



CMD 26-H3.74

Date: 2026-10-13

**Written Submission from the
Alderville First Nation**

**Mémoire de la
Première Nation Alderville**

In the matter of

À l'égard de

Cameco Corporation

Application to renew the Class IB nuclear fuel facility operating licence for the Port Hope Conversion Facility for a period of 20 years

Cameco Corporation

Demande visant à renouveler, pour une période de 20 ans, le permis d'exploitation d'une installation de combustible nucléaire de catégorie IB pour l'installation de conversion de Port Hope

Commission Public Hearing

Audience publique de la Commission

November 2026

Novembre 2026

Canadian Nuclear Safety Commission
280 Slater St
PO Box 1046 Stn B
Ottawa ON K1P 5S9
Attention: Ms. C. Salmon, Commission Registrar

Dear Ms. Salmon:

Re: Alderville First Nation's Written Submission: Port Hope Conversion Facility (PHCF)
Application for a 20-year Renewal of Licence FFOL-3631.00/2027

Introduction and Summary of Submissions

Alderville First Nation ("**AFN**") makes this written intervention on Cameco Corporation's application to renew Licence FFOL-3631.00/2027 for the Port Hope Conversion Facility for a 20-year term. The Michi Saagiig Anishinaabeg have been caretakers of the lands and waters on the north shore of Gchi Nibi since time immemorial, and their responsibility to protect the Water comes from the Creator and from Michi Saagiig law.

AFN signed pre-Confederation Treaties, the Williams Treaties of 1923, and the 2018 Williams Treaties First Nations Settlement Agreement, and its Treaty relationship heightens the Crown's obligations on shared lands.

AFN submits that the Commission cannot find that the Honour of the Crown has been upheld. **First**, the duty to consult and accommodate was triggered but has not been fulfilled. CNSC staff concluded otherwise by relying on Cameco's own findings, without a full analysis that included AFN's perspective. Two new developments engage the duty: the Michi Saagiig Nations' 2024 title claim to the Gchi Nibi lake and lakebed, and the new acknowledgement of section 35 Rights in the 2018 Settlement Agreement, which came after Cameco's 2017 renewal. **Second**, the Commission did not adequately consider or uphold the United Nations Declaration on the Rights of Indigenous Peoples and free, prior and informed consent. Under the *United Nations Declaration on the Rights of Indigenous Peoples Act*, section 72.1 of the *Nuclear Safety and Control Act*, and *Kebaowek*, these are legal obligations in this application. **Third**, there was no attempt at economic reconciliation. **Fourth**, in the alternative, ongoing infringement of AFN's section 35 Rights must be assessed and then avoided, mitigated, or accommodated.

AFN also raises specific concerns about air quality monitoring and emergency preparedness, the aquatic environment, Cameco's future remediation plans, waste management, and the transportation of nuclear substances through treaty territory.

Kind regards,
Julie Kapyrka
Consultation Manager – Alderville First Nation



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Alderville First Nation ("AFN")

1. AFN has been home to the Mississauga Anishinaabeg of the Ojibway Nation since the mid-1830s. Before that time, the people lived in their traditional lands around the Bay of Quinte (Grape Island or the "Bay"), but with the influx of refugee settlement after the American Revolution, their existence found itself under increased pressure. The British, having lost the American colonies after 1783, were forced to relocate the soldiers and civilians that had been loyal to the King during the conflict. For this reason, the Bay became one area of settlement for those who became known as the United Empire Loyalists. The Mississaugas (Michi Saagiig) were directly involved in early "land surrenders" along the St. Lawrence River and the Bay, allowing this resettlement to occur.
2. Along this corridor, the traditional economy of the Michi Saagiig found itself under continued pressure for the next 40 years. The creation of Upper Canada and its colonization, and later the War of 1812, were events much larger than the Michi Saagiig and other related groups could contend with. Eventually, by the 1820s, they found themselves forced to adapt, and during this period a number converted to Christianity, primarily Methodism, from the Bay to the Western end of Lake Ontario. By 1826, the Methodists at the Bay had convinced the Mississauga to take up the development of a mission and attempts were made at teaching the people a new agrarian economy. On tiny Grape Island, the people learned to read, write, and to worship in a different manner, becoming a major target group of the early assimilation policies of Canadian church and state.
3. While the people accepted the value of learning to read and write and adapting to a new economy, their deep self-identity as Michi Saagiig would not allow for a complete surrender of their cultural values and language. The Methodist experience among the Michi Saagiig can best be described as a hybrid, or a mixed composition of traditional and western values and spiritual worldview.
4. The Michi Saagiig maintained a hold on many of their traditions all through the early decades of the Methodist experience including the Ojibway language. In realizing that harsher policy was being designed to eradicate these traditions, a stronger resistance developed in the communities. For ensuing generations, this resistance toward their



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complete assimilation persisted and it has become the basis upon which the cultural survival of the people has been maintained. That history of survival and resistance ensured the cultural and legal continuity of the Michi Saagiig which forms part of the basis of their legal authority, Treaty relationships, and continuing jurisdiction addressed in the next Part.

