Canadian Nuclear Safety Commission | Commission canadienne de sûreté nucléaire

CMD 26-H100.11

Date: 2026-06-17

Written Submission from the Kebaowek First Nation

Mémoire de la Première Nation Kebaowek

In the matter of the

À l'égard des

Canadian Nuclear Laboratories

Laboratoires Nucléaires Canadiens

Application to amend the licence and licensing basis for the Gentilly-1 Waste Facility

Demande concernant la modification de leur permis et du fondement d'autorisation pour l'installation de gestion des déchets de Gentilly-1

Hearing in writing based on written submissions

Audience par écrit fondée sur des mémoires

July 2026

Juillet 2026

Document ID: QQQVZZNDK725-166150894-13057 (PDF)

Canada

Kebaowek First Nation
Review of Canadian Nuclear Laboratories' Application to Amend the *Waste Facility Decommissioning Licence* for the Gentilly-1 Waste Facility

FINAL WRITTEN SUBMISSION

presented to
Canadian Nuclear Safety Commission
June 17, 2026

Table of Contents

I. INTRODUCTION 3
II. BACKGROUND 5
III. APPLICABLE LAWS 5
A. Nuclear Safety Control Act, SC 1997, c 9 6
B. Impact Assessment Act, SC 2019, c 28, s 1 6
C. United Nations Declaration on the Rights of Indigenous Peoples including UNDRIP Act, SC 2021, c 14 7
D. Rights and Responsibilities Law 8
IV. SUBMISSIONS ON CNL's LICENCE AMENDMENT 11
A. Project Scoping Decisions Must Not be Made Unilaterally 12
B. Record must be Revised and Strengthened before Decision-Making 13
C. A Missed Opportunity for an Impact Assessment 14
D. Compliance is Required with KFN's Rights & Responsibilities Assessment Law 15
E. Breach of the Duty to Consult 16
F. Breach of Right to FPIC 18
G. An In-Person, Oral Hearing Must be Held 19
V. REMEDIES REQUESTED 19
A. Immediately suspend the decommissioning activities at the Gentilly nuclear site 19
B. Postpone the hearing until such a time that the informational and consultation gaps are remedied 19
C. Create a policy, framework or protocol for Section 82 assessments 20

I. INTRODUCTION

The following submission is presented on behalf of Kebaowek First Nation ("KFN") to the Canadian Nuclear Safety Commission ("CNSC"). KFN submits this written intervention in response to Canadian Nuclear Laboratories' ("CNL") application seeking a licence amendment to proceed with decommissioning at the Gentilly-1 Waste Facility ("G1WF" or "the Project").

KFN is one of ten distinct First Nations that make up the Algonquin Nation. Nine are located in Quebec and one, in Ontario. KFN's territory lies on either side of the Ottawa River Basin and 1,000 members live, work and exercise constitutionally protected Aboriginal rights and stewardship responsibilities in both Ontario and Quebec. KFN's reserve is located in Quebec on Lake Kipawa, 15 km from the interprovincial border. KFN, like many Indigenous peoples in Canada, is a trans-border community.

KFN holds and exercises inherent and constitutional rights, including title, throughout our territory which are protected pursuant to the Constitution Act, 1982. KFN also has rights recognized and protected by the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP"), as affirmed as part of Canada's domestic law through the *United Nation Declaration on the Rights of Indigenous Peoples Act* ("UNDA").

We hold a profound duty to act as stewards of *Anishinaabeg Algonquin Aki* (lands), to protect our sacred sites, and to honour our inherent relationships, in accordance with our laws. Yet, we are being denied the opportunity to fulfill these responsibilities. The CNSC's regulatory process and myopic view of Indigenous rights precludes and frustrates our ability to participate fully and fairly in matters relating to the transport and storage of radioactive waste to our territory, which engages Article 29(2) of UNDRIP and requires the Crown to obtain our Free, Prior, and Informed Consent (FPIC).

The disregard for our rights and denial of our jurisdiction is especially concerning as this project sets a precedent as one of the first decommissionings of a nuclear facility. G1WF ought to be subject to the highest level of scrutiny, rigour, and involvement by impacted First Nations and the public.

KFN submits the CNSC does not have the requisite constitutional and legal basis to proceed with decision-making under section 24(4) of the *Nuclear Safety and Control Act* ("NSCA"), nor a legitimate basis to conclude that there will be finding of no significant adverse environment effects under section 82 of the *Impact Assessment Act* ("IAA") for the following reasons:

1. The CNSC unilaterally made decisions about which activities fall within the scope of the project and associated licensing activities, and determined that no duty to consult arises, without considering KFN's input and perspectives.[1]

[1] *Gitxaala*, 2023 BCSC 1680 at para 326 [*Gitxaala*], *Mitchikanibikok Inik First Nation*, 2024 QCCS 4007 [*MIFN*] at para 395, and *Sipekne'katik v Alton Gas Storage*, 2020 NSCC 111 at paras 123-129, Canadian Courts

2. The CNSC failed to provide notice and disclose sufficient information to KFN to enable a prior and proper determination of the potential impacts to our rights and, in so doing, breached the duty to consult.

