

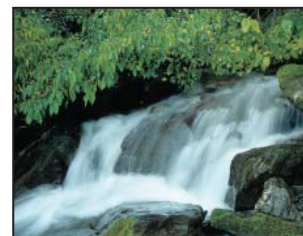


## Resource Benefit Sharing for First Nations and Government of Ontario

The Ontario government announced on April 27th that it is setting aside \$30 million as a down payment for future resource benefit payments to First Nations in Ontario.

Regional Chief Angus Toulouse stated that: “Resource benefit sharing is a fundamental Treaty right. A \$30 million down payment for future resource benefit payments to First Nations in Ontario is a solid demonstration of good faith on the part of the McGuinty government to work with First Nations on the basis of partnership.”

The provincial government acknowledged the mutual benefits of resource revenue sharing: “The socio-economic benefits of natural resource development to be shared with First Nations communities will encourage economic development opportunities, skills training and job creation that will improve regional economies and Ontario as a whole.”



The origin of this announcement goes back to work by the Ipperwash Inquiry Priorities and Action Committee (IIPAC), co-chaired by the Ontario Regional Chief and the Minister of Aboriginal Affairs, with members of the Chiefs of Ontario Political Confederacy and relevant provincial ministers. The IIPAC has identified a number of priority areas, including Land Rights and Interests. A technical sub-table on Resource Benefit Sharing was established as a result, which includes representatives from each First Nation political organization in Ontario. The sub-table reports directly to the IIPAC and the Chiefs in Assembly.

Discussions are now underway as to how a resource benefit sharing system will operate in Ontario. The \$30 million will flow to First Nations once discussions are complete and a First Nations-driven plan is in place. The Resource Benefit Sharing sub-table is exploring options and preferences. A high-level work plan has been developed which identifies community engagement as

a fundamental component. Current discussions indicate that community engagement could begin in the fall of 2009.

As well, a research project is in place that focuses on two pillars:

- A review of all Crown source revenues (such as stumpage fees, mineral rights, royalties, benefits and taxes collected directly from Treaty territories) to be prepared by an accredited economist; and
- A review of the spirit and intent of all Treaty language in Ontario that relates to sharing of lands and resources.

The research will also include an inventory of all resource benefit sharing initiatives in other jurisdictions.

This work could lead to some form of agreement between First Nations and Government of Ontario on resource benefit sharing before the end of 2009.

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- Update on New Status Card and Border Crossing
- First Nations Water Declaration
- INAC Engagement Sessions on Water and Wastewater
- First Nations Education
- Membership
- Matrimonial Real Property



## Update: Federal Budget and First Nations

It has now been almost five months since the federal government tabled its budget on January 27th, and the Chiefs of Ontario continues to press for more information about the funding allocated to First Nations. In particular, First Nations want to know when and how those resources will flow to First Nations.

The vast majority of the First Nations resources in the budget were for infrastructure, and it is clear that First Nations in Ontario have major infrastructure needs (estimated at \$2 billion worth of new and immediate investments). This is not simply about building infrastructure. It is about building safe and healthy communities.

The investments announced are positive but still fall far short of what is required. As well, it is still not clear if First Nations are eligible to apply to other non-Aboriginal specific components of the federal budget (such as resources for broadband).

So far, the Recreational Infrastructure fund of \$500 million over two years is the only area that specifically states that First Nations can apply. This fund will

be managed by Industry Canada's regional development organizations, with FedNor being the main organization in Ontario. An agency to deal with southern Ontario is to be established. Funds for this will be directed to repairs, rehabilitation and retrofits to a maximum of \$1 million per project.

A Chiefs of Ontario Bulletin issued March 10th provides greater detail on the federal budget. There has been little direct communication from the federal government on the budget since that time. There have been announcements by various Conservative Members of Parliament as to projects in their ridings, such as First Nations schools. But there does not seem to be any overarching plan or criteria for projects that are funded. This is of great concern to Chiefs of Ontario and we will continue to press for more details on these matters and will share this information as soon as it is received. In the meantime, we continue to encourage First Nations to bring forward "shovel-ready" infrastructure projects that can be completed by April 2011 to the Chiefs of Ontario office and the INAC Regional Office so we can identify priority projects and initiatives.

