

*****Intended for Informational Purposes Only*****

Court File No. CV-25-00751759-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ALDERVILLE FIRST NATION, APITUPI ANICINAPEK NATION, AROLAND FIRST
NATION, ATTAWAPISKAT FIRST NATION, FORT ALBANY FIRST NATION,
GINOOGAMING FIRST NATION, KITCHENUHMAYKOOSIB INNINUWUG,
ONEIDA NATION OF THE THAMES and WABAUSKANG FIRST NATION**

Applicants

- and -

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO and THE ATTORNEY GENERAL
OF CANADA**

Respondents

- and -

MICHEL KOOSTACHIN and RAMON KATAQUAPIT

Proposed Interveners

**FACTUM OF THE PROPOSED INTERVENERS
(MOTION FOR LEAVE TO INTERVENE)
MICHEL KOOSTACHIN and RAMON KATAQUAPIT**

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PART I - OVERVIEW

1. Michel Koostachin and Ramon Kataquapit (collectively, the “Proposed Interveners”) seek leave to intervene as friends of the Court pursuant to Rule 13.02 of the Rules of Civil Procedure for the purpose of rendering assistance to the Court by way of arguments within this application.¹
2. The Application is proceeding on the basis that the *Protect Ontario by Unleashing Our Economy Act, 2025* (“Bill 5”) allows Ontario to declare a Special Economic Zone (“SEZ”) where major projects can be approved without the need for proponents to abide by other provincial laws.² It also allows Ministers to remove the need for archaeological assessments, environmental assessments and endangered species protection as conditions on project approval and authorizes the Crown to unilaterally approve projects,³ undermining constitutionally protected and internationally recognized Indigenous rights, including the free, prior and informed consent of those whose lands and waters and way of life will be directly impacted and forever changed.⁴
3. Among the relief sought by the Applicants is a declaration that Bill 5 is unconstitutional and of no force and effect, and an interim, interlocutory, and/or permanent injunction or declaration or order prohibiting Ontario from taking any step involved in acting pursuant to the purported authority of Bill 5.⁵

¹ Rules of Civil Procedure, RRO 1990, Reg 194, [r 13.02](#) [Rules of Civil Procedure]; Notice of Motion for Leave to Intervene, Motion Record [MR], Tab 1 para 1[Notice of Motion].

² *Alderville First Nation v Ontario* (Court File No. CV-25-00751759-0000), Notice of Application, para 2 [NOA].

³ *Protect Ontario by Unleashing Our Economy Act*, RSO 2025, c 4, Schedules [2](#), [3](#) [s 1](#), [5](#), [7](#), [9](#), [10](#) [Bill 5].

⁴ Affidavit of Michel Koostachin (Affirmed December 3, 2025), MR, Tab 2, para 5 [Koostachin Affidavit]; Affidavit of Ramon Kataquapit (Affirmed December 2, 2025) MR, Tab 3, para 4 [Kataquapit Affidavit].

⁵ NOA, paras 33(g), 34(b)-(e).

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4. To assist the Court, the Proposed Interveners would provide useful and distinct submissions specific to the development, consideration, passage, Royal Assent, and/or enactment of Bill 5, focusing on three points:

- (a) Whether reconciliation, which seeks to reconcile the pre-existence of Indigenous societies with the imposition of Crown sovereignty, necessarily includes consideration of Indigenous Natural Law, including the spirit and intent of Treaty;
- (b) Whether international law principles, including those set out in the *United Nations Declaration on the Rights of Indigenous Peoples* (“*UNDRIP*”),⁶ should be purposively interpreted and diligently implemented, including to provincial law, recognizing their application to Indigenous peoples as individuals and rightsholders under s 35 of the *Constitution Act, 1982* (“*Constitution*”)⁷; and
- (c) Whether the right to substantive equality under s 15(1) of the *Canadian Charter of Rights and Freedoms* (“*Charter*”)⁸ is violated in a manner that perpetuates environmental racism against Indigenous people, as a form of racial discrimination.⁹

PART II - FACTS

5. As reflected in the two affidavits tendered in support of this motion, the Proposed Interveners have a genuine interest in the application because at the heart of Bill 5, is a granting of highly unrestrained power to the province to proceed with resource extraction and mining projects

⁶ *United Nations Declaration on the Rights of Indigenous Peoples*, [GA Res 61/295](#), UNGAOR, 2007, Supp No 53, UN Doc A/RES/61/295 [*UNDRIP*].

⁷ *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, [s 35\(1\)](#) [*Constitution*].

