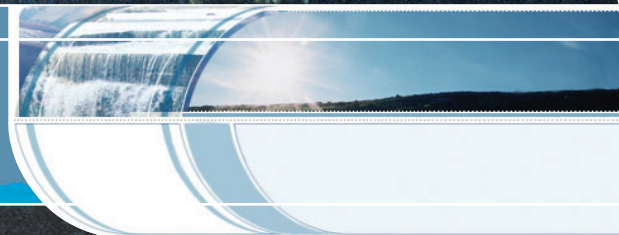


REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

NOVEMBER 2006



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**EXPERT PANEL
ON SAFE DRINKING WATER
FOR FIRST NATIONS**

**VOLUME II
LEGAL ANALYSIS**

**PREPARED BY WILLMS & SHIER ENVIRONMENTAL LAWYERS LLP
NOVEMBER 2006**

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1 Background

At present, there is no regulatory framework that applies to drinking water and wastewater on reserves. The current situation is best described as consisting of a number of parties whose roles and responsibilities are bound by government policies and contribution agreements. These arrangements are neither comprehensive nor easily deciphered; most critically, there are numerous gaps and a lack of uniform standards, as well as enforcement and accountability mechanisms.

The Office of the Auditor General, through the 2005 Report of the Commissioner of the Environment and Sustainable Development, recommended implementing a regulatory framework for drinking water in First Nations communities. The Commissioner found that:

When it comes to the safety of drinking water, residents of First Nations communities do not benefit from a level of protection comparable to that of people who live off reserves. This is partly because there are no laws and regulations governing the provision of drinking water in First Nations communities, unlike other communities.¹

In June 2006, the Minister of Indian Affairs and Northern Development, in consultation with the Assembly of First Nations (AFN), appointed an expert panel to hold hearings and provide options to regulate water on First Nations reserves. At the panel's option, it considered wastewater in addition to drinking water.

To assist the expert panel, Willms & Shier Environmental Lawyers LLP was commissioned to identify the legal basis and legal advantages and disadvantages, of five options for regulating water on First Nations reserves:

- 1 Application of provincial law as laws of general application
- 2 Federal regulation passed pursuant to an existing federal statute including federal laws that authorise First Nations to pass laws on water
- 3 A new federal act
- 4 Incorporating provincial water laws in new federal legislation
- 5 Applying asserted First Nations jurisdiction and customary laws.

¹ Office of the Auditor General of Canada, *Report of the Commissioner of the Environment and Sustainable Development to the House of Commons*, (Ottawa: Minister of Public Works and Government Services Canada, 2005).

2 Conclusions

2.1 Provincial Laws of General Application

Applying provincial drinking water and wastewater law as a law of general application is fraught with such uncertainty that it is neither a viable nor effective option.

Section 91(24) of the *Constitution Act, 1867* confers upon the federal government exclusive jurisdiction to make laws in relation to “Indians and lands reserved for the Indians.”²

A provincial law may, nonetheless, apply to Indians and lands reserved for the Indians in one of two ways:

- 1 of its own force as a law of general application so long as it does not affect “Indianness.” Because the scope of “Indianness” has not been exhaustively defined, it is difficult to determine whether any particular provincial water regulation would apply of its own force. And worse, because of the nature of the test, some provisions of the provincial regime might apply, while others would not. This would create challenges for both application and enforcement.

On the one hand, an argument can be made that the water regulation pertains to public health in general and does not relate to being “Indian.” On the other hand, the courts have found that band council activities related to local government functions form an integral part of primary federal jurisdiction over “Indians and lands reserved for the Indians.”³

Matters are further complicated for provincial water regimes that regulate land use. For example, regulations regarding source water protection and emergency powers to issue orders shutting down a water treatment facility clearly affect land use. Such regulations run the risk of intruding on the federal core of “lands reserved for the Indians.”

- 2 where the provincial law does regulate “Indians,” then the provincial law may apply by virtue of s. 88 of the *Indian Act*. Because it is unlikely that this section is available where provincial laws affect the use of reserve lands, this is an uncertain basis for applying provincial drinking water laws on reserve.

² *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3 reprinted in R.S.C. 1985, App. II, No. 5, s. 91(24) [hereinafter *Constitution Act, 1867*].

For a discussion on this topic, see P. Hogg, *Constitutional Law of Canada*, 3rd ed., (Toronto: Carswell, 1992) at 664-670 [hereinafter Hogg].

³ *Whitebear Band Council v. Carpenters Provincial Council Saskatchewan* (1982), 135 D.L.R. (3d) 128 (Sask. C.A.) [hereinafter *Whitebear*].

The complexities and uncertainties of this option create enormous challenges for regulators and the regulated alike in determining whether provincial water laws apply. Until the courts provide such guidance, the possibility remains that the provincial water law is inapplicable on reserve as a law of general application.

Given the importance of the objective of ensuring the delivery of safe, clean drinking water to First Nations people on reserve, such complexities and unpredictability as to the application of provincial water laws render this option essentially untenable.

2.2 Existing Federal Legislation

A number of federal laws relate to water and First Nations, including the *Canada Water Act*, *Canadian Environmental Protection Act*, *Department of Health Act*, *Department of Indian Affairs and Northern Development Act*, *Fisberies Act*, *Indian Act*, *First Nations Land Management Act*, and the *First Nations Commercial and Industrial Development Act*.⁴

Although these federal laws provide authority for some of the elements that would be included in drinking water and wastewater regulation on reserves, none of them provides a workable framework for all. Because of the significance of water to a healthy environment, the multiplication of threats to safe water, and the increasing complexity of regulating water, there is considerable disadvantage to having a patchwork of federal laws to govern different aspects of water and wastewater in First Nations communities.

The most likely candidates are the *Indian Act* and the *First Nations Land Management Act* (FNLMA). The *Indian Act* authorizes Cabinet to make regulations to prevent the spread of communicable diseases and to provide for sanitary conditions.⁵ First Nations may also pass bylaws under the *Indian Act* to regulate public wells, reservoirs, cisterns and other water supplies.⁶

The regulations and bylaws may be enforced by derisory fines or short prison terms. There is no provision for culturally sensitive compliance enforcement. These weak and uncreative enforcement provisions would not provide effective deterrence.

⁴ *Canada Water Act*, R.S.C., 1985, c. C-11 [hereinafter *Water Act*];
Canadian Environmental Protection Act, 1999, S.C., 1999, c.33 [hereinafter *CEPA*];
Department of Health Act, S.C., 1996, c.8 [hereinafter *Health Act*];
Department of Indian Affairs and Northern Development Act, R.S.C., 1985, c. I-6 [hereinafter *DIAND Act*];
Fisberies Act, R.S.C., 1985, c. F-14 [hereinafter *Fisberies Act*];
Indian Act, R.S.C., 1985, c. I-5 [hereinafter *Indian Act*];
First Nations Land Management Act, 1999, S.C., 1999, c. 24 [hereinafter *FNLMA*];
First Nations Commercial and Industrial Development Act, S.C., 2005, c. 53
[hereinafter *FNCIDA*].

⁵ *Indian Act*, *ibid.* at s. 73(1)(f) and (k).

⁶ *Indian Act*, *ibid.* at s. 81(1)(l).

The *FNLMA* provides tools to manage lands and resources to First Nations that “opt in” to the Act by signing the *Framework Agreement on First Nations Land Management* and developing a land code. It authorizes First Nations to develop their own regulations to protect the environment and provide local services.⁷

The disadvantage of using the *FNLMA* for water regulation is that opting-in requires the First Nation to engage in the complicated and time-consuming process of adopting a land code before passing water regulations. This process requires First Nations to decide about issues related to disposition of lands, revenues from natural resources, accountability, rules respecting the disposition of property upon marriage breakdown, and a whole host of other matters. First Nations may want to regulate standards for safe drinking water, but may not be ready, or have resources, to opt into the *FNLMA*.

Thirty-six First Nations, as listed in the Schedule to the *FNLMA*, signed the *Framework Agreement*. These 36 First Nations are able to develop and ratify a land code according to the procedures set out under the *FNLMA*. Seventeen of these First Nations have developed land codes.

2.3 New Federal Legislation

The *Constitution Act, 1867*, s. 91(24) gives the federal government the jurisdiction to develop new federal legislation to govern water on First Nations reserves.

An advantage of new federal legislation is that it could be a bridge to self-government by incorporating a broader role for First Nations people through a First Nations Water Commission with approval, licensing, enforcement and policy roles.

It could improve the capacity of First Nations to deal with water issues and lead to the eventual implementation of self-government over water.

It could bring uniform standards to all First Nations and accountability to present roles.

The process of developing and enacting the legislation could also serve as a relatively small-scale test-case and model for how self-government legislation relating to specific sectors might be negotiated and implemented in the future.

2.4 Incorporating Provincial Water Laws in New Federal Legislation

Another possible option is to incorporate provincial water laws by reference in new federal legislation.

⁷ *FNLMA*, *supra* note 4 at s. 20(2)(c) and (d).

This option offers many of the advantages of the previous one. An added advantage is that each province already has in place the institutional infrastructure and technical expertise to support and extend the application of its water laws on reserve.

The drawback to this option, however, is that there are gaps and varying water standards province to province, which would lead to the undesirable effect of some reserves benefiting from a more comprehensive regime than others.

The issue of who would inspect, investigate and enforce the provincial water standards is also problematic. Buy-in from the provinces and First Nations would be needed for the provinces to assume these roles. This would require the federal government to engage in negotiations with each province and consult with First Nations, which could in turn lead to lengthy delays.

A First Nations Water Commission, however, could play an instrumental role as an oversight body and could facilitate negotiations and discussions with the provinces and First Nations.

As discussed in the new federal statute option above, the advantages to establishing a First Nations Water Commission are that it would facilitate accountability and credibility, and would enhance capacity-building and First Nations participation in regulating their own water affairs. As such, it would assist in building the bridge to self-government.

2.5 Applying Asserted First Nation Jurisdiction and Customary Laws

A final option considered is to develop water legislation based on First Nations customary laws. The legal basis is the inherent right to self-government as acknowledged in the 1995 federal policy recognizing First Nations' inherent right to self-determination; it upholds s. 35(1) of the Constitution and its underlying purpose of reconciliation.

This task would start with, and be driven by, First Nations across the country. The objective would be to incorporate into federal legislation the basic tenets of customary law as they relate to water. It may be difficult, however, to discern exactly what First Nations customary law in this area is since it varies from nation to nation.

3 Provincial Laws of General Application

This section analyzes the feasibility of applying existing provincial water and wastewater regulation⁸ to reserves through the laws of general application.

First we review the constitutional framework for the division of powers between the federal and provincial governments as it relates to the regulation of First Nations. Next, we analyze the feasibility and effectiveness of this approach given the constitutional framework and the existing case law regarding provincial laws of general application.

3.1 Constitutional Framework: The Division of Powers

3.1.1 Federal Jurisdiction

Section 91(24) of the *Constitution Act, 1867* confers upon the federal government exclusive jurisdiction to make laws in relation to “Indians and lands reserved for Indians.”⁹ This jurisdiction is over two separate heads of power: one over “Indians” and the other over “lands reserved for the Indians.”¹⁰

Through the doctrine of interjurisdictional immunity, s. 91(24) protects a core of federal jurisdiction over “Indians” and “lands reserved for the Indians” that is off-limits to the provincial legislatures. A provincial law is invalid if the law can be characterized as a law relating to “Indians” or “lands reserved for the Indians” because in so doing, it would be affecting (in other than a purely incidental way) matters within this core of federal jurisdiction.

Under the first head of power, “Indians,” the federal government may enact laws relating to “Indians” regardless if such Indians reside on or off reserve.

Under the second head of power, “lands reserved for the Indians,” the federal government may pass laws that affect Indians or non-Indians so long as the laws relate to lands reserved for the Indians. “Lands reserved for the Indians” covers more than Indian reserves and extends to lands subject to aboriginal title.¹¹

⁸ Hereinafter referred to as “water regulation”.

⁹ *Constitution Act, 1867* *supra* note 2. For a discussion on this topic, see Hogg, *supra* note 2.

¹⁰ See *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010 (S.C.C.) [hereinafter *Delgamuukw*].

¹¹ *Delgamuukw, ibid.* In *Delgamuukw*, the Supreme Court of Canada confirmed that Aboriginal title lands, like *Indian Act* reserves are for constitutional purposes “lands reserved for the Indians”.

The fact that “Indians” and “lands reserved for the Indians” come within exclusive federal jurisdiction is insufficient on its own to insulate them from the reach of provincial laws. Certain provincial laws of general application may, of their own force or by referential incorporation under s. 88 of the *Indian Act*, validly apply to Indians and lands reserved for the Indians.¹² Section 88 reads as follows:

*Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act.*¹³

3.1.2 Provincial Jurisdiction

A provincial law may apply to “Indians” and “lands reserved for the Indians” in one of two ways:

- 1 of its own force as a law of general application so long as it does not affect “Indianness,” or
- 2 where the provincial law does regulate qua “Indians,” then the provincial law may apply by virtue of s. 88 of the *Indian Act*.

Provincial Laws of General Application

The courts have rejected the “enclave theory,” namely that s. 91(24) creates federal enclaves from which provincial laws of general application are excluded.¹⁴

The general rule is that provincial laws of general application apply of their own force to Indians and lands reserved for the Indians so long as the law is in relation to a matter coming within a provincial head of power, does not invade the exclusive federal authority over Indians and lands reserved for the Indians, and is not inconsistent with any federal laws.¹⁵

¹² *Indian Act*, *supra* note 4 at s. 88.

¹³ *Indian Act*, *ibid*.

¹⁴ *R. v. Francis*, [1988] 1 S.C.R. 1025 (S.C.C.) [hereinafter *Francis*]; *Cardinal v. Attorney-General of Alberta*, (1973) 40 D.L.R. (3d) 553 (S.C.C.) [hereinafter *Cardinal*]; *Four B Manufacturing Ltd. v. United Garment Workers*, [1980] 1 S.C.R. 1031 (S.C.C.) [hereinafter *Four B*].

¹⁵ *Cardinal*, *ibid*.
Dick v. The Queen, [1985] 2 S.C.R. 309 (S.C.C.) [hereinafter *Dick*];
 See also Hogg, *supra* note 2 at 671-677.

Under the first exception, provincial laws that impair the “status or capacity” of Indians, or that affect “Indianness” do not apply. Nor can provincial laws affect aboriginal or treaty rights or Indian status, as these matters go to the heart of being “Indian.”¹⁶

A provincial law must also not single out Indians or Indian reserves for special treatment and must not be inconsistent with federal law.¹⁷ If a provincial law is inconsistent with a provision of the *Indian Act* or any other federal law, the provincial law is rendered inoperative by the doctrine of federal paramountcy.¹⁸

Incorporation through S. 88 of the Indian Act

Subject to various exceptions, s. 88 of the *Indian Act* incorporates into federal law those provincial laws of general application that would not otherwise apply of their own force because they touch on “Indianness.” These are the only laws that s. 88 needs to apply because the other provincial laws of general application apply of their own force.¹⁹

There is considerable debate, however, over whether s. 88 incorporates into federal law all provincial laws of general application that do not apply of their own force, including those that affect s. 91(24) lands.

Supreme Court of Canada judgments have commented on this issue but have not decisively pronounced on this issue.²⁰ There are, however, lower court decisions that have concluded that s. 88 does not extend to incorporate provincial laws that affect s. 91(24) lands.²¹

There also appears to be strong academic support for the interpretation that s. 88 does not apply to s. 91(24) lands.²² Proponents of this view point to the fact that s. 88 only makes reference to “Indians” and makes no mention of “lands reserved for the Indians.”

¹⁶ *Delgamuukw*, *supra* note 10.

¹⁷ See *R. v. Sutherland*, [1980] 2 S.C.R. 451 (S.C.C.) [hereinafter *Sutherland*].

¹⁸ Hogg, *supra* note 2 at 671.

¹⁹ *Dick*, *supra* note 15.

²⁰ In *Cardinal*, *supra* note 14, Laskin J. dissenting on other grounds concluded that s. 88 “deals only with Indians, not with Reserves”. The majority did not consider this issue. In *Derrickson*, *infra* note 38, the Court reviewed the arguments for the two positions but did not conclude on the matter.

²¹ See *Re Park Mobile Home Sales and Le Greehy* (1978), 85 D.L.R. (3d) 618 (B.C.C.A.) [hereinafter *Park Mobile*]; *Reference re Stony Plain Indian Reserve No. 135* (1981), 130 D.L.R. (3d) 636 (Alta. C.A.) [hereinafter *Stony Plain*]; *R. v. Martin* (12 August 1985), (Ont. Dist. Ct.) [unreported] [hereinafter *Martin*]; *Stoney Creek Indian Band v. British Columbia*, [1999] 1 C.N.L.R. 192 (B.C.S.C.) [hereinafter *Stoney Creek*].

²² For a discussion on this issue, see K. Wilkins, *Negative Capability: Of Provinces and Lands Reserved for the Indians*, *Indigenous Law Journal*, Vol. 1, Spring 2002 at 57-111 [hereinafter *Negative Capability*].

Accordingly, there is a strong likelihood that s. 88 does not incorporate into federal law those provincial laws of general application that affect “lands reserved for the Indians.”

Section 88 Exceptions

In addition, a provincial law of general application that invades exclusive federal jurisdiction over “Indians” and “lands reserved for the Indians” is inapplicable if such law falls under any of the following exceptions:

- **“Subject to the terms of any treaty”**: Where there is a conflict between a treaty and a provincial law of general application, the treaty term prevails.
- **“Any other Act of the Parliament of Canada”**: This means that where there is a conflict between a federal statute and a provincial law of general application, the federal statute prevails.
- **“Inconsistent with this Act or any order, rule, regulation or bylaw made thereunder”**: A provincial law of general application is inapplicable where it is “inconsistent with this Act (the *Indian Act*) or any order, rule, regulation or bylaw made thereunder.”
- **“Except to the extent that such laws make provision for any matter for which provision is made by or under this Act”**: This indicates that a provincial law is inapplicable if there is a provision in the *Indian Act* on the same matter, even if the provincial law is not in direct conflict with the *Indian Act*.

3.2 Do Provincial Water Laws Apply on Reserve?

Whether provincial water laws apply on reserve involves an analysis of the following issues:

- 1 Do provincial water laws apply of their own force to “Indians” and “lands reserved for the Indians”? This issue can be broken down into two components:
 - a) Is provincial water regulation a law of general application?
 - b) Do provincial water laws affect “Indianness”?
- 2 If provincial water laws cannot apply of their own force, can they be referentially incorporated into federal law by the application of s. 88 of the *Indian Act*?

3.2.1 Do Provincial Water Laws Apply of Their Own Force?

The issue of whether provincial water regulation is a law of general application is relatively straightforward and is a matter of less contention: it is a law that extends uniformly throughout the territory and does not single out Indians or Indian reserves for

special treatment. The law’s application is the same regardless of the location or persons operating the plant.

The more contentious issue is whether the water law can be characterized as affecting “Indianness.” The law on this point is not clear. There is no case law that speaks directly to the issue of whether the provincial regulation of water on reserve affects the federal core of “Indianness.” Moreover, the scope of “Indianness” itself has yet to be clearly defined. As the Supreme Court of Canada noted in its 2003 decision:

The “core” of Indianness has not been exhaustively defined. It encompasses the whole range of aboriginal rights that are protected by s. 35(1): Delgamuukw, supra at para. 178. For present purposes, it is perhaps more easily defined negatively than positively. The core has been held not to include labour relations (Four B Manufacturing Ltd. v. United Garment Workers of America, [1980] 1 S.C.R. 1031) and highway traffic regulation on reserves (R. v. Francis, [1988] 1 S.C.R. 1025).²³

Provincial Water Regulation: Intrusion in the Federal Core of “Indianness”?

One can conceivably argue that provincial water regulations do not touch upon “Indianness,” as ensuring the safe supply of drinking water and standards for wastewater are matters of public health, which does not inherently relate to being “Indian.”

Take, for example, the case of *Four B Manufacturing v. United Garment Workers*, where the Supreme Court of Canada held that provincial labour law applied to a shoe manufacturing facility located on reserve because there was nothing inherently “Indian” about labour relations. The Court found that the provincial labour law applied, notwithstanding that the business was owned by Indians (albeit through a corporation), operated primarily by Indians, and received funding from the federal government under various INAC programs.²⁴

Speaking for the majority, Beetz J. stated that:

In my view, the established principles relevant to this issue can be summarized very briefly. With respect to labour relations, exclusive provincial legislative competence is the rule, exclusive federal competence is the exception. The exception comprises, in the main, labour relations in undertakings, services and business which, having regard to

²³ *Paul v. British Columbia (Forest Appeals Commission)* [2003] S.C.R. No. 585 (S.C.C.) at para. 33 [hereinafter *Paul*].

²⁴ *Four B*, supra note 14.

*the functional test of the nature of their operations and their normal activities, can be characterized as federal undertakings, services or businesses.*²⁵

The Court found that the regulation of labour relations in this case does not relate to “Indianness.” Rather, the provincial law involves the rights of both Indians and non-Indians to associate with another Indian or non-Indian for labour relations purposes, which do not relate to “Indianness.” It involves their relationships with trade unions and issues around collective bargaining powers with an employer who happened to be an Ontario corporation privately owned by Indians, to which, again, there is nothing inherently “Indian.”²⁶

The Court concluded in this case that the power to regulate labour relations did not affect “an integral part of primary federal jurisdiction over Indians and lands reserved for the Indians.” The Court held that this would be the case even if the business had been owned by an Indian (as opposed to a corporation, the shares of which were owned by Indians) and all of the employees were Indian:

*But even if the situation is considered from the sole point of view of Indian employees and as if the employer were an Indian, neither Indian status is at stake nor rights so closely connected with Indian status that they should be regarded as necessary incidents of status such for instance as registrability, membership in a band, the right to participate in the election of Chiefs and Band Councils, reserve privileges etc. For this reason, I come to the conclusion that the power to regulate the labour relations issue does not form an integral part of primary federal jurisdiction over Indians or lands reserved for the Indians.*²⁷

Consider also the case of *R. v. Francis*, where the Supreme Court of Canada concluded that provincial traffic laws applied to an Indian driving a vehicle on an Indian reserve. As the Court stated:

*I shall begin by saying that, in the absence of conflicting federal legislation, provincial motor vehicle laws of general application apply ex proprio vigore on Indian reserves. To hold otherwise would amount to resuscitating the “enclave” theory which was rejected by a majority of this Court in *Cardinal v. Attorney General of Alberta*, [1974] S.C.R. 695; see also *Four B Manufacturing Ltd. v. United Garment Workers of America*, [1980] 1 S.C.R. 1031. In *Kruger v. The Queen*, [1978] 1 S.C.R. 104, this Court held that general provincial legislation relating to hunting applies on reserves, a matter which is obviously far more closely related to the Indian*

²⁵ *Four B*, *ibid.* at 1046.

²⁶ *Four B*, *ibid.* at 1048.

²⁷ *Four B*, *ibid.* at 1047-1048.

*way of life than driving motor vehicles. Indeed Beetz J., speaking for the Court in Dick v. The Queen, [1985] 2 S.C.R. 309, at p. 326, expressly stated that provincial traffic legislation applies to Indians without touching their Indianness.*²⁸

While there appears to be a compelling argument that the regulation of water, construed as a matter of public health, is a law of general application that does not infringe upon “Indianness,” there is an equally persuasive argument that such regulation does in fact infringe upon the federal core of “Indians and lands reserved for the Indians.” That argument, as adopted by some courts, is that provincial laws that affect band councils’ ability to regulate matters and organize communal affairs on reserve intrude in the federal core of “Indians and lands reserved for the Indians.”²⁹ Since drinking water and wastewater are matters under the auspices of band council, it might be argued that provincial water regulation infringes upon this federal core.

In *Whitebear Band Council v. Carpenters Provincial Council Saskatchewan*, the Court found that the key distinction from the similar labour law in *Four B* was that the band council in *Four B* had no direct interest in the shoe manufacturing business, whereas:

*in the present case, the band council is the employer and is directly involved in and responsible for the work in respect of which the employees are engaged; thus, there exists a critical factual distinction between this and Four B.*³⁰

In *Whitebear*, the operation in question involved the construction of houses on reserve by band members employed by the band council.³¹ The Saskatchewan Court of Appeal held that it was a federal operation which did not come under the jurisdiction of the provincial labour relations board.

The Court analyzed the nature of the band council, noting the similarities between the band council and a municipal council:

As municipal councils are the “creatures” of the Legislatures of the Provinces so Indian Band Councils are the “creatures” of the Parliament of Canada. Parliament in exercising the exclusive jurisdiction conferred upon it by s. 91(24) of the British North America Act to legislate in relation to “Indians and Lands Reserved for the Indians” enacted the Indian Act which provides – among its extensive provisions for

²⁸ *Francis*, *supra* note 14 at para. 4.

²⁹ *Whitebear*, *supra* note 3.
Westbank First Nation v. British Columbia (Labour Relations Board), [1997] B.C.J. No. 2410 (B.C.S.C.) [hereinafter *Westbank*];
Paul Band v. R., [1984] 2 W.W.R. 540 (Alta C.A.) [hereinafter *Paul Band*];
Sagkeeng Alcohol Rehab Centre Inc. v. Abraham, [1994] 3 F.C. 449 (F.C.T.D.) [hereinafter *Sagkeeng*].

³⁰ *Whitebear*, *ibid.* at para. 27.

³¹ *Whitebear*, *ibid.*

*Indian status, civil rights, assistance, and so on and the use and management of Indian Reserves – for the election of a Chief and twelve councillors by and from among the members of an Indian Band resident on an Indian reserve.*³²

The Court went on to find that band council activities related to the performance of its local government functions form an integral part of primary federal jurisdiction in relation to “Indians and lands reserved for the Indians”:

As I have observed the primary function of an Indian Band Council is to provide a measure of self government by Indians on Indian Reserves. In enacting bylaws to their power to do so, and in performing generally their local government function, an Indian Band Council is doing that which Parliament is exclusively empowered to do pursuant to Section 91(24) of the British North America Act but which Parliament through the Indian Act has delegated Band Councils to do. In this sense the function of an Indian Band Council is very much federal...

*Given this, the provisions of the Indian Act to which I have referred, and the origin and nature, purpose and function of an Indian Band Council, I am satisfied that the power generally to regulate the labour relations of a Band Council and its employees, engaged in those activities contemplated by the Indian Act, forms an integral part of primary federal jurisdiction in relation to ‘Indians and Lands Reserved for the Indians’ pursuant to Section 91(24) of the British North America Act.*³³

The Court cited, with approval, the Federal Court of Appeal case *St. Regis*, which came to the same conclusion; namely that activities of a band council concerning the organization and maintenance of communal reserve life are within federal legislative jurisdiction:

*The activity consists of certain functions or services performed by or under the supervision of the Band Council, and viewed as a whole it may be characterized as the administration of the Reserve and the affairs of the Band. It is concerned with the organization and maintenance of communal life on the reserve. The Band Council derives its authority for the provision of these functions or services from the terms of the Indian Act and applicable regulations, as well as from administrative approvals by the Department of Indian Affairs and Northern Development which establishes programs for the reserves and provides the necessary financial resources for their implementation. The Band Council is carrying out some of the administration that inheres in federal jurisdiction with respect to the reserves.*³⁴

³² *Whitebear, ibid.* at para. 13.

³³ *Whitebear, ibid.* at para. 28.

³⁴ *Whitebear, ibid.* citing *Francis et al v. Canada Labour Relations Board et al*, (1981) 1 F.C. 225 (F.C.A.).

Consider also the case of *Paul Band v. R.* where the issue was whether employees of a band council who acted as special police constables within the reserve came under provincial labour relations legislation. The Alberta Court of Appeal held that the employees were carrying on normal operations or activities of the band council under the authority of the *Indian Act*, which constituted a federal undertaking or business. Thus, the provincial labour relations legislation had no application.³⁵

In the case of *Pikangikum First Nation v. Canada (INAC)*, the Federal Court considered a judicial review of a decision by INAC requiring Pikangikum to enter into a co-management agreement with INAC, failing which the Department would withhold funding and directly render the services itself, including the operation of the water treatment plant.³⁶

The Court, in determining the level of procedural fairness required in this situation, found that this decision is one that is “very important to the applicant (Pikangikum First Nation) as it basically takes away the applicant’s right to manage its affairs.”³⁷ The Court held that the mere announcement of the co-management requirement was insufficient and that the Minister had to give sufficient detail to Pikangikum about the deficiencies so that the band could respond.

These cases reflect acceptance of the argument that the ability of a band council to manage its communal affairs on reserve forms an integral part of primary federal jurisdiction over “Indians and lands reserved for the Indians.” Courts have not, generally, supported the application of provincial laws in cases that would affect this ability. This strongly suggests that provincial water regulation would not apply on reserves of its own force.

Provincial Water Regulation: An Intrusion in “Lands Reserved”?

Matters are further complicated since provincial water regimes generally include measures that affect land use such as emergency powers to shut down facilities or regulations on source water protection. Such regulatory elements run the risk of intruding on federal jurisdiction to regulate “lands reserved for the Indians.”

As the Supreme Court of Canada held in *Derrickson v. Derrickson*, “the right to possession of lands on an Indian reserve is manifestly of the very essence of the federal exclusive legislative power under s. 91(24) of the *Constitution Act, 1867*” and that valid provincial

³⁵ *Paul Band*, *supra* note 29.

³⁶ *Pikangikum First Nation v. Canada (Minister of Indian and Northern Affairs)*, [2002] F.C.J. No. 1701 (F.C.T.D.) [hereinafter *Pikangikum*].

³⁷ *Pikangikum*, *ibid.* at 100.

legislation “dealing with the right of ownership and possession of immoveable property...cannot apply to lands on an Indian reserve.”³⁸

What, however, is the scope of “lands reserved for the Indians”?

As Kerry Wilkins noted in his article *Negative Capacity*, cases establish that “a core of exclusive federal power over lands reserved is already unusually broad: a core that encompasses ownership, use, possession, occupation and disposition of lands that are subject to aboriginal interests.”³⁹

The Supreme Court of Canada in *Derrickson* cited, with approval, Kenneth Lysyk’s observation that “the matters contained within exclusive federal authority over Indian reserve lands [presumably] include regulation of the manner of land-holding, disposition of interests in reserve lands and how reserve lands may be used (e.g., zoning regulations).”⁴⁰

In the case of *District of Surrey v. Peace Arch Enterprises Ltd.*, the Court held that municipal zoning bylaws and *Health Act* regulations did not apply on reserve because they purport to regulate land use:

It seems to me that the first thing that must be determined here is whether the lands in question here are “lands reserved for the Indians” within the meaning of that expression appearing in s. 91(24) of the BNA Act, 1867.

If the answer to that is in the affirmative, then one must ask whether there is any room for provincial and municipal legislation which purports to regulate how land shall be used and what types of buildings may or may not be erected on that land. The zoning bylaws of the municipality do spell out very explicitly the manner in which land can and cannot be used, and the same may be said of the regulations under the Health Act of the province.

In my view the zoning regulations passed by the municipality, and the regulations passed under the Health Act, are directed to the use of the land. It follows, I think, that if these lands are “lands reserved for the Indians” within the meaning of that expression as found in s. 91(24) of the B.N.A. Act, 1867, that provincial or municipal legislation purporting to regulate the use of these “lands reserved for the

³⁸ *Derrickson v. Derrickson*, [1986] 1 S.C.R. 285 (S.C.C.) [hereinafter *Derrickson*].

³⁹ See *Negative Capacity*, *supra* note 22 at 71.

⁴⁰ *Derrickson*, *supra* note 38 at 295, citing K.M. Lysyk, Q.C., *Constitutional Developments Relating to Indians and Indians Lands: An Overview*, [1978] LS.U.C. Special Lectures 2001-228 at 227 [hereinafter *Constitutional Developments*].

*Indians” is an unwarranted invasion of the exclusive legislative jurisdiction of Parliament to legislate with respect to “lands reserved for the Indians.”*⁴¹

The broad scope of exclusive federal power over reserve lands brings into question the applicability of these crucial aspects of a drinking water regime. Such provincial regulatory powers can arguably be construed as interfering with the First Nation’s possession, occupation and use of reserve lands, which in turn would intrude in the federal core of “lands reserved for the Indians.”

3.2.2 *Saved by s. 88 of the Indian Act?*

If provincial water regulation cannot apply of its own force, the question becomes whether the water regulation could apply through referential incorporation under s. 88 of the *Indian Act*.

Provincial laws which would otherwise not apply to Indians of their own force are allowed to do so by virtue of s. 88 of the *Indian Act*.⁴² Beetz J. in *Dick v. The Queen* held that s. 88 applies to provincial laws that affect “Indianness” by impairing the status or capacity of Indians.

It is, however, questionable whether provincial water laws could be incorporated by s. 88 if the water laws affect “Indianness” by purporting to regulate land use through a source protection regime or emergency power orders.

Provincial Water Regulation Falls Under An Enumerated Exception?

For s. 88 to apply, the provincial water regulation must also not fall under any of the enumerated exceptions.

Section 88 is expressly subject to “any other Act of the Parliament of Canada” so that any conflict between a federal statute and a provincial law of general application is to be resolved in favour of the federal statute.

There are currently no federal laws or regulations expressly dealing with water and wastewater treatment facilities on reserve. There are only guidelines and policy manuals, such as the Guidelines for Canadian Drinking Water Quality (March 2006).

In addition, s. 88 also does not apply if there is a provision in the *Indian Act* on the same matter, even if the provincial law is not in direct conflict with the *Indian Act*; s. 88 applies

⁴¹ *District of Surrey v. Peace Arch Enterprises Ltd.*, [1970] B.C.J. No. 538 (B.C.C.A.) at para. 11-13 [hereinafter *Peace Arch*].

⁴² *Dick*, *supra* note 15.

“except to the extent that such laws make provision for any matter for which provision is made by or under this Act.”⁴³

The issue then becomes whether the *Indian Act* can be construed as “making provision” for water regulation and thus can be said to “occupy the field,” as it contains regulation and band bylaw making powers, albeit unexercised, on the same subject matter:

- Section 73(1)(k) of the *Indian Act* provides for the enactment of regulations by the Governor in Council to “provide for sanitary conditions in private premises on reserves as well as in public places on reserves.”⁴⁴

To date, no regulation has been passed relating to water or wastewater matters.

- Section 81(1)(l) of the *Indian Act* gives band councils power to pass bylaws relating to “the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies.”⁴⁵

However, it appears that the *Indian Act*, in conferring powers to make regulations or bylaws about certain matters, is unlikely, on its own, to displace s. 88 incorporated provincial regulation.

In the case of *R. v. Martin*, the Court considered the applicability of the provincial *Game and Fish Act* and the sections in the *Indian Act* providing that the Governor in Council and band council may make regulations and bylaws to govern the control and management of game and fish on reserves.⁴⁶

The Court held that providing a mechanism whereby a field might be occupied is different than actually occupying the field. As the Court held in *R. v. Martin*, to “make provision” as is contemplated by s. 88 is to create a substantive scheme or arrangement with respect to it, not merely to pass legislation authorizing regulations or bylaws about it:

I agree fully with the Crown’s submission that to “make provision” as is contemplated by s. 88 is to create a substantive scheme or arrangement. In this case, neither the Governor in Council nor the Band Council have enacted any regulations or by-laws pursuant to the powers given to them under the Indian Act. Since they haven’t taken up

⁴³ *Indian Act*, *supra* note 4.

⁴⁴ *Indian Act*, *ibid.* at s. 73(1)(k).

⁴⁵ *Indian Act*, *ibid.* at s. 81(1)(l).

⁴⁶ *Martin*, *supra* note 21.

See also *R. v. Charles*, [1998] 1 W.W.R. 515 (Sask. Q.B.) [hereinafter *Charles*].

For a helpful discussion, see K. Wilkins, *Still Crazy After All These Years: Section 88 of the Indian Act at Fifty*, (2000) 38 Alta. L. Rev. at 79-93 [hereinafter *Still Crazy*].

those powers, no substantive arrangement has been made. Sections 73(1)(a) and 1(o) in effect 'make provision for the making of a provision' for wildlife management on reserves. To the extent that the Game and Fish Act does that, it is applicable.⁴⁷

The Court concluded that since no regulations or bylaws have been enacted, the *Game and Fish Act* applies.

These cases suggest that when the federal government, or the band council, exercises those powers and passes a regulation or bylaw on water and wastewater that the provincial regulation may be displaced.

3.3 Summary of Legal Issues

Below is a summary of the legal issues associated with attempting to apply provincial drinking water law as a law of general application.

3.3.1 Uncertainty in the application of provincial laws of general application

The vague and undefined scope of “Indianness,” the question of whether provincial water regulation intrudes in the federal core, the applicability of s. 88 and whether it extends to apply to provincial regulation affecting reserve lands – these are all matters for which we do not have clear definitive answers.

3.3.2 Possibility of provincial laws being displaced where band bylaws exist

Even if the provincial water regulation may apply through s. 88, the fact that the provincial regulation could potentially be displaced where a band has enacted a bylaw dealing with water and wastewater matters is highly problematic. This could effectively lead to a situation in which some reserves operate under provincial regulation while others cannot because the regulation has been displaced by band bylaws.

3.3.3 Issues with source protection and issuing emergency orders

There are issues with the applicability of source protection laws since they inevitably regulate land use. Moreover, powers to issue emergency orders shutting down a facility or to appoint interim operators are also questionable since those powers arguably have a land use aspect. Whether these regulations may be saved by s. 88 is also unknown until challenged in court.

These complexities and legal uncertainties create tremendous difficulties in determining whether provincial water laws apply on reserve. Until the courts provide such guidance, the possibility remains that the provincial water law is inapplicable on reserve as a law of general application. Such unpredictability renders this option essentially untenable.

⁴⁷ *Martin, supra* note 21 at 13.

Existing Federal Legislation

This section reviews a number of federal laws that relate to water and First Nations, including the *Canada Water Act*, *Canadian Environmental Protection Act*, *Department of Health Act*, *Department of Indian Affairs and Northern Development Act*, the *Fisheries Act*, the *Indian Act*, the *First Nations Land Management Act*, and the *First Nations Commercial and Industrial Development Act*.⁴⁸

The objective was to determine whether the Acts include legislative authority to regulate in the fields that would be included in a water regulatory framework applicable to First Nations communities, and the advantages and disadvantages of each Act.

