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Proposal to amend the Forest Management Planning Manual  
regulated under the Crown Forest Sustainability Act and to  
amend Regulation 334 under the Environmental Assessment  
Act to Exempt Forest Management in the proposed Neskantaga  
Forest Management Unit

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**About**

The **Durham Community Legal Clinic (DCLC)** is a Community Legal Clinic that provides legal services, information, education, and representation for historically marginalized and low-income residents of Durham Region. DCLC also engages in advocacy and law reform activities, in particular to ensure that our laws properly consider the perspectives of historically marginalized and low-income Ontarians. The main areas of services DCLC provides includes employment law and related services, housing and tenancy issues, and social benefits.

The **Durham Access to Justice Hub®** (the “Hub”) was established by the clinic in 2019 with the assistance of LAO. This inter-agency and inter-disciplinary initiative intended to provide legal services beyond the income thresholds and subject matter of LAO, and other social, financial, and psychological services. These cooperative relationships seek to foster better client-centered services, reduce administrative barriers and silos, and improve efficiency of services that are funded or subsidized by taxpayer dollars. Some techniques used to achieve these goals include recruitment of volunteers to contribute towards improving access to justice, and by embedding students into workflows and innovative projects through experiential education. Through the Hub, DCLC provides even broader services to focus on the root causes of poverty and engages in deeper forms of poverty alleviation.

**Omar Ha-Redeye** is a lawyer and the Executive Director of DCLC. He holds a JD from Western University, and an LLM from Osgoode Hall. He has received numerous awards for his efforts in law reform and advocacy on behalf of historically marginalized and low-income populations, including the Queen Elizabeth II Diamond Jubilee Medal, and the OBA Foundation Award.

**Kelsey Henderson** is a Paralegal Candidate and volunteer with the Durham Community Legal Clinic and Access to Justice HUB. She was previously a Chemical Engineering Technologist, with experience in the Environmental Chemistry field.

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1. The Neskantaga First Nation, situated along the shore of Attawapiskat Lake in the District of Kenora, is interested in developing a cleaner renewable forest biomass energy facility to provide electricity. They are a member of the Matawa Tribal Council, and a signatory to Treaty 9. This is a fly-in community that is not normally accessible by roads, and one that experiences challenges of poverty.<sup>1</sup>
2. This project would allow the Neskantaga First Nation to divest from diesel-based energy sources, and would create jobs and income for the community, in addition to accomplishing environmental goals. The project would be executed with the cooperation of the Mitigokaa Development Corporation, a Canadian electricity generation developer that uses a proven biomass boiler and Organic Rankin Cycle (ORC) generation technology, which was created in 2016 specifically to provide alternatives to communities that rely on diesel fuel generation.
3. Neskantaga First Nations is part of the Oji-Cree First Nations band, and have been marginalized for many years. In 1995, they were placed on with a water boil advisory, and have been advocating for potable water ever since.<sup>2</sup> Their efforts include launching a class action lawsuit, along with other First Nation's bands.<sup>3</sup> The creation of a biomass facility would provide positive changes to our environment in reducing our greenhouse gas emissions, and has the potential to strengthen the Neskantaga economy and provide growth to the community. Implementing a biomass facility will provide Neskantaga First Nation's with secure jobs and income for the community, as there will be a need for workers in logging facilities, operation of the biomass facility, and other roles related to energy creation. This increase in income could provide the community with greater independence and autonomy, and improve the standard of living.

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<sup>1</sup> Geoffrey York, "In the Neskantaga First Nation, undrinkable water is a crisis of health and faith," *The Globe and Mail*, Sept. 16, 2019, online: <<https://www.theglobeandmail.com/canada/article-in-this-ontario-first-nation-undrinkable-water-is-a-crisis-of-health/>>.

<sup>2</sup> Olivia Sefanovich, "After evacuating twice over tainted water, Neskantaga residents plan their return home," *CBC News*, Dec. 17, 2020, online: <<https://www.cbc.ca/news/politics/neskantaga-plans-return-home-water-crisis-1.5840308>>.

<sup>3</sup> McCarthy Tétrault LLP, "Class Action Litigation on Drinking Water Advisories on First Nations," online: <<https://www.mccarthy.ca/en/class-action-litigation-drinking-water-advisories-first-nations>>.

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4. To achieve these goals, DCLC is largely supportive of the proposal to amend the Forest Management Planning Manual, regulated under s. 68 of the *Crown Forest Sustainability Act, 1994*,<sup>4</sup> and to amend the General Regulations<sup>5</sup> under the *Environmental Assessment Act*<sup>6</sup> to exempt "forest management" in the proposed Neskantaga Forest Management Unit. This designation by the Ministry of Natural Resources and Forestry would provide greater flexibility and allow for better forest management planning, operations, and resource licensing. It would also allow the Neskantaga First Nations to shift from diesel-based energy sources to utilizing biomass energy for its electricity supply.
5. The transition from diesel-based energy sources will have positive environmental impacts, and will strengthen the Neskantaga First Nations community, governance, and autonomy. Shifting to renewable energy sources will improve greenhouse gases emissions, and will encourage other regions to find viable renewable energy sources in their areas. Neskantaga First Nations' movement from diesel-sourced energy to renewable energy sources also coincidences with Ontario's climate change strategy to reduce greenhouse gas emissions and build a low-carbon economy.<sup>7</sup>
6. Biomass facilities use organic matter to produce energy, and with the proper forest management practices, are considered to be carbon-neutral.<sup>8</sup> This method of generating energy has been adopted as one of the primary energy sources by other countries in an effort to reduce their greenhouse gas emissions. Finland, for example, has become a global leader in forest-based biomass energy production. By putting an emphasis on renewable energy, Finland plans to stop producing energy from coal by 2030, in order to match their goal of becoming carbon-neutral by

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<sup>4</sup> SO 1994, c 25.