AFN Governance and Law

5. AFN is a signatory to pre-Confederation Treaties, the Williams Treaties of 1923, and the 2018 Williams Treaties First Nations Settlement Agreement. Its Treaty partnership heightens the Crown's obligations, including the protection of Rights in relation to shared lands.

6. To this day, AFN citizens hunt, trap, harvest, and gather foods and medicines, and perform and engage in ceremony upon the lands and waters that we now call southern Ontario. These activities are fundamental to AFN's member citizens' ability to be Michi Saagiig, to express their identity as a people, and to continue to thrive into future generations. The integrity and health of the lands and waters are essential for the people to be Michi Saagiig Anishinaabeg – the lands and waters are integral to their culture, to who they are, and to who they will become. And so, the environment, or as she is known, Mother Earth, is held in the highest regard, with the greatest respect, and with unconditional love. This principle forms the basis upon which AFN governance is structured and guides all AFN decision-making processes, which strive for a balanced and sustainable future for the community and its citizens.

7. The north shore of Lake Ontario (Gchi Nibi) is culturally and historically significant to AFN citizens – particularly the areas in which tributaries, rivers, and creeks outfall into Gchi Nibi. The north shore of Gchi Nibi has been an integral region for the Michi Saagiig since time immemorial and was used for trade, travel, ceremonies, hunting, fishing, harvesting, and gathering. Even the name: Mississauga or Michi Saagiig means "people of the big river mouths" and demonstrates the inextricable bond between the Nation and the north shore of Gchi Nibi – the people's name itself characterizes this strong relationship.

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8. The coastal wetlands are of considerable importance to the AFN, where many medicines were harvested and where the "food grows on the water," – manoomin (wild rice) which is part of the Anishinaabeg prophecy teachings. The AFN community is culturally invested in harvesting manoomin and engaged in providing oversight and guidance to maintaining its health and integrity across AFN treaty territories. Our people's relationship with manoomin is integral to who we are as Michi Saagiig peoples as it provides sustenance not only to our physical bodies but also feeds our spirituality and upholds our cultural identity. Harvesting and seeding manoomin binds our community together on an annual cycle. Manoomin requires healthy ecosystems in order to thrive. It has only been in the last few years, since 2018, that we have seen the resurgence of wild rice across many areas of Ontario, including the north shore of Gchi Nibi, as our communities can actively participate in the protection and oversight of this culturally significant seed.

9. The Michi Saagiig could be found on every tributary pouring into the Gchi Nibi, especially in the spring and fall during the Atlantic salmon runs (the original species is now extinct, due to industrialization). AFN citizens have been in relationship with these lands and waters for thousands of years. Some families had traplines and gathered medicines along the north shore of Gchi Nibi and continued this practice until the 1960s – when development and industry completely encroached upon these areas. The area around Frenchman's Bay is of particular significance to the Michi Saagiig due to the abundance of wildlife, waterfowl, amphibians, fish, and a wide variety of medicines and foods. The Michi Saagiig would come to this region to hunt, fish, gather, and engage in ceremony. It holds deep spiritual and cultural significance for the Michi Saagiig.

10. In keeping with our reverence and respect for the environment, AFN hosts the Black Oak Savanna and Tallgrass Prairie, a 50-hectare site on the edge of the Oak Ridges Moraine. The AFN Savanna and Prairie is the largest intact tract of native grassland habitat left on the Rice Lake Plains, and it plays an important role in the future restoration of other areas.

11. AFN is recognized as a respected and principled caretaker of the environment and is also committed to a green renewable energy future. As such, AFN is home to the first 100% First Nation owned solar farm in Canada which has been operational since 2013.



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12. Environmental consciousness and ecological integrity form part of AFN's community values. AFN member-citizens are caretakers for the lands and waters in and around the north shore of Gchi Nibi – as they have been, and will continue to be, for thousands more generations to come.

"Our people have been here for a long time. We've always been here. We're always going to be here. This is our territory." ~ Jeff Beaver

"...you need to respect the water. You need to understand it's alive. It can get sick, but it can also provide us with health if it's doing well itself. So, you need to respect all of the little critters that inhabit the lake. You need to respect all of the plants that are there. You need to respect the fish, and we need to respect ourselves, too. That's in terms of eating properly. We need to respect our environment. We need to protect it because it is what provides us with life." ~ Nora Sawyer

Michi Saagiig Laws, Responsibilities, and Relationships to Lands and Waters

13. The Michi Saagiig are caretakers for, and are in familial relationship with, the lands and waters within their territory in perpetuity, as they have been for thousands of years. The Michi Saagiig were given the responsibility by the Creator to protect *Shka-ki-mi-kwe* [Mother Earth] and her *Dooskweyaabin* [blood veins], the Waters. Water is life. The Waters play a critical role in the lives of the Michi Saagiig, and women hold particular responsibilities as caretakers of the Waters to ensure that they are protected and clean.

