



Media Release

Date set for Judicial Review of Ontario government's refusal to conduct an Environmental Assessment for Northern Ontario Forest Management Plan

Timmins, Ontario (September 22, 2020) – This legal action is being advanced by three Ontario First Nations. It focuses on the refusal by the Ontario Ministry of Environment, Conservation and Parks to order an Environmental Assessment (EA) or impose conditions on the Gordon Cosens forest management plan (FMP). At issue is whether conditions for sustainability are met and consultation with First Nations has been done properly for the 20,000 square km area. The First Nations say the answer to both questions is no.

The matter involves forestry in Treaty No. 9, the area known as “Height of Land Treaty” where all waters flow north to James Bay and Hudson Bay. Chapleau Cree First Nation, Missanabie Cree First Nation and Brunswick House First Nation have called this their homeland since long before Confederacy and the forming of Ontario.

Each First Nation has several Sustainable Forest Licences (SFLs) overlapping their respective territories. For decades, they have attempted to find ways to achieve a more equal and full participation in forestry and forest management – an industry with a far-reaching industrial footprint and worth over \$15B. They are seeking to be partners in ensuring that the forests remain healthy in the longterm, and Ontario's forest industry is sustainable.

The three First Nations have been forced to the Courts by the Province's lack of action. The Supreme Court of Canada has made clear that the Crown must act honourably in all its dealings with First Nations. Those dealings include the management of the forests. The honour of the Crown is not upheld when forest management plans are approved over the objection of First Nations who are trying to participate and have their voices heard.

On August 31, the First Nations launched a Judicial Review of a May 2020 decision to refuse their request for an EA. It is a significant challenge to Ontario's recently approved 10-year FMP for the Gordon Cosens Forest Management Unit (FMU). The Divisional Court set a hearing date of March 9, 2021.

“We are done with the confusion, ineffective processes and lip service,” said Chief Keith Corston (Chapleau Cree First Nation). “We need Ontario to collaborate closely with us and we need results. We only have one Boreal Forest and one homeland.”

To understand and appreciate the First Nations' concerns, the public, bureaucrats and the Courts need only look at reports from Ontario's Environmental Commissioner.

[Losing Touch: Annual Report 2011/2012 Part 1, page 26](#)

[Losing \(Our\) Touch: Annual Report 2011/2012 Part 2, pages 37 - 38](#)

[2018 Environmental Protection Report - Back to Basics: Respecting the Public's Voice on the Environment, page 16](#)

“Canadians should be shocked to know that environmental assessments are not done for the 10-year FMPs and Ontario continues to rely on an environmental assessment review done from 1988-1992,” stated David Flood, General Manager of Wahkohtowin Development GP Inc. “This EA review led to the 1994 Timber Class Environmental Assessment Approval and Declaration Orders made by Ontario which contained conditions for the Approval to apply.”

Chief Jason Gauthier (Missanabie Cree First Nation) said: “For many years we have tried to stop aerial herbicide spraying and other harmful forestry practices, but Ontario has not listened. It continues to approve and use poison that kills every leaf when it is sprayed from above.” He observed, “We know there is a better way to manage the forests. We must end aerial glyphosate herbicide spraying and adopt alternatives for the sake of the forests and our own health. Several countries have banned glyphosate use, the active ingredient most used for aerial spraying in Ontario and Quebec banned the practice over a decade ago.”

It is important to note that the events the First Nations are asking the Court to review took place prior to recent amendments to Ontario’s forestry and EA regime. In June 2020, the Ford Government revoked the [Declaration Order](#) and [amended Environmental Assessment Act Regulation 334](#) to expressly exempt Crown forest management from EA and eliminate the former Declaration Order conditions. The Ontario EA regime has been further diminished by the July 2020 [Omnibus Bill 197, COVID-19 Economic Recovery Act, 2020](#) (see Schedule 6), which makes major amendments to the Environmental Assessment Act.

This Judicial Review is an important opportunity to understand and give effect to the protections for forest health and sustainability that existed under the previous forestry and EA regime, before the sweeping changes were made in the name of removing duplication and red tape.

“Our efforts to engage with Ontario have not worked, and the current approach to forestry in Ontario is resulting in the death of the boreal forest by a thousand cuts,” said Chief St. Denis (Brunswick House First Nation). “Ontario’s must work hand in hand with us to stop the damage and create a new approach. Removing the Declaration Order and EA protections during a pandemic is wrong. We need a proactive government that will collaborate with us until we all see change and more sustainable forestry practices on the land where we live.”

-30-

For additional information or to schedule interviews, contact:

David Flood, General Manager, Wahkohtowin Development GP Inc., 705-622-9581

Amy Westland, Senior Counsel, Westaway Law Group, 613-724-7481

References to the Environmental Commissioner of Ontario’s reports

Losing Touch: Annual Report 2011/2012 Part 1, page 26

“Commissioner’s Conclusion - And, various ministries persist in hiding environmentally significant decisions from public scrutiny and comment in open defiance of the clear intent of the statute. The most egregious example is MNR’s attempt to shield the Provincial Wildlife Population Monitoring Program Plan from public review. The ministry’s behaviour is all the more offensive because the plan itself is

inadequate in meeting the requirements of the Environmental Assessment Act and the Crown Forest Sustainability Act, 1994.”

Losing (Our) Touch: Annual Report 2011/2012 Part 2, page 37 - 38

“The ECO concludes that MNR’s wildlife monitoring program is in a state of abject failure. Despite its name, the ministry’s Provincial Wildlife Population Monitoring Program is not provincial in scale, does not address wildlife other than a few bird species, and does not actually undertake any direct monitoring.”

“In recent years, it has become clear that the program has failed to achieve its own objective: to monitor and assess the status and trends of forest wildlife populations and their habitats, in order to inform MNR policy and management decisions. The ECO perceives this failure as the result of years of degradation on two fronts: MOE’s abandonment of its environmental assessment responsibilities to ensure MNR’s compliance with its Declaration Order; and MNR’s chronic underfunding, which began just after the ministry was tasked with this program.”

“MOE still retains responsibility for examining MNR’s compliance, as it approved the Declaration Order — despite its abdication of oversight by removing the requirement for MNR to seek re-approval. MOE should not leave it up to the public to hold MNR accountable through external avenues, such as judicial reviews.”

2018 Environmental Protection Report - Back to Basics: Respecting the Public’s Voice on the Environment, page 16

“it still remains to be seen whether this redesign [of the Provincial Wildlife Population Monitoring Program] is meeting the intended goals of the program because the ministry has not reported on its results, as it is required to.”