



**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)**

BETWEEN:

GRASSY NARROWS FIRST NATION
and
SHERRY FOBISTER,
WILLIAM FOBISTER, SENIOR, CHIEF SIMON FOBISTER
and
former CHIEF ROGER FOBISTER, SENIOR
on their own behalf and on behalf of all other members of
GRASSY NARROWS FIRST NATION

Applicants

- and -

MINISTER OF NATURAL RESOURCES AND FORESTRY (ONTARIO)
and MINISTER OF THE ENVIRONMENT AND CLIMATE CHANGE (ONTARIO),
and THE ATTORNEY GENERAL OF ONTARIO

Respondents

**(FURTHER AMENDED) NOTICE OF APPLICATION TO DIVISIONAL COURT
FOR JUDICIAL REVIEW**

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following pages.

THIS APPLICATION for Judicial Review will come on for a hearing before the Divisional Court on a date to be fixed by the Registrar at the place of hearing requested by the Applicants. The Applicants request that this application be heard at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicants' lawyer or, where

the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, YOU OR YOUR LAWYER MUST, IN ADDITION TO SERVING YOUR NOTICE OF APPEARANCE, SERVE A COPY OF THE EVIDENCE ON THE Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the Applicants' application record, or not later than 2 p.m. on the day before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: September 1, 2015

~~(Amended April 8, 2016)~~

(Further Amended August 5, 2016)

Issued by _____



Registrar
Divisional Court
Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N5

TO: _____ The Honourable Bill Mauro
_____ Minister of Natural Resources and Forestry
_____ c/o Legal Services Branch
_____ Ministry of Natural Resources and Forestry
_____ Whitney Block, Room 3420
_____ 99 Wellesley Street West
_____ Toronto, Ontario M7A 1W3
_____ Attention: Mr. Leith Hunter, Director

AND TO: _____ The Honourable Glen Murray
_____ Minister of the Environment and Climate Change
_____ c/o Legal Services Branch
_____ Ministry of the Environment and Climate Change
_____ 135 St. Clair Avenue West, 10th Floor
_____ Toronto, Ontario M4V 1P5
_____ Attention: Ms Halyna Perun, Director

AND TO: ~~Attorney General of Ontario~~
~~Crown Law Office – Civil~~
~~8th Floor, 720 Bay Street~~
~~Toronto, Ontario~~
~~M7A 2S9~~
~~Attention: Mr. Troy Harrison, Director~~

~~Constitutional Law Branch~~
~~4th Floor, 720 Bay Street~~
~~Toronto, Ontario~~
~~M7A 2S9~~
~~Attention: Mr. Michel Helie, Director~~

TO: MINISTRY OF THE ATTORNEY GENERAL

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Lawyers for the Respondents

APPLICATION

This is an Application for judicial review of a provincial decision approving clearcut logging activities and refusing to order an individual environmental assessment (“IEA”) regarding potential mercury contamination and adverse human health effects, arising from the approved activities.

The decision consists of two inter-related stages:

- (1) a December 2013 decision by the Minister of Natural Resources and Forestry, or the Minister’s designate (the “Natural Resources Minister”), approving a forest management plan (“Plan”), which allows clearcut logging of the Whiskey Jack Forest in northwestern Ontario under section 9 of the *Crown Forest Sustainability Act*, S.O. 1994, c. 25 (“*CFSA*”), and
- (2) a December 2014 decision by the Minister of the Environment and Climate Change, or the Minister’s designate (the “Environment Minister”) refusing, under section 16 of the *Environmental Assessment Act*, R.S.O. 1990, c. E.18 (“*EAA*”), to grant a Part II order (or “bump-up”) requested by the Applicants that would have allowed an IEA to be conducted on whether clearcut logging authorized under the Plan could:
 - (a) release mercury to the watersheds of and adjacent to the English-Wabigoon river system, which system runs through the

Whiskey Jack Forest most of which is part of the traditional territory of the Grassy Narrows First Nation (“Grassy Narrows”),

- (b) contaminate fish therein, and
- (c) increase the risk of harm to humans consuming the fish.

