

[TRANSLATION]

# First Nations of Quebec and Labrador Health and Social Services Commission

*The Linguistic Realities Unique to First  
Nations in Quebec*

Presented to the:

Standing Senate  
Committee on Official  
Languages

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COMMISSION DE LA SANTÉ  
ET DES SERVICES SOCIAUX  
DES PREMIÈRES NATIONS  
DU QUÉBEC ET DU LABRADOR

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## Introduction

We thank the members of the Standing Senate Committee on Official Languages for their invitation to appear. We are providing a summary of the main linguistic issues faced by First Nations in Quebec, including a few ways to improve the delivery of health services to First Nations. All health care and wellness services provided to First Nations must be based on an integrated and holistic view of their health and wellness, taking into account the social determinants of their health, including culture and language.

### 1. Legal framework

The legal framework governing the delivery of and access to health care services for First Nations in Quebec is complex; it is based on constitutional principles and standards, federal and provincial laws and policies, as well as various agreements.<sup>1</sup>

In this regard, the “Quebec government is responsible for developing, organizing and delivering health services to all residents of the province, including First Nations.<sup>2</sup> Despite this responsibility, the Government of Quebec clearly states its desire that services to First Nations on First Nations territory remain the responsibility of the federal government [...] except with regard to the medical care covered by the Régie de l’assurance maladie du Québec.”<sup>3,4</sup>

In the majority of cases, the Quebec government refuses to provide health services in a community unless there is a formal agreement holding the community itself or the federal government responsible for paying the full cost of the services.<sup>5</sup> However, the federal government’s service offer, and therefore the funding associated with and allocated to communities, does not include several of the elements

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<sup>1</sup> FNQLHSSC. *Final report – Regional Consultation for the Co-Development of Distinctions-Based Indigenous Health Legislation*. Wendake, 2022. Accessed October 16, 2024. <https://cssspnql.com/en/produit/co-developing-distinctions-based-indigenous-health-legislation-indigenous-health-legislation/>, p. 9.

<sup>2</sup> *Ibid.*, pp. 9–10.

<sup>3</sup> Ministère de la Santé et des Services sociaux. *Delivery and funding of health services and social services for aboriginal people*. Quebec, 2007. Accessed October 16, 2024. <https://publications.msss.gouv.qc.ca/msss/fichiers/2007/07-725-02A.pdf>, p. 7.

<sup>4</sup> Section 3 of the *Canada Health Act*, (R.S.C. 1985, c. C-6) sets out the primary objective of Canada’s health care policy, which is “to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers.” The *Canada Health Act* is based on five principles: public administration, comprehensiveness, universality, portability and accessibility. It is clear that both portability and accessibility of health services apply to the situation of Indigenous communities, particularly those along borders.

<sup>5</sup> FNQLHSSC, *Final report – Regional Consultation for the Co-Development of Distinctions-Based Indigenous Health Legislation*, p. 10.

that are normally offered by the provincial health network institutions.<sup>6</sup> As a result, medical care and hospital care, as well as specialized and super-specialized care, are offered by the province within the Quebec health and social services network institutions located outside the communities, where several incidents of racism and discrimination have been reported in Quebec's recent history.<sup>7</sup>

This division of powers and overlapping of responsibilities creates a number of issues in access to services, particularly in terms of service continuity. This is the case despite the obligation for every institution in the Quebec network to “ensure that its services are provided in continuity and complementarity with those provided by the other institutions and resources of the region, and that such services are organized in a way that reflects the needs of the population it serves.”<sup>8,9</sup> The fog surrounding the responsibility for services offered to First Nations—particularly when these services are to be offered in the communities—creates a multitude of jurisdictional disputes. The population of the First Nations is often caught in these traps and deprived of essential services normally offered to the non-Indigenous population.<sup>10</sup>

In addition, First Nations have the inherent right to self-determination in areas such as health care and child and family services.<sup>11</sup>

## 2. Translation of the FNCFS Agreement

On July 11, 2024, the *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program* (Final Agreement) was published in its final version in English only.

