



**Final submission from
Kitchissippi–Ottawa Valley
Chapter, Council of Canadians**

**Mémoire définitif du
Conseil des Canadiens, chapitre
Kitchissippi–Ottawa Valley**

In the Matter of the

À l'égard des

Canadian Nuclear Laboratories (CNL)

Laboratoires Nucléaires Canadiens (LNC)

Application from the CNL to amend its Chalk River Laboratories site licence to authorize the construction of a near surface disposal facility

Demande des LNC visant à modifier le permis du site des Laboratoires de Chalk River pour autoriser la construction d'une installation de gestion des déchets près de la surface

**Commission Public Hearing
Part 2**

**Audience publique de la Commission
Partie 2**

May and June 2022

Mai et juin 2022

PEOPLE. PLANET. DEMOCRACY.



Submission following Presentation at Hearing on June 2, 2022.

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(June 6, 2023) Email: <kitchissippiottawacocchapter@gmail.com>

On June 2, 2022 I spoke to the Commission at the hearing about the Near Surface Disposal Facility proposed by Canadian Nuclear Laboratories (CNL) for Chalk River (CR). It is now called a Mound. Herein I refer to this as CNL's proposed Nuclear Waste Mound (NWM). I represented the Council of Canadians' Kitchissippi-Ottawa Valley (CoC-KOV) Chapter. I use the first person "I" in much of this final submission on your management of the licensing process for the NWM, but I am speaking on behalf of the CoC-KOV Chapter.

Concerning the Council of Canadians

During my June 2 2022 presentation, a Commissioner asked for more information about the "Council," as we call it. A prominent Canadian NGO for more than 35 years, the Council's website includes information about some of our numerous campaigns and our strategic plan for 2023-2026. ¹

The Council has a bipartite structure. Our national NGO office's paid staff do research, policy work, communications, organizing, and more. As well, there are presently 46 volunteer-run chapters, like ours, across the country. Chapters engage on local issues, while also organizing on issues that align with the concerns of, and campaigns run by, our national office.

Our CoC-KOV Chapter members live in Renfrew County so we are all proximate to CNL's CR campus and to Rolphton. We are particularly concerned with the nuclear

¹ <https://canadians.org/>, see also: <https://canadians.org/takeaction/>, <https://canadians.org/resource/strategic-plan/>, and <https://canadians.org/chapters/>

industry's extremely toxic waste. Safe nuclear waste disposal is an oxymoron but coming up with best possible alternatives is essential. We are alarmed by the fact that industry has been allowed by government to ignore this issue for nearly 80 years. Equally alarming are the clear deficits in CNL's proposal to construct a toxic nuclear waste landfill in our watershed, one kilometer from the Ottawa River.

Council staff and volunteers are guided by a diverse Board of Directors.² As our Chairperson says, "We take action to protect the things we all share in common – like the climate, water, and public services – from privatization and powerful corporations, and to expand the influence of people and communities."

In the Council we maintain that our ailing planet needs Indigenous perspectives and facts. Colonial European and other ambitious, profit-driven human cultures have made a mess of our planet's environment. When we humans have noticed damage and sought to repair huge ecological crises, the solutions we develop too often are illusory, sometimes making things worse. Indigenous insights could benefit all of us. It seems clear that multidisciplinary insight, informed nature-based observations, and traditional cultural/spiritual knowledges must be respected.

It is the view of the Council, and our Chapter, that all Peoples are entitled to "full participation in public affairs" as guaranteed in Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR).³ Both Indigenous Peoples and Settler Canadians have the right to know the full and true scientific facts about how any industrial development and practices will or might impact their personal health, their communities, the wellbeing of future generations, and the natural world that sustains all life. The CNSC does a **very** poor job of ensuring that grassroots Settler Canadians have an open and accessible opportunity to express our views and concerns. However, before all else comes the *Honour of the Crown*. This is manifest (though not solely) in the Crown's *Duty to Consult* in a valid manner. That *Duty* is both a Treaty right and a Constitutional obligation. More recently, the Crown's *Honour* in undertaking valid consultation with Indigenous Peoples has taken on additional weight due to the federal government's commitment to true Reconciliation.

