



Opportunities for Improving the Health of First Nations

The Role of Public Health Legislation

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Overview of Opportunities to Consider



- First Nations routes for exercising control: delegated by-law making authority and through self-government agreements.
- Potential role of Federal Medical Officers of Health.
- Public Health Act for First Nations – the recognition of a 3rd jurisdiction?



Enhancing The Use Of By-laws

The Issue



- Canada has recognized the authority of FNs to pass By-Laws relating to some community health matters, as set out in the *Indian Act*.
- In particular, they may pass law to prevent the spreading of contagious and infectious disease and for the construction of wells, cisterns, reservoirs and other water supplies (Section 81(1)(a & l)).
- However, by-laws must be submitted to Canada (Minister of Indian Affairs) for approval.



Enhancing The Use Of By-laws The Opportunity



- In practice the power to pass by-laws has had limited impact on FN Health because there has been no capacity or resources to exercise this authority or jurisdiction.
- First Nation authority can be implemented through the following mechanisms:
 - Negotiated Tri-Partied Agreements (ie. Pandemic Plans); and
 - Implementation of the Expert Panel on Safe Drinking Water's recommendations.



Self-Governing First Nations

The Issue



- FN communities, particularly in the Northern Regions, have gained more significant and direct control over health through two key methods:
 1. Self-government and land claim agreements; and
 2. Transfer of administrative control over some community health services from Health Canada to FNs.



Self-Governing First Nations The Opportunity



- Increased funding and capacity to self-governing FNs to allow them to fulfill their responsibilities to their membership.
- Recognize that managing the land of some self-governing FNs involves development and maintenance on an existing infrastructure that is in desperate need of extensive and costly repairs. With no resources either internally or externally these communities face a bleak future.
- Transferred communities should be allowed to design and deliver programs that operate based on community needs and not rigid FN/IB program parameters/authorities. These programs should include environmental and community development programs.
- Funding formulas to transferred communities should not be based on population alone, but recognize that other factors contribute to the cost of delivering health programs.



The Recognition of a Third Jurisdiction: The Issue



- Naylor Report found that aboriginal health would only be improved through a “wide-angle approach to health determinants and community development and that this approach must be both guided and supported by the affected communities”.
- The Naylor Report went on to question whether public health services and overall health of FNs would be better met through the existence of a third level of jurisdiction which must form its own connection within the existing levels of federal provisional departments, laws, policies and practice.



Public Health Act for FNs?



- Need for broader constitutional and statutory framework that would entrench Public Health activities for First Nations.
- Current Public Health legislation in Provinces and Territories is inoperable in areas where there is no apparent agreement on jurisdiction.
- Spending power appears to be the default legislative authority.

There is an urgent need for a common approach to legislation and regulation that would:

1. Be guided by existing Provincial and Territorial PH Acts;
2. Ensure interoperability within Provincial and Territorial legislation and regulations; and
3. Would clarify and articulate the scope, role and functions of Public Health for FNs.

The interoperability may permit the extension of the authority of the Regional MOHs.



Would an MOA Suffice?



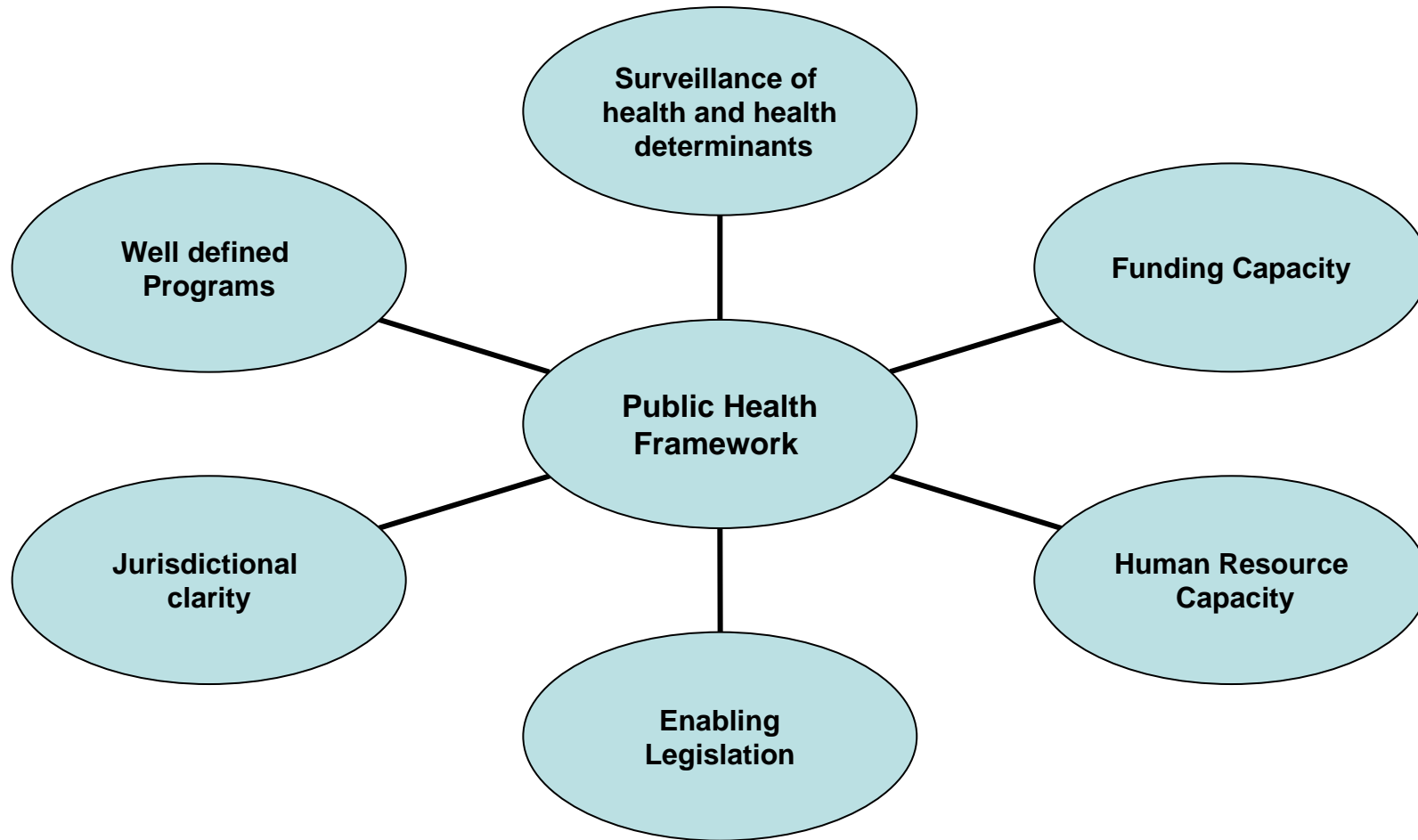
- The current disgraceful state of public health for FNs may not permit us to wait for legislation to be developed.
- Regional FN leaders may consider a Memorandum of Agreement in the form of a tripartite agreement, that would essentially detail F/P/T/FN roles and responsibilities and scope of authority/jurisdiction.
- The MOA could be either a temporary solution to a longer term solution or it could form the basis of ongoing renewable MOAs.



