



TSAG Chiefs Gathering Session

Summary Notes

August 15 and 16th, 2023

Background

On August 15 and 16th, 2023 a two-day session was hosted by TSAG's Chiefs Steering Committee on Technical Services to discuss the impacts of the *Department of Indigenous Services Act 2019* and the pending *An Act respecting drinking water, wastewater and related infrastructure on First Nations Lands*. The intent of these sessions was to bring together First Nation Leadership from Treaty's 6, 7 and 8 across Alberta to discuss and develop plans and actions moving forward. ISC representatives were invited to address the critical questions and concerns regarding these Acts.

Goals of the Gathering

- Inform First Nations leadership of the current status of *Department of Indigenous Services Act 2019*; as well as presenting what was heard in the four information sessions facilitated by the Chiefs Steering Committee between January – March 2023
- Inform Alberta First Nations leadership of current status of the proposed federal water legislation: *An Act respecting drinking water, wastewater and related infrastructure on First Nations* – including work to date, next steps and timelines
- Inform First Nations leadership in the Alberta Region about Closing the Infrastructure Gap 2030 – including work and assessments done to date, next steps and timelines.
- Indigenous Services Canada (ISC) to provide answers to critical unknowns of *Services Act 2019* and water legislation
- First Peoples Law to present on legal considerations and litigation options and timelines
- Creating a collaborative space moving forward

Outcomes of the Gathering

- First Nation Chiefs take away clear understanding of the current state of the *Department of Indigenous Services Act 2019* to share with their membership to engage in further discussions and actions
- First Nations Chiefs discuss the options for legal litigation on the proposed Water Act, and to understand where other nations may be taking legal action, to support and plan accordingly
- Communities reach out to the Chiefs Steering Committee through TSAG for further information and engagement – including in-community meetings and presentations
- Next steps and actions identified for the Assembly of Treaty Chiefs meeting in September 2023



- TSAG Chiefs Steering Committee obtain feedback, seek guidance and identify an action-oriented strategy that involves Nations directly

Attendees

ISC representatives were present for the first half of day 1 to present information and respond to questions. Following their departure, closed door meetings were held amongst First Nations leaders and attendees. Most of the attendance was made up of individuals attending in-person, with only a few attending virtually via zoom.

Treaty Area	# of Representatives	First Nations
Treaty 6	22	Alexander First Nation (7); Alexis Nakota Sioux Nation (1); Confederation Treaty 6 (1); Enoch Cree Nation (1); Montana First Nation (6); Saddle Lake (4); Samson Cree Nation (1);
Treaty 7	9	Bearspaw First Nation (1); Piikani First Nation (3); Stoney Nation (2); Sturgeon Lake First Nation (1); Tsuu T'ina First Nation (2); Treaty 7 First Nations Chiefs Association (2)
Treaty 8	12	Beaver Lake First Nation (5); Bigstone Cree Nation (2); Dene Tha First Nation (1); Western Cree Tribal Council (1); Treaty 8 First Nations of Alberta (1)
Miscellaneous	19	Nation/organization not identified
ISC	7	<u>In-person</u> Jessica Gordon , Senior Director, Housing and Infrastructure Reform Dayna Jongejan , Associate Regional Director General, Alberta Region Aline Nevers , Senior Advisor Christine Lynch , Policy Analyst Adam Rhyndress , Data Analyst <u>Virtual</u> Rebecca Blake , Director, Legislation Engagement and Regulation Supported by Tariq Pracha , Manager of Engagement <u>Virtual but did not participate</u> Kamoi McWhinney , Senior Policy Analyst Kalina Sedra , Junior Policy Analyst



Accessing Information

All PPT presentations and documents distributed during the session were shared with all participants and request for these can be sent to transfer@tsag.net. As well, the full recordings from these sessions can be accessed at www.tsag.net/transfer. This landing page also provides other key materials shared by TSAG's Chiefs Steering Committee as well as updates and upcoming events.

What We Heard

We heard many voices who shared their stories, questions, and concerns across the 2-days of sessions with many recurring themes and ideas. It was critical that ISC attend these sessions to not only speak to their intentions and timelines, but to answer questions that First Nations leaders need to know and have clarity of how this relationship can work going forward. Furthermore, Chief Rupert Meneen of Tallcree First Nation, along with First Peoples Law, shared their proposed legal action against Canada in response to the pending federal water legislation. They provided a **Call to Action** for all First Nations in the Alberta Region to provide written and verbal support.

Indigenous Services Canada

Opening remarks were provided by Dayna Jongejan on behalf of Jamie Brown [Regional Director General, Alberta Region]:

- One of the biggest challenges for ISC and First Nations in closing the infrastructure gap and managing any transfer of services is identifying solutions for capital expenditures.
- The current funding models are too rigid and inflexible, making it difficult for First Nations to achieve variable goals. Money allocations often have very specific parameters for spending, both in-terms of what they can spend it on, as well as within specific time periods, which often do not align with construction realities.
- There is a need for honesty and new ideas within ISC through discussions with Treaty 6, 7, and 8 leadership. This needs to lead to transformative change to improve how ISC treats and supports First Nations.
- There is need for improved communications within ISC, there are too many silos internally which leads to a breakdown in working together and with First Nations.
- ISC is working towards giving directors more dedicated program responsibilities, with the intention of providing better support to First Nations.

