

CONFRONTING THE WIINDIGO: SAUGEEN OJIBWAY NATION STEWARDSHIP, DECISION-MAKING, AND CONSENT IN THE CONTEXT OF NUCLEAR WASTE MANAGEMENT

J. Keeshig-Martin¹, M. Johnston²

¹Saugeen Ojibway Nation Environment Office, Neyaashiinigming

²Saugeen Ojibway Nation Environment Office, Neyaashiinigming

jk.martin@saugeenojibwaynation.ca, michael.johnston@saugeenojibwaynation.ca

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Abstract

The safe and responsible long-term management of nuclear waste is a defining challenge of our generation. There is also growing national and international consensus that Indigenous peoples must play a central role in shaping acceptable outcomes where their lands and waters are implicated. This is consistent with the ways Indigenous peoples understand their rights and role within their territories and is now reflected in international human rights documents, federal nuclear policy, industry practice and supported by a growing body of constitutional law. At the heart of this is the developing concept of Free, Prior and Informed Consent and how it might apply in the context of nuclear waste management and in relation to Indigenous rights and perspectives.

The experience of the Saugeen Ojibway Nation (SON) is both unique and instructive in understanding the issues and complexities surrounding First Nations involvement in nuclear waste management planning. The Bruce Nuclear complex has operated within the Territory of the Saugeen Ojibway Nation, known as Anishnaabekiing, since the 1960s, and includes low, intermediate and high-level nuclear waste storage facilities. The area has also been identified as a potential site for Canada's two proposed deep geological repository (DGR) facilities for this waste. In 2013, the SON and Ontario Power Generation (OPG) entered into an agreement to address the legacy of nuclear waste collaboratively, and to proceed with the DGR for low and intermediate-level waste (DGR Project) only if the project had the support of the SON Communities. More recently, in 2016, the Nuclear Waste Management Organization entered into a similar agreement with the SON that it would not select a site for the deep geological repository for Canada's used nuclear fuel in the SON's Territory without the consent of the SON Communities.

The paper will discuss, from the perspective of the SON, the opportunities and challenges that arise when Indigenous communities come to play a central role in the key decisions that shape nuclear waste management planning. We will argue, based on this example, that 1) the central involvement of Indigenous peoples in long-term nuclear waste management planning is required from a legal and political perspective; and 2) this central involvement represents a full and necessary expression of inherent stewardship rights. Full recognition and respect of Indigenous and Treaty Rights from nuclear industry partners, particularly the recognition of consent over use of our Territory, provides social and political legitimacy and maintains the Honour of the Crown. In the Canadian context, the

emergence of a new dynamic of shared decision-making and stewardship obligations between industry, government and Indigenous peoples has the potential to redefine our understanding of the treaty relationship and forcefully advance the project of reconciliation.

1. Introduction

Since time immemorial, Oral Traditionⁱ has been the way in which we as Anishnaabekⁱⁱ people have learned about the world and how to behave in it. It is the way in which we pass on our teachings from one generation to the next; it is a way to connect us to the stories and teachings of our Ancestors. Oral Tradition and practice evokes a deep connection between people within a community and with the land, water, air and animals. Our stories contain messages, historical occurrences, findings, observations, and instruction that can be best understood by our Elders, language speakers, and those who put Anishnaabek values into practice. Our stories offer teachings and lessons that apply to situations we are confronted with in the present.

1.1 The Spirit of the Wiindigo

An historical account of a dark event in the 1840s tells of a remote Indigenous camp, confronted in the depth of winter by a community member that had been possessed by the spirit of the Wiindigo. The Wiindigo is a violent Being in Anishnaabek legend that unavoidably causes conflict and struggle, and thus represents dangerous, consuming and potentially destructive forces. The community tried to cope with the unstable individual, but over weeks they were increasingly threatened by his violence and unpredictability. Finally, with no other way to secure their safety, the community regretfully euthanized the afflicted person. In the aftermath, the community came together to reconcile with the victim's family and heal, as much as possible, the hurt that had been experienced by all. It is a heart-wrenching and gruesome story.ⁱⁱⁱ

Within the community's response to the Wiindigo, however, are teachings about patience, compassion, community cooperation, and conflict management. The legends and histories do not prescribe a fixed solution for the problems associated with the Wiindigo, but rather provide guidance to the Anishnaabek people for making difficult decisions. In this sense, the Wiindigo is an apt metaphor for the issues surrounding the long-term management of nuclear waste. Nuclear waste is one of the most dangerous substances in the world. If neglected, nuclear waste poses an even greater threat to the land, the water and the animals and to our people.

