

WOLF LAKE FIRST NATION

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WITHOUT PREJUDICE

PRESENTATION TO THE COMMISSION FOR THE SCIENTIFIC, TECHNICAL, PUBLIC AND INDEPENDENT STUDY OF PUBLIC FOREST MANAGEMENT

**By
Chief Harry St. Denis
Wolf Lake First Nation**

April 27, 2004

Guerin, Quebec.

Good Morning Commissioners:

1. Introduction:

As you have noted, I am Chief Harry St. Denis, and I am here on behalf of the Wolf Lake First Nation. Our peoples are part of the Algonquin Nation, which consists of ten communities, nine are in Quebec and one is in Ontario. The territory of the Algonquin Nation includes lands and resources in both Quebec and Ontario.

Our First Nation has a membership of 250 people, and the territory of the Wolf Lake Algonquins has been documented and substantiated through a professional land use mapping project. I make this point because there are nine Algonquin communities located in Quebec and each Algonquin community has a core area of land use and occupancy, as well as shared areas of land use.

Our community believes it is important to be able to show our connection to the land in both historical and contemporary terms. We believe this is important because historical treatment and the social and political organization of the Algonquin Nation is not understood by the Government of Quebec, industry or the Quebec society in general.

There has been a long history, even before the creation of this province, to avoid and deny the existence of Algonquin and other First Nation peoples. When the French-speaking peoples came to North America they considered my ancestors as 'savages' no different than the animals in the forest. But because we outnumbered them at that time they negotiated trade agreements and made military alliances with us.

In 1760, the Algonquin, and other First Nations, negotiated peace Treaties with the English-speaking representatives of the Crown. In 1763, a 'Royal Proclamation' was issued by King George III, explicitly recognizing Algonquin lands as 'Indian territory', and the British Crown was supposed to protect our lands from non-Indian 'trespassers' and from 'frauds and abuses' by non-Indians. Unfortunately, the British Crown failed miserably in this regard.

As the French-speaking and later the English-speaking peoples began to explore and settle on Algonquin lands, which included the lands of our peoples, we began to experience the negative impacts. The fish and game we depended on became scarce because of over harvesting by the newcomers, causing our people to starve. Our forests were given away in concessions to logging companies without our permission or consent, causing our people hardship to the point of almost becoming extinct due to the resulting starvation, disease and poverty. We survived, despite all of the wrongs committed by successive colonial, and then provincial and federal governments.

This brings me to the first part of my presentation.

2. Recognition, Consultation & Accommodation of First Nations Aboriginal and Treaty Rights in Relation to Forests:

I mean no disrespect to each of you personally as members of this Commission, but I must say that our First Nation is critical about the mandate of this Commission and its composition. In our view, this so called 'consultation process' is reflective of an ongoing avoidance and denial strategy on the part of the Government of Quebec, which is to continue to ignore the fact that First Nations have collective Aboriginal and Treaty Rights, which are guaranteed by Canada's constitution. Too often we have seen provincial and federal boards and commissions set up without consulting us, resulting in recommendations that aren't accurate, or useful, for our peoples anyway.

In terms of your mandate, we strongly suggest that you go back to the Minister of Natural Resources, Wildlife and Parks and get explicit changes to your Commission's mandate to formally expand your scope of study to examine the Aboriginal and Treaty Rights of First Nations in relation to forests.

As First Nations with constitutionally protected (section 35) Aboriginal and Treaty Rights we have not only social, environmental and economic concerns regarding the forests located on our traditional territories, but also political and legal concerns. The mandate your Commission as received from the Minister responsible, is deficient because it is based upon the premise that the forests in the Province of Quebec are "public forests" and that the Quebec Forest Act and Regulations are the only law that applies.

The fact is, most of the forests in the Province of Quebec are subject to the Aboriginal title and rights of the First Nations, which means that the Government of Quebec doesn't have exclusive jurisdiction or ownership over the forests.

