

Submission To: the Minister of Natural Resources Canada (NRCan) regarding the *Draft Policy on Radioactive Waste Management and Decommissioning* (Feb 1, 2022)

From: Kitchissippi-Ottawa Valley Chapter, Council of Canadians
April 2, 2022 ~ <kitchissippiottawacocchapter@gmail.com>



The Kitchissippi-Ottawa Valley Chapter is deeply disappointed in the document you produced entitled *Draft Policy on Radioactive Waste Management and Decommissioning* (Draft Policy). Following are the overarching priorities of the Council of Canadians:

- Protect fresh water for future generations
- Protect the commons and the common good
- Challenge corporate control of essential goods and services
- Promote accountability and transparency in public institutions
- Address the climate crisis with just transition to true renewables
- Support Indigenous rights to protect their territories

It is with these priorities in mind that we make the following comments about the Draft Policy.

General Comments and Critique

We are in agreement with the *Ottawa Riverkeeper*¹ that your proposed policy

“fails to lay out clear definitions, is extremely vague, and seems impossible to enforce; or even provide mechanisms to decide when it would need to be enforced. In the places where it does directly address public desire, it does so very broadly. In other places, **it blatantly contradicts the opinions of Canadians engaged with this issue...**”

The Riverkeeper continues. The Draft Policy contains “no clear objectives” or “timelines” and is devoid of proposals to ensure and enact regulator “transparency, consultation, and oversight.”

“There is great urgency for putting strong policies for radioactive waste in place. As this policy is being developed, projects continue to be reviewed by the Canadian Nuclear Safety Commission (CNSC) using the existing regulations [which] are controversial in part because they are relying on old policy frameworks that Canadians clearly want updated.”

Relying on “old policy frameworks” is one of the issues we take up below, but first here are some of the policy priorities of greatest concern to us that the Draft Policy does not address properly:

¹ <https://ottawariverkeeper.ca/a-disappointing-result-canadas-draft-radioactive-waste-policy/>; March 17, 2022

1. Overall, the highest priority must be to protect the water, regarding location, design criteria, and construction of both temporary and longer-term waste facilities.
2. This policy is the place to rectify the conflict of interest inherent in Natural Resources Canada's mandate: to both promote the nuclear industry and protect the public from the industry's bona fide hazards. Resource development is NRCan's work. Protection of community and environmental health is the mandate of Environment and Climate Change Canada.
3. No importing of radioactive waste from other countries.
4. No plutonium extraction (reprocessing or pyro-processing) of radioactive fuel waste.
5. Radioactive waste must NOT be abandoned, as per current DGR proposals. Policy must stipulate perpetual care including Heritage Canada documentation and updating, as well as ongoing monitoring in the form of Rolling Stewardship.
6. Government and industry must be open and transparent in the management of radioactive waste and its transportation. Traceability of materials is also a key requirement. The Precautionary Principle must apply. Indigenous Peoples and Canadians have a right to access information, to engage in decision-making, and to know the risks.
7. The federal radioactive waste management policy must address the toxic legacy and practices of uranium mining and milling.

In regards to all the above matters, we are in full support of the excellent *Alternative Policy for Canada on Radioactive Waste Management and Decommissioning*, prepared as a submission to you by the coalition of citizen scientists, eNGO's and other civil society experts who comprise Nuclear Waste Watch's (NWW) Radioactive Waste Review Group. ²

In particular, we strongly support the recommendation from NWW to create a "publicly-owned agency independent of the nuclear industry and government agencies that promote nuclear power... to oversee the management of radioactive pollutants and decommissioning of nuclear facilities" (pg 3). We also call for this reorganization to include that the new regulatory agency be administratively attached to, and report to parliament through, the Minister of Environment and Climate Change Canada (pg. 7). These two changes will eliminate the conflict of interest inherent in the current arrangement, where NRCan is responsible both for advocacy with the regulator and the industry to ensure public health and welfare related to the industry, as well as promoting the industry itself.