Presentations were also given by ISC departments (see attendee list above) who presented on:

1. First Nations Infrastructure and Modernization
 - a. They introduced their two-track strategy which includes the modernization of current ISC programs and policies to address immediate needs. The second part is to support First Nation self-determination in the context of transfer of infrastructure programming. They introduced a number of ideas pertaining to the restructuring of funding models and financial tools. Some included multi-year grant or block (spending), monetization (borrowing), infrastructure reserve fund (saving) and other borrowing options. One



specific model of funding discussed that brings together the areas above was annualized asset lifecycle funding.

2. Housing and Service Delivery Transfer
 - a. They laid out their perspectives of what transfer is and the underlying principles informing their approach. Further to this they identified specific areas of concern about what transfer will do and what it will not do. Furthermore, they laid out their four pillars of transfer, (1) Service Delivery Model; (2) Governance; (3) Asset Sufficiency/Planning; and (4) Funding Mechanisms. They concluded with a vision for the transfer process that included engagement and proof of concept, negotiations/institution building, and implementation.
3. Updated consultation draft: *Proposal for An Act respecting drinking water, wastewater and related infrastructure on First Nation Lands* (Not a PPT, but the presenter used the website)
 - a. They laid out the upcoming water legislation and discussed the consultation results they received. In this document it sets out the principles, such as substantive equality, to guide the provision for First Nations of clean and safe drinking water and the effective treatment and disposal of wastewater on First Nation lands. It also provides pathways to facilitate source water protection.
 - b. The presenter mentioned a survey they distributed that none of the Chiefs or other attendees were aware of, demonstrating a significant (and ongoing) breakdown in communication and consultation.

Critical Concerns Identified

Lack of meaningful engagement between First Nations leadership and Indigenous Services Canada (ISC) / federal government

- There was no presence / engagement from senior ISC representatives and government ministers at this session. Several Chiefs identified this as an ongoing sign of disrespect for them and their Members.
- Several attendees identified the lack of engagement by Canada's elected officials with First Nations as not only an issue in these ongoing discussions, but it is a historic and entrenched pattern. Canadian governments continue to send their bureaucrats to discussions with First Nations leaders, and while ISC representatives state they share this information with leaders to inform decisions, there must be direct engagement between First Nations and Canadian leaders. To reiterate, **First Nations are not communities, but are Nations, and Canada must treat them as such.**
 - *"My people put a lot of trust in me to make a difference. But the time we spent with bureaucrats is just a waste of time. I've seen this far too often; conversation might lead to a few crumbs. Google 40 years ago, request from FN for housing, it's the same conversation we're having today, request for water treatment, it's the same conversation."*



Lack of proper consultation and engagement

- The plans and drafts that have been created by ISC thus far have been done without any meaningful engagement or consultation with First Nations. **They need to start over.**
 - *“Conversation is great, but consultation means something else, we expect you to follow what we lay out”*
- Why does ISC not provide funding for Nations to have representation in this process? There is funding to cover travel and host a lunch, but not for First Nations to have their own Member do this as their full-time employment. The numbers are uneven, ISC has full teams dedicated to these issues – First Nations leadership are working on this while serving their Members in 100s of other ways.
- ISC representatives made mention of a survey they have circulated amongst First Nations for the purposes of engagement, however, no one present was aware of this, and upon further follow up online and reaching out to ISC directly the link was provided.
 - UPDATE SINCE GATHERING: ISC provided the [link](#) for the Updated Consultation Draft: Proposal for An Act respecting drinking water, wastewater and related infrastructure on First Nations Land. They asked for all input and feedback by September 8th, 2023 (this link was shared with participants of this session from the TSAG Transfer email on August 22nd).
 - In follow up to this session ISC also shared the [First Nations Infrastructure Modernization Feedback Survey](#) for First Nations leaders, employees and others to provide input into the process for infrastructure modernization. The deadline to complete this survey is September 27th, 2023).

Transfer of Service and Indigenous Water Legislation being introduced by Canada breaches treaty rights

- The Indigenous Services Canada Act 2019 (Transfer of Services), and the forthcoming legislative proposal for First Nations Water and Wastewater are breaches of the Treaty agreements between Canada and First Nations. In both cases, the engagement and consultation has been insufficient, inadequate, and ineffective, but further to this, both of these plans moving forward fundamentally impact and work at cross-purposes with the Treaty agreements. Rather than improving and bettering First Nations, these legislative moves from Canada appear to be more targeted at absolving Canada of Treaty responsibilities and obligations.
- There are serious concerns surrounding the upcoming changes and transfers being associated with the repealing of the Indian Act. The Indian Act entrenches First Nations citizenship and rights. These are First Nations, not communities, however, the trajectory of Canadas decisions demonstrates they are municipalizing FNs. First Nations are needing to incorporate to deal with liabilities. There needs to be an acknowledgement that Treaty’s are not legislation, and legislation cannot replace Treaty’s.
 - Response from ISC: Speaking from experience, not on behalf of Canada, there is no chance of any repeal happening with the Indian Act in the next 5 years. There may be discussions about reformatations and improvements.