A water regulatory framework for First Nations could include the following elements:

- Water quality standards
- Design approvals for water and wastewater facilities
- Operating approvals for water and wastewater facilities
- Operators (licensing water and wastewater facility operators)
- Testing (monitoring water quality standards, taking corrective actions)
- Information provision (reporting adverse results, annual operations reporting)
- Enforcement (inspection, investigation and prosecution of legal standards)
- Emergencies (planning and responding to emergencies)
- Drinking water source protection
- Water taking
- Wells: siting, drilling, decommissioning
- Individual septic tanks
- Trucks and cisterns

⁴⁸ *Supra* note 4.

3.4 Canada Water Act

The *Canada Water Act*⁴⁹ enables the Minister of Environment, with Governor in Council approval, to establish consultative arrangements with provinces on water resource matters, and to conclude federal-provincial agreements for planning and implementing programs in any waters where there is a significant national interest in water resource management.⁵⁰

The Act permits the Minister, directly or in co-operation with any provincial government, institution, or person, to establish an inventory of those waters, collect data, and conduct research associated with water resources.⁵¹

The Act also enables the Minister, with approval of the Governor in Council, to conclude agreements with provinces for the joint designation of water quality management areas for any water where water quality management has become a matter of urgent national concern.⁵²

The Act provides that the Governor in Council may make regulations prescribing what constitutes waste when added to water, prescribing treatment of wastewater, and restricting deposits in water quality management areas.⁵³ The Act also provides for inspection and enforcement, with fines of up to \$5,000 per offence.⁵⁴

With the exception of a limited role in source protection and wastewater standards and treatment, the *Canada Water Act* does not authorize regulations in several of the fields that are required for a First Nations water regulatory framework. In particular, it does not provide for certifying operators, construction and design approvals, water takings, and responding to emergencies.

3.5 Canadian Environmental Protection Act

The goal of the *Canadian Environmental Protection Act (CEPA)*⁵⁵ is to contribute to sustainable development through pollution prevention and to protect the environment, human life and health from the risks associated with toxic substances.

⁴⁹ *Water Act*, *supra* note 4.

⁵⁰ *Water Act*, *ibid.* at s. 4 and 5.

⁵¹ *Water Act*, *ibid.* at s. 5.

⁵² *Water Act*, *ibid.* at s. 11.

⁵³ *Water Act*, *ibid.* at s. 18.

⁵⁴ *Water Act*, *ibid.* at s. 30(1).

⁵⁵ *CEPA*, *supra* note 4.

The Act defines a substance as toxic if it enters or may enter the environment in amounts that:

- have or may have an immediate or long term effect on the environment or its biological diversity
- constitute or may constitute a danger to the environment on which life depends, or
- constitute or may constitute a danger in Canada to human life or health.⁵⁶

CEPA provides a process to identify toxic substances, and to “virtually eliminate” dangerous toxic substances like DDT, dioxin, and furans, all of which are highly toxic, accumulate in the tissues on plants, animals or humans and take a long time to break down in nature.

Health Canada works in partnership with Environment Canada to assess potentially toxic substances and to develop regulations to control toxic substances.

Part 9 of *CEPA* allows for regulations that apply specifically to aboriginal land on pollution prevention and the control and release of substances.

CEPA is focused on regulating substances and has limited use in regulating water quality generally. *CEPA* does not authorize regulation in the fields necessary for a First Nations water regulatory framework. In particular, it does not provide a mechanism for regulations that cover operator certification, approvals of facilities, water takings or source protection.

3.6 Department of Health Act

The *Department of Health Act* states that:

*The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction relating to the promotion and preservation of the health of the people of Canada not by law assigned to any other department, board or agency of the Government of Canada.*⁵⁷

The jurisdiction to exercise power, duties and functions under the Act is restricted to areas *not by law assigned to any other department, board or agency of the Government of Canada*. It is arguable that the *Indian Act* assigns responsibility for drinking water to the federal

⁵⁶ *CEPA, ibid.* at s. 64.

⁵⁷ *Health Act, supra* note 4 at s. 4(1).

government and First Nations, as will be discussed below. The *Department of Health Act* is therefore an uncertain basis for regulating drinking water on First Nations.

However, even if this jurisdictional hurdle could be overcome, the regulations passed under the Act apply to relatively simple systems and provide for only weak enforcement powers, as existing regulations under the Act illustrate.

The *Potable Water Regulations for Common Carriers*⁵⁸ made under the Act protect public health on railways, ships, aircraft and all other methods of transportation and their ancillary services. The regulations set out a list of potable water requirements for common carriers and provide authority for officials to enforce the provisions.

The penalty for an offence is a fine not exceeding \$200 or imprisonment for a term not exceeding three months.⁵⁹

The regulation does not include inspection powers to enter premises, take samples, and make orders required for a drinking water regulation that applies to larger systems. Nor does the regulation provide a mechanism for approvals for water or wastewater facilities

Accordingly, the *Department of Health Act* does not provide a sufficient framework for regulating the complex water and wastewater systems that serve First Nations communities.

3.7 Department of Indian Affairs And Northern Development Act

The *Department of Indian Affairs and Northern Development Act (DIAND Act)* establishes the Department of Indian Affairs and Northern Development (which is now known as Indian and Northern Affairs Canada).⁶⁰

The Act provides that the Minister's powers, duties and functions extend to all matters over which Parliament has jurisdiction, and which are not by law assigned to any other department, board or agency of the Government of Canada, relating to Indian affairs, the Yukon Territory, the Northwest Territories and Nunavut and their resources and affairs, and Inuit affairs.⁶¹

The Act does not include a list of specific matters that can be regulated and thus does not provide the framework for a water regulation. However, by virtue of its power, duties and functions in relation to Indian affairs, the Minister could administer a new First Nations water law.

⁵⁸ *Potable Water Regulations for Common Carriers*, C.R.C., c. 1105 [hereinafter *Potable Water Regulations*].

⁵⁹ *Potable Water Regulations*, *ibid.* at s. 13.

⁶⁰ *DIAND Act*, *supra* note 4.

⁶¹ *DIAND Act*, *supra* note 4 at s. 4.

3.8 Fisheries Act

The *Fisheries Act* regulates the harvesting of fish, protects fish habitat, prevents pollution of fishery water, and ensures safe human use of fish. Under a 1985 Memorandum of Understanding between the Ministers of Environment and Fisheries and Oceans, the Minister of the Environment administers the pollution prevention provisions of the *Fisheries Act*.

The pollution prevention provisions include s. 34, which defines a “deleterious (harmful) substance” and s. 36 to s. 43 with the exception of s. 37, inclusively. The Minister of the Environment also administers the regulations made under these provisions. It is, however, the Minister of Fisheries and Oceans who remains accountable for the recommendation of regulations under the pollution prevention provisions to the Governor in Council, who appoints fisheries inspectors for the enforcement of these provisions, and who is entitled to use the Ministerial order provisions under s. 37. The use of this Act for even one aspect of a First Nations water regulatory framework complicates the regime by adding yet another ministry.

The *Fisheries Act* is a crude instrument for water management generally or source protection in particular. It focuses on the release of substances which are highly lethal to specific kinds of fish, not on safe source water or environmental quality in general. It does not cover releases into groundwater. It is not a preventive statute as it focuses on enforcement once a deleterious substance has been released.

Although the deleterious substance provisions of the *Fisheries Act* provide protection of drinking water sources to a limited extent, they do not provide for the type of comprehensive, holistic, source-to-source protection sought by the First Nations. The *Fisheries Act* does not provide a framework for any of the other fields required for a First Nations water regulatory framework such as certification of operators, approvals, emergency planning, wells or water or sewage transport.

3.9 Indian Act

3.9.1 Regulations

Section 73 of the *Indian Act* provides that Cabinet may make regulations to:

- prevent, mitigate, and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable; and

- provide for sanitary conditions in private premises on reserves as well as in public places on reserves.⁶²

These provisions have yet to be used to regulate water and wastewater on reserves. The courts have not considered the expression “sanitary conditions” in the context of the *Indian Act* nor whether this regulatory power includes the authority to pass regulations covering all of the fields required for a comprehensive safe drinking water regulatory framework on reserve.

Even apart from those basic questions, the regulation-making power under the *Indian Act* cannot deal with the complexity of modern water and wastewater regimes:

- The Act does not provide for the inspection and investigation powers necessary for enforcement of a water regulatory framework on reserve.
- The regulations may only be enforced by insignificant fines (not exceeding \$100) or imprisonment for a term not exceeding three months.
- Although regulations could cover approval of a facility, the Act does not provide for the creation of an arm’s-length body independent of INAC to issue the approval. As a result, either INAC would both fund facilities and issue the approvals, or INAC and a second federal department would assume those respective roles. Either situation would create a conflict because the same level of government funding a facility would potentially issue orders requiring further spending to correct problems.

An additional problem for First Nations is that these enforcement provisions do not provide for creative or culturally appropriate sentencing.

This regulation-making power has rarely been used even for the enumerated heads: a search uncovered only three regulations passed under s. 73. The reason seems to be, at least in part, the weak enforcement provisions.

Moreover, only one of the regulations, relating to waste disposal, deals with an environmental/health issue, and analysis shows it to be an unsophisticated response to a complex problem.

Even if all of these problems could be resolved, no single federal department has the resources and technical expertise necessary to support the complex regulatory and enforcement infrastructure of a modern water regime. The experience to date, in which departments share a number of responsibilities, as well as the potential conflicts between funding and enforcement, argue against simply spreading that infrastructure load across several departments.

⁶² *Indian Act*, *supra* note 4 at s. 73(1)(f) and (k).

In sum, the *Indian Act* regulation-making power does not provide sufficient authority for a comprehensive safe drinking water regulatory framework on First Nations reserves.

3.9.2 Bylaws

Section 81 of the *Indian Act* provides that a band council may make bylaws that are not inconsistent with the Act or with any federal regulation for the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies, and to prevent the spread of infectious diseases.⁶³

To our knowledge, there have been no bylaws passed for the regulation of public wells, cisterns, reservoirs and water supplies by band councils.

Enforcement is typically through an arrangement with the provincial Crown. Fines for violation of bylaws are \$1,000, or imprisonment of a term not exceeding 30 days, or both.⁶⁴ The Act does not provide for the inspection and investigation powers necessary for enforcement of a water regulatory framework on reserve.

The *Indian Act* band council bylaw-making power does not provide a sufficient authority for a comprehensive water regulatory framework on First Nations, in part because the enforcement powers are weak.

Although the federal government could develop a model band bylaw for bands to adopt, which could include water quality, certification, and approval standards, many First Nations would still lack the capacity to approve the facilities, inspect and enforce these bylaws. This is further complicated by the conflict of having a First Nation own, operate and also regulate a facility.

3.10 First Nations Commercial And Industrial Development Act

The *First Nations Commercial and Industrial Development Act (FNCIDA)* was developed to regulate “commercial or industrial undertakings” to be undertaken by major industrial operators on reserve (for example, the Fort MacKay oil sands project).

The Act provides that the definition of “commercial and industrial undertakings” can be broadened by regulation.⁶⁵ It provides for the incorporation by reference of provincial laws regulating those undertakings.⁶⁶ The legislation requires, as a condition precedent, agreement with the province to enforce these regulations.

⁶³ *Indian Act*, *supra* note 4 at s. 81(1).

⁶⁴ *Indian Act*, *ibid.* at s. 81(1)(a) and (r).

⁶⁵ *FNCIDA*, *supra* note 4 at s. 4.

⁶⁶ *FNCIDA*, *ibid.* at s. 3(3).

FNCIDA was developed with major projects and particular reserves in mind. However, the language of *FNCIDA* is sufficiently flexible to accommodate a regulation that would apply to water facilities on a number of First Nations within a particular province. The federal regulation would have to identify the particular First Nation and the reserves to which the regulation would apply.

FNCIDA is conditional upon First Nations opting in and the willingness of each province to extend and enforce provincial regulations on reserves.

FNCIDA does not provide sufficient authority for a comprehensive water regulatory framework on First Nations for three reasons. First, it requires opting into the *FNCIDA* as a whole, a step that First Nations may not be ready to take even if they want water regulation. Second, it is dependent upon agreement with the provinces to extend their jurisdiction to reserves. Third, it does not provide consistent protection across the country.

3.11 First Nations Land Management Act

The *First Nations Land Management Act (FNLMA)* gives member First Nations the rights, powers, and privileges of an owner in relation to their land. For such member First Nations, the land management provisions of the *Indian Act* cease to apply.⁶⁷

A First Nation wishing to establish a land management regime under the Act must adopt a land code that includes rules for general use and occupancy of the reserve. These must cover matters such as procedures for transfer of land, accountability for revenues from resources, enactment of First Nations laws, conflicts in the management of First Nation land, a dispute settlement forum, expropriation, delegation of responsibility, exchanging First Nation lands and amending the code.⁶⁸

Once the land code is adopted, bands under the *FNLMA* have the power to enact laws relating to environmental protection which would include laws relating to environmental assessment and environmental protection and the provision of local services and user charges for those services.⁶⁹

The First Nation may provide for enforcement measures provided that they are consistent with federal laws, such as the power to inspect, search and seize, and to order compulsory sampling, testing and the production of information.⁷⁰

⁶⁷ *FNLMA*, *supra* note 4.

⁶⁸ *FNLMA*, *ibid.* at s. 6(1).

⁶⁹ *FNLMA*, *ibid.* at s. 20(2)(c) and (d).

⁷⁰ *FNLMA*, *ibid.* s. 20(3).

The First Nation may create offences punishable on summary conviction and provide for the imposition of fines, imprisonment, restitution, community service and any other means for achieving compliance.⁷¹

Only those First Nations that have “opted in” to the *FNLMA* by signing the *Framework Agreement on First Nations Land Management* (February 12, 1996) and have developed a land code can take advantage of this law making power. Thirty-six First Nations, as listed in the Schedule to the *FNLMA*, have “opted in” and signed the *Framework Agreement*. These 36 First Nations are able to develop and ratify a land code according to the procedures set out under the *FNLMA*. Seventeen of these First Nations have developed land codes. No First Nations have enacted water regulations under the *FNLMA*.

The *FNLMA* likely provides sufficient authority for a water regulatory framework on First Nations reserves, for those Bands that have opted into the Act.

There are two weaknesses with using this Act. First, it makes opting into the entire Act a precondition to having water regulation, a proposition that imposes significant costs on bands. Second, the *FNLMA* does nothing to assist bands with the capacity building required to implement a modern water regulatory framework.

⁷¹ *FNLMA, ibid.* at s 22(1).

4 New Federal Legislation: A Bridge to Self-Government

The *Constitution Act, 1867*, s. 91(24) gives the federal government the jurisdiction to develop new federal legislation to govern water on First Nations.

John Graham, of the Institute on Governance, emphasized in his policy brief entitled *Safe Water for First Nations: Charting a Course for Reform*, that any reform package should provide a bridge to self-government.⁷²

The advantage of a new federal act is that it can be a bridge to self-government by incorporating some of the elements of self-government, and can provide a broader role for First Nations.

New First Nations water legislation could incorporate the components Graham identifies to guide initiatives with First Nations:

- 1 Principles – Is there a clear statement of principles in the initiative of how the relationship is to be conducted?
- 2 Strategic Vision – is the long term goal of the initiative compatible with the eventual implementation of the inherent right to self-government?
- 3 Ongoing machinery – Does the initiative establish an on-going machinery to help manage the relationship with first nations?
- 4 Review – Does the initiative call for a review of relationships being established?⁷³

To apply strategic vision, Graham asks whether the initiative helps to move affected First Nations along the “governance continuum.” This continuum, developed by INAC, has at one end a colonial agenda founded on s. 91(24) of the *Constitution Act, 1867* and the *Indian Act*, and at the other end comprehensive self-government. In the middle are the *FNLMA*, which places additional regulatory powers in the hands of First Nations to manage land and protect the environment, and the *First Nations Fiscal and Statistical Management Act (FNFSMA)*.

⁷² J. Graham, *Safe Water for First Nations: Charting a Course for Reform*, IOG Policy Brief No. 14 (January 2003) [hereinafter *Safe Water*].

⁷³ J. Graham and J. Wilson, *Towards Sound Government-to-Government Relationships with First Nations*, IOG Policy Brief No. 21 (October 2004) at 3-5 [hereinafter *Towards Sound Government*].

Key features of the *FNFSMA* include:

- It was “First-Nations led” in that it was developed with a group of First Nation leaders.
- Its preamble acknowledges that it is based on the First Nations’ inherent right of self-government: “Whereas the Government of Canada has adopted a policy recognizing the inherent right of self-government as an aboriginal right and providing for the negotiation of self-government...”
- It gives First Nations broad bylaw-making powers to make laws to tax reserve lands, including taxation of services and business activities, as well as the ability to impose development cost charges.
- The Act transfers approval of First Nations tax bylaws from the Minister to the First Nations Tax Commission.
- Under the Act, First Nations have powers to make laws on tax assessment inspections and enforcement, and can set up their own Assessment Review Board.
- The Act establishes the First Nations Financial Management Board to assist First Nations to develop their financial management capacity by providing training and financial advisory services and conducting assessments of the financial practices and financial health of First Nations.⁷⁴

This option, by empowering First Nations and building First Nations-led bodies, serves to accomplish the goal of establishing a bridge to self-government. It commences the building of capacity so that “at some point in the future, the First Nation unit could become part of some First Nation government and would bring with it the experience, skills and contacts that would otherwise take years to build.”⁷⁵

4.1 What a New Law Might Look Like

A new law would require the government to assess its consultative and accommodation obligations as enunciated by two Supreme Court of Canada cases, *Haida Nation* and *Taku River*.⁷⁶ Regardless of the government’s conclusion on its consultative obligations, new

⁷⁴ *First Nations Fiscal and Statistical Management Act*, R.S.C., 2005, c. 9 [hereinbefore and hereinafter *FNFSMA*].

⁷⁵ *Towards Sound Government*, *supra* note 77 at 4.

⁷⁶ *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550 (S.C.C.) [hereinafter *Taku River*]; *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511 (S.C.C.) [hereinafter *Haida Nation*].

legislation would benefit from engaging First Nations in its development from the outset.

Federal legislation could establish uniform water standards across Canada for all First Nations.

It could recognize that the provision of sewage and water services is a joint function of the federal departments and First Nations, and clarify the roles of existing partners. Given resource concerns of First Nations, it would be useful, almost necessary for INAC's funding role to be mandated in legislation.

Accountability would be ensured by 1) making the Act bind the Crown and 2) requiring each partner to exercise a duty of care in discharging its responsibilities.

The Governor in Council could also have powers to make regulations necessary to enable a First Nations group which is not a band as defined in the *Indian Act*, but is a party to a treaty, land claims agreement or self-government agreement with Canada, to benefit from the legislation.

4.1.1 Potential Role for First Nations Water Commission and Tribunal

A First Nations Water Commission could be created. Comprising a majority of First Nations representatives in the water sector, it could be given important roles in the management of water on First Nations' reserves.

The First Nations Water Commission could be comprised of members appointed by Order in Council on the recommendation of the Minister. Operating arms-length from INAC and the individual First Nations, the Commission could be responsible for licensing water and wastewater facilities, inspection, investigation, enforcement and policy advice.

Given the case law on inspection and investigation and the importance of keeping that distinction separate, the preferred structure would be to ensure that the inspection and investigation functions within the Commission were kept completely separate.⁷⁷

It would be important for the First Nations Water Commission to have the power to ensure that INAC provides adequate funding to construct and operate in accordance with approvals. This could be accomplished through approval conditions that could require improvements to the facility, together with the legislative requirements that INAC fully and adequately funded the facility.

⁷⁷ *R. v. Jarvis*, [2002] 3 S.C.R. 757 (S.C.C.) [hereinafter *Jarvis*];
R. v. Ling, [2002] 3 S.C.R. 814 (S.C.C.) [hereinafter *Ling*].

Accountability could also be assisted through the power of the First Nations Water Commission to investigate complaints arising from the performance by any of the partners of their roles.

Through its consultative role, the Commission would have the opportunity to advise the federal government about incorporation of aboriginal customary laws. It could also improve the capacity of First Nations over water issues and lead to the eventual implementation of self-government over water. Having a First Nations Water Commission with a trained staff would build the profile of water professionals within the First Nations community.

The Commission could report annually to Parliament and the AFN about the status of water on First Nations reserves. In addition to the annual report, a periodic House of Commons Committee review could serve to identify the need for improvements to the legislation.

While case law allows for the overlap of investigative, prosecutorial and appeal functions where its enabling statute clearly authorizes it, the preferable approach is to separate the adjudicative function and form a separate First Nations Water Tribunal.⁷⁸ Its role would be to hear appeals of approvals, orders, and unresolved complaints from First Nations members and the federal government.

Such an approach would provide some protection against claims of reasonable apprehension of bias, and increase the likelihood that the bodies would withstand such challenges in the context of judicial review.⁷⁹

Appendix A provides a summary of possible elements of First Nations drinking water legislation. Appendix B is a flow chart illustrating the potential roles of a First Nations Water Commission and First Nations Water Tribunal.

For other legal considerations on the application of new federal legislation to First Nations under self-government and land claim agreements, please see Section 7.2 below.

⁷⁸ *Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301 (S.C.C.) [hereinafter *Brosseau*]; *Bell Canada v. Canadian Telephone Employees Association*, [2003] 1 S.C.R. 884 (S.C.C.) [hereinafter *Bell Canada*]; *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 S.C.R. 781 (S.C.C.) [hereinafter *Ocean Port*].

⁷⁹ *R. v. Lippe* (1991), 64 C.C.C. (3d) 513 (S.C.C.) [hereinafter *Lippe*].

5 Incorporating Provincial Water Laws in New Federal Legislation

Another possible option is to incorporate by reference provincial water laws in new federal legislation. A First Nations Water Commission could still be created and the application of the federal act could be extended to apply to Bands outside the *Indian Act*.

An example of this approach is the *Indian Oil and Gas Act*.⁸⁰ Under the Act, the Governor in Council has made regulations containing rules on the exploitation of oil and gas on reserves. Section 4(c) of the *Indian Oil and Gas Regulations* provides for referential incorporation of some provincial laws:

4. It is a condition of every contract that the operator will comply with
 - (a) the applicable provisions of the *Indian Act* and any applicable orders and regulations made under that Act;
 - (b) these Regulations and any directions made pursuant thereto; and
 - (c) unless otherwise agreed to by the Minister and specified in the contract, all provincial laws applicable to non-Indian lands that relate to the environment or to the exploration for, or development, treatment, conservation or equitable production of, oil and gas and that are not in conflict with the Act or these Regulations.⁸¹

5.1 Gaps in Water Standards Province to Province

Incorporating provincial water laws by reference in new federal water legislation would eliminate any uncertainty associated with the application of provincial water law as a law of general application. However, there are gaps and varying water standards across provinces, which would lead to the undesirable result of providing some reserves with the benefits of a more elaborate regime than others. For example:

- Operator certification requirements for all provinces, except Québec, are based on Association of Boards of Certification (ABC) standards. It is generally the operator-in-charge who must be certified, although some provinces also require certification of other operators. Training requirements (as distinguished from certification requirements), vary across provinces, and

⁸⁰ *Indian Oil and Gas Act*, R.S.C. 1985, c. I-7.

⁸¹ *Indian Oil and Gas Regulations*, 1995, SOR/94-753.

there is variation as to whose responsibility it is to ensure certification (the facility owner or the province).

- Water treatment regulations only apply to systems of a certain minimum threshold size, which generally varies from two to fifteen connections. The applicable water quality parameters and standards are usually set out in regulation. Some provinces adopt as standards some or all of the federal Guidelines for Canadian Drinking Water Quality (which are formulated by a federal-provincial-territorial committee). Others provide only minimal microbiological or disinfection standards but set forth more specific treatment standards in individual system approvals/licences. Ontario and Québec have comprehensive treatment standards that go above and beyond the Guidelines.
- All provinces retain inspection powers over water treatment facilities, and nearly all provide the director and/or provincial officers with enforcement powers, such as powers to issue orders.
- Legislation in only some provinces requires that facilities prepare emergency plans, although this may be required by a system approval/licence. Similarly, there is variation as to what, if any, information must be regularly reported by facilities to the regulator (typically data logs). However, all provinces require reporting of adverse test results, which usually triggers further reporting requirements, and some also require that the laboratories conducting the test analysis to report adverse test results.
- All provinces and territories require governmental approval for the design, construction and operation of water treatment facilities (although this is not a *legislative* requirement in Yukon).
- Source protection is specifically addressed only in British Columbia, some Maritime Provinces and Québec, although Ontario and Manitoba will soon be promulgating comprehensive source protection legislation. Most other provinces protect source water through environmental laws of general application. Provincial legislation does not provide for protecting water sources that cross provincial boundaries. This is a concern for some reserves.
- Wastewater treatment is generally addressed by legislation analogous to water treatment legislation.
- With respect to bulk water takings, Alberta, British Columbia, Manitoba and Newfoundland have comprehensive riparian rights legislation, and Ontario requires a permit for large water takings.
- Wells serving one consumer or a small number of connections are regulated in all provinces to varying degrees. Alternative water transport and storage

systems, such as cisterns and water trucking, are addressed by legislation in some provinces only, and then to varying degrees of comprehensiveness.

- Small septic systems are generally regulated locally and only at the building stage.
- The siting, design and servicing of cisterns, septic tanks and percolation fields is inadequately covered; what guidance there is often in building codes.

Please see Appendix C for an overview of the provincial and territorial water legislation.

5.2 Need to Negotiate with Each Province

There also appears to be a general lack of political appetite amongst provinces to regulate and enforce water legislation on reserves. Importing provincial water standards into federal legislation is one issue but to have the provinces assume the inspection, investigation and enforcement roles is another more problematic one. Buy-in from the provinces would be needed. There may be some provinces willing to assume these roles while others may decline. As such, the federal government would need to engage in negotiations with each province and consult with First Nations, which could in turn lead to lengthy delays.

5.3 Potential Role for First Nations Water Commission

A First Nations Water Commission could play an instrumental role as an oversight body and could facilitate negotiations between the federal government and the provinces. Operating arms-length from INAC, the individual First Nations and the provinces, the Commission could also be responsible for channeling funds from the federal government to the provinces to cover costs incurred by the provinces for assuming these on-reserve enforcement activities.

The Commission could oversee the conduct of the provinces in regulating and enforcing their water legislation on reserves. For those provinces unwilling to assume the enforcement role, the Commission could be responsible for ensuring that there is an alternative form of adequate inspection, investigation, and enforcement in place, whether the Commission assumes these roles itself or enters into contracts with Tribal Councils or First Nations organizations for them to undertake these responsibilities.

It is important, however, that the Commission retain the role of issuing facility and operation approvals for water and wastewater facilities, as well as the power to ensure that INAC provides adequate funding to First Nations to construct and operate in accordance with approvals.

Accountability could be assisted by giving the First Nations Water Commission the power to investigate complaints arising from the conduct of any of the partners,

including 1) the federal government in funding the construction and operation of the facility as well as in funding the provinces' inspection, investigation and enforcement activities on reserves, 2) the provinces in carrying out these regulatory activities on reserves, and 3) any other parties, such as Tribal Councils, that may have by contract assumed the regulatory roles.

For other legal considerations related to self-government and land claim agreements, please see Section 7.2 below.

6 Applying Asserted First Nations Jurisdiction and Customary Laws

The final option for the regulation of water on reserves is to base new federal water legislation on First Nations customary laws. This task would start with, and be driven by, First Nations across the country.

The objective would be to incorporate into federal legislation the basic tenets of First Nations customary law as they relate to water.

6.1 Legal Basis for Option

The *Constitution Act, 1982*, s. 35(1) recognizes and affirms existing aboriginal and treaty rights of the aboriginal peoples of Canada and has, as its underlying purpose, the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown.⁸² The Act provides the constitutional framework to reconcile the fact that aboriginal peoples lived on the land in distinctive societies, with their own practices, traditions and cultures with the sovereignty of the Crown.⁸³

Canadian courts have yet to decide on whether the scope of s. 35(1) of the *Constitution Act, 1982* includes a right to self-government. Some lower courts have said that there is no right of self-government for aboriginal peoples. In *Delgamuukw*, the British Columbia Court of Appeal noted that the broader powers to make general laws regarding the land, resources and people in a territory were legislative powers that could not be awarded by the courts and that such powers were inconsistent with the division of powers between the federal and provincial governments under the Constitution.⁸⁴

In *Pamajewon*, the Supreme Court of Canada considered the issue of whether a particular aboriginal community was required to obtain a licence to carry out gaming initiatives on its lands.⁸⁵ The aboriginal community argued that it was entitled to govern its own affairs, including the regulation of economic enterprises within its reserve, and that this right was protected under Treaty No. 3.

⁸² *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), c. 11 [hereinafter *Constitution Act, 1982*], s. 35(1) states “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed”.

⁸³ See *R. v Van der Peet*, [1996] S.C.R. 507 (S.C.C.) at paras. 31 and 43 [hereinafter *Van der Peet*]; *R. v Sparrow*, [1990] 1 S.C.R. 1075 (S.C.C.) at 1109 [hereinafter *Sparrow*]; *R. v Gladstone*, [1996] 2 S.C.R. 723 (S.C.C.) at para. 73 [hereinafter *Gladstone*]; *Delgamuukw*, *supra* note 10 at paras. 81, 148, 161, 165 and 186; *Mitchell v. M.N.R.*, [2001] 1 S.C.R. 911 (S.C.C.) at paras. 12, 174, 155 and 164 [hereinafter *Mitchell*].

⁸⁴ *Delgamuukw v. British Columbia*, [1993] B.C.J. No. 1935 (B.C.C.A.) [hereinafter *Delgamuukw 1993*].

⁸⁵ *R. v Pamajewon*, [1996] 2 S.C.R. 821 (S.C.C.) [hereinafter *Pamajewon*].

The Court did not reach a definitive conclusion as to whether s. 35(1) protects the right to self-government. The Court assumed without deciding that s. 35(1) includes self-government claims, finding that claims to self-government are no different from other claims to aboriginal rights. These claims require the same analysis, which involves looking at whether that self-governing activity is “a defining feature of the culture in question” prior to contact with Europeans.⁸⁶ The Court characterized that right as “the right to participate in, and to regulate, high stakes gambling activities on the reservations.”⁸⁷ The Court found that the gaming activity was not integral to the Ojibwa culture and, thus, the Court was not required to decide on whether s. 35(1) includes the right to self-government.

In 1995, the federal government introduced a new policy recognizing First Nations’ inherent right to self-government. This policy removes some of the pressure from courts to decide on this complex issue. In its policy, the federal government stated that “the government of Canada recognizes the inherent right of self-government as an existing right within s. 35 of the *Constitution Act, 1982*.”⁸⁸

The policy recognizes that “the inherent right of self-government may be enforceable through the courts and that there are different views about the nature, scope and content of the inherent right. However, litigation over the inherent right would be lengthy, costly, and would tend to foster conflict.”⁸⁹

The policy further notes that the inherent right to self-government is based on the view that “the aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and based on the special relationship that aboriginal peoples have always had with their lands and reserves.” The “right to govern themselves in relation to matters that are internal to their communities” would, presumably, include the regulation of drinking water, which is a matter that is central to any community.

⁸⁶ The test as enunciated in *Van der Peet*, *supra* note 87.

⁸⁷ *Pamajewon*, *supra* note 89 at 212.

⁸⁸ Canada, Department of Indian Affairs and Northern Development. Federal Policy Guide, *Aboriginal Self-Government: The Government of Canada’s Approach to the Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*. Minister of Indian Affairs and Northern Development, Ottawa, 1995 [hereinafter *Aboriginal Self-Government*].

⁸⁹ *Aboriginal Self-Government*, *ibid*.

This option also has support in the international realm. The United Nations Draft Declaration on the Rights of Indigenous Peoples states:

Indigenous people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.⁹⁰

Accordingly, there is sound legal basis for this option. The *Constitution Act, 1982*, s. 35(1) recognizes and affirms existing aboriginal and treaty rights; the Supreme Court of Canada has not pronounced against the inclusion of the right to self-determination in the scope of s. 35(1); and federal policy supports self-government, as do the international principles on aboriginal rights as enunciated in the United Nations Draft Declaration.

6.2 Legislative Examples

A review of the legislation reveals that First Nations' opportunity to instill customary laws into the current legislative framework is rather limited:

- The *Canadian Environmental Assessment Act (CEAA)* and *Canada National Parks Act* provide for consultation and opportunities for participation in the decision-making process. Under *CEAA*, aboriginal traditional knowledge may be considered in conducting an environmental assessment.⁹¹

⁹⁰ United Nations Draft Declaration on the Rights of Indigenous Peoples, Article 3 and 31. See [www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.SUB.2.RES.1994.45.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.SUB.2.RES.1994.45.En?OpenDocument). On June 29, 2006 the Human Rights Council adopted by a roll-call vote of 30 in favour to 2 against and 12 abstentions a resolution on the Declaration on the Rights of Indigenous Peoples. The Declaration has now been forwarded to the UN General Assembly for approval before the end of 2006. We note that Canada has so far decided not to support this Declaration. Nonetheless, were a Canadian government to decide to support the Declaration, this would be a further indication of the policy direction Canada intended to pursue, and would be consistent with the general movement towards recognizing aboriginal self-government rights.

⁹¹ *Canadian Environmental Assessment Act*, R.S.C., 1992, c. 37, s. 2(1)(b)(iii), s. 16.1, s. 62(h) [hereinafter *CEAA*]; *Canada National Parks Act*, R.S.C., 2000, c. 32, s. 12(1) [hereinafter *Parks Act*].

- Under the *Oceans Act*, the Minister is required to “collaborate” with affected aboriginal organizations to develop a national strategy and plan for the management of activities affecting oceans.⁹²
- The First Nation’s role is slightly elevated in the *Species at Risk Act (SARA)* where First Nation representatives are given an advisory role. Under *SARA*, First Nation representatives are selected to sit on the National Aboriginal Council on Species at Risk to advise the Minister on the administration of the Act. The First Nation representatives also provide advice and recommendations to the Canadian Endangered Species Conservation Council.⁹³
- Under *SARA*, the use of aboriginal traditional knowledge is also strengthened by the statutory obligation of the Committee on the Status of Endangered Wildlife in Canada to carry out its functions on the basis of the best available information on the biological status of a species, including scientific knowledge, community knowledge and aboriginal traditional knowledge.⁹⁴

These examples reveal the rather limited role aboriginal traditional knowledge currently has in the legislative regime.

This option provides the opportunity to give customary law a more central role in developing First Nations water legislation.

Moreover, this option gives effect to the federal policy recognizing First Nations’ inherent right to self-determination; it upholds s. 35(1) of our Constitution and its underlying purpose of reconciliation; and lastly, it:

*encourages us to broaden our conception of the sources of Canadian law and to recognize the diverse roles that Indian, Inuit, and Metis peoples have played in the formation of this country and its Constitution.*⁹⁵

The disadvantage of this option is that it will be difficult to discern exactly what First Nations customary law is since it will vary from First Nation to First Nation. Second, the need to build governance and administrative infrastructure coherent with such First Nation law to administer a complex regulatory regime where significant technical standards are in play presents further difficulties.

⁹² *Oceans Act*, R.S.C., 1996, c. 31, s. 29, 31 [hereinafter *Oceans Act*].

⁹³ *Species at Risk Act*, R.S.C., 2002, c. 29, s. 8.1 [hereinafter *SARA*].

⁹⁴ *SARA*, *ibid.* at s. 15(2).

⁹⁵ B. Slattery, *The Organic Constitution: Aboriginal Peoples and the Evolution of Canada*, (1995) Osgoode Hall Law Journal, Vol. 34, No. 1. [hereinafter *Organic Constitution*].

Although this process is likely to be much slower than the new federal legislation option, it provides greater long-term capacity building potential. The process of articulating traditional law and weaving it in to contemporary regimes will have great positive impact in other areas of law where First Nations wish to assert governance jurisdiction.

This option and the new federal legislation option may be complementary strategies to respond to the twin objectives of regulating water and developing First Nations governance capacity. For example, in the development of new federal legislation, traditional law can be incorporated into the process.

7 Other Legal Considerations

Below we consider a number of legal issues that are relevant to an assessment of regulatory options.

7.1 Liability of Bands and Band Councils

Although there is some uncertainty on the legal capacity of bands and band council, there appears to be support in the case law to the effect that bands and band councils may sue and be sued. In any event, any legal uncertainty can be avoided by naming in the style of cause the band and the band members, acting on their own behalf as well as on behalf of all other members of the band.⁹⁶

The ability to sue bands and band councils opens up potential claims of liability against the band and band council, possibly as owner of the water facility, under the common law doctrine of occupiers' liability, or for negligence as operator of the facility.

There is some ambiguity as to the legal ownership of the water facility. However, given that bands have incidents of ownership, bands may have liability based on ownership of the water facility. Incidents of ownership are evidenced by the fact that:

- 1 the band has rights to use and occupy the land and facility situated on the land to the exclusion of all others, including the Crown, and
- 2 bands may obtain financing and obtain a mortgage on the water facility. Water facilities are treated and recorded by the Crown as band assets.

Notwithstanding the ownership issue, bands and band councils may also have occupiers' liability. The status of "occupier" is not dependent on ownership of the premises, but rather is based on control over the premises.⁹⁷ An occupier includes a person who has supervision and control of the premise and the power to admit and exclude the entry of others.⁹⁸ There could also be more than one occupier of the premises.⁹⁹

In having a property interest and control over the reserve land, bands may arguably have occupiers' liability. Moreover, there is also the possible argument that the Crown has joint liability under this doctrine since the Crown retains the underlying title to the

⁹⁶ *Montana Band v. Canada*, [1997] F.J.C. No. 1486 (F.C.T.D.).

⁹⁷ Allen M. Linden, *Canadian Tort Law*, 7th Edition (Toronto: Butterworths, 2001) at 638 [hereinafter *Tort Law*].

⁹⁸ *Tort Law*, *ibid.* at 638.

MacDonald v. Goderich, [1964] 3 D.L.R. 788 (Ont. C.A.) [hereinafter *MacDonald*].

⁹⁹ *Couch v. McCann* (1977), 77 D.L.R. (3d) 387 (Ont. C.A.) [hereinafter *Couch*].

Boryszko v. Bd. of Education of Toronto (1962), 35 D.L.R. (2d) 529 (Ont. C.A.) [hereinafter *Boryszko*].

land.¹⁰⁰ Under the *Indian Act*, s. 18(1) reserve lands are held for the use and benefit of the band and Her Majesty the Queen holds the underlying title to the reserve lands.¹⁰¹

The introduction of new federal water legislation would provide the opportunity to clarify any ambiguity about ownership of the water facility and the resulting liability that flows from being owner.

