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Request for Proposals: Legal Opinion on Mining in Ontario and the Duty to Consult First Nations

SUBMISSION INSTRUCTIONS

You are invited to submit a proposal for a project being undertaken by the Chiefs of Ontario to prepare a legal opinion on the impact of mining on First Nations rights in Ontario. In 2023, the Chiefs of Ontario (COO) received a mandate from the Chiefs in Assembly through emergency resolution 23/30S to review and assess possible legal mechanisms to address the lack of consultation with First Nations in the mining sector. The Chiefs of Ontario is seeking a legal firm capable of providing a detailed legal opinion to answer the series of questions prepared by the TWGM's technicians and COO Secretariat.

Please add this page to the front of your proposal.

REQUEST FOR FACILITATOR PROPOSALS

Submission Deadline: **April 15, 2024 at 12:00PM Eastern Standard Time (EST)**

Legal Name:	
Address:	
Telephone Number:	
Facsimile Number:	
Email Address:	

Send Proposal to:

Policy and Communications Sector, Attn: Chris Hoyos, Policy and Communications Director

Chiefs of Ontario
468 Queen St. E - Suite 400
Toronto, ON M5A 1T7
Email: chris.hoyos@coo.org

A proposal must be submitted as a PDF file to Chiefs of Ontario. The proposal must be received by Chiefs of Ontario no later than the deadline date. A proposal submitted in any other manner or late may be disqualified.

The proposal shall be irrevocably open for acceptance and binding on the Facilitator for fourteen (14) days after the Submission Deadline date.

The interested candidate's proposal must include the following:

- A demonstration of their expertise in addressing issues related to First Nations and mining; specifically the Mining Lands Administration System (MLAS), the Duty to Consult, Ontario's Mining Act, and *The Building More Mines Act*.
- A work plan in alignment with the project deliverables within the provided timeframe (**April 2024 – May 2024**)
- A proposed budget for the completion of the work with a budget schedule in alignment with the completion of each project deliverable

BACKGROUND AND CONTEXT

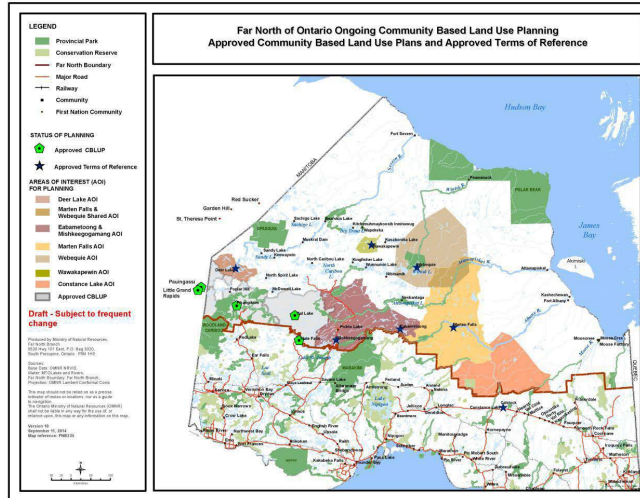
The province continues to expedite the rate at which mineral exploration and development occurs at the expense of First Nations. Thus far, many concerns of the impacted First Nations have gone unresolved as the province continues to neglect the duty to consult, their fiduciary responsibilities to First Nations, and the United Nations Declaration on the Rights of Indigenous Peoples, including the principle of Free, Prior, and Informed Consent.

Resolution 23/30S: Mining Encroachment in First Nations Traditional Homelands and Territories was passed by the Chiefs in Assembly at the 2023 Fall Chiefs Assembly. This Resolution directed the Chiefs of Ontario Secretariat to coordinate a technical review and feasibility assessment focused on the legal mechanisms executed in similar cases to the issue of the MLAS and First Nations in Ontario. The Resolution mandates that decisions including the Landore Decision (2018), the Saugeen SON Decision (2017), and the Gitxaala v. British Columbia (2023) be considered when addressing the series of questions prepared by the TWGM's technicians and COO Secretariat.

Additionally, the Resolution initiated the establishment of a TWGM as a part of the mandated Mining Sector Strategy. This group brings together technicians from First Nations across Ontario to facilitate wholesome discussion on the mining activities impacting the land and infringing on Aboriginal, Inherent and Treaty Rights. A series of questions was drafted by the TWGM that addresses the key concerns of the technicians regarding mining and the rights of First Nations. The questions developed by TWGM are as follows:

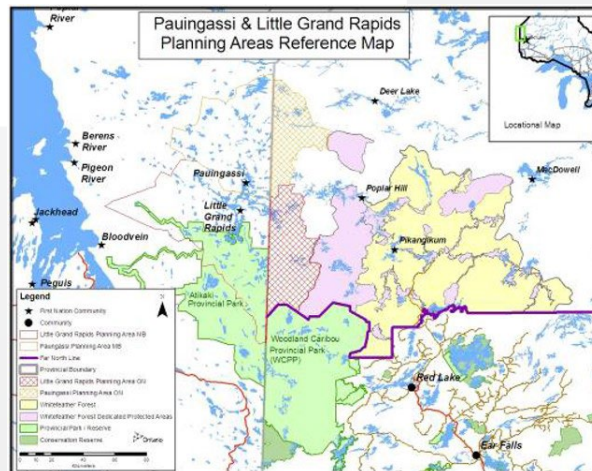
1. What legal avenue would you recommend be pursued to halt the rate at which mining claims are currently being staked in Ontario's on First Nations territories through the Mining Lands Administration System (MLAS)? Are there are legal avenues that align with staking claims in unknown areas that have potential First Nations values worth protecting?
2. What legal avenue would you recommend that First Nations take in regards to the Ministry of Mines' failure to fulfill the duty to consult regarding Bill 71: Building More Mines Act?