When I addressed the Commission on June 2nd, I saw no need to speak to the design, engineering and science concerns about the proposed NWM. I still see no need to delve further into these issues which I know others are covering

² <https://canadians.org/board/>

³ Here is the entire text of the ICCPR. Scroll down to find Article 25. While there, please read Article 1 as it is directly relevant to this brief. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

thoroughly. We agree with intervenors who appraise the present design of the NWM as experimental, slapdash, fragile, and suggest the proposed location is based on convenience for CNL's coveted bottom line rather than highly relevant environmental concerns. It seems a foregone conclusion that the presently proposed NWM will fail and cause harm. I remind that the CNSC mandate is "to protect the health and safety of Canadians, as well as our environment." Please listen to those crucial critiques and send the proposal back to the drawing board.

The dominant topic in our CoC-KOV chapter's April 2022 submission was your Crown regulatory agency's failure to do valid consultation. This was also the focus of my June 2 2022 oral presentation. I am grateful that Omàmìwininiwag speakers preceded me on that day. They spoke to much of what I intended to share about the centuries of cultural genocide and abuse Indigenous Peoples have experienced from the colonial and Canadian Crown, about which I intuit your personnel have little valid knowledge. My mention of same was not necessary.

In this submission I focus totally on issues pertaining to consultation.

The Tarnished Honour of the Crown

We in the Council care about the *Honour of the Crown*. We take to heart the commitments that the infant Canada made, through the British Crown, in the *Royal Proclamation of 1763* and the *1764 Treaty of Niagara*, neither of which has been upheld by the Government of Canada in regards to the protection of the homelands of the entire Omàmìwininiwag nation.

On top of that, Council Chapters' networks are alarmed about CNSC's failure to give due weight to community concerns: in New Brunswick in relation to the LePreau relicensing; for the Mississauga(a) First Nation community re: the Cameco refinery/incinerator⁴; for Port Hope residents living in nuclear contamination; in Indigenous and Settler communities the nearby toxic waste pools around former uranium mine sites; for residents near Darlington and Pickering; in Kincardine, South Bruce and Grassy Narrows, etc.

The May 1 2023 submission from Kebaowek First Nation (KFN) and the May 8 2023 submission from Kitigan Zibi Anishinabeg First Nation (KZAFN) echo the issues about the CNSC that arise from the situations just mentioned. On page 4 (05/1/23), KFN says,

"[CNSC] Staff and CNL's narrow approach to consultation exacerbated KFN's feelings of mistrust. As such, it was often difficult for us to find common ground with Staff and CNL in negotiations."

4 <https://anishinabeknews.ca/2022/01/10/mississauga-first-nation-intervenes-in-cameco-application-for-license-renewal/>

It is evident throughout KFN's and KZAFN's May 2023 submissions that every time an issue regarding design, location, engineering, etc., of the proposed NWM was raised with CNSC staff (as the Crown regulator responsible for consultation), our Kitchissippi-Ottawa Valley Indigenous hosts were informed that this was beyond the scope of CNSC's mandate. In other words, the "narrow" scope insisted on by CNSC in the extended consultation period subsumed substantial concerns about Indigenous Rights under the environmental assessment umbrella.

At the heart of KFN and KZAFN May/23 submissions is the *cumulative effect* of almost 80 years of not being consulted about **any** nuclear industry developments on their territory. These developments are alongside the Great River (Kichi Sibi), which is a living relation to the Omàmìwininiwag.⁵ The Kichi Sibi has been a source of sustenance since time immemorial, and is sacred within their worldview.

I concede that a specific project consultation process cannot address hundreds of years of colonial genocide, including programs of forced starvation, relocation, separating children from their families, and worse. Still, with the repeat disclaimer that I am not a lawyer, I note another SCC decision that states:

*"The duty to consult is not triggered by historical impacts. It is not the vehicle to address historical grievances... That said, it **may be impossible to understand the seriousness of the impact of a project on s. 35 rights without considering the larger context... Cumulative effects of an ongoing project, and historical context, may therefore inform the scope of the duty to consult...** This is not 'to attempt the redress of past wrongs. Rather, it is simply to recognize an existing state of affairs, and to address the consequences of what may result from' the project" [my emphasis]*⁶

The *Calls to Action* in the *Truth and Reconciliation Commission's* 2015 report are about making systemic change to effect genuine Reconciliation, instead of reinforcing "past wrongs" through weasel words and token actions.⁷ This topic is taken up further below.