## Resource Benefit Sharing

Continued from page 1

While there is much more work to be done to fully implement the historic, sacred Treaties of First Nations, this work on resource benefit sharing is a welcome advance and we will all need to work together to ensure it benefits all First Nations.



The Chiefs of Ontario is a coordinating body for 133 First Nation communities located within the boundaries of the Province of Ontario. The main objective of the Chiefs of Ontario office is to facilitate the discussion, planning, implementation and evaluation of all local, regional and national matters affecting the First Nations people of Ontario.

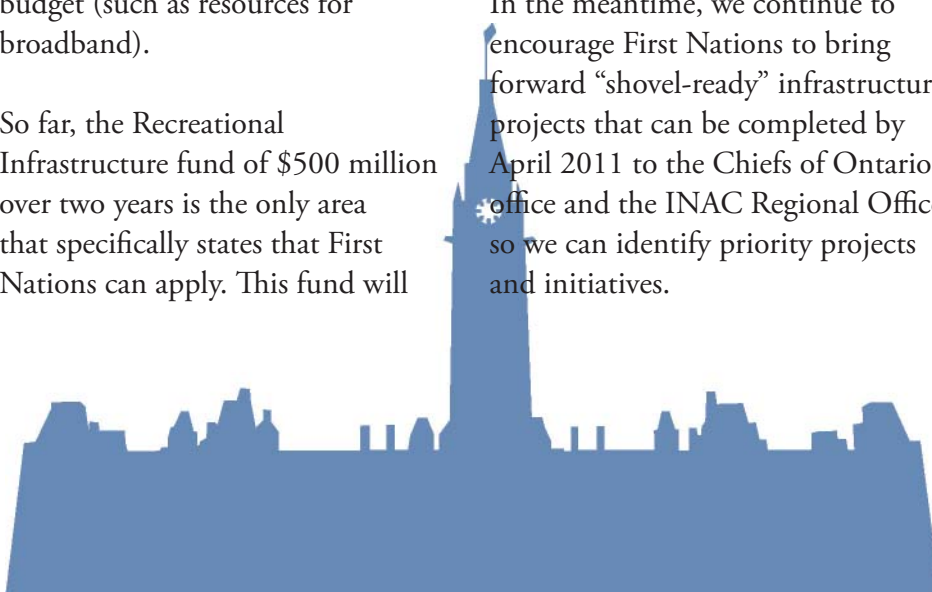
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## The Ontario Provincial Budget and First Nations

The provincial budget was presented in the Legislature on March 26th. In spite of a generally positive working relationship with the province, the budget had little in the way of specific measures and resources targeted at First Nations.

First Nations in Ontario have been seeking inclusion in both federal and provincial initiatives, particularly through budgetary measures that address economic stimulus and strategic investment in infrastructure and development for First Nations.

In this sense, the provincial budget was a disappointment. There are, however, some opportunities. The province did commit to working with Chiefs of Ontario on an Ontario-First Nations Forum on the Economy in the fall of 2009. This Forum will be an opportunity to press for additional commitments above and beyond the 2009 budget. Another welcome announcement was the \$205 million loan guarantee program to support First Nations

participation in energy projects. And the province did express its continued support for the implementation of the Ipperwash Inquiry report.

Provincial budget 2009 also identifies some economic stimulus targets that are not specific to First Nations but could present opportunities for investment. These include support for youth employment, investment in resource sector companies and green and emerging technologies. Based on the Government of Ontario's commitment to a new relationship, the Chiefs of Ontario will be seeking confirmation that First Nations will be able to participate in the initiatives announced in the Ontario budget, as well as a continued commitment to work with Ontario First Nations to support investments by the federal government.

One specific concern arising from the provincial budget is the implementation of a Canada/

Ontario harmonized sales tax, which is to be implemented by July 2010 (see article p. 4). It will be essential to thoroughly consider all implementation issues through an Ontario-First Nations process to ensure that there are no negative consequences for First Nations.

