

Summary of “Canada’s Complicity in Water Discrimination on Reserves”

THE CASE FOR A COMPLAINT UNDER THE CANADIAN HUMAN RIGHTS ACT

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Why use the *Canadian Human Rights Act*?

The *Canadian Human Rights Act (CHRA)* provides protection from discrimination for all Canadians, and applies to the federal government and federally regulated actions. It was under the *CHRA* that the First Nations Child and Family Caring Society successfully held the federal government accountable for discrimination in the provision of child and family services on reserves. Given the success of that case, and the similarities between inadequate child and family services and inadequate water services on reserves, as compared to those enjoyed by most Canadians, a strong complaint could be made under the *CHRA*.

In their success, the First Nations Child and Family Caring Society has paved a path that may be used for future complaints of discrimination by First Nations communities against the federal government. A complaint regarding discrimination in the provision of water services may be an ideal complaint to follow down this path. For more information on the First Nations Child and Family Caring Society and their progress in resolving discrimination in child and family services on reserves, visit <https://fncaringsociety.com/i-am-witness>.

What do I need to prove in my complaint?

There are 3 steps to making a complaint of discrimination under the *CHRA*. First, you must show that your community has characteristics that are protected from discrimination. Second, you must show that your community has either been denied a service, or has been negatively impacted in the provision of a service. Lastly, you need to show that the protected characteristic was a factor in the denial or negative impact.

1. CHARACTERSTIC PROTECTED FROM DISCRIMINATION

This step is the most straight forward, and requires simply showing that you or your community are a distinct race, or have a distinct national or ethnic origin. There is no dispute that First Nations communities have these protected characteristics. So, this step would be relatively simple.

2. DENIAL OF, OR NEGATIVE IMPACT BY, THE PROVISION OF A SERVICE

Before an argument can be made that First Nations communities are denied or negatively impacted by the provision of water services, it is important to show that the federal government is actually providing a service, and not just passively funding. Much of the language used by the federal government in discussing their role in water infrastructure on reserves is like that of an investor,

rather than a service provider. However, given the strong influence that the federal government has on the types of projects that are approved, or whether projects are approved, there is a strong argument that the federal government's actions are a service.

Once "service" has been shown, it is then necessary to show examples of First Nations communities either being denied water services, or being negatively impacted by the provision of water services. The following are some examples of the negative impacts in the provision of water services by the federal government, but it is not a complete list. Researching and including evidence of additional negative impacts is encouraged and will help strengthen the complaint.

Insufficient Funding

The first major negative impact in the provision of water services in First Nations communities is the inadequate funding set aside for water infrastructure, operations and maintenance. The present funding formulas for water services in First Nations communities are not based on the actual needs of each community, and funding has not increased at the same rate of growing populations and higher costs.

While the federal government has made several announcements of increased funding for water services over the past few decades, these funds have been both insufficient to address the actual needs of many communities, and have often been reallocated to other areas of need. The present federal government announced substantially greater funding for water services in 2016. However, it is estimated that these additional funds, over a 10-year period, will still leave a gap of 30-50%.

Regulatory and Service Gaps

The second major negative impact in the provision of water services experienced by many First Nations communities is the absence of binding regulations on water service standards. While most Canadians enjoy affordable, high-quality water under comprehensive and binding rules that hold water service providers accountable, First Nations communities do not enjoy the same protection under the law. Steps have been taken by the federal government in recent years to address this issue, but these efforts have been heavily criticized, are very problematic, and have so far been unsuccessful in developing regulations.

Beyond the regulation gaps, there are also service gaps created by the remarkably complex funding methods and a general lack of coordination between the agencies, departments, and other parties involved. An argument may be made that this complexity and lack of coordination is the main reason for the federal government's frequent delays in fulfilling its funding commitments.

3. A PROTECTED CHARACTERISTIC WAS A FACTOR IN THE DENIAL OR NEGATIVE IMPACT

This step requires you to show that your community's race and national or ethnic origin was part of the reason why your community was denied or negatively impacted by the federal government's provision of water services. You don't need to show that the federal government intended to discriminate, rather only that it was part of the reason. The water services are provided through Indigenous and Northern Affairs Canada, and are being provided to First Nations communities

solely and uniquely based on race and national or ethnic origin. Because of this fact, there is a strong argument that the race and national or ethnic origin of First Nations communities is a reason why they have experienced these negative impacts in receiving water services.

Taken together, demonstrating these 3 steps may be enough to successfully make a complaint under the *Canadian Human Rights Act*. For a more detailed look at how to make this complaint, please read my full discussion on the topic entitled “Canada’s Complicity in Water Discrimination on Reserve”.