

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	D E P O S E
	July 3, 2020	
	Isabelle Bourassa	
Ottawa, ON	1	

SCT File No.: **SCT-2002-20**

**SPECIFIC CLAIMS TRIBUNAL**

**B E T W E E N:**

**TIMISKAMING FIRST NATION AND WOLF LAKE FIRST NATION**

Claimants

v.

**HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA  
As represented by the Minister of Crown-Indigenous Relations**

Respondent

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**DECLARATION OF CLAIM**

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

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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: July 3, 2020

Isabelle Bourassa  
(Registry Officer)

**TO: HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA,**  
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**I. Claimants (R. 41(a))**

1. The location of the lands which form the subject of this claim are depicted on the Map at Schedule "A" ("1849 Claim Area").
2. The Claimants, Timiskaming First Nation ("TFN") and Wolf Lake First Nation ("WLFN"), who file this Claim jointly, confirm that they are First Nations within the meaning of s. 2 (a) of the *Specific Claims Tribunal Act* ("Act"), in the Province of Quebec.
3. TFN and WLFN are part of the Algonquin Nation, whose traditional territory includes the Ottawa River valley on both sides of the current Ontario-Quebec border, which encompasses the 1849 Claim Area. Historically, the Algonquins, or groups making up the Algonquin Nation, were referred to by a variety of names including "Timiskamings" and "Tetes de Boule", and were closely connected with the Nipissings. Historical materials often refer to them as "Algonquins and Nipissings".
4. The terms "Nipissings" and "Timiskamings" have a geographic association and refer to the Indians occupying or associated with that geographic location or region. However, the names also indicate a social organization – a band or tribe – associated with that area. So, for example, the *Timiscimi* (Temiskamings) are mentioned in the 1640 Jesuit Relation, along with the *outimagami* (Temagamis) and others, as groups living immediately north of the *Nipisiriniens* or Nipissings, whose main base was on Lake Nipissing. Similarly, a map entitled *A New Map of the Province of Quebec according to The Royal Proclamation of 1763*, shows lands attributed to the Temiskamings and Nipissings as well as the extent of the old colony of Quebec and a portion of the *Royal Proclamation* "Indian Territory."
5. Social organization amongst the Algonquins, like other Anishinaabe groups, was based upon the "band", which was made up of extended families. These

extended families sustained themselves, spiritually and physically, from resources within family territories, which together defined a band's traditional territory. Bands exercised management and control over their territories: title resided at the band rather than the nation level. Political leadership was exercised by a chief and headmen, selected according to customary laws.

### ***Timiskaming First Nation***

6. TFN is recognized as a "band" within the meaning of the *Indian Act*. It gets its name from Lake Temiskaming, which comes from the Algonquin word "*Temia gamin*", meaning deep lake. TFN has village or settlement sites around Lake Temiskaming, including its current community site at the north end of the Lake, as well as its ancient village site at "*Obadjiwan*", where the Lake narrows at the current site of Fort Témiscamingue. At the time of this Claim and in the period leading up to 1849, *Obadjiwan* was an important gathering place for TFN and other Algonquin First Nations. It was also an important center for trade, cultural and religious exchange between Europeans and Algonquin First Nations. TFN's traditional territory includes all of Lake Temiskaming and the lands and waters surrounding Lake Temiskaming, on both sides of the Ontario-Quebec border. The lands which form the subject of this Claim lie within the traditional territory of TFN and include *Obadjiwan*. TFN has never entered into a land surrender treaty with the Crown generally, or with respect to the 1849 Claim Area.
  
7. The current TFN community is centred at its reserve, which is situated at the north end of Lake Timiskaming. The reserve was established sometime on or after 1851 and presently consists of approximately 4,576.3 acres. TFN has a chief and six councillors elected by custom; the current Chief is Sacha Wabie. TFN currently has a population of approximately 2,492 members; 764 on reserve and 1,728 off reserve.

***Wolf Lake First Nation***

8. Like TFN, WLFN is recognized as a “band” within the meaning of the *Indian Act*. It derives its name from its traditional settlement or village site, “Wolf Lake” or “*Mahingan Sagahigan*”. It also has settlement sites at other locations within its traditional territory, including Dumoine Lake, Grassy Lake and Hunter’s 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 Dumoine Lake.
9. WLFN is a successor to what was known as the Dumoine Band or *Kiwe ‘gom’anicenabi*, which was present in, and occupied, WLFN’s traditional territory in the period prior to the mid-nineteenth century. 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.
10. The 1849 Claim Area is adjacent to WLFN’s traditional territory, which was historically occupied by the “Dumoine Band”, predecessor to the WLFN. In approximately the mid-nineteenth century, following a series of epidemics and other impacts from settlement and development, a number of southern Timiskaming families merged with the northern members of the Dumoine Band to become what is now the WLFN. Families that became part of this merged community petitioned for the 1849 reserve. As a result, WLFN shares an interest with TFN in the 1849 Claim. Neither WLFN, nor its predecessors have ever entered into a land surrender treaty with the Crown generally, or with respect to the 1849 Claim Area.
11. Despite numerous requests for a reserve throughout the years, WLFN still does not have a reserve. It has administrative offices in the Town of Temiscaming, Quebec. It has a council, composed of a chief and two councillors, selected by custom. WLFN’s current Chief is Lisa Robinson. At present, WLFN has a membership of approximately 250.

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

12. 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...*

13. TFN and WLFN filed this Claim with Canada in 2012. The Claim was rejected by Canada in 2016, by letter dated April 7, 2016, from Joe Wild, Senior Assistant Deputy Minister, Treaties and Aboriginal Government. The letter states that “it is the decision of the Minister of Indigenous and Northern Affairs . . . not to accept the specific claim for negotiations . . .”