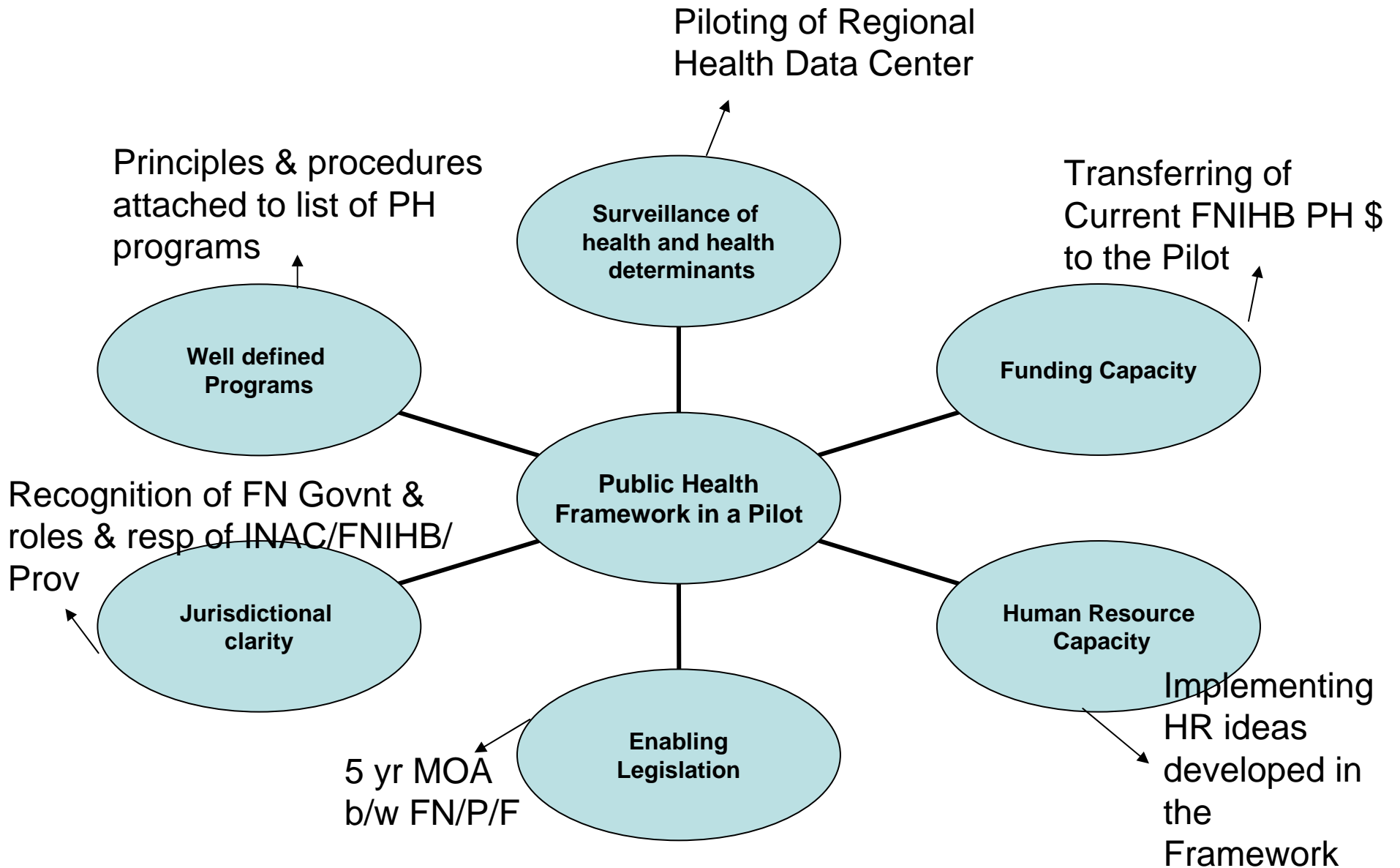
Next Step



Defining Public Health



Defining Public Health





Conclusion



- First Nations, like any other Canadian, have the right to have their health protected from environmental hazards, communicable diseases and chronically poor health.
- The changing landscape of public health activities across the country present an ideal opportunity for new, and potentially more radical approaches to ensuring FNs health is regarded with the same level of assurance as it is for all other Canadians.