



Algonquin Nation Secretariat

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NATIONAL CLAIMS RESEARCH WORKSHOP

CLAIMS IN NATIONAL PARKS:

TIMISKAMING FIRST NATION

AND

OBADJIWAN - FT. TEMISCAMINGUE NATIONAL HISTORIC SITE.

September 6, 2000.

SEP 11 2000

TIMISKAMING FIRST NATION AND OBADJIWAN (FORT TEMISCAMINGUE NATIONAL HISTORIC SITE).

Background.

The Algonquin Nation Secretariat is a tribal council which represents the rights and interests of three Algonquin First Nation communities - Barriere Lake, Wolf Lake and Timiskaming - whose territories lie in northwestern Quebec and northeastern Ontario, and are included within the lands reserved by the Royal Proclamation of 1763. The member communities possess Aboriginal title to their traditional territories; they have never signed any land cession treaties surrendering Aboriginal title; nor has their title been extinguished by any other lawful means.

The Algonquin nation (which includes groups known historically as Nipissings) is most closely related to the Ojibway, Odawa and Potawatomi Nations, with whom Algonquins share a common language (*anishnabemowin*) and many usages and customs.

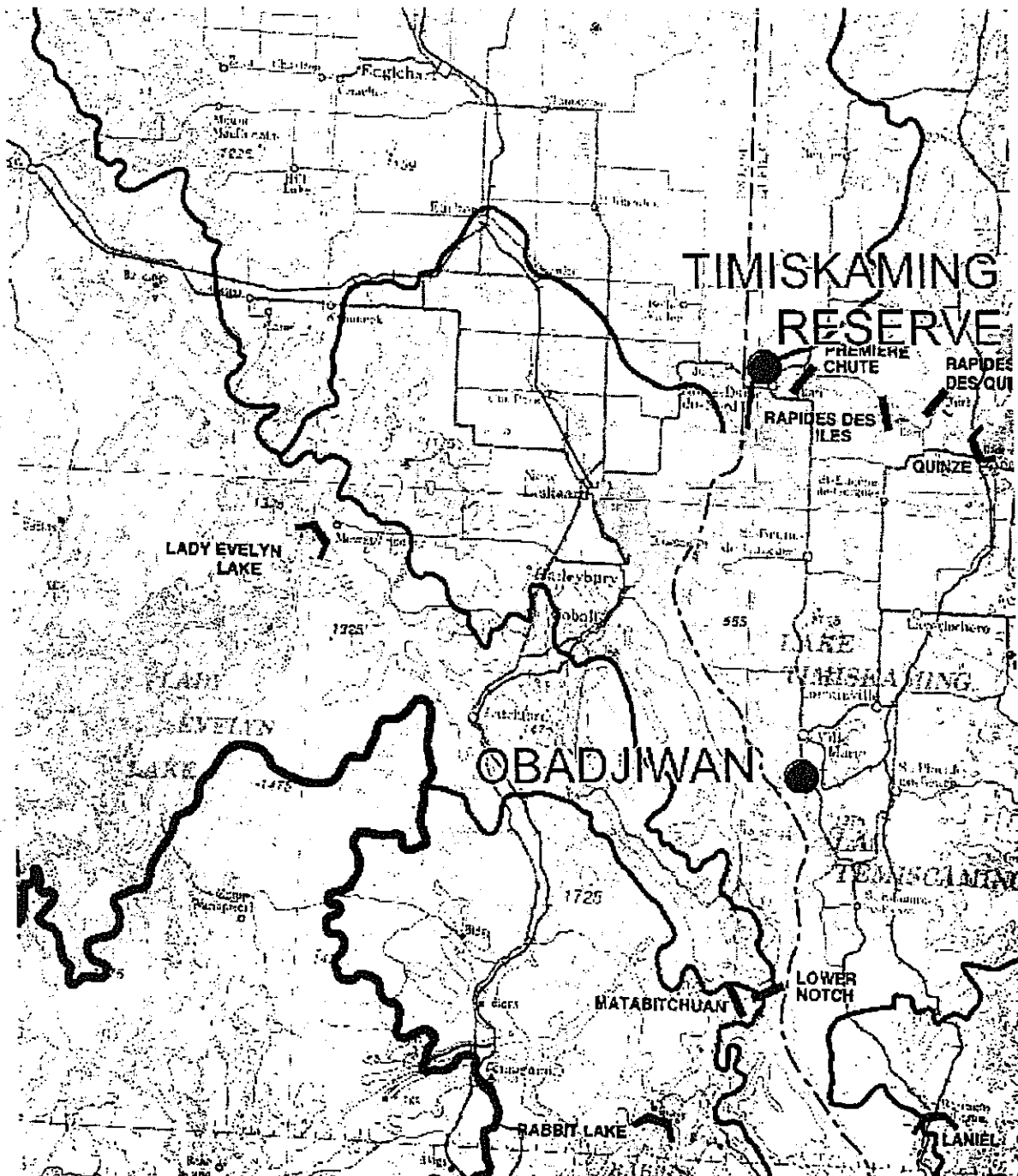
This paper will describe the experiences of the Timiskaming First Nation in dealing with their interests at Obadjiwan, also known as the Fort Temiscamingue National Historic Site.

