

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**WILLIE KEEWATIN, ANDREW KEEWATIN Jr. and
JOSEPH WILLIAM FOBISTER on their own behalf and on
behalf of all other members of GRASSY NARROWS FIRST NATION**

Plaintiffs

and

**MINISTER OF NATURAL RESOURCES
and
ABITIBI-CONSOLIDATED INC.**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date January 10, 2005

Issued by



Local registrar

Address of court office Ontario Superior Court of Justice,
393 University Ave., 10th Fl.
Toronto, ON
M5G 1E6

TO: **MINISTRY OF THE ATTORNEY GENERAL**

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CLAIM

THE PLAINTIFFS CLAIM:

- (a) a declaration or declarations that each of the Plaintiffs is a beneficiary under Treaty 3 between Her Majesty the Queen and the Saulteaux Tribe of the Ojibway Indians at the Northwest Angle on the Lake of the Woods with Adhesions, October 3, 1873 (“Treaty 3”) and as such have the right to hunt and fish within the provincially defined Whiskey Jack Forest Management Unit (the “Whiskey Jack Forest”);
- (b) a declaration that the Minister of Natural Resources (the “Minister”), or his delegate, had no authority to approve any forest licences, forest management plans, work schedules or make or give any other approvals or authorizations for forest operations, within those lands subject to Treaty 3 that were added to the Province of Ontario by virtue of *The Ontario Boundaries Extension Act*, S.C. 1912, c. 40, (the “Keewatin Lands”) so as to infringe, violate, impair, abrogate, or derogate from, the right to hunt and fish guaranteed to the Plaintiffs by Treaty 3;
- (c) a declaration that within the Keewatin Lands, the Government of the Province of Ontario, its Ministers or delegates, have no power or jurisdiction to take up lands for lumbering within the meaning of Treaty 3, since this power is exclusively reserved to the Government of the Dominion of Canada;
- (d) a declaration that within the Keewatin Lands, the Government of the Province of Ontario, its Ministers or delegates, have no power or jurisdiction to do or permit

any activity that infringes, violates, impairs, abrogates or derogates from, the Plaintiffs' rights to hunt and fish pursuant to Treaty 3;

(e) a declaration that the activities carried out by Abitibi-Consolidated Inc. pursuant to Sustainable Forest Licence 542253 (the "Forest Licence"), the 2004 Contingency Forest Management Plan for the Whiskey Jack Forest (the "Contingency Forest Management Plan") and any work schedules or other approvals and authorizations issued by the Minister or his delegate to Abitibi-Consolidated Inc. for its forest operations within the Whiskey Jack Forest, infringe, violate, impair, abrogate, or derogate from, the right to hunt and fish guaranteed to the Plaintiffs by Treaty 3;

(f) a declaration that the Forest Licence, the 1999-2019 Forest Management Plan for the Whiskey Jack Forest, the Contingency Forest Management Plan and any work schedules or other approvals and authorizations of forest operations, insofar as they apply to the Keewatin Lands, are void and of no effect;

(g) an order quashing the decisions of the Minister or his delegate to approve the Forest Licence on April 24, 1997 and April 30, 1997, the Contingency Forest Management Plan on May 4, 2004 and any work schedules or other approvals and authorizations of forest operations related to the Contingency Forest Management Plan, insofar as they apply to the Keewatin Lands;

(h) an order prohibiting the Minister or his delegate from approving any forest licences, forest management plans, work schedules or other approvals and

authorizations of forest operations related to the Whiskey Jack Forest, insofar as they apply to the Keewatin Lands;

(i) an order granting an interim stay of the operation of the Forest Licence, the Contingency Forest Management Plan, and any work schedules or other approvals and authorizations of forest operations pursuant to the Contingency Forest Management Plan insofar as they apply to the Keewatin Lands, or such other interim order as this Honourable Court considers proper, pending the final determination of this action;

(j) damages in respect of such cutting that has occurred pursuant to the above noted approvals;

(k) pre-and-post judgment interest in accordance with the *Courts of Justice Act*;

(l) costs; and

(m) such further and other relief as this Honourable Court may deem just.

The Parties

2. Each of the Plaintiffs is a descendant of one or more of the Chiefs of the Saulteaux Tribe of the Ojibway Indians who signed Treaty 3, and is therefore entitled to exercise the rights established thereby. Each is a member of the Grassy Narrows First Nation, one of the Nations that signed Treaty 3.

3. The Minister is that Minister of the Crown charged with the administration of the *Crown Forest Sustainability Act*, 1994, S.O. 1994, c. 25 as amended (the “CFSA”).

4. Abitibi-Consolidated Inc. is a body corporate, which carries out a variety of forest operations in Ontario, including forest operations within the Whiskey Jack Forest, and is the holder of the Forest Licence, the Contingency Forest Management Plan, work schedules and various other approvals or authorizations in the Whiskey Jack Forest which have been issued by the Minister or his delegate pursuant to the CFSA.

Treaty 3

5. On October 3rd, 1873, Her Majesty the Queen in Right of Canada entered into Treaty 3 with the Saulteaux Tribe of the Ojibway Indians in respect of lands that are now situated in northwestern Ontario and eastern Manitoba. The full text of Treaty 3 is set out in Schedule “A” to this Statement of Claim. A map showing the boundaries of Treaty 3 is provided in Schedule “B” to this Statement of Claim.

The Rights Assured by Treaty 3

6. Treaty 3 assures the right to hunt and fish to the beneficiaries of Treaty 3 (the “Beneficiaries”) in the following terms:

Her Majesty further agrees with Her said Indians that they, the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered as hereinbefore described, subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada, and saving and excepting such tracts as may, from time to time, be required or taken up for settlement, mining, lumbering or other purposes by Her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized therefor by the said Government.

7. At the time that Treaty 3 was signed, both the Crown and the signatories to Treaty 3 understood that the right to hunt and fish included the right to trap. It also included the right to exercise this right to hunt and fish both for subsistence and commercial purposes.

