

Algonquin Nation Secretariat

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Mr. David Didluck,
A/Assistant Deputy Minister,
Ministry of Aboriginal Affairs (Ontario)
160 Bloor St East, Suite 400
Toronto, Ontario, M7A-2E6

22 December 2015

Re: Adverse Impacts of the Algonquins of Ontario Agreement in Principle (AOO-AIP) on the Aboriginal Rights and Title of Timiskaming, Wolf Lake and Kebaowek (Eagle Village) First Nations

Dear Mr. Didluck,

The enclosed letter was addressed to your predecessor, Mr. Doug Carr. At the time it was signed, we were unaware that he had moved on. We assume that you will be following up, and look forward to receiving a reply.

Yours truly,

A handwritten signature in black ink that reads "Peter Di Gangi". There is a small mark above the first letter of the first name.

Peter Di Gangi
Director, Policy & Research,
Algonquin Nation Secretariat



Timiskaming, Wolf Lake and Eagle Village First Nations
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Mr. Doug Carr,
Assistant Deputy Minister
Ontario Ministry of Aboriginal Affairs,
160 Bloor Street East, Suite 400,
Toronto, Ontario, M7A-2E6
Fax 416-326-4017

December 18, 2015

Dear Mr. Carr:

Re: Adverse Impacts of the Algonquins of Ontario Agreement-in-Principle (AOO-AIP) on Aboriginal Rights and Title of Timiskaming, Wolf Lake, and Kebaowek (Eagle Village) First Nations

This letter is a response to yours dated September 17, 2015.

Thank you for taking the time to respond in detail to our extensive letters to Ministers of the Ontario Government, including of course, your Minister, the Honourable David Zimmer. However, despite the detail, there are significant inaccuracies in your letter, which we are obliged to correct.

At the outset, we want to say that the main purpose of this letter is to reaffirm our concerns about the adverse impacts of the Algonquins of Ontario Agreement-in-Principle (AOO-AIP) on the Aboriginal Rights and Title of Timiskaming, Wolf Lake, and Kebaowek (Eagle Village) First Nations, particularly in light of the fact that that AIP is supposed to go to a ratification vote from February 29 to March 7, 2016. We do not want to detract from this purpose, but feel the need to respond generally to the comments in your letter of September 17th.

The issues faced by our communities in the province of Ontario are complicated. This is largely due to the long-term impact of the imposition of the provincial boundary without our consent or consultation, and Ontario's historic policy of denying the rights and interests of our communities and members within lands now situated in the province of Ontario. It will take much time and effort to rectify the relationship, but if we are to make any meaningful progress, the Government

of Ontario needs to come to the realization that our First Nations were there before the Ontario-Quebec border. And despite the fact that our respective reserves and/or band offices may be located in Quebec, we possess and assert Aboriginal rights and title in Ontario. As section 35 of the *Constitution Act, 1982* mandates and directs, the Crown in right of Ontario must recognize and affirm our existing Aboriginal rights and interests in Ontario.

As you know, we tabled a Statement of Asserted Rights (SAR) in January 2013, which substantiates our asserted Aboriginal Rights and Title to lands in Ontario and Quebec. Unfortunately, since we tabled the Statement of Asserted Rights, the government of Ontario appears to have taken an inconsistent and ambivalent approach to relationship-building. We remain ready to put in the effort to try and address these challenges, and hope that the government of Ontario is also ready to do the same. Your comments about the Ontario government's efforts to engage our communities in consultation following its receipt of the SAR in January 2013 contain a number of significant inaccuracies.

With respect to the Kebaowek First Nation (formerly Eagle Village), despite the emphasis placed on their circumstances in the SAR and in subsequent correspondence, Ontario has made almost no efforts at all to engage them since 2013. In that time, they have received two narrow requests for consultations on fish management. In 2014-15, they read about consultations on Forestry Management in Algonquin Park by way of a public advertisement, and when they approached the Ministry of Natural Resources and Forestry (MNRF), they were advised that, in future, MNRF would include them in consultations and contact them. But MNRF never followed up and they continue to be ignored with respect to consultation issues within their portion of the SAR territory. Considering the direct impact of the AOO negotiations on the rights and interests of the Kebaowek First Nation (KFN), this lack of commitment on Ontario's part is cause for concern.

You are correct that Timiskaming First Nation (TFN) has received consultation requests on mining and forestry, but one should not confuse the frequency of requests with the quality of the consultation. Although the Ministry of Northern Development and Mines (MNDM) has provided some funds to TFN, MNRF has only offered to provide travel dollars for consultations on forest management plans, as well as occasional "leftovers" at year end. Because of the lack of support provided to engage on the forest management planning process, TFN has participated only as an "observer" and they have made their concerns about the inadequacy of these measures known to Ontario representatives on a number of occasions.

