate to them.

Participants identified several risks that must be avoided:

- Being too narrow and therefore prescriptive.
- Being created within the western legal tradition which undermines obligations for consultation and co-operation under DRIPA.
- Not addressing cultural identity as unique to each First Nation.
- Not addressing Indigenous rights.
- Excluding people not living in their community, or on their nation's land or territory.
- Presents challenges in terms of privacy for smaller BC First Nations seeking data on small community sizes (e.g. small geographic area data).

## THEME

# First Nations Data Ownership and Rights to Control Access and Possession



**Inherent rights of First Nations peoples are tied to the lands and waters of these territories. Settler systems have obligations under international, national, and provincial laws to uphold our inherent rights to self-determination. The right of First Nations people to own, control, access, and use our data is already ours, and must be hardwired through every aspect of the anti-racism data legislation.**



Danièle Behn-Smith, Eh Cho Dene Fort Nelson  
First Nation & French Canadian/Metis

Many participants referenced the OCAP® principles as the core principles and practices that must be embedded in the legislation. This goes beyond simply talking about OCAP®, but actually implementing it: “It is one thing to invoke OCAP®, it’s another thing to take ownership of it.” As some participants noted, the application of OCAP® principles could lead to better data use: “At one point in the journey, we create our own indicators” and, “data is only anti-racist if First Nations own it”.

The “control” component of the OCAP® principles was also a key focus of the discussion, as noted by one participant for example, “the legislation cannot result in an outcome whereby the Province gives itself more authority to collect data about us.” As noted during one of the sessions, “there is an imbalance of power when it comes to data collection” and this legislation must ensure that BC First Nations are in charge of their data, including decisions about collection, sharing, and use.

Several participants questioned whether the legislation would resolve privacy barriers to enable First Nations data to be in the hands of BC First Nations.

# Distinctions-Based Approach



**The ability to collect and manage data is about governance – service, protection, access to communities – we need this information.**



Judith Sayers, President,  
Nuu-chah-nulth Tribal Council

The development and implementation of the legislation must take a distinctions-based approach. BC First Nations participants voiced concern about the prevalence of pan-Indigenous approaches, both in relation to the unique position of First Nations in British Columbia relative to other Indigenous peoples (including Métis and Inuit), and the difference between First Nations. Participant comments reinforced that First Nations rights are tied to their title to the land and associated Section 35 rights in BC. This necessitates a government-to-government relationship and brings in issues of the territorial jurisdiction of BC First Nations with respect to data about, and within, their land base. The Métis and Inuit peoples do not have the same rights as First Nations in BC. This aligns with Principle 10 of the province's *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples*: "A distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of Indigenous peoples in BC are acknowledged, affirmed, and implemented." As articulated by one participant, "we have a ton of diversity across the country . . . but we're not all the same, and so this default to try and treat us the same at times, I think, does more harm than good."

Several participants spoke about the Province's need to be more flexible and deal with individual nations, not with BC First Nations as a homogeneous group. A focus group participant suggested that, in relation to OCAP®, "what [data] ownership looks like for one nation, is not how it will be for all communities." Several participants spoke of the contrasting worldviews that complicate the nation-to-nation process for developing legislation.

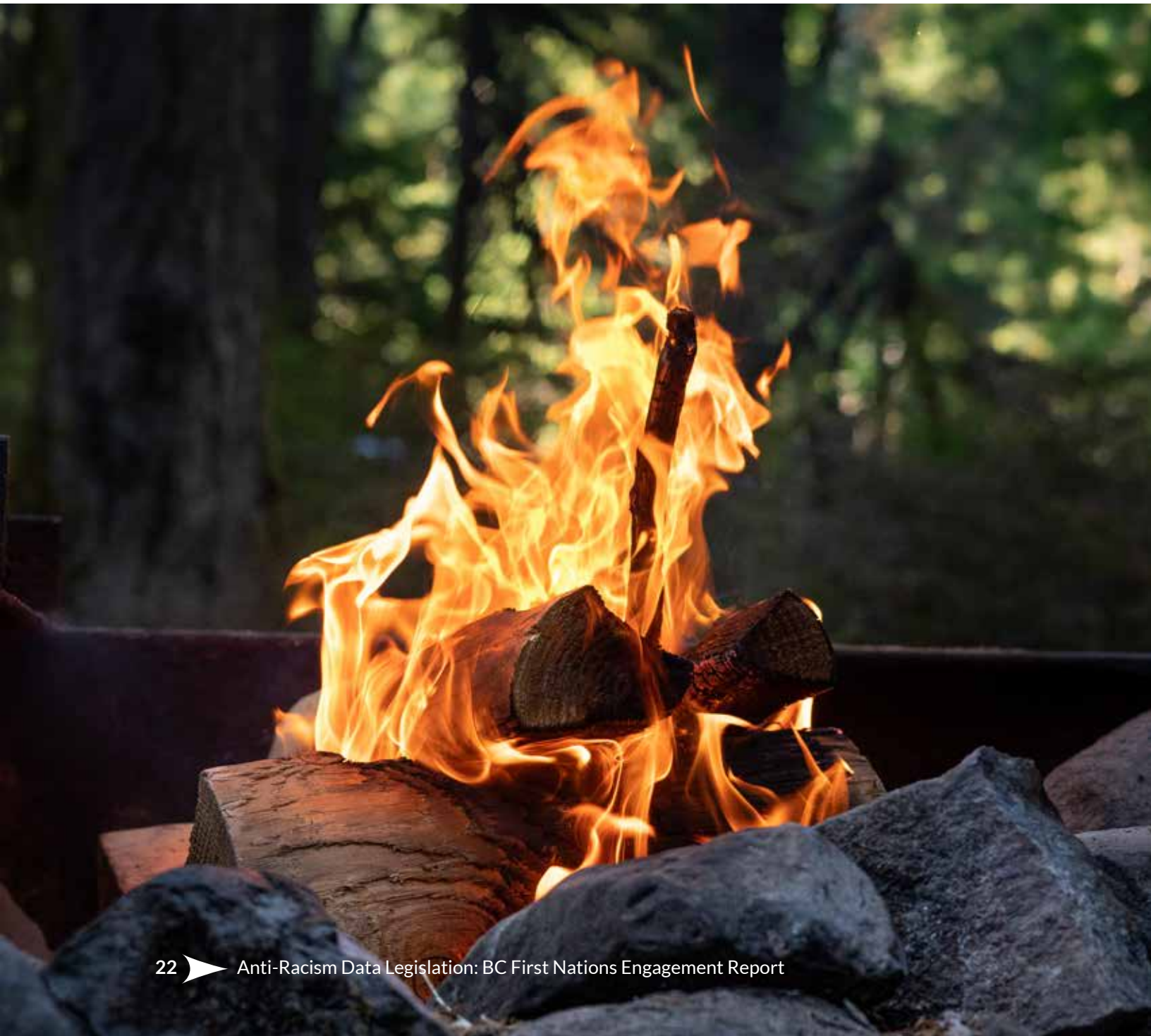
Participants asserted that the legislation must respect Indigenous knowledge and contrasting worldviews, and not uphold colonial structures, systems, and ideas about Indigenous peoples:

"Data is skewed to colonial perspective, that the answer is money, infrastructure, etc. Government data leads to wrong solutions."

“All their data and scientific results are meant to support a colonial worldview, not an Indigenous worldview.”

“You will not find a department or agency that doesn’t have systemic racism. They all do. It’s right there in the policies, paperwork, data, everything.”

“Part of this respect and acknowledgement of different worldviews is that they also differ across First Nations communities, and thus, a distinctions-based approach is required.”





# Alignment of Data with United Nations Declaration on the Rights of Indigenous Peoples and the Declaration on the Rights of Indigenous Peoples Act



**First Nations need to look at this legislation thoughtfully and carefully to be sure rights and title are protected.**



Deborah Jeffrey, Tsimshian Nation

First Nations participants commented that the legislation needs to be drafted and implemented in direct alignment with UNDRIP and DRIPA, and that this is fundamentally a very different process than the government usually follows. As noted by one participant, “that is what DRIPA was, right? . . . Developing legislation in a different way than what government is used to . . . is what is going to have to happen with every piece of legislation in order to actually live up to both the spirit, but also the law of DRIPA.”

Participants asked specifically about how the legislation will work to enforce DRIPA and UNDRIP. Several raised concerns that legislation exists regarding human rights but it is hampered by poor implementation and enforcement, or it is left open for interpretation and it is not currently informing all decisions being made in BC.

Several participants discussed the need for more training for the public service on UNDRIP and DRIPA, as well as cultural safety training in the context of race-based data. It was noted that it takes a lot of education both at the community level as well as in person to trust who is collecting the data. There is a need to start teaching from perspectives that are acknowledged by First Nations as being grounded in DRIPA, UNDRIP, and the Calls to Action of the Truth and Reconciliation Commission.

## Actioning of Data and Existing Commitments to Combat Racism



“  
The system was set up racially since the start,  
knock racism out of policies.”

Joe Bevan, Kitselas Nation

Participants stressed that there must be disclosure of what First Nations data already exists within the Province, and improved accountability to use this existing data to address racism. It was noted that the Province has received several reports and entered into numerous agreements over the course of many years, which included recommendations and commitments on data. Many of these have not been acted on, including previous Auditor General reports, and tripartite and bilateral agreements. It was noted that the Province must honour its existing commitments to build greater credibility as a partner with First Nations peoples in data efforts.

It was also noted that the Province’s recent consultation on the draft action plan under DRIPA includes a number of data-related commitments which should be advanced and enabled – and not constrained – through this legislation. For example, as noted by one participant: “We have resolutions from First Nations leadership asking for a full investigation into racism in public education, and for conducting an external review of Indigenous specific racism and discrimination in the provincial public education system . . . This has been supported by resolutions from the First Nations Summit, Union of BC Indian Chiefs, and BC Assembly of First Nations.” As of yet, this investigation remains outstanding and it is unclear how this legislation will improve this situation.

# Co-Development of Legislative Processes with BC First Nations



**The intent should be to establish processes that work best for First Nations peoples. [Processes] that are co-developed. Establish a process for it to unfold... shaped in a way that First Nations are thinking about [and] considering.**



Chief Hobart, Spuzzum First Nation

During the technical briefing sessions, First Nations participants sought further information about the processes of co-developing data legislation. They stressed that there needs to be a focus on creating meaningful partnerships with First Nations now, and in moving through the entire process, it will be important to work with First Nations and build relationships together. Another perspective shared was that when developing legislation, the Province needs to undertake consultation in a manner that builds trust. It was emphasized that consultation with First Nations needs to be undertaken every step of the way through the legislative development process.

