



Safe Drinking Water for First Nations Act - Repeal and Replacement Legislation





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Territory Acknowledgement

The Assembly of First Nations is in the Traditional and Unceded Territory of the Algonquin peoples.

Today's gathering brings us to the traditional territory of the Anishinabek, which includes the Ojibwa of Fort William First Nation, signatory to the Robinson-Superior Treaty of 1850.

We humbly acknowledge the territories within which we gather, both physically and virtually.



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The Assembly of First Nations

- The Assembly of First Nations (AFN) is the national organization ***advocating*** in support of First Nations in Canada.
- First Nations leaders (Chiefs) from coast to coast to coast direct the work of the AFN through resolutions passed at First Nations Assemblies normally held twice a year.
- The AFN Infrastructure Sector advocates in areas of infrastructure, drinking water, wastewater, and source water protection.



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Update on Legislation



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Recall: Safe Drinking Water for First Nations Act (SDWFNA) Update

- Created and brought into force without consultation and despite extensive First Nations resistance and challenges.
- The successful repeal of the SDWFNA received Royal Assent on June 23, 2022.
- The repeal and replacement of the SDWFNA with co-developed legislation has been mandated by the Chiefs-in-Assembly through Resolutions 88/2017, 01/2018, 26/2018, and 14/2019. It is also outlined in the AFN's *Healing Path Forward* 2021 priorities.



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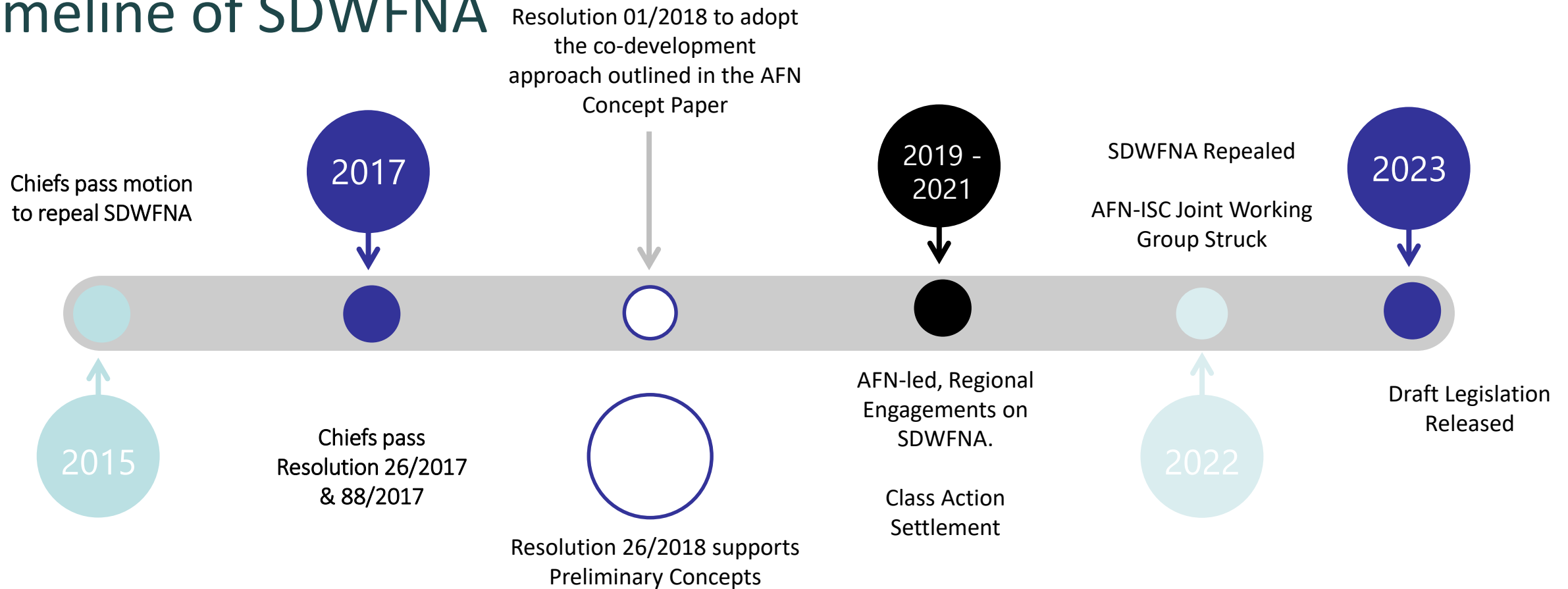
SCA 2022

- Emergency Resolution calling on Canada to recommit to co-development, as well as ensure the legislation includes a minimum standard, adequate funding, governance, source water protection and liability.