The Ontario Regional Chief wrote a letter to Premier Dalton McGuinty on all of these matters on April 7th and requested an immediate meeting to discuss the way forward, one that is consistent with the spirit of the new relationship. Subsequent to this request, Regional Chief Angus Toulouse met with Finance Minister Dwight Duncan who committed to working more closely with First Nations on pressing infrastructure needs including advocacy with his federal counterparts. The Regional Chief will report back to Ontario First Nations as soon as possible on these important matters.



**Chiefs of Ontario has a new and improved website. We will be updating it regularly to provide you the latest news and information on all the important events and initiatives happening in the region and on the national scene as well.**

**Check out the Chiefs of Ontario website at:**  
**[www.chiefs-of-ontario.org](http://www.chiefs-of-ontario.org)**



## HARMONIZED SALES TAX

The province announced in its March 26th provincial budget that it is now moving to work with the federal government to harmonize the Ontario Sales Tax (PST) with the federal Goods and Services Tax (GST). The plan is to have a Harmonized Sales Tax (HST) of 13% in place by July 2010, making Ontario the fifth province in Canada to implement tax harmonization (three Atlantic provinces harmonized their taxes under the Atlantic Accord, followed by Quebec, which introduced a harmonized tax in 1997). The federal government will administer the new HST.

Any changes to tax policy and law are always of concern to First Nations, and this situation is no exception. By way of background, federal and provincial tax laws have treated “Indian” tax exemption as a statutory entitlement under section 87 of the *Indian Act*. Of course, First Nations view tax exemption not simply as a privilege bestowed by the *Indian Act*. It is an Aboriginal right and in many cases a Treaty right. Canadian governments and courts have shown over the years that they do not believe that tax exemption is a constitutional right. In fact, the Province of Ontario and Government of Canada themselves have differing views about the nature of First Nations tax exemption.

Ontario, while not ideal, currently has one of the most effective approaches of any jurisdiction

in Canada for First Nation tax exemption on point of sale purchases. The main difference between Ontario tax policy and procedure and federal GST or HST policy is that Ontario does not impose the PST at the point of sale. First Nations citizens are able to make purchases without paying the PST (in most cases) by producing their status card. The federal GST and HST policy only recognizes GST/HST exemptions on purchases First Nations peoples make on reserves or where an off-reserve vendor delivers the goods to a home on-reserve.

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The concerns about harmonizing the taxes stem from the fact that the federal government will administer the new Ontario/Canada HST. It is worth noting that immediately following the budget announcement, the Ontario Minister of Aboriginal Affairs indicated that the province does **not** intend to change the point of sale tax exemption policy and practice that is currently in place.

As a result of correspondence sent to Ontario Government and subsequent meetings with the Minister of Finance, the Ontario

Government has committed to work with Ontario First Nations in an effort to maintain existing Ontario policy and practice concerning the point of sale exemption as part of the new tax regime. There is also a commitment from Canada and Ontario to work with First Nations through a tripartite Working Group. However, Canada has not provided any assurances that their tax policy and procedures will be adjusted to conform with Ontario policy and procedures to ensure the maintenance of the point of sale exemption. Making sure that Canada is in agreement with Ontario and First Nations is critical because Canada will have the responsibility to administer the harmonized tax.

All First Nations will need to be speaking out on this issue to make sure that the federal finance and revenue Ministers hear the need for cooperation with Ontario and First Nations in Ontario in achieving a satisfactory agreement in this matter. If you have not already written or raised this issue with the Ministers and/or your local MP and MPP, we encourage you to do so as soon as possible. No doubt this will be an important matter of discussion at our upcoming All Ontario Chiefs Conference (AOCC) and we'll want to confirm our core principles to direct this implementation initiative, including the assurance that First Nations will suffer no negative impacts as a result of the harmonized tax.



## New Status Card and Border Crossing Update

Indian and Northern Affairs Canada (INAC) has been working for some time now on creating a new Secure Certificate of Indian Status (SCIS) card for First Nations to replace the old laminated cards. INAC has been working with the United States Department of Homeland Security to try to get the new cards accepted as approved border-crossing documents under the U.S. Western Hemisphere Travel Initiative (WHTI).