The History.

Obadjiwan - meaning "both sides of the narrows" - occupies a strategic location on Lake Timiskaming where the two sides come together and almost meet. It is located about five hours north of Ottawa, between Mattawa and New Liskeard, straddling the Ontario-Quebec border (see map). For thousands of years, Algonquin and Ojibway people have come to Obadjiwan from both sides of the Ottawa river watershed on an annual basis. It was a focal point of their cultural, political and economic life: they would gather there to fish, hold councils, arrange marriages & alliances, and plan for the coming year. It was also a major trading centre which was part of a larger inter-tribal commercial network that stretched at least as far as Labrador and the Atlantic coast long before the arrival of the Europeans. Archaeological evidence indicates that this site has been used continuously by the Algonquin and their ancestors for over 6,000 years.

Obadjiwan lies within the traditional territory of the Timiskaming First Nation. Genealogical and documentary research carried out by the Algonquin Nation Secretariat places the direct ancestors of current Timiskaming members at Obadjiwan and throughout the surrounding territory prior to 1760. Land use studies carried out in 1996/97 indicate that Obadjiwan also lies within the current use area of the Timiskaming First Nation.

Map of a portion of the Ottawa Valley showing watersheds.



(Source: Ottawa River Regulation Planning Board, 1987)

Fur Trade.

Upon their arrival in the territory, Europeans recognized the strategic importance of Obadjiwan, and its already significant role in existing Aboriginal trade networks. As early as 1700, French traders located on the east side of the narrows to trade with the Algonquins who frequented the site, and to draw others from further afield, as part of the ongoing rivalry between the English and the French. The first formally recognized fur trade post at Obadjiwan was established in 1720, eventually known as Fort Temiscamingue. Forty years later, after the conquest of the French, the post was taken over by English traders operating out of Montreal. In 1794-95, the North West Company assumed control over operations until their merger with the Hudson's Bay Company in 1821. The HBCo continued its operations at this location until 1902. For the most part, the fur trade was a period of cooperation and mutual benefit between the Algonquin and the Europeans.

Colonization.

In 1839, the Oblate order had established a mission at the narrows, with the objective of converting the Algonquins. However as time went by, the Church was no longer satisfied with Aboriginal evangelism: they encouraged a policy of colonization, which involved the transmigration of Quebecois from other parts of the province to establish farming communities on the "new frontier". By 1886, Church-sponsored colonization efforts succeeded in bringing new settlers to the territory. At first the colonizers located at Baie des Peres, just north of Obadjiwan. The town of Ville Marie was formally established the following year, and immigrant farmers soon spread throughout the territory.

The arrival of these settlers brought about profound changes. Unlike the fur traders, the new colonists had no intention of participating in a cooperative economy or society with the Aboriginal people. Instead, they wanted to impose an economy and a society of their own, without Algonquin participation. Algonquin communities were not allowed to play any role in the government or administration of the territory. The Aboriginal title of the Algonquin people - their ownership of the land based on prior occupation - was ignored.

Increased competition for fish and game and the clearing of land for farms damaged the Algonquin way of life generally, but they also affected Obadjiwan specifically. In the early 1900's the construction of dams on Lake Timiskaming raised the water level by several metres, increasing the distance between the two sides of the narrows and destroying parts of the site. And, as settlement proceeded, the governments of Ontario and Quebec increasingly asserted their jurisdiction: Obadjiwan was effectively partitioned. This meant that the Algonquin could no longer treat it as a unified settlement site: different laws were applied to each side of the narrows, and different "owners" took possession of parcels in both provinces.

