

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

WOLF LAKE FIRST NATION

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES November 19, 2018 David Burnside	D É P O S É
Ottawa, ON	1	

Claimant

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA
As represented by the Minister of Indian Affairs
and Northern Development

Respondent

DECLARATION OF CLAIM

Pursuant to Rule 41 of the
Specific Claims Tribunal Rules of Practice and Procedure

This Declaration of Claim is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

DATE: November 19, 2018

David Burnside

(Registry Officer)

TO: **HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA,**
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and Northern Development,
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I. Claimant (R. 41(a))

1. The Claimant, Wolf Lake First Nation (“WLFN”), confirms that it is a First Nation within the meaning of s. 2 (a) of the *Specific Claims Tribunal Act* (“Act”), in the Province of Quebec.
2. WLFN is part of the Algonquin Nation, whose traditional territory includes the Ottawa River valley, on both sides of the Ontario-Quebec border. The Algonquins were closely connected with the Nipissings and historical materials often refer to the “Algonquins and Nipissings”.
3. WLFN derives its name from its traditional settlement or village site, “Wolf Lake” (*Mahingan Sagahigan*). It also had settlement sites at other locations within its traditional territory, including Grassy Lake and Hunters Point. Wolf Lake is one of three connected lakes -- the others being Watson or Brule Lake and Grassy Lake -- situated at the head of the Kipawa River, just to the west of Grand Lac Dumoine.
4. WLFN was formally recognized by Canada as a separate and distinct band in 1951. Canada has agreed “that for the purposes of the Wolf Lake First Nation’s Specific Claim regarding Reserve Creation, that from 1951 the Wolf Lake Band was a separate and distinct band from other Algonquian Bands living in the area.” Accordingly WLFN will limit its claim for compensation, on a without prejudice basis, to the period starting in 1951. However, the presence of WLFN in the area pre-dated 1951. WLFN is a successor to what was known as the Dumoine Band or *Kiwe ‘gom’anicenabi*, which was present in the area in the period prior to 1850-70. Subsequently, they were known by a variety of names from other settlement sites to which they were connected, including Grassy Lake, Hunter’s Lodge and Hunter’s Point. WLFN will put forward and rely on pre-1951 facts for contextual purposes, to support its claim post-1951.

5. In 1951, the core families making up the WLFN -- Paul, Constant, Reynolds, St Denis, Tebiscon -- occupied their traditional territory in the general region of the upper Kipawa and Dumoine River drainages, between Ostaboningué Lake and Grand Lac Dumoine, and southward to the Ottawa River.
6. The region of WLFN's traditional territory and its settlement sites are shown on Map 1, entitled "Wolf Lake and the Upper Ottawa Valley: Settlements and Reserves", attached as Schedule "A" to this Declaration.
7. Despite numerous requests for a reserve throughout the years, WLFN still does not have a reserve. It has administrative offices in the Town of Temiscamingue, Quebec. It has a council, composed of a chief and two councillors, selected by custom. Wolf Lake's longstanding Chief, Harry St. Denis, who was first elected in 1987, passed away on November 15, 2018. As at the time of submission of this claim, in 2003, Wolf Lake had a membership of over 250.

II. Conditions Precedent (R. 41(c))

8. The following conditions precedent as set out in s. 16(1) of the *Specific Claims Tribunal Act*, have been fulfilled:
 16. (1) *A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and*
 - (a) *the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part...*
9. WLFN initially filed this Claim with Canada in 1996. Further research was undertaken in respect of the Claim after 1996 and the Claim was resubmitted in January 2000. Canada issued a preliminary rejection of the Claim by way of two separate letters dated July 17, 2002, from then Minister, Robert Nault, and Assistant Deputy Minister Michel Roy of Indian Affairs ("DIA").

10. The Claim then went to the Indian Specific Claims Commission (“ISCC”) and through a facilitation process, and a final revised Claim was submitted to Canada on May 31, 2004. On July 18, 2006, Canada rejected the WLFN’s Claim for reserve lands. In the transition from the ISCC, Canada undertook a further review of the Claim, after which it notified the WLFN that it would not accept the Claim for negotiation, by way of letter from Michel Roy, dated July 13, 2009. This brings this Claim under s. 16 (1)(a) of the *Act*.

Claim Limit (Act, s. 20(1)(b))

11. WLFN does not seek compensation in excess of \$150 million.

III. Grounds (Act, s. 14(1))

12. The following are the grounds for the specific claim, as provided for in s. 14(1) of the *Specific Claims Tribunal Act*.

(c) a breach of a legal obligation arising from the Crown’s provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation.

13. This Claim is not based on and does not allege Aboriginal rights or title. However, both pre and post 1951 facts respecting WLFN’s presence within their traditional territory and facts related to the traditional territory of the Algonquin Nation will be presented for historical context and to provide a foundation for assertions of honour of the Crown and fiduciary obligations upon which this Claim is based, particularly the elements of vulnerability and cognizable interest.

IV. Allegations of Fact (R. 41(e))

Overview of the Claim

14. WLFN pleads that the Crown was obligated to provide a reserve for the Wolf Lake people. The First Nation sought a reserve within settlement sites in its traditional territory, within the traditional territory of the Algonquin Nation, and

also within the area set aside as “Indian territory” in the *Royal Proclamation of 1763*. The *Proclamation* made Indian lands inalienable except to the Crown and set up a treaty process for obtaining the surrender of Indian lands. This made the Wolf Lake people vulnerable and imposed a corresponding fiduciary obligation upon the Crown to act in their best interests regarding their lands. The Crown never entered into a land cession treaty with WLFN or the Algonquin Nation; yet, the Crown did not protect Wolf Lake lands from encroachment.

15. WLFN’s traditional territory became overrun by white settlement and development. The encroachment had a devastating impact on the Wolf Lake people. In the pre-1950 period they requested aid and reserve lands at their traditional settlement sites. Crown officials at various times acknowledged their need for a reserve and even took steps towards establishing a reserve for WLFN.
16. The impacts continued in the post-1951 period and so did the petitions for reserve lands by the WLFN. Crown officials acknowledged WLFN’s vulnerability and their need for a reserve in order to obtain a range of programs and services from the Department of Indian Affairs (DIA). WLFN had specific or cognizable interests in its traditional settlement sites at Grassy Lake, Wolf Lake and Hunters Point. The Crown had discretionary control in relation to these interests as the exclusive intermediary with the province of Quebec in the reserve creation process.
17. It was also within the discretionary control of the Crown to create a reserve for WLFN by purchasing lands for such purposes, which it started to do in 1973 but failed to follow-through.
18. WLFN also had a cognizable interest in potential reserve sites it identified in the period from 1980 to 1988. By its conduct and representations, Crown officials undertook to create a reserve for WLFN, which engaged the honour of the Crown and fiduciary obligations. Indeed, in 1986-8 Quebec agreed to

provide the land, but DIA decided not to proceed with the reserve creation process.

19. In failing to follow-through with the reserve creation process for WLFN, the Crown failed to fulfil its obligations of loyalty, good faith, full disclosure appropriate to the matter at hand and acting in what it reasonably and with diligence regards as the best interest of the beneficiary.