8. The right to hunt and fish retained by the Beneficiaries, includes the following necessarily incidental rights:

- (a) the right to access appropriate lands and habitat in which to exercise the right to hunt and fish;
- (b) the right to maintain adequate habitat for the purpose of exercising the right to hunt and fish;
- (c) the right to maintain trapline infrastructure, including trails and cabins and the surrounding habitat necessary to render this infrastructure useful;
- (d) the right to exercise the right to hunt and fish in the particular areas associated with particular parties; and

- (e) the right to educate children and other family members regarding the exercise of the right to hunt and fish in accordance with the traditional manner in which such rights were passed on.

The Keewatin Lands

9. The Keewatin Lands include those lands approximately described as the lands within Treaty 3 that are east of the present-day boundary between Ontario and Manitoba and north of the English River and its various component lakes and rivers, which became part of the Province of Ontario in 1912 by virtue of the *Ontario Boundaries Extension Act*, S.C. 1912, c.40. Prior to their inclusion in Ontario, the Keewatin Lands were part of those lands that had formerly been the property of the Hudson's Bay Company, were included in the territory of Canada known as the North-West Territories by virtue of the *Order of Her Majesty in Council Admitting Rupert's Land and the North-Western Territory into the Union*, June 23, 1870, and, in particular, were within the District of Keewatin. Attached as Schedules "C", "D", and "E" are maps that show the boundary of Ontario in 1873, 1889 and 1912, respectively.

10. The *Ontario Boundary Extension Act*, S.C. 1912, c. 40, provides that the Province of Ontario "will recognize the rights of the Indian inhabitants" in the Keewatin Lands, as well as throughout the remainder of lands added to the Province of Ontario.

11. The Whiskey Jack Forest Management Unit is wholly within the "tract surrendered" in Treaty 3 and includes lands that are within the Keewatin Lands.

Interference with Treaty 3 Rights

12. Stone-Consolidated Corporation applied for and received the Forest Licence.
13. Abitibi-Price Inc. and Stone-Consolidated Corporation amalgamated in 1997 to form Abitibi-Consolidated Inc. Abitibi-Consolidated Inc. now holds the Forest Licence as the successor to Stone-Consolidated Corporation.
14. The Minister or his delegate approved the Forest Licence, the Contingency Forest Management Plan and also approved work schedules and made other approvals and authorizations pursuant to the Contingency Forest Management Plan.
15. As a result of the approvals of the Minister or his delegate, Abitibi-Consolidated Inc. has conducted forest operations in the Keewatin Lands under the Forest Licence, the Contingency Forest Management Plan, work schedules and other approvals or authorizations including, but not limited to, clear cutting areas of the forest, building roads, removing beaver dams, preparing areas for replanting and spraying pesticides and herbicides over the forest and cut areas (the "Forestry Activities").
16. The Forestry Activities carried out by Abitibi-Consolidated Inc. substantially impair the ability of the Beneficiaries to exercise their treaty right to hunt and fish. In particular:

- (a) while logging operations are under-way the Beneficiaries (including the Plaintiffs) cannot enter the area being logged for the purpose of hunting or trapping, nor can they hunt or trap in the vicinity of active logging operations;
- (b) the Forestry Activities either destroy or render unusable infrastructure used for hunting or trapping;
- (c) the clear-cut areas are unsuitable for the exercise of trapping rights for a period of 15 to 45 years following the logging;
- (d) the Forestry Activities result in the fragmentation of habitat, which destroys or reduces the potential of unlogged habitat for the purpose of trapping;
- (e) the Forestry Activities result in the displacement of both aboriginal and non-aboriginal hunters and trappers from logged areas (and affected areas) increasing hunting and trapping pressure on remaining areas, thus making it more difficult for the Beneficiaries (including the Plaintiffs) to exercise their treaty right to hunt and fish;
- (f) the roads built for the purpose of Forestry Activities increase the potential for access by non-aboriginal hunters similarly increasing hunting pressures, thus making it more difficult for the Beneficiaries (including the Plaintiffs) to exercise their treaty right to hunt and fish;
- (g) the application of herbicides to clear cut areas delays or prevents the growth of deciduous trees, which reduces or eliminates large ungulate (particularly moose) populations from seven to ten years, thus interfering with the ability to hunt; and

(h) the cumulative effect of all of these factors is that the Forestry Activities impair the ability to the Beneficiaries (including the Plaintiffs) to pass on their culture and methods of hunting and trapping to their children and relatives.

Forest Licence *Ultra Vires* the Province

17. The exclusive jurisdiction over Indians, and Lands reserved for the Indians, including legislative and executive jurisdiction in respect of treaty rights, unless otherwise provided by the terms of a treaty, federal or imperial statute, is vested in the Parliament and Executive of the Government of Canada pursuant to s. 91(24) of the *Constitution Act, 1867*. Treaty 3 makes no provision for the Legislature or Executive of the Province of Ontario to infringe or impair the treaty rights contained in Treaty 3.

18. Neither the Executive or Legislature of the Province of Ontario, nor Abitibi-Consolidated Inc., has been authorized by the Government of Canada to “take up tracts” for any purpose in the Keewatin Lands.

19. The Parliament of Canada has enacted no law that authorizes or otherwise enables the Legislature or Executive of Ontario to infringe or otherwise impair the Plaintiffs’ right to hunt and fish contained in Treaty 3 in the Keewatin Lands.

20. As such the Forest Licence authorizes acts that impair a matter at the core of s. 91(24) of the *Constitution Act, 1967*. Therefore, the Forest Licence and all approvals derived therefrom are *ultra vires* the Province and of no force and effect.

Forest Licence *Ultra Vires* the Minister's Statutory Power

21. Under the CFSA, no company or person may conduct forest operations in a Crown forest without a forest licence, forest management plan, work schedule, or other licences or authorizations duly approved by the Minister.

22. Section 6 of the CFSA provides that the Minister or his delegate has no authority to approve or otherwise authorize any activities that abrogate or derogate from the rights of the Plaintiffs under Treaty 3.

23. The above-described matters constitute an abrogation or derogation of the Plaintiffs' right to hunt and fish under Treaty 3. As such the Forest Licence and all approvals derived therefrom are *ultra vires* the Minister pursuant to section 6 of the CFSA.

