



CMD 26-H7.49

Date: 2026-08-18

**Written Submission from the
Michi Saagiig Anishinaabeg
Nations of the Williams Treaties
First Nations (MS-WTFNs)**

**Mémoire des
Nations Anishinaabeg Michi
Saagiig des Premières Nations des
Traités de Williams (MS-WTFNs)**

In the matter of

À l'égard de

Ontario Power Generation

Application to refurbish Pickering Nuclear
Generating Station and to renew licences
for the Pickering Nuclear Generating
Station and Waste Management Facility

Ontario Power Generation

Demande concernant la réfection de la
centrale nucléaire de Pickering et le
renouvellement de ses permis pour la
centrale et l'installation de gestion des
déchets

**Commission Public Hearing
Part 2**

**Audience publique de la Commission
Partie 2**

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Octobre 2026



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August 18, 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: Written Submissions of Alderville First Nation, Curve Lake First Nation, Hiawatha First Nation and the Mississaugas of Scugog Island First Nation (the "MS-WTFNs") in the Ontario Power Generation License Application Regarding the Refurbishment of the Pickering Nuclear Generating Station, the Renewal of the Pickering Nuclear Generating Station and Waste Management Facility
Proceeding Number 2026-H7**

Attached is the joint submission of the MS-WTFNs in this proceeding filed as set out in the Commission's Revised Notice of Public Hearing dated January 22, 2026 and electronic messages exchanged with the CNSC Registrar August 12, 2026. These submissions will be supplemented with presentation materials and oral submissions at Part 2 of this Proceeding.

Yours truly,

FOGLER, RUBINOFF LLP

A handwritten signature in blue ink that reads "Scott Stoll".

Scott Stoll
Counsel

SS/mz

cc: Kate Babony, Scott Stoll, Fogler Rubinoff, Legal Counsel
Ontario Power Generation
Intervenors/Participants

**Pickering Nuclear Generating Station Consolidated Licence Application
Intervenor Submission**

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Executive Summary

1. Ontario Power Generation ("**OPG**") has proposed bringing several projects into a singular licence and approval process in one of the largest, most complicated construction projects ever undertaken in the world. The Application includes decommissioning and separating Pickering A from Pickering B; refurbishing Pickering B; completion of additional on-site nuclear waste storage; and the change from a shallow water intake to a deep-water intake ("**DWI**") system (collectively the "**Application**"). If granted, this 10-year approval will be the precursor to the next set of applications to be able to operate the Pickering B units for more than three decades and confirm exclusion of the Michi Saagiig Anishinaabeg of the Williams Treaties First Nations¹ ("**MS-WTFNs**") from their lands and the unceded lakebed for more than 100 years.
2. Less than a decade ago, the MS-WTFNs were finally recognized to have certain rights and status by the Crown – rights that were wrongfully denied and suppressed for generations. The MS-WTFNs not only have a role as a nation government but must also carry out the responsibilities that were given by the Creator to live reciprocally and in harmony with the Lands, Waters, and Relatives. These rights and responsibilities must be recognized, acknowledged, and protected.
3. Unless otherwise expressly and unequivocally stated, the MS-WTFNs have not consented to any part of this Application. Further, indicating a single element that is necessary for consent does not provide the entirety of the requirements for consent. The MS-WTFNs have four primary concerns:
 - (a) the need to complete the DWI;
 - (b) the completion of the Cumulative Rights, Responsibilities, and Relations Assessment ("**C3RA**"),

¹ As shared by Tom Cowie, Consultation Indigenous Knowledge Lead at Hiawatha First Nation, AFN, CLFN, HFN, and MSIFN, are Michi Saagiig Anishinaabeg First Nation communities that are related to each other culturally and to the broader Mississauga Nation. The Mississauga Nation includes AFN, CLFN, HFN and MSIFN, as well as the Mississaugas of the Credit First Nation (MCFN) and Mississauga First Nation. Culturally, the Mississauga Nation is part of the broader Anishinaabeg Nation, which includes the Ojibway, Chippewas, Mississaugas, Odawa and Pottawatomi Nations. Under the Indian Act, AFN, CLFN, HFN and MSIFN are recognized as distinct governing authorities, who hold the collective Rights of our community members. In this sense, we are individual Nations with sovereign Rights, while also belonging to a collective cultural Nation – the Mississauga Nation, and Anishinaabeg Nation. AFN, CLFN, HFN and MSIFN are signatory to several pre-Confederation Treaties, including the Gunshot Treaties. AFN, CLFN, HFN and MSIFN are also signatory Nations to the Williams Treaties of 1923 and the Williams Treaties First Nations Settlement Agreement of 2018, along with the Chippewa Nations of Beausoleil, Georgina Island and Rama (collectively known as the Williams Treaties First Nations (WTFNs)). Within this document, we speak of ourselves as Michi Saagiig Anishinaabeg (our shared cultural identity), as communities which are part of the Mississauga and Anishinaabeg Nations, as individual sovereign First Nations with Inherent Rights, as First Nation communities recognized under the Indian Act, and as individual Aboriginal and Treaty Rights-holding member First Nations of the WTFNs.

- (c) the nuclear waste facility and the future of nuclear waste at PNGS; and
- (d) the process the Canadian Nuclear Safety Commission ("CNSC") used to adjudicate OPG's ability to proceed with its proposal.

Deep-Water Intake Must Proceed

- 4. The MS-WTFNs seek a condition that requires the DWI to be completed prior to the restart of any unit at the Pickering Nuclear Generating Station ("**PNGS**") as it is a necessary component of the project providing enhanced environmental protection, improved cooling efficiency, and operational resilience. It marks a distinct improvement over the current shallow water intake, reducing fish impingement, entrainment, and lowering the temperature of cooling water discharged to the lake. Fish and the waters are of deep physical, cultural, and social importance to the MS-WTFNs. Protecting them is a core obligation to the Communities. Any departure from the DWI would represent an unjustifiable infringement upon the MS-WTFNs' Rights.
- 5. OPG's recent hedging on the continuation of the DWI necessitates the inclusion of a condition that requires the DWI to be completed prior to the operation of any reactors at Pickering B following refurbishment. OPG's lack of engagement and the CNSC's response have shaken the confidence of the MS-WTFNs in the CNSC and OPG. A licence condition, prohibiting operation of any Pickering B units unless the DWI is installed, is necessary to ensure this critical element of the project is completed.

Cumulative Rights, Responsibilities and Relations Assessment ("C3RA")

- 6. The MS-WTFNs are working with OPG around our shared understanding for the C3RA's requirement, which is the MS-WTFNs' solution, by providing the Crown an avenue to discharge its ongoing obligations to meaningfully consult.
- 7. The MS-WTFNs are currently working on the definitive list of required elements of the C3RA and will continue to engage with OPG to bring forth an agreed condition which will stipulate the necessary workplan. To the extent there is agreement, such will be filed with the CNSC at the earliest opportunity and to the extent there is disagreement, further submissions will be made in the Part II hearing.
- 8. The C3RA is a response to the Crown's previous misconduct towards the MS-WTFNs: its denial of rights, its suppression of the MS-WTFNs' assertion of jurisdiction, the nature of the OPG proposed works and century of exclusion from the PNGS site and the lake and lakebed, and the need to protect the rights of the MS-WTFNs into the future.

Waste

- 9. The MS-WTFNs are particularly concerned with the management of intermediate-level radioactive waste generated through refurbishment, operations, maintenance, and eventual decommissioning activities associated with the entire PNGS and both Pickering Refurbishment and Pickering Decommissioning.

10. While operating licences are measured in years, radioactive waste management obligations may extend for centuries or indefinitely. The Crown's reconciliation obligations must therefore be measured against the duration of the impacts they authorize, not merely the duration of the licence being sought.

CNSC Process

11. Once again, the MS-WTFNs have been the party creating a path forward so that the Crown may rectify its legal duties to respect the MS-WTFNs' constitutionally recognized and inherent rights. The CNSC needs to recognize its implied authority to provide progressive remedies to ensure that the CNSC discharges its duty to consult and accommodate ("**DTCA**"). The current process is inadequate as it fails to provide the MS-WTFNs with a timely, sufficiently resourced, well-defined and honourable process.
12. The CNSC has ignored the legal obligation to justify the ongoing Rights' infringement,² instead choosing to stick to a narrow DTCA application. The MS-WTFNs have made several suggestions for the CNSC to interpret and implement its mandate in ways of meeting its DTCA. Further, the CNSC should encourage the Crown to provide it with the necessary, explicit authority to ensure that they can adequately fulfill their legal obligation. Currently, the CNSC is at risk of failing to uphold the Crown's Honour and discharging of its legal obligations.

Roadmap

13. The remainder of this submission follows from those concerns and is divided into six discrete parts. Part 1 and Part 2 provide the project and party context necessary to understand the rights and interests at stake; Part 3 establishes the MS-WTFNs' legal authority; Part 4 applies the law to the Application and identifies the Crown's duties, failures, and available accommodations and MS-WTFNs' requirements; Part 5 addresses concerns with the CNSC's consultation process; and Part 6 concludes with the requested findings and relief.

² Canada, Department of Justice, *Infringement and Justification* (21 March 2025), [online: Justice Laws Website \[Infringement and Justification\]](#); *Cowichan Tribes v Canada (Attorney General)*, [2025 BCSC 1490](#) at paras 2565 and 2566.

Part 1 – Project Overview

Background

14. Durham is a strategically important energy region and hosts Ontario and Canada's most concentrated area of nuclear stations. The PNGS was the first major commercial multi-unit generating station in Canada and has been operating since 1971. The PNGS and Pickering Waste Management Facility ("**PWMF**") are located within the Pickering nuclear site boundary in Pickering, Ontario, on the treaty and traditional territory of the Michi Saagiig Anishinaabeg and Chippewa Nations, collectively known as the Williams Treaties First Nations. The current licences for both facilities expire on August 31, 2028. OPG is requesting a 10-year licence renewal from January 1, 2027 to December 31, 2036, which is an early renewal to align with the projected PNGS refurbishment and decommissioning schedules.
15. PNGS has eight reactor units built to generate electricity. Units 2 and 3 have been in Storage with Surveillance since 2010; Unit 1 was removed from service in October 2024 and Unit 4 in December 2024. Units 5 to 8 will operate until 2026 and currently generate 2,100 megawatts, or roughly 10% of Ontario's electricity.
16. Under the current Power Reactor Operating Licence ("**PROL**"), PNGS Units 5 to 8 may operate until the end of 2026, after which they will be shut down, defueled, and dewatered. If the PROL is renewed, the four refurbished reactors are expected to return to service by the mid-2030s, extending their life by more than 30 years.
17. OPG is among North America's largest power producers and controls either fully or in part, three nuclear sites and a fourth in consideration, in MS-WTFNs' Territory. It seeks an extraordinary, first-of-its-kind consolidated licence in Canada. Given its administrative and Aboriginal law implications, the application requires careful scrutiny of its nature and effects on MS-WTFNs' Rights.
18. The CNSC is the Crown agency responsible for regulating nuclear activity in Canada to protect health, safety, security and the environment which also extends to Indigenous communities. As a fiduciary, the CNSC should not be adverse to First Nations as they are in a position of trust and are responsible for discharging the Crown's obligations.³ This relationship goes beyond what the Crown owes the general public and must be the first consideration in determining whether infringement of Aboriginal Rights can be justified.⁴ The justificatory standard to be met may place a heavy burden on the Commission and requires deciding if the infringement is minimal and whether fair compensation has been available.⁵ When Aboriginal title is at issue, as is the case with PNGS, the Court in *Delgamuukw* found that the Crown's obligation to consult affected Indigenous groups "must be in good faith, and with the intention of substantially addressing the concerns of

³ Mary C. Hurley, "The Crown's fiduciary relationship with Aboriginal peoples", Library of Parliament PRB 00-09E (10 August 2000, revised 18 December 2002), [online \(pdf\)](#) [Hurley].

⁴ *Guerin v. The Queen*, 1984 CanLII 25 (SCC) (1984), 1984 CanLII 25 (DLR).

⁵ *R. v. Sparrow*, 1990 CanLII 104 (SCC) (1990), [AZ](#); Hurley, *supra* note 3.

the aboriginal peoples whose lands are at issue".⁶ The court also stated that the Crown is under a moral, if not legal, duty to enter into and conduct negotiations with Indigenous groups in good faith.⁷

19. The MS-WTFNs are signatories to pre-Confederation Treaties, the Williams Treaties of 1923, and the 2018 Williams Treaties First Nations Settlement Agreement. Their Treaty partnership heightens the Crown's obligations, including the protection of Rights in relation to shared lands, including the PNGS site.
20. The MS-WTFNs recognize PNGS must continue operating for now. Ontario needs its electricity supply, and removing PNGS from service would eliminate approximately 2,100 megawatts from the grid which cannot be readily replaced.
21. The MS-WTFNs do not oppose the licence renewal. However, development affecting shared lands, resources, and Rights must include full MS-WTFNs' participation and mutual decision-making, consistent with their sovereignty, laws, responsibilities, rights, and reconciliation. This project context therefore leads directly to the legal and reconciliation framework that must govern the Commission's assessment of the Application.

The Law on Reconciliation

22. The process of fulfilling the Government of Canada's obligations to Indigenous communities has significantly evolved since 1970s. Case law on the DTCA, the Declaration and Free, Prior, 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.
23. Canada endorsed the Declaration in 2016 without qualification and committed to its full and effective implementation.⁸ 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.
24. On June 21, 2021, UNDA came into force. UNDA requires, in consultation and cooperation with Indigenous peoples, to, among other things, take all measures necessary to ensure federal laws are consistent with the Declaration, including FPIC.⁹
25. 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

⁶ *Delgamuukw v. British Columbia*, 1997 CanLII 302 (SCC) (1997), [1997 CanLII 302](#) at para 168.

⁷ Hurley, [supra](#) note 3.

⁸ 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](#).

⁹ [Ibid.](#)

move projects forward efficiently, as is common in other overlapping jurisdictions across Canada.

26. 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.¹⁰ Part of Justice Canada's initiatives are to ensure consistency of federal laws with the Declaration.¹¹
27. 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.¹²

28. 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.¹³
29. Justice Blackhawk reinforced this interpretation in her Kebaowek decision.¹⁴ 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.¹⁵ 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.¹⁶ Once the conditions exist to engage the 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 it has been meaningfully applied.
30. 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,

¹⁰ [United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021](#), c 14.

¹¹ 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](#).

¹² [An Act to amend certain Acts and to make certain consequential amendments \(firearms\), SC 2023](#), c 32, s. 72.1.

¹³ [Nuclear Safety and Control Act, SC 1997](#), c 9, s. 3&9.

¹⁴ [Kebaowek First Nation v. Canadian Nuclear Laboratories](#), 2025 FC 319.

¹⁵ *Ibid* at paras 76-77, 84.

¹⁶ *Ibid* at para 112.

competitively and inclusively.¹⁷ 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..."¹⁸

31. 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.¹⁹
32. 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, United Declaration on the Rights of Indigenous Peoples²⁰ and UNDA.
 - 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.
 - 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.²¹
33. The federal government's DTCA process applicable to Crown agencies such as the CNSC is set out in their Consultation and Accommodation Guidelines,²² 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, be responsive to

¹⁷ Natural Resources Canada, [online: Natural Resources Canada](#).

¹⁸ Natural Resources Canada, *Waypoints on our Pathway of Reconciliation* (2 December 2024), [online: Government of Canada](#).

¹⁹ *Ibid.*

²⁰ 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].

²¹ Government of Canada, "Canada's Policy for Radioactive Waste Management and Decommissioning" (last modified 20 December 2024), [online: Government of Canada](#).