The WHTI was implemented as part of the United States' post-9/11 security measures. As of June 1st, only WHTI-approved documents (such as passports) can be used to cross the border into the United States.

However, despite the June 1st deadline, First Nations citizens traveling to the U.S. by land and water will still be able to use their laminated status cards as approved identification at border crossings (passports are still required for air travel). This is only a temporary measure in place until INAC begins issuing the new status cards later this year.

The roll out of the new status cards already started, with Ontario "border communities" being the focus (INAC unilaterally determined



a border community as one within 100 kilometers of a Canada-U.S. border). INAC deployed National Mobile Application Centres (NAT MACs) in these communities. The NAT MACs contain the equipment required to issue the new SCIS cards. INAC security policy dictates that NAT MACs can only be operated by INAC employees. As of this writing, INAC had to pull the NAT MACs from the border communities because of "internal issues" with the mobile units (INAC would not elaborate because of "security concerns") and because INAC was not able to address all the questions from community members about privacy concerns.

Training and equipment will be provided to First Nations band offices. This includes additional resources and salary budgets for membership clerks. In order to receive the equipment, training and new resources, First Nations and Tribal Councils must:

- Accept the Security terms and Conditions of the SCIS program
- Have an IRA/membership clerk who has met all requirements (BCR, criminal record check, signed Letter of Agreement and SCIS training)
- Internet connectivity

The remaining regional and district offices have been processing applications since April. All First Nations will need to apply for the new SCIS card at their band office. INAC regulations state that "registered Indians" 16 years and older will need to provide their old status card (if they have one), an original birth certificate (long or short form) and one other form of valid ID (such as a passport, driver's license, government issued photo ID or other ID. Information is available on the INAC website).

Consistent with resolutions passed by Chiefs-in-Assembly, Chiefs of Ontario continues to advocate and ensure that the privacy rights of First Nations are not affected in any way by the new SCIS. The Chiefs in Ontario view the new SCIS card as a short-term solution and will continue to support First Nations government initiatives to determine their own citizenship and develop their own First Nation identity cards. As well, Chiefs of Ontario is calling on Canada and the United States to observe the Jay Treaty as an agreement that guarantees First Nation border crossing rights.

**First Nations citizens traveling to the U.S. by land and water will still be able to use their laminated status cards as approved identification at border crossings.**



## Elder Council Gathering in Treaty #3

The Chiefs of Ontario and Grand Council Treaty #3 Water and Elder Council Gathering took place May 26-28 in Treaty #3 traditional territory of Wauzhushk Onigum First Nation. Elders from across Ontario and Treaty #3 assembled to discuss the key issues that face our peoples and our nations. The gathering had a special focus on water and the Ontario First Nations Water Declaration. As well, the Elders deliberated on the establishment of a Chiefs of Ontario Elders Council.

The Chiefs of Ontario and indeed all First Nations people in Ontario look forward to hearing about the events, ideas and outcomes of the gathering. The wisdom of the Elders is the foundation for all our work and the path that will move us forward as we work to re-build our nations.



## Ontario First Nations Water Declaration

On April 16, 2009, Ontario First Nations proudly announced the adoption of a First Nations Water Declaration. The Declaration is a strong show of commitment to protecting the valuable resource of water in Ontario and around the globe.



The Declaration has been shared with the United Nations Water Advisor, Maude Barlow, to assist her work in developing a United Nations Declaration on Water. The Chiefs of Ontario acknowledges the commitment of the Ontario

Ministry of the Environment in its efforts to support the Water Declaration.

Now that the First Nations Water Declaration is in place, the Chiefs of Ontario is launching a community poster and public information campaign. Chiefs of Ontario and First Nations communities are developing strategies to implement the Declaration that involve spiritual elements, cultural components, environmental strategies, direct action and solidarity of action. First Nations communities are encouraged to be proactive in developing initiatives like local public education campaigns, drinking water projects for schools, water standards— any initiatives that reflect local concerns and priorities.