1.2 We Are the Stewards of our Territory

As Anishnaabek, we are of the land, waters, and air. We would not exist without these elements and thus we have a role and responsibility in caring and preserving them for future generations. Being a Steward is inherent in being Anishnaabek. Within our language, there is no separation between concepts of land occupancy and responsibility to the Territory. We are the younger generation of the Animals; they are our older siblings. Animals know more about existing and thriving on Mother Earth than we do and so we learn from them and pay our respects to them. We see the universe and all that is contained within Mother Earth as alive with moving parts that constantly work to maintain balance. We were all born vulnerable to one another's way of life in this universe. The choices we make as human beings have the ability to maintain balance or to throw things into chaos. As Anishnaabek we are

concerned about what chaos could mean for our people and for all life on Mother Earth and we must consider change very thoughtfully through discussion, contemplation and continuous reflection.

Our role as Stewards requires that we act as agents in our own lives and in the community. Dr. Deborah McGregor of the Anishnaabek nation states,

All beings have a responsibility to fulfill, and recognizing this contributes to a holistic understanding of justice. Our interference with other beings' ability to fulfill their responsibilities is an example of great environmental injustice, an injustice to Creation".^{iv}

At the collective level, our Nation must determine the future of our Community and our Territory. We have principles and practices in collective decision-making that include seeking the perspectives of our Ancestors and those not yet born into this world. Our Nation has responsibilities within our Territory that have not been delegated to anyone else. Although others may have attempted to diminish our role, we maintain that we will always have a responsibility and obligation to Mother Earth and all Creation. Taking away our ability to express those responsibilities in the manner in which has been set for us is a grave and dire injustice.

Today, the people of our Nation use and occupy our Territory as our Ancestors did, in a variety of ways and for many purposes including hunting, fishing and gathering for sustenance, healing, cultural and trade purposes. Our Territory is the source of our identity as Anishnaabek, and the base for our cultural activities and spiritual ceremonies. Our Territory also continues to provide for our economic survival. It is the base for many current and future economic opportunities including a growing tourism economy and a commercial fishery based on our proven and exclusive Indigenous and Treaty Right. Our people and our ancestors have been fishing in these waters for sustenance and as the basis of trade and commerce since time immemorial, and we continue to do so today. After much struggle, this fact has been recognized by the courts and by the Crown through the R v. Jones and Nadjiwon decision.^v

We have consistently asserted jurisdiction over our Territory, often with lack of recognition from governments and industry. The notion of control includes commonly understood privileges of land ownership, such as the right to exclude others and to reserve the benefits of the land for use. We have a relationship with the land distinctly different from that of a fee simple property owner. We have understood that in a visceral way keeping the land and waters healthy benefits our health and quality of life. If the land is exploited and not cared for, it can no longer provide sustenance and consequently, all people will suffer.

Anishnaabek have a deep respect for the natural world. It is seen as alive, energetic, vibrant and filled with natural beings and forces. The environment is seen as an interdependent system of living beings in which humans play only a small part. This system of "reciprocal relations, defines responsibilities and ways of relating between humans and the ecosystem."^{vi} As a result, Indigenous people in Canada have a respectful relationship with the natural world that is as much philosophy as it is subsistence knowledge. In her paper, *Traditional Ecological Knowledge and Environmental Futures*, Winona LaDuke states, "By example, the nature of northern indigenous economies has been a diversified mix of hunting, harvesting, and gardening, all utilizing a balance of human intervention or care, in accordance with these religious and cultural systems' reliance upon the wealth and generosity of nature".^{vii}

An Anishnaabek Tradition is to hold ceremony before taking resources from the land and water as an expression of permission and gratitude. The land itself is often consulted by the holders of Traditional Knowledge to determine if the Land agrees with the use that is to be made of it. Anishnaabek Elder, Eddie Benton-Benai instructs, “Even today when Indian people come to a river that they must cross they offer Tobacco and ask the Great Mystery that they might be shown a place where they could cross safely”.^{viii} The salient feature in this understanding is that the natural world, inclusive of all its actors, is seen as having an agency that is unique, self-aware, and self-directed. As Anishnaabek, this way of connecting with the land is a defining characteristic of the distinct cultures and way of life. The duty to act as a Steward is a legal obligation.