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

14. The Claimants do not seek compensation in excess of \$150 million.

**IV. Grounds (Act, s. 14(1))**

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

(a) a breach of a legal obligation of the Crown under the *Indian Act* or any other legislation — pertaining to Indians or lands reserved for Indians — of Canada or of a colony of Great Britain of which at least some portion now forms part of Canada;

(b) 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.

16. This Claim is not based on and does not allege Aboriginal rights or title. However, facts respecting TFN’s and WLFN’s presence within their traditional territories 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.

## V. Allegations of Fact (R. 41(e))

### 1. Overview of the Claim

17. TFN and WLFN, both recognized bands under the *Indian Act*, claim the Crown breached a legal obligation under legislation and breached fiduciary duty when it failed to complete the establishment of a 100,000 acre reserve for their ancestors as undertaken, pursuant to the *Royal Proclamation of 1763*, by Order in Council it enacted in 1849. The proposed reserve was to be located on the northern and eastern shores of Lake Timiskaming, “lying between the Rivers Blanche and Kipawesipi”. The Map of the 1849 Claim Area at Schedule “A” to this Declaration shows the location of the proposed reserve.
18. The Claimants had a cognizable interest in the 1849 Claim Area based on their historic use and occupancy and on the 1849 Order in Council. The Crown had complete discretionary control over the traditional lands of the ancestors of TFN and WLFN, including the 1849 Claim Area. Promising to protect Indian lands in the *Royal Proclamation of 1763*, the Crown imposed a restriction on their alienability to anyone but the Crown. The Claimants’ traditional lands were within the lands reserved as “Indian Territory” in the *Royal Proclamation*. The 100,000 acre proposed reserve was also in Indian Territory; and in 1849, was still covered by the terms of the *Royal Proclamation* as a reserve to be newly established. The Crown had authority and discretion not just to undertake, but also to establish the reserve pursuant to the *Royal Proclamation of 1763*. Unfortunately, it did not live-up to its obligations either to protect the Claimants’ lands or to establish the reserve, as proposed.

19. The land was requested by missionaries and Bishop Guigues of Bytown, on behalf of the ancestors of today's TFN and WLFN. In response, the Crown started the reserve creation process and made an undertaking to set off or set apart a 100,000 acre tract of land – in effect a reserve – on the northern and eastern shores of Lake Temiskaming. Assistant Commissioner of Crown Lands, Tancrede Bouthillier, in a Report to the Executive Council, recommended that the tract be “laid out and bounded in the field to prevent strangers intruding upon it”. The Governor General in Council approved Bouthillier's Report and directed that the land be “set off”, according to the Report. However, the Crown did not see the reserve creation process through to completion. The Crown breached its fiduciary duty by failing to follow-through with loyalty, good faith, full disclosure and reasonable diligence: contrary to the Order in Council, the tract as proposed was never surveyed or set apart.

## **2. Historical Context**

### ***Historical Geography***

20. The traditional territory of the Algonquin Nation includes the entire length of the Ottawa River drainage basin. The headwaters of the Ottawa lie about 250 kilometres due north of the City of Ottawa, then it flows westward, southward, and southeastward for about 1,200 kilometres, before joining the St. Lawrence River at Lake of Two Mountains near Montreal.
21. The Ottawa River was highly significant and a defining geographic feature for the Algonquins. Known to the Algonquins as *Kitchissippi*, it was a source of their sustenance and a major travel corridor. The Ottawa River also defined how the Algonquins interacted with the European newcomers. Not only was it a major trade route during the fur trade, it was a main corridor for the timber industry, and the path along which settlement moved into the interior of what is now western Quebec and eastern Ontario.

22. Lake Temiskaming, which is at the heart of this Claim, is actually an expansion in the Ottawa River. The lake straddles the present Ontario-Quebec border approximately 500 kilometres northwest of the cities of Ottawa and Gatineau. The head of the lake is the site of the contemporary TFN community. However, the Temiskamings occupied another older village site further to the south where the lake/river narrows, called *Obawjewong*. This is an Algonquin word, which is a reference to the current at the site. *Obawjewong* has been continuously occupied for upwards of 6,000 years. It became a trading post where the fur trade with the Europeans was carried on continuously from about 1720 for almost two centuries.
23. The trading post is the present Obawjewong / Fort Temiscamingue National Historic Site, located on the east (Quebec) side of the Lake Temiskaming narrows, about 50 kilometres south of the Timiskaming Reserve. On the opposite (Ontario) side of the narrows are the ruins of the former Roman Catholic Mission, St. Claude, established by the Oblates of Mary Immaculate in the winter of 1863-64.
24. Historically, Lake Temiskaming had strategic importance because the confluence of rivers flowing in and out of it made it a major hub for travel in the region. The section of the upper Ottawa that enters the head of Lake Temiskaming is more commonly known as the Quinze River (*Rivière des Quinze*), so named for the fifteen rapids that lie along its course. A number of other rivers and creeks also fall into Lake Temiskaming, including the Montreal River (*Moniang sibi*) and its smaller tributary the Matabitchuan, which drain a significant area to the west and northwest and provide access to several large interior lakes, including Temagami, Lady Evelyn, Gowganda and Duncan Lakes. Another large river, the Blanche (*Ka'wabi sibi*), flows into Lake Temiskaming from the north, a few kilometres west of the current Quebec-Ontario boundary. The Blanche, Montreal and Quinze Rivers each provide routes over the height of land to Abitibi and the James Bay watershed, although historically the Quinze River route was the most popular.

