
Assembly of First Nations

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Assemblée des Premières Nations

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**SPECIAL CHIEFS ASSEMBLY
DECEMBER 6,7, and 8, 2022, OTTAWA, ON**

Resolution no. 23/2022

TITLE: Re-Commitment to Co-Development of Replacement Legislation for *Safe Drinking Water for First Nations*

SUBJECT: Health and Water

MOVED BY: Chief Sidney Peters, Glooscap First Nation, NS

SECONDED BY: Chief R. Donald Maracle, Mohawks of the Bay of Quinte, ON

DECISION Carried by consensus

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (the UN Declaration) was adopted by the Government of Canada without qualification and passed legislation affirming:
- i. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
 - ii. Article 19: States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.
 - iii. Article 21 (1): Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
 - iv. Article 21 (2): States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities.

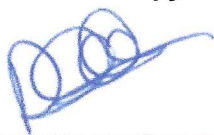
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- v. Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive, spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.
 - vi. Article 32 (1): Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
 - vii. Article 32 (2): States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
 - viii. Article 32 (3): States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.
- B.** The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls has identified the First Nations' water and housing crisis as a source of violence against First Nations' women, girls and 2SLGBTQQIA+ people, responding with Call for Justice 4.1 that states:
- i. We call upon all governments to uphold the social and economic rights of Indigenous women, girls, and 2SLGBTQQIA+ people by ensuring that Indigenous peoples have services and infrastructure that meet their social and economic needs. All governments must immediately ensure that Indigenous peoples have access to safe housing, clean drinking water, and adequate food.
- C.** The Assembly of First Nations (AFN) First Nations-in-Assembly have provided extensive direction to the AFN including resolutions addressing drinking water and wastewater issues faced by First Nations:
- i. Resolution 20/2012, *National First Nations Water Strategy*
 - ii. Resolution 29/2014, *Right to Safe Drinking Water on Reserve*
 - iii. Resolution 65/2015, *Support for First Nations for the Safe Water Project*
 - iv. Resolution 70/2015, *Support for Housing, Water and Infrastructure*
 - v. Resolution 74/2015, *First Nations Water*

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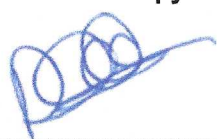
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- vi. Resolution 76/2015, *Safe Drinking Water for First Nations*
 - vii. Resolution 26/2017, *Safe Drinking Water for First Nations Act (the Act)*
 - viii. Resolution 77/2018, *First Nations led Engagement Process for Safe Drinking Water Legislation*
 - ix. Resolution 01/2018, *First Nations led Process to Develop New Federal Safe Drinking Water Legislation*
 - x. Resolution 26/2018, *Support for a First Nations Safe Drinking Water Legislation – Preliminary Concepts*
- D. AFN Resolution 53/2019, *Human Right to Clean Drinking Water*, recognizes and affirms the human right to clean drinking water. The human right to water and sanitation (HRWS) was recognized as a human right by the United Nations General Assembly on July 28, 2010.
- E. First Nations and all Canadians have the basic human right to clean drinking water. In addition, since the Walkerton Crisis in Ontario in 2000, many provincial governments have made clean drinking water a priority for all municipalities, while the federal government has failed to do the same for First Nations.
- F. First Nations across the country continue to face inadequate access to safe, clean water, sanitation, and adequate infrastructure.
- G. As part of the Safe Drinking Water Class Action Settlement Agreement approved by the courts, the Government of Canada has committed to make all reasonable efforts to develop and introduce replacement legislation, in consultation with First Nations, by December 31, 2022, that includes:
- i. Ensuring sustainable First Nations' water and wastewater systems premised upon defining minimum standards of water quality for First Nation water and wastewater systems, and defining minimum capacity standards for the delivery of water to First Nations;
 - ii. creating a transparent approach to building, improving, and providing drinking water and wastewater services for First Nations;
 - iii. confirming adequate and sustainable funding for First Nations' water and wastewater systems; and
 - iv. supporting the voluntary assumption of water and wastewater infrastructure by First Nations.
- H. In the summer of 2022, AFN and Canada began to co-develop legislation. Canada and the AFN had agreed to a Terms of Reference for a Joint Technical Working Group (JTWG), signed by AFN Chief Executive Officer

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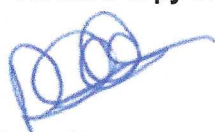
Janice Ciavaglia and then Minister of Indigenous Services Canada Minister Marc Miller, to co-develop safe drinking water and wastewater legislation through the preparation of, among other things, a draft framework and, subject to approval, the draft legislative content of the legislation, and agreed to a confidentiality agreement that committed both parties to maintaining confidentiality throughout the JTWG co-development process.

- I. On November 4, 2022, the AFN was informed that legislative drafting had begun without any prior notice, without permission to include content from the JTWG (an apparent breach of confidentiality) and separate from the agreed-upon approach to co-development (an apparent breach of the terms of reference).
- J. On November 8, 2022, the Chiefs Committee on Housing & Infrastructure (CCoHI) recommended that a number of key issues be addressed by the AFN, including that Canada pause the drafting of legislation and that AFN not participate in JTWG meetings until Canada was able to recommit to a true process of co-development.
- K. Significant concerns remain that Canada's proposed legislation will not address a commitment to funding, establishment of minimum standards, recognition of rights, and the creation of First Nations' governance institutions.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

- 1. Direct the Assembly of First Nations (AFN) to call on Canada to cease further development of its legislative drafting and release what they have developed thus far on safe drinking water.
- 2. Direct the AFN to withdraw from the Joint Technical Working Group (JTWG) unless Canada re-commits to the co-development of legislation in a meaningful partnership with First Nations in compliance with the original Terms of Reference of the JTWG and the confidentiality agreement.
- 3. Direct the AFN to co-develop legislation that includes at a minimum:
 - a. Recognition of First Nations rights and jurisdiction over lands and waters;
 - b. Mandatory requirements for Canada to provide water and wastewater treatment that meets minimum national standards (or where requested, the more stringent of the federal requirements or provincial standards governing residential water quality);
 - c. A commitment to adequate and sustained funding (including at a minimum, capital, operations & maintenance and inspections) to address water and wastewater;

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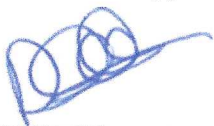
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- d. Mechanisms to address transboundary waters;
 - e. Liability protection for owners and operators; and,
 - f. Governance structures that ensure First Nations are decision-makers in the provision of water and wastewater services.
4. Direct the AFN to call on Canada to ensure there are no criminal charges and/or penalties against the owner(s) or operator(s) of a public water system where Canada has failed to provide adequate funding for the operations, capital maintenance and independent inspection of their public water system.

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