⁸ *Canadian Charter of Rights and Freedoms*, Part 1 of the Constitution Act, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, [s 15\(1\)](#) [*Charter*].

⁹ Notice of Motion, MR, Tab 1, para 6; Koostachin Affidavit, MR, Tab 2, para 11; Kataquapit Affidavit, MR, Tab 3, para 16.

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absent due regard for Indigenous rights and consideration of the injustices which would ensue to the lands and water, the health of which is inherent to the enjoyment and practice of Indigenous culture, law and identity.¹⁰

6. The Proposed Interveners are Indigenous and Treaty rightsholders recognized and affirmed by s 35 of the *Constitution*. Michel Koostachin and Ramon Kataquapit are Indigenous knowledge keepers and youth leaders, respectively, and have direct, lived experience advocating for their rights and the protection of the environment for the benefit of current and future generations, in alignment with Indigenous Natural Law and knowledge.¹¹

7. The Proposed Interveners are concerned that the Respondents proceeded with Bill 5 contrary to the rights set out in *UNDRIP*, including Articles 1, 2, 7 and 24,¹² and the *Charter*, including s 15(1).¹³ The Proposed Interveners will bring unique perspectives to this application, grounded in honouring the Treaty relationship, the diligent implementation of *UNDRIP*, and combating substantive inequality perpetuated by environmental racism.¹⁴

8. The implications of Bill 5 extend far beyond the Applicants and if granted leave to intervene, the Proposed Interveners are well-position to provide (1) useful and relevant assistance to the Court by way of written and oral submissions on the issues; (2) perspectives that are unique, broader, and materially different from that of the parties in the application; and (3) submissions that will not cause injustice to the parties, such as through undue delay, because the Proposed

¹⁰ Koostachin Affidavit, MR, Tab 2, paras 4, 5, 7, 9, 14, 17, 18; Kataquapit Affidavit, MR, Tab 3, paras 3, 4, 22, 23.

¹¹ Notice of Motion, MR, Tab 1, para 5.

¹² *UNDRIP*, arts 1, 2, 7, 24.

¹³ *Charter*, s 15(1).

¹⁴ Notice of Motion, MR, Tab 1, para 6; Koostachin Affidavit, MR, Tab 2, para 11; Kataquapit Affidavit, MR, Tab 3, para 16.

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Interveners have already prepared and attached its intended argument as Schedule “C” to this factum seeking leave to intervene in this matter.¹⁵

A. Proposed Intervener - Michel Koostachin

9. Mr. Michel Koostachin is a community member from Attawapiskat First Nation and a band member of Fort Albany First Nation in Treaty 9 territory. As an Omushkego Cree person (who are the ‘Water People’), his identity, wellbeing, and responsibilities are inseparable from the Attawapiskat River and the interconnected *muskeg* (peatlands), lakes, animals, and waterways. His deep ecological knowledge and experience caring for the Attawapiskat watershed and its people is drawn from his role as a *Skabbewsis* (helper) in ceremonies and his familial ties to these waters and lands. He has also lived, worked, and travelled extensively across Treaty 9 territory, providing trauma-informed mental health care as a front line worker in Indigenous, fly-in communities.¹⁶

10. Mr. Koostachin lends significant community-based experience to this intervention, including as founder of the Friends of the Attawapiskat River (“FAR”), an Indigenous grassroots group that aims to raise awareness about Indigenous rights and amplify the voice of the grassroots - who are themselves the caretakers of the land. He has spent years leading community workshops, regional gatherings and public presentations, and has provided extensive written and oral contributions to provincial, federal, and international bodies on topics spanning Indigenous Natural law and Cree cultural perspectives. His dedicated efforts, all of which are volunteer, come in response to government actions or project developments that threaten his rights, those of his community and the accompanying health of the Hudson–James Bay Lowlands.¹⁷

¹⁵ Koostachin Affidavit, MR, Tab 2, paras 23-26; Kataquapit Affidavit, MR, Tab 3, para 24-27.

¹⁶ Koostachin Affidavit, MR, Tab 2, paras 2-4.

¹⁷ Koostachin Affidavit, MR, Tab 2, paras 6, 9, 10, 12, 13 and Exhibits “G”-“Y”.

