Timiskaming, Wolf Lake and Eagle Village First Nations
6A Kateri Street, Timiskaming Reserve
Notre-Dame du Nord, QC
J0Z 3B0
Telephone: 819-723-2019

The Honourable Peter McKay,
Minister of Justice (Canada)
House of Commons Ottawa,
Ottawa, Ontario
Canada K1A-0A6

The Honourable Madeleine Meilleur,
Attorney General of Ontario
Ministry of the Attorney General
11th Floor, 720 Bay Street
Toronto, Ontario M5G 2K1

The Honourable Bernard Valcourt,
Minister of Aboriginal Affairs &
Northern Development (Canada)
10 Wellington Street,
Gatineau Quebec, K1A-0H4

The Honourable David Zimmer,
Minister of Aboriginal Affairs (Ont.)
Suite 400, 160 Bloor Street East
Toronto, Ontario M7A-2E6

The Honourable Bill Mauro,
Minister of Natural Resources and Forestry (Ontario)
Suite 6630, 6th Floor, Whitney Block
99 Wellesley Street West
Toronto, Ontario M7A-1W3.

21 July 2015

RE: "ALGONQUINS OF ONTARIO" PRELIMINARY DRAFT AGREEMENT IN PRINCIPLE

Dear Ministers:

On behalf of the Algonquin First Nations of Wolf Lake, Timiskaming and Eagle Village, we are writing to formally register our concerns about the potential adverse impacts that the "Algonquins of Ontario" Preliminary Draft Agreement in Principle (PDAIP) will have on the Aboriginal title and rights of our First Nations, to lands and resources in what is now the province of Ontario. We are also writing to give you formal notice that we consider the Crown (Canada and Ontario) to be in breach of its duty to meaningfully consult and accommodate our

rights and interests, despite our willingness to engage and our numerous efforts to engage in meaningful consultations with both Ontario and Canada regarding the PDAIP.

In late February 2015, after months of petitioning, AANDC finally agreed to provide funding, in the minimal amount of $25,000, to assist us in carrying out a preliminary review and analysis of the "Algonquins of Ontario" PDAIP. By way of this letter, we are advising your governments of the results of this initial work.

The PDAIP is a complex document, over 100 pages in length, with additional appendices and maps. It represents the outcome of 23 years of tripartite negotiations, costing the "Algonquins of Ontario" (AOO) alone over $18M in loan funding over that period to negotiate. Given these facts, the funds made available by AANDC to carry out our preliminary assessment is, at best, nominal. We have made a best effort, given these financial constraints, to examine the PDAIP and identify some key issues, and this letter is intended to summarize our initial thoughts and concerns.

We continue to have serious misgivings about the PDAIP and its effect on the Aboriginal title and rights of our communities. We are also very troubled by the apparent lax approach of your officials and negotiators in upholding the honour of the Crown, which has resulted in a breach of the Crown's duty to consult and accommodate us. These concerns are in no way alleviated by the assurances that your officials have provided to us, including the letter from your negotiators Messrs. Crane and Doering, dated July 13 2015, which for the most part repeats variations of the same "talking points" we have been hearing for years, without making a serious attempt to address our legitimate concerns in a meaningful and cooperative manner.

In summary, our communities have substantive and extensive Aboriginal title and rights in Ontario, including within the area covered by the PDAIP. We have made consistent efforts over many years to put Ontario and Canada on notice with respect to these interests and to try and initiate a process of engagement. Unfortunately your governments have, so far, declined to respond in a meaningful way to our assertions. The way your governments have proceeded with the PDAIP is an example of this pattern of behaviour. However we remain hopeful that both Canada and Ontario will change course and begin to take our rights and interests seriously so that we can, together, ensure that they are recognized and protected, not prejudiced.