²² Government of Canada, "Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult" (March 2011), [online: Government of Canada](#).

the Calls to Action from the TRC. Failure to adhere to these commitments would be inconsistent with the Honour of the Crown.

34. 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:
- (a) Consider whether the decision triggers the DTCA;
 - (b) Consider UNDRIP, including application of FPIC;
 - (c) Consider what is required to fulfill any agreements;
 - (d) Consider economic reconciliation; and
 - (e) To act honourably and to further reconciliation.
35. 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 the MS-WTFNs require from the CNSC, and this submission offers a path to achieve it.
36. OPG appears willing to build that process with the MS-WTFNs, and the relationship is improving. However, no formal agreements or concrete processes protect the MS-WTFNs' Rights or ensure participation in project benefits. The CNSC can advance this through a C3RA licence condition and its regulatory framework.
37. President Pierre Tremblay opened the Darlington New Nuclear Project ("**DNNP**") Hearing on October 2, 2024 (the "**Hearing**") by stating that reconciliation is a priority for him.²³ This comment echoes former President and CEP of the CNSC, Rumina Velshi's, 2022 statement:

*"Notably in Canada, the federal government is committed to reconciliation with Indigenous peoples, a commitment we at the CNSC embrace wholeheartedly. And federal legislation was adopted last year that provides a roadmap for implementing the United Nations Declaration on the Rights of Indigenous Peoples. **In short, doing things as they were done before is no longer an option, and that should be welcome news**".²⁴*

²³ Canada: Canadian Nuclear Safety Commission, *Public Hearing: Darlington New Nuclear Project Hearing (Transcript)*, (2 October 2024) at pg. 1.

²⁴ Canadian Nuclear Safety Commission, Speech, "Remarks by Rumina Velshi at the NEA Workshop on the Management of Spent Fuel, Radioactive Waste and Decommissioning in SMRs or Advanced Reactor Technologies" (8 November 2022), [online: Government of Canada](#).

38. While the MS-WTFNs are happy to hear Mr. Tremblay's commitment to the DTCA, reconciliation and the Honour of the Crown require honourable conduct to be *demonstrated*, including how the Declaration has been applied.
39. 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.²⁵
40. Granting a licence as complex as the Application, without proper recognition of the MS-WTFNs as regulators and sovereign governments with jurisdiction over the lands and waters of the PNGS site, will have a ripple effect beyond the current licencing application. It is critical to ensure that the Crown, the regulators, proponents, and rights holders establish a proper and consistent process for consultation. The MS-WTFNs are committed to working with the CNSC to create industry standards which uphold the principles of Reconciliation and reflect the Treaty relationship.
41. 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. With that framework in mind, the next Part identifies the MS-WTFNs whose rights, responsibilities, and relationships must guide the Commission's decision.

Part 2 - Michi Saagiig Anishinaabeg of the Williams Treaties First Nations

42. The legal and reconciliation framework described above must be applied in light of who the MS-WTFNs are and how they relate to the lands and waters affected by the Application. Michi Saagiig Anishinaabe Elder Gidigaa Migizi-ban shared:

The traditional homelands of the Michi Saagiig encompass a vast area of what is now known as southern Ontario. The Michi Saagiig are known as "the people of the big river mouths" and were also known as the "Salmon People" who occupied and fished the north shore of Lake Ontario where the various tributaries emptied into the Lake. Their territories extended north into and beyond the Kawarthas as winter hunting grounds on which they would break off into smaller social groups for the season, hunting and trapping on these lands, then returning to the Lakeshore in spring for the summer months.

The Michi Saagiig were a highly mobile people, travelling vast distances to procure subsistence for their people. They were also known as the "Peacekeepers" among Indigenous nations. The Michi Saagiig homelands were located directly between two very powerful Confederacies: The Three Fires Confederacy to the north and the Haudenosaunee Confederacy to the south. The Michi Saagiig were the

²⁵ Canadian Nuclear Safety Commission, 2023-24 *Departmental Plan* (Ottawa: Canadian Nuclear Safety Commission, 2023), [online: Government of Canada](#).

negotiators, the messengers, the diplomats, and they successfully mediated peace throughout this area of Ontario for countless generations.

Michi Saagiig oral histories speak to their people being in this area of Ontario for thousands of years. These stories recount the "Old Ones" who spoke an ancient Algonquian dialect. The histories explain that the current Ojibwa phonology is the 5th transformation of this language, demonstrating a linguistic connection that spans back into deep time. The Michi Saagiig of today are the descendants of the ancient peoples who lived in Ontario during the Archaic and Paleo-Indian periods. They are the original inhabitants of southern Ontario, and they are still here today.²⁶

43. Gidigaa Migizi-ban also shared:

The shoreline of Gchi Nibi and its tributaries [...] are part of our summering grounds, and remain central to our identity as the Salmon People, the People of the Big River Mouths, and the Shoreline People.²⁷

Alderville First Nation ("AFN")

44. Alderville 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 Bay of Quinte (Grape Island), 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 of Quinte became one area of settlement for those who became known as the United Empire Loyalists. The Mississauga then were directly involved in early "land surrenders" along the St. Lawrence River and the Bay, allowing this resettlement to occur.
45. Along this corridor, the traditional economy of the Mississauga 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 Mississauga and other related groups could contain. 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.
46. While the people basically accepted the value of learning to read and write and adapting to a new economy, at the same time their sense of identity would not allow for a complete

²⁶ *Michi Saagiig Anishinaabe* Elder Gidigaa Migizi-ban authored *Michi Saagiig Anishinaabeg Background-Historical Context* in 2017.

²⁷ Gidigaa Migizi (Doug Williams), *Michi Saagiig Anishinaabeg: This is Our Territory*, ARP Books, Winnipeg (2018).

surrender of their cultural values and language. The Methodist experience among the Mississauga can best be described as a hybrid, or a mixed composition of traditional and western values and spiritual worldview.

47. The Mississauga actually maintained a hold on many of their traditions, including the Ojibway language, all through the early decades of the Methodist experience. 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 complete assimilation existed and it has become the basis upon which the cultural survival of the people has been maintained. That history of survival and resistance informs the legal authority, Treaty relationships, and continuing jurisdiction addressed in the next Part.
48. To this day, AFN citizens hunt, trap, harvest, and gather foods and medicines, perform, and engage in ceremony upon these lands and waters that we now call southern Ontario. These activities are fundamental to our ability to be Mississauga, to express our identity as a people, and to continue to thrive into future generations. The integrity and health of the lands and waters are essential for Mississauga peoples to continue to be Michi Saagiig Anishinaabeg – they are integral to our culture, to who we are, and to who we will become. And so, we hold the environment, or as we know her – Mother Earth, in the highest regard, with the greatest respect, and with an unconditional love. This principle forms the basis upon which our governance is structured as a people and guides us in all decision-making processes which ultimately strive for a balanced and sustainable future for our community.
49. The north shore of Lake Ontario is culturally and historically significant to member-citizens of Alderville First Nation – particularly the areas in which tributaries, rivers, and creeks outfall into Gchi Nibi (Lake Ontario). 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.
50. The coastal wetlands were/are of considerable importance to the Michi Saagiig of Alderville First Nation, where many medicines were harvested and where the "food grows on the water," – manoomin (wild rice) – 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 communities together on an annual cycle. Manoomin requires healthy ecosystems in order to thrive. It has only been in the last few years that we have seen the resurgence of wild rice across many areas of Ontario, including the north shore of the Lake as our communities can now, since 2018, actively participate in the protection and oversight of this culturally significant seed.

51. 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). The citizens of Alderville First Nation 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 gather in this region to hunt, fish, gather, and engage in ceremony. It holds deep spiritual and cultural significance for Michi Saagiig.
52. In keeping with our reverence and respect for the environment, Alderville First Nation hosts the Black Oak Savanna and Tallgrass Prairie, a 50-hectare site on the edge of the Oak Ridges Moraine. The Alderville 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 remnants.
53. Alderville First Nation is recognized as a respected and principled caretaker of the environment and is also committed to a green renewable energy future. As such, Alderville First Nation is home to the first solar farm in Canada that is 100% First Nation owned. This solar farm has been operational since 2013.
54. Environmental consciousness and ecological integrity form part of Alderville First Nation's community values. AFN member citizens are caretakers for the lands and waters in and around the north shore of Gchi Nibi (Lake Ontario) – as they have been and will continue to do so 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

Curve Lake First Nation (CLFN)²⁸

55. The community members of CLFN are Anishinaabeg from the Mississauga Nation (Michi Saagiig Anishinaabeg Nation). Presently, we have approximately 2,800 registered, with roughly a third living within our reserve lands. CLFN is located roughly 25 kms northeast of Peterborough, Ontario. Known in our language as Oshkiigmong, our reserve lands are

²⁸ Ontario Power Generation. *Initial Project Description: New Nuclear at Wesleyville Project*. 2026. Canadian Impact Assessment Registry, Impact Assessment Agency of Canada.

situated on a peninsula between Chemong Lake and Buckhorn Lake and consist of a mainland peninsula and large island (Fox Island). CLFN co-owns smaller islands located throughout the Trent Severn Waterway system. The total land base of the First Nation is approximately 900 hectares. The community members of CLFN have long had a deep and meaningful connection to the land in our beautiful Territory, fostered through the hunting, fishing, gathering, harvesting, and ceremony that strengthens our relationship with each other and to the land that sustains us.

56. CLFN is signatory to many of the pre-Confederation Gunshot Treaties, Treaty 20 of 1818, and the Williams Treaties of 1923. It was the last Treaty signed in Canada, covered almost 13 million acres and was very controversial. After 90 years of dispute between the Crown and the WTFNs, a final settlement agreement was reached in 2018 which reaffirmed our pre-Confederation Treaty Rights. The settlement agreement formally recognizes the pre-existing Treaty harvesting Rights of our community members to hunt, trap, fish and gather for food, social and ceremonial purposes within portions of our Traditional Territories and Treaty areas.
57. We are a deeply spiritual people and bring this spirituality into our personal lives, as well as the work we do for those outside our community boundaries. We are a community committed to sharing cultural teachings, nurturing cultural awareness and appreciation, and promoting a sense of cultural pride. As a traditionally migratory people, Anishinaabeg and "Curve Lakers" have had a deep connection and awareness of the land within our Territory and beyond.
58. Today, CLFN is a forerunner in Indigenous education, repatriation efforts, traditional language revitalization, cultural resurgence, land-based learning and conservation efforts. We have strong Lands & Consultation departments that ensure that those engaging in the land on our Territory do so respectfully, and that the land is left better than when we came to it. We are a strong and proud community, dedicated to upholding our traditional teachings and protecting the gifts of this land for all generations to come.

Hiawatha First Nation (HFN)

59. Hiawatha First Nation is located on the north shore of Rice Lake, east of the Otonabee River. It is found in Otonabee Township approximately 30 kilometres south of Peterborough. The First Nation consists of approximately 2145 acres of land of which 1523 acres are under certificates of possession.
60. The area on the north side of Rice Lake has been inhabited since time immemorial. Hiawatha First Nation traces its history to the Michi Saagiig Anishinaabeg who has lived, travelled, and harvested throughout the region for generations. Rice Lake was historically renowned for its abundant wild rice beds, an important cultural and subsistence resource for the community. Changes to water levels associated with the Trent-Severn Waterway resulted in loss of those wild rice beds, an event that remains an important part of Hiawatha First Nation's history. The Otonabee River, and surrounding watershed have long sustained the Communities cultural practices, harvesting activities, governance, and stewardship

responsibilities. These relationships continue to shape Hiawatha First Nation's identity and the exercise of its Treaty rights throughout its Traditional Territory and Treaty Territory.

61. Our values grow from the culture from which we are born into and live with, our beliefs and attitudes emerge from these values. As Michi Saagiig people from the Mississauga Nation, we strive to live a health way of life, *Mno Bimaadziwin*, through the teaching passed down from our ancestors. These include the Seven Grandfather Teachings given to us by the Creator.
62. Hiawatha First Nation is a cultural partner of the Michi Saagiig (Mississauga) Nation, with Traditional Territories extending throughout much of southeastern Ontario, including lakebeds, tributaries, and watersheds. Hiawatha First Nation is a signatory to the Williams Treaties of 1923. Following more than 90 Years of dispute, the 2018 Williams Treaties Settlement reaffirmed the Nations' pre-Confederation Treaty harvesting rights and recognized the continued exercise of those rights throughout the Treaty Territory.
63. Today, Hiawatha First Nation is a growing vibrant community committed to strengthening its culture, language, governance, and stewardship responsibilities while building a healthy sustainable future for its citizens.

Mississaugas of Scugog Island First Nation (MSIFN)

64. The MSIFN community is located on the shores of Lake Scugog in Durham Region, Ontario. MSIFN has a long history in this part of Ontario and is a cultural partner of the Michi Saagiig (Mississauga) Nation, with traditional Territories expanding through most of southeastern Ontario, including lakebeds, tributaries, and watersheds. Lake Ontario and its Lakebed adjacent to the lands covered by the Michi Saagiig Anishinaabeg pre-Confederation and Williams Treaties, and south to the border with the United States, are unceded Lands and Waters. Within these Treaty and unceded Territories, MSIFN's priority is the protection and preservation of the Lands, Waters, wildlife, and fisheries that we rely on.
65. MSIFN formerly occupied about 800 acres of Reserve Lands situated near the north end of Scugog Island. The Historic Atlas of Ontario County describes the Mississauga as having occupied "villages or lodges" on the Lake from a "very remote time". They used the mainland shores of Lake Scugog, harvesting wild rice, before historic damming of the Lake and raising of water levels in 1828-1834 which contributed to their temporary relocation to Coldwater and Mud Lake. The original Reserve Lands purchased in 1843 included 200 acres of Lot 7, Concession 11 which is not today part of the MSIFN Reserve Lands.
66. Original vegetation on Scugog Island was hardwood forest, the well-drained sites supporting Sugar Maple, Black Maple, Beech, Ironwood, and Basswood; the areas of imperfect and poor drainage were dominated by Elm, Ash, Soft Maple, and White Cedar. The south end of Scugog Island was covered by a Tamarack forest when white settlers arrived.

67. Much of the rice harvesting activity of the MSIFN peoples was focused along the south shore of Lake Scugog. This would have been the largest stretch of relatively open, shallow water suitable for rice beds prior to historic damming of the Scugog River. After the damming, according to Cartwright's circa 1875 map, there were extensive beds of wild rice on both the west and east sides of the northern part of Scugog Island.
68. Scugog Carrying Place is a First Nation trail that connected Lake Ontario to Lake Scugog and Lake Simcoe. It formed part of an extensive pre- and post-contact transportation network over land and water connecting Georgian Bay and the Trent River to Lake Ontario. These routes facilitated seasonal travel and harvesting of resources over long distances by Anishinabek peoples of the area (Lake Scugog connected to the Kawartha Lakes and Lake Simcoe via the Beaver River). The Scugog River and Lake formed part of a northern route to hunting Territories in what we now know as Muskoka and Haliburton regions and much of Algonquin Park. Karcich (2013) reports that until 1829 the Mississauga had a camp at the head of the Scugog Carrying Place which now is Port Perry.
69. MSIFN is signatory to several pre-Confederation Treaties as well as the Williams Treaties of 1923, which after 90 years of dispute came to a settlement agreement in 2018 that reaffirmed the pre-Confederation Aboriginal and Treaty Rights to harvest. MSIFN contested Crown hunting regulations into the 1980s when Supreme Court decisions began recognizing Aboriginal harvesting Rights.
70. MSIFN is also signatory to the Framework Agreement for First Nations Lands Management, the First Nations Fiscal Management Act, and other political Aboriginal arrangements all of which support our Inherent Right as a self-governing authority.
71. MSIFN's Treaty area is within 50 km of PNGS project and members have expressed direct concerns and uncertainty surrounding the safety, management, and security of the nuclear reactors and waste stored on site, as well as impacts to the environment. MSIFN is the only First Nation community located within the Ingestion Planning Zone (50 km) for distribution of potassium iodide pills in the event of an emergency at the PNGS .
72. Nuclear safety is paramount to MSIFN. Nearly every aspect of the nuclear fuel lifecycle occurs within our Territory, except for uranium mining. These post-colonial activities will continually impact our community. It is the future generations who will bear this burden. The Crown and OPG have legal obligations to ensure our safety. MSIFN's Chief and Council, in conjunction with their teams, act as their community's regulatory body. The process MSIFN must undertake to discharge their legal obligations to their citizens and the WTFN community is complex and not something that the Crown can legally rush or disregard. UNDRIP exists to protect this, and our duty is to ensure it is upheld.