The Final Agreement is a commitment by the federal government to undertake long-term reform of the FNCFS Program and to eliminate the discrimination perpetrated by Canada in its FNCFS Program

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> *Act respecting health services and social services*, CQLR, c. S-4.2, s. 101(3).

<sup>9</sup> FNQLHSSC, *Final report – Regional Consultation for the Co-Development of Distinctions-Based Indigenous Health Legislation*, p. 10).

<sup>10</sup> Ibid., p.10.

<sup>11</sup> See, for example, the *Indian Act*, R.S.C. (1985), c. I-5, s. 81(1)(a), the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s. 35, and *An Act respecting First Nations, Inuit and Métis children, youth and families*, S.C. 2019, c. 24, s. 18(1).



and found in the Canadian Human Rights Tribunal (CHRT) decision.<sup>12,13</sup> The Agreement was made available in French on August 19, 2024, more than a month after it was released in English.

However, the federal government has an obligation to take into account the values of the *Canadian Charter of Rights and Freedoms*<sup>14</sup> in fulfilling its obligations under the Final Agreement and in its efforts to obtain approval from First Nations. The linguistic obligations of the federal government under the Charter<sup>15</sup> are based on the equality of Canada's official languages.

The federal government also has obligations under the *Official Languages Act*,<sup>16</sup> a quasi-constitutional statute, including the obligation to make, in both official languages, any instrument made in the exercise of an executive power (Part II), to commit to "protecting and promoting the French language" and to take positive measures to ensure that this commitment is implemented (Part VII).

The federal government has failed to meet these constitutional and quasi-constitutional obligations by not making the French version of the Final Agreement available in a timely manner. Members of First Nations communities who use French in their work have also been treated unfairly by the federal government.

This issue was the subject of two (2) official complaints to the Commissioner of Official Languages on July 26, 2024. No response has been received so far. The objective is to raise the Government of Canada's awareness of respect for official languages in its dealings with First Nations.

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<sup>12</sup> Government of Canada, *Executive Summary of the Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program*. October 1, 2024. <https://www.sac-isc.gc.ca/eng/1722880514648/1722880535737>.

<sup>13</sup> 2016 CHRT 2 [https://fncaringsociety.com/sites/default/files/2016\\_chrt\\_2\\_access\\_0.pdf](https://fncaringsociety.com/sites/default/files/2016_chrt_2_access_0.pdf)

<sup>14</sup> *Constitution Act, 1982*, Schedule B to the *Canada Act, 1982* (U.K.), 1982, c. 11.

<sup>15</sup> Among others, sections 16 and 20 of the *Canadian Charter of Rights and Freedoms*.

<sup>16</sup> R.S.C., 1985, c. 31 (4th Supp.).

### 3. Access to services

Of all the characteristics of the First Nations,<sup>17</sup> the linguistic aspect is of great significance, as it is the source of issues related to access to services.<sup>18</sup>

On June 1, 2022, *An Act respecting French, the official and common language of Québec*<sup>19</sup> (the Act), came into force,<sup>20</sup> and substantially modified the *Charter of the French Language*<sup>21</sup> (the Charter). The amendments to the Charter have raised a number of fundamental rights issues. On August 12, 2022, the Superior Court of Québec suspended the coming into force of sections 5 and 119 of the Act, which would add sections 9 and 208.6 to the Charter.<sup>22</sup> The Court considered that the provisions in question could result in irreparable harm to the accessibility to justice for English representatives of legal persons.<sup>23</sup> Although First Nations did not directly contribute to this recourse, a significant number of First Nations managers, administrators and contractors using English as their language of work could have been affected by these provisions.

On April 20, 2023, the Assembly of First Nations Quebec–Labrador (AFNQL) and the First Nations Education Council (FNEC) filed an application for judicial review with the Superior Court challenging 14 provisions of the Charter.<sup>24</sup> In particular, the AFNQL and FNEC denounced the difficulties First Nations face in accessing higher education, which now requires knowledge of French.<sup>25</sup> Such an obligation does not take into account the fact that the majority of First Nations have English or French

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<sup>17</sup> In particular, communities along borders.