Traditional Territory

20. In 1951, the core families making up the WLFN -- Paul, Constant, Reynolds, St Denis, Tebiscon -- occupied their traditional territory in the general region of the upper Kipawa and Dumoine River drainages, between Ostaboningué Lake and Grand Lac Dumoine, and southward to the Ottawa River. Their occupation within this region can be traced back, using genealogical records and the research work of Frank Speck published in 1915, to a period before settlement and development in the region.
21. The region of WLFN's traditional territory and its settlement sites are shown on Map 1, entitled "Wolf Lake and the Upper Ottawa Valley: Settlements and Reserves", attached as Schedule "A" to this Declaration. This lies within the traditional territory of the Algonquin Nation, which includes the Ottawa River valley, on both sides of the Ontario-Quebec border. Much of the traditional territory of the Algonquin Nation also lies within the area reserved as Indian territory by the *Royal Proclamation of 1763*.
22. The lands which are the subject of this Claim are within the traditional territory of the WLFN and the Algonquin Nation and the *Royal Proclamation* Indian territory.
23. Neither WLFN, nor the Algonquin Nation, has ever entered into a land cession treaty or otherwise surrendered or extinguished Aboriginal title to their traditional territories.

Pre-1951 Historical Context – *Royal Proclamation of 1763*

24. The Treaty of Paris of February 1763 formalized the transfer to Britain of the former French colony of Canada, also known as New France. The colony had been under British military rule since the capture of Montreal in September of 1760. The *Royal Proclamation* of October 7, 1763 set out a series of measures to provide for civil government in some areas, regulate trade, and manage relations with the Indigenous nations, not only in Canada but throughout British North America.
25. The *Proclamation* established four new governments in British North America, including the Province of Quebec. It included all of the seigneuries in the St Lawrence valley, as well as unsettled areas, including the lower Ottawa valley and much of present eastern Ontario. Beyond that and up to the height of land was reserved as “Indian territory”, which was off-limits to settlement.
26. The *Royal Proclamation of 1763* established the broad framework for the disposal of lands within Canada. There were two broad categories of land: one where settlement was to be permitted within the colony; and another where no settlement would be allowed, “Indian territory”. Lands reserved to the Indians were found in both categories. The traditional territories of the Algonquins and Nipissings, though located partly within the Province of Quebec, were mainly in the second category.
27. According to the *Proclamation* framework, the Crown would grant to incoming settlers such lands as “are now...in our power to dispose of” - that is, the waste or vacant lands of the Crown, more commonly known today as public lands. This category, however, did not include lands possessed by the Indian Nations. The only way for Indian lands to enter the category of public lands and “hereafter...be in our power to dispose of” would be through purchase by or cession to the Crown in accordance with the procedure set out in the *Proclamation*.

28. In the years following 1763, a series of Royal Instructions, Regulations and Ordinances further confirmed the rules and procedures contained in the *Royal Proclamation of 1763* with respect to protection of Indian Lands and prohibition and/or restrictions on settlement in those areas, and their application to Lower Canada (Quebec) and the Indian Territory.
29. The *Quebec Act* extended the boundaries of Quebec in 1774. However, according to article 3, nothing in that Act was to be construed, "... to extend, to make void, or to vary or alter any Right, Title or Possession, derived under any Grant, Conveyance, or otherwise howsoever, of or to any Lands within the said Province, or the Provinces thereto adjoining; but that the same shall remain and be in Force, and have Effect, as if this Act had never been made."
30. Historical evidence demonstrates that the Algonquins possessed clear ideas about land tenure and property. As early as 1761, they were described as being "exceedingly strict, as to the rights of property". The Algonquins and Nipissings were also familiar with the contents of the *Royal Proclamation of 1763* and subsequent measures. In fact, as late as 1850, they still possessed an original parchment of the *Royal Proclamation* which had been given to their ancestors.
31. Thus, the Algonquins and Nipissings began petitioning the Crown for relief in the late 18th century as lumbering and settlement began to encroach on their traditional territories, specifically citing the protective elements of the *Royal Proclamation*. They were facing poverty and starvation as a result of the encroachment of their hunting grounds. Although Crown officials at times acknowledged the validity of the Algonquin and Nipissing claims, no steps were ever taken to enter into a land cession treaty with them, and their lands and resources continued to be lumbered, cleared and settled without consent and without compensation.
32. The basic problem was the land settlement process in Lower Canada (now Quebec). In Upper Canada (now Ontario), generally treaties preceded survey, and survey preceded settlement. It was not possible for settlers to

squat on unsurrendered Indian land and hope to gain title thereby. This was in accordance with the rules set out in the *Royal Proclamation of 1763* and subsequent instruments, such as the *Dorchester Regulations of 1794*. Though those rules were applicable to Lower Canada, they were not adhered to by the Crown in the late 1700s and the 1800s, as settlement and resource development increased in the region.

Imperial Jurisdiction, Colonial Legislation, Confederation and Reserve Policy in Quebec

33. From 1763 Indian Affairs was the sole responsibility of the British Imperial Crown and not the colonial governments. With the *Act of Union* in 1841, Upper and Lower Canada were joined to become the Province of Canada, and control over Crown land revenues was devolved to the colonial government. However, the administration of Indian Affairs remained with the British Crown.
34. In recognition of the adverse impacts that were resulting from the continuing encroachment of Aboriginal lands in Lower Canada (Quebec), the colonial government adopted two pieces of legislation in 1850 and 1851:
 - a. The first, *An Act for the better protection of the Lands and Property of the Indians in Lower Canada* (S.C. 1850, c. 42, 13 & 14 Vict.), was intended to make better provision for preventing the encroachments upon and injury to Indian lands, and created the Commissioner of Indian Lands, in whom such lands would be vested in trust for the protection of the Indians.
 - b. The second, *An Act to authorize the setting apart of lands for the use of certain Indian Tribes in Lower Canada* (SC 14 & 15 Vic Cap 106), adopted by the Province of Canada in 1851, provided for the setting aside of up to 230,000 acres of lands for reserve purposes.

35. In 1860, the Imperial Crown devolved the administration of Indian Affairs unto the colonial government. With Confederation in 1867, Indian Affairs became a federal responsibility, and “Crown lands” or “public lands” went to the provinces, subject to any trusts or interests other than that of the province, including the Indian interest. As a result, reserve-creation became a of federal-provincial matter.
36. The reserve policy in Quebec after Confederation was based on the 1850 and 1851 colonial legislation, particularly the latter. The 1851 statute had allocated up to 230,000 acres to be set aside as Indian reserve lands in the province of Quebec. An Order in Council enacted in 1853 set out a schedule for the distribution of lands amongst Indian populations in Lower Canada, including the Algonquins. By 1895, approximately 2,749 acres remained; and by 1909, only 581 acres remained. Provincial officials continued to make reference to the 1851 statutory allocation as new requests for reserve lands were made, as did federal officials.
37. The 230,000 acre allocation was not adjusted as a result of the Quebec boundary extensions of 1898 and 1912 even though the provincial land base expanded and the number of bands in need of reserves increased significantly.
38. By 1917, Quebec officials were taking the position that since the initial amount of 230,000 acres had been more or less exhausted, so had the provincial government’s authority to allocate additional reserve lands.
39. In January 1922, Quebec changed its position: in certain situations if the lands requested did not interfere with resource development or colonization, additional reserves might be considered. In March 1922, the province adopted *An Act respecting lands set apart for Indians*, which provided a legislative framework for the establishment of new Indian reserves. The legislation provided for the usufruct of public lands to be set aside for reserve purposes up to an amount of 330,000 acres. In 1925, this legislation was

folded into the amended *Lands & Forests Act*, as s.67, maintaining the same wording.

40. In spite of the legislative measures, Quebec was still resistant to the allocation of new reserve lands. By 1926, Quebec had still not set aside any new reserves, despite repeated requests. Although there were occasional successes in the period leading up to 1951, in time the federal government appeared to rely on Quebec's recalcitrance as justification for its own inaction.

