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April 7, 2019

Via e-mail

Eric Everett
Far North Branch - Thunder Bay
1st Floor, 421 James Street South
Thunder Bay ON P7E 2V6
farnorthfeedback@ontario.ca

Re: **ERO Registry #013-4734, Proposal in support of the province's review of the Far North Act**

Dear Mr. Everett,

On behalf of the Osgoode Hall Law School's Environmental Justice and Sustainability Clinic, we are writing to provide comments on the Ministry of Natural Resources and Forestry (MNRF) proposal in support of the province's review of the Far North Act, posted to the Environmental Registry on February 25, 2019 ("the Proposal"). We are faculty and students affiliated with the Clinic.[1] Our aim is to contribute to the creation of policy and law that enacts principles of justice and sustainability for everyone in Ontario.

As we understand it, the MNRF Proposal is to repeal the *Far North Act*, in addition to three further elements. First, the government proposes that First Nations communities identified as having "advanced stage plans" pursuant to the *Far North Act* will be able to continue the joint-planning processes, but will have only until December 31, 2020 to complete and approve their Community-Based Land Use Plans (CBLUPs). Second, the government proposes to amend the *Public Lands Act* to govern land use planning in the Far North, and to provide all CBLUPs approved by December 31, 2020 with "substantially the same effect as under the *Far North Act*." Finally, planning processes in any community not currently in the advanced stages of planning will "wind down", and any future land use planning will be governed by the Public Lands Act "based on First Nation's interests and government resources and priorities".

Ontario's stated purpose with this review is to reduce "red tape" and restrictions on economic development in the Far North, including the Ring of Fire. While the repeal of the *Far North Act* and its replacement with an extension of the *Public Lands Act* may be expected to expedite development in some respects, land use planning legislation is not the only legal regime governing development in the Far North. Amendments to provincial legislation may facilitate approvals and permits for development projects; however, the province's constitutional obligations to Indigenous peoples, namely the Duty to Consult and Accommodate will need to be respected, in addition to First Nations' expectations that a Free, Prior, and Informed Consent ("FPIC") standard will be achieved, and any applicable standards and protocols under Indigenous Peoples' own laws.

In our assessment, the Proposal fails in three crucial respects:

1) It fails to demonstrate the required level of respect for Indigenous rights and jurisdiction;

2) It fails to remedy the existing flaws in Ontario's framework for land use planning and natural resource management; and

3) It amounts to a complete abandoning of Ontario's environmental protection and conservation goals, including climate mitigation strategies, in Ontario's Far North.

As such, the Proposal is not likely to achieve its aim of removing obstacles to economic development in Ontario's Far North. First Nations in the region have made it clear that they are not opposed to development on their territories *per se*, but the failure of the provincial government to understand that Aboriginal rights, Treaty obligations and Indigenous jurisdiction are not "red tape", is likely to lead to even more uncertainty for proponents and renewed conflict with First Nations.

ANALYSIS

1) The Proposal does not demonstrate the required level of respect for Indigenous rights and jurisdiction

In order to appreciate the effect of the Proposal on the exercise of Indigenous rights and jurisdiction in the Far North, it is necessary to understand how the *Far North Act* was intended to operate, and how it differs from the *Public Lands Act*. What makes the *Far North Act* unique is that land use planning under the Act would result in a CBLUP developed and approved by both local First Nations and the Ministry of Natural Resources and Forestry (MNRF). Crucially, the Act prohibits some types of development in the region until a CBLUP is approved and then only permits those development projects that are "consistent with" the finalized plan. Since the Act came into effect, four First Nations have approved CBLUPs[2] and a further nine have developed Terms of Reference.[3]

There are major practical differences between governing under the Far North Act and the Public Lands Act

One of the primary pillars of the Proposal is the amendment of the *Public Lands Act* to replace the *Far North Act* as the central legislative framework for land use planning in the Far North. In order to understand the implications of the Proposal, we compare the key provisions of the *Far North Act* and how they differ from the *Public Lands Act*, with a particular focus on the differences between the two legislative regimes as regards the degree of Indigenous participation in and control over land use planning on their territories.