All of these events restricted Algonquin access to the location and undermined the integrity of Obadjiwan. But Algonquin use and occupation continued. In 1875, the Church and the

federal government had established a school for members of the Timiskaming Band residing at the narrows. This school continued operating until around 1901. Until at least the late 1880's, the Timiskaming Band selected their Chiefs at Obadjiwan. As late as 1919, there were still a number of Algonquin families who lived there, and in the 1920's and 30's, other Algonquin families living on the west side of the narrows used the location as a base for their commercial fishing operations.

Dispossession.

However, as settlement proceeded, more and more Timiskaming members were forced off the land and encouraged to settle at the head of the lake, on the Timiskaming Reserve (which had been established in the early 1850's, but was largely unsettled until the late 1800's).

Meanwhile, the local settlers began developing their own mythology about the area, and came to know Obadjiwan as "le vieux fort", a place for picnics and parties. Beginning in the 1930's, local Francophones began lobbying Ottawa to designate Fort Temiscamingue as a National Historic Site. Finally, in 1970, the federal government purchased the Quebec portion of the site (about 66.11 acres). In the mid 1980's it was formally designated as the Fort Temiscamingue National Historic Site, to commemorate the wars between the English and the French, and the fur trade. Little or no consultation took place with the Algonquin people, and the ancient Aboriginal presence was given short shrift.

Recent Events.

Re-Development Plan.

In 1995/96, Parks Canada took steps to begin a re-development of the site, based on a management plan that had been approved by the federal government in 1990. When the Timiskaming First Nation became aware of the proposed re-development, they contacted Parks Canada and offered to be partners in the process, to ensure that Algonquin history and culture were accurately reflected. However, these offers were rebuffed.

In the meantime, in December 1996, Parks Canada received a report from an archaeologist who they had hired to check on the remains of some HBCo buildings. He had unexpectedly found significant new evidence of Aboriginal occupation at the site dating back at least 6,000 years, and made the following recommendations:

- the Aboriginal presence "should be unquestionably recognized and utilized throughout all phases of the coming development", with an emphasis on the pre-European trade networks that existed;
- careful monitoring of further excavation and development work, to protect artifacts and the integrity of the occupation sites;

- further investigation of specific locations; and
- greater involvement of the local Algonquin people in decision making and interpretation.

However, these recommendations were inconsistent with the management plan that had been approved in 1990, so they were largely ignored, and initially suppressed. In fact, the archaeologist's report was not even disclosed to the Timiskaming First Nation until over a year later.

Timiskaming Aboriginal title.

Beginning in January 1997, a series of letters went to Parks Canada informing them of the fact that the Timiskaming First Nation had a legal interest in the site, and requesting formal involvement in the re-development. These letters were ignored. Instead, in June 1997, Parks Canada entered into a partnership agreement with the government of Quebec and the Temiscamingue Development Society. Local non-Aboriginal businesses contributed about \$500,000 of the \$2.5 million re-development budget, in the hopes of recovering their investment from tourist revenues. Parks Canada never informed them that Timiskaming had asserted Aboriginal title to the site.

During the summer and fall of 1997 another series of letters were exchanged between the Algonquin Nation Secretariat and Parks Canada, and although then Secretary of State for Parks Andrew Mitchell assured the ANS that Parks was ready to enter into negotiations, nothing happened.

In December 1997, the Supreme Court of Canada ruled in *Delgamuukw*. They found that Aboriginal title is a real property right of exclusive use; that it has an "inescapable economic component"; and that whenever it is infringed, there must be justification, consultation, compensation, and in certain cases, consent. The objective, said the Court, is to reconcile Aboriginal title with the Crown's presence through negotiations and an assessment of the facts. That same month, Parks Canada officials were advised of the *Delgamuukw* decision and its impact on Fort Temiscamingue, but their position did not change.

By the spring of 1998, Parks Canada had still not committed to substantive negotiations with the Algonquins. Over the objections of the Timiskaming First Nation, Parks Canada began the re-development, without Algonquin involvement.

Desecration of Cemetery site.