2 https://nuclearwastewatch.weebly.com/uploads/1/4/9/1/14913256/nww-alternate-response-to-nrcan-draft-policy_march2022.pdf;
see also https://nuclearwastewatch.weebly.com/uploads/1/4/9/1/14913256/radioactivewastepolicyreview-briefer_march2022_draft.pdf

We are also fully in support of these two policy recommendations from NWW:

- **Engagement with Indigenous People**
1.16. Acknowledge, respect and honour that First Nations, Inuit and Métis peoples have unique status and rights in Canada, as recognized and affirmed in the Constitution Act, 1982, and that the honour of the Crown guides the conduct of the Crown in all of its dealings, including consultation and engagement processes, and that the conduct of the Crown will be guided by any framework, measure or action plan developed by Canada for Indigenous Reconciliation, consultation or engagement purposes and that is relevant to radioactive waste management and decommissioning, including any framework, measure or action plan developed as a result of the United Nations Declaration on the Rights of Indigenous Peoples Act. (pg 5)
- **Waste Producers and Owners, and Facility Operators Shall...** see recommendations **1.12 and 1.13**, which are both about cultural respect and developing improved engagement strategies. (pg 8)

The rest of this submission will address the connection between the above recommendations for respectfully engaging Indigenous Peoples, and ensuring the independence of the regulatory and community advocacy processes.

By way of introduction, we believe there is clear evidence that the Honour of the Crown is not upheld in the current process. For that reason, if no other, urgent change to rectify this is required. Bruce McIvor is a nationally and internationally respected Indigenous Rights lawyer who recently published the go-to book on case law, decisions, opinions, and policy regarding Duty to Consult in relation to the social justice objective of Reconciliation between Canada and all Indigenous Peoples. Pertinent to the changes we advocate, he comments:

“Importantly, just because the Duty to Consult was not triggered... this did not absolve the Crown of its obligation to conduct itself honourably... Indigenous Peoples should not be forced to fight for a place at the table... Real Reconciliation requires recognition of Indigenous Peoples’ inherent law-making authority and its place within Canada’s consitutional order. ”³

In the next two sections, we amplify the voices of three Indigenous leaders who describe their experiences and offer opinions on this topic. Two are elected “*Indian Act*” Chiefs, and one is a Traditional Grassroots Grandmother.

Indigenous Peoples have Incontrovertible Rights

Members of the Council of Canadians from Ontario and New Brunswick virtually attended the investigative sessions on “Governance of Canada’s Nuclear Industry,” which were convened by the parliamentary Standing Committee on Environment and Sustainable Development in February and March (2022) (ENVI Ctte). We were horrified by some of the evidence given by [REDACTED] on February 15th and further

³ McIvor, Bruce. *Standoff: why Reconciliation fails Indigenous People and how to fix it*. Nightwood Editions, 2021. Pgs. 123,125.

dismayed by the evidence offered by [REDACTED] from the Bigtigong Nishnaabeg First Nation ⁴ on March 3rd.

From [REDACTED]

“The issue is that the Government of Canada is delegating the governance and policy-making for nuclear waste to the nuclear industry. I liken it to putting the fox in charge of the chicken coop...

”The nuclear industry in Canada has been creating high-level nuclear waste now for approximately 60 years... The NWMO, which is an industry-owned organization, has been delegated by the nuclear industry to determine methods to safely store this waste... The method the NWMO has chosen to dispose of this deadly waste is to bury the nuclear waste in deep geological repositories. ⁵ The intent is to bury that waste at some point and then walk away, leaving future generations to deal with the issues and the contamination of their homelands by an industry that cares only about the bottom line...

“We also didn't accept any of their money. We told them... that we didn't want their money, because we looked at that as bribe money... they knew that we were not going to do it and eventually they just walked away...

“I wish [REDACTED] from Hornepayne were here, because they tried to be involved with the process there, in Hornepayne, and they were shut out of meetings. A lot of those meetings basically talked about the benefits of nuclear power and said nothing about any of the negative impacts that could be there. It was all one-sided. The messaging was all one-sided...The Hornepayne First Nation people were not even allowed in the room in those meetings.”

For the record, [REDACTED] referenced numerous resolutions from First Nations opposing the laissez-faire approach of decades of successive federal governments regarding the nuclear industry's waste. He also addressed technical issues:

“I would like to point out that as a prospector—I wander around the bush all the time, and I study geology—I understand geological processes, and the earth is not static; it's plastic. Over geological time, all rock formations move. These movements will eventually allow the toxic nuclear waste to then leach into the environment. It's not a matter of if it will eventually leach out but when...