25. For the WLFN and its predecessor the Dumoine band, the most important tributary on the southeastern side of Lake Temiskaming is the Kipawa River (*Kipewasipi* or *Kebaowek sibi*), which enters north of the present town of Temiscaming, Quebec. The Kipawa, which includes the large lake of the same name, has its source near Grassy Lake (*Matawackweak Sagahigan* or Lac Aux Foins), which is a short portage west of the headwaters of the Dumoine River. The WLFN ancestors living around Grassy and neighbouring Wolf Lake (*Mahigan Sagahigan* or Lac des Loups), therefore had easy access to both Lake Temiskaming and the lower Ottawa River by way of the Kipawa-Dumoine River route.
26. Lake Temiskaming was on one of the major canoe routes leading from the St. Lawrence valley to James Bay and Hudson Bay. From Lake Temiskaming, canoe parties could ascend the Montreal River to its head, then cross over into the Mattagami River, a Moose River tributary. More commonly, however, canoe parties would ascend the Quinze River, then head northward through a series of small lakes and portages and over the height of land into Lake Abitibi. From there, the Abitibi River, another tributary of the Moose, led directly to James Bay. As a result of these water connections, the inhabitants of the Temiskaming region were encountered relatively early by European explorers, missionaries and traders.

***Nation to Nation Relations and the Council Fire at Lake of Two Mountains***

27. Historically, the Algonquin peoples, including the Claimants' predecessors, as well as other Indigenous nations in what is now known as Canada, were engaged in nation-to-nation relations with European powers who came to occupy their lands. When European nations arrived in North America, the Algonquins, and the other Anishinaabe nations and the Hurons, were in a longstanding conflict with the Haudenosaunee (Iroquois) Confederacy. In this conflict, the French sided with the Algonquins and their allies, and the English

sided with the Haudenosaunee. The Algonquins participated in the Great Peace of Montreal in 1701, which brought about some peace between the Algonquins, their allies, and the Haudenosaunee.

28. An important point of contact between the Algonquins (as well as the Nipissings and Hurons) and the French was the Christian Mission Village at the Lake of Two Mountains, also known as Oka. The Sulpician Mission, which had its beginnings at several locations on Montreal Island, was consolidated at the Lake of Two Mountains after 1717 when the French Crown agreed to grant lands to the Seminary of Saint-Sulpice at the Lake of Two Mountains.
29. Military considerations also played a role in the move. Colonial officials fully expected the Algonquins, Nipissings and others at the Mission who were allied with the French, to form a defensive perimeter around Montreal. Although hostilities had declined drastically since the 1701 Peace Treaty with the Haudenosaunee, the Iroquois had spent decades attacking the French settlements from the south (via Lake Champlain and the Richelieu River) and from the west (via the Rideau Lakes system and the Ottawa River) during the summer warfare season. The Jesuit mission to the Christian Iroquois at Sault St. Louis (Kahnawake) and the Sulpician mission to the Nipissings, Temiskamings and other Anishnabeg at Isle aux Tourtes (approximately 20 kilometers to the south) already protected the southern approaches to the St. Lawrence. With the new mission at the mouth of the Ottawa River, the French colony's western flank would be protected as well.
30. In 1727, the mission at Isle aux Tourtes closed and the Nipissings and Temiskamings were relocated to the Lake of Two Mountains. In the early 1740s, colonial officials authorized a significant expansion in the Lake of Two Mountains mission settlement in expectation of the arrival of several hundred more Nipissings and Algonquins. A map from 1743, entitled *Plan de la Mission du Lac Des Deux Montagnes*, shows the proposed new layout. The

Hurons and Iroquois occupied a single village to the left of the fort and mission church. The villages of the Nipissings and Algonquins, then under construction, were around the bay to the right of the church. Though separate, the villages were being placed on either side of a common council house.

### ***Seven Nations of Canada Confederacy***

31. The three villages or council fires at Lake of Two Mountains became part of the confederacy known as the *Sept Nations du Canada* (Seven Nations of Canada), whose main council fire was at *Kahnawake*, the Christian Iroquois village on the south shore of the St. Lawrence River by the Lachine Rapids. The Confederacy consisted of Christian Huron, Iroquois, Abenaki, Algonquin and Nipissing residents of the various mission villages, plus their “allies and dependants”. The Seven Nations were longstanding French allies. Warriors from *Kanasetake/Oka* and the other villages fought alongside French soldiers in the Ohio valley and helped lay waste the American frontier settlements in New England and New York. Yet it was their neutrality during the summer of 1760 which permitted British and colonial American troops, with their Six Nation Iroquois allies, to descend the St. Lawrence River and capture Montreal.
32. The “allies and dependants” of the Mission villages referred to the Indigenous Nations in the interior connected with the mission villages. This included the Algonquins and Nipissings of Lake of Two Mountains who had dual identities. On the one hand, they were mission Christians, with strong ties to their summer villages at *Kanesatake / Oka*. But they also belonged to traditional bands whose territories adjoined one another throughout the Upper Ottawa valley.
33. Unlike the Christian Huron / Iroquois, the Christian Algonquins and Nipissings did not live year-round at the Mission, but instead spent up to ten months of

the year on their interior hunting grounds. They generally arrived at the Lake of Two Mountains in May or June, and departed again in late August or early September. The residents of the Algonquin and Nipissing summer villages at Lake of Two Mountains were all Roman Catholics. No “infidels” or “heathens” (as the missionaries and the Indian Department called them) resided there. Moreover, even though they were connected to the Mission villages at Lake of Two Mountains, the interior Anishinabeg were not entitled to receive the Imperial government presents given annually to residents of the Mission villages in Lower Canada. The interior Anishinabeg were supposed to collect their presents at Manitoulin Island in Upper Canada, according to officials within the Indian Department.