3. Can the recent supreme court decision regarding Bill C-92 in which the federal government upheld the Bill and the incorporation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) be applied to ensure that the provincial government receive the free, prior, and informed consent of First Nations prior to staking mining claims?
4. The novel appearance of recovery permits without any clear process to address First Nations duty to consult and accommodate on historic closed mines and the economic interests of First Nations was also introduced in Bill 71. Is there a legal avenue that might be taken to ensure that the grandfathering in of old mines and new minerals to be reassessed must include First Nations consultation and economic wealth sharing?
5. How can the outcomes of the Saugeen SON Decision 2017 and the Eabametoong FN v MNDM 2018 assist First Nations in the assertion, protection, and enforcement of their rights at the local level (day to day situations)? Has the government of Ontario and its ministries ignored these important court decisions related to proper notice, proper engagement, and proper process?
6. How would you recommend that Ontario's Mining Act be challenged regarding the surface and subsurface rights of First Nations? Would you advise that First Nations could pursue legal claims asserting their inherent rights to the land, including both surface and subsurface rights, based on Indigenous legal traditions, historical occupancy, and treaties.
7. How might Ontario's Environmental Bill of Rights (EBR) be used to challenge the protection of First Nations Section 35 rights?
8. While the provincial government has held standing committee hearings in Timmins and Thunder Bay, it has not held hearing on topics related to the impacts on First Nations rights in remote communities. Can this negligence be defined as a failure to fulfill the Duty to Consult?
9. What is the difference between the land and the mining claims being filed south of the undertaking and north of the undertaking? [Map of the Far North 2019 below]



10. What implications would the *Far North Act*, 2010 have on the staking of mining claims in the “Far North” and the Act’s current exclusion of the online MLAS activities and impacts?

11. What implications or precedent could there be for the Ontario government’s recognition of the Pauingassi and Little Grand Rapids First Nations (Manitoba) traditional territory within the Far North and boundaries of the province of Ontario? Will this recognition force Ontario to address the traditional territories aspect of Ontario First Nations? [Pauingassi and Little Grand Rapids MNR map below.]



OBJECTIVES AND KEY DELIVERABLES:

1. **6-8 Week Work Plan Developed:** The selected legal firm shall provide the Chiefs of Ontario with a 4-6 week work plan (appropriate timeframe to be decided upon by the firm) that accounts for the objectives and deliverables, as detailed below, as well as a quote outlining the approximate cost of the analysis.

2. Check-In Sessions: Complete at least three (3) **virtual** bi-weekly check-in meetings with Chiefs of Ontario representatives and/or the Technical Working Group on Mining to provide status updates and a forum for questions or clarities to be posed.
3. Develop a Legal Analysis: The selected legal firm will be responsible for the delivery of a legal analysis responding to the previously mentioned list of questions.

WORKING RELATIONSHIP

- This contract will be supervised by the Chiefs of Ontario Director of Policy and Communications.
- The Consultant will work alongside and will meet regularly with policy analysts, the Director of Policy and Communications, and technicians from the TWGM.

REQUIRED SCHEDULE WITH MILESTONES

Date	Milestone
May 17, 2024	Deadline for preliminary findings and data to be delivered to Chiefs of Ontario and Technical Working Group on Mining
May 31, 2024	Deadline for first DRAFT of legal analysis to be delivered to Chiefs of Ontario –Technical Working Group on Mining
June 7, 2024	Deadline for Chiefs of Ontario –Technical Working Group on Mining to provide feedback on legal analysis
June 13, 2024	Deadline for final DRAFT of legal analysis to be delivered to Chiefs of Ontario at the Annual Chiefs Assembly

PROFESSIONAL FEES

Applicants are to complete the Fee Schedule as fully as possible by replicating the table below in their proposal. Do not include HST in fees quote, but specify where HST is applicable. The fees quoted should be the applicant's best and only price. Estimated cost is the estimated hours multiplied by the hourly rate. **All travel expenses must be included in the Proposal Fee Schedule** over the timeframe of May 1, 2024 – June 21, 2024 – **unless COO requests additional travel.**

Work Components	Estimated Hours	Hourly Rates	Est. Cost (Hours Times Rates)	Est. Time Completion
Contingency Rate				
Total Cost & Completion Dates				

Additional points for applicants to consider:

- The Facilitator must commit to a firm price for the entire contract. No increases during the course of the contract will be allowed. All subcontractors' fees must be included in the quoted fees.
- Expenses should be estimated and explained with the Professional Fee schedule

PROPOSAL EVALUATION

All submission will be evaluated on the following criteria:

- Quality of the proposal;
- Capacity of the applicant to undertake the project;
- Appropriateness of the project budget and timelines;

COO RESERVES THE RIGHT TO:

- Reject any or all proposals received;
- Enter into negotiations with one or more applicants on any aspect of the proposal;
- Accept any proposal in whole or in part;
- Cancel, modify or reissue this document at any time;
- Verify any and all information provided in the proposal.

PROPOSAL REQUIREMENTS:

All submissions must include the following:

- Cover Letter;
- Detailed work plan with all deliverables accounted for;
- Completed fee schedule of estimated budget in alignment with deliverables;
- CVs and References.

RECEIPT OF PROPOSALS

Packages to be clearly marked: "RFP: Legal Findings" by **April 15, 2024 at 12:00PM** Eastern Standard Time (EST). Please submit electronically to Policy and Communications Sector at chris.hoyos@coo.org and CC' Annabelle.MacRae@coo.org. Submissions received after the stated deadline will not be accepted.

Selection of consultant will be awarded by **April 17, 2024**.