14. The Michi Saagiig care for Mother Earth through reciprocal relationship, taking only what is needed and offering ceremony as an act of gratitude. They value all Relations and have a responsibility to ensure that the health and integrity of their communities, lands, waters, and relatives are maintained for generations to come. The Michi Saagiig consider the effects of important decisions on the next seven generations, as their ancestors have done. Elders hold great knowledge of *Shka-ki-mi-kwe* [Mother Earth], carried in the communities' hearts and minds and passed by oral tradition to future generations.

15. These teachings are not merely cultural values or interests. They are the foundation of Michi Saagiig laws, roles, responsibilities, and governance systems. Bimaadziwin

Proudly working together to build a prosperous and healthy environment that promotes independence, honours and respects our values, and enhances our way of life.



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informs how the Nations live in right relationship with all life, including principles concerning land, water, stewardship, access, sharing, exclusion, and transfer.

16. Canadian legal frameworks, including the United Nations Declaration on the Rights of Indigenous Peoples ("**UNDRIP**" or "**Declaration**"), section 35, and the honour of the Crown, support recognition of Indigenous laws, but they do not create them. The source of the Michi Saagiig's responsibilities and law is the Creator. Accordingly, decision-makers must not translate Indigenous law only into Canadian legal categories or reduce relationships with lands and waters to environmental, cultural, or discretionary interests.

The Crown's Duty to Protect Section 35 Rights

The Law on Reconciliation

17. The process of fulfilling the Government of Canada's obligations to Indigenous Peoples and communities has significantly evolved in the last few decades. Case law on the duty to consult and accommodate ("**DTCA**"), UNDRIP including seeking Free, Prior and Informed Consent ("**FPIC**"), the *United Nations Declaration on the Rights of Indigenous Peoples Act* ("**UNDA**"), treaty and settlement negotiations, legislative enactments, and Canada's commitments adopted through policies and plans, inform honourable Crown conduct and how to discharge fiduciary duties to First Nations.

18. Canada endorsed the Declaration in 2016 without qualification and committed to its full and effective implementation.¹ This endorsement confirmed Canada's commitment to a relationship with Indigenous Peoples based on recognition of rights, respect, co-operation and partnership, which is broader than the DTCA.

19. On June 21, 2021, UNDA came into force. UNDA requires the Government of Canada, in consultation and cooperation with Indigenous peoples, to, among other things,

¹ Crown-Indigenous Relations and Northern Affairs Canada, "Canadian governments and the United Nations Declaration on the Rights of Indigenous Peoples" (April 2024), [online: Crown-Indigenous Relations and Northern Affairs Canada](#).



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take all measures necessary to ensure federal laws are consistent with the Declaration, including FPIC.²

20. UNDA gives Indigenous consent constitutional force under s. 35 of the *Constitution Act, 1982*. Consent is ongoing, not one-time, and can give proponents the certainty needed to move projects forward efficiently, as is common in other overlapping jurisdictions across Canada.

21. On June 21, 2023, Canada released the *UNDA Action Plan* including 181 measures to implement the Declaration throughout Canada and provide a roadmap for implementation of UNDA.³ Part of Justice Canada's initiatives are to ensure consistency of federal laws with the Declaration.⁴

22. Courts are to interpret legislation consistently, in a manner that achieves the purpose and intent of the legislation. After having made the legislative enactments described above, Canada included an amendment to the *Nuclear Safety and Control Act* ("**NSCA**"), which is reproduced below:

Rights of Indigenous peoples

72.1(1) The provisions enacted by this Act are to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them.⁵

² *Ibid.*

³ *United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021*, c 14.

⁴ Department of Justice Canada, News Release, "Third annual progress report on the implementation of the *UN Declaration on the Rights of Indigenous Peoples Act* highlights progress and points to where further work is needed" (20 June 2024), [online: Department of Justice Canada](https://www.judicial.gc.ca/decisions/html/2024/20240620_justice.html).

⁵ *An Act to amend certain Acts and to make certain consequential amendments (firearms), SC 2023*, c 32, s 72.1.



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23. Sections 3(a) and 9(a)(iii) of the NSCA provide that the Act is to be applied in a manner consistent and in conformity with Canada's international obligations, which includes the Declaration.⁶

24. Justice Blackhawk reinforced this interpretation in her Kebaowek decision.⁷ The Court found that the Declaration applies in three ways: 1) as an interpretative aid, 2) as the foundational framework and legislative measure that implements that framework, and 3) through the presumption of conformity to international law.⁸ She highlighted the distinction between the DTCA and FPIC. While they have similar objectives, the Declaration is a single, universal standard, as opposed to the DTCA which sits upon a spectrum.⁹ Once the conditions exist to engage FPIC, there is no analysis on the strength of those conditions before FPIC applies. This is the case when nuclear waste is created and stored on Indigenous territories. To be clear, the Declaration and FPIC apply in this application and the CNSC must demonstrate how they have been meaningfully applied.