3. The CNSC failed to obtain and consider Indigenous knowledge and our community's input prior to making determinations under section 82 of the IAAA, in breach of its statutory and constitutional duties.

4. The CNSC failed to consider the application of the KFN *Rights and Responsibilities Assessment Law* and Algonquin Law more broadly, contrary to the requirements of Article 18 of UNDIRP and UNDA.

5. The CNSC failed to recognize and respect KFN's right to provide FPIC, contrary to the requirements of Articles 29(2) and 32(2) of UNDRIP and UNDA.

6. The CNSC failed to hold an in-person, oral public hearing for decision of this significance and, in so doing, breached KFN's right to procedural fairness and the right to meaningfully participate in administrative decision-making under Article 19 of UNDRIP.

7. An impact assessment ought to have been conducted for this matter to protect KFN's rights and interests and the rights and interests of all members of the public.

KFN therefore seeks:

1. An immediate suspension of the decommissioning activities at the Gentilly nuclear site;

2. Postponement of the written hearing until such a time that the informational and consultation gaps detailed in this submission are remedied, and KFN is provided a meaningful opportunity to engage in the process, including with respect to the assessment of the project's potential impacts to our rights in accordance with our own laws; and

3. The co-development of a framework with the CNSC for the assessment of projects on federal lands under section 82 of the *Impact Assessment Act.*

KFN retains the right to provide further and more detailed comments pending the disclosure of adequate information and opportunities for meaningful participation, such that we can weigh in on the project's effects and potential impacts to our rights and interests. Notice, information sharing, and an opportunity to discuss issues are a minimal constitutional requirements in the context of the

---

found that presence of adverse impacts must be viewed through the perspective of the First Nation and is not dependent upon the Crown's unilateral belief about whether there is an adverse impact to rights.

duty to consult, which has not been met by the CNSC in this case.[2] KFN requires information disclosure, as well as clarity on timelines, roles, and process, to be given a fair chance to make informed comments on the CNSC's determinations under the *NSCA* and *IAA*.

II. BACKGROUND

Gentilly-1 is an experimental reactor located at the Gentilly nuclear site in Bécancour, Québec. CNL is seeking an amendment to the present G1WF licence for a period of 15 years to complete decommissioning activities.[3]

In July 2025, the CNSC permitted CNL to transport of 88 spent fuel bundles stored in 11 concrete silos via road from G1WF to the Chalk River Site. According to a report published by the CNSC in December 2025, CNL applied and obtained a license to transport from the CNSC, submitted a transport security plan, and obtained agreement from the International Atomic Energy Agency (IAEA) to move the spent fuel from the G1WF site to Chalk River. [4]

The decision to grant CNL the approval to ship spent fuel was predicated on the fact that there would be minimal impact to the health and safety of workers, the public, and the environment as a result of these activities. In its report, the CNSC commented it approved the transportation licence on the basis that there would be "minimal impact to the health and safety of workers, the public and the environment, as a result of these activities."[5] CNSC staff also concluded that CNL met all of the regulatory requirements in order to ship the fuel safely.

From the outset, the CNSC never provided any notice of its decision "decision to grant CNL approval to ship spent fuel" to the Chalk River Site, nor its decision to grant CNL a transport licence application, breaching the requirement contained in Article 29(2) of UNDRIP which provides that there should be no storage or disposal of hazardous waste on our territories without our FPIC, as well as the minimal constitutional requirements to provide notice, disclosure information, and provide an opportunity to discuss any issues.[6] While we requested the applications and authorizations relating to the approved licences multiple times, we have yet to receive any information disclosure from the CNSC. The breach of the Crown's constitutional duties is ongoing.

III. APPLICABLE LAWS

The following statues are among those relied on in our submission. We provide them here for ease of reference.

---

[2] *Haida Nation v British Columbia*, 2004 SCC 73 at para 43.
[3] CNL, "Revised Application for Licence Amendment to Proceed with Execution of Decommissioning at the Gentilly-1 Waste Facility," (April 15, 2026), p 2-3
[4] CNSC, Regulatory Oversight Report for CNL Sites: 2024 (Dec 1, 2025)
[5] *Ibid,* p 83
[6]

A. *Nuclear Safety Control Act,* SC 1997, c 9

Licences

24 (1) The Commission may establish classes of licences authorizing the licensee to carry on any activity described in any of paragraphs 26(a) to (f) that is specified in the licence for the period that is specified in the licence.

Application
(2) The Commission may issue, renew, suspend in whole or in part, amend, revoke or replace a licence, or authorize its transfer, on receipt of an application

(a) in the prescribed form;
(b) containing the prescribed information and undertakings and accompanied by the prescribed documents; and
(c) accompanied by the prescribed fee.

[…]

Conditions for issuance, etc.