”There are alternatives. You don't need to be producing the toxic waste that will be poisonous to our descendants for hundreds of thousands of years. They're going to have to deal with it. ...What's it going to be like in a thousand years? Are we assuming that there are not going to be any people around to deal with that? With first nations, we talk all the time about taking care of our descendants for seven generations.”

4 <https://www.ourcommons.ca/DocumentViewer/en/44-1/ENVI/meeting-7/evidence> [REDACTED]

5 NWMO = Nuclear Waste Management Organization, a consortium of Canadian nuclear industries

Asked by an MP member of the ENVI committee if he saw “any way of storing nuclear waste safely, whether that’s in a deep repository or on surface sites,” ██████████ answered:

“I’ve answered that same question to the NWMO. Stop making it, and then we’ll talk about how we can store it.”

Immediately pressed, *again*, by the same MP with the same question, ██████████ impressively hung onto his temper and answered,

“I’m saying you stop making it, and we’ll talk about how we can store it.”

On February 15th, ██████████ spoke with authority from three places, as: ██████████ ██████████ and, on behalf of ██████████⁶

It is instructive to read all of his comments in the evidence record of the ENVI Standing Committee. ██████████ explains some of the differences between Indigenous governance and the Canadian system of government, and how a contemporary decolonizing traditional framework is being used for decision-making.⁷ ██████████ also delves into the importance of taking a regional approach to assessment of environmental and community impacts. This topic is similarly raised by 12 Canadian civil society organizations regarding the extractive industry in the “Ring of Fire”⁸ – and by numerous other Indigenous and Canadian environmental organizations.

In response to a question on how he felt about the consultation processes led by the nuclear industry, ██████████ answered:

“Whatever process you are going through now, whether it be the Canadian Nuclear Safety Commission or the Nuclear Waste Management Organization, they definitely aren’t working in our favour. [They] highlight the opportunity for jobs... and different economic benefits. For communities that are far behind the Canadian standard in terms of infrastructure, housing and all these other sorts of different things—forgotten communities—it’s coercion at this point...

“Canada could start the work on creating an effective and broad consultation policy, co-developed with indigenous communities that would be applied to the need for any consultation...

“Like I’ve said before, it’s about rebuilding indigenous systems of governance that were interrupted by colonialism. That’s how you’ll get to your yes or your no from us. That’s how we can have our full engagement. To us, that is full engagement, fully informed processes and discussions. In the Anishinabe way we may not all agree, but at a point we come to a consensus of yes or no, all together...

6 <https://www.ourcommons.ca/DocumentViewer/en/44-1/ENVI/meeting-5/evidence> (Niganobe)

7 <http://anishinabeknews.ca/2022/02/25/anishinabek-nation-██████████-testifies-on-nuclear-waste-governance/>

8 <https://cela.ca/an-open-letter-on-regional-assessment-in-the-ring-of-fire/>

“Canada has ignored the role of traditional ecological knowledge systems before and has been subject to judicial review. Involving indigenous rights holders during the decision-making processes and not at the end will help rebuild our relationship and avoid costly and lengthy legal challenges. In fact, indigenous communities have expressed dismay of the time frames for the development of nuclear policies, which seem to be moving ahead very quickly even though we are still in the midst of a pandemic. If there is to be authentic and fair engagement, indigenous nations must be able to co-design the process.”

██████████ reviewed the position of the Anishinabek Nation and Iroquois Caucus regarding nuclear waste issue for the ENVI committee members: no abandonment of waste; state-of-the-art containment and packaging; must be monitored and retrievable in a perpetual system of informed guardianship; away from all water bodies; no exports or imports without free, prior and informed consent from all peoples who “lands and waters are being put at risk.” He concluded his initial statement:

“I want to impress upon everyone that it is our inherent responsibility as an Anishinabe to preserve and protect mother earth, not just for us but for all living beings who live upon it. We hold the Government of Canada to account to respect the rights of first nations, including all 133 in Ontario. No decisions concerning nuclear waste storage, the development of small modular reactors, transportation or decommissioning can be made absent of our free, prior and informed consent, as set out in article 29.2 of UNDRIP. The government must consider all indigenous nations as per our section 35 rights outlined in the charter. Transparency and full disclosure are essential but not a substitute for full engagement.”