An important concept in our expression of stewardship and our responsibility to our Territory is to consider seven generations or more ahead of time in the decisions we make today. For us, time is not static. When we make decisions we must consider the consequences of those decisions and how they may impact our children and those not yet born. This can also be done in ceremony, through deep and contemplative thought and in dialogue with other community members. Thinking generations ahead is a critical area to think about as we begin to learn and contemplate the nuclear waste issue in our Territory.

1.3 The Challenge of Nuclear Waste

The safe and responsible long-term management of nuclear waste is a defining challenge of our generation worldwide. The development of a solution that is technically and socially acceptable is no simple task. The Honourable Elizabeth Dowdeswell, founding President of Canada’s Nuclear Waste Management Organization (NWMO), characterizes nuclear waste management as “an unprecedented test of society’s ability and willingness to protect people and respect the environment, now and in the future”.^{ix} In a recent Scientific Forum of the International Atomic Energy Agency, the organization’s Director General Yukiya Amano shared with participants that “radioactive waste is an issue for all countries” and that “if a country decides to use nuclear technologies, from day one it must consider how to deal with that waste”.^x

At both the national and international level, the safe and responsible management of radioactive waste is considered an obligation of the present generation to the next generations. The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management articulates as one of its objectives the safe management of waste in “such a way that the needs and aspirations of the present generation are met without compromising the ability of future generations to meet their needs and aspirations”.^{xi} The NWMO describes the present generation’s responsibility for long-term management as an “ethical obligation”.^{xii} OPG, in justifying its proposed project for the disposition of radioactive waste, relies in part on “an obligation to future generations to dispose of this waste safely and responsibly where it cannot pose a threat to the public or the environment”.^{xiii}

Irrespective of one’s position on the merits of nuclear energy or the role it should play in meeting future energy demands, there is broad consensus that the safe management of nuclear waste is a challenge that the present generation must face. For us, the people of the SON^{xiv}—who in recent years have been faced with the possibility of two nuclear waste management projects—this reality is felt particularly acutely. Drawing on our experiences, this paper discusses the decisions surrounding the nuclear waste issue as a defining moment in the narrative of humankind, and explores the growing recognition of the role Indigenous peoples hold in making those decisions. It argues that

our involvement should be understood as a full expression of our inherent stewardship rights and that, as such, our participation in decision-making can only be understood through reference to Indigenous legal and cultural contexts. Finally, this paper offers initial insights gained by our Communities on the opportunities and barriers that come into play as we begin to make decisions on nuclear waste management in our Territory.

2. Recognition of Our Rights and Our Role in Decision-Making

Stewardship over our Territory is our inherent right and we have the right to Free, Prior and Informed Consent on projects that may impact us. Our rights have not always been recognized, particularly throughout the era of colonization on Turtle Island^{xv}. The nuclear industry has been operating in our Territory to the exclusion of our Nation for over 50 years. It is only in recent years that our rights have started to be recognized by the nuclear industry and Canadian governments and states. The mechanisms that have been developed that indicate recognition are presented below beginning with the nuclear industry.

2.1 The Nuclear Industry in our Territory

Within our Territory, Anishnaabekiing, sits the Bruce nuclear site, which houses the Bruce Nuclear Generating Stations, the Western Waste Management Facility for Low and Intermediate Level Nuclear Waste and the Bruce Dry Storage Facility for High-Level Nuclear Waste. The Bruce site has hosted nuclear power generation and nuclear waste storage activities since the construction of the Douglas Point reactor in the early 1960s. In more recent years, it has been identified as the proposed location for OPG's proposed DGR Project for low and intermediate level radioactive waste. In addition, a number of municipalities adjacent to the Bruce nuclear site have entered into the NWMO's Adaptive Phased Management process to identify a location for a Deep Geologic Repository for Canada's used nuclear fuel waste, with some moving to more advanced stages in the process.

