

## Sector: Infrastructure

### Issue: Safe Drinking Water Legislation

#### History

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Since passing the *Safe Drinking Water for First Nations Act* (SDWFNA) in 2013, First Nations have extensively criticized the Act for imposing unjust liability on First Nations without proper resources and for granting sweeping enforcement, legislative and judicial powers to the Crown. As a result, the AFN has been persistently advocating for its repeal and replacement, as directed by the First Nations-in-Assembly through numerous Resolutions, including Resolutions 26/2015, 88/2017, 01/2018, 26/2018, and 14/2019. The SDWFNA was repealed in June 2022, following the advocacy of the AFN and the National Class Action Settlement Agreement, which committed the federal government to repeal the SDWFNA and replace it with new legislation in consultation with First Nations by December 31, 2022.

Pursuant to the mandate of the First Nations-in-Assembly, the AFN has urged Canada to meaningfully co-develop the replacement legislation with First Nations and has engaged with every region across the country since 2019 for feedback from First Nations on the key elements of the proposed replacement legislation, which have subsequently formed the basis of the AFN's advocacy strategy, as necessary components that needed to be included in Canada's draft, throughout the AFN's discussions and negotiations with Canada.

At the December 2022 Special Chiefs Assembly, the First Nations-in-Assembly passed Resolution 23/2022, *Re-Commitment to Co-Development of Replacement Legislation for Safe Drinking Water for First Nations*, which directs the AFN to call on Canada to recommit to meaningful co-development of legislation that includes the following "critical requirements" as presented to ISC by AFN and First Nations during the development of the current draft: **recognition of rights over source waters, minimum binding national standards, commitment to funding, liability protection for First Nations governments, water governance structures led by First Nations, and mechanisms to address management of transboundary source waters.**

However, despite clear direction from the First Nations-in-Assembly on the inclusion of these critical requirements and sustained advocacy from the AFN and First Nations to co-develop legislation, Canada's current draft of the legislation does not address the 'critical requirements,' which risks failing to ensure that First Nations will have access to the human right to safe drinking water and sanitation, leaving First Nations unprotected.

#### AFN's recent advocacy

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Since Canada's release of the draft consultation legislation to mark the beginning of the consultation period in February 2023, the AFN has indicated that it does not support the draft bill in its current form, and urged Canada to recommit to co-development.

On May 16, 2023, Ontario Regional Chief Hare sent a letter to Minister Hajdu, which reiterated its position and insisted Canada seek an expanded mandate to develop legislation that addresses the needs and concerns of First Nations. The letter also underscored Canada's obligation to ensure this legislation is consistent with the UN Declaration on the Rights of Indigenous Peoples. The AFN's firm advocacy has successfully delayed the introduction of the legislation for the time being, given that the original date of the introduction was proposed for April 2023.

Moreover, in response to Canada's release of the consultation draft, the AFN immediately conducted a legal analysis of the proposed Act to support First Nations in their review of the Legislation; AFN also led regional engagement sessions to ensure that all First Nations have a meaningful opportunity to share their comments on the proposed Act.

Overall, the AFN's sustained advocacy has been successful in creating space for stronger legislation through the inclusion of governance and refined wording to address specific concerns of First Nations.

Advocacy from the AFN and First Nations urging Canada to address the five critical requirements in the legislation led to notification on May 29<sup>th</sup> that Minister Hajdu has delayed introduction of the legislation until September 2023.

## **Next Steps**

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Moving forward, AFN will continue to meet regularly and work with ISC counterparts to push for an expansion of the Minister's mandate and for amendments to address the five critical requirements to ensure that First Nations are protected.

At the same time, regular meetings with the AFN Internal Joint Technical Working Group, the Chiefs Committee on Housing and Infrastructure (CCoHI), and the Regional Water Coordinators will ensure the sharing of information on progress and guidance on the next steps.

The AFN remains committed to supporting the co-development and co-drafting of legislation on safe drinking water, wastewater, and related infrastructure with ISC. The AFN will continue to call on Canada to carefully co-develop legislation with First Nations technical expertise to ensure it will advance the highest standards for the safety, health, and well-being of First Nations and all those who reside, work, or visit First Nations lands and territories.

The AFN will continue to advocate for and support the creation of First Nations-led policies and solutions related to safe, clean, and reliable drinking water while working with our federal partners to close the water and wastewater infrastructure gap.