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A L G O N Q U I N N A T I O N

As Represented by

BARRIERE LAKE, KIPAWA,
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GRAND CHIEF JEAN-MAURICE MATCHEWAN

Presentation to the

MEMBERS OF THE COMMITTEE TO
EXAMINE MATTERS RELATING
TO THE ACCESSION OF QUEBEC TO SOVEREIGNTY

in

Quebec City, Quebec
on
Tuesday February 4, 1992

1. INTRODUCTION

Mr Chairman, Honourable Members:

Thank you for giving us this hearing.
Before proceeding, I want to introduce our delegation. I am here with:

-- Russell Diabo, Policy Advisor;
-- David Nahwegahbow, Legal Advisor;
-- James Morrison, Historian;
-- Richard Falk, Professor of International Law from Princeton University.

My name is Jean-Maurice Matchewan. I am Grand Chief of the Algonquin Nation as represented by the Algonquins of Barriere Lake, Wolf Lake, Kipawa and Timiskaming.

The Algonquin Nation is made up of 10 distinct communities in all. Nine are located in Quebec and there is one in Ontario.

The Algonquin Nation has never given up aboriginal title to its traditional territory. This includes all the lands and waters within the Ottawa River watershed on both sides of the Ontario-Quebec border.

We know that the possibility of Quebec separation is very real. And we are here today to tell you that this creates problems for us. We will explain our position frankly to you, letting you know in advance that we do not do it with hostility. You have your

interests. And we have ours.

If Quebec separates, the Algonquin peoples will have three basic options:

1) To remain associated with Canada
2) To leave with Quebec, or
3) To form a separate, sovereign Nation.

Quebec claims a right of self-determination. But self-determination belongs to peoples. It does not belong to territories. If Quebecois and Quebecoises claim the right to determine their own future, then the Algonquins have a prior right to self-determination.

We take the position that Quebec cannot secede with Algonquin land without our consent. And we have put Canada on notice that, until we advise otherwise, we intend to hold Canada to its fiduciary duty with respect to our traditional lands in the Province of Quebec.

There are four parts to our presentation, aside from the introduction:

* Historical basis for aboriginal rights and self-determination of the Algonquin Nation;

* Aboriginal title and the Royal Proclamation of 1763: the Crown's fiduciary obligations;

* Obligations in international law; and

* Summary and conclusions.

2. HISTORICAL BASIS FOR ABORIGINAL RIGHTS AND SELF-DETERMINATION OF THE ALGONQUIN NATION

The modern province of Quebec is a creation of British colonial law. Like Ontario, it has all along been subject to what Professor Brian Slattery calls "common law aboriginal title". By virtue of the Royal Proclamation of 1763 and subsequent regulations, aboriginal title can only be acquired by the Crown - which today means the Federal Crown - through voluntary surrender "taken from Indians of the lands occupied by them".

Despite this fact, it has often been claimed that Quebec's distinctiveness in the Canadian federation also extends to aboriginal rights. Generations of local school children have been taught that, from New France, their province inherited a pattern of dealing with Native people that was remarkably different from that followed in the Anglo-American colonies.

This argument - still being advanced by some politicians and academics in Quebec - has had profound consequences for aboriginal people, because it has been largely accepted by the Federal Government. In 1906, for example, government commissioners negotiating Treaty Number Nine at Abitibi Post in northwestern

Quebec explained to the local Algonquins that - because of Quebec's distinct history - they were only authorized to treat with those people who had hunting grounds in Ontario:

> The policy of the province of Ontario has differed very widely from that of Quebec in the matter of the lands occupied by the Indians. In Ontario, formerly Upper Canada, the rule laid down by the British government from the earliest occupancy of the country has been followed, which recognized the title of the Indians to the lands occupied by them as their hunting grounds, and their right to compensation for such portions as have from time to time been surrendered by them. In addition ta an annual payment in perpetuity, care has also been taken to set apart reservations for the exclusive use of the Indians, of sufficient extent to meet their present and future requirements.
>
> Quebec, formerly Lower Canada, on the other hand, has followed the French policy, which did not admit the claims of the Indians to the lands in the province, but they were held to be the lands of the Crown by right of discovery and conquest. Surrenders have not, therefore, been taken from the Indians by the Crown of the lands occupied by them.
>
> The reserves occupied by the Indians within the province of Quebec are those granted by private individuals, or lands granted to religious corporations in trust for certain bands. In addition, land to the extent of 230,000 acres was set apart and appropriated in different parts of Lower Canada under 14 and 15 Vic., chap. 106 (1851), for the benefit of different tribes. Several reserves have also been purchased by the federal government for certain bands desiring to locate in the districts where the purchase was made.

While their account of reserve creation is correct, there is only one problem with the commissioners' analysis of historical Quebec Native policy - it is not true. Britain did not adopt "French policy" with regard to native land claims in what is now Quebec. Nor did the British Crown ever claim unceded Indian lands in that province by virtue of discovery or conquest. Unlike the French-speaking inhabitants of what is now Quebec, the Indian Nations were considered allies, not subjects, of the Crown - and their pre-existing lands rights were to be respected. When French civil law was reintroduced into Quebec in 1774, it was never intended that the Indian Nations would be subject to its provisions.

Until 1830, there was little settlement pressure on unceded Indian lands in what is now Quebec. It is true that thereafter - unlike in Ontario - land surrenders were rarely taken, even though the law clearly required them. But this was not because governments of the day believed that they were following old French colonial policy. By the 1840's, settler politicians in the eastern half of the pre-confederation Province of Canada,

responding to among others a powerful lobby of Ottawa valley timber magnates, believed they could open such unceded Indian lands to settlement and resource extraction without first extinguishing aboriginal title.