2.2 Recognition Within the Nuclear Industry

In Canada, efforts to begin addressing nuclear waste issues have been accompanied by an understanding that Indigenous peoples must play a central role in shaping acceptable solutions and outcomes. In 1989, the Seaborn Panel began its review of the disposal concept for used nuclear fuel management proposed by Atomic Energy of Canada Limited. It represented the first time Canada engaged in a focused, public debate on the issue of nuclear waste management. The Panel took nearly ten years to conduct its review, visiting communities across the country and seeking broad public input. In 1998, the Panel released its report and held as a central concept the recognition of Indigenous peoples as being among those who stand to be most acutely impacted by the management of nuclear fuel wastes. This is because of their unique relationship with the natural environment, including their reliance on the land for sustenance and their deep beliefs about humankind's relationship with and responsibility for the natural environment.^{xvi} The Panel wrote that the "active involvement, consent and co-operation" of Indigenous peoples would be essential throughout all phases of nuclear waste management, from acceptance of a concept through to its implementation.^{xvii} Noting that the involvement of Indigenous people to date had been inadequate, the Panel recommended that a process for the participation of Indigenous peoples in future management efforts be established:

An Aboriginal participation process would enable them to participate fully in building and determining the acceptability of a concept. Such a process would allow them to thoroughly understand and assess the waste management problem; to help develop options and the ethical and social assessment framework in Phase II; and to participate in all relevant steps and decisions thereafter. Aboriginal people should design and execute the process so that it will be appropriate to their value systems and decision-making processes.^{xviii}

When OPG proposed to locate a deep geological repository at the Bruce site, we, the Saugeen Ojibway Nation, took the position from the outset that such a project should not proceed without the agreement and support of our Communities. Through regulatory proceedings, discussions and other means, we described the significant impact that the project stands to have on the cultural and spiritual identity of our Nation, our connection to the land and waters, our perception of the plants and animals, and our commercial fishery and tourism-based economies, the means through which we have come to rely on our Territory historically and in present day.

In August 2013, we secured a historic commitment from OPG that they would not proceed with the construction of the DGR Project until the SON Communities were supportive and further, that they would address the historical and ongoing impacts of nuclear power generation on our Territory and our Communities.^{xix} That commitment has set in motion a community-driven process of learning, discussion, and informed decision-making.

The NWMO has also recognized the special relationship that Indigenous peoples share with the natural environment and the unique stewardship responsibilities and knowledge that stem from that relationship.^{xx} In its recommendation to the federal government in 2005 on a preferred approach to used nuclear fuel management, the organization wrote that the communities that would be most impacted would need to be engaged and “participate in decision-making,” and that “a special responsibility” was owed. Further, “special attention” would need to be paid to potentially impacted Indigenous peoples.^{xxi} In a document outlining its siting process, the NWMO wrote that the process would recognize the rights, treaties and land claims of Indigenous peoples, that the organization would encourage the involvement of potentially impacted Indigenous communities and governments as early as possible in conversations about the suitability of a site, and that it would look to Indigenous peoples “as practitioners of Traditional Knowledge to be active participants in the site selection process”.^{xxii} Most recently, the NWMO applied these principles in the most direct way by making a commitment to our Peoples that it would not select a site for the deep geological repository for Canada’s used nuclear fuel in our Territory without the consent of our Communities.

2.3 Recognition in Canadian Law and Policy

The trend in nuclear policy towards the meaningful involvement of Indigenous peoples reflects broader growing national and international consensus that Indigenous peoples must play a central role in decisions where their lands and waters are implicated. In Canada, s. 35 of the *Constitution Act, 1982* recognizes and affirms the existing Indigenous and Treaty Rights of the Indigenous peoples of Canada. An ever-growing body of constitutional case law makes unequivocal the principle that Indigenous peoples must be consulted in good faith where the Crown contemplates actions or decisions that might adversely impact or infringe upon potential or established Indigenous or Treaty Rights,^{xxiii} and that “some cases may even require the full consent of an aboriginal nation”.^{xxiv}

As previously stated, we have been the stewards of our Territories since time immemorial, and intend to remain so. Section 35(1) of Canada's *Constitution Act, 1982* recognizes and affirms our existing rights, granting constitutional protection to existing rights, including the observance of our practices, customs and traditions. Stewardship is one such custom. Although it is a broad right that encompasses more than the right to observe individual practices like hunting or fishing, as an existing practice, necessary to survival, this ancient obligation of stewardship must be considered a constitutionally protected right.