Wolf Lake First Nation (WLFN) receives occasional consultation requests from Ontario, but not apparently on a consistent basis. Earlier this year during preliminary discussions on forest management planning, WLFN representatives indicated that resources were required to carry out proper consultations, but nothing further was heard from Ontario officials.

Contrary to the statement in your letter, Ontario has not provided "significant funding" to all three First Nations under the New Relationship Fund. To be clear, Wolf Lake and Kebaowek

have never received any funding from the NRF.

The only community to receive NRF funding has been Timiskaming, under the enhanced capacity building component of the program. As you may know, TFN remains concerned because MAA refuses to provide them with core consultation funding, on the basis that they are considered non-residents – despite the fact that half of their traditional territory lies in Ontario. TFN is concerned that the funding which they do receive through the NRF and from MNDM only has the status of pilot projects and they have received no commitment for long-term sustainable funding, which makes it very difficult for them to plan or to actually keep capacity. They are concerned that Ontario continues to consider them only a “pilot project”, instead of long-term participants who have a legitimate interest in the lands and resources within the portion of their traditional territory that lies in Ontario.

With respect to the NRF support which the ANS has received in 2014/15 and 2015/16, during the application process we were advised by Ontario officials not to address the AOO claim in our proposal or our work plans. We were told quite clearly that the NRF work was to be focussed on economic development and relationship building and we abided by that. Your letter of September 17th was the first time we have been advised that NRF funds can be used to engage on the AOO issue.

One thing is certain with respect to consultation matters: our communities are being dealt with in an inconsistent manner by Ontario and, despite the strength of evidence which we have provided to your government, we are not being engaged in a substantive, consistent, stable and ongoing manner. This is why we have been requesting, for a year now, to meet with MAA and MNRF officials collectively, to work on a consistent approach to consultation which involves all of our communities.

Regarding the AOO-AIP, we did make efforts to engage Canada and Ontario following our meetings with federal and provincial negotiators in January 2013. We provided detailed proposals and work-plans to both levels of government. Ontario steered us to the NRF process, which, as mentioned above, we were told was not intended to deal with the AOO issue.

With specific reference to the AOO process, Ontario did offer to attend a meeting in one of our communities, but the only support it was prepared to offer in this regard was to cover travel expenses for our participants. Your colleagues were advised that without resources to cover professional services we would be unable to engage effectively on the AOO claim. We cannot agree that Ontario's offer to pay for travel expenses is a serious effort at consultation on the AOO claim.

Moreover, as already mentioned, since December 2014 we have been trying, in the context of the NRF process, to obtain a meeting with your officials, to discuss consultation issues generally, to no avail. The inability of your officials, or those of MNRF, to engage substantively with us, led in part to the letter of July 21, 2015. The only area where we have met with some success in

engaging with Ontario officials is with regard to the receipt of GIS mapping information for portions of the SAR territory.

Parallel to these efforts, we approached the Government of Canada on a number of occasions for resources to assist us to engage. They provided us with a nominal contribution at the end of 2014/15, which was only enough to carry out a very preliminary assessment of the AOO preliminary draft AIP, as it then was. Our preliminary assessment was contained in the letter dated July 21, 2015 which went to Minister Zimmer and his colleagues. Beyond this, Canada was unprepared to provide us with any resources to engage the federal or provincial governments effectively - for instance, for meetings with officials or even with our membership.

Given the foregoing, and also given the contents of the Chiefs' July 21, 2015 letter to Minister Zimmer and his colleagues, it is hard to see how it could be suggested that the First Nations "have not responded to Canada's and Ontario's offer to meet and consult". We have to say that this is a false characterization. We have done our best given the limited resources at our disposal to address the many issues arising from the AOO-AIP. In contrast, our experience to date suggests that neither Ontario nor Canada have been eager to engage us on this matter, and therein lies the problem.

Meanwhile, as mentioned in our letter of July 21, 2015, our members from KFN continue to experience interference by MNRF with their harvesting rights in their traditional territory as a result of the proposed AOO-AIP. In addition to our correspondence, this has been raised by our staff in discussions with Ontario officials and identified as a priority on numerous occasions: with MNRF on April 15, 2015 and June 25, 2015, and with MAA officials on August 12, 2015 and November 9, 2015, but to no avail. Most recently, KFN members have reported incidents with armed individuals patrolling the entrance to Algonquin Park on behalf of the AOO. We do not feel that Canada and Ontario's responses to date take seriously the effects of its actions to our members on the ground.

With regard to your substantive comments on our concerns with the AOO-AIP, we agree that it would be best to address these things face to face, but there are some points that need to be made on the record:

1. Meaningful consultation on an informed basis requires substantive engagement which in turn requires human, professional and financial resources. Ontario and Canada have yet to provide the support necessary to consult properly on this issue, which stands to affect our communities dramatically. That is why we said, in our July 21 letter, that your government, and the government of Canada, have failed in their duty to consult with our communities. The record confirms this.
2. You have suggested that the revision of the draft AIP at clauses 2.2.2 and 2.2.3 ought to satisfy our concerns and that the wording was agreed upon. That is totally incorrect. The revisions were done unilaterally, without our input or participation and without any communication with us. We do not believe that this kind of unilateral action, and the

absence of any actual dialogue, meets the test of meaningful consultation.