Part 3 – Treaty Relationships, Indigenous Laws, and Continuing Jurisdiction

73. The history and identity described in Part 2 are inseparable from the legal authority of the MS-WTFNs. The Crown has, over several centuries, entered into numerous agreements or treaties with the MS-WTFNs expressly recognizing certain rights – but until recently failing to actually adhere to their commitments. These agreements, the Constitution, the

Royal Proclamation, the common law and the laws of Indigenous peoples and their inherent rights combine to provide the authority of the MS-WTFNs.

*The pre-Confederation Treaties, which were established between the Mississauga people and the Crown, were negotiated with the intention of sharing Lands with settlers and establishing a Nation-to-Nation relationship between governments. The negotiations of these Treaties were understood at the time [by the MS-WTFNs] within the context of needing to protect and preserve their way of life, their spirituality, values, culture, and economy, as well as to balance relationships and connections with homelands, with the desire of settlers to farm the fields and make use of the soil.*²⁹

74. The MS-WTFNs are sovereign Nations, Treaty partners, and rights-bearing governments with continuing responsibilities to the lands, waters, and all Relations within their territory. They are signatories to several pre-Confederation treaties, as well as the Williams Treaties of 1923 and the 2018 Williams Treaties First Nations Settlement Agreement. These treaties cover the PNGS lands and form part of the ongoing relationship between the MS-WTFNs, the Crown, and settlers. They are legally binding, living documents that record relationship, responsibility, coexistence, and the continuing obligations of the Crown.
75. The purpose of signing treaties was not to erase MS-WTFNs' law, jurisdiction, or ways of life. Rather, the treaties documented relationships concerning shared lands and waters and affirmed the Nations' sovereignty and right to self-determination, including the right and responsibility to protect their values, culture, economy, spirituality, and way of life. Many of the MS-WTFNs are also signatories to the Framework Agreement for First Nations Land Management,³⁰ the *First Nations Fiscal Management Act*,³¹ and other political and Aboriginal arrangements that support their inherent rights and self-governing authority.
76. Treaties must therefore be understood as relationship documents and governance frameworks, not as historical land transactions that can be interpreted apart from Indigenous law. Neither individually nor collectively did the treaties transfer, surrender, or extinguish all the MS-WTFNs' rights in their lands and waters. The MS-WTFNs retain rights to harvest, maintain their relationships and responsibilities to the Lands, Waters and Relatives and govern the use of their territories by others.
77. This treaty history is not merely background. It is part of the foundation for the MS-WTFNs' continuing jurisdiction, responsibilities, and legal authority in relation to the lands

²⁹ Michi Saagiig Anishnaabeg Nations of the Williams Treaties First Nations' contributions to the Ontario Power Generation (2025) Initial Project Description: New Nuclear Project at Wesleyville. Impact Assessment Agency of Canada.

³⁰ Framework Agreement on First Nation Land Management, 12 February 1996 (entered into by Westbank, Musqueam, Lheidli T'enneh, N'Quatqua, Squamish, Siksika, Muskoday, Cowessess, Opaskwayak Cree, Nipissing, Mississaugas of Scugog Island, Chippewas of Mnjikaning, Chippewas of Georgina Island, Saint Mary's First Nations, and Her Majesty the Queen in Right of Canada).

³¹ *First Nations Fiscal Management Act*, SC 2005, c 9.

and waters affected by the PNGS. Those responsibilities arise from MS-WTFNs law, Treaty relationships, section 35 of the *Constitution Act, 1982*, and the honour of the Crown.

Historical Impacts of the Williams Treaties and PNGS

78. Despite signing treaties, the MS-WTFNs were pushed out and unlawfully denied access to traditional and treaty lands favoured by settlers. In 1923, the Crown imposed the Williams Treaties under the pretense of resolving long-standing grievances regarding the government's failure to honour the pre-Confederation Treaties. The Williams Treaties included a devastating "basket clause" that denied the Michi Saagiig Anishinaabeg and Chippewa Nations their inherent right to harvest, among other rights, thereby truncating the Nations' economy, culture, spirituality, and way of life.³²

79. As shared by Gidigaa Migizi-ban:

The 1923 Williams Treaty was devastating to my people. I witnessed the trauma and the fear that was put on my people that were trying to live on the land. They lived daily watching over their backs and trying to maintain their lifestyle as Michi Saagiig Nishnaabeg. The government with the implementation of the "basket clause" was sneaky way to get rid of us as people who enjoyed this part of our great land. These old men I hung around with such as Madden and Jimkoons lived a life where they had to live by sneaking around and feeling like they were "poachers." They resorted to catching other animals and harvesting those things that the government did not feel were part of those things they need to "protect" from us. These things included small animals, such as the groundhog and the porcupine, the muskrat for meat and other things were also eaten because we were forbidden from hunting game like deer (which was our staple) and we were also prohibited from fishing from October 15 to July 1 every year under provincial statutes.³³

80. Michi Saagiig Anishnaabe Elder Gidigaa Migizi-ban, Williams, D. described how the Williams Treaties and the enforcement regime that followed devastated Michi Saagiig Anishinaabeg people who depended on the land and waters for survival. In his account, families faced starvation, especially during the winter months when fishing was prohibited and food was scarce. People were forced to find ways around restrictions imposed by government officials and game wardens, including fishing at odd hours and trying to avoid being seen on the ice. Many were chased, charged, fined, and brought before Canadian courts for attempting to feed themselves. Williams emphasized that this created an undignified and unnecessary way of living on the land, marked by fear, hardship, and humiliation for his people.³⁴
81. The [2018] Williams Treaties First Nations Settlement Agreement restored and reaffirmed the MS-WTFNs 's pre-existing [right] to freely fish, hunt, gather, and harvest within

³² IPD.

³³ Williams-ban, 2018.

³⁴ Williams-ban, 2018.

portions of [their] treaty and traditional territories, among other rights. It acknowledged [the] collective right to practise [MS-WTFNs'] culture, spirituality, and way of life. Despite that recognition and the Statements of Apology issued by Canada and Ontario, the original promises and intentions of the pre-Confederation Treaties continue to go unfulfilled, leaving [the MS-WTFNs to continually fight for] the preservation of their cultural, spiritual, and economic longevity and way of life[, including in this proceeding].

82. For several decades, the MS-WTFNs have lived with the impacts of the PNGS while being excluded from discussions, consultations, and decisions about how the facility affects their territory, way of life, citizens, and constitutionally protected section 35 rights. Between 1923 and 2018, while the Crown maintained that the Nations' rights had been extinguished, extensive development occurred throughout Durham Region, including construction of the PNGS on reclaimed lakebed. During this period, the MS-WTFNs witnessed degradation of harvesting areas, watersheds, transportation routes, sacred places, and ancestral homelands, while being denied meaningful legal avenues to stop it.
83. The historical exclusion of the MS-WTFNs from treaty implementation and land-use decisions now continues through regulatory processes that too often treat rights-bearing governments as ordinary stakeholders or intervenors. This continuity matters: the harms caused by exclusion from decision-making are not separate from the present licensing process; they are part of the context in which the Commission must understand impacts, accommodation, and reconciliation.

MS-WTFNs' Laws, Responsibilities, and Relationships to Lands and Waters

84. The MS-WTFNs 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 MS-WTFNs 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 MS-WTFNs, and women hold particular responsibilities as caretakers of the Waters to ensure that they are protected and clean.³⁵
85. The MS-WTFNs 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 MS-WTFNs 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.³⁶
86. These teachings are not merely cultural values or interests. They are the foundation of MS-WTFNs laws, roles, responsibilities, and governance systems. Bimaadziwin informs how

³⁵ IPD.

³⁶ IPD.

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

87. As shared by Tom Cowie, Consultation Indigenous Knowledge Lead at HFN:

"These teachings form the foundation of Michi Saagiig Anishinaabeg laws, roles and responsibilities and are viewed as gifts from the Creator, which are sacred laws, which the Michi Saagiig Anishinaabeg live by.

Lands and nature hold sacred and natural laws and principles for the Michi Saagiig Anishinaabeg. The lands and nature hold various natural laws and teachings that are highly respected, and which are depended upon for survival. Respect for all of Creation and all Relations, which sustain us and care for us is a sacred law. From this sacred law stems the responsibility of the Michi Saagiig Anishinaabeg to be care-takers of the lands and waters upon which they live. The Michi Saagiig Anishinaabeg connection with the land and nature is foundational to the values and customs of each Nation".³⁷

88. Canadian legal frameworks, including UNDRIP, section 35, and the honour of the Crown, support recognition of Indigenous laws, but they do not create them. The source of the MS-WTFNs' responsibilities and law comes from 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.

Unceded Lake Ontario, Lakebed, and Shared Jurisdiction

89. The 2018 Williams Treaties First Nations Settlement Agreement restored and reaffirmed harvesting rights, but it did not resolve all questions of title, jurisdiction, or responsibility. Significantly, the Settlement Agreement is silent on Lake Ontario and the question of lakebed cession. Silence does not create a surrender, release, extinguishment, or Crown authorization to proceed as though the Nations' jurisdiction no longer exists. As confirmed by the Department of Justice, the 2018 Settlement Agreement did not resolve title to submerged lands.³⁸ Accordingly, the MS-WTFNs maintain that they have never ceded title or jurisdiction over Lake Ontario's waters or lakebed, and that the infilled lands on which the PNGS sits remain within territory never ceded to the Crown. As documented by various MS-WTFNs:

Our Treaties expressly reserved our Rights to all shorelines, islands, peninsulas, maple stands, rice beds, wetlands and beaver houses within our homelands, as well as to the creek and river mouths of tributaries that flow into Gchi Nibi. Harvesting and establishing seasonal settlements were also reserved along every shore,

³⁷ IPD.

³⁸ Canadian Nuclear Safety Commission. (2025, April 4) *Record of Decisions: Application for a Licence to Construct one BWRX-300 Reactor at the Darlington New Nuclear Project Site*. Retrieved from [CNSC Commission Documents](#).

*reiterating that settlers were granted limited access to the Lands for farming purposes only.*³⁹

90. There is a substantial evidentiary basis for the Nations' position that significant portions of the reactor complexes and associated infrastructure have been constructed on the historical shoreline of the MS-WTFNs' territory and lakebed infill. Ontario Hydro, and subsequently OPG, has relied on Lake Ontario and its lakebed as part of the physical and operational footprint of the PNGS, including through existing intake and discharge systems and nearshore structures supporting Pickering A and Pickering B. The proposed Deep Water Intake system would require further and ongoing occupation, disturbance, and use of the lakebed and waters of Lake Ontario.
91. The continued use of Lake Ontario's waters and lakebed is not merely an impact to be noted in consultation materials. It engages asserted Aboriginal title, Treaty rights, jurisdiction, and the Nations' relationship in lands and waters that were not ceded. Territory is not divided between dry and wetlands in the manner assumed by provincial property regimes; submerged lands are contiguous with, and inseparable from, the broader territory and waters to which the Nations hold responsibilities. This position has been upheld by the court in Cowichan.⁴⁰ Cowichan found that the Cowichan did not distinguish between dry land and sea in terms of their territory, and that the Crown was honour-bound to protect Cowichan title to the submerged lands.⁴¹ The proposed C3RA bridges the gap between the differing worldviews of land and water.
92. The result is shared jurisdiction. The Nations maintain responsibilities and authority over the lands, waters, and relatives affected by the PNGS, while the Crown exercises its own jurisdiction through statutes such as the *Nuclear Safety and Control Act*. Although the CNSC has a strong safety record within a western regulatory framework, Anishinaabeg laws concerning the protection of people, lands, waters, and relatives have largely been excluded from decision-making.
93. This shift from water as a resource to water as a relation is central to the Nations' laws and responsibilities, ways of knowing, and positionality. It explains, in part, why the MS-WTFNs did not cede jurisdiction over Lake Ontario and why continued use of the lakebed cannot be treated as an ordinary permitting issue. Impacts to the lifeblood of Mother Earth go beyond tangible considerations and must be understood from the MS-WTFNs' perspective, with the Nations' own laws and responsibilities placed at the centre of the analysis.⁴²

Regulatory Consequences for CNSC and OPG

³⁹ Michi Saagiig Anishnaabeg Nations of the Williams Treaties First Nations' contributions to the Ontario Power Generation (2025) Initial Project Description: New Nuclear Project at Wesleyville. Impact Assessment Agency of Canada (the "IPD").

⁴⁰ *Cowichan Tribes v Canada (Attorney General)*, *supra* note 2, at paras 1651 & 1655.

⁴¹ *Ibid*, at paras 1625 & 1626.

⁴² *R. v. Van der Peet*, 1996 CanLII 216 (SCC), [1996 EYB](#).

94. It is legally incorrect to treat the MS-WTFNs' interests as merely cultural, consultative, or discretionary. The MS-WTFNs are not stakeholders. They are rights holders, Treaty partners, governments, and complementary regulators with continuing jurisdiction, regulatory responsibilities, and section 35-protected rights in relation to the lands, waters, and relatives affected by the PNGS. Treating them as ordinary intervenors obscures the source and nature of the rights at issue and undermines the honour of the Crown.
95. While the NSCA now incorporates commitments related to UNDRIP, it does not provide a complete framework for implementing Treaty relationships, shared jurisdiction, or Indigenous governance over affected lands and resources. As a result, rights-bearing First Nations are often required to seek Crown permission to participate in processes affecting their own territories. This approach fails to reflect their status as Treaty partners and governments, undermines meaningful consultation, and provides neither the time nor the resources necessary to assess impacts on rights and responsibilities.
96. The Commission has broad procedural discretion. That discretion should be exercised to address the Act's silence on Treaty implementation and shared jurisdiction. The Commission has the authority to recognize the MS-WTFNs as rights-bearing governments and complementary regulators rather than ordinary intervenors. At a minimum, any authorization affecting the Nations' lands, waters, rights, responsibilities, or jurisdiction should require a Nation-led framework for assessment, oversight, accommodation, compensation, consent, and reconciliation.
97. OPG and the MS-WTFNs have successfully negotiated agreements on nuclear projects, including the DNNP. Those discussions addressed the use of Lake Ontario's waters and lakebed, including the deep-water intake systems serving the DNNP and Darlington Nuclear Generating Station ("**DNGS**"). OPG and the CNSC therefore have long-standing notice of the Nations' jurisdictional position. That position should now be accurately reflected in the regulatory record, licensing materials, consultation record, and any licence conditions.
98. The Nations and OPG recognize Ontario's electricity needs and are learning to work together. However, consultation is not a substitute for the agreement required for ongoing occupation and use, nor can it retroactively legitimize past infringements. Past harms must be addressed through negotiation or, if necessary, litigation. The result of such a framework, if negotiated, would recognize and affirm the rights and responsibilities of the MS-WTFNs. Future use requires a framework grounded in consent, jurisdiction, and reconciliation.
99. The MS-WTFNs are not seeking damages in this proceeding. They are, however, placing OPG and the CNSC on notice that OPG does not have the Nations' consent to continue using the waters and lakebed without an express agreement. Continued use, occupation, disturbance, stewardship, oversight, and compensation relating to Lake Ontario's waters and lakebed require a negotiated agreement that respects the Nations' responsibilities and jurisdiction. These legal foundations frame the duties, failures, and proposed solutions addressed in Part 4.