The Government of Canada must Uphold the Honour of the Crown

The evidence offered by both ██████████ in their initial presentations and in response to follow-up questions, illuminates fundamental deficits in the Honour of the Crown. Their comments also shed a bright light on anti-Indigenous, Eurocentric biases of both industry and, at a minimum, the low standard of operating procedures of the ENVI parliamentary committee in regards to the government’s stated priority of Reconciliation.

If this were a singular experience in regards to the interface between regulators and proponents of the nuclear industry with Indigenous persons, it might be overlooked.

The same evident lack of understanding of cross-cultural protocols and worldview was evident at the CNSC public hearing on Cameco’s application for relicensing of its refinery and incinerator (Ref 2021-H-09) on the north shore of Lake Huron, near the town of Blind River and immediately adjacent to Mississauga (Mississaugi) FN.⁹ The entire video recording for the hearing session is instructive, beginning with the presentation by Mississauga FN, then followed by ██████████ It is riddled with cultural faux pas, evasive responses, obfuscation, and scientific overspeak. A number of the comments made were experienced as demeaning by ██████████ She subsequently prepared her own short video to clarify some of her key

⁹ This is the community of ██████████ However, here the November 24, 2021 testimony of grassroots traditional elder ██████████ comes to mind. A video recording of her testimony to the CNSC is found here: http://download.isiglobal.ca/cnsc/2021-11-23_24_25/2021-11-24-4H.mp4

concerns.¹⁰ Viewing her own recording, one gets a clearer sense of the emotion behind [REDACTED] comment to the ENVI committee (February 15th) that his “community are no strangers to the nuclear industry.”

When speaking at the ENVI committee both Chiefs were interrupted, which is culturally very inappropriate. [REDACTED] specifically mentioned, *three times* in his presentation, that time restrictions imposed by the ENVI committee made it impossible to properly express traditional concepts and his perspectives as a leader:

“Limited time frames to present on these important issues are not in the best spirit of Reconciliation, and the Anishinabek would like to highlight in our conversations that how nuclear fuel is stored, transported, consumed or disposed of must have deep engagement and consultation with all affected indigenous nations.”

It seems the Standing Committee, in fact perhaps all parliamentary structures, need to understand that equity is not the same as equality, and without equity there is no possibility of a respectful relationship. Further, in a relationship where respect is absent, there can be no reciprocal dialogue leading to Reconciliation.

Further to Ottawa Riverkeepers’ Comment re: “Relying on Old Policies”

On February 15th, ENVI committee member MP Leah Taylor Roy commented that the CNSC submitted a *Compendium of Indigenous Consultation and Engagement Practices*.¹¹ (*Compendium*) to the Standing Committee. In *Sec 2 Context: Background*, the *Compendium* states that CNSC applies “the guiding principles outlined in the document *Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult* (March 2011)” (2011 Guidelines) as a foundation for its project-specific consultation processes. This same statement is repeated on the website of the CNSC in a February 2022 update. Therefore it is clearly the current position of the regulatory agency, which is supposed to be under the administrative oversight of your Ministry, Natural Resources Canada.¹² Here is footnoted the digital version of that 2011 document for reference.¹³ MP Roy asked [REDACTED] to comment on whether that framework is appropriate. He responded that it all depends on:

“The basis on which you come to us for consultation and who you send to us for consultation. My community was part of this NWMO process at one point and one of the panellists who the NWMO had sent on their behalf remarked to our community that, ‘We could explain it to you, but you wouldn't understand it anyway. We'll give you all the information and you wouldn't understand it...’ Whom you send on the part of your delegation and your behalf as Canada or your organization... makes a lot of difference.”

