Kichesipirini Algonquin First Nation
Kichi Sibi Anishnabe / Algonquin Nation
Canada

By Honouring Our Past We Determine Our Future
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Prior Social Organization – Continuing Community Confusion Complicates Consultation

Since it has been established that the purpose of s. 35(1) is to reconcile the prior presence of aboriginal peoples in North America with the assertion of Crown sovereignty, it is clear from this statement that s. 35(1) must recognize and affirm both aspects of that prior presence – first, the occupation of land, and second, the prior social organization and distinctive cultures of aboriginal peoples on that land.

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February 2, 2011

Dear Honourable Robert Douglas Nicholson, Mr. Kirkpatrick, Mr. Jim Sherratt,

Re: Communication from City of Ottawa dated January 14, 2011

In the correspondence received from Mayor Jim Watson, City of Ottawa, Mr. Watson states that the City of Ottawa has been in regular communications with the Algonquins of Ontario, and has been working closely with them on all issues regarding the Algonquin land claim and developments within the municipality. Mayor Watson also claims that our letter was the first notice of Aboriginal interest received for the Kichesipirini Algonquin First Nation. I think it rather unfortunate that the representatives of the municipality have not been more adequately informed by the Algonquins of Ontario, or their federal and provincial representatives Mr. Brian Crane, or Mr. Robin Aitkens, since all were well aware of Kichesipirini Algonquin First Nation interests for years. Prime Minister Stephen Harper has also been aware, as communications were also sent directly to him.

Kichesipirini Algonquin First Nation Expressions of Interests

The Kichesipirini Algonquin First Nation has for years expressed interest in the assertions of Algonquin title and refusal to participate within the flawed Algonquin land claim for years.

Inclusive of contemporary assertions of interests and rights is our submission of the document Lasting Treaties, Living Covenants, February 2007.

In 2007 the Kichesipirini Algonquin First Nation began detailed formal submissions of interest regarding title and jurisdiction. We submitted documents to the representatives of the negotiations table, and then to the federal government. Interpreting the lack of consultation as a breach of the Constitution and rule of law the Kichesipirini Algonquin First Nation began international submissions as we had stated that we would.

We began external communications January 2008, and submitting documents to the Office of the United Nations High Commissioner of Human Rights and the Special Rapporteur on the Rights of Indigenous Peoples and the Head of Information and Evidence Unit, Office of the Prosecutor at International Criminal Court in March, 2008.

We then initiated communications with international bodies recognizing that the issues were of international significance and informed the Ministry of Natural Resources on .November 21, 2008 that we had filed with the International Criminal Court.

On December 4, 2008, Governor-General Michaëlle Jean used her reserve power, as appointed representative of the Crown, to prorogue parliament at the request of Prime Minister Stephen Harper.

We sent numerous submissions directly to the Prime Minister of Canada and received no response.

We also informed the Minister of Human Resources and Skills Development about funding irregularities and the refusal to allow persons of Kichesipirini identity to access programs unless they assumed another Aboriginal identity consistent with domestic policy, thereby attempting to pressure them to extinguish existing rights. We continued to submit numerous concerns including those on the dates of March 30, 2009, September 9, 2009, October 10, 2009 to the Head of Information and Evidence Unit, Office of the Prosecutor, International Criminal Court

On December 30, 2009, Governor-General Michaëlle Jean once again, as appointed representative of the Crown, prorogued Parliament at the request of Prime Minister Stephen Harper.

Despite the various submissions, there was absolutely no response from the office of the Prime Minister.

Since our claims are of substantial strength they should have triggered a consultation process in accordance with the legal obligations and the fiduciary responsibilities of the Crown, however, despite the legal requirement the current Office of the Prime Minister, is refusing to acknowledge such communications or provide direction regarding such assertions. The duty to consult regarding Aboriginal claims of interests is, in our understanding, a constitutional issue, and any claims by the representatives of Canada of adherence to the "highest standards of accountability" regarding human rights or other issues should begin here, upholding our own Constitution, I would think.

The appropriate response should have been a pre-consultation examination of fact, consultation, and then the necessary resources to assist in the proper administration and negotiation of the claim. Although we have made regular attempts to inform the public without any attempt at procedural fairness it is impossible, and unnecessary, for the Kichesipirini Algonquin First Nation to make specific or particular claims, but it is the responsibility of the Crown and its agents to make available all pertinent information regarding the negotiations.

It is my understanding that as part of the Algonquins of Ontario process there is a Municipal Advisory Committee, co-chaired by Brian Crane and Norm Lemke, and that this committee represents local, county and district governments across and adjacent to the area that is subject to the Algonquin claim. It is also my understanding that besides its important advisory role to the Ontario negotiations, the committee has been established to gather, record and distribute information about the land claim, and that the municipality of the City of Pembroke and the municipality of the City of Ottawa are represented on this committee. Considering the fact that we have also made specific claims of interests in the Pembroke area I find it unusual that there hasn't been a better exchange of information and that representatives of the City of Ottawa have not been previously aware of Kichesipirini Algonquin First Nation claims or international submissions.

I have also noticed that in the communication received from the office of the Jim Watson, Mayor of Ottawa, an error in the letter to Chief Grant Tysick of the Kinouchepirini referring to the Kinouchepirini, in paragraph 3, as the Kichesipirini Algonquin First Nation.

Previously, the Algonquin people, and most specifically the people of the Pembroke area, have been presented with information concerning an Algonquin group asserting rights that is often confused with the Kichesipirini Algonquin First Nation. The Kichesipirini Algonquin First Nation is a historical community with a proven attachment and jurisdiction, particularly associated with the Ottawa River and primary permanent settlement near Pembroke, Ontario.

Please let me take this opportunity to address this error, and place it in proper context regarding the Algonquin Nation situation, and processes regarding consultation and conservation from a traditional Indigenous Peoples of Canada context, especially regarding the natural heritage and archaeological sites of interest to the traditional Indigenous Peoples in Canada, particularly referred to here as Ottawa's Great Forest and the Beaver Pond Forest.

Due to failure on the part of the current federal government to adequately respond to Kichesipirini submissions of concern and interest there has been a regrettable negligence in bringing clarity to a number of situations associated with this ongoing confusion. Most recently this confusion has also occurred at the Ottawa City level, with the above mentioned communications with the office of Mayor Jim Watson regarding the Beaver Pond Forest, or Ottawa's Great Forest proposed development controversy.

We assert that these particular events are representative of a larger problem affecting the Canadian Aboriginal relationship, and can be most directly traced to a failure to provide appropriate information regarding the differences regarding common law, statutory, or contractual obligations, and how these differences affect different Aboriginal communities and their relationship to the Constitution and rights to consultation.

Community Confusion and Failure to Clarify

As I have been stating for several years such confusions can be expected as a result of the highly irregular domestic policy imposed regarding "comprehensive land claim negotiations" through such ongoing processes as the "Algonquins of Ontario" claim. These processes seem to circumvent the legal requirements for an appropriate fact-finding process that would normally be part of a court case, by delegating the process, of which the supposed purpose is to resolve Aboriginal title and jurisdiction claims with sovereignty assertions of the "Crown", to a faulty negotiations process completely removed from historical examination, or open public access to procedures and information facilitating free, prior and informed consent.

The negligence in establishing an appropriate fact-finding process regarding unceded lands also becomes of grave concern when such failure can negatively impact the identification, preservation, and contextual interpretation of potential archaeological sites, and then potentially destroys, ignores or misappropriates important evidence related to Aboriginal history, title and jurisdictional reconciliation as required by law.

The current process, removed from the purposes and criteria established in the Constitution and subsequent case law interpretations, then encourages the generation of numerous communities that have not had opportunity to examine their own history, genealogies, or traditional governance, and appropriate consultation processes that can meet the purposes of the Constitution and rule of law are confounded.

The flawed process, removed from factual examination, encourages Aboriginal persons to identify with four predominant contextual camps;

- Those organized under domestic policy inherited from colonial administration,
- Those contemporary communities opposing the current process because of structural, accountability concerns, and continuing adherence to colonial legacy administration via the Indian Act,
- Contemporary communities claiming historical existence but removed from refutable historical fact or traditional governance practices, and, still continuing adherence to other colonial legacy administrations, which could pose a threat to traditional governance,
- Those such as the Kichesipirini, which are a historical community still maintaining traditional membership criteria of proven genealogy and geographical attachment, being natural citizenship, and traditional governance, recognizing totemic identity as a historical heraldic tradition of Canada and the world, and that the process cannot be completely resolved through domestic policy alone, but must be recognized as having elements of international character.

The Kichesipirini Algonquin First Nation, as a traditional Indigenous Peoples of Canada, with a documented record of specific customary practice and jurisdiction has expressed interests in title and cultural preservation, including the restoration of important heritage sites and the identification and preservation of potential new sites.

Failure to Clarify Compromises Consultation

The failure of the Conservative government to respond to years of communications from the Kichesipirini Algonquin First Nation regarding the blatant irregularities associated with the claim has contributed to years of unnecessary confusion and waste of public monies, that cannot bring certainty to the underlying issues, and if relied upon regarding potentially important archaeological evidence, could risk the loss of important Aboriginal, Canadian and world heritage sites and knowledge.

The design of the current negotiations process facilitates a commercial contract which cannot in anyway bring lasting resolution to the issues of re-establishing underlying title Canadian, and as such contributes to misinformation and a failure for Canada as a nation to adequately examine the character of the sovereignty assertions associated with our history of colonization.

Algonquin territory is unceded territory. Assertions of Aboriginal interests are areas of Constitutional character, meaning they are of interest and benefit to all Canadians. The relevant sections of the Constitution protecting Aboriginal rights have affirmed:

- Since it has been established that the purpose of s. 35(1) is to reconcile the prior presence of aboriginal peoples in North America with the assertion of Crown sovereignty, it is clear from this statement that s. 35(1) must recognize and affirm both aspects of that prior presence – first, the occupation of land, and second, the prior social organization and distinctive cultures of aboriginal peoples on that land.

Since appropriate reconciliation is a Constitutional issue then the appropriate identification, geographic location, intergenerational descent, and cultural jurisdiction within the prior social organization becomes extremely important.

Few Canadians have taken the time, or been afforded the opportunity, to give serious thought as to why there is such significance placed on emphasizing the prior social organization and the distinctive cultures of the Aboriginal peoples and their relationship to the land, but I feel that those important aspects of what is considered pertinent to appropriate reconciliation according to the Constitution and case law interpretations has a direct bearing on the issues regarding the areas known as Ottawa's Great Forest and the Beaver Pond Forest.

We therefore feel it imperative to again identify the differences between the Kichesipirini and Kinouchepirini Algonquin communities in a proper cultural context, as is required in the Constitution, and again assert the need for the development of appropriate processes regarding the issues discussed.

While it important to understand the differences regarding common law, statutory, or contractual obligations involving Aboriginal peoples of Canada it is the aspects of their original social organization that makes them Indigenous Peoples, and it from that designation that we can see how the common law and natural law can then be of positive interest to us all.

The ability of the original common law and natural law as contingent to the first social order provides us with a unique set of principles that organize our relationship to place; our relationship as a society with our natural world.

This prioritization should then cushion the potentially harsh effects of statute and contract.

Cultural Foundations of Prior Social Organization Crucial For Appropriate Consultation

As had been previously stated in Kichesipirini Algonquin First Nation correspondence made publicly available Aboriginal identity is multi- faceted and extremely complex, and is beyond the capacity of clarification by the parties involved.

As attested by Legal Professor Darlene Johnston who has dedicated much of her academic work establishing Aboriginal persons and groups were known by many names, representing the many aspects of their lives and social attachments and responsibilities. Added to that, and compounding the facts, was the reality that they were also known by different names by other Aboriginal groups, and then even again by different names by the British and the French. Sometimes the application of one name is incorrectly applied to thirty different Aboriginal groups.

There needs to be great care taken before acting with certainty regarding specific Aboriginal identity, community, territory and associated right. One group may be known by ten different names, and recorded as such throughout the historical documents. Various groups often entered into agreements with the actual title-holders for temporary use of certain lands, and without a comprehensive understanding of the traditional governance structures, which is required by law as the basis of a legitimate process, there cannot be a reconciliation of the issues as has been clearly determined by case law and judicial interpretations of our Constitution.

The reliance on research done that fails to include corrections made regarding interpretations primary sources can be carried over into contemporary claims. Such as the case where even the report again repeats the erroneous location of the Kinouchepirini in Figure 11, Location of Algonquin bands in the 17th century, page 31, A Interprovincial Crossings Environmental Assessment Study- Archaeological Potential Study –Gatineau/Ottawa Area, 850-567 Archaeological potential study – Gatineau/Ottawa Area (Roche/NCE), July 2008 Final Report

We should again, for accuracy, clarify that a close examination of primary records provides a great deal of valuable information, but much of it biased and removed from a comprehensive understanding of the entire cultural complex, and that many secondary historical records or reports sometimes carry over mistakes and misinterpretations. Concerning the two groups claiming historical existence in this situation one group claims limited referenced sources that have been known to be proven inaccurate, but even if not so, the important aspects regarding the relationship between the two communities must also be based on the distinct cultural features that influenced the prior social organization of the Anishnabe peoples.

