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February 09, 2026 09 février 2026			
Natasha Fitter			
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Court File No.

**FEDERAL COURT**

B E T W E E N:

**WHITEFISH (GOODFISH) LAKE FIRST NATION #128,  
FROG LAKE, and BEAVER LAKE CREE NATION**

APPLICANTS

and

**THE ATTORNEY GENERAL OF CANADA, HIS MAJESTY THE KING IN  
RIGHT OF ALBERTA and PATHWAYS ALLIANCE INC.**

RESPONDENTS

APPLICATION UNDER sections 18 and 18.1 of the *Federal Courts Act*, R.S.C., 1985, c. F-7 and Rule 301 of the *Federal Court Rules*, SOR/98-106

**NOTICE OF APPLICATION**

TO THE RESPONDENTS

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN  
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date \_\_\_\_\_ Issued by \_\_\_\_\_

Issued on: February 09, 2026

Issued by: Natasha Fitter (Registry Officer)

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## APPLICATION

1. This is an application for judicial review, pursuant to s. 18.1 of the *Federal Courts Act*, RSC 1985, c. F-7, in respect of the decision of the Prime Minister of Canada, on November 27, 2025, to enter into a Memorandum of Understanding (the “**MOU**”) with Alberta, specifically as that MOU relates to the Pathways Carbon Capture and Sequestration Project (the “**Pathways Project**” or the “**Project**”), without notifying, consulting, or otherwise engaging with the Applicants (the “**Decision**”).
2. The Project, if approved, will be one of the world’s largest carbon capture and sequestration facilities. It will be located in the heartland of the Nations’ territories, and next to – if not overlapping with – their reserve lands. There is also a real risk that the Project will, today or in the future, store CO<sub>2</sub> under the Nations’ reserve lands, without their consent or approval.
3. To date, the Project has undergone no federal or provincial environmental review, and Canada has not consulted with the Nations on it. Since at least 2023, the Nations, individually and collectively, have sought to engage with Canada in respect of the Project, including to confirm Canada’s role in the Project and plans for consultation. Those requests have gone largely unanswered. In 2024, the Nations requested that the Minister “designate” the Project for federal environmental review; that request is outstanding, with the statutory decision-making timeline indefinitely paused at the proponent’s request.
4. The Decision to enter into the MOU triggered the duty to consult. The MOU contains a number of binding commitments and plans for the Project and indicates federal support for the Project.

5. However, after years of refusing to engage with the Nations regarding their concerns about the Project, the Prime Minister made the Decision to enter into the MOU without consulting or even notifying the Nations.
6. The Nations bring this application to hold Canada to its Treaty, constitutional, and legislative obligations to consult and engage with the Nations before entry into any binding agreement with Alberta regarding the Pathways Project.

The Applicants make an application for:

- a. An order in the nature of *certiorari* quashing or setting aside the Decision;
- b. A declaration that the Decision was unconstitutional;
- c. A declaration that Canada breached the duty to consult in making the Decision;
- d. A declaration that Canada breached its fiduciary duty to the Applicants in making the Decision;
- e. Such directions as may be necessary concerning further consultation and the Prime Minister's redetermination in respect of whether to re-negotiate the MOU as it relates to the Pathways Project and under what conditions;
- f. An order for costs of and incidental to this Application;
- g. In the event that this application is dismissed, an order that the Applicants shall not be required to pay the costs of the Respondents; and
- h. Such further and other relief as this Court may deem appropriate and just.

The grounds for this application are:

