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The Limits of "Best Efforts":

Bill C-61, Legislative Failure, and First Nations Water Rights

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1. Introduction

Nearly a decade after the federal government pledged to eliminate all long-term drinking water advisories in 2015, 35 advisories remain across 33 First Nations communities as of March 2025 (Indigenous Services Canada). In 2023, the federal government introduced Bill C-61: The First Nations Clean Water Act, aiming to address longstanding failures in Indigenous water governance. The bill promised to affirm First Nations' water rights and set minimum standards for drinking water and wastewater services. However, its use of the phrase “best efforts” to describe federal obligations immediately drew concern from Indigenous leaders and legal advocates. While “best efforts” carries recognized legal weight in Canadian contract and administrative law, it remains context-dependent and, without enforceable guarantees, risks perpetuating the same discretion and underperformance that have historically characterized federal water policy for First Nations.

This paper examines how the reliance on “best efforts” in Bill C-61 reflects deeper structural tensions in Crown–Indigenous relations, specifically, the tension between rhetorical rights recognition and the absence of binding, enforceable obligations. Drawing on testimony presented to the Standing Committee on Indigenous and Northern Affairs (INAN), statutory analysis of Bill C-61, Canadian jurisprudence interpreting “best efforts,” and political developments surrounding the bill’s demise, I argue that discretionary legal standards, even when framed as obligations, cannot meaningfully address systemic underfunding and governance failures without clear enforcement mechanisms, timelines, and rights-based accountability frameworks.

The paper proceeds as follows: Section 2 outlines the historical and legislative context leading up to Bill C-61. Section 3 describes the research methodology, integrating testimonial

analysis, doctrinal case law, and contextual critique. Section 4 analyzes the deployment of "best efforts" in Bill C-61 through committee testimony, statutory language, and case law interpretation. Section 5 assesses the broader political and legal implications for Indigenous water governance. Section 6 concludes with reflections on the need for stronger rights-affirming legislation and co-developed governance models.

2. Background and Legislative Context

In response to a long-standing clean water crisis in Indigenous communities, the federal government enacted the *Safe Drinking Water for First Nations Act* in 2013 under Prime Minister Harper's leadership (Canada, Aboriginal Affairs and Northern Development Canada). While the legislation was presented as a means to regulate water and wastewater systems on reserve lands, it was widely criticized for lacking adequate consultation, failing to provide necessary financial resources, and imposing legal liabilities on First Nations governments without corresponding support. Chief R. Donald Maracle of the Mohawks of the Bay of Quinte condemned the Act for overriding treaty rights and offloading responsibility onto under-resourced band councils, many of which were already struggling with E. coli contamination, decaying infrastructure, and chronic water shortages (First Nations of the Bay of Quinte). Federal analysis later confirmed these criticisms, noting that the Act created regulatory obligations without establishing enforceable standards, guaranteed funding, or a framework for Indigenous oversight (Collier and Tiedemann 7). Ultimately, no regulations were ever enacted under the Act, and it was quietly repealed in June 2022 through the *Budget Implementation Act, 2022, No. 1*; this repeal highlighted the legislation's disconnect between intention and implementation (Collier and Tiedemann 7).

Independent legal advocates also flagged structural flaws in the 2013 approach. In 2012, Ramani Nadarajah, counsel for the Canadian Environmental Law Association (CELA), testified before the Standing Committee on Aboriginal Affairs and Northern Development to critique Bill S-8—the predecessor to the 2013 Act. Nadarajah emphasized three key failures: the bill did not sufficiently protect constitutionally affirmed Aboriginal treaty rights; it failed to mandate a "multi-barrier" framework for ensuring safe drinking water—a layered safety system that includes source protection, treatment, monitoring, and infrastructure planning; and it did not respect First Nations jurisdiction over water governance. She argued that Clause 3, which aimed to limit the scope of non-derogation protections, was unnecessary given existing constitutional jurisprudence, and that Ontario's *Clean Water Act* offered a more appropriate model for safeguarding Indigenous rights through a strong non-derogation clause: one that affirms nothing in the legislation shall abrogate or derogate from Section 35 of the Constitution. Nadarajah also pointed to Paragraph 5(1)(b) and Clause 7, which granted the federal government sweeping regulatory authority, including the ability to override First Nations bylaws. In her view, these provisions created the risk that "any person" could be given decision-making powers without qualifications or oversight, thereby threatening First Nations' ability to control water systems on their own lands (Standing Committee on Aboriginal Affairs and Northern Development). These early concerns foreshadowed many of the structural gaps later acknowledged through class actions and formal legislative review.