Part 4 – Application; Duties, Failures, and Solutions

Duty to Consult and Accommodate

100. Having established the MS-WTFNs' legal authority, Treaty relationships, and continuing jurisdiction, this Part applies those principles to the Application. The duty to consult finds its source in the Crown's assumption of sovereignty over lands and resources shared with Indigenous Peoples. 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*. The common law test for the duty's existence, known as the *Haida Test*, creates a three-part framework that requires:⁴³
- (a) The Crown's knowledge, actual or constructive, of a potential Aboriginal claim or right;
 - (b) Contemplated Crown conduct; and
 - (c) The potential that the contemplated conduct may adversely affect an Aboriginal claim or right.
101. Under the current Application, the three-part *Haida Test* has been met and the Crown's DTCA exists as:
- (a) Crown decision making is required to endorse OPG's proposed activities;
 - (b) The rights of the MS-WTFNs have been recognized; and
 - (c) Approving the Application has the potential to adversely impact MS-WTFNs' proven and asserted rights.
102. In *Delgamuukw*, the Supreme Court of Canada established that the DTCA is engaged at a low threshold, and that the extent of the duty owed will vary depending on the circumstances.⁴⁴ *Delgamuukw* also established that, in most cases, the DTCA will be "significantly deeper than mere consultation".⁴⁵ In essence, the analysis should favour an obligation to consult and further reconciliation, except in the clearest of cases.
103. The nature of the Application infringement involves significant issues, including consideration of constructing new infrastructure within the unceded territory and the use of an outdated cooling system which drastically and unjustifiably impacts fish and fish habits, as well as nuclear waste, which is explicitly included in the Crown's obligations to abide by and implement UNDRIP.

⁴³ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 (CanLII), 2004 SCC 73 at para 35.

⁴⁴ *Athabasca Regional Government v. Canada (Attorney General)*, 2010 FC 948 at para 66.

⁴⁵ *Delgamuukw v. British Columbia*, 1997 CanLII 302 (SCC), *supra* note 6 at para 168.

104. Despite this obvious incentive, the adequacy of consultation often remains a contentious issue, such as the present case. To date, consultation and accommodation have not been sufficient, which is why the MS-WTFNs have intervened and sought to advance certain licence conditions to create legal obligation to ensure specific conduct towards accommodation are performed and will inform future activities.
105. The CNSC, as a Crown agency, is responsible for discharging the DTCA. Any potential impacts to rights from contemplated Crown conduct, in this case the issuance of the consolidated licence, need to be accommodated, including the ongoing infringement from continued operation. The courts consider accommodation to be a process which leads to an adjustment or adaptation to suit a specific purpose – it is contextual and perhaps includes a settlement or compromise.⁴⁶ The C3RA is tailored to the contextual requirement of the Application.
106. Renewal applications that require Crown decisions require a nuanced approach to the *Haida Test* as many, if not all, of the impacts have been partially or fully realized; and there is an inherent assumption in a renewal that during the original licence application the DTCA was properly discharged.
107. Determining whether there was a duty requires a two-part process:
- (a) Understanding how the duty is triggered under a renewal application; and
 - (b) Determining if any of those triggering events are applicable.
108. 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:
- (a) Does the activity create or have the potential to create a new or novel adverse impact on a protected right?⁴⁷; or
 - (b) Are there new operations or new activities being proposed in the renewal application?⁴⁸
109. The MS-WTFNs submit that the DTCA is triggered as it satisfies both (a) and (b):
- (a) Potential New Adverse Impacts on a Protected Right:
 - (i) New title claim to the lake and lakebed have been asserted for an area which was not the subject of any prior treaties or agreements;

⁴⁶ *Ginoogaming First Nation v. Her Majesty The Queen In Right of Ontario et al.*, 2021 ONSC 5866 at para 46.

⁴⁷ *Chaboyer v Saskatchewan Power Corporation*, 2025 SKCA 31 at para 153.[Chaboyer], *Cumberland House Cree Nation v Opaskwayak Cree Nation*, 2023 SKKB 62 at para 56. [Chaboyer 2023].

⁴⁸ *Chaboyer 2023* at para 66, and paras 57-59.

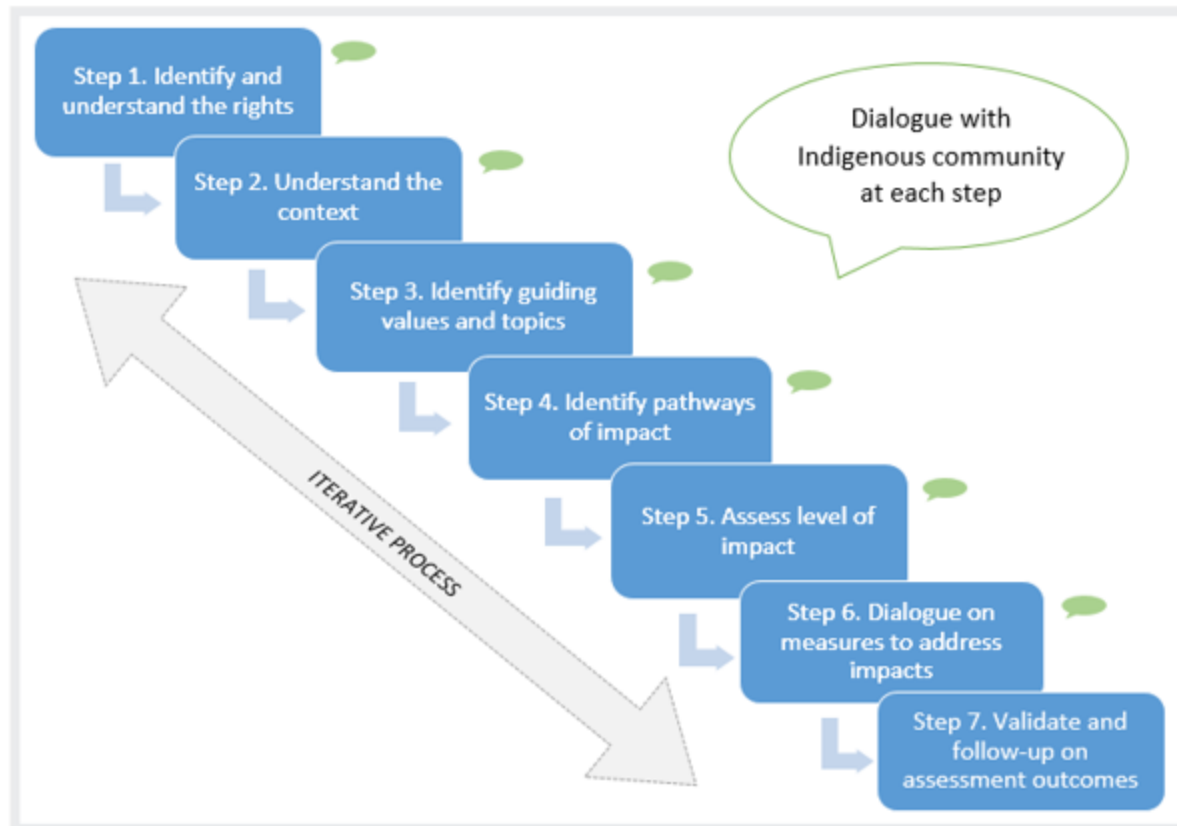
- (ii) The decision to issue the first consolidated licence to permit multiple simultaneous activities is a strategic higher-level decision; and,
 - (iii) The change from the original temporary structure – scheduled to close in the early 2000s to a permanent structure with operation plans until at least 2050s represents lost successive generational knowledge.
- (b) Proposed New Activities:
- (i) The proposed Deep Water Intake.

Application of the DTCA

110. The Crown must determine what level of consultation, and if appropriate, accommodations are required for the Application. Scoping lives on a low, medium, and high range and requires knowledge of the potential impacts. Determining potential impacts of a project requires a clear understanding of three components:
- (a) The project elements;
 - (b) The current state of rights; and
 - (c) Impacts of the project elements on the rights.
111. Making a transparent and accurate scoping analysis must start with a foundational rights baseline and current rights impacts. Any potential impacts on rights must be considered from the Nation's perspective. The Crown cannot make this determination unilaterally. A process that does not involve the Nations is paternalistic, not reflective of their position as sovereign governments, and counter the Canada's best practices.
112. The government of Canada is clear on their whole-of-government approach, meaning alignment across all federal departments and agencies regarding consultation. The Impact Assessment Agency of Canada ("IAAC") guidance on assessment of potential impacts on the Rights of Indigenous Peoples stresses that Indigenous peoples are best placed to identify a project's impacts on their rights.⁴⁹
113. The IAAC diagram identifies the steps the CNSC should follow to conduct a proper scoping analysis.⁵⁰

⁴⁹ *Impact Assessment Agency of Canada, Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples*, [online: Government of Canada](#).

⁵⁰ *Ibid.*



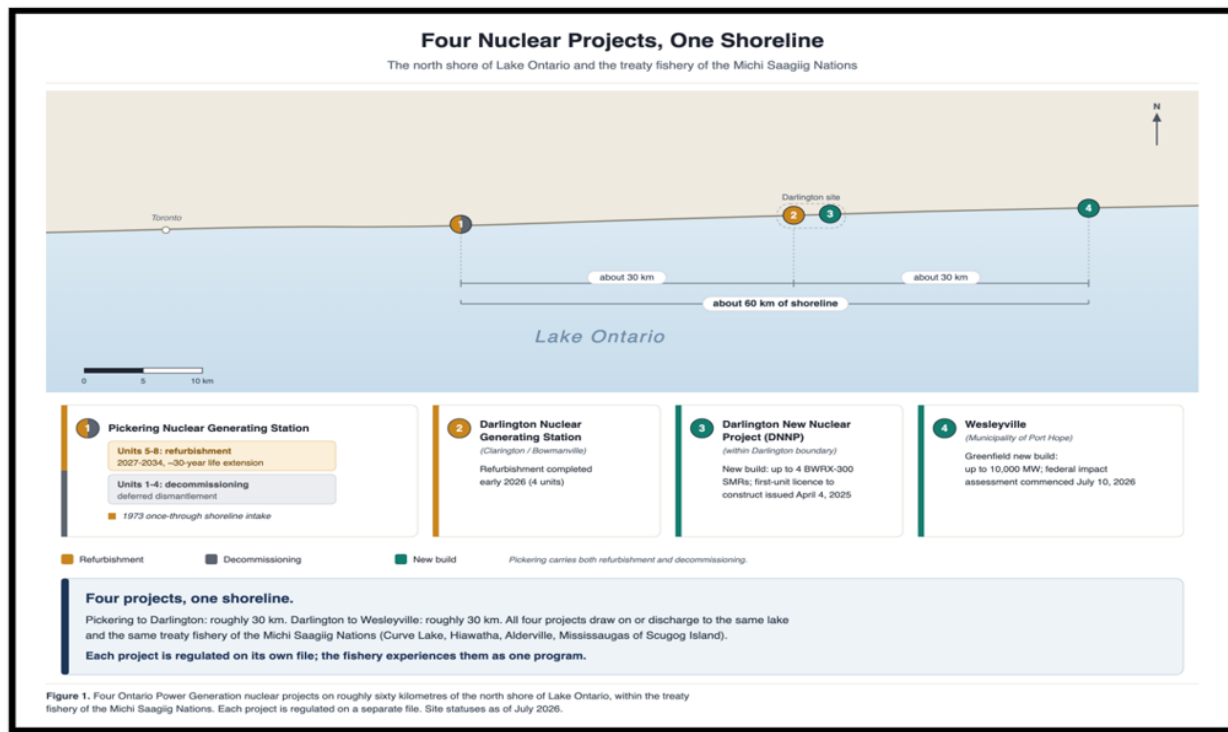
114. The current consultation process is deficient, as it has only addressed the first of the three impact components, project elements. Components two and three, rights identification and impacts on rights, are missing. The MS-WTFNs' requirements includes a community-led Rights Impact Assessment to rectify the Crown's consultation gap. It is the C3RA proposal.

Cumulative Effects

115. In *Yahey v British Columbia*, the Court held that the Crown's authority to authorize further development is constrained by its constitutional obligations under Treaty and by its fiduciary obligations.⁵¹ The Crown cannot assess a proposed authorization in isolation where the combined effects of past, present, and reasonably foreseeable activities have already diminished, or threaten to diminish, the meaningful exercise of Aboriginal or Treaty rights. A cumulative-effects analysis is therefore not discretionary or merely procedural; it is necessary to determine whether further Crown conduct would impair the practical ability of a rights-bearing Nation to exercise its protected rights in the manner promised by Treaty and protected by s. 35 of the *Constitution Act, 1982*.
116. A project-by-project approach obscures the true legal question. For example, a single lakeshore development restricting access to 1 km of a 30 km shoreline may appear modest when viewed alone. However, if existing authorizations already restrict access to 70% of

⁵¹ *Yahey v British Columbia*, [2021 BCSC 1287](#) at paras [1791-1792](#).

that shoreline, the additional restriction may be legally significant, because it further diminishes the meaningful exercise of protected rights. Treaty rights are not protected only until the final parcel of land or last practical access point is lost. The Crown must prevent the incremental erosion of rights through successive approvals. Put plainly, a "death by a thousand cuts" can constitute an infringement as surely as a single, direct interference. Accordingly, cumulative effects must assess, at minimum, changes: environmental, social, and economic values arising from the combined impact of past, existing, approved, and reasonably foreseeable human activities and natural processes, including the interaction of those effects over time.⁵² These changes must be viewed holistically against the impacts on protected Rights.



117. The honour of the Crown requires more than good intentions. It imposes a constitutional duty to diligently, purposively, and honourably implement and protect Treaty promises.⁵³ Where Crown decisions may further impair Aboriginal or Treaty rights, the Crown must have an adequate evidentiary foundation, engage in meaningful consultation, and consider accommodations capable of avoiding or mitigating those impacts.⁵⁴
118. Before authorizing the Application, the Crown must assess the cumulative effects of the DNGS, DNNP, the proposed New Nuclear Wesleyville, existing and proposed nuclear-waste facilities, and other foreseeable developments within the MS-WTFNs' Treaty

⁵² *Ibid* at para 1587.

⁵³ *Ibid* at para 1724.

⁵⁴ *R. v. Sparrow, 1990 CanLII 104 (SCC)*, *supra* note 5.

territory.⁵⁵ In addition to Crown-based cumulative effects assessment grounded in western scientific approaches, best practice standards also dictates the need for First-Nation-led cumulative effects assessment that capture impacts to Rights and utilizes methods developed by the impacted First Nations and are informed by Traditional Knowledge.⁵⁶ No such rights-based cumulative-effects assessment, whether from a Western-science perspective or the MS-WTFNs' perspective, has been completed for OPG's nuclear sites, including the Application. Without a cumulative effects assessment, the Crown lacks the factual and legal basis to conclude that the project will not adversely affect the exercise of MS-WTFNs' rights.