### **Background to the Decision**

#### A. The Parties

##### *The Applicant Nations*

7. As expanded below, the Applicants are three Treaty 6 Nations whose ancestral and reserve lands are located within the Project boundaries and stand to be seriously and directly impacted by the Project.
8. Whitefish Lake First Nation #128 (“**Whitefish**”) is a Cree First Nation, whose ancestral roots trace back to the Beaver Hills People, *amiskwatciwiyiniwak*. Whitefish is based in northeastern Alberta, approximately 68 km west of Bonnyville and 220 km northeast of Edmonton.
9. Frog Lake (“**Frog Lake**”) is a Cree First Nation based in northeast Alberta, approximately 250 km northeast of Edmonton. The Nation has the following reserves: Puskiakiwenin 122, located 65 km east of St. Paul, and Unipouheos 121, located 32 km southeast of Bonnyville.
10. Beaver Lake Cree Nation #131 (“**Beaver Lake**”) is a Cree First Nation whose traditional territory extends throughout portions of Alberta and Saskatchewan. The Nation’s reserve is located near Lac la Biche, approximately 250 km northeast of Edmonton. In 2008, Beaver Lake brought a Treaty infringement action against Canada and the Province of Alberta, arguing that the cumulative effects of development throughout Beaver Lake’s territory has damaged Beaver Lake’s way of life contrary to promises contained within Treaty 6.
11. Each of the Nations, along with Cold Lake First Nation, Heart Lake First Nation, Kehewin Cree First Nation, and Saddle Lake First Nation, also jointly hold the Blue Quills Reserve, which is located 3 km west of St. Paul.
12. The Nations are all parties to Treaty 6, which protects, among other rights, their rights to hunt, fish, trap, gather, reside in and carry out their way of life, livelihood, and economies in their lands after Treaty, as before. At least Whitefish and Beaver Lake have previously notified the Crown that, in their view, their Treaty rights are being infringed through the cumulative impacts of development.

13. Each Applicant is an Aboriginal people within the meaning of s. 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c. 11* (“*Constitution Act, 1982*”). The Applicants’ reserve lands are all “Indian reserves”, within the meaning of Schedule 2 to the *Constitution Act, 1930, (UK), 20-21 Geo V, c 26*.

*The Defendants*

14. The MOU was signed by Prime Minister Mark Carney, representing the federal Crown and Premier Danielle Smith, on behalf of the Alberta provincial Crown.
15. The Pathways Alliance (the “**Alliance**”) is the Project proponent and is an entity made up of Canadian Natural, Cenovus Energy, ConocoPhillips Canada, Imperial, and Suncor.

B. Relevant Legislative and Regulatory Framework

16. While the Decision itself was not made under or pursuant to legislation, the following statutes are relevant to the facts and issues in this application.

*United Nations Declaration on the Rights of Indigenous Peoples Act*

17. In 2021, Canada passed the *United Nations Declaration on the Rights of Indigenous Peoples Act, S.C. 2021, c. 14* (“**UNDA**”) to implement the *United Nations Declaration on the Rights of Indigenous Peoples*, which Canada adopted internationally in 2016. UNDA affirms Canada’s commitment to implement UNDRIP into Canadian law.
18. As this Court has recognized, through the passage of UNDA, UNDRIP has been incorporated into Canada’s domestic positive law. Among other provisions, UNDRIP articulates state obligations and Indigenous peoples’ rights in relation to state decisions about use of and development on Indigenous peoples’ lands.

*Impact Assessment Act*

19. The *Impact Assessment Act*, S.C. 2019, c. 28, s. 1 is the primary federal legislation governing environmental impact assessments and the process for identifying which projects shall be subject to federal environmental review.
20. Among other mechanisms, section 9 of that Act permits the Minister of the Environment to “designate” a project for federal review if that project may cause adverse effects within federal jurisdiction or direct or incidental adverse effects. Designated projects are then subject to federal environmental assessments.
21. Pursuant to s. 9(4), designation decisions must be made within 90 days of receipt of designation requests.
22. Sections 92 and 93 of the Act also enable the Minister of the Environment to initiate a regional assessment of the effects of existing or future physical activities in a specific region, including areas in part or whole outside federal lands. A regional assessment focuses not on a specific project, but on a region as a whole.

#### *Building Canada Act*

23. In summer 2025, Canada amended its regulatory framework through the passage of the *Building Canada Act*, SC 2025, c. 2, s. 4. This Act allows Canada to designate certain projects as “Projects of National Interest” (“**PONIs**”). Once a project is designated as a PONI, it is deemed to have received all necessary federal approvals. This is meant to accelerate the federal approval of projects.
24. The Act also established the creation of the Major Projects Office (the “**MPO**”) whose mandate is to “advance nation-building projects in Canada”.
25. While the Project has not been designated as a PONI, it was referred to the MPO as a “Transformative Project” under this new regime. It is unclear what, if any, regulatory significance attaches to that designation.