The Applicants challenge the approval of the Plan and the refusal of their request for a bump-up with respect thereto (collectively the “Decision”) on the basis that the exercise of these statutory powers of decision infringe on the rights of their members (1) to life, liberty and security of the person as guaranteed by section 7 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (U.K.), c. 11 (the “*Charter*”), and (2) to equality under section 15(1) of the *Charter*.

The Applicants also challenge the Decision on other constitutional and administrative law grounds set out below.

1. The Applicants make application for:

Charter Remedies

- (a) an order under section 24(1) of the *Charter* declaring that the Decision,
 - (i) infringes section 7 of the *Charter*, by depriving them of their life, liberty and security of the person in a manner not in accordance with the principles of fundamental justice;

- (ii) infringes section 15(1) of the *Charter* by depriving them of their right to equality;
- (b) an order under section 24(1) of the *Charter* setting aside the Decision;
- (c) an order under section 24(1) of the *Charter* in the nature of mandamus directing the Environment Minister to authorize an IEA as requested by the Applicants;
- (d) an interim and permanent order under section 24(1) of the *Charter* prohibiting the Natural Resources Minister from authorizing third parties, by licence or otherwise, from conducting clearcut logging in the Whiskey Jack Forest under authority of the Plan;
- (e) an interim and permanent order under section 24(1) of the *Charter* enjoining third parties with a licence or other instrument from the Natural Resources Minister from conducting clearcut logging in the Whiskey Jack Forest under authority of the Plan;

Administrative Law Remedies

- (f) an order declaring that:
 - (i) in failing to ensure that mercury releases would be prevented or mitigated, approval of the Plan by the Natural Resources Minister was without legal authority under the *CFSA* or, in the alternative, unreasonable; and
 - (ii) the refusal by the Environment Minister to grant a bump-up request so as to assess under an IEA potential environmental and

health impacts from mercury releases was without legal authority under the *EAA* or, in the alternative, unreasonable;

- (g) an order quashing or setting aside:
 - (i) the Decision; and
 - (ii) any authorizations, licences, permits, or approvals by the Ministers, or their respective ministries, enabling implementation of the Plan to proceed, in whole or in part, before this Application has been heard and determined by this Honourable Court;

Remedies Based on the Federal Paramountcy Doctrine

- (h) an order declaring that the Plan, by permitting release of mercury, a deleterious substance, into water frequented by fish, is contrary to, conflicts or is inconsistent with, section 36(3) of the federal *Fisheries Act*, R.S.C. 1985, c. F-14, and is thereby rendered inoperative to the extent of the conflict or inconsistency;

Costs

- (i) an order requiring the Respondents to pay the Applicants costs of this Application if requested or, in the alternative, an order that all parties shall bear their own costs;

Other Relief

- (j) such further or other relief as counsel may advise and this Honourable Court may permit.

Grounds for the Application

2. The Grounds for the application are:

The Parties

(a) The Applicants are:

(i) Chief Simon Fobister, ~~Senior~~, the elected chief and a member of Grassy Narrows, and having the status of an “Indian” within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5 (“*Indian Act*”), who is bringing this application on his own behalf and on behalf of all other members of Grassy Narrows;

(ii) Sherry Fobister, William Fobister, Senior, and ~~Simon~~ former Chief Roger Fobister, Senior each of whom is a member of Grassy Narrows, having the status of an “Indian” within the meaning of the *Indian Act*, who also bring this application on their own behalf and on behalf of all other members of Grassy Narrows; and

(iii) Grassy Narrows, a First Nation being among the Aboriginal peoples of Canada recognized under s. 35 of the *Constitution Act, 1982*, and having the status of a “band” within the meaning of the *Indian Act*. Members of Grassy Narrows live on and off the English River 21 Reserve (hereinafter the “Grassy Narrows Reserve”), a “reserve” within the meaning of the *Indian Act*. The members of Grassy Narrows, whose ancestors signed Treaty No. 3, are Anishinabe

(Ojibway) men, women, and children many of whom engage in the practice of traditional Anishinabe activities in their traditional territory, which are central to their identity, diet, culture, and economy, including by:

(A) fishing in the English-Wabigoon river system watershed, or adjacent watersheds, in the area that includes the Whiskey Jack Forest; and

(B) consuming fish caught from those waters.