A critical turning point came in December 2021, when the Federal Court and the Manitoba Court of King's Bench approved a landmark class action settlement addressing Canada's systemic failure to ensure safe drinking water on reserves. The settlement allocated $1.5 billion in individual compensation, $6 billion in infrastructure investments over time, and an

additional $400 million to support ongoing implementation (Canada, Indigenous Services Canada, *Courts Approve Settlement*). Importantly, the agreement also included a political commitment: the federal government pledged to repeal the 2013 Act and make "reasonable efforts" to co-develop new legislation in collaboration with First Nations (*Tataskweyak Cree Nation v. Canada* 19-20) The agreement further created a First Nations Advisory Committee to oversee progress and ensure community voices were embedded in future policy design. For many Indigenous leaders and legal advocates, the settlement marked a historic admission of liability and a necessary first step toward enshrining the human right to clean water for First Nations peoples.

These legal and financial commitments laid the foundation for a national engagement process. Between 2022 and 2023, Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), in collaboration with Indigenous Services Canada (ISC), held hundreds of virtual and in-person engagement sessions with First Nations rights-holders, technical experts, and organizations. Two consultation drafts of proposed legislation were circulated, shared directly with First Nations communities, and posted publicly to solicit broad feedback. According to Joanne Wilkinson, Senior Assistant Deputy Minister for Regional Operations at ISC, the feedback period on the first draft was extended in response to community requests, and key priorities were identified through these consultations, including sustainable funding mechanisms, source water protection, and First Nations jurisdiction over water governance (Canada, House of Commons, INAN Meeting 114). Engagement occurred through multiple channels: national dialogue tables, regional fora, emails and phone calls from ISC officials, and direct collaboration with the First Nations Advisory Committee formed as part of the 2021 settlement. These efforts were framed by the federal government as collaborative and respectful of Indigenous rights, but

critics later argued that engagement alone did not satisfy the principle of free, prior, and informed consent (FPIC) as outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (United Nations).

The federal government also engaged provinces and territories on the issue of source water protection, a jurisdictionally complex area where collaboration is critical. While provincial and territorial governments expressed support for clean water outcomes, they also emphasized the need for clarity on constitutional boundaries. To bridge this gap, an expanded AFN–Canada dialogue table was established in late 2022, co-led by former AFN National Chief Phil Fontaine and Anishinabek Grand Council Chief Linda Debassige. Wilkinson emphasized that this partnership helped shape the proposed legislation to align with UNDRIP and Section 35 of the Constitution Act, 1982, describing Bill C-61 as a "historic opportunity for rights recognition" (INAN Meeting 114).

Bill C-61, entitled the First Nations Clean Water Act, followed a standard legislative trajectory before its unexpected collapse. It was introduced in Parliament in December 2023, proposing a broad legal framework to support safe drinking water and wastewater services in First Nations communities, while affirming the inherent right to self-government in relation to water governance. It received first reading in the House of Commons on December 11, 2023, and passed second reading on March 19, 2024, at which point it was referred to the Standing Committee on Indigenous and Northern Affairs (INAN). The committee conducted hearings with Indigenous leaders, legal experts, and federal officials, and reported the bill back to the House with amendments on December 2, 2024 (Canada, Parliament, House of Commons). It was successfully reported back to the House for a third reading (Canadian Environmental Law Association).

Although amendments introduced at the committee stage significantly strengthened Bill C-61—recognizing a substantive right to water, embedding free, prior, and informed consent (FPIC) into regulatory processes, and clarifying funding obligations—the Act's foundational reliance on "best efforts" language remained intact. These amendments addressed several critiques raised by Indigenous leaders, particularly regarding symbolic recognition and procedural safeguards. However, they stopped short of transforming the bill into a fully rights-based framework. Without removing discretionary standards or creating independent enforcement mechanisms, the bill continued to rely on political goodwill rather than judicially enforceable obligations, leaving systemic vulnerabilities unresolved despite its improvements (Canada, House of Commons).

