



## Safe Drinking Water for First Nations Act

### What is Bill S-8?

Bill S-8 is the *Safe Drinking Water for First Nations Act*, received Royal Assent and was passed into law on June 19, 2013. The Bill will permit the federal government (in collaboration with First Nations communities) to establish federal regulations regarding:

- Treatment of water and waste-water;
- Certification/training of operators of drinking water systems;
- Protection of the sources of drinking water from contamination;
- Testing/sampling/monitoring of waste-water and reporting of test results;
- Accountability of Chiefs and Council in regards to maintaining regulations/standards;

### Concerns and Impacts of Bill S-8 on First Nation Communities

- Lack of provisions for funding to bring First Nations water delivery/waste-water up to current standards/and to continue to maintain water-systems;
- The proposed bill fails to address the fact that First Nations communities must be actively involved/directly engaged in the development of regulations;
- Permitting the government to over-ride existing First Nation by-laws, Band Council Resolutions and policies that protect the water, granting extensive powers to the government to impose regulatory regimes and delegate any of the powers listed in the Bill to a third-party, for the purpose of monitoring and enforcing regulations;
- The federal government introduced this legislation without engaging in proper consultation with First Nation communities whose constitutionally protected Aboriginal and Treaty rights may be negatively impacted;
- Providing the Minister with the authority to compel First Nations to charge fees to members for receiving clean water;
- Providing the government with the authority to annul inherent treaty rights to the 'extent necessary to ensure safe drinking water;'
- Fails to recognize the limited capacity of many First Nations to comply with the regulations contained in the bill;
- Represents a derogation of the federal government's duty to ensure equitable access to water (for first nations communities);

- The non-derogation clause, included in this Bill, will not prevent from the federal government from justifying an abrogation or derogation of Aboriginal Treaty rights, should it be deemed ‘necessary ‘ to ensure safety of First Nations drinking water.

Despite the fact that Bill S-8 is, seemingly, focused around the protection and maintenance of First Nations water, Bill S-8 does little to ensure that First Nations communities will have access to clean drinking water. While Bill S-8 creates additional standards and regulations, it does little to address the capacity of First Nations to comply with the regulations. The Act also reflects a lack of commitment/accountability on the part of the federal government to provide certainty that First Nations communities will be engaged and involved in the development of regulations.

The proposed Bill fails to recognize the sanctity of water within First Nations culture, it attempts to regulate the relationship of First Nations people with the water, regarding the water as a commodity, even raising the possibility that First Nation communities may be compelled to charge their members a fee for accessing the water. Furthermore, concerns have been raised in regards to the fact that this Bill represents a derogation of the federal government's responsibility to provide basic services to First Nation communities and raises the possibility that some first nations will have more stringent (water treatment) standards than others as the result of different provincial water-treatment standards (Open Parliament, 2013). Additionally, this Bill raises an issue of liability, leaving First Nation communities at-risk of incurring fines and/or being subject to financial penalties, with the potential of loss of land (or other community-owned assets).

As the federal government is intended to be the primary provider of services to First Nation communities, it is also concerning that this legislation proposes to limit the liability of the federal government in situations where it has already failed to properly address its constitutional mandate to ensure equitable access to clean drinking water (Open Parliament, 2013).

### **Recommendations:**

- Address existing infrastructure and capacity limitations of First Nations communities prior to introducing federal legislation;
- Develop First Nations water commission (aimed at addressing community water-issues, seeking input from communities);
- The legal duty to consult must be respected—and be at the core of regulatory process;
- First Nations community’s develop regulatory system grounded in customary law (creating clean-water standards, integrating Traditional cultural principles);

### **References:**

Bill-S8: Safe Drinking Water for First Nations Act. Retrieved from: <http://openparliament.ca/bills/41-1/S-8/>