The **purpose statement** of the *Far North Act* is found in section 1 and reads as follows:

> The purpose of this Act is to provide for community based land use planning in the Far North that,
>
> (a) sets out a joint planning process between the First Nations and Ontario;
> (b) supports the environmental, social and economic objectives for land use planning for the peoples of Ontario that are set out in section 5; and
> (c) is done in a manner that is consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*, including the duty to consult.

The purpose statement is significant as it guides the exercise of Ministerial discretion, in this case specifying certain environmental and social objectives for land use planning, and explicitly requiring they be met in a manner consistent with constitutional obligations owed to Indigenous peoples.

By contrast, the *Public Lands Act*, an older statute, does not have a dedicated "purpose statement". Rather, the purpose of the Act appears to be inferred by section 2(1): "The Minister shall have charge of the management, sale and disposition of the public lands and forests." The Land Use Planning Guidelines, the central policy document under the *Public Lands Act* states that planning processes "facilitate an orderly means of arriving at sound decisions for allocating and managing Ontario's natural resources." However, unlike the *Far North Act*, neither the *Public Lands Act* nor the Guidelines provide any guidance as to what constitutes "sound decisions." In sum, the purpose of the *Public Lands Act* appears to be to empower the Minister to dispose of and allocate public lands and natural resources.

The **objectives** of the *Far North Act* referred to in the purpose statement are found at section 5:

> The following are objectives for land use planning in the Far North:
>
> 1. A significant role for First Nations in the planning.
> 2. The protection of areas of cultural value in the Far North and the protection of ecological systems in the Far North by including at least 225,000

square kilometres of the Far North in an interconnected network of protected areas designated in community based land use plans.
3. The maintenance of biological diversity, ecological processes and ecological functions, including the storage and sequestration of carbon in the Far North.
4. Enabling sustainable economic development that benefits the First Nations.

Again, these objectives are unique in their specific reference to Indigenous involvement in and benefits from land use planning. The objectives inform and restrict the exercise of discretion under the *Far North Act*, particularly, as we will see, the exercise of Ministerial or Cabinet "over-ride" of CBLUPs or approval of development activities outside of the community-based planning process. The *Public Lands Act*, in contrast, does not have legislated objectives. Rather, the exercise of discretion in the land use planning process must be consistent with and adapt to current government policy.[4]

When is land use planning undertaken?
Under the *Far North Act*, participation by First Nations in the community-based land use process is not compulsory; however, once First Nations with reserves in the North indicate their interest in initiating the planning process, the Minister is required to work with the First Nation to develop terms of reference and prepare a land use plan. In contrast, under the *Public Lands Act*, land use planning is permissive, and depends on the interest from the public and the resources available from government.[5]

Who undertakes planning?
As outlined in both the purpose statement and the objectives, planning under the *Far North Act* is a joint process between First Nations and the MNRF. Section 7 outlines the process for establishing a "joint body", including that the joint body must be composed of an equal number of representatives from the First Nation and the Ministry.[6] The result of the joint planning process is a CBLUP.

By contrast, land use planning under the *Public Lands Act* is a Ministry-driven process. The establishment of planning committees is possible but not required. Although the Guidelines provide recommendations regarding Indigenous participation, the purpose of this participation is to ensure better buy-in for the ultimate land use plan, and to ensure that the Ministry complies with its constitutional obligations to consult and accommodate Aboriginal peoples, rather than to effect a meaningful joint planning process.

Who approves the land use plan?
Pursuant to section 9(14) of the *Far North Act*, both the Minister (by order) and the council of the First Nation (by resolution) must approve the community-based land

use plan in order for the plan to have effect. The Minister must consider the objectives of land use planning as set out in section 5 of the Act when deciding whether to make an order approving the land use plan.[7] Under the *Public Lands Act*, only approval by the Minister is required for the land use plan to take effect.[8]

What is the effect of a land use plan?
In both the *Far North Act* and the *Public Lands Act*, the approved land use plan informs the kinds of activities that can occur in the planning area going forward. Notwithstanding exceptions, amendments and over-rides, which are outlined below, all future activities on the land, and dispositions, allocations or uses of public land must be "consistent with" the land use plan.[9]