Another presumption contained in your Commission's mandate is that First Nations are simply Quebec residents and part of Quebec society, so First Nations issues will be subsumed under the social, environmental and economic dimensions of forest management. We reject this notion, there needs to be a formal and clear expansion of your Commission's mandate by the Minister of Natural Resources, Wildlife and Parks, or the recommendations coming out of this process for First Nations will be meaningless as far as we are concerned.

In terms of your "***Preparatory Document for Public Consultation***", the references to First Nations are few and far between, and where we are mentioned, it is in paternalistic terms reflective of a colonial era. For example, on page 6, in describing the "general context" of forests in Quebec, the documents states "[s]olutions were sought that allowed the development of First Nations communities." This implies that the Government of Quebec "allowed" our communities to develop. The truth is we have pressured Quebec to recognize, consult and accommodate our rights and even with the Charest government it seems we still have a long ways to go.

In addition to the recommendation that your Commission formally seek expansion of its mandate from the Minister. We also recommend that the composition of the Commission be expanded to include a First Nations representative, or two on it. Again, with all due respect to the obvious depth of experience you each possess in your own right, we submit that you cannot do justice to the unique and complex issues facing First Nations, not having lived or experienced the reality yourselves.

For your information, even legislators are acknowledging the importance of having direct Aboriginal input into a review of proposed legislation that may affect the Aboriginal peoples.

For example, the federal Parliament's Standing Committee on Aboriginal Affairs recently adopted a motion in March 2004, which stated:

“That when legislation related to Aboriginal peoples is before the Committee, at least one representative from the affected groups be invited to participate in the proceedings of the Committee. . .”

We recognize that this is a recommendation body, not a federal Parliamentary Committee, but we suggest that the Minister of Natural Resources, Wildlife and Parks, should also respect the principle of Aboriginal inclusion by formally adding a First Nations Commissioner, or two, onto this Commission.

In light of our recommendations and comments about the deficiencies in the mandate and composition of this Commission, I am making the following remarks on a 'without prejudice' basis.

3. Forest Management Framework and Models:

The Supreme Court of Canada has clearly given the direction that there needs to be a “reconciliation process”, which involves the recognition and accommodation of the pre-existing rights of Aboriginal peoples with the assertion of sovereignty by the Crown. First Nations are not just another “stakeholder group”, as your “Public Consultation” document suggests.

The member communities of the Algonquin Nation are in the process of documenting and substantiating our collective Aboriginal title and rights, each community is at a different stage of completion in terms of their historical research. Until the Aboriginal title and rights research is complete we cannot proceed into negotiations on a “Nation-to-Nation” basis, as the Algonquin Nation.

We therefore recommend to the Government of Quebec and the forest industry as an interim solution, that the government and industry both endorse and support the approach taken by the Forest Stewardship Council's National Working-Group. The FSC has developed a National Boreal Standard, which includes the recognition of the rights of Indigenous Peoples.

Although the FSC is a voluntary certification system for the development of regional standards to assess and audit sustainable forest management, we believe the FSC approach to forest certification is the best and only approach we can accept within our traditional territory.

For your information, we are providing a copy of the FSC Principle 3 from their National Boreal Standard, as an annex to our presentation. We urge you to read it and if you can get the responsible Minister to expand the mandate and composition of your Commission then perhaps we will get an opportunity to revisit the content of FSC's Principle 3 and sustainable forest management.

In closing, let us say we appreciate that the Commissioners have taken certain steps to consult with First Nations, including a session this Summer. However, this is no substitute for the recognition and respect the Minister of Forests, Wildlife and Parks should have for First Nations, particularly in light of Premier Charest's personal commitments to First Nations made on June 17, 2003, in Quebec City. Premier Charest said;

"I am making a commitment to you today to better explain to Quebecers the importance of reaching an agreement with the aboriginal nations on living together and respecting aboriginal rights."

Let us hope that the Minister will follow this Premier's lead and accept our recommendations, which means that the session planned with First Nations for this Summer will be explicitly within the scope of your Commission's mandate. As for the other aspects of your mandate:

- 1.) Sustainable Development and Integrated Resource Management;
- 2.) Comprehensive Knowledge of Forest Assets; and
- 3.) Planning, Delivery and Performance of Forest Management Activities.