25. This is also consistent with the federal government's own policy. Natural Resources Canada ("**NRCan**") is the federal agency responsible for improving the quality of life of Canadians by ensuring the country's abundant natural resources are developed sustainably, competitively and inclusively.¹⁰ NRCan states that partnering with Indigenous Peoples, communities, and businesses is critical to building an inclusive, sustainable and resilient natural resource sector in Canada. NRCan is committed to working together with Indigenous Peoples to build nation-to-nation relationships founded in mutual respect, partnership, and recognition of rights and stated: "[A]dvancing reconciliation means not only transforming our words but our actions...".¹¹

⁶ [Nuclear Safety and Control Act, SC 1997](#), c 9, ss 3, 9.

⁷ [Kebaowek First Nation v. Canadian Nuclear Laboratories](#), [2025 FC 319](#).

⁸ *Ibid* at paras [76-77](#), [84](#).

⁹ *Ibid* at para [112](#).

¹⁰ Natural Resources Canada, [online: Natural Resources Canada](#).

¹¹ Natural Resources Canada, [Waypoints on our Pathway of Reconciliation \(2 December 2024\)](#), [online: Government of Canada](#).



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26. NRCan states the relationship between the ministry, and Indigenous Peoples and communities is to be achieved through continuous consultation and cooperation to secure FPIC for decisions that impact Indigenous communities and their rights.¹²

27. Section 3 of NRCan's Policy for Radioactive Waste Management and Decommissioning states:

NRCan's radioactive waste policy confirms that the federal government must honour Indigenous rights, the Honour of the Crown, reconciliation, the United Nations Declaration on the Rights of Indigenous Peoples¹³ and UNDA.

28. It requires early, ongoing and meaningful Indigenous engagement, supported by capacity, information sharing and collaboration. Engagement must aim to secure free, prior and informed consent from affected Indigenous peoples. The policy recognizes Indigenous knowledge, stewardship responsibilities, and the importance of protecting lands and waters.

29. It also acknowledges that radioactive waste has been created or stored in traditional and treaty territories without prior engagement or consultation and commits to working with affected Indigenous peoples to address those past harms.¹⁴

30. The federal government's DTCA process applicable to Crown agencies such as the CNSC is set out in its Consultation and Accommodation Guidelines,¹⁵ but the DTCA policy is only part of the reconciliation process. Parliament has mandated Crown agencies to expediently implement the Declaration, integrate the UNDA Action Plan, and be responsive

¹² [Ibid.](#)

¹³ United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007), art 29 [UNDRIP].

¹⁴ Government of Canada, "Canada's Policy for Radioactive Waste Management and Decommissioning" (last modified 20 December 2024), [online: Government of Canada.](#)

¹⁵ Government of Canada, "Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult" (March 2011), [online: Government of Canada.](#)



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to the Calls to Action from the Truth and Reconciliation Commission (“**TRC**”). Failure to adhere to these commitments would be inconsistent with the Honour of the Crown.

31. The Crown is obligated to do more than check a consultation box – it must act honourably in dealing with Indigenous Nations. Honour requires the Crown to:

- Consider whether the decision triggers the DTCA;
- Consider the application of UNDRIP, including FPIC;
- Consider what is required to fulfill any agreements or Treaties;
- Consider economic reconciliation; and
- To act honourably and to further reconciliation.

32. Major resource projects increasingly move beyond minimum DTCA requirements toward inclusion of Indigenous leadership at all stages to support project certainty. This approach applies FPIC as the foundation for relationship and process: not merely consent to proceed, but collaboration on how a project proceeds successfully. That is the process AFN requires from the CNSC, and this submission offers a path to achieve it.

33. The federal reconciliation policy highlights that while one project may not require robust consultation, the way the Crown treats Indigenous partners will impact future relationships. The CNSC has stated its vision is to build trust and advance reconciliation and claims to support the implementation of the UNDA Action Plan.¹⁶

34. It is critical to ensure that the Crown, the regulators, proponents, and rights holders establish a proper and consistent process for consultation. AFN is committed to working with the CNSC to create industry standards which uphold the principles of Reconciliation and reflect the Treaty relationship.

¹⁶ Canadian Nuclear Safety Commission, 2023-24 Departmental Plan (Ottawa: Canadian Nuclear Safety Commission, 2023), [online: Government of Canada](https://www2013.senate.gov/record/hearings-and-statements).



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35. Whether expressed or implied, this tribunal is required to respect the treaty and reconciliation processes established through legislation and case law in order to uphold the Honour of the Crown.

Duty to Consult and Accommodate (DTCA)

36. The CNSC application process requires a purposeful and contextual analysis of the DTCA including participation of AFN.