34. The “allies and dependents” within the Seven Nations Confederacy included what are now the Timiskaming and Wolf Lake First Nations, as well as at least some of the Ottawa and Ojibway of northern Lakes Huron and Superior. This can be seen from a description of the Seven Nations Confederacy contained in a Memorandum which Montreal Indian Superintendent Daniel Claus prepared in 1777 for William Knox, Under-Secretary (Deputy Minister) for the American Department in London:

That there are two Confederacies of Ind[ian]s in the Northern District is very true vizt 1. The Seven Nations in the Province of Quebec, *whose Allies & Dependants are all the Indian Nations to the North and Northwest of them.* And then the Iroquois or Six Nations, and the Indians living at Detroit, whose Allies and Dependants, are all the Tribes to the West & Southwest as far as the Ohio and Mississippi. *These two Grand Confederacies however, have since the Conquest of Canada united themselves, and act in concert in matters of importance, and would not be separated on any acc[oun]t or for any Regulation whatsoever [emphasis added].*

***The Treaties of Swegatchy (1760), Treaty of Kahnawake (1760), the Royal Proclamation of 1763 and the Niagara Treaty of 1764***

35. The Claus Memorandum refers to the period after the British prevailed over the French in North America, in the Seven Years War. Prior to that, the Seven

Nations Confederacy and their “allies and dependants”, were allied with the French. The Haudenosaunee Confederacy was allied with the British. At the time, the Indigenous Nations wielded considerable military and economic influence in the politics and power over North America, so their alliance or neutrality played an important part in the Seven Years War.

36. What enabled the British to prevail over the French on North American soil was the ability of Sir William Johnson, the Superintendent General of Indian Affairs, to negotiate a peace with the Seven Nations of Canada. It was their neutrality during the summer of 1760 that permitted the British, with their Six Nation Iroquois allies, to descend the St. Lawrence River and capture Montreal.
37. At a Treaty Council held with the British at Swegatchy in August 1760, the Seven Nations formally declared their neutrality. And at another Treaty Council at Kahnawake in September 1760, the Seven Nations, their allies and dependants, were incorporated into the existing Covenant Chain alliance between the British and the Six Nations. In return for their promises of future loyalty and alliance, the British promised the Seven Nations, among other things, that their autonomy and land rights would be respected. This was subsequently reaffirmed in the *Royal Proclamation of 1763* and at the Niagara Treaty Council in 1764.
38. After the fall of New France, some of the Indigenous Nations formerly allied with the French became concerned with British settlers encroaching on their lands, particularly in the Ohio Valley, and also with the British occupation of French forts. This led to an uprising that came to be known as the Pontiac Rebellion. In response, and to quiet the land rights concerns of the Indigenous Nations, the Crown issued the *Royal Proclamation of 1763*. It acknowledged the land rights of the Indigenous Nations; banned settler encroachment on Indigenous lands that had not been validly ceded or surrendered, and made Indian lands inalienable to anyone but the Crown.

39. Following the *Royal Proclamation of 1763*, the Niagara Treaty Council was called by the Crown in the summer of 1764, to formally announce the terms of the *Royal Proclamation* to Indigenous Nations and to further quiet unrest in accordance with Indigenous laws and diplomatic conventions. At the request of the Crown, more than 2,000 First Nations Chiefs representing some twenty-two Indigenous Nations, including the Algonquin Nation, attended the Treaty Council at Niagara. The Crown's purpose in calling the Grand Council was to create and renew Indigenous alliances and at the same time use those alliances to bring Pontiac and others in-line with British interests.
40. At the Treaty Council, Sir William Johnson committed the Crown to recognize and protect the pre-existing land rights of the Indigenous Nations, consistent with the *Royal Proclamation of 1763*. The Crown also affirmed the practice of gift-giving, or "Indian presents", which was a foundational obligation in diplomatic relations with Indigenous Nations. Sir William Johnson, who was well versed in First Nation diplomacy, also bound the Crown to honour its obligations in accordance with Indigenous laws, traditions and customs.
41. Under the Niagara Treaty, the First Nations in attendance confirmed their attachment as allies to the British Crown. This included the Algonquin Nation. Indeed, the Algonquin Nation leaders later fought as allies of the British Crown in the American Revolution and the War of 1812.

***Application of the Royal Proclamation of 1763 and Algonquin Claims and Petitions***

42. 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.

43. According to the *Royal 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 Indigenous Nations. The only way for such 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 treaty process set out in the *Royal Proclamation*.
44. In the years following the *Royal Proclamation of 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.
45. In the late eighteenth and early nineteenth centuries, as lumbering and settlement moved up the Ottawa Valley and began to encroach on their traditional territories, the Algonquins and Nipissings began petitioning the Crown for relief specifically citing the protective elements of the *Royal Proclamation*. They were facing hardship as a result of the encroachment on 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 their consent and without compensation.
46. The Algonquins and Nipissings were aware of the *Royal Proclamation* and the fact that it applied to them and their lands. They had been represented

at the 1760 Treaty Council at Kahnawake and at the Niagara Treaty Council in the summer of 1764. Sixty years after the Treaty of Niagara, representatives of the Algonquins and Nipissings still had the copy of the *Royal Proclamation of 1763* which had been given to them by Sir William Johnson.

47. On November 5, 1824, Sir John Johnson, Superintendent General of Indian Affairs (and son of the late Sir William Johnson), wrote a letter to Colonel Darling, the Military Secretary, with regard to the claims of the Algonquins and Nipissings. In the letter, he confirmed the application of the *Proclamation* to the Algonquins; that it was intended to protect their land rights; that the Crown had breached its terms in conveying Algonquin land without entering into a treaty with them and without paying any compensation therefor. Enclosed with his letter was an original printed copy of the *Royal Proclamation of 1763* that had been in the possession of the Algonquins. He endorsed that copy with the words, "At the earnest request of the Algonkins I put my name to this. John Johnson".
  
