



DEPARTMENT OF
CONSULTATION AND ACCOMMODATION

May 28, 2019

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Ministry of Tourism, Culture and Sport
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Toronto, ON
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To Whom it May Concern:

The Mississaugas of the Credit First Nation (“MCFN”) submits the following comments in respect of the amendments to the *Ontario Heritage Act*, R.S.O. 1990 that are being proposed in Bill 108, *More Homes, More Choice Act, 2019*.

MCFN has reviewed the proposed amendments, and is of the view that some of the amendments – in particular, the amendments that are being proposed for the provisions that address resources of archeological value (section 48), require more clarity. Explanation is needed from your Ministry in respect of the intention behind these amendments, so that MCFN can understand the potential implications of those amendments on its Aboriginal and treaty rights.

MCFN would also like to take this opportunity to comment on some of the broader issues that MCFN experiences in respect of archology and archeological protection. These are discussed below.

MCFN Rights and Territory

MCFN’s traditional territory spans from Long Point on Lake Erie to the Niagara River, then down the River to Lake Ontario, northward along the shore of the Lake to the River Rouge east of Toronto then up that river to the dividing ridges to the head waters of the River Thames then southward to Long Point, the place of the beginning (the “Territory”). It is a vast territory over which MCFN has a stewardship responsibility.

MCFN asserts Aboriginal rights not only to continued use of the lands, waters, and watershed ecosystems within its Territory for a variety of livelihood, harvesting, ceremonial and spiritual purposes, but also specifically asserts an Aboriginal right to protect the integrity of the environment, and the lands and resources, within its Territory, including archeological resources.




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The MCFN Territory is perhaps the most highly urbanized land in Canada. Unfortunately, much of this development took place at a time prior to the articulation by the Supreme Court of Canada of the Crown's Duty to Consult and Accommodate Indigenous communities ("DTCA"). MCFN was not consulted prior to the vast preponderance of the development that has taken place on its Territory. As a result, a great many archaeological resources, including human burials and cultural materials, have been destroyed and irretrievably lost.

In the exercise of its stewardship responsibility, MCFN's Department of Consultation and Accommodation seeks to work together with the Crown and with project proponents to ensure that archaeological work is done in a respectful way, and that any archaeological resources found through an investigation are dealt with appropriately. For cultural materials and human remains, this may include ceremonies required by Anishnabe law.

The *Heritage Act* contains provisions that specifically address resources of archeological value, and so it is of utmost importance to MCFN to understand the implications of the proposed amendments.

The Proposed Amendments

The proposed amendments to the *Heritage Act* that MCFN has particular concerns with include the following:

1. *The amendments that remove references to "the regulations" or being "prescribed in the regulations" in sections of the Act dealing with resources of archeological value.*

Section 48 under Part V of the *Heritage Act* deals with resources of archeological value. Under this section, various activities are prohibited from taking place on archaeological sites, unless the person wanting to engage in those activities on those particular sites were to apply for and obtain a licence from the Minister (section 48(1)).

Section 48 (2) says that a licence is not required where classes of sites and/or activities are "prescribed by the regulations". The proposed amendments remove the language "prescribed by the regulations", and substitute it with "as prescribed". The proposed amendments remove the language "by (the) regulation(s)" wherever it appears, and replaces "belong to a class of sites prescribed by the regulations" with "belongs to a prescribed class of sites (or activities)".

Impact of the Proposed Amendments

The proposed amendments to section 48 (resources of archeological value) leave it open to interpretation that the "prescribe-able" classes of sites and activities do not necessarily have to be prescribed *by regulation* – in other words, it suggests that the Minister can create these classes of sites and activities, where a license is not required, in some other (unknown) way.





MCFN Recommendations

Clarity is required in respect of amendments relating to section 48 (resources of archeological value) – in particular, what is meant by sites and activities being “prescribed”. If there are not prescribed by regulation, then how will they be so prescribed?

In our view, clarity is required on this important matter and we would appreciate hearing back from the government regarding what is intended by these amendments.

Regards,



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