This should still be important to all of us since it gives us the opportunity to re-examine and restore those aspects of our human history as a nation originating from community rather than solely contract, incorporation, and colonization.

Since the underlying purposes of the consultations and land claim is the reconciliation of prior social organization against assertions of sovereignty, the original social organization becomes of great significance, and even a rudimentary examination of details from a number of sources about the two historical communities provides the following facts.

The first group being:

Kichesipirini Algonquin First Nation-Kichi Sibi Anishnabe-Canadians		
Kichi (Kiche)	Sipi (Sibi)	Rini
(Great, Grande)	River	People
People of the Great River		
Also known as Island Algonquins		
Largest and most powerful group of Algonkin. Known variously as: Algoumequins de l'Isle, Allumette, Big River People, Gens d l'Isle, Honkeronon (Huron), Island Algonkin, Island Indians, Island Nation, Kichesippiriniwek, Kitcisìpiriniwak , Nation de l'Isle, Nation of the Isle, People of the Island, and Savages de l'Isle. Main village was located on Morrison's (Allumette) Island, Ontario, near present day Pembroke. The Kichesipirini are fortunate to be the most extensively documented of all the Algonquin nations, with clearly documented governance, culture, economic activities, and genealogies. Numerous sources clearly describe many details concerning this nation and assist in our understanding of how this nation lived and defined themselves prior to European contact.		
Professor Evan Pritchard writes; One band of "Anishinabe-Algonkians," the "Kiche-sipi-rini" or "People of the Great River," were possibly the first of this ancient culture to settle down in one place, Allumette Island. Allumette is the largest island in the Ottawa River, the river which forms the boundary between Ontario and Quebec, and there is evidence of sedentary Anishinabe-Algonkian settlements there going back at least 6,280 years, and occupation in the area dating back 7,000 years as it became inhabitable after the Ice Age. From this power base in the center of the trade route, their influence and language spread throughout North America. Hence they have been called "The First People." **Allumette Island was a turning point in the civilization.** There is little doubt that the Anishinabe-Algonkians of Allumette are the direct descendants of the so-called "Clovis' people, long considered the oldest group of Native Americans.		
1613 Champlain Journals account of visit to "Allumette Island" Kichesipirini jurisdiction, views ancient gravesite marked with carved totem poles and grave houses.		
Numerous references in primary sources including the Jesuit Relations		
Totemic signature in 1701 Great Peace of Montreal Treaty		
Dual Totemic identity as being Crane, ( ), and "Human Being"		
Baswenaazhi (Echo-maker, i.e., Crane), traditionally charged with **outgoing International Communications and Teaching**. Because of this, often members of the Baswenaazhi group are said to be the most vocal. The White Crane clan were the **traditional hereditary principal leaders**. **The Whooping Crane as totemic symbol**.		
Numerous smaller bands or clans were incorporated into the Kichesipirini after numerous crisis. Their jurisdiction extended to Great Lakes region through kinship and alliances.		
Some further references; Introduction to Kinship Terms by Dr. J. Rand Valentine, Deeds / Nations, Directory of First Nations Individuals in South-Western Ontario 1750 - 1850 by Greg Curnoe, showing some treaty-signatory doodem, Nindoodemag: The Significance of Algonquian Kinship Networks in the Eastern Great Lakes Region, 1600–1701, Interprovincial Crossings Environmental Assessment Study- Archaeological Potential Study –Gatineau/Ottawa Area, 850-567 Archaeological potential study – Gatineau/Ottawa Area (Roche/NCE) , July 2008 Final Report		

The second group often confused with the Kichesipirini being:

The Kinouchepirini Algonquin		
Kinounch, or Kinounge	epi	Rini
(Pikeral, Pike)	River	People
People of the Pike or Pikeral River		
Also known as Quenongebin		
Also known as Keinouche, Kinonche, Ginoozhe, Pickerel, Pike and Quenongebin. Sometimes they were listed as an Algonquian band, but after 1650 they were associated with the Ottawa and were originally found along the lower Ottawa River.The Kinounchepirini take their name from the Kinonge River, just west of Montebella, Quebec. The Handbook of Indians of Canada (Hodge, 1913) correctly associates the band with the river but mistakenly places them near Lake Huron. They were correctly identified by Champlain as Quenongebin during his 1613 expedition to visit the Kichesipirini. He encountered the Quenongebin at a river prior to passing the Weskarini. The Quenongebin, or Kinounchepirini were mistakenly located below "the Island of the Algonquins", (Kichesipirini), in the Jesuits Relations (vol.18, p.229). It is assumed that all Algonquin bands below the Kichesipirini territory were referred to as being "south of the Island", or Ountchatarounounga, by the Huron. Many historians continued these mistakes. Bruce Trigger mistakenly identified the Kinounchepirini with the band Champlain met near present day Cobden, referred to as the Nibachis band after their Chief. It would seem that the current group is basing their assertions on this faulty research.		
Peter Hessel explains these mistakes in his book the Algonquin Nation on pages 18 and 19. He verifies that editor of Champlain's journals, Laverdiere, in 1870, had the facts straight. An examination of the facts shows the Kinounchepirini as being a band located in Quebec, with no attachment to the Muskrat River or any area at all within the vicinity of Pembroke Ontario. Even if their assertions to the region were accurate Kichesipirini jurisdiction supersedes that of bands, and that jurisdiction is constitutionally protected.		
Pike Clan, totemic identity, Ginoozhe, Part of the Wawaazisii group. The Wawaazisii group was charged with **internal teaching and healing**.		
The Kinouchepirini experienced numerous shifts as a result of important alliances entered into through Kichesipirini relations with other Anishnabek communities. There is little genealogical evidence available to discern Kinouchepirini community members or continued attachment to their traditional territories.		
They disappear as a distinct entity from the records after 1701.		
Some further references; Introduction to Kinship Terms by Dr. J. Rand Valentine, Deeds / Nations, Directory of First Nations Individuals in South-Western Ontario 1750 - 1850 by Greg Curnoe, showing some treaty-signatory doodem, Nindoodemag: The Significance of Algonquian Kinship Networks in the Eastern Great Lakes Region, 1600–1701		

Like any other Algonquian groups, the Anishinaabe-Anishnabe-Anishnabek clan system served as a system of government as well as a means of dividing labour. The five original groups or phratries were entrusted with specific governmental jurisdictions. Also typical of traditional Anishnabek governance was the practice of communities to identify with the river that they were attached to, where their village was situated, or used as a part of their family band hunting territory. A thorough and appropriate examination of fact must integrate an examination of the original social order, inclusive of the totemic governance structure.

Detailed explanations regarding the complexities and references to Kichesipirini culture have been submitted by Professor Darlene Johnston, in such works as Connecting People to Place: Great Lakes Aboriginal History in Cultural Context, Connecting people to Place: Aboriginal History in Cultural Context, both prepared for the Ipperwash Commission of Inquiry,

Sorting through the confusion requires great patience, the application of highly specialized advanced research skills and open access to all relevant historical records.

Because Aboriginal rights are contextually specific, geographically grounded, and inherent and inalienable it is imperative that there be not only the establishment of a geographical connection to a specific area, a position within the pre-existing social organization, but evidence proving specific descent. Without appropriate pre-consultation processes or examination of fact it is far too easy for there to be mistakes made, and as such, breaches of Aboriginal rights.

Professor of Law and Aboriginal history expert John Borrows has accurately stated that: "The failure to recognize and affirm the positive and customary Aboriginal laws of Aboriginal governments, which preserves and embodies more general principles of their ancient normative orders, has lead to near-anarchy and constant strife within Aboriginal communities".

This failure can also have very serious implications when attempting to navigate legal requirements in unceded territory, particularly regarding the duty to consult when there has been an expression of Aboriginal interest.

- The nature of the duty to consult varies with the situation. The richness of the required consultation increases with the strength of the prima facie Aboriginal claim and the seriousness of the impact on the underlying Aboriginal or treaty right. (Haida Nation, at paras. 43-45 and Taku River Tlingit First Nation v. British Columbia (Project Assessment Director), 2004 SCC 74, [2004] 3 S.C.R. 550, at para. 32.)

- Although s. 35 protects "existing" rights, it is more than a mere codification of the common law. Section 35 reflects a new promise: a constitutional commitment to protecting practices that were historically important features of particular aboriginal communities. It cannot confer any new rights.

- An important element of a duty to consult is the possibility that the Crown conduct may affect the Aboriginal claim or right, and potentially may be adversely impacted by the current government conduct or decision. The claimant must show a causal relationship between the proposed government conduct or decision and a potential for adverse impacts on pending Aboriginal claims or rights. Past wrongs, including previous breaches of the duty to consult, do not suffice.

- The honour of the Crown requires that these rights be determined, recognized and respected. This, in turn, requires the Crown, acting honourably, to participate in processes of negotiation.

The Kichesipirini Algonquin First Nation asserts that the existing archaeological process and the existing policy concerning consultation generates adverse impacts on Kichesipirini assertions.

Prior Social Organization Must Influence Consultations in Situations Involving Unceded Territory

The duty to consult "...requires demonstration of a causal connection between the proposed Crown conduct and a potential adverse impact on an Aboriginal claim or right. It grounded the duty to consult in the need to preserve Aboriginal rights and claims pending resolution. It confines the duty to consult to adverse impacts flowing from the specific Crown proposal at issue — not to larger adverse impacts of the project of which it is a part. The subject of the consultation is the impact on the claimed rights of the current decision under consideration." (Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council, 2010 SCC 43)

Whereas other Algonquin communities have expressed broad historical interests the Kichesipirini Algonquin First Nation expresses interests directly related to the current lack of appropriate attention being given to the investigation, protection, preservation, and proper recognition being given to the specific cultural practices exercised by the customary traditional Algonquin-Anishnabek Nation, and how such negligence can negatively impact on potential Aboriginal rights and pending investigation into land claims.

The Kichesipirini Algonquin First Nation claims that the current development proposals affecting the area known as Ottawa's Great Forest and Beaver Pond Forest are situated within unceded Algonquin territory, and can be identified as being part of the natural and cultural heritage of Canada, with the potential of containing important archaeological sites that are an interest to the Algonquin Nation and Anishnabe cultural complex.

We assert this potential based on the research methodology used in the Interprovincial Crossings Environmental Assessment Study- Archaeological Potential Study – Gatineau/Ottawa Area, 850-567 Archaeological potential study – Gatineau/Ottawa Area (Roche/NCE), July 2008 Final Report. "This approach is based on the following anthropological assumption: the presence of an archaeological site at a given location is not a matter of chance, but is the result of choices and decisions made by individuals based on their understanding of the local environment and any number of social, cultural and economic constraints."

According to this methodology of study two important sets of criteria are relied on. The first element includes the geomorphological or topological criteria, which is primarily the actual position and organisation, or structure, of a geographic area, assuming that the inhabitants had to make logical decisions based on advantages and disadvantages determined by natural resources and geography.

This report also acknowledges Kichesipirini interests within the present-day Gatineau-Ottawa region.

In determining the potential for prehistoric archaeological sites the key objective of the "prehistoric" archaeological potential identification according to this model, which we would qualify as consistent with the emergence of natural law, is to categorise key geographic locations in the study area based on the probability of finding evidence of prehistoric human activity based, on established knowledge of prehistoric decision-making processes and social reasoning. These should be determined by understanding the historical changes that have affected a particular area and its ability to provide for the necessities of life, particularly land, food sources, vegetation and water. The first probability is then derived from a geomorphological standpoint, paying particular attention in this instance to the changes of the Champlain Sea. Certain sites would have provided conditions suitable to human habitation. Occupations of these would have emerged in ancient times, generally between 8 800 and 10 200 B.P., the most ancient Paleoindian cultures known would have inhabited the area, as well as the cultures that followed. Recognizing the importance of attachment to water and emerging land, certain sites are then

considered of high probability to contain vestiges of human activity from prehistoric times. The most ancient indications of human activity in the Ottawa River Valley consist of a pair of grooved proximal projectile points found at surface level in the Rideau Lakes area, and two additional points featuring Agate Basin type parallel flaking, representative of the second half of the Paleoindian period, being Plano style points bearing the characteristic signature of Amerindian populations originating in the Prairies whose range would have extended right into the Gaspésie region by way of the Great Lakes and the St. Lawrence.

This evidence is interesting as it appears to be strongly affirming the broader cultural significance of the area and the affirmation of traditional origin stories associated with the Algonquin-Anishnabe-Anishnabek-Anishnabe peoples and broader cultural complex.