In January 2025, Governor General Mary May Simon issued a formal proclamation to prorogue Parliament until March 24, 2025, effectively halting all pending legislative business, including Bill C-61 (Canada, Governor General). The bill "died on the table" and would need to be reintroduced in a new session unless Parliament passed a motion to reinstate it at the same legislative stage: a rare occurrence (Canadian Environmental Law Association). If an election is called before that happens, all legislative progress would be erased. After the prorogation of Parliament and its effects on the progress of the bill, the political fallout was immediate. Indigenous Services Minister Patty Hajdu described the outcome as a "deep disappointment," noting that she had hoped the legislation would pass before the next election (Aiello). In an open letter to Parliament, National Chief Cindy Woodhouse Nepinak of the Assembly of First Nations urged lawmakers to prioritize the bill's passage, writing that "we cannot afford further delays" and that Bill C-61 was a necessary step toward restoring trust and ensuring safe water access for all First Nations communities (Woodhouse Nepinak). Political leaders began trading blame: the

Liberal government pointed to a lack of cross-party cooperation, while the NDP accused the Liberals of failing to prioritize the bill amid political resets and cabinet shuffles (Morin). As of early 2025, no new legislation has been tabled, and First Nations communities remain without a federal legal framework guaranteeing access to safe drinking water. The rise and fall of Bill C-61, despite its promise, leaves unresolved the structural mistrust between Indigenous peoples and the Canadian state over how water justice is defined, delivered, and legally enforced.

3. Methodology

This research adopts a qualitative legal methodology grounded in doctrinal, comparative, and interpretive approaches to assess how the term "best efforts" functions within the legal and political context of Bill C-61 and broader context of Indigenous water governance in Canada. The analysis is structured to reflect the evolving discourse around the phrase; it begins with community-led critiques, moving through legal clarification, and returning to those critiques with enhanced interpretive insight.

The first stage involves a close reading of testimony presented before the Standing Committee on Indigenous and Northern Affairs (INAN) during its 2024 review of Bill C-61. Witnesses—including First Nations leaders, legal advocates, and policy experts—voiced deep skepticism about the use of "best efforts" to describe federal obligations, often characterizing the phrase as vague, noncommittal, or reminiscent of prior legislative failures. These critiques, delivered before detailed legal definitions were discussed in the hearings, foreground the political, ethical, and historical stakes of using indeterminate language in rights-based legislation. Their concerns anchor this paper's central inquiry: Can "best efforts," despite its legal

enforceability, adequately fulfill the expectations of Indigenous communities shaped by long-standing mistrust?

The second stage conducts a doctrinal scan of Canadian jurisprudence to examine the legal force and interpretive boundaries of the term "best efforts." Key decisions, particularly in *Atmospheric Diving Systems Inc. v. International Hard Suits Inc*., establish that "best efforts" is more demanding than "reasonable efforts," requiring not only good faith but also measurable diligence and an active commitment to achieving the promised outcome. This jurisprudential framework is used to assess whether Bill C-61's use of the phrase, especially in Sections 18, 20, 26, and 30, meets this standard or allows discretion that could dilute its legal impact.

The third stage applies a contextual legal critique to evaluate how "best efforts," a standard originating in private contractual settings, operates when transplanted into public Indigenous governance legislation. In commercial law, "best efforts" typically functions between parties of relatively equal bargaining power and is enforced through judicial remedies. By contrast, in Bill C-61, the phrase is deployed within a context marked by profound power asymmetries and Crown fiduciary obligations, raising questions about whether a standard drawn from commercial relationships can meaningfully uphold constitutional and treaty-based duties. Rather than a direct comparative analysis, this stage interrogates the appropriateness of borrowing private law concepts to govern Indigenous–Crown relations, where historical and systemic inequities complicate notions of reciprocity and enforceability.

By integrating these three approaches—testimonial analysis, doctrinal precedent, and comparative legal reasoning—this research traces how the meaning of "best efforts" evolves as it moves between legal theory, legislative drafting, and Indigenous political experience. In doing so, it offers a framework for evaluating how legal language operates not only as a mechanism of

enforceability but also as a symbol of trust, accountability, and the limits of reconciliation within Canadian law. While this paper seeks to trace the evolving meaning of "best efforts," it recognizes that testimonial evidence cannot represent all First Nations perspectives, and that judicial interpretations rooted in private law contexts may not map neatly onto public legislative duties.