- (b) The Respondent Natural Resources Minister is responsible for the *CFSA*, Ontario's primary statute permitting logging of, and development and approval of forest management plans for, the Crown forests of Ontario.
- (c) The Respondent Environment Minister is responsible for the *EAA*, Ontario's primary statute for examining the effects of undertakings, such as logging and related forest management activities on Crown lands in Ontario, on the natural environment, human life, and social, economic, and cultural conditions.

Overview

- (d) The Applicants rely on fishing in the watershed of the English-Wabigoon river system as a significant part of their way of life, and on the consumption of area fish as a significant part of their diet. Existing

mercury pollution dating from the discharge of mercury by a Dryden, Ontario chlor-alkali plant into the same river system in the 1960s has had, and continues to have, a significant adverse impact, due to the consumption of mercury-contaminated fish, on the health and well-being of members of Grassy Narrows, including some of the individual Applicants who have been diagnosed with, or whose children have been diagnosed with, symptoms consistent with mercury poisoning. The Applicants fear that clearcut logging authorized under the Plan poses a serious risk of additional harm to the health and well-being of community members because it will trigger new releases of mercury to the watershed, increase the accumulation of mercury in the food chain, and prolong and exacerbate the existing mercury problem.

Historical Background: Industrial Discharges of Mercury in the English-Wabigoon River System

- (e) Beginning in the 1960s, a chlor-alkali plant at Dryden, Ontario began discharging mercury into the English-Wabigoon river system, eventually discharging approximately 9,000 kilograms of mercury into the river system, which flows into and through the traditional lands and territory of the Applicants;
- (f) Once in the water, the mercury was transformed by chemical-biological processes into methyl mercury, a nerve poison capable of bio-accumulating up the food chain, being ingested by fish, and adversely

impacting humans consuming methyl mercury-contaminated fish caught from waters in the aforementioned area;

- (g) The consumption of methyl mercury-contaminated fish by members of Grassy Narrows resulted over the decades in serious, and well-documented, neurological harm and other adverse health impacts, many of which continue to afflict many members of Grassy Narrows to this day;
- (h) Litigation by Grassy Narrows against the federal and Ontario governments, and the successor company to the original industrial discharger, resulted in a settlement in the 1980s and the payment of some compensation as well as the establishment of a mercury disability board to evaluate and compensate members of Grassy Narrows suffering on-going neurological harm and other adverse health impacts consistent with mercury poisoning arising from the industrial discharges of mercury into local bodies of water;
- (i) The watershed of the English-Wabigoon river system where the industrial discharges of mercury took place encompasses most of the Whiskey Jack Forest;
- (j) Fish within this watershed continue to have levels of mercury above, or near, the limit for safe human consumption;

- (k) Grassy Narrows Reserve is located within the Whiskey Jack Forest itself.

The Whiskey Jack Forest Management Plan

- (l) Starting in or about 2010 and continuing to late 2013, the Ministry of Natural Resources and Forestry (“MNRF”) gave periodic public notice of its intention to develop a forest management plan that would authorize logging for the Whiskey Jack Forest, and sought from time to time public comment on various stages of what eventually became the approved Plan.
- (m) Over this same 2010 to 2013 period, Grassy Narrows and other groups raised publicly through the media, and directly with the provincial government, their concern that the sole method of harvesting trees under the Plan, clearcut logging, would interfere with the rights of the members of Grassy Narrows and risked the release of new, or additional, sources of mercury into the region’s watershed system, the potential for increased methyl mercury contamination of fish, and consequential harm, or further harm, to the health and well-being of members of Grassy Narrows consuming the fish.
- (n) During the 2010 to 2013 period, and earlier, MNRF also was independently aware, through its own research and investigations, of the mercury problem arising from clearcut logging and the challenge of

preventing or mitigating it. Notwithstanding these concerns, the Natural Resources Minister approved the Plan in December 2013.