We wish we could comment on these aspects of your mandate, but because we do not have the technical capacity or expertise, we cannot comment. We would hope that the Government of Quebec understands that we cannot prepare our responses in these technical areas without funding support from government and/or industry.

We can tell you that we were never consulted on the 1986 Quebec Forest Act, nor did we agree to the "Timber Supply Forest Management Agreements" that cover our traditional territory, which also means that the annual allowable cut covering our traditional territory was likely set too high, because our cultural areas and environmental concerns were not taken into account. We are definitely not satisfied with the 'status quo', there needs to be agreement with our First Nation on how we will be involved in forest management and planning, but this cannot occur until we get the necessary funding support for the technical process to reconcile our values, rights and interests with those of other forest users. I'm ready to answer any questions if you have any.

Migwetch-Merci-Thank You!

ANNEX A

FOREST STEWARDSHIP COUNCIL'S NATIONAL BOREAL STANDARD PRINCIPLE #3

PRINCIPLE #3: Indigenous Peoples' Rights

The legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources shall be recognized and respected.

Intent, 3 – Terminology

Indigenous rights are collectively held rights, therefore most of the language referring to Indigenous rights in this standard refers to “Indigenous Peoples” (an accepted international term) or communities as a whole, and not to individuals.

In order to make the document more readable, “Indigenous communities” is used to refer to the collective, while “Indigenous individual” is used to refer to a single Indigenous person. “Indigenous Peoples” in the criteria refers to more than one community. It is very important that applicants and auditors understand the complexity of the Indigenous groups in Canada and how terminology reflects what are sometimes confusing political realities.

The term “Indigenous Peoples” in Canada means “Aboriginal Peoples” as defined in the Constitution Act, 1982 to include “Indians, Inuit and Métis”. “Indians” are recognized in Canada as “Bands” with a “Chief and Council”. There are two types of “band councils” recognized in Canada “elected councils” (according to rules laid out in the Indian Act) and “custom councils”. “Indian bands” are also referred to as “First Nations” in Canada. A “First Nation” could refer to one “band” or a group of historically, culturally and linguistically related “bands”. “Indians” are recognized in Canada as having “Indian status” and are entitled to be placed on membership rolls in a general “Indian register” in Ottawa, and/or on “band lists” as a “member” of a federally recognized “band”. The federal government has primary treaty and fiduciary duties, responsibilities and obligations for “Indians and lands reserved for the Indians”, but the provinces are also Crown governments and as such, also have some derivative duties, responsibilities and obligations towards “Indians and lands reserved for Indians”.

Through various federal policies over the past 100 years, many “status Indians” lost their federally recognized status and there is therefore a group of “Indians” known as “non-status Indians.”

“Métis” are recognized in Canada, although identity and membership criteria are vague bordering on “self-identification” rather than genealogy for Métis individuals. The courts in Canada have recognized the “Métis” as having some limited “**Aboriginal rights**” to “site specific” activities such as hunting rights. The legal framework related to Indigenous Peoples in Canada is constantly evolving..

Intent, 3 – Agreements

There are a number of agreements described in this principle. A single agreement may cover the requirements or a framework agreement and subsequent sub-agreements may be negotiated over time, depending on the ability and intent of the parties. Agreements described should preferably be confirmed in writing. However, circumstances will vary across the country. Where an Indigenous community does not want to enter into a written agreement, this requirement is waived. The applicant must demonstrate in writing that efforts were made to obtain written agreement and that the Indigenous community is satisfied with the management plan. Where written agreements are not obtainable, FSC certification is intended to support progress over time toward reaching written agreement.

Intent, 3 – Consultations

Consultation processes with Indigenous Peoples as described in Principle 3 apply not only to standard elements under Principle 3 but to elements in other Principles and Criteria.

3.1 Indigenous peoples shall control forest management on their lands and territories unless they delegate control with free and informed consent to other agencies.

Intent, 3.1

Indigenous lands and territories in Canada have been defined legally as:

- 1) Those areas where Aboriginal title still exists, that is where no treaties are in place (such lands may be subject to a formal land claim); and,
- 2) Those areas subject to historical (pre-Confederation and post-Confederation) or modern-day treaties.