After Confederation, the QuebeC elite invented the theory that their predecessors had simply been following French colonial practice in order to justify the non - recognition of aboriginal title. This is what the Treaty 9 commissioners had reported as historical truth. This self-serving argument was important to Quebec, because Canadian boundary extension acts in 1898 and 1912 - which incorporated the Abitibi and James Bay regions into that province - implicitly or explicitly recognized pre-existing aboriginal rights in those same territories.

For the Algonquins and other First Nations - whose common law aboriginal title to much of modern Quebec has never been extinguished - the current discussions provide an opportunity to set the record straight.

(1) The French Regime

Even the statement that France never "admitted" Indian claims to land is incorrect. As a number of historians have pointed out, French policy towards native people has been frequently misunderstood. It is important, for example, to distinguish between assertions of international and domestic sovereignty. The French Crown never claimed full title to lands occupied by Indian nations within the purported boundaries of Canada - which, after all, covered an enormous part of North America.

This was especially true of the lands north and west of the seigneuries on the St. Lawrence River - where, since 1716, settlement and clearing of land had been forbidden without the express authorization of the Crown. Known to the French as the "pays d'enhaut" - and to the Anglo-Americans as "Indian country" - this was the zone of the fur trade. Effective French sovereignty in these regions extended no further than musket range of their trading posts.

The traditional lands of the Algonquin Nation - which extend up both sides of the Ottawa River and inland towards James Bay - were always considered part of the Indian country. The French traded with the Algonquins at posts along the Ottawa and its tributaries, with major trading establishments at Abitibi and Temiscamingue.

In the first half of the eighteen century, some members of the Algonquin Nation - known then both as Algonquins and Nipissings - were spending their winters in their homelands and their summers at the Sulpician mission settlement on Lake of Two Mountains, which they called Oka (pickerel). These were the people who hunted along the lower Ottawa River as far as Mattawa and Lake Nipissing.

The Algonquins who remained on their lands year-round were known to the others as Nopiming daje inini or inlanders, which the

French translated as gens des terres. To confuse matters, the French occasionally called them tetes de boule (which was a term applied as well to the Attikamegue Nation of the upper St. Maurice region). These were the Algonquins who inhabited the headwaters of the Ottawa - including Barriere Lake - and the Kipawa, Abitibi and Temiscamingue regions.

The Algonquins were famous warriors. As allies of the French, they fought many battles against the British and their Native allies, the Six Nations Iroquois. Without their assistance - and those of other "domiciled" Nations - Montreal and the other tiny French settlements along the St. Lawrence would not have survived the seventeenth century.

But it was not just the mission Algonquins who were involved in combat. In the late seventeenth and early eighteenth centuries, warriors from as far away as Abitibi and Temiscamingue joined the French on their expeditions against the Iroquois and the English. During the Seven Years War, inland Algonquins also fought alongside their brethren from Oka until the French alliance was abandoned in the late summer of 1760.

(2) Nation to Nation Relations

As late as the 1950's, it was still possible for historians to ignore Native people when writing about the conquest of New France. such rights as France's former allies had retained under the British, it is usually argued, flowed from Article 40 of the capitulation of Montreal on 8 September, 1760. The capitulation had been drafted by the Marquis de Vaudreuil and his officers:

> The Savages or Indian allies of his most Christian Majesty, shall be maintained in the Lands they inhabit; if they chuse to remain there; they shall not be molested on any pretence whatsoever, for having carried arms, and served his most Christian Majesty; they shall have, as well as the French, liberty of religion, and shall keep their missionaries [...]

But the Indian Nations were not dependent on such agreements between France and Britain to protect their interests. As Mr. Justice (now Chief Justice) Lamer of the Supreme Court has pointed out in the recent Sioui case, the Hurons of Lorette had already made their own treaty with the British two days before the fall of Montreal.

The same was true for other Indian Nations of what is now Quebec. In mid-August of 1760, deputies of nine tribes - including representatives of the Algonquin Nation - came to meet Sir William Johnson, the British Superintendent of Indian Affairs, at Fort Levis in the St. Lawrence River. British forces, beginning their descent on Montreal, had just captured this island stronghold near what is now Prescott, Ontario. There, accordingly to Sir William, the nine Nations ratified a Treaty with British, "whereby they agreed to remain neuter on condition that we for the future treated them as friends and forgot all our former enmity".

The consequences of the treaty were devastating for the French colony, since the Indian Nations controlled the water routes to Montreal. On the 29th of August, the French commander - the Marechal de Levis - called a council with the chiefs and warriors at La Prairie to urge them to stay in the French interest. As he was speaking, the ambassadors who had been sent to Sir William Johnson suddenly returned - interrupting him to announce that they had already made peace with the British. The assembled tribes vanished, leaving Levis with a belt of wampum dangling uselessly from his hand.

Sir william Johnson used his close contacts with the Six Nations of New York province to cement diplomatic ties with these former native adversaries. After the capture of New France in 1760, the Seven Indian Nations of Canada, along with their "allies and dependents", formally united together with the Six Nations to form one large confederacy in the British interest.

Unlike the "canadiens", the Indian Nations of Quebec were considered allies, not subjects, of the British Crown. Over the years that followed, colonial officials responsible for Indian relations - governors, the military, and officers of the Indian Department - continued to operate on a nation to nation basis with Indian Nations.

Governor Haldimand of Quebec made this point at the close of the American Revolutionary War in 1783, in instructions which he issued to Sir William Johnson's son, John Johnson, as the new Superintendent-General of Indian Affairs. As the Indian Nations, he wrote, "consider themselves, and in fact are, free and independent, unacquainted with control and subordination, their Passions and Conduct are alone to be governed by Persuasion and Address".

