



---

## MEDIA RELEASE

\*Release **embargoed until 7 a.m. on Monday August 12, 2024**

---

**Media Event Date and Time:** Monday, August 12, 2024, 11:00 a.m. EST

**Media Event Location:** Queen's Park Media Studio, Toronto

**Dial in:** Toronto(+1) 289 815 3500 -- Toll Free - North America(+1) 800 864 5102

**Livestream:** <https://www.ola.org/en/legislative-business/video/media-studio>.

### **NO MORE AUTOMATIC MINING CLAIMS IN ONTARIO, SAYS FIRST NATIONS' COURT CHALLENGE**

August 12, 2024

TORONTO – Six First Nations have just filed a court case in Ontario Superior Court challenging the Province's Mining Act regime as an unconstitutional violation of their treaty rights and their Charter equality rights. The case says that the Mining Act regime fails in three ways: the automatic recording of mining claims without any prior engagement with First Nations, the abysmal system of “consultation” about exploration on those claims, and the inability of First Nations to protect their lands from either, all must fall.

“Companies are staking, or recording, dozens of claims *per day* on our traditional territory,” says Chief June Black of Apatipi Anicinapek Nation. “No notice, no engagement, no addressing of our concerns at all. We’re told only after the claims are registered, when it’s too late.”

“These mining claims give their holders certain land rights that the Mining Act treats as overriding our constitutionally-protected rights. As soon as a claim is recorded, we can’t use that land for new reserves, or indigenous parks; we can’t be stewards over our lands as our laws tell us we must,” says Kitchenuhmaykoosib Inninuwug Chief Donny Morris. “The Mining Act statute is taking precedence over Canada’s Constitution. How can that be right?”

“Ontario says to us, don’t worry, we will consult you before we allow any exploration activity to occur on those mining claims.” Chief Sheri Taylor of Ginoogaming First Nation knows from experience how hollow that is. “The recording of claims by itself, takes away our rights to use and protect that land ourselves. Added to that is exploration, but the “consultation” that Ontario does before it grants exploration permits, is a system of sending form letters and not much else. It is appallingly weak. It was that that forced us to into court once already, to protect a sacred area from exploration. Even though we won that injunction, Ontario will not remove those mining claims; so we’re facing the same threats again.”

“A huge swath of Ontario’s north, where we live and govern the lands, is now covered with thousands of mining claims,” says Attawapiskat Chief Sylvia Koostachin Metatawabin. She, and Aroland Chief Sonny Gagnon and Fort Albany Chief Elizabeth Kataquapit, are all witnessing the onslaught of claims-staking and exploration around and beyond the Ring of



Fire and feel the bulldozer effect of so much of their lands being taken up by prospectors and mining companies, with little they can do under the Mining Act to stop this.

The case is an application seeking declarations that certain provisions of the Mining Act are unconstitutional and orders that they be struck and replaced. "Ontario needs to ask itself if it is open for mining business at all costs. Which human rights are for sale?", asks lead counsel on the case, Kate Kempton from Woodward and Company.

For further information or interviews with Applicant First Nations, please contact:

**Kate Kempton**  
Senior Legal Counsel  
[kkempton@woodwardandcompany.com](mailto:kkempton@woodwardandcompany.com)  
Tel: 416-571-6775

**Lina Santana**  
Legal Assistant  
[lsantana@woodwardandcompany.com](mailto:lsantana@woodwardandcompany.com)  
Tel: 647-472-6838



## BACKGROUNDER

### FIRST NATIONS LAUNCH CONSTITUTIONAL CHALLENGE TO MINING ACT

**Press Conference:** Aug 12, 2024, 11 a.m. EST, Queen's Park Media Studio, Toronto

**Dial in:** Toronto(+1) 289 815 3500 -- Toll Free - North America(+1) 800 864 5102

**Livestream:** <https://www.ola.org/en/legislative-business/video/media-studio>.

**The contents of this document relate to a Notice of Application, filed with the Court and served on the Ministry of Attorney General, and which sets out the following:**

*Apitipi Anicinapek Nation, June Black, Aroland First Nation, Sonny Gagnon, Attawapiskat First Nation, Sylvia Koostachin Metatawabin, Fort Albany First Nation, Elizabeth Kataquapit, Ginoogaming First Nation, Sheri Taylor, Kitchenuhmaykoosib Inninuwug, and Donny Morris v. His Majesty The King in right of Ontario*

#### **Relief Sought:**

Declarations:

1. A constitutional duty to consult and accommodate ("**Duty**") the Applicant First Nations is owed and must be met in respect of and prior to the registration of mining claims pursuant to sections 4.1, 27, 28, 38(2), 50(1), 50(2), 65(1), and 66 of the *Mining Act*, RSO 1990, c M.14 ("**Mining Act**").
2. Pursuant to section 52(1) of the *Constitution Act*, 1982, that sections 27, 28, 38(2), 50(1), 50(2), 65(1), and 66 of the *Mining Act* and sections 2(1), 3, 5(1) and 8 of O. Reg 65/18 violate section 35(1) of the *Constitution* and are inapplicable or of no force or effect to the extent that they prevent or do not provide for the Duty to be met in respect of and prior to the registration of mining claims.
3. All mining claims registered in Ontario as of the date of declaration and in respect of which no permit for mineral exploration has been issued and is then in force, are void and of no force or effect, having been registered without the Duty having been met in respect thereof.
4. Pursuant to section 52(1) of the *Constitution*, that section 35 and in particular subsection 35(3) of the *Mining Act* violates section 35(1) of the *Constitution* by preventing, impeding, or not providing for the withdrawal of lands from claims registration, exploration and mining to protect Indigenous rights and interests if mining claims or other mining tenure are already registered thereon.
5. That the system or systemic program/practice applied by His Majesty the King in Right of Ontario ("**Ontario**") purportedly to meet the Duty in respect of exploration permits and plans pursuant to section 78.1 to 78.3 of the *Mining Act* and sections 7, 9 and 14 to 18 of O.



Reg. 308/12 (being the “**Exploration Duty System**”) as further set out in paragraph 29 of this Notice, is a violation of the Duty and section 35(1) of the *Constitution*.

6. Pursuant to section 52(1) of the *Constitution*, that sections 78.1 to 78.3 of the *Mining Act* and sections 7, 9 and 14 to 18 of O. Reg. 308/12 violate section 35(1) of the *Constitution* and are inapplicable or of no force or effect to the extent that they prevent or do not provide for the Duty to be met in respect of and prior to the issuance of an exploration permit or approval of an exploration plan.
7. That the Duty in respect of the registration of mining claims and other tenure, and the issuance of exploration permits and plans, must in all instances provide for:
  - a) meaningful consideration of cumulative effects;
  - b) meaningful consideration of the Indigenous perspective including Indigenous laws;
  - (c) reasonable funding to enable the affected Indigenous Peoples to participate in (a) and (b) in an informed manner; and
  - (d) measures to address the concerns of affected Indigenous Peoples about potential adverse effects to their rights and interests sufficient to acquire their consent if not unreasonably withheld.
8. Pursuant to section 52(1) of the *Constitution*, that: Sections 29, 30, 31, 33, 34, 40, 86, and 92(1) of the *Mining Act* violate the Individual Applicants’ and individual members of the Applicant First Nations’ equality rights protected under section 15 of the *Charter of Rights and Freedoms*, insofar as they provide protections for Non-Indigenous Land Interests but not Indigenous Land Interests that are sui generis interests in land that only Indigenous People have by virtue of their particular legal status and relationship with land; These violations are not justified under section 1 of the *Charter*; and
9. These sections of the *Mining Act* are to be amended to include the same protections for Indigenous sui generis interests in land.

## Orders

10. All provisions of the *Mining Act* declared unconstitutional herein shall be amended within one year following the declaration(s).
11. An order that the Duty shall be carried out in respect of mining claims registration and mineral exploration in accordance with paragraph 7 herein, through an efficient system or systematic program/practice developed through good faith consultation with the Applicant First Nations.

### **Overview of the case:**

1. Many First Nations in Ontario have seen their territories flooded with newly registered mining claims under Ontario’s free-entry mining system. The *Mining Act* regime allows for



prospectors from anywhere in the world to register a mining claim online and claim certain rights to the territory, while First Nations who may have interests in the land or are impacted by what is done to the land, have no opportunity to be consulted. The *Mining Act* makes it extremely difficult to have these claims removed. This amounts to a breach of the First Nations' s.35 constitutional rights to be consulted.

2. As soon as mining claims are registered, the claimholders acquire property rights and First Nations lose the ability to turn those lands into reserves, parks, or to have the land withdrawn from further mining claim registration. First Nations are receiving dozens of notifications per day from companies staking claims on traditional territory. These are lands used to exercise Treaty rights, but they are disrupted by the staked claims that prospectors can hold for perpetuity.
3. Furthermore, Ontario's "consultation" in subsequent stages of the mining process (e.g. exploration applications) is very deficient. In addition to enabling the staking of mining claims without consultation, consent or accommodation, Ontario facilitates a woefully deficient "consultation" process. When companies apply for exploration licences and permits, enabling prospectors to drill and disrupt land either in or adjacent to traditional territory, there is no consideration for the cumulative effects to the environment.

## MEDIA CONTACT

For more information or for interviews, contact Woodward & Co. Lawyers LLP:

**Kate Kempton**  
Senior Counsel  
[kkempton@woodwardandcompany.com](mailto:kkempton@woodwardandcompany.com)  
Tel: 416-571-6775

**Lina Santana**  
Legal Assistant  
[lsantana@woodwardandcompany.com](mailto:lsantana@woodwardandcompany.com)  
Tel: 647-472-6838

---

## LEGAL COUNSEL

Woodward & Co. Lawyers LLP is a law firm that works exclusively with Indigenous governments and organizations. We are driven first and foremost by a commitment to work in partnership with Indigenous peoples in their quest for justice and self-determination.

Web: [woodwardandcompany.com](http://woodwardandcompany.com)