



# **NESKANTAGA FIRST NATION**

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## **PRESS RELEASE**

# **NESKANTAGA FIRST NATION GOES TO COURT OVER ONTARIO'S FLAWED CONSULTATIONS ON RING OF FIRE ROAD**

## **REMOTE FIRST NATION ASKS COURT TO CLARIFY ONTARIO'S OBLIGATIONS UNDER THE DUTY TO CONSULT AND ACCOMMODATE ON ENVIRONMENTAL ASSESSMENTS**

**November 26, 2021**

With the support of its partner RAVEN (see [raventrust.com/campaigns/neskantaga/](http://raventrust.com/campaigns/neskantaga/)), Neskantaga First Nation has filed an application in the Superior Court of Ontario with respect to the consultations framework of the provincial *Environmental Assessment Act (EAA)*. The *EAA*, which fails to make any provision for Indigenous peoples and their consultation processes, has created an unworkable landscape for environmental assessments, posing a direct threat to Aboriginal, Treaty, and inherent rights. (See attached Application, Court No. CV-21-00672552-0000, issued November 23, 2021.)

Specifically, Neskantaga is asking the court to weigh in on what Ontario's consultation obligations are with respect to the development of terms of reference for an environmental assessment, when a First Nation is in crisis. Neskantaga is a remote Oji-Cree community, whose homeland is host to a portion of the so-called "Ring of Fire" mining region.

Following years of Neskantaga's concerns going unheeded by Ontario and by project proponents, Neskantaga is seeking the Court's declaration on the extent of the Duty to Consult and Accommodate Indigenous communities with respect to consultations on environmental assessments, in particular for remote communities in crisis. In the middle of the pandemic, while Neskantaga was dealing with a lockdown, boil-water advisory, and community evacuation, Ontario started the clock on a key access road project that would enable a massive expansion of mining in the ecologically sensitive Ring of Fire. The province imposed impossible deadlines, disregarding Neskantaga's own laws and protocols for community decision-making, and the multiple crises the Nation was facing. Ontario also facilitated the splitting of the project, so that a single road initiative was split into multiple separate projects. As a result of this project-splitting, Neskantaga now faces increased pressure, forcing them to engage in multiple overlapping but distinct processes.

Chief Wayne Moonias explained: "For too long, our community's laws and protocols have been disregarded by an Ontario government focused on economic development at the expense of Aboriginal, Treaty, and inherent rights. We respectfully and repeatedly advised Ontario of the



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need to halt an Environmental Assessment while we dealt with crises on multiple fronts, only for our needs to go ignored. Our people are strong and humble and we will defend our way of life. Justice demands a meaningful process, and we have shown we are willing to go to the courts to get it.”

Julian Falconer, legal counsel to Neskantaga, commented: “It is stunning in this day and age that a law intended to apply to mining and exploration in Indigenous homelands is utterly lacking in a framework for meaningful consultations with Indigenous peoples. Quite simply, we are going to court to create some ground rules around consultations with Indigenous peoples, starting at the earliest stages of an environmental assessment and the drafting of terms of reference. By failing to build in considerations around consultations which take into account the unique requirements of First Nations, it is hardly surprising that the legislation is insensitive to obligations of Reconciliation and the Honour of the Crown.”

## Key points:

- The Ring of Fire is a 5,000 square-kilometre potential multi-metal mining region, the largest in Canada.
- The Ring of Fire is located within the James Bay lowlands, a globally significant wetland, massive carbon storehouse, and landscape that has sustained the lifeways of Anishinaabe and Anishini peoples since time immemorial.
- Neskantaga First Nation is a remote Oji-Cree community, home to approximately 400 members, in addition to more than one hundred members living off-reserve.
- Neskantaga is subject to the longest-running boil water advisory in Canadian history, at 26 years and counting.
- The Duty to Consult and Accommodate is a legal principle requiring consultations with Indigenous communities whose rights may be affected by a project.
- Ontario’s *Environmental Assessment Act (EAA)* is the governing legislation for environmental assessments on mining and infrastructure initiatives. Neskantaga’s application focuses on sections 5.1 and 6 of the *EAA*, which govern consultations when drafting Terms of Reference for an environmental assessment.
- The *EAA* lacks a clear statement and guidance on the Duty to Consult and Accommodate with respect to environmental assessments. This has created an unworkable system where project proponents, from governments to mining companies to other First Nations, are unable to meaningfully consult with affected communities.
- This legal challenge is brought pursuant to Rule 14.05 of the Ontario *Rules of Civil Procedure*.

RAVEN is a registered charity operating in Canada. They work with Indigenous Nations to defend their rights in court by raising legal funds. For more on RAVEN and its support for Neskantaga’s Application, see:

<https://raventrust.com/campaigns/neskantaga/>



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**Enclosed:**

- **Notice of Application, Court No. CV-21-00672552-0000, re: Duty to Consult and Accommodate Under the EAA (Issued November 23, 2021)**

*For further information, please contact:*

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