#### C. Proposed Project: Canada’s Largest Carbon Capture and Sequestration Facility

## *The Project*

26. The Pathways Project is a carbon capture and sequestration (“CCS”) project proposed by the Alliance.
27. The Project will capture, transport, and store carbon from most of the major oil sands facilities in Alberta. The Project is broadly made up of three components, each of which will take place partially or wholly on the Nations’ traditional territories:
  - a. **Transportation Network:** CO<sub>2</sub> will be separated from the emissions of 13 oil sands facilities in and north of the Nations’ territories and compressed and converted to a fluid state. The CO<sub>2</sub> will be transported from each of the facilities via lateral pipelines to a 400km+ central transportation line starting in Treaty 8 territory in the north and ending in Treaty 6 territory in the south (*i.e.*, the Nations’ territory).
  - b. **Injection Wells:** Upon arrival at the end of the transport line, the CO<sub>2</sub> will be injected 1-2 km underground via up to 19 injection wells. The exact locations of the injection wells have not been disclosed but they will be located within the Nations’ traditional territories and close to, if not next to, reserve lands.
  - c. **Storage Hub:** After injection, the CO<sub>2</sub> will be permanently stored underground in a porous geological formation. The storage hub overlaps with each of the Nations’ territory, and is either contiguous with or adjacent to their reserve land. Stored CO<sub>2</sub> changes shape and expands over time but never dissipates unless as a result of an intentional or unintentional release. Put otherwise, once injected underground, it remains there in perpetuity.
28. This Project is one of the largest carbon capture and sequestration proposals in the world.

29. According to the Alliance, one of the purposes of the Project is to facilitate additional oil extraction and production from the oil sands. The Alliance has also stated that the Project can only proceed with federal financial support.

*No Regulatory Review to Date*

30. To date, the Project has not undergone either a provincial or federal environmental impact assessment.
31. On a provincial level, the Project is still proceeding through Alberta's regulatory process, which is managed by the Alberta Energy Regulator ("AER"). To date, the Alliance has filed at least 70 applications with the AER related to the Transportation Network. However, no environmental assessment has been conducted.
32. Alberta has delegated consultation on the Transportation Network to the Alliance but has stated that it will not consult in respect of the Injection Wells or the Storage Hub.
33. As of the date of the Decision, some consultation has taken place with the Nations in respect of the Transportation Network, although the Nations have expressed repeated concerns to Alberta and Canada about the inadequacy of that consultation, including a lack of information, a lack of Crown involvement, and Alberta's untenable position that neither the Injection Wells nor the Storage Hub require consultation.
34. On a federal level, it is unclear what, if any, federal environmental assessments will take place. In December 2024, the Nations, along with several other Treaty 6 Nations, submitted a request to the Impact Assessment Agency ("IAA") to have the Project designated for a federal impact assessment under s. 9 of the *Impact Assessment Act* (the "**Designation Request**").
35. Under the legislation, the Minister was required to make a decision on the Designation Request within 90 days of receiving the request, by March 2025.

However, shortly after making the request, the Alliance asked that the statutory timeline be paused to provide additional information. This request was immediately granted, and the timeline remains on an indefinite pause with no decision having been made by the Minister.

36. The Nations have asked the IAA for clarity on what type of information it is seeking from the Alliance, when it anticipates receiving this information, copies of that information when it receives it, and when it anticipates making a decision on the Designation Request. Canada has failed to provide the information so requested.

37. In addition, in February 2024, Beaver Lake submitted a request for the Minister to conduct a regional assessment under s. 93 of the *Impact Assessment Act*, based on, among other activities, the Pathways Project. That request was denied in September 2024 in part because the IAA was “not aware of reasonably foreseeable future developments within the region in the next five to ten years that would be subject to impact assessment requirements under the IAA” – put otherwise, the IAA was not aware of prospective federal activities that would trigger federal environmental review processes.

D. Nations’ Attempts to engage with Canada about the Project Outside Regulatory Context

38. The Nations first became aware of the Project in or around 2022.

39. Since this time the Nations, on their own and in concert with other Treaty 6 nations, have reached out to Canada on multiple occasions to seek clarity on:

- a. What steps, if any, Canada will take to ensure there is no intrusion into the pore space under their reserve lands (which, without their consent, amounts to either nuisance or trespass);
- b. Whether Canada plans on providing funding to support the development of the Project;