In the following paragraphs we will outline our initial concerns. Before proceeding, however, we want to take this opportunity to tell your governments once again that we are not "Quebec Algonquins"; nor do we agree to be called Algonquins "located in Quebec" as proposed in the new clause put forward by your negotiators. Our First Nations have names, which derive from the territories we have inhabited from time immemorial. Our ancestral territories include portions of what is now Ontario and Quebec. The "Algonquins of Ontario" is not a band, First

Nation, Nation or entity possessed of Aboriginal title or rights, under Algonquin law, Canadian law or international law. It is a formulation of your governments: it does not represent our communities, and has never been mandated to negotiate on our behalf, or with respect to our Aboriginal title and rights interests in the province of Ontario. We find it frustrating that after decades of trying to engage your governments and explain the nature and territorial scope of our rights and interests, we continue to be treated as if our Aboriginal title interests in Ontario do not exist.

THE CROWN'S DUTY TO CONSULT: CANADA AND ONTARIO HAVE KNOWN ABOUT THE OVERLAPS FOR DECADES

The federal government has known for at least 21 years that there are overlapping territorial interests among the Algonquins on both sides of the Ontario - Quebec boundary. In 1994, two years after it had commenced tripartite negotiations with Ontario and the Algonquins of Golden Lake (now Pikwakanagan), Canada commissioned an assessment of the state of Algonquin research, which was carried out by ethnohistorian James Morrison. His report, which is dated September 1994, spoke directly to the matter of overlaps:

> There are also areas of overlap within what might be broadly defined as Algonquin territory. Algonquin claims in Ontario are not neatly confined to the community of Golden Lake. All the communities under study except Winneway assert some sort of traditional claim to lands on the Ontario side of the Ottawa River, both between Pembroke and Mattawa, and from Mattawa to Lake Temiskaming and beyond.[1]

So, for almost the entire time that Canada and Ontario have been negotiating towards the PDAIP, the federal government has been aware of the fact that there are overlapping assertions of rights.

The Algonquin Nation Secretariat (ANS) began carrying out Aboriginal title research on behalf of the Algonquins of Barriere Lake (ABL), Wolf Lake (WLFN) and Timiskaming (TFN) in 1996/97. Around this time, Eagle Village (EVFN) also began doing the same work.[2] As additional facts resulting from this research came to light, Canada and Ontario have been periodically reminded about the nature and scope of the rights being asserted and the fact that overlaps with the "AOO" needed to be addressed.

At least as early as 1998, WLFN and TFN were meeting with the Chief and Council of the Algonquins of Pikwakanagan, in part to discuss overlap and beneficiary issues. The area around Mattawa was identified as one of particular concern. At that time we understood that this work

[1] James Morrison, "Quebec Algonquin Historical Research: An Assessment". Prepared for INAC, 30 September 1994, at p iii.
[2] In January 2012, EVFN mandated the ANS to complete its Aboriginal title research.

would need support from Canada in order to address the issues properly, over and above the core research being done as part of our Aboriginal title project. As a result, in 2000-2001, the ANS tabled a proposal to Canada to deal specifically with the related issues of beneficiaries and overlap in the Mattawa area. This proposal was supported by the Algonquins of Pikwakanagan, as well as the Eagle Village First Nation. The intention of this work was to document and sort out the overlaps in the Mattawa area, by doing current use & occupancy mapping, as well as archival research. This, in turn, would provide the basis for a rational and fact-based discussion on the overlapping interests, with a view to resolving them.

However, despite the consensus from the Algonquin First Nations, Canada refused to support the ANS's joint Algonquin proposal for overlap research which, therefore, could not be undertaken.

As the ANS continued its Aboriginal title research, further facts came to light, in particular with respect to WLFN's interests in Ontario. In August 2007, a meeting took place between the ANS and representatives of the government of Ontario (including Brian Crane, in his capacity as Ontario's senior negotiator on the Golden Lake Claim, as it was then known), and Robin Aiken of INAC. The ANS displayed a map showing traditional band territories based on research carried out to that date, and highlighted the asserted rights of TFN and WLFN in Ontario. Specific reference was made to the fact that WLFN had overlaps with the Golden Lake claim from Deep River west towards Mattawa on the Ontario side. Concerns were also raised about the beneficiary issue. Ontario's representatives declined to commit to any substantive action, but asked for more detailed information to backup the rights being asserted.