However, section 12(1) of the *Far North Act* also restricts certain types of activities in land use planning areas *before, or in the absence of, an approved* community-based land use plan.[10] In this way, the land-use planning process acts as a kind of "lever" through which a community can exercise at least a minimal degree of control over the pace and form of certain kinds of development on its territory. The absence of an approved plan, under the *Far North Act*, would prevent the approval of significant development activities, such as opening a new mine, commercial timber harvesting, oil and gas exploration or production, and constructing electrical generating facilities, during the planning process.[11] While this is a critical difference between the *Far North Act* and the *Public Lands Act*, as we outline below, mineral staking and exploration are not currently subject to these controls, which means that communities currently lack this lever in respect of one of their most pressing concerns even under the current regime. However, as we explain later, the *Far North Act* does provide that a community with an approved CBLUP may designate lands as open or closed to staking, according to their own visions for their territories (and subject to certain over-rides detailed next).

Ministerial amendments, exceptions and over-rides
Both Acts provide for ways in which the Minister can still approve activities in a land use planning area that would otherwise be prohibited in the land use plan. The *Far North Act* contains a number of complex mechanisms for Ministerial or Cabinet override, depending on whether a CBLUP has been approved. Where there is no approved CBLUP, development activities can be approved in two ways:

1) Section 12(2) allows the Minister to make an order to permit prescribed activities (s 12(1)) if a number of *conjunctive* factors are satisfied, one of which is the First Nation's support for the development activity (s 12(2)(c));[12] and

2) The Lieutenant Governor in Council can also make an order to permit a prohibited development activity if, after considering the objectives at section 5, that development is deemed to be in the "social and economic interests of Ontario" (12(4)).

However, the *Far North Act* sets a high threshold for the Crown to over-ride an approved CBLUP. Section 14(4) makes it clear that while Cabinet may do so, it must first take into account the objectives set out in section 5, and determine the development or approval is "in the social and economic interests of Ontario." Subsection (5) contains further restrictions on Cabinet's ability to order an exception.

The *Public Lands Act* sets a much lower threshold for amending an approved land use plan. As per section 12.2(3) "The Minister may, at any time, amend, in accordance with the land use planning policies and guidelines, a land use plan that the Minister previously approved." The Act provides no mandatory criteria for consideration by the Minister and as noted above, provides no purpose or objectives against which such changes must be measured. Therefore, land use plans under the *Public Lands Act* are vulnerable to unilateral discretionary changes in government policies related to natural resources management, such as forestry and mining. This vulnerability fundamentally undermines the prospective and long-term nature of land use planning, and potentially, any efforts towards joint planning with First Nations.

Therefore, from the perspective of Indigenous participation in and control over land use planning in their territories, **the *Far North Act* provides for far more *legislated* decision-making involvement and power for First Nations than the *Public Lands Act*.** However, while the *Far North Act* incorporates "significant" consideration of Indigenous interests and opportunities for the involvement of Indigenous peoples, we do not mean to suggest that this is ideal or even sufficient.[13] Rather, it is simply to point out that the existing statute directly recognizes First Nations as distinct from other communities or the "public", and directly acknowledges Aboriginal and treaty rights in the text itself. The *Public Lands Act,* in contrast, contains no mention of First Nations in the text of the statute at all, only in the accompanying guidelines and policy documents.[14]

2) The proposal fails to remedy major existing weaknesses of the *Far North Act* and may exacerbate weaknesses in other natural resource and land use planning laws in Ontario

In order to fully understand the implications of this Proposal, we also consider how other provincial laws will operate in the Far North if the *Far North Act* is repealed. We offer three observations. The first is that the *Far North Act* provides Indigenous communities with far more opportunities to control, restrict and shape development on their territories than is permitted under other Acts, such as the *Mining Act* and the *Crown Forest Sustainability Act*. Notwithstanding that the Minister must approve the CBLUP and has powers to amend it as described below, the joint planning process and the resulting CBLUPs do offer opportunities for First Nations to decide on land use designations and to infuse those designations with their own values, principles and laws. In contrast, both the *Mining Act* and the *Crown Forest Sustainability Act* are intended to facilitate resource extraction and, therefore, focus predominantly on minimal compliance with s.35 of the Constitution in their contemplation of Indigenous involvement and control over planning and resources management. Nor do either of those regimes on their own implement resource revenue sharing, although the newly negotiated agreements with some tribal councils can interact with those regimes to produce some revenues for First Nations.