10 Nokomis Joan offers this oral history of some of these issues: <https://www.youtube.com/watch?v=5Q8y7HlqBKI>

11 <http://nuclearsafety.gc.ca/eng/resources/aboriginal-consultation/compendium-of-indigenous-consultation.cfm>

12 <https://nuclearsafety.gc.ca/eng/acts-and-regulations/regulatory-documents/published/html/regdoc3-2-2-v1-2/index.cfm>

13 https://www.rcaanc-cirnac.gc.ca/DAM/DAM-CIRNAC-RCAANC/DAM-CNSLTENGE/STAGING/texte-text/intgui_1100100014665_eng.pdf

Though this account is truly shocking, it is not surprising in that the 2011 Guidelines policy document, *that CNSC is still using*, clearly promotes what Indigenous Rights lawyer Bruce McIvor terms the dots-on-a-map approach to who needs to be engaged in consultation, as well as the check-off-the-boxes / log-book approach to whether consultation has been undertaken properly.¹⁴ This sort of approach is used to avoid meaningful dialogue while appearing to be documenting a valid consultation process. It certainly does nothing to further Reconciliation.

The 2011 Guidelines are deemed a thoroughly inadequate approach to recognition of Indigenous rights in Dr. Bryn Gray's 2016 federal government research and analysis.¹⁵ Gray's report starts off gently, but quickly identifies innumerable shortcomings in that policy and the processes it advocates. He identifies many considerations, and offers advice to Cabinet Ministers and departmental staff mandated to work on both Consultation and Reconciliation files. Dr. Bryn's report merits a careful read by you and your managerial staff, Minister Wilkinson.

In 2018, the current government – headed by the Liberal Party of Canada, of which you are a member, and in which you hold a Cabinet position, Minister Wilkinson – adopted its “*Ten Principles*” document.¹⁶ This outlines the approach your government is striving towards in relationship-building with all Indigenous Peoples, which can include negotiations, consultations, dialogues, and other venues to further one of this government's stated highest priorities: Reconciliation.

The 2018 *Ten Principles* reflect the commitments Canada has made to uphold the Honour of the Crown, through:

- the courts and case law precedents;
- evolution of practice in implementing Section 35 of the Constitution;
- Canada's 2016 signature on the United Nations' *Declaration on the Rights of Indigenous Peoples*;
- passage of *An Act respecting the United Nations Declaration on the Rights of Indigenous People* (UNDRIP Act).

The UNDRIP Act “provides that the Government of Canada must take all measures necessary to ensure that the laws of Canada are consistent with the United Nations' *Declaration on the Rights of Indigenous Peoples*, and must prepare and implement an action plan to achieve the objectives of the Declaration.”¹⁷ It received Royal Assent on June 21, 2021, with this summary statement:

“This enactment provides that the Government of Canada must take all measures necessary to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples, and must prepare and implement an action plan to achieve the objectives of the Declaration.”

¹⁴ McIvor, Bruce. Op.Cit. Pgs. 78-79.

¹⁵ https://publications.gc.ca/collections/collection_2018/aanc-inac/R5-126-2016-eng.pdf

¹⁶ <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

¹⁷ <https://parl.ca/DocumentViewer/en/43-2/bill/C-15/third-reading>

Six years have passed since Canada's international endorsement of UNDRIP and the publication of the Bryn Gray review of the *2011 Guidelines*. More than three years have passed from the adoption of the *Ten Principles* "relationship" policy guidelines. It is now nine months since the UNDRIP Act became law in Canada. And, unfortunately, CNSC is still promoting the outdated and discredited policy approaches set out in the 2011 Guidelines to the ENVI committee and industry proponents as their (CNSC's) best approach for consultation.

Why is NRCan tolerating this, when it has legislative administrative oversight for the CNSC? This is one clear example of NRCan not upholding its responsibility to be an advocate for the public re: nuclear industry matters. We are certain you are hearing of many more such shortfalls and deficits because NRCan cannot possibly advocate for the Indigenous or Canadian public on their distinct and mutual concerns about the industry, while also promoting development of the industry, which is NRCan's primary mandate.