<sup>18</sup> FNQLHSSC, *Projet Pancanadien-Évaluation régionale : offre de services aux membres des Premières Nations résidant à proximité d'une autre province*. Wendake, 2011, p. 22.

<sup>19</sup> SQ 2022 c. 14.

<sup>20</sup> With exceptions.

<sup>21</sup> CQLR c. C-11.

<sup>22</sup> “**9.** A French translation certified by a certified translator shall be attached to any pleading drawn up in English that emanates from a legal person. The legal person shall bear the translation costs.”

“**208.6.** A pleading to which, in contravention of section 9, no translation certified by a certified translator is attached cannot be filed at a court office or at the secretariat of an agency of the civil administration that exercises an adjudicative function or within which a person appointed by the Government or by a minister exercises such a function. The court clerk or the secretary shall notify the legal person concerned without delay of the reason for which the pleading cannot be filed.”

<sup>23</sup> *Mitchell c. Procureur général du Québec*, 2022 QCCS 2983 (CanLII),

<<https://www.canlii.org/en/qc/qccs/doc/2022/2022qccs2983/2022qccs2983.html>>

<sup>24</sup> File No. 200-17-034684-233, Superior Court of Quebec (administrative division), District of Quebec.

<sup>25</sup> In particular, the provisions of the Charter and related regulations in force since July 2023, which provide that college certificates and diplomas (necessary to meet university admission criteria) can be issued only if three French courses have been successfully completed, with no exemptions provided.

as a second language. In some cases, this reality limits the accessibility of First Nations people to the health and social services professions, which we will discuss later.

In the health and social services network in Quebec, the FNQLHSSC was informed of issues related to accessibility to health care and social services caused by this language barrier and certain ambiguities caused by amendments to the Charter between 2022 and 2024. Thus, following the passage of the Act, staff in the provincial health and social services network would have to inform some First Nations people that they were required to serve them exclusively in French. Our consultations with First Nations communities led us to conclude that the amendments to the Charter resulted in ambiguities. In addition, members of English-speaking First Nations communities located on the borders with New Brunswick and Ontario prefer to receive care in neighbouring provinces rather than in Quebec due to the availability of services and professionals working in English.

To resolve any ambiguity, on July 19, 2024, the Ministère de la Santé et des Services sociaux (MSSS) published a guide<sup>26</sup> specifying the nature of situations in which the health and social services network intends to use a language other than French where permitted under the *Charter of the French Language*. The guide states that a health professional may deviate from the obligation to communicate in French when a person's health requires it, but other obligations remain, including anything written. It specifies that when communicating in writing with a user in a language other than French, a French version of the communication must be attached. This makes exchanges with people who do not communicate in French unnecessarily burdensome.<sup>27</sup>

Since the Guide was launched, the FNQLHSSC has not been informed of any other language-related refusals for First Nations care.

#### 4. Challenges in recruiting and retaining professionals

However, significant issues remain with respect to access to the health and social services profession by First Nations. First of all, it is important to remember that First Nations remain the historical victims of the *Indian Act*, which required from 1876 to 1920 the emancipation of any “Indian” who wanted to

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<sup>26</sup> Ministère de la Santé et des Services sociaux. *Use of a Language Other than French With Users of Health and Social Services*. Québec, 2024. Accessed October 16, 2024.

<https://publications.msss.gouv.qc.ca/msss/en/document-003786/>, p. 3 ff.