The case of *Wright v. Moosomin First Nation* suggests that a band council may be held liable for negligence arising from improper operation of water and wastewater facilities. The Court in *Wright* found the First Nations-run school to be negligent in failing to properly supervise the school yard. The Court found that “a First Nation that operates a school is in much the same position as a school board that operates a school.”¹⁰²

However, bands and band councils, similar to any governmental operation, may nevertheless be held liable for negligence if they fail to meet their standard of care in discharging their responsibilities as operators of the facility. In such a case, the band may benefit from the due diligence defence and be absolved from liability if it can show that it took all steps expected of a reasonable person to prevent the incident.

7.2 Aboriginal Self-Government and Land Claim Agreements

The federal government introduced in 1995 a policy guide recognizing First Nations’ inherent right of self-government as an existing right within s. 35 of the *Constitution Act, 1982*.¹⁰³

Given this policy direction, a viable and effective drinking water regime should seek to allow First Nations to advance and make concrete this right under any water regulatory framework.

New federal legislation could accomplish this objective.

Under existing self-government agreements, First Nations may have jurisdiction over the regulation of water and wastewater under a public works and community infrastructure provision.¹⁰⁴ These First Nations may adopt federal water legislation if they so choose.

¹⁰⁰ Note that these are possible arguments. It is also possible for the courts to decide not to apply the common law doctrine of occupiers’ liability based on the *sui generis* nature of reserve lands.

¹⁰¹ *Indian Act*, *supra* note 4 at s. 18(1).

¹⁰² *Wright (Litigation Guardian of) v. Moosomin First Nation*, [2003] S.J. No. 138 at para. 13 [hereinafter *Wright*].

¹⁰³ *Aboriginal Self-Government*, *supra* note 92.

¹⁰⁴ See for example the Anishnaabe and Westbank First Nation Self-Government Agreements. Under these Agreements, the First Nation has jurisdiction over public works and community infrastructure. Under these Agreements, public works and infrastructure standards must be at least equivalent to

For First Nations without such law-making powers under their agreements, or which do have jurisdiction but have not exercised it, then “federal laws of general application” apply. A federal water law may apply as a “federal law of general application” to such self-governing First Nations.

All agreements contain an amending procedure should a First Nation wish to revise its self-government agreement to include primary jurisdiction over water regulation. This process may be initiated by either party: the self-governing First Nation or the federal government. Amendments generally require the consent of both parties.

To ensure uniformity and consistency of water quality standards, future self-government agreements could include a provision in the agreement requiring the First Nation to maintain standards equivalent to that of the federal government.

Land claim settlement lands are more problematic. It is questionable whether such lands continue to be s. 91(24) lands and therefore within federal jurisdiction. As such, it is uncertain whether a federal water legislation applying to s. 91(24) lands would include settlement lands. These First Nations, however, may choose to adopt provincial or federal legislation if they so wish.

7.3 International Examples

We consider below the approach taken in three other jurisdictions in regulating water quality for their aboriginal peoples. This review reveals the considerable variation in the approaches taken in other jurisdictions in the regulation of water for aboriginals. Such divergences, however, may be accounted for by the unique cultural and legal histories in each jurisdiction.

We examine in turn the United States, Australia, and New Zealand.

7.3.1 *United States*

In the United States, support for tribal sovereignty of federally recognized Indian tribes rooted in the American domestic regime was recognized as early as the 1830’s by the Supreme Court Marshall decisions.¹⁰⁵ Since 1871, when Congress ended the treaty-making process, relations with Indian groups have been governed by Congressional Acts, Executive Orders and Executive Agreements.

federal law, and federal safety and technical codes. At the time of writing, the Anishnaabe Self-Government Agreement is still subject to ratification by the First Nations and Canada.
¹⁰⁵ *Johnson v. McIntosh*, 2 U.S. 8 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832), all decided by U.S. Supreme Court Chief Justice John Marshall [hereinafter *Marshall Trilogy*]

The self-determination era began with an act of Congress: the *Indian Civil Rights Act* of 1968, an Act which was opposed by the majority of tribes.¹⁰⁶ This eventually led Congress to introduce measures removing many of the barriers to tribal self-government. In 1975, Congress enacted the *Indian Self-Determination and Education Assistance Act*, which further reinforced the notion of tribal self-government.¹⁰⁷

This political approach informs the current drinking water quality framework on tribal lands in the U.S. A unique feature of this regime is that the U.S. federal government, while having primary responsibility for implementing and enforcing drinking water regulations on tribal lands, may by statute authorize certain program authority to tribes that qualify as states.

Drinking water quality is regulated by the federal *Safe Drinking Water Act (SDWA)*, which was first enacted in 1974 and amended most recently in 1996.¹⁰⁸

The U.S. Environmental Protection Agency (EPA) is the regulatory body responsible for setting and enforcing drinking water regulations and standards. The U.S. EPA established the Public Water System Supervision (PWSS) program under the *SDWA*.

Under the Act, the U.S. EPA may authorize tribes to implement the PWSS program, a process referred to as obtaining “primacy,” if the tribes meet certain requirements. To date, only the Navajo Nation has obtained “primacy.”¹⁰⁹ State laws regulating drinking water generally do not apply to federally-recognized tribal lands.

7.3.2 *Australia*

Canada and Australia share a similar cultural and legal history: both countries were colonies of the British Commonwealth, and received the common law of England and written constitutions providing for a federal system with a set of division of powers between the federal and regional governments.¹¹⁰

¹⁰⁶ See the U.S. Environmental Protection Agency *Resource Guide*, Chapter 2: History of Federal Indian Law, available at <http://www.epa.gov/indian/resource/chap2.htm#43>. The Act imposed certain restraints on the civil rights of tribal governments.

¹⁰⁷ *Indian Self-Determination and Education Assistance Act*, [US Code](#), Title 25, Chapter 14, Subchapter II, Part A, s. 450f.

¹⁰⁸ *Safe Drinking Water Act (SDWA)*, [US Code](#), Title 42, Chapter 6A, Subchapter XII [hereinafter *SDWA*].

¹⁰⁹ Navajo Nation received “primacy” in October 2000.

¹¹⁰ See Sky Mykyta, *Losing Sight of the Big Picture: the Narrowing of Native Title in Australia* (2004-2005) 36 *Ottawa L. Rev.* 93-126/ (2004-2005) 36 *R.D. Ottawa* 93-126 at para. 5 and 7 [hereinafter *Native Title in Australia*]

Notwithstanding the similarities, there are two key differences which may account for the different approach to water regulation in Australia:

- unlike Canada, which grants the federal government exclusive legislative control over “Indians and Lands reserved for the Indians,” state governments in Australia had the main responsibility for the policy-making of aboriginal affairs. After the 1967 referendum, the Australian Constitution was amended to recognize Indigenous peoples as citizens and to allow the federal government to legislate Indigenous affairs.¹¹¹
- no treaties with Indigenous people were entered into in Australia.¹¹²

British acquisition or appropriation of native Australian lands was based on the *terra nullius* doctrine, namely that the native inhabitants of these lands lacked laws, without which their lands were regarded as unoccupied.¹¹³

Common law recognition of native title came rather late in Australia with the High Court of Australia’s *Mabo* decision in 1992. In *Mabo*, the Court rejected the *terra nullius* doctrine and held that, where native title was not extinguished, the natives were entitled to their traditional lands in accordance with their customary regimes.¹¹⁴

With the 1967 amendment to the Australian Constitution, the federal government became responsible for Indigenous policy while the state and territorial governments controlled water resources. In 1973, the federal government established the Department of Aboriginal Affairs (DAA). Its role was to provide advice to the government on indigenous affairs and to implement and administer indigenous affairs policy. The DAA was the central indigenous affairs agency until the creation of the Aboriginal and Torres Strait Islander Commissioner (ATSIC) in 1989.¹¹⁵ ATSIC’s roles included advising all levels of government on indigenous issues and delivering and monitoring some of the federal government’s indigenous programs and services.

¹¹¹ *Native Title in Australia, ibid.*

¹¹² *Native Title in Australia, ibid.* at para 8. See Chidi Oguamanam, *Indigenous Peoples and International Law: The Making of a Regime*, (2004) 30 Queen’s L.J. 348 at 40 [hereinafter *The Making of a Regime*] at paras. 46-48.

¹¹³ *The Making of a Regime, ibid.* at para. 46.

¹¹⁴ *Mabo v. State of Queensland* [No. 2] (1992) 175 CLR 1 [hereinafter *Mabo*]. Contrast this with the 1888 Supreme Court of Canada decision in *St. Catherine’s Milling* where a form of Aboriginal title was recognized, although the title in that case derived from the Royal Proclamation of 1763 rather than the common law

(*R. v. St. Catherine’s Milling and Lumber Company* (1888), 14 A.C. 46 at 54 (P.C.), 2 C.N.L.C. 541).

In the U.S., there is also the Marshall trilogy in the 1830’s, see *supra* note 109.

¹¹⁵ A. Pratt and S. Bennett, *The end of ATSIC and the future administration of Indigenous affairs*, August 9, 2004, available at <http://www.aph.gov.au/library/pubs/CIB/2004-05/05cib04.htm> [hereinafter *The end of ATSIC*].

Despite recommendations of the Review Panel struck by the federal government to “examine and make recommendations to government on how Aboriginal and Torres Strait Islander people can in the future be best represented in the process of the development of Commonwealth policies and programs to assist them,” the government abolished ATSIC in 2005.¹¹⁶ Responsibility for programs formerly managed by ATSIC was transferred to various “mainstream” federal departments.

Based on a “whole-of government” approach to policy-making, the federal government works with the state and territorial governments to deliver water programs and services to indigenous communities within the framework of the Council of Australian Governments (COAG).¹¹⁷ In 2004, the federal government established a National Water Commission, an independent statutory body, to provide advice to the federal government and the COAG on national water issues.

7.3.3 *New Zealand*

Unlike Canada, New Zealand is not a confederation but a unitary and sovereign state, whose sovereignty appears to rest upon the Treaty of Waitangi (1840), the principal treaty between the native Maori and the British.¹¹⁸ The Treaty of Waitangi, in failing to meet native expectations, led to the introduction of the *Treaty of Waitangi Act* in 1975 to address indigenous claims.¹¹⁹

The Act set up the Waitangi Tribunal with the mandate to audit state actions and practices that violate the Treaty principles. Through the Tribunal, the revived Waitangi Treaty concept is now the blueprint with which the government of New Zealand seeks to address indigenous land claims and rights to self-determination. The work of the Tribunal continues to influence aboriginal law and policy at all levels of government and public administration in New Zealand. The New Zealand High Court has described it as the “fabric of the New Zealand society.”¹²⁰

Unlike Canada, New Zealand does not have a system of indigenous reserves. New Zealand’s drinking water regulations apply equally to both Maori and non-Maori people.

¹¹⁶ *The end of ATSIC, ibid.*

¹¹⁷ The Council of Australian Governments comprises of the Prime Minister, State Premiers, Territory Chief Ministers and the President of the [Australian Local Government Association](#) (ALGA).

¹¹⁸ See Sian Elias Gnzrn, *Maori and the New Zealand Legal System*, (2002) 76 Austl. L.J. 620 and J.G.A. Pocock, *Law, Sovereignty and History in a Divided Culture: The Case of New Zealand and the Treaty of Waitangi*, (1998) 43 McGill L.J. 481

¹¹⁹ *Treaty of Waitangi Act 1975* (N.Z.), 1975/114, as amended.

¹²⁰ *The Making of a Regime, supra* note 116 at paras. 49 and 50. *Huakina Trust v. Waikato Valley Authority*, [1987] 2 N.Z.L.R. 188 (H.C.), cited in Siegfried Wiessner, *Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis*, (1999) 12 Harv. Hum. Rts. J. 57 at 71.

There is also no federal-state split in jurisdiction. Responsibilities for drinking water are shared between national ministries and local governments. The New Zealand Ministry of Health administers the New Zealand Drinking Water Standards.¹²¹ The Drinking Water Standards are currently being revised by the *Health (Drinking Water) Amendment Bill*. The Bill received first reading on July 25, 2006.

Compliance with the Standards is currently voluntary. However, if the Bill is passed in its current form, compliance with the Drinking Water Standards would become compulsory. Under the proposed Bill, water suppliers must take all practicable steps to comply with the Standards. The Bill also requires water suppliers to prepare and implement public health risk management plans for systems serving more than 500 people.

Despite the uniformity in application of drinking water legislation to both Maori and non-Maori people in New Zealand, Maori considerations may be taken into account and accommodations may be made in the implementation of the water regime. For example, in the case of the Maori communities in Hokianga, ultraviolet disinfection was approved as an alternative to chlorination to accommodate the Maoris' cultural objection to adding chemicals to their water.

¹²¹ See Drinking Water for New Zealand at <http://www.drinkingwater.co.nz/> and New Zealand Ministry of Health website at <http://www.moh.govt.nz/water>.

Appendix A: Possible Elements of Legislation

General

- 1 The legislation must bind the Crown.
- 2 The provision of sewage and water services is a joint function of the federal departments and First Nations, and each partner must exercise a duty of care in discharging its responsibilities.

Conflict of Laws

- 3 A Band Council may make bylaws not inconsistent with the legislation.
- 4 Where federal and provincial regulations address the same subject matter, the federal regulation will apply.

Administration

- 5 The Federal government may make agreements with provinces and First Nations regarding provincial services in the areas of training and technical assistance.

First Nations Water Commission

- 6 A First Nations Water Commission shall be established that shall be:
 - composed of an odd number of members appointed by Order in Council on the recommendation of the Minister and in consultation with the Assembly of First Nations, the majority of whom shall be First Nations members or employees of First Nations organizations and tribal councils.
 - arms-length from INAC and the First Nations community, and its members shall avoid conflict of interest in decision-making.
- 7 The First Nations Water Commission shall be responsible for licensing construction and operation of water and wastewater facilities, inspection, enforcement, and administrative penalties.
- 8 The First Nations Water Commission may:
 - provide policy advice to the Minister
 - lead consultation on developing policy and legislation on water and wastewater, and

- articulate customary laws and traditional knowledge about First Nation water and wastewater that should be put into operation.
- 9 The First Nations Water Commission shall report to Parliament annually on the state of water on reserves and the adequacy of First Nation water legislation and policy.

First Nations Water Tribunal

- 10 A First Nations Water Tribunal shall be established that shall be:
- composed of an odd number of members appointed by Order in Council on the recommendation of the Minister and in consultation with the Assembly of First Nations, the majority of whom shall be First Nations members or employees of First Nations organizations and tribal councils.
 - arm's-length from INAC and the First Nations Water Commission and its members shall avoid conflict of interest in decision-making.
- 11 The First Nations Water Tribunal:
- shall hear appeals of approvals and orders related to water and wastewater facilities, and
 - may receive and investigate complaints about enforcement from First Nation members and issue orders for their resolution.

Resources

- 12 The federal government:
- as owner, shall adequately fund the construction, operation and maintenance of water and wastewater systems and training, including the Circuit Rider Program.
 - shall fund the First Nations Water Commission and Tribunal.
 - may provide advice and technical assistance directly or in funding arrangements with First Nation entities in such fields as technical support, assistance in facility planning and design, and operator training.

Operation of Facilities

- 13 The First Nations shall operate water and wastewater systems to meet standards set out in regulations, namely:

- Water and wastewater facilities shall be under the supervision of qualified operators appropriate to the class and type of water or wastewater facility.
- A person who is certified to operate water and wastewater facilities by a provincial agency is considered to be certified for purposes of the legislation.
- The First Nations shall follow the procedures for drinking-water testing and respond to adverse water quality test results as set out in regulation.
- The First Nations shall operate drinking-water system and sewage treatment plants in accordance with the standards set out in regulation, and following approval by the First Nation Water Commission.
- The First Nations shall report regularly to First Nation members and to the First Nation Water Commission, including test results and corrective action taken.
- The First Nations shall have an emergency plan including clear roles and responsibilities for issuing boil water advisories or orders and cease and desist orders, closing facilities, notifying the public, taking corrective action and providing an alternative potable water source for the First Nation community.
- The First Nations shall ensure that employees' work environment at drinking-water and wastewater facilities is safe.
- The First Nations shall monitor sewage effluent quality and ensure the effluent is within its regulatory limits.

14 The First Nations may:

- contract with third parties for provision or sale of water and wastewater services
- generate revenue to cover the cost of water and wastewater services, and
- collaborate with municipal and provincial governments.

Approvals, Inspection, Investigation, and Enforcement

15 The First Nations Water Commission has the following powers:

- issue water and wastewater facility and operation approvals
- ensure that facilities are adequately funded

- encourage peer reviews of the design and construction of water and wastewater facilities
- appoint inspectors and investigators, and
- issue administrative penalties.

16 Inspectors appointed by the Commission have the following powers:

- enter premises
- search and seize relevant documents
- take samples
- issue orders (contravention order, order to address imminent drinking-water health hazard, order to decommission or shut down system, to provide service, to prepare operational plan) or otherwise to ensure compliance with licence conditions, and
- appoint interim operating authority.

17 Investigators have the power to

- investigate complaints
- investigate potential areas of non-compliance as reported by the inspectors, and
- recommend administrative penalties to the First Nations Water Commission.

Source Protection

18 First Nations may:

- make agreements amongst themselves and surrounding jurisdictions regarding water, wastewater and source protection (e.g. conservation authorities, municipalities, counties, territories and provinces), and
- establish well-head protection zones and regulate land use that poses drinking-water threats on reserve lands (e.g. septic, waste, chemical handling).

Regulations

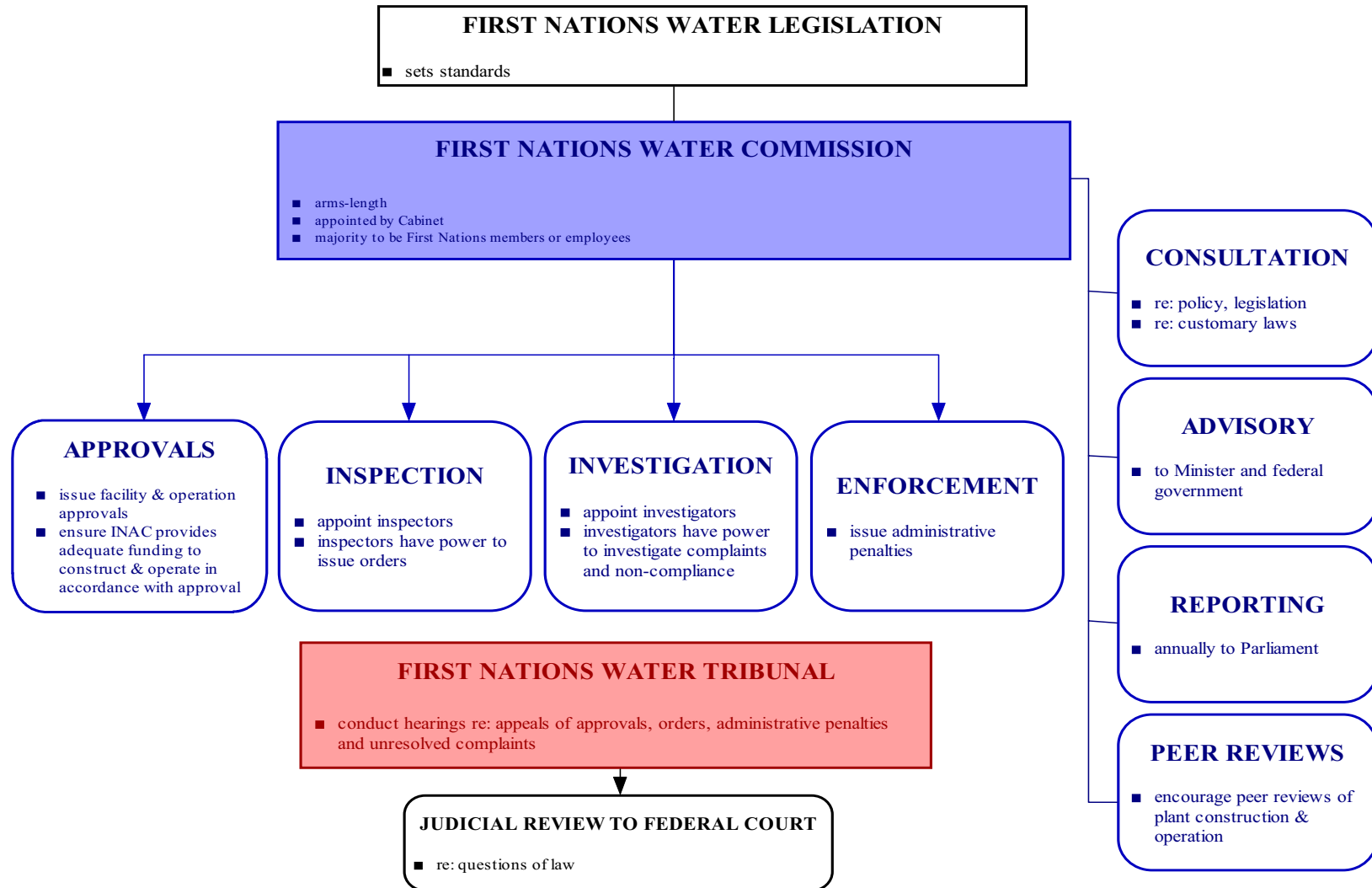
- 19 The Governor in Council may make regulations, or may adopt in whole or in part, by reference, the standards or regulations of other competent jurisdictions, after consultation by the Minister with the Commission:
- prescribing drinking water quality standards and sewage effluent standards
 - prescribing standards for design, construction, operation, maintenance and management of drinking water and wastewater systems
 - respecting qualifications and expertise of contractors engaged in the design and construction of drinking water and wastewater facilities
 - prescribing licensing of drinking water and wastewater facilities
 - prescribing minimum treatment standards
 - prescribing drinking water monitoring, testing and responding to adverse drinking water quality tests
 - prescribing employment of certified operators of drinking water and wastewater facilities
 - prescribing reporting requirements
 - governing financial plans related to First Nations drinking water and wastewater operations
 - governing emergency plans and procedures
 - governing wells, well-heads, casings, licenses, abandoning wells, provision of well logs to First Nations and to province and to INAC/HC/Geological Survey of Canada
 - governing water extraction from ground and surface water
 - governing drinking source water protection and well-head protection zone
 - governing septic tanks, bulk water transport and cisterns
 - prescribing penalties, including administrative penalties
 - prescribing harmonization of the drinking water legislation with other federal legislation

- regarding any matter necessary or advisable to carry out the purpose of the legislation
- necessary to enable a First Nations group which is not a band as defined in the *Indian Act* but is a party to a treaty, land claims agreement or self-government agreement with Canada to benefit from the legislation (i.e. as stated in the *FNFMSA*)
- that vary from province to province/First Nation to First Nation.

Review

- 20 The administration of this Act shall, every several years after the coming into force of the Act, stand referred to such committee of the House of Commons, of the Senate or of both Houses of Parliament as may be designated or established for that purpose.
- 21 The committee designated or established for the review shall, as soon as practicable, undertake a comprehensive review of the provisions and operation of the Act and shall, within one year after the review is undertaken, submit a report to Parliament thereon, including a statement of any changes to the Act or its administration that the committee would recommend.

Appendix B: Flow Chart – Potential Roles of the First Nations Water Commission and Tribunal



Appendix C: Cross-Country Comparison of Provincial and Territorial Water Legislation

The following charts provide a brief summary of provincial and territorial legislation, policy documents and guidelines that affect the following areas related to drinking water regulation:

- operators
- applicability, standards and testing
- inspection and enforcement
- emergency plans
- information reporting
- design approvals
- operating approvals
- source protection
- wells
- wastewater treatment
- cisterns, water trucking
- bulk water use

The last table contains links to legislation cited.

Operators

Regulatory Requirement (Operators)	Statute, Regulation, etc.	Section
<i>Alberta</i>		
Operation of water treatment plant or water distribution system in a waterworks system must be done by certified operator	Potable Water Regulation, A. Reg. 277/2003	14(1)
Person responsible for a waterworks system must ensure there are a minimum number of certified operators present (as set out in approval)	Potable Water Regulation	14(2)
Director issues certificate of qualifications to operators at the levels described in the Water and Wastewater Operator’s Certification Guidelines	Potable Water Regulation	15(1)
The level of operator certification is the same as the same as the classification of the facility Operator certification is based on AENV’s Water and Wastewater Operator’s Certification Guidelines	Standards and Guidelines for Municipal Waterworks, Wastewater and Storm Drainage Systems (January 2006)	1.14
The day-to-day operations of wastewater systems should be supervised by one or more persons who hold a valid certificate of qualification for the type of class of facility concerned.	Standards and Guidelines for Municipal Waterworks, Wastewater and Storm Drainage Systems (January 2006)	7.1.4.2, Table 7.2
Responsibilities of operators: understand Approval for facility, understand certification requirements, ensure subordinate operators meet certification requirements, contingency plan for operator absence	Standards and Guidelines for Municipal Waterworks, Wastewater and Storm Drainage Systems (January 2006)	7.1.4.3
Facilities exempt from having certified operators: - hamlet and municipal development water systems that do not require treatment for health-effect parameters (high quality groundwater source), and have less than 15 service connections and less than 3 km of distribution system - public facilities that have only a water distribution system or wastewater collection system - wastewater systems that are regulated under the <i>Safety Code Act</i> .	Pat Lang (Acting Director, Drinking Water Branch)	-
Aspects of certification: - facility classification (Ranging from Class I to IV) - qualifications of operator - qualification requirements - examination process - powers and responsibilities of an operator	Water and Wastewater Operator’s Certification Guidelines	2 3 4 5 App. IV

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Regulatory Requirement (Operators)	Statute, Regulation, etc.	Section
“Conditional certificates” permitted for facility owners who cannot otherwise meet the requirements of approval (but only for small systems)	Water and Wastewater Operator’s Certification Guidelines	4.2
<p>Certification is mandatory for operator in charge. No other training requirements</p> <p>Standards set by provincial legislation</p> <p>Certification done by province</p> <p>Training offered by province working with associations; also private organizations</p>	Heather Edwards, “Certification Regimes for Water and Wastewater Facility Operators: A Review of Provincial and First Nations Approaches” (October 24, 2001) ¹²²	P. 9
Certified operators are required to operate waterworks distribution systems.	<i>Waterworks Systems Consisting Solely of a Water Distribution System</i>	P. 7
Operator guidelines for waterworks systems	<i>Waterworks Systems Using High Quality Groundwater</i>	P. 7
British Columbia		
Only a person qualified in accordance with the regulations (or a person supervised by someone so qualified) may operate, maintain or repair water supply systems; and it is the water supplier’s responsibility to ensure this requirement is met	<i>Drinking Water Protection Act</i> , S.B.C. 2001, c. 9	9
<p>A person is qualified to operate, maintain or repair a water supply system if the person is certified by the Environmental Operators Certification Program (see http://www.eocp.org/)</p> <p>Exception for a person with specialist knowledge immediately relevant</p>	Drinking Water Protection Regulation, B.C. Reg. 200/2003	12
<p>Standards set by provincial legislation</p> <p>Certification done by Environmental Operator Certification Program</p> <p>Training offered by BCWWA & others approved by Environmental Officer Certification Program</p>	Heather Edwards, “Certification Regimes for Water and Wastewater Facility Operators: A Review of Provincial and First Nations Approaches” (October 24, 2001)	P. 9
Certification is a mandatory requirement effective May 2003. Systems serving 500 exempted from prescriptive requirement in December 2005, to facilitate a discretionary approach to owner/operator qualification	Barry Boettger (Provincial Drinking Water Officer)	-
Manitoba		
Operating licence required to operate a public or semi-public water system	<i>Drinking Water Safety Act</i>	8

¹²² Online: [http://www.iog.ca/publications/CertificationReport.pdf#search=""Certification%20Regimes](http://www.iog.ca/publications/CertificationReport.pdf#search=).

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Regulatory Requirement (Operators)	Statute, Regulation, etc.	Section
<p>No person may operate an unclassified facility</p> <p>Certification Advisory Committee established (structure, powers)</p> <p>Classes of certificates range from training, small system and 1 to 4</p> <p>Schedule B sets forth certification requirements for issuance of an operator’s certificate</p> <p>Conditional certificate available, based on employment</p>	<p>Water and Wastewater Facility Operators Regulation, M. Reg. 77/2003</p>	<p>4(1), 2 11 12 13(3) 15(1)</p>
<p>Operating requirements:</p> <ul style="list-style-type: none"> - owner of facility must ensure that operators are certified - operator-in-charge is responsible for overall operation of facility - owner must ensure records of operator-in-charge retained 	<p>Water and Wastewater Facility Operators Regulation</p>	<p>23(1) 26(1) 31</p>
<p>Responsibilities of operator in charge:</p> <ul style="list-style-type: none"> - operate the facility in a safe and efficient manner in accordance with the relevant operations manuals - ensure the processes s/he is responsible for are measured, monitored, sampled and tested - ensure that records are maintained of all necessary adjustments are made to processes s/he is responsible for - ensure equipment is properly monitored, inspected and evaluated, and that records of equipment operating status are prepared and available at the end of every operating shift 	<p>Water and Wastewater Facility Operators Regulation</p>	<p>32(a)-(d)</p>
<i>Newfoundland and Labrador</i>		
<p>All waterworks in the province must be operated in a manner that the Minister may direct</p>	<p><i>Water Resources Act</i>, SNL 2002, W-4.01</p>	<p>38(1)</p>
<p>Permits to Operate typically require that all systems are have trained operators (with operator certification strongly recommended) and that annual Operation and Maintenance Reports be submitted to the DOEC. Municipalities are required to submit the names of their system operators, and there is a database for the education and training of individual operators. The Permit to Operate recommends continuing education for all operators</p>	<p>Martin Goebel (Director, Water Resources Management Division; Department of Environment and Conservation)</p>	<p>-</p>

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Regulatory Requirement (Operators)	Statute, Regulation, etc.	Section
<p>Certification not mandatory, but training offered to all operators</p> <p>Standards set by Atlantic Canada Water and Wastewater Voluntary Certification Programme</p> <p>Certification done by province, Atlantic Canada Water and Wastewater Voluntary Certification Programme, Association of Boards of Certification</p> <p>Training offered by province, in consultation with local authorities and organizations</p>	<p>Heather Edwards, “Certification Regimes for Water and Wastewater Facility Operators: A Review of Provincial and First Nations Approaches” (October 24, 2001)</p>	<p>P. 9</p>
<p>Training includes classroom training, annual workshop and visits by mobile training units, all provided at no cost to operators</p>	<p>Martin Goebel (Director, Water Resources Management Division; Department of Environment and Conservation)</p>	<p>-</p>
<i>New Brunswick</i>		
<p>No person shall operate a waterworks except in accordance with the terms and conditions of the approval issued for the waterworks</p>	<p>Water Quality Regulation, N.B. Reg. 82-126 (under the <i>Clean Environment Act</i>)</p>	<p>3(7)</p>
<p>Minister may require that a person responsible for a waterworks undergo a training program</p> <p>Person responsible for a waterworks must not permit a person to be in control the waterworks who refuses or fails such a training program</p>	<p>Water Quality Regulation</p>	<p>19</p>
<p>Operator may not cease to operate a waterworks without consent of Minister</p>	<p>Water Quality Regulation, N.B. Reg. 82-126</p>	<p>14</p>
<p>Certificates of Approval require that the approval holder ensure that operators of water treatment systems and water distribution system complete the California State University Water Distribution System Operation and Maintenance course, the New Brunswick Community College Water Distribution Fundamentals Program, or an approved equivalent. New operators must also complete certain parts of the Atlantic Canada Water and Wastewater Voluntary Certification Program (ACWWVCP)</p> <p>Approvals specify the required number of certified water distribution and/or treatment operators (based on the system classification)</p>	<p>Tony J. Whalen (Senior Drinking Water Engineer, Water & Wastewater Management Section, N.B. Department of Environment)</p>	<p>-</p>
<p>Certification done by province (administers exams)</p> <p>Training offered by associations and private contractors, in consultation with the province</p>	<p>Heather Edwards, “Certification Regimes for Water and Wastewater Facility Operators: A Review of Provincial and First Nations Approaches” (October 24, 2001)</p>	<p>P. 9</p>

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Regulatory Requirement (Operators)	Statute, Regulation, etc.	Section
<i>Northwest Territories</i>		
Commissioner and the Minister may, on behalf of the Government of NWT, enter into agreements with the Government of Canada (or a provincial government in conjunction with the Government of Canada) respecting water resources management	<i>Water Resources Agreements Act</i> , R.S.N.W.T. 1988, c.17 (Supp.)	2
MACA (Municipal and Community Affairs) provides training and oversees certifying WTP operators; regulations for the certifying of WTP operators being considered	“Managing Drinking Water Quality in NWT: A Preventative Framework Strategy” (May 2005)	P. 11
Standards set by NWT Water & Wastewater Certification Committee consistent with ABC standards Certification done by School of Community Government, Government of the NWT Training offered by School of Community Government via contract, e.g. BC WWA, or using in house staff Mandatory certification under public health legislation is currently under consideration	Duane Fleming (Chief Environmental Health Officer, Stanton Territorial Health Authority)	-
<i>Nova Scotia</i>		
No person shall commence or continue any activity that is designated by the regulations as an activity or thing in respect of which a certificate of qualification is required unless that person holds the appropriate certificate of qualification	<i>Environment Act</i> , S.N.S. 1994-95, c. 1	62-63
There are several types and classes of operator certification certificates, having varying educational and experience requirements. Deemed certification for operators who hold a certificate issued by the Atlantic Canada Water and Wastewater Voluntary Certification Board Reciprocal certification for operators certified by the ABC or by a certification agency Education and operating experience requirements for operator certification certificate Exam requirements for operator certification certificate Surplus experience can compensate for education, and <i>vice versa</i>	Water and Wastewater Facilities and Public Drinking Water Supplies Regulation, N.S. Reg. 186/2005 (made under the <i>Environment Act</i>)	14 15 16 19 20 21-22
Facility must have a qualified operator in charge	Water and Wastewater Facilities and Public Drinking Water Supplies Regulation	27ff

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Regulatory Requirement (Operators)	Statute, Regulation, etc.	Section
<i>Nunavut</i>		
<i>No relevant provisions</i>		
<i>Ontario</i>		
<p>No person shall operate a municipal drinking-water system or a regulated non-municipal drinking-water system unless the person holds a valid operator's certificate issued in accordance with the regulations</p> <p>This requirement may not apply to all drinking water systems, depending on size and classification</p>	<p><i>Safe Drinking Water Act, 2002</i>, S.O. 2002, c. 32</p> <p>Drinking-Water Systems, O. Reg. 170/03 (made under the <i>SDWA</i>)</p>	12(1)
<p>Part IV of the Act will create a regime for the accreditation of operating authorities (the person or entity given responsibility by the owner for the operation and management of the system).</p> <p>Would require Minister to develop a Quality Management Standard for drinking-water systems, designate accreditation bodies (to administer accreditation programs for operating authorities)</p>	<p><i>Safe Drinking Water Act</i></p>	13-29 [not yet in force]
<p>For each type of municipal residential subsystem, there are four classes of operators' certificates (I to IV), and for limited groundwater and surface-water subsystems, and training licences</p> <p>Regulation provides for municipal residential operators' certificates (Qualifications required for each certificate set out in Sch. 2), limited subsystem operators' certificates, operator-in-training's certificates, conditional operators' certificates; certificate can be revoked or suspended on certain grounds</p>	<p>Certification of Drinking-Water System Operators and Water Quality Analysts, O. Reg. 128/04 (made under <i>SDWA</i>)</p>	6 7-10, 13
<p>The owner or operating authority of a subsystem shall ensure that every operator employed in the subsystem holds a certificate applicable to that type of subsystem</p> <p>The owner or operating authority of a municipal residential subsystem must designate as overall responsible operator of the subsystem an operator who holds the appropriate certificate</p>	<p>Certification of Drinking-Water System Operators and Water Quality Analysts</p>	22 23
<p>Owner or operating authority of a subsystem must designate one or more operators as operators-in-charge of the subsystem, who is/are authorized to set operational parameters for the subsystem, and must take all steps reasonably necessary to operate the processes in a safe and efficient manner, ensure that the processes are measured, monitored, sampled and tested in a manner that permits them to be adjusted when necessary, ensure records are maintained properly, and ensure that all equipment used in the processes is properly monitored, inspected and tested</p>	<p>Certification of Drinking-Water System Operators and Water Quality Analysts Regulation</p>	25-26

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Regulatory Requirement (Operators)	Statute, Regulation, etc.	Section
Annual training required for operators	Certification of Drinking-Water System Operators and Water Quality Analysts Regulation	29
The certification program is delivered by the province through a program administrator, the Ontario Environmental Training Consortium, which evaluates license applications and administers exams. Operator training is not offered by the OETC. The Walkerton Clean Water Centre (which is an agency of the Ministry of the Environment) delivers the entry-level Drinking Water Operators Training course, the Preventing Waterborne Illness course and the Operation of Small Drinking Water Systems correspondence course. All other training is delivered by providers external to MOE.	Lisa Trevisan (Sr. Drinking Water Advisor, Office of the ADM/Chief Drinking Water Inspector, Drinking Water Management Division)	-
Prince Edward Island		
Every owner of a facility shall place the responsibility for the operation, repair and maintenance of the facility under the direct responsible charge of an operator who holds a valid operator's certificate for the relevant classification Operator's certificate valid for four years; requirements of certificate set out in Sched. B; experience can substitute for education requirements	Drinking Water and Wastewater Facility Operating Regulations, P.E.I. Reg. EC710/04 (under the <i>Environmental Protection Act</i>)	4 5
Certification mandatory for municipal operators Regulations will come into force making certification mandatory for private systems in 2007 Continuing education required to maintain certification	George Somers (Drinking Water Management Section Manager)	-
Quebec		
No one may operate a waterworks unless he has obtained a permit of operation from the Minister	<i>Environment Quality Act</i> , R.S.Q., c. Q-2	32.1
All the duties relating to the operation and monitoring of a treatment or distribution facility must be carried out by a certified person. Certified person must supervise all maintenance and repair work on a distribution facility and putting the distribution facilities into service after remedial or extension work	Regulation respecting the quality of drinking water, c. Q-2, r. 18.1.	44
A certified person is a person who holds a diploma, certificate or other attestation recognized by the Minister of Education, Recreation and Sports or by Emploi-Québec for the production or distribution of water intended for human consumption; certificates must be renewed every five years	Regulation respecting the quality of drinking water	44
Emploi-Québec's qualification program for drinking water operators in Québec is built on Canada-wide Red Seal interprovincial standards	Caroline Robert (Direction des politiques de l'eau)	-

