



BRIEFING NOTE RE: Bill S-11

FIRST NATIONS SAFE DRINKING WATER ACT

October 6, 2010

Prepared by: Forum for Leadership on Water (FLOW)

The Forum for Leadership on Water (FLOW) is writing to provide comments on Bill S-11, 'An Act Respecting the Safety of Drinking Water on First Nation Lands,' in an attempt to strengthen the provisions of the legislation. We welcome the intent of the Bill to improve the health and safety of First Nations through development of regulations that govern drinking water and wastewater treatment on First Nations' lands. However, FLOW does not support the Bill in its current form. We recommend amendments to the Bill to ensure that it protects Aboriginal and treaty rights and commits to a cooperative framework between First Nations jurisdictions and the Government of Canada in the establishment of a safe drinking water regime.

FLOW is an independent group of water experts from across Canada that encourages government action to protect our critical fresh water resources. We believe that all levels of government must work together to effectively address current and emerging threats to fresh water security. Securing safe drinking water and protecting aboriginal water rights are priority issues for FLOW. To that effect, we recently released *Seeking Water Justice: Strengthening Legal Protection of Canada's Drinking Water* (attached). It reveals a deeply fragmented drinking water system in Canada characterized by patchwork provincial laws, and a lack of binding federal drinking water standards. It recommends a comprehensive approach to drinking water management through consistent Canada-wide drinking water standards—including on First Nations reserves—so that all Canadians have equal access to safe drinking water.

Improved access to safe drinking water is of specific concern in First Nations communities. In 2010, there were 49 communities whose systems remain classified as high risk. As of August 31, 2010, there were 117 First Nations communities under drinking water advisories—a number that is on an upward trend, despite Canada's attempts to better manage access to safe drinking water in these areas.

FLOW does not support Bill S-11 in its current form. Amendments are required to address concerns outlined by First Nations (see attached resolutions) and to be consistent with Government recommendations made in the 2005 Annual Report of the Commissioner of the Environment and Sustainable Development, and the 2006 Expert Panel on Safe Drinking Water for First Nations Report.

This document outlines three key issues that require consideration prior to third reading in the Senate:

- 1) Aboriginal and treaty rights
- 2) Capacity to improve water resource management
- 3) Governance regime

1. Aboriginal and Treaty Rights

In its current form, Bill S-11 does not respect constitutionally protected Aboriginal and treaty rights. To enact legislation which appears to contemplate and even condone impacts on First Nation's rights without first accommodating the known concerns of First Nations is in direct violation of the government's fiduciary duties and responsibilities, as well as statements of the Supreme Court of Canada regarding the protections afforded First Nations rights by virtue of Section 35(1) of the Canadian Constitution.

- Section 4(1)(r) gives Canada authority to determine the extent the Crown can abrogate and derogate treaty rights, in direct violation of the Constitution Act. The Government of Canada has not consulted with First Nations communities to determine the extent of those impacts and accommodate concerns in advance.
- The Crown had not satisfied its duty to consult and accommodate First Nations concerns about the approach to water management established through this legislative framework. They failed to complete an analysis on all of the recommendations made by the Expert Panel on Water.
- Section 6 states that Bill S-11 and its regulations will "prevail over the land claims agreements or self-government agreements." This could enable the Government of Canada to abrogate and derogate from the terms of modern Treaties and to significantly diminish the powers already being exercised by First Nation water boards and commissions under the terms of such agreements. It could also undermine powers First Nations have had under the *Indian Act* since 1951 and any authority First Nations have over water by the inherent right of self-government.

2. Capacity to improve water resource management

Bill S-11 devolves liability to First Nations without clarifying if additional resources will be made available to meet potentially additional demands.

- First Nations' water systems are already under-resourced. First Nations communities face similar problems to Canadian municipalities including increasing maintenance and operation costs. However, unlike municipalities, First Nations do not have local taxes to help offset costs.
- Bill S-11 enacts an approach that is contrary to the recommendations outlined by the Commissioner of Environment and Sustainable Development and the Expert Panel. These reports both emphasize the need to build the capacity of First Nations (i.e., by providing adequate training, education, and resources for First Nation leaders) to ensure they have financial resources and governance frameworks established to meet the requirements of new drinking water regulations. Such structures and mechanisms could include a First Nations Water Commission, or a First Nations Water Tribunal.
- The legislation contains provisions to limit liability of the federal and provincial governments for the safety of First Nations water supplies. While First Nations have limited authority over water on reserve lands, they would be responsible for meeting the legislative requirements.

