

## First Nations Launch Drinking Water Lawsuit Against Federal Government



By [Julie Abouchar](#), Partner and Certified Environmental Law Specialist, with the assistance of Julia Paillé, student-at-law. © Willms & Shier Environmental Lawyers LLP.

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*Four Alberta First Nations launched a lawsuit against the federal government on June 16, 2014, alleging that Canada failed to provide resources and investments to ensure safe drinking water on reserves. The lawsuit, commenced by the Tsuu T'ina Nation, the Sucker Creek First Nation, the Ermineskin Cree Nation, and the Blood Tribe, is significant for First Nations communities across the country dealing with water quality issues. Water is important for cultural and ceremonial reasons in addition to sustaining life. However, there is a history of delayed action to ensure safe drinking water on reserves across the country. Currently, 58 First Nation water systems across Canada have boil water advisories resulting from unsafe drinking water quality.*

### Background

The following key events precede this litigation

- ◆ **2006 Expert Panel on Safe Drinking Water for First Nations** – The Minister of Indian Affairs and Northern Development and the Assembly of First Nations appointed an Expert Panel on Safe Drinking Water for First Nations in June 2006. The Panel's mandate was to hold hearings across the country and provide regulatory options for water on First Nations reserves. The Panel's November 2006 report provided options for water regulation on First Nations reserves. The report concluded that regulation alone would be insufficient to address water quality issues and that adequate resources and investment are pre-conditions to regulation.
- ◆ **2011 Report on First Nations Water Infrastructure** – The Federal government commissioned a report on the state of First Nations water infrastructure from engineering firm Neegan Burnside. This report, released in April 2011, estimated a cost of \$1.08 billion in construction costs and \$79.8 million in non-construction costs to bring First Nations water systems up to standards of water systems off reserve.
- ◆ **2013 Safe Drinking Water for First Nations Act** – The Federal government enacted the *Safe Drinking Water for First Nations Act* in May 2013. The Act provides a framework for regulations for
  - protecting sources of drinking water
  - standards for the design of water and wastewater systems, and
  - procedures for monitoring, testing and reporting adverse results.

Regulations have not yet been drafted. The Act attracted opposition from First Nations based on the lack of infrastructure, training and support required for First Nations to comply with the Act. The Assembly of First Nations recognized the capacity gap, just as the Expert Panel had.

### **The Legal Challenge by the First Nations**

The Plaintiffs' Application states that they have been dealing with unsafe and inadequate drinking water for too long. Their reserves do not have the infrastructure or expertise to treat and deliver drinking water. As a result, the Plaintiffs' reserves have frequently been under boil water advisories and residents have suffered adverse health effects from contaminated water. The lack of safe drinking water has caused some residents to move off reserve and has perpetuated long-standing disadvantages faced by First Nations people in Canada.

The Plaintiffs describe the injuries suffered by them, including adverse health effects, being deprived of the full benefit and use of their reserves, the diminishing economic value of their reserves, and diminishing residential conditions on reserves.

The Plaintiffs allege that the Federal government's failure to ensure safe drinking water for their reserves constitutes a violation of government duties and commitments. The Plaintiffs' claim is grounded in the Federal government's fiduciary duty and Honour of the Crown relating to the creation and management of reserves. It is also based on the section 7 right to life, liberty and security of the person, and section 15(1) equality rights provided in the *Canadian Charter of Rights and Freedoms*. The Plaintiffs further allege that the Federal government has violated the section 36(1)(c) *Constitution Act* requirement that the federal and provincial governments be committed to providing equal public services to all Canadians.

The Plaintiffs ask Canada to remedy the unsafe drinking water conditions including: consulting and implementing strict standards and monitoring regimes, and increasing governance, resources and powers in the hands of the First Nations.

The Plaintiffs also seek an order for Canada to disgorge the savings it has made by failing to implement the necessary infrastructure to ensure safe drinking water.

***[Julie Abouchar](#) is a partner at Willms & Shier Environmental Lawyers LLP in Toronto and is certified as a Specialist in Environmental Law by The Law Society of Upper Canada. She can be reached at 416-862-4836 or by e-mail at [jabouchar@willmsshier.com](mailto:jabouchar@willmsshier.com).***

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