Unjustifiable Infringement of the Plaintiffs' Treaty Right

24. In the alternative, if the Forest Licence is not *ultra vires* the Province or the Minister, it is an unjustifiable infringement of the Plaintiffs' treaty right. The Plaintiffs repeat and rely upon the allegations in paragraph 16 to describe the nature of the *prima facie* infringement of their treaty right.

25. Furthermore, neither the Legislature nor the Lieutenant-Governor-in-Council have provided sufficient direction by either legislation or regulation regarding how the Minister is to deal with the treaty right to hunt and fish, despite the fact that the decisions made by the Minister threaten to infringe the treaty right to hunt and fish of the Plaintiffs in a substantial number of cases. For this reason, the CFSA itself constitutes an infringement of the treaty right to hunt and fish.

26. The infringement cannot be justified as:

(a) there was no consultation with the Plaintiffs' or with Grassy Narrows First Nation, or such consultation as did occur was conducted without the genuine intention of ascertaining the Plaintiffs' rights and interests and accommodating those rights and interests;

(b) any consultation was conducted under circumstances where the Minister knew or ought to have known that the Plaintiffs' and Grassy Narrows First Nation did not have the means to meaningfully participate in consultation, in particular:

(1) the Minister knew or ought to have known that Grassy Narrows did not have the financial resources to retain properly qualified advisors and professionals to allow them to properly assess and comment on the effects of the various approvals proposed by the Minister;

(2) the Minister knew or ought to have known that the various approvals being considered were highly complex and could not be assessed for the

purpose of determining the scope and extent of any potential infringement of the Treaty Rights without the assistance of qualified advisors; and,

(3) the Minister knew or ought to have known that the statutory mechanisms provided for by the *Indian Act*, R.S.C. 1985, c. I.5, as amended, for the governance of Grassy Narrows First Nation did not give the community an effective mechanism to, in a timely manner, comment upon or make decisions regarding the off-reserve rights of the members of Grassy Narrows First Nation; and

(4) the Minister knew or ought to have known that the economic and personal circumstances, including level of income, employment circumstances and level of education, of the individual trappers were such that they could not meaningfully carry out the work necessary to engage in effective consultation.

(c) the Minister delegated its duty to consult to Abitibi-Consolidated Inc.;

(d) the Forest Licence and approval or authorizations derived therefrom did not meaningfully accommodate the rights and interests of the Plaintiffs and Grassy Narrows First Nation; and

(e) there was no reasonable compensation offered to the Plaintiffs.

27. As a result of the fact that the CFSA, the Forest Licence and the approvals or authorizations derived therefrom constitute an unjustifiable infringement of the treaty right to hunt and fish of the Plaintiffs, they are contrary to s. 35(1) of the *Constitution Act, 1982* and

therefore, to that extent, are of no force and effect pursuant to s. 52 of the *Constitution Act, 1982*.

January 10, 2005

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SCHEDULE "A" – Text of Treaty 3

TREATY 3

BETWEEN

HER MAJESTY THE QUEEN

AND THE

SAULTEAUX TRIBE

OF THE

OJIBBEWAY INDIANS

AT THE

NORTHWEST ANGLE ON THE LAKE OF THE WOODS WITH ADHESIONS

(REPRINTED 1966) (REPRINTED 1978)

LAYOUT IS NOT EXACTLY LIKE ORIGINAL

TRANSCRIBED FROM:
ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

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ORDER IN COUNCIL SETTING UP COMMISSION FOR TREATY 3

The Committee have had under consideration the memorandum dated 19th April, 1871, from the Hon. the Secretary of State for the provinces submitting with reference to his report of the 17th of the same month that the Indians mentioned in the last paragraph of that report and with whom it will be necessary first to deal occupy the country from the water shed of Lake Superior to the north west angle of the Lake of the Woods and from the American border to the height of land from which the streams flow towards Hudson's Bay.

That they are composed of Saulteaux and Lac Seul Indians of the Ojibbeway Nation, and number about twenty-five hundred men, women and children, and, retaining what they desire in reserves at certain localities where they fish for sturgeon, would, it is thought be willing to surrender for a certain annual payment their lands to the Crown. That the American Indians to

the south of them surrendered their lands to the Government of the United States for an annual payment which has been stated to him (but not on authority) to amount to ten dollars per head for each man, woman and child of which six dollars is paid in goods and four in money. That to treat with these Indians with advantage he recommends that Mr. Simon J. Dawson of the Department of Public Works and Mr. Robert Pither of the Hudson's Bay Company's service be associated with Mr. Wemyss M. Simpson — and further that the presents which were promised the Indians last year and a similar quantity for the present year should be collected at Fort Francis not later than the middle of June also that four additional suits of Chiefs' clothes and flags should be added to those now in store at Fort Francis — and further that a small house and store for provisions should be constructed at Rainy River at the site and of the dimensions which Mr. Simpson may deem best — that the assistance of the Department of Public Works will be necessary should his report be adopted in carrying into effect the recommendations therein made as to provisions, clothes and construction of buildings.

He likewise submits that it will be necessary that the sum of Six Thousand dollars in silver should be at Fort Francis subject to the Order of the above named Commissioners on the fifteenth day of June next — And further recommends that in the instructions to be given to them they should be directed to make the best arrangements in their power but authorized if need be to give as much as twelve dollars a family for each family not exceeding five — with such small Sum in addition where the family exceeds five as the Commissioners may find necessary — Such Subsidy to be made partly in goods and provisions and partly in money or wholly in goods and provisions should the Commissioners so decide for the surrender of the lands described in the earlier part of this report.

The Committee concur in the foregoing recommendations and submit the same for Your Excellency's approval.

Signed: Charles Tupper
25 April/71

TREATY No. 3

ARTICLES OF A TREATY made and concluded this third day of October, in the year of Our Lord one thousand eight hundred and seventy-three, between Her Most Gracious Majesty the Queen of Great Britain and Ireland, by Her Commissioners, the Honourable Alexander Morris, Lieutenant-Governor of the Province of Manitoba and the North-west Territories; Joseph Alfred Norbert Provencher and Simon James Dawson, of the one part, and the Saulteaux Tribe of the Ojibway Indians, inhabitants of the country within the limits hereinafter defined and described, by their Chiefs chosen and named as hereinafter mentioned, of the other part.