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Timeline of SDWFNA





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Goals of New Legislation

1. Confirm Adequate, Predictable and Sustainable Funding for First Nations Safe Drinking Water and Wastewater Systems
2. Ensure Sustainable First Nations Water and Wastewater Systems
3. Protect First Nations Rights, Interests, Aspirations and Laws Regarding Water
4. Create a Transparent and Consent-Based Approach to Building, Improving, and Providing Drinking Water and Wastewater Services for First Nations
5. Support the Consensual Transition of Care and Control over First Nations Water Infrastructure to First Nations



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The Preliminary Concepts included key topics across 26 categories including:

1. Goals of the First Nations Safe Drinking Water Legislation
2. Key Operative Elements of the First Nations Safe Drinking Water Legislation Draft Interest Framework
3. Protection of First Nations Rights and Title
4. Definition of Safe Drinking Water
5. Scope of Safe Drinking Water
6. Federal Jurisdiction
7. First Nations Jurisdiction
8. Inter-Jurisdictional Governance
9. Adherence to International Commitments
10. Source to Tap to Source Approach
11. First Nations Safe Drinking Water Standards
12. Funding Arrangements
13. Source Water Protection
14. Watershed-Based Approach
15. Technical Standards
16. Emergency Measures in Response to Contamination of Drinking Water
17. First Nations Water Commission
18. Mechanism to Review Federal Commitment
19. Transparency of Water Information Commitment (FN Public Registry)
20. Alternative Dispute Resolution Mechanisms
21. Enforcement
22. Legislative Review Every 5 Years
23. Timeframe for Initial Implementation
24. Procedure for Drafting Regional Regulations
25. Consequential Amendments
26. Coming Into Force



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Class Action Settlement

- The 2021 Class Action Settlement accelerated the repeal and replacement of legislation.
- The Class Action requires Canada to make reasonable efforts to develop new legislation with minimum standards, adequate funding, transparent governance.



2023 ISC Consultation Process for Draft

- Upon release, there was a 30-day consultation period on the proposed legislation. Based on the release on February 17, 2023, the 30-day period closed on March 19, 2023.
- Following sustained advocacy, the consultation period was extended further.



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*Requirements & Needs for Current Legislation as
Articulated by First Nations*



2023 Engagements

- The AFN supported Regions through Regional Water Coordinators on engagements on the proposed legislation that released in February 2023.
- ISC/Canada are also coordinating engagements on the new legislation.
- Important role for First Nations voice in advocating for decision making in water stewardship, management and governance



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2019 - 2021 Engagements

- The 2023 Engagements built on many years of engagement, including 2019 – 2021.
- National regionally-led engagement processes were held in the Fall of 2019, and throughout 2020– 2021.
- Feedback related to inclusion of First Nations worldviews, laws and customs; assurance of funding; recognition of jurisdiction; address urgent issues; address source water protection; and address ownership and liability.
- As part of the engagement processes, several options were presented to First Nations, with descriptions and details to aid in understanding the important concepts.



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Key Areas of New Legislation

- Rights
- Funding
- Governance
- Liability
- Minimum Standards
- Source Water Protection



Principles

- Principles within the Act help to determine how to apply the Act. Wording in this section is important, but not is meant as an interpretive aid. These are important and significant in the context of this new Act.
- The Principles section clearly speak to minimum standards, **but these must also be including in the binding elements of the Act to ensure that are in place immediately.**
- Essential to ensure the principles are as binding as possible, with the strongest wording throughout.