In May 1998, contractors, who had been looking for the remains of an old HBCo barn, uncovered human remains with a backhoe. Parks Canada regulations state clearly that when remains are found on a site, all work must halt until an investigation is carried out. Contrary to these regulations, the contractors moved the backhoe over a few yards and kept digging. They uncovered another set of remains. Undeterred, they moved the backhoe yet again and continued, digging up a third burial. Only then did they stop their work.

Faced with this embarrassing incident, Parks Canada finally made efforts to consult the Algonquins of the area. Attempts were made to negotiate. The Timiskaming First Nation requested that all excavation halt until agreement was reached on disposition of the human remains, and the extent of the unmarked cemetery was determined. Parks Canada refused, and insisted that their work schedule could not be delayed.

At the end of June, last ditch efforts were made to have the re-development delayed. Canadian Heritage Minister Sheila Copps was once again informed that the Timiskaming First Nation had a legal interest in the site based on Aboriginal title. But to no avail. That was the last straw. On June 29th, the Timiskaming membership directed their Council to organize an occupation of the site, in order to protect the burial ground. The site was taken over by community members and shut down.

A flurry of negotiations took place over the next week, leading to an interim agreement:

- the site would remain closed to the public;
- the occupation would be suspended;
- immediate steps would be taken to deal with the burials;
- security measures would be put into place to prevent trespass; and
- Parks Canada would negotiate the broader issues.

At this stage, the Timiskaming First Nation had lost all confidence in Parks Canada and its ability to deal responsibly with the issues or address their legal rights. They felt that the only way Canada would respect their rights in the site would be if there was a recognition of Aboriginal title and Algonquin ownership.

As it turned out, the grave sites were part of a much larger unmarked burial ground which predated the first arrival of missionaries in the area. It is adjacent to two other cemeteries (a Protestant one, started by the fur traders, and a Roman Catholic one, started by the Oblates when they arrived in the mid 1830's) which were already marked.

A series of meetings with Council, community members and the elders established priorities:

1. Protect the human remains and determine the full extent of the unmarked cemetery for further protective measures.
2. Keep the site closed to the public until outstanding issues are addressed.
3. Seek and obtain recognition of Timiskaming's Aboriginal title at the site, including ownership, as a means of gaining effective control over it.

What followed was two years of intensive effort to try and get the government of Canada to deal with the legal interests of the Timiskaming First Nation in this site, while at the same time addressing technical and operational issues related to the burial ground and the site itself.

Among other things, this experience has exposed the paralysis which has overtaken the government of Canada on the policy side since *Delgamuukw*, and underscored the urgent need for legislative and policy change in matters affecting Aboriginal title and rights.

Attempts at implementing *Delgamuukw*

In September 1998, the Timiskaming First Nation tabled a proposal for reconciliation with the Minister responsible for Canadian Heritage, Sheila Copps. It was straightforward, and adopted the process and standards of proof laid out by the Supreme Court in *Delgamuukw*, but in a negotiations setting:

- Proof of title: the Timiskaming First Nation would provide the evidence required to prove Aboriginal title at the site.
- Infringement: The Timiskaming First Nation would identify existing infringements based on prevailing legislation and policy, as well as practises at the site.
- Justification: The federal Crown would then identify which infringements it could justify, and which it could not.
- Reconciliation: The parties would negotiate an agreement reconciling Crown title with Algonquin Aboriginal title at the site, and addressing the infringements.

However, Parks Canada insisted that it had no mandate to address the broad issues, and that "claims" were the responsibility of the Department of Indian Affairs. Instead, Parks Canada said that they could only deal with operational issues at the site.

Attention then turned to the Department of Indian Affairs. Numerous meetings with officials only confirmed that the federal government had no response to *Delgamuukwo* other than avoidance and denial. They explained that what the Supreme Court said only applied if you went to court. They added that despite the "new rules of the game" laid out by the Supreme Court, the Comprehensive Claims policy prevented them from recognizing Aboriginal title, so there could not be no discussion of infringement or justification, either.

To try and break this impasse, a meeting with then Minister of Indian Affairs Minister Jane Stewart and then Secretary of State (Parks) Andy Mitchell took place on June 7th, 1999. Minister Stewart explained what her officials had already told us: that policy prevented her from recognizing title, or entering into any process which might lead to such recognition. However, she did admit that something needed to be done to address the issues of infringement and justification.