Whereas the Indians inhabiting the said country have, pursuant to an appointment made by the said Commissioners, been convened at a meeting at the north-west angle of the Lake of the

Woods to deliberate upon certain matters of interest to Her Most Gracious Majesty, of the one part, and the said Indians of the other.

And whereas the said Indians have been notified and informed by Her Majesty's said Commissioners that it is the desire of Her Majesty to open up for settlement, immigration and such other purpose as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract, and to make a treaty and arrange with them so that there may be peace and good will between them and Her Majesty and that they may know and be assured of what allowance they are to count upon and receive from Her Majesty's bounty and benevolence.

And whereas the Indians of the said tract, duly convened in council as aforesaid, and being requested by Her Majesty's said Commissioners to name certain Chiefs and Headmen, who should be authorized on their behalf to conduct such negotiations and sign any treaty to be founded thereon, and to become responsible to Her Majesty for their faithful performance by their respective bands of such obligations as shall be assumed by them, the said Indians have thereupon named the following persons for that purpose, that is to say: —

KEK-TA-PAY-PI-NAIS (Rainy River.)
KITCHI-GAY-KAKE (Rainy River.)
NOTE-NA-QUA-HUNG (North-West Angle.)
NAWE-DO-PE-NESS (Rainy River.)
POW-WA-SANG (North-West Angle.)
CANDA-COM-IGO-WE-NINIE (North-West Angle.)
PAPA-SKO-GIN (Rainy River.)
MAY-NO-WAH-TAW-WAYS-KIONG (North-West Angle.)
KITCHI-NE-KA-LE-HAN (Rainy River.)
SAH-KATCH-EWAY (Lake Seul.)
MUPA-DAY-WAH-SIN (Kettle Falls.)
ME-PIE-SIES (Rainy Lake, Fort Frances.)
OOS-CON-NA-GEITH (Rainy Lake.)
WAH-SHIS-KOUCE (Eagle Lake.)
KAH-KEE-Y-ASH (Flower Lake.)
GO-BAY (Rainy Lake.)
KA-MO-TI-ASH (White Fish Lake.)
NEE-SHO-TAL (Rainy River.)
KEE-JE-GO-KAY (Rainy River.)
SHA-SHA-GANCE (Shoal Lake.)
SHAH-WIN-NA-BI-NAIS (Shoal Lake.)
AY-ASH-A-WATH (Buffalo Point.)
PAY-AH-BEE-WASH (White Fish Bay.)
KAH-TAY-TAY-PA-E-CUTCH (Lake of the Woods.)

And thereupon, in open council, the different bands having presented their Chiefs to the said Commissioners as the Chiefs and Headmen for the purposes aforesaid of the respective bands of Indians inhabiting the said district hereinafter described:

And whereas the said Commissioners then and there received and acknowledged the persons so presented as Chiefs and Headmen for the purpose aforesaid of the respective bands of Indians inhabiting the said district hereinafter described;

And whereas the said Commissioners have proceeded to negotiate a treaty with the said Indians, and the same has been finally agreed upon and concluded, as follows, that is to say: —

The Saulteaux Tribe of the Ojibbeway Indians and all other the Indians inhabiting the district hereinafter described and defined, do hereby cede, release, surrender and yield up to the Government of the Dominion of Canada for Her Majesty the Queen and Her successors forever, all their rights, titles and privileges whatsoever, to the lands included within the following limits, that is to say: —

Commencing at a point on the Pigeon River route where the international boundary line between the Territories of Great Britain and the United States intersects the height of land separating the waters running to Lake Superior from those flowing to Lake Winnipeg; thence northerly, westerly and easterly along the height of land aforesaid, following its sinuosities, whatever their course may be, to the point at which the said height of land meets the summit of the watershed from which the streams flow to Lake Nepigon; thence northerly and westerly, or whatever may be its course, along the ridge separating the waters of the Nepigon and the Winnipeg to the height of land dividing the waters of the Albany and the Winnipeg; thence westerly and north-westerly along the height of land dividing the waters flowing to Hudson's Bay by the Albany or other rivers from those running to English River and the Winnipeg to a point on the said height of land bearing north forty-five degrees east from Fort Alexander, at the mouth of the Winnipeg; thence south forty-five degrees west to Fort Alexander, at the mouth of the Winnipeg; thence southerly along the eastern bank of the Winnipeg to the mouth of White Mouth River; thence southerly by the line described as in that part forming the eastern boundary of the tract surrendered by the Chippewa and Swampy Cree tribes of Indians to Her Majesty on the third of August, one thousand eight hundred and seventy-one, namely, by White Mouth River to White Mouth Lake, and thence on a line having the general bearing of White Mouth River to the forty-ninth parallel of north latitude; thence by the forty-ninth parallel of north latitude to the Lake of the Woods, and from thence by the international boundary line to the place beginning.

The tract comprised within the lines above described, embracing an area of fifty-five thousand square miles, be the same more or less. To have and to hold the same to Her Majesty the Queen, and Her successors forever.

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for farming lands, due respect being had to lands at present cultivated by the said Indians, and also to lay aside and reserve for the benefit of the said Indians, to be administered and dealt with for

them by Her Majesty's Government of the Dominion of Canada, in such a manner as shall seem best, other reserves of land in the said territory hereby ceded, which said reserves shall be selected and set aside where it shall be deemed most convenient and advantageous for each band or bands of Indians, by the officers of the said Government appointed for that purpose, and such selection shall be so made after conference with the Indians; provided, however, that such reserves, whether for farming or other purposes, shall in no wise exceed in all one square mile for each family of five, or in that proportion for larger or smaller families; and such selections shall be made if possible during the course of next summer, or as soon thereafter as may be found practicable, it being understood, however, that if at the time of any such selection of any reserve, as aforesaid, there are any settlers within the bounds of the lands reserved by any band, Her Majesty reserves the right to deal with such settlers as She shall deem just so as not to diminish the extent of land allotted to Indians; and provided also that the aforesaid reserves of lands, or any interest or right therein or appurtenant thereto, may be sold, leased or otherwise disposed of by the said Government for the use and benefit of the said Indians, with the consent of the Indians entitled thereto first had and obtained.