Several participants focused on how the government approaches or engages First Nations governments, and the need to reset that relationship and process. According to several participants, this requires “recognition of our traditional, cultural First Nations as governments.”

Participants emphasized that the Province must uphold their obligations under DRIPA to ensure all laws are consistent with UNDRIP including undertaking consultation and co-operation. In particular, participants in leadership positions stated that the Province must provide an opportunity for First Nations and First Nations mandated organizations to review the draft legislation itself. Questions were also raised about whether there will be an opportunity for various First Nations experts to review the legislation.

First Nations participants commented that they are busy and have been managing a number of crisis situations in their communities related to COVID-19, and also disaster relief from the recent devastating wildfire and flooding situations throughout the province. Therefore, meaningful consultation and co-development on legislation requires a longer timeline.

According to one participant: “You can’t have meaningful engagement if the timeline is too short.”

Additionally, there was concern regarding the spirit of nation-to-nation consultation practices: “Consultation is not engagement – who is holding the power?” Several participants mentioned that there is a need to build trust through the renewal of relationships and processes: “My concern with the legislation is that it is driven by the province. When you reach the final stages, then the province takes over. First Nations needs to drive the process and the issues”.

## Institutional Data Capacity

First Nations participants asked whether the legislation will consider data capacity within communities. This was raised in the context of understanding how many BC First Nations are ready to be in charge of their own data, and exactly how the Province will assist with this capacity. In addition, the question was raised about whether there has been consideration with respect to supporting First Nations work toward their own data sovereignty in terms of collecting, managing, and storing their own community data. Finally, several participants flagged that there are capacity issues with the Province in terms of their capacity to engage with all BC First Nations and collect quality data. For example, one participant questioned the data the Province collects related to federal child care legislation and stated that “they’re just enraging First Nations.”



# Data Collection, Data Standards, and Data Quality

During the engagement sessions, there were several questions raised about what data the Province is collecting with respect to BC First Nations and whether there are plans for more data to be collected in the future.

Comments were made about the importance of how data are collected including how terms are selected (e.g. Aboriginal versus Indigenous), the need to standardize data collection about Indigenous identity, as well as to address the withdrawal of consent for being identified.

It was also noted that there is duplicative or inconsistent information across different departments and agencies. For example, the Ministry of Children and Family Development and their delegated agencies are not collecting data in an efficient manner when we consider that “when children move off reserve, the delegated agency asks the same questions.”

There is often a lack of understanding amongst the public service about First Nations issues, which jeopardizes data quality. The discussion sessions revealed examples where data has been collected and disseminated in harmful ways, such as the information gathering that has been touted to be collected in the best interests of the Indigenous child as outlined in the *Family Law Act*. Questions were raised during the engagement sessions about what the best interests of the child means when it comes to the data, since some communities see data used against them with respect to child apprehension.

Several participants expressed a need for protocols to ensure cultural safety. Additionally, participants asked about how to mitigate situations when Indigenous peoples are triggered by data collection, especially when it comes to a topic about discrimination and racism, and specifically asked whether the legislation will provide for trauma support.

Participants commented that data is not as objective as we would like and who tells the story is as important as the data itself. Some commented that when data is being released, it needs to be a strength-based approach and appropriately attribute disparities to systemic root causes.

Finally, the vision of BC First Nations is to implement a First Nation-led, national network of regional data centres to assure data quality and to advance the realization of data sovereignty that is aligned with First Nations’ distinct world views.<sup>9</sup> The concept of a BC First Nations data governance centre established by and for BC First Nations must not be inhibited or restricted in any way. The concept of a BC First Nations data governance centre, once properly mandated and established by and for BC First Nations, can be positioned as a future key partner in support of data quality.

<sup>9</sup> First Nation Data Governance Strategy Presentation, 2021

# CONCLUSION

In order to better understand how effective anti-racism data legislation could be developed, QRG held 26 engagement sessions with 58 BC First Nations participants between December 2021 and March 2022 through multiple formats, such as focus groups, key advisor interviews, First Nation/Band Council presentations, dialogue with BC First Nations organizations, and technical sessions with BC First Nations leaders. As previously stated, there are approximately 200 Councils and 34 Nation groups in BC, and additional technical briefing sessions have been scheduled for April 2022 on a nation-to-nation basis. It is also important to continue further engagement with BC First Nations during the implementation of the anti-racism data legislation.

Based on QRG's conversations with BC First Nations, there is a lack of trust between BC First Nations and the Province when it comes to data collection, management, access. There are concerns that the Province will use data against BC First Nations, or give itself more authority to collect data that rightfully belongs to First Nations. Addressing these concerns and building trust between BC First Nations and the Province can be advanced through the recognition of Indigenous data sovereignty, and data governance in alignment with OCAP®, UNDRIP, and DRIPA. The collection and sharing of data also needs to be trauma-informed and grounded in cultural safety.

At the same time, BC First Nations see the potential to illuminate systemic racism within education, the justice system, health care, child welfare, and lived everyday experiences, and enhance accountability by exposing the ways that racism and colonialism impact BC First Nations. BC First Nations also see the potential to use data in accordance with their knowledge systems to govern and promote the well-being of their communities.



# APPENDIX A: Engagement Methods and Activities

QRG worked with the Ministry of the Attorney General (MAG) and the First Nations Leadership Council (FNLC) organizations to distribute the anti-racism data legislation discussion paper to every First Nation in BC, with an invitation to attend a discussion session in December 2021 and January 2022 and to meet on a Nation basis in late 2021 and early 2022. In addition to preparing and distributing this discussion paper, QRG developed a database of over 200 First Nation Bands/governments and organizations for communication and outreach purposes. The discussion paper was also circulated to First Nations sectoral organizations with an offer to meet. Experts were approached to provide key advisor interviews.

QRG followed principles of confidentiality and privacy in the gathering of information during the engagement process. The information collected is not attributed to individuals and has been compiled and synthesized in a themed document.

The following section describes the engagement methods used and the activities completed to date.

## Focus Group Sessions

QRG organized 14 focus group sessions from December 2, 2021 to January 28, 2022, to provide an opportunity for First Nations to share their knowledge and provide input into this process. Each session was 45 minutes in duration and focused on the six discussion questions posed in the anti-racism data legislation discussion paper. QRG's objective was to gather responses to the questions and identify if any First Nations wanted to have a one-on-one discussion in addition to participation in one of these sessions, or whether they wanted to identify other individuals who may be interested in providing input on the anti-racism data legislation initiative.

Eleven focus group sessions were held between December 2, 2021 and January 28, 2022. Participation varied and some sessions were cancelled due to a lack of registrations. This was unsurprising, given several climate and public health emergencies.

## Key Advisor Interviews

As part of the process to enable broad outreach to First Nations, QRG invited First Nations subject matter experts, to participate in a one-on-one discussion. Eleven key advisor interviews were held between December 1, 2021 and January 19, 2022 .

## First Nation/Band Council Presentations

QRG communicated with First Nations leadership and Band administrators to identify their interest in arranging a presentation, or hosting a discussion with their Chief and Council or management team on the anti-racism data legislation. QRG presented to three First Nations/Bands.

## Dialogue with First Nation Organizations

QRG reached out to eight First Nations mandated organizations. Four of these are First Nations leadership organizations in BC and the other four are sector-specific entities. The FNLC has received regular briefings on the overall engagement approach. Through interviews, QRG met with a member of three First Nations sector-serving organizations

## Technical Discussions

QRG and MAG organized Technical Discussion sessions with First Nations to review the policy document that will form the basis of the legislation. Four sessions were held between January 31, 2022 to February 10, 2022, and were attended by Parliamentary Secretary, Rachna Singh, with participation from First Nations leadership. Parliamentary Secretary Singh also provided a presentation to the First Nations Summit meeting held in February 2021. Three additional sessions are planned in early April to review the draft legislation.



## Engagement Activities

The following table provides a summary of engagements from December 2021 to March 2022:

Date	Engagement Activity	First Nation/Organization Represented
December 2	Focus Group Session	- Esquimalt/Songhees First Nation - McLeod Lake Indian Band - Tseil-Waututh First Nation
December 3	First Nations Discussion Paper	- BC Assembly of First Nations
December 3	Focus Group Session	- Metlakatla First Nation
December 9	Focus Group Session	- Takla Lake First Nation
December 8	Key Advisor Interview	- Tseil-Waututh First Nation
December 10	Key Advisor Interview	- Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations
December 15	Key Advisor Interview	- Carrier First Nation, Nadleh Whut'en Band
December 16	Key Advisor Interview	- Ktunaxa First Nation
December 17	Key Advisor Interview	- Gitanyow and Gitsegukla Nations, from the Wilp Gamlaxyeltxw, Lax Ganeda (Frog Clan) - UBC Faculty of Medicine (formerly FNHA)
December 20	Key Advisor Interview	- Kitselas First Nation member
December 21	First Nation Session	- Binche Whut'en First Nation
December 21	Key Advisor Interview	- UBC Faculty of Medicine
January 7	Key Advisor Interview	- Eh Cho Dene of the Fort Nelson First Nation with French Canadian/Métis roots - Deputy Provincial Health Officer of Indigenous Health, BC Government
Week of January 10	Key Advisor Interview	- First Nations Health Authority
January 13	First Nation Organization	- First Nations Education Steering Committee
January 14	Key Advisor Interview	- Wei Wai Kum First Nation
January 14	Focus Group Session	- Simpcw Nation
January 19	Key Advisor Interview	- Nuw-Chah-Nulth Tribal Council
January 20	First Nation Session	- Carrier Sekani Tribal Council
January 21	Focus Group Session	- Nak'azdli Whuten - McLeod Lake Indian Band
January 27	First Nation Session	- Nezul Be Hunuyeh Delegated Child and Family Services Agency

January 31	Technical Discussion	<ul style="list-style-type: none"> <li>- Squamish Nation</li> <li>- Musgamakw Dzawada'enuxw First Nation</li> <li>- Spuzzum First Nation</li> </ul>
February 2	Technical Discussion	<ul style="list-style-type: none"> <li>- Sepwepemc Nation</li> <li>- Gitxaala Nation</li> </ul>
February 8	Technical Discussion	<ul style="list-style-type: none"> <li>- Squamish First Nation</li> <li>- Spuzzum First Nation</li> </ul>
February 10	Technical Discussion	<ul style="list-style-type: none"> <li>- Sto:lo</li> <li>- Tsleil-Waututh</li> </ul>
February 17	First Nation Organization	<ul style="list-style-type: none"> <li>- Presentation to the First Nations Summit meeting</li> </ul>
February 28	First Nation Organization	<ul style="list-style-type: none"> <li>- First Nations Public Service Secretariat, Band Administrators Advisory Committee</li> </ul>

## Qualitative Analysis and Coding Schema

The sample included 29 input files, which were comprised of hand written notes and verbatim transcripts. To ensure content validity and reliability in analysis techniques QRG proceeded through a number of steps in the qualitative thematic analysis of the data collected from the engagement sessions. QRG first reviewed the notes and transcripts (input files) from each engagement session to have a sense of the overall content. After the review, each input file (29) was uploaded in the qualitative analysis software, NVivo.