While such detailed information was being prepared through further research and despite being aware of the nature of the overlap issue, Canada and Ontario extended the boundaries of the "AOO" claim area, from the south shore of the Mattawa River northwards to Long Sault Island, apparently sometime between 2008 and 2010. There were no consultations or discussions with our communities about this boundary change prior to it being made, despite its impact on our Aboriginal title area.

RECENT DEVELOPMENTS: STATEMENT OF ASSERTED ABORIGINAL TITLE AND RIGHTS ("SAR") WAS PRESENTED TO ONTARIO AND CANADA, AND THE RECORD OF EFFORTS TO ENGAGE IN MEANINGFUL CONSULTATIONS

As you know, our First Nations formally presented our Statement of Asserted Aboriginal Title and rights to your governments in January 2013.

Prior to that, in October 2012, Canada's senior negotiator, Ron Doering, wrote to us on behalf of Canada and Ontario, indicating that progress had been made on a draft Agreement in Principle, and inviting us to meet to "begin a dialogue with neighbouring Aboriginal groups as to how their

potential, or in some cases, existing rights may be affected by a possible settlement with the Algonquins of Ontario". This invitation led to a meeting between TFN, EVFN and WLFN, Messrs. Doering and Crane, and other representatives from the federal and provincial negotiating teams, on January 24, 2013. In the meantime, in December 2012, the PDAIP was publicly released.

During our January 24, 2013 meeting with Ontario and Federal officials, we tabled the SAR and explained it to them. The SAR contains detailed evidence supporting our assertions of Aboriginal rights, including title, to our traditional territories in Ontario and Quebec, along with maps. Part of our intention in releasing the SAR was to provide the federal and provincial Crowns with the strength of evidence that they said they needed to engage us in substantive consultations with respect to the territories where we were asserting Aboriginal title and rights.

The meeting of January 24, 2013 also provided an opportunity to speak about the PDAIP, with particular reference to the overlap issue. After some discussion Messrs. Doering and Crane agreed that our meeting was not to be considered "consultation", but rather a "briefing" or "pre-consultation" regarding the PDAIP.

TFN, WLFN and EVFN raised a number of issues during the meeting of January 24, 2013. The main points were reflected in a letter which was sent to Messrs. Doering & Crane on our behalf by legal counsel, Mr. David Nahwegahbow, dated February 11, 2013. This letter confirmed that the session of January 24th was not to be characterized as "consultation", but it also indicated that our communities were prepared to begin substantive discussion with Canada and Ontario regarding the PDAIP, pending mutual agreement on the terms of engagement, and also contingent on adequate resources being made available to ensure that any subsequent consultations would be on a fully informed basis.

Mr. Nahwegahbow's letter also identified six preliminary issues which caused our communities concern. These included overlaps, the northward extension of the "AOO" claim area; beneficiaries; the loose definition of "Algonquin"; and the impact on the exercise of rights, particularly for EVFN members. For your ease of reference, we enclose a copy of this letter.

On behalf of Ontario, Mr. Crane promised a substantive response to the preliminary concerns raised in Mr. Nahwegahbow's letter "as soon as possible".[3] Two and a half years later we are still waiting for Mr. Crane to fulfil his undertaking.

For his part, Mr. Doering replied to Mr. Nahwegahbow's letter on April 4, 2013. He indicated that the session of January 24, 2013, and Mr. Nahwegahbow's follow up letter provided "an excellent basis for continued discussions between Timiskaming, Wolf Lake and Eagle Village

[3] Email from Brian Crane to David Nahwegahbow, 12 February 2013.

First Nations and the two governments", and encouraged us to follow up with AANDC for funding to support this work, with the prospect of follow up meetings to pursue the issues.

In fact when we did try to follow up with AANDC, we faced not support, but significant resistance. The ANS submitted a project outline and budget to AANDC on December 2, 2013. It included provision for legal review of the PDAIP, meetings with our communities to go over the contents with them, and meetings with Canada, Ontario and the Algonquins of Pikwakagan - all of the requisite activities for an informed consultation process. The budget for this proposal was in the neighbourhood of $174,000. We felt that the amount requested was reasonable and proportionate given the work that had to be done and the relatively short time frame.