3. Governance regime

Bill S-11 proposes to regulate drinking water on reserves according to provincial standards, contrary to the recommendations of the Expert Panel on Safe Drinking Water for First Nations. The proposed regulations fail to address the inconsistencies and gaps that exist in provincial drinking water regulations and instead perpetuate these known and well-documented inadequacies (identified in the *Seeking Water Justice* report). Bill S-11 is missing an important opportunity to build unity and cohesion in regulations across the country, starting with First Nations communities.

- The Bill gives Canada the authority to make any provincial law, as amended from time to time, apply to First Nations as federal law - at the sole discretion of the federal cabinet, without any limitations and without any role for First Nations. Applying provincial laws by reference is an approach contrary to the preferred recommendation of the Expert Panel on Safe Drinking Water for First Nations and the Commissioner of Environment and Sustainable Development. It establishes a relationship between First Nations and provincial governments that is not protected by the Constitution Act.
- It is of significant concern that “any person or body” could receive legislative power over First Nations water and wastewater systems. This represents a significant possible loss of First Nations ability to control and manage their own lands and systems:
 - 4(1) (b) states that the regulations may “confer any legislative, administrative, judicial or other power on any person or body” to carry out the Bill and regulations passed under it. This creates significant concern over the generic nature of this clause given that the expertise and professional qualification of “any person” is undefined. This represents a significant possible loss of First Nations ability to control and manage their lands and systems without knowing who could take over these powers (i.e., private companies).

SUMMARY

FLOW strongly urges the Senate to consider and address these issues before the bill is debated in the House of Commons. Many of the provisions in Bill S-11 are troubling. It is unacceptable to give the Crown full, sweeping authority and control of First Nations’ water resources while transferring liability and responsibility to First Nations. We are legally and morally bound to ensure First Nations have access to safe drinking water without compromising their inherent and constitutional rights.

Attachments

- Seeking Water Justice: Strengthening Legal Protection of Canada’s Drinking Water
- Assembly of First Nations resolution 43/2010
- Union of British Columbia Indian Chiefs resolution 2010-36
- Assembly of Manitoba Chiefs resolution AUG-08.02
- Chiefs of Ontario resolution 09/19

EXECUTIVE SUMMARY



SEEKING WATER JUSTICE:

STRENGTHENING LEGAL PROTECTION
FOR CANADA'S DRINKING WATER

EXECUTIVE SUMMARY

WATER INJUSTICE – CANADIANS HAVE UNEQUAL ACCESS TO SAFE DRINKING WATER

Canadians do not have equal access to safe drinking water – a basic source of survival.

2010 marks the anniversary of two of the most significant water contamination events in Canada's history:

- 10th anniversary of Walkerton, ON – seven people died and thousands of residents became ill (some permanently) because of *E-coli* contamination of the town's drinking water source.
- 5th anniversary of Kashechewan First Nations, ON – three quarters of the community's members were evacuated when *E-coli* was reported in the drinking water supplies.

While high-profile disasters such as Walkerton are rare occurrences in Canada, they are a tragic reminder of the high cost of failing to protect the water we drink. Despite the lessons of Walkerton and Kashechewan, troubling signs suggest there are still significant risks to Canada's drinking water. For example, in April 2008, the Canadian Medical Association reported that there were 1,776 drinking water advisories in effect across Canada – this is simply unacceptable in a developed country in the 21st Century.

Unequal access to safe drinking water in Canada is particularly evident in Canada's First Nations communities and in rural and remote communities. As of April 30th, 2010, there were 116 First Nations communities across Canada under a Drinking Water Advisory and it is estimated that 20–40% of all rural wells in Canada have nitrate concentrations or coliform bacteria counts in excess of drinking water guidelines and pose threats to health.

A TWO-TIERED SYSTEM: OUR LEGAL RULES FAIL TO ENSURE CONSISTENT DRINKING WATER STANDARDS

Unlike the United States and European Union, we do not have legally binding national standards for drinking water. Instead, we have voluntary national guidelines and provinces establish their

own standards which may or may not meet those guidelines. This leaves significant populations, such as First Nations and rural communities, vulnerable to waterborne diseases, boil water advisories and associated health effects. The patchwork of drinking water laws across the country also means that depending on the province or territory you live in, you may have access to a higher standard of drinking water than your friends or family in another part of the country. In fact, only those living in Alberta, Nova Scotia, Quebec and Ontario have governments that have "adopted" the *Guidelines for Canadian Drinking Water Quality*. But not all of those jurisdictions require testing for the full suite of parameters in the Guidelines. Close to half of Canadian jurisdictions lack mandatory testing for chemical contamination of drinking water and over half do not require advanced water treatment for surface water (as is required in the European Union and United States).