37. What is the purpose of the DTCA? For AFN, the DTCA is about creating a mutually beneficial partnership between proponents, the Crown and the Nation. Viewed this way, the DTCA stops being a forced requirement and evolves into a process that proponents seek to undertake because it inevitably leads to a smoother and better project. Collaboration of knowledge and perspectives has led to the most progressive resource projects in Canada. This is the goal of reconciliation and the DTCA.

38. Reconciliation includes a renewed fiscal relationship, developed in collaboration with Indigenous nations, that promotes a mutually supportive climate for economic partnership and resource development. Reconciliation is an ongoing process that occurs in the context of evolving Indigenous-Crown relationships.¹⁷

Binnie J. — The fundamental objective of the modern law of Aboriginal and treaty rights is the reconciliation of Aboriginal peoples and non-Aboriginal peoples and their respective claims, interests and ambitions. The management of these relationships takes place in the shadow of a long history of grievances and misunderstanding. The multitude of smaller grievances created by the indifference of some government officials to Aboriginal people's concerns, and the lack of respect inherent in that indifference has been as destructive of the process of

¹⁷ Government of Canada, "Principles respecting the Government of Canada's relationship with Indigenous peoples" (last modified 1 September 2021), online: Government of Canada <<https://www.justice.gc.ca/eng/csj-sjc/principlesprincipes.html>>.



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*reconciliation as some of the larger and more explosive controversies. And so it is in this case.*¹⁸

39. In considering Binnie J.'s passage above, it is clear that the Crown must not mechanically apply terms to understand its obligations, but must purposefully examine the nature of the decision, the nature of the rights and the potential infringement as a starting point. Further, we submit that the proper way to understand the rights is through discussion with the Indigenous Rightsholder to better understand their perspective of the rights claimed and be able to put into context the infringement. It is only through such a purposeful and contextual analysis that progress towards reconciliation will occur.

40. The Crown's working foundation with Indigenous Nations is based on these principles and, as stated by Binnie J., reconciliation is the overarching principle governing this relationship. The DTCA is an important legal requirement that exists as one way to protect Indigenous Nations against the adverse decisions or actions of the Crown. Consideration of the principles of the Declaration and economic reconciliation are other available legal tools. Determining whether the Honour of the Crown has been upheld may start with consideration of DTCA fulfillment, but it is far from the end.

41. The Commission must determine whether the DTCA, UNDA and economic reconciliation were fulfilled when deciding if the Honour of the Crown has been upheld.

42. AFN submits that:

- the DTCA was triggered but not yet fulfilled;
- the Declaration, including FPIC, are legal obligations that were not adequately considered or upheld;
- there was no attempt at economic reconciliation; and therefore,
- the Honour of the Crown has not been upheld.

Duty to Consult and Accommodate has been Triggered

¹⁸ *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388 at para 1 [*Mikisew Cree*, 2005].



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43. While the duty to consult is not expressly set out in constitutional documents or in legislation, it is nonetheless a constitutional requirement. It finds its source in the Crown's assumption of sovereignty over lands and resources formerly held by Indigenous Peoples.

44. The duty, which cannot be removed or restricted by legislation, is a common law requirement grounded in the Honour of the Crown and enshrined in section 35 of the *Constitution Act, 1982*.¹⁹ The *Haida* test outlines the circumstances under which the Crown's duty to consult arises. This test is a three-part framework that requires: (1) the Crown's knowledge, actual or constructive, of a potential Aboriginal claim or right; (2) contemplated Crown conduct; and (3) the potential that the contemplated conduct may adversely affect an Aboriginal claim or right.²⁰

45. The CNSC, as a Crown agency, is responsible for discharging the DTCA. The Crown may delegate procedural aspects of the duty to a proponent, but the legal obligation of fulfilling the DTCA and upholding the Honour of the Crown rests with the CNSC.

46. *Delgamuukw* established that the duty to consult is engaged at a low threshold and that the extent of the duty owed will vary depending on the circumstances.²¹ *Delgamuukw* also established that, in most cases, the duty to consult will be "significantly deeper than mere consultation."²² In essence, the analysis should favour an obligation to consult and further reconciliation except in the clearest of cases.

47. The Commission must first determine if the Crown owed a duty to AFN regarding Cameco's FFOL application prior to determining if it was fulfilled.

48. Determining whether there was a duty requires a two-part process:

¹⁹ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511 [*Haida*]; *R. v. Kapp*, [2008] 2 SCR 483; *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 SCR 550. In paragraph 61 of its decision in *Beckman v. Little Salmon/Carmacks First Nation*, [2010] 3 SCR 103, the Supreme Court's first judgment on the duty to consult within the context of a modern treaty agreement, the Court held that while "[c]onsultation can be shaped by agreement of the parties, ... the Crown cannot contract out of its duty of honourable dealing with Aboriginal people."

²⁰ *Haida*, supra note 19 at para 35.

²¹ *Haida*, supra note 19 at para 35.