Algonquin First Nations: Impacts and Petitions, 1840s-1860s

41. In the 1840's and 1850's, there was over-hunting in the traditional territory of the Algonquins, which was caused by increased competition for game as a result of the advance of the timber trade and settlement up the Ottawa valley. This continued to inflict serious hardship among the Algonquins, including the ancestors of WLFN. In addition to this, a series of epidemic illnesses swept through the region between 1843 and 1852, and in 1858-59, likely brought in by lumbermen. This included influenza, tuberculosis and measles. The results were devastating, further reducing populations which were already under pressure from economic dislocation.
42. In response to these impacts, in the 1840's through the 1860's individual Algonquin and Nipissing bands, either directly or through missionaries on their behalf, began to press for reserve lands within their own traditional territories. Oblate missionaries pressed for reserve lands at Maniwaki and Timiskaming. The Golden Lake Algonquins, (in Ontario) as well as Grand Lac and Barriere Lake Algonquins (in Quebec), also pressed for reserve lands.
43. Reserves were set aside for Maniwaki and Timiskaming in Canada East or Lower Canada (Quebec), purportedly pursuant to the 1851 colonial legislation. However, the ancestors of WLFN did not remove to either of those reserves because it was not within their traditional territory. Nor did the Wolf Lake people enjoy the protections supposedly offered by the 1850 and 1851 colonial enactments: their village sites and hunting grounds continued to be

encroached upon, to their detriment. However, in the years after 1875, on occasion they did receive relief and implements paid for by the Indians of Quebec Fund.

44. By the mid-1860s, white trappers had begun swarming towards the upper Ottawa by way of the Black and Dumoine Rivers, into the heart of WLFN territory, further increasing competition for fur and game. By 1871, their entire area was under timber licence. Farms, shanties and depots dotted the area, not only destroying habitat but also increasing pressure on fish and wildlife, which were used to provision the shanties. These activities also had a dramatic impact on fur returns.

Wolf Lake People Petition for Aid and Reserve at Grassy Lake, 1870s and 1880s

45. In response to the impacts, in the early 1870s the ancestors of WLFN began clearing land and farming at Grassy Lake in the hopes of getting the lands reserved. They marked out ten miles, which they requested as a reserve. In 1876, the Wolf Lake people, and other bands in the region asked for aid and protection of their traditional lands. In 1881-82, the Oblates sent petitions to DIA for the Algonquins at Grassy Lake asking for protection of their lands. DIA replied that the lands were administered by Quebec and that they did not have the power to set apart a reserve. Chief Petrimont in 1882 renewed the request made by his predecessor for a reserve at Grassy Lake, but reduced the request from ten miles to five miles. DIA Deputy Superintendent General Vankoughnet responded again that the federal government had no control over the land but that he would forward the request to Quebec. The request was forwarded but there does not appear to have been any follow-up.
46. Though there is no indication that DIA had made any further efforts towards obtaining genuine reserve status for the tract at Grassy Lake, the Department did extend occasional assistance to the Algonquin people who lived there in the 1880's and 1890's, including relief and medical services, provided through third parties via Mattawa.

Wolf Lake Settlement, 1890 -1930s

47. In 1890-91, another wave of sickness swept the area, killing a number of Algonquin people. Following this, the remaining Wolf Lake community members moved their settlement further west to Wolf Lake.
48. In 1905-06, there was another epidemic which killed a total of 18 people in the Wolf Lake, Grassy Lake and Dumoine area.
49. In 1910, Chief Petrimont asked DIA for a school at Wolf Lake. From 1911 until 1933, DIA funded a day school at Wolf Lake. In 1912, the local Indian Agent reported to DIA that the Wolf Lake people needed assistance. The first time the Indian Agent visited Wolf Lake was in 1914-15. Despite the provision of a school and occasional medical attendance, conditions continued to be difficult for the WLFN.
50. As a result of their destitute circumstances, a delegation went from Wolf Lake to Ottawa in December 1920 or January 1921 to meet directly with Indian Affairs officials. They requested a reserve, seed potatoes, and compensation from flooding caused by a timber operation. They mentioned that they had not seen the Indian Agent for five years. The Chief Surveyor of DIA, Sam Bray, noting that living by the hunt was getting precarious, recommended a reserve be set aside for WLFN, and that the matter be taken-up with Quebec. It does not appear that this recommendation was followed-up on.
51. In 1924, Chief Petrimont and his councillors petitioned DIA for reserve lands at Wolf Lake, an area of fifty miles by fifty miles, or 2,500 square miles, due to scarcity of game and fur from an influx of white trappers, and to avoid starvation. Duncan Campbell Scott responded on behalf of DIA that the matter had already been taken-up with Quebec, but promised to do so again. There is no record of any follow-up.

Hunter's Point, 1930s and 1940s

52. At the beginning of the 1930's there was yet another epidemic which wiped out a large portion of the community at Wolf Lake. By 1931 Chief Petrimont and most of his family were dead. Regarding the dire situation at Wolf Lake the Indian Agent reported that "The Indians are dying so fast that it is not worth making a new chief. Among these Indians there only four or five men who are strong and able to work". He asked the Department to let him know "if anything is to be done for these Indians".
53. By the late 1930s, the Wolf Lake Band induced by DIA local officials, began to relocate to the settlement of Hunter's Point. Indian Agent Zotique Caza was recommending the relocation to Hunter's Point as early as 1939.
54. However, continued pressure from non-Indian trappers and hunters meant that the overall situation did not improve. In 1940 the Indian Agent reported that people remained destitute, and linked their circumstances to the fact that "there are too many white trappers all over".

Reserve Creation in the Post-War Period as part of Efforts to Extend Infrastructure and Services for First Nations

55. In the 1940s, as part of a post-war effort to improve social programs for the general public, DIA announced a new approach -- improving infrastructure and services to First Nations. Contact was initiated with Quebec for land to be transferred to federal ownership because expenditure of federal funds to build housing and infrastructure required legal title to the lands.
56. In 1947, Indian Affairs Minister C.D. Howe wrote to Quebec Minister of Lands and Resources, M. Borque. He asked for reserve lands for a number of bands, including Barriere Lake, Lac Simon, Grand Lake Victoria, Long Point, Kipawa, and Hunter's Point (which would have been a reference to the Wolf Lake people), citing federal duty and responsibility to provide for the needs of these Indians. Quebec responded unfavorably in 1948.

Post 1951- Historical Context and Material Facts Regarding WLFN's Claim for a Reserve

Formal Recognition of the WLFN (1951)

57. With the passing of the 1951 *Indian Act*, DIA formally recognized four Algonquin Bands living in the Kipawa region: the Kipawa, Brennan Lake, Hunter's Point and Wolf Lake Bands. Two of these bands -- Kipawa and Brennan Lake – would unite in 1965 to form the amalgamated Kipawa Band (later to become known as Eagle Village); and Hunter's Point would cease to exist after its remaining members transferred in the late 1960's to the Wolf Lake Band.

WLFN Reserve Land Needs Acknowledged by Canada (1952-54)

58. In 1952, DIA once again took up the reserve issue, taking steps to identify the reserve land needs of bands within the Timiskaming Agency, which included WLFN. The Superintendent of Reserves and Trusts, L.L. Brown, asked Jules D'Astous, Regional Superintendent of Indian Agencies in Quebec, to provide this information. In response, local Superintendent Lamothe identified Wolf Lake and Hunter's Point Indians as needing a reserve, but was not sure whether they wanted it at Hunter's Point or Wolf Lake. He asked for instructions to take it up with the Indians.
59. In 1953, D'Astous wrote to Brown setting out the reserve requirements in the Timiskaming Agency. Wolf Lake, Hunter's Point and Kipawa were specifically mentioned. A reserve of 100 acres was requested at Wolf Lake, the general location of which is shown on a map. According to D'Astous, no reserve was needed for Hunter's Point because "most of them will move to Wolf Lake". Nor, according to D'Astous, was a reserve needed for Kipawa because most of them were expected to integrate with the white or Metis population. These findings were repeated in a memorandum for Deputy Minister Laval Fortier, prepared by H.M. Jones, the Director of the Indian Affairs Branch, in 1954.