(4) No licence shall be issued, renewed, amended or replaced — and no authorization to transfer one given — unless, in the opinion of the Commission, the applicant or, in the case of an application for an authorization to transfer the licence, the transferee

(a) is qualified to carry on the activity that the licence will authorize the licensee to carry on; and
(b) will, in carrying on that activity, make adequate provision for the protection of the environment, the health and safety of persons and the maintenance of national security and measures required to implement international obligations to which Canada has agreed. [emphasis added]

B. *Impact Assessment Act,* SC 2019, c 28, s 1

Purposes
6 (1) The purpose of this Act is to prevent or mitigate significant adverse effects within federal jurisdiction — and significant direct or incidental adverse effects — that may be caused by the carrying out of designated projects, as well as significant adverse environmental effects, as defined in section 81, that may be caused by the carrying out of projects, as defined in that section, by establishing processes to anticipate, identify and assess the potential effects of those projects in order to inform decision making under this or any other Act of Parliament in respect of those effects.

[…]

Project carried out on federal lands

82 An authority must not carry out a project on federal lands, exercise any power or perform any duty or function conferred on it under any Act of Parliament other than this Act that could permit a project to be carried out, in whole or in part, on federal lands or provide financial assistance to any person for the purpose of enabling that project to be carried out, in whole or in part, on federal lands, unless [emphasis added]

> (a) the authority determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or
> (b) the authority determines that the carrying out of the project is likely to cause significant adverse environmental effects and the Governor in Council decides, under subsection 90(3), that those effects are justified in the circumstances.

[…]

Factors

84 (1) An authority's determination regarding whether the carrying out of the project is likely to cause significant adverse environmental effects must be based on a consideration of the following factors [emphasis added]:

> (a) any adverse impact that the project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982;
> (b) Indigenous knowledge provided with respect to the project;
> (c) community knowledge provided with respect to the project;
> (d) comments received from the public under subsection 86(1); and
> (e) the mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project that the authority is satisfied will be implemented.

C. *United Nations Declaration on the Rights of Indigenous Peoples* including *UNDRIP Act,* SC 2021, c 14

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11(2)
States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 18
Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19
States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. [emphasis added]

Article 29(2)
States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

Article 32 (2)
States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water and other resources.

D. ***Rights and Responsibilities Law***

3. Purposes
3.1 The purposes of this Law are to:

(a) ensure respect for KFN's inherent and constitutionally protected rights, title, and jurisdiction across KFN Territory;
(b) protect KFN's ability to exercise its Rights and Responsibilities throughout KFN Territory now and into the future;
(c) establish a process for KFN's assessment of Projects that upholds KFN Rights and Responsibilities;

(d) uphold Algonquin Ona'ken'age'win in decision-making regarding Projects affecting KFN Rights and Responsibilities;
(e) ensure that all Projects are acceptable under Algonquin Ona'ken'age'win and respect KFN Rights and Responsibilities;
(f) guarantee that KFN has granted its FPIC before any Designated Project commences on KFN territory;
(g) provide for equal and fair participation of all Members in the assessments of Designated Projects;
(h) support a strong and unified KFN community; and
(i) enhance community well-being and opportunities that align with KFN Rights and Responsibilities.

4. Algonquin Ona'ken'age'win

4.1 Administration Principles: This Law will be administered with respect for the following Seven Teachings:

(a) **Wisdom**: KFN derives ancestral memory through Algonquin Knowledge and carries the responsibility to apply this knowledge in the planning and development of Projects.
(b) **Respect**: KFN carries the responsibility to consider the Effects of Projects on all life forms and will show respect towards all relations in recognition of our interdependence.
(c) **Love**: KFN recognizes the interconnectedness of all life forms and the ways that love sustains the Earth, including through water which shares its life force with all living things.
(d) **Bravery**: KFN, as stewards and caretakers of the Earth, will protect and care for the lands, waters, animals, fish, trees, plants, rocks, and all relations, including future generations, even in the face of challenges and change.
(e) **Honesty:** The totality of KFN Algonquin Knowledge cannot be captured by the written word and will be learned and experienced by nurturing one's relations.
(f) **Truth**: KFN's assessments of Projects are grounded in truth- seeking and will create opportunities for the lands, waters, animals, fish, trees, plants, rocks, and all relations to tell their stories.
(g) **Humility**: KFN recognizes that we are dependent on Aki for sustenance and well-being, and accordingly, we will show humility and gratitude for the relations that sustain KFN Rights and Responsibilities.