The data analysis involved uploading files to the NVivo software program, organizing files by type of engagement, and then reading through the text to inductively code remarks, sentences, and passages for main ideas. Thematic analysis uses inductive coding by reading through texts to identify ideas, themes, patterns, and relationships across the texts and is referred to as a bottom-up approach to derive themes from the raw data. Inductive coding sets aside preconceived notions of what the codes should be and gives greater attention to participants' remarks. During inductive coding, the analysis aggregated and disaggregated codes, as the relationships emerged with greater or lesser salience to identify key themes.

Once key themes were identified, themes were then validated by a re-verification process with the session facilitators/note-takers, and then input files were re-read to systematize the coding across the dataset. Following validation of the re-verification process, QRG deductively coded (by using the existing list of codes) the full dataset for those key themes. This iterative process allowed for consistency and validity across files coded over time (November to March). The coding schema and structure codebook lists the key themes, number of files and number of references. These values are an output of the qualitative

analysis. It is important to note that not all files (participants transcripts/notes) discussed all key themes, and in some files participants made reference to key themes with greater frequency than other key themes; key themes that were aggregated from many sub-themes (e.g. data collection, standards, quality) have more references. To ensure participant confidentiality and prevent residual disclosure sub-themes were grouped into key themes in the report.

Thematic Relationship	# of files with key theme	# of references to key theme in all files
FN data sovereignty & governance	21	65
FN data ownership	14	23
Distinctions-based approach	17	32
DRIPA & UNDRIP	12	19
Actioning data and existing commitments to combat racism	14	31
Co-development of legislation	22	50
Capacity	20	35
Data collection, standards, and quality	22	116



# APPENDIX B: Anti-Racism Data Legislation Discussion Paper Prepared for BC First Nations

# ANTI-RACISM DATA LEGISLATION

*A discussion paper prepared for  
First Nations in BC*







# Content Warning

This document covers topics including, but not limited to, colonial violence, systemic racism and Indigenous-specific racism and inequality. The information and material presented in this document may trigger unpleasant feelings, thoughts, and responses. The KUU-US Crisis Line Society provides a First Nations and Indigenous specific crisis line available 24 hours a day, seven days a week, toll-free anywhere in BC at 1-800-588-8717.

## Disclaimer

This report was prepared by Quintessential Research Group for the sole purpose of engaging with First Nations in British Columbia on issues related to the collection of data for anti-racism purposes. Funding for this project was provided by the Ministry of Attorney General, Government of British Columbia. The material contained in this report reflects the best professional judgement of the researchers, based on the information gathered and available at the time of its completion and as appropriate for the scope of work. Any use that a third party makes of this report, or any reliance or any decision based on it, is at the discretion and responsibility of such third parties. The researchers have prepared this report in the level of skill and professionalism that is consistent with members of the social sciences and Indigenous research profession working under similar conditions at the time the work was performed. The information contained herein should not be construed as to define, limit, or otherwise constrain First Nations rights and interests.

# About the Artwork



Temosen-THUT (Charles Elliott) is a Coast Salish artist and is from the Tsartlip First Nation on Southern Vancouver Island. As a young artist, Charles carved designs on cotton wood bark and styled his own small totem poles and model canoes coached by his father, uncles and encouraged by his mother. Art and wood carving have been his focus for 55 years, inspired by the love of his Salish art tradition Charles's works testify to his dedication to classic Coast Salish design as he recreates ancient utilitarian art objects and contemporary new works all within the Coast Salish discipline. Charles work is in private and public collections in Canada and around the world in countries such as China, Japan, Holland, Germany, Czech Republic, South America, British West Indies, United States, England and most Commonwealth countries. Charles work can be viewed at various public exhibitions throughout Victoria and his Ltd. prints and commissions bought and arranged through a studio visit. His work entitled ITOTELNEW, which means working with the people to learn together or "the people learning" is featured in this review document. Temosen tells us that the artwork represents the importance of working with all Indigenous peoples and includes representations of First Nations, Inuit and Métis peoples in the artwork.



Myrna Crossley is of Coast Salish and Settler descent and is member of the Songhee's Nation. Myrna has lived on the Tsartlip Reserve in the W'SANEC traditional territory on the Saanich Peninsula of Vancouver Island for the past thirty-one years with her husband Charles Elliott and their children. Myrna previously worked for the Tsartlip Band for 14 years, food security was a major part of her job description. This included working with Indigenous plants as food and medicine and delivering workshops to the community in these areas. Myrna apprenticed under Elise Krohn, Herbalist, Native Foods Specialist, Educator and Author from Washington State through the sponsorship of the Tsartlip Band. Myrna harvests seasonally and has been establishing gardens on her property for food, medicine, and natural dyes. Myrna uses the plants for teas, salves, tinctures, lip balms, body creams and plant dyes. Myrna has prepared the medicines to be gifted during our engagement work throughout the project.

Photocredit (2021) storyhive. To learn more please visit <https://www.storyhive.com/projects/5942>





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# What is this Paper About?

First Nations have used data, information and knowledge to steward their territories, exercise governance, and assure the well-being of their Citizens since time immemorial. Data sovereignty is an Indigenous human right inextricable from the rights to self-determination and self-government. Through the imposition of colonialism, these rights were violated, and data used against Indigenous Peoples, portraying us as disorganized and inferior in order to justify continued occupation on our lands.

The impacts of colonialism are ongoing and persist through Canadian systems and policies and are embedded in the justice system, education system, health care system, and child welfare system. Data collection initiatives about Indigenous peoples have been part of the colonizing process and experienced as an act of violence and genocide.


First Nations have tremendous resilience and drawn upon our inherent rights to data sovereignty, developing data governance principles and protocols that protect our rights and clearly describe our interests in the use of data and information about their Peoples.

One of these interests is the use of data to illuminate how racism and colonialism unjustly impact and oppresses Indigenous Peoples. For this reason, First Nations peoples have called for greater access to and use of race and identity data. First Nations people also insisted that greater access to and use of data *about* them be led, governed, and controlled *by* them.

The Province of BC has committed to addressing systemic racism in public sector policies, programs, and services, including through developing an Act related to race-based data in 2022 and a new anti-racism Act in 2023. The proposed anti-racism data legislation aims to enhance protection and standardization of the collection, use, and disclosure of de-identified race-based data to better identify and address systemic racism.

This document supports the engagement process with BC First Nations to inform this anti-racism data legislation. It analyzes existing mandates, principles, and engagement amongst First Nations on data sovereignty, data governance, and anti-racism and presents this in the form of desired outcomes in anti-racism data legislation for BC First Nations to carefully review and consider.

This paper will be circulated to all BC First Nations with the offer to meet on a Nation basis throughout late 2021 and early 2022. This paper will also be presented at the annual First Nations Leadership Gathering between BC First Nations and Provincial Cabinet members for discussion on December 1, 2021. Direction and perspectives provided by BC First Nations in response to this paper will be carefully summarized in an engagement report to be shared with BC First Nations and the Province following the engagement.



The Province of BC will further consult and collaborate with BC First Nations on the anti-racism data legislation, consistent with its obligations under section 3 of the *Declaration on the Rights of Indigenous Peoples Act*.

In addition to the engagement process supported by this paper: the Province of BC has developed an [online SenseMaker Survey](#) that anyone can answer (available Sept 9 – January 31, 2022); the Métis Nation of BC and the BC Association of Aboriginal Friendship Centres are conducting their own engagements; a range of engagements are also being held with diverse racialized populations across BC.

**Indigenous data sovereignty** is the right of a nation, group of people or individual to exert control over the governance of data collection, application, and ownership.<sup>1</sup>

**Indigenous self-determination** refers to the fundamental right of all peoples to freely decide their own political status and to freely pursue their own cultural, economic and social development.<sup>2</sup>

**Disaggregated data** is data that provides sub-categories of information, for example by ethnic group, race, gender, occupation or educational status. This information is usually anonymized or de-identified – stripped of personal information like name or data of birth – and used in statistical analysis.<sup>3</sup>

**Race** refers to a group of people who share the same physical characteristics such as skin tone, hair texture and facial features. Race is a socially constructed way to categorize people and is used as the basis for discrimination by situating human beings within a hierarchy of social value. Racial categories may vary over time and place and can overlap with ethnic, cultural, or religious groupings.<sup>4</sup>

**Racial Equity** is the systemic fair treatment of all people. It results in equitable opportunities and outcomes for everyone. It contrasts with formal equality where people are treated the same without regard for racial differences. It is a process (meaningful engagement) and an outcome (equitable treatment in policies).<sup>5</sup>

**Systemic Racism** – Routine and societal systems, structures and institutions such as requirements, policies, legislation and practices that perpetuate and maintain avoidable and unfair inequalities across racial groups, including the use of profiling and stereotyping.<sup>6</sup>

**Indigenous-specific racism** refers to the unique nature of stereotyping, bias and prejudice about Indigenous peoples in Canada that is rooted in the history of settler colonialism. It is the ongoing race-based discrimination, negative stereotyping and injustice experienced by Indigenous peoples that perpetuates power imbalances, systemic discrimination and inequitable outcomes stemming from the colonial policies and practices.<sup>7</sup>

<sup>1</sup> British Columbia's Office of the Human Rights Commissioner, *Disaggregated Demographic Data Collection in British Columbia: The Grandmother's Perspective*, 2020, 86.