Reserve Creation in Quebec from 1951 to the early 1960s

60. There is an indication in the period leading up to 1964 that Quebec was more amenable to the creation of new reserves. This is confirmed by the fact that a number of reserves were established in Quebec during the said period:
- a. In 1953 a reserve was established at Natashquan, on the North Shore of the St. Lawrence, with lands purchased from the province in 1952. Originally measuring 8.3 hectares, this reserve was expanded through additional land purchases in 1954 (6.2 hectares) and 1970 (6.5 hectares).
 - b. In 1956 Canada had confirmed the Romaine reserve pursuant to the *Indian Act*. Originally provincial Crown land, letters patent were issued by the province in 1955.
 - c. In 1958, a federal Order-in-Council (PC 1958-1387) set aside the Amos (Pikogan) reserve for the benefit of the Abitibi Dominion Band of Algonquins (now Abitibiwinni). Canada had begun buying lots from individual owners in that area in 1945, using a portion of the Band's trust fund proceeds (generated by timber surrenders on the Abitibi IR #70).
 - d. In 1960, a reserve was established at Schefferville pursuant to Quebec's Lands & Forests Act (1922), for Naskapi people who had relocated there from Ft. Chimo and Ft. Mackenzie after 1956.
 - e. The Mingan reserve was created in 1963 for the Montagnais by way of a transfer of 1,758 acres from the provincial government to Canada, once again pursuant to the 1922 provincial legislation.
 - f. In May of 1959, Quebec issued letters patent to the Oblates, covering 116 acres at Winneway. In November, Quebec's Executive Council passed O-in-C 1269, authorizing the Oblates to lease a portion of the lands to Canada for the Long Point Band.

WLFN Requests Reserve Land in 1958

61. The first recorded request from the WLFN for a reserve in the post-1951 period came in 1958. The request came in April from Chief Gabriel Paul for a reserve at Wolf Lake. R.L. Boulanger, Regional Supervisor of Indian Agencies for Quebec, replied in early May that the land belonged to Quebec and the only thing DIA could do is ask the province for the land. Although Boulanger promised to follow up with Chief Paul, there is no evidence that he did.

Federal-Provincial Relations: Programs and Services (Late 1950s-early 1960s)

62. The late 1950s and early 1960s opened a new era of federal-provincial relations in which the issue of First Nation programs and services took on greater significance in Canada. There were three principal policy drivers: one was the need to provide better services for First Nations, which had its genesis in the post-war period; the second was a continuation and greater emphasis on integration of Indians into the Canadian mainstream, a federal policy which started in the 1940s; and a third was fiscal restraint by Canada, which was the impetus to have the provinces share in the costs for these services.
63. By 1963-64, the formal policy of DIA was that it could only provide programs and services to registered Indians who lived on reserves.
64. A national federal-provincial conference was held in 1964 to discuss the extension of provincial services to Indians. It led to the establishment of Regional Indian Advisory Committees as mechanisms for federal consultation with First Nations; it also led to bilateral discussions between Canada and many of the provinces over the issue of administrative responsibility for programs and services to Indian people, on and off reserve.
65. In Quebec, a federal-provincial coordinating committee was set-up that ran from 1965 to 1966. Quebec was favorable to integration; and was willing to

provide services to Indians as long as the federal government paid. It resisted providing additional reserve lands because it was inconsistent with the principle of integration. Little progress was achieved.

Aboriginal Rights, Claims for Reserve Lands by Wolf Lake/Hunter's Point and Kipawa

66. The federal-provincial push for integration and off-loading brought resistance from First Nations and an escalating emphasis on land rights and claims. Territorial land rights and claims were being asserted through the Regional Indian Advisory Committees and in the rise of Indian political organizations, like the Indians of Quebec Association (IQA). Another avenue opened up when the federal government embarked upon direct consultations with First Nations on a proposed Indian claims commission.
67. It was in this context that WLFN identified their reserve land needs again in 1964. In consultations on proposed legislation to establish an independent claims commission, local Superintendent Lamothe reported that he had met the Wolf Lake and Hunter's Point Bands. According to Lamothe, the Bands claimed land to form a reserve in the vicinity of Hunter's Point.
68. Superintendent Lamothe also met with the Kipawa and Brennan Lake Bands in 1964. They made a claim to DIA for a reserve in the Kipawa Area of approximately 8-10 square miles. In 1965, these two bands formally amalgamated to form the new Kipawa Band, which elected Mike McKenzie as its Chief. Chief McKenzie submitted a new petition for a reserve on behalf of the newly amalgamated Kipawa Band in 1965. This request was initially considered and rejected at a meeting of the Quebec federal-provincial coordinating committee in February 1966 because it was viewed as a step backward for Kipawa Indians who were seen as being on the road to integration. Nevertheless, Chief McKenzie persevered.
69. In the meantime, WLFN was also persisting with its requests. In January 1966, Mrs. Gabriel Paul, wrote to local MP, Tom Lefevbre, asking for help in seeking housing assistance. The MP forwarded the letter to the Minister of

Indian Affairs and the matter was referred to the local Superintendent, Albert Lalonde, who reported in March 1966. His Report acknowledged that the members of Kipawa, Wolf Lake and Hunter's Point were in great need of houses, but he recommended relocation and amalgamation of the three bands.

Reserve Lands Requests by Wolf Lake/Hunter's Point and Kipawa – Departmental Bias and Lack of Diligence

70. Through the Fall of 1966 and 1967, Chief McKenzie also continued to press for a reserve for Kipawa. He appeared to cause some confusion within DIA by initially purporting to speak for, and suggesting that this would also address the needs of, other Indians in the area, including Wolf Lake and Hunter's Point. MP Lefebvre added further confusion when he intervened with the Minister again in April 1967, at the invitation of a local priest who favored relocation. Minister Laing sent a preliminary reply to Lefebvre in May 1967 indicating that before relocating an Indian group it was important to ascertain their wishes: he promised to investigate and report back.
71. An investigation was done by L. Tremblay, of DIA's District office in Amos, who visited Hunter's Point and Kipawa. Tremblay reported, on June 14, 1967, that the Hunter's Point settlement was occupied by the Hunter's Point Band and the Wolf Lake Band, with a total population of approximately 40 persons. He also reported that he interviewed Chief Francis Paul and the Indian population, and that they had not thought-about or discussed relocation. He asked the Chief to talk to his people and that he would be back to get their opinion. Nevertheless, Tremblay appeared to favor their relocation.
72. Jules D'Astous, who was now the Director of Administration at DIA Headquarters, was consulted on the matter. In his advice to people at Headquarters, on July 11, 1967, he was even more biased in favor of relocation and amalgamation. Despite the fact that they were separate bands with different circumstances, he said that the Kipawa Indians, the Hunter's Point Indians, the Wolf Lake Indians, and Brennan Lake ... were

fundamentally “one situation only.” Moreover, he recommended that no separate efforts be made to obtain land for the Hunter’s Point Band and Wolf Lake Band without having the Kipawa situation settled.