2.4 The United Nations Declaration on the Rights of Indigenous Peoples

At the international level, the 2007 adoption of the United Nations Declaration of the Rights of Indigenous People (or the "Declaration") represented an historic recognition of the inherent rights of Indigenous peoples, including the rights to participate in decision-making in matters affecting their rights and Territories. As the first internationally accepted document that recognizes the inherent rights of Indigenous people, the Declaration is a transformative document for Indigenous people. The Declaration began with the creation of the United Nations Working Group on Indigenous Populations in 1982, coincidentally the same year that Canada enacted the *Constitution Act, 1982*. Twenty-five years of study, deliberation and negotiation at the United Nations by international legal experts, representatives from Indigenous communities, and advocates of human rights culminated in September 2007, with the United Nations General Assembly's adoption of the Declaration.^{xxv} Louise Arbour - former Justice of the Supreme Court of Canada and at the time the United Nations High Commissioner of Human Rights - called it "the most comprehensive statement to date on Indigenous peoples' rights".^{xxvi} While Canada initially rejected the Declaration in 2007, after careful consideration, the Government of Canada endorsed the document in 2010. In November 2015, the newly elected federal government announced its intention to implement the Declaration, and officially reaffirmed that commitment at the United Nations in May 2016.

The Declaration details a number of relevant manifestations of our inherent rights, including our right to maintain and strengthen our distinctive spiritual relationship with traditionally owned or occupied lands, territories and waters, and to conserve and protect the environment and the productive capacity of our lands or territories and resources.^{xxvii} The document also explicitly recognizes the duty of the state to secure the Free, Prior and Informed Consent (FPIC) of our Nation when contemplating actions that could impact our interests. These actions could include population relocations, the taking of "cultural, intellectual, religious and spiritual property," or the damage, taking, occupation, confiscation or use of our lands, territories and resources. It is important to receive our consent before "adopting and implementing legislative or administrative measures," and "prior to approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."^{xxviii} Article 29 of the document expressly addresses the disposal of hazardous materials:

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.^{xxix}

Increasingly, the concept of consent is referred to in claims to Indigenous rights. It is, however, a concept that requires continuous elaboration as it has not yet been well-defined in law. Internationally, there have been very few instances where Indigenous people have been given consent over matters affecting their interests. Here in Canada, the agreements reached between our

Nation and the nuclear industry has established historic precedents. The right of Indigenous people to consent to projects in their territories has never before been recognized with such strong commitment and in an area of such resounding significance as that which OPG and the NWMO have made to us.

3. Implementing Shared Decision-Making: Issues and Challenges

3.1 Coming to an Understanding of Consent

3.1.1 A Basic Understanding of Free, Prior and Informed Consent

FPIC is becoming a central concept in Western law and its strongest expression is currently held within the United Nations Declaration. We recognize that the principles of FPIC are broad, allowing for varied implementations, but the modern concepts are simple, regardless of cultural milieu.

First, we must be **free** to consider actions or proposals that affect our interests without coercion, intimidation, manipulation, or undue influence. Freedom to choose is a fundamental idea in Canada's legal system and is routinely expected in any negotiation. There can be varying perspectives on what agreements have been made without coercion, however, particularly where economic benefit is involved.

Second, our input must be solicited **prior** to decisions being made that concern our interests. The consultation must also allow enough time for us to be meaningfully heard and for accommodations to be made based on our position.

Third, we must be **informed** by being provided with complete, honest, and relevant information about the nature and impact of decisions that could affect our interests. The information must be provided in a form that is understandable and transparent. It is not our responsibility to translate, seek out or pay for the information.

Lastly, and most significantly, we must be able to decide, and have our decisions respected through **consent**, or not, without fear of reprisal.

3.1.2 Understanding Free, Prior and Informed Consent through the Anishnaabek Structure

As Anishnaabek we have always had our own decision-making processes that are rooted in our values of transparency, openness and respect. In this section we offer some details of our practice of decision-making.

In this structure, people are inherently free to make personal decisions. Community members are provided with the collective law and governing principles of the Nation through daily life interactions with family and community. Family and community bear the responsibility of transferring knowledge to children, youth and adults through various means including Oral Tradition, land based activities, mentorship, reflection, and rites of passage. Community members are continually reminded of the duty to reflect on the knowledge gained from family, community and the surrounding environment. People are free from coercion and are encouraged to respect the personal decisions of others if they are not harming the collective life of the community and Nation. When necessary, the community acts in concert to coerce good behaviour; it is rarely punitive.

Individuals are encouraged and taught to seek permission before acting in ways that potentially conflict with another person or group of people. Permission for hunting, fishing or harvesting, or permission to create a camp in another's Territory, are examples of where prior engagement is the norm. Inherent freedom is thus limited by the social protocols that require people to seek approval before acting. Individuals are consistently reminded to think and act in a way that is in the best interest of the collective.