First Nations from what is now Quebec - including warriors of the Algonquin Nation - had fought as allies of the British throughout the American Revolutionary War. They also fought in the War of 1812-15 - helping, for example, to defeat the Americans at the Battle of Chateauguay. The Algonquin Nation remained loyal to the British Crown during the 1637-38 Rebellion in Lower Canada.

Algonquins have also, in keeping with this martial tradition, served overseas with Canadian Forces in both World Wars.

(3) British Military Rule 1760-63

After the fall of Montreal, Britain never intended that aboriginal people living within the former boundaries of Canada would thenceforth be subject to French colonial usages and customs. The continuation of those French laws had been rejected by the British Commander in Chief General Jeffrey Amherst, under the terms of the Capitulation.

In fact, the British Crown promised equal treatment to both French-speaking "canadiens" and aboriginal people. As the King

instructed General Amherst in 1760-61, the Indian Nations were to be treated "upon the same principles of humanity and proper indulgence" as the French; and Amherst was to "cultivate the best possible Harmony and Friendship with the Chiefs of the Indian Tribes".

On September 20, 1760, Sir William Johnson had appointed his son-in-law, Daniel Claus, as Deputy Indian Agent at Montreal, in order to extend "the British Indian interest". At a series of council meetings with the Algonquins and other Indian Nations, Claus assured them that their land rights would be respected.

The military government did abolish the former French trade monopolies, which had seen fur trade posts - such as Temiscamingue - either kept for the Governor's profit or sold to the highest bidder. But the three military jurisdictions - Montreal, Quebec and Trois Rivieres - maintained the French distinction between the settled lands on the St. Lawrence and Indian country. Within the Montreal District, for example traders needed military permission to pass up the Ottawa River beyond the old seigneurial boundaries west of Lake of Two Mountains.

(4) The Province of Quebec, 1763-1774

The Royal Proclamation of October 7, 1763 created the Province of Quebec, though with relatively limited boundaries. These encompassed the old French seigneuries and a part of the interior country within a diagonal line drawn from Lac St. Jean southwest to the eastern tip of Lake Nipissing. The Crown's purpose in doing so was to include the rivers which flowed into the St. Lawrence from the northward - presumably so that the St. Lawrence and Ottawa River routes, the main access points to the settled part of the province, would be under the new civil government's control.

Some settlement was to be permitted in Quebec - particularly for demobilized military officers and their families. Thus, Part II of the Proclamation permitted the Governor of Quebec to "settle and agree" with the inhabitants of the province for such lands as "are now or hereafter shall be in Our power to dispose of". However, the Crown had relatively little land at its disposal - and relatively few Anglo-American settlers actually arrived in the province.

Apart from the seigneurial grants, the remaining lands in Quebec were in the possession of aboriginal people. These were protected by the provisions set out in Part IV of the Proclamation:

> And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of Indians, with whom We are Connected and who live under Our Protection, should not be molested or disturbed in the possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any

of them, as their Hunting Grounds.

Accordingly, the Governors of Quebec and the other colonies were forbidden to pass patents or issue warrants of survey beyond the bounds of their commissions. Private persons were forbidden to settle on unceded Indian lands. When Indian lands were wanted, they were to be purchased for the Crown at a public meeting with the nations or tribes concerned.

The Royal Proclamation of 1763 was officially promulgated within the new Province of Quebec by Governor James Murray. This was so that the new and old subjects of the Crown would know the various regulations it contained. The Crown also ordered Sir William Johnson to make the Proclamation known to the Indian Nations within the territories under his jurisdiction.

These Indian territories included the lands of the Algonquins. Some of these lands - such as those along the Ottawa River - were now within the Province of Quebec. The remainders were within the great Indian reserve set out in Part IV of the Proclamation. There was to be no settlement at all within the latter territories, without the "leave and licence" of the Crown - and the consent of the Indian Nations.

The 1971 report of the Dorion Commission on the territorial integrity of Quebec disputes the applicability of the Proclamation within the boundaries created in 1763. However, it fully accepts that the Proclamation applied to the lands north of Quebec's 1763 boundary.

Historical evidence, however, shows that the provisions of the Proclamation were also strictly observed within the old province of Quebec. In 1766, for example, His Majesty's Privy Council in London had endorsed a grant of 20,000 acres to a certain Joseph Marie Philibot at a location of his choosing. But when that individual asked for land on the Restigouche River, the Governor and Council of Quebec refused his application - on the grounds "the lands so prayed to be assigned are, or are claimed to be, the property of the Indians and as such by His Majesty's express command as set forth in his proclamation in 1763, not within their power to grant".

Lands within the province which the Crown considered in its "Power to dispose of" to settlers - to use the wording of the Royal Proclamation - did not include the areas north and west of the Ottawa and St. Lawrence Rivers. As under the military regime, these lands were zoned for the fur trade and aboriginal people. In april of 1764, it was forbidden for inhabitants of Quebec to pass beyond Carillon on the Ottawa without a pass from the Governor.

(5) The Province of Quebec, 1774-1791

By the Quebec Act of 1774, the province's boundaries were enormously enlarged, extending as far to the westward and southward as the upper Great Lakes and the Mississippi River. This took in much of the territory which had been zoned under the Proclamation for exclusive Indian occupation. Virtually all of the

lands of the Algonquin Nation, for example, were now within the bounds of Quebec.

The reason for the boundary extension, as both the Preamble to the Act and the subsequent instructions to the Governor make clear, many small French interior settlements - such as Detroit, and Kaskaskia on the Illinois - had been left by the Proclamation without civil government. Not only would these settlements now be governed from the st. Lawrence, but they would be able to avail themselves of French civil law, which had been reintroduced by the Act as well.