4.2 Assessment Principles: KFN's assessment of Projects will be guided by the following Algonquin legal principles:

(a) **Respect for All Relations:** the lands, waters, animals, fish, trees, plants, rocks, and all relations are not "resources," but relatives gifted by the Creator that should be cared for and respected. Humans should only take what we need, and all parts of a relation's gift should be used and shared for the benefit of the collective. Where harm is contemplated, it should be as minimal as possible, and something must be given back to maintain balance and uphold reciprocity.
(b) **Water (Nibi) Is Life**: water is a life-giver and a carrier of spirit. Lakes, rivers, and wetlands must stay clean for drinking, harvesting, ceremonial activities, swimming, and to preserve the health of the lands, animals, fish, trees, plants, and all relations. Human activities will respect water and should not damage its quality, quantity, or flow.
(c) **Preserving KFN Way of Life**: fishing, hunting, trapping, and gathering activities as well as Sacred Sites should not be disturbed or destroyed in ways that undermine the ability of Members to secure a livelihood, transfer Algonquin Knowledge across generations, and exercise KFN Rights and Responsibilities.
(d) **Seven Generations Perspective**: decisions made today should protect the abundance of Mother Earth and preserve the ability of the next seven generations to exercise KFN Rights and Responsibilities. Human activities should not result in permanent and irreversible damage.

5. Principles of Free, Prior, and Informed Consent

5.1 **Self-Determination**

(a) KFN has the right to freely pursue its political, legal, linguistic, economic, social, cultural, spiritual, and ecological development.
(b) KFN has the right to determine priorities and strategies for the use of KFN Territory.
(c) KFN has the right to be secure in the enjoyment of its own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
(d) All decisions regarding Projects will be made in accordance with Algonquin Ona'ken'age'win.

5.2 **Continuity**

(a) FPIC is not a one-time event, but a process that occurs throughout the implementation of a Designated Project.
(b) FPIC may be amended or withdrawn.

5.3 **Collectivity**

(a) FPIC is collective right held by all Members.
(b) Council carries the responsibility to make decisions for the benefit of current and future generations.
(c) All Members have the right to participate equally in public decision-making processes.

IV. SUBMISSIONS ON CNL's LICENCE AMENDMENT

KFN makes these submissions recognizing we were never consulted on the developments, activities, and licensing of Chalk River's nuclear operations which have resulted in the contamination of groundwater and the release of hazardous waste into freshwater streams and lakes which flow into the Ottawa River. These activities occurred without knowledge or input from KFN, let alone our FPIC. The Crown's ongoing disregard for KFN's rights and interests, including our inherent jurisdiction throughout our territory, has been of concern to the Algonquin Anishinaabeg since the 1950s.

This submission builds on prior correspondence and communication with the CNSC, CNL and AECL,[7] all of which we request be adopted in full into this hearing record, including:

- Letter from KFN to Ministers Hodgson and Dabrusin; Presidents Tremblay, Carr, Dermarkar; and the IAAC Compliance Unit, dated May 14, 2026, "Re: Demand for respect for KFN's right to be consulted and FPIC obtained prior to the transport, storage, and disposal of hazardous waste on our traditional territories"

- Letter from KFN to federal authorities CNSC and AECL, Mr. Adam Levine and Ms. Shannon Castellarin dated February 5, 2026, "Kebaowek First Nation's Comments on the Section 82 Assessment for the Proposed Gentilly-1 Waste Facility Decommissioning Project"

- Email to CNL and AECL from KFN on December 18, 2025, "Re: Upcoming Notice of Intent for the Decommissioning of Gentilly-1 under Section 82 of the Impact Assessment Act," providing notice and expectation of compliance with KFN's Rights and Responsibilities Assessment Law and concerns that initiation of 30-day public comment period immediately before the holiday break is procedurally unfair.

- Email correspondence dated December 11, 2025, "Gentilly-1 Questions for Response by CNL/AECL" from KFN to CNL and AECL.

[7] KFN initiated and participated in discussions with CNSC, CNL, and AECL since 2021 regarding the need to reform federal assessment of projects under s 82 of the *Impact Assessment Act,* raising concerns about procedural deficiencies and the Crown's conduct

- Letter from KFN to Colin Moses (CNSC) on December 8, 2025, "Systemic Underfunding Threatens KFN's Ability to be Engaged, Meaningfully Consulted."

- Letter from KFN to Candace Salmon (CNSC Registrar) on October 15, 2025, regarding G-1 project and concerns regarding consultation and approach regarding s. 82 of the *Impact Assessment Act*.

KFN maintains that the project, which involves and relates to the decommissioning wastes from the G1WF and the transfer of high-level radioactive material to Chalk River, has the potential to cause negative impacts to our section 35 rights, title, and jurisdiction–on a direct, indirect, and cumulative basis–that are *intergenerational*, *irreparable* and *profound*.

A. Project Scoping Decisions Must Not be Made Unilaterally

KFN rejects the scope of the project, as defined unilaterally by the CNSC and CNL.

The CNSC has taken the position that the duty to consult is not triggered because the transport, storage, and disposal of hazardous waste from other nuclear facilities is already covered by existing licences bases for the G1WF and Chalk River sites,[8] and, therefore, there is not "Crown conduct" contemplated. This position is legally incorrect: the Crown issued an authorization for the transport of waste from G1WF to Chalk River site, and the ongoing accumulation of hazardous waste on KFN territory without our knowledge and consent poses the potential for adverse impacts.