The Bump-up Request

- (o) The notice of decision approving the Plan indicated that persons objecting to the decision could apply to the Ministry of the Environment and Climate Change (“MOECC”) requesting a bump-up under the *EAA* that would, if approved, authorize an IEA to be performed before the Plan would be allowed to go into effect.

- (p) Grassy Narrows, in conjunction with an environmental non-governmental organization not party to this application, filed such a request in January 2014 as well as supplementary submissions with supporting material in May, July, September, and November 2014.

- (q) The initial request, the supplementary submissions of Grassy Narrows, and the response of MNRF demonstrated the need for an IEA, including:
 - (i) since the industrial discharges of mercury in the 1960s, clinical evaluations of members of Grassy Narrows show that many have suffered from, and continue to suffer from, a variety of neurological health problems attributable to eating methyl mercury contaminated fish caught in area waters;

- (ii) peer-reviewed scientific studies show clearcut logging in boreal forests at latitudes similar to the Whiskey Jack Forest, leads to the presence, or increased presence, of methyl mercury in fish in watersheds where the logging takes place;
- (iii) members of Grassy Narrows fear the health risks posed by eating mercury-contaminated fish but continue to do so for a variety of complex reasons, including because fishing and consumption of fish caught has always been part of their traditional way of life, diet, and culture, which they do not wish to lose, and because it is an affordable source of food in an impoverished community;
- (iv) MNRF admitted that it makes no claims for the effectiveness of the only measures it proposes for the mitigation of mercury impacts to water from clearcut logging authorized under the Plan;
- (v) MNRF personnel involved in preparation of, or comment with respect to, guidance materials for the Plan raised concerns that key measures proposed for use with the Plan would not be enforceable and would not adequately mitigate mercury releases to water and could, in fact, exacerbate them.

- (r) Despite the above and related submissions and material filed by Grassy Narrows and admissions by MNRF, the Environment Minister, or his designate, refused the bump-up request of Grassy Narrows in December 2014, allowing implementation of the Plan to proceed. In doing so, the refusal decision specifically relied on the mitigation measures that MNRF disclaimed the effectiveness of in controlling mercury impacts, and simply imposed requirements for monitoring such measures during clearcut logging activity authorized under the Plan.

The Decision Violates the Section 7 *Charter* Rights of the Applicants

- (s) Section 7 of the *Charter* declares that everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Depriving Applicants of Right to Life, Liberty and Security of the Person

- (t) The Decision violates the section 7 *Charter* rights of the Applicants by:
- (i) Depriving them of their right to life guaranteed under section 7 by increasing their risk of death, illness or disease as a result of the approval and anticipated implementation of the Plan and corresponding refusal to examine beforehand, through an IEA, the potential impacts to them posed by consumption of mercury-contaminated fish arising from, or exacerbated by, clearcut logging authorized by the Plan in the Whiskey Jack Forest;

- (ii) Depriving them of their right to liberty guaranteed under section 7 by undermining, or seriously compromising, their freedom to choose an environment in which to reside and in which to practice their traditional way of life, including fishing in their traditional territory, due to the serious risks they face, if they stay in the area, of neurological or other harm, or such further harm, as a result of eating fish caught in local waterways contaminated by methyl mercury caused by clearcut logging authorized by the Plan, and not studied beforehand, through an IEA;

- (iii) Depriving them of their right to security of the person guaranteed under section 7 by:
 - (A) increasing the risk to their physical security by exposing them to health damage, or further health damage, including death or disability, due to approval and implementation of the Plan that will permit clearcut logging with known potential to release mercury into the watershed, contaminating fish, and leading to neurological and other harm to those consuming the fish, and not studying the issue beforehand through an IEA; and

- (B) increasing the risk to their psychological security because the Decision constitutes serious state-imposed psychological stress arising from their fear that clearcut logging authorized by the Decision, which has been strongly linked in the scientific literature to runoff and bioaccumulation of mercury, will exacerbate the contamination of fish, as well as neurological and other health problems experienced by members of Grassy Narrows consuming the fish.