119. Current federal assessment standards require consideration of cumulative effects, Indigenous knowledge, impacts on Indigenous peoples, and adverse effects on section 35 rights.⁵⁷ The CNSC cannot rely on older assessments that fail to evaluate cumulative rights impacts or incorporate First Nations' laws, knowledge, governance, and Nation-led assessments. The environmental studies supporting the Application were not scoped to assess Indigenous rights and do not include the MS-WTFNs' cumulative-effects analysis.
120. Consultation conducted on a project-by-project basis is not an adequate substitute for assessing the cumulative erosion of rights.⁵⁸ The Crown must work with Treaty Nations to identify, assess, and manage cumulative impacts before relying on conclusions that further licensing is constitutionally justified. As the Court noted in *Yahey*, ordinary prudence requires long-term planning and consideration of the likely future consequences of present decisions.⁵⁹ As the Ontario Court of Appeal confirmed in *Restoule*, the honour of the Crown must be expressed through "concrete practices" and "legally enforceable duties".⁶⁰
121. Although cumulative-effects assessments should ordinarily precede authorization decisions, the evolving scope of the Application and inadequate timelines have required the MS-WTFNs to incorporate this work into the C3RA. That does not act as waiver of the Crown's obligations. Rather, it provides a practical mechanism through which the Crown can begin to fulfill them. Establishing a defensible cumulative-effects baseline would also support future licensing decisions by measuring impacts against a rights-based threshold rather than treating them as isolated events.
122. A legally adequate cumulative-effects assessment requires timely disclosure of all relevant information. The failure to provide information necessary for meaningful MS-WTFNs participation undermines, and may breach, the duty to consult and accommodate. The MS-WTFNs requested information on July 7, 2026 regarding the DWI but did not receive it in

⁵⁵ *Yahey* at para 1859.

⁵⁶ First Nations Major Projects Coalition, *Major Project Assessment Standard: Member-Developed Principles, Criteria, and Expectations to Guide Major Project Environmental Assessments* (April 2019) at 31-33 (Principle 8), [online \(pdf\): First Nations Major Projects Coalition](#).

⁵⁷ *Impact Assessment Act*, SC 2019, c 28, c 28.

⁵⁸ *Yahey v British Columbia*, *supra* note 46 at paras [1802](#), [1804-1805](#).

⁵⁹ *Ibid* at para [1805](#).

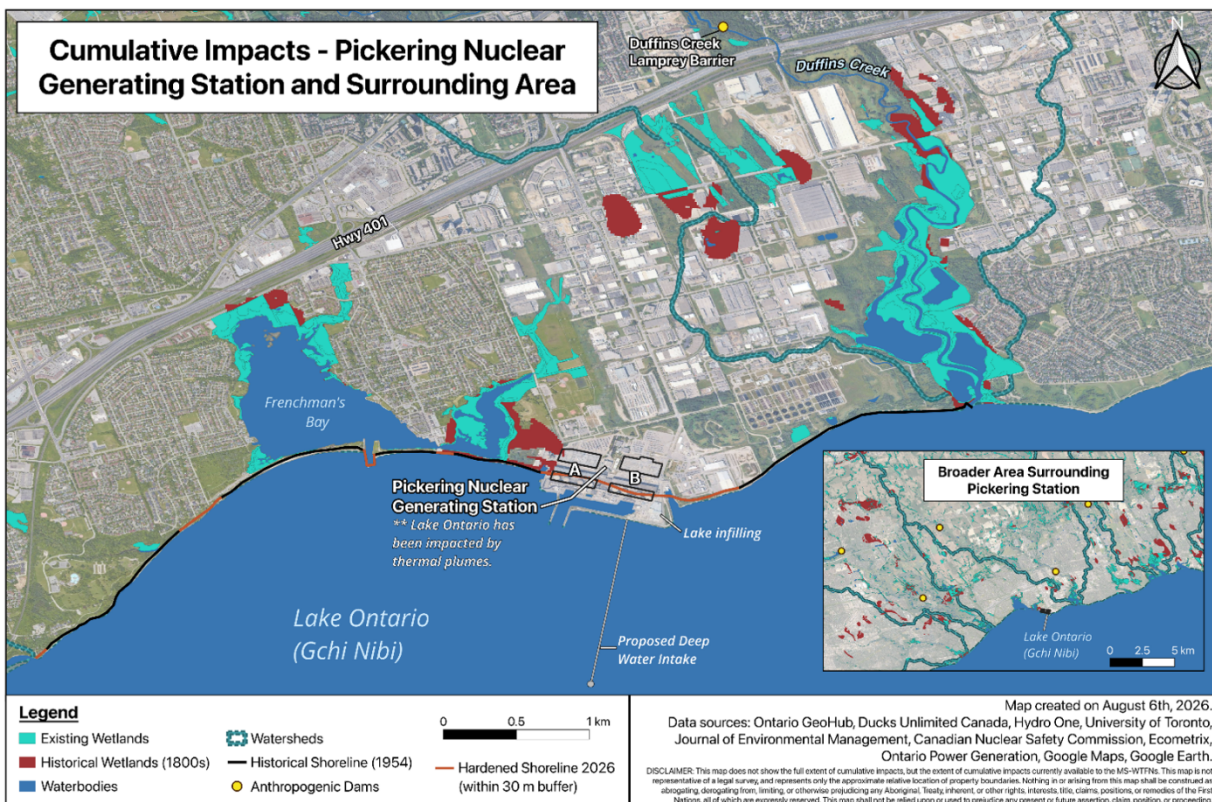
⁶⁰ *Restoule v. Canada (Attorney General)*, [2021 ONCA 779](#) at paras [494](#), [567](#).

time to assess its implications for this submission. The Crown cannot rely on the absence of the MS-WTFNs' analysis where the necessary information has not been provided.

123. *Yahey* identified the absence of effective cumulative-effects tools as a central cause of Treaty infringement.⁶¹ That concern is particularly acute here, where long-term nuclear waste management remains unresolved. The Court rejected simply "staying the course" and held that the Crown must establish enforceable mechanisms to assess and manage cumulative impacts on Treaty rights.⁶² As the Court directed:

*"The parties must act with diligence to consult and negotiate for the purpose of establishing timely enforceable mechanisms to assess and manage the cumulative impact of industrial development on Treaty rights, and to ensure these constitutional rights are respected".*⁶³

124. Those mechanisms do not presently exist for the PNGS nuclear complex. The C3RA is intended to help fill that gap.



⁶¹ *Yahey v British Columbia*, *supra* note 46 at para [1587](#).

⁶² *Ibid* at para [1805](#).

⁶³ *Ibid* at para [1888](#)

125. This figure shows the extent of wetlands in the 1800s⁶⁴ and indicates that wetland loss has previously occurred at the PNGS site and surrounding area. Wetlands represent the interconnectedness of all our Relatives and the need to maintain balance, as they are sensitive both to direct impacts (e.g., removal), and from impacts on adjacent Lands, which can result in a myriad of changes (e.g., to hydrology, contamination, and many other aspects of their health and spirit). Removal of wetlands, even if only partial, is not only a reduction of wetland area, but of their functionality, balance and ability to support our Relatives.
126. This figure also shows the extent of the Gchi Nibi (Lake Ontario) shoreline in 1954. The historical shoreline was delineated using 1954 aerial imagery⁶⁵ which was georeferenced to align with the present-day region. The 1954 aerial imagery was used as it is the earliest imagery currently available, given the time constraints, to the MS-WTFNs.
127. Within the extent of the watershed in which the PNGS is located, Lake Ontario shoreline hardening was analyzed. In accordance with riparian buffers for large lakes in the southern Ontario ecological region, a riparian buffer of 30 meters distance from the lake's shore was used for this analysis.⁶⁶ Using both summer (leaf-on) and spring (leaf-off) 2026 aerial imagery, the percentage of the total length of the 1954 shoreline within the sub-watershed immediately surrounding PNGS that contains hardening via industrial and residential development, including houses, buildings, concrete structures (such as the Frenchman's Bay breakers) and parking lots was calculated. Roads were not considered to be hardening infrastructure. Both types of aerial imagery were used to ensure the full extent of shoreline hardening was captured, without risk of visibility issues from tree foliage. Within the 30 m buffer, 2,310 m of the 7,949 m-long 1954 shoreline/riparian area, or 29%, contained hardened infrastructure as of April 2026.
128. The full extent of impacts of PNGS operations on Lake Ontario (Gchi Nibi) are not shown on this map. The impacts not shown include but are not limited to: coastal littoral zone sediment recruitment and transport;⁶⁷ hydrodynamic and Lake Ontario current impacts associated with both lake infilling water outfall;⁶⁸ spatial extent and fish recruitment areas affected through impingement and entrainment; targeted angler harvest of fish congregating at the thermal outfall; thermal plumes; and water usage associated with PNGS.

⁶⁴ Ducks Unlimited Canada (2015) Wetland Loss in Southern Ontario. Ducks Unlimited Canada GIS Hub. Ducks Unlimited Canada GIS Hub

⁶⁵ University of Toronto. (n.d.). 1954 Air Photos of Southern Ontario. University of Toronto Libraries | Map and Data Library. <https://mdl.library.utoronto.ca/collections/air-photos/1954-air-photos-southern-ontario/index>

⁶⁶ Lee, P., Smyth, C., & Boutin, S. (2004). Quantitative review of riparian buffer width guidelines from Canada and the United States. *Journal of Environmental Management*, 70(2), 165–180. <https://doi.org/10.1016/j.jenvman.2003.11.009>

⁶⁷ Canada Water Agency. (2022, May). Lake Ontario Canadian Nearshore Assessment, 2019 Highlights and Results Report. Government of Canada. <https://www.canada.ca/en/canada-water-agency/freshwater-ecosystem-initiatives/great-lakes/great-lakes-protection/taking-action-protect/nearshore-waters/lake-ontario-nearshore-assessment.html>

⁶⁸ Pernanen, S. (2012, July). McLaughlin Bay: Existing Conditions & Restoration Opportunities.

129. The shoreline/riparian area hardening must be interpreted within the context of extensive upland development, land reclamation, and the physical loss of wetlands, tributaries, and naturalized creeks, along with the impacts of ongoing PNGS operations listed above. The effects of shoreline hardening and ongoing PNGS operations directly and cumulatively impact the MS-WTFNs' ability to access and exercise inherent and Treaty Rights, including but not limited to Rights-based fisheries, and to maintain and steward MS-WTFNs Lands, Waters, other Relatives, Responsibilities, culture, and ways of life.

Intergenerational Knowledge

130. The Crown's denial of the MS-WTFNs' Treaty Rights during Southern Ontario's most prolific development stage allowed for the unabated erosion of the Nations' harvesting, fishing and hunting areas, homelands, ancestors, language, and Rights for 100 years. The lack of consultation and the MS-WTFNs' perspective on development's Rights impacts created a gap in understanding the true cumulative effects. It also created a Crown-imposed separation, limitation and impact to direct relationships between areas of the Territory and the MS-WTFNs' member citizens, which has been maintained over several generations is now a burden the MS-WTFNs must carry.
131. Since the 2018 Settlement Agreement and acknowledgement of the MS-WTFNs' Treaties and rights, the Nations have been working tirelessly to recapture and preserve their traditional knowledge. The Crown created a 100-year impact to the ability to maintain direct relationships with part of the Territory, which, when coupled with other colonial policies, such as Residential Schools, resulted in severe impacts to knowledge generation and transfer through generations. And yet, the Crown expects the Communities to fill this gap within a regulatory window. This is a daunting task, as they simultaneously need to fight further rights erosion while gathering their dispersed teachings, knowledge systems, and expertise.
132. PNGS is located in a strategically significant and culturally important area, close to Frenchman's Bay, which was a cultural hub for the Michi Saagiig Anishinaabeg including harvesting, summering grounds, seasonal villages, and major travel routes. Reviewing the cumulative impacts map, illustrates the interconnectedness of the rivers and the area of Lake Ontario, now occupied by the PNGS.
133. PNGS first came into service in 1971 and was structurally designed to operate for 30 years. The operating licence has continually been renewed. OPG is currently asking for a 10-year extension while the refurbished units are projected to be capable of supplying power for 30+ years. The PNGS expanded and perpetuated the MS-WTFNs exclusion from this critically important harvesting and fishing territory in the 1960s. Projected operations until 2058 means the MS-WTFNs will continue to be physically severed from these lands, waters, and Relatives – a cultural, spiritual, and economically important harvesting area for approximately 100 years.
134. The Nations are undertaking efforts to restore a baseline of rights-based activities, fulfill their responsibilities and to promote future desired uses, such as the Manoomin Project and the Rouge National Urban Park Guardians Program, but their efforts continue to be

outpaced, derailed, and undone by adverse impacts extensions. The C3RA initiative includes work on ecological and cultural restoration which the MS-WTFNs require be done.

135. The Michi Saagiig Anishnabeg's Seven Generations teaching considers the impacts of current decisions for seven generations. With the exclusion lasting approximately 100 years, several generations of people will have lost access to their traditional lands and few, if any people, will remain from before the PNGS was built. This directly disrupts any physical relationships with the land, waters, and relatives, resulting in a loss of the ability to generate and transmit land-based knowledge. It also causes permanent damage to ecosystems and cultural landscapes, among other harms. This harm is compounded by the loss of language, which serves as a primary vehicle for transmitting land-based knowledge, cultural teachings, and relationships to specific places, resulting in the further erosion of knowledge systems tied to the land. As a result, the pathways through which elders and knowledge-keepers pass down place-based knowledge and teach cultural practices are significantly impaired. What was originally proposed as a temporary or limited infringement has now effectively become permanent, creating a new and more significant impact.
136. Generational interruptions of knowledge and culture is a common assimilation practice used by Canada against Indigenous Peoples, such as Residential Schools, and has been well documented. PNGS presents a similar infringement. Deprivation of the ability to be on the MS-WTFNs' lands where PNGS operates disrupts the connection between key cultural practices, harvesting areas, shoreline, and waters. Considering the knowledge loss resulting from the Crown's act, extending this disruption from the original one and a half generations to essentially a permanent distribution, lasting beyond five generations, means this cultural knowledge may be lost forever.
137. Articles 13 and 14 of the Declaration affirm the rights to revitalize, use, and pass down histories, languages, and oral traditions to future generations. Articles 25 and 31 protect the right to maintain, control, and develop traditional knowledge, sciences, and cultural heritage, emphasizing responsibility to future generations.⁶⁹
138. While the MS-WTFNs understand Ontario's energy needs, keeping PNGS going comes at a cost disproportionately borne by the communities and represents a significant cultural loss. The Declaration exists to protect against such erosion of culture. The Nations believe the compromise offered through the C3RA is necessary to help restore some of the lost knowledge and repair the cultural loss.

Strategic Higher-Level Decisions

139. OPG characterizes the request for a consolidated licence as merely administrative, which it is not. The decision is strategic and consequential, affecting the future operation, oversight, and development of the PNGS. As the Supreme Court of Canada recognized in

⁶⁹ *United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021*, *supra* note 10.