Even with the limited research completed it has shown that the middle reaches of the Ottawa River witnessed a high degree of human activity six thousand years ago (Clermont, 1999: 44). Two of the most important archaeological sites identified, are listed as located close to the major rapids of Morrison Island (BkGg-12) and Allumettes Island (BkGg-11), which are of course the traditional permanent settlements of the Kichesipirini Algonquin First Nation, and bear witness to intensive activities of a domestic and ritual nature bearing the signature of an important cultural tradition known as the 'Laurentian Archaic' tradition (Clermont, 1999; Clermont & Chapdelaine, 1998; Clermont et al, 2003).

In addition, copper objects are commonly found, and the presence of copper chips and shavings on certain sites attests to the transformation of this metal, which likely originated north of the Great Lakes area, demonstrating again extensive networking and relationships.

While it is acknowledged that the Morrison Island and Allumettes Island sites have yielded an unprecedented variety of copper objects (Clermont et al, 2003), and potential material artefacts containing totemic identity symbols, because of domestic administrative procedures associated with colonization, and repatriation practices, the actual identity of the Aboriginal community, being the Kichesipirini Algonquin First Nation, is lost, and the genuine preservation of Algonquin –Anishnabe history and prior social organization is compromised.

This is one reason why we continue to assert that the second criteria for identifying potential "prehistorical', or ancient sites must also be based on the integration of accurate understandings of the ethno-historical occupation and prior social organization of the specific cultural group, and then how that might influence relationships with a broader cultural complex, if there is to be genuine preservation of our human history and genuine national foundations.

That is why it is acknowledged that the accurate identification of sites of higher archaeological potential would require in-depth knowledge of the characteristics of the prehistoric human occupation of the study area, based on the interpretation of available ethno-historical data, such as the important work being done by Professor Darlene Johnston, as well as the more general knowledge of the human occupation of the broader area, in this case being the entire Ottawa River Valley and its tributaries.

However when important aspects of the prior social organization have been radically negatively impacted, or removed from specific site attachment, as a result of colonial administrative policy, we must be vigilant to acknowledge that such compromise is still ongoing, and exercise diligence in recognizing its possible continuing influence.

Genuine Culture Victim of Colonial Piece-mealing

It is imperative that we recognize that colonial practice has also influenced our generating breaks in the historical evolution, which are inherently biased, referring to two separated chronological periods, with one as being "prehistoric" and the other being historical, with the chronological measure of history determined by colonial contact.

This bias has generated an artificial split in methodology which has also contributed to an inaccurate understanding of Algonquin-Anishnabe history and the genuine capture of the Kichesipirini experience. The prehistoric period refers to the history of Amerindian occupation prior to the arrival of Europeans, and is documented through "pockets" of isolated archaeological study still biased by colonial identity constructs and reserve locations and administrations. The idea of the "history" of the Amerindian population is then thought to begin in the first centuries following the first contacts with the Europeans and is "revealed" by the study of historical documents, complemented with archaeological studies, but again compromised by the colonial administrative divisions.

The understanding of the culture has been piece-mealed.

This artificial segregation robs us of the holistic understanding of our genuine relationships by superimposing geopolitical boundaries and discriminatory reliance on colonial identity constructs and piece-meal examination of records rather than relying on uninterrupted intergenerational attachments to specific ecological regions, and the integration of particular natural life forms as foundations of natural law and early social organizational relationships. This failure to integrate the relational and holistic philosophical ideas that influenced the social order gives a false, fragmented illusion of scattered, isolated, often competing bands. The original social order instead demonstrates intercultural exchanges facilitated through the positive normative values, in this particular circumstance, held by the Anishnabe population, and their ongoing social-political influence, and robs us of seeing their place within the study of the natural continuance of human social organization within an appropriate ecological and international context.

Recognizing the likelihood of ancient human occupation of sites near bodies of water, and in particular the known Algonquin tradition of organizing themselves and identifying themselves through attachments to proximal bodies of water, raises particular concern about this special area. The high potential is affirmed in the Ministry of Culture's draft Standards and Guidelines for consultant archaeologists, 2006, which clearly stipulates that undisturbed land within 300 meters of a primary water source, undisturbed land within 200 meters of a secondary water source, as well as undisturbed land within 300 meters of an ancient water source are considered to have archaeological potential.

But it should also be stressed that with a holistic examination of ancient Anishnabek social patterns ancient areas of land, especially islands, are also of extreme importance and special significance within the prior social governance structuring. This places special significance for potential interest within the Ottawa's Great Forest and the Beaver Pond Forest area from a specific Kichesipirini Algonquin First Nation customary cultural perspective.

Also of particular interest to the Kichesipirini Algonquin First Nation would be any locations containing rapids, large rock faces, areas with echo potential and areas containing the combination of such natural elements. The Anishnabek peoples appreciated natural features of the environment as potential monuments of cultural significance and inspiration.

Certain Ecological Features, or Their Combinations, Are Traditional Cultural Sites

In a recent report completed by Dr. Robert McGee, former curator for the Museum of Civilization, and former president of the Canadian Archaeological Society explains that during particular historical periods the site contained ancient rapids, and islands, which are regularly understood as elements of cultural and spiritual significance to Anishnabek peoples:

”During this period the Carp Ridge emerged as a series of rocky islands paralleling the southern shore of the sea. These islands were separated from one another and from the shore by narrow channels through which tidal currents, together with those of melt water flowing from the nearby mouth of the Ottawa River, would have produced turbulent mixing of fresh and salt water as well as inhibiting the formation of winter ice. Polynia conditions such as these are very productive locals in Arctic waters, attracting both sea mammals and their human predators.”

From a Kichesipirini perspective we would deduce the high likelihood that this area would have most certainly attracted ancient human occupation, or use, and possess natural elements that may have strongly influenced Anishnabe cultural development.

When given the opportunity to examine Anishnabe history and culture from a holistic perspective that has not been tainted by the generations of colonial administrations we can begin to examine how geography, and certain features of ecosystems have influenced society over the course of thousands of years rather than just delegating this valuable information to the display cases of museums and walking trails of tourist attractions.

When we place these places in their proper context we can begin to contemplate how they may have influenced people philosophically in the past, and perhaps wonder how that could still continue.

But instead of developing a holistic examination of human history throughout the area we are forced to rely upon fragmented and unreasonable policy that is an affront to the dignity of those interested in genuinely pursuing a credible account of human social development.

Understanding human social development, and understanding human social development and relationships to the natural world is critically important at this time.

Since the priorities and purposes of human societies are often organized and then either enforced or encouraged through their distinct social organization and customary laws and traditions, then it would stand to reason that if we are to understand the actual relationship of human social organizations and their natural world through the course of time, then we must preserve a holistic representation of those facts and attempt to draw as reference for possible solutions to contemporary circumstance an accurate historical account.

The current structure of the negotiations process or preservation of cultural references cannot contribute to a process of reconciliation as required by the constitution.

Those persons of Aboriginal identity that wish to have these potentially important records of human social development preserved accurately and with confidence for future generations are often sabotaged or criminalized, while those well-meaning non-aboriginal professionals caught unnecessarily in commercially motivated conflicts of interests are placed in positions that can negatively impact the reputation and ethical exercise of the profession and area of academic expertise.

Appropriate Archaeological Research Critical to Cultural Preservation and Reconciliation

The Kichesipirini continues to claim interests and is particularly concerned about:

- Discovery of a significant find by Ken Swayze less than 1 km away from Richardson Ridge in 2006 that was refuted by the developer and is currently being disputed in court. This site was previously confirmed as 10,000 years old by Dr. Muller-Beck, Professor Emeritus of Paleohistory and Archaeology of Hunting Cultures, when he visited the site in 2007;

- Scientific discrediting of the thoroughness of the KNL study provided by Dr. McGhee, Fellow of the Royal Society of Canada and past president Canadian Archaeological Association, in June 2010. The MTC has expressed no opinion on this review;

- Discovery of a similar significant site at the same elevation less than 1 km away on Huntmar Ridge in July 2010. This has been reported to the City of Ottawa but to-date nothing has been done to evaluate this site because the city has not allocated funds for such purposes - despite its obligation to do so under the Ontario Heritage Act;

- Discovery of the stone circle in Beaver Pond Forest in 2010. The protection of this site will only protect the immediate vicinity (a few meters on either side of it). The very discovery of this site is evidence that it was missed in the 2004 survey.

- AOO received the report from Groupe de recherche archéologique de l'Outaouais (GRAO). Based on their review, GRAO advises that:"the rocky upland areas of the proposed development can no longer be ignored as of low archaeological potential. They should be considered to be of high potential for occupation by early postglacial populations without excluding possibility of periodic or temporary occupation in more recent prehistoric time to exploit some specific resources available in the area of study, like quartz or other lithic material, for stone tool production or any basic need of the distant predecessors or ancestors of the Algonquian people."

- Mr. Potts, negotiator for the Algonquins of Ontario, highlighted that the AOO respect private property rights, but underscored that "if aboriginal artifacts exist it is crucial that these resources be preserved and respected in a manner consistent with Algonquin traditions."

Has the federal government ensured that all parties involved, including all Aboriginal peoples, have been informed of the differences regarding common law, statutory, or contractual obligations and the spectrum of consultation obligations based on those particulars, and how those legal constructs can be complicating effective consultation and appropriate cultural and heritage preservation?

The NCC's Archaeological Resource Potential, Federal Lands in the National Capital Region, Volume 1, 1998, by Marcel Laliberté states that: " In the Ottawa Valley information regarding important historical periods is scarce and rather confused because of the small number of sites investigated", and the report specifically names the Kichesipirini as holding specific jurisdiction regarding trade and international relations.

The accurate preservation of the history of human social organization is an area of international concern.

We continue to assert that the scarcity of investigation of potential sites is directly related to the procedural gaps that fail to protect legitimate Aboriginal claims from commercial interest, and that these procedural gaps are deeply entrenched within all the systems of the federal-provincial relationship, as a direct result of our unresolved colonial legacy.

Failure to develop processes that identify and reconcile these administrative injustices prevents Canada from implementing critical aspects of our own Constitution and robs many Canadians of their inherent rights and full disclosure of important historical facts.

The area identified has been determined to contain areas of "high potential" regarding ancient human occupation, which should have signified the formal recognition of archaeological potential, and because of the specific naming of the Kichesipirini in numerous consultation reports and our claims of interest a consultation process with us should have been triggered.

However, because of policy priorities that conflict with the Canadian Constitution there was little avenue for protection; and interim guidelines were not yet officially accepted, and the the 1993 Archaeological Assessment Technical Guidelines remained in force.

Since that time, the ministry deemed most directly responsible has finalized the Standards and Guidelines for Consultant Archaeologists and compliance with the Standards and Guidelines only became mandatory on January 1, 2011.

However, it must be noted that the ministry claiming direct responsibility for such activities is the Ministry of Tourism and Culture. The Ministry of Tourism and Culture is a provincial ministry, and it is mandated by the Ontario Heritage Act.

The Ontario Heritage Act empowers the Minister of Culture to "determine policies, priorities and programs for the conservation, protection, and preservation of the heritage of Ontario.

The standards and guidelines are for archaeological consultants hired by clients to conduct archaeological studies usually associated with land use planning and development in the province, on their behalf, recording archaeological fieldwork in the land use development context.
(http://www.apaontario.ca/assets/content/guidelines/1A-Introduction.pdf)

It must be noted that the priorities are not for the preservation of historical integrity, or increased knowledge of human civilization, but are instead based on land use planning and development interests, relegating archaeologists to the position of provincial and commercial hired guns, rather than highly specialized professionals committed to furthering science and the humanities.

This regulation of archaeology imposes a conflict of interest regarding our concerns, as an Indigenous Peoples of Canada, and blocks our ability to access important independent professional assistance and

historical evidence that could help us in bringing clarity to the ancient foundations of the Canadian nation.

Reliance on the Ministry or the Heritage Act cannot adequately protect Aboriginal sites, because these sites, many located in unceded Algonquin territory, would pose a threat to provincial claims of revenues, since provinces have no legal jurisdiction in unceded territory.

The current practice of delegating the preservation and consultation authority to Indian Act reserves or their subsequent incorporations does not reconcile or preserve the integrity of the prior social organization, as required by the Constitution.

This places the province in a unique position of having the ability to ignore, minimize, or otherwise administer the findings regarding those prior social orders.

The archaeologists are hired by the incorporated commercial company, for the interest of the company, and not by the people of Canada, for the common interests of the people of Canada.

The archaeologists are hired by the commercial client, for the purposes of land development, to record archaeological findings in the land use development context, which means it must be recorded to protect provincial interests, in the current context, as the first priority.

This would mean that there would be a predisposed interest and pressure to ignore, overlook, inaccurately delegate consultative authority, or commercialize "prehistorical" or significant cultural evidence that might support an Aboriginal claim or be of immense intrinsic importance to a specific Indigenous Peoples.

We consider this to be "sharp dealing".

Remembering again:

- Since it has been established that the purpose of s. 35(1) is to reconcile the prior presence of aboriginal peoples in North America with the assertion of Crown sovereignty, it is clear from this statement that s. 35(1) must recognize and affirm both aspects of that prior presence – first, the occupation of land, and second, the prior social organization and distinctive cultures of aboriginal peoples on that land.