A compromise was worked out: the Timiskaming First Nation would not seek explicit recognition of Aboriginal title, and they would not insist on exclusive use. For her part, Minister Stewart indicated that she would be prepared to act "as if" Aboriginal title existed, so that we could move on to the infringement and justification tests. Parks Canada agreed to work quickly to determine the extent of the unmarked cemetery and on other operational issues. It was agreed that negotiations would proceed on this basis, between DIAND, Parks Canada, and Timiskaming.

It appears that the Department had by then done an internal "risk assessment" of the likelihood of Aboriginal title existing at the site, and concluded that it was high risk. After all, here was a fact situation with physical evidence of 6,000 years of continuous occupation; genealogical evidence showing continuity of identity; historical evidence confirming that it was in Timiskaming's traditional territory; and evidence of current use within living memory. That is perhaps why the Minister was prepared to offer what she did.

Negotiations commenced within a week, only to be terminated by officials when Timiskaming raised issues related to Aboriginal title, infringement and justification. A letter was sent to Minister Stewart, seeking confirmation of the political agreement that had been reached with her earlier that month. She sent a letter of clarification, which retreated to the earlier excuses we had heard from her officials, and dashed any hopes of compromise. Her letter denied what had been agreed to in our earlier meeting, and said essentially that existing policy prevented her from fulfilling her political commitment.

Meanwhile, the local non-Aboriginal population had begun to agitate: the site remained closed for a second season; they were being denied access to their beloved "vieux fort"; and the money which the businesses had invested was caught in limbo.

In July 1999, a meeting took place on the Timiskaming Reserve with senior federal officials, including the CEO of Parks Canada and the ADM for Claims and Self

Government. Also in attendance was the local Bloc Quebecois member of Parliament, Pierre Brien, and representatives of the neighbouring municipalities. The pressure was on to have a partial re-opening of the site so that the local non-Aboriginals could use the beach area. The officials had to do something to buy some time. Despite Minister Stewart's reversal, the federal officials professed the government's continued commitment to dealing with title issues and operational issues in the same agreement.

On July 16th, another interim agreement was signed between Parks Canada and the Timiskaming First Nation. Among other things:

- it set out the rules for limited and supervised public access to a portion of the site;
- it provided for jointly managed security arrangements (with half of the security people being Timiskaming members);
- it committed the parties to make their best effort at concluding an agreement dealing with the wider issues;
- and finally, it stated that if an agreement on the broader issues could not be reached, the site would be closed by Parks Canada.

In the fall and winter of 1999, negotiations proceeded, with Parks Canada, Indian Affairs, Timiskaming, and a new player, the Department of Justice. If they were not successful, at least these negotiations were informative.

DIAND declined to receive our evidence relating to Algonquin Aboriginal title at the site. DOJ did not even want mention of *Delgamuukw* in any agreement, saying that it would be tantamount to an implicit recognition of Algonquin title. Moreover, they wanted no mention of the "I" word (infringement) or the "J" word (justification), since these too, they said, would acknowledge some liability on the part of the federal government. The closest they would come was to agree on a "joint examination" relevant legislation, policies and practises, and discussions on "issues arising from the examination".

Moreover, Parks Canada officials disclosed that all they were really able to offer was an advisory committee to make recommendations to the Minister - and not true co-management. They explained that the Parks Act required the Minister to be the one to make final decisions, and therefore true co-management of a National Historic Site or Park was a legal impossibility.

It soon became clear that nothing had changed. Canada was continuing its refusal to deal with the legal interests of the Timiskaming Band in the site. They wanted considerable concessions from the First Nation, without offering anything substantive in return. At the same time, however, they wanted to be able to point to the negotiations, and any subsequent agreements, as proof of "consultation" if things went to court.

It was apparent that the federal officials at the table had no mandate nor the will to compromise, or to depart from existing policy. The sole forums for dealing with assertions of title, they said, were the courts, or the Comprehensive Claims process.

But when you cut away at all of their excuses, it came down to a couple things: they were not prepared to deal with this site specific issue in terms of the Band's legal interest in the land. And, because of this, they were not prepared to justify their policies and legislation in light of the Band's legal interests. Instead, they wanted to subordinate the Band's legal interests to existing policy, and to hell with the law. This certainly differed from the assurances provided by Minister Stewart, who had made it clear that her officials were to take a flexible and creative approach.