4. Analysis

The Standing Committee on Indigenous and Northern Affairs (INAN) played a critical role in shaping the public and parliamentary reception of Bill C-61. Throughout 2024, the committee heard testimony from First Nations chiefs, legal advocates, and representatives of Indigenous organizations who scrutinized both the content of the bill and the process of its development. While the government characterized the bill as a product of consultation and collaboration, the testimony from rights-holders told a different story, exposing deep fractures in trust and dissatisfaction with the vague obligations encapsulated in the term "best efforts."

Vice-Chief David Pratt of the Federation of Sovereign Indigenous Nations (FSIN), representing 74 First Nations in Saskatchewan, spoke bluntly about what he viewed as legislative overreach in Bill C-61. While FSIN supported the need for water legislation, Pratt emphasized that federal affirmation of self-government in the preamble was undermined by the bill's actual provisions, which he argued imposed layers of federal jurisdiction under the guise of partnership. Specifically, he critiqued clause 6(1)(b), which implies a role for the Canada Water Agency in coordinating source water protection, as bypassing established treaty-based relationships and violating Section 35 of the Constitution. In his view, "best efforts" language within sections relating to funding and obligations created a loophole that effectively gutted the bill's purpose:

"It does nothing more than create a loophole that undermines the entire intent and purpose of the act" (Canada, House of Commons, INAN Meeting 117).

Similar critiques came from the Ermineskin Cree Nation, whose representatives spoke with striking urgency. Chief Joel Mykat began his remarks by calling it "disappointing and frustrating" to still be demanding a recognized right to safe drinking water in 2024. He rejected the "best efforts" clause as insufficient to meet either legal or human rights standards, saying plainly that "Canada's best efforts...are not good enough." He passed the floor to Councilor Mackinaw, who gave a detailed history of Ermineskin's legal and policy engagement. Despite ten years of negotiations with Canada, including engineering assessments and abeyance of litigation, federal officials ultimately refused to fund the solutions recommended to bring safe water to the entire community. The community had engaged extensively on Bill C-61, submitting six formal responses, hosting five all-day council sessions, and consulting with legal scholars and UNDRIP experts. Yet, as Mackinaw noted, the bill still failed to recognize First Nations' inherent right to safe drinking water. Chief Mykat concluded that unless the bill included such a recognition, litigation would resume: "Real reconciliation starts with ending Canada's violation of our treaty and every First Nation's right to safe drinking water" (Canada, House of Commons, INAN Meeting 118).

Grand Council Chief Linda Debassige of the Anishinabek Nation offered a nuanced view. While she participated in the federal–AFN dialogue table that co-led the drafting of the legislation, she nonetheless called the phrase "best efforts" in clause 30 "unacceptable and very weak." Citing the long history of broken promises around First Nations water access, she argued the bill should instead use terms like "must provide" or "shall ensure" to affirm enforceable duties. Debassige reminded the committee that without predictable funding and robust

enforcement, the promise of clean water would remain aspirational. Her testimony was particularly important in distinguishing between organizational collaboration (with bodies like the Assembly of First Nations) and rights-holders' consent, highlighting the fact that even those engaged in the drafting process sought firmer commitments from the Crown (Canada, House of Commons, INAN Meeting 119).

Chief Sherri-Lyn Hill and Councilor Dr. Greg Frazer of Six Nations of the Grand River, the most populous First Nation in Canada, echoed the theme that participation in drafting does not equate to consent. Hill decried the "best efforts" standard in clause 26 as a "slap in the face," contrasting it with the binding language used in provincial and federal water legislation. Six Nations has struggled with water insecurity for decades, and both Hill and Frazer emphasized that access to clean water should be treated as a human right, not a discretionary goal. When asked directly by a Member of Parliament how the bill could be improved, Hill responded that the phrases "must provide" and "must ensure" were necessary to reflect the seriousness of the Crown's obligations. She also raised concerns about the undefined role of the minister in determining water protection zones, noting that Six Nations' historical jurisdiction over the Grand River had been eroded through legislative imposition, not dialogue (Canada, House of Commons, INAN Meeting 122).