These new arrangements, however, had little relevance for the Indian Nations of Quebec. Indian Nations, as before, had a direct relationship with the Crown, through the British military and Indian Department. As the Commander in Chief explained to the head of that Department shortly after the passing of the Quebec Act, Indian people were ordinarily left to "their own usages and customs" in most things. While they might, said General Thomas Gage, have been informed that, "in cases of murder or robbery", they could be tried according to English law, the "French law of Canada" would have no authority over them.

The settler government - which at this time consisted of a Legislative Council, rather than an Assembly - had no constitutional authority over aboriginal people, though it could and did pass laws to protect them from depredations by whites. One such piece of legislation was a 1777 Ordinance to prevent the selling of liquor to aboriginal people. Under its terms, inhabitants of Quebec were also forbidden to travel past the foot of the long fall on the Ottawa River - near Carillon - without a pass. Nor was anyone to be allowed to settle "in any Indian village or Indian country within this Province" without a licence in writing from the government.

British officials assured the Indian people that the provisions of the Royal Proclamation protecting their land rights were still in effect. There was little settlement pressure within the province in any case until the close of the American Revolutionary War - when Britain suddenly had to provide far great numbers of refugee Loyalists.

Many of these Loyalists wanted to settle on Indian lands north of the St. Lawrence River and Lakes Erie and Ontario. As a result, beginning in 1781, the Crown acquired various tracts of land from the Indian Nations - in keeping with the rules set down in the Royal Proclamation of 1763. One of these purchases - in 1783, of lands in what is now the far corner of eastern Ontario - was made from Mynass, an Algonquin Chief, who lived at Oka.

Some Loyalists also settled in what are now the Eastern Townships of Quebec. The Crown had purchased the Seigneury of Sorel for them - and, with other seigneurial lands available, there was little need to apply to the Indian Nations for more land. Disputes did arise at St. Regis - Akwesasne - much of which was coveted by the settlers. However, their petition ta the Executive council - the ultimate land-granting authority - was

refused, on the grounds that the lands in question, being Indian lands, were "not in the Ring's power to grant".

(6) The Province of Lower Canada, 1791-1841

The Province of Canada was created by Imperial statue in 1791. what had remained of Quebec after the American Revolution was formally divided into Lower and Upper Canada by Imperial Order in Council of 24 August 1791. The boundary between the two provinces was to run along the Ottawa River as far as Lake Temiscamingue and then "due North until it strikes the boundary line of Hudson's Bay". The traditional lands of the Algonquin Nation, therefore, were now both in Upper and Lower Canada.

French civil law was to apply in the lower province, while the English common law was to prevail in the upper. This did not affect common law aboriginal title, which was to have the same application in both. Shortly after the passing of the 1791 legislation, the King reappointed Sir John Johnson as Superintendent General of Indian Affairs. He was to assure "Our Faithful allies, the Nations inhabiting our provinces of Upper and Lower Canada and the frontiers thereof" of His Majesty's continued concern for their welfare.

These assurances included protection of existing land rights. As Sir John's superior officer - Governor Guy Carleton, Lord Dorchester - assured the Confederacy of Indian Nations at Montreal in 1791, the Crown "never has, and never will, take a foot of land from you without your consent, and without paying you for it".

There were problems, however, as Lord Dorchester explained to the colonial secretary in early 1795, he had been hearing frequent "complaints of the Indians of Lower Canada regarding their Lands", as well as protests from the Indians in Upper Canada at "Persons who have taken possession of Lands which are still claimed by them". These discontents, according to the Governor, "could proceed only from the omission of Form, and want of knowledge in the Persons employed to make Purchases of their Lands". Deciding therefore to expand on the rule& originally set out in the Royal Proclamation of 1763, Lord Dorchester had issued a new series of regulations to Sir John Johnson on 24 December 1794.

These regulations clearly applied to Lower Canada, as well to the upper province. They state that when lands are wanted in "any of the King's Provinces", proper requisitions are to be made to the Commander in Chief. By Article 3, "All purchases are to be made in public Council with great solemnity and ceremony according to the ancient usages and customs of the Indians, the principal Chiefs and Leading Men of the Nation or Nations to whom the lands belong being first assembled". Proper maps of the lands to be acquired are to be made, and copies of the agreements given to the Indian Nations for their records.

Between 1794 and 1830 in Upper Canada, the British Crown entered into a long series of land surrender agreements with the Indian Nations. This was to allow for the settlement of American

Loyalists and subsequent British immigrants.

Within Lower Canada, on the other hand, there was no sustained pressure on unceded Indian lands before 1820. Until that time, settlement had largely been confined within the old seigneurial grants along the St. Lawrence.

When the frontier of settlement did advance into Indian country, Indian Department officials insisted that the Royal Proclamation of 1763 continued to apply. In 1824, the octogenarian Superintendent-General, Sir John Johnson, argued in a letter to the Governor that the lands of the Algonquin Nation were being illegally encroached upon by lumberman and settlers:

> By His Majesty's Proclamation dated the 7th October 1763, a copy of which is herewith enclosed, you will find that it is expressly provided that the Indians shall not under any Pretence whatever, be deprived of the Lands claimed by them, unless they should be inclined to dispose of them, in which case they are to be Purchased for the Crown only, and at some Public meeting to be held for that purpose.

As late as 1837, the Executive Council of Lower Canada considered that the Algonquin Nation had established a valid claim to their hunting grounds along the Ottawa River, based on the Royal Proclamation and Lord Dorchester's regulations.

(7) The Province of Canada, 1841-1867

By the early 1840's, the Lower Canada forest industry had spread into the Saguenay-Lac St. Jean region and far up the Ottawa River and its tributaries. English speaking lumberman like William Price - the "father of the Saguenay" - and John Egan - who held all the licenses around Lake Temiskaming - used their influence with the provincial government to open what had until then been fur trade and Indian country to resource extraction.

