

PRESS RELEASE

Tuesday, September 22, 2020

FOR IMMEDIATE RELEASE

**ONTARIO FIRST NATIONS CHALLENGE FORD GOVERNMENT IN COURT:
SWEEPING CHANGES TO ENVIRONMENTAL ASSESSMENT REGIME MUST BE
DECLARED UNCONSTITUTIONAL**

Several Ontario First Nations launched a legal proceeding in court challenging the sweeping changes the Ford Government made to the Ontario Environmental Assessment Act (“EAA”) and the related Class EA for forestry.

Ontario passed a new EAA through Bill 197, an omnibus bill entitled “Covid 19 Economic Recovery Act”. Bill 197 was introduced on July 8 and passed on July 21, less than two weeks later, with no consultation. This followed closely on the heels of Ford’s revocation of all environmental assessments for forestry – done through a regulation on July 1.

“The combined effect of the stripped EAA and the removal of any EAs for forestry going forward, leaves the environment and First Nations who depend on it and connect to it for their very identities and cultures, completely vulnerable to a provincial government that seems intent on pushing us back 40 years,” says lawyer Kate Kempton. “These changes were rammed through, using the pandemic as an excuse when they have nothing to do with that.”

The EAA changes upend the statutory regime. In the past, all public projects automatically required an EA unless specifically exempted by the Minister in a regulation (and such exemption proposal was subject to consultation and challenge). Now, no public projects require an EA unless the Minister decides to designate anything – and there are no rules or criteria in the Act at all for what if anything would be included. This creates an open-ended discretionary regime subject to political whim.

The revocation of all environmental assessment for forestry undoes critical conditions that had been in place for the last three decades. These conditions came from a four year hearing that heard from all sectors of the public and First Nations about how important the forests are and how decimated they or would become if clear cutting and other practices continued without more scrutiny and oversight. These hearings were held in response to years of protests in Ontario’s forests that was dubbed the War of the Woods.

“Ontario is again unilaterally reversing all of the protections that had been hard fought for by our people, we protested to protect n’Daki Menan, our ancestral homeland. We experienced firsthand the sweeping destruction that roads caused to the land and our people, our values, and our way of life. We want to be meaningfully consulted and accommodated, to ensure our free, prior, and informed consent,” says Chief Shelly Moore-Frappier of Temagami First Nation. “We want to ensure protection for environmentally, sacred, and sensitive sites, such as old growth forests that remain in the Temagami area. It is our responsibility, as Anishnabek.”

“To take away all of these procedural and substantive rights and protections for First Nations, especially without engaging with us in good faith, leaves our aboriginal and treaty rights at risk of being rendered meaningless in many environments,” says Chief Arnold Gardner of Eagle Lake First Nation. “This is in defiance of our section 35 constitutional rights, the requirement for the Crown to act honourably toward us, and to work toward reconciliation.”

Chief Robert Nakogee of Fort Albany First Nation states: “This is not reconciliation between the Crown government that has perpetrated colonialism, and the governments of first peoples who have lived in and protected these environments and lands since time beyond memory. This isn’t de-colonialization. This is deconstruction. First Nations are fighting back. We are seeking to have all of this declared unconstitutional.”

The Notice of Application was just filed with the Ontario Divisional Court today. The hearing will be held in Toronto, likely some time in the spring.

The Applicants of this legal challenge are as follows: Association of Iroquois and Allied Indians, Attawapiskat First Nation, Chapleau Cree First Nation, Eagle Lake First Nation, Fort Albany First Nation, Magnetawan First Nation, Mohawks of the Bay of Quinte, Temagami First Nation and Teme-Augama Anishnabai.

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