²² *Athabasca Regional Government v. Canada (Attorney General)*, 2010 FC 948 at para 66.



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- a. understanding how the duty is triggered under a renewal application; and
- b. determining if any of those triggering events are applicable.

49. The *Haida* test is nuanced when Crown conduct is considered a renewal of existing activities. There is an inherent assumption in a renewal that during the original licence application the DTCA was properly discharged. There is also a desire for maintaining certainty with respect to long-past decisions. However, this does not excuse the Crown from performing a detailed analysis.

50. If that process took place, the first determination is whether the contemplated Crown conduct is a true extension of existing activities and impacts. To make this determination, the courts have developed two clarifying questions:

1. does the activity create or have the potential to create a new or novel adverse impact on a protected right?²³ or
2. are there new operations or new activities being proposed in the renewal application?²⁴

51. Based on the information in Cameco's application reviewed to date, CNSC staff conclude that Cameco's requested licence renewal is unlikely to cause new adverse impacts to any potential or established Indigenous and/or Treaty rights. Accordingly, staff conclude that the application is unlikely to raise the duty to consult. They based this conclusion on the following factors:

Continued operations...

- will not change the Cameco site characterization;
- will not result in new facilities at the site;
- the site footprint will not expand; and
- no new activities are planned.²⁵

²³ *Chaboyer v Saskatchewan Power Corporation*, 2025 SKCA 31 at para 153 [*Chaboyer*]; *Chaboyer v Saskatchewan Power Corporation*, 2023 SKKB 62 at para 56 [*Chaboyer 2023*].

²⁴ *Chaboyer 2023* at para 66, upheld in *Chaboyer* at para 5, *Chaboyer 2023* at paras 57-59.

²⁵ Written submission from Cameco Corporation in the Application to renew the Class IB nuclear fuel facility operating licence for the Port Hope Conversion Facility for a period of 20 years.



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52. However, facts without context are not illuminative of the whole situation. The CNSC relies on Cameco's own findings to determine there was no DTCA without completing a full analysis, which must include AFN's perspective. The factors used to determine if the DTCA was triggered are insufficient to complete the analysis.

53. AFN submits that the DTCA was triggered for the following reasons:

1. A new title claim to the lake and lakebed has been asserted; and
2. The 2018 Settlement Agreement brings new acknowledgement of section 35 Rights.

54. The Crown has also failed to apply UNDRIP, including FPIC. Taken together, the conduct of the Crown has failed to uphold the Honour of the Crown.

New Title Claim - Lake and Lakebed Title Assertion

55. The Gchi Nibi lakebed is unceded territory of the Michi Saagiig Nations and any disruption of the lakebed by Cameco activities requires our consent. The Michi Saagiig Nations asserted this jurisdiction in 2024 and the CNSC became aware of this title claim during the DNNP Licence to Construct ("DNNP LTC") application process. This is a new title claim that was not considered during any previous licensing phases. Once the Crown has knowledge of a potential title claim and is considering conduct adverse to that claim, the duty to consult is triggered. The law is very clear and firmly established on this point.²⁶

56. The Commission noted in its Record of Proceeding that, as described in section 4.3.5.6 of CMD 24-H3.F, CNSC staff contacted Crown-Indigenous Relations and Northern Affairs Canada ("**CIRNAC**"), regarding whether the Williams Treaties Settlement Agreement addressed specific claims to the lakebed.²⁷ CIRNAC confirmed that the Williams Treaties Settlement Agreement did not address any potential claim of the Williams Treaties First Nations to lakebeds or water and any lakebed assertions.

57. A new title claim is a strong DTCA triggering event. The role of administrative bodies in relation to the DTCA was considered by the Court in *Gitxaala*:²⁸

²⁶ *Haida* supra note 19.

²⁷ Record of Decision DEC 24-H3, In the Matter of Ontario Power Generation Inc, Application for a Licence to Construct one BWRX-300 Reactor at the Darlington New Nuclear Project site, April 4, 2025 at para 413.

²⁸ *Gitxaala Nation v Canada*, 2016 FCA 187 at para 174 [*Gitxaala*].



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When a strong prima facie case for the [title] claim is established, the right and potential infringement is of high significance to the Aboriginal peoples, and the risk of non-compensable damage is high, the duty of consultation lies at the high end of the spectrum. While the precise requirements will vary with the circumstances, in this type of case a deep consultative process might entail: the opportunity to make submissions; formal participation in the decision-making process; and the provision of written reasons to show that Aboriginal concerns were considered and how those concerns were factored into the decision: Haida Nation, at paragraph 44.

58. The Court in *Clyde River* found:²⁹

Flexibility is required, as the depth of consultation required may change as the process advances and new information comes to light (Haida Nation, at paras. 39 and 43-45).

59. The new title claim changes the DTCA analysis and requires the CNSC to be flexible in its approach. The level of required consultation has evolved.