It is, as section 52 of the Constitution Act, 1982 declares, the Constitution to be the "supreme law" of the nation, unalterable by the normal legislative process, and unsuffering of laws inconsistent with it.

The duty of the judiciary is to interpret and apply the laws of Canada and each of the provinces, and it is thus our duty, as Canadians, to ensure that the constitutional law prevails.

Has the federal government ensured that all parties involved, including all Aboriginal peoples, have been informed of the differences regarding common law, statutory, or contractual obligations and the spectrum of consultation obligations based on those particulars in a manner that is consistent with the purposes of the Constitution, ensuring that no policy or practice, either through omission or commission, is potentially inconsistent with the purposes of Section 35(1)?

Provincial Priorities Inconsistent With Prior Social Organization Cultural Priorities

The provincial policy sets out guidelines for assessing sites that clearly have a cultural heritage value or interest, as determined by the priorities established by the province. These priorities are commercial. Those Aboriginal communities involved in the current negotiations process have agreed to these externally determined priorities. This cannot reconcile or preserve the prior social organization.

The provincial policy sets out guidelines for assessing sites that clearly have a cultural heritage value or interest, but removed from the legal requirements to protect such evidence for Aboriginal or international interests, and because all processes are completed in the land development context we would assume that the same principles would direct the selection of those sites deemed of interest or value because of their potential revenue generating capacity, and the selection of those Aboriginal communities engaged in the process that would be willing to comply.

Those communities wanting to preserve the potential site for the preservation of understanding human heritage for other than commercial interests would be excluded from the biased process, and those communities comfortable with the provincial priorities would first remain silent, or, alternatively assert the right to be engaged.

This situation is again reflective of the many facets of the jurisdictional splits that are used as means of circumventing and confusing Constitutional obligations.

The provincial policy does not appropriately integrate the potential for a specific Aboriginal interest in archaeological sites, nor their potential significance in areas where assertions of Aboriginal title have been made .Nor does it ensure that there exists within our shared human cultural experience elements that are significance and social importance beyond commercialization and revenue generation.

The policy vaguely affirms that archaeological sites can help document Aboriginal histories, and as we already know, but the policy fails to acknowledge that such histories would carry important evidence in Aboriginal title and jurisdiction claims, and enhance our understanding of the social priorities as values found within our shared human history.

The policy guidelines do not make certain that Aboriginal engagement be consistent with the protections of Section 35 of the Constitution, or Charter, assertions of title, or verifiable claims of interest. While it does state that there is a need to engage relevant Aboriginal communities it does not define relevant in a Constitutional or Aboriginal rights or culturally derived responsibility-based context.

Failing to do so means that the policy also fails to ensure that such engagement is directly tied to the identification of Aboriginal communities that hold specific rights consistent with the Constitution, existing rights, or claims of title and jurisdiction, meaning that it could potentially generate Aboriginal community confusion and take unfair disadvantage of loss of cultural legitimacy resulting from generations of colonial oppression.

Since the policy fails to clearly preserve and protect Aboriginal interests and rights from a Constitutional legal context it raises serious questions concerning public confidence.

It would be assumed then that the relevant Aboriginal communities determined by the provincial policy would be those interested in participating from a land use development context as determined by the province.

Policy recommendations for the identification of relevant Aboriginal communities are based on geographical proximity to potential site, traditional territory of a present-day community, and broad cultural understandings that do not require that they be consistent with the prior social organization. This is in direct contradiction of the criteria determined by case law interpretation of the Constitution, and furthers the administrative unfairness experienced by those communities wishing to preserve traditional rights and cultural legitimacy, the genuine history of Canada, and human social development.

The policy then continues to breach the legal requirements by recommending that: "After identifying Aboriginal communities most likely to be interested in your project, you should gather basic information about those communities, such as their cultural affiliations and some sense of both their history and their current realities (eg. languages, governance, socioeconomics, etc)." The process meets with those based on their "current realities" which again is not consistent with the Constitution.

At no time does the policy state that the process of identifying relevant Aboriginal communities must be consistent with the Constitution, case law, the rule of law, claims of rights, specific cultural responsibilities, or examination of legal rights associated with claims to title and jurisdiction. This process or policy does not have the ability to reconcile the Constitutional requirements.
(http://www.mtc.gov.on.ca/en/publications/AbEngageBulletin.pdf,
http://www.mtc.gov.on.ca/en/publications/SG_2010.pdf)

The Ontario Ministry of Tourism and Culture is just that. It is the ministry designated to preserve the heritage of Ontario. Ontario is a colonial construct. As the Ministry website states: "Through this ministry, the government has been promoting heritage conservation for many years, adjusting its role to meet changing needs and circumstances. The government of Ontario recognizes that our heritage tells us who we are, where we have come from and what we have accomplished. This knowledge is a source of strength and confidence."

However it fails to integrate the genuine history which must include an examination of the colonial context, and then that relationship with the Indigenous Peoples of the area. The Linden Report has even stipulated that requirement. Failure to accurately portray and record the history of Ontario smacks of historical revisionism, at the continued expense of the original peoples, and robs the people of the world from a comprehensive understanding of the long-term consequences of colonization. In unceded Algonquin territory this raises serious concerns.

The policy is provincially biased as is further emphasized on the provincial Ministry website: "We support provincial ministries, agencies, heritage organizations, museums and archaeologists in order to conserve and present Ontario's rich cultural heritage."

But what if parts of Ontario's culture are a direct contradiction of the genuine heritage of Canada, which includes our native heritage?

And what if aspects of genuine Canadian history contain important elements of Aboriginal history that directly challenge the exaggerated commercial claims of the province?

What steps have been taken by the province to ensure that there is first an understanding of the prior social organization of Aboriginal peoples on the land, consistent with the Constitution, previous to developing policy, standards and guidelines?

The priorities of the Ministry of Tourism and Culture are described as:

- Supports delivery of high quality tourism and cultural experiences to Ontarians and visitors to Ontario. Promoting a sustainable, customer-focused tourism industry helps improve our quality of life, increase pride in our communities, and increase economic growth.

- Encourages the arts and cultural industries, protects Ontario's heritage and advances the public library system to maximize their contribution to the province's economic and social vitality.

- Seeks to increase investment in Ontario's tourism industry.

- Works in partnership with our agencies, attractions, boards and commissions, the tourism industry, other ministries, other levels of government and the private sector.

- Supports the delivery and marketing of high-quality tourism experiences to Ontarians and visitors to Ontario.

Nowhere does it list historical integrity or advanced knowledge of human social organization as a priority.

The purposes of the ministry are for the commoditization and commercialization of a neutralized version of our history that has, essentially, removed any protections that would ensure that important aspects regarding the prior social organization of our Aboriginal populations are accurately preserved. Having done this it facilitates that policy has removed any remnant of our prior social organizations that held certain natural places as sacred, or beyond the commercial sphere, and so, has then erased any potential evidence to support aboriginal claims of any strength to title or jurisdiction, especially regarding aspects of culture that uphold covenant, particularly covenants running with the land, rather than contract, and then commercializes our entire relationship with the natural world around us.

This raises serious concerns within unceded territory where provincial claims of interest have no jurisdiction except where there has been clear extinguishment of prior interests, which includes legitimate Aboriginal claims of interest. In unceded Algonquin-Anishnabe territory this means that there is absolutely no mechanism in place that will protect the genuine preservation of the actual history from commercial encroachments.

It also means that the documentary integrity of the archaeological profession and government institutions is completely compromised.

It must be noted:

- "Although s. 35 protects "existing" rights, it is more than a mere codification of the common law. Section 35 reflects a new promise: a constitutional commitment to protecting practices that were historically important features of particular aboriginal communities. It cannot confer any new rights."

- "It is, as section 52 of the Constitution Act, 1982 declares, the Constitution to be the "supreme law" of the nation, unalterable by the normal legislative process, and unsuffering of laws inconsistent with it. The duty of the judiciary is to interpret and apply the laws of Canada and each of the provinces, and it is thus our duty, as Canadians, to ensure that the constitutional law prevails."

The Ministry of Tourism and Culture seemingly then entices potentially interested groups who are in agreement with the Standards and Guidelines and its priorities with offers of outreach and training opportunities.

We find these conditions remarkably similar to the systemic administrative approaches involving the Ministry of Natural Resources and its inflated involvement in resource allocation and the land claim negotiations involving the participating AOO. We are certain that many persons seeking careers in natural conservation did not wish to find themselves acting as enforcers against Indigenous Peoples for the purposes of natural resources extraction and commercial energy development.

All relations involving the Aboriginal peoples of Canada rely on foundations built on layers of administrative gaps that fail to allow for the genuine preservation of the traditional Aboriginal community and social organization in order to allow unfettered commercial development, under the pretence that it is economically and socially necessary.

There is absolutely no reason to think, especially considering the environmental and health challenges facing us, that actually preserving, studying, promoting, teaching, and integrating traditional knowledge and cultural principles of the genuine prior social organization could not contribute to a more lasting and sustainable social and economic model more suitable for contemporary challenges.

These current secondary policies, which we rely on are inconsistent with legal obligations, and give raise to serious concerns for us, again, regarding appropriate consultation, and then subsequent larger matters of public confidence.

As a distinct element of the prior Anishnabek social organization, the Kichesipirini have experienced generations of losses regarding ancestral remains, witnessed the desecration of ancestral cemeteries for road and bridge development, the complete loss of cultural sites, and even the failure to acknowledge our existence, and the continued right to relationship to important archaeological sites that would be of immense interests to the larger Anishnabe peoples. Because the destruction of these irreplaceable heritage sites has been so thorough most Algonquins are not even aware, even many of the Elders have been sleeping. The current policy would allow for the continuance of such circumstances, and would not correct the historical and cultural gaps created through prior vandalism and loss of cultural legitimacy.

The current policy does not allow for the need for cultural capacity development amongst a people that have been exposed to colonial interference for 400 years, but are now expected to be able to appropriately engage in processes designed to identify aspects of their traditional culture.

Such administrative gaps continue the same procedural discriminations against those communities wishing to maintain their existing customary rights, identities, membership criteria, and claims as those willing to acquiesce through provincial and third party collaboration.

This moves the same type of procedural gaps from the land claim negotiations process into the archaeological arena, and formalizes the continuance of the loss of extremely important archaeological finds or other elements of cultural and heritage significance, or places them within the context of historical revisionism apart from the prior social organization, as has been the processes long associated with the Kichesipirini Algonquin First Nation experience.

Attempts to Conserve Commercial Status Quo Through Administrative Injustices

The Kichesipirini Algonquin First Nation has formally submitted a claim to the Harper government years ago. Provincial administration cannot be used as a means to confound the oppression of Aboriginal communities or circumvent the legal requirements regarding appropriate duty to consult based on specific circumstances.

The content of the duty to consult varies with the circumstances and as had been established in the Haida Nation case a "spectrum" of consultation obligations. The strength of assertions made by the Kichesipirini regarding unceded territory and existing rights makes the issue of consultation and protection of potential archaeological evidence a constitutional issue. Unfortunately we have identified another area of conflict regarding the link between constitutional doctrine and administrative law remedies was already noted in Haida Nation, regarding appropriate consultations and duty to consult jurisprudence:

- "In all cases, the honour of the Crown requires that the Crown act with good faith to provide meaningful consultation appropriate to the circumstances. In discharging this duty, regard may be had to the procedural safeguards of natural justice mandated by administrative law. [Emphasis added; para. 41.]

As outlined in Beckman *v*. Little Salmon/Carmacks First Nation, 2010 SCC 53:

- "The relevant "procedural safeguards" mandated by administrative law include not only natural justice but the broader notion of procedural fairness. And the content of meaningful consultation "appropriate to the circumstances" will be shaped, and in some cases determined, by the terms of the modern land claims agreement. Indeed, the parties themselves may decide therein to exclude consultation altogether in defined situations and the decision to do so would be upheld by the courts where this outcome would be consistent with the maintenance of the honour of the Crown."

It has been further clarified:

- " [A]dministrative law principles are not designed to address the very unique circumstance of the Crown-Aboriginal history, the Crown-Aboriginal relationship. Administrative law principles, for all their tremendous value, are not tools toward reconciliation of Aboriginal people and other Canadians. They are not instruments to reflect the honour of the Crown principles. [tr., at p. 62]"

Further clarification states:

- The relevant "procedural safeguards" mandated by administrative law include not only natural justice but the broader notion of procedural fairness. And the content of meaningful consultation "appropriate to the circumstances" will be shaped, and in some cases determined, by the terms of the modern land claims agreement. Indeed, the parties themselves may decide therein to exclude consultation altogether in defined situations and the decision to do so would be upheld by the courts where this outcome would be consistent with the maintenance of the honour of the Crown.

Recognizing that the current administrative procedures regarding the engagement of Aboriginal communities concerning the identification, preservation, protection, and consultation and participation regarding potential archaeological sites is fraught with the same types of procedural gaps and

administrative unfairness as the existing land claim processes, and that participation in such flawed administrations could be considered as acquiesce of broader rights, the Kichesipirini Algonquin First Nation maintains the alternative option of continuing to assert rights, and appropriately seek legal remedy and accommodation, without agreeing to participate in provincial processes, unless there is meaningful consultation.