The Deprivations are not in Accordance with Principles of Fundamental Justice

- (u) The Decision also constitutes a deprivation of the section 7 rights of the Applicants by not being in accordance with principles of fundamental justice.

Failure to Respect Sanctity of Human Life

- (i) Given the history of mercury impacts on the members of Grassy Narrows, the Decision fails to respect the sanctity of human life, a substantive principle of fundamental justice, by risking further harm to human health and well-being, if not loss of human life, in the community from mercury exposure arising from approval and implementation of the Plan, which authorizes clearcut logging, and failing to examine the risks before hand through an IEA.

Denial of Procedural Protections

(ii) The Decision denies the Applicants procedural protections as it was made without their being able to appear before an independent body that could have considered these matters under three different statutes because:

(A) MNRF failed to promulgate a regulation setting out an appeal process for forest management plans as authorized under section 12 of the *CFSA*;

(B) MNRF and/or MOECC failed to classify by regulation forest management plans as instruments that are eligible for third party appeals under sections 38-48 of the *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28 and O. Reg. 681/94 promulgated thereunder, which could have led to an independent public hearing with respect to the Plan;

(C) as a result of the Environment Minister refusing to grant the bump-up request, the Applicants were denied an opportunity:

(1) to obtain an IEA that could have provided in-depth study and consideration of the issue of mercury release to area waters and resulting health implications thereof, from the Plan's authorization of clearcut logging, matters of vital concern to their life, health, and well-being as consumers of fish from these waters; and

(2) to request an independent public hearing under sections 9.1-9.3 of the *EAA* with respect to the resulting IEA; and

(D) the substitution of a notice, comment, ~~and~~ consultation, and IEA request opportunity offered by MNRF/MOECC to Grassy Narrows was not adequate in the context of this case in comparison to a hearing before an independent body, particularly given the health threats posed by mercury to members of Grassy Narrows arising from clearcut logging authorized under the Plan, and the information known only to MNRF at the time respecting the limitations of its mercury mitigation measures. The MOECC, as the decision-maker in the IEA process, did not act in accordance with principles of fundamental justice in that it collaborated with MNRF, the Plan proponent, on

both MNRF's substantive submissions to, and on the ultimate decision of, MOECC, all without the knowledge of the Applicants.

Effects Grossly Disproportionate to Objectives

- (iii) The effects of the Decision on the life, liberty, and security of the person of members of Grassy Narrows due to potential additional exposure to mercury and the failure to study same through an IEA before proceeding, are grossly disproportionate to the Decision's objectives of allowing the harvesting of trees in the Crown forest by clearcut logging.

Offends Basic Tenet of Legal System

- (iv) The Decision also is not in accordance with principles of fundamental justice because it offends a basic tenet of the legal system by violating the equality rights of the Applicants under section 15(1) of the *Charter*, as set out below.

The Decision Violates the Section 15(1) *Charter* Rights of the Applicants

- (v) Section 15(1) of the *Charter* declares that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

- (w) The Decision violates the section 15(1) *Charter* rights of the Applicants by: (1) creating a distinction based on grounds enumerated in, or analogous to, section 15(1); and (2) creating a disadvantage based on the distinction.

Creating a Distinction

- (x) The Decision violates section 15(1) of the *Charter* by creating a distinction that:
- (i) disproportionately burdens:
 - (A) members of Grassy Narrows who live within the watershed and who are identifiable by their Aboriginality, their place of residence, their historical and ongoing practice of traditional Aboriginal activities in their traditional territory, including fishing, all characteristics that are actually or constructively immutable, and which the government has no legitimate interest in expecting the people of Grassy Narrows to change in order to receive substantive equality under the law; and
 - (B) women of childbearing age in the community who must avoid consumption of methyl mercury-contaminated fish or risk exposing their unborn children to serious adverse health effects; and

- (ii) ignores their pre-existing health disadvantage as a result of past consumption of methyl mercury-contaminated fish from local waters.