From McIvor's book *Standoff, the Crown*, in this case NRCan, "always holds ultimate responsibility for ensuring that consultation and accommodation is adequate" and if an "administrative tribunal" cannot or does not adequately fulfill the duty to consult and/or accommodate, "the Crown must provide further avenues for consultation prior to approvals – otherwise the decision can be quashed by the courts." CNSC is an administrative tribunal that is advising nuclear industry proponents to use consultation guidelines and approaches that are not in keeping with current government policy. NRCan, the responsible Crown oversight agency for CNSC, is not doing its due diligence to ensure that CNSC fulfills those duties adequately.

A similar deficit exists regarding the Nuclear Waste Management Organization's inadequate approaches to consultation with First Nations, as testified by [REDACTED] and [REDACTED] at the ENVI committee hearings. (A number of other First Nations share this experience, some of which are mentioned in a recent publication by the Council of Canadians.¹⁸) Again, NRCan has "ultimate responsibility" to ensure that NWMO's consultation processes uphold the Honour of the Crown. NRCan has this obligation because it has contracted NWMO to develop a nuclear waste strategy and framework, and otherwise entered into a collegial relationship with the industry-led NWMO in many regards over recent years.

Throughout *Standoff*, McIvor goes some distance to explain what underlies cognitive dissonance on the part of your federal government and its regulatory agencies. In the first 3/4 of his book, McIvor goes painstakingly through facts, background information, decisions, opinions, and interpretations, to describe how Section 35 consultation has been addressed by the courts and implemented, over time, by those acting as the Crown. Then he begins to analyze whether there has been a net gain in Indigenous rights and justice from all this "Duty to Consult" case law.

"Courts have handed Indigenous Peoples numerous significant victories – but then they have also created a blueprint for overriding Indigenous Peoples inherent and constitutional rights."¹⁹

The truth in that statement showcases the fatal flaw underlying your government's off-repeated

18 <https://canadians.org/analysis/radioactive-waste-and-indigenous-consent>

19 McIvor, Bruce. Op.Cit. Pg. 135.

commitment that Reconciliation is your highest political priority, which is expressed clearly in the *Ten Principles* document. Realistically, however, Mclvor's investigational frame is "why Reconciliation fails Indigenous Peoples..."

"Reconciliation continues to fail because it attempts the impossible – the Reconciliation of a right with a lie. The right is the pre-existing interest Indigenous Peoples had and continue to have in their land before and after the colonizers' arrival. This includes the right to benefit from their lands and decide how their lands should be used or not used.

"The lie is that through simply showing up and planting a flag, European nations could acquire an interest in Indigenous land and displace Indigenous laws. Around the world this racist legal principle is recognized as the *Doctrine of Discovery*... [which] was encoded in Canadian law in the 1990's." ²⁰

This past week, while writing this submission, an international campaign mounted by Indigenous community leaders has brought forth a qualified apology from Pope Francis regarding the role of the Roman Catholic Church in the operation of Canada's residential schools for Indigenous children. Some people appreciate this as a first step; others feel it is hollow and retraumatizing. **Among many important topics not addressed by Francis was the large question of rescinding the Papal Bulls that form the *Doctrine of Discovery*.** This *Doctrine* gave European explorers the right to claim dominion over any territory that was not inhabited by Christians, on the grounds that any inhabitants encountered in such lands were considered to have no souls and therefore not be human.

Regardless of the position of Holy Roman Empire, nothing stands in the way of Canada making it legislatively clear, as part of implementation of UNDRIP, that our nation rejects this *Doctrine*. ²¹ That is when real Reconciliation can begin.

Honour & Reconciliation in the Context of Nuclear Industry Governance to Manage Waste and Decommissioning

The following mandate is drawn from the text of CNSC's mission on their website.

The "Commission regulates the use of nuclear energy and materials to protect health, safety, security and the environment; to implement Canada's international commitments on the peaceful use of nuclear energy; and to disseminate objective scientific, technical and regulatory information to the public" including "effects on the environment, on the health and safety of persons..."