60. The Commission acknowledged Cameco's interest in continuing engagement with AFN and Cameco has reached out to AFN with the intention of forming a relationship and has shared compliance reports.

61. The Commission further notes that, in CMD 24-H3.G, CNSC staff proposed the following updated compliance verification criteria for licence condition 15.4:

Each report shall include, at a minimum, and for each Indigenous Nation and community engaged:

- An update on the status of and engagement conducted related to the aquatic, terrestrial and atmospheric monitoring.

62. The Commission respected our title claim over the lake and lakebed during the OPG DNNP LTC application. The same respect, consultation and accommodation is required for the Renewal of Operating Licence FFOL application. We have a legal responsibility to the Water. We view any potential disruption to the lakebed as requiring AFN's consent.

²⁹ *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017 SCC 40 at para 20 [*Clyde River*].



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2018 Settlement Agreement

63. Cameco's current Operating Licence was renewed in 2017, one year prior to the 2018 Settlement Agreement. AFN was not meaningfully consulted during the establishment of the conversion facility nor during the 2017 renewal application process. It is erroneous to state that the DTCA has not been triggered when AFN has never been meaningfully consulted in the first instance.

64. If the Commission determines that the DTCA test under Haida is not the correct framework to protect AFN's section 35 rights, then in the alternative the *Sparrow* framework would apply. When continued infringement of section 35 rights is part of a Crown's decision, that infringement and harm is no longer historical. The ongoing damage and impacts must be assessed and either avoided, mitigated or accommodated. The Court in *Cowichan Tribes* stated:

Section 35(1) protects Aboriginal rights that were in existence when the *Constitution Act*, 1982 came into effect. As the Court said in *Sparrow*...

*"As s. 35 did not come into force until 1982, I accept that the Crown's duty to justify infringing conduct may be generally inapplicable to discrete Crown conduct that occurred prior to that date **where there is no ongoing infringement**. However, in my view, the justification analysis applies to Crown conduct that began prior to 1982 and/or prior to a declaration of title where the interference with the Aboriginal right is continuing **at the time the Aboriginal right is recognized** [emphasis added]. I agree with the plaintiffs that the infringement and justification analysis applies to pre-declaration conduct. The justification framework is capable of absorbing complications that may arise when historic Crown conduct gives rise to enduring interferences".³⁰*

³⁰ *Cowichan Tribes v Canada (Attorney General)*, 2025 BCSC 1490 at para 2566.



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Participant Concerns

1. Air Quality Monitoring: Ensuring Accuracy and Transparency

65. Cameco's atmospheric monitoring program (using lime candles, dustfall collectors, and high-volume air samplers) is essential for assessing air quality around your facility. To foster confidence in these efforts, we'd appreciate further details on:

1. How were these monitoring methods selected? Were they chosen based on industry standards, regulatory requirements, or input from local stakeholders or experts?
2. How are monitoring locations determined? Understanding the rationale behind their placement would help us better understand the effectiveness of the program.
3. Could Cameco share a Windrose model of the site? This and other models involving atmospheric dispersion around the facility would provide valuable context for how any pollutants may travel from the site.

66. Additionally, the data on **HF emissions** from 2017–2025 highlights the importance of proactive risk management. **How quickly were equipment-related issues addressed once identified?** Is there a real-time detection and alarm system in place to minimize risks? Considering the possible consequences of a severe accident at PHCF releasing a large cloud of concentrated acid and toxic material, does the town have a thorough and well-rehearsed evacuation plan that is familiar to the citizenry? How long would it take to evacuate the downtown area in case of an emergency? We'd appreciate insights into the corrective actions taken, emergency planning, and whether similar issues have been prevented since.

2. Aquatic Environment

67. Cameco's decision to pause surface water monitoring in Port Hope Harbour in 2018, after two decades of sampling, prompts a few questions about the future of this program:

1. How were the original 13 monitoring locations selected? Understanding the criteria used would help us appreciate the thoroughness of the program.



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2. What parameters were tested, and how frequently were samples collected? Were samples taken from both near-surface and deep-water columns?
3. When monitoring resumes, how will the results be shared with the community?
Regular updates would ensure transparency as the program restarts.

68. We're encouraged by the resumption of this program and hope to see it continue with the same rigor as before.

3. Future Plans

69. Cameco's upcoming licence period includes plans for storm sewer enhancements, groundwater recovery, soil remediation, and flood protection. These initiatives demonstrate a commitment to environmental stewardship, and we'd love to stay informed about:

1. The specific timelines for these improvements and how progress will be measured.
2. How the effectiveness of these measures will be evaluated, including the metrics and data that will be used.
3. Opportunities for community input or collaboration to ensure these efforts align with local needs and priorities.

4. Waste Management

70. Cameco's approach to managing uranium-contaminated waste is critical to protecting our shared environment. To better understand your processes, we'd appreciate clarity on:

1. What happens to uranium-contaminated materials? Are they stored on-site, and if so, what safeguards are in place to prevent environmental contamination?
2. Could you elaborate on the pathways for "recovery at a recycling facility" and "fluoride product processing for uranium recovery"? Specifically, what do these processes entail, and how do they contribute to sustainability?