The second observation is that, if the *Far North Act* is repealed and the *Public Lands Act* amended such that communities with approved CBLUPs will have "substantially the same effect as under the Far North Act", provincial resource laws will operate differently for communities with approved CBLUPs than for those without. An approved CBLUP not only designates different land uses within a territory, but it also determines how other provincial statutes can be interpreted and operationalized. In other words, the CBLUP restricts and shapes the exercise of Ministerial discretion under other resource legislation going forward. If the *Far North Act* is repealed, provincial laws such as the *Mining Act* and the *Crown Forest Sustainability Act* may be applied differentially across the Far North, with some communities having on-going influence over planning and resources management, while others will only be afforded opportunities to be consulted or, at best, to negotiate impact benefit agreements (IBAs). Indeed, the existence of an approved CBLUP in a First Nation's territory could afford it more leverage in negotiating IBAs, resulting in a differentiated patchwork of benefits and burdens of development across the region. Such a state of affairs has the potential to provoke or exacerbate tension, competition and even conflict between communities across the North. It is also unlikely to create the certainty for development that industry is seeking.

Finally, with the Far North divided up into areas with and without CBLUPs, development activities *and* conservation efforts will be far more piecemeal than would have been the case if the *Far North Act* had been fully implemented. Such a fragmentary approach to land use planning is likely to exacerbate First Nations' and environmentalists' concerns regarding the cumulative effects of development, particularly as relates to the construction of access infrastructure to the mines in the Ring of Fire. For example, where a regional approach to the approval of roads might minimize the cumulative effects of such infrastructure while still meeting community needs, a fragmented approach may result in more roads being built than would be strictly necessary.

The proposal does not remedy the continuing problems with Ontario's modified free entry mining regime

The regulation of mining activity has been of particular concern to First Nations in the Far North. Mineral claim staking, electronic claim registration, mineral exploration and obtaining mining leases or licenses of occupation for the purposes of mining are permitted under the *Far North Act*, even in areas without an approved CBLUP.[15] Moreover, mineral tenure in areas subject to the *Far North Act* is protected under the *Mining Act* such that any mining claims, leases, patents or licenses of occupation for the purposes of mining made or issued before the approval of a CBLUP survive, even when a CBLUP designates the land as inconsistent with mining purposes.[16] However, as mentioned, the *Far North Act* would prohibit the opening of a new mine where no community-based land use plan has been developed[17] or where mining is inconsistent with the land use designation under an approved CBLUP.[18] The repeal of the *Far North Act* would mean that this prohibition would be lifted, and new mines could be built in areas without a CBLUP in accordance with the requirements of the *Mining Act*.

The *Mining Act*, like the *Far North Act*, significantly affects First Nations' interests in the Far North.[19] The Act includes 14 provisions that directly relate to First Nations constitutional rights. These include provisions requiring that staking and exploration must be consistent with s.35 rights,[20] including the Duty to Consult and Accommodate,[21] and that all leases granted under the Act are limited by s.35 protections of Aboriginal rights.[22] However, there are strong arguments that, despite the language of compliance with s.35, provisions in the *Mining Act* that provide for automatic registration of mining claims and allow so called low-impact exploration activity breach constitutional obligations to Aboriginal peoples. In Treaty 9 territory, as an example, registration or exploration without prior Aboriginal consultation may breach Indigenous laws and impact the exercise of treaty rights, therefore violating s.35.[23] Further, the short timeframes stipulated under the Act may violate constitutional obligations even where consultation is contemplated.[24]

Land-use Planning in the Far North must Implement a FPIC Standard

To sufficiently recognize Indigenous rights and jurisdiction in the Far North, the government would need to meet both the Duty to Consult and Accommodate and the free, prior and informed consent (FPIC) standard under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Article 19 of the UNDRIP states:

> States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

On its face the *Far North Act* does not require First Nations consent prior to development. Similarly, the joint planning process is not a statutory recognition of Indigenous jurisdiction over their territories. Indeed, this largely explains why the *Far North Act* was strongly opposed by most affected First Nations. First Nations were particularly upset that the legislation was unilaterally drafted by the government, with inadequate consultation with Indigenous peoples prior to enactment, and that the legislation contained considerable Ministerial control over approvals and Cabinet overrides of land use plans.

