



Timiskaming, Wolf Lake and Eagle Village

Members of the Algonquin Nation

Statement of Assertion of Aboriginal Rights & Title

OVERVIEW

11 January 2013

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TIMISKAMING, WOLF LAKE & EAGLE VILLAGE, MEMBERS OF THE ALGONQUIN NATION:

STATEMENT OF ASSERTION OF ABORIGINAL RIGHTS AND TITLE

11 January 2013

OVERVIEW

Strong *Prima Facie* Claim

This Statement of Asserted Aboriginal Rights and Title (Statement) establishes that the Claimants possess a strong *prima facie* claim to their traditional territories, which straddle the Ontario-Quebec border along the Upper Ottawa River, as depicted in the map attached to this Overview. The claimants have never surrendered their Aboriginal rights and title by treaty or otherwise, and have never authorized any Aboriginal group in Quebec or Ontario, including the Algonquins of Pikwakanagan (Golden Lake), to negotiate for them in relation to such rights.

Timiskaming, Wolf Lake and Eagle Village First Nations are Rights Holders

The Statement has been prepared on behalf of the First Nations of Timiskaming (TFN), Wolf Lake (WLFN), and Eagle Village (EVFN), who are all members of the Algonquin Nation. It provides a summary of the evidence collected to date, supporting their assertions of Aboriginal title and rights within their traditional territories.

TFN, WLFN and EVFN are all descended from the Algonquin Bands who traditionally used and occupied the territory in question, namely the Timiskaming, Dumoine and Mattawa Bands of the 19th century. Their members can trace their ancestry and continued use and occupation of this territory back to time immemorial.

TFN, WLFN and EVFN are all recognized as “Bands” within the meaning of the *Indian Act*, and come within the meaning of “Indian peoples” in section 35 of the *Constitution Act, 1982*. They have never entered into a land cession treaty surrendering their Aboriginal rights and title; nor have they authorized any other nation or entity to negotiate on their behalf for such title and rights. Therefore, their Aboriginal rights and title have never been extinguished and exist to this present day.

The Crown Owes a Duty to Consult and to Obtain Rights Holders’ Free Prior and Informed Consent

The purpose of the Statement is to set-out the evidence to support WLFN, TFN and EVFN in their efforts to engage the honour of the Crown and its duty to consult them and accommodate their interests in matters affecting their traditional territories. It is intended to engage Canada’s obligations under domestic law (*Constitution Act, 1982, s. 35* and the *Haida* case) and international law, the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), which requires free prior and informed consent before any development activities within the traditional territories of Indigenous Peoples.

The Statement is provided as an interim step prior to the completion of formal Statements of Claim from TFN, WLFN and EVFN, and is provided at this time to give the Crown formal notice of their asserted Aboriginal rights and title. The research documenting WLFN and TFN's Aboriginal title and rights is largely complete, and will be followed in due course with a Statement of Claim. EVFN's research is still underway, and will take further time before it is completed. The form and content of this Statement reflects this: it is directed primarily to the assertions of TFN and WLFN. EVFN's asserted rights are covered in a separate chapter, which identifies what sections of the main document contain evidence common to all three communities, as well as additional assertions that can be made with specific reference to EVFN based on research to date.

Although the Statement is only a summary of the evidence, it is intended to provide enough evidence to trigger the Crown's duty and to establish that the scope of that duty is at the high end because of the strength of the claim.

The Claim – Asserted Aboriginal Rights and Title

WLFN and TFN assert Aboriginal rights and title over the territory identified in the body of the Statement, outlined in a series of maps which are included to identify the general boundaries of the "Asserted Aboriginal Rights and Title Area", including areas over which Aboriginal title is asserted, as well as areas over which Aboriginal rights (but not title) are asserted.

This Statement asserts both Aboriginal title and site-specific Aboriginal rights. The following jurisprudence is relied on in support of asserted Aboriginal rights: *R. v. Adams*, *R. v. Van der Peet*, and *R. v. Côté*. The area over which Aboriginal title is asserted is identified in the maps contained in the Statement and is supported by the Supreme Court of Canada decision, *Delgamuukw v. British Columbia*.

Date of Contact is *circa* 1680 and the Date of Sovereignty is *circa* 1850

The date of contact for purposes of the legal tests for Aboriginal rights is sometime after 1680, when the French built trading posts in the Temiscamingue region. The evidence shows that the ancestors of TFN, WLFN and EVFN were present in the territory at this time.

For purposes of proving Aboriginal title the date of Crown sovereignty is *circa* 1850, the time the Crown began to exercise effective sovereignty in the region. The evidence indicates that the Timiskaming, Dumoine and Mattawa Bands, ancestral to today's Timiskaming, Wolf Lake, and Eagle Village First Nations, occupied their territories at this time to the exclusion of other groups.