Returning briefly to the 'blind eye' that Cameco and the CNSC have turned on the issues of the Mississauga FN community ²², what is apparent is the failure of both those entities to demonstrate Honour of the Crown. This is a serious deficit in fiduciary care because, as Mclvor reminds us in his recap of the *Mikisew Cree* decision, even when Duty to Consult is not triggered, the duty of

20 Mclvor, Bruce. Op.Cit.. Pgs. 168-170.

21 <https://www.cbc.ca/news/canada/montreal/vatican-apology-doctrine-of-discovery-residential-schools-colonization-1.6399836>

22 Cameco - CNSC hearing; Op.Cit.

the Crown to act with Honour towards Indigenous Peoples remains omnipresent.²³

Both Cameco and CNSC failed to reassure the Indigenous presenters – and their community and neighbours – that there is official bona fide concern about the risks/dangers of industry contamination on adjacent human and ecosystem health. Unresponsiveness to the issues of racism and cultural rights violations, raised separately by elected and traditional community leaders, further underscores the failure of these entities to enact the Honour of the Crown.

In this era of supposed “Reconciliation,” the *Ten Principles* document places the onus for action on the governing party in Parliament. The onus *particularly* falls on the Minister of Natural Resources Canada, who is vested with administrative oversight responsibility for all aspects of the nuclear industry including the regulatory agency and its processes on behalf of the Crown.

Historic failure to appropriately consult arises from ongoing colonial decision-making processes in all governmental jurisdictions. It is also evidence of the extent to which our elected governments have handed power over to corporations, expecting them to undertake duties of the Crown on behalf of the government. This is true in “consultations,” but also regarding securing impact and environmental assessments instead of this work being managed directly by public officials. This topic is too large for this submission but had to be noted here.

Indigenous Peoples have much experience with broken or, at a minimum, extraordinarily delayed promises. While frustrated, they expect improvement in how our governments interface with them on matters which impact their lands, watersheds, communities, and inherent rights. In particular, the CNSC (including its predecessor Atomic Energy of Canada Ltd.) and NRCan appear adept at abrogating the Section 35 responsibilities with which they are empowered. Since Canada signed on to the United Nations’ *Declaration on the Rights of Indigenous Peoples*, the “Free, Prior and Informed Consent” (FPIC) expectations have inspired demands for improved governmental diligence at consultation.²⁴

The authors of the federal government’s 2016 *Expert Panel Report on Building Common Ground* identified “eroded confidence” in CNSC’s assessment process due to “apprehension of bias or conflict of interest...”²⁵ Relevant recommendations were made by the expert panel but not implemented, and the problem remains as stated. This is certainly true in New Brunswick in relation to the 25-year relicensing application for LePreau, here in the Ottawa Valley regarding the proposed NSDF at Chalk River, for the grassroots community of Mississauga FN, and in Port Hope with its legacy and ongoing contamination, in the vicinity of all the uranium mine sites surrounded by toxic waste piles, for residents near Darlington, etc.

That expert panel report continues: “the erosion of public trust [leads] some to believe that outcomes are pre-ordained... [that] there is no use in participating in the review process... [and] the consequence of this is a higher likelihood of protests and court challenges, longer timeframes to get to decisions and less certainty that the decision will actually be realized – in

23 Mclvor, Bruce. Op.Cit. Pgs. 123-125.

24 <https://quakerservice.ca/wp-content/uploads/2021/02/Backgrounder-on-self-determination-and-FPIC.pdf>

25 <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html>

short, the absence of social license.” We quote excerpts from a Council of Canadians publication to demonstrate this is not compatible with “peace, order and good government: ²⁶

“The CNSC...reports to Natural Resources Canada (NRCAN), but this ministry actively promotes nuclear power. The public has long raised flags about the shortcomings of the CNSC as a regulator... In fact, the CNSC has never failed to approve a license for the nuclear industry, even when serious concerns have been raised about environmental racism and community health impacts, threats to the water and air quality, or lack of financial transparency... There has been a revolving door between the CNSC and the nuclear industry. The current CEO of the CNSC, Rumina Velshi, previously worked for Ontario Power Generation, ²⁷ one of the largest owners of nuclear power plants. Under Minister Seamus O’Regan, NRCAN aggressively pushed for the development of small modular reactors, ²⁸ or SMRs, as a climate solution – despite their unproven track record. During this process, the CNSC was caught secretly lobbying ²⁹ on behalf of the nuclear industry, calling the government to exempt SMRs from a full environmental impact review to allow faster commercialization of these projects...