And with a view to show the satisfaction of Her Majesty with the behaviour and good conduct of Her Indians She hereby, through Her Commissioners, makes them a present of twelve dollars for each man, woman and child belonging to the bands here represented, in extinguishment of all claims heretofore preferred.

And further, Her Majesty agrees to maintain schools for instruction in such reserves hereby made as to Her Government of Her Dominion of Canada may seem advisable whenever the Indians of the reserve shall desire it.

Her Majesty further agrees with Her said Indians that within the boundary of Indian reserves, until otherwise determined by Her Government of the Dominion of Canada, no intoxicating liquor shall be allowed to be introduced or sold, and all laws now in force or hereafter to be enacted to preserve Her Indian subjects inhabiting the reserves or living elsewhere within Her North-west Territories, from the evil influences of the use of intoxicating liquors, shall be strictly enforced.

Her Majesty further agrees with Her said Indians that they, the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered as hereinbefore described, subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada, and saving and excepting such tracts as may, from time to time, be required or taken up for settlement, mining, lumbering or other purposes by Her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized therefor by the said Government.

It is further agreed between Her Majesty and Her said Indians that such sections of the reserves above indicated as may at any time be required for Public Works or buildings of what nature soever may be appropriated for that purpose by Her Majesty's Government of the Dominion of Canada, due compensation being made for the value of any improvements thereon.

And further, that Her Majesty's Commissioners shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the tract above described, distributing them in families, and shall in every year ensuing the date hereof, at some period in each year to be duly notified to the Indians, and at a place or places to be appointed for that purpose within the territory ceded, pay to each Indian person the sum of five dollars per head yearly.

It is further agreed between Her Majesty and the said Indians that the sum of fifteen hundred dollars per annum shall be yearly and every year expended by Her Majesty in the purchase of ammuniton and twine for nets for the use of the said Indians.

It is further agreed between Her Majesty and the said Indians that the following articles shall be supplied to any band of the said Indians who are now actually cultivating the soil or who shall hereafter commence to cultivate the land, that is to say: two hoes for every family actually cultivating, also one spade per family as aforesaid, one plough for every ten families as aforesaid, five harrows for every twenty families as aforesaid, one scythe for every family as aforesaid, and also one axe and one cross-cut saw, one hand-saw, one pit-saw, the necessary files, one grind-stone, one auger for each band, and also for each Chief for the use of his band one chest of ordinary carpenter's tools; also for each band enough of wheat, barley, potatoes and oats to plant the land actually broken up for cultivation by such band; also for each band one yoke of oxen, one bull and four cows; all the aforesaid articles to be given once for all for the encouragement of the practice of agriculture among the Indians.

It is further agreed between Her Majesty and the said Indians that each Chief duly recognized as such shall receive an annual salary of twenty-five dollars per annum, and each subordinate officer, not exceeding three for each band, shall receive fifteen dollars per annum; and each such Chief and subordinate officer as aforesaid shall also receive once in every three years a suitable suit of clothing; and each Chief shall receive, in recognition of the closing of the treaty, a suitable flag and medal.

And the undersigned Chiefs, on their own behalf and on behalf of all other Indians inhabiting the tract within ceded, do hereby solemnly promise and engage to strictly observe this treaty, and also to conduct and behave themselves as good and loyal subjects of Her Majesty the Queen. They promise and engage that they will in all respects obey and abide by the law, that they will maintain peace and good order between each other, and also between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether Indians or whites, now inhabiting or hereafter to inhabit any part of the said ceded tract, and that they will not molest the person or property of any inhabitants of such ceded tract, or the property of Her Majesty the Queen, or interfere with or trouble any person passing or travelling through the said tract, or any part thereof; and that they will aid and assist the officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulations of this treaty, or infringing the laws in force in the country so ceded.

IN WITNESS WHEREOF, Her Majesty's said Commissioners and the said Indian Chiefs have hereunto subscribed and set their hands at the North-West Angle of the Lake of the Woods this day and year herein first above named.

Signed by the Chiefs within named, in presence of the following witnesses, the same having been first read and explained by the Honorable James McKay:

JAMES McKay,
MOLYNEUX St. JOHN,
ROBERT PITHER,
CHRISTINE V. K. MORRIS,
CHARLES NOLIN,
A. McDONALD, Capt.,
Comg. Escort to Lieut. Governor.
JAS. F. GRAHAM,
JOSEPH NOLIN,
A. McLEOD,
GEORGE McPHERSON, Sr.,
SEDLEY BLANCHARD,
W. FRED. BUCHANAN,
FRANK G. BECHER,
ALFRED CODD, M.D.,
G. S. CORBAULT,
PIERRE LEVIELLER,
NICHOLAS CHATELAINE.

ALEX. MORRIS L.G.,
J. A. N. PROVENCHER, Ind. Comr.,
S. J. DAWSON,

KEE-TA-KAY-PI-NAIS,
his x mark
KITCHI-GAY-KAKE,
his x mark
NO-TE-NA-QUA-HUNG,
his x mark
MAWE-DO-PE-NAIS,
his x mark
POW-WA-SANG,
his x mark
CANDA-COM-IGO-WI-NINE,
his x mark
MAY-NO-WAH-TAW-WAYS-KUNG,
his x mark
KITCHI-NE-KA-BE-HAN,
his x mark
SAH-KATCH-EWAY,
his x mark
MUKA-DAY-WAH-SIN,
his x mark
ME-KIE-SIES,
OOS-CON-NA-GEISH,
his x mark
WAH-SHIS-KOUCE,
his x mark
KAH-KEE-Y-ASH,
his x mark
GO-BAY,
his x mark
KA-ME-TI-ASH,
his x mark
NEE-SHO-TAL,
his x mark
KEE-JEE-GO-KAY,
his x mark
SHA-SHA-GAUCE,
his x mark
SHAW-WIN-NA-BI-NAIS,
his x mark
AY-ASH-A-WASH,
his x mark
PAY-AH-BEE-WASH,
his x mark
KAH-TAY-TAY-PA-O-CUTCH,
his x mark