11. Mr. Koostachin was active in the legislative process for Bill 5, which included being present at Queen’s Park for public commentary and press conferences, providing written submissions to the various provincial Ministers and testifying as a witness before the Legislative Assembly’s Standing Committee on the Interior. He has previously testified before the Legislative Standing Committee on the Interior on land protection and Treaty rights matters in response to bills that amend mining laws in the province. Throughout, he has repeatedly and respectfully raised concerns about the exclusion of the grassroots from decision and law-making processes, which would allow for projects to proceed absent regard for Indigenous rights and protections for the environment, and Indigenous Natural law, perspectives and teachings.¹⁸

B. Proposed Intervener - Ramon Kataquapit

12. Mr. Ramon Kataquapit is a Cree youth and band member from Attawapiskat First Nation in Treaty 9 territory, where his family has relied on the Attawapiskat River watershed and the Hudson–James Bay lowlands since time immemorial. He is the founder of Okiniwak Indigenous Youth Movement (“Okiniwak”) - which means ‘the leading youth’. Their mission, which began as a response to Bill 5, has grown into a movement rooted in the prophecy of the Seventh Fire: a prophecy that acknowledges young people will light the path toward healing, balance, and protection of the land. Mr. Kataquapit also serves on the Nishnawbe Aski Nation’s (“NAN”) Oshkaatisak Council and the Chiefs of Ontario’s Youth Council.¹⁹

13. As an Indigenous youth, he offers a unique perspective grounded in both trauma and hope. He is part of the first generation to grow up absent residential schools, and as a youth leader, recognizes that healing means reconnecting with what was stolen - by returning to the land,

¹⁸ Koostachin Affidavit, MR, Tab 2, para 8 and Exhibits “A”-“F”.

¹⁹ Kataquapit Affidavit, MR, Tab 3, paras 1, 2, 8-10.

practicing culture, participating in ceremony, and advocating for Indigenous self-determination, sovereignty and stewardship to protect the health and rights of his people, the land and the water.²⁰

14. Mr. Kataquapit has led and taken part in a range of public events across Ontario sharing youth perspectives on Bill 5 and its impacts to the spirit and health of him and his community, garnering significant media attention. He has also worked diligently to gain the support of leadership, as demonstrated by the recent passing of resolutions from NAN and Chiefs of Ontario in support of his youth-led advocacy in opposing Bill 5 and the *Building Canada Act* (Bill C-5).²¹ The resolutions recognize the vital participation of youth movements in discussions related to Bill 5, recognizing them as future leaders with a crucial role in the preservation of Indigenous knowledge, Treaty, culture, and land.²²

PART III - ISSUES

15. This motion raises one issue: should this Honourable Court grant leave to the Proposed Interveners as Friends of the Court for the purpose of rendering assistance on this application?

PART IV - SUBMISSIONS

A. Rule 13 Intervention Authority

16. The Court may grant leave to any person to intervene as a friend of the Court under Rule 13.02 for the purpose of rendering assistance to the Court by way of argument.²³

B. The Test for Granting Intervener Status

17. On a motion for intervener status under Rule 13.02, the test is well established. The relevant factors the Court is to consider are (1) the nature of the case; (2) the issues involved; and (3) the

²⁰ Kataquapit Affidavit, MR, Tab 3, paras 16-21.

²¹ *Building Canada Act*, [SC 2025, c 2, s 4](#)

²² Kataquapit Affidavit, MR, Tab 3, paras 11-15, 22, 23 and Exhibits “A”-“H”.

²³ Rules of Civil Procedure, [Rule 13.02](#).

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likelihood that the proposed intervener can make a useful and distinct contribution to the resolution of the matter without causing injustice to the immediate parties.²⁴ The Proposed Interveners satisfy all these factors.

18. As the Application is a constitutional case engaging the *Charter* and s 35 of the *Constitution* and UNDRIP's application therein, the Court may permit an intervention when at least one of the following criteria is met: (1) it has a real substantial and identifiable interest in the subject matter of the proceedings; (2) it has an important perspective distinct from the immediate parties; or (3) it is a well-recognized group with special expertise and a broadly identifiable membership base.²⁵

19. The Proposed Interveners satisfy not one but all of the criteria and this intervention is especially helpful, as they constitute a vulnerable group whose interests are at stake and the outcome of this matter will have an impact beyond the private rights of parties.²⁶ The general relaxation of the rules governing applications for leave to intervene in constitutional cases, including *Charter* cases, applies in this instance due to an increase in the desirability of permitting interventions where judgments have a great impact on others who are not immediate parties.²⁷

20. A friend of the Court need not be “impartial”, “objective”, or “disinterested” in the outcome of the case. The fact that the position of a proposed intervener is generally aligned with the position of one of the parties is not a bar to the intervention if the intervener can make a useful contribution

²⁴ *Peel (Regional Municipality) v Great Atlantic & Pacific Co of Canada Ltd (CA)*, [1990 CanLII 6886 \(ONCA\)](#) at 167 [Peel].