<sup>27</sup> This situation affects not only health and social services, but also the justice system and public safety, as a result of the inclusion of section 22.3(1) in the Charter.

become a lawyer or doctor.<sup>28</sup> This legislation gave rise to other socio-historical issues, including residential schools and economic disparities that have resulted in the ethnocide (“cultural genocide”) of more than 150,000 First Nations.<sup>29</sup>

Today, and because of these socio-historical inequities, professional associations face a stark shortage of First Nations and Inuit people, and the health and social services professions are particularly affected. In 2008, the FNQLHSSC innovated by working with the four faculties of medicine in Quebec to establish a specific and exclusive admission contingent for First Nations and Inuit people. Moreover, access to midwifery was maintained for First Nations and Inuit through a grandfathering clause prior to the creation of the professional order in 1999 and specific training for First Nations and Inuit professionals deployed in Nunavik and the territories of the Cree Nation.<sup>30</sup>

However, the adoption of section 32 of the Charter in June 2022 now requires health and social service professionals to use only French in written and oral communications with applicants for admission to the profession, including Inuit and First Nations people, without consideration for their membership in communities working in English. Currently, English-speaking candidates and professionals have difficulty obtaining information in English regarding the practice of professions in Quebec and associated licences, documentation for professional practices, such as guidelines, and practice guides found on the professional orders’ websites.<sup>31</sup> Yet, those documents are essential to the practice of the profession so that professionals can provide users with quality care.<sup>32</sup>

As a result of amendments to the Charter in 2022, professional orders no longer provide training in English. How can English-speaking First Nations professionals meet their continuing education obligation if no courses are offered in English? Professionals end up having to take equivalent training with professional associations in Ontario and New Brunswick, and then having to get them recognized with their professional order in Quebec. This process entails significant costs and involves a cumbersome bureaucratic approach for First Nations professionals trying to keep their skills up to date

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<sup>28</sup> *The Indian Act*, S.C.1876 c. 18, s. 86(1); *The Indian Act*, S.C.1880 c. 28, s. 99(1); *The Indian Act*, S.C.1886 c. 43, s. 86; *The Indian Act*, R.S.C.1906 c. 81, s. 111.

<sup>29</sup> Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: summary of the Final Report of the Truth and Reconciliation Commission of Canada*. Ottawa, 2015. Accessed October 16, 2024.

[https://publications.gc.ca/collections/collection\\_2015/trc/IR4-7-2015-eng.pdf](https://publications.gc.ca/collections/collection_2015/trc/IR4-7-2015-eng.pdf), p. 1.

<sup>30</sup> *Regulation respecting professional acts that persons other than midwives may engage in on certain terms and conditions*, c. S-0.1, r. 1.

<sup>31</sup> AFNQL and FNEC. *Document regarding BILL 96*. Wendake, 2021. Accessed 16 October 2024. <https://cssspnql.com/en/produit/document-regarding-bill-96/>, p. 35.

<sup>32</sup> *Ibid.*



in accordance with their professional orders' obligations. These individuals often work with First Nations, Quebec and Canadian populations in areas far from urban centres, which are often underserved due to service shortages and instability.

That said, the most discriminatory section of the Charter is section 35, which now requires professional orders to only issue a permits to people who have demonstrated appropriate knowledge of French. First Nations and Inuit can receive an exemption under section 97 of the Charter, which gives the government the power to determine by regulation the conditions and circumstances in which a professional order is authorized to depart from the first paragraph of section 35. The resulting regulation (r. 10)<sup>33</sup> provides an exemption in respect of persons living in an Indigenous community or residing outside Quebec but practising their profession in an Indigenous community.

This means that First Nations people who speak English and live outside their community, or have never lived in their community, are victims of great injustice because they are unable to practise their profession in or outside their community under r. 10. This situation is discriminatory under section 21 of the UNDRIPA.<sup>34</sup> It should be noted that Indigenous rights recognized in section 35 of the *Constitution Act, 1982*<sup>35</sup> and inherent rights recognized by the UNDRIPA, particularly since *R. v. Montour*,<sup>36</sup> remain important tools for the protection of First Nations rights, in part because the changes to the Charter in June 2022 were carried out using notwithstanding clauses<sup>37</sup> that allow the exclusion from judicial review by the courts of sections that are discriminatory under human rights charters (Canadian and Quebec).

Lastly, the fact remains that the Charter prevents the recognition of college courses (as opposed to university courses) to enable First Nations professionals working in English to quickly earn college certificates (1 to 2 years) or college diplomas (3 years) to speed up the entry of young professionals into the communities. We reiterate that the requirement for completion of three French courses to obtain a college diploma<sup>38</sup> is now a barrier to learning for First Nations working in English.