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Regulatory Requirement (Operators)	Statute, Regulation, etc.	Section
These provisions do not apply to systems serving 20 persons or less	Regulation respecting the quality of drinking water	43
Certification mandatory for operators in charge Standards set by provincial regulation Training offered by Cégep, and others	Heather Edwards, “Certification Regimes for Water and Wastewater Facility Operators: A Review of Provincial and First Nations Approaches” (October 24, 2001)	P. 9
<i>Saskatchewan</i>		
No person can supply water to consumers for hygienic use unless the person is a permittee in compliance with the production, storage, management and distribution requirements of this section	The Water Regulations, c. E-10.21, M. Reg 1	23(3)
Operator Certification Board controls the certification process	The Water Regulations	53, 54
Every municipality or permittee of a waterworks must ensure operation of works is under the direction of an operator who holds the certificate corresponding to the classification of those works	The Water Regulations	63
Contact hours, continuing education credits, training required for renewal of licence	The Water Regulations	68
Classification of works	The Water Regulations Saskatchewan Water and Wastewater Works Operator Certification Standards, 2002, EPB 139/02/2M	62(1) 2.0
Certification requirements (by class of works)	Saskatchewan Water and Wastewater Works Operator Certification Standards	3.0
Certification mandatory for operators in charge (by 2005); not mandatory for other operators Standards set by provincial regulation Certification done by provincially appointed certification board; exam administered by the Operator’s Association, supervised by Institute of Applied Science and Technology, and provided by the province Training offered by several organizations	Heather Edwards, “Certification Regimes for Water and Wastewater Facility Operators: A Review of Provincial and First Nations Approaches” (October 24, 2001)	P. 9

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Regulatory Requirement (Operators)	Statute, Regulation, etc.	Section
<i>Yukon</i>		
<p>Training and certification is voluntary and is done through the B.C. Environmental Operators Certification Program</p> <p>Although operator training is voluntary, there is considerable participation in the training sessions offered by the Yukon Water and Waste Association, and many operators are certified</p>	<p>Patricia Brooks (Drinking Water Program Coordinator)</p>	<p align="center">-</p>

Applicability, Standards and Testing

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
<i>Alberta</i>		
<p>Facilities are classified as I through IV based on population (<1500; 1501-15,000; 15,001-50,000; 50,001+) and points</p> <p>Monitoring requirements based on population (<500; 501-1,000; 1,000-2,500; 2,501-5,000; 5,000+)</p>	<p>Standards and Guidelines for Municipal Waterworks, Wastewater and Storm Drainage Systems (January 2006)</p>	<p>9.1.4</p> <p>9.2.3</p>
<p>This Regulation only applies to waterworks systems referred to in the Activities Designation Regulation, Schedule 1, Division 5 and Schedule 2, Division 5:</p> <ul style="list-style-type: none"> - the construction, operation or reclamation of a waterworks system (1) that (A) serves a city, town, specialized municipality, village, summer village, hamlet, settlement area as defined in the Metis Settlements Act, industrial development, municipal development or privately owned development, (B) is a private utility or a watering point, or (C) is owned by a regional services commission, and (2) that uses as the source of its water supply surface water or groundwater other than high quality groundwater - the construction, operation or reclamation of a waterworks system (1) that (A) serves a city, town, specialized municipality, village, summer village or settlement area as defined in the Metis Settlements Act, (B) is a private utility; or (C) is owned by a regional services commission, and (2) that uses high quality groundwater as the source of its water supply - the construction, operation or reclamation of a waterworks system (1) that (A) serves a city, town, specialized municipality, village, summer village or settlement area as defined in the Metis Settlements Act, (B) is a private utility, or (C) is owned by a regional services commission, and (2) that consists solely of a water distribution system that uses as the source of its water supply potable water from a waterworks system that holds a current approval or registration under the Act - the construction, operation or reclamation of a waterworks system (1) that serves a hamlet or a municipal development, (2) that uses high quality groundwater as the source of its water supply, and (3) that has (A) 15 or more service connections, or (B) 3 or more km of water distribution system - the construction, operation or reclamation of a waterworks system (1) that serves a hamlet or a municipal development, (2) that consists solely of a water distribution system that uses as the source of its water supply potable water from a waterworks system that holds a current approval or registration under the Act, and (3) that has (A) 15 or more service connections, or (B) 3 or more km of water distribution system <p>(But see notes in Activities Designation Regulation)</p>	<p>Potable Water Regulation, A. Reg. 277/2003</p> <p>Activities Designation Regulation, Alta. Reg. 276/2003, Schedule 1, Division 5 (a)</p> <p>Activities Designation Regulation, Schedule 2, Division 5 (a)</p> <p>Activities Designation Regulation, Schedule 2, Division 5 (b)</p> <p>Activities Designation Regulation, Schedule 2, Division 5 (c)</p> <p>Activities Designation Regulation, Schedule 2, Division 5 (d)</p>	<p>1(2)</p> <p>(a)</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
The person responsible for a waterworks system must ensure that the potable water supplied by the system does not contain a substance in a concentration that varies from the specified concentration for the substance set out in any applicable approval or the regulations	<i>Environmental Protection and Enhancement Act</i> , R.S.A. 2000, c. E-12	149
Physical, microbiological, chemical and radiological characteristics in a waterworks system must at least meet the applicable Maximum (or Interim) Acceptable Concentration Maximum specified in the Health Canada Guidelines for Canadian Drinking Water Quality for the parameters listed in the Alberta Standards and Guidelines for Municipal Waterworks, Wastewater and Storm Drainage Systems	Potable Water Regulation, A. Reg. 277/2003	6
A waterworks system must meet at least the minimum waterworks performance standards set out in the Standards and Guidelines for Municipal Waterworks, Wastewater and Storm Drainage Systems	Potable Water Regulation	7
The person responsible for a waterworks system shall obtain water samples and submit the samples for analysis to an approved laboratory for analysis The number of samples obtained must be for analysis of bacteriological quality must be obtained in accordance with the Guidelines for Canadian Drinking Water Quality Samples may be required to be re-submitted or re-analyzed	Potable Water Regulation	17
Parameters that must be tested for: bacteriological; physical, organic & inorganic chemicals and pesticides (including location of sample, monitoring frequency); turbidity; fluoride; iron, manganese; trihalomethanes and bromodichloromethane; disinfection (chlorine residual, UV) Issue-oriented and follow-up monitoring (required sampling where violation of drinking water standards)	Standards and Guidelines for Municipal Waterworks, Wastewater and Storm Drainage Systems (January 2006)	1.10.3 1.10.4
Monitoring guidelines for water distribution systems	<i>Waterworks Systems Consisting Solely of a Water Distribution System</i>	P. 7-8
Monitoring guidelines for waterworks	<i>Guide to Requirements for Regulated Waterworks Systems Using High Quality Groundwater</i>	P. 7
British Columbia		

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
<p>“Water supply system” means a domestic water system, other than (a) a domestic water system that serves only one single-family residence, and (b) equipment, works or facilities prescribed by regulation as being excluded</p> <p>A single connection system is captured by the Drinking Water Protection Act if it is anything other than a single family dwelling (i.e. a gas station or restaurant on it's own water supply)</p>	<p><i>Drinking Water Protection Act</i>, S.B.C. 2001, c. 9</p> <p>Barry Boettger (Provincial Drinking Water Officer)</p>	<p>1</p> <p>-</p>
<p>All water supply systems are prescribed for the purposes of ss. 8, 10, 11 and 22 (1) (b) of the Act</p> <p>All water supply systems, except small systems, are prescribed for the purposes of s. 9 of the Act</p>	<p>Drinking Water Protection Regulation, B.C. Reg. 200/2003</p>	<p>4(1)</p> <p>4(2)</p>
<p>A small system is exempt from s. 6 of the Act if (a) the system does not provide water for human consumption or food preparation purposes (nor is connected to a water supply system that does so), or (b) each recipient of the water from the system has a point of entry or point of use [a] treatment system that makes the water potable</p> <p>“Small system” means a water supply system that serves up to 500 individuals during any 24 hour period.</p>	<p>Drinking Water Protection Regulation</p>	<p>3.1</p> <p>5</p>
<p>“potable water” means water provided by a domestic water system that (a) meets the standards prescribed by regulation, and (b) is safe to drink and fit for domestic purposes without further treatment</p>	<p><i>Drinking Water Protection Act</i>, S.B.C. 2001, c. 9</p>	<p>1</p>
<p>A water supplier must provide to its users drinking water that is potable water, and meets any additional requirements established by the regulations or by its operating permit</p>	<p><i>Drinking Water Protection Act</i></p>	<p>6</p>
<p>The prescribed water quality standards for potable water are set out in Schedule A, which provides standards for fecal coliform bacteria, <i>E. coli</i> and total coliform bacteria</p>	<p>Drinking Water Protection Regulation</p>	<p>2</p>
<p>B.C. can require improvements in water quality and conditions on an operating permit, or in an order can impose a system specific “standard”</p>	<p>Barry Boettger (Provincial Drinking Water Officer)</p>	<p>-</p>
<p>Water supplier must monitor its drinking water source, and the water it provides, for the parameters and at the frequency set out in the regulation</p>	<p><i>Drinking Water Protection Act</i></p>	<p>11</p>
<p>A water supplier must monitor at the frequencies set forth in Sched. B (frequency varies from 4 to 90+ samples per month, depending on population size served)</p>	<p>Drinking Water Protection Regulation</p>	<p>8</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
<i>Manitoba</i>		
<p>“Public water system” means a water system that (a) has 15 or more service connections, or (b) has fewer than 15 service connections, but is designated by the Director as a public water system</p> <p>“Semi-public water system” means a water system that is not a public water system or a private water system</p> <p>“Private water system” means a water system that (a) supplies water only to one private residence, or (b) despite supplying water to commercial premises or to more than one private residence, is designated by the Director as a private water system</p>	<p><i>The Drinking Water Safety Act</i>, S.M. 2002, c. 36</p>	<p>1(1)</p>
<p>“Public water system” means a water system that has 15 or more service connections but does not include water systems exclusively serving hotels, schools, hospitals, correctional institutes, construction camps, underground mine workings, or extended communal families</p>	<p>Water Supplies Regulation, Man. Reg. 330/88R (made under the <i>Public Health Act</i>)</p>	<p>1</p>
<p>Every public water supplier and semi-public water supplier must comply with the drinking water quality standards specified in the regulations</p> <p>Every public water supplier (and certain semi-public water suppliers) must disinfect the water system's water supply in accordance with the regulations</p>	<p><i>Drinking Water Safety Act</i></p>	<p>3</p> <p>20(1)</p> <p>[not yet in force]</p>
<p>Water for domestic use must meet accepted standards of potability subject to the approval of the medical officer of health or the Minister</p> <p>Residual chlorine required</p>	<p>Water Supplies Regulation</p>	<p>2</p> <p>10</p>
<p>Every public water supplier and semi-public water supplier must sample and submit water samples in accordance with the regulations</p> <p>Disinfectant residual testing also required</p>	<p><i>Drinking Water Safety Act</i></p>	<p>20-21</p> <p>[not yet in force]</p>
<p>A private water supplier must sample and submit water samples in accordance with the regulations, if required by the regulations</p>	<p><i>Drinking Water Safety Act</i></p>	<p>21(2)</p> <p>[not yet in force]</p>
<p>Water supplier must ensure that a chlorinated water supply is tested daily for free chlorine residual</p>	<p>Water Supplies Regulation</p>	<p>10(2)</p>
<p>Water suppliers must test for disinfectant residuals before the water leaves the water treatment plant, and after the water has left the treatment plant, at prescribed time intervals and points along the distribution system</p>	<p><i>Drinking Water Safety Act</i></p>	<p>20(2)</p>
<p><i>NOTE: No regulations under the Drinking Water Safety Act have been passed yet</i></p>	<p>-</p>	<p>-</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
<i>Newfoundland and Labrador</i>		
Applicability threshold: 1, if owned by a municipal jurisdiction; if private ownership, no jurisdiction regardless of size. A public water supply is one which is owned and operated by a municipal entity (this could conceivably include a handpump well or a single household's water system)	Martin Goebel (Director, Water Resources Management Division; Department of Environment and Conservation)	-
Province has adopted the chemical and physical guidelines in the Guidelines for Canadian Drinking Water Quality, as revised, as provincial objectives	<i>Drinking Water Safety in Newfoundland and Labrador: 2005 Annual Report</i>	10
The province carries out all water quality testing and reporting Testing requirements and procedures are outlined in approved policy directives, rather than in regulations	Martin Goebel (Director, Water Resources Management Division)	-
Routine monitoring of drinking water quality in this province is a joint responsibility of the Ministry of Environment and Conservation (ENVC) and Department of Government Services (GS). The Department of Environment and Conservation is responsible for chemical and physical monitoring of source and tap water quality while GS is responsible for monitoring bacteriological tap water quality and chlorine residuals. Larger municipalities such as St. John's and Corner Brook also independently collect bacteriological samples which are submitted to Provincial Health Laboratories (PHL) for analysis	<i>Drinking Water Safety in Newfoundland and Labrador: 2005 Annual Report</i>	8
Chemical monitoring program focuses on tap water quality monitoring. Testing is done for inorganic chemical parameters, THMs and HAAs	See www.env.gov.nl.ca/Env/env/waterres/Surfacewater/Schedule/DrinkingWater-SamplingSchedule.asp	-
Bacteriological standards are based on Guidelines for Canadian Drinking Water Quality	See www.env.gov.nl.ca/Env/env/waterres/Policies/WQ-Standards-Microbiological.asp	-
Chemical and physical guidelines as specified in the Guidelines for Canadian Drinking Water Quality are considered to be objectives	See www.env.gov.nl.ca/Env/env/waterres/Policies/WQ-Standard-PhysicalChemical.asp	-
During proven or suspected outbreaks of Giardiasis, or any other waterborne disease outbreak, the Department of Government Services may be required to undertake special site specific water quality surveys	See http://www.env.gov.nl.ca/Env/Env/waterres/Surfacewater/DWQ%20Manual/DWQ_MONITORING%20MANUAL_2006.pdf	P. 2
Person responsible for an undertaking that may lead to an adverse effect on water to be used for drinking or domestic purposes may be ordered to carry out water quality analyses	<i>Water Resources Act</i>	40

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
<i>New Brunswick</i>		
“Public water supply system” means a public water supply system as defined by regulation	<i>Clean Water Act</i> , S.N.B., c. C-6.1	1
Potable Water Advisory Committee set up to determine what constitutes water that presents a significant health risk	<i>Clean Water Act</i>	13.1
No water supply shall be used as a potable water supply unless it is of a safe and sanitary quality	General Regulation, N.B. Reg. 88-200 (under the <i>Health Act</i>)	216
Every owner of a public water system must have the water in the system tested in accordance with the regulations	<i>Clean Water Act</i>	11(3)
<p>Certificates of Approval require that the most recent sampling plan approved by the Department of Health be followed, as a minimum</p> <p>Certificates of Approval typically require that parameters such as free chlorine residual, water production, manganese, turbidity, pH and colour be monitored at locations and frequencies as specified</p> <p>Certificates of Approval provide suspended solid limits for supernatant overflow from sludge handling facilities, wastewater from treatment facilities</p>	Tony J. Whalen (Senior Drinking Water Engineer, Water & Wastewater Management Section, N.B. Department of Environment)	-
<p>The owner of a regulated water supply system must have a sampling plan that is approved by the Minister, and ensure that the water is tested in accordance with the plan</p> <p>Sampling plan must incl. certain elements, such as frequency, location, parameters</p>	Potable Water Regulation, N.B. Reg. 93-203 (under the <i>Clean Water Act</i>)	7 8
Laboratory requirements	Potable Water Regulation	9
Remedial testing powers of Province	Potable Water Regulation	10
The Minister may require a person responsible for a waterworks to monitor and maintain records of parameters of operation of the waterworks, and can specify methods and equipment to do so	Water Quality Regulation, N.B. Reg. 82-126	17
<p>A free chlorine residual of not less than 0.1 ppm must be maintained</p> <p>All chlorinating/disinfecting equipment for potable water must be tested for residual chlorine, to the satisfaction of the district medical health officer</p>	General Regulation, N.B. Reg. 88-200 (under the <i>Health Act</i>)	225

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
<i>Northwest Territories</i>		
Commissioner and the Minister may, on behalf of the Government of NWT, enter into agreements with the Government of Canada (or a provincial government in conjunction with the Government of Canada) respecting water resources management	<i>Water Resources Agreements Act</i> , R.S.N.W.T. 1988, c.17 (Supp.)	2
“Public water supply” means any water supply system which serves or supplies water, by any means whatsoever, either exclusively or partly for human consumption to more than five customers and includes the plant for the treatment of water	Public Water Supply Regulations, R.R.N.W.T. 1990, c. P-23	1
Bacteriological standard: max: avg. of 1 coliform per 100 ml (multitube fermentation technique or membrane filter technique)	Public Water Supply Regulations	10(1)
Physical standards: - no impurity which would cause offence to the sense of sight, taste or smell - turbidity: 5 units - colour: 15 units - threshold odour number: 3	Public Water Supply Regulations	11(2)

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
<p>Chemical standards:</p> <p>- drinking water shall not contain impurities in concentrations which may be hazardous to the public health; should not be excessively corrosive to the water supply system</p> <p>- the following chemical substances should not be present in a water supply in excess of the listed concentrations where, in the judgment of the Chief Medical Health Officer, other more suitable supplies are or can be made available:</p> <p>Alkyl benzene sulfonate (ABS): 0.5 mg/L Arsenic (As) 0.05 mg/L Chloride (Cl) 250 mg/L Copper (Cu) 1 mg/L Carbon chloroform extract (CCE) 0.2 mg/L Cyanide (CN) 0.01 mg/L Fluoride (F) 1.7 mg/L Iron (Fe) 0.3 mg/L Manganese (Mn) 0.05 mg/L Nitrate (NO₃) 45 mg/L Phenols 0.001 mg/L Sulfate (SO₄) 250 mg/L Total dissolved solids 500 mg/L Zinc (Zn) 5 mg/L Barium (Ba) 1 mg/L Cadmium (Cd) 0.01 mg/L Chromium (hexavalent) (Cr₆) 0.05 mg/L Lead (Pb) 0.05 mg/L Selenium (Se) 0.01 mg/L Silver (Ag) 0.05 mg/L</p>	Public Water Supply Regulations	12(2) 12(3)
<p>Radioactivity standards: unnecessary exposure to ionizing radiation should be avoided. Approval of water supplies containing radioactive materials shall be based upon the judgment that the radioactivity intake from such water supplies when added to that from all other sources is not likely to result in an intake greater than the radiation protection guidance recommended by the Radiation Protection Division of the Department of National Health and Welfare</p>	Public Water Supply Regulations	13(2)
Chlorination and 0.2 mg/L of residual free chlorine required	Public Water Supply Regulations	15-16
Fluoride testing required	Public Water Supply Regulations	17(6)

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
Samples of water must be submitted to a laboratory for bacteriological analysis as directed by the Medical Health Officer	Public Water Supply Regulations	9
The frequency and manner of sampling shall be determined by the Chief Medical Health Officer. Under normal circumstances, samples should be collected daily		11
<i>Nova Scotia</i>		
<p>A publicly or privately owned system for producing, collecting, storing or transmitting potable water that serves less than 500 persons is not required to be classified under these regulations</p> <p>“Public drinking water supply” means a water supply system, including any source, intake, treatment, storage, transmission or distribution, that is intended to provide the public with potable, piped water and that (i) has at least 15 service connections, or (ii) regularly serves 25 or more persons per day for at least 60 days of the year</p>	Water and Wastewater Facilities and Public Drinking Water Supplies Regulation, N.S. Reg. 186/2005 (made under the <i>Environment Act</i>)	10(3)(a) 31(e)
If a water system has 15 or more connections or serves greater than 25 people, the system must be registered as a public drinking water supply. As such they must monitor and sample their water and ensure that it meets the Guidelines for Canadian Drinking Water Quality. The water treatment equipment used is only regulated for municipal system		John Eisnor (Facilities Engineer Water and Wastewater Branch)
Standard: owner of a public drinking water supply must ensure that the microbiological, chemical and physical characteristics do not exceed the maximum acceptable concentration for substances as set out in the federal Department of Health Guidelines for Canadian Drinking Water Quality	Water and Wastewater Facilities and Public Drinking Water Supplies Regulation	35
Additional requirements may be set out in operating approval for municipal water supplies	John Eisnor (Facilities Engineer Water and Wastewater Branch)	-
<p>An owner of a public drinking water supply must regularly sample, test and monitor their public water drinking supply for:</p> <ul style="list-style-type: none"> - microbiological quality - general chemical and physical quality - disinfection residual (if being used) - source and treated water turbidity (if chemically assisted filtration is being used) - fluoride concentrations (if being used) - any substances required by the Minister or an administrator 	Water and Wastewater Facilities and Public Drinking Water Supplies Regulation Guidelines for Monitoring Public Drinking Water Supplies	33
Minister must test water in all educational facilities	<i>Education Act</i> , S.N.S. 1995-96, c. 1	141A

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Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
<i>Nunavut</i>		
<i>No relevant provisions</i>		
<i>Ontario</i>		
No person shall establish, alter, extend or replace new or existing water works except under and in accordance with an approval granted by a Director; but this requirement does not apply to (a) a water works used only for supplying water (for certain purposes) that is not required under any Act or regulation to be fit for human consumption; (b) a water works not capable of supplying more than 50,000 L/day of water; (c) to a privately-owned water works used to supply water only for five or less private residences; or (d) other water works exempted by regulation	<i>Ontario Water Resources Act</i> , R.S.O. 1990, c. O.40	52(1),(8)
Obligations apply to owners of municipal drinking-water systems and regulated non-municipal drinking-water systems	<i>Safe Drinking Water Act, 2002</i> , S.O. 2002, c. 32	11

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
<p>Regulation applies to those water systems defined as follows:</p> <ul style="list-style-type: none"> - “large municipal non-residential system” means a municipal drinking-water system that does not serve a major residential development and is capable of supplying drinking water at a rate of more than 2.9 litres per second - “large municipal residential system” means a municipal drinking-water system that serves a major residential development and serves more than 100 private residences - “large non-municipal non-residential system” means a non-municipal drinking-water system that is capable of supplying drinking water at a rate of more than 2.9 litres per second and does not serve (a) a major residential development, or (b) a trailer park or campground that has more than five service connections - “non-municipal seasonal residential system” means a non-municipal drinking-water system that (a) serves (i) a major residential development, or (ii) a trailer park or campground that has more than five service connections, and (b) does not operate to supply water to a development, trailer park or campground referred to in clause (a) for at least 60 consecutive days in, (i) every calendar year, or (ii) every period that begins on April 1 in one year and ends on March 31 in the following year - “non-municipal year-round residential system” means a non-municipal drinking-water system, other than a non-municipal seasonal residential system, that serves, (a) a major residential development, or (b) a trailer park or campground that has more than five service connections - “small municipal non-residential system” means a municipal drinking-water system that does not serve a major residential development, is not capable of supplying drinking water at a rate of more than 2.9 litres per second and serves a designated facility or public facility; - “small municipal residential system” means a municipal drinking-water system that serves a major residential development but serves fewer than 101 private residences - “small non-municipal non-residential system” means a non-municipal drinking-water system that is not capable of supplying drinking water at a rate of more than 2.9 litres per second, serves a designated facility or public facility and does not serve (a) a major residential development, or (b) a trailer park or campground that has more than five service connections 	<p>Drinking-Water Systems Regulation, O. Reg. 170/03 (made under the <i>SDWA</i>)</p>	<p>1(1)</p>
<p>Certain large municipal non-residential systems defined to be small municipal non-residential systems</p>	<p>Drinking-Water Systems Regulation</p>	<p>1(2), 1(4), 1(6)-(7),</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
<p>This Regulation does not apply to any of the following drinking-water systems unless the system serves a designated facility: 1. Large municipal non-residential systems, 2. Small municipal non-residential systems, 3. Non-municipal seasonal residential systems, 4. Large non-municipal non-residential systems, 5. Small non-municipal non-residential systems</p> <p>“Designated facility” means, (a) a children and youth care facility, (a.1) a children’s camp, (b) a delivery agent care facility, (c) a health care facility, (d) a school or private school, (e) a social care facility, or (f) a university, a college of applied arts and technology, or an institution with authority to grant degrees</p>	<p>Drinking-Water Systems Regulation</p>	<p>4.1</p> <p>1(1)</p>
<p>If a large municipal residential system or small municipal residential system obtains all of its water from certain a drinking-water systems, certain schedules do not apply to the those systems (subject to exceptions)</p> <p>Numerous other like exemptions, exceptions, and exceptions to exceptions</p>	<p>Drinking-Water Systems Regulation</p>	<p>5(1)</p> <p>5(2)ff</p>
<p>The requirements relating to the following parameters are set out in the schedules:</p> <ul style="list-style-type: none"> - Treatment - Operational Checks, Sampling and Testing - Adverse Test Results and Other Problems - Reports - Chemical Testing Parameters <p>The applicable schedule depends on whether the water system is</p> <ul style="list-style-type: none"> - large or small - residential or non-residential - municipal or non-municipal 	<p>Drinking-Water Systems Regulation</p> <p>Non-Residential and Non-Municipal Seasonal Residential Systems that Do Not Serve Designated Facilities, O. Reg. 252/05 (made under the <i>SDWA</i>)</p>	<p>4, Scheds.</p> <p>3</p>
<p>Drinking-water testing licence required for testing (subject to exceptions); laboratory must be accredited</p> <p>Water quality analysts’ certificates regime</p> <p>Certain tests do not require drinking-water testing licence</p>	<p><i>Safe Drinking Water Act, 2002</i></p> <p>Certification of Drinking-Water System Operators and Water Quality Analysts Regulation, O. Reg. 128/04 (made under <i>SDWA</i>)</p> <p>Drinking-Water Testing Services Regulation, O. Reg. 248/03</p>	<p>63, 64, 72</p> <p>16-21</p> <p>2</p>
<p>Director may impose a condition in an approval under s. 37 that provides relief from the duty of strict compliance with a regulatory requirement (incl. the sampling, testing or monitoring of water quality in a municipal drinking-water system or the reporting of the results)</p>	<p><i>Safe Drinking Water Act</i></p>	<p>38</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
A municipal drinking-water licence may contain conditions re sampling, testing and monitoring requirements	<i>Safe Drinking Water Act</i>	45
Prince Edward Island		
“Public drinking water supply facility” means a drinking water supply facility serving five or more households	Drinking Water and Wastewater Facility Operating Regulations, P.E.I.	1(1)(q)
“Semi-public drinking water supply system” means a drinking water supply system with a minimal or no distribution system that provides drinking water to the public from a system not connected to a public drinking water supply facility	Reg. EC710/04 (under the <i>Environmental Protection Act</i>)	1(1)(r)
“Small public drinking water supply facility” means a drinking water supply facility that serves 100 or fewer customers		1(1)(s)
The assessment of water quality monitoring results under this Part shall be based on the recommendations in the most recent version of the Guidelines for Canadian Drinking Water Quality, or, where no such guidelines exist, on the advice of the Chief Health Officer.	Drinking Water and Wastewater Facility Operating Regulations	8
<p>Owners of semi-public, small public, and public drinking water supply facilities must test and analyse water samples for</p> <ul style="list-style-type: none"> - presence of coliform bacteria and <i>E.coli</i> - general chemical analysis (for chemicals listed in Sch. C, s. 1) (alkalinity, calcium, chloride, copper, hardness, iron, lead, magnesium, manganese, nitrate, pH, potassium, phosphorous, sodium, sulphate, zinc) - detailed chemical analysis (for chemicals listed in Sch. C, s. 2) (incl. metals and other inorganic constituents, organic constituents) - free chlorine residual <p>Frequency depends on type of system</p>	Drinking Water and Wastewater Facility Operating Regulations	9-11
Tourism establishments not on municipal water must test water (generally) every three months	General Regulations, P.E.I. Reg. EC267/99 (under the <i>Tourism Industry Act</i>)	12
Quebec		
“Distribution system” means mains, a system of mains or equipment used to collect, treat, store or supply water intended for human consumption. In the case of a building connected to a waterworks system, all mains supplying the building and located downstream of the property limit or the shut-off valve are excluded	Regulation respecting the quality of drinking water, c. Q-2, r. 18.1	1

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
<p>The provisions of this Chapter (filtration and disinfection) do not apply to a distribution system that supplies only one residence; one or several enterprises; one residence and one or several enterprises (but do apply if the treatment system supplying one or more enterprises is modified or a water treatment system is installed) [Note: this is a treatment standard; not a water quality standard]</p> <p>The provisions of this Division (quality control of drinking water supplied by distribution systems) do not apply to a distribution system that supplies 20 persons or less, and do not apply to a distribution system that supplies only one or several enterprises</p> <p>Where this Regulation requires the number of persons supplied to be determined, the method in Schedule 0.1 must be used.</p>	<p>Regulation respecting the quality of drinking water</p>	<p>4</p> <p>10</p> <p>1</p>
<p>The treatment prescribed by this section must be able to eliminate at least 99.99 % of viruses, 99.9 % of <i>Giardia</i> cysts and 99 % of <i>Cryptosporidium</i> oocysts</p> <p>Filtration not mandatory for low turbidity waters</p> <p>Free residual chlorine of at least 0.3 mg/L required</p>	<p>Regulation respecting the quality of drinking water</p>	<p>5</p> <p>8</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
<p>Standards:</p> <ul style="list-style-type: none"> - Microbiological parameters (various) - inorganic substances: <ul style="list-style-type: none"> Antimony 0.006 µg/L Arsenic (As) 0.025 Barium (Ba) 1 Boron (B) 5 Bromates 0.010 Cadmium (Cd) 0.005 Chloramines 3 Copper (Cu) 1 Cyanides (CN) 0.2 Fluorides (F) 1.5 Lead (Pb) 0.01 Nitrates + nitrites 10 Nitrites (expressed as N) 1 Mercury (Hg) 0.001 Selenium (Se) 0.01 Total chromium (Cr) 0.05 Uranium (U) 0.02 - organic substances (incl. numerous pesticides): <ul style="list-style-type: none"> Benzene 5 µg/L Total trihalomethanes 80 - radioactivity: <ul style="list-style-type: none"> Cesium-137 10 Bq/L Iodine-131 6 Radium-226 0.6 Strontium-90 5 Tritium 7000 - turbidity (varies) 	<p>Regulation respecting the quality of drinking water</p>	<p>Sch. 1</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
<p>Every operator must take samples of the water he supplies to the public and forward them to a laboratory for analysis</p> <p>Testing requirements for following parameters:</p> <ul style="list-style-type: none"> - bacteriological - inorganic substances (listed in Schedule 1) - pH - organic substances (listed in Schedule 1) - turbidity - disinfection control 	<p><i>Environment Quality Act</i>, R.S.Q., c. Q-2</p> <p>Regulation respecting the quality of drinking water</p>	<p>45.1</p> <p>11-25</p>
<p>Testing methods and standards</p> <p>Further testing where exceedances</p> <p>Systems serving 20 persons or less systems exempted</p> <p>“Distribution system” means mains, a system of mains or equipment used to collect, treat, store or supply water intended for human consumption. In the case of a building connected to a waterworks system, all mains supplying the building and located downstream of the property limit or the shut-off valve are excluded”</p>	<p>Regulation respecting the quality of drinking water</p>	<p>30-33</p> <p>39</p> <p>10</p> <p>1</p>
<i>Saskatchewan</i>		
<p>The waterworks provisions apply to the following waterworks that supply water for a human consumptive use or hygienic use: (a) all municipal waterworks; (b) all municipal wells that are connected to a distribution system; (c) all water pipelines connected to a municipal waterworks, regardless of volume of water supplied or number of service connections; (d) all water pipelines, not otherwise connected to a municipal waterworks, serving 15 or more service connections; (e) all waterworks, other than those mentioned in clauses (a) to (d), with a design flow exceeding 18 cubic metres in any 24-hour period.</p>	<p>The Water Regulations, 2002, c. E-10.21, M. Reg 1</p>	<p>20(1)</p>
<p>Minister may adopt all or any part of the Guidelines for Canadian Drinking Water Quality for the purposes of this Division.</p>	<p>The Water Regulations, 2002</p>	<p>29(2)</p>
<p>Continuous disinfection by chlorination (or other approved means) required; free chlorine residual of > 0.1 mg/L required</p>	<p>The Water Regulations, 2002</p>	<p>30(5)-(6)</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Applicability, Standards and Testing)	Statute, Regulation, etc.	Section
<p>Every incorporated municipality shall provide and maintain one or more wells or other sources of water supply for the use of the inhabitants and shall be responsible for the safety of such supply</p> <p>Every well or other source of water supply, and every source of ice cut, for use for human consumption, or in connection with the manufacture for sale of food or drink, including storage, handling, intakes, transmission, and outlets shall be subject to inspection and testing by a Medical Health Officer or Health Officer</p>	<p>Regulations Respecting Public Health, C.O. 1958/079 (made under the <i>Public Health Act</i>)</p>	<p>17</p> <p>18</p>
<p>Although new drinking water regulations have not yet been enacted, Environmental Health Services requires that specific good public health practices be followed such as routine bacteriological and chemical sampling, and adoption of the health-related parameters of the Guidelines for Canadian Drinking Water Quality</p>	<p>Patricia Brooks (Drinking Water Program Coordinator)</p>	<p>-</p>

Inspection and Enforcement

Regulatory Requirement (Inspection and Enforcement)	Statute, Regulation, etc.	Section
<i>Alberta</i>		
<p>Director may issue an environmental protection order to the person responsible for a waterworks system where operation of the system may cause the potable water supplied by that system to be unfit for any of its intended uses, or may cause the concentration of a substance in the water to vary from the specified concentration for the substance set out in any applicable approval or code of practice or the regulations</p> <p>Where an inspector, an investigator or the Director is of the opinion that any potable water supplied by a waterworks system may cause an immediate and significant adverse effect on human life or health, he or she may issue an environmental protection order requiring emergency measures be taken</p> <p>Inspector, an investigator or the Director can also take emergency measures where immediate and significant adverse effect possible</p>	<p><i>Environmental Protection and Enhancement Act</i>, R.S.A. 2000, c. E-12</p>	<p>150(1)</p> <p>151</p> <p>152</p>
<p>Right of entry onto works by inspector and grounds</p> <p>Powers of inspector: require anything be operated or not operated, use or move any machine, etc., take samples, require the production of information, make copies, use any computer, make reasonable inquiries, take photos, seize anything in plain view</p> <p>Director may demand production of documents</p> <p>Justice's order to enter and inspect available, under certain circumstances</p> <p>Investigator has certain rights to enter and has all the powers of an inspector, and has seizure powers</p> <p>Director may issue an enforcement order, if in his/her opinion, that person has contravened this Act; including for suspension of an approval, shutting down a any activity, submission of a work plan, repair of works. Court order of compliance with order available</p> <p>Director may carry our Director's order if person fails to carry it out</p> <p>Offences</p> <p>Penalties: three classes of penalties (individual/corp.): \$250/\$1000, \$50,000/\$500,000, \$100,000/\$1,000,000. Directors and officers can be liable</p> <p>Administrative penalties available</p> <p>Civil remedies not affected by this Act</p>	<p><i>Water Act</i>, R.S.A. 2000, c. W-3</p>	<p>119(1)</p> <p>120(1), 122(1)</p> <p>121(1)</p> <p>125</p> <p>128-133</p> <p>135-138</p> <p>139</p> <p>142</p> <p>143, 146</p> <p>152</p> <p>153</p>
<p>Duty to comply with regulations</p>	<p>Potable Water Regulation, A. Reg. 277/2003</p>	<p>2</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Inspection and Enforcement)	Statute, Regulation, etc.	Section
<i>British Columbia</i>		
Drinking water officer may order a water supplier to prepare an assessment if s/he has reason to believe that it is necessary to identify threats to the drinking water, etc.	<i>Drinking Water Protection Act</i> , S.B.C. 2001, c. 9	19
Drinking water officer may make abatement and prevention orders where reason to believe that a drinking water health hazard exists or risk thereof		25
Drinking water officer can make order against anyone who the officer has reason to believe is in contravention of this Act or regulations		26
Drinking water officer's order can enable others to take the required action at the expense of the person the order was directed to		27
Drinking water officer may take direct action under certain circumstances		28
Private citizens may request investigation	<i>Drinking Water Protection Act</i>	29
Drinking water officer has same inspection powers as a medical health officer	<i>Drinking Water Protection Act</i>	40
Justice may issue warrant to enter and search property, under certain circumstances		41
Contravention of the Act an offence	<i>Drinking Water Protection Act</i>	45
Inspection powers of a health officer, medical health officer or public health inspector, to investigate health hazards	<i>Health Act</i> , R.S.B.C. 1996, c. 179	61
Health officer, medical health officer or public health inspector can make certain orders		63
Contravention of provisions of this Act (re water-taking and inter-basin transfers) an offence	<i>Water Protection Act</i> , R.S.B.C. 1996, c. 484	17
Officer has search powers where contravention of this Act suspected (primarily directed at water takings and transfers)		20
Fines for contravention of Act, regulation, order, direction or permit under the Act: (a) in the case of an offence that is not a continuing offence, a fine of not more than \$200 000 or imprisonment for not longer than 12 months, or both; (b) in the case of a continuing offence, a fine of not more than \$200 000 for each day the offence is continued or imprisonment for not longer than 12 months, or both.	<i>Drinking Water Protection Act</i>	45
<i>Manitoba</i>		
Office of Drinking Water set up to enforce the Act and regulations (not yet passed)	<i>The Drinking Water Safety Act</i> , S.M. 2002, c. 36	4(2)(a)

