

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

BETWEEN:

Her Majesty the Queen

Appellant

-and-

Clifford Kokopenance

Respondent

**NOTICE OF MOTION TO A JUDGE
(Motion for Intervention on Appeal)**

TAKE NOTICE that Nishnawbe Aski Nation (“NAN”) applies to a Judge of this Honourable Court, at a date to be fixed by the Registrar, pursuant to Rule 55 of the *Rules of the Supreme Court of Canada* for an order allowing NAN to intervene in the appeal, on a without costs basis, to file a factum up to 20 pages in length, to present oral argument for 30 minutes, and for such further or other order that the Honourable Judge may deem appropriate.

AND FURTHER TAKE NOTICE that the following documents will be referred to in support of the motion:

1. The Affidavit of Alvin Fiddler, Deputy Grand Chief of NAN, sworn on the 28th day of March, 2014;
2. The factum filed by NAN in support of this application for intervention; and
3. Such further and other material as counsel may advise and this Honourable Court permit.

AND FURTHER TAKE NOTICE that the motion shall be made on the following grounds:

4. Rule 55 of the *Rules of the Supreme Court of Canada*, SOR/2002-156.
5. Nishnawbe Aski Nation (formerly known as Grand Council Treaty No. 9) was established in 1973 as the political territorial organization representing the political, social and economic interests of its member nations.
6. NAN represents 49 First Nations throughout the province of Ontario. The Chiefs of the 49 First Nations represented by NAN are the members of the NAN not-for-profit corporation. The Chiefs meet two to three times a year in assembly to mandate, by resolution, the direction and initiatives of NAN.
7. NAN territory encompasses James Bay Treaty No. 9 and Ontario's portion of Treaty No. 5. NAN territory has a total land mass covering two-thirds of Ontario, spanning an area of 210,000 square miles, west to the Manitoba border, east to the Quebec border and north of the 51st parallel to the coast of James Bay and Hudson Bay. The total approximate population of NAN members (on- and off-reserve) numbers 45,000.
8. Of the 46 First Nations in the Kenora District, 29 are represented by NAN.
9. NAN's mandate is to represent the socioeconomic and political interests of its First Nation communities to all levels of government on a nation-to-nation basis. NAN holds the view that the issues to be addressed in this appeal will seriously impact NAN First Nations. NAN's perspective in the case at bar is shaped by its concern for the collective rights of NAN First Nations and for the precedential effect of this decision on its members.
10. NAN has been at the forefront of the various legal proceedings that brought the issue of First Nations underrepresentation on Ontario juries to the attention of the courts and the public. It was as a result of those proceedings that this issue came to the attention of the Respondent in this appeal and led to the filing of fresh evidence on his appeal at the Court of Appeal for Ontario.

11. As a result of its mandate and experience, NAN will present a unique perspective to the Court that is different from that of the parties. NAN will focus its submissions on the following:
 - a. The nature of the Crown’s obligation to ensure a representative jury roll and the application of that obligation in the context of remote First Nation communities. NAN takes the position that there must be a *Charter*-based approach to interpreting “representativeness”, and that appropriate approach to First Nations representation on juries must include a reasonable results-based component rather than merely an assessment of effort;
 - b. The engagement of the honour of the Crown in relation to laws of general application that have disproportionate effects on First Nation individuals, especially those living on-reserve, due to geographic, cultural, socioeconomic, and historical factors;
 - c. The application of the duty to consult with respect to jury roll issues and the principles that would apply to such consultations; and
 - d. How to best address inadequacies in the process of generating Ontario jury rolls in a manner that ensures that appropriate nation-to-nation dialogue occurs, that privacy interests are respected, and that ultimately proportionate First Nation representation on jury rolls is achieved.
12. Such further and other grounds as counsel may advise and this Honourable Court permit.

DATED at the City of Toronto, in the Province of Ontario, this 31st day of March, 2014.

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