We, having had communication of the treaty, a certified copy whereof is hereto annexed, but not having been present at the councils held at the North West Angle of the Lake of the Woods between Her Majesty's Commissioners, and the several Indian Chiefs and others therein named, at which the articles of the said treaty were agreed upon, hereby for ourselves and the several bands of Indians which we represent, in consideration of the provisions of the said treaty being extended to us and the said bands which we represent, transfer, surrender and relinquish to Her Majesty the Queen, Her heirs and successors, to and for the use of Her Government of Her Dominion of Canada, all our right, title and privilege whatsoever, which we, the said Chiefs and the said bands which we represent have, hold or enjoy, of, in and to the territory described and fully set out in the said articles of treaty, and every part thereof. To have and to hold the same unto and to the use of Her said Majesty the Queen, Her heirs and successors forever.

And we hereby agree to accept the several provisions, payments and reserves of the said treaty, as therein stated, and solemnly promise and engage to abide by, carry out and fulfil all the stipulations, obligations and conditions therein contained, on the part of the said Chiefs and Indians therein named, to be observed and performed; and in all things to conform to the articles of the said treaty as if we ourselves and the bands which we represent had been originally contracting parties thereto, and had been present and attached our signatures to the said treaty.

IN WITNESS WHEREOF, Her Majesty's said Commissioners and the said Indian Chiefs have hereunto subscribed and set their hands, this thirteenth day of October, in the year of Our Lord one thousand eight hundred and seventy-three.

Signed by S. J. Dawson, Esquire, one of Her Majesty's said Commissioners, for and on behalf and with the authority and consent of the Honorable Alexander Morris, Lieutenant Governor of Manitoba and the North-West Territories, and J. A. N. Provencher, Esq., the remaining two Commissioners, and himself and by the Chiefs within named, on behalf of themselves and the several bands which they represent, the same and the annexed certified copy of articles of treaty having been first read and explained in presence of the following witnesses:

THOS. A. P. TOWERS,
JOHN AITKEN,
A. J. McDONALD.
UNZZAKI.
JAS. LOGANOSH,
his x mark
PINLLSISE.

For and on behalf of the Commissioners, the Honorable Alexander Morris, Lieut. Governor of Manitoba and the North West Territories, Joseph Albert Norbert Provencher, Esquire, and the undersigned S. J. DAWSON, Commissioner.
PAY-BA-MA-CHAS,
his x mark
RE-BA-QUIN,
his x mark
ME-TAS-SO-QUE-NE-SKANK,
his x mark

To S. J. Dawson, Esquire, Indian Commissioner, &c., &c., &c.

SIR, — We hereby authorize you to treat with the various bands belonging to the Salteaux Tribe of the Ojibbeway Indians inhabiting the North-West Territories of the Dominion of Canada not included in the foregoing certified copy of articles of treaty, upon the same conditions and stipulations as are therein agreed upon, and to sign and execute for us and in our name and on our behalf the foregoing agreement annexed to the foregoing treaty.

NORTH-WEST ANGLE, LAKE OF THE WOODS,
October 4th, A.D. 1873.

ALEX. MORRIS,
Lieutenant-Governor.
J. A. N. PROVENCHER,
Indian Commissioner.

ADHESION BY HALFBREEDS OF RAINY RIVER AND LAKE (A.)

This Memorandum of Agreement made and entered into this twelfth day of September one thousand eight hundred and seventy-five, between Nicholas Chatelaine, Indian interpreter at

Fort Francis and the Rainy River and acting herein solely in the latter capacity for and as representing the said Half-breeds, on the one part, and John Stoughton Dennis, Surveyor General of Dominion Lands, as representing Her Majesty the Queen through the Government of the Dominion, of the other part, Witnesseth as follows:—

Whereas the Half-breeds above described, by virtue of their Indian blood, claim a certain interest or title in the lands or territories in the vicinity of Rainy Lake and the Rainy River, for the commutation or surrender of which claims they ask compensation from the Government.

And whereas, having fully and deliberately discussed and considered the matter, the said Half-breeds have elected to join in the treaty made between the Indians and Her Majesty, at the North-West Angle of the Lake of the Woods, on the third day of October, 1873, and have expressed a desire thereto, and to become subject to the terms and conditions thereof in all respects saving as hereinafter set forth.

It is now hereby agreed upon by and between the said parties hereto (this agreement, however, to be subject in all respects to approval and confirmation by the Government, without which the same shall be considered as void and of no effect), as follows, that is to say: The Half-breeds, through Nicholas Chatelaine, their Chief above named, as representing them herein, agree as follows, that is to say:—

That they hereby fully and voluntarily surrender to Her Majesty the Queen to be held by Her Majesty and Her successors for ever, any and all claim, right, title or interest which they, by virtue of their Indian blood, have or possess in the lands or territories above described, and solemnly promise to observe all the terms and conditions of the said treaty (a copy whereof, duly certified by the Honourable the Secretary of State of the Dominion has been this day placed in the hands of the said Nicholas Chatelaine).

In consideration of which Her Majesty agrees as follows, that is to say:—

[diagram]

That the said Half-breeds, keeping and observing on their part the terms and conditions of the said treaty shall receive compensation in the way of reserves of land, payments, annuities and presents, in manner similar to that set forth in the several respects for the Indians in the said treaty; it being understood, however, that any sum expended annually by Her Majesty in the purchase of ammunition and twine for nets for the use of the said Half-breeds shall not be taken out of the fifteen hundred dollars set apart by the treaty for the purchase annually of those articles for the Indians, but shall be in addition thereto, and shall be a pro rata amount in the proportion of the number of Half-breeds parties hereto to the number of Indians embraced in the treaty; and it being further understood that the said Half-breeds shall be entitled to all the benefits of the said treaty as from the date thereof, as regards payments and annuities, in the same manner as if they had been present and had become parties to the same at the time of the making thereof.