Though I am not a lawyer, the almost 80 years of official neglect experienced by the Omàmìwininiwag seems similar to what was elaborated in the Yahey (Blueberry) First Nation's British Columbia Supreme Court decision.⁸ The Yahey plaintiffs argued that the authority's licensing practices had long ignored the

5 Omàmìwininiwag is the Indigenous name for what Canada calls the Algonquin Anishinabeg.

6 <https://www.canlii.org/en/ca/scc/doc/2017/2017scc41/2017scc41.html>

7 https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf

8 <https://www.canlii.org/en/bc/bcsc/doc/2021/bcsc1287/2021bcsc1287.html>

Indigenous Rights of their First Nations population. This resonates with the following quote from page 1 of KZAFN's May 8th brief, that they "struggle to see how [Omà̀winìwag] concerns can be meaningfully incorporated this late in the permitting process." In the Yahey case, the Court found in the FN's favour.

When the development's implementation plan is already written before consultation begins, the process is at best meaningless and probably hypocritical. Such is basically the case in regards to consultation with KFN and KZAFN re: engineering, design, location, and other details of the CNL proposal for its CR nuclear waste mound.

It is unclear if the CNSC understands the drawbacks of conducting consultation in such a constrained and ultimately disrespectful manner. A panel of experts was contracted to prepare the 2017 federal discussion paper *Building Common Ground* (social research for the 2019 *Impact Assessment Act*). The panel reported a "frequently cited" public concern that "the close relationship" between CNSC and industries indicates a "lack of independence and neutrality" and the appearance of "bias or conflict of interest" in its regulatory function. The panel continues: the "term 'regulatory capture' was often used" by participants. Here is a direct quote from these lauded experts:

*"Public trust and confidence is crucial to all parties. Without it, an assessment approval will lack the social acceptance necessary to facilitate project development... the erosion of public trust in the current assessment process has created a belief among many interests that the outcomes are illegitimate. This, in turn, has led some to believe that outcomes are preordained and that there is no use in participating in the review process because views will not be taken into account. **The consequence of this is a higher likelihood of protests and court challenges, longer time frames to get to decisions and less certainty that the decision will actually be realized – in short, the absence of social license**" [my emphasis].⁹*

Building Common Ground's authors' warnings about disruption from protests and court challenges might well motivate the CNSC to pay more attention to how it does consultation – especially if you consider the following pro-industry evidence:

- ◆ In 2017, a CNSC employee affirmed that CNSC has never refused to approve a licensing or relicensing for a facility though some minor

⁹ https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html#_Toc001 Sec 3.1.1

adjustments to the proponent's applications may be required before approval.¹⁰

- ◆ A 2018 Greenpeace communication states, "The CNSC's decision to secretly encourage the federal government to exempt SMRs from impact assessments provides additional evidence that the CNSC continues to lack neutrality in its oversight of the nuclear industry."

Also disturbing were two statements made on June 2 2022 by the Atomic Energy of Canada Ltd. (AECL) representative. It seems AECL wears two hats in this licensing process. He authoritatively dismissed both my concern about REGDOC 3.2.2, and also asserted that Canada's policy is to NOT allow First Nations a "veto" in consultation processes. (Both these issues are taken up further below.) As I understand it, AECL is a co-proponent for the NWM yet the AECL speaker appeared to be interpreting federal government policy, which is the jurisdiction of the Crown or the courts.¹¹ AECL is a peer Crown agency to the CNSC. In his presence as a proponent, offering AECL views on government policy seems undue influence. This matter is raised because, again with the disclaimer that I am not a lawyer, I have heard that *Duty to Consult* obligations are more rigorous when the Crown is a proponent.

In our view, the *Honour of the Crown* has been besmirched by the failure to validly consult with the Omà̀m̀wininiwag, who have never surrendered their title to the land that the nuclear industry has been using for more than 70 years. The *Honour of the Crown* is being further tarnished by the CNSC Staff's narrow scope for this recent extended period of consultation provided by your Procedural Direction.

