

The Standing Senate Committee on Aboriginal Peoples has the honour to table its

#### FOURTH REPORT

Your committee, which was authorized to examine the subject matter of those elements contained in Divisions 2 and 3 of Part 5 of Bill C-19, *An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures* has, in obedience to the order of reference of 4 May 2022, examined the said subject-matter and now reports as follows:

Your committee wishes to provide observations on Division 3 of Part 5 which proposes to repeal the *Safe Drinking Water for First Nations Act*, S.C. 2013, c. 21.

Clean drinking water is essential to a healthy life; properly treated water is important for sanitation, hygiene and the health and safety of all Canadians. The committee is alarmed about the unacceptable water crises that continues to plague First Nations across Canada causing serious illnesses, mental health issues and unnecessary suffering. Canadians would be shocked, and ashamed if they knew how the Government of Canada has treated First Nations on water issues.

The Tataskweyak Cree Nation told the committee about community members, including young children, becoming seriously ill or developing rashes from drinking or bathing in polluted water. Due to flooding and upstream resource development, community-funded research revealed the Tataskweyak Cree Nation's source water is contaminated with E. coli and blue-green algae blooms. Taralee Beardy, Executive Director of the Tataskweyak Cree Nation, explained that two feasibility studies were conducted to draw water from an uncontaminated source. However, the Government of Canada instead upgraded the existing system, and water remains unsafe to drink.<sup>1</sup> As Taralee Beardy emphasized: "we just want clean drinking water for our children and ... our unborn children. We just want to have clean drinking water, safe drinking water, for our future generations." The effects of contaminated water sources are far-reaching. Not only does contaminated water profoundly affect the health and well-being of families, especially children, traditional foods may also be unsafe for community members to consume due to pollutants. Children cannot even swim in the waters near Tataskweyak.

The committee underscores the urgency of ensuring access to clean, safe drinking water for all First Nations. Left with no other options, the Tataskweyak Cree Nation, along with lead plaintiffs Curve Lake First Nation and Neskantaga First Nation, filed a class action lawsuit against the federal government (*Tataskweyak Cree Nation et al. v. Canada (A.G.)*). The class action lawsuit was settled on 23 December 2021, when the Federal Court and the Court of Queen's Bench of Manitoba jointly approved a settlement agreement. The agreement compensates First Nations people who lived under a drinking water advisory for a year or more between 20 November 1995 and 20 June 2021. In addition to a commitment by the Government of Canada to seek the repeal of the *Safe Drinking Water for First Nations Act*, the settlement also provides \$8 billion in compensation and future funding for water infrastructure to support safe drinking water for First Nations.

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<sup>1</sup> Indigenous Services Canada, [Remaining long-term drinking water advisories: Tataskweyak Cree Nation](#).

The committee takes note that First Nations must use all the tools at their disposal to push the Government of Canada to act. The committee heard from Chief Wilbert Marshall of Potlotek First Nation who described how his community has had problems with its water supply since 1974. A new plant was built in 1998, but it did not properly treat the water. According to Chief Marshall, Potlotek First Nation obtained a commitment for a new water treatment plant only after photographs were shared with the media of black water coming out of residents' taps. The new plant treats the high levels of manganese and iron in their water supply, which in the past contributed to serious illness in the community, as well as a deep mistrust of the federal government. Only part of the water and wastewater infrastructure problems have been solved as Potlotek First Nation continues to have challenges with wastewater collection and disposal.

There are other ongoing legal actions against the Government of Canada related to clean drinking water in First Nations communities. Instead of working in partnership with First Nations to provide clean water, the federal government forces First Nations governments to use their limited resources for litigation to access what other Canadians take for granted – clean, safe drinking water. For example, the committee heard from Chief Byron Louis of the Okanagan Indian Band who explained:

[The] Okanagan Indian Band wants to remind you that it still has a claim outstanding against the Government of Canada for failing to ensure that we have a clean water supply and that our people's basic human rights are respected. We are not part of the class action suit and did not settle our claim. As we have said from the beginning, we have always been ready, willing and able to negotiate a resolution to this claim. Yet, to date, the Government of Canada has come forward with vague proposals and weak promises that do nothing to address the real crisis our community continues to face.

Similarly, the Kainai/Blood Tribe began litigation in 2014 which remains under negotiation. While the committee recognizes that the federal government is taking important steps to address long-term drinking water advisories, the committee remains deeply concerned that First Nations had to resort to litigation to obtain federal funding for safe drinking water.

The Kainai/Blood Tribe also connected water rights to honouring treaty promises, including rights to water in a written brief:

As the largest First Nation in Canada in the most water scarce region of the country, the issue of water rights is fundamentally critical to Kainai's use and enjoyment of its reserve lands and Canada's ability to honour the terms of the Blackfoot Treaty concluded in 1877.

In 1999, the federal government agreed to principles for a treaty relationship with the Federation of Sovereign Indigenous Nations whereby they "expect to resolve differences through mutual discussion and decision."<sup>2</sup> The committee takes note of this fact and further observes the Government of Canada's reactive approach to litigation brought forward by First Nations violates aspects of its treaty and nation-to-nation commitments.

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<sup>2</sup> Office of the Treaty Commissioner, [Statement of Treaty Issues: Treaties as a Bridge to the Future](#), October 1998, p. 68.

The committee observes that there are innovative, First Nations-led solutions to drinking water and wastewater infrastructure. For example, First Nations institutions such as the Atlantic First Nation Water Authority bring together groups of First Nations to operate and maintain water and wastewater infrastructure. The Government of Canada could contribute to these solutions, including by facilitating partnerships between the public and private sectors to deliver infrastructure to First Nations more broadly. Infrastructure builds create jobs and can drive economic and educational opportunities for local communities. Further, the Government of Canada could assess cost / benefits of infrastructure investments in terms of broader economic and social outcomes relative to their cost.

The committee heard about the federal government's commitment in the settlement agreement to develop, in consultation with First Nations, legislation to replace the *Safe Drinking Water for First Nations Act* and the plans to introduce it in Parliament by the end of 2022. The Kainai/Blood Tribe explained in a written brief, "that Canada's timeline is highly unrealistic, especially in light of the complexity and critical importance [of] unresolved ... First Nation water rights issues [sic]."

The committee believes that, with respect to First Nations water, the Government of Canada has breached the honour of the Crown and its treaty and nation to nation relationships.

In the committee's view, Ministers should report publicly on the solutions to the water crisis for First Nations. Further, the implementation of any solutions needs to be measured or the status quo is unlikely to change.