Rio Tinto, the duty to consult extends to "strategic, higher-level decisions" that may adversely affect Aboriginal or Treaty rights, even where impacts are not immediate.⁷⁰

140. The Commission's decision to issue a consolidated licence is precisely such a decision. It establishes a long-term regulatory framework for the PNGS, influences future licensing and refurbishment decisions, and sets precedents with implications well beyond this proceeding. The DTCA is therefore engaged.
141. The significance of this decision was acknowledged by the Commission itself during Part I of the hearing. President Tremblay described the licence as complex, Commissioner Berube as exceptionally large and complex, and Commissioners Hopwood and Lacroix noted that it contemplates matters not previously undertaken by the CNSC.⁷¹
142. President Tremblay also recognized that OPG cannot predict every future circumstance and that accommodations are necessary to manage unforeseen risks. That principle applies not only to nuclear safety, but also to the protection of MS-WTFNs' rights. Where uncertainty exists, a precautionary approach is required.
143. The Crown-created information gap regarding cumulative impacts and rights cannot be remedied within ordinary regulatory timelines, particularly amid pressure to accelerate major infrastructure projects. This is precisely why the C3RA is needed. It offers a practical compromise: allowing the licensing process to proceed while creating the time and structure necessary to properly identify and assess impacts on MS-WTFNs' rights and jurisdiction and suggest mitigation and accommodation measures. The framework is designed to ensure those studies are completed in advance of the next five- and ten-year PNGS regulatory cycles.

Cumulative Rights, Responsibilities and Relations Assessment

144. The MS-WTFNs have used community priorities and scoped an umbrella assessment framework and are seeking support from the CNSC through licence conditions, as well as support and funding from OPG through project commitments and agreements for the C3RA. The C3RA is designed to:
 - (a) Integrate and develop outputs through a coherent Nation-led impact assessment lens, including Indigenous Knowledge Studies, Cumulative Effects Assessments, technical reviews, and community input and direction;
 - (b) Identify and begin closing some material gaps, particularly those related to cumulative effects, cross-project interactions, and impacts to asserted and established Rights; and

⁷⁰ *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 (CanLII), 2010 SCC 43 at para 44.

⁷¹ Canadian Nuclear Safety Commission (June 23, 2026) *Part 1 Public Hearing on the Pickering Nuclear Generating Station Licence Renewal and Refurbishment* [Public Hearing Transcript].

- (c) Support the development of clear, evidence-based positions and accommodation pathways across the full lifecycle of PNGS (refurbishment, operations, and decommissioning).
145. The goals of the C3RA are to:
- (a) Support coordinated and effective participation in future PNGS regulatory processes;
 - (b) Ensure the MS-WTFNs' Knowledge and priorities are clearly and consistently reflected for the PNGS project;
 - (c) Support a Rights-based and cumulative effects informed understanding of PNGS as well as other OPG projects and activities;
 - (d) Strengthen alignment and communication across the MS-WTFNs within OPG and CNSC engagement processes;
 - (e) Support informed and constructive engagement with OPG and consultation with the CNSC; and
 - (f) Support understanding of longer-term considerations related to PNGS planning, management, and stewardship/restoration.
146. The C3RA will allow for the organization and interpretation of information (for the MS-WTFNs for the PNGS lifecycle) in a way that supports ongoing PNGS planning, management, and stewardship, including longer-term considerations related to operations, decommissioning, and waste management. Core components of the C3RA that enable this include:
- (a) **Information Management Solutions:** The C3RA includes plans and capacity for the establishment and maintenance of data systems respective and supportive of the MS-WTFNs' knowledge and knowledge systems;
 - (b) **Engagement:** The C3RA plans for internal engagement of the communities to bring forward vital community expertise, priorities, and visions to PNGS planning and operations. In addition, the C3RA will outline structured engagement opportunities with both CNSC and OPG that respects MS-WTFNs' ways of knowing and decision processes; and
 - (c) **Assessment:** The C3RA approach supports the understanding of impacts from PNGS and other OPG activities in relation to Rights, Responsibilities, Wellbeing, Lands, Waters, and all Relatives, including longer-term and intergenerational considerations.
147. The C3RA includes a MS-WTFNs-led cumulative effects study, specific to the PNGS project, to help address previous, current, and future harm and to better inform PNGS planning going forward.

148. The C3RA also includes a MS-WTFNs-led assessment of impacts to MS-WTFNs' Rights. This analysis will help to identify potential mitigations and management to enhance, heal, and advance the MS-WTFNs jurisdiction, Rights, and Responsibilities.
149. **Restoration and Reconciliation:** The C3RA will establish a Reciprocal Restoration and Governance Framework. This component focuses on creating a proactive, coordinated approach that aims to understand MS-WTFNs-led goals for restoration of lands, waters, all Relatives, fulfilment of Responsibilities and wellbeing. This framework is a critical tool to facilitate site-specific restoration, and offsetting efforts should they become necessary and appropriate. Mitigations will be developed through the assessment of impacts to the MS-WTFNs' Rights and by structured engagement with OPG, targeted at finding solutions to impacts and concerns.
150. Numerous nuclear projects have been initiated and expanded in the MS-WTFNs' traditional territory without meaningful consultation, engagement or free, prior, and informed consent. The subsequent legacy and cumulative effects on MS-WTFNs' Rights, Responsibilities and Relations, including effects and impacts from the PNGS site, have not been formerly identified, assessed, or mitigated through CNSC processes nor proponent-led assessments. Further, the MS-WTFNs have not had the opportunity to meaningfully participate in any comprehensive assessment of activities on the PNGS site. The last PNGS Environmental Assessment and Decision Statement occurred under the false assumption that the MS-WTFNs did not have Rights, as the Environment Assessment ("EA") decision was made prior to the Supreme Court of Canada's recognition of the Crown's duty to consult and accommodate, as well as the 2018 Williams Treaties First Nations Settlement Agreement.
151. The use of a dated and stale EA and lack of comprehensive consultation means that the current legal standards are not considered in this licence application. The MS-WTFNs are therefore seeking to put mechanisms in place to ensure that going forward, the MS-WTFNs' knowledge, expertise, community priorities, position, and vision(s) are understood by CNSC and OPG, and inform the PNGS lifecycle (including but not limited to refurbishment, operations, monitoring, waste management, and decommissioning) as a requirement to proceeding.
152. The CNSC's own Indigenous Knowledge Policy Framework recognizes the importance of having systems and structures in place to support Indigenous Knowledge informing the regulatory process itself as well as project designs, operations, and monitoring. The CNSC Indigenous Knowledge Policy Framework states:

"Indigenous Nations and communities also require adequate time and resources to collect and manage Indigenous Knowledge, including human resources, education, training, research, translation, and information storage and management. Managing these issues will enable Indigenous Nations and communities to

meaningfully participate in and provide Indigenous Knowledge as part of project reviews and regulatory processes".⁷²

153. Given colonial pressures and previous missteps in excluding the MS-WTFNs from assessment and regulatory processes for nuclear projects, the MS-WTFNs have not had the "adequate time and resources" to either establish integral information and data management systems required nor formalize the MS-WTFNs' assessment and decision processes for the PNGS project. Having this in place prior to the completion of the PNGS licensing process is not possible, but, the MS-WTFNs have developed a solution to avoid Project delays.
154. The MS-WTFNs are seeking cooperation from OPG and the Crown for the C3RA process to benefit all parties. The C3RA process is an actionable solution for existing and likely future impacts, as well as potentially providing some healing and reconciliation from past harms. Supporting the C3RA process now will also benefit and help to expedite future PNGS licensing processes as the MS-WTFNs will have capacity to bring forward concerns and solutions early on in regulatory processes.
155. The CNSC's Indigenous Knowledge Policy Framework identifies that:

"Indigenous ways of knowing and the Indigenous cultural context enhance the CNSC's understanding of the potential impacts of nuclear projects and strengthen the rigour of project reviews and regulatory oversight".⁷³
156. Having support for the C3RA from CNSC through project conditioning, and OPG, through support and funding, will not only increase the rigour of the assessment and ensure a high standard of regulatory oversight for this Project, but will also foster increased trust for regulatory processes and decisions. Support and implementation of the C3RA will have positive impacts, including but not limited to:
 - (a) The MS-WTFNs will have improved access to all the information required to understand Project-specific risks and impacts;
 - (b) The MS-WTFNs' approach, developed for the PNGS process, will inform and provide efficiencies for engagement activities on future OPG projects and CNSC processes;
 - (c) Each of the MS-WTFNs will be better informed throughout this current and future PNGS regulatory process, resulting in greater trust in regulatory decisions;
 - (d) A community trusted information system will be put in place that allows for more effective use of previously gathered knowledge, data, and input from the communities to inform the PNGS lifecycle and other OPG activities;

⁷²Canadian Nuclear Safety Commission, *Indigenous Knowledge Policy Framework*, [online: Government of Canada](https://www.cnscc.gc.ca/eng/indigenous-knowledge-policy-framework) at s 2.1.4, "Facilitate the Gathering and Consideration of Indigenous Knowledge".

⁷³ *Ibid.* at "Framework vision".

- (e) A completed MS-WTFN-led assessment of project-specific and cumulative effects on the MS-WTFNs' rights, responsibilities, and relations and well-being that will inform the development of mitigations to protect MS-WTFNs' rights and wellbeing, including but not limited to restoring meaningful ability to harvest; and
- (f) Project-specific offsetting, restoration, monitoring, and follow-up plans will be informed by and meaningfully consider the MS-WTFNs' Knowledge, input, and Rights, Responsibilities, and Relations as provided by the MS-WTFNs and designed to ensure protection of MS-WTFNs' Rights.

Deep Water Intake

- 157. The MS-WTFNs require that OPG complete the proposed DWI prior to the relicensing of the operation of any of the PNGS units.
- 158. For decades, the PNGS relied upon a simple shallow water intake that created an environmental disaster for fish. This system not only killed millions of fish but created thermal plumes which impacted fish breeding. It was not until the 2000s when environmental and regulatory pressure finally came and forced an improvement: the current netting system, which reduced the physical destruction of fish by creating a physical barrier to prevent the entry of fish into the intake. However, this netting does not assist in the ongoing destruction of fish created by the thermal plume of the outlet. Further, it creates a significant ongoing operational and maintenance obligations.
- 159. According to OPG's 2023 Fish Impingement Monitoring Report the amount of "Impinged Biomass" was routinely about 18,000kg per year prior to 2003/2004.⁷⁴ From that time, it was not until 2010/2011 that a meaningful reduction, approximately 4,500kg of biomass, was achieved. And while this is an improvement, certain years saw spikes in the level of fish kills, with 2019 returning to the pre-fish diversion system horror with fish impingement of more than 15,000 kg.
- 160. The fish diversion system ("**FDS**") was designed to reduce fish impingement and is somewhat effective in achieving that objective, but it is susceptible to failure. In addition, the design of the system still results in fish entrainment in the nets and ignores the thermal plume. Simply put, the MS-WTFNs rely upon OPG's reporting that the DWI will significantly reduce impingement and entrainment and take the position this existing FDS is not adequate in protecting the fish.
- 161. The proposed DWI, while not perfect, would be a significant improvement. More concerning, however, is that the current system does not prevent operational issues, including shutdowns caused by algae growth. OPG represented, and MS-WTFNs understood, that the DWI was an integral part of the proposed refurbishment project. OPG has previously characterized the DWI as:

⁷⁴ Ontario Power Generation, *PNGS 2023 Impingement Monitoring Report*, Report No P-REP-07263-00017-R000 (2024-05-31).

A strategic initiative aimed at enhancing Pickering's operational efficiency, supporting increased electrical output, reducing environmental impacts, including reducing biofouling event, decreasing fish impingement and entrainment and improving its resilience to climate-related challenges.⁷⁵

162. During the June 2026 Part I hearing, OPG stated that the DWI may not proceed, despite previously presenting it as a critical component of the Pickering Refurbishment Project.⁷⁶ Given the significance of the DWI to Lake Ontario, fish habitat, and the exercise of MS-WTFNs' rights and responsibilities, this change should have been clearly and directly communicated to the Nations at the earliest opportunity. Instead, the issue emerged late in the process, forcing the MS-WTFNs to address a fundamental project uncertainty within already compressed timelines. This approach is inconsistent with meaningful consultation.
163. OPG stated the DWI was not required for "regulatory compliance"; apparently a reference to achieving the Department of Fisheries and Ocean's ("DFO") Fisheries Act Authorizations requirements.⁷⁷ Since improved environmental metrics are not the primary concern, the MS-WTFNs are left to conclude that the operational efficiencies will be the driving force in the OPG's decision on whether to proceed with the DWI. That ignores the law and the obligation to the MS-WTFNs. The Crown and OPG have duties to consult, accommodate, and to secure free, prior, informed consent.
164. The Nations made an information request regarding the DWI on July 8, 2026. Of the submitted requests, DFO denied, OPG did not respond, and the CNSC advised that OPG and DFO were better positioned to address the request.
165. The CNSC required OPG to make a decision on whether it intends to maintain the DWI as part of the proposed project by the end of July – a few days prior to this submission. This not only created an additional concern for the submissions in an already compressed time schedule but created significant additional work for the MS-WTFNs. Further, this behaviour appears to be contrary to the principles of discharging the DTCA.
166. The MS-WTFNs have discussed the importance of fish to their cultural identity, as a Relative that offers gifts of medicine and food, and the role it has played in their cultural and spiritual lives. This ongoing harm cannot be permitted to persist as it has in the past. A solution exists that would dramatically improve the current situation: the DWI, which must be implemented. The competition of the DWI cannot be left vulnerable to budget limitations or other financial consideration. As such, the DWI must be imposed as a stipulated requirement.

⁷⁵ Ontario Power Generation, *Pickering Refurbishment Program: Work Bundle Structure and Contracts*, Schedule 3 (18 December 2025), [online \(pdf\): Ontario Power Generation](#), pages 3 and 15.

⁷⁶ Canadian Nuclear Safety Commission (June 23, 2026) Part 1 Public Hearing on the Pickering Nuclear Generating Station Licence Renewal and Refurbishment [Public Hearing Transcript], at pages 152-153.

⁷⁷ *Ibid.*

167. The MS-WTFNs will not provide consent to the refurbishment or operation of the PNGS without having DWI completed. To be clear, it is the MS-WTFNs' position that its free, prior, informed consent is a pre-condition to OPG's activities proceeding.
168. The *Sparrow Test* requires consideration of minimal impairment, meaning the Crown has gone no further than necessary to achieve its objective.⁷⁸ The DWI is the more minimally impairing of the two contemplated cooling-systems and necessary to justify the MS-WTFNs' infringed Rights.
169. Michi Saagiig Anishinaabeg means "People of the Big River Mouths". Water is revered as the lifeblood of Mother Earth. Salmon is an essential food source of the Mississaugas and remains culturally significant. As told by Michi Saagiig Elder Gidigaa Migizi-ban:
- "They wanted to keep all the islands, all through the system because they knew they needed to have somewhere to pitch their wigwamin. They also requested that all of the river mouths on Lake Ontario be kept for them because this is the place they would catch the salmon they depended a lot on. They also wanted to keep the maple bushes of the women so that they could collect maple sap and make maple sugar. They also wanted to keep the rice beds, so they could pick rice. They wanted to keep the wetlands for medicines and beaver houses, because they needed the beaver. Trapping was important at that time and the beaver were disappearing. They also thought that they could hunt along every shore, camp if need be on every shore in their territory and that the farmer would only stick to the fields and would have an understanding of their way of life".*⁷⁹
170. There is a need to restore the fisheries which are central to the MS-WTFNs' identity, food, social fabric, rights, and responsibilities. The Commissioners must consider this when determining the need for the DWI. The MS-WTFNs therefore maintain that the DWI, or an alternative demonstrably equivalent in protecting fish, fisheries, and rights, should be a mandatory condition of any authorization. The Nations do not consent to the refurbishment or continued operation of the PNGS without a measure that meaningfully addresses these impacts. Any decision on the project must be assessed through a rights-based lens, including the Nations' responsibilities to water, fisheries, and future generations. The current cooling system represents an unjustified infringement, which leads to the broader requirement that the Crown justify any ongoing or proposed infringement of section 35 rights.