The standard model of intra or inter Anishnaabek community decision-making is consensus. Conditions are added to the decision based on concerns brought forward and in order to move forward with an approach. Every party is to have a sufficient amount of time to present their thoughts, opinions, concerns and ideas. In circles where leaders, clan or family representatives come together, they are expected to bring forward the interests and concerns of their clan or family members. Honesty in the discussion circle is a moral imperative. There is no timeframe to make decisions; a final decision could take a great amount of time to reach and may take multiple cycles of information sharing and discussion between decision-making parties and the wider populations, groups, clans, families. The depth of discussions results in communities being fully informed of the issue, and a decision by consensus that is accepted by everyone.

3.2 Understanding the Legacy of Colonization

British and French colonization of Turtle Island began hundreds of years ago and encroachment on our Territory began approximately three hundred years ago. In the 1700s and 1800s, treaties were favoured over violence and war as a mechanism to support coexistence between settlers and Indigenous peoples.

The European colonists came with an experienced regime of power and control having done this in other regions of the world prior to colonizing Turtle Island. The various colonies then combined in the latter half of the 1800s to form the Federation of Canada. The newly formed federal government moved quickly to develop policies that were meant to further exert their envisioned power and control over Indigenous peoples, including ours, particularly by forcing our acceptance of the *Indian Act*. The *Indian Act* then authorized the displacement of Indigenous people from their Territory onto smaller land reserves, or the complete expropriation of their Territories, leaving them with no land base. It also imposed a Western form of governance onto the communities that conflicted with the traditional political structures already in place. Historically and presently, communities that fail to comply with unilateral policies imposed by Canadian law risk being cut off from economic supports that have been promised in treaty and other agreements held with the Crown. The project of colonizing Turtle Island is ongoing and its impacts are tremendous.

The creation of the Indian Residential School System by Canada and the Christian churches also caused immense damage to the cultures and practices of Indigenous peoples. Language speaking, Oral Tradition, and observance of reciprocal land practice have deteriorated greatly due to the forced assimilation of our people to the Western system. In particular, Indigenous peoples are driven to participate in the capitalist system that to many represents the uncontrolled influence of wealth, an exaggerated value placed on self-reliance, and the idealization of competition. Language speaking, Oral Tradition and reciprocal land practice are necessary for the transference of traditional knowledge as well as to a continued connection to our Ancestors, heritage, and community. These cultural disconnections consequently influence disconnection from identity, family, community and land. The breakdown within the self, the family unit, community, Nation and the Territory has a significant negative impact on a process whereby collective decisions must be made.

Additionally, Indigenous exclusion from decisions related to their Peoples and Territories place significant stress on relations with the Federal and Provincial governments. It has only been in more recent years that we have seen a surge in public awareness of the systemic challenges faced by Indigenous peoples, and a growing sentiment that something must be done about it. There remains however a general lack of understanding of the scope of oppression and exclusion that Indigenous people labour under, as well as a great amount of distrust between Indigenous people and the Crown. These gaps in perception are detrimental to all relationships Indigenous peoples have with governments and industries within their Territories.

New processes between the Crown and Indigenous communities must be conscious of these realities. As our Nation's decision-making authority is further recognized, those elements of culture and traditional practice that have been harmed will need be strengthened and restored. This may take some time, but it is imperative that cultural restoration be given the time and resources to succeed. In some instances, as with our process underway with OPG, past harms may need to be resolved or addressed before new relationships can be formed. As well, time must be given to build the resources and knowledge needed to grapple with sometimes complex and highly technical issues around important decisions. Conversely, any new decision-making or consultation processes must be sensitive to and conscious of the worldview and context of our people.

3.3 Embracing Anishnaabek Principles of Stewardship

Despite the many hardships our people have faced in the past and continue to face in the present, collectively we celebrate our existence and survival, and remind ourselves to be thankful for this life. We have suffered a great many losses and many of our people have very different lifestyles than that of our Ancestors, yet our core values as Nations and Communities remain. Our values, teachings and our inherent resilience, passed onto us from our Ancestors, have given us what we need as we strive toward *mino bimaadziwin*: living in a good way with all Creation.

We are a resilient people and to this day we continue to assert and practice our role as Stewards in our Territory. Undoubtedly our connection to our Territory has been impacted in ways that make it difficult for us to assert our role as we once did. There is much work to be done in the area of rebuilding, community development, and cultural revitalization and continuation. In these times we look to our stories, like that of the Wiindigo, to guide us through situations that are difficult in order to ensure a better future for our younger generation and for those generations yet to come.

