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The Politics of Consultation

Indigenous-Nuclear Relations Regarding Small Modular Reactors

Sage Broomfield

Abstract: Small Modular Nuclear Reactors (SMRs) have been named the future of the Canadian nuclear industry, and Indigenous communities have been identified as an end-user for this technology. However, the nuclear industry has a complicated colonial history that has left indelible effects on Indigenous peoples and their lands. This paper evaluates the consultation processes for SMR implementation in Canada, including those of the first SMR demonstration site proposed for Ontario's Chalk River Laboratories. The argument is made that the consultation efforts performed by the Canadian government ultimately conceal and uphold colonial dynamics of power to dispossess land and undermine Indigenous governance.

Introduction

In March 2019, the nuclear energy company Global First Power submitted a license application for the construction of a Small Modular Reactor (SMR) in Ontario's Chalk River Laboratories.¹ The latest in nuclear energy technology, SMRs are smaller than conventional reactors in output and physical size.² The federal government has identified this new technology as part of Canada's 'low-carbon future' and has identified remote off-grid Indigenous communities as one of three end-user groups.³ It is argued that implementing SMRs in these communities will eliminate their dependency on diesel generators, a costly and cumbersome form of energy production.⁴ Instead of being implemented into these communities directly, the proposed Chalk River SMR project would be located in Southern Ontario on the Algonquins of Ontario land claim, threatening the health, traditional, and commercial land-use practices of the Algonquin people as well as other Nations.⁵ These Nations and organizations would

1 Canadian Nuclear Safety Commission, "Global First Power Micro Modular Reactor Project," Government of Canada, last modified May 28, 2020, <http://nuclearsafety.gc.ca/eng/reactors/research-reactors/nuclear-facilities/chalk-river/global-first-micro-modular-reactor-project.cfm>.

2 Canadian Small Modular Reactor Roadmap Steering Committee, "A Call to Action: A Canadian Roadmap for Small Modular Reactors. Ottawa, Ontario, Canada," 2018, <https://smroadmap.ca/>.

3 Government of Canada, "Canada's Small Nuclear Reactor Action Plan," 2020, <https://www.nrcan.gc.ca/our-natural-resources/energy-sources-distribution/nuclear-energy-uranium/canadas-small-nuclear-reactor-action-plan/21183>.

4 Government of Canada, "Canada's Small Nuclear Reactor Action Plan."

5 Algonquins of Ontario, "Oral Presentation Submission from the Algonquins of Ontario," last modified January 25, 2018, http://www.tanakiwin.com/wp-system/uploads/2018/01/CMD18-H2_51-SubmissionfromtheAlgonquinsOfOntario-1.pdf.

experience the negative environmental, social, and cultural effects of the nuclear project without the benefits of energy production. The nuclear industry has historically targeted Indigenous lands and communities to be the sites of extractive energy processes, such as uranium mining.⁶ This Chalk River project SMR will continue a long colonial history of asymmetrical and exploitive effects on Indigenous peoples perpetrated by the nuclear industry.⁷

The Duty to Consult is the legal responsibility of the federal and provincial governments to consult and ‘where appropriate, accommodate’ Indigenous groups affected by Crown activity.⁸ Resource development projects such as the Chalk River SMR trigger the Duty to Consult. This Supreme Court-affirmed instrument is supposed to protect inherent Aboriginal and Treaty rights of Indigenous peoples and is therefore included in the processes of Environmental and Impact Assessments which occur in resource projects.⁹ As a part of the federal government, the Canadian Nuclear Safety Commission (CNSC) is responsible for upholding the Duty to Consult in all of its nuclear projects.¹⁰

This paper will argue that the consultation efforts performed by the Canadian government through the CNSC for the implementation of SMRs pander to what Dene scholar Glen Sean Coulthard has termed the *politics of recognition*. This framework is reinforced by legal and political instruments of recognition, such as the Duty to Consult, which ultimately conceal and uphold colonial dynamics of power to dispossess land and undermine Indigenous governance.

I will first discuss the colonial underpinnings of the Canadian nuclear industry. Using uranium mining as an example, I will establish the existence of an asymmetric and detrimental relationship between the nuclear industry and Indigenous peoples. Next, I will outline the *politics of recognition* and establish the Duty to Consult as an instrument of an oppressive colonial system. I will then evaluate Canadian-Indigenous consultation processes through critical textual analysis of *The Canadian Roadmap for Small Modular Reactors*. The following section will use the Chalk River consultation proceedings as a case study to evaluate SMR consultation in practice. Finally, I will provide an assessment of future research and concluding remarks.

6 Landrie-Parker Coates, “Northern Indigenous Peoples & the Prospects for Nuclear Energy,” Fedoruk Centre, 2016, https://fedorukcentre.ca/documents/resources/coates_landrie-parker2016-nippne.pdf.