At the same time, the Catholic clergy were pressing the government to allow proper colonization of the Saguenay. They were concerned that rural people - faced with a shortage of arable land in the old seigneuries - had been leaving for the towns of Canada and the United States.

As some compensation to aboriginal people who were being displaced, Oblate missionaries petitioned the provincial government to provide Indian reserve lands in the Saguenay and Ottawa regions. These would include a township on the Gatineau River and another large tract at the head of Lake Temiscamingue - both for the Algonquins and their relations. In a report to the government dated August 2, 1849, the Assistant Commissioner of Crown Lands, Teophile Bouthillier, recommended that the tracts be set apart. He also noted the contrast between the two halves of the province of canada in their treatment of Indian claims:

> There is this general observation to make in conclusion,

> that while in Upper Canada the Government have scrupulously paid the actual occupants of the soil for almost every inch of ground taken from them, making fresh purchased as new districts were laid out, they in Lower Canada appear to have been totally regardless of all Indian claim.

The Assistant Commissioner's remark was meant as a criticism, not as a defence, of Lower Canada land policy. Nowhere do Bouthillier or any other government officials of this period suggest that the lower province, in disregarding Indian claims, was following old French colonial practice.

The government's response to these petitions was the Lower Canada Statute of 1851, which set apart 230,000 acres of land in Canada East for the use of certain Indian tribes. By Order in Council of 9 August 1853, these lands were formally distributed. The schedule included 38,400 acres at the head of Lake Temiscamingue, and 45,750 at Maniwaki or Riviere Desert for the "nomadic tribes" of the Nepissingue, Algonquin, Outaouais and Tetes de boule.

In effect, then, the creation of reserves in Canada East constituted compensation for damages caused to Native hunting grounds by lumbering and settlement. However, none of the official documents - including the 1851 statute - tied reserve creation to the extinguishment of aboriginal title. This is not surprising since the Legislative Assembly of Canada had no such constitutional authority.

(8) The Province of Quebec, 1867 -

The modern province of Quebec came into being through the British North America Act of 1867. Responsibility for "Indians and lands reserved far the Indians" within the province was entrusted to Canada under Section 91(24). Under Section 109 of the Act, Quebec was given authority over lands and resources within its boundaries - subject to any "interest other than that of the province in the same".

It was a commonly held view that aboriginal title was just such an interest. In 1875, Telesphore Fournier - Minister of Justice in Alexander Mackenzie's Liberal government - argued this point in an opinion involving aboriginal title in British Columbia. The opinion notes that aboriginal rights to land had always been respected throughout what was now Canada - including both Ontario and Quebec:

> The determination of England as expressed in the Proclamation of 1763, that the Indians should not be molested in the possession of such parts of the dominions and territories of England as not having been ceded to the King are reserved to them, and which extended also to the prohibition of purchase of lands from the Indians except only by the Crown itself at a public meeting ar assembly of the said Indians to be held by the Governor

> or Commander in Chief, has with slight alteration been continued down to the present time, either as the settled policy of Canada or by Legislative provisions of Canada to that effect; [...] and in various parts of Canada from the Atlantic to the Rocky Mountains large and valuable tracts of land are now reserved for the Indians as part of the consideration of their ceding and yielding to the crown their territorial rights in other portions of the Dominion.

In 1867, Quebec's boundary only extended as far north as the height of land separating the St. Lawrence watershed from the rivers flowing into Hudson and James Bay. The more northerly territory - part of the lands covered by the charter of the Hudson's Bay Company - was formally transferred to Canada in 1870, following petitions from the Senate and House of Commons of the new Dominion. The transfer stipulated that the "claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government".

Most of the Algonquin homelands were within the territorial boundaries of Quebec in 1867, though some lands remained within what were now the Northwest Territories. In 1898, Canada transferred the southern half of this northern territory to Quebec. The remainder was transferred in 1912. Again, there was an express stipulation that aboriginal title would be dealt with.

Canada made Treaty No. 9 in 1905-06 and 1929-30 with the Native inhabitants of Ontario whose lands had once been part of Rupert's Land. No such treaty was made in Quebec. In the decades following Confederation, the Quebec elite had begun arguing that the province had inherited French policy with regard to aboriginal title. It was not necessary, therefore, to negotiate for the extinction of the aboriginal interest. This argument was adopted by the provincial government - and largely accepted by Canada.

In the period after 1880, Quebec began a major expansion of settlement and resource extraction in the traditional homelands of the Algonquin Nation. Continuing their attempts to stem the flood of rural "canadiens" to the New England states, Oblate clergy promoted major colonization schemes at the head of Lake Temiscamingue and in the Abitibi region.

Lumbering remained the major activity up the Gatineau River and around the headwaters of the Ottawa. To aid the lumber industry and provide hydro-electric power, Quebec permitted the construction of enormous dams and reservoirs at Baskatong, Cabonga Dozois and Kippewa. These dams caused major damage to the homelands of the Algonquin people.

Quebec also stepped up prosecution of Algonquin people for supposed violations of provincial game and fish regulations. Between the two world wars, only the Hudson's Bay Company - for their own commercial reasons - were prepared to support the pre-existing rights of aboriginal people to hunt, fish and trap.

Development and encroachment on unsurrendered Algonquin lands continued to the end of the nineteenth century and throughout the twentieth century, more or less unabated. This caused much hardship to the Algonquin people whose traditional way of life depended upon hunting, fishing, trapping and gathering.

Their way of life was even more directly interfered with when the government of Quebec permitted the creation of private hunting and fishing reserves on traditional lands, without Algonquin assent. When the private clubs were abolished, the government of Quebec created Zones of Controlled Exploitation (ZEC). Algonquin people did not assent to these either. Yet they are still being harassed for exercising their aboriginal rights in these zones.