Creating a Disadvantage

- (y) The Decision further violates section 15(1) of the *Charter* by creating a disadvantage on the basis of the above distinction that perpetuates the history of prejudice experienced by Aboriginal peoples in Canada in general, and the exposure to mercury suffered by members of Grassy Narrows in particular by authorizing, and refusing to examine beforehand through an IEA potential impacts to them posed by, clearcut logging that will trigger new releases of mercury into the local water system, thus effectively putting the members of Grassy Narrows in the position of either:
 - (i) giving up the fishing and other traditional activities in their traditional territory that are of significant importance to a band member's personal identity; or
 - (ii) further exposing themselves and their unborn children to harm due to consumption of fish contaminated by new releases of mercury to area waters.

The Decision is not justified by Section 1 of the *Charter*, or Disproportionately and Unreasonably Interferes with *Charter* Guarantees

- (z) The violations of sections 7 and 15(1) of the *Charter* set out above do not constitute a reasonable limit demonstrably justified in a free and democratic society pursuant to section 1 of the *Charter*. The impugned Decision impairs the rights of the Applicants, does not advance a sufficiently important governmental objective and, in any event, fails to meet the proportionality requirements of section 1 of the *Charter*. Alternatively, the Decision, in seeking to meet statutory objectives, disproportionately and unreasonably interferes with protections guaranteed to the Applicants under sections 7 and 15(1) of the *Charter*.

The Decision Violates Administrative Law Principles

- (aa) In making the Decision, the Ministers, or their designates, erred in law and/or acted beyond or without jurisdiction in that:
- (i) there was no evidence that the mercury mitigation measures proposed pursuant to, or in conjunction with, the Plan would mitigate mercury impacts to the river system, avoid contamination of fish, or prevent serious risk of harm to members of Grassy Narrows consuming contaminated fish, and there was substantial evidence to the contrary;
 - (ii) the Natural Resources Minister failed to meet the purposes, duties, and conditions precedent imposed upon the Minister pursuant to

sections 1, 2, 9, and 68 of the *CFSA* and various manuals and guides promulgated thereunder, requiring the Minister to only approve a Plan that provides for the sustainability of the Crown forest ecosystem by meeting the social, economic, and environmental needs of present and future generations, as well as minimizing adverse effects to animal life and water;

- (iii) the Environment Minister, in refusing to grant the bump-up request and order that an IEA be conducted and in allowing, without the knowledge of the Applicants, MOECC to collaborate with MNRF during the decision-making process with respect thereto, or failing to ensure such collaboration did not occur, acted unfairly or unreasonably, and failed to meet the purposes and duties imposed by sections 1, 2 and 16 of the *EAA* and declaration orders promulgated thereunder related specifically to forest management on Crown lands, to protect the environment, including human life;
- (iv) relevant factors were not taken into account or, in the alternative, irrelevant factors were taken into account.

The Plan Conflicts, or is Inconsistent, with the Federal *Fisheries Act*

- (bb) In authorizing the Plan under section 9 of the *CFSA*, which will allow clearcut logging operations causing or permitting the deposit of mercury, a

deleterious substance, into water frequented by fish, including the watersheds of and adjacent to, the English-Wabigoon river system, the Natural Resources Minister's decision conflicts or is inconsistent with the prohibition in section 36(3) of the *Fisheries Act* prohibiting such deposits and is thereby, pursuant to the federal paramountcy doctrine, inoperative to the extent of the conflict or inconsistency.

Constitutional and Statutory Provisions

- (cc) *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the "Charter"), sections 1, 7, 15(1), 24(1), 28;
- (dd) *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, section 35;
- (ee) *Indian Act*, R.S.C. 1985, c. I-5;
- (ff) *Crown Forest Sustainability Act*, S.O. 1994, c. 25;
- (gg) *Environmental Assessment Act*, R.S.O. 1990, c. E.18;
- (hh) *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28 and O. Reg. 681/94;
- (ii) *Fisheries Act*, R.S.C. 1985, c. F-14, section 36(3);
- (jj) *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1;
- (kk) *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (ll) *Rules of Civil Procedure*, R.R.O. 1990, Regulation 194.
- (mm) Such further or other grounds as counsel may advise and this Honourable Court may permit.