Our proposal was rejected. Instead, on January 27, 2014, AANDC offered a one-time contribution of $25,000 "to complete" the consultation on the PDAIP, including "legal review, internal consultation, communication with AANDC and any related costs judged to be appropriate to complete the consultation process". We knew that such an offer was entirely disproportionate given the costs incurred by Canada, Ontario and the "AOO" in their negotiations to date. We also knew that it was inadequate given the complexity of the issues and the need to properly inform the members of our three distinct First Nations so that they could provide direction. The ANS spent the next thirteen months going back and forth with AANDC, simply to get the Department to agree that the offer of $25,000 would not be considered "once and for all" funding to complete the so-called consultations - rather, that it would be a start. We finally received a funding commitment in February 2015, with less than 8 weeks left in the fiscal year.

Since then, Canada, Ontario, and the "AOO" have initialled the PDAIP, setting the stage for a vote, without our concerns being properly addressed. We note that the July 13, 2015 letter from Messrs. Doering and Crane states that we have "completed" our "internal consultations" on the PDAIP. This is absolutely untrue. We have begun to assess the PDAIP, based on the limited amount of funds provided, and notwithstanding your governments' apparent lack of commitment to authentic engagement. We have not completed the steps necessary to come close to proper consultation by any measure - this would require a thorough review of the PDIAP; substantive discussion with Ontario and Canada; and real consultations with our membership to seek direction. And this does not even address the matter of accommodation.

Our experience to date does not inspire confidence in Canada or Ontario's willingness to engage us in a meaningful way. Our evidence (the SAR) and our concerns appear to have been dismissed. Written and verbal references by both Canada and Ontario to "ongoing processes" and "consultations" with our communities are not correct. We have not been able to engage in a meaningful way with Canada or Ontario, because neither government has taken steps to work with us towards mutual agreement on the terms of engagement, and also because adequate

resources have not been made available to support real consultation or engagement with our membership. To suggest otherwise is to misrepresent the facts. In fact, it appears to us that the way in which federal officials have been proceeding is in contravention of Canada's own guidelines and policy for consultation. Ontario's consultations have been equally inadequate. We must challenge your officials and state clearly to you that the Crown has failed to fulfil its duty to consult us properly on this matter which stands to have a direct and substantial impact on our Aboriginal rights, including title.

CONCERNS WITH THE PDAIP

Beyond the absence of consultation, there is the PDAIP itself. As indicated, given the nominal funds provided, we have had the opportunity to carry out a very preliminary analysis and discussion of the issues. We have had no resources to consult our communities (except for one meeting held at Mattawa to meet with EVFN members), and no resources to engage effectively with federal or Ontario officials. Nonetheless, even this preliminary analysis raises substantive questions and concerns about the PDAIP and it's impact on our rights.

The Territory

As expressed back in January 2013 we remain concerned by the characterization of this claim as "Algonquins of Ontario" when it entirely ignores our asserted Aboriginal rights in that province, including Aboriginal title. The provincial boundary has no connection to the traditional territory of the Algonquin Nation or any Algonquin community of which we are aware, and similarly, the "AOO" boundary was not, as far as we know, determined with any reference to Algonquin traditional band territories. In this respect, the claim area is an artificial construct which is now being used as a justification to ignore, and attempt to extinguish our rights and interests.

As well, sometime between 2008 and 2010 the boundary of the "AOO" claim was moved north from the south shore of the Mattawa River up to the Long Sault, further into our territory, without any consultation with our communities. This added about 236,000 acres of land to the "AOO" claim area, wholly within the territory over which EVFN asserts Aboriginal title. Despite repeated requests, we have still received no explanation of how or why this was done, and why we were not consulted.

At the same time, given the fact that EVFN's research is still in process, it may well be that additional lands within the "AOO" claim area will fall within EVFN's asserted Aboriginal title territory.