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<sup>33</sup> *Regulation to authorize professional orders to make an exception to the application of section 35 of the Charter of the French Language*, CQLR c. C-11, r. 10.

<sup>34</sup> Office of the United Nations High Commissioner for Human Rights. *United Nations Declaration on the Rights of Indigenous Peoples* CDL, September 12, 2007.

<sup>35</sup> *Constitution Act, 1982*, Schedule B to the *Canada Act, 1982* (U.K.), 1982, c. 11.

<sup>36</sup> *R. c. Montour*, 2023 QCCS 4154 (CanLII), <https://canlii.ca/t/k0wzd>

<sup>37</sup> *An Act respecting French, the official and common language of Québec*, SQ 2022 c. 14, s. 121.

<sup>38</sup> *Charter of the French Language*, CQLR c. C-11, s. 88.0.2, para. 2.

All the more so as few First Nations members hold a college diploma (12%) or a university degree (11%),<sup>39,40,41</sup> and yet these members provide culturally competent services, and do so in a holistic manner in the Indigenous language. In addition, professional orders are not aware of the issues and needs that communities are facing. Non-native professionals are not trained to intervene culturally with First Nations and Inuit. Professional orders must do more to promote the Indigenous knowledge of Indigenous professionals and invest in cultural safety as recommended by numerous commissions.<sup>^</sup> It is a strength to be able to offer culturally appropriate services in a community's Indigenous language as these cultural competencies ensure that users receive high-quality care.<sup>^</sup> These criteria must be taken into consideration when a candidate seeking admission to a profession applies for a permit to practice on reserve<sup>^</sup> or for an organization that provides services to First Nations people.

In terms of accessibility to professions and access to health care and social services, the FNQLHSSC is in favour of a culturally safe approach that takes into account respect for the linguistic differences of First Nations. The AFNQL Chiefs also adopted a declaration in September 2023 recognizing the right to culturally appropriate public services, which includes the right to access care and training that reflects the linguistic realities of the First Nations.<sup>42</sup>

## 5. Culturally safe environments

On June 9, 2023, the Government of Quebec introduced Bill 32, *An Act to establish the cultural safety approach within the health and social services network*. One requirement of the bill is for every institution in the health and social services network to adopt a cultural safety approach toward Indigenous persons.<sup>43</sup> However, it is important to note that the Quebec government still denies the existence of systemic discrimination, despite repeated calls from Indigenous leaders and several organizations to recognize Joyce's Principle, which was established in the wake of the tragic death of Joyce Echaquan.<sup>44</sup>

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<sup>39</sup> About four in ten adults hold a secondary school diploma or higher.

<sup>40</sup> The professional structure of jobs held by First Nations and Inuit compared to that of the general population shows that there is a relatively lower concentration of First Nations and Inuit in higher skilled positions, such as managers (8.2% compared to 10.3%) and professionals (12% compared to 18.1%). First Nations and Inuit Labour Market Advisory Committee: *Labour Market Conditions for First Nations and Inuit in Québec*, 2016, p. 39.

<sup>41</sup> This paragraph is taken from the brief entitled *Document regarding Bill 96* by the Assembly of First Nations Quebec-Labrador referred to in footnote 32, above.

<sup>42</sup> AFNQL, *Declaration of First Nations' Rights to Self-determination and Cultural Safety*. Montréal, 2023: <https://files.cssspnql.com/s/FjxNTjjXUfucRzB>.

<sup>43</sup> Explanatory notes to Bill 32, *An Act to establish the cultural safety approach within the health and social services network*.