73. The bias within the Department showed through in Minister Laing’s response to MP Lefebvre on July 27, 1967. Despite not having yet obtained formal answer from Chief Paul, he said: “It has now been ascertained by Indian Affairs Branch officials who are investigating the matter that the majority of the Indians at Hunter’s Point wish to move to a new location”.
74. However, WLFN had no intention of relocating and amalgamating with Kipawa. This was made clear in separate letters dated February 1968, written directly to DIA Headquarters from Chief Francis Paul, Councillor Michel Constant and Mr. and Mrs. Gabriel Paul. Rather than move to Kipawa, they said they wanted to move back to Wolf Lake and asked the government to provide them housing there. The letters were transmitted to the DIA Regional Office and on to local Indian Agent Lalonde whose advice was unsupportive of WLFN.
75. Mr. and Mrs. Gabriel Paul wrote again in April 1968, complaining about DIA’s differential treatment of WLFN compared to Kipawa. The Regional Office of DIA again referred the matter to Lalonde who repeated his earlier advice and accused Mrs. Paul of instigating the complaints. DIA finally responded to Chief Francis Paul’s February letter on May 1968 that DIA could not provide houses at Wolf Lake because it did not own land there, the land belonged to Quebec. Yet, there is no record of DIA asking Quebec for land for a reserve for WLFN in response to Chief Paul’s requests in 1966, 1967 or 1968.
76. In contrast, Kipawa’s reserve request moved through the system at DIA: proposed sites were identified; maps prepared; DIA and Chief McKenzie agreed on a site near the Town of Temiskamingue; Kipawa passed a band council resolution (“BCR”), which was approved by the Regional Director in the Quebec Regional Office and sent to Ottawa; Headquarters approved the

request in April 1968 and a formal request for land for the Kipawa reserve was submitted to the government of Quebec.

Federal Acknowledgement of Aboriginal Rights in Quebec (1966-68)

77. The prominence of Aboriginal rights as a policy issue increased in the period leading-up to the *1969 White Paper*. With regard to Quebec, the issue was raised and acknowledged by officials within the highest levels of the federal government in 1966-68. In 1966, the Deputy Minister of DIA requested a memo on Indian rights in Quebec, with particular reference to the Boundary Extension Act of 1912. Hugh Conn, DIA's Specialist on Indian Treaties prepared a memo, in which he recommended a broader historical understanding rather than focussing solely on the 1912 Act. He set out that Indians in Quebec had Aboriginal rights confirmed by the *Royal Proclamation of 1763*; that they had a constitutional right to the benefits of a treaty with the Crown; and that the government of Canada had the sole responsibility for compelling the observance of this constitutional right. Conn also noted the implications regarding lands added to the province by virtue of the various boundary extensions.
78. The Hugh Conn memo was reviewed by Assistant Deputy Minister R.F. Battle in 1967 and ultimately formed the basis of correspondence in 1968 from J.A. MacDonald, Deputy Minister of DIA, to his counterpart in the Department of Justice, D.S. Maxwell. MacDonald asked for a legal opinion, but noted that since there were no formal treaties in Quebec, "... there is a presumption that the aboriginal interest of the Indians has not been extinguished".
79. Territorial rights and reserve land needs were also addressed at a meeting with Quebec Chiefs in Kahnawake in 1968, organized by DIA as part of its ongoing effort to consult with First Nations on programs and service issues. Chief Mike McKenzie of Kipawa, and Chief Francis Paul of Wolf Lake, among others, attended that meeting. In response to requests about the creation of new reserves, Jules D'Astous, Director of Administration at DIA Headquarters – the same official who in July 1967 blocked WLFN's reserve efforts --

advised the chiefs concerned to prepare a sketch identifying the land, and pass a band council resolution requesting action. He "... assured them the Agency, the Regional Office, and Branch headquarters would follow up and submit their requests to the provincial authorities."

The 1969 White Paper and the First Federal Indian Reserve Policy

80. In January, 1969, the IQA presented the Premier of Quebec, Daniel Johnson, with a brief on territorial rights. Relying on Aboriginal title, the *Royal Proclamation of 1763*, the *Quebec Act* of 1774, and the boundary extension Acts of 1893 and 1912, the IQA claimed approximately 85% of the province of Quebec, and requested \$5 billion in compensation.
81. In June 1969, the Trudeau Government, through its Minister of Indian Affairs, Jean Chretien, released the *1969 White Paper*. It called for the elimination of Indians' "special" constitutional and legal status, the elimination of reserve lands, termination of existing treaties, and a wholesale transfer of responsibility over to the provincial governments.
82. In the fall of 1969, the IQA passed a resolution that Minister Chretien take measures to assure that Indian rights are recognized by Quebec or to oblige Quebec to negotiate a treaty with Indians in Quebec. In response, DIA pursued the establishment of a tripartite process with Quebec to address programs and services issues as well as land rights and reserve issues. Agreement was reached in December 1969 to establish a Tripartite Committee, and the Committee met several times. In those meetings: the IQA wanted to deal with the land rights issues before discussions on the *White Paper*; and Quebec refused to deal with land rights issues until the Dorion Commission on the territorial integrity of Quebec, issued its report. Thus, there was no agreement on the big issues. However, Quebec agreed to the provision of lands for the federal government to build houses for the James Bay Cree at Fort George.
83. At the same time that the *1969 White Paper* was in the final stages of development, Minister Chretien approved the first federal policy on the

creation of reserves and additions to existing reserves. It closely reflected the policy objectives of the *White Paper*. Ostensibly, it was founded on the assumption that "... the Indian reserve system is not in the long-term interests of the Indian people". Moreover, the Federal Indian Reserve Policy noted that provincial and municipal governments were opposed to the establishment of new reserves or additions to existing reserves. Accordingly, the thrust of the Policy was as follows: while committed to maintaining existing reserves, it should resist efforts to increase reserves.

84. The Policy effectively introduced a prohibition on additions to the reserve land base, except in the following circumstances:
 - 1) Establishment of reserves in accordance with a treaty obligation.
 - 2) Where a reserve or portion thereof is required for public purposes and an exchange or replacement of land is a matter of necessity.
 - 3) Where the economic, geographic and social factors appear to justify additions to reserves and there is little likelihood of conflict with other levels of government.

85. This Federal Reserve Policy was approved by Minister Chretien on March 12, 1969. The *1969 White Paper* was formally withdrawn by the Trudeau Government in 1971; but the Federal Reserve Policy remained intact and was reaffirmed as an interim policy in May 1972.

86. The Dorion Commission into the territorial integrity of Quebec, which had been established by the Union Nationale Government of Daniel Johnson, issued its Report in 1971, to the new Premier Robert Bourassa. The Report was largely consistent with, and in fact endorsed, the *1969 White Paper*.

87. The James Bay hydro project was announced by the Bourassa Government in 1971, which brought the issue of Aboriginal rights sharply into focus in Quebec. The James Bay Cree, who were not consulted on the project, went to Court to stop the project in 1972. Quebec Superior Court granted them an injunction in 1973, which was reversed on appeal. Nevertheless, it forced

Quebec to negotiate the James Bay Northern Quebec Agreement, which was concluded in 1975.

The Situation of Wolf Lake First Nation in 1969-1971

88. The federal policy environment in the period leading up to 1969 and immediately thereafter, regarding the creation of reserves or addition to reserves, explains but does not justify or excuse DIA's lack of diligence in accommodating WLFN's requests for a reserve. Quebec refusal to provide reserve lands was an excuse for continuing federal inaction. Yet, federal policy paved the way for Quebec's policy of integration and its stance on resistance to the provision of lands for reserves in Quebec. Moreover, DIA was aware that WLFN had outstanding Aboriginal rights, but did nothing to assist WLFN in protecting those rights notwithstanding the *Royal Proclamation of 1763* and its jurisdiction over Indians and lands reserved for Indians.
89. Wolf Lake First Nation nevertheless made further efforts to secure a reserve. Chief Paul wrote to DIA in January 1969 asking for housing assistance, to which DIA said no, responding in the same way it had to previous requests. Therefore, in February 1969, WLFN appeared to try a new approach: instead of asking for housing at Wolf Lake or Hunter's Point, the First Nation asked for housing and reserve land at Belleterre. This came in a petition under the name of Mrs. Gabriel Paul, apparently on behalf of the First Nation, with a list of band members attached.
90. Again, Albert Lalonde, who was now the Superintendent of the Temiskaming Agency, was asked to comment. He was not supportive. In his report of March 1969, he continued to favour amalgamation with Kipawa and maintained that it was out of the question to request land for a reserve at Hunter's point before knowing Quebec's position on the request for Kipawa. DIA responded in April 1969 that it could not build houses for WLFN because

no lands had been set aside for them at Hunter's Point, Kipawa, or at any other locality.