And whereas the said Half-breeds desire the land set forth as tracts marked (A) and (B) on the rough diagram attached hereto, and marked with the initials of the parties aforementioned to this agreement, as their reserves (in all eighteen square miles), to which they would be entitled under the provisions of the treaty, the same is hereby agreed to on the part of the Government.

Should this agreement be approved by the Government, the reserves as above to be surveyed in due course.

Signed at Fort Francis, the day and date
above mentioned, in presence of us as
witnesses: A. R. TILLIE,
CHAS. S. CROWE,
W. B. RICHARDSON,
L. KITTSOON.

J. S. DENNIS, [L.S.]
NICHOLAS CHATELAINE. [L.S.]
his x mark

ADHESION OF LAC SEUL INDIANS TO TREATY No. 3

LAC SEUL, 9th June, 1874.

We, the Chiefs and Councillors of Lac Seul, Seul, Trout and Sturgeon Lakes, subscribe and set our marks, that we and our followers will abide by the articles of the Treaty made and concluded with the Indians at the North West Angle of the Lake of the Woods, on the third day of October, in the year of Our Lord one thousand eight hundred and seventy-three, between Her Most Gracious Majesty the Queen of Great Britain and Ireland, by Her Commissioners, Hon. Alexander Morris, Lieutenant Governor of Manitoba and the North-West Territories, Joseph Albert N. Provencher, and Simon J. Dawson, of the one part, and the Saulteaux tribes of Ojibewas Indians, inhabitants of the country as defined by the Treaty aforesaid.

IN WITNESS WHEREOF, Her Majesty's Indian Agent and the Chiefs and Councillors have hereto set their hands at Lac Seul, on the 9th day of June, 1874.

(Signed) ACKEMENCE, Councillors.

his x mark

MAINEETAINEQUIRE,

his x mark

NAH-KEE-JECKWAHE,

his x mark

The whole Treaty explained by R. J. N.

PITHER.

Witnesses:

(Signed) JAMES McKENZIE.

LOUIS KITTSOON.

NICHOLAS CHATELAINE.

his x mark

R. J. N. PITHER, Indian Agent.

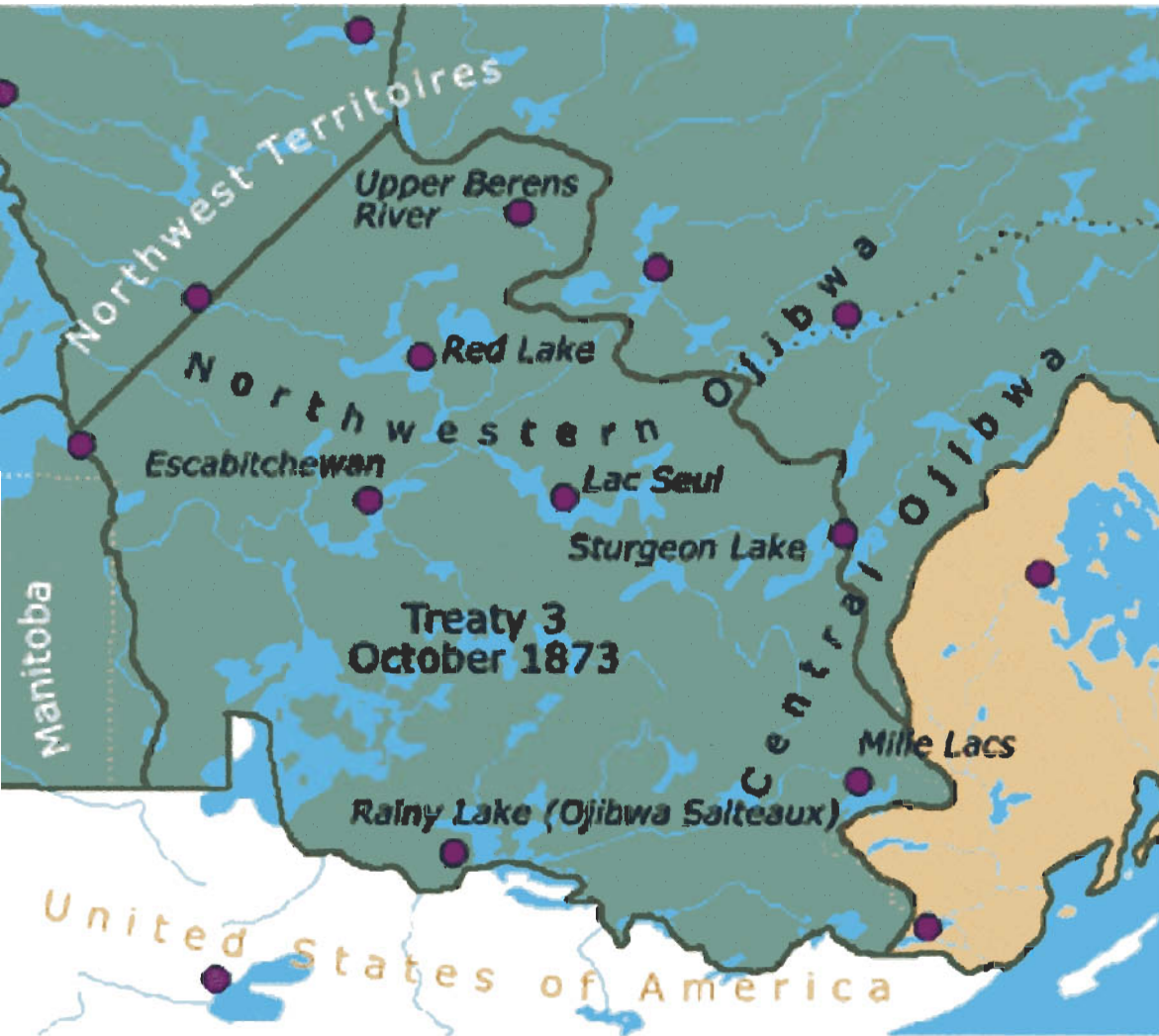
JOHN CROMARTY, Chief.