By this time, there had been a Cabinet shuffle and there was a new Minister of Indian Affairs, Robert Nault. On January 10, 2000, he came to the Timiskaming Reserve and met with Chief and Council. Minister Nault surprised Council by saying that his Department shouldn't even be at the negotiating table, since this was neither a Comprehensive or a Specific Claim.

The Minister also said that the portion of the proposed MOU dealing with Aboriginal title and infringement should be "thrown in the garbage", and stated that regardless of the law, the government of Canada was not prepared to recognize Aboriginal title because it did not want to pay compensation for past infringements. When asked about whether or not the government was prepared to comply with the direction provided by the courts, he indicated that his government was guided more by "how far the public will allow us to go" than what the courts said. The only positive thing he did say was that he would see about arranging a meeting with Sheila Copps, the Minister of Canadian Heritage.

Attempts to transfer title.

The meeting with Ministers Nault and Copps took place on March 20th, 2000. At that time, Minister Copps reiterated that the government of Canada would not recognize Aboriginal title. But she offered a compromise: she would be prepared to consider transferring a 100% interest in the site to the Timiskaming First Nation, and then enter into an agreement for co-management with the Band. This, she said, would give the Band the ownership and control which they were seeking. She also expressed displeasure at the fact that after two years, her officials had been unable to resolve the issue.

Council considered this, and felt that it might be a useful interim step: title in fee simple is simply another layer of title on top of Aboriginal title and Crown title, and so long as it did not prejudice Timiskaming's underlying Aboriginal title, it would give effective control over the site to the Band, until the broader issues were dealt with. Within days, a letter was sent to the Minister, confirming the offer made, and agreeing to pursue it through negotiations.

However, once again, we found that political commitments can be derailed by prevailing

policy and legislation: officials indicated that the Minister did not actually have the authority to transfer the land to the Band, since the National Parks Act requires that the Minister hold title. But they did indicate that the Minister was taking this seriously, and that she was committed to finding alternatives. Timiskaming agreed to sit down and try and find another work-around.

Consistent with the interim agreement that had been signed in July 1999, in the absence of an agreement on the wider issues, Parks Canada was required to keep the site closed. With the summer season approaching, and the prospect of more irate non-Aboriginals agitating for access, the pressure was on Parks Canada to move quickly if the site was not to be closed for a third season.

The complexion of negotiations changed significantly at this stage. DIAND and DOJ were eliminated from the equation - which turned out to be alright, since their involvement had turned out to be more of an impediment than anything else. As well, Timiskaming was no longer dealing with officials who lacked mandate: the negotiations took place directly with the Chief Executive Officer of Parks Canada and their senior legal counsel. A member of Parliament was to act as facilitator on an as needed basis.

Parks officials brought significant motivation to the table, and an obvious wish to fulfil their Minister's commitment. They were prepared to be creative, and they were ready to address difficult and substantive issues head-on. All of this was in stark contrast to the contributions of DIAND officials in the earlier round of negotiations.

With this formula, substantive progress was made in a relatively short time. An Agreement in Principle was signed off on May 19th, 2000, which laid out the basis for a formal arrangement:

- The Minister and the CEO of Parks Canada would seek the necessary authorities to transfer a 50% interest in the site to be held in trust for the Timiskaming First Nation;
- The Minister and the CEO would make a best effort to complete the transfer by July 4th;
- The purpose of the trust would be to hold the land for the benefit of the Timiskaming First Nation:
 - to protect the Aboriginal history and culture at the site;
 - to maintain the site as a National Historic Site;
 - to provide the Timiskaming First Nation with "an ongoing, integral role in the management of the site"; and
 - any other purposes which might be identified in a final agreement.

- There would be a staged re-opening of the site as progress warranted; and
- If the parties were unable to conclude the transfer by July 4th, Parks Canada would once again close the site to the public.

With agreement reached on some of the key points, we set about to develop the basis of a final agreement. Much of our time was spent finding work-arounds to the impediments created by existing legislation and policy. In the end, we came up with the elements of a solution which would conform to existing legislation, but which would give the community effective control over management of the site. The July 4th deadline was extended to allow us time to complete the paperwork and the loose ends, but now there is the basis for an agreement, which will be put to the community for final ratification early this fall.