7 Coates, “Northern Indigenous Peoples & the Prospects for Nuclear Energy.”

8 Government of Canada, “Government of Canada and the duty to consult,” 2019, <https://www.rcaanc-cirnac.gc.ca/eng/1331832510888/1609421255810>.

9 Library of Parliament, “The Duty to Consult Indigenous Peoples,” 2019, https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201917E.

10 Canadian Nuclear Safety Commission, “Indigenous consultation, engagement, and reconciliation,” 2020, <http://nuclearsafety.gc.ca/eng/resources/aboriginal-consultation/index.cfm#:~:text=The%20duty%20to%20consult%20is,to%20Indigenous%20Consultation%20and%20Engagement>.

Indigenous-Nuclear Relations and Their Colonial Past

Language used by the nuclear industry is often imbued with futuristic fantasies—more akin to utopian science fiction narratives than realistic evaluations of future impacts.¹¹ In order to meaningfully engage with a nuclear future, it is important to also engage with the history of the nuclear industry. The nuclear industry is intricately tied with the colonial-capitalist expansion of Canada. Since the 1930s, the negative impacts of the nuclear industry’s activities like uranium mining have disproportionately impacted Indigenous peoples in Canada.¹² Indigenous communities have seen the negative effects of the nuclear industry without being the benefactors of nuclear energy production.¹³ The history of Indigenous-nuclear relations illuminates patterns of inconsideration of Indigenous communities that underpin current industry developments, including SMR technology.

Many Canadian nuclear projects began operating in the 1930s and 40s, and many of these projects were built on Indigenous territory without consent—the Chalk River Laboratories being one of many examples.¹⁴ Another example is the Port Radium Mine, located on Dene Land in the Northwest Territories, which extracted uranium between 1940 to 1982.¹⁵ Following the mine’s closure in the 1990s, detrimental effects to both health and social patterns for the surrounding Dene communities as well as environmental degradation were recognized.¹⁶ In addition to the Port Radium Mine, the McArthur River and Cigar Lake mines were also highly profitable for the nuclear industry and are located in Northern Saskatchewan on Treaty 8 and 10 territory.¹⁷ The political history of uranium mining illustrates the asymmetry in Indigenous-nuclear relations. Indigenous communities and their lands saw undue harm caused by colonial capitalistic pursuit of extractive energy processes. The inception of Canada’s nuclear energy industry highlights its colonial past and provides important context for current nuclear projects.

Theoretical Framework

Through bureaucratic consultation processes, the federal government is able to check reconciliatory boxes while actively undermining Indigenous governance and Indigenous land claims. The *politics of*

11 Benjamin K. Sovacool and M. V. Ramana, “Back to the Future: Small Modular Reactors, Nuclear Fantasies, and Symbolic Convergence,” *Science, Technology, & Human Values* 40, no.1 (2015): 96–125.

12 Coates, “Northern Indigenous Peoples & the Prospects for Nuclear Energy.”

13 Coates, “Northern Indigenous Peoples & the Prospects for Nuclear Energy.”

14 Lance Haymond and Verna Polson, “Letter from the Kebaowek First Nation and the Algonquin Anishinabeg Nation Tribal Council to the Prime Minister Requesting an Overarching Indigenous Cooperation Agreement with the Algonquin Nation for the Chalk River Nuclear Site Proposed Developments,” 2020, <https://iaac-aeic.gc.ca/050/evaluations/document/135033>.

15 Coates, “Northern Indigenous Peoples & the Prospects for Nuclear Energy.”

16 Coates, “Northern Indigenous Peoples & the Prospects for Nuclear Energy.”

17 Deline First Nation and Indian Affairs and Northern Development Canada, “Canada-Déline Uranium Table Final Report Concerning Health and Environmental Issues Related to the Port Radium Mine,” 2005, <https://assembly.nu.ca/library/Edocs/2005/001195-e.pdf>.

recognition is a framework proposed by Glen Sean Coulthard. In his book, *Red Skin, White Masks*, Coulthard discusses the ways in which Canadian colonialism functions in relation to Indigenous governance by building on Frantz Fanon's famous work *Black Skin, White Masks*.¹⁸ Fanon asserts that in cases where colonial state power does not depend on overt state violence, it will instead entice the oppressed to identify with asymmetric forms of recognition.¹⁹ Building on Fanon's work, Coulthard makes two broad claims, first that the colonial power of the Canadian state has shifted from a system of unconcealed domination to being exercised through mechanisms of accommodation and recognition.²⁰ The second of Coulthard's claims is that despite this new veneer of recognition, the tyrannical nature of Canadian state power remains unchanged.²¹