his x mark

Schedule "B"

Map of the Area for the October 1873 Treaty – Treaty 3

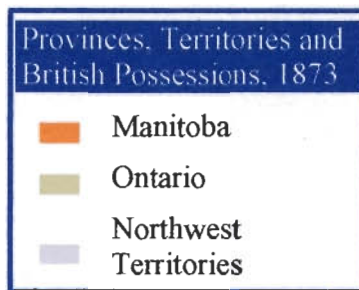
(Source: Natural Resources Canada, Atlas of Canada, Historical Indian Treaties, atlas.gc.ca)



Schedule "C"

Map of Northwestern Ontario, 1873

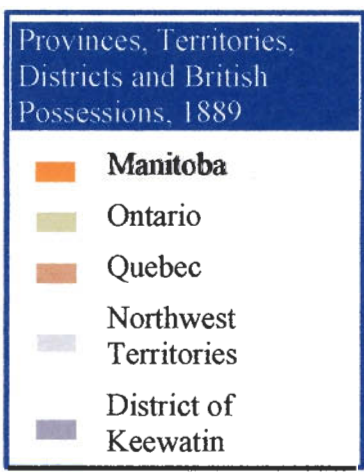
(Source: Natural Resources Canada, Atlas of Canada, Territorial Evolution of Canada, atlas.gc.ca)



Schedule "D"

Map of Northwestern Ontario, 1889

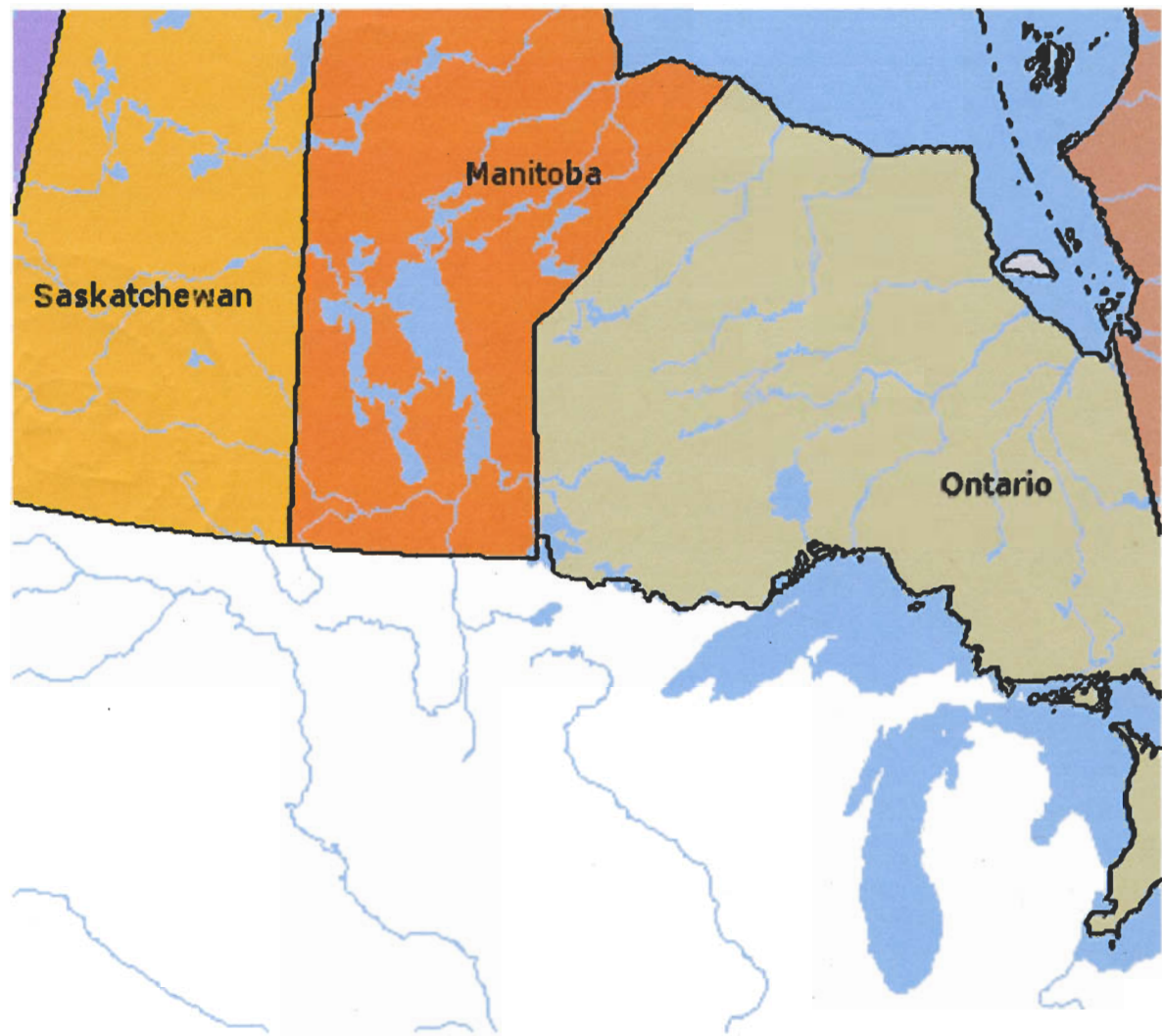
(Source: Natural Resources Canada, Atlas of Canada, Territorial Evolution of Canada, atlas.gc.ca)



Schedule "E"

Map of Northwestern Ontario, 1912

(Source: Natural Resources Canada, Atlas of Canada, Territorial Evolution of Canada, atlas.gc.ca)



WILLIE KEEWATIN et al
Plaintiffs

and

**MINISTER OF NATURAL RESOURCES
and ABITIBI-CONSOLIDATED INC.**
Defendants

Court File No: >>

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
Toronto

STATEMENT OF CLAIM

COOK ROBERTS

7th Floor – 1175 Douglas Street
Victoria, B.C. V8W 2E1

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