Necessity of Justifying the Proposed Infringement

171. The Supreme Court of Canada established the legal test to justify infringement of section 35 rights in *Sparrow*. The *Sparrow test* comprises two steps:

⁷⁸ [Infringement and Justification](#) supra note 2.

⁷⁹ Williams-ban, 2018.

- (a) Does the law in question have the effect of interfering with existing Aboriginal rights; and
- (b) Can the Crown justify the infringement by showing that:
 - (i) The law has a valid objective;
 - (ii) The infringement is justified in light of the principles of the honour of the Crown.
 - (A) This requires an analysis of whether the infringement necessary to achieve the Crown's objective, whether the law is minimally impairing on the protected right, whether fair compensation was made available or whether the Indigenous Nation was consulted with respect to the regulatory measures.⁸⁰

172. The justification test requires the Crown to consult and accommodate First Nations communities to protect their rights. If the Crown treats a renewal as a mere extension and declines consultation despite an unreasonable infringement of section 35 rights, whether due to duration or severity, it fails the second branch of the *Sparrow* test. A generous, purposive approach must be brought to the duty to consult, not a rigid, formulaic application.⁸¹

173. The DTCA is not the tool to address historical wrongs, but when an infringement is ongoing, the harm is no longer historical. The ongoing damage and impacts must be assessed and either avoided, mitigated or accommodated. The Court 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".⁸²*

174. In *Kebaowek*, Justice Blackhawk also referred to the justified infringement test:

⁸⁰ *R. v. Sparrow*, 1990 CanLII 104 (SCC), *supra* note 5.

⁸¹ *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 (CanLII), *supra* note 60 at paras 43, 46

⁸² *Cowichan Tribes v Canada (Attorney General)*, *supra* note 2 at para 2566.

"Additionally, the Supreme Court in Tsilhqot'in Nation reaffirmed the test for a justified infringement of section 35 rights. To justify an infringement of a section 35 right, the Crown must demonstrate: "(1) that it discharged its procedural duty to consult and accommodate; (2) that its actions were backed by a compelling and substantial objective; and (3) that the governmental action is consistent with the Crown's fiduciary obligation to the group".⁸³

175. Continued use of the lake water and lakebed on unceded territory and without agreement from the MS-WTFNs, is an unjustified infringement of their rights. Additionally, the fish impingement and rising water temperatures directly infringe upon the Nation's rights and their responsibilities to water and Relatives who rely on the water. The responsibilities are inseparable from the health of the fish, animals, plants, and members. There are alternative technologies do not infringe on their rights as significantly.
176. The Application includes direct, physical, new and ongoing impacts upon the reaffirmed and recognized rights of the MS-WTFNs and thereby trigger the DTCA. A complete right's impact assessment in advance of any work taking place is the proper process for the Crown to ensure it meets its duty to the Communities, but that takes many years to complete. The MS-WTFN proposed C3RA requirements will realize the obligations and duties owed by the Crown. This includes upholding the rights protected under the Declaration, which are addressed in the next section.

United Nations Declaration on the Rights of Indigenous Peoples

177. The Crown's obligations to the MS-WTFNs arise from the Honour of the Crown, section 35, Treaty relationships, UNDRIP, UNDA, and the broader goal of reconciliation. Consultation is not a procedural exercise. It must be meaningful, rights-based, and directed toward securing consent where Indigenous lands, waters, jurisdiction, and rights are affected.
178. This licence application engages those obligations. It involves a strategic, long-term nuclear decision with ongoing and cumulative impacts in MS-WTFNs' territory. The CNSC must therefore assess the Crown's duties through the combined lens of the duty to consult and accommodate, Treaty obligations, UNDRIP, UNDA, and the Honour of the Crown.
179. Recent jurisprudence, including *Kebaowek*,⁸⁴ confirms that UNDRIP is more than an aspirational instrument. Federal decision-makers must interpret and exercise their statutory powers in a manner consistent with UNDRIP, including its emphasis on Indigenous participation in decision-making and free, prior, and informed consent. The CNSC must therefore do more than acknowledge Indigenous rights; it must structure its process and decisions to meaningfully address them.

⁸³ *Kebaowek First Nation v. Canadian Nuclear Laboratories*, *supra* note 14 at para [117](#); quoting *Tsilhqot'in Nation v. British Columbia*, [2014 SCC 44](#) [*Tsilhqot'in*].

⁸⁴ *Ibid* at paras [112](#), [117-118](#), [127-128](#).

180. The practical question is not whether these obligations exist, but how they are to be implemented. The C3RA provides that mechanism. It gives effect to consultation, accommodation, cumulative-effects assessment, Indigenous knowledge, Indigenous governance, and ongoing oversight within a structured and accountable process.
181. OPG's willingness to include the C3RA as a licence condition demonstrates that a rights-based approach is achievable. By incorporating the C3RA into the regulatory framework, the Commission can help fulfill the Crown's constitutional, statutory, and reconciliation obligations while providing greater certainty for all parties.
182. Nuclear regulatory decisions warrant heightened scrutiny due to the Commission's requirement to balance public safety, environmental protection, intergenerational risk, and energy needs. UNDRIP expressly identifies hazardous materials as engaging special protections for Indigenous peoples. This Application is the first of its kind in Canada, and the complexity, duration, and consequences of the proposed licence increase the legal importance of a clear, robust, and rights-compliant consultation process.
183. FPIC is not a one-time procedural step. It is an ongoing, consent-seeking process grounded in relationship, transparency, and respect for First Nation jurisdiction. Properly implemented, FPIC also reduces regulatory risk by creating clearer expectations for proponents, regulators, and Indigenous rights holders.
184. Consent-based decision-making is not exceptional in complex regulatory settings. Projects crossing provincial, international, or Indigenous jurisdictions require decision-makers to account for each affected government's authority. The same principle applies where projects affect First Nation lands, waters, resources, rights, and governance responsibilities.
185. The MS-WTFNs' governance responsibilities cannot be compressed into ordinary regulatory timelines. The C3RA bridges that gap. It provides a practical means for the Crown, CNSC, OPG, and the Nations to meet their respective obligations while ensuring that rights impacts are properly assessed, managed, and accommodated throughout the life of the project. These principles are especially important in relation to nuclear waste, where the consequences of present decisions extend far beyond the life of the proposed licence.

Waste

186. OPG has materially expanded the scope of the Application from the version initially described in October 2024, which addressed the PROL and the Waste Facility Operating Licence ("**WFOL**"), to the current version, which also incorporates the PWMF and decommissioning. This expansion is legally significant because it confirms that waste management is not ancillary or severable from the licenced activities; rather, it is an integral and foreseeable consequence of the project.
187. In the Part 1 Hearing, Sara Irvine explained the rationale for a consolidated licence. Irvine acknowledged that the consolidated licence was intended, in part, to avoid the concern raised by stakeholders and Indigenous Nations: the piecemealing of applications. She

explained that refurbishment necessarily produces low- and intermediate-level waste, and that the consideration of waste is therefore a significant part of the proposed licence period. On that basis, she stated that all licensed activities on the Pickering site for the next 10 years should be considered together in this hearing and captured within the consolidated licence, to ensure that there are no piecemealing activities.⁸⁵

188. Anishinaabeg worldviews are grounded in the understanding that all living things are interconnected. The phrase "All My Relations" is often used to represent the concept that all living things are connected and reflects a foundational cultural, and spiritual responsibility: everything in creation has a purpose, spirit, and inherent worth, and humans have reciprocal responsibilities to the lands, waters, plants, animals, relatives, and future generations. From this perspective, environmental decision-making cannot lawfully or meaningfully separate a project from its effects, including the waste it creates, the lands, waters and relatives it may affect, and the future generations who will inherit its consequences.
189. Western science similarly recognizes ecological interdependence. The food chain is a basic example: humans are part of a broader system in which each element depends on the health of the others. This principle is undermined when regulatory processes artificially divide a project into discrete topics, future phases, or separate licensing silos. Such segmentation prevents decision-makers from assessing the full scope of foreseeable impacts and is inconsistent with a precautionary, cumulative, and rights-based approach to environmental protection. This principle is well recognized and accepted, as any assessment regime explicitly prohibits piecemealing projects to reduce regulatory scrutiny. That does not support consolidation; it means foreseeable licence impacts must be assessed now, not deferred to later applications.
190. During the DNNP licence to construct application, the CNSC treated waste as outside the scope of the application on the basis that waste would be considered in future licensing hearings. The Nations were not asking that waste be licenced at that stage.⁸⁶ Rather, they were objecting to the exclusion of foreseeable nuclear by-products from the assessment of a project that would necessarily generate them. That approach is precisely the kind of piecemealing the Nations reject. The MS-WTFNs assess development through the Seven Generations Principle, requiring decisions made today to be considered in light of their consequences for future community members, who will inherit both the benefits and the burdens of the project. This timeframe is extended far beyond seven generations for a nuclear project, due to the permanency of nuclear waste. In fact, the Nuclear Waste Management Organization ("NWMO") states the Deep Geological Repository could last up to one million years.⁸⁷ The MS-WTFNs strongly hold that responsibility for waste

⁸⁵ Canadian Nuclear Safety Commission (June 23, 2026) *Part 1 Public Hearing on the Pickering Nuclear Generating Station Licence Renewal and Refurbishment* [Public Hearing Transcript], at page 80.

⁸⁶ Ontario Power Generation, *Darlington New Nuclear Project Licence to Construct Application Plan*, NK054-PLAN-01210-00007-R001 (27 May 2022), [online \(pdf\): Ontario Power Generation](#) at page 22.

⁸⁷ Impact Assessment Agency of Canada, *Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project*, [online: Canadian Impact Assessment Registry](#).

should not be passed down to future generations, and long-term waste strategies must be dealt with now.

191. Ms. Irvine was correct that waste aspects arise from each PNGS activity, and that waste should therefore be addressed in an integrated way. The legal issue is not merely whether waste is mentioned, but how it is considered in relation to the licence, the duty to consult, UNDRIP, and the requirement for free, prior, and informed consent. The MS-WTFNs' position is that separating the by-products of licenced activities into discrete, siloed applications is inappropriate where those by-products are foreseeable, material, and directly connected to the project under consideration.
192. PNGS produces low-level and intermediate-level radioactive waste, which is stored at the PWMF. That waste is not incidental; it is a direct, foreseeable, and a continuing consequence of PNGS operations, refurbishment, and decommissioning.
193. On May 31, 2024, the PWMF applied for an amended licence to authorize the construction and operation of a new structure for the storage of low and intermediate-level radioactive waste, resulting from future refurbishment activities at PNGS. The expanded facility was granted its licence on July 24, 2025, and the reasons for decision were released on December 19, 2025.⁸⁸
194. The Commission determined that the duty to consult had been triggered and fulfilled, and that UNDRIP had been upheld during the licence application. However, the reasons for decision did not identify the legal or evidentiary basis for that conclusion, nor did they explain how Article 29 of UNDRIP was considered, applied, or satisfied.
195. Article 29 of UNDRIP provides:
 - (a) Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
 - (b) 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.
 - (c) States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.⁸⁹

⁸⁸ Canadian Nuclear Safety Commission, *Record of Decision, DEC 25-H101* (2025), [online: Canadian Nuclear Safety Commission](#).

⁸⁹ [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.

196. Both Mississaugas of Scugog Island First Nation and Curve Lake First Nation intervened in that hearing and stated that UNDRIP had not been upheld. Given that the rights at issue belong to the Nations, and that consent must be sought from the affected Indigenous peoples, the Commission's contrary conclusion required a clear evidentiary foundation and transparent reasons. The reasons do not identify the evidence relied upon to displace the Nations' position or explain how the Commission concluded that Article 29 was satisfied. The MS-WTFNs formally requested a redetermination of that decision, which the Commission declined to make.
197. Nuclear waste remains a significant and live concern for the MS-WTFNs. PNGS originally contemplated approximately 30 years of waste generation and storage; it is now being considered in relation to a total operating and waste-management horizon of approximately 65 years. This is the first WFOL on which the MS-WTFNs have been consulted. The storage of radioactive and hazardous materials on or affecting First Nations lands, territories, waters, and relatives engages Article 29, and requires a process capable of securing the free, prior, and informed consent of the affected Indigenous peoples.
198. The MS-WTFNs are particularly concerned with the management of intermediate-level radioactive waste generated through refurbishment, operations, maintenance, and eventual decommissioning activities associated with the entire PNGS and both Pickering Refurbishment and Pickering Decommissioning. Intermediate-level waste is distinct from ordinary operational waste because of its long-lived radiological hazards, the specialized containment measures it requires, and the extended period over which stewardship obligations remain in place.
199. Unlike many project impacts that can be reversed or mitigated within a human lifetime, decisions regarding intermediate-level radioactive waste create obligations that extend far beyond the proposed license term and well beyond the lifespan of the current generation. As a result, the Nations cannot evaluate the Application solely on the basis of present site activities. The foreseeable waste consequences of refurbishment, continued operations, and future decommissioning must also be considered.
200. The MS-WTFNs remain concerned that no fully implemented, consent-based pathway presently exists for the long-term management and disposition of all categories of radioactive waste that may arise from the continued operation and refurbishment of Pickering B, and the decommissioning of Pickering A. While future regulatory processes may address specific waste facilities or disposal proposals, the resulting waste inventory is being created through decisions being made today. The Crown and the Commission cannot artificially separate waste generation from waste management when both are foreseeable and inseparable consequences of the same undertaking.
201. The Commission should recognize that every authorization permitting continued operation, refurbishment, or decommissioning activity contributes to future waste inventories and therefore contributes to future rights impacts, stewardship obligations, and cumulative effects experienced by the MS-WTFNs. These impacts must be assessed through a rights-based and intergenerational lens consistent with section 35, the Honour of the Crown, UNDRIP, and the principles of reconciliation.

202. The MS-WTFNs appreciate the dedicated waste-table meetings with OPG. However, OPG's engagement cannot, by itself, discharge the Crown's constitutional obligations or the CNSC's responsibility to ensure that its licensing process is consistent with the honour of the Crown, the duty to consult, and UNDRIP. As of this writing, the CNSC has not explained how it is seeking FPIC, how it is applying Article 29, or what standard it uses to determine whether UNDRIP has been meaningfully upheld. If CNSC staff are relying on OPG's engagement to support their conclusions, the Nations require disclosure of the criteria, evidence, and analysis being used to assess whether that engagement satisfies the Crown's obligations.
203. The MS-WTFNs therefore request specific evidence of: (1) the legal test or framework the CNSC is applying to assess compliance with UNDRIP and FPIC in this Application; (2) when and how that test or framework was clearly communicated to the Nations; (3) the evidence CNSC staff rely upon to conclude that the test has been met; and (4) how the Nations' own stated position that UNDRIP has not been upheld was considered and addressed. Without this information, the Commission cannot reasonably conclude that UNDRIP, Article 29, or the DTCA have been satisfied. The absence of that information also illustrates a broader concern with regulatory uncertainty and unknown long-term consequences.