Previous to the 1970s, the system of Canadian settler-colonialism was supported by uncontrolled and paternalistic policies.²² The *1876 Indian Act* is an example of pre-shift legislation, one that is overt in its oppressive policies.²³ The *Act* gave sweeping regulatory powers over "Indians and Lands reserved for Indians" to the federal government, which included but was not limited by any means to housing, land ownership, and the residential school system.²⁴ Further, the *Indian Act* eroded Indigenous self-determination through mechanisms that banned important ceremonies, as well as cultural and governance practices.²⁵ The *Act* also put in place the Status Indian system, a legal distinction that afforded Status Indians rights not afforded to Metis, Non-Status, Inuit or other Canadians.²⁶ In order to receive rights, First Nations people were coerced into identifying with colonial recognitions of Indigeneity. The *Indian Act* remains in effect today, controlling and regulating Indigenous life and serves as the foundation for Indigenous-Canadian relations.

The 1960s and 1970s saw an increase of Indigenous activism in Canada and North America.²⁷ Coulthard identifies three watershed moments for Indigenous activism in Canada. First, the widespread pushback against the 1969 *Statement of The Government of Canada on Indian Policy* or *White Paper*, which was largely viewed as the completion

18 Glen S. Coulthard, *Red Skin, White Masks: rejecting the colonial politics of recognition* (Minneapolis, MN: University of Minnesota Press, 2014), 221.

19 Coulthard, *Red Skin, White Masks*.

20 Coulthard, *Red Skin, White Masks*.

21 Coulthard, *Red Skin, White Masks*.

22 Coulthard, *Red Skin, White Masks*.

23 Coulthard, *Red Skin, White Masks*.

24 Indigenous and Northern Affairs Canada, "An Act to amend and consolidate the laws respecting Indians," 2010, <https://www.aadnc-aandc.gc.ca/eng/1100100010252/1100100010254>.

25 Sheryl Lightfoot, *Global Indigenous Politics: A Subtle Revolution* (Abingdon-on-Thames: Routledge, 2016), 171.

26 Government of Canada, "What is Indian Status," 2020, <https://www.sac-isc.gc.ca/eng/1100100032463/1572459644986>.

27 Lightfoot, *Global Indigenous Politics*.

of Canada's cultural genocide.²⁸ Second, the Calder case and its partial recognition of Aboriginal rights and title.²⁹ Despite the Nisga peoples loss of the case, the decision paved the way for the government's 1973 *Statement on Claims of Indian and Inuit People: A Federal Native Claims Policy*, which essentially undid the state's refusal to recognize Indigenous claims to land rights where the existence of rights remained open to interpretation.³⁰ Following these landmark moments, policies which emphasized recognition began to appear.

Documents produced after the shift emphasize recognition and accommodation of Indigenous peoples, including Section 35 of the 1982 *Constitutional Act* and the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.³¹ Yet, Coulthard argues that these documents, while written with accommodating language, fail to undo the colonial system of dispossession and assimilation.³² Heralded as a progressive piece of legislation, Section 35 of the Canadian *Constitution* establishes inherent Aboriginal rights and title.³³ This 'constitutional breakthrough' paved the way for the 1995 recognition by the state of 'the inherent right to self-government of Indigenous peoples.'³⁴ However, international Indigenous scholar Sheryl Lightfoot argues that the law does not go far enough to protect collective land ownership, which continues to be negotiated on a case-by-case basis.³⁵ An example of this type of land negotiation can be seen at the Algonquin Land claim on which the Chalk River laboratory is located.³⁶ Canada has also been condemned internationally for its oppositional attitudes towards UNDRIP and coming under fire from Indigenous peoples at home.³⁷ Coulthard's conclusion is that while the forms of colonial power have changed, the intentions of the state to dispossess Indigenous peoples of their land and right to self-determination remain unchanged.³⁸ The tangibility of Indigenous governance begins and ends in these documents, which provide a new vocabulary, but few tools or protocols. Nuclear Impact Assessments emphasize Indigenous consultation however, as I will discuss, are illustrative of Coulthard's conclusion that the dispossession of Indigenous lands remains a focus of government activity.

28 Coulthard, *Red Skin, White Masks*.

29 Coulthard, *Red Skin, White Masks*.

30 Coulthard, *Red Skin, White Masks*.

31 Lightfoot, *Global Indigenous Politics*.

32 Lightfoot, *Global Indigenous Politics*.

33 Government of Canada, "Constitution Acts, 1867 to 1982," 2021, [https://laws-lois.justice.gc.ca/eng/const/page-16.html#:~:text=35.,are%20hereby%20recognized%20and%20affirmed.&text=\(2\)%20In%20this%20Act%2C,and%20M%C3%A9tis%20peoples%20of%20Canada](https://laws-lois.justice.gc.ca/eng/const/page-16.html#:~:text=35.,are%20hereby%20recognized%20and%20affirmed.&text=(2)%20In%20this%20Act%2C,and%20M%C3%A9tis%20peoples%20of%20Canada).