Our understanding is that intermediate and high-level radioactive waste will be stored in concrete vaults until a deep geological repository is built, and low-level radioactive waste will be deposited into the proposed Near-Surface Disposal Facility (NSDF), which may directly impact on water sources and waterways. Unfortunately, the CNSC has rationalized the lack of consultation on the basis that the spent fuel from G1WF was already transferred to CRL.[9] *Post hoc* justifications cannot cure a breach of the duty to consult or FPIC.

The CNSC has unilaterally determined that our concerns "do not fall directly in scope of the G1WF decommissioning activities that are being proposed for this licence amendment." [10] CNL also maintains that, "[w] hile the transportation of waste, and the proposed storage or disposal of waste at CRL, are not part of the Project or the requested licence amendment, CNL and AECL are engaging separately with KFN on these matters."[11]

---

[8] CNSC to KFN, "RE: CNSC Staff Response to the Keboawek First Nation Inquiries on the Section 82 Assessment for the Proposed Gentilly-1 Waste Facility Decommissioning Activities" (12 January 2026); CNSC to KFN, "Subject: CNSC Staff Response to the Keboawek First Nation's Comments on the Section 82 Assessment for the Proposed Gentilly-1 Waste Facility Decommissioning Project" (10 April 2026) [April 10, 2026 CNSC letter].

[9] April 10, 2026 CNSC letter

[10] April 10, 2026 CNSC letter

[11] CNL, "Supplier Document Gentilly-1 Waste Facility Licence Amendment Application Environmental Protection Measures for Decommissioning and Demolition, 61-03710-ENA-005514, Revision 1.0," p 51

It appears the CNSC and CNL's are aligned in preventing KFN from participating meaningfully in processes and decisions which may affect our rights. Where the Crown conducts a preliminary assessment on the potential impacts of a project to a First Nation, it must disclose this assessment and provide an opportunity for the First Nation to comment (see, *Sipekne'katik v Alton Gas Storage*, 2020 NSCC 111 at paras 123-129). As stated by the Supreme Court in *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017 SCC 40 at para 49, consultation is "talking together for mutual understanding," including talking with First Nations about the possible impacts to rights.

The CNSC and CNL's attempt to foreclose consultation on the narrow basis of licencing scopes disregards the multiplicity of past and ongoing breaches of our right to FPIC, and the critical importance of assessing and monitoring the cumulative effects of Crown authorized activities in the past, present, and reasonably foreseeable future.[12] As stated in our letter dated February 5, 2026, all activities related to the transfer, storage, and disposal of hazardous waste on our traditional territories have the potential to adversely impact our section 35 rights. We view all projects which lead to the storage and disposal of hazardous waste on KFN territory as interconnected and expect to be consulted on all activities which engage Article 29(2) of UNDRIP.

The Crown should not have permitted the transport and disposal of waste at NSDF without first notifying KFN and asking whether our Nation about perceived potential adverse impacts. This was a breach of the constitutional duty to consult and KFN's right to FPIC. Moving forward, we require the CNSC, AECL, and all proponents to adhere to KFN's *Rights & Responsibilities Assessment Law*, in accordance with the process described below.

B. Record must be Revised and Strengthened before Decision-Making

The hearing record before the CNSC does not demonstrate that known, significant, and adverse environmental effects can be effectively mitigated, nor do the proposed conditions provide any certainty that these effects will be avoided or reduced to an acceptable level, as required by section 82 and 84 of the *IAA.*

While KFN has reached out to CNL and the CNSC regarding this project, they have not sought our Indigenous knowledge in respect to the project, as required by section 84(1)(b) of the *IAA.* Our Indigenous laws and knowledge must be included in the hearing documents and must inform the CNSC's decisions, as stipulated by the Federal Court's decision in *Kebaowek*. KFN's Algonquin laws and knowledge provide a comprehensive view of ecosystems as interconnected systems. They help identify problems in local environments and assess ecosystem health. KFN's inherent relationship to the ecosystem allows for changes in land use, provided these changes do not endanger

[12] KFN, *Rights & Responsibilities Assessment Law* at sections 10.3(e), 16.1(b)(vii),19.3; *Canadian Environmental Assessment Act*, SC 2012, c 19, sections 4(1)(i), 19(1)(a); and *Impact Assessment Act*, 2019, SC 2019, c 28, sections 6(2), 22(1)(a)(ii).

sustainability and renewability. KFN is concerned that the CNSC's regulatory oversight does not align with our laws and knowledge, nor with modern environmental science.

The following document requests remain outstanding:

- copies of any internal Environmental Review(s), Environmental Effects Review(s), or equivalent environmental assessment documents prepared (or currently relied upon), along with any additional information to support the section 82 assessment on federal lands; and
- CNL's licence to transport application, safety analysis of the transportation package, transport security plan, and agreement obtained from the IAEA to move the spent fuel from the G1WF site to the Chalk River site.