Operational issues.

We should add that the past two years has also involved significant work related to the burial site itself, since at the beginning the elders had identified this as the main priority. We were not prepared to let policy issues prevent us from taking measures to identify the extent of the unmarked burial site and implement protective measures, and Parks Canada was in agreement with us on this point. There were a number of other issues which we also needed to address:

- identification of the remains: they were confirmed to be Algonquin people, buried around 200 years ago
- re-burial of the remains - this was done in the summer of 1998
- determination of the extent of the unmarked burial site: this was done by remote sensing, because the elders indicated that they did not want any further disturbance of human remains
- protective measures: once the extent of the burial site was determined, we worked with Parks Canada to reach agreement on the best way to ensure that the cemetery was protected and commemorated in a respectful way
- completing documentary research on the human history of the site (this is being done by a member of our research team, at Parks Canada's expense)
- a comparative archaeological survey to put Obadjiwan into regional context (this is being done by two archaeologists, mutually agreed on, at Parks Canada's expense)
- collection of oral history on Algonquin use of the site (this is still being finalized)

It was fortunate that we were able to deal with these matters on another track, otherwise everything would have been held up by the problems we encountered at the policy level. We kept the technical work on a separate track because they were priorities and we expected that issues related to title and policy would be in the medium-term range.

Some Lessons Learned.

Every situation is different, and each First Nation must rely on its own facts when determining how to proceed. However, there are some things we can share from our experience, and hopefully they might help out others.

1. Community ownership and jurisdiction.

The Timiskaming First Nation was exercising its Aboriginal title jurisdiction when it took possession of Obadjiwan to protect the cemetery site. This action was outside of any agreements with other governments, and outside of their legislative and policy frameworks. It was done pursuant to Algonquin cultures and tradition. The Timiskaming First Nation could not have succeeded in this without broad based community support, which came about through regular public meetings between the members and Council to allow for thorough discussion of the issues and adjustments to mandate as negotiations evolved. The elders played an important role, especially regarding the human remains and identification & protection of the larger burial ground. These mechanisms supported the maintenance of discipline and community consensus when direct action had to be taken.

2. Security, access, negotiations.

Between the time the initial occupation took place up until now, access to the site, and security, have been primary concerns. This has been in part to protect the cemetery site until protective measures are in place, and in part to ensure that the community had a direct role in determining how the site was to be used. Security arrangements have been managed jointly by Parks Canada and the Timiskaming First Nation, employing qualified Band members and coordinated through the Timiskaming First Nation's Police Services.

Access to the site, and its phased re-opening to the public, were tied directly to progress at the negotiating table. As substantive progress was made in negotiations, access was increased. If resolution could not be reached, Parks Canada was bound to shut down the site.

3. Be in control of the facts - Have your research ready and accessible.

Although this issue has - so far - been dealt with outside of existing claims policy and process, it is directly related to Aboriginal rights and title, and the Timiskaming First Nation relied on our research unit to provide them with the facts that they needed to press their case. We were able to do this, and (because our research is not yet complete) identify key gaps in our existing research that needed to be filled. Genealogical work, data on traditional community territories, and the results of current use mapping were instrumental in providing leverage in negotiations.

We had a better handle on the facts than federal officials, and they knew that if we had to, we had the evidence to go to court.

4. Be certain about mandate.

Unfortunately, considerable time and effort were expended in dealing with a variety of officials - some of them relatively senior - whose only mandate stemmed from existing policy frameworks, and had no authority to address the specifics of the situation. Existing policy frameworks require conformity, and leave little if any room for authentic compromise. Disturbingly, others who we dealt with had no mandate at all.

It took considerable time and pressure to ensure that the people we were dealing with had a real mandate to push the policy envelope to the point where the negotiations involved mutual compromise on substantive issues.

5. Be wary of Ministerial commitments.

We found out more than once that Ministerial commitments may not necessarily be do-able if there are significant policy or legislative barriers.

On another level, Ministerial commitments go only so far as the officials are prepared to go. Officials can be adept at finding ways to neuter Ministers' political commitments, particularly if prevailing policy can be used as a pretext.

Take detailed minutes of all meetings (audio or video recordings if possible), and follow up immediately with letters to confirm undertakings and commitments. If you end up in court, this documentation is crucial.