<sup>44</sup> FNQLHSSC, *Final report – Regional Consultation for the Co-Development of Distinctions-Based Indigenous*

While introducing legislation in this area is a step forward, structural changes must be made to establish a lasting relationship between First Nations and provincial institutions.<sup>45</sup> In this regard, the British Columbia First Nations Health Authority (FNHA)<sup>46</sup> and the Health Standards Organization developed an information sheet on the British Columbia Cultural Safety and Humility Standard. We suggest the creation of a national standard to fight racism against Indigenous people seeking health care services<sup>47</sup> and the addition of specific indicators for cultural safety in the mechanisms for evaluating service quality and performance.<sup>48</sup> Such a tool could have a significant impact on the willingness of institutions to improve their attitude toward First Nations.<sup>49</sup>

## Conclusion

The comments in this brief highlight the complexity and challenges facing First Nations in health-related matters in Quebec.

Language-of-use issues in some cases encourage First Nations people in Quebec to seek health services in neighbouring provinces,<sup>50</sup> or in other cases to avoid institutions in the Quebec network due to the racism and discrimination experienced or reported throughout the history of Quebec and Canada. Such discrimination persists, for example, against First Nations members of professional orders who use English as their working language and whose mother tongue is an Indigenous language.

Is there a solution that could be put forward by the federal government, such as the Standing Senate Committee on Official Languages?

To this end, we call on the Government of Canada to develop a national standard on cultural safety, integrated into the organizational mechanisms for evaluating the quality and performance of public

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*Health Legislation*, p. 24; Atikamekw Nehirowisiw, Joyce's Principle. 2020. Accessed October 18, 2024. [https://principedejoyce.com/sn\\_uploads/principe/Joyce\\_s\\_Principle\\_brief\\_\\_\\_Eng.pdf](https://principedejoyce.com/sn_uploads/principe/Joyce_s_Principle_brief___Eng.pdf)

<sup>45</sup> Ibid., p. 31.

<sup>46</sup> First Nations Health Authority: <https://www.fnha.ca/>.

<sup>47</sup> HSO Health Standard Organization. *Client and Family Information Sheet: Cultural Safety and Humility Standard for British Columbia*. 2022. Accessed October 17, 2024.

[https://healthstandards.org/files/HSO\\_CSHClientandFamilyInformationSheet\\_EN.pdf](https://healthstandards.org/files/HSO_CSHClientandFamilyInformationSheet_EN.pdf).

<sup>48</sup> FNQLHSSC, *Final report – Regional Consultation for the Co-Development of Distinctions-Based Indigenous Health Legislation*, p. 31.

<sup>49</sup> Ibid.

<sup>50</sup> FNQLHSSC,

*Projet Pancanadien-Évaluation régionale : offre de services aux membres des Premières Nations résidant à proximité d'une autre province*, p. 40.

services.<sup>51</sup> This standard would need to be developed in collaboration with First Nations and would need to be able to adapt to regional and local realities. We believe that a minimum standard for cultural safety must provide for access to care and training in both official languages and recognition of translation or support needs for people who express themselves in their ancestral languages.

The Government of Canada cannot interfere with the powers of the provinces recognized in section 92 of the *Constitution Act, 1867*,<sup>52</sup> but it can use the funding mechanism as a lever of influence with the provinces and territories to promote rigorous health standards for all Canadians.<sup>53</sup> Therefore, we urge the Government of Canada to use funding as leverage with the provinces and territories to promote respect for the language rights of Indigenous people. It is important to note that such an approach is in line with the UNDRIPA.<sup>54</sup>

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<sup>51</sup> FNQLHSSC, *Final report – Regional Consultation for the Co-Development of Distinctions-Based Indigenous Health Legislation*, p. 32.

<sup>52</sup> 30 & 31 Victoria, c. 3 (UK).

<sup>53</sup> See, for example, Michel Maher, “Le déficit du fédéralisme fiscal dans l’exercice du pouvoir de dépenser,” (1996) 75-3, *The Canadian Bar Review* 404.1996 CanLIIDocs 84, <https://canlii.ca/t/2rmz>

<sup>54</sup> *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14. s. 5.

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VISION

First Nations individuals, families and communities are healthy, have equitable access to quality care and services, and are self-determining and culturally empowered.

MISSION

To accompany Quebec First Nations in achieving their health, wellness, culture and self-determination goals.



COMMISSION DE LA SANTÉ  
ET DES SERVICES SOCIAUX  
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