Finally, Chief Erica Beaudin of Cowessess First Nation struck a balance between praise for the bill's recognition of First Nations' water jurisdiction and criticism of its vague funding commitments. Speaking as a rights-holder from Treaty 4 territory, she called for "predictability of resources" and described the phrase "best efforts" as insufficient to address systemic underfunding. Beaudin also highlighted jurisdictional friction with provinces, warning that the bill's mandate for First Nations–provincial cooperation could hinder timely implementation

unless Indigenous jurisdiction was explicitly affirmed (Canada, House of Commons, INAN Meeting 119).

Together, these testimonies reveal a clear through-line: for many First Nations leaders, "best efforts" is not merely insufficient—it is a symbol of the federal government's historical reluctance to commit to binding, rights-based legislation. The testimony also reflects the divide between formal claims of consultation and the on-the-ground experience of exclusion, particularly when rights-holders find themselves responding to legislation rather than shaping it from the outset. Despite variations in tone—some urging amendment, others advocating rejection—the overall message is consistent: without legal clarity, structural enforcement, and genuine co-development, Bill C-61 risks repeating the very failures it was designed to overcome.

In her testimony before the Standing Committee on Indigenous and Northern Affairs, Minister of Indigenous Services Patty Hajdu defended the federal government's use of the term "best efforts" in Bill C-61. Acknowledging the concerns raised by many First Nations leaders, who criticized the phrase as vague and unenforceable, Hajdu argued that "best efforts" constitutes a high legal standard in Canadian law. She referenced a 1994 British Columbia Supreme Court decision that defined the term as requiring "all reasonable steps to achieve the objective, carrying the process to its logical conclusion and leaving no stone unturned"—a threshold she contrasted with the weaker notion of "reasonable efforts" (Canada, House of Commons, INAN Meeting 123). According to Hajdu, the phrase imposes a meaningful legal obligation, particularly regarding funding, binding the federal government to sustained, co-developed support for First Nations water systems. She further claimed that the inclusion of "best efforts" arose from extensive consultations with Indigenous organizations, many of whom saw it as a flexible yet accountable compromise. Framing the bill as a shift away from top-down

governance, Hajdu emphasized its intent to support long-term regulatory and funding stability through co-development. Still, as several committee members and Indigenous witnesses noted during the same session, this interpretation remained deeply contested, particularly given Canada's longstanding failure to deliver on even basic infrastructure commitments (Canada, House of Commons, INAN Meeting 123).

To understand the weight and limitations of "best efforts" in Bill C-61, it is necessary to examine the specific clauses in which the term appears. While the word "must" is used 36 times throughout the bill, indicating strong, mandatory obligations, the phrase "best efforts" appears nine times, often to qualify government responsibilities with a softer, more discretionary standard. Several clauses emphasize consultation: section 18 states that if a First Nation governing body does not select applicable water standards, "the Minister must make best efforts to begin consultation and cooperation within 90 days" to determine the highest relevant standards (Canada, Parliament, House of Commons sec.18). Section 20 requires similar efforts to consult before making any recommendations under the Act, bounded by a six-month window (Canada, Parliament, House of Commons sec. 20). Section 27 expands this to consultation regarding funding frameworks, while section 39 uses "best efforts" to direct early consultation on the development of a First Nations-led water commission (Canada, Parliament, House of Commons secs. 27, 39). These provisions create recurring timelines for engagement but stop short of legally binding the government to concrete outcomes.

The second cluster of "best efforts" clauses centers on financial commitments. Section 30 requires the Government of Canada to make "best efforts" to provide funding that meets the needs assessed through the Act, while section 31 commits to using "best efforts" to ensure water services on First Nations lands are comparable to those in non-Indigenous communities (Canada,

Parliament, House of Commons secs. 30–31). Section 32 adds a similar commitment to fund the implementation of the First Nations Water Commission's terms of reference (Canada, Parliament, House of Commons sec. 32). Each of these clauses carries rhetorical weight, but the absence of mandatory phrasing like "shall provide" leaves funding commitments subject to political discretion and administrative interpretation. These provisions collectively articulate aspirations rather than obligations, raising concerns among First Nations leaders about whether such language meaningfully addresses Canada's long history of underfunding Indigenous water infrastructure.