91. Frustrated in their efforts to obtain a secure land base, and faced with continued encroachment, the members of the Wolf Lake Band scattered from Hunter's Point during the period after 1969. An electors' list prepared in August of that year contains the names of 23 eligible voters. Of those, only 9 were at Hunter's Point. The Hunter's Point Band also ceased to exist: as at May 31, 1969, the six remaining members transferred to or married into Wolf Lake and one transferred to the Kipawa Band.
92. Faced with closure of the school and withdrawal of federal support, between 1969 and 1970, most of the permanent population at Hunter's Point dispersed.

A Reserve for Kipawa Band and Continued Pressure on WLFN to Amalgamate with Kipawa (1970-71)

93. The request for a reserve for Kipawa made by DIA in 1968 was not immediately responded to by Quebec. Indeed, despite positive indications by Quebec in 1967 that the request would receive favourable consideration, Quebec decided to wait for the Dorion Commission Report. In any event, a further study undertaken by a social worker on the negative social impacts of relocation to the site selected by Kipawa and DIA, caused a reconsideration of the relocation. In 1970, the Kipawa Council passed a BCR indicating that it did not want to move from Kipawa. In 1971, two sites were identified in closer proximity to Kipawa, both of which were privately owned. Kipawa Council passed a BCR in 1971 accepting one of those sites and DIA purchased the lands, which were eventually surveyed and transferred to the federal government in January 1974. On December 11, 1975, a federal Order in Council was enacted formally designating the land as a reserve.
94. Meanwhile, in what appeared to be a continuation of the push to relocate and amalgamate WLFN, this time indirectly rather than directly, from 1970 until

1974, steps were taken to recruit Wolf Lake members to transfer to the Kipawa Band. At first, the transfers were done individually: with BCRs accepting the transfers and DIA approving them. Then, in June 1971, Kipawa passed a BCR establishing a mechanism and simple transfer forms to facilitate the transfer and acceptance of Wolf Lake band members to the Kipawa band, by providing advance approval. The BCR was approved by DIA Superintendent Albert Lalonde on July 14, 1971, who forwarded it with his recommendation for approval, along with a number of transfers, to the Regional Office.

95. The mechanism proved effective as many Wolf Lake Band members did transfer to Kipawa during this period. In the spring of 1974 there was another round of transfers, using the forms developed in 1971. This would have been during or just after the construction period at Kipawa, when it was most enticing to join the Kipawa Band. It was at this point in time that the membership of Wolf Lake First Nation dropped to an all-time low of 27 members. Of course, after this the population continued to climb back up.

More Wolf Lake Petitions, 1972-80

96. WLFN continued to petition for housing and reserve lands even after their dispersal from Hunter's Point. In 1972, there was a petition on January 10th, one on May 17th and another on May 24th. All three were signed by community members including Chief Francis Paul. The first asked for a house and reserve near Wolf Lake highway road; the other two asked for a reserve close to the government road. Albert Lalonde responded on June 16th. As he had previously told them, he said it was impossible to get land at Hunter's Point because it belonged to the Province. He also told them that Kipawa was now in the construction phase and encouraged them to contact Mike McKenzie and apply to join that Band or apply for housing there. The letter was copied to Chief McKenzie.

97. On June 19, 1972, Mr. and Mrs. Gabriel Paul sent a letter to Indian Affairs in Ottawa complaining about differential treatment and collusion between Albert Lalonde and Chief Mike McKenzie. DIA assigned Albert Lalonde to deal with it despite the fact that it complained of misconduct on his part. His response was not helpful. In August 1972, Lalonde wrote to Chief Paul, explaining that the reserve for Kipawa was purchased privately; that if WLFN wanted land that belongs to the province, it had to pass a BCR supporting the request to the province or it could ask IQA to negotiate with Quebec for the land.
98. Not having obtained any help from government officials, in the summer of 1972, Chief Paul turned to Real Caouette, MP and Leader of the Social Credit Party. On August 2nd, Caouette wrote to Minister Chretien saying that Chief Paul asked him to intervene to get a reserve and housing, complaining that Lalonde had told them to join Kipawa Band, but that WLFN was opposed to such a merger. From the internal reaction of officials, DIA finally realized that WLFN was not going to relocate or amalgamate with Kipawa. Indeed, the advice of one of the officials, P.B. Lesaux, Director of the Indian-Eskimo Development Branch, noted that Kipawa had received a reserve and steps should be taken to protect the interests of WLFN as well.
99. Unfortunately, the response to Caouette, dated October 5, 1972, did not reflect Lesaux's advice. It took a minimal approach to accepting any responsibility for getting a reserve lands for Wolf Lake and appeared to support Lalonde's conduct in suggesting Wolf Lake amalgamate with Kipawa.
100. WLFN petitioned again for reserve lands in December 1972, referring to the fact that Kipawa had gotten a reserve and they should get one too. The petitioners insisted WLFN was not joining Kipawa and that their "house reserve" could be "any place I could get a piece of land – doesn't matter to us as long as we have our own house reserve." These petitions resulted in a meeting with Departmental officials in January 1973, after which steps were taken to acquire lands from a company privately. Unfortunately, after some

initial inquiries, it was determined that the lands were not owned by that company. Lalonde suggested they look for another site.

101. WLFN petitioned for a reserve again in 1973 and 74, but to no avail.

Wolf Lake First Nation in the 1980's

102. After the devastating effects of the relocation and amalgamation dismemberment strategies of the 1960's and 70's, the Wolf Lake population began to recover in the 1980s. This was due to the effect of Bill C-31, but it was also due, at least in part, to the transfer of Kipawa members to the Wolf Lake Band. In 1980, there were 39 members, but by 1987 this had grown to 64 members, and by December 1990 the registered population of the Wolf Lake Band had increased to 149 people.

103. WLFN sent DIA two plainly worded petitions in September and October of 1980 that made reference to the fact that they could not get services from DIA because they were off reserve, so they wanted a reserve. The October petition was in the form of a BCR: it asked for land for a reserve and that they had a few suitable places picked.

104. Jean-Guy Fortier, Supervisor, Reserves & Trusts, of the Val d'Or Service Centre, who was assigned to follow-up, had a meeting with Chief Andrew Paul and his Council in November 1980. His Report sent to DIA's Regional Office in Quebec at the end of November made some significant findings:

- It noted the "distressing situation" the people of Wolf Lake have "to suffer";
- It also pointed out the "condition of illiteracy" within the WLFN Council, which prevents them from "organizing themselves and asserting their point of view";
- The Report mentioned the cultural differences between Kipawa and Wolf Lake: that the Wolf Lake Indians are traditional Indians, born in the bush, who still speak Algonquin;

- It mentioned that most of the WLFN members cannot meet their own needs, so they are joining the Kipawa Band, and make-up the biggest part of that Band;
- The Report underlines the lack of services from DIA, such as education, housing and health -- he said he noticed many of them were sick;
- Fortier noted that for ten years DIA had received resolutions from the band requesting the creation of a reserve and nothing was done; and he promised to submit the Council's grievances.