Chiefs of Ontario will work to coordinate activity and information sharing about the many initiatives underway.

The idea originated at a First Nations Water Policy Forum hosted by the Chiefs of Ontario in November 2008. The Forum brought together Elders, women, First Nations leaders and members of various First Nations groups that work in the area of water protection and water policy. Participants at the Forum recommended the creation and implementation of an “Ontario First Nations Water Declaration”. Draft text was developed and shared with all First Nations and, following excellent feedback and suggestions, was confirmed and endorsed.

The purpose of the Declaration is to ensure First Nations are educated about their rights to safe and clean drinking water; to raise awareness about the importance of water protection; and to improve water quality in First Nations across Ontario. Access to safe and clean drinking water is not only a Treaty and Aboriginal right, it is also a basic human right.



## INAC's Engagement Sessions on Drinking Water and Wastewater

In spite of opposition from First Nations, INAC announced it would proceed with its "Engagement Sessions with First Nations on the Proposed Legislative Framework on Drinking Water and Wastewater in First Nation Communities".

Two sessions were held in Ontario: one in Thunder Bay on March 3rd and another in Toronto on March 5th. The results of the sessions were documented by the Institute on Governance and reports on each session will be presented to the federal Minister of Indian Affairs.

Numerous participants at both sessions made it clear to INAC that these meetings are not to be considered consultations. Participants also did not allow INAC to ask its questions regarding preferred options for incorporation by reference.

INAC was able to share some information with First Nations. INAC has commissioned a national assessment of First Nation water and wastewater systems. It has just been announced that the bid has been awarded to the firm – Neegan Burnside. Chiefs of Ontario has consistently taken the position that infrastructure needs must be addressed before any legislation on drinking water and wastewater is developed. Because the work on the national assessment has just been awarded to a contractor,

infrastructure needs may not be determined until the fall of 2009 at best.

Chiefs of Ontario is taking a number of steps to ensure First Nations rights are protected and respected. Chiefs of Ontario has commissioned its own Impact Analysis on INAC's preferred option of incorporation by reference. This analysis will look at several elements including compliance, design approvals, monitoring, reporting and certification.

Chiefs of Ontario, in collaboration with other First Nations organizations, commissioned a legal primer called the *Aboriginal Water Rights Primer* in response to INAC's engagement sessions. The primer will include some historical background, analysis of First Nations water rights, protection of rights, the "infringement test" and relevant Crown decisions.

To further assist this effort and to ensure the First Nations position and direction are on the record, Chiefs of Ontario is preparing a report for the Minister based on information from resolutions, the engagement sessions, the First Nations Water Declaration and the legal primer.

Chiefs of Ontario is working with First Nations to make every effort to ensure that we protect not only our water, but also our rights to water.

## Ontario First Nations Economic Forum

Planning is underway for a major Ontario First Nations Economic Forum. The forum is planned for the fall of 2009 and is intended to bring together a broad cross-section of First Nations political, technical and economic interests along with representatives from the governments of Canada and Ontario and the private sector and other key players. The forum could be an opportunity to create new arrangements and shared commitments to advance First Nations social and economic development.

It is anticipated that special roundtables and working groups will be designated for key areas such as energy, resource development and resource benefit sharing to identify, coordinate and consolidate all of the work that is underway. There are also indications that First Nations may see some significant announcements and very specific action plans coming forward as a result of the forum.

More information will be provided on this exciting forum as it becomes available.

[www.chiefs-of-ontario.org](http://www.chiefs-of-ontario.org)



## First Nations Education and the INAC PSE Audit and Evaluation

There have been rumours for some time now that Indian and Northern Affairs Canada (INAC) is considering transferring authority of the current post-secondary education support programs to an as-yet unidentified “third party”.

Some clarity was provided by INAC officials at a February 29th appearance before the Parliamentary Standing Committee on Aboriginal Affairs and Northern Development. The INAC officials confirmed that an internal review process was in place to determine options to “increase access” to the program. In addition, INAC confirmed that an internal audit would be completed and made public by the end of March.