Land Selection in Overlap Areas

The "AOO" is actively engaged in land selection in the overlap portions of the claim area where our communities assert Aboriginal title - an area which is already largely covered by third party interests. We can assume that the "AOO" are choosing the best remaining available parcels of Crown Land, including within the overlap area. This will diminish the lands available for land selection by our First Nations, and may expose them to alienation to third parties. This appears to us to be prejudicial to our Aboriginal title and rights.

Process for Dealing with Overlap Issues

When we have raised the overlap issue in the past, Canada and Ontario have both "encouraged" us to deal directly with the "AOO". However, the AOO is a creation of your governments, it has no standing as a band, First Nation or nation, and does not possess Aboriginal title or rights. Under the law, we are obliged to engage with rights-holders and their governing authorities. Over the years we have had communications with the Algonquins of Pikwakanagan regarding overlap issues and we are prepared to continue to do so on a bilateral basis. But the fact of the matter is that it is the Crown which has the duty to consult with us on this matter, and to accommodate our rights and interests. Both Ontario and Canada have a constitutional duty to consult and accommodate our First Nations. We believe that by consistently referring us back to the "AOO", Ontario and Canada are trying to avoid their legal duty to fulfil their responsibilities to our communities in this regard. This is not acceptable. We need to engage directly with the federal and provincial Crowns on this matter.

The Beneficiaries

We have never authorized any body or group, including the "AOO", to negotiate on our behalf with respect to our communities' rights in Ontario. Furthermore, there are unsettling questions around the sweeping scope of the definitions used in the PDAIP with respect to who is an "Algonquin". In this regard, we do not take any comfort from the July 13, 2015 letter sent to us by Messrs. Doering and Crane.

The definitions used in the PDAIP are overly broad and leave ample room for confusion and potential damage to the interests of our communities, our members, and our Aboriginal title. As it now stands, the scope of the eligibility requirements for an "Algonquin" contained in the PDAIP are so broad that they could include many or all of our current members. The criteria seem to be focussed on individual genealogy and not dependent on the existence of a community.

With specific respect to EVFN members, some of them who were formerly on the "AOO" rolls subsequently regained their status and are now registered members of EVFN. We have been told that, when requested, "AOO" representatives have refused to remove their names from the "AOO" rolls.

The PDAIP definition of beneficiaries may also provide eligibility to individuals who are not entitled to benefit from collective rights under the law of aboriginal rights, enabling them to make decisions regarding the extinguishment or modification of rights in our Aboriginal title territory, while we are excluded.

The PDAIP also leaves open the prospect that some of our individual members might somehow be in a position to "waive" their Aboriginal rights, including title, to the "AOO" claim area.

We wish to state unequivocally that neither our respective First Nations as a whole nor our members in any way waive our respective Aboriginal rights, including title, in our traditional territory within Ontario.

Exercise of Aboriginal Rights

"AOO" beneficiaries have been granted special harvesting rights within the claim area, including interim measures. The recognition or granting of these rights puts them in a privileged position and undermines our Aboriginal title and rights. Fish and wildlife, are a renewable but not unlimited resource. Preferential allocation to AOO users removes or reduces access for our harvesters, which is a violation of the rights of our harvesters under Sparrow and Cote.

OMNRF officials have interfered with EVFN members harvesting in Ontario. The position of OMNRF appears to be that only "AOO" beneficiaries are eligible to exercise "Algonquin harvesting rights" - therefore excluding our members. The conclusion of the AIP and the extension of boundaries north of Mattawa appear to have had a direct impact on the ability of EVFN members to exercise their Aboriginal harvesting rights.

We have tried for months to set up a meeting with OMNRF officials to address this issue. Initially they agreed to meet with us, then they reneged, saying that they could only deal with "operational" issues, and that we must deal with the Ontario Ministry of Aboriginal Affairs to address "policy" issues. After being advised of this, we were in contact with OMAA, but have yet to engage in substantive discussions.

Non-Derogation

We do not accept the assurances of your negotiators that the non-derogation sections of the PDAIP will safeguard the rights and interests of our communities. The fact of the matter is that some individuals who may have a degree of Algonquin ancestry are being provided an opportunity to vote on an agreement that may extinguish and / or modify rights within our Aboriginal title territories, without our consent, and in the absence of good faith consultations.

