



FEMMES AUTOCHTONES DU QUÉBEC INC.
QUEBEC NATIVE WOMEN INC.

STATEMENT

April 13, 2009

Proposed Legislative Framework for Drinking Water and Wastewater in Aboriginal Communities

Late February 2009, the Government of Canada undertook a process whereby it would create legislation on drinking water and wastewater in Aboriginal communities. The president of Quebec Native Women attended one of the “Engagement Session on Legislative Framework” which took place in Montreal on March 26. While the discussion on the issue of safe drinking water in Aboriginal communities is not recent, QNW presented a Brief on Drinking Water in August 2006 to the Expert Panel on Safe Drinking Water for First Nations; thus far very few measures have been taken to address the problem of water system and sanitation in our communities. The basic question remains largely unanswered: how do we obtain safe drinking water for Aboriginal communities?

In 1996, the Royal Commission on Aboriginal Peoples reported that water and sanitation systems in Aboriginal communities are more likely to be inadequate than for non-Aboriginals. Ten years later, the Report of the Special Rapporteur on the situation of Human Rights and Fundamental Freedoms of Indigenous peoples, stated that: “20 per cent of Aboriginal communities have inadequate water and sewer systems” in Canada. The report goes on to state that “Aboriginal homes are generally overcrowded, and are 90 times more likely than those of other Canadians to be without piped water. On reserves, more than 10,000 homes have no indoor plumbing. About one reserve community in four has a substandard water or sewage system”. All of these conditions have placed the health of Aboriginal peoples at risk.

“Access to safe water is a fundamental human need and therefore a basic human right.”
Kofi Annan, former UN Secretary-General.

The right to safe, clean, drinking water is a right that has been recognized in the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. In addition, the UN declared the International Decade for Action titled “Water for Life” for 2005-2015 and the Human Rights Council adopted the Resolution on Human Rights and Access to Safe Drinking Water and

Sanitation, to “appoint, for a period of three years, an Independent Expert on the issue of human rights obligations related to the access to safe drinking water and sanitation”. The mandate of the Independent Expert will be to review over a period of three years best practices and human rights obligations related to water and sanitation. The first report was submitted to the HRC at its tenth session in March 2009, which clearly states that sanitation is a primordial need with respect to access to water.

Furthermore, the rights of Aboriginal peoples are protected through section 35 of the Constitution Act of 1982, but up to what point resources are protected it is not clearly defined. The aim of legislation in Canada with respect to Aboriginal peoples and water was mainly to assure the perpetuity of traditional activities such as fishing and hunting, instead of the right to protect and preserve natural resources. There are regulations in place to assure safe drinking water and adequate wastewater systems in provinces and territories, but these regulations do not apply to Aboriginal communities. This is due to the fact that Aboriginal peoples have a “trust” relationship with the Crown who, through the Minister of Indian and Northern Affairs has a fiduciary responsibility and obligation to Crown and reserve lands. The existing Protocol for Safe Drinking Water for First Nations Communities which “contains standards for design, construction, operation, maintenance, and monitoring of drinking water systems and is intended for use by First Nations staff responsible for water systems”; is not a legally binding instrument.

The issue of regulation and the creation of legislation are two separate issues. It is not necessary to implement legislation if the trust relationship continues to exist between Aboriginal peoples and the Canadian Government. If existing regulations exist then it is important that action be taken immediately to help Aboriginal communities implement them. A logic model of the implementation to provide communities with proper training and infrastructure can eventually be worked out. However, the proposed legislation obliges Aboriginal communities to incorporate by reference thereby subjecting Aboriginal nations to fall under jurisdiction of the provinces and territories.

It is important to note here that engagement sessions were only initiated at the end of February and terminated in early April with a Government deadline of mid-April for bands to submit an impact study. This kind of activity undertaken by INAC fails to adequately meet the standards and duty to consult Indigenous peoples, in accordance with Supreme Court judgements. Indeed, during these sessions, the Government had already defined legislation as the only option for bands to choose.

Upon assessment of the different reports from INAC and reports submitted by Aboriginal organizations obtained during the review process, Quebec Native Women (QNW) disagrees with the implementation and creation of legislation as it would not adequately deal with the issue of safe drinking water especially since the majority of Aboriginal communities are not adequately equipped or trained to take over the responsibility of water and sewage systems.

QNW believes that the management and protection of water should ultimately fall under jurisdiction of Aboriginal communities **once they have adequate capacity, training and infrastructure**. It is important to emphasize that this process will likely take time, require properly trained human resources and be accompanied by adequate financial resources that respond the particular needs of Aboriginal communities. However, as was noted by one INAC facilitator, legislation will take a few years. This is unacceptable as the reason why so many Aboriginal communities do not have safe drinking water is that INAC and other Government agencies failed to do their job of properly monitoring our communities' water systems. We can no longer afford the wait until the political will decides to do the "right thing".

QNW therefore reiterates its **recommendations** that it presented in its 2006 Brief on Drinking Water:

- That access to safe water be recognized as a basic human right for all people living in Canada including Aboriginal people;
- That the Government of Canada honour its fiduciary duty to Aboriginal people and provide the means for Aboriginal people to safely develop the infrastructure, training, and maintenance of water management systems on reserves;
- That no regulatory framework concerning water be unilaterally imposed on Aboriginal people;
- That a regulatory framework be developed for water on reserves with the full participation of Aboriginal people;
- That a regulatory framework be developed for water on reserves on a government-to-government basis with Aboriginal communities;
- That a regulatory framework be developed for water on reserves on a regional basis or by nation;
- That Aboriginal people have a meaningful role in the watershed protection;
- That regulations concerning water management on reserves be based on sustainable development and Aboriginal cultural values.

For more information please contact:

Joanne Ottereyes, Interim Communications Officer

450-632-0088 #227

communication@faq-qnw.org