If your Commission decides to approve the current proposal from CNL for this radioactive waste landfill project on unceded territory, in opposition to clear and supported claims from the rightful Indigenous titleholders, you are abrogating your mandated responsibility to uphold the *Honour of the Crown*. You are also risking the outcome forecast by the authors of *Building Common Ground*.

Inadequacy of Consultation

A Crown regulator can devolve some "engagement" responsibility to the proponent, but in the end the entire consultation process is yours to manage successfully. Based on what I heard on June 2nd from Omà̀m̀wininiwag speakers and read in all Omà̀m̀wininiwag submissions, it is patently clear that every single Omà̀m̀winini First Nation feels you butchered the job of doing consultation and

¹⁰ http://www.ccnr.org/CNSC_licence_refusals_2017.pdf

¹¹ <https://www.aecl.ca/about-aecl/>

engagement. In a unique concurrence, all the Omàwiniwag leadership voices heard at last year's hearing said they could not "consent" to the proposal, in the FPIC meaning of the word "consent."

Your agency is bound by the Crown's *Duty to Consult* validly with Indigenous Peoples in concert with the federal government's commitment to Reconciliation. This is both a Treaty and Constitutional obligation and also is in the interest of the entire Canadian public. As stated, I am not a lawyer but the Clyde River Supreme Court of Canada (SCC) decision says:

*"The public interest and the duty to consult do not operate in conflict here. The duty to consult, being a constitutional imperative, gives rise to a special public interest that supersedes other concerns typically considered by tribunals tasked with assessing the public interest. A project authorization that breaches the constitutionally protected rights of Indigenous peoples cannot serve the public interest."*¹²

The Clyde River decision further states that the Crown is obliged to undertake "a meaningful, good faith consultation process", and goes on to say:

*"...[W]hile the Crown may rely on steps undertaken by a regulatory agency to fulfill its duty to consult in whole or in part...the Crown always holds ultimate responsibility for ensuring consultation is adequate. Practically speaking, this does not mean that a minister of the Crown must give explicit consideration in every case to whether the duty to consult has been satisfied, or must directly participate in the process of consultation. Where the regulatory process being relied upon does not achieve adequate consultation or accommodation, the Crown **must** take further measures to meet its duty. This might entail filling any gaps on a case-by-case basis or more systemically through legislative or regulatory amendments... Or, it might require making submissions to the regulatory body, requesting reconsideration of a decision, or seeking a postponement in order to carry out further consultation in a separate process before the decision is rendered...*

"...[A]ny decision affecting Aboriginal or treaty rights made on the basis of inadequate consultation will not be in compliance with the duty to consult, which is a constitutional imperative. Where challenged, it should be quashed on judicial review. That said, judicial review is no substitute for adequate consultation. True reconciliation is rarely, if ever, achieved in courtrooms. Judicial remedies may seek to undo past infringements of

¹² <https://www.canlii.org/en/ca/scc/doc/2017/2017scc40/2017scc40.html>

*Aboriginal and treaty rights, but adequate Crown consultation before project approval is always preferable to after-the-fact judicial remonstrations following an adversarial process. Consultation is, after all, '[c]oncerned with an ethic of ongoing relationships'... **No one benefits – not project proponents, not Indigenous peoples, and not non-Indigenous members of affected communities – when projects are prematurely approved only to be subjected to litigation**" [my emphases].*

Since the June 2022 hearing, I have reflected on the wisdom in Ms. Van Schie's concluding remark for KFN: the process used by the industry and the Crown fails to recognize and address "the intergenerational trauma of these developments and the displacement on their land base."¹³ I submit that intergenerational nation, community, clan, and family memories of all the historic human rights violations they have experienced are revisited on the Peoples via inadequate FPIC consultation efforts. As well, extant impacts of Canada's genocidal policies fundamentally diminish Indigenous communities' capacity to engage in these processes. This directly affects individual inherent rights, the wellbeing of all life in their traditional territories, and the rights of the next Seven Generations. KZAFN's May 8th submission speaks eloquently to this point.