Governance

- The Act contains significant inclusion of reference to new First Nations Governance structures. This is a substantial inclusion.
- Strong wording is further suggested to ensure full participations of First Nations in governance and decision-making. It is currently enabling, in that it stipulates the future creation of a Commission.
- This allows for regional flexibility and further engagement will help to refine during implementation.



Minimum Standards

- The section of Reasonable Efforts does not currently stipulate a minimum standard upon enactment of the law.
- Therefore, wording that stipulates that water services meet or exceed the Canadian Drinking Water Quality Guidelines or a provincial proximate, and the Wastewater Systems Effluent Regulations are necessary and in keeping with the direction by the Chiefs-in-Assembly.
- This is an important opportunity to include in the legislation to ensure all First Nations have adequate water and sanitation.



Funding

- Current wording ensure that funding allocations are done in consultation with First Nations.
- Stronger wording would ensure co-development of funding decisions and allocations, and place First Nations at the center of all decision making.
- Needs-based funding is referenced, but full life-cycle costing of the true costs must be protected.



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Rights

- Significant inclusion of recognition of First Nations rights in the preamble, which dominated feedback from the AFN Regional and National Engagements.
- Strong preamble includes reference to First Nations rights to water, relationship with water and context related to jurisdiction and self-government.
- There are important links to UNDRIP, and the National Action Plan that need to be further considered.
- Important to understand elements of preamble, versus elements recognized in the binding text of the legislation.



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UNDRIP & UNDA

- There is currently no policy, program or legislation that directly connects the commitments of UNDRIP to infrastructure including water and wastewater initiatives. A significant effort is needed to not merely link to UNDRIP, but to ensure recognition of the role of infrastructure and water and sanitation as foundational elements that underpin all efforts to improve the lives and futures of First Nations people.



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UNDRIP & UNDA

- Canada must maintain its responsibility to deliver water and wastewater to First Nations at a minimum level, committing to ongoing funding and ensuring that no First Nations are left behind.
- The water/wastewater gap must be closed by 2030, and establishment of sustainable funding options and mechanisms to ensure support for First Nations who design and deliver services according to their unique needs and priorities.



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UNDRIP & UNDA

- Full exercise of jurisdiction over source waters on-reserve and substantial assertion of jurisdiction over source waters in, on or around traditional territories.
- OCAP[®] principles are upheld in all water and wastewater related initiatives.
- All First Nations have access to a minimum level of drinking water quality and sanitation, and are able to access water and sanitation that meets minimum requirements defined by United Nations General Assembly.



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Ontario Context & Feedback



Feedback & Engagement - Ontario

- Engagements in Ontario continue to stress the importance of significant increases in funding, addressing long and short-term drinking water advisories, resolving individual and decentralized water system issues, addressing issues of liability, and ensuring a strong minimum standard for water and sanitation are in place .



Feedback & Engagement – Source Water Protection

- Lack of consistency with provincial water planning and management and inadequate protection of rights mean that source water protection is not guaranteed in this current draft, further limiting First Nation participation.
- Legislation does not address FN role in watershed protection and stewardship.



Feedback & Engagement - Wording

- Current language does not adequately ensure that the targeted outcomes will be achieved. Wording is too vague, and does not adequately protect First Nations.
- Ongoing concerns around language that indicates best or 'reasonable' efforts.
- Strongest wording must be utilized to eliminate problematic 'interpretations' by other government parties.



Feedback & Engagement – Infrastructure Support

- Ongoing issues in procurement, problematic contractors and consultants and lowest-bid approaches mean that even when solutions are identified FNs are years and decades from seeing positive results.
- Closing the Gap is only part of the solution, addressing the growth of people and FN economies requires a new way of planning infrastructure.



Additional Feedback

- Ontario FNs want greater clarity on the role of a Commission and assurance that FN-led will truly mean FN-led from ideation to implementation. Gradual transition and financial supports are necessary in order to ensure success.



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Where are we now?



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Current Legislation

- Expected introduction
- Ongoing discussions
- Parliamentary Process



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Kinana'skomitin
Miigwetch
Thank You

Questions?
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