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Inspection and Enforcement)	Statute, Regulation, etc.	Section
<p>Drinking water safety orders may be issued by the director, a medical officer, or a drinking water officer (on certain grounds)</p> <p>Order may require anything necessary to deal with the risk, including investigate, conduct tests, monitor, construct, alter, replace, stop delivery of water, provide alternate water</p>	<i>The Drinking Water Safety Act</i>	11(10) 11(3)
In addition to a drinking water safety order, the Minister may order a water supplier to hire an interim manager	<i>The Drinking Water Safety Act</i>	13
<p>The director or a medical officer may enter and inspect any premises to determine compliance with this Act</p> <p>A Justice can also issue a warrant authorising such an inspection</p> <p>Further rights of entry and inspection for the director and/or a medical health officer and/or a drinking water officer in exigent circumstances, in a public health emergency, etc.</p>	<i>The Drinking Water Safety Act</i>	27
<p>Contravention of the Act or regulations is an offence</p> <p>Director and officer can also be liable</p> <p>Penalties: for an offence under the Act (summary conviction): (1) individuals: (first offence) a fine of not more than \$50,000, or imprisonment for a term of not more than 6 months, or both; (subsequent offence): to a fine of not more than \$100,000, or imprisonment for a term of not more than 1 year, or both; (2) corporations: for a first offence, to a fine of not more than \$500,000.; for each subsequent offence, to a fine of not more than \$1,000,000</p>	<i>The Drinking Water Safety Act</i>	31(1) 31(3) 31(4)
<i>NOTE: No regulations under the Drinking Water Safety Act have been passed yet</i>	-	-
<p>Inspection powers similar to those of the <i>Drinking Water Safety Act</i> are provided for by the <i>The Water Protection Act</i> (which chiefly concerns watershed management), including: Minister may designate officers, inspection powers of officers, rights of entry into dwellings, and seizure powers</p> <p>Contravention of Act an offence, special liability for directors and officers, fines provided for (different scales for individuals and corporations). Any person can report a violation (whistle-blower protection exists)</p>	<i>The Water Protection Act</i> , C.C.S.M., c. W65	30-32 33-34
<p>Person authorised by Minister has right of entry and right to take action to prevent pollution or contamination of water around the area of a well (where a person fails to take reasonable precautions to avoid polluting or contaminating the ground water around a well)</p> <p>Failure to comply with well water protection provisions of this Act an offence, subject to a fine</p>	<i>The Ground Water and Water Well Act (Manitoba)</i> , C.C.S.M., c. G110	10.1 11

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Inspection and Enforcement)	Statute, Regulation, etc.	Section
A medical officer of health, an inspector or Minister may order a person to desist from depositing filth near a watercourse, or order the person to remove the filth	Protection of Source Water Regulation, M. Reg. 326/88R (under <i>The Public Health Act</i>)	4
Where any public or private water supply system is found to be defective or the water unsatisfactory for domestic purposes, remedial measures shall be undertaken by the owner as directed by the medical officer of health	Water Supplies Regulation, M. Reg. 330/88R (under <i>The Public Health Act</i>)	7
Where, in the opinion of the Minister, the quality of the water of an existing public water system constitutes or may constitute a menace to public health, the Minister may order the person responsible to take remedial action	Water Works, Sewerage and Sewage Disposal Regulation, M. Reg. 331/88R (<i>under the Public Health Act</i>)	5
Director, an environment officer, a public health inspector or a drinking water officer may enter and inspect a facility and its equipment and records, in order to determine compliance with this Act	Water and Wastewater Facility Operators Regulation, M. Reg. 77/2003 (<i>The Environment Act</i>)	34
<i>Newfoundland and Labrador</i>		
Minister may designate inspectors, who have all the powers of a peace officer and search and seizure powers Private citizens may request investigation It is a condition of every licence and permit that inspections be permitted	<i>Water Resources Act</i> , SNL 2002, W-4.01	66, 67, 72 68 71
Minister may make orders where suspected contravention of Act, regulations or licence or permit Minister's remedies where non-compliance with order	<i>Water Resources Act</i>	76 79
The Minister may, as a result of the test results submitted to the Minister, direct an owner of other person responsible for an undertaking to take the action that the Minister considers necessary to remedy an adverse effect revealed by the test results	<i>Water Resources Act</i>	41(3)

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Inspection and Enforcement)	Statute, Regulation, etc.	Section
<p>Contravention of Act an offence</p> <p>Penalties (summary conviction):</p> <ul style="list-style-type: none"> - corporation or a municipal authority: (i) for the first conviction, to a fine of not less than \$1,000 and not more than \$1,000,000; (ii) for a subsequent conviction, to a fine of not less than \$4,000 and not more than \$1,000,000 - individuals: (i) for a first conviction, to a fine of not less than \$500 and not more than \$10,000, or to a term of imprisonment of not more than 3 months, or to both the fine and imprisonment; (ii) for a subsequent conviction, to a fine of not less than \$1,000 and not more than \$10,000, or to a term of imprisonment of not more than 6 months, or to both a fine and imprisonment <p>Also available:</p> <ul style="list-style-type: none"> - restitution/unjust enrichment - prohibition, mandatory injunction orders - posting of bonds - compensation to Minister for remedial action taken - conditional sentences 	<i>Water Resources Act</i>	90 91
Health officer/inspector's right of entry and inspection and to make orders, in the interest of public health	<i>Health and Community Services Act</i> , SNL 1995, c. P-37.1	5
Minister may order the removal of buildings and sewage facilities constructed in restricted areas	<i>Health and Community Services Act</i>	9
<i>New Brunswick</i>		
Ministerial orders available to control deposit of contaminants into water , to alter a waterworks, etc.	<i>Clean Water Act</i> , S.N.B., c. C-6.1	4
Minister may designate inspectors for the purposes of this Act, who have certain inspection powers	<i>Clean Water Act</i>	17
<p>Contravention of this Act an offence (summary conviction).</p> <p>Fines: (a) individuals: \$500 to \$50,000, and in default of payment is liable to imprisonment in accordance with the <i>Summary Convictions Act</i>; (b) persons other than individuals: \$1,000 to \$1,000,000</p> <p>Fines can be higher to deprive offender of unjust enrichment</p> <p>Every offence an absolute liability offence (except for individuals)</p> <p>Civil remedies not precluded</p>	<i>Clean Water Act</i>	25 26 27 30
Minister or inspector may inspect a waterworks and may take test and measurements	Water Quality Regulation, N.B. Reg. 82-126 (under the <i>CWA</i>)	16

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Inspection and Enforcement)	Statute, Regulation, etc.	Section
Minister may order changes to be made to waterworks by the operator where water quality may be a public menace; and where that person neglects or refuses to do so, Minister may obtain a court order	<i>Health Act</i> , S.N.B., c. H-2	15
Power of Minister, district medical health officer, inspector, etc. to enter onto any premises to examine same for the purposes prescribed	<i>Health Act</i>	16
Power of Minister, etc. to enlist assistance of peace officers		17
Power of medical health officer to order the disinfection or closing of a well found to unsafe or improperly constructed	General Regulation, N.B. Reg. 88-200 (under the <i>Health Act</i>)	219
Certificates of Approval typically provide: - an Inspector has the authority to inspect the facilities and carry out such duties as defined in the <i>Clean Environment Act</i> and/or the <i>Clean Water Act</i> - if, in the opinion of the Minister, this operation is unable to provide drinking water of adequate quality, the Minister, in consultation with the Minister of Health, may modify the Approval or issue a new Approval with conditions to improve the protection of public health - if, in the opinion of the Minister, the operation is causing unacceptable deterioration of environmental conditions, the Minister may modify the Approval or issue a new Approval with conditions to improve the protection of the environment	Tony J. Whalen (Senior Drinking Water Engineer, Water & Wastewater Management Section, N.B. Department of Environment)	-
<i>Northwest Territories</i>		
Commissioner and the Minister may, on behalf of the Government of NWT, enter into agreements with the Government of Canada (or a provincial government in conjunction with the Government of Canada) respecting water resources management	<i>Water Resources Agreements Act</i> , R.S.N.W.T. 1988, c.17 (Supp.)	2
The Medical Health Officer or a Health Officer can enter and examine public water supply premises; and can make recommendations or issue directives to the operator (where regulations not being observed); and must document where a public water supply does not comply with these regulations	Public Water Supply Regulations, R.R.N.W.T. 1990, c. P-23	4
Chief Medical Health Officer has closure powers		5
<i>Nova Scotia</i>		
Inspectors are deemed peace officers	<i>Environment Act</i> , S.N.S. 1994-95, c. 1	113
Rights of entry and inspection		119
Orders to enter and inspect also available		121
Private citizens may request investigation	<i>Environment Act</i>	115-16

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Inspection and Enforcement)	Statute, Regulation, etc.	Section
A condition of each every approval must be to permit inspections	<i>Environment Act</i>	117
Whistleblower protection	<i>Environment Act</i>	124
Ministerial control order available where reasonable and probably grounds for belief that the Act has been or will be contravened	<i>Environment Act</i>	125
Ministerial stop order also available		126
Factors to be considered before making an order, to guide Minister in deciding whether to issue any order	<i>Environment Act</i>	129
Civil remedies not affected by Act; conviction under Act is <i>prima facie</i> evidence of negligence; but some employees are protected from liability. Government can also recover some expenses	<i>Environment Act</i>	141-143
Offences under the Act incl. providing false information, contravening an approval, order or the Act, etc.	<i>Environment Act</i>	158
Penalties: - ss. 50(1), 67(1) or 68(1) 158(a), (e) or (g): liable to a fine of not less than \$1,000 to \$1,000,000 or imprisonment up to two years, or both - ss. 32, 50(2), 55, 59, 60, 62, 67(2), 68(2), 69, 71, 75, 76, 79, 83, 89, 115, 124 132, 158(b), (c), (d), (f) or (h): up to \$1,000,000 - s. 99: \$5,000 - other offences: \$500,000	<i>Environment Act</i>	159
- due diligence defence available; higher fines for disgorgement of profits available; director and officer liable; trustees and secured creditors <i>not</i> generally liable		160-165
Nunavut		
<i>No relevant provisions</i>		
Ontario		
Minister shall appoint a Chief Inspector to implement operational policies for inspections in relation to drinking water and drinking-water systems	<i>Safe Drinking Water Act, 2002</i> , S.O. 2002, c. 32	7(1)
Minister can designate provincial officers, who have powers of a peace officer	<i>Safe Drinking Water Act, 2002</i>	8
A provincial officer may, at any reasonable time and without a warrant or court order, conduct an inspection for the purposes of determining compliance with this Act or the regulations	<i>Safe Drinking Water Act, 2002</i>	81

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Inspection and Enforcement)	Statute, Regulation, etc.	Section
It is a condition in every licence, whether or not it is specified in the licence, that the owner and accredited operating authority of the system shall permit provincial officers to conduct inspections	<i>Safe Drinking Water Act, 2002</i>	45(3)
A provincial officer may issue an order to any person that the provincial officer reasonably believes is contravening or has contravened a provision of the SDWA or the associated regulations; a provision of an order made under the SDWA; or a condition in a certificate, permit, licence or approval issued or granted under the SDWA	<i>Safe Drinking Water Act, 2002</i>	105ff
Minister, Director can issue order where imminent health hazard	<i>Safe Drinking Water Act, 2002</i>	108-9
Offences	<i>Safe Drinking Water Act, 2002</i>	137ff
Fines:		141
- individual: (first conviction:) \$20,000/day; (subsequent conviction:) \$50,000/day, 1 yr imprisonment, or both		
- corporations: (first conviction) \$100,000/day; (subsequent conviction) \$200,000/day		
- higher fines for certain offences (incl. those that could have resulted in a drinking-water health hazard): (corporations) \$250,000/day; subsequent offences: \$500,000/day; (individuals:) \$50,000/day; subsequent conviction : \$100,000/day, 1 yr imprisonment, or both		142
- higher fines for certain offences (incl. offences that results in a drinking-water health hazard): (corporation:) \$6,000,000 on a first conviction, \$10,000,000 on each subsequent conviction. (individuals:) \$4,000,000/day to \$7,000,000/day on each subsequent conviction, to 5 yrs imprisonment, or both	143	
Orders available (order to prevent damage, restitution order)		146
Civil remedy not affected		148
The Director shall ensure that all municipal residential drinking-water systems are fully inspected through an annual cycle of inspections	Compliance and Enforcement, O. Reg. 242/05 (made under the <i>SDWA</i>)	2
In response to finding a deficiency during an inspection at a municipal residential drinking-water system, the Director shall ensure that a mandatory action is taken by the Ministry within 14 days (or immediately in certain circumstances)		3
Where the enforcement branch determines that an investigation is warranted, the branch shall conduct an investigation to determine if reasonable and probable grounds exist for taking enforcement action; public may apply for an investigation to be commenced		6(2), 7

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Inspection and Enforcement)	Statute, Regulation, etc.	Section
<p>Minister has power to investigate (and to delegate that power)</p> <p>Provincial officers may investigate and prosecute offences, issue orders where suspected contravention, enter and inspect</p> <p>Provincial officers may issue control orders, stop orders</p> <p>Contravention of Act an offence</p>	<p><i>Environmental Protection Act</i>, R.S.O. 1990, c. E.19</p>	<p>4(1),(3)</p> <p>5(5), 156-8</p> <p>7, 8, 124ff</p> <p>186</p>
<p>Provincial officers empowered with power to investigate and prosecute for the purpose of this Act; can make orders where reasonable belief of contravention of this Act or for preventative measures; has search in seizure powers, and can issue an order to any person who owns, manages or has control of a water works where in public interest to do so</p> <p>Minister may examine any surface waters or ground waters in to determine what pollution exists</p>	<p><i>Ontario Water Resources Act</i>, R.S.O. 1990, c. O.40</p>	<p>5(3)-(4), 15, 16, 16.2, 19-20</p> <p>29(2)</p>
<p>Penalties:</p> <p>- individuals: (other than an offence described in ss. 109 (1)) is liable, (a) (first conviction) \$50,000/day, (b) (subsequent conviction) \$100,000/day and one year imprisonment, (4) both (33).</p> <p>- corporations: (other than an offence described in ss. 109 (1)) is liable (a) (first conviction) \$250,000/day; (b) (subsequent convictions): \$500,000/day</p> <p>- serious offence: (corporations) fines vary from \$25,000 to \$6,000,000 on a first conviction; \$50,000 to \$10,000,000 on a second conviction; and \$100,000 to \$10,000,000 on subsequent convictions; (individuals) \$5,000 to \$4,000,000 on a first conviction, \$10,000 to \$6,000,000 on a second conviction, and \$20,000 to \$6,000,000 on subsequent convictions; 5 yrs imprisonment; or both</p>	<p><i>Ontario Water Resources Act</i></p>	<p>108</p>
<i>Prince Edward Island</i>		
<p>General investigation powers of Minister</p> <p>Minister may issue orders</p> <p>Environment officers have entry, search and inspection, seizure powers.</p> <p>Orders must be complied with</p> <p>Contravention of Act an offence; remedial powers of Minister</p>	<p><i>Environmental Protection Act</i>, R.S.P.E.I. 1988, c. E-9</p>	<p>3(1)(a)</p> <p>7(2)</p> <p>7(4), (8)</p> <p>29(4)</p> <p>32-34</p>
<p>Penalties:</p> <p>- individuals: \$200 - \$10,000, or imprisonment for 90 days, or both, and to pay such restitution</p> <p>- corporations: \$1,000 to \$50,000, or its directors to imprisonment for 90 days, or to both, and to pay restitution</p>	<p><i>Environmental Protection Act</i></p>	<p>32</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Inspection and Enforcement)	Statute, Regulation, etc.	Section
Chief Health Officer or a health officer can make orders where there is some circumstance that is or is likely to be dangerous or injurious to public health	<i>Public Health Act</i> , R.S.P.E.I. 1988, c. P-30	5
Quebec		
Contravention of certain provisions an offence; penal provisions and other sanctions	<i>Environment Quality Act</i> , R.S.Q., c. Q-2	106-109.1.2
Every functionary authorised by the Minister may at any reasonable time enter on land or a building (other than a private residence) to collect samples, install measuring apparatus, make analyses, examine records or examine the premises for the enforcement of this Act or regulations	<i>Environment Quality Act</i> , R.S.Q., c. Q-2	113
Minister (or designated functionaries) may require information necessary for the exercise of his duties from any person doing anything contemplated by this Act Minister (or designated functionaries) have search powers	<i>Environment Quality Act</i> , R.S.Q., c. Q-2	120 120.1
Contravention of certain provisions in regulations an offence Every person who, in contravention of s. 3, puts water intended for human consumption that does not comply with the standards of quality set out in Schedule 1, is liable to a fine of \$2 000 to \$20 000 in the case of a natural person; \$4 000 to \$40 000 in the case of a legal person Any contravention of ss. 11, 12, 14, 15, 17 to 19, 21, 30, 39, 40, 44.3 renders the offender liable to a fine of \$2 000 to \$25 000 in the case of a natural person; \$5 000 to \$60 000 in the case of a legal person Any other offence: \$500 to \$10 000; \$1 000 to \$20 000 Subsequent offences: fines doubled	Regulation respecting the quality of drinking water, c. Q-2, r. 18.1	45-49
Saskatchewan		
<i>NOTE: No general inspection powers of water works</i>		
The Saskatchewan Watershed Authority has the right to inspect certain works (primarily water diversion and control works)	<i>The Saskatchewan Watershed Authority Act, 2005</i> , S.S. c. S-35.03	68
Inspection powers of Saskatchewan Watershed Authority re wells		76
General inspection powers of Saskatchewan Watershed Authority		89
Offence to contravene this Act		90
Operator Certification Board may investigate applicants for an operating certificate	The Water Regulations, 2002, c. E-10.21, M. Reg 1	65

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Inspection and Enforcement)	Statute, Regulation, etc.	Section																				
<p>Administrative penalties available for breach of the regulations:</p> <table border="1" data-bbox="191 317 948 552"> <thead> <tr> <th data-bbox="191 317 418 384">Type of Contravention</th> <th colspan="3" data-bbox="418 317 948 348">Potential for Adverse Effect</th> </tr> <tr> <td data-bbox="191 384 418 426"></td> <th data-bbox="418 384 581 426">Major</th> <th data-bbox="581 384 743 426">Moderate</th> <th data-bbox="743 384 948 426">Minor</th> </tr> </thead> <tbody> <tr> <td data-bbox="191 426 418 468">Major</td> <td data-bbox="418 426 581 468">\$5,000</td> <td data-bbox="581 426 743 468">\$3,500</td> <td data-bbox="743 426 948 468">\$2,500</td> </tr> <tr> <td data-bbox="191 468 418 510">Moderate</td> <td data-bbox="418 468 581 510">\$3,500</td> <td data-bbox="581 468 743 510">\$2,500</td> <td data-bbox="743 468 948 510">\$1,500</td> </tr> <tr> <td data-bbox="191 510 418 552">Minor</td> <td data-bbox="418 510 581 552">\$2,500</td> <td data-bbox="581 510 743 552">\$1,500</td> <td data-bbox="743 510 948 552">\$1,000</td> </tr> </tbody> </table>	Type of Contravention	Potential for Adverse Effect				Major	Moderate	Minor	Major	\$5,000	\$3,500	\$2,500	Moderate	\$3,500	\$2,500	\$1,500	Minor	\$2,500	\$1,500	\$1,000	The Water Regulations, 2002	70-71
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<p>General environmental inspection and enforcement powers Where non-compliance with permit</p>	<p><i>Environmental Management and Protection Act, 2002, S.S. c. E-10.21</i></p>	<p>8, 69 30</p>																				
Yukon																						
<p>Minister may designate inspectors, who have certain powers of entry, search and inspection; and can direct persons to undertake corrective actions</p>	<p><i>Waters Act, S.Y. 2003, c. 19</i></p>	<p>33-35</p>																				
<p>A licensee who holds a type A licence who (a) contravenes or fails to comply with any condition of the licence, where the contravention or failure to comply does not constitute an offence under s. 39, or (b) without reasonable excuse, fails to furnish or maintain security as required under ss. 15(1), is guilty of an offence and liable on summary conviction to a fine of up to \$100,000 or to imprisonment for a term of up to one year, or to both.</p> <p>A licensee who holds a type B licence who (a) contravenes or fails to comply with any condition of the licence, where the contravention or failure to comply does not constitute an offence under s. 39, or (b) without reasonable excuse, fails to furnish or maintain security as required under ss. 15(1), is guilty of an offence and liable on summary conviction to a fine of up to \$15,000 or to imprisonment for a term of up to six months, or to both.</p>	<p><i>Waters Act</i></p>	<p>38-39</p>																				
<p>Every source of water supply is subject to inspection by the a Medical Health Officer or Health Officer</p>	<p>Regulations Respecting Public Health, C.O. 1958/079 (made under the <i>Public Health Act</i>)</p>	<p>18</p>																				
<p>Environmental Health Officers conduct routine inspections and ensure that any deficiencies are rectified</p>	<p>Patricia Brooks (Drinking Water Program Coordinator)</p>																					

Emergency Plans

Regulatory Requirement (Emergency Plans)	Statute, Regulation, etc.	Section
Alberta		
Critical spare parts must be kept on hand	Potable Water Regulation	9(2)
The system owner/operator must include emergency response planning in the operation program	Standards and Guidelines for Municipal Waterworks, Wastewater and Storm Drainage Systems (January 2006)	1.6.1
Large water systems should undertake a Security Vulnerability Self Assessment every two years (5 years for small systems), to be submitted to AENV by the owner		2.7.1
The system owner/operator should develop an Emergency Reaction Plan (ERP) (per CSA z 731) based on the vulnerability assessment		2.7.2
Measures and responses to assure physical security should be prepared; including considering appointing a senior employee as security manager, training, access control, detection systems, etc.		2.7.3
SCADA (supervisory control and data acquisition) security requirements		2.7.4
Fluoridation program may be suspended during certain repair and maintenance		1.5.4.9
Any failure or shut-down of the equipment use for disinfection must be reported immediately to the Director and the Regional Health Authority	Potable Water Regulation, A. Reg. 277/2003	11
British Columbia		
Water supplier must have a written emergency response and contingency plan in accordance the regulations.	<i>Drinking Water Protection Act</i> , S.B.C. 2001, c. 9	10(1)
Drinking water officer can order a water supplier to review and update the plan		10(2)
The emergency response and contingency plan must be made public in accordance with the regulations	<i>Drinking Water Protection Act</i>	15(a)
An emergency response and contingency plan must include water supplier information, emergency contacts, the steps to be followed in an emergency, public notice protocols, etc.	Drinking Water Protection Regulation, B.C. Reg. 200/2003	13
Manitoba		
The owner of a facility shall ensure that the facility has a documented emergency response plan acceptable to the director, and that the plan is reviewed at least once every two years (or as the director may require)	Water and Wastewater Facility Operators Regulation, M. Reg. 77/2003 (under <i>The Environment Act</i>)	29
The person establishing a public water system must submit to the Minister plans, specification, and any other information in connection with the proposal that the Minister may call for	Water Works, Sewerage and Sewage Disposal Regulation, M. Reg. 331/88R (<i>Public Health Act</i>)	2(1)

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Emergency Plans)	Statute, Regulation, etc.	Section
Minister has broad powers to make drinking water safety orders	<i>The Drinking Water Safety Act</i> , S.M. 2002, c. 36	11-13
Medial officer (or Minister under advice of) may issue boil water advisories	<i>The Drinking Water Safety Act</i>	17
If a laboratory conducts an analysis of a sample from a public or semi-public water system and the results indicate a serious health risk or non-compliance with a drinking water standard, the lab must immediately notify the director, a medical officer or a drinker water officer; director can then order water supplier to take remedial action	<i>The Drinking Water Safety Act</i>	22(2), 23(1)
Similar provisions exist for private water systems		24
<i>Newfoundland and Labrador</i>		
Minister may order the preparation and submission of a contingency plan	<i>Water Resources Act</i> , SNL 2002, W-4.01	76(3) (iv)
Minister may suspend or alter a permit in an emergency	<i>Water Resources Act</i>	51
A municipal council may establish a committee and adopt a plan to deal with all matters relating to emergency measures	<i>Emergency Measures Act</i> , R.S.N.L. 1990, c. E-8	6(1)
<i>New Brunswick</i>		
Minister may make certain orders upon determining that a public water supply system poses a significant health risk	<i>Clean Water Act</i> , S.N.B., c. C-6.1	13(3)- (5)
Emergency measures plans addressed in general	<i>Emergency Measures Act</i> , S.N.B. 1978, c. E-7.1	<i>Generally</i>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Emergency Plans)	Statute, Regulation, etc.	Section
<p>Certificates of Approval require approval holder to maintain a Contingency Plan, which is to address:</p> <ul style="list-style-type: none"> - steps to be taken in the event of a water treatment plant or disinfection equipment failure, adverse test result, water main break, pressure drop or security breach (incl. evaluating risk to water quality, evaluating backflow potential, boil orders, notification of residents, and system flushes) - interdiction measures (incl. administrative aspects, such as emergency contacts and public notification procedure; and technical aspects, such as resampling, checking chlorine residuals and adjusting chlorine dosage, flushing water mains and checking equipment) - measures to be taken in case of an environmental event, such as a hazardous materials spill (incl. evaluating the risk to drinking water system, alerting appropriate authorities and notifying the cleanup company) - power outage measures (incl. short-term aspects, such as reservoir capacity, auxiliary power, etc.; and long-term aspects, such as auxiliary power) - natural disaster measures (incl. response to flooding or rain, ice, or snow storms) - where the operator is unable to carry out normal duties (i.e., provision of a backup operator) 	<p>Tony J. Whalen (Senior Drinking Water Engineer, Water & Wastewater Management Section, N.B. Department of Environment)</p>	<p>-</p>
<i>Northwest Territories</i>		
<p>Commissioner and the Minister may, on behalf of the Government of NWT, enter into agreements with the Government of Canada (or a provincial government in conjunction with the Government of Canada) respecting water resources management</p>	<p><i>Water Resources Agreements Act</i>, R.S.N.W.T. 1988, c.17 (Supp.)</p>	<p>2</p>
<i>Nova Scotia</i>		
<p>The requirement for having emergency response plans or contingency plans can be found in the terms and conditions of a water treatment plant's operating approval</p>	<p>John Eisnor (Facilities Engineer, Water and Wastewater Branch)</p>	<p>-</p>
<i>Nunavut</i>		
<p><i>No relevant provisions</i></p>		
<i>Ontario</i>		
<p>Minister may issue certain orders if the Minister is of the opinion that an imminent drinking-water health hazard exists or that the failure of a laboratory endangers or is likely to endanger public health</p>	<p><i>Safe Drinking Water Act, 2002</i>, S.O. 2002, c. 32</p>	<p>108</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Emergency Plans)	Statute, Regulation, etc.	Section
Director may issue certain orders in aforementioned circumstances, incl. to provide the users of the system with an alternative supply of drinking water, give public notice, operate system in a certain way, and to impose sampling or testing requirements	<i>Safe Drinking Water Act, 2002</i>	109
Director may issue a notice of emergency response under certain emergency circumstances, which can direct the Ontario Clean Water Agency or a person to do certain things in accordance with the directions specified in the notice	<i>Safe Drinking Water Act, 2002</i>	110
Ontario Clean Water Agency employee may accompany a Provincial Officer on an inspection if the Director has issued or is considering issuing a notice of emergency response	<i>Safe Drinking Water Act, 2002</i>	81(7)
Warning notice of potential problems must be posted at designated facilities under certain circumstances	Drinking-Water Systems Regulation, O. Reg. 170/03 (under the <i>SDWA</i>)	Sch. 19
Every municipality must formulate an emergency plan governing the provision of necessary services during an emergency	<i>Emergency Management and Civil Protection Act</i> , R.S.O. 1990, c. E.9	3
<i>Prince Edward Island</i>		
Municipalities that own a public drinking water supply facility must develop a well field protection plan for the protection of the principal sources of drinking water supply of the municipality, including any well fields or wells that collectively provide two-thirds or more of the overall drinking water demand of the serviced area of the municipality A well field protection plan must include an emergency response plan or contingency plan to address accidental releases of contaminants or other unplanned events that may threaten the quality of ground water within any capture zone that has been identified by the Department for the well field	Drinking Water and Wastewater Facility Operating Regulations, P.E.I. Reg. EC710/04 (under the <i>Environmental Protection Act</i>)	20(1) 20(3)(b)
Emergency measures plans regime	<i>Emergency Measures Act</i> , R.S.P.E.I. 1988, c. E-6.01	<i>Generally</i>
<i>Quebec</i>		
Every continuous disinfection treatment facility must be equipped with standby equipment to ensure disinfection in case of emergency	Regulation respecting the quality of drinking water, c. Q-2, r. 18.1.	9
Regional county municipalities and the Kativik Regional Government must, in conjunction with the local municipalities that are part thereof establish civil protection plans	<i>Civil Protection Act</i> , R.S.Q. c. S-2.3	16

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Emergency Plans)	Statute, Regulation, etc.	Section
Municipal plan of disaster prevention and emergency measures must address water shortages	Regulation respecting municipal plans of disaster prevention and emergency measures, R.Q. c. P-38.1, r.2 (made under <i>An Act respecting the Protection of persons and property in the event of disaster</i>)	2(1), Sch. 1
In case of treatment failure, the ministry must be informed immediately, as well as the public health director	Regulation respecting the quality of drinking water	35.1
Government departments and bodies and local municipalities must report to the appropriate public health director or to the national public health director any threats to the health of the population that come to their knowledge or any situations which cause them to believe on reasonable grounds that the health of the population is threatened	<i>Public Health Act</i> , R.S.Q. c. S-2.2	92
<i>Saskatchewan</i>		
Waterworks must have in place a written quality assurance and quality control policy that is satisfactory to the Minister	The Water Regulations, 2002, c. E-10.21, M. Reg 1	43(1)
Every permittee of a waterworks (and employees, contractors, etc.) must immediately report to the Minister any upset condition, bypass condition, etc. that could adversely affect water quality The persons must immediately report any instance where disinfection equipment fails, or the required level of disinfection is not achieved	The Water Regulations, 2002, E-10.21, Reg. 1	37(1)
<i>Yukon</i>		
<i>No relevant provisions</i>		

Information Reporting

Regulatory Requirement (Information Reporting)	Statute, Regulation, etc.	Section
<i>Alberta</i>		
A waterworks system must meet at least the minimum waterworks performance standards set out in the Guidelines for Canadian Drinking Water Quality	Potable Water Regulation, A. Reg. 277/2003	7(1)
Any failure or shut-down of the equipment use for disinfection must be reported immediately to the Director and the Regional Health Authority	Potable Water Regulation, A. Reg. 277/2003	11
A person responsible for a waterworks system shall submit returns and reports respecting the construction, operation or reclamation of the system as required in an approval or the applicable code of practice (or as required by the Director)	Potable Water Regulation, A. Reg. 277/2003	16(1)
Director may require re-submission of unsatisfactory samples	Potable Water Regulation, A. Reg. 277/2003	17(4)
Reporting requirements: - contraventions: owner shall immediately report to Director (with specified particulars) any contravention of the Approval or the Code, either by telephone or other approved method; also shall report any structural or equipment malfunction - monthly: owner shall compile monthly reports including all analytical results from parameters required to be tested - annual: owner shall submit to the Director a summary of the monthly reports (average, maximum and minimum of the parameters), description of problems and corrective action taken	Standards and Guidelines for Municipal Waterworks, Wastewater and Storm Drainage Systems (January 2006)	1.11.2 1.11.2.1 1.11.2.2 1.11.2.3
Reporting guidelines for water distribution systems	<i>Waterworks Systems Consisting Solely of a Water Distribution System</i>	P. 9
<i>British Columbia</i>		
A water supplier must immediately notify the drinking water officer of the supplier considers there is a threat that is likely to result in the drinking water not meeting the standards	<i>Drinking Water Protection Act</i> , S.B.C. 2001, c. 9	13
The drinking water officer may request or order a water supplier to give public notice under certain circumstances	<i>Drinking Water Protection Act</i>	14
Laboratory must report test results to the drinking water officer and the water supplier If a monitoring & testing parameter is exceeded, the laboratory must immediately give notice to the water supplier, the drinking water officer and the medical health officer	<i>Drinking Water Protection Act</i>	11(2) 12

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Information Reporting)	Statute, Regulation, etc.	Section
Drinking water officer can request laboratory to provide a report of all water samples and results for a water supplier	Drinking Water Protection Regulation, B.C. Reg. 200/2003	8(f)
Immediate reporting (under s. 12 of the Act) required where Sched. A standards not met (subject to exceptions)	Drinking Water Protection Regulation	9
Public notification required where water not potable	Drinking Water Protection Regulation	10
Operating permit may contain terms and conditions requiring information reporting	<i>Drinking Water Protection Act</i>	8(3)(f)
Information that must be made public by a water supplier in accordance with the regulations: emergency plan, the results of monitoring and testing, its current assessment and response plan	<i>Drinking Water Protection Act</i>	15
Who must provide information, where multiple owners	<i>Drinking Water Protection Act</i>	17
Water supplier must prepare and assessment if required by the regulations or ordered by the drinking water officer (purpose: to inventory and assess source water (incl. land use), the system's operations, monitoring requirements, threats to drinking water)	<i>Drinking Water Protection Act</i>	18
Grounds for drinking water officer's order re assessments		19
Public notice must be given of assessment, and assessment made public		21
Assessment response plan required under certain circumstances (to identify measures to address threats identified in assessment)	<i>Drinking Water Protection Act</i>	22
The Provincial health officer must prepare an annual report for the legislature, report to Minister any situation seriously impeding the protection of public health due to government action/inaction	<i>Drinking Water Protection Act</i>	4.1-4.2
Certain persons required to report threats to drinking water to the drinking water officer (incl. persons required to report spills under other statutes, and members of the civil service)	<i>Drinking Water Protection Act</i>	24
Public notice may be required for hazard abatement and prevention orders	<i>Drinking Water Protection Act</i>	25(3)(f)
Person can be required to give public notice or report information by order (where contravention suspected)	<i>Drinking Water Protection Act</i>	26
Notification of habitat officer required where a person makes a change in or about a stream	Water Regulation, B.C. Reg. 204/88	40

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Information Reporting)	Statute, Regulation, etc.	Section
<i>Manitoba</i>		
Every 5 years, every public or semi-public water supplier must conduct an assessment of the water system’s infrastructure and its water supply source, in accordance with the regulations	<i>The Drinking Water Safety Act</i> , S.M. 2002, c. 36	9
Every public and semi-public water supplier must sample and submit results bacteriological and other prescribed parameters from the water system to the director, in accordance with the regulations	<i>The Drinking Water Safety Act</i>	22(1)
Laboratory must report serious health risks and exceedances to the director, medical officer or drinking water officer	<i>The Drinking Water Safety Act</i>	22(2)
<i>NOTE: No regulations under the Drinking Water Safety Act have been passed yet</i>	-	-
Certain information must be submitted as a prerequisite to establishing a public water system	Water Works, Sewerage and Sewage Disposal Regulation, M. Reg. 331/88R (<i>under the Public Health Act</i>)	2(1)
Before commencing operations as a facility, the owner must prepare of table of organisation for the director	Water and Wastewater Facility Operators Regulation, M. Reg. 77/2003 (<i>under The Environment Act</i>)	24
<i>Newfoundland and Labrador</i>		
Current practice is that the province posts DWQ results to it website and also lists all boil water orders. (Since it is the province that does DWQ monitoring – there is no need for “reporting”)	Martin Goebel (Director, Water Resources Management Division; Department of Environment and Conservation)	-
<i>New Brunswick</i>		
If an owner of a regulated water system submits water for testing at a laboratory other than the Provincial Analytical Services, the laboratory shall transmit the results from the tests to the Minister	Potable Water Regulation, N.B. Reg. 93-203 (<i>under the Clean Water Act</i>)	9(2)
Person contemplating establishing a waterworks must submit to the Minister the plans, specifications, engineer’s reports, estimates, a source water analysis, and the plans and specifications	<i>Health Act</i> , S.N.B., c. H-2	14
Violation of term or condition of an approval must be reported	Water Quality Regulation, N.B. Reg. 82-126 (<i>under the Clean Environment Act</i>)	11
The operator must keep a record of all tests required under the regulation and make them available at any time to an inspector	General Regulation, N.B. Reg. 88-200 (<i>under the Health Act</i>)	225(3)

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Information Reporting)	Statute, Regulation, etc.	Section
<p>Certificates of Approval require approval holders to submit annual reports to the Department of Environment, which must address:</p> <ul style="list-style-type: none"> - sampling plan analytical results (microbiological, organic & inorganic) - monitoring results (daily/ weekly/ monthly data such as free chlorine residual, turbidity, pH, temperature, Mn, Fe, etc.) - water production (peak daily and monthly production) - annual chemical consumptions (chlorine and fluoride) - operational highlights (significant incidents & system improvements, changes or additions) - summary of backflow prevention and cross-connection control activities - summary of flushing activities - operator information (training, certification & staffing changes) - public relations (notifications, public education & complaints) 	<p>Tony J. Whalen (Senior Drinking Water Engineer, Water & Wastewater Management Section, N.B. Department of Environment)</p>	<p>-</p>
<p><u>Environmental Emergencies</u></p> <p>Certificates of Approval require approval holders to immediately notify the Department of Environment when</p> <ul style="list-style-type: none"> - there has been, or is likely to be, an unauthorized release of solid, liquid or gaseous material including wastewater, petroleum or hazardous materials to the environment, or - a violation of the Water Quality Regulation or any Approval is of such a magnitude or period that there is concern for the health or safety of the general public, or there could be significant harm to the environment <p><u>Public Health Emergencies</u></p> <p>Certificates of Approval require approval holders to immediately notify the Department of Health when a deterioration of the water quality in the distribution system is of such a magnitude or duration that there is concern for the health and/or safety of the general public (for example, when <i>E. coli</i> detected in a drinking water sample, a stoppage or malfunction of a continuous disinfection system; significant losses of water pressure)</p>	<p>Tony Whalen (Senior Drinking Water Engineer)</p>	<p>-</p>
<i>Northwest Territories</i>		
<p>Commissioner and the Minister may, on behalf of the Government of NWT, enter into agreements with the Government of Canada (or a provincial government in conjunction with the Government of Canada) respecting water resources management</p>	<p><i>Water Resources Agreements Act</i>, R.S.N.W.T. 1988, c.17 (Supp.)</p>	<p>2</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Information Reporting)	Statute, Regulation, etc.	Section
Daily, monthly and annual water sampling procedures have been developed (but not implemented yet) Environmental Health Officers keep records of all boil water advisories	“Managing Drinking Water Quality in NWT: A Preventative Framework Strategy” (May 2005)	P. 13
A publicly accessible drinking water quality database with lab results and boil water advisories is operational: http://www.pws.gov.nt.ca/Water/Homepage.asp	Duane Fleming (Chief Environmental Health Officer, Stanton Territorial Health Authority)	-
<i>Nova Scotia</i>		
An owner must immediately notify the Minister or an administrator as soon as they are aware of any of an exceedance of the Guidelines for Canadian Drinking Water Quality, raw water contamination, etc.	Water and Wastewater Facilities and Public Drinking Water Supplies Regulation, N.S. Reg. 186/2005 (made under the <i>Environment Act</i>)	34
A municipal water supply’s operating approval also stipulates reporting requirements	John Eisnor (Facilities Engineer, Water and Wastewater Branch)	-
<i>Nunavut</i>		
<i>No relevant provisions</i>		
<i>Ontario</i>		
Every owner of a municipal drinking-water system shall provide a copy of all operational plans for the system to the Director	<i>Safe Drinking Water Act, 2002</i> , S.O. 2002, c. 32	16(2) [not yet in force]
Adverse results must be reported by the laboratory, in accordance with the regulations, and must also report result to accredited operating authority, or to the owner if no such authority exists. (For practical purposes, current practice is to report to the owner, as the accreditation paradigm is to be developed as part of the Municipal Drinking Water License program, which has not yet been rolled out)	<i>Safe Drinking Water Act</i> Lisa Trevisan (Sr. Drinking Water Advisor, Office of the ADM/Chief Drinking Water Inspector, Drinking Water Management Division)	18 -
A municipal drinking-water licence may contain conditions re reporting and notice requirements	<i>Safe Drinking Water Act</i>	45
Reporting requirements (for adverse test results and other problems) set out in schedules, and depend on the size and classification of the system	Drinking-Water Systems Regulation, O. Reg. 170/03 (made under the <i>SDWA</i>)	4
	Non-Residential and Non-Municipal Seasonal Residential Systems that Do Not Serve Designated Facilities, O. Reg. 252/05 (made under the <i>SDWA</i>)	3