Documentary Evidence

3. The following documentary evidence will be used at the hearing of the application:

- (a) the record to be filed by the Respondent Ministers pursuant to section 10 of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1;

Applicants' Application Record

- (b) Affidavit of Simon Fobister, affirmed July 30, 2015;
- (c) Affidavit of Amber Ellis and David Sone, sworn August 21, 2015;
- (d) Affidavit of Chief Roger Fobister, Senior, affirmed August 26, 2015;
- (e) Affidavit of Joseph Fobister, affirmed August 26, 2015;
- (f) Affidavit of William Fobister, Senior, affirmed July 30, 2015;
- (g) Affidavit of Sherry Fobister, affirmed August 26, 2015;
- (h) Affidavit of David Sone, sworn August 21, 2015;

Applicants' Supplementary Application Record

- (i) Affidavit of Dr. Richard Carignan, ~~to be sworn~~ February 18, 2016;
- (j) Supplementary Affidavit of Dr. Richard Carignan, ~~to be sworn~~ February 18, 2016;
- (k) Affidavit of Dr. Donna Mergler, ~~to be sworn~~ November 6, 2015;
- (l) Affidavit of Dr. Anna Willow, ~~to be sworn~~, February 18, 2016;
- (m) Affidavit of Dr. Justin Podur, ~~to be sworn~~, December 10, 2015;
- (n) Affidavit of Stephen Kilburn, affirmed January 29, 2016;
- (o) Affidavit of Steven Fobister, Senior, affirmed March 24, 2016;
- (p) Supplementary Affidavit of David Sone, sworn March 9, 2016;
- (q) Supplementary Affidavit of Joseph Fobister, affirmed March 22, 2016;

(r) Supplementary Affidavit of Chief Roger Fobister, Senior, affirmed March 9, 2016;

(s) Supplementary Affidavit of Simon Fobister, affirmed March 22, 2016;

(t) Supplementary Affidavit of William Fobister, Senior, affirmed March 9, 2016;

(u) Supplementary Affidavit of Sherry Fobister, affirmed March 24, 2016;

Applicants' Further Supplementary Application Record

(v) Affidavit of Dr. Shigeru Takaoka, ~~to be sworn~~ May 28, 2016;

(w) Affidavit of Dr. Tadashi Fujino, ~~to be sworn~~ May 27, 2016;

(x) Affidavit of Dr. Akitomo Shimoji, ~~to be sworn~~ May 28, 2016;

(y) Affidavit of Minako Miyata, sworn July 8, 2016;

(z) Further Supplementary Affidavit of Simon Fobister, affirmed July 15, 2016;

~~(n)(y)~~(aa) Such further or other material as counsel may advise and this Honourable Court may permit.

Date: September 1, 2015
~~(Amended April 8, 2016)~~
(Further Amended August 5, 2016)

CANADIAN ENVIRONMENTAL LAW
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Lawyers for the Applicants

GRASSY NARROWS FIRST NATION, et al.

v. **MINISTER OF NATURAL RESOURCES AND FORESTRY, et al.**

Applicants

Respondents



**ONTARIO
SUPERIOR COURT OF JUSTICE**

(Divisional Court)

PROCEEDING COMMENCED AT TORONTO

**(FURTHER AMENDED) NOTICE OF
APPLICATION TO DIVISIONAL COURT FOR
JUDICIAL REVIEW**

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**CERTIFIED TO BE A TRUE COPY OF
ORIGINATING PROCESS ISSUED HEREIN**

M. Perreault
SOLICITOR FOR THE APPLICANT

THIS IS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE

LA PRÉSENT ATTESTE QUE CE DOCUMENT, DONT CHACUNE DES PAGES EST REVÊTUE DU SCEAU DE LA COUR SUPÉRIEURE DE JUSTICE À TORONTO, EST UNE COPIE CONFORME DU DOCUMENT CONSERVÉ DANS CE BUREAU

DATED AT TORONTO THIS 5th DAY OF Aug 2016
FAIT À TORONTO LE 5th JOUR DE Aug 2016

F. Karbidis
REGISTRAR DIVISIONAL COURT

GREFFIER