<sup>2</sup> British Columbia's Office of the Human Rights Commissioner, 89.

<sup>3</sup> British Columbia's Office of the Human Rights Commissioner, 8.

<sup>4</sup> Turpel-Lafond, *In Plain Sight: Addressing Indigenous-Specific Racism & Discrimination in B.C. Health Care*, 2020, 8.

<sup>5</sup> Government of BC, "Anti-Racism Data Legislation Engagement Questions," 2021.

<sup>6</sup> Turpel-Lafond, 8.

<sup>7</sup> Turpel-Lafond, 8.



# What are the Necessary Conditions for BC First Nations to Support the Development and Implementation of Anti-Racism Data Legislation?

BC First Nations and the Province of BC have clearly stated shared objectives in anti-racism data legislation – to draw attention to systemic racism; to increase transparency and hold systems accountable for equitable and improved performance; and, to improve outcomes and equity for Indigenous and other racialized people.

To achieve these objectives, new provincial anti-racism data legislation will enable and empower enhanced collection, analysis, and utilization of race-based data – including data about First Nations peoples. This gives rise to questions such as:

- Who will have the enhanced power, authority, and control to collect, analyze, and utilize existing race-based data as enabled by this new legislation?
- Who will establish priorities for race-based data collection and analysis?
- What race-based data already exists within the Province of B.C.?
- How will this legislation interface with the Province of BC obligations under the *Declaration on the Rights of Indigenous Peoples Act*?

BC First Nations have a long history of individually and collectively asserting their rights and interests in data sovereignty, data governance, and anti-racism, which can inform responses to these and other questions critical to the legislative development process. The key milestones, mandates, and key documents relevant to this history are presented in detail in Appendix A. These documents have been analyzed and the following DRAFT set of desired outcomes presented for First Nations to consider.



## The legislation must be in full alignment with the United Nations Declaration on the Rights of Indigenous Peoples and the Declaration on the Rights of Indigenous Peoples Act

The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) describes the rights of Indigenous Peoples to, among other things, maintain, protect and develop their intellectual property, Identity and Nationhood, cultural heritage, traditions and customs, traditional knowledge, and science and technology. The concepts of data sovereignty and governance underpin these and many of the 46 human rights standards in the UN Declaration.

The *Declaration on the Rights of Indigenous Peoples Act (Declaration Act)* creates a set of obligations and tools to advance these human rights. This set of obligations includes the obligation for Province to ensure its laws align with the UN Declaration. The set of tools includes the ability for the Province of BC to enter into shared decision-making agreements with Indigenous Governing Bodies.

The UN Declaration and the *Declaration Act* have been adopted by BC First Nations, with consistent calls and resolutions for accelerated implementation.

Therefore, as related to provincial anti-racism data legislation:


- Indigenous rights to data sovereignty and governance must be clearly and prominently upheld within the legislation
- The tools under the *Declaration Act* for shared decision-making agreements between the Province and Indigenous Governing Bodies related to data about their Citizens must be explicitly enabled
- First Nations title and rights holders must be included as key decision-makers in the development of legislation, standards, and regulations

## The legislation must increase First Nations ownership, control, access, and possession of data about their Citizens

Almost 20 years ago, the Chiefs in national assembly expressed their desire to protect First Nations data – they committed to assert ownership and assume control over the access and possession of First Nations data generated by other governments and/or researchers. Since that time, these OCAP™ principles have served as guideposts for the treatment of First Nations data.

Therefore, as related to provincial anti-racism data legislation:

- there must be a full inventory prepared of existing First Nations data held by BC, and subsequently disclosed to BC First Nations

- 
- agreements must be negotiated between the Province and BC First Nations describing
    - First Nations ownership of these data
    - First Nations decision-making related to these data
    - First Nations access to these data
    - Any provisions for stewardship, virtual possession, or possession of these data
  - First Nations must be supported to collectively and individually establish the research and data collection agenda related to anti-racism and their Peoples, and the Province of B.C cannot unilaterally act to conduct new surveys, research, studies involving Indigenous Peoples

## The legislation must embed a distinctions-based approach

Under the *Declaration Act* and its *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples*, the Province recognizes First Nations, the Métis Nation, and Inuit as the Indigenous peoples of Canada, consisting of distinct, rights-bearing communities with their own histories, including with the Crown. The Province of BC is required to consider the diversity of the Indigenous peoples in British Columbia, particularly the distinct languages, cultures, customs, practices, rights, legal traditions, institutions, governance structures, relationships to territories and knowledge systems of the Indigenous peoples in British Columbia.

Therefore, as related to provincial anti-racism data legislation:

- The rights of First Nations, arising from their prior occupation, use and title to the land, must be acknowledged as unique and distinct
- The data sovereignty of each Nation must be respected
- The specific racism, stereotyping, discrimination, and oppression experienced by First Nations peoples due to settler colonialism must be acknowledged as different than other racialized populations

## The legislation must enable First Nations-led efforts to develop institutional data capacity

As directed by national Assembly of First Nations resolutions, the First Nations Information Governance Centre (FNIGC) has developed a national First Nations data governance strategy that describes the path forward for First Nations to achieve full data governance, build capacity, and have timely access to data. The strategy includes the development of regional First Nations Information Governance Centres that would serve and be governed by the Nations of that region. BC First Nations Chiefs have endorsed this strategy and participated in engagement sessions about a BC First Nations regional data governance centre.



Therefore, as related to provincial anti-racism data legislation:

- The concept of a BC First Nations data governance centre established by and for BC First Nations must not be inhibited or restricted in any way
- The concept of a BC First Nations data governance centre, once properly mandated and established by and for BC First Nations, can be positioned as a future key partner in support of BC First Nations data sovereignty and governance related to race-based data
- New pan-Indigenous committees, working groups, and similar processes must not be prescribed without endorsement of BC First Nations
- Resourcing and capacity to work with First Nations data must be provided directly to First Nations, to manage their own data, establish properly structured relations with the Province of B.C, and establish infrastructure and institutions for ownership, control, access, and possession

## The legislation must not result in any degradation of data quality

In BC, there has been a long history of collective efforts to improve the quality of data related to Indigenous Peoples. This has included the development of the Aboriginal Administrative Data Standard in 2007, the establishment and routine measurement of core indicators across many social and economic sectors such as health and education, and the conclusion of major studies related to racism and racism-affected outcomes for Indigenous Peoples. Comparable data assets do not exist for other racialized populations – a gap that this legislation is intending to address.

Therefore, as related to provincial anti-racism data legislation:

- There must be a clear understanding of the existing standards, indicators, and reports that First Nations have developed over many years
- Adjustments cannot be made to existing data standards and indicators in the rush to address the gaps for other racialized groups
- There must be consideration paid to the need for data comparability through time
- The legislation must require full co-development of any regulations, standards, and processes



## Discussion Questions

1. Is this an accurate reflection of the shared interests of BC First Nations and the Province in anti-racism data legislation: “to draw attention to systemic racism; to increase transparency and hold systems accountable for equitable and improved performance; and, to improve outcomes and equity for Indigenous and other racialized people.”
2. Do the foregoing statements fairly summarize the interests of BC First Nations in anti-racism legislation? What needs to change? What is missing?
3. What are your or your First Nation’s interests in anti-racism data? How can these interests be supported through provincial anti-racism data legislation?
4. What are the major risks posed by this legislation? How can these be mitigated?
5. What additional engagement, consultation, and collaboration opportunities are needed to ensure anti-racism strategies and data address First Nation interests?
6. How can the proposed legislation support properly structured relations on a Government-to-Government basis?





# What is Anti-Racism Data Legislation?


In Fall 2020, the Province of BC mandated the Ministry of the Attorney General to work with the Office of Human Rights Commissioner and other partners to create legislation (targeted for spring 2022) aimed at reducing systemic racism by enabling the collection of race-based data – identifying and illuminating inequities, gaps, and barriers in sectors such as, but not limited to, policing, healthcare, and education. In addition to anti-racism data legislation, the government also plans to introduce an Anti-Racism Act in 2023. In providing this mandate, the Province of BC is responding to recommendations of two key reports: *In Plain Sight: Addressing Indigenous Specific Racism and Discrimination in BC Healthcare* and *Disaggregated Demographic Data Collection in BC: The Grandmother’s Perspective*.

As stated by the Province of BC, the need for Anti-Racism Data Legislation arises from various factors, such as the need to:

- collect race, ethnicity and Indigenous-specific data to identify, measure, and monitor systemic racism in government policies, programs, and services;
- develop trust, support & accountability for data use in racialized communities;
- create alignment with the *Declaration of Rights of Indigenous Peoples Act* and ensure Indigenous involvement;
- create protections for those who provide data; and,
- provide oversight and standards for data collection, use, disclosure, and possession.

The anti-racism data legislation is intended to integrate and work with existing provincial legislation. The *Declaration Act* contains requirements to align laws with the UN Declaration and consult and collaborate with Indigenous Peoples in doing so. As related to data specifically, in BC, the collection, use, and disclosure of data is governed primarily by the *BC Statistics Act (BCSA)* and the *Freedom of Information and Protection of Privacy Act (FOIPPA)*, and at a broader level by the BC Human Rights Code. There are gaps in the *BCSA* and the *FOIPPA* that need to be addressed by provincial anti-racism legislation to better govern the collection, use, and disclosure of data in BC. For example, the *BCSA* and *FOIPPA* lack:

- clear authority identified regarding the use of personal information to promote racial equality or to address systemic racism
- direction regarding the use of data for anti-racism purposes
- an authority to require that public bodies collect certain personal information
- specific consideration of racialized communities or anti-racism

- 
- specified reporting requirements
  - alignment with the *Declaration Act*
  - protections that focus on confidentiality of communities (including Indigenous peoples) instead of just individuals and organizations
  - community oversight regarding the collection, use and disclosure of data

There are a variety of ways to address these gaps in current BC legislation and practice, and multiple groups to work with. Therefore, the Province of BC is taking an enabling approach to the legislation. Anti-racism data legislation in BC will set an enabling framework for the development of regulation, policy, and standards that provide more specific guidance – including specific regulations and policy co-developed with Indigenous Peoples related to Indigenous-specific data. In other words, the anti-racism data legislation will establish a high-level set of purposes, principles, and obligations that create space to co-develop rules and understandings directly with Indigenous Peoples on issues such as data collection, use, disclosure, de-identification, management, publication, and reporting of information, including personal information. The regulations are also where the detailed structure and authorities of an oversight body could be established. All Ministries will be required to review their existing data policies through the lens of the anti-racism data legislation, and to make necessary changes as well as creating new policies to ensure their specific ministry policy framework is aligned with the new legislation.

