

Indigenous Water Rights Within Canada

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Abstract

This paper will bring the reader along a journey to understand the lack of clean water available to those within Indigenous reserves in Canada. Indigenous people of Canada have had to endure third world living conditions as a result of colonization of territories and peoples. For decades, boil-water advisories have been placed on Indigenous reserves across Canada and due to the lack of serious care from political figures, many boil water advisories remain in place today. By allowing a continued conversation around the livelihood of those who live on reserves, our nation can work towards having equality of water for each person.

Key Words: water, Indigenous, boil water advisories, Canada

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When asking people what is Canada known for, the chances of someone saying water is relatively high. By commonly being pictured with glaciers, mountains, and sea to land contact, it makes Canada appear rich in the resource of water. Water that is safe to consume straight from the tap is taken for granted by many Canadians and is far from universal. With most of the world without access to readily available water and unannounced to many Canadians, there are about 300 reserves that face water insecurities. Generations of people have grown up without access to fresh, clean tap water in a country that is known for its freshwater. These are violations of human rights and continue to dehumanize those left with the consequences. These issues are not environmental issues; instead, they are social issues. "Water accessed through pipe systems causes gastrointestinal illness, it must be boiled prior to consumption or not used at all, and these drinking water advisories can last anywhere from a few days to several years" (Reading, 2011).

Many Indigenous peoples have been caring for water for what it is known to be: sacred. Of course, this was until the arrival of Europeans, which drastically changed the course of their world as they knew. "From the conception of a baby, the water is the most important thing seen because it carries the baby, it comes out of pores, and through happiness and sorrow it is present." (K, Anderson 2010). Over time, Indigenous women and families have had to adapt to modernization and environmental degradation, as well as further governmental restrictions on access to water. Ideas like these how many Indigenous people grew up, having heard stories of how 'rivers are the veins of the earth' make these ideas come to life. Jan Longboat once said as quoted that 'Water is what sustains us. Water is what brings us into this world, and water is what keeps us in this physical world. And so, it is life'. (K, Anderson.)

As of February 15, 2020, there were 140 boil water advisories on Canadian native communities as reported by the Government of Canada. (Ending long term drinking water advisories, 2020) Some of these advisors have been in place for decades. Boil Water Advisories (BWA) mean that the communities faced with them have to pump their water from wells, boil it before using, or buy water in bulk weekly. These advisories are in place when bacteria or parasites have contaminated the water. Upon consumption or touching, they will create short and long term health concerns to those who consume it. There are instant health problems that result from straight consumption and others that arise as a result of a lack of available water. These health risks can show up as rashes, cancer, diabetes, respiratory problems, and headaches. It was not until 2010 that the United Nations General Assembly and the Human counsel recognized the rights to water and sanitation as a Human Right. (Klasing, A. 2018) Organizations such as the David Suzuki Foundation, Amnesty International, the Council of Canadians, and Human Rights Water are all collating together to monitor the progression of drinking water advisories (DWA). The support of these organizations' advocacy has made for more progress shown within these communities.

Water advisories have been in place for decades and are simply a systemic crisis that many Canadians will never face. Advisories leave many Indigenous people facing daily challenges to access safe water for drinking and hygiene — a fundamental human right easily enjoyed by most Canadians. The inability to have safe water to consume, for personal hygiene and food preparations is debilitating to communities. Indigenous community members that choose to stay in their community must endure poor living conditions and seek expensive alternatives of water for consumption. Without direct access to water, many are faced with shipping bottled water in for everyday consumption as the water coming through the taps is not

viable. Shipping water into communities causes there to be limitations on available water, only leaving communities unable to consume the recommended daily water consumptions.

Indigenous peoples in Canada remain at the bottom of virtually every socio-economic statistic in this country and continue to face discrimination and systemic racism regularly. This paper will work to explore the water boil advisories that have been placed throughout Canada within Indigenous reserves nationwide and the effects that they have on the livelihood of these communities. We will explore the inconsistent political party rulings, legislation, and the lack of water protections within Canada.