48. In spite of the *Royal Proclamation*, the encroachments on Algonquin lands continued unabated. 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 unceded Indigenous 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.

***Impacts of Settlement, Development and Epidemics***

49. By the mid-1840s, settlement had advanced further into Algonquin territory, as far as Allumette Island, near the current city of Pembroke. The timber trade had also advanced further up the Ottawa River and into the interior reaching into the Claimants' traditional territories. The movement of development and settlement into Algonquin territory had a damaging impact on Algonquin First Nations, depleting wildlife that the Algonquins depended on for food. This inflicted serious hardship and starvation among the Algonquins, including the ancestors of the Claimants.
  
50. In addition to this, waves of epidemic diseases swept through the region between 1843 and 1852, likely brought in by lumbermen. The first wave included scarlet fever and measles. For the Algonquins, who had had little exposure to European diseases up to then, the results were devastating. First Nations, including the predecessor to WLFN, already under pressure from economic dislocation, were decimated.
  
51. The second wave brought tuberculosis and scrofula (tuberculosis of the bones and glands) to the Algonquins. Accounts of the impact were provided by fur traders and missionaries. According to Father Laverlochère, who conducted missions into Algonquin territory, thirty-one Anishnabeg from the small Fort William or Allumettes mission (opposite Pembroke) died over the winter of 1844-45, all but two of them young men. Illness then spread northward and westward through the lumber shanties on the Coulonge, Dumoine and other Ottawa tributaries to Lake Kipawa and the southern end of Lake Temiskaming. The first reports of its local impact came at the end of the following winter. On March 18, 1846, Chief Factor John Siveright at Fort Temiscamingue said that there had been considerable sickness, and at least one death, among the people trading at his post. That death was the

Temiskaming Chief Petrimeau (Minawanikijik). There were further deaths during the summer and fall.

52. Another report from Chief Factor Siveright on March 7, 1847, indicated that families trading at the Opimika Narrows outpost at the south end of Lake Temiskaming were the most severely affected. According to Siveright, an individual nicknamed Provençal had died the previous fall, and his widow and family had sought refuge at McConnell's lumber depot. The McConnells were lumbermen from Aylmer who had recently begun competing against the HBC in the fur trade. Provençal, whose real name was Pinesiwabanweshkam, was a younger brother of Chief Minawanikijik. The Chief's grounds were just west of the Opimika Narrows (modern McLaren Bay, Ontario). His brother's grounds were immediately to the east, on what is now the Quebec side, between the Long Sault rapids and Lake Kipawa.

### ***Imperial Jurisdiction, Colonial Legislation, and Confederation***

53. From 1763, Indigenous 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 Indigenous Affairs and Indigenous lands remained with the British Crown.
54. The *Royal Proclamation of 1763* and the Order in Council of 1849, which are the basis of the present Claim, were enacted under the British Crown.
55. Subsequently, in recognition of the adverse impacts that were resulting from the continuing encroachment of Indigenous lands in Lower Canada (Quebec), the colonial government adopted two pieces of legislation in 1850 and 1851. The first statute, *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 Indigenous lands, and created the Commissioner of Indian Lands, in whom such lands would be vested in trust for the protection of the Indians.

56. The second statute was entitled *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). It was adopted by the Province of Canada in 1851 and provided for the setting aside of up to 230,000 acres of lands for reserve purposes. Under the 1851 Act, Orders in Council enacted in 1852 and 1853 set out schedules for the distribution of lands amongst certain First Nations in Lower Canada. One of the tracts identified in the schedules evolved into the current Timiskaming Reserve.
57. In 1860, the Imperial Crown devolved the administration of Indigenous Affairs unto the colonial government. With Confederation in 1867, Indigenous 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 federal-provincial matter.

### **3. Crown’s Undertaking for a Reserve: the Bouthillier Reports and the Order in Council of 1849**

58. TFN and WLFN claim that the Crown breached legislative and fiduciary obligations to create a reserve, the establishment of which was undertaken by the Crown, pursuant to the terms of the *Royal Proclamation of 1763*, in an Order in Council it enacted in 1849.
59. The Order in Council was enacted in response to petitions for a reserve put forward by the ancestors of the Claimants, through their missionaries, Fathers Laverlochère and Clement, and the Bishop of Bytown in 1848 and 1849. What prompted these petitions were the devastating impacts of starvation and disease on the Claimants’ ancestors, which had worsened by 1848. Father

Laverlochère's report, dated November 24<sup>th</sup>, 1848, from his mission at Temiskaming in May and June of 1848, comments on the dire situation and vulnerability of the Algonquins at Temiskaming:

... we arrived without incident at Temiskaming. We were expected, with the greatest impatience, by our dear neophytes, who have no soft comfort, in the frightening misery that decimated them daily, than to have their Missionary. A large number of them, suffering from consumption, inevitable repercussion of a cruel famine they had to endure last winter, were only waiting for the arrival of the Black-robos to die. It is a sad spectacle for the heart of a missionary, to see these walking skeletons come before him, with death in their heart, and yet a smile on their lips, to tell him with touching resignation, of their indescribable suffering ....

