


“Providing essential public services of reasonable quality to all Canadians”: Interpreting s.36(1)(c) of the *Constitution Act, 1982*



 Social Sciences and Humanities
Research Council of Canada



CIHR IRSC

 Canadian Institutes of Health Research / Instituts de recherche en santé du Canada

Conseil de recherches en
sciences humaines du Canada

 Canada

"The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses."

UN General Assembly Resolution



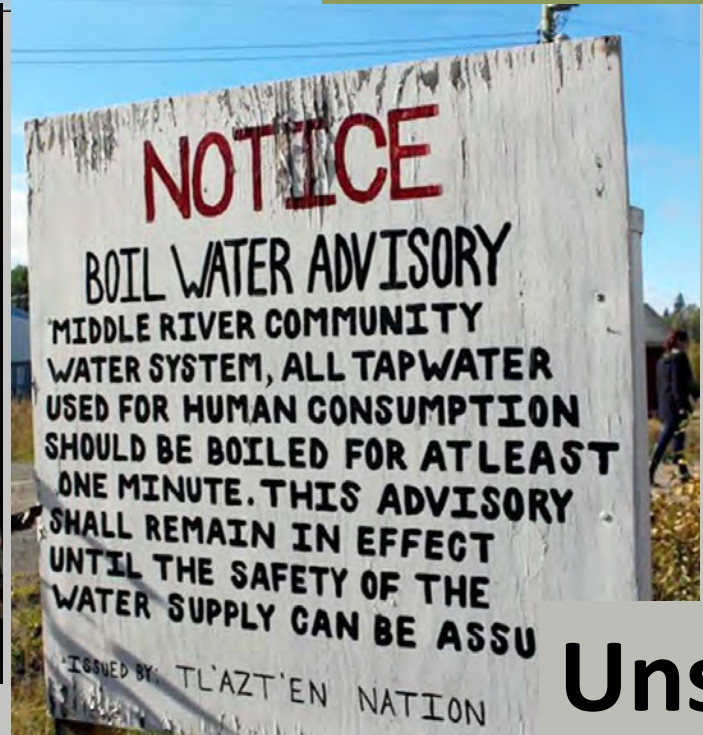
Unacceptable



Inaccessible



Insufficient



Unsafe

St. Theresa Point First Nation Study

- 30% of individuals said they've missed work or school because they or a family member was sick from a waterborne illness

O'Gorman, Harper et al



STPFN: Impact on Schooling

- “Some students don’t come to school because they haven’t been able to shower or do laundry.”
- “Skating rink – can’t flood it – so it’s not functioning.”
- “Some students go to the washroom every hour – they have diarrhea.”
- “Eye wash stations don’t work – science classes can’t do experiments.”
- “Water pressure – at the school – is very unpredictable. It’ll shut off sometimes for an hour or so. If water isn’t working, school is shut down – this happens a lot.”

O’Gorman, Harper et al



36 (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

- (a) promoting equal opportunities for the well-being of Canadians;
- (b) furthering economic development to reduce disparity in opportunities; and
- (c) providing essential public services of reasonable quality to all Canadians.

36(1) Sous réserve des compétences législatives du Parlement et des législatures et de leur droit de les exercer, le Parlement et les législatures, ainsi que les gouvernements fédéral et provinciaux, s'engagent à

- a) promouvoir l'égalité des chances de tous les Canadiens dans la recherche de leur bien-être;
- b) favoriser le développement économique pour réduire l'inégalité des chances;
- c) fournir à tous les Canadiens, à un niveau de qualité acceptable, les services publics essentiels.

Does s. 36(1)(c) contain a substantive right or is it a mere aspiration?

Courts in at least 15 countries have recognized and enforced a constitutionally-protected right to water or the government's obligation to provide water using more open ended provisions such as the right to life or general welfare provisions.

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36 (2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

36 (2) Le Parlement et le gouvernement du Canada prennent l'engagement de principe de faire des paiements de péréquation propres à donner aux gouvernements provinciaux des revenus suffisants pour les mettre en mesure d'assurer les services publics à un niveau de qualité et de fiscalité sensiblement comparables.

1971 Version

Art. 46 Parliament and the government of Canada and the Legislatures and governments of the Provinces are committed to

(1) The promotion of equality of opportunity and well-being for all individuals in Canada

(2) The assurance, **as nearly as possible**, that essential public services of reasonable quality are available to all individuals in Canada; and

(3) The promotion of economic development to reduce disparities in the social and economic opportunities for all individuals in Canada wherever they may live.

Art. 47 The provisions of this part shall not have the effect of altering the distribution of powers and **shall not compel** the Parliament of Canada or the Legislatures of the Provinces to exercise their legislative powers.

Art 46 Il incombe au Parlement et au Gouvernement du Canada ainsi qu'aux Législatures et aux Gouvernements des Provinces.

(1) de promouvoir l'égalité des chances pour toutes les personnes qui vivent au Canada et d'assurer leur bien-être;

(2) de procurer à toute la population, **dans la mesure du possible** et suivant des normes raisonnables de qualité, les services publics essentiels; et

(3) de promouvoir le progrès économique afin de réduire les inégalités sociales et matérielles entre les personnes, où qu'elles habitent au Canada.

Art 47 Les dispositions de ce titre n'ont pas pour effet de modifier la répartition des pouvoirs, **non plus qu'elles n'obligent** le Parlement du Canada ou les Législatures des Provinces à exercer leurs pouvoirs législatifs.

Representations to UN Bodies

“[Section 36(1)(c) is] particularly relevant in regard to Canada’s international obligations for the protection of economic , social and cultural rights”.

CESCR 6th Periodic Review (2016)

“...recommends that [Canada] implement its commitment to review its litigation strategies in order to foster the justiciability of economic, social and cultural rights.”

Substantive or aspirational?

- Recognition of substantive right in other countries
- Ordinary meaning of the words used
- Words used in the specific context
- Insights drawn from changes in the drafting process
- Representations in international fora
- Observations during periodic reviews

Getting People to Care

“The Government should provide adequate water and wastewater services to all First Nations.”

People are more likely to agree if:

- Use a human rights frame
- Show that changes are feasible, affordable
- Invoke community connection
- Make suffering clear (without stigmatizing)
- Do not appeal to nationalism

WATER IS A HUMAN RIGHT



**Do you have running water?
I don't ...and I live in Canada, I need your help.**

What now? Strategies?

**MUSEUM OF CANADIAN
HUMAN RIGHTS VIOLATIONS**

**CHALLENGING
CANADIAN
HYPOCRISY**



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