This work is informed in some ways by Ontario's *Anti-Racism Act*, enacted in 2017 to address systemic racism and to advance equity. The legislation:

- Establishes the Anti-Racism Directorate in legislation to ensure its sustainability;
- Requires the continuation and regular review of a multi-year anti-racism strategy, ensuring the sustainability and accountability of the government's anti-racism work;
- Mandates a review of the anti-racism strategy at least every five years, in consultation with the public and community partners; and
- Enables the government to implement race data collection and an anti-racism impact assessment tool, to help identify, remedy, or prevent inequitable racial impacts of policies and programs.



## Next Steps

As previously described, this paper will be circulated to all BC First Nations with the offer to meet on a Nation basis throughout late 2021 and early 2022. This paper will also be presented at the annual First Nations Leadership Gathering between BC First Nations and Provincial Cabinet members for discussion on December 1, 2021. Direction and perspectives provided by BC First Nations to this paper will be carefully summarized in an engagement report to be shared with BC First Nations and the Province of BC.

In addition to the engagement process supported by this paper: the Province has developed an [online SenseMaker Survey](#) that anyone can answer (available Sept 9 – January 31, 2022); the Métis Nation of BC and the BC Association of Aboriginal Friendship Centres are conducting their own engagements; and, a range of engagements are being held with diverse racialized populations across BC.

The Province of BC will further consult and collaborate with BC First Nations on the anti-racism data legislation, consistent with its obligations under section 3 of the *Declaration on the Rights of Indigenous Peoples Act*.

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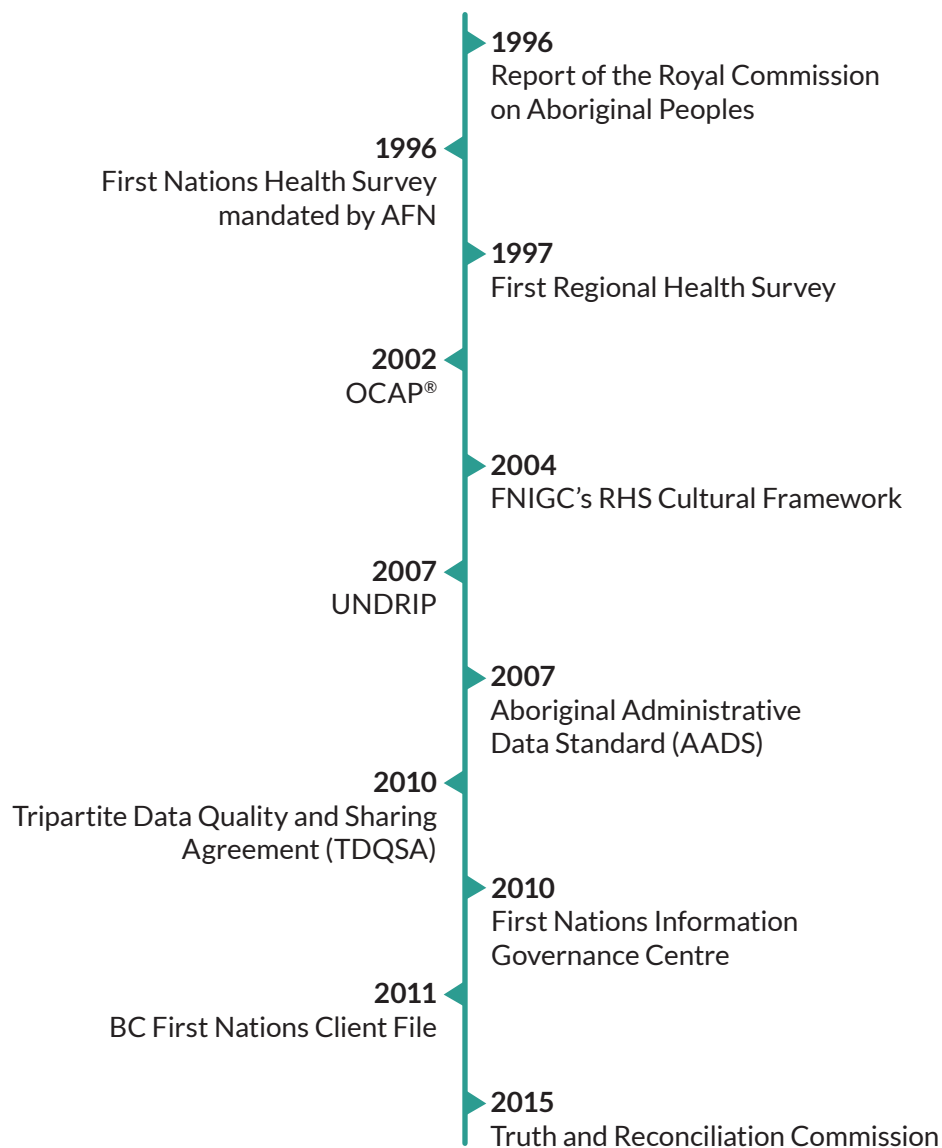
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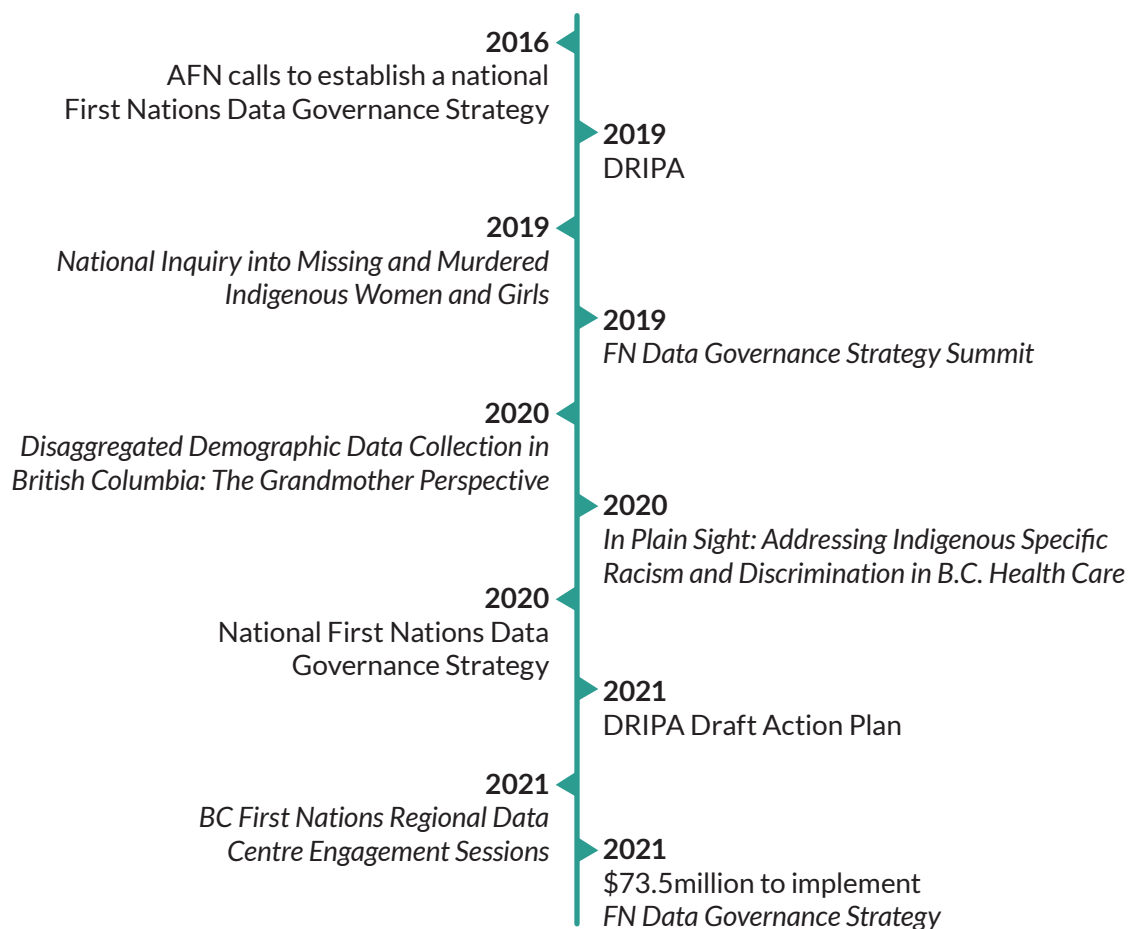
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# Appendix A: BC First Nations Perspectives and Mandates on Data

This section of the paper describes the key principles, standards, recommendations, and engagement conducted to date by and amongst BC First Nations as related to data, data sovereignty, and data governance. It also concludes a table of data governance resolutions passed by the AFN and UBCIC.

## Key Milestones Visual Guide





► **Report on the Royal Commission on Aboriginal Peoples (1996)**

RCAP called for government support of Indigenous information management systems, including for infrastructure, training and capacity at the nation level.

The Assembly of First Nations (AFN) Chiefs Committee on Health (CCOH) **mandated that a First Nations health survey** be implemented every four years across Canada (1996).

► **First Regional Health Survey (RHS) (the RHS steering committee becomes the FNIGC) (1997).**

► **OCAP® (2002)** are foundational to BC First Nations' Health Plans, agreements and processes, supporting the development and realization of health data governance within the context of BC First Nations health transformation agenda. The First Nations Information Governance Committee developed the principles largely in response to the concerns outlined in the previous section, and with particular reference to the collection and use of First Nations data for research purposes that often were not aligned with First Nations concerns and priorities and resulted in inappropriate handling of data collection, analysis, interpretation, and sharing

► **FNIGC's RHS Cultural framework (FNIGC 2004)**, among other things, reconciles a First Nation or indigenous world view with the need to collect data and conduct research.

▶ **United Nations Declaration of the Rights of Indigenous Peoples (2007)**

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is the world's most comprehensive international instrument that affirms Indigenous rights to self-determination, free, prior and informed consent, community governance, and other human rights that are critical to the futures of the world's 476 million Indigenous peoples. UNDRIP provides a necessary but insufficient foundation for the realization of Indigenous rights and interests in data. Indigenous Peoples also require Indigenous-designed legal and regulatory approaches founded on Indigenous Data Sovereignty principles.