Officials admitted that there has been a decrease of First Nations post-secondary students from 30,000 down to 23,000 over the

past decade. Funding for the program was identified as \$314 million, and the 2% cap on increases imposed in 1996 was the main reason this program could not keep pace with

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*There has been a decrease of First Nations post-secondary students from 30,000 down to 23,000 over the past decade.*

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inflation, rising tuition, material and transportation costs, and the booming First Nations population. Clearly, the 2% cap is affecting the future well-being of First Nations students, citizens and communities.

The internal PSE audit was released on March 15th. The audit shows that INAC’s management of the program has serious flaws: INAC officials are unable to report on the effectiveness of the program, have not reviewed the sufficiency and appropriateness of funding levels and have not established a performance management framework to track outcomes based on accurate data.

While shameful, this is not entirely surprising. These results are consistent with numerous reports including the Auditor General of Canada’s 2004 report and a 2007 Standing Committee on Aboriginal Affairs and Northern Development report, both of which spoke to the need to modify administrative processes to better support the program currently being delivered by First Nations, to work in

partnership with First Nations and to immediately lift the 2% cap on funding.

The reality is that First Nations are doing an excellent job of delivering PSE programs, but the federal government is doing a poor job of ensuring the program is sustainable and meets the needs of First Nations learners. This is an issue that is critical to the future success of both First Nations and Canadians. The First Nations population is young and growing. Ensuring First Nations have access to a quality education should be a national priority.

The way forward must be set through collaboration and characterized by transparency. The federal government must work with First Nations to establish fair funding and accountability mechanisms in order to ensure First Nations learners succeed. The Chiefs of Ontario will continue to keep you updated on this important issue.

*Ensuring First Nations have access to a quality education should be a national priority.*





## Membership and the McIvor Decision

The British Columbia Court of Appeal issued a major decision on April 6th in the McIvor case. The McIvor case is a major court case that deals with First Nations status and membership. The name comes from the plaintiffs, Sharon McIvor and her son, Charles Jacob Grismer.

McIvor and Grismer challenged the constitutionality of section 6 of the *Indian Act*, which deals with entitlement to registration as an “Indian”. The main argument is that section 6 violates the plaintiffs’ rights under the Charter of Rights and Freedoms because it discriminates against them based on gender and marital status. This is based on the fact that women who were reinstated following Bill C-31 in 1985 (women who had “married out” prior to 1985) and their children are treated differently from men who married out prior to 1985 and their children. McIvor and Grismer argued that children tracing their Indian descent through the mother’s line from women who had married out prior to 1985 were not able to transmit Indian status to a third generation if one of the parents was not an Indian (often referred to as the “third generation cut-off”).

This case and the issues argued in it could have major impacts on policy

and law as it relates to Indian status, registration and membership.

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*It is the right of any nation to determine its own citizenship and First Nations are no exception.*

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The B.C. Court of Appeal (BCCA) issued its decision in April. The BCCA found that subsections 6(1)(a) and 6(1)(c) of the *Indian Act* violate the guarantee of equality in section 15 of the Charter. The court found that the discrimination against Grismer was based on gender – his mother being registered under 6(1)(c) rather than 6(1)(a) – but not marital status.

The BCCA found that the discrimination brought about by section 6 could not be justified under the Charter and struck down sections 6(1)(a) and 6(1)(c). However, the court suspended this “declaration of invalidity” for one year to allow Parliament time to amend the legislation to make it constitutional.

As of this writing, there are a number of unanswered questions. The federal government announced

on June 2nd that it would not appeal the decision and that it would “work collaboratively with willing Aboriginal organizations and Parliamentarians to facilitate” the development of new legislation. However, just two days later, on June 4th, Sharon McIvor announced that she would seek leave to appeal the decision to the Supreme Court of Canada (which could take three years or more to hear and rule on the case).

Essentially, everything is on hold while the court decides whether or not it will hear the appeal. Chiefs of Ontario will insist that First Nations have a lead role in any work – legislative or otherwise – that touches on the issue of citizenship, membership or status, given the cultural, legal and political importance of these matters.