Effects of Changing Parties

Firstly, the different political stances with political parties and government have negatively affected Indigenous communities' rights to clean water. Not every political party or government has prioritized the need to end boil-water advisories, therefore with BWA, not a priority by each government this has halted implementation of clean water in reserves. As of 2015, one-third of the boil water advisories in Ontario had been in effect for a decade or longer within this developed country (Klasing, A. 2018). With significant work done to eliminate these BWA, there still needs to be a lot more done to get rid them through providing clean pipes and eventually, clean water.

The recent evacuation of Kashechewan First Nation in north-eastern Ontario due to water contamination further reminds us that such issues are relatively commonplace in Indigenous communities. (White, E. 2020) In 2013, Prime Minister Justin Trudeau announced a government-funded project that promised to address the Water Crisis in Indigenous communities, with all BWA to be gone before 2020. With many of these BWA gone from communities, there is still a long way to fully accomplish the goal of Indigenous communities

with municipal like water systems. However, communities will slowly become sicker over time because of the slow poisoning from their water. NDP Leader Jagmeet Singh has stated that if elected, he would be writing a 'blank cheque' for all issues facing Indigenous communities to address the lack of clean drinking water. He was challenged on his statement but responded by asking if there would be backlash received if big Canadian cities like Toronto or Vancouver had a clean drinking water problem. Singh would commonly use a statement like this to have him stand out within the Indigenous community. Especially since his opposition party the Conservative party previously scrapped plans to assist First Nation communities with clean water issues. It is the ideology within political groups to over-promise and underperforms, to create bold statements for underprivileged groups who commonly get overlooked.

Canada should establish an independent Indigenous water commission with the authority to monitor and evaluate water policy and outcomes that affect Indigenous communities. Having voices of Indigenous peoples who can speak on the issue firsthand will allow for more implementation within the reserves suffering the most. "First nations should be sitting at the table from the earliest stages of policy formulation, problem identification, and development of solutions to water quality" (Morin, S. 2016). The leaders and representatives should be present and included in the decision-making process, allowing for precise and appropriate implementation to occur.

Importance of Legislation

Secondly, it is essential to understand that Indigenous Water rights have been extinguished by the legislation of governments wanting Indigenous groups to sign off rights by providing a lack of sufficient resources for operations and management. There has been no comprehensive legislation that expresses clearly the intent to eliminate Indigenous water rights.

The process of colonization denied the rights to Water of Indigenous peoples in Canada, and in nations worldwide. Eurocentric views came in, and settlers had been provided with access to water, and in doing so took away water rights from Indigenous communities.

“... here in British Columbia, the right to withdraw water from freshwater sources was assigned through licenses issued to settlers making withdrawals for domestic, agricultural, and industrial uses. In a time of scarcity, the oldest licenses have access to available water first. As a result of colonial processes and exclusion of First Nations from decision-making and information-sharing, and allegedly also from deliberate action on the part of the provincial government, First Nations are seldom the senior license holders.” (Marshall, 2011)

Many Indigenous communities have been stripped of water rights without much consultation, and a corporation then bought up the water they had used for centuries for financial gain. Many households that are not serviced by community systems struggle with the cost and financial burden of water. Many who are living in more remote areas within Canada are unable to provide fully for themselves, which is not something that anyone should be burdened by. Canada and the United States were built without regard for Indigenous Peoples' reliance upon water for [their] livelihood and food security (Walkem, 2019). Especially true for households in northern Canadian communities that do not have access to adequate resources. Indigenous Peoples' knowledge and laws for the protection and preservation of water have continually been disregarded. "Water is, and always has been, viewed by Indigenous people as something precious: a fundamental life-giving force" (Mcgregor, 2008). As Candis Callison from the Tahltan peoples discusses, the lack of available, transparent infrastructure on reserves is not an environmental issue but a lack of social support within the reserves. Waters have been dammed, overfished, polluted, watersheds logged – all without Indigenous consent or involvement (Walkem, 2019). The management of drinking water in Canadian Indigenous communities is different in that it does not fall under provincial or municipal jurisdiction;