▶ **Aboriginal Administrative Data Standard (AADS) (2007).** The purpose of implementing a provincial government data standard for the collection of data specific to Aboriginal persons is to support improved provincial government administrative data. This in turn will support: culturally appropriate, effective and efficient policy, program and service development; performance management and measurement; and socio-economic research, analysis and reporting.

▶ **Tripartite Data Quality and Sharing Agreement (TDQSA) (2010)** reaffirmed the fundamental contribution of First Nations health data to health transformation and First Nations decision-making, through a clear statement of First Nations health information governance, in alignment with the OCAP® principles of First Nations Ownership, Control, Access and Possession. Article 3.1 (a) of the TDQSA reaffirmed the TFNHP's prior commitments to improve the quality and availability of First Nations data; facilitate sharing First Nations Client File data; and create new data sets to enable First Nations in BC to monitor the health of First Nations and the success of programs and services provided to First Nations communities.

▶ **First Nations Information Governance Committee became the First Nations Information Governance Centre (2010)** absorbing the committee members as directors of the board.

▶ **BC First Nations Client File (2011).** currently the best available method of accessing accurate health information about the identifiable majority of status and eligible-for-Status First Nation clients residing in BC. The FNCF is the product of a deterministic record linkage between an extract of the Indian Register held by Crown-Indigenous Relations and Northern Affairs (CIRNA), the MOH Client Roster and the BC Vital Statistics database.

▶ **Truth and Reconciliation Commission (2015)**

In 2015, the Final Report of the Truth and Reconciliation Commission was released, which included 94 Calls to Action to eradicate systemic racism in Canadian society (see for example Calls to Action 55).

▶ **Federal Budget (2018)**

Budget 2018 provided \$2.5 million over three years to support FNIGC's "design of a national data governance strategy and coordination of efforts to establish regional data governance centres."



▶ **Declaration on the Rights of Indigenous Peoples Act (2019)**

On November 26, 2019, the Province unanimously passed the *Declaration on the Rights of Indigenous Peoples Act (Declaration Act)* following a process of co-development with Indigenous Peoples in BC. The *Declaration Act* includes a number of obligations and tools:

- Section 3: In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.”
- Section 4 requires the Province of BC to “prepare and implement an action plan to achieve the objectives of the Declaration.”
- Section 7 establishes space for shared decision-making agreements between statutory decision-makers and Indigenous Governing Bodies.

As related to anti-racism data legislation, the consultation draft action plan required under section 4 includes a goal to end Indigenous-specific racism and discrimination, and an action to “advance the collection and use of disaggregated demographic data, guided by Indigenous data governance, and support the establishment of an Indigenous-governed and mandated regional data centre and alignment with the Data Governance Strategy.”

▶ **MMIWG (2019)**

The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls called for an intersectional approach to eliminating systemic racism and violence against women, girls and two-spirit peoples. Several of the *Calls for Justice* address the need for disaggregated data concerning violence against Indigenous women, girls, and 2SLGBTQQA+ people (see for example 16.44, 17.2, 18.3, 18.4).

▶ **First Nations Data Governance Strategy Summit (2019)**. FNIGC and Alberta’s FNIGC co-hosted a two-day *First Nations Data Governance Strategy Summit* in February. The Summit was the first national engagement with First Nations and brought delegates together from all ten regions to discuss the development of a data governance strategy and establishing RIGCs.

▶ **Disaggregated Demographic Data Collection in British Columbia: The Grandmother Perspective (2019)**

The *Grandmother’s Perspective* is a report responding to the calls for the collection of disaggregated data by race in order to address the systemic racism discrimination that the COVID-19 pandemic so starkly laid bare. The report builds on decades of activism – particularly from Indigenous and community of colour – calling for data that reflects the lived experiences of those who experience systemic inequalities. The approach put forward in the report calls for what Gwen Phillips of the Ktunaxa Nation calls “the grandmother perspective.” This is an approach that centres the importance of relationship: “First Nations governments are not wanting to operate with Big Brother mentality that we’ve been groomed into believing in relation to what data does to us – it’s more like we want to come from the grandmother’s perspective. We need to know because we care.”



► **National First Nations Data Governance Strategy (2020)**

The First Nations Data Governance Strategy is a path for First Nations to achieve data sovereignty from a community-driven and nation-based collaborative process. The Vision is that every First Nation will achieve data sovereignty in alignment with their respective worldview.

The Guiding Principles are based in thirty-three different principles that fall under the following eight headings:

- Community-driven and Nation-based (the cornerstone of the Strategy);
- OCAP®;
- Relationships;
- Transparency and Accountability;
- Quality Community-Driven Standards and Indicators;
- Nation Building; Equity and Capacity; and,
- Effective Technology and Policy.

The nine pillars for Action define which data function and capacity should be built and why and the paths to move them forward.

- Two are cross-cutting enabling pillars:
  - First Nations Data Governance
  - FN Digital Infrastructure and Human Resources
- Seven are vertical pillars representing specific functions of data stewardship:
  - Rights Holders Relationship Management
  - Data Access and Repatriation
  - Data Collection, Discovery, and Gap Bridging
  - Data Standards and Intergovernmental Interoperability
  - Data Management
  - Data Trust, Ethics and OCAP Implementation
  - Data Relationship Management with Other Levels of Governments and Partners

The desired outcomes of the strategy are:

- Rights holders are empowered by evidenced-based decision-making.
- Nation-driven data gaps are closed more quickly.
- Services to First Nations are improved at a faster pace.
- Transfer of government services back into the hands of rights holders is enabled.

- Progress toward self-determination and self-governance is fast-tracked.
- Progress for a New Fiscal Relationship is further enabled through the power of data (including fiscal capacity).
- First Nations wellness and quality of life improvements are accelerated.
- Relevant UNDRIP, RCAP, TRC Calls to Action, MMIWG Calls for Justice Commitments are fulfilled.

► ***In Plain Sight: Addressing Indigenous-Specific Racism and Discrimination in BC Health Care (2020)***

The In Plain Sight report examined Indigenous-specific racism in health care, including a comprehensive presentation of data (recognized as collectively owned by Indigenous Peoples of BC) AND concludes that:

- Application of Indigenous data governance principles is a critical aspect of supporting the implementation of the UN Declaration
- Current Indigenous data governance processes need to evolve to align with UNDRIP, and to produce required data in a more nimble and timely manner
- Recommends renewal of data governance and proper delegation by Indigenous Governing Bodies to institutions and new positions (e.g., Indigenous Health Officer)

Recommendation #9: Indigenous data governance processes:

- Be developed with Indigenous institutions and governments in support of self-determination and sovereignty.
- Create clear protocols for access to information, including for Indigenous communities, the Indigenous Health Representative and Advocate, and Indigenous Health Officer.
- Accelerate the movement towards a vision of a Nation-governed and mandated regional data centre and alignment with the National Data Governance Strategy.
- Result in renewal of the TDQSA to reflect the UN Declaration, align with the vision of a Regional Data Centre, and to address recommendations provided in the TDQSA Rapid Review (February 2019).

► ***The BC First Nations Regional Data Centre Engagement Sessions (2021)***

In May 2021, engagement sessions were held on the concept of a BC First Nations regional data centre, as envisioned under the National Data Governance Strategy. The BC First Nations Governance Centre Initiative, the FNIGC, and the First Nations Public Service Secretariat hosted five meetings between May 17-26 and drew 58 participants from First Nations governments over all sessions. QRG Consulting, contracted by the Province of BC to facilitate First Nations engagement on the Anti-racism data Act, obtained the transcripts of the consultations. The transcripts were cleaned and imported into NVivo – a qualitative data analysis software that allows users to identify key themes

and patterns in large sets of text data. The key themes arising from these engagements focused on quality data, data sovereignty, data governance and First Nations capacity. The participants reported the most important factors related to quality data: reliability, accuracy, legitimacy, relevancy, accessibility and timeliness. Presenters asked participants about their government's interests were either queries for more information, a critique of the system or recommendations for priorities related to how BC's Regional Information Governance Centre could be implemented to meet BC's First Nations' interests and service needs.

- ▶ **Federal Budget 2021 Allocation.** \$73.5 million over three years to continue work toward the development and implementation of a FN Data Governance Strategy

First Nations Leadership Decisions related to Data Sovereignty		
Org.	Resolution no.	Details
BC/Assembly of First Nations		
AFN	48/2009	<p><b>First Nations Information Governance Stand Alone Centre</b></p> <p>called for promoting, protecting and advancing the First Nations Ownership, Control, Access and Possession (OCAP®) principles, the inherent right to self-determination and jurisdiction in research and information management. The Chiefs in Assembly:</p> <ol style="list-style-type: none"> <li>1. Support the development of the First Nation Information Governance Centre, pending regional support resolutions, that will be comprised of a national central office supported by regional satellite offices to be structured as a federally incorporated Centre and governed by a mandated board who will be directly accountable to First Nations through existing practices and structures.</li> <li>2. Mandate the AFN's First Nations Information Governance Committee (FNIGC) to oversee the development of the Centre and to develop and implement a communication strategy to engage First Nations at the local and regional levels in order to ensure continued accountability.</li> <li>3. Mandate the AFN to prepare a letter to the Minister of Health to inform them of this direction and to take immediate steps necessary to secure developmental funding and to transfer existing RHS contracts to the new Centre by April, 2010.</li> <li>4. Mandate the AFN's CCOH to provide a detailed progress report on the implementation of the Centre at the July 2010 AFN Annual General Assembly.</li> </ol>
AFN	54/2016	<p><b>OCAP® Training Prerequisite for All Federal/Provincial/Territorial Government Employees And Researchers</b></p> <p>Chiefs in Assembly directed the National Chief to prepare a letter to the federal Ministers of Health, INAC, ESDC, and research funding agencies to state the importance of all employees taking the Fundamentals of OCAP® on-line course to further their understanding of First Nations data sovereignty and information governance. The Resolution resolved to recognize Indigenous data sovereignty as a cornerstone of Nation rebuilding</p>