CLOSING THE GAPS: RECOMMENDATIONS FOR BUILDING A HEALTH-BASED SAFETY-NET FOR ALL CANADIANS

The full report, *Seeking Water Justice: Strengthening Legal Protection for Canada's Drinking Water*, highlights the need for all levels of government to be involved in the provision of safe drinking water to Canadians. The report identifies gaps in the system and outlines steps for the federal government to take to ensure all Canadians, including First Nations, are legally entitled to a minimum quality of drinking water. These steps include:

1. Legislate Enforceable Drinking Water Protection Across Canada

The federal government should collaborate with provincial, territorial, and Aboriginal governments to assist all parties in adopting legally binding drinking water quality standards (the maximum allowable concentrations of potentially harmful substances in drinking water) in their own legislation within five years. This joint effort will ensure the health and safety of all Aboriginal and non-Aboriginal Canadians despite which province or territory they live. The federal government could

do this by replacing the Canadian Guidelines for Drinking Water Quality with a Safe Drinking Water Act that has health-based long term objectives and legally binding minimum national standards and regulations. The Safe Drinking Water Act would function as a federal safety net and would apply on federal lands and in provinces that did not provide the same level of health protection as the national standards.

2. Enforce World-Class Drinking Water Standards

The federal government should ensure Canadian drinking water standards are equal to or better than the highest standards in other industrialized nations to protect human health and the environment.

3. Provide Resources for Safe Drinking Water on First Nations Reserves

The federal government should take urgent steps to provide resources, support and capacity development required for safe drinking water on federal lands and all First Nations reserves to enable them to implement national standards and regulations. Resources need to be made available for appropriate treatment and distribution, wastewater treatment and collection, source water protection, training and ongoing support of water and wastewater treatment operators. The Government of Canada should work with the Assembly of First Nations and interested parties to develop a First Nations Water Commission – a model the AFN has identified as essential for First Nations-controlled drinking water management. First Nations should be co-authors in developing drinking water legislation that applies to them to ensure it is respectful of their inherent, Aboriginal and treaty rights.

4. Increase the Transparency of Reporting on the State of Drinking Water Systems

Establish consistent and standard reporting mechanisms to increase transparency and track relevant statistics and information about the state of drinking water and wastewater systems through a Federal-Provincial-Territorial body such as the Canadian Drinking Water Committee. This information needs to be made available to the public through an annual report to Parliament.

AN INTERNATIONAL COMPARISON: WHERE CANADA STANDS

According to David Boyd author of *The Water we Drink*, “Canada’s lack of standards is a weakness in protecting the health of Canadians.” The voluntary drinking water guidelines in this country are weaker than legally binding drinking water quality standards in other industrialized nations, including enforceable regulations in the United States and the European Union. The report concluded that Canada’s guidelines were outdated, weaker and more lenient compared to those of our counterparts in Europe and the United States:

- **OUTDATED** – there is an unacceptable backlog of outdated guidelines for physical and chemical parameters due to budget reductions
- **WEAK** – Many of the parameters in the Canadian guidelines are up to 1000 times weaker than at least one of the other corresponding European standards or Australian guidelines.
- **MORE LENIENT** – Canada has weaker MAC (maximum allowable concentration) guidelines than at least one other jurisdiction (European Union, United States or Australia) or the World Health Organization for 53 of the 67 contaminants examined in the study, including microbiological contaminants, chemical contaminants, radiological contaminants, and disinfection byproducts.

TITLE:	Impact Analysis of Proposed Federal Legislation Bill S-11
SUBJECT:	Safe Drinking Water
MOVED BY:	Ron Lameman, Proxy, Beaver Lake Cree Nation, AB
SECONDED BY:	Chief R. Don Maracle, Tyendinaga Mohawk Territory, ON
DECISION:	Carried by Consensus

WHEREAS:

- A. 115 First Nation communities are under Drinking Water Advisories and another 49 have water facilities under high risk.
- B. First Nations lack adequate resources for training, operations, and management of their water resources.
- C. The regulations contained in proposed Bill S-11 will require significant financial and technical resources to implement for each region.
- D. The total cost to implement the regulations is not known.
- E. The federal Government has stated they are facing a capital crisis.
- F. First Nations are concerned that there will not be adequate resources to support the implementation of the regulations developed under Bill S-11.