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Information Reporting)	Statute, Regulation, etc.	Section
System information must be submitted to the Director	Drinking-Water Systems, O. Reg. 170/03	10
Annual reports must be prepared and submitted to the Director		11
Certain test results must be reported by the lab to the Director	Drinking-Water Testing Services Regulation, O. Reg. 248/03	12
Both the Minister of the Environment and the Chief Drinking Water Inspector required to produce reports about province’s drinking water that are made publicly available. (Minister provides report to the Legislative Assembly; Chief Drinking Water Inspector provides a separate report to the Minister that is subsequently released to the public)	<i>Safe Drinking Water Act, 2002</i> , S.O. 2002, c. 32	3(4) [not yet in force], 7(2)
<i>Prince Edward Island</i>		
All public and semi-public drinking water supply systems must be registered with the Department	Drinking Water and Wastewater Facility Operating Regulations, P.E.I. Reg. EC710/04 (under the <i>Environmental Protection Act</i>)	7
Where water quality is analyzed by a laboratory other than the PEI Analytical Laboratories, the owner shall submit the results of the analysis to the Department within 5 working days of receipt	Drinking Water and Wastewater Facility Operating Regulations, P.E.I. Reg. EC710/04	13(2)
Where water quality is analyzed by a laboratory other than the PEI Analytical Laboratories and where the results of the analysis indicate the presence of <i>E. coli</i> , the owner shall notify the department immediately		13(3)
The owner of a public drinking water supply facility must report a summary of the results of water quality analyses to its customers annually		14(1)
Tourism establishments must notify Department of Health and Social Services where water tests show water not for human consumption	General Regulations, P.E.I. Reg. EC267/99 (<i>Tourism Industry Act</i>)	13
<i>Quebec</i>		
All the analysis results must be sent electronically to the ministry (even if compliant with the standards)	Regulation respecting the quality of drinking water, c. Q-2, r. 18.1	33
Laboratory must inform person in charge of distribution system, the Minister and to the regional public health director if fecal coliform bacteria or <i>E. coli</i> present in water, or if any other Sch. 1 standard exceeded	Regulation respecting the quality of drinking water	35
Person in charge of distribution system must notify the Minister and the regional public health director if failure of coagulation system, the sedimentation system, the filtering system, the disinfection system, etc.	Regulation respecting the quality of drinking water	35.1

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Information Reporting)	Statute, Regulation, etc.	Section
Person in charge of distribution system must notify the Minister and the regional public health director of planned remedial measures where Sched. 1 standards exceeded, and must notify users if fecal coliform bacteria or <i>E. coli</i> present in water (by sending individual written notices or by any other appropriate means, and informing users that their water is unfit for consumption and of the precautions to be taken, including boiling water)	Regulation respecting the quality of drinking water	36
Must notify connected distribution system of certain exceedances	Regulation respecting the quality of drinking water, c. Q-2, r. 18.1	37, 39.1, 40
Ministère du Développement durable, de l'Environnement et des Parcs must report every 5 years to the government about implementation of the regulation and opportunity to modify standards	Regulation respecting the quality of drinking water	54
Saskatchewan		
Minister is responsible for the collection of data on water quality in Saskatchewan. Minister may set up equipment to do so, or require a municipality, etc. to do so	<i>Environmental Management and Protection Act, 2002, S.S. c. E-10.21</i>	17(1)
Any laboratory that conducts any analysis of water samples for a waterworks must report the results to the permittee and the Minister If a sample shows that the total fecal coliform standard has been exceeded, the laboratory must notify the Minister and permittee in a particular manner On being so notified, the permittee must report to the Minister the measures it intends to take to remedy the situation Testing must be done after the completion, alteration, extension or repair of part of a waterworks Annual reporting to consumers also required	The Water Regulations, 2002, c. E-10.21, M. Reg 1	39(7) 39(8) 39(9) 40 44
The permittee of a waterworks shall ensure an independent engineering assessment is completed for certain aspects of the waterworks at least once every five years, and the findings must be reported to the Minister	The Water Regulations, 2002, c. E-10.21, M. Reg 1	35
Permittee of waterworks and every employee, agent or contractor engaged by a permittee shall immediately report to the Minister and known or anticipated upset condition that could adversely affect the quality of the water produced; and must immediately report failure of disinfection equipment or inadequate disinfection	The Water Regulations, 2002	37
Owner or operator of a public water supply must immediately notify the local authority of any situation that may affect the safety of the public water supply	Health Hazard Regulations, R.R.S. c. P-37.1, Reg. 10	9
<i>NOTE: further information reporting requirements may be set forth in permit (issued pursuant to Environmental Management and Protection Act, 2002, S.S. c. E-10.21, s. 23)</i>		

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Information Reporting)	Statute, Regulation, etc.	Section
<i>Yukon</i>		
<i>No relevant provisions</i>		

Design Approvals

Regulatory Requirement (Design Approvals)	Statute, Regulation, etc.	Section
<i>Alberta</i>		
Approval or registration required to commence or carry out activities designated in regulation	<i>Environmental Protection and Enhancement Act</i> , R.S.A. 2000, c. E-12	60, 61
An approval is required for the construction, operation or reclamation of a waterworks system that uses as the source of its water supply surface water or groundwater other than high quality groundwater, and that serves a municipality (etc.), is a private utility or a watering point, or certain systems owned by a regional services commission.	Activities Designation Regulation, Alta. Reg. 276/2003 (under the EPEA)	5(1), Sched. 1, Div. 5 (a)
A registration is required for the construction, operation or reclamation of a waterworks system that uses high quality groundwater as the source of its water supply and that serves a municipality (etc.), as is a private utility, or certain systems owned by a regional services commission	Activities Designation Regulation, Alta. Reg. 276/2003 (under the EPEA)	5(2), Sched. 2, Div. 5 (a), ... (b), ... (c), ...
A registration is required for the construction, operation or reclamation of a water distribution system		
A registration is required for the construction, operation or reclamation of a waterworks system (i) that serves a hamlet or a municipal development, (ii) that uses high quality groundwater as the source of its water supply, and (iii) that has (A) 15 or more service connections, or (B) 3 or more kilometres of water distribution system		
A registration is required for the construction, operation or reclamation of a water distribution system that serves a hamlet or a municipal development that has 15 or more service connections or 3 or more kilometres of water distribution system		(d)
The Minister/Director can construct and operate [water diversion] works, and initiate and carry out a an undertaking [relating to water diversion]	<i>Water Act</i> , S.A. 2002, c. W-3	84-85
A waterworks must be designed so that it meets as a minimum the requirements of the Guidelines for Canadian Drinking Water Quality (or other standard specified by the Director)	Potable Water Regulation, A. Reg. 277/2003	4(1)
Engineer's stamp and signature required	Potable Water Regulation	4(2)
Director must be informed of intention to extend or expand a works (which must also comply with Guidelines for Canadian Drinking Water Quality)	Potable Water Regulation	5

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Design Approvals)	Statute, Regulation, etc.	Section
<p>Design standards aspects include, for surface water:</p> <ul style="list-style-type: none"> - sand filtration (coagulation, flocculation, sedimentation, filtration, backwash), membrane filtration - pre-treatment (screening, oxidation, adsorption, coagulation) - system configuration, equipment (pumps, valves, pipes, chemical feed system flow meters) - waste stream disposal - disinfection (chlorine, UV) - fluoridation - repair and maintenance 	Standards and Guidelines for Municipal Waterworks, Wastewater and Storm Drainage Systems (January 2006)	1.5
<p>Registration of water distribution systems required</p> <p>Waterworks distribution system design requirements</p>	<i>Waterworks Systems Consisting Solely of a Water Distribution System</i>	P. 5 P. 6
Guideline for which waterworks facilities require registration	<i>Waterworks Systems Using High Quality Groundwater</i>	P. 4
<i>British Columbia</i>		
<p>Construction permits (which may include terms and conditions) are required for construction/alteration of water supply systems</p> <p>For systems under 500 people approval can be waived.</p>	<i>Drinking Water Protection Act</i> , S.B.C. 2001, c. 9	7
<p>Construction permits may be issued by a drinking water officer or an approved engineer</p> <p>No construction permit necessary for emergency repairs</p>	Drinking Water Protection Regulation, B.C. Reg. 200/2003	6
Systems regulated as water utilities require additional construction approval from the Ministry of the Environment, who considers fire fighting flow and other considerations unrelated to mandate of Health	Barry Boettger (Provincial Drinking Water Officer)	-
<i>Manitoba</i>		
No person shall construct or begin any construction of or alter a public or semi-public water system except under the authority of a permit to do so issued by the director in accordance with the regulations (but minor alteration may not require a permit)	<i>The Drinking Water Safety Act</i> , S.M. 2002, c. 36	7
NOTE: No regulations under the Drinking Water Safety Act have been passed yet	-	-

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Design Approvals)	Statute, Regulation, etc.	Section
<p>No person shall construct, operate or alter a public water system without first obtaining the Minister’s certificate that the Minister has approved of the plans, specifications, information about the potential supply source and other information submitted by the person contemplating establishing the public water system</p> <p>Minister can require changes in plans or specifications</p>	<p>Water Works, Sewerage and Sewage Disposal Regulation, M. Reg. 331/88R (<i>under the Public Health Act</i>)</p>	<p>2(2)</p> <p>4</p>
<p>No person shall construct or operate a non-potable public water system unless approved by the Minister</p>	<p>Water Works, Sewerage and Sewage Disposal Regulation</p>	<p>3</p>
<p>All facilities must be classified as a small system or class 1 to 4</p>	<p>Water and Wastewater Facility Operators Regulation, M. Reg. 77/2003 (<i>The Environment Act</i>)</p>	<p>2-10</p>
<i>Newfoundland and Labrador</i>		
<p>A person must submit to the Minister plans, specs, etc, before the construction of waterworks, and cannot begin the waterworks until a permit is granted</p> <p>Minister may require further information or investigation, grant the permit (with terms and conditions), direct alterations, etc.</p>	<p><i>Water Resources Act</i>, SNL 2002, W-4.01</p>	<p>37</p>
<p>A person must obtain a permit from the Minister to carry out an undertaking for which a permit is required by this Act or regulations; and the Minister may grant such a permit with such terms and conditions as the Minister considers necessary</p> <p>Terms and conditions of permit may be amended</p>	<p><i>Water Resources Act</i></p>	<p>48</p> <p>49</p>
<p>Guidelines for the Design, Construction, Operation and Maintenance of Water and Sewer Works is completed in draft form and has been circulated to stakeholders for input and comments</p>	<p><i>Drinking Water Safety in Newfoundland and Labrador: 2005 Annual Report</i></p>	<p>28</p>
<p>Guidelines for the Design, Construction and Operation of Water and Sewerage Systems provide comprehensive guidance on the design of water works</p>	<p>See http://www.env.gov.nl.ca/Env/env/waterres/CWWS/Guidelines_Water_Sewerage/section3.pdf</p>	<p>-</p>
<i>New Brunswick</i>		
<p>Approval required for the construction of any waterworks</p> <p>No approval required for domestic wells and small waterworks</p>	<p>Water Quality Regulation, N.B. Reg. 82-126 (<i>Clean Environment Act</i>)</p>	<p>3(5)-(7)</p> <p>5(3)-(4)</p>
<p>Approval process (application), incl. Minister’s right to require further information, public notice and public input requirements. Terms and conditions may attach to approval</p>	<p>Water Quality Regulation, N.B. Reg. 82-126</p>	<p>6-10</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Design Approvals)	Statute, Regulation, etc.	Section
It is not lawful to construct a waterworks without first obtaining the Minister's certificate of approval of the plans and specifications	<i>Health Act</i> , S.N.B., c. H-2	14(2)
No well or other potable water supply may be constructed, installed or otherwise brought into use without the approval of a district medical health officer unless it has been approved by the Minister of Health under ss. 14(2) of the Act.	General Regulation, N.B. Reg. 88-200 (under the <i>Health Act</i>)	218
Prohibited to join the pipes of a distribution system of a municipality or rural community to any other system for the distribution of water without an approval	Water Quality Regulation	3(6)
Prohibited to make a direct physical connection between a private water supply and a public water supply	General Regulation, N.B. Reg. 88-200 (under the <i>Health Act</i>)	220(2)
<i>Northwest Territories</i>		
No person shall construct or alter a public water supply system unless approval has first been obtained in accordance with these regulations	Public Water Supply Regulations, R.R.N.W.T. 1990, c. P-23	3
The design of water treatment plants must be adequate to provide the treatment of the raw water which is required to produce finished water (Several design parameters are specified, including filter media, heating, lighting, chlorine feed equipment, etc.)	Public Water Supply Regulations	14, 15
The design of pumping stations should accommodate maintenance of the sanitary quality of the water pumped through it, and to facilitate cleanliness, continuity and ease of operation	Public Water Supply Regulations	18
Design standards for reservoirs and other tanks, water mains	Public Water Supply Regulations	19-20
<i>Nova Scotia</i>		
No person shall commence or continue any activity designated by the regulations as requiring approval unless that person holds the appropriate approval (which may contain terms and conditions)	<i>Environment Act</i> , S.N.S. 1994-95, c. 1	50, 56
The construction of municipal water works including water supply facilities and water distribution facilities is designated as an activity	Activities Designation Regulations, N.S. Reg. 47/95 (<i>Environment Act</i>)	9
All facilities must be classified (owner must apply for facility classification certificate)	Water and Wastewater Facilities and Public Drinking Water Supplies Regulation, N.S. Reg. 186/2005 (made under the <i>Environment Act</i>)	7-10
<i>Nunavut</i>		
Councils have may, by bylaw, provide for the establishment, acquisition, operation, maintenance or alteration of sewage systems or water distribution systems	<i>Cities, Towns and Villages Act</i> , R.S.N.W.T. 1988, c. C-8	55(2)(d)

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Design Approvals)	Statute, Regulation, etc.	Section
A municipal council may, by bylaw, regulate the design and installation of a water distribution system owned or operated by persons other than the municipal corporation	<i>Cities, Towns and Villages Act</i>	92
Ontario		
No person shall establish a new municipal drinking-water system except under the authority of and in accordance with an approval under this Part or a drinking-water works permit	<i>Safe Drinking Water Act, 2002</i> , S.O. 2002, c. 32	31(1) (a)
Exempt: municipal drinking-water systems that are <i>not</i> either a large municipal residential system, or a small municipal residential system; certain other activities exempt	Drinking-Water Systems, O. Reg. 170/03 (made under the <i>SDWA</i>)	9
A person who proposes to establish a new municipal drinking-water system shall make an application to the Director for an approval (if the application is made before the day prescribed) or for a drinking-water works permit and a municipal drinking-water licence (if the application is made after that same day) Application requirements	<i>Safe Drinking Water Act, 2002</i>	32(1) 32(5)
A drinking-water works permit may contain conditions, incl. requirements in relation to the construction, installation or alteration of any works, equipment, mechanism or other thing; and requirements for compliance with design standards specified by the Director in the conditions	<i>Safe Drinking Water Act, 2002</i>	41(2)
No person shall establish, replace or operate a regulated non-municipal drinking-water system except in accordance with the prescribed requirements; and under the authority of and in accordance with an approval (if an approval is required) (Provisions similar to those for municipal drinking-water systems also exist for regulated non-municipal drinking-water systems)	<i>Safe Drinking Water Act, 2002</i>	52(1)
No person shall establish a water works except under and in accordance with an approval granted by a Director, the granting of which requires the submission of plans and specs and other information and carrying out tests on the water supply	<i>Ontario Water Resources Act</i> , R.S.O. 1990, c. O.40	52
A municipality can apply to the Ontario Clean Water Agency for the provision of and operation of water works for the municipality, and the parties can enter into such an agreement	<i>Ontario Water Resources Act</i>	63
Each subsystem must be classified by type and class according to Sch. 1; and Director shall issue to the owner a certificate of classification for the subsystem	Certification of Drinking-Water System Operators and Water Quality Analysts, O. Reg. 128/04 (<i>SDWA</i>)	3

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Design Approvals)	Statute, Regulation, etc.	Section
Prince Edward Island		
No person shall undertake the establishment of a water supply system (or change an existing system) without first obtaining an approval from the Minister Application for an approval must be accompanied by plans and specs, and other information as Minister requires	<i>Environmental Protection Act</i> , R.S.P.E.I. 1988, c. E-9	13
Atlantic Canada Guidelines for Supply, Treatment, Storage Distribution and Operation of Drinking Water Supply Systems are followed	George Somers (Drinking Water Management Section Manager)	-
Quebec		
No one may establish waterworks before submitting the plans and specs to the Minister and obtaining his authorisation	<i>Environment Quality Act</i> , R.S.Q., c. Q-2	32
Every construction of installation of a waterworks must comply with the plans and specifications referred to in the authorisation issued by the Minister under s. 32 of the Act and comply with construction standards prescribed in this Regulation Standards regulate quality of material, piping, protection against freezing, proximity of conduits, filling, valves, meters, etc.	Regulation respecting waterworks and sewer services, c. Q-2, r. 7	3
Saskatchewan		
Permit for construction of waterworks required Permit requires application and permission from appropriate municipal authority Minister may attach terms and conditions to permit Permit must be registered on land title	<i>Environmental Management and Protection Act, 2002</i> , S.S. c. E-10.21	21 22 23 24
A person who applies for a permit for a waterworks pursuant to the Act must file an application in a form specified by the Minister, and must provide the information and materials required by the <i>Guide to Waterworks Design</i> (adopted by this regulation)	The Water Regulations, 2002, c. E-10.21, M. Reg 1	24
No person shall establish or alter a public water supply unless the owner of operator has obtained written approval to do so from the local authority	Health Hazard Regulations, R.R.S. c. P-37.1, Reg. 10	5
Approval of the Sask. Watershed Authority required for certain works (primarily water diversion and control)	<i>The Saskatchewan Watershed Authority Act, 2005</i> , S.S. c. S-35.03	59
Permit required for ground water exploration	The Ground Water Regulations, S. Reg. 172/66 (under the <i>Ground Water Conservation Act</i> [repealed])	4

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Design Approvals)	Statute, Regulation, etc.	Section
NOTE: The council of a rural municipality in which a hamlet or organised hamlet is located , of a town within the meaning of the <i>Northern Municipalities Act</i> is responsible for ensuring potable water in those areas	<i>Public Health Act</i> , 1994, S.S. 1994, c. P-37.1	14
<i>Yukon</i>		
New water treatment plants must have the approval of a health officer prior to operation	Patricia Brooks (Drinking Water Program Coordinator)	-

Operating Approvals

Regulatory Requirement (Operating Approvals)	Statute, Regulation, etc.	Section
<i>Alberta</i>		
Approval or registration required to commence or carry out activities designated in regulation	<i>Environmental Protection and Enhancement Act</i> , R.S.A. 2000, c. E-12	60, 61
An approval is required for the construction, operation or reclamation of a waterworks system that uses as the source of its water supply surface water or groundwater other than high quality groundwater, and that serves a municipality (etc.), is a private utility or a watering point, or certain systems owned by a regional services commission	Activities Designation Regulation, Alta. Reg. 276/2003 (under the EPEA)	5(1), Sched. 1, Div. 5 (a)
<p>A registration is required for the construction, operation or reclamation of a waterworks system that uses high quality groundwater as the source of its water supply and that serves a municipality (etc.), as is a private utility, or certain systems owned by a regional services commission</p> <p>A registration is required for the construction, operation or reclamation of a water distribution system</p> <p>A registration is required for the construction, operation or reclamation of a waterworks system (i) that serves a hamlet or a municipal development, (ii) that uses high quality groundwater as the source of its water supply, and (iii) that has (A) 15 or more service connections, or (B) 3 or more kilometres of water distribution system</p> <p>A registration is required for the construction, operation or reclamation of a water distribution system that serves a hamlet or a municipal development that has 15 or more service connections or 3 or more kilometres of water distribution system</p>	Activities Designation Regulation, Alta. Reg. 276/2003 (under the EPEA)	5(2), Sched. 2, Div. 5 (a), ... (b), ... (c), ... (d)
A waterworks must be designed so that it meets as a minimum the requirements of the Guidelines for Canadian Drinking Water Quality, and any other standard specified by the Director	Potable Water Regulation, A. Reg. 277/2003 (made under the EPEA)	4(1)
The equipment and controls for filtration, disinfection and all other required treatment in a waterworks system must be operated in a manner that achieves the potable water quality required by this Regulation	Potable Water Regulation	9(1)

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Operating Approvals)	Statute, Regulation, etc.	Section
<i>British Columbia</i>		
<p>Operating permits required for water supply systems issued in accordance with the regulations, and must comply with the terms and conditions thereof, and must operate the water supply system in accordance with applicable regulations</p> <p>Examples of operating terms and conditions in an operating permit: treatment requirements, equipment requirements, qualification and training of operators, monitoring requirements, finished water standards and reporting requirements</p>	<p><i>Drinking Water Protection Act</i>, S.B.C. 2001, c. 9</p>	<p>8</p>
<p>A drinking water officer may issue an operating permit to a water supplies</p>	<p>Drinking Water Protection Regulation, B.C. Reg. 200/2003</p>	<p>7</p>
<i>Manitoba</i>		
<p>No person shall operate a public or semi-public water system unless the person holds a current operating licence for the water system issued by the director in accordance with the regulations.</p> <p>Licence may be subject to terms and conditions necessary to provide for the safety of the water from the water system, and effective environmental management</p>	<p><i>The Drinking Water Safety Act</i>, S.M. 2002, c. 36</p>	<p>8(1), (2)</p> <p>8(3)</p>
<p><i>NOTE: No regulations under the Drinking Water Safety Act have been passed yet</i></p>	<p>-</p>	<p>-</p>
<p>Domestic water quality shall meet accepted standards of potability</p>	<p>Water Supplies Regulation, M. Reg. 330/88R (made under <i>The Public Health Act</i>)</p>	<p>2</p>
<p>No person shall construct, operate or alter a public water system without first obtaining the Minister’s certificate that the Minister has approved of the plans, specifications, information about the potential supply source and other information submitted by the person contemplating establishing the public water system</p> <p>Minister may prescribe conditions or limitations on operations</p>	<p>Water Works, Sewerage and Sewage Disposal Regulation, M. Reg. 331/88R (<i>under the Public Health Act</i>)</p>	<p>2(2)</p> <p>2(3)</p>
<p>No person shall construct or operate a non-potable public water system unless approved by the Minister</p>	<p>Water Works, Sewerage and Sewage Disposal Regulation</p>	<p>3</p>
<p>Minister can direct changes in a public water system where water quality may constitute a menace to the public health</p>	<p>Water Works, Sewerage and Sewage Disposal Regulation</p>	<p>5</p>
<p>No facility can be operated unless it is classified as a small system or class 1 to 4 facility</p>	<p>Water and Wastewater Facility Operators Regulation, M. Reg. 77/2003 (<i>under The Environment Act</i>)</p>	<p>4</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Operating Approvals)	Statute, Regulation, etc.	Section
<i>Newfoundland and Labrador</i>		
A person must obtain a permit from the Minister to carry out an undertaking for which a permit is required by this Act or regulations; and the Minister may grant such a permit with such terms and conditions as the Minister considers necessary Terms and conditions of permit may be amended	<i>Water Resources Act</i> , SNL 2002, W-4.01	48 49
All waterworks must be maintained and operated in a manner that the Minister may direct	<i>Water Resources Act</i>	38(1)
Guidelines for the Design, Construction, Operation and Maintenance of Water and Sewer Works completed in draft form and has been circulated to stakeholders for input and comments	<i>Drinking Water Safety in Newfoundland and Labrador: 2005 Annual Report</i>	28
<i>New Brunswick</i>		
Approval required for the operation of any waterworks No approval required for domestic wells and small waterworks	Water Quality Regulation, N.B. Reg. 82-126 (under the <i>Clean Environment Act</i>)	3(5)-(7) 5(3)-(4)
Approval process (application), incl. Minister’s right to require further information, public notice and public input requirements. Terms and conditions may attach to approval	Water Quality Regulation, N.B. Reg. 82-126	6-10
It is not lawful to operate a waterworks without first obtaining the Minister’s certificate of approval of the plans and specifications	<i>Health Act</i> , S.N.B., c. H-2	14(2)
An environmental impact assessment may be required to operate	Environmental Impact Assessment Regulation, N.B. Reg. 87-83 (<i>Clean Environment Act</i>)	5(1)
<i>Northwest Territories</i>		
No legislated operating approvals currently, but planned for new drinking water regulations under the <i>Public Health Act</i> .	Duane Fleming (Chief Environmental Health Officer, Stanton Territorial Health Authority)	-
<i>Nova Scotia</i>		
No person shall commence or continue any activity designated by the regulations as requiring approval unless that person holds the appropriate approval (which may contain terms and conditions)	<i>Environment Act</i> , S.N.S. 1994-95, c. 1	50, 56
The operation of municipal water works including water supply facilities and water distribution facilities is a designated activity	Activities Designation Regulations, N.S. Reg. 47/95 (<i>Environment Act</i>)	9

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Operating Approvals)	Statute, Regulation, etc.	Section
<i>Nunavut</i>		
Councils have may, by bylaw, provide for the establishment, acquisition, operation, maintenance or alteration of sewage systems or water distribution systems	<i>Cities, Towns and Villages Act</i> , R.S.N.W.T. 1988, c. C-8	55(2)(d)
<i>Ontario</i>		
No person shall use or operate a municipal drinking-water system except under the authority of and in accordance with an approval under this Part or municipal drinking-water licence	<i>Safe Drinking Water Act, 2002</i> , S.O. 2002, c. 32	31(1) (b)
No person shall use or operate water works for which an approval is required unless the required approval has been granted and complied with	<i>Ontario Water Resources Act</i> , R.S.O. 1990, c. O.40	52(7)
Every owner of a municipal drinking-water system or a regulated non-municipal drinking-water system shall ensure that the drinking-water system is operated in accordance with the requirements under this Act	<i>Safe Drinking Water Act, 2002</i>	11(1)
<i>Prince Edward Island</i>		
Water treatment systems shall be maintained and operated in such a manner as the Minister may direct	<i>Environmental Protection Act</i> , R.S.P.E.I. 1988, c. E-9	16
No owner of a facility shall operate the facility, or permit it to be operated, unless the facility classification certificate has been issued for the facility	Drinking Water and Wastewater Facility Operating Regulations, P.E.I. Reg. EC710/04 (under the <i>Environmental Protection Act</i>)	2, 3
Lieutenant Governor in Council may, by order, create water corporations to manage and operate water treatment systems	<i>Environmental Protection Act</i>	18
Operating conditions primarily contained in certificates of approval	George Somers (Drinking Water Management Section Manager)	-
<i>Quebec</i>		
Requirements addressing: continuous service, maintenance standards, impartial service, compulsory inspection, access to Minister, fire protection, water quality, etc.	Regulation respecting waterworks and sewer services, c. Q-2, r. 7	17ff

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Operating Approvals)	Statute, Regulation, etc.	Section
<i>Saskatchewan</i>		
Permit for operation of waterworks required	<i>Environmental Management and Protection Act, 2002</i> , S.S. c. E-10.21	21
Permit requires application and permission from appropriate municipal authority		22
Minister may attach terms and conditions to permit		23
Permit must be registered on land title		24
Minister may amend permit, require assessment, or cancel permit where non-compliance with permit		30
A person who applies for a permit for a waterworks pursuant to the Act must file an application in a form specified by the Minister, and must provide the information and materials required by the <i>Guide to Waterworks Design</i> (adopted by this regulation)	The Water Regulations, 2002, c. E-10.21, M. Reg 1	24
Permittee must comply with the Guidelines for Canadian Drinking Water Quality	The Water Regulations, 2002	29
Use of chemicals must be conformance with standards specified		30
Standards for certain parameters (e.g, bacteriological, turbidity, chemical)		32-34
Operating requirements of wells	The Water Regulations, 2002	25
NOTE: The council of a rural municipality in which a hamlet or organised hamlet is located , of a town within the meaning of the <i>Northern Municipalities Act</i> is responsible for ensuring potable water in those areas	<i>Public Health Act, 1994</i> , S.S. 1994, c. P-37.1	14
<i>Yukon</i>		
New water treatment plants must have the approval of a health officer prior to operation	Patricia Brooks (Drinking Water Program Coordinator)	-

Source Protection

Regulatory Requirement (Source Protection)	Statute, Regulation, etc.	Section
<i>Alberta</i>		
Only environmental laws of general application (e.g., prohibition on the release of a substance into the environment in an amount in excess of that prescribed by an approval, a code of practice or the regulations, or in an amount that may cause a significant adverse effect)	<i>Environmental Protection and Enhancement Act</i> , R.S.A. 2000, c. E-12	108, 109
There is a framework for water management planning (although only with respect to water diversions, takings, biodiversity etc.)	<i>Water Act</i> , R.S.A. 2000, c. W-3	Part 2, Div. 1
<i>British Columbia</i>		
Water diversion and control works regulated	<i>Water Protection Act</i> , R.S.B.C. 1996, c. 484	<i>Generally</i>
Wells must be flood-proofed, if required by regulation	<i>Drinking Water Protection Act</i> , S.B.C. 2001, c. 9	16
Owner or operator of a well that provides drinking water and identified as at risk of flooding must flood-proof their well	Drinking Water Protection Regulation, B.C. Reg. 200/2003	14
Assessments (prepared by water supplier in respect of water system, if required) must address drinking water source	<i>Drinking Water Protection Act</i> , S.B.C. 2001, c. 9	18
An assessment response plan must address cross connections with non-potable water sources	Drinking Water Protection Regulation	15
Introducing anything to a drinking water source that is likely to result in a drinking water health hazard prohibited	<i>Drinking Water Protection Act</i> , S.B.C. 2001, c. 9	23
Certain persons (incl. persons required to report spills under other statutes, and members of the civil service) required to report threats to drinking water to the drinking water officer	<i>Drinking Water Protection Act</i>	24
Hazard prevention orders available to drinking water officer	<i>Drinking Water Protection Act</i>	25
Drinking water officer may take direct action to ameliorate a drinking water health hazard	<i>Drinking Water Protection Act</i>	28
Wells must be at least 100 feet from any probable source of contamination, such as a privy vault, cesspool, manure heap, stable or pigsty, and at least 20 feet from any dwelling house, and at least 400 feet from any cemetery or dumping ground (subject to exceptions)	Sanitary Regulations, B.C. Reg. 142/59 (O.C. 829/17) (made under the <i>Health Act</i>)	42
Activities that may contaminate wells or public supplies forbidden (such as to bathe or wash, or to put any decayed matter into any body of water)		43

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Source Protection)	Statute, Regulation, etc.	Section
True protection is mostly done through land use planning	Barry Boettger (Provincial Drinking Water Officer)	-
Drinking water protection plans: - Minister may designate an area for a drinking water protection plans, and establish process by which plans are to be established - plan may address necessary changes to water system, need for additional terms and conditions on an operating permit, options for mitigating risk (incl. source protection), etc. - Lieutenant Governor in Council may require that plan be considered in the decision-making under a specified enactment, establish water quality standards for drinking water source, restrict well drilling, etc.	<i>Drinking Water Protection Act</i>	31 32(4) 35-38
Well drilling regulated Changing a stream requires approval (see also the Water Regulation, B.C. Reg. 204/88, s. 37) Person responsible for debris in a stream can be required to remove it Minister may designate areas for water management plans; Lieutenant Governor in Council may require that plan be considered in the decision-making under a specified enactment	<i>Water Act</i> , R.S.B.C. 1996, c. 483	68ff 9 40.2 62, 65
Person making a change to a stream must ensure sediment that could adversely affect the stream does not enter the stream	Water Regulation, B.C. Reg. 204/88	41
Protection of ground water in the course of well drilling, maintenance and abandonment	Ground Water Protection Regulation, B.C. Reg. 299/2004	7-14
<i>Manitoba</i>		
Deposit or discharge into the any watercourse of any manure or filth of any nature is prohibited Committing any act that may contaminate a groundwater supply prohibited Order to desist and clean-up available to medical officer of health, inspector, the Minister	The Protection of Water Sources Regulation, M. Reg. 326/88R (made under the <i>Public Health Act</i>)	2(1) 2(2) 4

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Source Protection)	Statute, Regulation, etc.	Section
<p><i>The Water Protection Act</i> sets up water quality management zones, watershed authorities, the Manitoba Water Council and the Water Stewardship Fund in order to regulate the use and consumption of water, the production of waste and wastewater effluent and industrial and agricultural activities that may impair water quality, all on a watershed-basis</p> <p>Regulations can adopt water quality standards, which can be required to be taken into account in issuing environmental approvals</p> <p>Regulations establishing water conservation programs may be made</p> <p>Regulations may permit creation of watershed management plans regarding planning issues</p>	<p><i>The Water Protection Act</i>, C.C.S.M., c. W65</p>	<p>Generally</p> <p>4</p> <p>10</p> <p>15</p>
<p>Drinking water safety orders available to the Minister where water maybe health risk (unlimited scope)</p>	<p><i>The Drinking Water Safety Act</i>, S.M. 2002, c. 36</p>	<p>11</p>
<p>Deposit of any substance that may pollute or contaminate groundwater prohibited in the vicinity of a well</p>	<p><i>The Ground Water and Water Well Act (Manitoba)</i>, C.C.S.M., c. G110</p>	<p>10(2)</p>
<p><i>The Water Rights Act (Manitoba)</i> governs water diversion and riparian rights, including the granting of licences</p>	<p><i>The Water Rights Act (Manitoba)</i>, C.C.S.M. c. W80</p>	<p>Generally</p>
<p>Construction of sewer or sewer works requires Minister’s approval</p> <p>Minister may require alteration in the interest of public health</p> <p>Standards for sewage treatment and effluent water quality</p>	<p>Water Works, Sewerage and Sewage Disposal Regulation, M. Reg. 331/88R (<i>under the Public Health Act</i>)</p>	<p>7(1)</p> <p>7(2)</p> <p>8, 9</p>
<i>Newfoundland and Labrador</i>		
<p>Minister may, by regulation, designate an area surrounding a present or potential source of public water supply as a public water supply area; and a person operating a waterworks or using water from that source must protect that source of public water supply; and no person shall do anything that might impair water quality in that area, or fish, bathe, boat or swim in that area, or excessively use water from that area</p> <p>Minister may establish groundwater well protection zones (for wells used for non-domestic purposes) in order to protect that well field from pollution. A municipal authority or person operating works or using water from that well source must give notice of the protection zone and protect the well field as the Minister may require. In protection zones prohibited to deposit material which might impair the quality of the groundwater, or conduct development activity (unless approval obtained from the Minister)</p>	<p><i>Water Resources Act</i>, SNL 2002, W-4.01</p>	<p>39</p> <p>61</p>
<p>Sewage disposal and sewage systems regulated; manure not to be spread within 75 m of a drinking water source</p>	<p>Sanitation Regulations, O.C. 96-442 (<i>under the Public Health Act</i>)</p>	<p>11</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Source Protection)	Statute, Regulation, etc.	Section
Has one of the most well established source water protection programs in the country with approximately 90.5% of the total population receiving drinking water from protected surface and groundwater supplies. Each protected water supply is designated by regulation (there are currently 320)	<i>Drinking Water Safety in Newfoundland and Labrador: 2005 Annual Report</i>	3
<i>New Brunswick</i>		
Release of contaminant or water into water prohibited, where it could affect water quality, endanger human or animal life, or damage property or plant life (unless done under authority of law)	<i>Clean Water Act</i> , S.N.B., c. C-6.1	12
Minimum distances required from a well to a cesspool, septic tank, etc. to protect aquifers	Water Well Regulation, N.B. Reg. 90-79 (under the <i>Clean Water Act</i>)	4ff, 22
Land and Water Advisory Committee set up to review operation of the Act and recommend amendments	<i>Clean Water Act</i>	31-32
Minister may (by Designation Order) designate protected areas of a watershed, in which the Minister (by the Designation Order) can control certain activities in those areas.	<i>Clean Water Act</i> Wellfield Protected Area Designation Order, N.B. Reg. 2000-47 Watershed Protected Area Designation Order, N.B. Reg. 2001/488 Protected Area Exemption Regulation, N.B. Reg. 90-120	14
Many municipal wellfields are protected by Protected Area Designation Orders under the <i>Clean Water Act</i> . These orders restrict certain activities to protect ground water recharge areas or portions of ground water recharge areas from contamination. There are presently 22 designated wellfields in New Brunswick. Similarly, many municipal watersheds are protected by Watershed Protected Area Designation Orders under the <i>Clean Water Act</i> . These orders restrict certain activities in areas A, B & C to protect watersheds or portions of watersheds from contamination. There are presently 30 protected watersheds in 20 municipalities that have been designated. This represents approximately 4% of New Brunswick's area and about 40% of the population.	Tony J. Whalen (Senior Drinking Water Engineer, Water & Wastewater Management Section, N.B. Department of Environment)	-
All New Brunswick waters are to be classified	Water Classification Regulation, N.B. Reg. 2002-56 (<i>Clean Water Act</i>)	<i>Generally</i>
No person shall (without an approval) emit, discharge or deposit any contaminant in such a manner that it may cause water pollution	Water Quality Regulation, N.B. Reg. 82-126 (under the <i>Clean Environment Act</i>)	3(2)