If you knew the history of the Omàwiniwiniwag, and had taken to heart the Reconciliation commitments that you as an agent of the Crown are obliged to uphold, you would have conducted yourself very differently with this second iteration of a proposal for on-site waste storage from CNL. Instead you bullheadedly went ahead, seemingly thinking that engagement and consultation were something to address proforma as they would not generate any relevant considerations.

The apparent superior attitude of the nuclear industry as a whole must be addressed here. Industry spokespeople commonly hide behind a mantra that only their scientists are smart enough to opine on licensing intricacies. I have personally heard this from industry spokespeople and cheerleaders. Worse, during a *Parliamentary Standing Committee on Environment and Sustainable Development* hearing on governance of the nuclear industry, I recall Chief Reg Negowabe of Mississauga First Nation (MFN) mentioned being told this by industry "engagement" emissaries.¹⁴ The assertion made to him that "We could give you all the information, but you wouldn't understand it anyway" is insulting

¹³ A brief intro to FPIC: <https://www.kairoscanada.org/what-we-do/indigenous-rights/free-prior-informed-consent>
KAIROS' 2 page fact sheet on FPIC: <https://www.kairoscanada.org/product/free-prior-informed-consent-fact-sheet>

¹⁴ MFN is located less than 1km from the Cameco facility in Blind River, See Chief Negowabe's presentation at: <https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20220215/-1/36485>, the Chief's presentation starts just after 12:45pm.

to grassroots community members, citizen scientists, and environmental activists, as well as Indigenous Peoples.

Perhaps most indicative of the CNSC's niggardly approach to community consultation is the decision to review the NWM (formerly the NSDF) proposal under the now defunct *Canadian Environmental Assessment Act* (CEAA). It was precisely because the majority of Canadians and Indigenous People felt CEAA 2012 was woefully inadequate that the current federal government prioritized overhaul of environmental assessment process law during their first term in office. CEAA 2012 had none of the more comprehensive provisions for assessment that are found in the *Impact Assessment Act* (2019), which has been Canadian law for four years.

In my view, the decision to proceed with analyzing the NWM under the CEAA 2012 was a strategic decision that underscores how closely the CNSC is in partnership with the industry. I say this because choosing to evaluate the current proposal from CNL under CEAA 2012 means you have avoided a valid, arms-length expert environmental and human impact assessment that would include deep consultation with the Omàmìwininiwag. This appears to be just one more indication of the CNSC being primarily concerned with industry's objectives.

Reliance on the CEAA provisions is not the only way the CNSC is conveniently leaning on archaic policies. On June 2 2022 I spoke about how confounded I was when I learned you are still relying on out-of-date federal policy for Indigenous consultation from 2011 (*2011 Guidelines*), which were last updated on September 15, 2010. This quote is from your website:

"The CNSC is also mindful of its role as a statutory administrative tribunal exercising quasi-judicial powers, which imposes on it the duty to treat all participants in its proceedings fairly. When developing and implementing consultation processes, the CNSC takes into account the guiding principles that have emerged from Canada's case law and best consultation practices, as outlined in the document *Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult – March 2011.*"¹⁵

This policy, which is the basis of your REGDOC 3.2.2, is what industry proponents see as your standards. In the quickly evolving Indigenous consultation arena, **a 2010 policy is NOT "best" practice in 2022 or 2023.** Over the past dozen years, a multitude of relevant legal cases, principles, practices, and laws have expanded and further defined the Crown's *Duty to Consult* obligations. Though I

¹⁵ The "2011 Guidelines" are found here: <https://www.rcaanc-cirnac.gc.ca/eng/1100100014664/1609421824729>

have not made a comprehensive list of how it misleads. **Just one glaring example of the invalidity of the 2011 Guidelines (in REGDOC 3.2.2) is the claim “the duty [to consult] applies to current and future activities and not historical infringements” while, as mentioned above, the 2021 Yahey (Blueberry) FN SCC decision says cumulative historic impacts or infringements are relevant to the process.** ¹⁶