While we acknowledge CNL's request for confidentiality was granted by CNSC,[13] the constitutional duty to consult and to uphold and protect our rights far outweigh any prejudice that would be caused from the disclosure of these documents. KFN cannot verify whether the CNSC's assessment as to the triggering and depth of the duty to consult is justifiable without the disclosure of the above noted documents.

As noted above, KFN has initiated a lengthy correspondence with CNSC and CNL. And yet, only one letter of this history appears in the Record of Engagement from CNL.[14] We request that all our correspondence and instances in which our concerns were raised in meetings be included in the record of this proceeding. We also request a response from CNL as to why the record is not comprehensive. CNL's application documents lack critical informed shared by KFN and does not fully or accurately reflection of our attempts to seek meaningful engagement.

KFN submits that CNL's application documents must be revised and strengthened before any decision under the *IAA* can be made–which is a perquisite to a licensing decision under the *NSCA.*

C. A Missed Opportunity for an Impact Assessment

KFN is dismayed that despite our continued calls for impact assessment ("IA") for decommissioning of nuclear facilities and sites, including the dismantling of nuclear facilities,[15] this project is proceeding absent a federal IA. Existing and future nuclearized and radioactive waste host communities, including KFN ought to have access to IA so that they can proactively know and participate in decision-making regarding all stages of a nuclear project.

---

[13] Request for Confidentiality from Julie Therrien (CNL) dated 2026 04 24; Memorandum from Karen Campell (CNSC) dated 2026 05 01

[14] CNL, "Gentilly-1 Waste Facility Decommissioning Indigenous Communications Supplementary Report (2023 January-2026 February) 61-513130-REPT-011919 Revision 0," dated April 2 2026

[15] *See for instance*: "Kebaowek First Nation Submission on review of the Canadian Impact Assessment Act (IAA) Regulations Designating Physical Activities (the "Project List Regulation")" dated Sept 27, 2024; "Kebaowek First Nation Submission on regulations being developed for the Canadian Impact Assessment Act ("IAA") in Bill C-69, namely, the Regulations Designating Physical Activities (the "Project List Regulation") and Information Requirements and Time Management," dated May 31, 2019.

For 75 years, Canada's nuclear safety regulator has failed to come up with a reliable, verified, and acceptable plan for decommissioning and the disposal of radioactive wastes. Only now–through project specific decommissioning licences–is the CNSC determining how to licence the decommissioning of nuclear facilities.[16] The CNSC's licensing process is not a reliable nor a sufficient stand-in for IA, which would have allowed for our direct input and involvement on key decision points, including the scope of the project undergoing review.

KFN remains of the view that decommissioning decision-making should not be able to escape the scrutiny and direct involvement of affected communities like ours when there are tools available under Canada's federal IA law to address issues of intergenerational, environmental, and social significance and to remedy historical wrongs.

KFN has also put CNL and the CNSC on notice that our *Rights and Responsibilities Assessment Law* is triggered by the G1WF project and that compliance with its requirements is necessary to discharge the duty to consult and obtain our FPIC, as detailed further below.

D. Compliance is Required with KFN's Rights & Responsibilities Assessment Law

As CNL and CNSC are aware, on November 27, 2026, KFN ratified the *Rights & Responsibilities Assessment Law*. This Law applies whenever a proponent, including a Crown corporation, proposes physical activities which may result in effects on KFN territory or impacts to KFN rights and responsibilities. CNSC must comply with the Law, pursuant to the requirements in UNDRIP that states cooperate with Indigenous peoples through their own representative institutions and in accordance with their own laws, procedures, and customs before authorizing projects affecting our territory.[17]

The purpose of the Law is for KFN to determine whether there is a risk of adverse impacts to KFN rights and responsibilities. Pursuant to Step 1 of the Law, proponents must submit a Project Description that provides KFN with sufficient information to make a Designation Decision under Section 10 of the Law. We expect CNSC to support KFN in obtaining a project description from proponents, as the Crown maintains the substantive obligation to discharge the duty to consult but may delete procedural aspects to third parties (*Haida Nation v British Columbia*, 2004 SCC 73 at para 53).

A complete project description enables KFN to identify the potential impacts of a project and evaluate their anticipated severity, to help inform the decision about whether the project should be designated for review under the FPIC process. CNSC must allow KFN sufficient time to make this Designation Decision and should consider KFN's own determinations about the risk of potential

[16] M.V. Ramana, K Blaise (2024) Regulation vs promotion: Small modular nuclear reactors in Canada, Energy Policy, Volume 192.
[17] UNDRIP, Art 32(2); see also UNDRIP, Arts 11, 12, 27.

impacts, before making any determination about the existence or scope of the duty to consult. There is a clear need for improved transparency, communication, and collaboration with KFN, to avoid further violations of our right to FPIC.

Further, CNSC must allow KFN's FPIC Process under Steps 4-13 of the Law to take its course, as this process will produce the information about KFN's laws and knowledge, as well as proposed mitigation and accommodation measures, necessary for the Crown to make a responsible and constitutionally compliant decision under the section 82 assessment.