60. In his Report of November 24<sup>th</sup>, 1848, Father Laverlochère indicates that the dire situation is what finally prompted the Indians to ask for a reserve and describes how urgent it is that they get the reserve to avoid utter destruction:

Misery is increasing every year in a frightening manner among the Indians, especially among those at Allumettes, Temiskaming and Grand Lac, who have seen their hunting grounds invaded by the lumber merchants. They have no other way of escaping their utter destruction, after much long and painful suffering, than to ask the Legislature for a sufficient extent of land to gather in a village and take up agriculture. Otherwise, they are finished. They themselves have finally understood this, because a large number of them constantly urged me to make this request on their behalf. They certainly could not have shared better news with us, for since we were first given the responsibility of instructing them, we have been urging this on them with all our strength. We hope the Government will speedily accede to such a just request from these ancient inhabitants of a soil which, although uncultivated, was no less their own, and to which the desire they now manifest to cultivate it gives them new rights [emphasis added].

61. Although the petition itself has been lost, the above passage indicates that Father Laverlochère made the request for a reserve on behalf of the petitioners some time before his November 24, 1848 report. This was followed by two further petitions made by Bishop Guigues directly to the Governor

General, Lord Elgin, one on April 16, 1849 and another on June 26, 1849. The June 26<sup>th</sup> petition makes reference to the earlier request by Father Laverlochère.

62. Lord Elgin referred the petitions to the Crown Lands Office. In response to the petitions, Bouthillier, issued two reports to the government: one on July 11, 1849 and one on August 2, 1849. The first report appears to be a preliminary report for the government. It provides a background on the petitions as well as a recommended course of action. The second report is obviously more detailed and is a follow-up on the first report. The reports are significant, especially the second one, because the Governor General in Council adopted Bouthillier's recommendation in an Order in Council on August 7, 1849.
63. Bouthillier's July 11, 1849 Report consists of two memos. The first deals with the petition by the "Algonquin Indians of the Lake of two Mountains" for land on the Gatineau River. In this instance, the Assistant Commissioner pointed out that squatters and other whites in the area did not want any lands they were occupying to be included in a grant to the Indians. He therefore recommended that all lands occupied by whites be excluded. This memo alludes to the second memo and refers to the fact that the "Algonquin Indians from the interior apply for another tract at the head of Lake Temiskaming"; and he says that "[r]eference is requested to their Memorial which accompanies this".
64. The second Bouthillier memo of July 11<sup>th</sup> deals specifically with the petition for lands on Lake Temiskaming and refers to the lands requested as being for "the use of the Indians of the Ottawa River". It describes the lands as: "The tract applied for lies between the River Blanche and the River Kipawesipi, is about 150 miles distant from surveyed Townships and would contain about one hundred thousand acres of land". The memo notes that it would not interfere with any existing third-party interests. However, Bouthillier

says that the grant must be regulated by the “numerical strength and wants of the Tribe or tribes to be provided for” and indicates that inquiries would be undertaken with the Indian Office to obtain this information.

65. Bouthillier’s next report was issued about two weeks later, on August 2, 1849, and is entitled: “The Lower Canada Indians North of the River St. Lawrence claiming lands & Pecuniary assistance from Government, are the Saguenay Indians or Montagnais, & the Indians of the Ottawa, said to be the Algonquins & Nipissing Tribes”. This Report was in front of the Committee of the Executive Council on Land Matters of the Province of Canada, and as the title indicates, it dealt not just with the Algonquins and Nipissings, but also with the Montagnais of the Saguenay.
66. The first part of the August report describes the Indians of the Saguenay and the tracts of land they are seeking. The second part of the Report deals with the “Indians of the River Ottawa and its tributaries” and indicates that Bouthillier had obtained the further information he was referring to in the July 11<sup>th</sup> memo, because he summarizes what was known of their identity and their Aboriginal title territory:

The Nipissing & Algonquin Indians extend up the River Ottawa to the Boundaries of the Hudsons Bay Territory and spread on both sides of that River to the head waters of its tributaries. The Tetes de Boule another Branch of the Algonquin or Nipissing, inhabit the Banks & Tributaries of the River St. Maurice, and divide the Ottawa from the Saguenay Indians.

The Algonquins have at different times claimed to be the proprietors (as the descendants of the Original possessors) of those Grounds, and as such to be indemnified, as other Indian Tribes have been in Upper Canada, for such portions of their hunting grounds as have been opened to settlement or laid out into Timber locations, but their pretensions in that respect have been negatived by former Governments and they have only been considered as entitled to limited grants of Land for actual settlement.

Their present number, including the Tetes de Boule, who do not appear as yet to have Petitioned, but for whom it is advisable to provide along with the others, is estimated at 1000 families, from four to five thousand individuals. Most of the signers of the Petitions now before Government, if not all, are or were residents of the Village of the Lake of the Two Mountains, at the Indian Mission under the charge of the Revd Gentlemen of the Seminary of St Sulpice, who, it is understood, obtained a grant of the Seigniorship of that name on condition of their administering to the Spiritual as well as temporal wants of the Indians who would resort to that mission. There is yet in that Seigniorship, a Bloc of some 10,000 acres in reserve for them - but they are now, it appears, desirous of settling further up the river Ottawa where some of them have already commenced improvements.

67. In his August Report, the Assistant Commissioner then gives details about the two particular tracts of land being sought for the Indigenous peoples of the upper Ottawa, as well as the way in which third-party interests should be dealt with:

They apply, thro' His Lordship the Bishop of Bytown for a tract of land at the head of the Lake Temiscaming lying between the Rivers Blanche and Kepewasipi [Kipawa] which would contain about 100,000 acres - also, for a Township on the Gatineau bounded in front to the Eastward by that river at the North by the River Desert and at the South and West by lines to be drawn at sufficient distances to embrace an ordinary size Township of about 60,000 acres.