Notwithstanding this justified opposition, the Proposal now being considered does not remedy the weaknesses outlined above, nor the flaws in the process. Rather, the MNRF seeks to replace the most progressive, if imperfect, land-use planning regime in Ontario with one that may not even comply minimally with constitutional obligations. This change could have substantial consequences for the level of participation and control First Nations have over development in their territories. Instead, the government should negotiate a stronger legislative framework for land use planning in the Far North that recognizes Indigenous jurisdiction.

Any regime governing land-use in the Far North must implement, at a minimum, "joint planning" with First Nations

Finally, even in the absence of an approved CBLUP, all development activities in accordance with any resource legislation would be taking place in a territory also governed by Treaties.[25] This means that, even in the absence of an approved CBLUP, any license, permit or approval issued under the statutes will trigger the Crown's Duty to Consult and Accommodate. Moreover, the existence of a Treaty means that claims are *prima facie* strong – the deciding factor on where consultation on the spectrum will lie would be how seriously the contemplated activity would affect those Treaty rights. Mining, logging, road and bridge construction, and energy corridors can all have potentially grave and irreversible impacts on recognized Treaty rights, such as hunting, trapping and fishing, therefore, these activities would likely trigger both a Duty for "deep consultation" as well as the need for accommodation related to the Aboriginal peoples' concerns. Therefore, at minimum, the Crown is likely to owe any First Nation affected, among other things, the opportunity to make formal submissions and participate in the decision-making process, as well as the provision of written reasons illustrating how their concerns and the possibility of accommodation were considered in the final decision.[26] And while certain procedural aspects of the Duty to Consult and Accommodate may be delegated to third party proponents, courts have been very clear that the responsibility ultimately rests with the Crown. Thus, the approach under the *Far North Act*, which institutionalized a Crown role in decision making with First Nations is preferable to the *Public Lands Act*, which is more consistent with a reliance on proponents to perform consultation.

In any event, relying on the minimal constitutional requirements, such as the Duty to Consult and Accommodate, cannot offer a way forward where there is disagreement between the Crown and the affected Indigenous community.[27] The Duty to Consult and Accommodate cannot guarantee that the underlying issues in the dispute will be addressed at all, let alone satisfactorily, and consequently, it cannot eliminate prolonged disputes, bitter conflict and even violence between Indigenous communities, private companies and the Crown over development on traditional lands.[28]

As a result, an approach which seeks to minimally comply with the Duty to Consult and Accommodate not only fails Indigenous communities, but also creates significant uncertainty, delay and costs for project proponents. Litigation is expensive, time-consuming and uncertain for all parties. Indeed, companies have recognized the real and growing risk of not seeking the consent of Indigenous communities.[29] For these reasons, members of the business community and international financing institutions[30] are increasingly moving from a "consult" standard to a "consent" standard in line with FPIC when working with Indigenous peoples.[31]

Therefore, despite the "delays" incurred by the joint-planning process under the *Far North Act*, a complete and approved CBLUP arguably provides far more certainty from a proponent's perspective than a return to a paradigm of project-based obligations to consult. Accordingly, while the Proposal seeks to speed up development by doing away with joint-planning going forward, this move is likely to create *more* uncertainty, delay, costs and even conflict, not less.

3) The Proposal amounts to a complete abandoning of Ontario's environmental protection and conservation goals, including climate mitigation strategies, in Ontario's Far North

The Far North region is already experiencing substantial impacts from climate change, and is a very significant ecological area globally. The value of carbon stored in peatlands for moderating climate was estimated by the Far North Science Advisory Panel at $1.5 trillion in 2010[32], which is at risk of being released as permafrost melts. There appears to be no indication about how Ontario intends to support protection and climate action overall, and certainly not how these activities can be part of First Nations' sustainable economic development in the Far North.

It is true that First Nations in the Far North were against *Far North Act*'s imposition of a 50% protection target in their territories without their consent. However, First Nations are also very concerned about the sustainability of their lands and the impacts of climate change. They seek recognition of their jurisdiction to address climate change through Indigenous laws and joint-planning with Ontario. Indigenous peoples should be able to exercise their inherent jurisdiction to make planning, permitting and approval decisions on their territories themselves, based on the authority that comes from knowing the land.