²⁵ *Bedford v Canada (Attorney General)*, [2009 ONCA 669](#) at para 2.

²⁶ *Elementary Teachers' Federation et al v Her Majesty*, [2018 ONSC 6318](#) at para 11.

²⁷ *Peel* at [167](#); Koostachin Affidavit, MR, Tab 2, paras 11-13; Kataquapit Affidavit, MR, Tab 3, paras 16-18.

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to the analysis of the issues before the Court.²⁸ Such contributions can assist the Court in its analysis by placing them under scrutiny from a different perspective.

C. The Proposed Interveners meet the Test for Leave to Intervene

i) The Proposed Interveners have a direct interest and raise matters of public interest

21. The issues raised in this Application are of most profound importance to the Proposed Interveners, their generation and those yet to come, whose lives - as Omushkego Cree - depend on the Attawapiskat River, which has been their provider since time immemorial. The Proposed Interveners have repeatedly appeared before provincial and federal governments and Indigenous governing bodies seeking protections for the environment and recognition and respect of their Indigenous rights, in light of legislative changes and project decision-making that risks harm to their human rights, and the health of lands and water in the Attawapiskat watershed on which they depend.²⁹

22. The Proposed Interveners efforts are committed to safeguarding the ability of present and future generations to practice their rights and responsibilities, recognizing that among the impacts of the proposed Ring of Fire and related developments proceeding under Bill 5 is an interference with their traditional practices, including access to lands for ceremonial purposes and harvesting of traditional foods and medicines; threats of adverse impacts on the area's land, water, and wildlife to which they are spiritually connected; and decision-making practices that as of yet, have been fundamentally at odds with Indigenous Natural law and the spirit and intent of Treaty, that

²⁸ *Oakwell Engineering Limited v Enernorth Industries Inc*, [2006 CanLII 60327 \(ONCA\)](#) at para 9; *Hydro One Networks Inc. v. Ontario Energy Board*, [2019 ONSC 3763](#) (CanLII) at para 29.

²⁹ Koostachin Affidavit, MR, Tab 2, paras 3-6; Kataquapit Affidavit, MR, Tab 3, paras 1, 3, 9, 14, 15, 19, and Exhibits "G"-"H".

teaches strength, sharing, kindness and honesty in order to protect the land and water for those not yet born.³⁰

23. The Proposed Interveners also raise matters of significant public benefit, as the lands and waters where Bill 5 would enable the fast-tracking of resource development including the proposed Ring of Fire, is a region of Treaty 9 profound global importance. Developing a region that presently serves one of the last remaining intact peatlands and carbon sinks in the world and is one last refuges for wildlife, poses profound impacts to climate and the protection of biodiversity and its restoration.³¹

ii) The Proposed Interveners have useful and distinct perspectives

24. The submissions of Proposed Interveners will differ from those of the Applicant First Nation parties by virtue of their unique perspectives as Treaty rights and knowledge holders, caretakers of the land, and as individual grassroots and youth community members. Their belonging to these groups, as members of the Attawapiskat community and as individuals each with lived experience of the consequences when decisions are made without the awareness or consent of affected Indigenous communities, gives rise to rights allowing them to enjoy, practice and profess their culture, law and identity.³²

25. Among the most immediately pressing issues raised in this application is Ontario's stated intent to designate the lands where the Ring of Fire is proposed as a SEZ. The imposition of an SEZ, absent any legal corollary to uphold robust environmental assessment law and protections for endangered species and Indigenous cultural sovereignty, engages core questions of the Crown's

³⁰ Koostachin Affidavit, MR, Tab 2, paras 4, 16-18; Kataquapit Affidavit, MR, Tab 3, paras 17, 18, 20-23.

³¹ Koostachin Affidavit, MR, Tab 2, paras 6, 9(f), 9(k) and Exhibits "G" and "I"; Kataquapit Affidavit, MR, Tab 3, para 4.

³² Koostachin Affidavit, MR, Tab 2, paras 11-13; Kataquapit Affidavit, MR, Tab 3, paras 16-18.

obligations and human rights entitlements owed to the Indigenous grassroots and youth to which the Proposed Interveners are uniquely positioned to speak to.