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Source Protection)	Statute, Regulation, etc.	Section
No person shall discharge or deposit in any watershed of a public potable water supply any material which may alter the quality of the water of which may become detrimental to health	General Regulation, N.B. Reg. 88-200 (under the <i>Health Act</i>)	227
<i>Northwest Territories</i>		
Commissioner and the Minister may, on behalf of the Government of NWT, enter into agreements with the Government of Canada (or a provincial government in conjunction with the Government of Canada) respecting water resources management	<i>Water Resources Agreements Act</i> , R.S.N.W.T. 1988, c.17 (Supp.)	2
Source protection strategy being developed	<i>Managing Drinking Water Quality in NWT: A Preventative Framework Strategy</i> (May 2005)	P. 9
<i>Nova Scotia</i>		
Water removal, transport, diversion, regulated	<i>Water Resources Protection Act</i> , S.N.S. 2000, c. 10	<i>Generally</i>
The Minister, when requested by an operator of a water works or proposed water works, may designate an area surrounding any source or future source of water supply as a protected water area; and the operator of the water works is responsible for taking all measures to protect to protect the area designated	<i>Environment Act</i> , S.N.S. 1994-95, c. 1 Approximately 15 regulations have been passed designating protected water areas	106
The requirement for having source water protection plans can be found in the terms and conditions of a water treatment plant's operating approval	John Eisnor (Facilities Engineer, Water and Wastewater Branch)	-
<i>Nunavut</i>		
The Nunavut Water Board shall contribute fully to the development of land use plans as they concern water in the Nunavut Settlement Area by providing its recommendations to the Nunavut Planning Commission	Nunavut Land Claims Agreement	13.4.1
<i>Ontario</i>		
General prohibitions on discharge of a contaminant into the environment, discharging a contaminant such that it causes an adverse effect, deposit of waste on land or land covered by water	<i>Environmental Protection Act</i> , R.S.O. 1990, c. E.19	6, 14, 40
Director can define areas for the protection of the public water supply, wherein material that may impair the quality of water shall be placed	<i>Ontario Water Resources Act</i> , R.S.O. 1990, c. O.40	33

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Source Protection)	Statute, Regulation, etc.	Section
<p>Conservation Authorities oversee drinking water source protection areas for most of the province (not some northern areas)</p> <p>Source protection committees prepare terms of reference for the preparation of source protection plans. If the source protection area contains water that flows into the Great Lakes, the terms of reference are deemed to require consideration of the Great Lakes agreements to which Canada or Ontario is a party</p> <p>The source protection committee then prepares an assessment report that will identify all of the watersheds in the source protection area and will set out a water budget for each watershed. It will also identify vulnerable areas the source protection area and drinking water threats associated with those vulnerable areas. Risk assessments would be prepared to identify significant drinking water threats</p> <p>The source protection committee then prepares the source protection plan, which will include the most recently approved assessment report. Plan will set out policies to prevent the significant drinking water threats identified in the assessment report, policies to achieve targets established by the Minister relating to the use of the Great Lakes as a source of drinking water, and policies governing certain monitoring programs</p> <p>If a source protection plan is in effect in a source protection area, several provisions of the Bill apply to policies intended to ensure that activities identified as significant drinking water threats never become or cease to be significant drinking water threats and to policies that are specifically designated by the plan and are intended to assist in achieving targets established by the Minister relating to the use of the Great Lakes as a source of drinking water</p> <p>Responsibility for the enforcement is generally given to municipalities; in unorganized territory, the province of Ontario has this responsibility</p>	<p><i>Clean Water Act</i> [not yet proclaimed into force]</p>	<p>4</p> <p>7-12</p> <p>13-18</p> <p>19-22, 24-30</p> <p>40-41</p> <p>42-47</p>
<i>Prince Edward Island</i>		
<p>Altering a watercourse in any way requires a permit</p>	<p><i>Environmental Protection Act</i>, R.S.P.E.I. 1988, c. E-9</p>	<p>10</p>
<p>Buffer zones set up between intensive livestock operations and watercourses/wetlands (length depends on intermediate slope; measures must be taken to prevent runoff from former into latter; agricultural crops prohibited in buffer zone</p> <p>Forested riparian zones adjacent to watercourse or wetland must be maintained</p>	<p><i>Environmental Protection Act</i></p>	<p>11.2</p> <p>11.3</p>
<p>Permit required for wells in “restricted areas” (as defined in Sch. A); wells cannot be located within certain distances of certain things, incl. sewer lines, septic tanks, manure storage facility, etc.</p>	<p>Water Well Regulations, P.E.I. Reg. EC188/90 (under the <i>Environmental Protection Act</i>)</p>	<p>5, 9</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Source Protection)	Statute, Regulation, etc.	Section
Well field protection plans must be prepared by municipalities that own public drinking water supply facilities in respect of any well fields or wells that collectively provide two-thirds or more of the overall drinking water demand of the serviced area of the municipality	Drinking Water and Wastewater Facility Operating Regulations, P.E.I. Reg. EC710/04 (Environmental Protection Act)	20
Quebec		
Regulation governs groundwater catchment (wells) in order to prevent it from causing lowering artesian pressure, from minimising negative effects on watercourses, preventing contamination of groundwater, etc.	Groundwater Catchment Regulation, c. Q-2, r. 1.3	<i>Generally</i>
Owners of spring water, mineral water or groundwater catchment sites intended to supply drinking water at flow rates >75 m ³ /day must have the following documents signed by an engineer or a geologist: a plan showing the location of the bacteriological protection area and the virological protection area which correspond to the portions of the supply area of the catchment site as defined by using a migration time of groundwater over 200 days (bacteriological protection) and over 550 days (virological protection)	Groundwater Catchment Regulation	25
For catchment sites operated for drinking water supply purposes the average flow rate of which <75 m ³ /day and supplying more than 20 persons, the bacteriological protection area is within a 100 m radius from the catchment site and the virological protection area shall be set within a 200 m radius		25
Special provisions for farming areas, incl. spreading of wastes		26-30
Other regulations for prevention of agricultural, industrial and domestic wastewater pollution: - Agricultural operations regulation - Regulation respecting industrial depollution attestations - Regulation respecting the landfilling and incineration of residual materials - Regulation respecting pits and quarries - Regulation respecting waste water disposal systems for isolated dwellings	Caroline Robert (Direction des politiques de l'eau)	-
Saskatchewan		
Sask. Watershed Authority was created to manage the water and watersheds of Saskatchewan and has authority to: - regulate and control the flow of water in any body of water - licence and administer the use of all water resources and the construction of water works - maintain and enhance the quality and availability of the water - enter into agreements with the Government of Canada and Indian Bands for the management and protection of water resources	<i>The Saskatchewan Watershed Authority Act, 2005, S.S. c. S-35.03</i>	5, 6

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Source Protection)	Statute, Regulation, etc.	Section
General environmental law provisions re: - unauthorised discharges - regulation of discharges (permitting regime) - control orders - emergency environmental protection orders	<i>Environmental Management and Protection Act, 2002</i> , S.S. c. E-10.21	4 35 45 46
Regulations surrounding drilling for groundwater (drilling generally prohibited, abandonment procedures, etc.)	The Ground Water Regulations, S. Reg. 172/66 (under the <i>Ground Water Conservation Act</i> [repealed])	<i>Generally</i>
<i>Yukon</i>		
Commissioner in Executive Council may establish water management plans	<i>Environment Act</i> , R.S.Y. 2002, c. 76	70
With the approval of the Commissioner in Executive Council, the Minister may enter into an agreement with a provincial or territorial government or the Government of Canada providing for the management of any waters	<i>Waters Act</i> , S.Y. 2003, c. 19	5
Deposit of waste in water management areas generally prohibited	Waters Regulation, O.I.C. 2003/58	7
Water management areas set out in Sch. 1		2
Deposit of waste in any waters in a water management area generally prohibited, except in accordance with the conditions of a licence or as authorized by regulations	<i>Waters Act</i>	7(1)
Wells must be minimum distance from sewage outfalls, etc. No sewerage system effluent is permitted to discharge less than 100 feet downstream from the inlet of any pipe withdrawing water for human consumption	Regulations Respecting Public Health, C.O. 1958/079 (under the <i>Public Health Act</i>)	20-21 25
Minimum set-backs to wells and surface water bodies	Sewage Disposal Systems Regulation, Y.O.I.C. 1999/82	12, 16-20

Wells

Regulatory Requirement (Wells)	Statute, Regulation, etc.	Section
<i>Alberta</i>		
An inspector or the Director may issue a water management order to the person responsible for a water well where possibility of an adverse effect on the environment or on human health	<i>Water Act</i> , R.S.A. 2000, c. W-3	97(1), 136(1)
<i>British Columbia</i>		
Regulated aspects of water wells: <ul style="list-style-type: none"> - restrictions on constructing wells, closing wells and related activities - restrictions respecting well pumps and flow tests - qualified well drillers and qualified well pump installers - well reports - water analyses for new or altered wells - well identification - closing or deactivating a well - well caps or well covers - controlling artesian flow - well operation - prohibition on introducing foreign matter into a well - wells on Crown land - drilling authorizations - ground water advisory board 	<i>Water Act</i> , R.S.B.C. 1996, c. 483	68-82
Regulated aspects of water wells: <ul style="list-style-type: none"> - surface sealing - well identification - deactivating or closing a well - well caps and well covers - floodproofing of wells - protection of wellhead - temporary wells - change of use or purpose 	Groundwater Protection Regulation, B.C. Reg. 299/2004 (under the <i>Water Act</i>)	7-14
Wells must be flood-proofed, if required by regulation	<i>Drinking Water Protection Act</i> , S.B.C. 2001, c. 9	16
Restrictions on well-drilling in certain areas		36
Owner or operator of a well that provides drinking water and identified as at risk of flooding must flood-proof their well	<i>Drinking Water Protection Regulation</i> , B.C. Reg. 200/2003	14

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wells)	Statute, Regulation, etc.	Section
Wells must be at least 100 feet from any probable source of contamination, such as a privy vault, cesspool, manure heap, stable or pigsty, and at least 20 feet from any dwelling house, and at least 400 feet from any cemetery or dumping ground (subject to exceptions)	Sanitary Regulations, B.C. Reg. 142/59 (O.C. 829/17) (made under the <i>Health Act</i>)	42
Manitoba		
Regulates well-drilling (creates licensing regime) and provides for: - access to wells and records - surveys and studies - control of flow from well - pollution of ground waters - order re well abandonment or improper seal or cap - right of entry	<i>The Ground Water and Water Well Act (Manitoba)</i> , C.C.S.M., c. G110	Generally
Contamination of wells prohibited	Protection of Water Sources Regulation, Man. Reg. 326/88R	2(2)
Wells must be constructed and maintained to prevent contamination of the water, and the medical officer of health or inspector may direct what methods of construction or materials must be used Well abandonment regulated medical officer of health may order the reconstruction, disinfection, or closing of a well where unsafe Disinfection not required in the absence of erratic or high level coliform contamination or other contaminating factors	Water Supplies Regulation, M. Reg. 330/88R	6(1),(2) 6(3) 7(2) 8
Newfoundland and Labrador		
Part III regulates well drilling, including licensing regime, creating well driller obligations and responsibilities, permitted rate of withdrawal, protection zone around a well	<i>Water Resources Act</i> , SNL 2002, W-4.01	53-63
Regulated areas: - licencing regime - preventing surface water infiltration; minimum distances from potential contamination sources - siting, design and appurtenances requirements - water control areas - maintenance and abandonment wells - prohibition on waste disposal - water yield testing	Well Drilling Regulations, 2003, N.L.R. 63/03 (<i>Water Resources Act</i>)	3-7 8-11 12-16 17 18 19 20-23

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wells)	Statute, Regulation, etc.	Section
Sewage shall not contaminate a well	Sanitation Regulations, C.N.L.R.	5(5)
Minimum setbacks from well for septic tanks, disposal areas	803/96 (under the <i>Public Health Act</i>)	Sch. 1
<i>New Brunswick</i>		
Well driller's report required when well is dug	<i>Clean Water Act</i> , S.N.B., c. C-6.1	11(1)
Owner of well must test water in accordance with regulations		11(2)
supply to consumers of water that poses a significant health risk prohibited (except from a private well)		13(2)
Minister can take certain steps where water from a well poses a significant health risk		13(3)-(8)
Well drilling requires the appropriate registration, licence, permit or approval in accordance with the regulations		16
Well contractor's permit required for anyone who engages in the business of well-drilling	Water Well Regulation, N.B. Reg. 90-79 (under the <i>Clean Water Act</i>)	4, 6
Permit renewable		8
Inspector can require modifications		11
Well location requirements		14
Construction standards		15-21
Minimum setback distances, other locational requirements		22-25
Where well not in use		26-27
Pump installation requirements		30
Well yield must be evaluated		32
Well Drilling Advisory Board created		35
Inspector's orders	38	
Voucher system: Minister issues voucher to well-driller, who gives it to owner, who then must use voucher to have water tested	Potable Water Regulation, N.B. Reg. 93-203 (under the <i>Clean Water Act</i>)	3-6
Owner must develop a sampling plan for Minister's approval		7ff
Different zones created throughout province, in which certain activities that may threaten groundwater are restricted or prohibited	Wellfield Protected Area Designation Order, N.B. Reg. 2000-47	<i>Generally</i>

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Regulatory Requirement (Wells)	Statute, Regulation, etc.	Section
No well may be constructed without the approval of a district medical health officer unless it has been approved by the Minister	General Regulation, N.B. Reg. 88-200 (under the <i>Health Act</i>)	218
A district medical health officer may order the disinfection or closing of a well or spring where it is found to be unsafe for drinking or cooking purposes, or where it is improperly located or constructed or the spring is inadequately protected		219
Contaminating wells prohibited		229
Setbacks from septic tanks		240
Depth requirements		256-7
Setbacks from sub-surface disposal field		258
<i>Northwest Territories</i>		
Not referred to specifically, but falls under general sampling and testing requirements	Duane Fleming (Chief Environmental Health Officer, Stanton Territorial Health Authority)	1
<i>Nova Scotia</i>		
Well drillers must have Certificate of qualification	Well Construction Regulations, N.S. Reg. 58/95 (made under the <i>Environment Act</i>)	5
Certificate of qualification requirements		6-16
Inspector can require well modification		17
Construction standards, capping, sealing		20-23
Location of wells (incl. minimum distances)		24-33
Abandoned wells		34
Pump installation		38-40
Yield test		41-47
Well Construction Records	48-50	
Corrective action to be taken when bacteria found to be present	Guidelines for Monitoring Public Drinking Water Supplies	5.4.2
<i>Nunavut</i>		
<i>No relevant provisions</i>		

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wells)	Statute, Regulation, etc.	Section
<i>Ontario</i>		
<p>Subjects:</p> <ul style="list-style-type: none"> - permit required to construct well in designated area - issuance of well construction permit - grounds for refusal to issue, etc., well construction permit - well contractor licence required - issuance of well contractor licence - grounds for refusal to issue well contractor licence - grounds for revocation, etc., of well contractor licence - well technician licence required for the construction of wells - issuance of well technician licence - grounds for refusal to issue well technician licence - grounds for refusal to renew, etc., well technician licence - review, refusal to issue, etc., well permit or licences - interim order, refusal to issue, etc., well permit or licences - expiry of well permit or licences - transfer of well permit or licences 	<p><i>Ontario Water Resources Act</i>, R.S.O. 1990, c. O.40</p>	<p>35-50</p>
<p>The owner of a drinking-water system that includes a well used as a raw water supply shall ensure that no surface water or other foreign materials enter the well</p>	<p>Non-Residential and Non-Municipal Seasonal Residential Systems that Do Not Serve Designated Facilities, O. Reg. 252/05 (made under the <i>SDWA</i>)</p>	<p>10</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wells)	Statute, Regulation, etc.	Section
<p>Regulated areas:</p> <ul style="list-style-type: none"> - well contractor licence - well technician licence - examination - continuing education – well technicians - assistant well technician - construction requirements - well clusters - location of wells - casing - annular space - disinfection - pump installation - venting - testing of well yield - well maintenance - abandonment - protection of well tag 	<p>Wells Regulation, R.R.O. 1990, Reg. 903 (made under the <i>OWRA</i>)</p>	<p><i>Generally</i></p>
<i>Prince Edward Island</i>		
<p>Well drilling, construction and operation can only be done in accordance with the regulations</p>	<p><i>Environmental Protection Act</i>, R.S.P.E.I. 1988, c. E-9</p>	<p>12</p>
<p>Where a municipality is the owner of a public drinking water supply facility, it must develop a well field protection plan</p>	<p>Drinking Water and Wastewater Facility Operating Regulations, P.E.I. Reg. EC710/04 (under the <i>EPA</i>)</p>	<p>20</p>
<p>Regulated areas:</p> <ul style="list-style-type: none"> - well driller's and well contractor's licenses - well construction report - well permits - groundwater exploration permits - groundwater extraction permits - general provisions re well construction - location of wells - well design - upon well completion - abandonment - pump installation - restricted areas 	<p>Water Well Regulations, P.E.I. Reg. EC188/90</p>	<p><i>Generally</i></p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wells)	Statute, Regulation, etc.	Section
Well construction standards	Atlantic Canada Guidelines for the Supply, Treatment, Storage, Distribution and Operation of Drinking Water Supply Systems (2004)	2.3.6
Wellhead requirements		2.3.8
<i>Quebec</i>		
Wells require municipal approval	Groundwater Catchment Regulation, c. Q-2, r. 1.3	3
Contamination must be avoided		4
Minimum setbacks from wastewater, agricultural areas; floodplains,		5-8
Construction and materials standards, sealing,		9-18
Yield tests, reports, sampling requirements		19-21
Protection areas		24-30
Authorization of the Minister required for high-load systems, systems used to supply bottled water		31
Drilling requirements		45
Municipalities responsible for the application of several parts of regulation		63
Minister of the Environment must every 5 years file a report with the Government on the application of this Regulation		64

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wells)	Statute, Regulation, etc.	Section
<i>Saskatchewan</i>		
<p>Approval of Saskatchewan Watershed Authority required for construction of wells (except wells used for domestic purposes)</p> <p>No person shall operate a water well drilling machine unless that person or machine is registered with Saskatchewan Watershed Authority (except wells constructed for domestic purposes)</p> <p>No person shall do any of the following, except in accordance with the regulations: (a) undertake a ground water investigation program; (b) drill a water well; (c) use ground water</p> <p>Well drillers and owners of wells must ensure wells are sited, constructed and controlled in accordance with the regulations</p>	<p><i>Saskatchewan Watershed Authority Act</i>, 2005, S.S. 2005, c. S-35.03</p>	<p>59(1)</p> <p>74</p> <p>75</p> <p>77</p>
<p>Regulated areas:</p> <ul style="list-style-type: none"> - permit for ground water exploration - registration of machines for drilling - drilling and evaluation (notice of drilling, driller’s report, logs, yield test, disinfection) - abandonment of test holes and wells - use of ground water - report completion of well and appurtenant works - licencing of existing works, new works - meters and observation wells - ground water use records - inspection 	<p>The Ground Water Regulations, S. Reg. 172/66 (under the <i>Ground Water Conservation Act</i> [repealed]¹²³)</p>	<p><i>Generally</i></p>
<p>Municipal wells connected to a distribution system supplying water for hygienic uses must meet certain disinfection standards Every person who holds an approval pursuant to <i>The Saskatchewan Watershed Authority Act</i> to construct, extend, alter or operate a well must ensure it meets construction standards, and ensure that the water is cleaned and disinfected</p>	<p>The Water Regulations, 2002, c. E-10.21, M. Reg 1</p>	<p>22</p> <p>25</p>

¹²³ These Regulations continue in force under *The Saskatchewan Watershed Authority Act*, 2005.

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wells)	Statute, Regulation, etc.	Section
<p>No person shall establish, extend, renovate or alter a well or other supply of water intended for public use that is not connected to a distribution system unless the owner or operator has obtained written approval to do so from the local authority</p> <p>Owner of operator of a well or other supply of water intended for public use that is not connected to a distribution system must ensure water is potable, take steps to prevent contamination, submit samples for testing</p> <p>A local authority can require the owner or operator to provide ongoing treatment if it suspects that a public water supply (incl. a well as above) constitutes a health hazard</p>	<p>Health Hazard Regulations, R.R.S. c. P-37.1, Reg. 10</p>	<p>5</p> <p>6, 7</p> <p>8</p>
<i>Yukon</i>		
<p>No person shall create a condition injurious to health or which is or is likely to become a public nuisance on any well</p> <p>Every incorporated municipality shall provide maintain one or more wells or other sources of water supply for the use of the inhabitants and shall be responsible for the safety of such supply</p> <p>Every well or other source of water supply for use for human consumption, or in connection with the manufacture for sale of food or drink, including storage, handling, intakes, transmission, and outlets shall be subject to inspection and testing by a Medical Health Officer or Health Officer</p> <p>Minimum setbacks from sources of pollution; protection from surface water; cover and seal</p>	<p>Regulations Respecting Public Health, C.O. 1958/079 (made under the <i>Public Health Act</i>)</p>	<p>6(1)</p> <p>17</p> <p>18</p> <p>19</p>

Wastewater Treatment

Regulatory Requirement (Wastewater Treatment)	Statute, Regulation, etc.	Section
<i>Alberta</i>		
<p>Approval or registration required to commence or carry out activities designated in regulation</p> <p>An approval is required for the construction, operation or reclamation of a wastewater system that uses a wastewater treatment plant other than a wastewater lagoon, and (i) that (A) serves 2 or more service connections within a municipality (etc.) (B) is owned by a regional services commission, or (C) is a private utility, OR (ii) that serves an industrial development or privately owned development and (A) discharges treated wastewater off the site of the development, or (B) is designed to treat more than 25 cubic metres of wastewater per day</p>	<p><i>Environmental Protection and Enhancement Act</i>, R.S.A. 2000, c. E-12</p> <p>Activities Designation Regulation, Alta. Reg. 276/2003 (under the EPEA)</p>	<p>60, 61</p> <p>5(1), Sch. 1, Div. 2, Part 7 (g)</p>
<p>A registration required for the construction, operation or reclamation of a wastewater system that uses a wastewater lagoon as the wastewater treatment plant, and is as described above</p> <p>A registration required for the construction, operation or reclamation of a wastewater collection system is as described above</p>	<p>Activities Designation Regulation, Alta. Reg. 276/2003 (under the EPEA)</p>	<p>5(1), Sch. 2, Div. 2 (d), (e)</p>
<p>Certified operator required for operation of wastewater treatment plant or wastewater collection system, who must hold appropriate certificate</p> <p>The person responsible for the wastewater system must ensure adequate number of certified operators are available to perform or direct the operation of the wastewater treatment plant or wastewater collection system</p> <p>Director may issue certificates of qualification provided for in the latest edition of the Water and Wastewater Operators' Certification Guidelines</p> <p>The person responsible for a wastewater system or storm drainage system must submit returns and reports respecting the construction, operation or reclamation of the system</p> <p>Sampling requirements</p>	<p>Wastewater and Storm Drainage Regulation, Alta. Reg. 119/1993</p> <p>Wastewater and Storm Drainage (Ministerial) Regulation, Alta. Reg. 120/1993</p> <p>(Identical; both made under <i>Environmental Protection and Enhancement Act</i>)</p>	<p>2(1)</p> <p>2(2)</p> <p>3(1)</p> <p>4</p> <p>5</p>
<p>A certificate of qualification issued under s. 3 of the Wastewater and Storm Drainage (Ministerial) Regulation is valid for 3 years</p>	<p>Environmental Protection and Enhancement (Miscellaneous) Regulation, Alta. Reg. 118/1993</p>	<p>8</p>
<p>Types of certification, facility classification, operator responsibilities, facility owner responsibilities, operator qualifications (incl. experience & education requirements), examinations</p>	<p>Water and Wastewater Operators' Certification Guidelines</p>	<p><i>Generally</i></p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wastewater Treatment)	Statute, Regulation, etc.	Section
<p>Overview of approval process</p> <p>Performance standards</p> <p>Design standards</p> <p>Design guidelines</p> <p>Operating and monitoring requirements and guidelines</p>	<p>Standards and Guidelines for Municipal Waterworks, Wastewater and Storm Drainage Systems (January 2006)</p>	<p>1</p> <p>3</p> <p>5</p> <p>7</p> <p>10</p>
<p>Alberta Capital Region Wastewater Commission supplies sewage transmission and treatment services to several municipalities</p>	<p>Alberta Capital Region Wastewater Commission Regulation, Alta. Reg. 129/1985</p>	<p><i>Generally</i></p>
<i>British Columbia</i>		
<p>Areas addressed:</p> <ul style="list-style-type: none"> - holding tanks - sewerage systems (only small systems with design daily domestic sewage flow of less than 22 700 litres) 	<p>Sewerage System Regulation, B.C. Reg. 326/2004, O.C. 701/2004 (under <i>Health Act</i>)</p>	<p><i>Generally</i></p>
<p>Areas addressed:</p> <ul style="list-style-type: none"> - manner of discharge of effluent into the initial dilution zone - effluent quality - effluent disinfection - effluent toxicity - use of reclaimed water - standards for discharge water; standards for discharge land - advanced treatment required where so indicated by environmental impact studies - design and construction of sewage facilities - management and operations (incl. preparation of operating plan, inspection, operator qualifications and certification, - monitoring required of discharge, receiving environment - reporting and record-keeping required 	<p>Municipal Sewage Regulation, B.C. Reg. 129/99 (made under the <i>Environmental Management Act</i>)</p>	<p>5-6</p> <p>7, Sch. 2-5</p> <p>8</p> <p>9</p> <p>10</p> <p>11, 12</p> <p>13</p> <p>14-15</p> <p>16-23</p> <p>24-27</p> <p>28</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wastewater Treatment)	Statute, Regulation, etc.	Section
<i>Manitoba</i>		
<p>Municipality, sanitary district, or person contemplating the construction of a common sewer or public sewerage system or sewage treatment and disposal system must submit plans, specs, reports, etc. to the Minister; must be prepared by a P. Eng.</p> <p>Certificate required from Minister for construction or operation of a common sewer or public sewerage system or sewage treatment and disposal system</p> <p>No common sewer or sewerage system shall be established or continued unless there is maintained in connection therewith a system of sewage treatment and disposal satisfactory to the Minister</p> <p>Effluent must not cause (during periods of minimum flow of the receiving body) a nuisance or offence in accordance with the requirements of the <i>Environment Act</i> or regulations</p> <p>A municipality, sanitary district, water district, or person having control of a sewerage system, sewage disposal or treatment works or plant, or public water system, is responsible for managing, operating, working, or controlling the system, works, or plant in an efficient and safe manner and in conformity with the requirements of the Minister or <i>The Environment Act</i> and regulations</p> <p>Any municipality or person discharging raw or untreated sewage into any water course must make adequate provisions for disposal of all sewage to the satisfaction of the Minister, and in accordance with <i>The Environment Act</i> and regulations</p>	<p>Water Works, Sewerage and Sewage Disposal Regulation, Man. Reg. 331/88R (made under the <i>Public Health Act</i>) [But see next entry]</p>	<p>6, 12</p> <p>7(1)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p>
<p>Wastewater treatment is no longer handled under Reg. 331/88R under the <i>Public Health Act</i>. We simply waive the requirement conditional on application under the Environment Act – Classes of Development Regulation</p>	<p>Don Rocan (Manager, Ministry of Water Stewardship)</p>	<p>-</p>
<p>No person may operate an unclassified facility</p> <p>Classification of facilities</p> <p>Structure, powers of Certification Advisory Committee</p> <p>Classes of certificates range from training, small system and 1 to 4</p> <p>Director may issue operator’s certificate if Sched. B criteria satisfied</p> <p>Conditional certificate available, based on employment</p>	<p>Water and Wastewater Facility Operators Regulation, M. Reg. 77/2003 (made under <i>The Environment Act</i>)</p>	<p>4(1)</p> <p>2</p> <p>11</p> <p>12</p> <p>13(3)</p> <p>15(1)</p>
<p>Operating requirements:</p> <ul style="list-style-type: none"> - owner of facility must ensure that operators are certified - operator-in-charge is responsible for overall operation of facility - owner must ensure records of operator-in-charge retained 	<p>Water and Wastewater Facility Operators Regulation</p>	<p>23(1)</p> <p>26(1)</p> <p>31</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wastewater Treatment)	Statute, Regulation, etc.	Section
<p>Responsibilities of operator in charge:</p> <ul style="list-style-type: none"> - operate the facility in a safe and efficient manner in accordance with the relevant operations manuals - ensure the processes s/he is responsible for are measured, monitored, sampled and tested - ensure that records are maintained of all necessary adjustments are made to processes s/he is responsible for - ensure equipment is properly monitored, inspected and evaluated, and that records of equipment operating status are prepared and available at the end of every operating shift 	<p>Water and Wastewater Facility Operators Regulation</p>	<p>32(a)-(d)</p>
<p>Regulation of septic systems</p>	<p>Onsite Wastewater Management Systems Regulation, M. Reg 83/2003 (<i>Environment Act</i>)</p>	<p><i>Generally</i></p>
<i>Newfoundland and Labrador</i>		
<p>Wastewater treatment plants require a permit, which involves submitting to the Minister the plans, specifications and an engineer's report of the sewage works to be undertaken and the location of the discharge of the effluent</p>	<p><i>Water Resources Act</i>, SNL 2002, W-4.01</p>	<p>36</p>
<p>A person shall not throw out, deposit or bury excreta from human bodies other than in an approved sewage system</p> <p>Certificate of approval from an inspector (and, where required, approval from all controlling agencies) required for installing a sewage system</p> <p>A sewage system shall not discharge sewage or effluent onto the ground except where the system is designed so that properly treated effluent is discharged into the soil</p> <p>Manufacture or sale of septic tanks & appurtenances which have a working capacity of less than 2,300 litres require approval of a professional engineer in consultation with the department</p>	<p>Sanitation Regulations, C.N.L.R. 803/96 (made under the <i>Health and Community Services Act</i>)</p>	<p>4(1) 4(3) 5(3) 6(1)</p>
<p>“Alternate sewage system” (any plumbed sewage system utilizing secondary or tertiary treatment processes or a system where effluent is discharged other than to a conventional disposal field, seepage pit or ocean pipeline) may be approved, where a s. 5 system could not be used or is would not be practical</p> <p>Application for an alternate sewage system requires assessment data (incl. water table monitoring, percolation test, soil profile and grain size analysis data) and design specifications and blueprints for the proposed alternate sewage system, both compiled by a professional engineer</p>	<p>Sanitation Regulations</p>	<p>7(1)-(2) 7(3)-(4)</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wastewater Treatment)	Statute, Regulation, etc.	Section
Temporary sewage systems may be permitted where a contract has been awarded respecting a building lot which is to be serviced by a municipal sewage system	Sanitation Regulations	9
A person discharging sewage and other materials into a body of water, public sewer shall comply with the standards, conditions and provisions prescribed in these regulations for the constituents, contents or description of the sewage or other discharged materials	Environmental Control Water and Sewage Regulations, 2003, N.L.R. 65/03 (made under the <i>Water Resources Act</i>)	3
A person shall not discharge into a public sewer sewage or effluent containing a constituent specified in Schedule B having a content greater than indicated, or having a temperature in excess of 65° C, or having a pH less than 5.5 or greater than 9.0		5
A person shall not discharge into a body of water sewage or effluent containing a constituent specified in Schedule A, or effluent of certain temperatures , pH values and radioactivity		6
Discharge of pollutant remains prohibited		7
Effluent samples and receiving water samples must be taken as composite samples or as grab samples; and for composite sampling, all levels must be within ss. 5 and 6 values and Schedules A and B; and for grab samples, 90% of all levels taken in one month must be within ss. 5 and 6 values and Schedules A and B		9
The Minister may require that a discharger of sewage monitor and report its effluent for the constituents in ss. 4 and 5 and Schedules A and B		10
<i>New Brunswick</i>		
Minister may issue a Ministerial Order requiring the person to whom it is directed to install, replace or alter a wastewater treatment facility in order to control, reduce, eliminate or remedy the release of a contaminant or waste into or upon water	<i>Clean Water Act</i> , S.N.B., c. C-6.1	4(f)
Approval required to construct, modify or operate any sewage works	Water Quality Regulation, N.B. Reg. 82-126 (under the <i>Clean Environment Act</i>)	3(4)
No person shall construct, modify or operate a sewage works except in accordance with the terms and conditions of the approval issued therefor		3(7)
Notwithstanding s. 3, no approval is required for the construction of a private service connection, incl. the tapping of a water or sewage main for that purpose		5(4)

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wastewater Treatment)	Statute, Regulation, etc.	Section
Approval required for construction or operation of public sewerage system	Public Sewerage Systems Regulations, R.R.N.W.T. 1990, c. P-22 (under the <i>Public Health Act</i>)	3
Inspection powers of public sewerage systems		4
Public sewerage systems may be ordered to be closed where the Chief Medical Health Officer is satisfied that the disposal of sewage or effluent creates a health hazard		5
Final disposal of effluent cannot create a health hazard or be aesthetically unacceptable		6(1)
Design of sewers and sewage pumping stations regulated		7
Connections between sewers and potable water supply prohibited		8(1)
Design of sewage treatment systems; safety measures to protect operators and visitors		9-10
Effluent chlorination requirements		11
<i>Nova Scotia</i>		
Sewage treatment plants require operating approvals	Activities Designation Regulations, N.S. Reg. 47/95 (<i>Environment Act</i>)	7(2)(a)
Classification of facilities; classification of wastewater treatment facility; classification of wastewater collection facility (by population and points) Application and issuance of facility classification certificate Operator certification certificates exist for wastewater treatment operators, wastewater collection operators; certification procedures and requirements	Water and Wastewater Facilities and Public Drinking Water Supplies Regulation, N.S. Reg. 186/2005 (made under the <i>Environment Act</i>)	7, 11, 12 8 14-26
Septic systems regulated	On-site Sewage Disposal Systems Regulations, N.S. Reg. 51/97 (made under the <i>Health Act</i>)	<i>Generally</i>
<i>Nunavut</i>		
Councils have may, by bylaw, provide for the establishment, acquisition, operation, maintenance or alteration of sewage systems or water distribution systems	<i>Cities, Towns and Villages Act</i> , R.S.N.W.T. 1988, c. C-8	55(2)(d)

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wastewater Treatment)	Statute, Regulation, etc.	Section
<i>Ontario</i>		
<p>Application</p> <p>No person shall establish, alter, extend or replace new or existing sewage works except under and in accordance with an approval granted by a Director, who may require applicant to submit plans, specifications, engineer’s report and other information and to carry out and report on tests or experiments relating to the location of the discharge of effluent or the work to be undertaken; Certificate of approval may be subject to conditions</p> <p>Tribunal hearing required under certain circumstances</p>	<p><i>Ontario Water Resources Act</i>, R.S.O. 1990, c. O.40</p>	<p>53(6)</p> <p>53(1)-4)</p> <p>54-55</p>
<p>Owner of sewage works must make returns to a Director on the matters specified by the Director in a direction to the owner</p> <p>Sewage works must be maintained, kept in repair and operated in such manner as may be directed by a Director</p>	<p><i>Ontario Water Resources Act</i></p>	<p>60</p> <p>61</p>
<p>Director can report to a municipality that it is necessary in the public interest that sewage works be established or altered, and the municipality must implement the report of the Director</p> <p>A municipality may apply to the Ontario Clean Water Agency for the provision of and operation by the Agency of sewage works; parties may enter into such an agreement</p>	<p><i>Ontario Water Resources Act</i></p>	<p>62</p> <p>63ff</p>
<p>(“Facility” means a wastewater collection facility or a wastewater treatment facility)</p> <p>Regulation applies to most facilities that are owned or operated by the Crown or a municipality, and some that are not</p> <p>Certificate of classification must be obtained (classification by point system)</p> <p>Classes of operator’s licences</p>	<p>Licensing of Sewage Works Operators Regulation, O. Reg. 129/04 (made under the <i>OWRA</i>)</p>	<p>1</p> <p>2</p> <p>4,</p> <p>Sch. 1</p> <p>6</p>
<p>Operating standards:</p> <ul style="list-style-type: none"> - operators must be licensed; - owner of a facility must designate an overall responsible operator - record-keeping requirements - operations and maintenance manuals - training requirements 	<p>Licensing of Sewage Works Operators Regulation</p>	<p>14</p> <p>15-18</p> <p>19</p> <p>20</p> <p>21</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wastewater Treatment)	Statute, Regulation, etc.	Section
Classification system for sewage systems Sewage systems must comply with the standards prescribed in this Regulation or those provided in a certificate of approval issued	Sewage Systems Regulation, R.R.O. 1990, Reg. 358 (made under the <i>Environmental Protection Act</i>)	2 4(1)
Sewage standards address: - discharge to ground surface, water; gas escape; discharge of fecal coliform bacteria; - tanks - earth pit privies - leaching pits, cesspools - septic tank systems - holding tanks - proprietary aerobic systems ³ - hauled sewage systems - class 10 sewage systems	Sewage Systems Regulation	4(2) 6 7 8, 9 10 11 12 13 13.1
<i>Prince Edward Island</i>		
Facility classification certificate required for a facility (which incl. a wastewater treatment facility or wastewater collection facility) Certified operator required for each facility Requirements for operator's certificate	Drinking Water and Wastewater Facility Operating Regulations, P.E.I. Reg. EC710/04 (under the <i>Environmental Protection Act</i>)	2 4 5(5), Sch. B
Monitoring requirements: owner of wastewater treatment facility must ensure that samples of treated wastewater are collected and analyzed for (a) biological oxygen demand, suspended solids and fecal coliform bacteria on a quarterly basis (or monthly, depending on classification); (b) ammonia, total phosphorous and total nitrogen on a yearly basis; and (c) any other parameter required by the Department Annual reporting to customers required	Drinking Water and Wastewater Facility Operating Regulations	17 19
<i>Quebec</i>		
Addresses wastewater treatment	Cadre de gestion relatif à la réalisation des projets municipaux du Programme d'assainissement des eaux, R.Q. c. Q-2, r.1.1	<i>Generally</i>