Although the Department of Indian Affairs tried, after the 1940's, to have small reserves set apart for the interior Algonquins - at Amos, Lac Barriere, Grand Lac and Lac Simon, for example - these proposals were resisted by the Quebec Colonization Department.

Apart from these minimal efforts, Canada has generally failed to support the rights of Algonquin peoples in Quebec. The Algonquin people are among the poorest in Quebec and Canada. Housing, health and education standards are inadequate and our unemployment rates are as high as 80-90 per cent. And despite outstanding claims, we have been squeezed by Quebec onto marginal land bases. For example, the reserve at Rapid Lake is made up of 59 acres of sand for a total population of 450 people. The community of Kippewa is in a similar situation. Wolf Lake does not even have a reserve.

3. ABORIGINAL TITLE AND THE ROYAL PROCLAMATION OF 1763: THE CROWN'S FIDUCIARY OBLIGATIONS

Though the Royal Proclamation of 1763 was intended to be protective of the interests of Indian peoples in their lands, it also placed a serious impediment on their ability to deal with their lands. It provided that Indian lands could only be surrendered to the Crown. This, of course, also placed the Crown in a very powerful position vis a vis Indians because it alone had the power to buy Indian lands. The Crown also had the responsibility for promoting settlement on Indian lands - which was a conflict of interest. This conflict was usually resolved in favour of settlement.

This is exactly what occurred, to the extreme, in the case of the Algonquins. Settlement proceeded on Algonquin lands and the Crown did little to stop it. Nor did it make any efforts to negotiate a surrender of the aboriginal title of the Algonquins. This is unlike the situation in Ontario and the prairies where settlement was either preceded by, or at least accompanied by, treaties of land cession.

Since 1867, it has been the Crown in right of Quebec which has driven settlement and development of Algonquin lands, aided and abetted by the Crown in right of Canada. The Crown in right of

Quebec has consistently refused to allow the transfer of adequate reserve lands to Algonquin First Nations.

The inalienability of aboriginal title led the Supreme Court of Canada in 1984 to conclude that this placed a fiduciary duty upon the Federal Crown to act in the best interests of the Indians. In Guerin v The Queen, the Court said:

> The fiduciary relationship between the Crown and the Indians has its roots in the concept of aboriginal, native or Indian title. The fact that Indian bands have a certain interest in lands does not, however, in itself give rise to a fiduciary relationship between the Indians and the Crown. The conclusion that the Crown is a fiduciary depends upon the further proposition that the Indian interest in the land is inalienable except upon surrender to the Crown.

In 1982, s.35 of the Constitution Act. 1982. "recognized and affirmed" the existing aboriginal and treaty rights of the aboriginal peoples of Canada. As a result, according to the Supreme Court of Canada, the fiduciary duty of the Crown is now a constitutionally charged obligation: Sparrow v. The Queen (1990).

As a consequence of the Royal Proclamation of 1763, common law aboriginal title, the fiduciary duty of the Federal Government and s. 35 of the Constitution Act, 1982, the Algonquin Nation takes the position that:

(1) The Federal Government owes a fiduciary duty to the Algonquin Nation to protect their aboriginal title to lands in Quebec.

(2) Any constitutional changes affecting the title of the Algonquins in Quebec requires their consent.

(3) Quebec can not legally secede from canada with Algonquin lands without algonquin consent.

4. OBLIGATIONS IN INTERNATIONAL LAW

International law has been deficient about addressing the specific concerns and vulnerabilities of Indian Nations. At the same time, increasingly, international law is developing a sensitivity to these concerns and vulnerabilities, especially through the activities of the Working Group on Indigenous populations. The working group meets annually at Geneva under the auspices of the UN Sub-Commission on Prevention and Protection of Minorities, and has been drafting a Universal Declaration on Indigenous Rights. Beyond this, ILO Convention 107 and 169 exist, but do not pertain directly to the present circumstances and have not been ratified by Canada. These instrument& can be regarded as embodying minimum principles of customary international law that are binding on all countries. In this regard, the Preamble of No. 169 (1989) is relevant, especially the language, "Recognizing the aspiration of these peoples to exercise control over their own

institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live." The legal acknowledgement of this aspiration is binding on the Canadian Government, implying a series of practical effects in the context of either fundamental reform bearing on the wellbeing of Indian nations or within the context of the dissolution of the former state and its replacement by two or more states.

Canada is also bound by general conceptions of international laws that are contained in fundamental treaties that have relevance to the concerns of the Algonquin Nation, although not drafted with this concern in mind. Article 1(2) of the United Nations Charter describes, as among the "Purposes" of the UN, "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." The centrality of this principle is expressed by the inclusion of common language in Article 1(1) of both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

The specific mechanisms far realizing this legal commitment have not been established, but it is certainly the case that the Algonquin Nation encompasses a "people" within the meaning of international law, and that the contemplated changes by way of reform or separation profoundly affect their "political status" and bear upon their prospects to exercise their rights to development. Secession of Quebec by rupturing the integrity of the Algonquin Nation and its territory within the current boundaries of Canada has a manifest profound affect such that its prospect should give rise to some sort of appropriate participation by which approval or disapproval could be expressed by the Algonquin people, both those in Quebec and those in Ontario.

The meaning of the principle of self-determination in international law has always reflected the practice and aspirations of peoples in the world. Recent developments, especially the dissolution of the Soviet Union and the emergence of Croatia and Slovania from out of Yugoslavia, underscore the relevance of political behaviour to the application of the rights of self-determination. Canada's foreign policy is interesting in this respect because of the haste with which diplomatic recognition was accorded to emergent nations out of the Soviet Union and Yugoslavia. One would think Canada should act with equal haste to recognize the right of self-determination of Indigenous peoples within its own borders.