The duty to consult arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it. Having submitted numerous claims, including those regarding the failure to accurately preserve the archaeological and cultural heritage of the Kichesipirini Algonquin First Nation to international bodies, the Crown has real and constructive knowledge of our potential specific Aboriginal claim or right.

The existence of such a potential claim is essential in determining the duty to consult. In accordance with the generous, purposive approach that must be brought to the duty to consult, the required decision or conduct is not confined to government exercise of statutory powers or to decisions or conduct which have an immediate impact on lands and resources, but also extends to "strategic, higher level decisions" that may have an impact on Aboriginal claims and rights.

We assert that the identified potential for possible ancient archaeological sites being associated with the Ottawa's Great Forest and Beaver Pond Forest site are of specific interest to the Kichesipirini Algonquin First Nation, the Algonquin Nation, the Anishnabek peoples, Canada, and the world. Consistent with our claims, customary natural rights, identification as being an Aboriginal community possessing such interests, and that systemic failure to appropriately identify ancestral remains and archaeological findings with the appropriate Aboriginal community has been a repeated experience of the Kichesipirini Algonquin First Nation, and has contributed to the failure to uphold the Constitution and preserve the genuine culture and heritage of Canada.

As such, we continue to assert that the adherence to administrative policy and domestic procedure, removed from adherence to the constitution and principles of administrative fairness, has been part of "strategic, higher level decisions" that have contributed to the abrogation and derogation of those rights held by those Aboriginal communities wishing to preserve their existing rights, in accordance to international and customary law, and the failure to protect cultural evidence with integrity that could assist in such claims.

We will examine how those "strategic, higher level decisions" often furthered through negligence regarding the timely remedy of areas of administrative unfairness, have directly contributed to numerous conflicts and community confusions.

Although it has been established that at the national level that assertions of past wrongs, speculative impacts, and adverse effects on a First Nation's future negotiating position will not suffice as triggering the duty to consult, the provincial policy is designed in such a way that any claim to interest can trigger engagement and the appearance of Aboriginal consultations concerning Aboriginal rights with interested Aboriginal communities, thereby generating unnecessary conflict and confusion.

This is an abrogation and derogation of the prior social organization and in conflict with the purposes of the Constitution and appropriate consultation in these particular circumstances.

Such engagement then becomes removed from the right and is absorbed within the commercial interests of the province and interested third parties.

Third parties do not have an obligation to consult, nor are they permitted to make independent deals with Aboriginal communities that may negatively affect communal Aboriginal rights, such as those asserted by the Kichesipirini community.

We assert that the current Standards and Guidelines offered by the Ministry of Tourism and Culture is an attempt by the Province to delegate appropriate resolution of this responsibility to third parties and willing Aboriginal communities.

Since we did assert an interest in cultural heritage and archaeological sites and artefacts we believe that the situation affecting Ottawa's Great Forest and Beaver Pond Forest are within Kichesipirini Algonquin First Nation jurisdiction of interests and legitimate claim.

"Currently the Ministry of Tourism and Culture is responsible for educating municipal councils, municipal staff, Municipal Heritage Committees, land use planners, heritage professionals, heritage organizations, property owners, and others by developing free tools (such as the Ontario Heritage Tool Kit)."

We assert that reliance on the province to provide such resources, especially within unceded territory, is an obvious conflict of interests, and is in conflict with the purposes of the constitution.

As noted also in the Provincial Policy Statement (PPS, 2005) conservation of archaeological resources and area of archaeological potential "shall be consistent with" provincial policy statements and that this would include geographic areas that contain significant cultural heritage landscapes and that some of these geographic areas may become a potential heritage property under the Ontario Heritage Act. This becomes an issue of contention within unceded Algonquin territory.

It is also problematic when the PPS, 2005 defines cultural heritage landscapes as a defined geographical area of heritage significance which has been modified by human activities and is valued by a community. A landscape involves groupings of individual heritage features such as structures, spaces, archaeological sites and natural elements, which together form a significant type of heritage form, distinctive from that of its constituent elements or parts.

It then continues that an inventory or map or properties or geographic areas that contain significant cultural heritage landscapes can be compiled by local, provincial or federal jurisdictions, again potentially becoming recognized property under the Ontario heritage Act.

If a site is determined worthy of preservation, such as when an aboriginal village site is found to extend over a large area, it is not preserved as a site of cultural significance to the specific Aboriginal community, the larger cultural complex, or part of Canadian heritage, but is instead preserved as "green space".

This contradicts Anishnabe cultural practices of having recognized certain ecological features of a landscape as having significance in themselves and openly defies the international practice of recognizing the potential for "Cultural Landscapes and Monuments of Nature, which recognizes famous rocks, caves, trees, or waterfalls as being significant themselves, apart from human structure and modification. (ICOMOS)

Need To Clarify Common Law, Statutory, Or Contractual Obligations Concerning All Aboriginal Communities

The international standard of Cultural Heritage Site refers to a place, locality, natural landscape, settlement area, architectural complex, archaeological site, or standing structure that is recognized and often that is often legally protected as a place of historical and cultural significance. It must be remembered that the Ottawa Valley is a place of ancient human settlement from which we could all learn a great deal, and which is of interest to the world that also placed significance on ecosystem relationships.

Recognizing the long history of site desecration and compromises in the accurate preservation of the larger Anishnabe and mound builder society cultural complex, as has been evidenced by the specific Kichesipirini experience, the Ontario practice makes preservation in accordance with international standards and ideals completely impossible.

The piece-mealing of Aboriginal culture through the dislocations and divisions imposed by the Indian Act, the reserve system, and the highly irregular preference for preserving the "registered" version of history and identity, as well the imposition of provincial boundaries within Algonquin territory, makes the actual preservation of the genuine culture difficult, and with the oppression of the genuine culture from a holistic understanding after generations of colonial administration, makes recognizing and identifying potential sites problematic.

If we rely solely on the Ontario standards, priorities, and interpretations we will risk losing valuable understandings of the complexities of the prior social organization, and will have instead have a patchwork of areas designated as "green space" with tourist attraction type interpretations, that have been developed through the cooperation of Aboriginal peoples who have been removed from their own collective practice and understanding of their entire culture for generations through colonial administrations and oppressions.

The Ontario policy articulates that Aboriginal communities it directs parties to "refer to First Nation communities (also known as "bands" under the Indian Act), Métis communities, and communities of other Aboriginal peoples who identify themselves as a community."

The Kichesipirini should draw particular attention to the inherent irregularities in this reference. Indian Act bands are not representative of the actual priori jurisdictions, or actual First Nations.

Primary documents as well do not provide a history of a Métis aboriginal community existing as part of the prior social organization. The original records of the Kichi Sibi Anishnabe show a clear record of a new distinct people under the jurisdiction of the Kichesipirini known as the Canadians. Whereas the Métis leaders in the consultations regarding the creation of the Dominion of Canada asserted agreement with the British Crown's assertions of sovereignty through rights of conquest and supported the disintegration of the prior social organizations in exchange for incorporated rights while the priori Canadian population, within Kichesipirini jurisdiction, continued resistance against colonization.

It is not enough that we acknowledge existence and rights of populations that resulted from ethno-genesis but we must also ensure appropriate examination of the cultural practices and social organization and affiliations of distinct mixed-blood Aboriginal populations, and the ability of all parties to previously exercise free, prior and informed consent, before making sweeping assumptions without detailed cultural and governance awareness.

It is not enough that an Aboriginal community identify themselves as a community, nor is it enough that they hold some sort of loose attachment to the territory or previous culture.

Rights are specific, and must be provable. The Kichesipirini Algonquins are reflective of the actual priori jurisdiction, and are therefore in the truest sense a "First Nation", and they are not under Indian Act administration.

It must again be remembered:

- Kichesipirini Algonquin First Nation, Kichi Sibi Anishnabe, Canada, maintain and assert a history of customary jurisdiction that is "certain" in nature, "consistent with law" , "in existence since time immemorial" and is "provable in court".

These rights are of Aboriginal, Canadian, international and constitutional character:

- Although s. 35 protects "existing" rights, it is more than a mere codification of the common law. Section 35 reflects a new promise: a constitutional commitment to protecting practices that were historically important features of particular aboriginal communities. It cannot confer any new rights.

And since the Kichesipirini have not relinquished any existing rights, can prove those rights and responsibilities in court, and has already filed a claim of interest concerning the traditional territory and the responsibilities regarding heritage and archaeological sites, and remembering that:

- It is, as section 52 of the Constitution Act, 1982 declares, the Constitution to be the "supreme law" of the nation, unalterable by the normal legislative process, and unsuffering of laws inconsistent with it. The duty of the judiciary is to interpret and apply the laws of Canada and each of the provinces, and it is thus our duty, as Canadians, to ensure that the constitutional law prevails.

In unceded territory where a community holding existing rights has made a claim of interest reliance on the provincial policy is in contradiction to the requirements of the Constitution and case law, and as such, must be considered void.

Although there are attempts to generate new practices of common law amongst Aboriginal peoples that are not reliant on a proper examination of fact, and that unwittingly contemporary aboriginal communities are often enticed into procedures and used this way, there can be no "crystallization" of such convention into new common law.

The Constitution clearly over-rides convention.

The existing executive and administrative bodies of Canada are there primarily by convention.

The Kichesipirini have filed a claim of interest years ago, and that claim should have been appropriately responded to.

Have all parties involved, including all Aboriginal peoples, been informed of the differences regarding common law, statutory, or contractual obligations and the spectrum of consultation obligations based on those particulars?

Party At Risk If Consultation Is Inadequate

According to the Real Estate Acquisitions Corporate Policy of the City of Ottawa there is again, the recognition for the need of First Nations Consultation, however that effectiveness and legitimacy of those consultations is again compromised by the existing policies. The City policy states "When acquiring or encumbering federal or provincial lands within the Algonquin's of Ontario Land Claim area, it is recognized that the federal and provincial governments have an obligation to consult with the First Nations. Further, the federal and provincial governments cannot delegate to the purchaser that obligation to consult. As the beneficiary of a (pending) land transfer and the party at risk if consultation is absent or inadequate, the City will monitor the consultation process." (http://ottawa.ca/city_hall/policies/real_estate_acquisition_en.html#P69_10586)

The Real Estate Acquisitions Corporate Policy of the city lists as legal justification regarding land distributions:

Legislative & Administrative Authorities
Arts and Heritage Plan
City of Ottawa Act
City of Ottawa By-Law 2002-38
City of Ottawa By-Law 2002-49
City of Ottawa Capital Budget
City of Ottawa 20/20 Official Plan
Disposal of Real Property – Harmonization of Policy, Procedures and Disposal By-law
Delegation of Authority By-law
Expropriations Act
Environmental Assessment Act
Greenspace Master Plan
Municipal Act 2001
Municipal Tax Sales Act 1984
Ontario Municipal Board Act
Ontario Heritage Act
Planning Act

While stating that "As the beneficiary of a (pending) land transfer and the party at risk if consultation is absent or inadequate, the City will monitor the consultation process" the city fails to clearly acknowledge that the first basic legal requirement is to ensure that all policy and legislation must be consistent with the principles and purposes of the Constitution.

It would be hoped then that where there are irregularities within provincial administrative policy that can potentially abrogate or derogate the existing rights of Aboriginal peoples that federal policy would correct the numerous administrative injustices existing at the provincial and municipal level.

The Ministry of Canadian Heritage "is responsible for national policies and programs that promote Canadian content, foster cultural participation, active citizenship and participation in Canada's civic life, and strengthen connections among Canadians."

Again, there are policy and procedural gaps as acknowledged: "The Policy unit is developing a strategic framework that Canadian Heritage will use to ensure its policies and programs reflect Aboriginal concerns. The Policy unit provides a coordinated departmental response to Aboriginal policy initiatives of other federal departments. In this way, it contributes to the federal Aboriginal policy agenda. Finally, the Policy unit helps Canadian Heritage contribute to Canada's positions and

activities in various international fora. These fora include the United Nations; the United Nations Educational, Scientific and Cultural Organization; the Organization of American States; and the Summit of the Americas." (http://www.pch.gc.ca/pgm/pa-app/pol/pol-eng.cfm#a2)

But is it enough to ensure policies and programs reflect broad Aboriginal concerns?

Again, this area of policy development is dependent on the continued reliance on domestic policy constructs that perpetuate the colonial administration and demographic identity manipulations, and does not allow for the recognition of existing rights as held by those communities wishing to preserve their customary identity and jurisdiction.

The Supreme Court expects consultation to be "meaningful" and consultation may result in an agreed upon accommodation in lieu of an infringement on an existing right or title. Consultation and/or accommodation does not eliminate or reduce asserted rights or titles. Meaningful consultation must be transparent, open and include any and all relevant information.