In this respect, we submit that Ontario should adopt a broad, regional and strategic lens to land-use planning in the Far North, opening up a dialogue towards developing an Indigenous-led strategic planning process oriented toward generating lasting benefits for the communities and having an overall positive impact on sustainability.

RECOMMENDATIONS

1. We recommend that Ontario take this opportunity to re-think the land use planning and natural resource regimes in the Far North in order to implement government-to-government partnerships for planning, development, and long-term sustainability.

2. We recommend that Ontario begin negotiations towards a joint strategic planning process to develop mutually agreeable environmental protection and economic development goals for the Far North.

3. We recommend that Ontario immediately commit to implementing an FPIC standard, jointly-developed with First Nations, in all approvals and permitting processes affecting First Nations in the Far North, including mining exploration. This can only be achieved through a government-to-government partnership approach. Anything less will be divisive and strenuously opposed, thus creating greater delays and uncertainty for all parties engaged in land use planning in the Far North.

Conclusion

Viewed in isolation, the repeal of the *Far North Act* is not objectively negative. Repealing legislation that was seen by many Indigenous peoples as "an invalid law and a new form of colonialism"[33] could, in theory, lead to respectful nation-to-nation dialogue and an enhanced recognition for the inherent jurisdiction of Indigenous peoples to choose, approve, reject, control and benefit from any development on their territories. Such an outcome would be consistent with the spirit of Reconciliation as articulated by the Truth and Reconciliation Commission.

It is undeniable, however, that the current regime provides more statutory levers for communities to control the pace and type of development, and far more power for First Nations to participate in and control land use planning decisions on their territories, than the *Public Lands Act*. Moreover, repealing the *Far North Act*, and leaving some communities with approved CBLUPs and others without, would result in some First Nations enjoying a higher degree of control over planning and development under provincial law than their neighbours. The *Public Lands Act* would likely expedite development in some respects, but land use planning statutes are not the only legal regime in place in the Far North and the interplay of these regimes with other legal duties, particularly under the Duty to Consult and Accommodate, the FPIC standard and Indigenous laws, is unpredictable. Therefore, development in the Ring of Fire is likely to continue to be slow, contested, and uncertain under the proposed regime.

As with all decisions, repealing the *Far North Act* could also have unintended effects. Responding to the news of the proposed repeal, Indigenous groups and communities have been unequivocal that their consent is required for future development decisions in the Far North. If the government listens and engages in meaningful nation-to-nation dialogue as these communities are requesting, the repeal of the *Far North Act* could be an opportunity for First Nations not only to see beneficial economic development on their lands, but to ensure that this development is consistent with their own laws. This would be a crucial step forward in Crown-Indigenous relations in Ontario.

However, if the government seeks to fast-track industrial development through, at best, minimal compliance with constitutional obligations, it can expect confrontation, conflict and further unintended results. The failure of the government to understand that Aboriginal rights, treaty obligations and Indigenous jurisdiction are not "red tape" or "platitudes" would undoubtedly lead to renewed conflict with Indigenous peoples.

The proposed repeal of the *Far North Act* presents both an opportunity and a risk. Ultimately, the outcomes will depend on the kind of relationship the province seeks with Indigenous peoples across the Far North.

Sincerely,

Dayna Nadine Scott
Associate Professor,
Osgoode Hall Law School and the Faculty of Environmental Studies