AFN	57/2016	<p><b>Funding for Regional First Nations Information Government Centres</b></p> <p>AFN General Assembly called for coordination of First Nations regions, data governance champions and national partners to establish a national First Nations data governance strategy. Data sovereignty be recognized as “the cornerstone of nation-building” and sought federal government funding and support to develop fully functional regional First Nations information governance centres across Canada, as well as coordination of a national First Nations data governance strategy.</p>
AFN	66/2017	<p><b>AFN-Canada Joint Report on Fiscal Relations</b></p> <p>Chiefs in Assembly directed Canada to create a Joint Advisory Committee on Fiscal Relations (JACFR) that would provide advice on a direction for the fiscal relationship between First Nations and Canada (which includes measures to advance First Nations capacity building for data and measurement).</p>
AFN	42/2018	<p><b>Data Sovereignty.</b> Chiefs in Assembly:</p> <ol style="list-style-type: none"> <li>1. Assert that First Nations in Canada maintain ownership and control over data that relates to their identity, their people, language, history, culture, communities and Nations, both historic and contemporary, and that each Nation will establish regulations to govern their data, determining how it will be managed, accessed and shared with other governments, organizations and/or individuals.</li> <li>2. Call on the First Nations Information Governance Centre (FNIGC) to coordinate, with support from the federal government, Statistics Canada, and the Assembly of First Nations, regional processes to engage First Nation Chiefs and leaders in each province and territory to discuss improving the quality of or access to data or statistical information related to their people and Nation.</li> <li>3. Call on the Government of Canada to allocate funding to the First Nations Information Governance Centre (FNIGC) to align engagement processes related to First Nations data, statistics, and information management, and to expedite the development of First Nations’ controlled Regional Information Governance Centres as part of the National First Nations Data Governance Strategy.</li> <li>4. Assert that, in future, all federal, provincial, and territorial government investments in First Nations data governance and analysis, information management, statistics, and reporting must align with the objective of each First Nation achieving full data governance, building and maintaining across their government, the capacity to collect, store, protect, analyze, and utilize data in their decision-making and reporting, measuring their own progress towards the outcomes defined in their community development and nation building plans</li> </ol>
BCAFN	08/2020	<p><b>Action Plan for First Nations Homelessness On and Off-Reserve</b></p> <p>The BCAFN Chiefs-in-Assembly directs the Regional Chief and staff to identify resources to conduct research, with key partners where possible, to:</p> <ol style="list-style-type: none"> <li>i. gather data to determine the number of First Nations people experiencing homelessness;</li> <li>ii. analyze the data to determine the causes and the gaps in services, including the shortage of housing on-reserve that contributes to members leaving their communities and the reasons that prevent the homeless from accessing adequate shelter on and off -reserve;</li> <li>iii. Develop a mechanism to allow First Nations to access data collected for their own future utilization</li> </ol>

BCAFN	01/2021	<p><b><i>In Plain Sight Independent Review of Indigenous-Specific Racism In B.C. Health Care</i></b></p> <ol style="list-style-type: none"> <li>1. the BCAFN Chiefs-in-Assembly fully supports the <i>In Plain Sight</i> report and endorses its recommendations to eliminate anti-Indigenous racism from the BC health care system;</li> <li>2. that the BCAFN Chiefs-in-Assembly urges the provincial government to advance the <i>In Plain Sight</i> report recommendations without delay, and with appropriate reporting and accountability for results back to First Nations patients, communities, and Indigenous Governing Bodies;</li> <li>3. that the BCAFN Chiefs-in-Assembly urges the federal government to take systemic actions to eliminate racism from Canada's health care system and establish proper recognition and legislation and tools to support First Nations governments to exercise their rights and jurisdiction in health;</li> <li>4. that the BCAFN Chiefs-in-Assembly directs the Regional Chief and BCAFN staff to work with the First Nations Leadership Council to provide any necessary support to the implementation of the <i>In Plain Sight</i> reports, including integration into the action plan pursuant to the <i>Declaration on the Rights of Indigenous Peoples Act</i>; and</li> <li>5. that regular progress reports on implementation of the <i>In Plain Sight</i> report be provided to the BCAFN Chiefs-in-Assembly</li> </ol>
BCAFN	04/2021	<p><b><i>Support for FNEC to Develop a BC Specific Model for Capital Funding for First Nation Schools and Teacherages</i></b></p> <p>The BCAFN Chiefs-in-Assembly fully support the First Nations Education Steering Committee (FNEC) in their efforts to develop a proposal for a BC-specific funding model for First Nation school capital; and</p> <p>The BCAFN Chiefs-in-Assembly call on Indigenous Services Canada to provide relevant data to FNEC to support the development of this proposal.</p>
<b>Union of BC Indian Chiefs Resolutions</b>		
UBCIC	2021-60	<p><b><i>Support for the BC First Nations Data Governance Strategy and the Development of First Nations Information, Governance Centres.</i></b> UBCIC Chiefs-in-Assembly:</p> <ol style="list-style-type: none"> <li>1. fully endorse the First Nations Information Governance Centre's National Data Governance Strategy, recognize that BC First Nations have provided input through the BC First Nations Data Governance Discussion Paper, and acknowledge that the federal government has provided funding to implement the national strategy in BC and across the country;</li> <li>2. call on the federal government to immediately release Budget 2021 funding to the First Nations Information Governance Centre to begin implementing the national First Nations Data Governance Strategy in BC, as directed by First Nations in BC;</li> <li>3. call on the Province of BC to recognize BC First Nations' Data Sovereignty in the <i>Declaration Act</i> Action Plan; direct the UBCIC Executive and staff, working with the BC Assembly of First Nations and the First Nations Summit as the First Nations Leadership Council, to work with the First Nations Information Governance Centre, the First Nation Public Service Secretariat, and other relevant organizations to implement the national First Nations Data Governance Strategy in BC and to establish the BC First Nations Data Governance Centre, contingent upon resources and funding.</li> </ol>

UBCIC	2021-13	<p><b><i>In Plain Sight Independent Review of Indigenous-Specific Racism in B.C.'s Health Care System.</i></b> UBCIC Chiefs Council:</p> <ol style="list-style-type: none"> <li>1. fully supports the <i>In Plain Sight</i> report and endorses its recommendations to eliminate anti-Indigenous racism from the BC health care system;</li> <li>2. urges the provincial government to advance the <i>In Plain Sight</i> report recommendations without delay, and with appropriate reporting and accountability mechanisms to ensure the results are transparently reported back to First Nations patients, communities, and Indigenous Governing Bodies;</li> <li>3. urges the federal government to take systemic actions to eliminate racism from Canada's health care system and establish proper recognition and legislation including section 9.1 of the Tripartite Health Framework Agreement, and tools to support First Nations governments to exercise their rights and jurisdiction in health;</li> <li>4. directs the UBCIC Executive and staff, working with the BC Assembly of First Nations and the First Nations Summit as the First Nations Leadership Council, to provide any necessary support to the implementation of the <i>In Plain Sight</i> reports, including integration into the action plan pursuant to the <i>Declaration on the Rights of Indigenous Peoples Act</i> and relevant international instruments;</li> <li>5. directs the UBCIC Executive to ensure that regular progress reports on the implementation of the <i>In Plain Sight</i> report be provided to the UBCIC Chiefs Council.</li> </ol>
UBCIC	2020-26	<p><b><i>Aligning the School Act with the UN Declaration and Contesting the Assignment of Personal Education Numbers to Children in BC from Birth</i></b></p> <p>The UBCIC Chiefs-in-Assembly fully support the First Nations Education Steering Committee's (FNESC) opposition to the unexpected and abrupt amendments to the <i>School Act</i>, as well as the Ministry of Education's failure to adequately consult BC First Nations and address concerns about how the assignment of Personal Education Numbers (PENs) to any child that is a BC resident, including from birth, may negatively impact Indigenous learners;</p>



First Nations Summit Resolutions		
FNS	0913.07	<p><b>Condemnation of Human Biomedical Experimentation In Indigenous Communities and Residential Schools</b></p> <p>Resolves that the First Nations Summit Chiefs in Assembly:</p> <ol style="list-style-type: none"> <li>a) condemn the action of the federal government for condoning and cooperating in the deeply disturbing and shocking nutritional and medical experiments involving Indigenous children; and</li> <li>b) call on Canada to make an apology to the Indigenous victims and survivors of residential schools who were used as subjects in such experiments</li> </ol> <p>2. That the First Nations Summit Chiefs in Assembly hold the view that these experiments reveal Crown conduct reflecting a pattern of genocide against Indigenous peoples.</p> <p>3. That the First Nations Summit Chiefs in Assembly will not accept the Prime Minister's June 2008 apology as a catch-all recognition for all federal policy past, present and ongoing which have, and continue to, negatively impact Indigenous peoples.</p> <p>4. That the First Nations Summit Chiefs in Assembly:</p> <ol style="list-style-type: none"> <li>a) consider it imperative that residential school survivors, Indigenous peoples and all Canadians need to know the full truth of these experiments;</li> <li>b) call on the federal government, all churches, the Canadian Red Cross and any other parties involved in the residential school system to immediately provide Indian Residential Schools Survivors, First Nations and the Truth and Reconciliation Commission with full and complete access to all available records on all experiments and procedures conducted on Indigenous communities and Indigenous children in residential schools and Indian Hospitals;</li> <li>c) call on the federal and provincial governments, all churches and the Canadian Red Cross to initiate a strategic communications action plan, created in partnership with Indigenous Peoples, to ensure information regarding the scientific experiments and procedures is made public and available to victims and their families, including ensuring that such information is reflected in the public school education curriculum so that all Canadians can understand and be aware of the whole truth; and</li> <li>d) call on the government to fund investigation into all cases in which children were subjected to electrical shock at Indian Residential Schools and where Indigenous Peoples were forcibly sterilized at both Indian and public hospitals.</li> </ol> <p>5. That the First Nations Summit Chiefs in Assembly call on the federal government to fund:</p> <ol style="list-style-type: none"> <li>a) An examination of the extent of the residual impacts and intergenerational trauma caused by the nutritional and medical experiments; and</li> <li>b) develop a system for fair and just restitution for those persons and communities who suffered emotional and physical effects as a result of the experiments.</li> </ol> <p>6. That the First Nations Summit Chiefs in Assembly call on the federal, provincial and territorial governments to recognize First Nation jurisdiction over research and data collection processes involving our people and communities and that the First Nation principles of Ownership, Control, Access, and Possession (OCAP) be respected and adhered to in the development of any future partnerships involving research.</p>