Most notably, section 26—arguably the moral centerpiece of the bill—requires that the Minister, in consultation with First Nations, "make best efforts to ensure" access to clean and safe drinking water for all residents of First Nation lands (Canada, Parliament, House of Commons sec. 26). This clause gestures toward the long-standing human rights claims made by Indigenous communities but avoids codifying a substantive right to water. Taken together, these clauses fall into three thematic categories: consultation (secs. 18, 20, 27, 39), funding (secs. 30, 31, 32), and access (sec. 26). While many are accompanied by timelines ranging from 90 days to six months, the reliance on "best efforts" creates obligations defined more by intention than enforceability. This internal structure sets the stage for a broader legal analysis of how the term "best efforts" has been interpreted in Canadian jurisprudence, and whether such language is sufficient to meet constitutional, fiduciary, and ethical obligations to First Nations.

In the 1994 case law referenced by Hajdu, *Atmospheric Diving Systems Inc. v. International Hard Suits Inc*., the British Columbia Supreme Court delivers one of the most authoritative interpretations of "best efforts" in Canadian contract law. Justice Dorgan, drawing on both English and Canadian precedents, affirms that "best efforts" constitutes a significantly

higher standard than "reasonable efforts," demanding not merely good intentions but demonstrable diligence, persistence, and comprehensive action. Referencing *Sheffield District Railway Co. v. Great Central Railway Co.*, the Court anchors the term in the expectation that parties must "leave no stone unturned" in fulfilling contractual obligations, even suggesting a quasi-fiduciary posture in certain contexts (*Atmospheric Diving Systems Inc. v. International Hard Suits Inc*. para. 63). The Court further invokes *Berliz v. Charter Oil Co.* to clarify that while inevitable failure may limit liability, it does not excuse the duty to exert best efforts (*Atmospheric Diving Systems Inc. v. International Hard Suits Inc*. para. 64). Most significantly, Justice Dorgan distilled five key principles that define the standard: good faith, active diligence, pursuit of all reasonable and customary steps, contextual constraint, and an objective benchmark grounded in the actions of a prudent party (*Atmospheric Diving Systems Inc. v. International Hard Suits Inc*. paras. 70–71).

The decision rejected any notion that "best efforts" is vague or merely aspirational; instead, it frames the term as a binding legal obligation requiring parties to choose and pursue the most effective means of achieving the agreed outcome, regardless of the result (*Atmospheric Diving Systems Inc. v. International Hard Suits Inc*. paras. 66–72). As such, the case established "best efforts" as a robust and enforceable standard that courts can scrutinize both factually and normatively: a precedent of particular relevance to statutory language like that found in Bill C-61. While courts enforce "best efforts" rigorously in private contractual settings, its transplantation into public Indigenous governance, where historical inequities and fiduciary obligations shape the relationship, raises concerns about its adequacy as a rights-protective standard.

The Supreme Court's decision in *Mikisew Cree First Nation v. Canada* emphasizes the legal limits of relying on "best efforts" for Indigenous consultation in the legislative process. The Court held that no aspect of law-making—from drafting to enactment—triggers a constitutionally enforceable duty to consult under Section 35 of the *Constitution Act, 1982* (Canada, Supreme Court paras. 50–51). While the honour of the Crown remains a guiding principle, it does not impose a procedural requirement to engage Indigenous communities during legislative development. This distinction has direct implications for Bill C-61: although it includes numerous provisions obligating the Minister to make "best efforts" to consult First Nations, such language is not legally binding under constitutional law. As the Court affirmed, even if legislation affects Indigenous rights, the Crown is not relieved of its broader duty to act honourably. However, this duty is moral and political, not judicially enforceable (Canada, Supreme Court para. 52). Thus, "best efforts" in Bill C-61 risks operating more as a rhetorical commitment than a mechanism of accountability, particularly in the absence of treaty-embedded consultation clauses or delegated executive rulemaking subject to judicial review.

The underlying stakes of Bill C-61 become even clearer when viewed alongside ongoing litigation such as the class-action lawsuit launched by Shamattawa First Nation. In this case, Justice Canada lawyers argued that the federal government has no legal obligation to provide First Nations with clean drinking water, framing potable water access as a matter of political discretion rather than a legally enforceable duty (Forester). This position directly undermines public statements made by government officials, including Minister Patty Hajdu, about Canada's responsibility for Indigenous water crises. The case highlights a deep tension between political rhetoric and legal accountability—an issue that intensifies concerns about Bill C-61's reliance on discretionary language like "best efforts." Without codifying a substantive right to water or

establishing binding obligations, legislative frameworks such as Bill C-61 risk perpetuating the very injustices they claim to redress (Forester).