The first mentioned tract being far in advance of all settlement, would interfere with no existing right or privilege; the second should be so laid out as to exclude all squatters improvements, of whom there appear to be a certain number in that neighbourhood, some of whom have already remonstrated against their holdings being transferred to the Indians. The tract may also be in part covered by lumber licences but this, it is conceived, should be no reason for withholding it from the Indians, as the proprietors of such licences might be permitted to continue their operations, the proceeds in that case being appropriated for the use of the Indians.

68. Bouthillier goes on to recommend that in order to avoid difficulty with third parties, the tracts in question be "laid out and bounded in the field", that is,

surveyed. He then says that it should be left to the discretion of the government to decide whether the whole or a part of the surveyed tracts would finally be appropriated, once more accurate information is obtained on the “actual number of individuals or families to be provided for”. TFN and WLFN plead that the latter proviso refers to the Indians of the Saguenay and not to the Claimants’ predecessors.

69. The passage from the Report is as follows:

These various grants of Land, if made according to the wishes of the Indians, must of course be sanctioned by Legislative enactments, but in the meantime it is suggested that the tracts mentioned be laid out and bounded in the field to prevent strangers intruding upon them, leaving it discretionary with the Government finally to appropriate a part or the whole, when in possession of more accurate information on the actual number of individuals or families to be provided for [emphasis added].

70. Bouthillier’s Report also acknowledges the state of poverty of the petitioners and refers to the need for pecuniary aid. A point to be noted in this regard is that Bouthillier acknowledges that the petitioners will derive some money from “the sale of timber on their reserved tracts”. This connects with the reference in the earlier passage of the report that contemplates proceeds of timber sales on the tracts “... being appropriated for the use of the Indians”. It is also noteworthy that Bouthillier uses the phrase “reserved tracts”, obviously indicating the lands are to become “reserves”.

The Petitioners also pray for pecuniary aid, and it is evident that without some such assistance, at least to the extent of supplying them with the requisites of a farm - A grant of Land will be of little use to them in their present state of poverty. They will however derive some little resource from the sale of Timber on their reserved tracts [emphasis added].

71. The Governor General in Council approved Assistant Commissioner Bouthillier’s Report on August 7, 1849. The official Minute states as follows:

On the annexed Report of T Bouthillier, Esquire, Assistant Commissioner of Crown Lands, dated 2<sup>nd</sup> August, 1849, on the Petitions of the Saguenay and Ottawa Indians:-

The Committee recommended that the Honourable J.B. Tache be instructed to investigate the Indian Lands on the Saguenay, and that the commissioner of Crown Lands be directed to set off the Lands on the Ottawa, according to the annexed Report.

72. It is to be noted that the Committee only recommends that "... the Honourable J.B. Tache be instructed to investigate the Indian Lands on the Saguenay..." and not the lands designated for the Algonquins. This wording confirms that Bouthillier was referring to the Saguenay Indians when he said that more accurate information would be required before making a final decision on appropriating the reserve lands, as interpreted by the Executive Council. In other words, the decision to allocate lands to the Algonquins was not subject to further investigation.
73. On August 24, 1849, the Crown Lands Department gave instructions for the survey of a township for the Indians on the River Gatineau, a survey which was expected to be completed by the spring of 1850. In January of 1850, Bouthillier told Assistant Superintendent General of Indian Affairs George Vardon of the Indian Office in Montreal, that the tract on Lake Temiskaming "may be laid out whenever required". But so far as can be determined, the latter tract was never surveyed and "set off" in accordance with the 1849 Order in Council.
- VI. The Basis in Law on Which the Crown is Said to have Failed to Meet or Otherwise Breached a Lawful Obligation**
74. TFN and WLFN, both recognized bands under the *Indian Act*, claim the Crown breached a legal obligation under legislation and breached fiduciary duty when it failed to complete the establishment of a 100,000 acre reserve for their ancestors as undertaken, pursuant to the *Royal Proclamation of*

1763, by Order in Council the Crown enacted in 1849. The proposed reserve was to be located on the northern and eastern shores of Lake Timiskaming, “lying between the Rivers Blanche and Kipawesipi”. The Map of the 1849 Claim Area at Schedule “A” to this Declaration, shows the location of the proposed reserve.

75. The Claimants had a cognizable interest in the 1849 Claim Area, based on their historic use and occupancy and on the 1849 Order in Council. The Crown had complete discretionary control over the traditional lands of the ancestors of TFN and WLFN, including the 1849 Claim Area. Promising to protect Indian lands in the *Royal Proclamation of 1763*, the Crown imposed a restriction on their alienability to anyone but the Crown. The Claimants’ traditional lands were within the lands reserved as “Indian Territory” in the *Proclamation*. The 100,000 acre proposed reserve was also in Indian Territory; and in 1849, was still covered by the terms of the *Proclamation* as a reserve to be newly established. The Crown had authority and discretion not just to undertake, but also to establish the reserve pursuant to the *Royal Proclamation of 1763*. Unfortunately, it did not live-up to its obligations either to protect the Claimants’ lands or to establish the reserve, as proposed.
76. The land was requested by missionaries and Bishop Guigues of Bytown, on behalf of the ancestors of today’s TFN and WLFN. In response, the Crown started the reserve creation process and made an undertaking to set off or set apart a 100,000 acre tract of land – in effect a reserve – on the northern and eastern shores of Lake Temiskaming. Assistant Commissioner of Crown Lands, Tancrede Bouthillier, in a Report to the Executive Council, recommended that the tract be “laid out and bounded in the field to prevent strangers intruding upon it”. The Governor General in Council approved Bouthillier’s Report and directed that the land be “set off”, according to the Report. However, the Crown did not see the reserve creation process through to completion. The Crown breached its fiduciary duty by failing to

follow-through with loyalty, good faith, full disclosure and reasonable diligence: contrary to the Order in Council, the tract as proposed was never surveyed or set apart.