- c. What role, if any, Canada will play in respect of approving the Project;
  - d. What technical information Canada has in respect of the Project or what research it is currently undertaking, or is planning on undertaking;
  - e. What technical information Canada has requested from the Alliance;
  - f. Who or what departments within Canada are responsible for issuing authorizations related to the use of or impact to reserve pore space;
  - g. Whether and how Canada intends to consult on the Project, and whether Canada plans on relying on Alberta's consultation process to fulfill its own consultation obligations;
  - h. What discussions Canada has had with the Alliance and Alberta in respect of the Project; and
  - i. General status updates on the Project, and Canada's involvement.
40. As of the date of the Decision, Canada has not provided the information so requested. Most of the Nations' letters have received no substantive responses.
41. Since around 2023, the Nations have expressed concern to Canada about the potential impacts the Project will have on their reserve lands, their traditional territories, and the resources upon which they rely to exercise their Treaty rights including:
- a. *Impacts to Reserve land*: Permanent storage of millions of tonnes of CO<sub>2</sub> in an underground geological formation adjacent to or overlapping with the Nations' reserve lands may adversely impact those lands either directly, through storage of carbon in the pore space under their reserves, or indirectly, through displacement of brine into and/or increased pressure on the pore space under their reserve land.

- b. *Environmental Harms*: The Project may result in CO<sub>2</sub> or brine leakages which could harm aquatic life, including fish and fish habitats, contaminate drinking water, and interfere with deep-subsurface ecosystems.
- c. *Economic Development*: The Nations' rights to use and benefit from their reserve lands includes the right to use and benefit from subsurface resources like the pore space. The Project may adversely impact the Nations' rights to develop subsurface resources such as oil and gas resources and pore space within their reserve boundaries. It may also impact soil which could harm agricultural production.
- d. *Health and socio-economic conditions*: The Project may result in morbidity or mortality caused by inhalation of concentrated CO<sub>2</sub> either released from the Transportation Line, or returned to the surface due to Storage Hub leaks. When compressed and transported in a pipeline, CO<sub>2</sub> is highly volatile, creating a high risk of dangerous explosions and leaks that could endanger nearby communities. The Project may cause impacts to houses and infrastructure through induced seismicity or ground heave.
- e. *Social and Cultural Harms*: When the Nations' members are out on the land practicing their Treaty Rights, either on their reserve lands or their traditional territories, they will be at risk for unexpected releases of CO<sub>2</sub>. Important sites and cultural heritage associated with their rights are likewise at risk from unexpected CO<sub>2</sub> releases. There are also concerns that heritage sites will be damaged in the building of the Project infrastructure.
- f. *Cumulative Impacts*: The proposed transportation infrastructure will contribute to the cumulative impacts of development which have already limited the Nations' abilities to exercise their rights – at least two of the Nations take the position that their Treaty rights are

currently being infringed through development today. The Project will also allow for the further expansion of industrial oil sands infrastructure within and near their traditional territories.

42. The Nations have repeatedly conveyed to Canada their concerns that Alberta's environmental review and consultation processes are inadequate under the *Constitution Act, 1982*, Treaty 6, and UNDRIP, and fall far short of federal standards. Those concerns have similarly not been addressed.
43. In light of the potential impacts this Project will have on the Nations' rights and interests, the Nations have repeatedly sought Canada's confirmation that it will engage in consultation with them and have asked Canada to initiate this consultation. Although representatives from Canada have met with the Nations on a few occasions and heard the Nations' concerns, Canada has not consulted, or committed to consulting, as of the date of the Decision.
44. As noted above, the Project was referred to the MPO as a "Transformative Project" at some time in the summer or fall of 2025. The MPO website states that "[t]he Major Projects Office will develop a strategy to build the Pathways project". None of the Nations were provided notice of the project's referral to the MPO.
45. The MPO's latest update on the Project is that Canada and Alberta have created a working group to discuss how to work together to advance the Project. None of the Nations were advised of the creation of the working group or invited to participate.
46. At no time prior to the Decision did the MPO reach out to the Nations to discuss this Project or the Decision, or to notify them about the Decision. The Nations were informed of the MOU through media reports after its signing.

### **The Decision**

47. On November 27, 2025, Prime Minister Carney, on behalf of Canada, and Premier Smith, on behalf of Alberta, signed the MOU.