As was made clear in *Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319, the CNSC must align its processes to reflect KFN's laws, knowledge, and processes, and work toward achieving mutual agreement. Furthermore, the UNDA Action Plan commitment #34 sets out the federal government's commitment to support Indigenous participation in decision-making and enable them to exercise federal regulatory authority.

In this process, the CNSC has not enabled KFN's full participation in decision-making despite the impacts posed by the project to our rights. KFN underscores the importance of meaningful consultation and engagement with its community, emphasizing the need for improved transparency, communication, and collaboration to align industry activities with the laws, knowledge, processes, rights, values, and interests of KFN.

E. Breach of the Duty to Consult

Section 8(2) of the *NSCA* recognizes that the CNSC acts as an agent of the Crown. Therefore, it is the CNSC acting as the Crown that must meet obligations to consult and is entrusted with the responsibility of fulfilling the Honour of the Crown and advancing the Nation-to-Nation relationship.

The Crown's duty to consult is part of a process of fair dealing and reconciliation which flows from the Crown's obligation to act honourably in its dealings with Indigenous Peoples (*Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para 32 [Haida]). The duty is triggered at a low threshold—it arises whenever the Crown has knowledge, real or constructive, of the potential existence of an Aboriginal or Treaty right and contemplates conduct which could adversely affect that right (*Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69 at para 55; *Haida* at para 35).

The G1WF decommissioning project and end waste distribution to the Chalk River site falls within our territory and, more specifically, in an area where both CNL and the CNSC have acknowledged that Kebaowek asserts section 35 rights. The project involves the transport, storage, and disposal of radioactive waste on our territory, engaging Article 29(2) of UNDROP which requires that the Crown obtain our consent before any authorizations relating to these activities occur. This requirement is confirmed by the Federal Court in *Kebaowek First Nation v Canadian Nuclear*

Laboratories, 2025 FC 319 at para 130 [*Kebaowek*]. Accordingly, the G1WF licence amendment triggers a duty to consult Kebaowek at the deepest end of the consultation.

The importance of CNL and AECL acknowledging the duty to consult is triggered, and at the deepest end of the spectrum, cannot be overstated:

1. Consultation that proceeds on a unilateral and erroneous assessment of the scope of consultation, without considering the Indigenous perspective and Indigenous laws, is inherently flawed;

2. The scope of consultation provides a roadmap for identifying requisite level of participation and opportunities for engagement in decision-making. As set out in *Kebaowek*, deep consultation includes, among other things:
    - a requirement to design a meaningful consultation process specific to the rights, interests, needs, and concerns articulated by a Nation;
    - proactive discussions about consultation timelines and regulatory coordination;
    - identification and development of process for dealing with information gathering and disclosure to fully understand and address potential impacts to rights;
    - a respectful and robust process for the inclusion of Indigenous laws and knowledge; and,
    - timely and effective discussions around the implementation of FPIC and, where appropriate, avoidance and accommodation of impacts.

While the CSNC has responded to KFN's correspondence raising concerns about the project–after the Crown already carried out the impugned activities–this should not be construed as meaningful engagement nor fulfillment of Crown consultation obligations. To the contrary, past correspondence demonstrates KFN's detailed and committed efforts over the course of several months to seek answers, inclusion and information, without any substantive or meaningful response from the CNSC. Instead, the CNSC dismissed our concerns and did not provide any opportunity for discussion of the issues. KFN should not have had to mount a defence as to why our engagement is constitutionally required. To the contrary, fulfilling consultation obligations is a burden borne by the Crown which CNSC has actively sought to evade with respect to the GIWF project and associated licensing activities.

Furthermore, the CNSC attempted to dictate KFN's level of involvement in this matter and sought to limit our involvement by significant reducing our requested capacity funding by ~75%. What's more, our funding application to participate in a related matter for the Gentilly-2 decommissioning licence was rejected <u>in full.</u> We have made repeated attempts to have these decisions reconsidered, to ensure funding is commensurate to the level of meaningful consultation required by the Constitution and our *Rights and Responsibilities Assessment Law*, to no avail.[18] This hearing matter comes at

[18] KFN Letter to CNSC Vice President, "Systemic Underfunding Threatens KFN's Ability to be Engaged, Meaningfully Consulted" dated Dec 8, 2025.

significant cost to our community. When our rights are at stake, we will intervene and work against attempts by the CNSC to silence us.

Our Nation made both CNL and the Crown abundantly aware, in writing and orally, that we expect to be consulted and our consent obtained prior to the storage and disposal of hazardous waste on our territory on numerous occasions. As KFN also meets regularly with the CNSC and CNL, this omission to properly consult us is even more egregious. As we take stock of CNSC's engagement with us to date regarding the G1WF project, it is clear to us that the CNSC's approach to engagement has been and continues to be inadequate, falling far below what is required by the Constitution, UNDRIP, and UNDA.