Consultation may not be influenced by bribery or coercion. Those communities involved in such processes would be competing for positions to be used to abrogate the genuine Aboriginal rights in the same way that those at the current land claim negotiations process are being used. Such consultations and processes can only be considered "business deals", and cannot challenge, question, or reconcile the underlying constitutional rights and obligations.

These practices place unfair responsibilities and risks to both the Aboriginal communities and the involved corporations. Should a developer entice either the Crown or the Aboriginal communities with remuneration, gifts or promises, as part of any process, then the developer is acting outside the law and is open to prosecution.

The Crown, including the provincial Crown, must act with honour and integrity, avoiding even the appearance of sharp dealing when dealing with the Aboriginal peoples of Canada.

As stated in the introduction of Aboriginal Consultation and Accommodation - Interim Guidelines for Federal Officials to Fulfill the Legal Duty to Consult (February 2008), (http://www.ainc-inac.gc.ca/ai/arp/cnl/intgui-eng.asp) :

"In the Haida and Taku River decisions, the Supreme Court of Canada (SCC) held that the Crown has a legal duty to consult and, if appropriate, accommodate, when the Crown contemplates conduct that might adversely impact section 35 rights (established or potential). This duty has been applied to an array of Crown actions and in relation to a variety of potential or established Aboriginal and treaty rights. For the purposes of these Guidelines, the legal duty to consult refers to the common law duty; statutory or contractual obligations to consult will be referenced as such."

But has the federal government ensured that all parties involved, including all Aboriginal peoples, have been informed of the differences regarding common law, statutory, or contractual obligations and the spectrum of consultation obligations based on those particulars in a manner that is consistent with the purposes of the Constitution, ensuring that no policy or practice, either through omission or commission, is potentially inconsistent with the purposes of Section 35(1)?

Convention or Constitution?

The current federal government site then claims that "the courts have thus far left the detailed exercise of implementing processes designed to fulfill the legal duty, to government." The Interim Guidelines reflect the federal government's understanding of the legal parameters of the duty, and seek to provide guidance in determining how and when the legal duty to consult is triggered and need to be considered by government officials in the course of their work."

The Constitution --including the Charter-- is the "Supreme Law" which means that governments must respect it whenever they pass a law, make a policy, or have day-to-day dealings with us.

Despite the fact that such issues affecting the Aboriginal peoples of Canada have been manifest for decades the federal government is only now developing consultation guidelines.

Stating that:

"In the coming months, work will be undertaken to develop a federal policy on consultation and accommodation that will address outstanding legal and policy matters including the scope of the duty, who is the Crown, the nature and scope of accommodation, capacity of government and Aboriginal groups to engage in consultation, and the reconciliation of the evolving legal duty with statutory and other legally based obligations to consult (e.g. comprehensive land claim agreements). It is expected that such a policy, to be informed by engagement with First Nations, Inuit and Métis groups, will enable the legal duty to be fulfilled in a more consistent, coherent, and efficient way across the federal government."

We filed a claim 4 years ago and have not yet received a response.

It must be noted that this federal interpretation continues to further the adherence to First Nations, Inuit and Métis identity constructs, without defining "First Nations" , and does not effectively address the "existing" rights, and does not address the potential rights of all Aboriginal collectives. Unless there is a clear definition of the term "First Nation" consistent with the possibility of including those traditional Aboriginal polities, such as the Kichesipirini, wishing to preserve customary indigenous common law and identity consistent with international law, the administration of Aboriginal programs, claims of interests, existing rights, and consultations, remain vulnerable to compromised integrity and continued administrative injustices.

The federal government goes on to claim:

"The federal government as a whole is responsible to ensure that any and all consultation and, where appropriate, accommodation obligations are fulfilled."

Of particular interests to us, having submitted a formal claim almost four years ago, are the requirements to:

- Ensure that an assessment of the strength of claim has been done and documented;
- Ensure that relevant information regarding the government or third party activity is provided to appropriate Aboriginal groups in a timely manner, including the appropriate contact within government to respond to and any particular timelines that may be at issue;

- Engage the Aboriginal groups regarding the proposed activity so that they have an opportunity to outline their established or potential Aboriginal and treaty rights and to articulate concerns regarding potential adverse impacts on their rights or interests;

- Ensure there is a reasonable process for engaging Aboriginal groups (may be within or in addition to public processes or established regulatory processes) and keep records of all communications;

- Ensure that all communications received from Aboriginal groups are responded to in a coordinated and timely fashion;

- Ensure that all meetings and correspondence are on the record to enable the Crown to rely on such information, if necessary, in Court. Information provided to government may be subject to Access to Information Act requests.

- Consider, assess, and respond to the representations of the Aboriginal groups;

Numerous Supreme Court of Canada decisions apply to provincial and territorial governments. Third parties, such as industry proponents, do not have a legal obligation to consult Aboriginal groups whose rights may be adversely impacted by their activities. The Crown alone is legally responsible for any consequences that flow from its actions and interactions with third parties that may adversely affect Aboriginal and treaty rights.

In the case of legally based consultation, the final responsibility for consultation and accommodation rests with the Crown as the honour of the Crown cannot be delegated.

There is still the attempt to delegate those matters not under the administration of the Indian Act to the Federal Interlocutor for Métis and Non-Status Indians, stating that the Federal Interlocutor helps to find practical ways to improve federal programs and services for Métis, Non-Status Indians and urban Aboriginal people without clarifying the potential compromise of existing Aboriginal rights associated with reliance on the OFI.

- It must be noted that consultation itself is not merely a question of law, but is a distinct, often complex, constitutional process which in such circumstances, is a right involving facts, law, policy, and the adherence to any process that circumvents these requirements must be questioned.

As stated in Partners in Confederation, "Aboriginal peoples are the bearers of ancient and enduring powers of government that they carried with them into Confederation and retain today."

Kichesipirini Algonquin First Nation, Kichi Sibi Anishnabe, Canada, maintain and assert a history of customary jurisdiction that is "certain" in nature, "consistent with law" , "in existence since time immemorial" and is "provable in court".

What type of pre-consultation fact-finding process was established, and is it publicly available?

Again, has the federal government ensured that all parties involved, including all Aboriginal peoples, have been informed of the differences regarding common law, statutory, or contractual obligations and the spectrum of consultation obligations based on those particulars?

We find ourselves in a unique situation:

"From the Records of the Federal – Provincial Arbitrators (Unsettled Accounts Arbitration), Indian Claims, Robison Treaties, Vol. 5, Entered in the Department of Indian Affaires, January 12, 1889:

The Hon. J.J. Curran, Q.C., Solicitor General For Canada explains:

"We contend that these Treaties are governed by international law, rather than municipal law. They were made with the Tribes under the Authority of the Sovereign, and the Faith of the Nation was pledged in dealing with those annuities. The Crown is a Trustee in those matters, and occupies a special relationship towards those Indians, and is bound to watch over their interests and enforce their rights, and will not be allowed to set up its own laches as a defence against these claims. All these claims are safeguarded in a manner that is quite a different manner from any claim that would arise between two subjects of Her Majesty who might come before any court to have their matters adjudicated upon." (Abrbitration Transcript p. 63)

Note: Laches – In law, failure to do a thing at the right time is "inexcusable negligence."

There seems to be great ambiguity regarding how to respond appropriately to claims asserted by the Kichesipirini Algonquin First Nation.

We should remember:

- Where there is ambiguity, it must be resolved in favour of the Aboriginal group. As such, in order for the Crown to justify an infringement of Aboriginal title, it must demonstrate a compelling and substantive legislative objective, it must have consulted with the appropriate Aboriginal group prior to acting, and in some cases, compensations may be required.

Failing to clarify the implications associated with the differences regarding common law, statutory, or contractual obligations, and with the City of Ottawa admitting potential and the party at risk if consultation is absent or inadequate, and that the "City will monitor the consultation process" can the representatives of the city of Ottawa, and justice experts explain to us how the municipality acquired the right to exercise the fiduciary responsibilities of the Crown?

Is this consistent with the Constitutional requirements?

In such circumstances can a "mistake of law", or ignorance of the law be used as a reliable defence?

What resources has the city used to determine how to identify the specific Aboriginal group most appropriate for consultation consistent with the requirements of the Constitution?

While the current Conservative government claims that "the courts have thus far left the detailed exercise of implementing processes designed to fulfill the legal duty, to government." The Interim Guidelines reflect the federal government's understanding of the legal parameters of the duty, and seek to provide guidance in determining how and when the legal duty to consult is triggered and need to be considered by government officials in the course of their work.

Is this accurate? And what is happening to natural resources and cultural property of interest to the Algonquin Nation while this administration struggles with its understanding of the Constitution and case law?

So, we would ask, since Mayor Jim Watson has stated that Mr. Kirkpatrick is the principal contact for the City of Ottawa with the Algonquins of Ontario if he was ever informed about the various claims of interest made by the Kichesipirini and how they could impact on City decisions and participation in appropriate and meaningful consultation in unceded Algonquin territory?

Was there ever advice sought from the Ministry of Justice regarding the appropriateness of the consultation process for the purposes outlined in the Constitution and case law?

Did the Ministry of Justice ever disclose information about the claims of interest made by the Kichesipirini Algonquin First Nation?

Did the Ministry of Natural Resources ever disclose information about such claims?

Did the Ministry of Human Resources and Social Development disclose such information?

Considering how public Kichesipirini claims have been can it be considered that those currently involved in the existing consultation process with the AOO have exercised due diligence in determining the appropriateness of those current consultations and subsequent actions?

Was all information regarding potential claims and the probability of the need for additional consultation ever made available to Kanata North Lands, (KNL)?

With regards to entering into contracts or other similar agreements the parties must have the necessary capacity to contract, and the contract must not be trifling, indeterminate, impossible or illegal.

- All contract and international law is based on the principle of free and informed consent as an element of good faith and ensured procedural fairness.

- The duty to consult descends from these important principles.

Remembering again:

- Since it has been established that the purpose of s. 35(1) is to reconcile the prior presence of aboriginal peoples in North America with the assertion of Crown sovereignty, it is clear from this statement that s. 35(1) must recognize and affirm both aspects of that prior presence – first, the occupation of land, and second, the prior social organization and distinctive cultures of aboriginal peoples on that land.

Has the Province established a permanent, independent and impartial agency to facilitate and oversee the settling of land and treaty claims in Ontario, and if so, were they made aware of Kichesipirini claims? Where the Treaty Commission of Ontario as was recommended in the Linden Report?

Who is responsible for educating the various parties regarding Constitutional obligations and appropriate consultation?

Failure to clarify the differences regarding common law, statutory, or contractual obligations and the spectrum of consultation obligations based on those particulars outlined in Section 35(1) contributes to risks of conflict, protects, occupations, and expensive court proceedings. Is that responsible government?

Protracted Omissions or Potential Opportunity

Kichesipirini assertions are consistent with;

- The purposes of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, and to employ international machinery for the promotion of the economic and social advancement of all peoples.

Noting that:

"A nation is much more than an outward form of territory and government. . . .
So long as they those who hold sovereignty cherish sovereignty in their hearts their nation kingdom or principality is not dead. It may be prostate and helpless. . . .It may be suspended, in exile, a mere figment even of reality, derided and discouraged, and yet entitled to every respect. Why?
Because we are not dealing with fictions, [these] valiant standard bearers of sovereignty . . .
in faith and confidence have, and this is the point . . . inalienable, immutable rights."
("Sovereignty in Exile," 35 American Journal of International Law (1941) 666-668)

Communities with strong traditions of civic nationalism tended to define nationality or citizenship to include jus soli (the law of soil, birth within the nation-state). The "state" emerged within nations, to perform specialized functions. The "state" was a creation of the natural nation of natural persons, those persons corporeal with corporeal needs and liabilities. The "state" being "incorporated" by the peoples cannot, as an extension of the nation consisting of natural persons to serve specialized functions contradict or conflict with the first order of law of the collective.

The natural national origin of Canada begins with the prior social organization of the Indigenous Peoples, and includes the totemic system of the Algonquin Nation, the Kichesi Sibi Anishnabe.

It has been noted that:

"This disclosure is in accordance with all that has been observed of the history, organization, and polity of the Chippewa, and of the Algonquin tribes generally. The totem is in fact a device, corresponding to the heraldic bearings of civilized nations, which each person is authorized to bear, as the evidence of his family identity. The very etymology of the word, which is a derivative from Do daim,
a town or village, or original family residence, denotes this..."
(Henry Rowe Schoolcraft)

The heraldic or totemic system of the Anishnabe peoples integrates sophisticated symbolism based on creative interpretation of ecological and relational observations of the interconnected natural world around them. The symbols found on artfefacts are but a small representation of the larger aspirations of the society and its prior organization.

Are there still contemporary opportunities for continued national development based on the normative values and guiding principles attached to the prior social organization that would be lost if we did not take precautionary measures to ensure their accurate preservation?

The Echo Maker and High Aspirations

The totemic identity of the Kichesipirini is the Whooping Crane.