34 Coulthard, *Red Skin, White Masks*.

35 Lightfoot, *Global Indigenous Politics*.

36 Haymond and Polson, "Letter from the Kebaowek First Nation and the Algonquin Anishinabeg Nation Tribal Council."

37 Lightfoot, *Global Indigenous Politics*.

38 Algonquin Anishinabeg Nation Tribal Council and Kebaowek First Nation, "Letter to Prime Minister."

Consultation and the *Politics of Recognition*

Legal instruments such as the Duty to Consult assist in creating an illusion of reconciliatory practices within the nuclear industry while the dispossession and degradation of Indigenous lands continue. Through cosmetic statements of recognition, the inclusive language used during consultation processes dilutes the linguistic, cultural and political identities of Indigenous populations in Canada. In 2018 Natural Resources Canada facilitated a pan-Canadian conversation on the potential of SMRs in the Canadian nuclear industry with stakeholders, including heavy industry and Indigenous communities. *The Roadmap* was the resulting document.³⁹ The following section reviews the Canada-wide consultation process summarized in *The Canadian Roadmap to Small Modular Reactors*.

This consultation process was an initial step in implementing SMRs and did not include a project proposal; the Duty to Consult was not triggered, nor was an Impact Assessment. However, the document makes clear that the Canadian government has a Duty to Consult on nuclear projects and that Indigenous consultation is, therefore, a priority. While the legal obligations differ from the Chalk River proceedings, *The Roadmap* highlights important characteristics and misgivings of nuclear consultation efforts.

The consultation documents produced by the nuclear industry make a point to isolate Indigenous consultation to highlight its importance.⁴⁰ However, the tendency to amalgamate Indigenous and public consultation processes is exemplified in *The Roadmap*.⁴¹ While public engagement is an important process, it cannot be considered on par with Indigenous consultation. The Duty to Consult establishes a unique responsibility of the Canadian government to consult Indigenous populations and their governments. Amalgamating the two processes ignores the inherent right to self-governance outlined in Section 35 of the Constitution. When consolidated, these processes allow for an erasure of the legal identity of Indigenous peoples and a devaluation of First Nations governments and organizations. These documents claim to establish and respect Indigenous inherent rights. However, in practice, they fail to go beyond recognition and continue to uphold the *politics of recognition*.

Communication is a key component of consultation processes, and language barriers, especially in Inuit communities, present a challenge.⁴² Indigenous languages are tied to regions and can vary greatly within

39 Government of Canada, "Canada's Small Modular Reactor Action Plan," 2021, <https://www.nrcan.gc.ca/our-natural-resources/energy-sources-distribution/nuclear-energy-uranium/canadas-small-nuclear-reactor-action-plan/21183>.

40 Canadian Small Modular Reactor Roadmap Steering Committee, "A Call to Action."

41 Canadian Small Modular Reactor Roadmap Steering Committee, "A Call to Action."

42 Canadian Small Modular Reactor Roadmap Steering Committee, "A Call to Action."

one province.⁴³ The federal government has made efforts to provide *The Roadmap* consultation documents in languages such as Ojibwe, Inuktitut, Inuinnaqtun and Cree.⁴⁴ However, translation is only offered for one ‘briefing document,’ which is full of reader-friendly jargon.⁴⁵ Ultimately, the document over-simplifies a complicated subject, Indigenous-Nuclear relations, into short bulleted lists and sweeping statements.⁴⁶ The Indigenous engagement process is ironically summarized by saying: ‘Indigenous [consultation] is not a one-time checklist.’⁴⁷ Ultimately, the document serves as an SMR brochure rather than providing helpful information for Indigenous language speakers. A translation is only as good as the original work; a consultation process that lacks socio-political forethought will not be improved by translation. This is an example of where accommodation, in this instance translation, presents one image of inclusivity but at the same time lacks substance and an intention to respond to Indigenous voices, reflecting the spirit of the process itself.