48. The MOU contains commitments in respect of a number of different energy initiatives, including the Pathways Project. The Project commitments include the following:
- a. The MOU commits Canada and Alberta to work cooperatively with the Alliance partner companies to develop and enter into a tri-lateral MOU on or before April 1, 2026, for a multi-phased approach to delivering a set of emissions savings projects (the “**Phase 1 Pathways Projects**”) focused predominantly on carbon capture and storage, solvent based replacements or other actions taken by the Alliance that reduce emissions intensity.
  - b. The Phase 1 Pathways Projects will be constructed and begin operations in a staged manner between 2027 and 2040, to achieve emissions reductions at specific intervals.
  - c. Under the MOU, Canada and Alberta agree that, to hold all parties to account for all phases of the Pathways Projects, the trilateral MOU with the Alliance must include effective enforcement mechanisms to ensure the completion of all phases of the infrastructure. Such mechanisms could include, but are not limited to, tax and regulatory measures.
  - d. Finally, the MOU commits Alberta and Canada to developing a bitumen pipeline to deliver bitumen from Alberta’s oil sands. The MOU states that “the Application for the pipeline project will be ready to submit to the MPO on or before July 1, 2026.” However, the MOU makes the bitumen pipeline conditional on the Pathways Project, and vice versa. The MOU describes the two projects as being “mutually dependent”.
49. In signing the MOU, Canada committed its support to the Project and established concrete steps to implement that support. For instance, the MOU establishes a timeline for the commencement of construction and operations.

The MOU also makes the Pathways Project a condition of the bitumen pipeline. Given the political and economic impetus for the bitumen pipeline, this makes the Project more likely to proceed. The MOU could also lead to a shorter regulatory review of the Project. After the submission of the pipeline project to the MPO on or before July 1, 2026, it will be considered for designation as a PONI. Successful designation as a PONI could expedite the review process. Since the Project is a prerequisite for the bitumen pipeline, this might also lead to a shorter review for the Project.

### **Legal Basis for Application**

50. The Decision is incorrect, unreasonable and unconstitutional, and should be set aside on the basis that it is:

- a. Inconsistent with the duty to consult;
- b. Inconsistent with Canada's fiduciary duty to the Nations in respect of their reserve lands; and
- c. Inconsistent with the Crown's duty to engage in honourable dealings with the Nations as Treaty partners.

#### **A. Decision Is Inconsistent with the Duty to Consult**

51. The honour of the Crown requires that the Crown consult with Indigenous peoples if it is contemplating a decision or course of action that may have a negative impact on Indigenous rights and interests. Consultation must take place as early as possible in the decision-making process, before a proposed project has moved too far along. It is required in respect of strategic higher-level decisions that may impact future operational decisions.

52. In addition, as this Court has confirmed, UNDRIP is now part of Canada's domestic law. As a result, the duty to consult must be interpreted with reference to UNDRIP, including, among other provisions:

- a. Article 18, which entitles the Nations to participate in decision-making in matters which would affect their rights.
- b. Article 29(2), which requires Canada to ensure no storage or disposal of hazardous materials shall take place in the lands or territories of Indigenous peoples without their free, prior, and informed consent.
- c. Article 32(2), which requires Canada to consult and cooperate in good faith with Indigenous peoples in order to obtain their free, prior, and informed consent prior to the approval of any project affecting their lands or territories and other resources.

53. The Decision triggered the duty to consult:

- a. The signing of the MOU is a strategic, higher-level decision with legal and practical consequences. It commits Canada to supporting the Project before any consultation or environmental review has taken place and sets the stage for the Project's ultimate approval. It is binding on its face (as opposed to political or aspirational) and sets out specific and concrete steps for moving the Project forward including:
  - i. Requiring a tri-lateral MOU be signed by April 1, 2026, between Canada, Alberta, and the Alliance companies on how to advance the Project;
  - ii. Setting out a timeline for the commencement of Project construction and operations; and
  - iii. Requiring the development of enforcement mechanisms to ensure completion of all phases of the project.
- b. The Crown had both real and constructive knowledge of the Nations' Treaty and Aboriginal rights and interests at issue.

- c. The Crown had both real and constructive knowledge that, in the Nations' view, there is an actual risk of adverse impacts on those rights as a result of the Project.
- d. The Nations had expressly requested consultation from Canada on numerous occasions in respect of the Project, and those requests have been ignored.

54. Canada breached its duty to consult by failing to, among other things:

- a. Give the Nations any notice that it was considering signing the MOU;
- b. Elicit and consider the Nations' view in respect of how the Decision will impact their rights as it relates to the Project;
- c. Discuss Canada's plans for its involvement in the Project with the Nations;
- d. Provide the Nations with the information they have been seeking from Canada over the last several years; and
- e. Work with the Nations to determine whether, and under what conditions, to move forward with the Decision following consultation with the Nations, including but not limited to potential accommodation.