Also of great relevance are the negotiations between the Palestinians in the Occupied Territories and the State of Israel for some interim form of Self-Government, and between the Iraqi Kurds and the State of Iraq to achieve some type of "autonomy" within the Iraqi state. It is clear that self-determination may lead to the redefinition of the boundaries and number of states, and that it pertains to restructuring of the rights of peoples and

nations within states. This latter process is part of international law, and cannot be insulated by claiming that it is carried on within the state in accordance only with domestic law. This assertion has acquired extra force recently with the increasing recognition that Indian nations are subjects of international law that are deserving of special protection because of their vulnerability and the degree to which their survival as a nation is at risk. In effect, there is emerging at an international level a sense of fiduciary duty to ensure protection, a duty that is also being promoted by NGOs concerned with these issues.

The application of the principle of self-determination with respect to indigenous peoples particularly in the context of relations within existing states is not yet fully settled in international law. This is still in the process of being worked out. The UN Working Group on Indigenous Populations has still not completed its Declaration and it is expected to take a number of years before it is brought forward for ratification, The meaning of self-determination in this context, however is likely to be affected by practical circumstances - just as has been the experience elsewhere - which will inevitably vary from place to place.

Peoples, not states or governments, have the right of self-determination, as was eloquently acknowledged by the World Court in the 1975 WESTERN SAHARA case:

> It is for the people to determine the destiny of the territory and not the territory the destiny of the people.

The territory of Quebec, as such, has no right of self-determination. This right inheres in the people, and the people alone, and cannot be exercised on their behalf. If the Quebecois and Quebecoises claim a right of self-determination, it is only because they can establish their credentials as a people. But by doing this, they implicitly recognize an equivalent right for other peoples living within the territory. The Algonquins are "peoples" within the meaning of international law. They clearly have the right of self-determination.

Of further relevance is the general international law doctrine of succession to rights and duties of the prior state in the event of revolutionary changes of circumstances, including separation. Specific means must be taken prior to any contemplated separation to identify rights and interests of affected peoples and nations and practical means must be found to safeguard these rights and interests. In the absence of consent, it is difficult to see how this duty to safeguard can be upheld if the change has the effect of disrupting or seriously altering the geographical continuity of a nation and its territory as would be the case here if Canada splits into two states from the perspective of international law with Algonquin communities and territories being located in both new entities.

Further, this line of reasoning is strengthened to the extent

that the rights and duties of Canada, with respect to the Algonquin Nation are themselves derivative from the British Crown. whether these relations can be altered unilaterally is legally doubtful, especially if there are adverse effects on a protected nation such as the Algonquin Nation.

Finally, it should be stressed that the right of development rests with peoples, not with states. According to Article 1 of the U.N. Declaration on the Right to Development (1986), this is an inalienable right which belongs to every human person and all peoples. Article 1.2 states:

> The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

The whole instrument was endorsed by Canada, and adopted by a vote of 126-1, with 8 abstentions, by the U.N. General Assembly. The right of development includes the right of peoples to develop in their own way. This is especially important far those forms of development which are sensitive ta environmental values. This sensitivity to environmental values is an acknowledged achievement of indigenous peoples and is fully consistent with the image of sustainable development so persuasively emphasized by the Brundtland Commission Report "Our Common Future".

5. SUMMARY AND CONCLUSIONS

Summary

In summary, the position of the Algonquin Nation is as follows:

(1) It is a fallacy to suggest that, in terms of aboriginal rights, modern Quebec is the successor to New France. Quebec is a successor to British colonies known as Quebec (1763-1774; 1774-1791); Lower Canada (1791-1841) and Canada [East] (1841-1867). Owing their existence to British colonial law, all of these jurisdictions have been subject to common law aboriginal title. That is to say, the doctrine of aboriginal rights - which has passed into Canadian common law - applies equally to modern Quebec.

(2) In the same way, Quebec's present boundaries are the creation, not of French colonial law, but of various Imperial and Canadian enactments. These include the Royal Proclamation of 1763, the Quebec Act of 1774, the Imperial Order in Council of 1791 dividing Quebec into Upper and Lower Canada, the British North America Act, 1867 and the boundary extension acts of 1898 and 1912 which added the Abitibi and James Bay regions. All of these enactments either explicitly or implicitly acknowledged pre-existing aboriginal rights.

(3) The Algonquin Nation holds aboriginal title to its traditional lands in Quebec. This has now been recognized in Section 35 of the Constitution Act of 1982. The Algonquin Nation has never ceded or surrendered its aboriginal title.

(4) The Algonquin Nation were acknowledged as allies, not subjects, of the Crown - as was recognized to have been the situation with the Hurons in the Sioui case of the Supreme Court of Canada. When the French were conquered, the Indian Nations - including the Algonquins - negotiated separate agreements with the British. Their relations with the French and the English were on a nation-to-nation basis. This is reflected in the Royal Proclamation of 1763.

(5) when French civil law was reintroduced into Quebec in 1774, it was never intended that aboriginal people would be subject to its provisions. They were to be governed according to their own usages and customs. Algonquin peoples have retained their inherent right to self-government.

(6) Not only do the Algonquin people have rights, the Crown - presently represented by Canada - has obligations which have been acquired from Britain following patriation. In Canadian law, Canada owes a fiduciary duty to the Algonquin peoples to protect their aboriginal title to lands in Quebec. This is because aboriginal title can only be surrendered to the Federal Crown. According to the Supreme Court of Canada, the federal fiduciary duty is a constitutional duty and it is enforceable at law. And this is reinforced at the international level by the special responsibility of governments in relation to the rights of indigenous peoples.