Concerns Around the Unknown

204. The NWMO is in the midst of a federal impact assessment of the Ignace Deep Geological Repository ("**DGR**") site for used nuclear fuel. In June 2026, the DGR was referred to the Major Project's Office to consider listing it as a project of national interest.⁹⁰
205. OPG, which is defined in federal legislation as the primary waste owner in Ontario, has allocated a great deal of money in the single DGR strategy for more than two decades. OPG would therefore have to come to an agreement with the federal government to spend more time and money on engineering design in order to develop any alternative strategy, such as for an on-site, near-surface "rock cavern" disposal method.
206. The lack of nuclear waste information included for decommissioning is a systemic failure of the CNSC and OPG. The Saugeen Ojibway Nation's ("**SON**") written submission for the DNGS licence to amend application stressed this. SON commented that despite the importation of nuclear waste into their territory, the lack of information around OPG's current plans is a:

"Symptom of a much larger and very significant problem. OPG continues to exploit decisions and authorizations made decades ago...These decisions and

⁹⁰ Canada, One Canadian Economy, *Canada Initiates Process to List Major Projects under the Building Canada Act* (23 June 2026), [online: Government of Canada](#).

*authorizations were made without any consultation with SON, and certainly without SON's consent".*⁹¹

The lack of consultation and consent of First Nations is an ongoing problem.

207. Again, it should be emphasized that the MS-WTFNs never provided consent to the PNGS, expanded PWMF or future on-site storage of nuclear waste at the Pickering site. There is still no established long-term plan for managing and storing used nuclear fuel in Canada. Given the risks associated with the storage of radioactive waste in the traditional and Treaty Territory, possibly indefinitely, the MS-WTFNs underscore the necessity of securing consent. **The MS-WTFNs suggest that a First Nation consent provision should be formulated and enforced by the Commission for the management of nuclear waste at all sites.**
208. The MS-WTFNs were not meaningfully consulted regarding the new waste structure for the refurbishment extension at the PNGS. MS-WTFNs only learned about the plans for a new structure at Pickering during a March 20th, 2024, OPG "**Pickering Kickoff Meeting**" with the MS-WTFNs, and was informed about the actual letter of intent and its submission during an April 9th, 2024, meeting with the CNSC.
209. The requirement for additional waste storage at the PNGS is absent in CMD 24-H5.1 s. 6.11 – Waste Management. The Nations who did intervene in the PWMF expansion licence application were clear that they did not consent. The CNSC cannot state their commitment to reconciliation and implementing UNDRIP while simultaneously ignoring the Declaration's Article 29 (2). These deficiencies in scope, disclosure, and consent inform the MS-WTFNs' broader concerns with the CNSC consultation process addressed in Part 5.

Part 5 - Canadian Nuclear Safety Commission Consultation Process

210. REGDOC – 3.2.2 Indigenous Engagement, identifies requirements, guidance and information for CNSC licensees with respect to Indigenous engagement. Information on the CNSC's approach to Indigenous consultation is found in Appendix C. The current REGDOC version available on the CNSC website is from 2022. Appendix C includes a Guiding Principle which states:

"The CNSC is also mindful of its role as a statutory administrative tribunal exercising quasi-judicial powers, which imposes on it the duty to treat all participants in its proceedings fairly. When developing and implementing consultation processes, the CNSC takes into account the guiding principles that have emerged from Canada's case law and best consultation practices, as outlined

⁹¹ Written submission from the Saugeen Ojibway Nation in the Matter of Ontario Power Generation – Licence amendment application for the Darlington Nuclear Generating Station regarding the commercial production of Cobalt-60. May 1, 2024, at pages 2-3.

in the document Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011".⁹²

211. Despite the above link provided on the website not leading to the stated guidelines, relying on case law and best practices from 2011 poses considerable challenges. Both the REGDOC and the CNSC's guiding documents are in need of updating, which will hopefully rectify the deficiencies outlined below.

DTCA Clarity

212. The duties, infringements, and uncertainties described in Part 4 must be understood against the process through which the CNSC has addressed the MS-WTFNs. During the DNGS licensing process, the CNSC did not disclose its DTCA analysis to the MS-WTFNs. The Nations nevertheless participated extensively with both the CNSC and OPG, reasonably believing consultation was underway. Only in its hearing submission did the CNSC reveal its view that the DTCA had not been triggered. Reaching that conclusion after months of engagement, without prior disclosure, was inconsistent with transparency, meaningful consultation, and the Honour of the Crown.
213. To avoid a repeat of that process, the MS-WTFNs sought clarification of the CNSC's DTCA assessment for the Application. On November 18, 2025, the CNSC advised that the proposed licence amendments likely triggered consultation obligations, but no scoping analysis was provided.
214. The MS-WTFNs also disagree with OPG's preliminary assessment, which largely confines potential rights impacts to the DWI. As stated:
- "The key potential impacts to the MS-WTFNs' asserted rights which were identified by OPG in its Application in relation to the construction of the DWI structures included impacts arising from disturbance of the lakebed in boat-accessible areas, and methods of material disposal".⁹³*
215. That framing is too narrow, as it treats impacts as localized construction effects while overlooking the Nations' asserted title, jurisdiction, responsibilities, and rights in relation to the unceded waters and lakebed of Lake Ontario. The assertion of title itself engages the DTCA. As discussed above, ongoing use and occupation of the lake and lakebed without MS-WTFN agreement raises broader issues of jurisdiction, cumulative effects, and continuing rights infringement.
216. The CNSC must also assess the cumulative effects of the Application alongside the other nuclear developments within the MS-WTFNs' traditional and Treaty territory. Modern assessment frameworks recognize that First Nations' rights cannot be understood without First Nations' knowledge, governance, and stewardship. As Canada has acknowledged:

⁹² Canadian Nuclear Safety Commission, REGDOC-3.2.2, Indigenous Engagement, Version 1.2 (Ottawa: CNSC, February 2022), Appendix C, [online: Canadian Nuclear Safety Commission](#).

⁹³ Ontario Power Generation, CD# P-CORR-00531-24269 Registry Update on IR Activities, March 4, 2026.

Indigenous Knowledge systems are diverse, living value systems that need to be considered equally alongside other knowledge, including western science.⁹⁴

217. The current consultation process falls short of the Crown's fiduciary, constitutional, and honour-based obligations. The failure to provide a transparent DTCA analysis, adequately scope rights impacts, assess cumulative effects, disclose key information in a timely manner, or meaningfully incorporate MS-WTFNs' laws and knowledge has left the Nations unable to fully evaluate and respond to impacts on their rights and jurisdiction. Consultation cannot satisfy the Honour of the Crown where the information, process, and resources necessary for meaningful participation are absent.
218. The MS-WTFNs' developed and supported C3RA is designed to address those deficiencies. It provides a practical requirement through which the CNSC, OPG, and the Crown can fulfill their obligations, incorporate the MS-WTFNs' knowledge and governance, assess cumulative effects, and ensure that future decisions affecting the Nations' lands, waters, rights, relations, and responsibilities are made in a manner consistent with reconciliation, UNDRIP and the Honour of the Crown.

Participant Concerns

219. The MS-WTFNs have asked the CNSC to update its licensing and hearing processes to recognize Treaty host First Nations' authority and properly fund their participation. The Honour of the Crown requires good faith, respectful dealings with Indigenous peoples, and underpins Canada's reconciliation commitments: rights recognition, respect, cooperation, and partnership.⁹⁵ Those commitments create real expectations and a high standard for Crown conduct. When the process falls short, it harms reconciliation, weakens partnership, and erodes trust.
220. According to the report, "Indigenous Mental Wellness and Major Project Development", the perceived justice and benefit of participating in regulatory processes are frequently questioned by Indigenous communities. Many community members have voiced frustration that regulatory processes are futile with regard to changing actual outcomes or being heard. A regulatory practitioner explains:

"...any proponent who is able to hire a good consultant will go in and introduce we're here because we want to be transparent ...there's all these really good buzzwords so we'll go in and use those buzzwords and say we're here to do things right...Well guess what I've just done by doing that? I've created an expectation. I've created a little bit of hope. That hope that I've created is so bloody sacred. I cannot emphasize that enough because what you've now done is given yourself a responsibility to do things right. You've raised people's expectations. You created hope and if you don't deliver, you are now directly responsible for their

⁹⁴ Canada, Impact Assessment Agency of Canada, *Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions* (2019), [online: Government of Canada](#).

⁹⁵ Canadian Northern Economic Development Agency, *What is Crown Consultation*, [online: Government of Canada](#).

psychosocial health. So just simple participation in EA process. The ability to be there at a meeting, hear all these really good things that are going to happen and then kaboom everybody's gone. Major, major, major, trigger. (IA practitioner 2, December 10, 2020)".⁹⁶

221. Indigenous Peoples often experience regulatory processes as disenfranchising because those processes can reproduce histories of dispossession, dislocation, and limited control over decisions affecting their lands, resources, and sovereignty. Community members and leadership may feel forced into non-Indigenous governance frameworks in which Indigenous Knowledge is treated as a procedural requirement rather than a serious source of law, values, and decision-making authority. These dynamics can undermine trust, create false expectations, and cause significant frustration and mental-wellness impacts when communities perceive that their concerns are not genuinely heard or reflected in outcomes.⁹⁷
222. The current CNSC approach to host Treaty First Nations is itself harmful. The MS-WTFNs must repeatedly apply for intervenor status in each licensing process, even as four Class 1 nuclear facilities within their territory proceed through active licensing phases. The CNSC then decides whether to accept those applications as though the Nations were ordinary third-party stakeholders. That process diminishes MS-WTFNs' sovereignty and dishonours the Treaties.
223. For years, the MS-WTFNs were excluded from Part 1 Hearings. Only after repeated requests did the CNSC acknowledge that the Commission controls its own process and that only its own decision prevented MS-WTFNs' participation. The eventual invitation to discuss participation came too late for the communities to respond meaningfully. These participation concerns were compounded by continuing changes to the scope of the Application.

Changing Scope

224. The Application scope has been a moving target. The MS-WTFNs were told at the end of 2023 that OPG would be applying for a PROL in 2025 and the WFOL in 2027, and the decommissioning application would follow after between 2027-2028. It was under this premise that the MS-WTFNs consulted on the project.
225. OPG's letter of 31 October 2024 to the CNSC indicated their intention to apply for a consolidated PROL and a WFOL in 2025 – a change from two separate licences. The

⁹⁶ Tania Salerno, Jordan Tam, Justin Page & Sandra Gosling, *Indigenous Mental Wellness and Major Project Development: Guidance for Impact Assessment Professionals and Indigenous Communities* (Final Report, 7 May 2021) (Ottawa: Impact Assessment Agency of Canada), pages 34–35, [online \(pdf\): Government of Canada](#).

⁹⁷ [Ibid](#) at pages 34-37.

formal June 2025 licence application expanded the scope to align the PROL and WFOL with the refurbishment of Units 5-8 and simultaneous decommissioning of Units 1-4.⁹⁸

- 226. The MS-WTFNs wrote to the CNSC registrar on 18 December 2025 at the CNSC request in response to their 11 December 2025 letter regarding a possible hearing delay. The CNSC positioned the three-month delay as an accommodation to the MS-WTFNs as Crown consultation has been inadequate in general and specifically due to the change in scope and complexity of the consolidated licence application.
- 227. The MS-WTFNs did not ask for a hearing delay, nor would an extra three months provide the necessary time for proper consultation and analysis of Rights impacts for such an extensive licence. While the CNSC did postpone the hearing for three months, there was no further financial capacity provided for the extended timeline.
- 228. At the 23 June 2026 Part 1 Hearing, the consideration of removing the DWI was raised, from the MS-WTFNs' perspective, seriously for the first time. This created uncertainty in the licence scope and the lack of consultation regarding this key project element has been disappointing. Part of the Crown's obligation to FPIC requires providing the MS-WTFNs with all pertinent information on a free and willing basis. The DFO denied our request for information, twice, and suggested a Freedom of Information request instead – truly the antithesis of FPIC.
- 229. The continually shifting licence application has made meaningful consultation extremely challenging. The burden for timely and current information has been placed on the MS-WTFNs, as the Crown has not been forthcoming with free and prior information. These process challenges are intensified where funding does not match the complexity, pace, and importance of the Application.

Funding

- 230. Adequate funding is essential to meaningful consultation and the Crown's discharge of its duty to consult and accommodate.
- 231. The MS-WTFNs are the host Nations and Treaty rights holders for the PNGS, DNGS, DNNP, Wesleyville New Nuclear Project, and other CNSC-regulated projects. Together, these facilities represent the highest concentration of nuclear development in Canada within a single Indigenous territory. The resulting impacts on MS-WTFNs' rights have been substantial, cumulative, and long-term.
- 232. Each Nation faces unique capacity constraints, yet all must fulfill dual responsibilities: consulting with their own citizens and coordinating collectively as MS-WTFNs to protect shared rights, lands, waters, and responsibilities. This coordination benefits the CNSC and

⁹⁸ Ontario Power Generation Inc, *Submission from OPG*, CMD 26-H7.1, Canadian Nuclear Safety Commission Public Hearing, Pickering Nuclear Generating Station and Pickering Waste Management Facility Licence Renewal and Refurbishment (23 June 2026), [online \(pdf\): Canadian Nuclear Safety Commission](#).

OPG by reducing duplication, allowing the Nations to engage through a unified process, joint submissions, and coordinated hearings.

233. The Nations have consistently pursued this efficient approach, including through shared legal representation in the DNNP and DNGS proceedings. The Application is significantly more complex than previous hearings, yet legal and participation funding was reduced by more than 25%. This forces the Nations to choose between legal representation and essential internal consultation, a result that is inconsistent with reconciliation and the Honour of the Crown.
234. Despite raising these concerns with CNSC staff and Natural Resources Canada, including a formal funding request submitted on May 11, 2026, with repeated follow-ups on May 21 and June 1, no response has been received until August 11, 2026 – the day prior to the August 12, 2026 written submission date this proceeding.
235. The Commission should not permit inadequate funding to become a modern barrier to Indigenous participation. A funding program that is insufficient to support meaningful engagement in a \$30 billion project cannot satisfy the Crown's constitutional obligations.
236. More broadly, the current CNSC process does not provide sufficient time, information, or resources for the MS-WTFNs to assess impacts on their rights and jurisdiction. The burden of correcting those deficiencies should not fall on the Nations. Nevertheless, the MS-WTFNs have proposed a practical solution. The C3RA provides a framework through which consultation, cumulative-effects assessment, and Indigenous decision-making can occur in a meaningful and timely manner. The Commission should therefore impose the requested licence condition requiring the C3RA as a necessary element to help fulfill the Crown's obligations and uphold the Honour of the Crown. These process deficiencies and proposed accommodations support the findings and relief requested in Part 6.

Part 6 – Finding and Relief

Licence Condition and Approval of Application

237. There are four primary areas upon which the MS-WTFNs' submissions were made: DWI, waste, C3RA and the CNSC process. As noted, the MS-WTFNs continue to work with OPG on each of the DWI, the waste facility and the C3RA.
238. While operating licences are measured in years, radioactive waste management obligations may extend for centuries or longer. The Crown's reconciliation obligations must therefore be measured against the duration of the impacts they authorize, not merely the duration of the licence being sought.
239. The MS-WTFNs plan to request license conditions that:
 - (a) require the DWI be completed and in use prior to the operation of a refurbished Pickering B unit,

- (b) require the elements set out in the C3RA, and in respect of the waste facility proposal, to be completed.

Given the status of discussions with OPG, no draft language is provided at this time. The MS-WTFNs will provide such language in advance of the Part 2 proceeding.

- 240. The MS-WTFNs have made several comments about the regulatory framework within which the CNSC operates, the interpretation of that framework and the inadequacy of such towards enabling the proper fulfilment of the DTCA by the CNSC. The MS-WTFNs seek to have the CNSC recognize the shortcomings and difficulties posed by the present system and to set a path forward to address the regulatory framework deficiencies.
- 241. This request for relief will be further addressed in advance of the Part 2 Hearing in October.