The Assembly of First Nations (AFN) does not speak for all First Nations

- Time and time again, attendees highlighted the issues around the Assembly of First Nations (AFN). The Canadian government continues to negotiate and make decisions with the input of AFN; however, **AFN does not represent or speak for all Nations**. Canada must stop engaging and negotiating with them on our behalf.

Why is ISC not considering the data of TSAG?

- TSAG has data and knowledge about First Nations across Alberta, however, ISC has been requesting new data and conducting new studies on Nations to replicate this data. ISC states they wanted to get data directly from the communities and engage with them, however, this duplication of efforts in an already resource and fund limited effort is frustrating for First Nations leadership.
- An AFN/ISC assessment report, Closing the Infrastructure Gap by 2030: A Collaborative and Comprehensive Cost Estimate Identifying the Infrastructure Investment Needs of First Nations across Canada, found that the infrastructure gap is approximately \$349 Billion, with \$50 Billion needed in Alberta alone. ISCs numbers differ, and these disconnects are concerning.

Infrastructure Gap is large and continues to grow

- The infrastructure gap is continuing to grow, with financial numbers and targets identified 10 years ago nowhere near achieved. There needs to be consideration to both current needs, and future generations.
 - a. Response: Funding has significantly increased since the Liberals took power (doubled), however, the gap has grown too much, and the funding is not keeping pace. Further, the restrictive nature of funding streams makes closing the gap more challenging.

ISC Funding Models are Ineffective and Inflexible

- How can any Transfer of Services and closing of infrastructure gaps be undertaken under the current funding agreements. There needs to be transformation.
- Further concerns regarding how these rigid funding structures can fit into a path forward, particularly when you consider a single Nation may have multiple communities all with very different needs.
 - ISCs Response: their mandate is for transfer, however, nothing will be forced on a Nation, and pathways forward are not a one-size fits all solution, but looking for what works best for each Nation [referred to a 'menu of options'].
- ISC Comments regarding the Modernization Process:
 - Currently ISC is too siloed in their departments and funding streams. They are working towards integration and streamlining in all aspects. One possible idea relates to developing funding and investment approaches on annualized licensing and asset funding to be use at the discretion of the First Nation.



Other Concerns

- Are there any concerns or considerations from ISC regarding the current Premier of Alberta's Sovereignty Act claims?
 - ISC Response: We generally pay little attention to provincial politics as they do very little on reserve. ISC will continue to honour their fiduciary responsibilities.
- The ongoing agreements and votes taking place regarding the Métis Nations of Canada is concerning for First Nations, as there are worries regarding the access to resources.
 - ISC Response: Current funding streams are allocated to First Nations only.

Pathways Forward with First Peoples Law

First Peoples Law (FPL) attended the sessions following the departure of ISC representatives to discuss and explore pathways forward for challenging and addressing these motions from the Canadian government. Overall, from all of those present at the sessions there appeared to be a consensus that moving forward with litigation pertaining to Water and Wastewater legislation was an essential course of action.

To bring litigation efforts forward, and strengthen the efforts there are a number of action areas and concerns that must be considered and addressed.

- Letters of support and resolution from all First Nations across Alberta will provide momentum and carry more weight in legal proceedings. While there is no specific threshold identified by the FPL team, they simply said, as much as possible.
- If First Nations leaders provide stories and examples to FPL about how these plans from the Canadian government will adversely affect their people, it will strengthen the arguments.
- While most First Nations appear to be supportive, there needs to be more communication and engagement, between and among First Nations to provide a unified front.
- ISC and the federal government are always stating that they want input, so this is an opportunity to provide a formal plan and direction to them and see what they do with it.
- There is urgency to these efforts as the legislation is likely moving towards votes in November. A counter proposal and plan should be in place prior to that.
 - ***Clear indication of who is leading and organizing the efforts is essential.***
- In considering any litigation efforts and future battles, careful consideration needs to put into protecting not only our reserve lands, but also territorial lands.
- Bringing forward and Elders Gathering and/or possible committee to support and lead this effort would go a long way. Further, they could provide testimony.
- Careful consideration needs to be given to '**who owns the water**'. Canadian and western ideologies will try to put legal and rigid frames around ownership and liability; however, this is not the Indigenous way of thinking about water.
 - Water is life, both for today and for future generations.



- Litigation is costly, so there needs to be a carefully formulated plan taken forward to challenge these motions.
- Finally, this information needs to be shared widely. This summary only provides a high-level overview of key concerns and comments from those in attendance. Please visit www.tsag.net/transfer for full information packages and session recordings.