

## **Providing More Clarity for Industry's Duty to Consult**

Submitted by the Timmins Chamber of Commerce

Co-sponsored by the Thunder Bay Chamber of Commerce, Greater Sudbury Chamber of Commerce, North Bay and District Chamber of Commerce, and the Sault Ste. Marie Chamber of Commerce

**Adopted by the Ontario Chamber of Commerce – May 2017**

### **Issue:**

The lack of clarity regarding the provincial government's approaches to many Aboriginal issues – including the duty to consult and unresolved land claims – threatens the future socioeconomic well-being of communities across Ontario while hindering meaningful discourse on the development of natural resource sector projects.

### **Background:**

In Canada, the duty to consult with Indigenous communities who may be adversely affected by resource development lies with federal and provincial governments, which are increasingly using legislation to shift that responsibility to resource sector businesses seeking to advance projects on or near Indigenous lands.<sup>1</sup> The Province of Ontario has joined other Canadian jurisdictions in taking this approach, though the lack of clarity or direction regarding that approach has created considerable challenges for all involved. This is particularly true for smaller operators and communities who lack sufficient knowledge or resources to begin interpret and implement the legislation.<sup>2</sup> In some cases, this has led to the stalling or outright halting of projects with potential economic and social benefits for the affected Indigenous communities, and Ontario at large. Indeed, the murkiness of nature and implementation of the individual responsibilities of industry, the Crown, and Indigenous communities themselves is creating considerable confusion at all stages of the process -- including for projects as significant as the so-called Ring of Fire, a multi-mineral district located in Ontario's Far North, where disagreements about appropriate application of the duty to consult have led to considerable delays.<sup>3</sup>

These challenges this has created have been identified by many concerned observers, including Ontario's Auditor General Bonnie Lysyk, who in December 2015 specifically identified the need for the Province to "ensure that requirements surrounding its Aboriginal consultation process are clarified and can easily be understood by potential investors."<sup>4</sup> Moreover, the Auditor's report found that this is "creating uncertainty for the mining industry."<sup>5</sup>

Similar sentiments have been expressed by the Northwestern Ontario Prospectors Association, which has argued that this industry-side approach "has unclear expectations, few guidelines, no transparency, and does nothing to solve ongoing disputes."<sup>6</sup> The Ontario Prospectors Association has made comparable remarks, indicating that the current lack of clear guidelines is leading to

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<sup>1</sup> Canadian Chamber of Commerce, *Top 10 Barriers to Business Competitiveness 2016*

<sup>2</sup> <http://www.republicofmining.com/2016/01/18/mining-and-indigenous-peoples-our-future-by-pierre-gratton-november-23-2015/>

<sup>3</sup> Fraser Institute, "Uncertainty deterring mining investment in Ontario," January 2016  
<https://www.fraserinstitute.org/blogs/uncertainty-deterring-mining-investment-in-ontario>

<sup>4</sup> Office of the Auditor General of Ontario, "Annual Report 2015," December 2015

[http://www.auditor.on.ca/en/content/annualreports/arreports/en15/2015AR\\_en\\_final.pdf](http://www.auditor.on.ca/en/content/annualreports/arreports/en15/2015AR_en_final.pdf)

<sup>5</sup> *ibid.*

<sup>6</sup> Northwestern Ontario Prospectors Association, "Comments on Renewing Ontario's Mineral Development Strategy," April 2015 [http://www.nwopa.net/uploads/2/8/8/7/28877487/nwopa\\_-\\_2015\\_comments\\_on\\_mineral\\_development\\_strategy\\_-\\_final.pdf](http://www.nwopa.net/uploads/2/8/8/7/28877487/nwopa_-_2015_comments_on_mineral_development_strategy_-_final.pdf)

considerable confusion for all parties. Similar sentiments have been expressed by the Ontario Chamber of Commerce, as well as many local Chambers and other stakeholder organizations concerned about the many undue challenges Ontario's approach places on industry and Indigenous communities alike.

### **Recommendations:**

#### **The Ontario Chamber of Commerce urges the Government of Ontario to:**

1. Develop a consistent, coordinated approach to Indigenous consultation and accommodation which clearly identifies the duties of industry and the Crown; harmonizes provincial and federal processes; and reflects relevant factors such as new and existing obligations within established case law; and
2. Ensure sufficient resources are dedicated to communicating and implementing this approach across government, industry, and Indigenous communities.