(7) In the past, the Crown has failed miserably in protecting the interests of the Algonquin Nation to lands in Quebec. The Crown in right of Canada has allowed the Crown in right of Quebec to make massive encroachments on Algonquin lands without ensuring that there was first a negotiated settlement. In light of this, it is unreasonable to expect the Algonquin Nation to rely on mere promises or pledges that a sovereign Quebec would adequately respect their most sacred rights.

(8) Recent experience of the Algonquins of Barriere Lake confirms this reluctance. A trilateral agreement signed in August of 1991 with Canada and Quebec is a joint project to create an integrated resource management plan for La Verendrye Park. It was intended to incorporate Algonquin traditional knowledge and to protect Algonquin traditional practices. But Quebec is not respecting this agreement.

(9) As a consequence of the Royal Proclamation of 1763, common law aboriginal title, the fiduciary duty of the Federal Government and s. 35 of the Constitution Act. 1982,

(a) Any constitutional changes affecting the title of the Algonquins in Quebec requires Algonquin

consent; and

(b) Quebec cannot legally secede from Canada with Algonquin lands without Algonquin consent.

(10) Self-determination for Quebec would lead to the redefinition of the boundaries of Canada. Under international law, the rights of aboriginal peoples and nations within both states would be compromised. The process of separation cannot be insulated from these rights by claiming that it is carried on within a state in accordance only with domestic law. This assertion has acquired extra force recently with the increasing recognition that Indian nations are subjects of international law that are deserving of special protection because of their vulnerability and the degree to which their survival as a nation is at risk.

(11) Peoples, not states or governments, have the right of self-determination, as was eloquently acknowledged by the World Court in the 1975 WESTERN SAHARA case:

> It is for the people to determine the destiny of the territory and not the territory the destiny of the people.

The territory of Quebec, as such, has na right of self-determination. This right inheres in the people, and the people alone, and cannot be exercised on their behalf.

(12) If the Quebecois and Quebecoises claim a right of self-determination, it is only because they can establish their credentials as a people. But by doing this, they implicitly recognize an equivalent right for other peoples living within the territory. The Algonquins are "peoples" within the meaning of international law. They clearly have the right of self-determination.

(13) Any secession by Quebec from Canada would rupture the integrity of the Algonquin Nation and its territory. The tragedy of the Kurds shows what happens when peoples are caught within the boundaries of different states. Article 32 of the ILO Convention No 169 (1989) implicitly establishes the responsibility of governments to uphold the political unity and territorial integrity of indigenous peoples. accordingly, the Algonquin people possess the right to approve or disapprove the creation of any new state which would affect the status of their traditional lands and the unity of their people.

(14) What is also relevant is the international law doctrine of succession to rights and duties of the prior state in the event of revolutionary changes of circumstances - including separation. Specific means must be taken prior to any contemplated separation to identify rights and interests of affected peoples and nations and practical means must be found to safeguard these rights and interests.

(15) Professor Henri Brun has suggested to this Committee that aboriginal rights in an independent Quebec could be explicitly guaranteed in a separate clause of the new Quebec constitution - one which could only be amended with their consent. But the promise to protect the right is not enough, because the fundamental right of self-determination is being denied. The essential part of self-determination is full participation in the process as a distinct people. This includes the right to give or withhold assent.

(16) Just as with the right of self-determination, the right of development rests with peoples, not with states. According to Article 1 of the U.N. Declaration on the Right to Development (1986), this is an inalienable right which belongs to every human person and all peoples. Article 1.2 states:

> The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

The whole instrument was endorsed by Canada, and adopted by a vote of 126-1, with 8 abstentions, by the U.N. General Assembly.

(17) The right of development includes the right of peoples to develop in their own way. This is especially important for those forms of development which are sensitive to environmental values. This sensitivity to environmental values is an acknowledged achievement of indigenous peoples and is fully consistent with the image of sustainable development so persuasively emphasized by the Brundtland Commission Report "Our Common Future".

(18) The Algonquin people have had over a century of bitter experience with maldevelopment in the Province of Quebec. Accordingly, the political leadership of Quebec lacks credibility on this range of issues. In this regard, any accession to sovereignty which would give a new state called Quebec even more control over resources on Algonquin lands is totally unacceptable.

Conclusions

You can't have double standards when it comes to self-determination. If Quebecois and Quebecoises want to claim self-determination for themselves, then realize that we have it too. Because self-determination exists in a people, in their language and culture, in their connection with the land.

We do not want our rights affected any more than they are now. There are Algonquin people living both in Ontario and in Quebec. Look at Temiskaming. Their Reserve is in Quebec, but at least half of their traditional lands are in Ontario. Many

community members live on the Ontario side. Temiskaming people go back and forth all the time. They visit. They hunt, fish and trap. They work in all sorts of jobs. They go to the doctor. They shop. Why should you or the federal government be able to stop them from doing any of this?

For better or for worse, Algonquin people have been part of Canada for a long time. We made solemn agreements with the white people. We believed the promises made to us by the Great Queen in England. We aren't prepared yet to give up on that reality. And certainly not when plans for sovereignty are being made without us.

Some of you tell us we will be better treated in an independent Quebec. Why should we believe you? It was the Quebec provincial government that flooded our lands, and put us in jail for hunting and trapping. And Quebec is still letting timber companies rape our land.

I want you to think of a clock. The twelve hours represent all of human history on this land you call Quebec. French-speaking people have been here since 5 minutes to 12. English-speaking people have been here since 3 minutes to 12. But we Algonquins have been here all along. And we've done a lot less damage than you have in your few minutes.

We plan to be here for another 5,000 years.

Meegwetch.