Terms used in consultation documents such as “Indigenous,” or more specific terms such as “First Nations,” “Metis,” and “Inuit,” have complicated and contextual histories. Without adequate explanation of terms such as “reserve,” their use becomes insidious, working implicitly to reinforce biases. For example, the word “reserve” occurs only once in *The Roadmap*: “The high cost of [electrical] power-on reserve lands is a burden, and retaining capacity on reserve lands is a priority.”⁴⁸ This reductive use of language results in a distortion of historical and systematic conditions. Reserve communities are characterized as a problem by the *Canadian Roadmap*, which allows for SMRs to be marketed as an easy fix to economic or infrastructure weaknesses. The *Roadmap* focuses on the problem of expensive energy on reserve land rather than the colonial structures that make energy bills high for on-reserve communities, including the government’s failure to run power lines to these communities. The use of ‘reserve’ without appropriate context demonstrates how accommodating language can misconstrue both the histories and present-day realities of Indigenous-Canada relations. Without comprehensive consideration of the language used in consultation documents, misuse of complex terms can reinforce biases and create distortion.

Despite citing a study that concludes that the complicated history of Indigenous-nuclear relations together with its ‘many mistakes and failures’ warrants attention, *The Roadmap* does not go far enough in

43 Canadian Small Modular Reactor Roadmap Steering Committee, “A Call to Action.”

44 Canadian Small Modular Reactor Roadmap Steering Committee, “A Call to Action: A Canadian Roadmap for Small Modular Reactors. Summary of Key Findings,” November 2018, <https://smrroadmap.ca/>.

45 Canadian Small Modular Reactor Roadmap Steering Committee, “A Call to Action: Summary.”

46 Canadian Small Modular Reactor Roadmap Steering Committee, “A Call to Action.”

47 Canadian Small Modular Reactor Roadmap Steering Committee, “A Call to Action.”

48 Canadian Small Modular Reactor Roadmap Steering Committee, “A Call to Action.”

cogitating on the consultation process itself.⁴⁹ Identifying colonialism as a variable is only step one, and the nuclear industry fails to go beyond this initial acknowledgement, pointing to a broader pattern of recognition that lacks actionability. Through bureaucratic consultation processes, the federal government is able to check reconciliatory boxes while actively undermining Indigenous governance and Indigenous land claims.

Case Study: Chalk River Consultation Processes

The Chalk River project will be the first demonstrative implementation of SMRs in Canada. Proponents have claimed that SMRs are significantly safer than larger reactor technology. However, many of the safety risks of conventional reactors remain an issue with SMRs, including radiation leaks caused by an influx of air into the reactor core.⁵⁰ Also, the novel designs of SMRs pose new safety and regulatory challenges. For example, their shared modular systems may create safety weaknesses.⁵¹ The containment systems, which protect the radioactive material inside the reactor of SMRs, are less robust than larger reactors which can lead to safety concerns such as increased probability of hydrogen explosions.⁵² In addition, the economies of scale associated with the implementation of the technology mean that larger reactors actually produce cheaper power, and the technology will require large-scale government investment to be successful.⁵³ Despite these issues, the Chalk River Project has gone ahead with government support.

As SMRs have entered the political discussion, the Federal government has shown that they value speedy economic development over careful and considerate environmental assessments. In 2019, the CNSC successfully lobbied the federal government to exempt SMRs from amendments made to the *Impact Assessment Act*,⁵⁴ formerly *The Canadian Environmental Assessment Act*.⁵⁵ The *Impact Assessment Act* is the federal legislation that oversees impact assessments which aim to prevent serious environmental effects.⁵⁶ In pushing to exempt these nuclear reactors from the Act, lobbyists claimed that the effects of SMRs are ‘well known’;

49 Canadian Small Modular Reactor Roadmap Steering Committee, “A Call to Action.”

50 M.V. Ramana, “Submission to the Canadian Nuclear Safety Commission Regarding the Project Description for Global First Power’s Micro Modular Reactor,” 2019, <https://ceaa-acee.gc.ca/050/evaluations/proj/80182/contributions/id/2278>.

51 International Atomic Energy Agency, “New Recommendations on Safety of SMRs from the SMR Regulatory Forum,” 2020, <https://www.iaea.org/newscenter/news/new-recommendations-on-safety-of-smrs-from-the-smr-regulators-forum>.

52 Union of Concerned Scientists, “Safety, Security and Cost Concerns,” 2013, <https://www.ucsusa.org/resources/small-modular-reactors>.

53 Union of Concerned Scientists, “Safety, Security and Cost Concerns.”

54 Government of Canada, “Justice Laws Website Canadian Environmental Assessment Act,” 2012, <https://laws-lois.justice.gc.ca/eng/acts/C-15.21/page-1.html>.