It is the right of any nation to determine its own citizenship and First Nations are no exception. First Nations in Ontario and elsewhere are already engaged in various forums and initiatives to advance this work. Ultimately, First Nations want to move away from concepts of “membership” in favour of an approach that implements First Nation inherent jurisdiction over the core matter of citizenship. Chiefs of Ontario will keep you informed of all developments related to the McIvor decision and membership and citizenship issues.

**Chiefs of Ontario will insist that First Nations have a lead role in any work – legislative or otherwise – that touches on the issue of citizenship, membership or status, given the cultural, legal and political importance of these matters.**



## Update on Law and Legislation that Affects Ontario First Nations

### Changes to the Mining Act

In July 2008, Premier Dalton McGuinty announced that the Province of Ontario would “reform and modernize” the *Mining Act*. The Premier stated that the goal was to keep the mining industry strong but also to “modernize the way mining companies stake and explore their claims in order to be respectful of private land owners and Aboriginal communities.” He stated further that the Ontario government believes that exploration and mine development should only take place following early consultation and accommodation with Aboriginal communities.

The provincial government did announce a consultation process but it was overwhelmingly rejected as inadequate by Ontario First Nations. The timeframes were too tight and restrictive. Ontario Regional Chief Angus Toulouse met with the Minister of Aboriginal Affairs in October 2008. In a positive development, the Minister agreed to extend the timeframe for consultations, send the Bill to committee after first reading in the Legislature (which allows for further consultation and changes to the Bill), establish a political and technical dialogue with First Nations and the province which would,

among other things, enable First Nations to participate in the drafting of the Bill.

The Chiefs in Assembly passed a resolution on November 19, 2008 which provided a mandate for the Political Confederacy to participate in a process with the Government of Ontario to address First Nations rights and interests, while respecting and acknowledging different Grand Council/PTO perspectives. As well, there was a need for a community engagement process. The province agreed and provided additional resources for community engagement.

The *Mining Act* modernization bill was introduced in the provincial legislature on April 30th as the proposed Bill 173, *Mining Amendment Act*, 2009. Members of the Political Confederacy were invited to Queen’s Park for the event.

It will now be up to First Nations and the Grand Councils/PTOs to review the draft Bill and decide whether or not it addresses their issues. It is important to note that there are further opportunities to secure additional improvements through the Committee review process and the continuation of the First Nation and Ontario-specific process.

It was positive to see the Government of Ontario take steps to work with First Nations leadership and officials to improve the *Mining Act* and to address First Nations rights and interests.

### Bill 150 – The Green Energy and Green Economy Act

Bill 150, the *Green Energy and Green Economy Act*, was introduced by the provincial Minister for Energy and Infrastructure on February 23rd.

The main objectives of the Bill are to make it easier to get renewable energy projects into place and to create a “culture of conservation” by developing regulations to encourage individuals, businesses and government to use energy more efficiently and to rely more on renewable energy sources. Overall, the province hopes the Bill will spark “green jobs” and a “greener economy”.

The Bill itself consists of three sections and a series of “schedules” (“A” through “L”) that serve as attachments to the Bill. Schedule A is the *Green Energy Act* itself, and the remaining schedules amend existing legislation to bring them into line with the objectives of Bill 150.

*The Ontario government believes that exploration and mine development should only take place following early consultation and accommodation with Aboriginal communities.*



There are a few notable provisions that relate to First Nations.

**Schedule A** deals with the duty to consult and can be read positively as an indication of legislature’s intention not to infringe on the rights of Aboriginal peoples as protected by section 35. However, given this statement is placed in a Schedule rather than the Bill itself, it is not clear what effect this provision has and whether it performs any function beyond what would already happen under the Constitution. If the statements were in the actual Bill itself, it would be seen as applying to the entire Bill including all the Schedules. This might provide greater certainty. First Nations can, of course, always refer to section 35 to protect their inherent Aboriginal and Treaty rights, which provides protection regardless of the wording in provincial bills and schedules. Still, the question of the placement of this wording requires clarification from provincial officials.