26. The Proposed Interveners will make distinct and useful submissions that will assist the Court in the determination of this application, as they are among those to be directly impacted by Bill 5, which risks irreversible disturbances to the *muskeg* - the region where the Ring of Fire is proposed - and a way of life grounded in the spirit and intent of Treaty. In such circumstances, the Court may be assisted by the intended argument of Proposed Interveners contained in Schedule “C” herein, which posits:

27. First, reconciliation, which seeks to reconcile the pre-existence of Indigenous societies with the imposition of Crown sovereignty, necessarily includes consideration of Indigenous Natural Law, including the spirit and intent of Treaty;

28. Second, international law principles, including *UNDRIP*, should be purposively interpreted and diligently implemented, including to provincial law, recognizing their application to Indigenous peoples as individual s 35 rightsholders; and

29. Third, Bill 5 violates the Interveners’ right to substantive equality under s15(1) of the *Charter* by perpetuating environmental racism against Indigenous people, which is a form of racial discrimination that Canada has committed to addressing under the *National Strategy Respecting Environmental Racism and Environmental Justice Act*.³³

iii) The Proposed Interveners serve the interests of justice

30. Allowing this motion would advance the interests of justice. The Proposed Interveners are the only potential participants in this Application that represent both Indigenous grassroots and youth perspectives grounded in Indigenous Natural Law and Indigenous knowledge. This is one

³³ *National Strategy Respecting Environmental Racism and Environmental Justice Act*, SC 2024, c 11, [preamble](#).

of the first opportunities for a Court to consider the application of the doctrine of reconciliation,³⁴ together with *UNDRIP* and the *Charter* in earnest, in the context of Indigenous grassroots and youth rightsholders who themselves stand to be directly affected by Bill 5.³⁵

D. Conditions That May Be Imposed

31. The terms and conditions for granting leave to intervene as a friend of the Court have included that the intervener: (1) take the record as it is and not be permitted to adduce further evidence; (2) deliver its factum - limited to a certain page length as they deem necessary - promptly; (3) allow the Applicants the opportunity to file a Reply factum up to a certain page length as they deem necessary; (4) be limited as to time for oral argument; (5) not seek, nor be subject to, any award of costs, on the Application or the motion;³⁶ and (6) make reasonable effort to avoid duplicating the submissions of any of the parties or other interveners.³⁷

32. Where a matter raises significant issues of public importance and interest - as does the within Application and proposed intervention - the Court should apply the general rule that a party who intervenes as a friend of the Court is neither liable for, nor entitled to, costs on the motion nor on the hearing of the Application.³⁸

PART V - ORDER REQUESTED

33. The Proposed Intervenors, Michel Koostachin and Ramon Kataquapit, respectfully request an Order of this Honourable Court pursuant to Rule 13.02 of the Rules of Civil Procedure in the following terms:

³⁴ *Kebaowek First Nation v Canadian Nuclear Laboratories*, [2025 FC 319](#) at para [10](#) citing *R v Van der Peet*, [1996 CanLII 216](#) (SCC) at para [31](#).

³⁵ Koostachin Affidavit, MR, Tab 2, para 11; Kataquapit Affidavit, MR, Tab 3, para 16.

³⁶ *Ontario (Minister of the Environment) v Castonguay Blasting Ltd*, 2011 CarswellOnt 10686 (ONCA) at para 9, Intervenors' Book of Authorities [**IBOA**], Tab 1, at 6-7.

³⁷ *Joseph Groia v Law Society of Upper Canada*, [2014 ONSC 6026](#) at para [12](#).

³⁸ *Toussaint v Attorney General of Canada*, [2025 ONSC 2007](#) at paras [61-63](#).

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- (a) The Proposed Interveners be granted leave to intervene as friends of the Court for the purpose of rendering assistance to the Court by way of argument in the within application;
- (b) The Proposed Interveners shall accept the record as adduced by the parties, and shall not seek to file any additional evidence;
- (c) The Proposed Interveners may file a factum of no more than 20 pages, or such other length as this Court may direct, substantially in the terms of the factum attached as Schedule “C” to its factum seeking leave within 7 days of the date leave is granted;
- (d) The Proposed Interveners may appear and make oral submissions at the hearing of this proceeding, not exceeding 15 minutes, or such other duration as this Court may direct;
- (e) The Proposed Interveners may, with leave of the Court as required, make brief written submissions on any pre-hearing motion in this proceeding where the issues raised or the relief sought may materially affect the Proposed Interveners’ interests;
- (f) The Proposed Interveners seek that any documents served on any party in this proceeding also be served on them;
- (g) The Proposed Interveners shall take steps to ensure that its submissions are distinct from those to be made by the parties and any other interveners;
- (h) The Proposed Interveners will not seek costs nor have costs of this motion and the application awarded against it; and
- (i) Such further and other relief as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS _____.

Kerrie Blaise and Kanisha Acharya-Patel
Lawyers for the Proposed Interveners
Michel Koostachin and Ramon Kataquapit