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THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Mandate the AFN to advocate that the Government of Canada provide adequate financial resources to each region to conduct a thorough impact analysis to determine the financial, technical, and policy development needs for each region.
2. Direct the AFN to urge Canada that any further discussion on Bill S-11 be suspended until the estimated full economic impacts of this Bill are identified and presented to Parliament.

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OUR LAND IS OUR FUTURE

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UNION OF BC INDIAN CHIEFS
42ND ANNUAL GENERAL ASSEMBLY
SEPTEMBER 15TH - 17TH, 2010
VANCOUVER, BC

Resolution no. 2010-36

RE: Action on Bill S-11, "Safe Drinking Water for First Nations"

WHEREAS as Indigenous Peoples, we have a sacred relationship with water, and have exercised our inherent jurisdiction over water since time immemorial. Our rights to water are included in our Aboriginal Title, Rights, and Treaty Rights. Water is the source of all life, and we must act to ensure its protection and ensure that all First Nations have access to safe drinking water;

WHEREAS the *United Nations' Declaration on the Rights of Indigenous Peoples* states:

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.

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;
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their 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;

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A handwritten signature in black ink, appearing to read 'Stewart Phillip', written over a horizontal line.

Grand Chief Stewart Phillip, President

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;

WHEREAS on July 28, 2010, the United Nations General Assembly declared that safe and clean drinking water and sanitation is a human right to the full enjoyment of life and all other human rights;

WHEREAS First Nations recognize that there is currently a crisis in drinking water in First Nations communities; in March 2010, 115 First Nations communities were under Drinking Water Advisories, and 49 First Nations water systems were classified as “high risk;”

WHEREAS by Resolution 2010-03, the Union of BC Indian Chiefs Council supports the right of a First Nation to protect their territory and the health of their community and directed the UBCIC Executive and staff to work with First Nations and/or like-minded Indigenous Nations who are actively involved in defending or working to protect this precious natural resource;

WHEREAS Bill S-11 “Safe Drinking Water for First Nations” was introduced in Parliament on May 25, 2010, and stands to create a regulatory framework for First Nations drinking water, and will potentially infringe on Aboriginal Title and Rights and Treaty Rights;

WHEREAS the regulations in Bill S-11 will require significant financial and technical resources to implement for each region, and the total cost is not known. First Nations are concerned that there will not be adequate resources to support the implementation of the regulations developed under Bill S-11;

WHEREAS by Resolution 08/2010 the Assembly of First Nations (AFN) Chiefs-in-Assembly mandated the AFN to advocate that the Government of Canada provide adequate financial resources to each region to conduct a thorough impact analysis for each region, and directed the AFN to urge Canada that any further discussion on Bill S-11 be suspended until the estimated full economic impacts of this Bill are identified and presented to Parliament;

THEREFORE BE IT RESOLVED that the Union of BC Indian Chiefs-in-Assembly direct the UBCIC Executive and Staff to work with First Nations and/or like-minded Indigenous Nations or organizations including the national Assembly of First Nations that are actively working to protect safe drinking water for First Nations;

THEREFORE BE IT FURTHER RESOLVED that the Union of BC Indian Chiefs-in-Assembly call on the federal government to either abandon Bill S-11, or severely amend Bill S-11 by incorporating input from First Nations as well as the recommendations from the Expert Panel on Safe Drinking Water and a full impact analysis for each region;

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Grand Chief Stewart Phillip, President

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THEREFORE BE IT FINALLY RESOLVED that the Union of BC Indian Chiefs-in-Assembly direct the Executive to communicate opposition to Bill S-11 in its current form to the federal government, and specifically contest Bill S-11's potential to infringe on Title and Rights and Treaty Rights.