6. Third parties and the media.

Throughout the process, significant effort was dedicated to maintaining dialogue with the local municipalities and the media. Maintaining open communication with the local municipalities was critical in terms of creating some space in which negotiations with Canada could occur.

7. Get to know the relevant legislation and policies.

When we started on this, we had to navigate through a maze of legislation and regulations: *The National Parks Act*, *The Parks Canada Agency Act*, *The National Historic Sites and Monuments Act*, Parks Canada's "Guiding Principles and Operational Policies", and the management plan for Fort Temiscamingue itself. Each one presented obstacles to resolving the conflict, and required numerous work-arounds.

Now, much of the previous legislation has been rolled into a new Parks Act, but the same problems remain: the legislation, the policies, the regulations and the site's management plan all contain significant infringements on the Aboriginal rights and title of the

Timiskaming First Nation. But, as we have already explained, Canada has refused to justify these infringements, so we are left to contend with a legal and policy framework that is inconsistent with the law. You might not like it, but you have to get to know it if you are going to fight it.

We have gotten Parks Canada to agree to a "joint examination" of relevant legislation, policies and practises impacting on Obadjiwan, along with a commitment to "discuss" the issues arising from that examination. The Timiskaming First Nation intends to use this as a means to specifically identify infringements in applicable legislation, Parks Canada policies, and the Fort Temiscamingue Management Plan, and to seek their amendment as required.

Conclusions.

We are now very close to reaching agreement on measures which will provide the Timiskaming First Nation with an integral role in management of this site. The arrangements are not perfect, and have been constrained by existing policy and legislation.

But we have pushed the envelope in some ways, and gotten Parks Canada to follow us into the twilight zone that lies beyond existing policy. This has been done without compromising the underlying Algonquin Aboriginal title, and without any requirement for a release of claims. The majority of the costs of negotiations were covered through contributions by Parks Canada and Indian Affairs.

This is in direct contrast to both the Specific Claims process and the Comprehensive Claims process, which are slaves to policy, which require a release, and where negotiations are funded through loans.

If things go well, then by next spring the site will be ready for a full re-opening, with revised interpretation materials that give proper weight to Algonquin history and culture. The community will have a direct role in programming, and will once again be able to access the site for gatherings and other events. As an interim arrangement, and until the wider issue of Algonquin Aboriginal title and rights are dealt with, it appears to have the makings of a satisfactory regime.

The process has been an educational one for us, but more so for Parks Canada. Four years ago, they wouldn't give us the time of day. Officials, particularly in the Quebec Region, were at first very rigid and doctrinaire, and it appeared that they had little or no experience in dealing with First Nations or Aboriginal and Treaty law. But this has changed - partly because they know us, and our objectives, better now, but also because senior management became directly involved in the process. On this last point we want to specifically mention Tom Lee, CEO for the Parks Canada Agency, who was instrumental in moving the negotiations to the point where we could be confident that any compromises

reached were reciprocal, and not one-way.

And although it is easy to get frustrated with the officials - often with good reason - we got the sense that many of them are also frustrated, because they too must make do with narrow and increasingly untenable policy and legislative frameworks that have not kept pace with the law. And many of them are aware of the contradictions that this poses. On the one hand, they have First Nations demanding change and invoking the rule of law, and on the other side they have political masters who, with some exceptions, are disinterested or downright hostile to accommodating the rights and interests of First Nations in a way that is consistent with the treaties or Aboriginal title.

At the end of the day, this lack of leadership and policy paralysis can be traced directly to the Prime Minister's Office and the Privy Council Office. It is important to remember that the current Prime Minister, Jean Chretien, introduced the White Paper of 1969, which called for the termination of First Nation rights. Given federal inaction on the final report of the Royal Commission on Aboriginal Peoples, and its refusal to adjust policy and legislation in light of recent case law such as *Marshall* and *Delgamuukw*, resistance to change must be coming from the highest levels of government.

Despite these continuing barriers, we have been able to work out arrangements with Parks Canada at Obadjiwan that, on an interim basis, give an appropriate measure of control to the Tsimshian First Nation without compromising their fundamental rights and interests. At the same time, we have been able to turn conflict and mistrust into something more respectful, and in the process, develop mutual goals and shared understandings with Parks Canada.