The other area of note is **Schedule B**, which proposes amendments to the *Electricity Act, 1998*, including two provisions that refer to Aboriginal peoples in regard to the Ontario Power Authority (OPA).

Proposed section 25.32 (4.4) of Schedule B gives the Minister of Energy and Infrastructure the power to direct the OPA on the consultation process so that the Crown meets its duty to consult on matters that fall under OPA authority. This section raises the issue as to how the Minister’s authority to issue these directions to the OPA

will relate to the other government-wide policy on the duty to consult, which is still under development. Will the Minister be constrained by the government-wide policy or can the Minister deviate from it? This section also refers not only to Aboriginal peoples but also to “other persons or groups”. This raises the question as to how the Minister will direct the OPA to consult with First Nations in a manner consistent with the unique relationship between the Crown and First Nations. Finally, there is the question as to how Aboriginal peoples will be involved in developing directions to the OPA on consultation issues.

Proposed section 25.32 (4.5) of Schedule B essentially allows the Minister to order that the OPA seek and fund IBA-type agreements with Aboriginal peoples to support their participation in these activities. This provision, and the overall objectives of the Act itself, present some real opportunities for interested First Nations to become involved and financially benefit from renewable energy projects on their lands. There will be federal environmental review issues to address as there would be for any major project, which raises issues about coordinating both provincial and federal environmental review processes and consultation duties.

What is not clear in the legislation is what mandate the OPA has to develop **non-renewable** electricity facilities – and the related duty to consult on these projects – as these provisions only relate to renewable energy.

A final question relates to the mandate of the proposed Renewable Energy Facilitation Office and Renewable Energy Facilitator (section 10 to 12 in the *Green Energy Act*). The Office and the Facilitator have a mandate to work with proponents and to assist proponents of renewable energy projects to meet the requirements of the various approval processes. It is not clear whether this includes questions relating to consultation with First Nations.

Chiefs of Ontario is securing a meeting with the Minister for Energy and Infrastructure, George Smitherman, to raise these issues and seek clarity on the province’s position. This information will be relayed to Ontario First Nations as soon as possible. The Chiefs of Ontario has a more detailed Briefing Note on Bill 150 that is available on request.





## MRP Advocacy Initiative: Advocating for the Rights and Interests of Ontario First Nations

In spite of strong opposition by First Nations, the Conservative government seems intent on pursuing its flawed legislation on Matrimonial Real Property (MRP), Bill C-8. On the week of May 11th, the government brought the Bill back to the House of Commons. It has not yet passed and, as such, is not law.

It is the position of First Nations across the country that the Bill is flawed; it does not provide First Nations with an effective way to address MRP issues on-reserve; it infringes on First Nations jurisdiction; and First Nations were not properly consulted on the legislation.

For all these reasons, Chiefs of Ontario continues to take a strong stand against the Bill and is working to ensure it does not pass. Part of these efforts included a major lobbying effort with Members of Parliament in Ottawa from March 23rd to April 3rd. Leaders and representatives of Ontario First Nations met with MPs from all parties, as well as the NDP caucus.

Everyone involved in the lobbying effort agreed it was an effective step, especially given the apparent lack of understanding about the First Nations position. Many MPs were concerned about the position of Native women, given the



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*Matrimonial real property is the term used to describe the family home and the land on which it sits.*

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government has been selling its bill as a measure that “protects women” (even though men, women and children are equally affected by MRP issues). Ontario First Nations leaders were able to inform MPs that First Nation women reject Bill C-8.

It remains important for all First Nations to continue to speak out against the Bill, including First Nations women and women Chiefs. As well, First Nations that have taken their own proactive approach to address MRP issues should make their efforts known.

The next key steps in our collective effort include continued coordination among all First Nation organizations and with Opposition parties on the second reading vote, and encouragement for all First Nations to continue to contact their MPs and the Clerk to appear if the Bill gets to Committee.

Chiefs of Ontario will continue to keep all First Nations apprised of the status of the government’s MRP Bill and will work diligently to protect First Nations rights and jurisdiction.