55 Government of Canada, “Justice Laws Website Canadian Environmental Assessment Act.”

56 Government of Canada, “Justice Laws Website: Impact Assessment Act,” last modified April 16, 2021, <https://laws.justice.gc.ca/eng/acts/I-2.75/FullText.html>.

however, many of the proposed SMRs use new, untested designs, and some use chemicals that have caused serious accidents during the prototype phase.⁵⁷ The amendments also failed to include impact assessments of the decommissioning phase of the reactors, which includes cleaning up, dismantling and removing radiation-contaminated facilities, disposing of radioactive wastes and returning sites to public use.⁵⁸ Lobbyists claimed that full-scale assessments would hinder the commercialization of SMR technology.⁵⁹ However, critics have warned that this choice will ‘benefit the nuclear industry, but at the expense of the environment, public health and safety, and the rights of Indigenous communities.’⁶⁰ Importantly, the Chalk River request was submitted under the predecessor to the *Impact Assessment Act*, the *Canadian Environmental Assessment Act*, and as a result, requires a comprehensive environmental assessment.

The Indigenous consultation process for the Chalk River project began with an email sent in July 2019 to 30 affected Indigenous Nations and organizations who were given 60 days to comment on the project proposal and submit comments to the CNSC.⁶¹ The Chalk River SMR project has come under legal and political criticism by Indigenous and legal organizations, as well as academics through consultation channels and other political avenues.⁶² In response to the initial comments made by Indigenous organizations and Nations, the CNSC stated it had fulfilled the Duty to Consult and had intentions for Indigenous groups to be ‘meaningfully involved’ with the licensing process.⁶³ The CNSC’s claims raise a crucial question: as to whether the notification of a project and a request for comments qualifies as ‘meaningful consultation?’ Notably, the Kebaowek First Nation, one of the 30 affected Nations and groups, asserted that the CNSC did not adequately consult with them, calling into question the Duty to Consult.⁶⁴

57 Shawn McCarthy, “Federal nuclear regulator urges Liberals to exempt smaller reactors from full panel review,” *Globe and Mail*, November 6, 2018, <https://www.theglobeandmail.com/business/article-federal-nuclear-regulator-urges-liberals-to-exempt-smaller-reactors/>.

58 Sierra Club Foundation, “Groups Condemn Plans to Exempt Nuclear Reactors from Bill C-69,” 2019, <https://www.sierraclub.ca/en/civil-society-groups-condemn-plan-to-exempt-nuclear-reactors-from-bill-c-69-impact-assessment>.

59 McCarthy, “Federal nuclear regulator urges Liberals.”

60 Dr. Ole Henderson, as quoted in Sierra Club, “Groups Condemn Plans to Exempt Nuclear Reactors from Bill C-69.”

61 Canadian Nuclear Safety Commission, “Decision on the scope of the environmental assessment for the proposed Micro Modular Reactor Project at the Chalk River Laboratories,” 2020, <http://www.suretenucleaire.gc.ca/eng/the-commission/pdf/Decision-GlobalFirstPowerEAScoping-CMD20-H102-e-Final.pdf>.

62 Haymond and Polson, “Letter from the Kebaowek First Nation and the Algonquin Anishinabeg Nation Tribal Council”; Canadian Nuclear Safety Commission, “Disposition Table of Public and Indigenous Groups’ and Organizations’ Comments on the Project Description– Micro Modular Reactor Project,” 2020; M.V. Ramana, “Submission to the Canadian Nuclear Safety Commission Regarding the Project Description for Global First Power’s Micro Modular Reactor,” 2019.

63 Canadian Nuclear Safety Commission, “Disposition Table of Public and Indigenous Groups’ and Organizations’ Comments.”

64 Haymond and Polson, “Letter from the Kebaowek First Nation and the Algonquin Anishinabeg Nation

In a press release in January of 2019, the Anishinabek Nation Chiefs-in-Assembly, who represent 39 First Nations across Ontario, objected to any and all applications of SMR technology on their territories.⁶⁵ Three months later, the license application for the construction of the SMR in the Chalk River Laboratories was submitted.⁶⁶ In July of the same year, the Government of Canada announced the commencement of the Environmental Assessment (E.A.) for the proposed site.⁶⁷ Indigenous consultation is an important component of the E.A. that is mandated by the Duty to Consult and is upheld by the CNSC, the federal component of the Canadian nuclear complex. It is important to note that the Indigenous consultation commenting process happened alongside and in conjunction with public engagement.

The SMR project termed the Micro Modular Reactor (MMR), an effort of the energy company Global First Power, will be located in the Chalk River Laboratories situated on the Algonquins of Ontario land claim, one of the largest and most complex land claims in the province.⁶⁸ This project comes two years after the facility's 2018 relicensing, which was done without the consent of the Algonquin people.⁶⁹ The initial Indigenous consultation comment period took place between July 2019 and January 2020.⁷⁰ A summary of Indigenous and public comments was published in May 2020.⁷¹ A month earlier, the CNSC released a statement regarding the impacts of the COVID-19 pandemic and gave their staff an additional 30 days for the submission of their comments while the deadline for public and Indigenous consultation went unchanged.⁷²

The timeline, as well as other details of the Chalk River project, were challenged by the 30 identified Indigenous Nations and organizations who are directly affected by the project.⁷³ There were considerable objections made by these Indigenous organizations and groups which explicitly outlined environmental and political concerns. The Algonquins of Ontario (AOO)'s comments note the effects that the Chalk River

Tribal Council."