Moved: Chief Jonathan Kruger, Penticton Indian Band
Seconded: Maureen Chapman, Proxy, Lew'a:mel First Nation
Disposition: Carried
Date: September 15, 2010

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Grand Chief Stewart Phillip, President

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**ASSEMBLY OF MANITOBA CHIEFS
20th ANNUAL GENERAL ASSEMBLY
BROKENHEAD OJIBWAY NATION
AUGUST 12, 13 & 14, 2008**

CERTIFIED RESOLUTION

**AUG-08.02
Page 1 of 2**

RE: CANADA'S PROPOSED DRINKING WATER LEGISLATION

Moved by:

Chief Glenn Hudson
Peguis First Nation

Seconded by:

Chief Dennis Meeches
Long Plain First Nation

CARRIED

WHEREAS, the Expert Panel identified three options: introducing a statute incorporating by reference existing provincial regulatory regimes; setting out uniform federal standards and requirements; and recognizing First Nations customary laws regulating water; and

WHEREAS, in 2006 Indian and Northern Affairs Canada (INAC) launched the Plan of Action to address the most serious water quality problems on reserve, establish national standards for the operation of treatment facilities, and ensure mandatory training for all water operators; and

WHEREAS, the Plan of Action established an Expert Panel on Safe Drinking Water for First Nations to hold regional hearings and provide in a final report options to the Minister of Indian Affairs that would enhance First Nations drinking water safety; and further recommended before moving forward on any of the options, that the federal government must provide adequate resources to close the resource gap; and

WHEREAS, the Government of Canada has indicated its support and received mandate for incorporating by reference existing provincial and territorial regulations and adapting them, as required, to meet the needs of First Nation communities; and

WHEREAS, INAC proposes to engage First Nations this Fall on the elements of a legislative framework in accordance with the incorporation by reference, the results of which will be provided to the Minister of Indian Affairs along with the recommendation for moving forward with legislation; and

WHEREAS, a preliminary Impact Analysis for each region is to be completed prior to INAC's engagement session with First Nations; and

**ASSEMBLY OF MANITOBA CHIEFS
20TH ANNUAL GENERAL ASSEMBLY
BROKENHEAD OJIBWAY NATION
AUGUST 12, 13 & 14, 2008**

CERTIFIED RESOLUTION

**AUG-08.02
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**RE: CANADA'S PROPOSED DRINKING WATER LEGISLATION
(cont'd)**

WHEREAS, Assembly of First Nation (AFN) resolution *Canada's Proposed Water and Wastewater Legislation* expresses concern on the federal government approach that has extensive impacts on First Nation rights, including land rights, the inherent right to self government, water regulation and environmental protection and the process does not meet the Crown's duty to consult and accommodate Aboriginal and Treaty Rights.

THEREFORE BE IT RESOLVED, that the Chiefs-in-Assembly demand the Government of Canada conduct meaningful consultations with First Nations prior to development of any legislation or regulations regarding First Nations' water resources.

FURTHER BE IT RESOLVED, that the Chiefs-in-Assembly demand that the Government of Canada review all of the options identified in the Expert Panel report and to consider other potential options that First Nations may identify as part of the process to establish a new Government of Canada mandate for water legislation.

FINALLY BE IT RESOLVED, that the Chiefs-in-Assembly demand the Government of Canada provide adequate resources to First Nations to enable their full participation in all stages of a consultation process.