Establishing Aboriginal Rights and Title: Culture and Social Organization

WLFN, TFN and EVFN belong to what is now known as the Algonquin Nation, and self-identify as *Anishnabe*. The social organization of the Algonquin Nation was such that the Band, made up of extended families, was the land holding unit. Some responsibilities lay at the nation level. The nation and its member bands were governed by commonly recognized traditional laws and customs that regulated land ownership, tenure, access, and resource use.

The activities asserted as Aboriginal rights by WLFN, TFN and EVFN are those which are integral to the culture and traditions of the Algonquin people at first contact, and which continue to be exercised in the modern context. There are territorial (site-specific) and non-territorial aspects to these activities, that include such things as hunting, fishing, trapping and gathering, all of which had economic and trade aspects, and which find contemporary expression today.

These activities are not unique to WLFN, TFN and EVFN, but are practiced in common across the Algonquin nation, and their importance and continued significance are amply demonstrated by current use and occupancy studies commissioned by the Algonquin Nation Secretariat.

Establishing Aboriginal Rights and Title: Occupancy

WLFN, TFN and EVFN assert that they meet the evidentiary requirements for use and occupancy under the tests for both Aboriginal title and Aboriginal rights. Their members continue to use and occupy lands and waters within their respective traditional territories, as well as lands within the boundaries of the Algonquin Nation territory. Historically, they relied on well-established customs and laws to regulate tenure, land use, and allocation, therefore meeting the tests for legal occupancy. There is sufficient evidence to satisfy a connection to the areas identified, and to satisfy the legal tests needed to establish occupancy. Current use and occupancy is put forward as presumptive proof of Aboriginal rights and title.

Analysis of Continuity: Pre-History and History of the Region

Archeological, historical and genealogical evidence confirms the presence of the ancestors of WLFN, TFN and EVFN in the area for centuries. Archaeological evidence at the Obawjeewong / Fort Temiscamingue site confirms continuous occupation for a period of between 6,000 and 7,000 years. General knowledge of the Algonquin-speaking groups by the French dates back to the first half of the seventeenth century with the earliest contact occurring around the year 1603. As previously mentioned, sustained contact with the ancestors of WLFN, TFN and EVFN began after 1680 when the French began building trading posts in the Temiscamingue region.

Analysis of Continuity Particularly for Aboriginal Title: Bands and Band Territories

The territories of WLFN, TFN and EVFN changed considerably in the period 1850-1951 as the dominant economic activities transitioned from the fur trade, to lumbering, to colonization and agriculture, and finally hydro, mining, and tourism. Dispossession of their traditional territories, coupled with devastating waves of epidemic diseases, had a dramatic impact on the people, and required significant adaptations, including the reconfiguration of traditional bands, and a realignment of use and occupancy patterns. However, despite these changes, the current rights holders and their ancestors maintained significant continuity in terms of their membership, and in the use and occupancy of their traditional territories. This is demonstrated by the evidence.

The Crown has Consistently Recognized the Aboriginal Rights and Title of the Algonquin Nation and TFN, WLFN and EVFN: The *Royal Proclamation of 1763* and Treaties of 1760-64

The historical evidence shows a long history of political recognition of the existence of TFN, WLFN, and EVFN and their predecessors. The French, the British Crown, and the Crown in Right of Canada recognized the traditional territories, rights and interests of the Algonquin Nation, including the ancestors of TFN, WLFN and EVFN. Their traditional territories were included in the area covered by the *Royal Proclamation of 1763*, a fact which has been acknowledged by recent Canadian governments.

A series of treaties made with the British between 1760 and 1764 recognized the territorial rights of the ancestors of WLFN, TFN and EVFN. However, despite these things, over time the Crown allowed the lands of WLFN, TFN and EVFN to be overrun by third parties, without their consent and without any form of compensation. The Crown did not fulfill its duty to protect the land as obligated by the honour of the Crown and its fiduciary duties; nor did it enter in a land treaty in accordance with the requirements of the *Royal Proclamation of 1763*. As a result, TFN, WLFN and EVFN suffered significant harm.

Non-Extinguishment

The Aboriginal title and rights of TFN, WLFN and EVFN have not been extinguished by treaty or any other lawful means, and there is no evidence of there being a clear and plain intention to extinguish such rights. There are no land cession treaties covering the portions of WLFN, TFN or EVFN territory now lying in Quebec. Although there are several treaties in Ontario which purport to cover the parts of the traditional territories of the Algonquins generally, and TFN, WLFN and EVFN in particular, a review of these treaties will make it clear that neither TFN, nor WLFN, nor EVFN, nor their predecessors, participated in any of these treaties. Section 35 of the *Constitution Act, 1982* stipulates that these rights can only be extinguished by consent, in accordance with the test proving extinguishment laid down in *R. v. Sparrow*. Furthermore, TFN, WLFN and EVFN have never authorized any Aboriginal group in Quebec or Ontario, including the Algonquins of Pikwakanagan (Golden Lake), to negotiate in relation to their Aboriginal rights and title.