65 Anishinabek News, "Anishinabek Chiefs-in-Assembly unanimously oppose small modular reactors on Anishinabek territory," 2019, <https://anishinabeknews.ca/2019/06/12/anishinabek-chiefs-in-assembly-unanimously-oppose-small-modular-reactors-on-anishinabek-territory/>.

66 Canadian Nuclear Safety Commission, "Disposition Table of Public and Indigenous Groups' and Organizations' Comments."

67 Global First Power, "Proposed Chalk River Project," 2019, <https://www.globalfirstpower.com/proposed-project-at-chalk-river-ont>.

68 Government of Canada, "Algonquins of Ontario Land Claim Negotiations," 2016, <https://www.rcaanc-cirnac.gc.ca/eng/1355436558998/1539789262384>.

69 Algonquins of Ontario, "Oral Presentation Submission from the Algonquins of Ontario."

70 Canadian Nuclear Safety Commission, "Request for Commission Decision Summary."

71 Government of Canada, "Disposition Table of Public and Indigenous Groups' and Organizations' Comments."

72 Kerrie Blaise and M.V. Ramana, "RE: COVID-19 Response and Public Intervention Deadline for Global First Power E.A.," Canadian Environmental Law Association 2020.

73 Government of Canada, "Disposition Table of Public and Indigenous Groups' and Organizations' Comments."

facility has had on their people since its initial 1944 licensing and called for formal consultation processes between the AOO and the CNSC.⁷⁴ The Anishinabek Nation raised concern that the current project description does not outline effects on Indigenous peoples, despite the site being on their lands as well as the AOO land claim.⁷⁵ Other Indigenous commenters included the Algonquins of Pikwakanagan First Nation (AOPFN) and the Métis Nation of Ontario (MNO), who raised similar concerns.⁷⁶ In addition to the documents published by the CNSC, the Algonquin Anishinabeg Nation Tribal Council released a letter to Prime Minister Justin Trudeau on May 14th, 2020, with a list of grievances regarding the Chalk River project specifically, and highlighted the shortcomings of current consultation practices.⁷⁷ This letter expanded on broader objections to SMR technology made by the Anishinabek Nation Chiefs Council in the January 2019 press release.⁷⁸ The comments and critiques submitted by the Indigenous Nations and groups directly contradict the sustainable angle that Global First Power purports. This contradiction illustrates the Janus-faced nature of recognition-based consultation practices, which present as reconciliatory on one hand while upholding oppression and undermining Indigenous governance on the other.

The marketing for the Chalk River MMR project focuses on the sustainability of the technology and even goes so far as to say that SMRs produce power without the “environmental impact of greenhouse gas and carbon emissions.”⁷⁹ This claim does not take into consideration the environmental impacts, including greenhouse gas emissions, during implementation. Further, many concerns expressed by Indigenous groups regarding the project are environmental in nature, including contamination of soil, vegetation, and harvested plants; surface and groundwater contamination; endangerment of wildlife and their habitats; and impacts to traditional land and resource uses.⁸⁰ Global First Power echoes the Canadian government by painting SMRs as part of a sustainable future, at the same time largely ignoring the environmental concerns of Indigenous peoples. Also, nuclear experts have pointed out the risk of accidents and

74 Government of Canada, “Disposition Table of Public and Indigenous Groups’ and Organizations’ Comments.”

75 Government of Canada, “Disposition Table of Public and Indigenous Groups’ and Organizations’ Comments.”

76 Government of Canada, “Disposition Table of Public and Indigenous Groups’ and Organizations’ Comments.”

77 Haymond and Polson, “Letter from the Kebaowek First Nation and the Algonquin Anishinabeg Nation Tribal Council.”

78 Anishinabek News, “Anishinabek Chiefs-in-Assembly unanimously oppose small modular reactors.”

79 Global First Power Ltd, “Nuclear Energy & Small Modular Reactors,” 2020, <https://www.globalfirstpower.com/nuclear-energy-smr-s#:~:text=s+small%20modular%20reactors%E2%80%94%20SMRs,electricity%20or%20for%20other%20uses>.