105. The Fortier Report was thus a major turning point in the struggle by Wolf Lake for a reserve. Fortier quite clearly indicated that WLFN was in a vulnerable position and that it required the active assistance of Canada to provide the services that were readily available to other Bands. The Report was circulated at the DIA Regional Office in Quebec. On December 30, 1980, Ghislain Lemay, Director of Education, gave his comments to Yvon Gosselin, Director of Reserves and Trusts. He confirmed that the reason WLFN people were not receiving services was because they were off reserve, and said: "The solution to this problem is indisputably resolve the issue of reserve status."

106. At this stage the Department seemed to firmly support the establishment of a reserve for Wolf Lake. DIA began preparing a request to Quebec for land. On February 11, 1981, Chief Andrew Paul and his Council passed another BCR asking for a reserve. Fortier wrote to Chief Paul on February 26th, following up on his earlier visit, to advise him WLFN was being denied housing, social and education programs "for the sole reason that you are not living on a full status reserve." He confirmed to the Chief that a formal request for land was being made to Quebec.

107. Canada made its first formal request to Quebec for Wolf Lake to receive a reserve on March 2, 1981. The letter from the Regional Director, R.M.

Connelly, requested the land for a reserve so DIA can provide houses and services to improve living conditions for this “destitute group.” Quebec responded on May 26, 1981, saying a meeting with the band would be arranged to get more information on WLFN’s needs. Meanwhile, Chief Paul was asked to identify candidate sites, and on May 27th wrote to Regional Director Connolly, enclosing a map showing two sites. The map was forwarded to Quebec. The meeting between Quebec and WLFN happened on October 19, 1981, with Albert Lalonde attending on behalf of DIA as an observer. Quebec indicated that an inter-ministerial committee was in the process of establishing a reserve policy; that the information provided by WLFN would be transmitted to the committee; and a decision taken later by appropriate authorities.

108. The *Constitution Act, 1982* was enacted on April 17, 1982. It included the *Canadian Charter of Rights and Freedoms*, section 15, the equality rights guarantee, which was to come into effect in 1985. The *Constitution Act, 1982* also had section 35, which recognized and affirmed existing Aboriginal and treaty rights.
109. Section 15 of the *Charter* forced the federal government to amend the *Indian Act*. Bill C-31 repealed discriminatory provisions from the *Indian Act*, like section 12(1)(b) -- which removed Indian status from an Indian woman when she married a non-Indian man. But it also provided for the reinstatement of thousands of Indian people who had lost status as a result of the discriminatory provisions of the *Act*. Bill C-31 was passed into law in June 1985.
110. However, section 35 of the *Constitution Act, 1982*, did not inspire the federal government to amend its laws or policies to recognize and affirm Aboriginal and treaty rights. For WLFN, it did not translate into protection of their Aboriginal rights which had been confirmed by the *Royal Proclamation of 1763*; nor did it translate into the provision of reserve lands. Indeed, because of the anticipated impact of the increase of the status Indian population and

reserve land base, Bill C-31 forced DIA to re-examine and tighten-up the Federal Indian Reserve Policy (Addition to Reserves Policy or ATR Policy) initially introduced in 1969.

111. The new ATR Policy came into effect on October 3rd, 1983, after DIA made the request for a reserve for WLFN on March 2nd. The revised policy on additions to reserves and new reserves was approved by the DIA Departmental Management Committee, with no formal consultations with the First Nations, including WLFN. Its terms were consistent with earlier versions, and essentially continued the prohibition on new reserves which was the hallmark of Chretien's 1969 policy, subject to similar exceptions. Under the new Policy, "... the Department did not recognize a formal responsibility to provide land to landless groups unless there is an outstanding treaty entitlement" The Management Circular implementing the new Policy appeared to broaden this exception to cover "lawful obligations". According to the Policy, new reserves were to be dealt with on a case by case basis. Provincial consent and cooperation was usually required; and approval of the Minister was required before a commitment to provide land is made. Most significantly, the financial implications took on greater prominence in the decision to add or create a reserve.

112. The 1983 ATR Policy also set out procedural steps for reserve creation:

- Step 1: BCR request;
- Step 2: Preliminary analysis by Region and recommendation to Regional Director General (RDG) and Headquarters (HQ);
- Step 3: HQ review by Director General, Reserves and Trusts;
- Step 4: ADM approval in principle, authorizing negotiation of deal;
- Step 5: Negotiation of conditional deal;
- Step 6: Treasury Board approval;
- Step 7: Conclude acquisition; and

- Step 8: Order in Council.

113. By March of 1982, four months after the meeting with Quebec, there was still no action. So, Melvin McKenzie, WLFN's Band Administrator, wrote to DIA again on March 3, 1982, reiterating that they "desperately need land for a Reserve". He said they needed houses because "people are living in shacks with no running water or inside plumbing". Quebec officials who were copied on the letter responded that the provincial reserve policy had not been finalized. On April 28, 1982, McKenzie wrote directly to Minister of Indian Affairs John Munro, asking why no progress had been made.
114. The replies from DIA made clear DIA's commitment to negotiate with Quebec on behalf of WLFN. On May 18, 1982, Yvon Gosselin, of the Quebec Regional Office, replied that DIA had to wait for Quebec's reserve policy "... before we negotiate on your behalf a territory for your people." Munro's Special Assistant, Roy Jacobs, response of June 14th was to the same effect. The Minister himself responded on October 19, 1982: "... my Department has to wait until the Government of Quebec issues a policy regarding the creation of Indian reserves before we can negotiate for a territory on your behalf".
115. The Province of Quebec approved its new policy of reserve creation in December 1982.
116. There was no immediate follow-up because WLFN did not meet the minimum population criteria of 200 members in Quebec's reserve policy. However, Bill C-31 would change this: under Bill C-31, there was a major increase in the number of registered Indians and major increases to the membership of individual bands. Newly elected Chief Richard Miness explained in a letter dated January 8, 1986, to Albert Lalonde, now Manager of Reserves and Trusts for DIA at Val d'Or, that a "new band council for the Wolf Lake Band was elected on May 4, 1985, that the enactment of Bill C-31 by the Canadian Government was likely to increase the membership of Wolf Lake to over 150 people." Chief Miness renewed WLFN's request for a reserve and attached a

map of the chosen site.

117. Lalonde wrote to the DIA Regional Office on January 15th, 1986, and referring to the 1981 meeting with Quebec, recommended a new meeting with Quebec based on the increase in WLFN's increased population. Jacques Rivard responded that a meeting with the Quebec Energy and Resources Ministry was set for February 27th. He also indicated that according to a preliminary meeting with provincial representatives, chances were "excellent" for WLFN to get a reserve and that Quebec appeared ready to relax the minimum population requirement for WLFN.
118. The February 27th meeting with the WLFN Chief and Council was attended by DIA and Quebec officials. What is significant about this meeting is that Quebec indicated that in WLFN's case it was prepared to waive the population requirement. However, WLFN was required to submit to Quebec a resolution requesting the reserve, along with a short history of the band, a demographic study, a list of band members, and three potential sites in order of priority. WLFN's preferred site was between Tee Lake and Kipawa, measuring 170 acres.
119. On March 11, 1986, WLFN passed a BCR requesting funding from DIA to carry out these studies requested by Quebec. Yvon Gosselin, in a report to the Regional Director General, Frank Vieni on March 19th, said Quebec "seems agreeable" and strongly recommended financial assistance to the band. Vieni agreed and "... that measures be taken to support in every possible way the creation of a reserve for the community of Wolf Lake." Vieni also informed Chief Miness on April 16, 1986. The site selection report and demographic studies were done by July 1986 and follow-up meetings with DIA and Quebec officials were arranged for July 31st. In the meeting, Quebec officials reiterated that Quebec would apply the population criteria in a lenient manner and said WLFN should submit a BCR requesting a reserve. After that, Vieni visited the Wolf Lake community on August 6th and followed it with

a letter to Chief Mines to assure him of DIA's "full support and collaboration."