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3. Are there plans to explore long-term disposal options or reduce the volume of waste stored on-site?

71. We're particularly interested in learning how Cameco is working to **minimize its environmental footprint** and explore innovative solutions for waste management.

5. Transportation of Nuclear Substances on Treaty Lands

72. The transportation of nuclear substances—such as UO_2 , UF_6 , or other hazardous materials—is a matter of shared concern. To ensure safety and transparency, we'd appreciate:

1. Advance notice whenever these materials are transported through treaty territory, regardless of the perceived risk level. This would allow us to stay informed and prepared.
2. Immediate notification of any incidents, no matter how minor, involving these materials. Even small events can have significant implications, and we want to ensure that Cameco's response is timely and transparent.



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Conclusion

73. AFN has been caretaker of the lands and waters along the north shore of Gchi Nibi since time immemorial. AFN's responsibilities to the Water come from the Creator and from Michi Saagiig law. Those responsibilities are not just cultural interests to be weighed among others. As signatories to pre-Confederation Treaties, the Williams Treaties of 1923, and the 2018 Williams Treaties First Nations Settlement Agreement, AFN holds Treaty and section 35 Rights that heighten the Crown's obligations on shared lands and waters. Cameco's Port Hope Conversion Facility is on the shore of Gchi Nibi, and its licence renewal must be assessed with these Rights and responsibilities in mind.

74. AFN respectfully submits that the Commission cannot find that the Honour of the Crown has been upheld for this application. Specifically, AFN submits that:

1. The duty to consult and accommodate has been triggered but not fulfilled.

CNSC staff concluded that the duty was not triggered, relying on Cameco's own findings about site characterization, footprint, and planned activities. Staff reached that conclusion without a full analysis that included AFN's perspective. Two developments since the last licensing decision engage the duty:

- a. The Michi Saagiig Nations asserted title to the Gchi Nibi lake and lakebed in 2024. That is a new claim, not considered in any earlier licensing phase, and the CNSC already knows about it.
- b. The 2018 Settlement Agreement gives new acknowledgement of AFN's section 35 Rights. It postdates Cameco's 2017 renewal, and AFN was not meaningfully consulted on either the facility's establishment or that renewal.

2. The Declaration and FPIC were not adequately considered or upheld. Under UNDA, section 72.1 of the NSCA, and *Kebaowek*, the Declaration and FPIC apply to this application, and the CNSC must show how it has meaningfully applied them.

3. There was no attempt at economic reconciliation.



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4. **In the alternative, the Sparrow justification framework applies.** If the Commission decides the Haida framework is not the right one, it should apply Sparrow. The ongoing infringement of AFN's section 35 Rights must then be assessed and avoided, mitigated, or accommodated.

75. AFN also remains concerned about air quality monitoring, emergency preparedness, the aquatic environment, Cameco's future remediation plans, waste management, and the transportation of nuclear substances through treaty territory.

AFN's Requests

76. AFN respectfully asks the Commission to:
1. Find that the duty to consult and accommodate has been triggered for Cameco's application to renew Licence FFOL-3631.00/2027, and that the duty has not yet been fulfilled.
 2. Before making a licensing decision, require deep consultation with AFN that reflects the new title claim to the lake and lakebed. This should include formal participation in the decision-making process and written reasons explaining how AFN's concerns were considered and factored into the decision.
 3. Recognize that any potential disruption to the Gchi Nibi lakebed requires AFN's consent. AFN asks the Commission to give its title claim the same respect, consultation, and accommodation it gave in the OPG DNNP Licence to Construct proceeding.
 4. Show in its reasons how the Declaration, including FPIC, has been meaningfully applied to this application.
 5. Consider economic reconciliation as part of deciding whether the Honour of the Crown has been upheld.



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6. In the alternative, assess the ongoing infringement of AFN's section 35 Rights under the Sparrow framework, and require that it be avoided, mitigated, or accommodated.
 7. Direct Cameco to respond fully to AFN's questions on air quality monitoring, emergency and evacuation planning, the aquatic environment, remediation timelines and metrics, and waste management. Cameco should also give AFN advance notice of any transport of nuclear substances through treaty territory, and immediate notice of any incident involving those substances.
 8. Work with AFN, Cameco, and other rights holders to set up a proper and consistent consultation process, and industry standards that uphold the principles of Reconciliation and reflect the Treaty relationship.
77. AFN considers the duty to consult and accommodate a way to build a partnership that benefits proponents, the Crown, and AFN alike, and that leads to better projects. AFN is committed to working with the CNSC and Cameco so that decisions about Gchi Nibi respect the Treaty relationship, honour Michi Saagiig law, and protect the lands and waters for the next seven generations.

All of which is respectfully submitted on behalf of Alderville First Nation.