80 Haymond and Polson, “Letter from the Kebaowek First Nation and the Algonquin Anishinabeg Nation Tribal Council.”

other safety concerns.⁸¹ For example, there is a risk of a malfunction in the event of an ingress of air into the reactor core, which may lead to a radiation leak.⁸² There is also a lack of transparency regarding technical information, which has raised concerns from both Indigenous commenters and nuclear experts.⁸³ The choice to implement SMR technology in an existing site, such as Chalk River, means that the touted energy benefits for off-grid Indigenous communities will not be realized as part of this project, while the negative environmental impacts will still affect Indigenous lands.⁸⁴ This is yet another example of Indigenous peoples experiencing the dispossessing effects of industry without benefit and without political or legal control.

The CNSC and Global First Power make a point to join the public and Indigenous consultation processes. For example, the Global First Power website states that the project will be accompanied by ‘ongoing public and Indigenous engagement.’⁸⁵ As well, the summary of Environmental Assessment comments published by the CNSC contains comments by public and Indigenous groups.⁸⁶ The Duty to Consult clearly delineates a unique governmental responsibility to consult affected Indigenous peoples. Therefore the joining of public and Indigenous consultation processes is reductive and diminishes Indigenous governmental and legal legitimacy.

In July of 2020, the CNSC published the decision on the initial consultation process for the Environmental Assessment of the proposed MMR project.⁸⁷ The document summarizes the completed steps in the Environmental Assessment process thus far, highlighting that the initial Indigenous Engagement process was ‘satisfactory and in accordance with [regulatory standards].’⁸⁸ The document also notes that the Kebaowek First Nation expressed that they had not been adequately consulted.⁸⁹ However, the objections to the consultation processes made by the Anishinabek Nation and the Algonquins of Pikwakanagan Nation are minimized or omitted.⁹⁰ The CNSC asserts that moving forward, efforts will be made to ‘give timely project updates’ and ‘where appropriate’ gather traditional land-use knowledge as the project moves forward.⁹¹ The CNSC’s response is illustrative of the *politics of recognition*, having fulfilled its consultatory duties to the standard set out in Canadian law, there is no further

81 M.V. Ramana, “Submission to the Canadian Nuclear Safety Commission.”

82 M.V. Ramana, “Submission to the Canadian Nuclear Safety Commission.”

83 Haymond and Polson, “Letter from the Kebaowek First Nation and the Algonquin Anishinabeg Nation Tribal Council.”; M.V. Ramana, “Submission to the Canadian Nuclear Safety Commission.”

84 World Nuclear Association, “Nuclear Power in Canada,” <https://www.world-nuclear.org/information-library/country-profiles/countries-a-f/canada-nuclear-power.aspx>.

85 Global First Power, “Nuclear Energy & Small Modular Reactors.”

86 Government of Canada (2020)

87 Canadian Nuclear Safety Commission, “Decision on the scope of the environmental assessment.”

88 Canadian Nuclear Safety Commission, “Decision on the scope of the environmental assessment.”

89 Canadian Nuclear Safety Commission, “Decision on the scope of the environmental assessment.”

90 Canadian Nuclear Safety Commission, “Decision on the scope of the environmental assessment.”

91 Canadian Nuclear Safety Commission, “Decision on the scope of the environmental assessment.”

cogitation on the colonial system these processes uphold. The dismissive attitude of the CNSC towards Indigenous legal legitimacy is emphasized by the inadequate articulation and response to the concerns and comments of the Indigenous Nations and organizations during the consultation period. The CNSC's response illustrates their intentions to perform extractive land dispossession through SMR implementation.

Conclusion

The Duty to Consult as applied in the CNSC's consultation processes illustrates that superficial recognition-based approaches to Indigenous governance ignore and erode Indigenous legal legitimacy with broad and inclusive language lacking any semblance of actionability or historical awareness. Moreover, the Duty to Consult has been inconsistently applied, as evidenced by the relicensing of the Chalk River Laboratories, which was done without the consent of the Algonquin people.⁹² In practice, projects like the Chalk River MMR project delegitimize Indigenous communities and governments, continuing a history of exploitative colonial capitalist practices. Thus, we cannot simply wait for the nuclear industry to take responsibility for its actions past or present.

The suppression of Indigenous voices is not unique to the nuclear industry itself; rather, the recognition-based form of Indigenous relations is a factor inherent to the colonial state. If the nuclear industry and the Canadian state are truly to move beyond recognition-based Indigenous relations, the political sphere must make room for the voices of Indigenous communities and make space for Indigenous governance that rejects colonial frameworks. Coulthard articulates that current Canadian reconciliation consists of hollow apologies and acknowledgements of hurt and past wrongs, with no further action.⁹³ Given that we cannot rely on colonial institutions or their consultation processes to empower Indigenous self-determination, we must instead support resurgent actions.⁹⁴ By supporting community initiatives, including protest actions, we legitimize Indigenous rights beyond colonial frameworks of recognition.

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92 Algonquins of Ontario, "Oral Presentation Submission from the Algonquins of Ontario."

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