In cases where there are common areas used by Indigenous communities, the interests of all such communities must be assessed.

Treaties do not **delegate control** and do not mean that Indigenous communities no longer have an interest in managing their lands and territories. Treaties are living documents, and the current interpretations of those Treaties must be considered.

The onus is on the applicant to make best efforts to obtain informed consent, understanding that there may be exceptional circumstances that may influence whether or how consent is achieved given that circumstances vary from Indigenous community to Indigenous community. The applicant is expected to make best efforts to obtain a positive acceptance of the management plan based on the Indigenous communities having a clear understanding of the plan.

It is important for the applicant to develop a good understanding of the nature of the communities and their rights, in order to seek consent and build a good relationship with Indigenous communities.

3.1.1 The applicant keeps abreast of and, in the management plan, is able to demonstrate a good working knowledge of the Indigenous communities, their legal and customary rights and their interests related to forest lands within the forest management planning area.

Verifier:

- The following information may contribute to a working knowledge of the legal and customary rights and interests:
 - The number of distinct Indigenous communities having, or claiming rights and interests within the area;
 - The population and demographic profile of these respective Indigenous communities;
 - The political organization and governance structure of each respective Indigenous community;
 - The political mandate provided within that governance structure for consultation and negotiation on behalf of the Indigenous community in regard to the rights and interests asserted by that community in relation to forest management;

- The **traditional use** areas or lands within the applicant's forest management area asserted by each respective Indigenous community;
- The extent of overlap between these traditional territories;
- The extent to which these traditional use areas have been recognized by the Crown;
- The traditional and historic use patterns of each respective Indigenous community within these areas;
- The contemporary use patterns of each respective Indigenous community;
- The nature, or basis, of the rights and interests asserted by each respective Indigenous community;
- The extent to which there is agreement, or lack of agreement, between the Crown and the respective Indigenous community as to the nature and extent of the rights and interests asserted by each People;
- The existence, and current status of negotiations between the Crown and the Indigenous community regarding rights and interests asserted by each respective Indigenous community; and,
- The existence, and current status, of any legal actions related to the rights and interests of each respective Indigenous community.

3.1.2 The applicant obtains agreement from each affected Indigenous community verifying that their interests and concerns are clearly incorporated into the management plan. Such agreement will also include:

- A description of the roles and responsibilities of the parties;
- The interests of the parties;
- A description of appropriate decision-making authorities for all parties;
- A dispute resolution mechanism; and
- Conditions under which consent has been given and under which it might be withdrawn, if any.

This agreement is not intended to abrogate or derogate from their Aboriginal and Treaty Rights.

Verifier:

- Each Indigenous community indicates that it is satisfied that the applicant has incorporated their interests and concerns within the management plan.

3.1.3 The applicant participates in and/or supports the efforts of the affected Indigenous communities to develop the financial, technical and logistical capacity to enable them to participate in all aspects of forest management and development. This could include (but is not restricted to) activities ranging from planning and decision-making to the establishment of businesses or the pursuit of employment related to forest management.

Verifier:

- The Indigenous communities are satisfied that the applicant is making reasonable effort to support or assist them to achieve their interests in forest development.

Intent, 3.1.3

The applicant's support of capacity building should encourage an increased role for Indigenous communities in forest management. The applicant

encourages an environment leading to increasing roles and responsibilities for Indigenous communities leading to joint management , where that is the desired objective.

- 3.1.4** The applicant has jointly established with affected and interested Indigenous communities, opportunities for long-term economic benefits where that is the desired objective.

Verifiers:

The following information can be useful to indicate the provision of long term economic benefits:

- record of jobs filled and employment opportunities provided to Indigenous individuals;
- record of training opportunities provided/available to Indigenous individuals;
- record of partnership arrangements with Indigenous enterprises;
- joint agreements signed by both parties clearly stating the nature of the economic opportunities, evidence of revenue-sharing from forest operations, and timelines; and
- indication of satisfaction from the affected and interested Indigenous community(ies).