“In 2021, NRCAN announced two concurrent processes, one to modernize the federal radioactive waste policy and another to task the NWMO with developing an integrated strategy for low- and medium-level radioactive waste. These parallel processes cast doubt on the legitimacy of the consultation and federal policy development, as the strategy should come after the federal policy has been developed... NWMO, representing the polluters, should never be allowed to write a strategy that they themselves will later implement... The polluters – through the NWMO – call the shots and the CNSC rubber stamps their approval.

“For decades, we have allowed the nuclear industry to generate massive amounts of [waste] with little accountability. As a result, communities are bearing the brunt of the impacts, public trust is eroded, while future generations are left with an intractable problem. The Council of Canadians is of the view that “we urgently need an independent, arm’s length oversight body free to regulate radioactive waste management without industry influence.”

Recommendations

1. Acknowledging the superb work done by Nuclear Waste Watch civil society partners:

Implement as is their Alternate Policy instead of your draft document.

2. Cultural, legal, historical, and other education is needed to address systemic and institutional bias and racism against Indigenous Peoples, which undermines their rights within federal institutions, departments, parliamentary bodies, and regulatory agencies. Our chapter calls for you to compulsorily and immediately implement the Truth and Reconciliation Commission’s oft-repeated Call to Action ³⁰ re: institutional cultural competency education, as follows:

²⁶ <https://canadians.org/analysis/dont-let-nuclear-industry-decide-how-manage-radioactive-waste>

²⁷ <https://nuclearsafety.gc.ca/eng/about-us/organization/president.cfm>

²⁸ <http://nrcan.gc.ca/keynote-address-minister-seamus-oregan/22882>

²⁹ <https://www.theglobeandmail.com/business/article-federal-nuclear-regulator-urges-liberals-to-exempt-smaller-reactors/>

“Provide valid, Indigenous-led, rights-centred, and Reconciliation-oriented education for management and staff of Natural Resources Canada, the Canadian Nuclear Safety Commission, and the Nuclear Waste Management Organization and all other nuclear industry federal contractees, on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

3. The nuclear industry has extraordinary capacity to produce, as well as to generate terrible toxins that endure in perpetuity, threatening ecosystems and human communities. For Indigenous Peoples, meaningful engagement includes all relevant consultation duties, protocols and responsibilities as well as upholding the Honour of the Crown at all times. A failure to implement this recommendation could only be interpreted as a further dishonour of Indigenous Peoples by the Crown. In the eyes of many, such a failure would nullify any authority from the existing regulatory and legislative bodies.

Establish an independent agency, arms-length from government and industry, to oversee radioactive waste management and decommissioning, as per the recommendation from NWW’s Alternate Policy document which is submitted to respond to the call for comments on your Draft Policy. This agency will be able to start anew with relationship-building with Indigenous (and Canadian settler) communities that hitherto have felt alienated or oppressed by the CNSC and NRCan’s evident conflict of interest.

4. Reconciliation starts at your doorstep, Minister Wilkinson. During the past week, leaders from Indigenous communities across the land have loudly called for Canada to repudiate the racist *Doctrine of Discovery*. This horrible codification of denial, as McIvor points out, is the “handmaiden” to all the brutality that has been wrought upon Indigenous Peoples since first contact with European colonizers: “The first step is acceptance that Canada is fundamentally a racist state... With acceptance comes opportunity.”³¹ Enacting the following recommendation will open a new era of justice and equity in Canada’s resource economy. There is much work to do. It must be faced bravely and with good intention. As so many Indigenous leaders have said, it is urgently time for genuine dialogue, negotiation and collaboration.

The Minister of Natural Resources is hereby requested, on behalf of Canadians of good heart, fair mind and deep conscience, to lobby within the Cabinet and the Legislature for an immediate new measure of UNDRIP implementation, specifically a Bill revoking the authority of the Doctrine of Discovery throughout the state boundaries of the land now known as Canada.

30 https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf; (see for example, Calls to Action 24, 27, 28, 57, 86, 92iii)

31 McIvor, Bruce. Op.Cit. Pgs 169-171. The *Doctrine* was developed as a legal principal in the US in the 1830’s and slipped into Canadian law in the 1990’s, through the *Sparrow* decision.