The Whooping Crane, once indigenous to the territory, is a very appropriate symbol of those responsible for external relations. It is the tallest bird in North America and its unique call can be heard for two miles. Whooping Cranes are named for their loud, single-note calls, which are greatly amplified by a coiled trachea that stretches 150 cm, nearly five feet, allowing for their special amplification. It is an impressive bird in stature standing nearly 1.5 meters,5 feet, in height with a wingspan of 2.3 meters, or 7.5 feet in width.

Fossilized remains of the Whooping Crane date back several million years. Evidence from the Pleistocene Epoch, just after the ice age, shows that Whooping Cranes were once scattered throughout a much wider geographic range, extending from central Canada to Mexico and from Utah to the Atlantic coast, having had influence throughout much of traditional Anishnabe territory. Whooping Cranes of all ages engage in dancing, which includes various behaviors such as bowing, jumping, running, stick or grass tossing, and wing flapping, and is generally believed to thwart aggression, relieves tension, and strengthens social bonds.

Whooping Cranes have been known to migrate 800 kilometres, about five hundred miles, in a single day, fly an average speed of about 45 kilometres an hour, can ascend thousands of feet with little physical effort, and then glide on a slight downward flight path for many miles. It is no wonder that this bird was chosen as the emblematic symbol for a community delegated with diplomatic relations. And it is no surprise that ancient societies around much of the world have also chosen various types of cranes for the same purposes, decorating castles and royal courts with their images.

All cranes are highly vocal and have a large vocabulary of specialized calls, and have barely changed in the last ten million years, whereas the world around them now would be scarcely recognizable. The ecoregion now is highly fragmented by public roads, logging roads, large scale logging, and settlement patterns. For thousands of years, wherever they are found, cranes have been honoured around the world for their ancient ancestry, their beauty, impressive size, summoning call, and unique methods of flight. In Europe and Africa their image appears in various forms of prehistoric art.

While they are represented in Australian dances, on Egyptian tombs, in Russian songs, and Greek and Roman myths, as well as in the totems and clans of Native Americans, their ancient and specific acknowledgement here has been almost obliterated through the past administrations associated with our colonization.

The Whooping Crane is one of the most ancient class of birds, having once soared impressively across the skies since time immemorial, perfectly at home in the places where ice-age waters first drew away exposing stepping stones of islands, such as what our history tells us of here. Their regular patterns of migration, followed since time out of mind, by large flocks made up of numerous smaller families, can be closely correlated with the same paths followed by the Anishnabe peoples in their long and ancient history.

Wetlands and prairies were necessary locations for Whooping Cranes as they completed their annual seasonal migrations, so they were regular features of the natural landscapes that had significant influence on the emerging mindscapes of developing societies. Their great influence on this ancient civilization can be found carried into the sophisticated Crane Effigy Mounds created between A.D. 700 and 1200 by the Woodland native culture and on carvings found here in Kichesipirini jurisdiction.

Did our unique flute music attempt to imitate the call of the Crane? Were its dances incorporated into our traditional dances? Its place in our Legends taught of learning from past mistakes, of wounded-ness, redemption, and then, heroic intervention in the relationship with humankind. Will the Crane's flight be shown to coincide with the geographical epochs here, the migration stories of the Anishnabe, the existence of cowrie shells in the area, the vast trading networks, the decision to live simplistically and in ways sustainable with the environment?

There is much we do not know, and we are just beginning to acknowledge and examine the prior social organizations of the first human societies here in Canada.

Sadly, at just the time that the traditional territory of the Kichesipirini community was facing its greatest challenges and most aggressive destruction the Whooping Crane too became a victim of ruthless devastation, quickly becoming one of the most endangered species on the planet because of habitat loss, destructive agricultural practices, development pressures, and indiscriminate hunting. .

As Algonquin territory was being exploited, and the Kichesipirini were removed from the public record, their totemic symbol was almost completely obliterated from the face of the earth, and so the pattern continued; vanishing landscapes, endangered species, social destruction and lost or compromised histories.

Can the dependence solely on isolated archaeological sites actually preserve the traditional culture of the actual prior social organization?

Can a collection of artifacts or interpretative trails and cultural centers actually meet the legal requirements of reconciliation called for in the Constitution?

Is it enough to categorize and describe the various totems, but remove them from a comprehensive understanding and deep appreciation of their relationships to each other, their ecological habitat, their abstract symbolic purposes and the principles that founded them and guided their inspiration?

Can they be understood and fully appreciated removed from the natural environment that produced them?

Does the culture of Indigenous Peoples only exist under the ground, or as material remnants and artefacts?

Is it simply a collection of relics from the past and interesting ceremonial displays of entertainment value and curious observation by tourists?

Or is there something still alive in the genuine cultures of our Aboriginal societies that merits greater attention and understanding?

Why has there been such delays in responding to the claims of interests made by the Kichesipirini Algonquin First Nation?

What is so important about our Aboriginal past that it does receive the special mention in the highest articulations of the law, has been the subject of so many court deliberations, attracted international discussion, and has generated so much policy attention and controversy?

Contemporary definitions of culture includes:

- An integrated pattern of human knowledge, belief, and behavior that depends upon the capacity for symbolic thought and social learning,

- The set of shared attitudes, values, goals, and practices that characterizes an institution, organization or group.

We understand then that there is great significance given to the preservation of culture, and cultural artifacts. We understand and appreciate that there is great interest placed on discovering ancient archaeological sites and items. But have we integrated the deeper reasoning behind this intentional social aspiration to preserve and protect elements of our human past?

Can the existing standards and guidelines of the Ministry of Tourism and Culture help us understand the shared attitudes, values, goals, and practices that characterized the Anishnabe culture, or the specific manifestation of the Kichesipirini expressions of that culture?

Can depending in the provincial or federal systems of cultural and heritage identification, preservation, or education provide for a culturally sensitive and appropriate integrated pattern of knowledge, belief, and behaviour built upon the capacity for symbolic thought and genuine social learning?

Comprehensive concepts of culture currently position the purposes of culture with the processes designed to facilitate first to the betterment or refinement of the individual, especially through education, and then to the fulfillment of national aspirations or ideals, originally meant to be the cultivation of the soul or mind.

“Culture” emerged as a concept central to anthropology, encompassing all human phenomena that are not purely results of human genetics particularly interested in:

- The evolved human capacity to classify and represent experiences with symbols, and to act imaginatively and creatively; and,

- The distinct ways that people living in different parts of the world classified and represented their experiences, and acted creatively.

Since culture is considered to evolve, and is directly linked to creativity, culture must be understood to be dynamic.

Symbols and symbolic thinking thus make possible a central feature of social relations in every human population: reciprocity. Symbolic thought makes possible reciprocity between individuals and divergent groups.

It must be understood then that material artifacts were the material residue of culture, but do not represent the culture itself.

Culture must then be understood as that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by humanity as a members of society.

These elements of culture must then be “integrated,” that is, constituting a defined and observable pattern of action and thought that gives normative purpose to people's lives, and provides them with a

basis from which to evaluate new actions and thoughts. The genuine preservation of a "cultural system" of norms and values that regulate social action symbolically would then allow for continued ability in the capacity of promoting new cultural models responding to contemporary needs, based still on the foundations of original values, to enable new generative action for contemporary and succeeding generations.

Can reliance on the existing standards and guidelines associated with the current provincial and federal policy provide that capacity in ways consistent with the prior social organization, and ecological values, of the Algonquin Nation, the Anishnabe culture, or the Aboriginal cultural foundations of Canada?

Internationally these issues are addressed in the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage. According to the Convention, the intangible cultural heritage (ICH) – or living heritage – is the mainspring of humanity's cultural diversity and its maintenance a guarantee for continuing creativity.

It is defined as follows:

"Intangible Cultural Heritage means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development."(emphasis added)

Can relegating Aboriginal culture and heritage to the priorities of tourism and commercial interests genuinely preserve Canadian culture and heritage?

Is existing Canadian policy consistent with the international principles guiding the safeguarding of intangible cultural heritage?

Does it preserve the continued interaction between the prior social organization, the environment, continued interaction with nature, or their history and continuity?

The Kichesipirini Algonquin First Nation has expressed numerous claims of interests regarding gravesites, loss of ancestral remains, failure to adequately mark and protect graves, failure to associate accurate history with gravesites, and the loss of protection of cultural and heritage sites, expropriation of land and gravesites, but these communications have been ignored.

Why?

Is the United Nations Declaration on The Rights of Indigenous Peoples an international human rights instrument?

Heritage is defined to include:

- Something inherited from the past.
- Natural heritage, an inheritance of fauna and flora, geology, landscape and landforms, and other natural resources,
- Cultural heritage, the legacy of physical artifacts and intangible attributes of a group or society: man-made heritage,
- Tradition, customs and practices inherited from ancestors
- Inheritance of physical goods after the death of an individual; of the physical or non-physical things inherited
- Birthright, something inherited due to the place, time, or circumstances of someone's birth

Cultural heritage, whether "national heritage" or just general concepts of "heritage", is the legacy of physical artifacts and intangible attributes of a group or society that are inherited from past generations, maintained in the present and bestowed for the benefit of future generations. Cultural heritage can also include cultural landscapes; natural features that may have cultural attributes to a particular society.

In its truest meaning then culture includes the intangible aspects of a particular culture, often maintained by social customs during a specific period in history. This would integrate those concepts of sacredness held by the prior social organization to be considered in certain circumstances to be included as protected within the Constitution. Culture includes the social values, traditions, customs and practices, aesthetic and spiritual beliefs, artistic expressions, language and other aspects of human activity significant to a particular community.

Genuine cultural heritage and appropriate preservation must then attempt to capture the significance of physical and material artifacts as they are interpreted against the backdrop of the specific socioeconomic, political, ethnic, religious and philosophical values of the appropriate particular group of people, in accordance to their prior social organization, and then contemplated as to how that might still be of relevance to contemporary society.

Naturally, intangible cultural heritage is more difficult to preserve than physical objects.

We do not seek to preserve objects simply for their material interest, but it must be remembered that preserved objects also validate memories.

Cultural heritage and its preservation are not matters of material chronological catalogue, but are instead evolving studies profoundly interested in the study of humanity.

Attachment to particular regions inspired our traditions, customs, practices and artwork. The natural features of the land inspired our social design and governance systems.

Our cultural and natural heritage is dependent on natural places being irreplaceable sources of life and inspiration. Our heritage is our legacy from the past, what we live with today, and what we wish to pass on to future generations of Canadians. We must live in proximity to such places.

Totemic Identity as Character-Defining Aspect of Culture and Part of Canadian Heritage

Archaeological anthropology is often associated with concepts of historic preservation or heritage conservation, which is an organized endeavour that seeks to preserve, conserve and protect buildings, objects, landscapes or other artifacts of historic significance, hopefully safeguarding the character-defining elements of a cultural resource so as to retain its heritage value.

Remembering, that as expressed through one aspect of our cultural conventions:

"We are a country with an Aboriginal heritage. A growing number of states have given qualified recognition to the United Nations Declaration on the Rights of Indigenous Peoples. Our Government will take steps to endorse this aspirational document in a manner fully consistent with Canada's Constitution and laws." (Speech From the Throne, March 3, 2010, Governor General. Michaelle Jean)

What are the character-defining elements of our Aboriginal heritage in Canada that must be preserved?

And how is it that these character-defining elements can be of such important to deserve Constitutional and legal mention?

How do we define our Aboriginal "heritage value"? Are we to rely on external definitions?

What parts of our Aboriginal heritage should be considered the legacy of physical artifacts and intangible attributes of the prior social organization that are inherited from past generations, maintained in the present and bestowed for the benefit of future generations, for the benefit of all Canadians?.

Are the current policies guiding culture and archaeological practices and priorities consistent with the need to preserve the character-defining elements of the culture, in accordance with the prior social organization, which is part of our Canadian heritage?

The Kichesipirini Algonquin First Nation documented record clearly captures trade activities as an intangible attribute of our specific prior social organization.

This is clearly one of the strongest character- defining elements of our distinct culture and heritage. Our heritage most certainly establishes that the Algonquin Anishnabe peoples were not solely hunter-gathers, but that they exercised dynamic and diverse economic activities.

Our attachment to certain geological features, such as ancient island areas, and landscapes being waterways, while exercising a particular totemic identity, while enforcing a particular type of social-political-environmental monitoring and stewardship regime, are identifying attributes of the Kichesipirini Algonquin First Nation. Since we were involved in related activities with other Anishnabe groups, this captures a unique aspect of Aboriginal culture in Canada. This intangible cultural attribute, or set of inter-related attributes, inclusive of economic activity and strong community based rights carried into reciprocal positive relations and trade networks are attributes reflected by our symbolic representations that grounded us to the natural life forms and features of our landscape.

Has the federal government ensured that all parties involved, including all Aboriginal peoples, have been informed of the differences regarding common law, statutory, or contractual obligations, and emerging international environmental law, and the spectrum of consultation obligations based on those particulars?