B. Decision Is Inconsistent with Canada's Fiduciary Duty in Respect of the Nations Reserve Lands

55. The federal government has a fiduciary obligation to each of the Nations in respect of the care, control, and protection of their reserve lands, and the space and resources, including the pore space, below those lands. Pursuant to the Crown's fiduciary duty, it is responsible for the protection from exploitation and preservation of the Nations' quasi-proprietary interest in their reserves. That duty, which is grounded in the honour of the Crown, includes a duty of loyalty, a

duty of good faith, a duty to provide full disclosure appropriate to the subject matter, and a duty to act in the best interests of the Nations.

56. As with Canada's duty to consult, the existence and contents of Canada's fiduciary duty are also informed by UNDRIP, which forms part of Canada's domestic law.
57. Through the Decision, Canada breached its fiduciary duty, including by failing to:
- a. Act in good faith and in accordance with the standard of care required of a fiduciary;
  - b. Disclose the information requested by the Nations prior to making the Decision;
  - c. Notify the Nations of its intention to enter into the MOU and consult with the Nations on the Decision;
  - d. Inform itself of the potential impacts associated with the Project on the Nations' reserve lands prior to making the Decision; and
  - e. Take steps to determine whether the Project is in the best interests of the Nations prior to making the Decision.

C. Decision Inconsistent with the Duty to Engage in Honourable Dealing with Treaty Parties

58. Both the duty to consult, and the Crown's fiduciary duty in respect of reserve lands, are grounded in the honour of the Crown – a constitutional principle that requires the Crown to conduct itself honourably in its dealings with Aboriginal people. That duty has, as its ultimate purpose, the reconciliation of Aboriginal interests with Crown sovereignty.
59. In addition to fiduciary and consultation duties, the honour of the Crown compels the Crown to act with integrity in its Treaty relationships. That duty of

honourable dealing in the discharge of Treaty relationships prohibits the Crown from any appearance of sharp dealing or acting in anything less than good faith.

60. The Crown's course of conduct leading up to, and including the signing of the MOU, was inconsistent with that duty. To the contrary, it was characterized by dishonorable conduct and the appearance of bad faith that renders the Decision unconstitutional.
61. The Nations have repeatedly tried to discuss this Project with Canada – its Treaty partner – for several years, including seeking information about how Canada would honour its obligations under Treaty and consult with the Nations, Canada's role in the Project, and Canada's funding commitments.
62. Since at least 2023 and as of the date of Decision, Canada has been aware of the Nations' concerns with the Project's potential impacts on their rights and interests. This includes concerns regarding potential impacts on reserve land and Treaty rights, and certain of the Nations' positions of existing Treaty infringement. It was also aware of concerns raised by the Nations regarding the inadequacy of Alberta's regulatory process to address these issues.
63. Since 2024, Canada was also aware of the Nations' outstanding Designation Request and consented to the indefinite delay of that process at the Alliance's request.
64. In light of the Nations' ongoing attempts to engage with Canada in respect of this Project – which they repeatedly asserted would impact their Treaty rights – it was inconsistent with Canada's obligations as a Treaty partner, acting honourably, to make the Decision without:
  - a. First engaging with the Nations on their Project-related concerns raised since 2023;
  - b. Providing any notice to, or discussion with, the Nations regarding the Decisions; and

- c. Making a decision on the Designation Request and instead maintaining an indefinite pause on that request.

**Request for Materials in the Possession of the Crown**

65. Pursuant to Rule 317 of the *Federal Court Rules*, the Nations request a certified copy of all material that is relevant to the application and in the possession of the Crown, including, but not limited to, the full consultation record and all material considered in the Prime Minister's decision-making.

**LEGISLATION AND AGREEMENTS RELIED UPON:**

66. The Nations plead and rely on:

- a. *Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c.11;
- b. Treaty 6;
- c. *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14;
- d. *Impact Assessment Act*, S.C. 2019, c. 28, s. 1;
- e. *Building Canada Act*, SC 2025, c. 2, s. 4;
- f. *Federal Courts Act*, RSC, 1985, c. F-7; and
- g. *Federal Courts Rules*, SOR/98-106.

**This application will be supported by the following materials:**

1. The Record of Decision;
2. An affidavit from individual(s) yet to be confirmed; and
3. Such further and other materials as counsel may advise and this Honourable Court may permit.

Dated: February 9, 2026



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