- 3.1.5** A dispute resolution process for addressing and resolving grievances has been jointly developed with the affected Indigenous communities and is being fairly implemented.

Verifiers:

- Knowledge of the dispute resolution mechanism within the Indigenous communities.
- Documentation which supports the dispute resolution mechanism(s).

3.2 Forest management shall not threaten or diminish, either directly or indirectly, the resources or tenure rights of Indigenous Peoples.

Intent, 3.2

The existence of a Treaty does not mean that Indigenous communities have given up their tenure and use rights. In the absence of a treaty, Aboriginal rights exist. Applicants do not interpret treaties or Aboriginal rights. Their responsibility is to address the impact of forest operations on those tenure and use rights. These use rights apply at a broader scale (for example forest conditions over time which may affect fishing, hunting, trapping, and gathering), as opposed to site-specific issues addressed under 3.3.

3.2.1 The applicant makes use of an existing assessment or, in the absence of an assessment, undertakes a joint assessment of Indigenous resources and tenure rights with the affected Indigenous communities.

Verifier:

- Baseline data on numbers of traditional land users, revenues generated from traditional land-use.

3.2.2 Based on the results of the assessment, the applicant develops management activities outlined in the management plan to ensure that Indigenous resources are not threatened or diminished.

3.3 Sites of special cultural, ecological, economic or religious significance to Indigenous People(s) shall be clearly identified in cooperation with such Peoples, and recognized and protected by forest managers.

3.3.1 The applicant supports the efforts of the affected Indigenous communities to conduct land use studies and mapping which result in an **Indigenous areas of concern** protection agreement, addressing information sharing, protection, mitigation and/or compensation, and confidentiality measures for Indigenous traditional values and uses.

Verifiers:

Elements that may indicate the applicants support for land use studies include:

- Written plan on Indigenous land use and values and supporting maps;
- Evidence of financial support to conduct land use studies and mapping;
- Evidence of the implementation of the Indigenous areas of concern protection agreement including evidence of change in forestry operations, if pertinent, to protect Indigenous land uses and/or sites;
- Satisfaction of the Indigenous communities or an appropriate body (such as an Elders committee) with plan implementation and values protection;
- Evidence that values and sites outlined in plan are being protected;
- Evidence of negotiations with hunters, trappers and other Indigenous individuals who are land users, that is endorsed by the Indigenous communities;
- Evidence of mediation to the satisfaction of the Indigenous communities; and
- Records of workshops conducted in which mutual learning on cultural perspectives occurs.

3.3.2 The applicant supports the efforts of the affected Indigenous communities to monitor the impacts over time of forestry activities on the values identified in the Indigenous areas of concern protection agreement.

Verifiers:

- Agreement(s) with the affected Indigenous communities on monitoring.
- Regular joint assessments on the effects of **forest management activities** on the Indigenous communities.
- Baseline data on, for example, location and extent of sites of areas of concern.

3.3.3 Where Indigenous communities have indicated that forestry operations on particular blocks or sites are creating a threat of serious environmental, economic, or cultural impact, the applicant suspends or relocates forestry operations or until disputes are resolved. Examples of serious threats could include:

- Destruction of burial sites, spiritual sites, spawning areas, medicinal areas;
- Severe disruption of livelihood;
- Damage to community water supply; and,
- Severe disruption of food chain to the community.

Verifiers:

- Policies in place to suspend or relocate operations pending dispute resolution;
- Record of suspended or relocated operations in response to an identified threat; and,
- Community satisfaction with handling of serious threats.

See also 6.5.1.

3.4 Indigenous Peoples shall be compensated for the application of their traditional knowledge regarding the use of forest species or management systems in forest operations. This compensation shall be formally agreed upon with their free and informed consent before forest operations commence.

3.4.1 The applicant enters into an agreement with the affected Indigenous communities which compensates for the use of traditional knowledge that leads to the:

- Commercial use of a forest species, in particular non-timber forest products;
- Improved management plans; or
- Improved operations.

Verifiers:

- Evidence of satisfaction of Indigenous individuals with the application of the agreement;
- Knowledge in the Indigenous community that such agreements are in place;
- Evidence that compensation has been delivered.