Forests as Community-based Places of Universal Cultural and Symbolic Significance

Remembering:

"Heritage is our legacy from the past, what we live with today, and what we pass on to future generations. Our cultural and natural heritage are both irreplaceable sources of life and inspiration."

Noting that:

- Cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation.
- Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world,
- Considering that protection of this heritage at the national level often remains incomplete,
- Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole,

And that such heritage includes:

- Sites, defined as works of man, or the combined works of nature and man, and areas, including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.
- Natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;
- Geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;
- Natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty,
- Including fragile forest ecosystems, importance of forests is tied to their cultural and symbolic significance, especially evident at this historical juncture.
- Forests also provide other incalculable indirect benefits and services, including carbon storage, biodiversity conservation, disease containment and regulation of hydrological, carbon and various nutrient cycles,
- Some of these benefits of preserving forests are public, others private; some are local, others global; some immediate, and others long term.

Traditional Understanding of Territorial Integrity

To begin to understand the prior social organization of the Anishnabe peoples we must understand how they perceived themselves in relationship to the land, and how they understood the land and the world to be organized. The land was not simply a superficial layer of some substance, but instead represented one part of a series of interconnected interdependent relationships of which we are just one, and as individuals, just one generation of one type. Central to the Anishnabe worldview is the concept that all living organisms are continually engaged in a highly interrelated set of relationships with every other element constituting the environment in which they exist, and that we as human beings, are meant to be a part of this natural world rather than opposed to it.

Within the traditional Anishnabe social and political systems political boundaries usually matched naturally occurring ecological boundaries, the indigenous culture highlighted and celebrated the unique ecology of the particular bioregion that the society was attached to, Encouraged consumption of local, primarily naturally occurring foods, Encouraged the use of local materials for most technologies and material needs, Encouraged the cultivation of native plants through , and Encouraged intergenerational sustainability in harmony with the natural bioregion. Emerging research demonstrates the existence of permanent settlements combined with rural social and economic activities and governance structures that allowed for social and economic diversity, utilizing natural capital. In this sense, Anishnabe culture created intentional communities that strove to live a certain way in clearly defined relationships with each other and the natural world around them.

In accordance to traditional Anishnabe custom we consider territorial integrity to, in part, mean the preserved natural self-generating health and diversity of the naturally occurring ecological regions and systems within a naturally defined area and the continued natural ability to provide for, and contain characteristic, geographically distinct groupings of natural life form communities and species. The culture recognized that interlinked ecosystems combined to form a world that is profoundly intertwined, and cannot be appropriately understood through reductionist or fragmented analysis. The traditional territory of the Kichi Sibi Anishnabe coincides primarily with the Ottawa River watershed and what is currently known as the Eastern forest-boreal transition eco-region of Canada.

The natural services, natural materials and natural processes were considered the most efficient and self-sustaining so there was special emphasises placed on their preservation for the benefit of the society. According to Anishnabe traditional culture failure to protect the natural integrity of a defined territory potentially generates circumstances of possible conflict and vulnerability. The preservation and responsible intergenerational protection of natural resources and natural capital were considered then an investment in social capital, or the ability to maintain positive relationships and networks based on trust and good regard.

But the Anishnabe relationship to the natural world was not simply survivalist or opportunistic. It embodied deep manifestations of human endeavours to move through their path in this life, in this world, with wisdom; integrating distinct models of creativity, analytical rigour, spiritual insight, ethical integrity, and aesthetic appreciations, which cannot be appropriately captured or understood away from the natural environment that inspired them.

In order to facilitate the higher aspirations of the culture it is imperative that permanent settlements have close access to natural spaces. This encourages the necessary knowledge and emotional attachments to ensure that the particular underlying ideologies of the culture can be preserved and protected for future generations. Without these grass root community experiences the essence of the culture cannot be maintained.

Central to the deeper intangible aspects of Anishnabe culture we find a documented record of symbolic significance being attributed to trees, the biodiversity of shorelines, waterfalls, rapids, places of echoes, rock faces, observance of the sky, and special relationship to members of the family of natural creatures. Within the territory there is the abundance of ancient pictograms, typically found in echo rich locations, as they are around the world, influencing the new aspect of archæology called "archæoacoustics. Sites such as Mazinaw Rock, and Migizi Kiishkaabikaan bear witness, as teaching rocks, to the multi-dimensionalism of Anishnabe culture, the interest in echoes, and the need to develop more holistic ways of understanding and preserving our culture. And so we might even better understand the deeper role of the "Echo Maker" or "Speaker of The Clans".

Remembering that:

"We are a country with an Aboriginal heritage. A growing number of states have given qualified recognition to the United Nations Declaration on the Rights of Indigenous Peoples. Our Government will take steps to endorse this aspirational document in a manner fully consistent with Canada's Constitution and laws." (Speech From the Throne, March 3, 2010, Governor General Michaelle Jean)

An aspirational document is one that is ambitious, holding to high standards and ideals, desiring success, and in law, expressing a hope or intention, but not yet creating a legally binding obligation.

It must be noted that here in unceded Algonquin territory there does not yet exist the external jurisdiction to create a legally binding obligation apart from the Constitutional obligations concerning consultation with the Kichesipirini. The Kichesipirini Algonquin First Nation has already accepted the Declaration as an expression of our underlying legal principles and international obligations.

We assert that the Ottawa Valley, the traditional territory of the Algonquin Nation, the Kichi Sibi Anishnabe, the jurisdiction of the Kichesipirini, has long been a place of cultural innovation. Within this territory there has been specific places set aside and determined to hold special symbolic significance. These places were often places of natural landscape, whose symbolic significance was deemed to be important to the contribution of the intrinsic values of the society and intergenerational legacy. The culture depended on the ongoing emotional attachment to areas of natural ecology, a natural economy, and the preservation of regular contact with such places to facilitate the ongoing emotional concern and sense of stewardship and responsibility amongst the people and into the succeeding generations.

We would aspire that the proper cultural conservation of areas of significance to the Algonquin people is not dependent on the existence of artefacts being found, or possibly existing on a particular site, but is in fact still available, to continue to hold certain places, especially those of ecological significance as being reflective of the intangible attributes of our culture that are reflective of the character-defining elements of a cultural resource , and that there is also international interest in ensuring steps are taken to assist us to retain what is necessary to preserve elements that capture genuine heritage value, or living heritage.

As is understood the genuine preservation of culture and heritage strives to protect the communities' response to their natural environment, their interaction with nature, their history, and their creative economic development in relationship to their natural environment and intergenerational responsibilities, which embody those principles consistent with existing international human rights instruments and requirements of mutual respect among peoples and sustainable development.

Genuine Cultural Preservation, Biodiversity, and Human Well-being Interconnected

Sustainable development has become commonly understood as a pattern of resource use that aims to meet human needs while preserving the environment in a manner that these needs can be met, not only in the present for the present generation, but also for generations to come. The sustainable development concept is consistent with Anishnabe intergenerational stewardship responsibilities. The term is widely associated with the Brundtland Commission which coined sustainable development "meets the needs of the present without compromising the ability of future generations to meet their own needs."

It does not simply define needs to be economic in character.

Sustainable development ties together concern for the natural carrying capacity of natural systems with the social challenges facing humanity, including "sustainability" employed to describe an economy "in equilibrium with basic ecological support systems" and based on the three major aspirational components.

The three pillars of sustainable development are:

- Environmental sustainability,
- Economic sustainability, and,
- Sociopolitical sustainability.

International intellectual regimes challenge the legitimacy of Canada's current outdated policy and priorities. The United Nations 2005 World Summit Outcome Document reinforces the interconnectedness of the "interdependent and mutually reinforcing pillars" of sustainable development as economic development, social development, and environmental protection.

The Universal Declaration on Cultural Diversity, UNESCO, 2001, further elaborates the concept and refers to the need for genuine cultural preservation stating that "...cultural diversity is as necessary for humankind as biodiversity is for nature"; it becomes "one of the roots of development understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence". In this vision, cultural diversity is the fourth policy area of responsible sustainable development encouraging current generations to take a more holistic systems approach to growth and development and to manage natural, produced, and social capital in ways that can support welfare and well-being current and future generations.

Recently the Center for International Environmental Law applauded the further international initiatives that have reaffirmation the appropriateness of multilateral processes that include Indigenous Peoples to ensure more comprehensive agreements with environmental integrity featured that is accountable to the global community, recognizing that the interconnectedness of our planet's social and ecological systems require collaboration, legal action, and public interest advocacy as essential means to protect those systems.

The prior social organization of the Algonquin Nation, inclusive of Kichesipirini jurisdiction preserved for Canada unique types of community-based property rights that by definition emanate from the concerned local community and are consistent with emerging internationally recognized standards and priorities. Traditional Anishnabe community-based property rights are inclusive and derive their authority from the local community first and not solely from the nation-state where they are located.

Consistent With Our Constitution

In the speech from the throne in the spring of 2010 the Canadian State representatives made reference to the United Nations Declaration on the Rights of Indigenous Peoples stating:

"A growing number of states have given qualified recognition to the United Nations Declaration on the Rights of Indigenous Peoples. Our Government will take steps to endorse this aspirational document in a manner fully consistent with Canada's Constitution and laws."

On Nov. 10, 2010 the Harper government issued a qualified "Statement of Support" regarding the Declaration stating:

"We are now confident that Canada can interpret the principles expressed in the Declaration in a manner that is consistent with our Constitution and legal framework."

We continue to assert the need for clarification regarding the definition and legal character of "states" in relationship to Indigenous Peoples, especially within the context of the Canadian Constitution and existing Aboriginal rights within unceded Algonquin territory in order that all Canadians may exercise free, prior and informed consent.

Noting that propaganda is defined as:

"…a form of communication that is aimed at influencing the attitude of a community toward some cause or position, and that often presents facts selectively, thus possibly lying by omission, to encourage a particular synthesis…"

Propaganda may be administered in insidious ways such as:

- Disparaging disinformation about the history of certain groups and may be encouraged or tolerated in the educational system, and may include the creation or deletion of information from public records, in the purpose of making a false record of an event or the actions of an organization.

- Obfuscation, intentional vagueness, and generated confusion where generalities are deliberately vague and reliance on the use of undefined phrases, without analyzing their validity or attempting to determine their reasonableness or application.

In our formal statement of interests, Lasting Treaties, Living Covenants, filed with the Conservative government almost four years ago we specifically asserted our interests in:

- Heritage and Culture,

- Historic Sites

- Artefacts

- Ancestral Graves and Cemeteries

- Social Services, and,
- Education

We assert that the principles of the Declaration are fully consistent with the Constitution and existing rights of the Kichesipirini Algonquin First Nation.

Noting that:

Canada's sovereignty is conditional upon Canada protecting forever Crown obligations to the Aboriginal people. Britain insisted that the Canadian Constitution be patriated upon this condition. The 1982 Constitution Act included section 25 of the Canadian Charter of Rights and Freedoms, which stipulated that:

"..guarantees in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including a) any rights or freedoms recognized by the Royal Proclamation of October 7, 1763 and b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired."

The Declaration has recognized:

- Indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,
- That all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,
- The urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

We further assert that:

- The Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm our right to freely determine our political status and freely pursue our economic, social and cultural development.

And further note that:

- The rights affirmed in treaties, agreements and other constructive arrangements between States and Indigenous Peoples are, in some situations, matters of international concern, interest, responsibility and character.
- The United Nations has an important and continuing role to play in promoting and protecting the rights of Indigenous Peoples.

A Place of Cultural and Natural Heritage

With regards to the particular situation concerning consultations and other matters related to Ottawa's Great Forest and Beaver Pond Forest, and our determination of the high potential for comprehensive cultural significance to the Algonquin Anishnabe and community peoples as a place of Cultural and Natural Heritage, draw particular attention to, but not limited to, the following Articles of the United Nations Declaration on the Rights of Indigenous Peoples:

Article 8
1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
(d) Any form of forced assimilation or integration;
(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9
Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 11
1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 15
1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 18
Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19
States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20
1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 25
Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 31
1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 33
1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34
Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.
Article 39
Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40
Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41
The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42
The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

In the exercise of the rights by the Kichesipirini Algonquin First Nation as enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration by the Kichesipirini Algonquin First Nation shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. We find the current regime of provincial and federal policy inadequate and insufficient; potentially trifling, indeterminate, impossible or illegal.

Remembering again:

- Since it has been established that the purpose of s. 35(1) is to reconcile the prior presence of aboriginal peoples in North America with the assertion of Crown sovereignty, it is clear from this statement that s. 35(1) must recognize and affirm both aspects of that prior presence – first, the occupation of land, and second, the prior social organization and distinctive cultures of aboriginal peoples on that land.

In conjunction with the Kichesipirini Algonquin First Nation, as a specific Indigenous Peoples, in accordance with our prior social organization, as a distinctive aboriginal culture on the land, as required by the Constitution and judiciary interpretations, having expressed our interests, we expect the State to take effective measures, beginning with appropriate consultation, and accommodation, to recognize and protect the exercise of these rights.

Sincerely,
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