[1] As co-directors, as well as current and former students of the clinic, our team brings a wealth of expertise in environmental law and governance, natural resources law, and planning law to this submission. The lead author, Dr. Dayna Nadine Scott holds a York Research Chair and is Associate Professor at Osgoode Hall Law and the Faculty of Environmental Studies at York University, academic co-director of the Environmental Justice and Sustainability Clinic, and co-coordinator of the MES/JD program. In 2016, she was awarded a SSHRC Insight Grant to lead a team of researchers in a study of the legal contours of consent in the Ring of Fire region of the far north of Ontario. Her colleague and collaborator on the grant, Dr. Estair Van Wagner, is an Assistant Professor at Osgoode Hall Law School and academic co-director of the Environmental Justice and Sustainability Clinic. She researches and teaches on natural resource law and Indigenous environmental jurisdiction in both Canada and New Zealand. Post-doctoral fellow Ryan Bowie, Faculty of Environmental Studies, York University, current Osgoode Hall Law School JD student Amanda Montgomery, and MES/JD student Amanda Spitzig, provided additional support to this submission.
[2] These First Nations are: Cat Lake-Slate Falls, Pauingassi, Little Grand Rapids and Deer Lake First Nations (https://www.ontario.ca/page/land-use-planning-process-far-north).
[3] First Nations with ToRs include: Marten Falls, Webequie, Eabametoong, Mishkeegogamang, Constance Lake, McDowell Lake, Wawakapewin, Kashechewan, Weenuck and North Spirit Lake First Nations (https://www.ontario.ca/page/land-use-planning-process-far-north).
[4] Land Use planning guidelines.
[5] *Public Lands Act*, s 12(1), 12(2) and 12.1(1).
[6] *Ibid* at s 7(6).
[7] *Far North Act*, s 9(16).
[8] *Public Lands Act*, s 12(2).
[9] *Far North Act*, s 14(1). *Public Lands Act*, s 12.3(1).
[10] *Far North Act, 2010*, SO 2010, Chapter 18, s 12(1).
[11] *Ibid*.
[12] This mechanism has been used on 20 occasions by the Minister, largely to approve minor activities that also serve the interests of the First Nation, such as repairing air strips, constructing winter roads and building aggregate pits for construction on the reserve (See list of Ministerial orders: https://www.ontario.ca/page/ministers-orders-under-far-north-act#section-2). The nature of these orders is an indication of the degree to which development activities are highly restricted in the Far North where no CBLUP exists.
[13] Finding Common Ground: A Critical Review of Land Use and Resource Management Policies in Ontario, Canada and their Intersection with First Nations at 10-11. The other Act identified by the authors is the *Mining Act, 2009*.
[14] *Ibid* at 12.
[15] *Far North Act*, *supra* note 4, s 12(5)(e).
[16] *Mining Act*, *supra*, s 205.
[17] *Far North Act*, *supra* note 4, s 12(1)1
[18] *Mining Act*, *supra* note 50, s 204(2)(b). There is an exception provision at s 204(3) of the *Mining Act* that states: "Despite subsection (2), the Lieutenant Governor in Council may, after taking into account any prescribed land use planning objectives, permit a new mine opening for a project described in that subsection if the project is in the social and economic interests of Ontario."
[19] McLeod et al., *supra* note 41 at 10.
[20] *Mining Act, supra,* s 78.2, 78.3, see O. Reg 308/12.
[21] *Mining Act, supra* note 50, s 2
[22] *Ibid*, s 86.1.
[23] Karen Drake, "The Trials and Tribulations of Ontario's Mining Act: The Duty to Consult and Anishinaabek Law" (2015) 11 JSDLP 183 at 217.
[24] *Ibid*. See *Ross River Dena Council v Yukon*, 2012 YKCA 14, 358 D.L.R. (4th) 100, leave to appeal to SCC refused, 37.
[25] The Far North is largely covered by Treaty 9, with northern parts of Treaties 3 and 5 encompassed on the south-west edge of the region.
[26] *Haida Nation*, supra note 92 at para 44.
[27] Michael Coyle, "From Consultation to Consent: Squaring the Circle?" (2016) 67 UNBLJ 235 at 236.
[28] Coyle, *supra* note 103 at 236; Shin Imai, "Consult, Consent and Veto: International Norms and Canadian Treaties." In *The Right Relationship,* ed. Michael Coyle and John Borrows. (Toronto: University of Toronto Press, 2017) at 18.
[29] William M. Laurin & Joann P. Jamieson, "Aligning Energy Development with the Interests of Aboriginal Peoples in Canada" (2015) 53:2 Alta L Rev 453 at para 38.
[30] Examples include International Council on Mining and Metals, The Boreal Leadership Council and Prospectors and Developers Association of Canada. See Imai, *supra* note 35 at 11.
[31] Coyle, *supra* at 247; Imai, *supra* at 34.
[32] Ontario (May 4-5, 2010). Planning Together Workshop (Report), Ministry of Natural Resources. Thunder Bay, Ontario.
[33] NAN, *supra*.