FNS	0221.08	<p><b><i>In Plain Sight Independent Review of Indigenous-Specific Racism In B.C. Health Care</i></b></p> <p>a) fully endorses the recommendations contained in the report, <i>In Plain Sight</i> which draw attention to systemic discrimination and the need to eliminate anti-Indigenous racism occurring within the BC health care system;</p> <p>b) urges the provincial government to promptly implement the recommendations set out in the report, <i>In Plain Sight</i> and to report progress results back to First Nations patients, communities, and Indigenous Governing Bodies;</p> <p>c) urges the federal government to take systemic actions to eliminate racism from Canada’s health care system, including the establishment of proper recognition legislation and tools to support First Nations governments in the exercise of their rights and jurisdictions in health;</p> <p>d) directs the First Nations Summit Political Executive and staff to work with the Union of BC Indian Chiefs and the BC Assembly of First Nations and like-minded organizations to support the implementation of the report, <i>In Plain Sight</i>, including integration into the action plan pursuant to the <i>Declaration on the Rights of Indigenous Peoples Act</i>; and</p> <p>e) that regular progress reports on implementation of the report, <i>In Plain Sight</i> be provided to the First Nations Summit Chiefs in Assembly.</p>
FNS	0621.05	<p><b><i>Call On Province to Commission An Investigation and Report Into Indigenous-Specific Racism and Discrimination In the Provincial Public Education System</i></b></p> <p>1. Resolves that the First Nations Summit Chiefs in Assembly:</p> <p>a) fully oppose any racism and discrimination directed against First Nation learners in the provincial public-school system; and</p> <p>b) support the identification of measures to eliminate racism and discrimination and commit to ensuring that the provincial government upholds the minimum human rights standards in the United Nations Declaration on the Rights of Indigenous Peoples, as mandated under the <i>Declaration on the Rights of Indigenous Peoples Act</i>.</p> <p>2. Resolves that the First Nations Summit Chiefs in Assembly fully support the First Nations Education Steering Committee in its continued advocacy for systemic changes to address ongoing and persistent institutional, systemic and interpersonal racism and discrimination experienced by First Nation learners in the provincial public-school system.</p> <p>3. Resolves that the First Nations Summit Chiefs in Assembly call on the Province of British Columbia to:</p> <p>a) commission an independent investigation and report into systemic and Indigenous-specific racism and discrimination taking place in the provincial public education system; and</p> <p>b) ensure that in carrying out this critical investigation and report, dedicated resources and processes will meet or beat those used to prepare the report, <i>In Plain Sight</i>, which similarly investigated racism in the BC public health system.</p>

FNS	1021.06	<p><b>Support for the BC First Nations Data Governance Strategy and the Development of First Nations Information Governance Centres</b></p> <p>1. That the First Nations Summit Chiefs in Assembly:</p> <ul style="list-style-type: none"> <li>a) endorse the First Nations Information Governance Centre's National Data Governance Strategy;</li> <li>b) support the establishment of a BC First Nations Data Governance Working Group supported by a Data Champions Team to guide the implementation of the national First Nations Data Governance Strategy in BC and to advise on the establishment of a BC First Nations Data Centre; and</li> <li>c) call on the federal government to immediately release Budget 2021 funding to the First Nations Information Governance Centre to begin implementing the national First Nations Data Governance Strategy in BC.</li> </ul> <p>2. That the First Nations Summit Chiefs in Assembly call on the British Columbia government to recognize BC First Nations' Data Sovereignty in the Action Plan regarding the implementation of the <i>Declaration on the Rights of Indigenous Peoples Act</i>.</p>
FNS	1021.09	<p><b>Supporting Anti-Racism Legislation and Framework</b></p> <p>That the First Nations Summit Chiefs in Assembly:</p> <ul style="list-style-type: none"> <li>a) stand in solidarity with all Indigenous peoples and racialized minorities who are combatting racism and experiencing grievous harm, fear, trauma, and hate;</li> <li>b) call upon the provincial government to ensure that First Nations Title and Rights Holders provide their free, prior and informed consent to any new legislative initiatives and frameworks. In particular, that First Nations Title and Rights Holders are included as key decision-makers in the development of the new anti-racism legislation; and</li> <li>c) direct the First Nations Summit Political Executive and staff to work with the Union of BC Indian Chiefs and the BC Assembly of First Nations, as the First Nations Leadership Council, to continue engaging with First Nations in BC and the provincial government on its anti-racism legislation, including ensuring that the legislation addresses the cross-sectoral nature of systemic racism, adopts a holistic, inclusive approach to eliminating the root causes of racism, and establishes an equitable, transparent system for race-based data collection.</li> </ul>



# APPENDIX C: Tsleil Waututh Nation anti-racism data legislation community engagement update



Tsleil-Waututh Nation

While initially envisioned to be multiple in-person engagements with community members on the proposed anti-racism data legislation, the sessions were postponed. The shifting landscape of COVID-19 public health orders and directives from both the provincial authority and the Nation's Health Department resulted in postponing and redirecting QRG's engagement efforts.

## People of the Inlet

Our engagement plans were modified and conducted in virtual settings, including:

- Staff participation in Technical Briefing
- Discussion with our Chief Administrative Officer
- Chief and Council presentation
- Virtual open community session
- Key informant interviews

## Engagement Methods

The open community session was broadly advertised through our usual communications channels. Community members were also invited to have a one-on-one discussion if that was more convenient.

Our community engagement session took place from 5:30 pm to 7:00 pm on Thursday, February 24, 2022. We started the session with a foundational "Data 101" presentation that was prepared internally by our community member to provide some basic knowledge on data including topics such as data collection, data management, and data governance. This community session was also co-facilitated with key members of Quintessential Research Group (QRG) and we thank them for their support during our engagement process.

During the engagement session we shared the discussion paper entitled "*Anti-Racism Data Legislation: A Discussion Paper for First Nations in BC*" and the five conditions necessary for

BC First Nations support of the development and implementation of the anti-racism legislation. Our session was also guided by the six discussion questions which include:

1. Is this an accurate reflection of the shared interests of BC First Nations and the Province in anti-racism data legislation: “to draw attention to systemic racism; to increase transparency and hold systems accountable for equitable and improved performance; and, to improve outcomes and equity for Indigenous and other racialized people.”
2. Do the foregoing statements fairly summarize the interests of BC First Nations in anti-racism legislation? What needs to change? What is missing?
3. What are your or your First Nation’s interests in anti-racism data? How can these interests be supported through provincial anti-racism data legislation?
4. What are the major risks posed by this legislation? How can these be mitigated?
5. What additional engagement, consultation, and collaboration opportunities are needed to ensure anti-racism strategies and data address First Nation interests?
6. How can the proposed legislation support properly structured relations on a Government-to-Government basis?

We plan to host an in-person community education session later in the Spring 2022, (pending our community reopening), as our participants would like to be further engaged in the implementation process of the proposed anti-racism data legislation.

#### **CAO, Chief and Council**

The CAO and Chief and Council were both provided with context of the provincial consultation efforts, and TWN specific community engagement plans to offer our input.

### **Engagement Outcomes**

#### **Leadership**

CAO, Chief and Council all spoke to an unawareness of the provincial consultation efforts, despite staff noting that government-to-government communications were assured. CAO pushed for delaying the engagement time frames to make way for a meaningful community consultation process. Further, the importance of this legislation and the nurturing of the government- to -government relationship deserves and requires improvements to the communication processes and timelines on the part of the Province. While Chief and Council understood this to be an important topic area, most voice a lacking in education and deep understanding on the matter and for this reason would like to ensure participation continues especially in the anti-racism data-legislation implementation process. Building capacity for meaningful engagement regarding topics such as data requires an investment in capacity-building as well as shared understandings of concepts and terminology. Concepts such as ‘data’ and ‘legislation’ can be prone to alienate the average person and therefore cause a power imbalance around such an important topic. Council acknowledged broader anti-racism efforts underway that will hopefully shift the

trajectory of the negative experiences that our community members face with racism and discrimination in their day-to-day lives. To ensure full participation of all of our community members Tsleil-Waututh Nation wants to take part in initiatives that benefit or affect our people, and be part of processes from the beginning and at all stages of the process.

### **Community Session and Key Informant Interviews**

Nine community members and their families participated in the virtual community session. There was an overall desire to participate in race-based data collection for the purposes of aiding ongoing and future efforts to improve the outcomes of Tsleil-Waututh people and be accurately represented in data. However, there is a need for not only increased input but increased opportunity to be equitable leaders in the processes, policies and legislation that will affect the territory and people of Tsleil-Waututh Nation. Being equitable leaders requires not only a space for representation and engagement, but further time and financial investments in building capacity so that TWN individuals are fluent in the various disciplines and able to represent community meaningfully at all levels of the decision-making processes. One member spoke of the language used in the session poster as being inaccessible; she is the first generation to not have gone to residential school and we can't assume basic reading and writing skills among those who were part of the system that failed to offer them an education.

A few members voiced apprehension about giving government data, as government has always treated First Nations people as numbers and statistics. Intention and purpose for data collection is important, however experience has dictated that intentions often aren't very good and not usually for their benefit. Sharing stories is sacred and should be done in a good way. One individual voiced a lack of faith in the Province to implement this legislation in a meaningful way that effects change.

Members also shared a fear for what we might lose if we take back our data, as funding is based on the statistics we share. One member noted 'everything we give up, we lose twice as much,' and she referenced losing land, healthcare, education, and other funding based on things First Nations have tried to reclaim. There was expressed fear of the possibility of loss, especially for future generations.

Another shared perspective was the paternalistic tone of this engagement, where First Nations are always invited to the table after the fact; 'here is what you get, make it work.' The Province can't get away from the paternalistic relationship of knowing and assuming what we need.

'The implications are greater than we think.' Members voiced how insufficient a 90-minute session was to engage in this discussion, at the same time, acknowledging that it's difficult to have a lengthier session on a dense topic such as data. It was also acknowledged that more engagement is needed as we can't assume the perspectives shared represent the Nation's 600+ membership.

We are continuing to schedule interviews with key informants in our community based on timelines that work for their schedules. The strict consultation timeframes dedicated by the Province has been incompatible with the pace of community, especially in a COVID context. We plan to have these interviews finalized along with an additional in-person session on the implementation of the anti-racism data legislation in early Spring 2022 after we attend the additional Nation-to Nation sessions scheduled in early April 2022 with Parliamentary Secretary Rachna Singh and other members of the Province to review the ant-racism data legislation.



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