4. Concluding Thoughts

As part of our ongoing efforts to protect the Territory and protect our people's right to use and rely on the Territory as they always have, we have entered into protection agreements with the Crown. In 2010, our Nation and the then Ministry of Energy and Infrastructure entered into an agreement that created mechanisms to protect our rights and interests from impacts caused by new energy projects. The recognition of our right to consent by OPG and the NWMO represents a continuation of our efforts towards resurgence as decision-makers and marks the beginning of a wave of decisions that our Communities expect to be a part of.

Within the context of nuclear waste management projects in our Territory, recognition and respect for our role as Stewards and decision-makers in Anishnaabekiiing is an important step for the Canadian governments and industry to begin the process of reconciliation. For a project of

reconciliation to be successful, past harms must be addressed in conjunction with the full recognition of our right to consent.

Acts of oppression and injustice must also be addressed as part of a reconciliation process. In their landmark report, the Truth and Reconciliation Commission wrote:

There is an emerging and compelling desire to put the events of the past behind us so that we can work towards a stronger and healthier future. The truth telling and reconciliation process as part of an overall holistic and comprehensive response to the Indian Residential School legacy is a sincere indication and acknowledgement of the injustices and harms experienced by Aboriginal people and the need for continued healing. This is a profound commitment to establishing new relationships embedded in mutual recognition and respect that will forge a brighter future. The truth of our common experiences will help set our spirits free and pave the way to reconciliation.^{xxx}

The work of the Truth and Reconciliation Commission is one example of a process aimed at reconciling the serious past harm caused by the Government of Canada through the policy and implementation of the Indian Residential School System. The Commission recognizes the importance of truth telling in a reconciliation process. In this case, it means hearing from all those impacted (or their representatives) and revealing the stories of the children that were taken to residential schools and never returned home. Telling the truth means being aware of what happened and listening to what is needed for healing.

We, as Indigenous peoples and Canadians, can learn from this process as we begin to embark on more reconciliatory paths. Of great significance to beginning a path of reconciliation between Indigenous peoples, Canadians and industry is a fulsome understanding of Indigenous worldviews, history (particularly concerning land conflicts), the treaties, and Crown-developed unilateral government policies and their impacts on Indigenous peoples. Along with our shared history, everyone must also be aware of the social, political and economic issues of Indigenous peoples today and, perhaps most importantly, our aspirations for future generations.

A central element of reconciliation will be new models of shared decision-making. This is a reality which has been recognized by the international community with the UNDRIP, by Canada's courts, and by the nuclear industry in Ontario with the recognition of our right to give consent. In spite of this recognition, clearly defined models for cooperative decision-making, that include both Indigenous and non-Indigenous voices in equal and appropriate measure are still rare.

FPIC is a mechanism that may support what comes next within reconciliation processes between Indigenous Nations and Canada. We know it is up to us to express our decision-making role in a way that is meaningful to us. The process in which we are engaged with the nuclear industry on the management of nuclear waste in the Territory is exemplary of a better amalgamation of our legal understanding, one which we anticipate will allow us to express our FPIC in a proactive way that reflects our obligation to our Nation and Territory. This, in turn, lends the decision-making process a legitimacy that has rarely been seen in Canada.

Stories of the Wiindigo teach us about the need to confront issues that are difficult, and the nuclear waste issue presents itself to us in this way. Guided by the lessons of the Wiindigo stories, our Nation and Ontario's nuclear industry are leading the way in defining a culturally acceptable definition of

FPIC that also respects the rights and needs of non-Indigenous Canadians. From this communication will come new teaching and insights that will ultimately guide the implementation of FPIC across the country, and perhaps the world.

Endnotes

ⁱ Oral Tradition is the practice of transmitting knowledge orally from one generation to the next.

ⁱⁱ Anishnaabek are Indigenous group of peoples belonging to the Three Fires Confederacy. They are Ojibway, Pottowatomi and Odawa. The Anishnaabek surround the Great Lakes region and span across Turtle Island from the east in territories that are also referred to as the Province of Quebec, to the north and west through Manitoba, Saskatchewan, with one community located in Alberta, and South into the American states of Minnesota and Michigan State.

ⁱⁱⁱ Jarvis Papers Collection # 5 S-125, Volume B. 57, Jarvis Papers, Metro Toronto Reference Library, Collection # S-125, Volume B57.

^{iv} D. McGregor, “Honouring Our Relations: An Anishnabe Perspective on Environmental Justice” in *Speaking for Ourselves: Construction Environmental Justice in Canada*, edited by J. Agyeman et. al. (Vancouver, British Columbia: University of British Columbia Press, 2009), p. 27-41.