120. On August 18, 1986, Chief Mines transmitted a BCR to Robert Tessier, Deputy Minister of Energy Mines and Resources, Quebec officially requesting a reserve in the area of Le Tang. Officials from Canada and Quebec visited the site with WLFN on October 11, 1986. Following the site visit on October 28th, Bernard Arsenault, on behalf of Quebec, advised Yvon Gosselin of DIA, of Quebec's agreement in principle with the site. As next steps, Arsenault suggested DIA prepare a 25 year development plan. He also asked Gosselin to notify the Chief of Quebec's decision. On November 12th, Guy Courtois of Public Works Canada was dispatched to meet the Chief, visit the site and start working on the master plan.
121. Courtois visited the site and on May 29, 1987, reported that the preferred site was not feasible and recommended adjacent sites. Newly elected Chief Harry St. Denis, wrote to Ghislain Lemay, Director of Lands, Revenues and Trusts in the Regional Office, on June 6th to inform DIA of a fourth potential site, approximately 2 km from the Town of Timiscaming. In a surprising turnaround, Lemay's response dated June 15, 1987, said that before taking any further steps, the Regional Office "must get the written concurrence of the Deputy Minister."
122. This turnabout was caused by another review of the Federal Additions to Reserve Policy, which started in 1985. This was brought about by Bill C-31 and the huge increase in the registered Indian population that accompanied it, together with the climate of fiscal restraint during the Nielsen Task Force on Program Review (1984-86). The new policy was announced by then Minister Bill McKnight in December 1987. Notwithstanding the increase in demand for reserve lands, partly as a result of Bill C-31, expenditure reduction became the underlying theme of the new ATR Policy. Policy criteria for reserve entitlement were tightened-up and authority for decisions became centralized in the hands of the Deputy Minister. The Program Directive that accompanied the Minister's announcement eliminated "socio-economic

need” as a basis for the creation of new reserves and the main avenue became lawful obligation, which itself was tightened-up.

123. As aforesaid, the ATR Policy was originally introduced when Chretien was Minister in 1969; it was extended in 1972 on an interim basis; then it was amended in 1983. It came under review in 1985, as a result of Bill C-31, and a new ATR Policy was adopted in 1987. It is unclear which version applied given that Wolf Lake’s efforts to secure a reserve preceded the introduction of the first policy and then spanned the entire period covered by all three versions. This undoubtedly created confusion for Departmental officials as well. But it was the review which started in 1985 and resulted in the adoption of a new policy in 1987 that had the greatest impact as the Wolf Lake reserve proposal was nearing a successful conclusion in 1986-88. This is significant, since up until this point federal officials had presented Quebec’s position and policy as the only barrier to obtaining reserve lands. Consistent with the undertaking provided by Minister Munro in 1982 - that federal support was present - there was never any indication from officials that the proposal might not meet with approval from the federal side, or that they did not have the authority to proceed.

124. On September 14th, 1987, the Regional Office of DIA prepared a submission to Headquarters recommending the Deputy Minister authorize the continuation of the WLFN reserve creation project. It specifically mentioned that the province of Quebec agreed in principle to transfer the land for a reserve for WLFN free of charge. Nevertheless, on October 11th, 1988, Graham Swan, Director of the Lands Directorate, at Headquarters, decided not to proceed with the WLFN submission, on the basis that it could not be justified under the new reserves policy. Citing financial reasons, he decided not to submit the proposal to the Deputy Minister for authorization. The decision to reject WLFN’s reserve proposal was communicated to then Chief Harry St. Denis, in a meeting on November 7th, 1988.

V. The Basis in Law on Which the Crown is said to have failed to meet or otherwise breached a lawful obligation:

125. This claim is based on breach of fiduciary obligation. WLFN's traditional territory lies within the traditional territory of the Algonquin Nation, and also within the area set aside as "Indian territory" in the *Royal Proclamation of 1763*. The *Proclamation* made Indian lands inalienable except to the Crown. This made the Wolf Lake people vulnerable and imposed a corresponding fiduciary obligation upon the Crown to act in their best interests regarding their lands.
126. WLFN's traditional territory became overrun by white settlement and development. The encroachment had a devastating impact on the Wolf Lake people. In the pre-1950 period they requested aid and reserve lands at their traditional settlement sites. Crown officials at various times acknowledged their need for a reserve and even took steps towards establishing a reserve for WLFN.
127. The impacts continued in the post-1951 period and so did the petitions for reserve lands by the WLFN. Crown officials acknowledged WLFN's vulnerability and their need for a reserve in order to obtain a range of programs and services from the Department of Indian Affairs (DIA). WLFN had specific or cognizable interests in its traditional settlement sites at Grassy Lake, Wolf Lake and Hunters Point. The Crown had discretionary control in relation to these interests as the exclusive intermediary with the province of Quebec in the reserve creation process.
128. It was also within the discretionary control of the Crown to create a reserve for WLFN by purchasing lands for such purposes, which it started to do in 1973 but failed to follow-through.
129. WLFN also had a cognizable interest in potential reserve sites it identified in the period from 1980 to 1988. By its conduct and representations, Crown officials undertook to create a reserve for WLFN, which engaged the honour of the Crown and fiduciary obligations. Indeed, in 1986-8 Quebec agreed to

provide the land, but DIA decided not to proceed with the reserve creation process.

130. In failing to follow-through with the reserve creation process for WLFN, the Crown failed to fulfil its obligations of loyalty, good faith, full disclosure appropriate to the matter at hand and acting in what it reasonably and with diligence regards as the best interest of the beneficiary.

131. WLFN claims that it suffered harm as a result of the Crown's breach of fiduciary duty, to which it is owed compensation.

132. This specific claim is without prejudice to any Aboriginal title claims that WLFN may have or to any other specific claims that WLFN may have for the period prior to 1951, including any broad-based claims based on the *Royal Proclamation of 1763* or any treaties that WLFN or its predecessors may have entered into with the Crown.

VI. Relief Requested:

133. WLFN seeks the following relief:

- a) An order from the Tribunal validating its specific claim for breach of a legal obligation arising from the Crown's non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, in relation to:
 - i. The Crown's failure to provide a reserve at the Grassy Lake settlement site, in 1951, or as soon thereafter as reasonable diligence would require;
 - ii. The Crown's failure to provide a reserve at the Wolf Lake settlement site, in 1951, or as soon thereafter as reasonable diligence would require;
 - iii. The Crown's failure to provide a reserve at the Hunters point settlement site, in 1951, or as soon thereafter as reasonable diligence would require;
 - iv. The Crown's failure to complete the purchase of a reserve for WLFN in 1973; and
 - v. The Crown's failure to complete the reserve creation process for the reserve sites identified after 1980, more specifically in 1986-87.
- b) Compensation for all its losses arising from the aforesaid breaches, including, without limiting the generality of the foregoing:

- i. Losses related to the denial of a reserve or reserves in respect of the above-noted specific claims from the date of the start of the breach until the date of the Tribunal's decision and the payment of compensation,
 - ii. Losses related to the denial of funding for the infrastructure, development and establishment of a reserve, and
 - iii. Losses for the denial of federal programs and services as a result of not having a reserve.
- c) Interest on the compensation.
- d) The costs of this claim.
- e) Such other relief or compensation as this Honourable Tribunal deems just.

Dated this 19th day of November, 2018.



**David C. Nahwegahbow,
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Schedule 'A'

To Wolf Lake First Nation's Declaration of Claim
dated November 19, 2018.

Wolf Lake and the Upper Ottawa Valley:
Settlements and Reserves.

MAP #1