5. Implications

The preceding analysis of Bill C-61's use of "best efforts" exposes critical fault lines in the relationship between the Crown and Indigenous peoples regarding water governance and legislative trust. While the federal government framed the bill as a historic step toward reconciliation, the testimonies of Indigenous leaders and Canadian jurisprudence reveal a recurring pattern: discretionary language continues to displace enforceable rights, even where historical injustices demand stronger commitments.

It is important to recognize that "best efforts" constitutes a high legal standard in Canadian law. As affirmed within *Atmospheric Diving Systems Inc. v. International Hard Suits Inc*., "best efforts" demands more than good faith, requiring demonstrable diligence and persistence. In private law, where parties operate with relative bargaining parity and access to judicial remedies, "best efforts" can function as a meaningful and enforceable obligation. However, its deployment in Bill C-61 highlights critical limitations. Indigenous communities are not private contractors but rights-holders seeking redress under constitutional and treaty obligations. Without clear statutory rights and independent enforcement mechanisms, the phrase risks becoming aspirational rather than binding. Political volatility, including prorogation and shifting governmental priorities, further weakens the practical enforceability of even high-standard language in public governance.

First Nations leaders recognized this gap. Testimonies consistently critiqued not only "best efforts," but the bill's broader failure to affirm a substantive right to water, despite

rhetorical alignment with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). While committee-stage amendments eventually addressed these concerns—explicitly recognizing a right to clean and safe drinking water, strengthening requirements for free, prior, and informed consent, and clarifying funding obligations (Canada, House of Commons)—they ultimately preserved the bill's discretionary structure. Key elements such as binding obligations, judicially enforceable rights, and independent oversight remained absent. This reflects a broader pattern of performative reconciliation, where symbolic gestures substitute for binding structural change.

Legal limits further compound these concerns. *Mikisew Cree First Nation v. Canada (Governor General in Council)* confirmed that legislative development does not trigger constitutional duties to consult, while cases like the Shamattawa First Nation litigation reveal Canada's continuing position that it holds no legal obligation to provide safe drinking water. Together, these show how rights recognition remains vulnerable to political discretion rather than guaranteed by law. Yet this critique must also confront the real dilemma. Many Indigenous leaders stressed the urgency of passing legislation to address immediate water crises. Given the diversity among First Nations, full consensus on any national framework is unlikely, and prolonged delays carry significant human costs. Still, the rapid passage of inadequate legislation risks entrenching the cycles of mistrust or even outright failing, like the 2013 bill. Thus, Bill C-61's failure reflects a deeper conflict: the Crown's emphasis on political flexibility remains structurally at odds with Indigenous demands for enforceable, rights-based governance. Without a shift toward co-developed legal frameworks grounded in binding obligations, legislative efforts, however well-intentioned or procedurally improved, will continue to reproduce the failures they aim to redress.

6. Conclusion

Despite longstanding promises to eliminate unsafe drinking water advisories, Bill C-61's reliance on discretionary language such as "best efforts" shows the continuing gap between the recognition of Indigenous rights and the creation of enforceable legal duties. While "best efforts" is treated as a demanding standard in Canadian law, its use in Bill C-61, without concrete enforcement mechanisms or external oversight, made key obligations discretionary in practice. Although amendments at the committee stage improved the bill by recognizing the human right to clean and safe drinking water and strengthening provisions on free, prior, and informed consent, the legislation still left the fulfillment of these rights dependent on political goodwill rather than legal guarantee. The persistence of qualified language raises wider concerns about the Crown's fiduciary responsibilities toward Indigenous peoples: responsibilities that call for active and substantive fulfillment of constitutional and treaty rights, not symbolic gestures. Bill C-61 ultimately died as a result of broader political events, including the resignation of Prime Minister Trudeau and the prorogation of Parliament; however, even if it had passed, its reliance on discretionary standards would have left critical vulnerabilities intact. As this analysis shows, future efforts to secure Indigenous water rights will require legislation that creates binding statutory obligations and ensures clear accountability, rather than depending on flexible standards that risk repeating the same patterns of delay and underperformance.

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