The July 13, 2015 the letter from Messrs. Doering and Crane states that an additional clause 2.2.3 has been included in the PDAIP, which purports to protect our interests, by defining "Algonquin communities located in Quebec" as "Aboriginal people other than Algonquins". This is an absurd approach which has been formulated in the absence of any consultation with us, and which we reject.

We believe that the non-derogation clause is being used as a means of excluding us from negotiations that directly impact on our Aboriginal title and rights.

Release, Indemnification, and Other Matters

The PDAIP contains a release and indemnification clause which may prevent our First Nations from making any claims against Ontario or Quebec for compensation for past infringements of our Aboriginal rights.

There are many other issues which could be raised, but the preceding points should suffice for now. Further identification of issues will need to await proper engagement and resourcing.

CONCLUSION

In the *Haida* decision it was made clear that "the Crown cannot run roughshod over one group's potential and claimed Aboriginal rights in favour of reaching a treaty with another". But it appears to us that this is exactly what Canada and Ontario have been doing to our rights by way of the "AOO" negotiations. This is unacceptable and the Crown need to act more honourably.

As you can see, we have a growing number of legitimate questions and concerns. Many of these arise from the fact that we have not been provided with relevant and timely information or documentation. We have a long list of items which we will need to review in order to better understand issues arising from the PDAIP. If Canada and Ontario are serious about consulting our communities, there needs to be far more good faith and disclosure.

There also needs to be authentic engagement between our communities and Canada and Ontario. This must be more than simply issuing letters, or the repetition of "talking points". Canada and Ontario need to provide us with adequate financial resources, and need to dedicate human resources with the requisite authority to deal with the issues that have arisen, and to engage us in a substantive way. And we need to come to agreement on the terms of such engagement.

At the same time, without adequate resources it will not be possible to begin proper engagement. Canada and Ontario need to provide financial support for the work that must be done, proportionate to the outlays that have already been made, and continue to be made, by the parties to support the "AOO" negotiations. This should include the resources required for EVFN to complete its research to document its interests within its traditional territory.

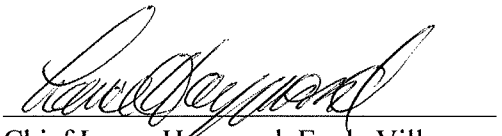
If Ontario and Canada insist on excluding us from meaningful consultations on the PDAIP, then we insist that Canada and Ontario exclude the areas where our First Nations' asserted Aboriginal title and rights overlap with the "AOO" claims, or at least suspend negotiations over such areas, until such time as we have engaged in meaningful consultations and reached an acceptable accommodation.

Despite the disappointing conduct of the Crown to date, we remain ready to engage Canada and Ontario, in a meaningful process of consultation and accommodation to address the concerns we have with respect to the PDAIP.

Yours truly,

Chief Terence McBride, Timiskaming

Chief Harry St Denis, Wolf Lake



Chief Lance Haymond, Eagle Village

cc Chief Kirby Whiteduck, Algonquins of Pikwakanagan
Chief Jean-Guy Whiteduck, Kitigan Zibi
Ron Doering

Brian Crane
David C. Nahwegahbow, Nahwegahbow, Corbiere
David Schulze, Dionne Schulze
Jay Aspin, MP, Nipissing - Temiskaming
Cheryl Gallant, MP, Renfrew - Nipissing - Pembroke
Christine Moore, MP, Abitibi - Temiscamingue
Charlie Angus, MP, Timmins - James Bay
Victor Fedeli, MPP, Nipissing
John Vantof, MPP, Timiskaming - Cochrane
John Yakabuski, MPP, Renfrew - Nipissing - Pembroke
Niki Ashton, MP, NDP Aboriginal Affairs Critic
Carolyn Bennett, Liberal Aboriginal Affairs Critic

Enclosures

1. Letter from David Nahwegahbow to Ron Doering & Brian Crane, 11 February 2013