CERTIFIED COPY

***of a resolution adopted
on August 12, 13 & 14, 2008
Brokenhead Ojibway Nation, Manitoba***



Grand Chief Ron Evans

**ASSEMBLY OF MANITOBA CHIEFS
20TH ANNUAL GENERAL ASSEMBLY
AUGUST 12, 13, 14, 2008 – BROKENHEAD OJIBWAY NATION**

RESOLUTION, TITLE AND DECISION:	STRATEGY:
<p>AUG-08.02 CANADA'S PROPOSED DRINKING WATER LEGISLATION</p> <p>THEREFORE BE IT RESOLVED, that the Chiefs-in-Assembly demand the Government of Canada conduct meaningful consultations with First Nations prior to development of any legislation or regulations regarding First Nations' water resources.</p> <p>FURTHER BE IT RESOLVED, that the Chiefs-in-Assembly demand that the Government of Canada review all of the options identified in the Expert Panel report and to consider other potential options that First Nations may identify as part of the process to establish a new Government of Canada mandate for water legislation.</p> <p>FINALLY BE IT RESOLVED, that the Chiefs-in-Assembly demand the Government of Canada provide adequate resources to First Nations to enable their full participation in all stages of a consultation process.</p> <p><i>Updated June 23, 2009 by Melissa Hotain, Environmental Policy Analyst.</i></p>	<p>Responsible: Melissa Hotain, Environmental Policy Analyst / Darcy Wood, Sr. Housing Policy Analyst</p> <p>Action Required: As set out in Resolution.</p> <p>Action Taken: August 14/08 Chiefs in Assembly Presentation on water update delivered by Chief Hudson and Melissa Hotain outlining INAC's plans to propose drinking water legislation, regional impact analysis, national water and wastewater assessment.</p> <p>Update provided at January 2009 Chiefs in Assembly. Ongoing updates with AFN and regional organizations via the First Nations Water Technical Advisory Group.</p> <p>INAC national engagement process with First Nations on drinking water legislation was held in Winnipeg February 24, 2009. Summary of session was prepared by Institute on Governance (independent body contracted by INAC).</p> <p>Impact analysis of proposed legislation on First Nation's communities was prepared by R4B Consulting. Regional reports were rolled into a national report by IOG.</p> <p>IOG to draft final report with recommendations to Minister of Indian Affairs who will determine next steps of proposed legislation.</p> <p>On May 25th, 2009 Minister Strahl announced the awarding of a contract to Neegan Burnside Ltd. (Winnipeg) to conduct a national engineering assessment of existing public and private water and wastewater systems providing services to First Nation communities. The assessment will take 2 years to complete.</p> <p>Status: Ongoing.</p>

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CHIEFS OF ONTARIO

35th All Ontario Chiefs Conference
July 7-8-9, 2009
Batchewana First Nation

**INAC'S PROPOSED LEGISLATIVE
FRAMEWORK FOR DRINKING WATER
AND WASTEWATER IN FIRST NATION
COMMUNITIES**

RESOLUTION 09/19
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WHEREAS:

- The Government of Canada conducted "consultations" on the Development of a Proposed Legislative Framework for Drinking Water and Wastewater in First Nation communities
- The Government of Canada funded regional First Nation organizations to carry out Impact Analysis reports on the Impacts of a Proposed Federal Legislative Framework for Drinking Water and Wastewater in First Nation Communities;
- The Institute on Governance (IOG) *Summary Report of the Impact Analyses of the Proposed Federal Legislative Framework for Drinking Water and Wastewater in First Nations Communities* roll-up report submitted to INAC on April 17, 2009 concluded that "First Nations generally are no where near meeting provincial standards. Therefore, applying these standards now would be calamitous."
- During the "consultation" sessions First Nation leadership and technical participants voiced their objections very clearly to the process that was followed and concluded that:

MOVED BY:

Chief Joel Abram
Oneida Nation of the Thames

SECONDED BY:

Chief Isadore Day
Serpent River First Nation

CONSENSUS

**Certified Copy of a Resolution adopted on July
8, 2009.**

Angus Toulouse,
Ontario Regional Chief

1. The Crown failed to engage in any meaningful consultation with First Nations regarding the options and recommendations in the Report of the Expert Panel on Safe Drinking Water for First Nations dated November 2006.
 2. The 2006 "*Report of the Expert Panel on Safe Drinking Water on First Nations*" recommended three options which First Nations have not had benefit of consideration in this current round of engagement session – one of which begins to respect the jurisdictions of First Nations over Water and the other considers national standards as the more appropriate basis for new First Nation water regulations;
 3. The Crown breached its duty to consult and accommodate First Nations by making a unilateral decision to proceed with the engagement sessions and impact analysis solely on the basis of incorporation by provincial/territorial reference.
 4. The Crown did not genuinely listen to the concerns of First Nations regarding a process for the development of a new drinking and wastewater legislative framework.
 5. The Crown failed to provide adequate time and resources to enable meaningful consultation.
 6. The Crown has clearly communicated that it is unwilling to engage in discussion of any inherent, Treaty and Aboriginal rights related issues. This is an infringement of inherent, Treaty and Aboriginal rights, the right to self-determination, and is a fundamental flaw in Canada's attempted efforts to consult.
- This process does not respect the legal duty to consult, accommodate and seek prior consent on matters that impact First Nations' inherent, treaty and aboriginal rights.

THEREFORE BE IT RESOLVED that:

**Resolution 09/19
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1. We do not accept the government's legislation to the development of drinking water and waste water
2. We demand that Canada co-develop a meaningful consultation process with First Nation communities
3. Direct the Chiefs in Ontario office to seek resources to take immediate legal action if deemed necessary.