<sup>5</sup> RRO 1990, Reg 334.

<sup>6</sup> RSO 1990, c E.18.

<sup>7</sup> Government of Ontario, "Climate change strategy," May 8, 2019, online: <<https://www.ontario.ca/page/climate-change-strategy>>.

<sup>8</sup> Biomass explained, online: US Energy Information Administration <<https://www.eia.gov/energyexplained/biomass/biomass-and-the-environment.php>>

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2050.<sup>9</sup> To achieve this goal, Finland utilizes their vast forest landscapes to create energy. In 2018, 27% of Finland's energy was a product of wood-based renewable energy sources.<sup>10</sup> Neskantaga First Nations community is surrounded by forestry, and is a suitable candidate to begin creating energy using a wood-based biomass facility. Given the Supreme Court of Canada's recent decision in *References re Greenhouse Gas Pollution Pricing Act*,<sup>11</sup> finding new way to develop carbon neutral energy sources is a provincial and federal priority.

7. The best way to implement this proposal is to ensure that the forest management plan follows the *United Nations Framework Convention on Climate Change* ("UNFCCC")<sup>14</sup> requirements for biomass conversion from forest land to be considered "renewable." Compliance with UNFCCC's standards requires that the biomass originating from forest land areas continue to be renewable if the land remains a forest, and when sustainable management practices are used to ensure that the level of carbon stocks does not decrease over time. UNFCCC standards also require ensuring national or regional forestry and nature conservation regulations are properly complied with.<sup>16</sup>
8. The operation of the biomass energy facility will require the harvest of approximately 100 hectares per year of forest. The Neskantaga Forest spans approximately 50,000 hectares, and according to the harvest approximation it would take 500 years in order for the forest to be depleted from this process. Despite the many years it would take for the forest to be depleted from this operation, we are proposing the Forest Management Plan put in place a requirement that a certain number of trees are planted each year, to ensure the resource can remain self-sustaining and renewable. Despite the stringent requirements of this approach, it is appropriate to ensure that this biomass facility continues to remain a renewable source of energy indefinitely, in order to work towards Ontario's goal of creating a low-carbon economy.

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<sup>9</sup> Finland plans to completely phase out coal by 2030, online: Independent <<https://www.independent.co.uk/news/world/europe/finland-plans-completely-phase-out-coal-2030-a7438731.html>>

<sup>10</sup>Total consumption of energy increased by 2 per cent in 2018, online: Statistics Finland <[https://www.stat.fi/til/ehk/2018/04/ehk\\_2018\\_04\\_2019-03-28\\_tie\\_001\\_en.html](https://www.stat.fi/til/ehk/2018/04/ehk_2018_04_2019-03-28_tie_001_en.html)>

<sup>11</sup> 2021 SCC 11 (CanLII).

<sup>14</sup> May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107.

<sup>16</sup> Pembina Institute, "Biomass Sustainability Analysis," April 2011, online: <<https://www.opg.com/document/biomass-sustainability-analysis-report-pdf/>>

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9. We are also in support of the amendment to Regulation 334, to exempt forest management activities within the proposed Neskantaga Forest Management Unit. This would expedite the process, and to remove duplicate Forest Management requirements that would be covered under the Forest Management Planning Manual. However, crucial considerations from this approach should not be omitted, ensuring that the eco-system is not disrupted; endangered species under the *Species at Risk Act*<sup>17</sup> are not impacted, migratory routes are not impacted, air quality remains intact, etc. To ensure these protections remain in place, the Forest Management plan should address strategies to minimize impacts, and the project should be monitored in the same way that an environmental assessment officer would monitor the project.
10. The transition from diesel-based sources to a biomass facility will not only greatly benefit the Neskantaga First Nations, it will signal to other Ontario regions the importance of planning and working towards a prosperous low-carbon economy. This movement may spread across Ontario and to other provinces, as well to work towards increasing Canada's goal of renewable energy beyond its current status at 16%.<sup>18</sup> Most importantly, this is a project which has the potential to empower marginalized communities, and provide a boost to the local economy. An estimated two-thirds of all Indigenous children in Canada live in poverty.<sup>19</sup> The COVID-19 pandemic is expected to plunge some First Nations even further into debt, and push people even deeper into poverty.<sup>20</sup>

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<sup>17</sup> SC 2002, c. 29.

<sup>18</sup> Government of Canada, "Renewable energy facts," Oct. 6, 2020, online: <<https://www.nrcan.gc.ca/science-data/data-analysis/energy-data-analysis/energy-facts/renewable-energy-facts/20069>>.

<sup>19</sup> David Macdonald & Daniel Wilson, "Shameful Neglect: Indigenous Child Poverty in Canada," Canadian Centre for Policy Alternatives, May 17, 2016, online: <[https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/05/Indigenous\\_Child%20\\_Poverty.pdf](https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/05/Indigenous_Child%20_Poverty.pdf)>.

<sup>20</sup> Carol Audet, "First Nations face overlapping crises and inadequate support during pandemic," Policy Options, Sept. 24, 2020, online: <<https://policyoptions.irpp.org/magazines/september-2020/first-nations-face-overlapping-crises-and-inadequate-support-during-pandemic/>>.

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11. Ontario is committed to building an equitable and sustainable environment for future generations.<sup>21</sup> Part of that strategy entails building strong and sustainable communities. DCLC supports this proposal, and believes that it represents a good first step towards these goals.

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<sup>21</sup> Hon. Peter Bethlenfalvy, "Ontario's Action Plan: Protecting People's Health and Our Economy," Government of Ontario, March 24, 2021, online: < <https://budget.ontario.ca/2021/pdf/2021-ontario-budget-en.pdf>>.