^v *R v Jones and Nadjiwon*; [1993] CNLR 182.

^{vi} W. LaDuke, “Traditional Ecological Knowledge and Environmental Futures” in *Colorado Journal of International Environmental Law and Policy*, ed, *Endangered Peoples: Indigenous Rights and the Environment* (Niwot, Colorado: University Press of Colorado, 1994) at p 128.

^{vii} *Ibid* at p 129.

^{viii} E. Benton-Banai, *The Mishomis Book: The Voice of the Ojibway* (Minneapolis, Minnesota: University of Minnesota Press, 1988).

^{ix} Nuclear Waste Management Organization, “Choosing a Way Forward: The Future Management of Canada’s Used Nuclear Fuel – Final Report”, November 2005, pp. 4, 38, 40, 42.

^x N. Jawerth, “Addressing Radioactive Waste: IAEA Scientific Forum Highlights Technologies for Safely Managing Radioactive Waste”, 23 September 2014, online: International Atomic Energy Agency <<https://www.iaea.org/newscenter/news/addressing-radioactive-waste>>.

^{xi} Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, art. 1.

^{xii} Nuclear Waste Management Organization, “Choosing a Way Forward: The Future Management of Canada’s Used Nuclear Fuel – A Summary”, November 2005, p. 2.

^{xiii} Ontario Power Generation, “About the DGR”, online: <<http://www.opg.com/generating-power/nuclear/nuclear-waste-management/Deep-Geologic-Repository/Pages/Deep-Geologic-Repository.aspx>>.

^{xiv} The Saugeen Ojibway Nation currently reside in two areas on the Saukiing Neyaashiing, Turtle Island, also referred to as the Bruce Peninsula/Region (Ontario, Canada). The bodies of water surrounding the peninsula are Odauwah-Gummauh, or Lake Huron, on the west side, and Waussau-Gummauh, or Georgian Bay, on the east side. Our people in Neyaashiinigmiiing, translated as *the place surrounded by water on three sides*, are registered by the Department of Indian Affairs as the Chippewas of Nawash First Nation and live on a peninsula on the east of the Saukiing Neyaashiing and along Waussau-Gummauh. Our people in Saugeen, translated as *the place at the mouth of the river*, are registered by the Department of Indian Affairs as the Chippewas of Saugeen First Nation and live on the south west side of the Saukiing Neyaashiing along Odauwah-Gummauh.

^{xv} Turtle Island is the Indigenous name (translated) for North America.

^{xvi} Seaborn Federal Environmental Assessment Panel Report (1998), ss. 5.3d, 6.1.1.

^{xvii} *Ibid.*

^{xviii} *Ibid.*

^{xix} Letter from T. Mitchell, President of Ontario Power Generation, to Chief Arlene Chehgahno, Chippewas of Nawash Unceded First Nation, and Chief Randall Kahgee, Saugeen First Nation, August 7, 2013.

^{xx} Nuclear Waste Management Organization, “Moving Forward Together: Process for Selecting a Site for Canada’s Deep Geologic Repository for Used Nuclear Fuel”, May 2010, pp. 18, 24, 38.

^{xxi} *Supra* note iv.

^{xxii} *Supra* note xiv.

^{xxiii} *Haida Nation v British Columbia*, 2004 SCC 73.

^{xxiv} *Delgamuukw v British Columbia*, [1997] 3 SCR 1010.

^{xxv} United Nations, UN News Centre, United Nations adopts Declaration on Rights of Indigenous Peoples, 13 September 2007, online:
<<http://www.un.org/apps/news/story.asp?NewsID=23794&Cr=indigenous&Cr1=>>.

^{xxvi} Indigenous and Northern Affairs Canada, “Statement by Minister Carolyn Bennett to celebrate the fifth anniversary of Canada’s endorsement of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)”, (12 November 2015), online:
<<http://news.gc.ca/web/article-en.do?nid=1020539&tp=980>>.

^{xxvii} UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, 2 October 2007, A/RES/61/295.

^{xxviii} *Ibid.*

^{xxix} *Ibid.*

^{xxx} Schedule “N” of the Truth and Reconciliation Settlement Agreement, online:
<http://www.trc.ca/websites/trcinstitution/File/pdfs/SCHEDULE_N_EN.pdf>. Accessed Monday July 5, 2016.