3. With regard to the selection of settlement lands within the overlap area, when we met in January 2013, your own negotiator Mr. Brian Crane admitted to our delegation that land selection would in fact be “with prejudice” to KFN, WLFN and TFN. The reality is that the AOO will be selecting the best lands of what is available without any reference to the rights holders who have an interest.
4. With regard to the moving of the AOO claim boundary north of the Mattawa River, we have repeatedly requested information on when and why this boundary was changed. This change in the boundary added approximately 236,000 acres to the AOO claim area, entirely within KFN’s asserted Aboriginal title territory, and also taking up a significant portion of land over which WLFN asserts Aboriginal rights. We have asked for the justification for this change, and we have asked why we were never consulted. We have never received a forthright answer from your government or the government of Canada. Your suggested “remedy” – acting unilaterally to further adjust the boundary to exclude Long Sault Island – is minimal, entirely inadequate and again, has been done without even bothering to engage with our communities.
5. As for eligibility and beneficiary criteria, your assurances offer little comfort. Your suggestion that the enrolment process is “voluntary” is at odds with the experience of some members of the KFN, who have tried to get their names taken off the AOO list, but whose requests were refused by AOO representatives. Moreover, there are serious questions about the legitimacy of eligibility criteria which appear designed to enable large numbers of individuals with only a tenuous connection to Algonquin ancestry to vote on the extinguishment of Algonquin Aboriginal rights and title, while legitimate rights-holders are excluded. We have identified scores of individuals on the AIP voters list who fall into this category. We can provide additional detail, but so far Ontario and Canada have refused to engage us substantively on this point.
6. With regard to who bears the duty to consult with us regarding the potential adverse effects of the AOO-AIP on our asserted Aboriginal rights and title, we are pleased that you acknowledge that it is the Crown, including the Crown in right of Ontario, that bears this responsibility, along with the federal Crown. You only now need to fulfill that duty up to the standard of the honour of the Crown, because you have not done so to date. Your government continues to try and deflect this responsibility to the AOO to address outstanding concerns. We remain ready to engage in nation to nation discussions with the appropriate rights-holders; but, we need to be properly resourced and it needs to meet appropriate standards of engagement, and it must not relieve the Crown of its obligations to consult and accommodate our interests.
7. We have no quarrel with measures that are intended to conserve fish and wildlife. However we do take issue with the fact that Ontario appears to now refuse to recognize the rights of KFN members to harvest in Ontario, giving preferential access to individuals

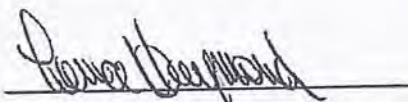
who are affiliated with the AOO. As mentioned above, these individuals appear to be taking enforcement of a not-yet concluded AIP into their own hands and threatening the safety of our members.

8. We have advised Ontario and Canada on numerous occasions that we are not "Algonquins of Quebec", including in our most recent letter of July 21, 2015. We are Algonquins of the Ottawa Valley who continue to inhabit territories which our ancestors used and occupied for centuries before the arrival of Europeans or the imposition of provincial borders. So we find it unfortunate that despite what we have said, you would still choose to refer to our communities "Algonquins of Quebec". That continued choice of words says a lot about the distance that must still be travelled before we can achieve our goal of reconciliation and mutual respect.

With a vote on the AOO-AIP now scheduled for February 29 to March 7, 2016, there is added urgency to the concerns we have raised. Your letter refers to there being a lot of time and opportunities to engage in consultations in the future and that the AIP is not binding. We appreciate, as stated in the AOO-AIP, that even if ratified, the document will still not be legally binding. On the other hand, we also know that the AIP will set out the parameters for the Final Agreement, and once in place, it will be difficult to deviate from it. That is why our concerns need to be dealt with now, before a ratification vote on the AIP takes place. If the AOO-AIP vote goes ahead without our legitimate concerns being addressed we want to make it clear that we will not be bound by the results. The parties to the negotiations are therefore taking a substantial risk, particularly if we decide to challenge the substance and the process of the AOO-AIP.

Thank you for your consideration and please be assured that we are prepared to meet with your Minister and you and your officials to discuss any of the foregoing. Most importantly, and most urgently, we are prepared to engage meaningfully with Ontario to find reasonable solutions to the issues of overlap regarding the AOO-AIP. Our staff has already been in touch with your officials to try and arrange for dates, but as of this writing they have had no reply. We would request you to have your officials contact our staff on an urgent basis to make suitable arrangements.

Respectfully,



Chief Lance Haymond,
Kebaowek Anicinabe



Chief Harry St. Denis, Wolf Lake

Dawn McBride

for/ Chief Terence McBride, Timiskaming