

**Speaking Notes for
National Chief Kevin Daniels**

**Bill 173, Mining Amendment Act, 2009; and
Bill 191, Far North Act, 2009**

**August 10, 2009
Sioux Lookout, Ontario**

Good Afternoon Mr. Chairman, Members of the Standing Committee and Observers.

It's an honour to be here today in Sioux Lookout on the traditional territory of the Ojibway, OjiCree, Cree and Métis. By way of introduction, I am Kevin Daniels, National Chief of the Congress of Aboriginal Peoples.

CAP is one of the five national Aboriginal organizations in Canada. We represent Status and non-Status Indians living off-reserve and Métis. We were founded in 1971 as the Native Council of Canada and were involved in the 1982 constitutional negotiations and many cases before the Supreme Court of Canada.

I have come here today in support of the Ontario Coalition of Aboriginal People we do not intend to stand aside when it comes to the rights and interests of our constituency.

These Bills before us today will have an impact on our constituency in Ontario. You are already well aware that this is a trigger of the Crown's duty to consult. I would like to point out to the committee that CAP has received no capacity funding to be engaged in these issues. It is important that Aboriginal peoples have the capacity and resources to participate. The Crown has obligations and these obligations are entrenched in the Honour of the Crown.

In regard to Bill 173, the Mining Amendment Act, we recognize the importance of mining to the economy of Ontario and we recognize Bill 173 as an important first step in modernizing the Act. From the onset of this work, it was clear to participants that the Crown has obligations to Aboriginal peoples and that there are Aboriginal rights and interests related to mining development. What is less clear is the recognition that this obligation is greater than consulting with Indian Act reserves.

We are pleased that the old free-entry model has gone, since it was directly responsible for many controversial operations on traditional Aboriginal territories. In many ways, it is symbolic of the end of the frontier mentality, which has been responsible for so much harm to Aboriginal peoples.

CAP supports an approach to land use planning in the far north that recognizes the interests of all Aboriginal peoples. We want to be involved in land use planning processes and have the capacity to be involved. Aboriginal peoples need to be involved in the determination of what protection means and the setting of economic and conservation objectives.

I've read through the testimony of several witnesses to this committee and it is truly remarkable to see the lack of understanding of who the Aboriginal peoples of Canada are. The term "First Nations" is used over and over by witness after witness with the mistaken view that the term means the same as "Aboriginal peoples". The Aboriginal peoples of Canada are described in Section 35 (2) – the Indian, Métis and Inuit.

This bill needs work to be respectful of established Aboriginal consultation and accommodation requirements that have been set out by the Supreme Court of Canada.

Consultation needs to be done properly the Crown must discharge its duty to consult and this means being inclusive of all Aboriginal interests, including Status and non-Status Indians living off-reserve and Métis.

Bill 191, Far North Act, 2009

We are very concerned about this legislation and the impact it will have on future generations and with the lack of consultation or accommodation for Aboriginal peoples.

We understand that this proposed legislation will put in place the formal process to allow economic development to occur in the far north of Ontario. We are not opposed to economic development and recognize the benefits it can bring. We also understand the needs of business to have certainty. Our interests are clear. We want to be fully engaged in any land use planning process.

Métis, status and non-status Indians need to be involved in the development of the Far North Land Use Strategy. We also need to be involved in the land use planning exercises.

Everyone at this committee recognizes that most of the problems will arise in the traditional territories of Aboriginal peoples. These traditional territories are shared areas among Métis, Status Indians on and off reserve and non-Status Indians.

Dispute resolution is the biggest issue connected to the Mining Amendment Act. From the Aboriginal point of view, the question is who will fund this process? I think this should be funded by the Proponent. Aboriginal peoples involved in a dispute resolution process need to have access to lawyers. If a tribunal is established under section 170.1, this tribunal must have someone on it from our constituency.

Through these committee hearings, I have been surprised at the attacks on Ontario's Endangered Species Act. This is an issue in which CAP has played a major role at the federal level. The federal species at risk act and the Ontario Act are vital to the protection of our natural world and fulfilling our obligations under the UN Convention of Biodiversity. Both the CBD and SARA have specific wording to ensure the inclusion of Aboriginal peoples in initiatives.

When this committee is speaking about the Aboriginal peoples of Ontario, it needs to be clear that you are referring to s.35(2) of the Canadian Constitution. The term First Nations is a vague term and in federal legislation it is a reference to Indian Act reserves. So when this committee is speaking about opportunities for First Nations, it needs to be inclusive and say opportunities for Aboriginal peoples.

Much of how this process will work will be covered in the regulatory process. This raises many questions for us, since it is in the regulations that many difficult decisions will be made which will affect our rights and interests. As we sit at this committee hearing, mining companies are undertaking exploration of our traditional lands without any consultation.

So we are left with the important questions of our involvement in the development of the regulations.

- How will this done?
- What capacity will we have to be involved?
- Will we have access to independent legal counsel to ensure protection for consultation, accommodation and free prior and informed consent?

We know there will be conflict over our traditional lands. I'm not overly optimistic about the future, because of the amount of struggle that will need to take place in the Courts.

We are concerned with the high degree of Ministerial discretion in Bill 173: we know from experience that this spells trouble for Aboriginal interests.

We recognize that mining and mineral exploration can bring employment, jobs and training, but our Elders have warned us about the impacts on the environment. Chief Seattle said it best:

The Earth is our Mother. We are part of earth and it is part of us. This we know – The earth does not belong to us. We belong to the earth.

Shekon!

Thank you