77. This specific claim is without prejudice to any Aboriginal title claims that TFN and WLFN may have or to any other specific claims that the Claimants may have either jointly or separately, which do not have the same legal and factual basis as the present Claim.

**VII. Relief Requested:**

78. The Claimants seek the following relief:

- a) An order from the Tribunal validating their specific claim that the Crown breached a legal obligation under legislation, and breached fiduciary duty when it failed to establish a 100,000 acre reserve (1849 Claim Area) for their ancestors, as undertaken pursuant to the *Royal Proclamation of 1763*, by Order in Council it enacted in 1849;
- b) Equitable compensation for all their losses arising from the aforesaid breaches, including, without limiting the generality of the foregoing:
  - i. Equitable compensation for the current unimproved marketvalue of the 1849 Claim Area, and
  - ii. Equitable compensation for loss of use of the 1849 Claim Area from the date the reserve was supposed to be set aside to the date of the judgment;
- c) Interest on the compensation;
- d) The costs of this Claim; and
- e) Such other relief or compensation as this Honourable Tribunal deems just.

Dated this 3rd day of July, 2020.



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**David C. Nahwegahbow, IPC, LSM**  
Counsel for the Claimants,  
Timiskaming First Nations, and  
Wolf Lake First Nation

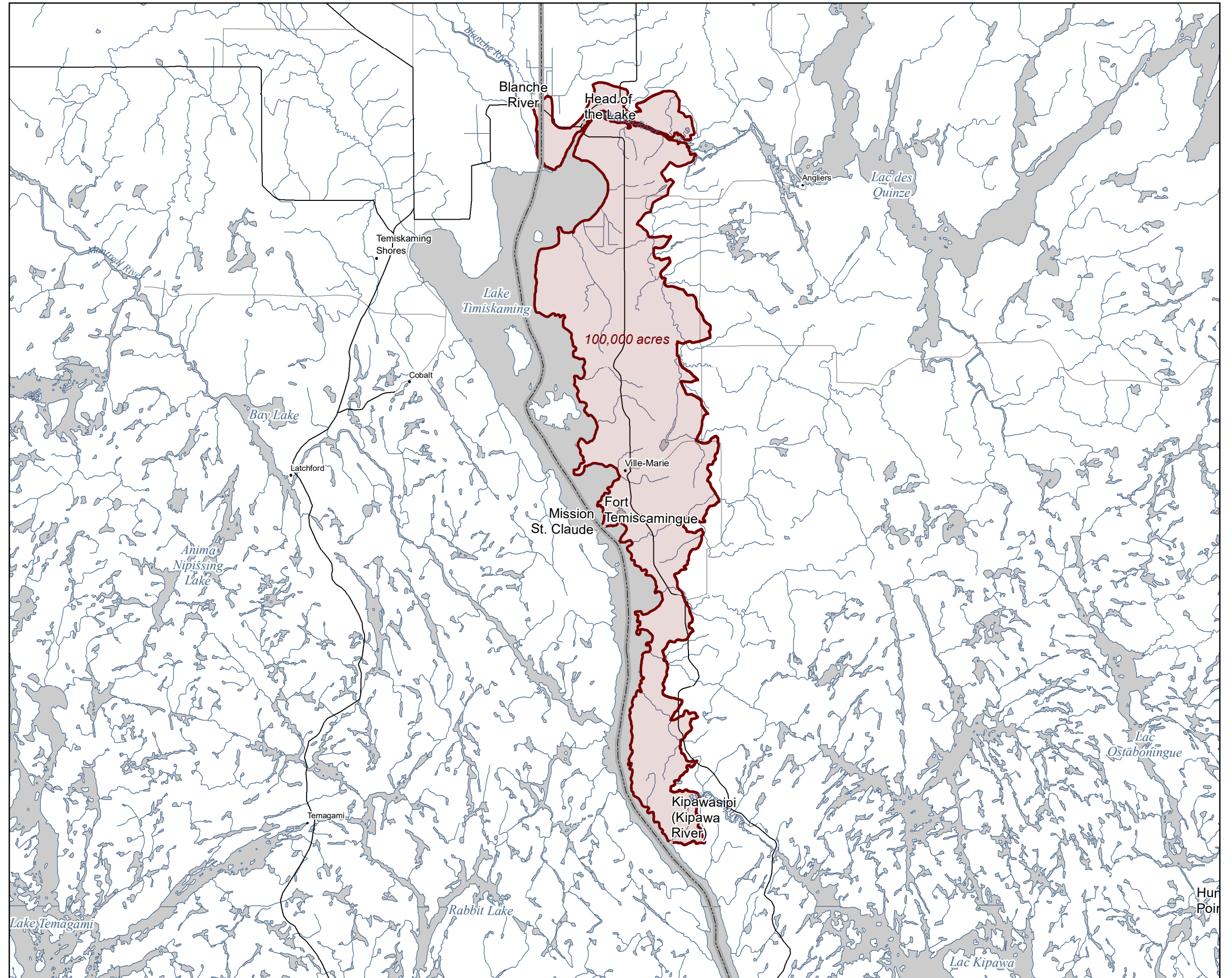
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**Schedule 'A'**

Map of 1849 Claim Area

Schedule A - Map showing proposed Reserve on Lake Temiskaming, August 7, 1849

-  Proposed Reserve, 1849 (100,000 acres)
-  Interprovincial Boundary (Shanly, 1866)



Map prepared by PlanLab Ltd., for the Algonquin Nation Secretariat, June 30, 2020

Basedata: NRCan CanVec 1:250,000  
Projection: UTM17N, NAD83

0 2 4 6 8 10 Kilometres



1:325,000