F. Breach of Right to FPIC

The transport of waste from the G1WF site to the Chalk River and the Near-Surface Disposal Facility (NSDF) poses potential adverse impacts to KFN's rights and responsibilities. The transport of high-level radioactive waste across KFN territory and its storage and permanent disposal on KFN territory is a serious breach of KFN's right to provide its FPIC, as recognized by Article 29(2) of UNDRIP and affirmed by the Federal Court of Canada in *Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319 at para 130.

UNDRIP must inform all actions taken under statue, including the CNSC's execution of its licensing decision under section 24 of the *NSCA*. The UNDA confirms that UNDRIP applies in Canadian law and provides the minimum standards against which state conduct must be measured. CNL's request for a licence amendment requires consideration of multiple UNDRIP principles, including KFN's right to determine priorities and strategies for the use of our territories in accordance with our own laws and jurisdiction. The CNSC's minimal constitutional obligation is to consult and cooperate in good faith with KFN to obtain our FPIC prior to approving the licence amendment.

KFN submits Articles 18, 19, 29.2 and 32(2) of UNDRIP are directly relevant to this licensing process, the Crown's conduct in carrying out engagement, and the Crown's decision-making. At this juncture of the licensing process, KFN confirms that:

- the transport of high-level radioactive from G1WF to Chalk River resulted in a serious breach of KFN's right to provide its FPIC;

- the CNSC failed to meet the heightened standards required by UNDRIP in the consultation process; and

- The CNSC does not have the requisite legal and constitutional basis to proceed with decision-making.

G. An In-Person, Oral Hearing Must be Held

KFN endorses the request for a procedural ruling under Rule 20 of the *Canadian Nuclear Safety Commission Rules of Procedure* ("Rules") submitted by the Concerned Citizens of Renfrew County and Area ("CCRCA") for an in-person, oral hearing.

Section 40 of the *Nuclear Safety and Control Act* further that requires that the CNSC hold a public hearing occur prior to the issuance of a licence:

> **40(5)** The Commission shall, subject to any by-laws made under section 15 and any regulations made under section 44, hold a public hearing with respect to
> **(a)** the proposed exercise by the Commission, or by a panel established under section 22, of the power under subsection 24(2) to issue, renew, suspend, amend, revoke or replace a licence

A public hearing should have occurred prior to the transport of spent fuel rods from G1WF to Chalk River and issuance of the transport licence[19] to ensure a robust assessment about the potential adverse effects stemming from the decommissioning activities at G1WF, including the potential adverse effects to our section 35 rights, considering UNDRIP and the FPIC standard.

V. REMEDIES REQUESTED

A. Immediately suspend the decommissioning activities at the Gentilly nuclear site

For the reasons set out above, we seek a commitment by the CNSC that it will not proceed with the licensing the decommissioning of the G1WF site without obtaining KFN's FPIC, including with respect to any transfer, storage, and disposal of waste at the Chalk River site.

In the interim, we request an immediate suspension of all currently planned decommissioning activities at the G1WF site.

B. Postpone the hearing until such a time that the informational and consultation gaps are remedied

Given the continued lack of adequate response from the CNSC and the seriousness of our concerns, we request the CNSC to postponing the hearing until such a time that the informational and consultation gaps detailed in this submission are remedied and KFN is provided a meaningful opportunity to engage in this process, including with respect to the assessment of the project's potential impacts to our rights in accordance with our own law.

---

[19] *Packaging and Transport of Nuclear Substance Regulations,* 2015 (SOR/2015-145), s 6

C. Create a policy, framework or protocol for Section 82 assessments

Our interventions before the CNSC have repeatedly focused on ensuring that the licensing review process and assessment regime for nuclear projects are aligned with our ability to meaningfully participate in decision-making regarding activities that impact our rights and jurisdiction, and to provide protections for our lands and waters. We reiterate our commitment to working with the CNSC to develop a framework for projects triggering s 82 of the *IAA*.

To date, however, the CNSC has failed to adequately respond to KFN's efforts to develop a mutually agreeable framework, and there is regrettably, no indication from either CNSC Staff nor the CNSC Commission that they are willing to remedy this critical gap so that statutory and constitutional obligations can be met.

As we've raised in communications with the CNSC, the Impact Assessment Agency of Canada has a long history administering a comprehensive impact assessment framework supported by regulations, publicly available guidance, policy documents, advisory bodies including Indigenous advisory groups, public registries, and established procedural safeguards. These tools create certainty, transparency, consistency, and accountability for all participants. The CNSC and its implementation of the *NCSA* regime fails to meet the same level of rigour, supports, and involvement.

In closing, a major shift in the planning, coordinating, and decision-making of section 82 assessments is required if the CNSC is to meet its constitutional duties and pave a way forward that upholds our rights, including our right to FPIC. Since November 2021, KFN has been requesting a framework for section 82 project engagements. These calls have gone unmet. We reiterate once again that this framework must be developed and in place before any decision is made on the G1WF project or any other section 82 project.