instead, Indigenous communities are under federal jurisdiction. Meaning "they are responsible for ensuring safe drinking water in Indigenous communities north of 60° parallel... between First Nations and three federal government departments: Indian and Northern Affairs Canada (INAC), Health Canada and Environment Canada" (Auditor General of Canada, 2020). However, there is no federal legislation addressing drinking water in First Nations communities currently in place. The non-Indigenous legal structures have acted to "secure state ownership, sovereignty, and relatively unfettered authority to make decisions which impact upon the waters and Indigenous Peoples" (Walkem, 2019). "Since 1977, the federal government has investigated, made recommendations, and committed funds to remediate the water and wastewater situation on the reserves" (HRW, 2020). Over the years, the government is quick to take land from Indigenous peoples but not quick to help them in times of need. They take and take without giving, and this has been the negative cycle of despair that unfortunately, rules. With the Wet'suwet'en nation, we see that the Canadian government had given ruling to the Indigenous community to control the land. However, when the Canadian government needed the land for economic prosperity, it was suddenly not the Indigenous peoples land but belonged to the government. This cycle has been the constant state since eurocentrism entered the land of Turtle Island.

Water protection. The third main idea is regarding the lack of Water protections that have caused severe health problems to Indigenous communities, placing them more at risk of contracting illnesses. The issue of drinkable water monitored closely by the World Health Organization (WHO) and the United Nations (UN) over the years, and they have been a propelling force in pushing government officials to make a change in Indigenous communities. Most Indigenous water systems face issues that affect small towns, and not often large towns as

contaminations are more likely to take place in rural areas over urban areas. Mining, logging, agriculture, and other land activities threaten water hydraulic systems. "These water systems often rely on small bodies of source water with variable flow rates, resulting in reduced capacity of the water source to dilute contaminants and high variation in concentration levels of contaminants, this makes the water more challenging to treat" (Reading, 2011). With a smaller amount of water entering, one will have less water to process and to treat, leaving communities with substantially small amounts of water to use.

Many essential pieces that would be covered in most regulatory regimes are missing from guidelines. These include the approval and licensing of water treatment plants, ongoing monitoring, public reporting requirements, and compliance and enforcement mechanisms. "In practice, this means, for example, that where a province requires water treatment plants to be licensed or certified, the plants located in First Nations communities face no such regulation from the provinces." (APRS, 2013) Resulting in provincial regulations not being met on reserves, and updated information not being provided to those who have the responsibility to care for the water system.

Indigenous people should not have to sign their rights of water over to the provincial government as has been proposed. Instead, the government should work alongside the various reserves who are on BWA and provide continued support and financial assistance. By working with communities, rather than against them, the persisting issue will be able to be managed. As read in the Indigenous Water Governance in Australia the ("demand for recognition of Indigenous laws and jurisdiction to act to protect water is not a Canadian phenomenon, but part of a larger international trend of Indigenous Peoples who are reasserting their jurisdiction and

presence upon the waters and lands.” (Tsatsaros, J. Wellman, J. Bohnet, I. Brodie, J. & Valentine, P. (2018)

In conclusion, the continued BWA “... highlights the need for negotiation and consultation with Aboriginal peoples leading to true accommodation of their rights and involvement regarding water use and management (D. Laidlaw, 2019). Until this happens, Indigenous peoples will have little recourse but to engage in continuing litigation. When we continue the conversation of litigation, we allow for more change to be present. Although theirs little implemented to control the BWA, progress has been made in 2020 to see Indigenous voices heard. The protests in solidarity with the Wet'suwet'en nation have told the country that the rights of Indigenous peoples will be heard and will no longer be overlooked. The hope in writing this piece on BWA is to stand with Indigenous peoples who have endured third-world living conditions within a nation priding itself on first world statuses. To add to the conversation where society can continue to break down the Eurocentric lens.

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