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Regulatory Requirement (Wastewater Treatment)	Statute, Regulation, etc.	Section
<p>The Minister shall issue a depollution attestation to every municipality which operates wastewater treatment works</p> <p>Depollution attestations set out:</p> <ul style="list-style-type: none"> - the nature, quantity, quality and concentration of every contaminant emitted, deposited, released or discharged into the environment, which results from the operation of municipal wastewater treatment works - the nature, origin and quality of the wastewater treated by municipal wastewater treatment works - the contaminant discharge standards - sampling methods 	<p><i>Environment Quality Act</i>, R.S.Q., c. Q-2</p>	<p>31.33</p> <p>31.34- 31.35</p> <p>[not in force unless order is published]</p>
<p>Minister may determine municipal wastewater treatment standards</p>	<p><i>Environment Quality Act</i></p>	<p>31.36</p>
<p>No one may carry out work respecting sewers or the installation of devices for the treatment of waste water before submitting the plans and specifications to the Minister and obtaining his authorization</p> <p>No one may operate a waterworks and sewer system unless he has obtained a permit of operation from the Minister</p> <p>No one may cease to operate, alienate a sewer system otherwise than by succession without obtaining the Minister's authorization</p>	<p><i>Environment Quality Act</i></p>	<p>32</p> <p>32.1</p> <p>32.7</p>
<p>Re vacation resorts: No one may set up or operate any amusement grounds, camping ground, trailer park, mobile home park, holiday camp or public beach, unless it is served by a sewer system authorized by the Minister or he holds a permit</p>	<p><i>Environment Quality Act</i></p>	<p>33</p>
<p>The Minister may order a municipality to acquire such a system or to install a new sewer system</p> <p>The Minister may, as regards a municipality, issue those orders he deems necessary in matters respecting the supplying of drinking water and the management of waste water.</p>	<p><i>Environment Quality Act</i></p>	<p>32.5</p> <p>34 (2)</p>
<p>Construction/installation of sewer equipment must comply with the plans and specifications referred to in the authorization issued by the Minister under s. 32 of the Act and comply with the construction standards prescribed in this Regulation</p>	<p>Regulation respecting Waterworks and sewer services, R.Q. c. Q-2, r.7 (made under the <i>Environment Quality Act</i>)</p>	<p>3</p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wastewater Treatment)	Statute, Regulation, etc.	Section
<p>Construction standards address:</p> <ul style="list-style-type: none"> - quality of material - piping - protection against freezing - system plan 	Regulation respecting Waterworks and sewer services	4 5 6 11
<p>Operation standards address:</p> <ul style="list-style-type: none"> - continuous service requirements; impartial service, right to service, grounds for suspension of service, right of complaint - maintenance - inspection - access to Ministry 	Regulation respecting Waterworks and sewer services	17, 19, 24, 32 18 20 21
<p>Application for a sewer system operating permit (pursuant to s. 32.1 of the Act) must submit a written application to the Minister in Forms 7, 9</p> <p>Every operator must submit to the Ministère de l'Environnement et de la Faune an annual report on his operations for the preceding year</p> <p>Special provisions for sewer systems operated by a municipality outside its territorial limits</p>	Regulation respecting Waterworks and sewer services	49 51 53ff
<i>Saskatchewan</i>		
<p>The council of a rural municipality in which a hamlet or an organized hamlet is located, of a town within the meaning of The Northern Municipalities Act, or of any other municipality other than a rural municipality or northern municipality shall ensure that there is a system for the disposal of sewage for use by the inhabitants thereof; (the same will apply in the future to the council of a northern village or northern hamlet within the meaning of <i>The Northern Municipalities Act</i>)</p>	<i>Public Health Act</i> , 1994, S.S. 1994, c. P-37.1	14

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wastewater Treatment)	Statute, Regulation, etc.	Section
No person shall commence the construction, extension, alteration or operation of any waterworks or sewage works unless that person has first obtained a permit from the Minister to do so	<i>Environmental Management and Protection Act, 2002</i> , S.S. c. E-10.21	21
Permit may contain terms and conditions		23
Every person wishing to obtain a permit must file with the Minister: (a) an application; (b) permission from the appropriate municipal authority for the construction of the sewage works into, on, along, across or under any road allowance or any public highway, square or other public place that may be affected by the sewage works; (c) any prescribed plans or other material; (d) the application fee; (e) if requested by the Minister, a report on the operation of the sewage works; and (f) other requested information		22
Registration of permit notice, easements on land		24-28
The Minister may issue a sewage works protection order to a person responsible for a sewage works if, in the opinion of the Minister, it is necessary to do so to protect human health or the environment	<i>Environmental Management and Protection Act, 2002</i>	31
Adopts Guidelines for Sewage Works Design (“Guidelines”) Scope of regulation Terms and conditions may be issued with permit A person who applies for a permit for a sewage works must file an application, and provide the information and materials required by the Guidelines	The Water Regulations, 2002, c. E-10.21, M. Reg 1	5(1)
		6
		9(2)
		13
Pumping stations must have mechanically forced air ventilation; water outlets must be equipped with a backflow prevention device	The Water Regulations	15
Wastewater treatment facilities must be operated so as to produce effluent that meets the requirements set out in the permittee’s permit, these regulations and the regulations Unless otherwise set out in the permittee's permit, all wastewater treatment facilities in a sewage works must include a secondary treatment process that produces effluent with no more than 30 mg/L BOD5 or CBOD5, and 30 mg/ L TSS; or facultative lagoons designed in accordance with this section [which specifies number and layout of lagoons, surface area, storage volume, etc.]	The Water Regulations	16
		16
Report required for any upset conditions	The Water Regulations	17
Disinfection requirements (specified in permit)		18
Testing and record-keeping requirements (specified in permit)		19

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Wastewater Treatment)	Statute, Regulation, etc.	Section
<i>Yukon</i>		
<p>An individual may, without a licence, deposit waste that is sewage from a residential building, in accordance with the Sewage Disposal Systems Regulation</p> <p>A person may deposit waste without a licence if the proposed use or deposit satisfies the criteria set out in respect of a municipal undertaking, in column 2 of Schedule 8 (of which item 3 is certain deposits of waste by a city, town, village)</p>	<p>Water Regulation, Y.O.I.C. 2003/58 (made under the <i>Waters Act</i>)</p>	<p>4(3)</p> <p>4(1)(c) (iv)</p>
<p>This Regulation applies to the disposal of from all buildings, etc., except where disposed of by way of a municipal sewer system or authorized under the Yukon Waters Act (Canada)</p> <p>Addresses:</p> <ul style="list-style-type: none"> - discharge of sewage - permitting and notification requirements for construction of a sewage disposal system - siting of septic tank, sewage holding tank or contained privy - construction and operation requirements - maintenance requirements - abandonment and site reclamation - transportation and final disposal of sewage 	<p>Sewage Disposal Systems Regulation, Y.O.I.C. 1999/82 (made under the <i>Public Health and Safety Act</i>)</p>	<p>3</p> <p>5-8</p> <p>9-15</p> <p>16-20</p> <p>21-29</p> <p>30-34</p> <p>35-37</p> <p>38-42</p>
<p>The Legislature may make laws in relation to the following classes of subjects in respect of Yukon: . . . waters, other than waters in a federal conservation area, including the deposit of waste in those waters, the definition of what constitutes waste and the disposition of any right in respect of those waters under ss. 48(2)</p>	<p><i>Yukon Act</i>, S.C. 2002, c. 7</p>	<p>18 (1)(n)</p>

Cisterns, Water Trucking

Regulatory Requirement (Cisterns, Water Trucking)	Statute, Regulation, etc.	Section
<i>Alberta</i>		
<i>No relevant provisions</i>		
<i>British Columbia</i>		
“Domestic water system” includes a tank truck, vehicle water tank or other prescribed means of transporting drinking water, whether or not there are any related works or facilities	<i>Drinking Water Protection Act</i> , S.B.C. 2001, c. 9	1
A person does not require a construction permit for a water supply system that is a tank truck or a vehicle water tank	Drinking Water Protection Regulation, B.C. Reg. 200/2003	6(3)(b)
<i>Manitoba</i>		
Prohibited to sell water or convey water for sale for domestic purposes except by written permission of the medical officer of health.	Water Supplies Regulation, Man. Reg. 330/88R (under the <i>Public Health Act</i>)	4
Water for sale for domestic purposes may not be transported or conveyed in any vehicle unless the tanks, other receptacles and equipment are maintained in sanitary condition and in good repair to the satisfaction of the medical officer of health.		5
<i>Newfoundland and Labrador</i>		
<i>No relevant provisions</i>		
<i>New Brunswick</i>		
“Waterworks” includes cisterns, reservoirs, tanks	<i>Health Act</i> , R.S.N.B. 1973, c. H-2	1
A cistern in a foul condition can constitute a “nuisance”		1
No person shall make a direct physical connection between a potable water supply and a storage tank unless the storage tank is so constructed as to avoid contamination of the water in the tank	General Regulation, N.B. Reg. 88-200 (under the <i>Health Act</i>)	220(1) (a)
No person shall make a direct physical connection between a private water supply and a public water supply		220(2)
The tanks, pipes, containers, receptacles and other equipment of the vehicle used for the transportation or conveyance of water to be used for drinking, cooking or other domestic purposes shall be maintained in a sanitary condition and in good repair and a district medical health officer may inspect any such vehicle	General Regulation,	222

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Cisterns, Water Trucking)	Statute, Regulation, etc.	Section
<i>Northwest Territories</i>		
<p>Water haulage tanks should be constructed so as to exclude birds, animals, insects and dust</p> <p>There shall be a manhole cover on a tank, conveniently located for entering for purposes of cleaning the interior. The opening shall be made so that there is a water-tight raised lip around the edge, a minimum of 50 mm high. It shall be fitted with a water-tight cover</p> <p>There shall be a drain opening in the bottom of a tank so that the tank may be drained completely and flushed easily</p> <p>Each tank shall be provided with convenient clean storage space for the hoses, and the ends of the hoses shall be protected from contamination</p>	<p>Public Water Supply Regulations, R.R.N.W.T. 1990, c. P-23 (made under the <i>Public Health Act</i>)</p>	21
<p>Fact: There are 34 public water systems in the NWT: 27 of them get water from rivers or lakes, 4 of them get water from underground wells, 3 of the public water systems in the NWT get water trucked in from other communities</p> <p>Water Treatment Plant Operators are those persons who are directly responsible for water treatment, whether it be disinfection at a truckfill station or at a facility using chemical treatment</p>	<p>Managing Drinking Water Quality in the Northwest Territories: A Preventative Framework and Strategy (May 2005)</p>	P. 2 P. 10
<i>Nova Scotia</i>		
<p>Province has potable water hauler guidelines</p>	<p>Potable Water Hauler Guidelines, June 2005</p>	<i>Generally</i>
<i>Nunavut</i>		
<p><i>No relevant provisions</i></p>		
<i>Ontario</i>		
<p>Provincial officer may, without warrant or court order, inspect any means of containment that the provincial officer reasonably believes is being used for the handling or transportation of drinking water or water from a raw water supply</p>	<p><i>Safe Drinking Water Act, 2002</i>, S.O. 2002, c. 32</p>	82(7)
<p>Numerous treatment and testing requirements do not apply to certain small drinking-water systems if all of its drinking water is transported from certain drinking-water systems and is stored in certain containers</p>	<p>Drinking-Water Systems Regulation, O. Reg. 170/03 (made under the <i>SDWA</i>)</p>	7

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Cisterns, Water Trucking)	Statute, Regulation, etc.	Section
<i>Prince Edward Island</i>		
Requirements for water loading stations incl. backflow prevention, preventing one hauling vessel contaminating subsequent hauling vessel connected to the station, preventing hose contact with the ground, access and security precautions	Atlantic Canada Guidelines for the Supply, Treatment, Storage, Distribution and Operation of Drinking Water Supply Systems (2004)	7.8.5
<i>Quebec</i>		
Division II addresses water supplied by tank truck to more than 20 persons. Addresses: water quality standards, testing requirements (incl. for free chlorine), restriction on other uses of the truck	Regulation respecting the quality of drinking water, c. Q-2, r. 18.1	26-29
<i>Saskatchewan</i>		
General requirement for approval of a works does not apply to a pump or other apparatus used to fill a tank, cistern, trough or similar vessel or receptacle or a dugout constructed for domestic purposes	<i>Saskatchewan Watershed Authority Act</i> , 2005, S.S. 2005, c. S-35.03	59(2)(ii)
Delivery of potable water by bulk tank requirements, incl: potability, water is subject of a permit, testing, notification, publication of adverse results. Exceptions: private deliveries to own residence or social function	Health Hazard Regulations, R.R.S. c. P-37.1, Reg. 10	10
<i>Yukon</i>		
No tank which is used to transport sewage or sludge shall be used to contain potable water	Sewage Disposal Systems Regulation, Y.O.I.C. 1999/82 (made under the <i>Public Health and Safety Act</i>)	40

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Bulk Water Use)	Statute, Regulation, etc.	Section
<p>The property in and the right to the use and flow of all the water at any time in a stream in British Columbia are for all purposes vested in the government, except only in so far as private rights have been established under licences issued or approvals given under this Act; and no right to divert or use water may be acquired by prescription</p>	<i>Water Act</i>	2
<p>A licence entitles its holder to, <i>inter alia</i>, divert and use beneficially, for the purpose and during or within the time stipulated, the quantity of water specified in the licence; store water</p> <p>If diversion or use of water is required for a term < 12 months, the comptroller or a regional water manager may, without issuing a licence, grant an approval in writing, approving the diversion or use of the water (with conditions), but such diversion or use are subject to the same provisions as if the approval were a licence</p> <p>“Quick licensing” available, under some circumstances</p> <p>Licences for power purposes</p>	<i>Water Act</i>	5 8 12.1 12.2
<p>If it appears to the LGiC to be advisable, in order to enable a person to investigate the suitability of a stream for any purpose, or in order to make provision for a water supply for a waterworks, irrigation or power system or project, or for the use of the Crown for any purpose, the LGiC may order reserve all or part of the unrecorded water of the stream from being taken or used or acquired under this Act</p> <p>A water reservation has been created for the Nisga’a Nation</p>	<i>Water Act</i>	44 44.1
<p>The comptroller may at any time issue to a group of 6 or more licensees a certificate of incorporation incorporating them into a water users' community with the name the comptroller considers advisable</p> <p>A water users' community is a public corporate body and may (a) acquire, hold and control property and licences, (b) acquire, construct, hold, maintain, improve, replace and operate works, and (c) levy assessments on its members and enforce payment of those assessments by suit in a court of competent jurisdiction</p>	<i>Water Act</i>	51 52
<p>Minister may order the preparation of water management plans</p>	<i>Water Act</i>	62ff
<p>Schedule A, together with the relevant provisions of this regulation, is established as the tariff of the fees, rentals and charges in respect of water diversions</p>	Water Regulation, B.C. Reg. 204/88 (made under the <i>Water Act</i>)	4

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Bulk Water Use)	Statute, Regulation, etc.	Section
<p>Water vested in the government - property in and the right to the use and flow of all the water at any time in a stream in British Columbia are vested in the government, except only in so far as private rights have been established under this Act or under licences issued or approvals given under the <i>Water Act</i></p> <p>B.C. water removal restriction – removal of water from B.C. severely restricted</p> <p>Prohibition against large scale transfers between major watersheds</p> <p>No further licences for B.C. water removal</p> <p>Exception for water to be used in transit - Nothing in this Act prohibits the removal of water from B.C. in the ordinary course of carrying the water in vehicles, vessels or aircraft for the use of persons or animals while the persons or animals are being transported in the vehicles, vessels or aircraft</p> <p>Register for continuing water removal</p>	<p><i>Water Protection Act</i>, RSBC 1996, c. 484</p>	<p>3</p> <p>4, 5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p>
Manitoba		
<p>Generally prohibited to</p> <ul style="list-style-type: none"> - drill for, divert, extract, take or store water for removal - sell or otherwise dispose of water to a person for removal - convey or transport water for removal - remove water <p>from a water basin or sub-water basin</p>	<p><i>The Water Resources Conservation And Protection And Consequential Amendments Act</i>, S.M. 2000, c. 11</p>	<p>2</p>
<p>Licence required to divert water; construct, establish, operate or maintain any works; and control water or construct, establish, operate or maintain any water control works; BUT, these do not apply to a person using water for domestic purposes, where the person has lawful access to the water, or to a person who constructs a well to obtain water for domestic purposes</p> <p>“Domestic purposes” means the use of water, obtained from a source other than a municipal water distribution system, at a rate < 25,000 litres per day, for household and sanitary purposes, for the watering of lawns and gardens, and the watering of livestock and poultry</p>	<p><i>Water Rights Act</i>, C.C.S.M. c. W80</p>	<p>3</p> <p>1</p>
<p>The order of priority of the purposes for which water may be used or diverted, or works constructed, established or maintained, in accordance with this Act is as follows: 1. domestic purposes; 2. municipal purposes; 3. agricultural purposes; 4. industrial purposes; 5. irrigation purposes; 6. other purposes</p>	<p><i>Water Rights Act</i></p>	<p>9</p>
<p>The Minister may reserve any unlicensed water</p>	<p><i>Water Rights Act</i></p>	<p>13(1)</p>
<p>Outlines application procedure for a licence under the <i>Water Rights Act</i></p>	<p>Water Rights Regulation, Man. Reg. 126/87</p>	<p><i>Generally</i></p>

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Bulk Water Use)	Statute, Regulation, etc.	Section
<i>Newfoundland and Labrador</i>		
Property in and the right to the use and flow of water in a body of water in the province are for all purposes vested in the Crown	<i>Water Resources Act</i> , SNL 2002, W-4.01	9
A right to the permanent diversion or to the exclusive use of water shall not be acquired by a riparian owner or another person by length of use or otherwise than in accordance with this Act		12(1)
Bulk water export generally prohibited		12(2)
Licence required to, <i>inter alia</i> , use water for a municipal, agricultural, institutional, commercial or industrial purpose	<i>Water Resources Act</i>	14
Priority of uses where concurrent applications: (a) domestic purposes; (b) municipal purposes; (c) agricultural purposes; (d) commercial, institutional and industrial purposes; (e) water and thermal power generation purposes	<i>Water Resources Act</i>	15
First priority of use may be given to Hydro		17
Minister may reserve unappropriated water	<i>Water Resources Act</i>	16
Royalties and water use charges	<i>Water Resources Act</i>	29
<i>New Brunswick</i>		
<i>Clean Water Act</i> , s. 15 requires a permit for water diversion; exempt uses include the harvesting of aquatic plants or the removal of aquatic plants by physical means for recreation, navigation or gathering food and the use of aquatic plant harvesting equipment in the area of harvesting	Watercourse and Wetland Alteration Regulation, N.B. Reg. 90-80 (made under the <i>Clean Water Act</i>)	3(3)
<i>Northwest Territories</i>		
<i>No relevant provisions</i>		
<i>Nova Scotia</i>		
It is generally prohibited to - drill for, divert, extract, take or store water for removal - sell or otherwise dispose of water to a person for removal - convey or transport water for removal	<i>Water Resources Protection Act</i> , S.N.S. 2000, c. 10	4
<i>Nunavut</i>		
With the exception of domestic or emergency use of waters as set out in s. 5 of the <i>Northern Inland Waters Act</i> , no person may use water or dispose of waste into water without the approval of the Nunavut Water Board	Nunavut Land Claims Agreement	13.7.1

REPORT OF THE EXPERT PANEL ON SAFE DRINKING WATER FOR FIRST NATIONS

Regulatory Requirement (Bulk Water Use)	Statute, Regulation, etc.	Section
<i>Ontario</i>		
<p>No person shall take more than a total of 50,000 litres of water in a day, by means of a well or from a surface source, or by means of a structure or works for the diversion or storage of water, without a permit</p> <p>Where the taking of water (other than the taking of water for use for ordinary household purposes or for the watering of livestock or poultry and other than for firefighting) interferes with any public or private interest in any water, the Director may prohibit the person from so taking water without a permit issued by the Director</p>	<p><i>Ontario Water Resources Act</i>, R.S.O. 1990, c. O.40</p>	<p>34</p>
<p>Matters to be considered by Director when considering an application under s. 34 of the Act on whether to cancel, amend or impose conditions on a permit to take water</p> <p>Notice and consultation requirements for s. 34 applications</p> <p>Restriction on transfer of water between basins</p>	<p>Water Taking and Transfer Regulation, O. Reg. 387/04 (made under the <i>(OWRA)</i>)</p>	<p>4</p> <p>7</p> <p>10</p>
<i>Prince Edward Island</i>		
<p>Permit required for alteration of a watercourse, incl. water diversion</p>	<p><i>Environmental Protection Act</i>, R.S.P.E.I. 1988, c. E-9</p>	<p>10</p>
<i>Quebec</i>		
<p><i>No relevant provisions</i></p>		
<i>Saskatchewan</i>		
<p><i>No relevant provisions</i></p>		
<i>Yukon</i>		
<p>Prohibited to use waters in a water management area except in accordance with the conditions of a licence (and other exception). (“Use” includes water diversion)</p>	<p><i>Waters Act</i>, S.Y. 2003, c. 19</p>	<p>6, 1</p>
<p>Yukon Water Board must not authorize any substantial alteration of the quantity, quality or rate of flow of water on or adjacent to settlement land, unless certain conditions are met</p>	<p>Umbrella Final Agreement Council for Yukon Indians, 1993</p>	<p>14.8,</p> <p>14.9</p>

Table of Links to Legislation

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Potable Water Regulation, A. Reg. 277/2003	http://www.canlii.org/ab/laws/regu/2003r.277/index.html
Wastewater and Storm Drainage Regulation, Alta. Reg. 119/1993 Wastewater and Storm Drainage (Ministerial) Regulation, Alta. Reg. 120/1993 (both made under the <i>EPEA</i>)	http://www.canlii.org/ab/laws/regu/1993r.120/index.html
<i>Environmental Protection and Enhancement Act</i> , R.S.A. 2000, c. E-12	http://www.canlii.org/ab/laws/sta/e-12/index.html
Activities Designation Regulation, Alta. Reg. 276/2003 (under the <i>EPEA</i>)	http://www.canlii.org/ab/laws/regu/2003r.276/index.html
Approvals and Registrations Procedure Regulation, Alta. Reg. 113/1993 (<i>EPEA</i>)	http://www.canlii.org/ab/laws/regu/1993r.113/index.html
Standards and Guidelines for Municipal Waterworks, Wastewater and Storm Drainage Systems (January 2006)	http://www3.gov.ab.ca/env/waste/muniwwater/stormdrainage.html
Waterworks Systems Using High Quality Groundwater	http://environment.gov.ab.ca/info/library/6999.pdf#search=%22Waterworks%20Systems%20Using%20High%20Quality%20Groundwater%22
Waterworks Systems Consisting Solely of a Water Distribution System	http://environment.gov.ab.ca/info/library/6998.pdf#search=%22Waterworks%20Systems%20Consisting%20Solely%20of%20a%20Water%20Distribution%20System%22
Water and Wastewater Operators' Certification Guidelines	http://www3.gov.ab.ca/env/protenf/forms/WaterGuidelinesBookletv2_oct05.pdf
<i>British Columbia</i>	
<i>Water Act</i> , [RSBC 1996] c. 483	http://www.qp.gov.bc.ca/statreg/stat/W/96483_01.htm
Groundwater Protection Regulation, B.C. Reg. 299/2004	http://www.qp.gov.bc.ca/statreg/reg/W/Water/Water299_2004/299_2004.htm
Water Regulation, B.C. Reg. 204/88 (made under the <i>Water Act</i>)	http://www.qp.gov.bc.ca/statreg/reg/W/Water/204_88.htm
<i>Water Protection Act</i> , RSBC 1996, c. 484	http://www.qp.gov.bc.ca/statreg/stat/W/96484_01.htm

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<i>Drinking Water Protection Act</i> , S.B.C. 2001, c. 9	http://www.qp.gov.bc.ca/statreg/stat/D/01009_01.htm
Drinking Water Protection Regulation, B.C. Reg. 200/2003	http://www.qp.gov.bc.ca/statreg/reg/D/200_2003.htm
<i>Health Act</i> , R.S.B.C. 1996, c. 179	http://www.qp.gov.bc.ca/statreg/stat/H/96179_01.htm
Municipal Sewage Regulation, B.C. Reg. 129/99 (made under the <i>Environmental Management Act</i>)	http://www.qp.gov.bc.ca/statreg/reg/e/envmgmt/129_99.htm
Sanitary Regulations, B.C. Reg. 142/59 (O.C. 829/17) (made under the <i>Health Act</i>)	http://www.qp.gov.bc.ca/statreg/reg/H/Health/142_59.htm#42
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<i>The Drinking Water Safety Act</i> , S.M. 2002, c. 36	http://www.canlii.org/mb/laws/sta/d-101/index.html (C.C.S.M. c. D101) http://www.canlii.org/mb/laws/sta/2002c.36/index.html (S.M. 2002, c. 36; not proclaimed)
<i>The Water Protection Act</i> , C.C.S.M., c. W65	http://www.canlii.org/mb/laws/sta/w-65/index.html
<i>The Ground Water and Water Well Act (Manitoba)</i> , C.C.S.M., c. G110	http://www.canlii.org/mb/laws/sta/g-110/index.html
<i>The Water Rights Act (Manitoba)</i> , C.C.S.M. c. W80	http://www.canlii.org/mb/laws/sta/w-80/index.html
Protection of Water Sources Regulation, Man. Reg. 326/88R	http://www.canlii.org/mb/laws/regu/1988r.326/index.html
Water Supplies Regulation, Man. Reg. 330/88R (under the <i>Public Health Act</i>)	http://www.canlii.org/mb/laws/regu/1988r.330/index.html
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Water and Wastewater Facility Operators Regulation, Man. Reg. 77/2003 (made under <i>The Environment Act</i>)	http://www.canlii.org/mb/laws/regu/2003r.77/index.html
Water Works, Sewerage and Sewage Disposal Regulation, Man. Reg. 331/88R	http://www.canlii.org/mb/laws/regu/1988r.331/index.html

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Statute, Regulation, etc.	Link
Water Rights Regulation, Man. Reg. 126/87	http://www.canlii.org/mb/laws/regu/1987r.126/index.html
Onsite Wastewater Management Systems Regulation, M. Reg 83/2003 (<i>Environment Act</i>)	http://www.canlii.org/mb/laws/regu/2003r.83/index.html
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<i>Health and Community Services Act</i> , SNL 1995, c. P-37.1	http://www.canlii.org/nl/laws/sta/p-37.1/index.html
<i>Water Resources Act</i> , SNL 2002, W-4.01	http://www.canlii.org/nl/laws/sta/w-4.01/index.html
Environmental Control Water and Sewage Regulations, 2003, N.L.R. 65/03	http://www.canlii.org/nl/laws/regu/c2003r.65/index.html
Sanitation Regulations, C.N.L.R. 803/96	http://www.canlii.org/nl/laws/regu/1996r.803/index.html
Well Drilling Regulations, 2003, N.L.R. 63/03 (<i>Water Resources Act</i>)	http://www.canlii.org/nl/laws/regu/c2003r.63/index.html
<i>Drinking Water Safety in Newfoundland and Labrador: 2005 Annual Report</i>	http://www.env.gov.nl.ca/Env/env/waterres/Surfacewater/DWS-Report/2005/DWQ_Annual_Report-ALL.pdf
New Brunswick	
<i>Clean Water Act</i> , S.N.B., c. C-6.1	http://www.canlii.org/nb/laws/sta/c-6.1/index.html
Water Well Regulation, N.B. Reg. 90-79	http://www.canlii.org/nb/laws/regu/1990r.79/index.html
Potable Water Regulation, N.B. Reg. 93-203 (under the <i>Clean Water Act</i>)	http://www.canlii.org/nb/laws/regu/1993r.203/index.html
Water Classification Regulation, N.B. Reg. 2002-13 (under the <i>Clean Water Act</i>)	http://www.canlii.org/nb/laws/regu/2002r.13/index.html
Watercourse and Wetland Alteration Regulation, N.B. Reg. 90-80 (<i>CWA</i>)	http://www.canlii.org/nb/laws/regu/1990r.80/index.html
Wellfield Protected Area Designation Order, N.B. Reg. 2000-47	http://www.canlii.org/nb/laws/regu/2000r.47/index.html
Watershed Protected Area Designation Order, N.B. Reg. 2001-83	http://www.canlii.org/nb/laws/regu/2001r.83/index.html

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Protected Area Exemption Regulation, N.B. Reg. 90-120	http://www.canlii.org/nb/laws/regu/1990r.120/index.html
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Water Quality Regulation, N.B. Reg. 82-126 (under the <i>Clean Environment Act</i>)	http://www.canlii.org/nb/laws/regu/1982r.126/index.html
Environmental Impact Assessment Regulation, N.B. Reg. 87-83 (under the <i>Clean Environment Act</i>)	http://www.canlii.org/nb/laws/regu/1987r.83/index.html
<i>Health Act</i> , R.S.N.B. 1973, c. H-2	http://www.canlii.org/nb/laws/sta/h-2/index.html
General Regulation, N.B. Reg. 88-200 (under the <i>Health Act</i>)	http://www.canlii.org/nb/laws/regu/1988r.200/index.html
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<i>Water Resources Agreements Act</i> , R.S.N.W.T. 1988, c.17 (Supp.)	http://www.canlii.org/nt/laws/sta/supp.17/index.html
Public Sewerage Systems Regulations, R.R.N.W.T. 1990, c. P-22 (under the <i>Public Health Act</i>)	http://www.canlii.org/nt/laws/regu/p-22/index.html
Public Water Supply Regulations, R.R.N.W.T. 1990, c. P-23	http://www.canlii.org/nt/laws/regu/p-23/index.html
<i>Managing Drinking Water Quality in the Northwest Territories: A Preventative Framework and Strategy</i> (May 2005)	http://www.pws.gov.nt.ca/pdf/WaterAndSanitation/WaterFramework.pdf
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<i>Water Resources Protection Act</i> , S.N.S. 2000, c. 10	http://www.canlii.org/ns/laws/sta/2000c.10/index.html
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Water and Wastewater Facilities and Public Drinking Water Supplies Regulation, N.S. Reg. 186/2005 (made under the <i>Environment Act</i>)	http://www.canlii.org/ns/laws/regu/2005r.186/index.html
Activities Designation Regulations, N.S. Reg. 47/95 (<i>Environment Act</i>)	http://www.canlii.org/ns/laws/regu/1995r.47/index.html

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Statute, Regulation, etc.	Link
<i>Water Resources Protection Act</i> , S.N.S. 2000, c. 10	http://www.canlii.org/ns/laws/sta/2000c.10/index.html
Well Construction Regulations, N.S. Reg. 58/95	http://www.canlii.org/ns/laws/regu/1995r.58/index.html
<i>Education Act</i> , S.N.S. 1995-96, c. 1	http://www.canlii.org/ns/laws/sta/1995-96c.1/index.html
On-site Sewage Disposal Systems Regulations, N.S. Reg. 51/97 (<i>Health Act</i>)	http://www.canlii.org/ns/laws/regu/1997r.51/index.html
Guidelines for Monitoring Public Drinking Water Supplies	http://www.gov.ns.ca/enla/water/docs/Guidelines_for_Monitoring_Public_Drinking_Water_Supplies.pdf
A Drinking Water Strategy for Nova Scotia - Final Report	http://www.gov.ns.ca/enla/water/docs/NSWaterStrategyReport.pdf
Potable Water Hauler Guidelines, June 2005	http://www.gov.ns.ca/enla/water/docs/PotableWaterHaulerGuidelines.pdf#search=%22potable%20water%20hauler%20guidelines%22
<i>Nunavut</i>	
<i>Cities, Towns and Villages Act</i> , R.S.N.W.T. 1988, c. C-8	http://action.attavik.ca/home/justice-gn/attach-en_conlaw_postdiv/consRSNWT1988cC-8.pdf
Nunavut Land Claims Agreement (Water Provisions)	http://nwb.nunavut.ca/article.htm
<i>Ontario</i>	
<i>Environmental Protection Act</i> , R.S.O. 1990, c. E.19	http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90e19_e.htm
<i>Ontario Water Resources Act</i> , R.S.O. 1990, c. O.40	http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90o40_e.htm
<i>Safe Drinking Water Act, 2002</i> , S.O. 2002, c. 32	http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/02s32_e.htm
Drinking-Water Systems Regulation, O. Reg. 170/03 (made under the <i>SDWA</i>)	http://www.e-laws.gov.on.ca/DBLaws/Regs/English/030170_e.htm
Non-Residential and Non-Municipal Seasonal Residential Systems that Do Not Serve Designated Facilities, O. Reg. 252/05 (made under the <i>SDWA</i>)	http://www.e-laws.gov.on.ca/DBLaws/Regs/English/050252_e.htm

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Certification of Drinking-Water System Operators and Water Quality Analysts Regulation, O. Reg. 128/04 (made under <i>SDWA</i>)	http://www.e-laws.gov.on.ca/DBLaws/Regs/English/040128_e.htm
Drinking-Water Testing Services Regulation, O. Reg. 248/03	http://www.e-laws.gov.on.ca/DBLaws/Regs/English/030248_e.htm
Wells Regulation, R.R.O. 1990, Reg. 903 (made under the <i>OWRA</i>)	http://www.e-laws.gov.on.ca/DBLaws/Regs/English/900903_e.htm
Licensing of Sewage Works Operators Regulation, O. Reg. 129/04 (made under the <i>OWRA</i>)	http://www.e-laws.gov.on.ca/DBLaws/Regs/English/040129_e.htm
Sewage Systems Regulation, R.R.O. 1990, Reg. 358 (made under the <i>Environmental Protection Act</i>)	http://www.e-laws.gov.on.ca/DBLaws/Regs/English/900358_e.htm
Prince Edward Island	
<i>Environmental Protection Act</i> , R.S.P.E.I. 1988, c. E-9	http://www.canlii.org/pe/laws/sta/e-9/index.html
Drinking Water and Wastewater Facility Operating Regulations, P.E.I. Reg. EC710/04 (under the <i>Environmental Protection Act</i>)	http://www.canlii.org/pe/laws/regu/2004r.710/index.html
Water Well Regulations, P.E.I. Reg. EC188/90	http://www.canlii.org/pe/laws/regu/1990r.188/index.html
<i>Public Health Act</i> , R.S.P.E.I. 1988, c. P-30	http://www.canlii.org/pe/laws/sta/p-30/index.html
General Regulations, P.E.I. Reg. EC267/99 (under the <i>Tourism Industry Act</i>)	http://www.canlii.org/pe/laws/regu/1999r.267/index.html
Atlantic Canada Guidelines for the Supply, Treatment, Storage, Distribution and Operation of Drinking Water Supply Systems (2004)	http://www.gov.ns.ca/enla/water/docs/WaterSystemGuidelines.pdf
Quebec	
<i>Environment Quality Act</i> , R.S.Q., c. Q-2	http://www.canlii.org/qc/laws/sta/q-2/index.html
<i>Water Resources Preservation Act</i> , R.S.Q. c. P-18.1	http://www.ijican.org/qc/legis/regl/q-2r.1.1/index.html

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Statute, Regulation, etc.	Link
Regulation respecting the quality of drinking water, c. Q-2, r. 18.1.	http://www.canlii.org/qc/laws/regu/q-2r.18.1.1/index.html
Groundwater Catchment Regulation, R.Q. c. Q-2, r.1.3	http://www.canlii.org/qc/laws/regu/q-2r.1.3/index.html
Waterworks and sewer services, Regulation respecting, R.Q. c. Q-2, r.7	http://www.canlii.org/qc/laws/regu/q-2r.7/index.html
<i>Civil Protection Act</i> , R.S.Q. c. S-2.3	http://www.canlii.org/qc/laws/sta/s-2.3/index.html
<i>Public Health Act</i> , R.S.Q. c. S-2.2	http://www.canlii.org/qc/laws/sta/s-2.2/index.html
Regulation respecting municipal plans of disaster prevention and emergency measures, R.Q. c. P-38.1, r.2 (made under <i>An Act respecting the Protection of persons and property in the event of disaster</i>)	http://www.canlii.org/qc/laws/regu/p-38.1r.2/index.html
Saskatchewan	
Municipal Drinking Water Quality Monitoring Guidelines (adopted by The Water Regulations, s. 5)	http://www.se.gov.sk.ca/environment/protection/water/EPB%20202%20-%20Municipal%20Drinking%20Water%20Quality%20Guidelines.pdf
<i>Public Health Act</i> , 1994, S.S. 1994, c. P-37.1	http://www.canlii.org/sk/laws/sta/p-37.1/index.html
<i>Saskatchewan Watershed Authority Act</i> , 2005, S.S. 2005, c. S-35.03	http://www.canlii.org/sk/laws/sta/s-35.03/index.html
<i>Environmental Management and Protection Act</i> , 2002, S.S. c. E-10.21	http://www.canlii.org/sk/laws/sta/e-10.21/index.html
The Ground Water Regulations, S. Reg. 172/66 (under the <i>Ground Water Conservation Act</i> [repealed] ¹²⁴)	http://www.canlii.org/sk/laws/regu/1966r.172/index.html
The Water Regulations, 2002, c. E-10.21, M. Reg 1	http://www.canlii.org/sk/laws/regu/e-10.21r.1/index.html
Health Hazard Regulations, R.R.S. c. P-37.1, Reg. 10	http://www.canlii.org/sk/laws/regu/p-37.1r.10/index.html

¹²⁴ These Regulations continue in force under *The Saskatchewan Watershed Authority Act, 2005*.

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Statute, Regulation, etc.	Link
Saskatchewan Water and Wastewater Works Operator Certification Standards, 2002	http://www.se.gov.sk.ca/environment/protection/water/epb%20139%20-%20Operator%20Standards%202002.pdf
Yukon	
<i>Environment Act</i> , R.S.Y. 2002, c. 76	http://www.canlii.org/yk/laws/sta/76/index.html
<i>Waters Act</i> , S.Y. 2003, c. 19	http://www.canlii.org/yk/laws/as/2003c.19/index.html
Waters Regulation, O.I.C. 2003/58 (made under the <i>Waters Act</i>)	http://www.canlii.org/yk/laws/regu/2003r.58/index.html
Regulations Respecting Public Health, C.O. 1958/079 (made under the <i>Public Health Act</i>)	http://www.canlii.org/yk/laws/regu/1958r.079/index.html
Sewage Disposal Systems Regulation, Y.O.I.C. 1999/82 (made under the <i>Public Health and Safety Act</i>)	http://www.canlii.org/yk/laws/regu/1999r.82/index.html

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