As well, Canada fully endorsed the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) in 2016. In 2021, federal legislation was passed committing the Crown to enact UNDRIP principles, including FPIC, throughout Canada. ¹⁷ Yet, the 2011 Guidelines are still on the books as Canada’s official policy (which the AECL spokesperson informed us all on June 2 2022). ¹⁸ In 2016, the federal government commissioned a report from legal expert Bryn Gray entitled “Building Relationships and Advancing Reconciliation through Meaningful Consultation.” Gray recommended a new federal consultation policy “to assist the government-wide effort to renew the relationship between Canada and Indigenous peoples based on recognition of rights, respect, cooperation and partnership.” Seven years later, his recommendations are still being “reviewed.” ¹⁹

I must reiterate my June 2022 points: these 2011 Guidelines amount to a tick-the-boxes and log-the-communication-**attempts** approach to engagement and consultation. These are now below the lowest acceptable standards. These guidelines in REGDOC 3.2.2 totally disrespects Indigenous culture and Peoples in their own territories. The policy runs counter to the dialogical process central to FPIC. As a non-governmental Canadian organization that strongly supports Indigenous rights, justice and Reconciliation, we in the Council are ashamed of these backward 2011 Guidelines.

Meaningful, Good Faith Consultation

When Canada fully endorsed UNDRIP in 2016, we also started on the long road of integrating the principles of “Free, Prior and Informed Consent” (FPIC) regarding all public matters that affect Indigenous Peoples. A primary objective of FPIC is to level the playing field. ^{20 21}

16 Kate Gunn: <https://www.firstpeopleslaw.com/public-education/blog/time-is-of-the-essence-treaty-rights-and-cumulative-impacts-in-yahey-v-british-columbia>.

17 <https://www.canada.ca/en/departement-justice/news/2023/03/implementing-united-nations-declaration-on-the-rights-of-indigenous-peoples-act-next-phase-of-co-development.html>

18 This is the second instance when I felt confused by the role of the AECL in this hearing, as I commented on page 6.

19 This is [the link](#) to Indigenous Relations Canada’s page describing their continued shameful reliance on the 2011 Guidelines.

20 For an excellent primer on how to do FPIC properly, see: <https://www.fao.org/3/i6190e/i6190e.pdf>

21 Another excellent resource on doing FPIC properly is the New Zealand Ministry of Justice’s (1997), which is summarized in the Haida 2004 SCC decision at: <https://www.canlii.org/en/ca/scc/doc/2004/2004scc73/2004scc73.html>

In the case of the proposed NWM at CR, this means that the Crown holds responsibility to ensure:

- the process for engagement and consultation is **FREE** of any form of soft or hard coercion;
- the legitimate title-holders, the Omàmìwininiwag, receive notice of the possible plan to construct this facility **PRIOR** to the development of the design and the formation of an application for development;
- everything the Algonquins need to be fully **INFORMED** is available to them, including capacity to undertake their own independent assessment of environmental and social aspects of the proposal as well as all resources required to assist in understanding the ramifications and potentials of the development;
- nothing happens without addressing the issues and concerns about infringement or other negative effects on their communities or territory, and the People have given their **CONSENT** to proceed with the project.

To do this correctly, the proponent and the regulator must do all that is necessary to **open** a productive conversation with the population of the communities affected. According to the KFN and KZAFN May 2023 submissions, as well as all the First Nation intervenors who testified on June 2 2022, this did not happen until very recently and then only in an extremely “narrow scope.”

Engaging with **the full community**, with the goal of determining if it is a willing host, is especially important. Every community member in a particular First Nation holds inherent Indigenous Rights that cannot be traded away by First Nation leaders elected under *The Indian Act*. “Chief and Council are responsible for all activities in the community from Social Service, Health, Public Works, Administration, Economic Development and other services required in the community,” according to the Aboriginal Financial Officers Association.²²

Considering to give up one’s individual Indigenous Rights, for any mitigation or accommodation, starts with valid and respectful information-sharing in an environment where it feels safe to speak one’s concerns. Representatives of the Crown and industry who go into a community for open meetings must observe Indigenous protocols and conduct themselves in a manner that is respectful to the culture of the People. Based on the KFN and KZAFN submissions, it seems clear that CNSC staff and CNL representatives did not have adequate grounding in

22 [https://www.afoask.ca/public/uploads/PDF%20files/Roles%20and%20ResponsibilitiesCandC\(1\).pdf](https://www.afoask.ca/public/uploads/PDF%20files/Roles%20and%20ResponsibilitiesCandC(1).pdf)

Omàmìwininiwag culture, history, spirituality, and traditional knowledge to carry out appropriate community-wide engagement and consultation processes.

Non-Indigenous political, corporate and industry leaders in Canada have tried to quash the CONSENT aspect of FPIC by insisting that Indigenous Peoples have no right to a veto. As an instance, on June 2 2022, Kebaowek FN Councillor Justin Roy heard a manager from AECL energetically stress that FPIC does not allow Indigenous Peoples to have a veto. The transcript shows that Roy responded as follows:

“...I’ll agree. FPIC is not a veto. FPIC is supposed to be a way for Indigenous peoples to have a clear, respectful, transparent and open path to proper consultation so that at the end of that consultation we... as the ongoing and original stewards of these lands, have the information, have the knowledge, to be able to say yes or no to support a project.”

If valid FPIC consultation is done, this might make the minds of Crown and industry decision-makers more respectful. The insights gained would likely improve the project.

In Conclusion: Repairing CNSC’s “Honour of the Crown”

It is not the fault of the general population that the nuclear industry has created a terrible and terrifying pool of deadly waste that it does not have a good plan for handling. Government secrecy in the dawn of the nuclear age, when Canada was an integral partner in the nuclear arms weaponry development, set the stage for the problems we have today. Industry simply *ran with* the federal modus operandi of neglect and environmental abuse because it suits their business model.

Things change. Democracy evolves. From the Haida SCC decision: “Meaningful consultation may oblige the Crown to make changes to its proposed action based on information obtained.”

There is no doubt that the Omàmìwininiwag are the rightful title-holders in this territory. Excluded from the Treaty process for centuries, the Omàmìwininiwag in both Quebec and Ontario rely on promises made by the Crown 250+ years ago:

“The Royal Proclamation of 1763 – sometimes referred to as an Indigenous bill of rights – sets out the principle that the government could only gain access to Indigenous peoples’ land and resources with their free consent.”²³

23 “Free, Prior and Informed Consent” Fact Sheet from KAIROS: <https://www.kairoscanada.org/>

Indigenous People, who have been here since time immemorial, experienced the gravest and most long standing human rights violations of any population group in what is now known as Canada. Canada enacted a dire campaign to eradicate the Indigenous population through starvation, civil rights repression, physical oppression, re-education camps for Indigenous children, and many more horrid programs and policies. Our nation's fall from grace in the eyes of much of the world's population is because the truth about many of these human rights abuses is finally being swept out from under the rug of colonial silence.

Today, in light of the national objective of Reconciliation, all Crown entities – which includes the CNSC -- must meticulously demonstrate true Honour in all dealings with Indigenous Peoples.

1. As I stated in our original intervention submission in April 2022, and repeated on June 2 2022, **it is incumbent on persons working in the official federal positions, such as the CNSC staff, to undertake the sort of *Cross-Cultural Competency Training*** exhorted multiple times by the Truth and Reconciliation Commission.²⁴ **The CNSC must make this training compulsory for all your staff and for any proponents you authorize to do engagement on your behalf.**
2. **Lobby the federal cabinet to create a new official policy for consultation that fully honours FPIC principles and references key case decisions, policies and legislation aimed at meaningful consultation leading towards genuine Reconciliation.** You can start by reading Bryn Gray's work (see above), initially recommended in 2016 and which the government is still "reviewing."
3. **Send this Nuclear Waste Mound proposal for Chalk River back to the proponents. When it is resubmitted have your staff evaluate it under the *Impact Assessment Act (2019)*.** Meanwhile, apply CEAA S.52 to send this very controversial development proposal to Cabinet.

As I spoke on June 2 2022, I was holding two Eagle Feathers presented to me on separate occasions (2005, 2017) for my Indigenous Rights solidarity work. As a non-Indigenous person of Euro-settler heritage, I am humbled by the trust represented by these gifts and the responsibilities that come with them. I hope I have lived up to those responsibilities in this final submission.

²⁴ https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf, see as an example Call #57