J.B.Gerald

From: "Mrs. Stanley" <kittoh@storm.ca>
Date: October-20-11 2:06 PM
To: <eaglewatch@npogroups.org>
Attach: message-footer.txt
Subject: [eaglewatch] The Keewatin Judgement: Give an Inch to Take a Mile

From the Eagle Watch #185
October 20, 2011

The Keewatin Judgement: Give an Inch to Take a Mile
A Detailed Analysis

Over the past two months, since midAugust, many Nishnaabek scholars, historians and concerned people as well as lawyers, investment brokers, mining corporatists, academics, journalists and others have been poring over a tedious 400page legal document. Called the ***Keewatin Judgement*** KJ and written by Ontario Superior Court of Justice Judge, Mary Ann Sanderson, it addresses two questions in a civil trial, "K*eewatin vs Minister of Natural Resources*". The issue is the detrimental effects of logging on Indigenous hunting and fishing rights and activities. The Grassy Narrows Nishnaabek want to stop logging on their territory.

When the Judgement was first released, it was met with great praise and hope. AFN Chief Shawn "Alto" Atleo joined in a two-parrot harmony with Angus "Tenor" Toulouse, Regional Chief, Chiefs of Ontario, cooing and welcoming the decision.

The Plaintiffs are "*Andrew Keewatin Jr. and Joseph William Fobister on their own behalf and on behalf of all other members of Grassy Narrows First Nation*". That means everyone at Grassy Narrows is liable if the court rules against the Plaintiffs in this matter at any future time. This case is an apparent attempt to make the Crown, ie Canada/Ontario honour the Nishnaabe right to hunt and fish.

The Defendants are the (Ontario) *Minister of Natural Resources and Abitibi Consolidated Inc*. with the Attorney General of Canada as a Third Party.

We are by no means experts on legal documents but we were encouraged to look at the KJ, presumably to comment, and so we did. We are sorry to report that the jubilant claims to victory by the Plaintiffs and others are premature and likely quite hollow, in our view. The verdict will most likely be appealed by Ontario, dragging the whole matter out in the courts for more years to come. To what end?

The questions that end up being addressed by the Judge are way off the real issues of Indigenous rights and sovereignty, Treaty terms and even the viability of the Treaties.

Another Judge, Nancy "Secret Agent" Spies dictated the issues to be addressed, avoiding the real issues. Following her lead, "Assuming" Sanderson focuses in on the distinctions between Ontario and Canada and their relative jurisdictions. We view this as a diversion tactic and a waste of time. The Treaty in question makes it quite clear how to resolve their various and frequent disputes and squabbles. Treaty #3 includes this passage,

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

The Commissioners acted on behalf of the Crown, Treaty #3 being *"between Her Most Gracious Majesty the Queen of Great Britain and Ireland, by her Commissioners, the Hon. Alexander Morris, Lieutenant-Governor of the Province of Manitoba and the North West Territories, Joseph Albert Norbert Provencher and Simon James Dawson, of the one part, and the Saulteaux tribe of the Ojibbeway Indians, inhabitants of the country within the limits hereinafter defined and described, by their Chiefs, chosen and named as*

hereinafter mentioned, of the other part".

The Crown can appoint or empower anyone SHE pleases through her Privy Councils in a minute and without your knowledge. That's why it's called "privy". This includes any Ontario government official. All elected and/or appointed officials whether federal, provincial, municipal or band council, take an OATH to the Crown. This presumes their ultimate allegiance is to the Crown. They never know what they might get asked to do.

The Crown is everywhere in Government in the top position of authority. It is, therefore, the Crown who must be taken to task and exposed for failure to "protect" the Indians as promised.

Madam "Assuming" Sanderson need not trouble her head about Question One:
"Does Her Majesty the Queen in Right of Ontario have the authority within that part of the lands subject to Treaty 3 that were added to Ontario in 1912, to exercise the right to "take up" tracts of land for forestry, within the meaning of Treaty 3, so as to limit the rights of the Plaintiffs to hunt or fish as provided for in Treaty 3?"

or Question Two:
"If the answer to question/issue 1 is "no", does Ontario have the authority pursuant to the division of powers between Parliament and the legislatures under the Constitution Act, 1867 to justifiably infringe the rights of the Plaintiffs to hunt and fish as provided for in Treaty 3? [provided that the question of whether or not the particular statutes and statutory instruments at issue in this action in fact justifiably infrige the treaty rights shall not be determined and shall be reserved for the trial of the rest of this proceeding.]"

(Whew, that was one long sentence, written in legaleze to confound us ordinary folks and make us feel inferior and unable to deal with such topics. Should we leave it all to the experts?)

"Assuming" Sanderson answered "No" to both questions.

It is obvious to us with question one that "*within the meaning of treaty 3*", the Crown had every intention of taking up, ie taking over any land She wished and for whatever purpose She wanted in whatever capacity or hat She was wearing on any given day and crushing the lives of the Indigenous or "*limiting their rights*" as she saw/sees fit.

The absolute bottom line in reality is that the Crown has no just authority whatsoever but that is not what Sanderson is looking at.

In saying No to Question One, she has to go to Question Two. When she says No to Question Two, that creates an avalanche of protracted court action that could go on for many more years. Woopee for the lawyers and experts who make piles of money out of unending disputes and arguments over small points of colonial law.

It took Sanderson a year to prepare this document which will no doubt have its effects on the Nishnaabek of Grassy Narrows.

The question at the end of the day for the people of Grassy Narrows, is really this, "What about the blockades that have been effectively preventing clear cut logging on Asubpeeschoseewagong Netum Anishinabek land?" It's been a long haul and many are weary and ready to quit at the slightest encouragement. Some ask, "Should they trust the Crown to do the right thing?"

Grassy Narrows Anishnaabek may now be divided by arguments as to whether or not they should continue the blockades, escalate them or dismantle them. Lawyers take every opportunity to capitalize on disagreement. Sanderson's judgement inflames any divisions in the community that may exist. Meanwhile she resides in her posh home somewhere in the Toronto vicinity. She may even take a long winter vacation in some warm climes traveling by private jet or yacht or some such. Who knows she may get to have lunch with Queenie sometime.

Experts and Witnesses

$What's$ at $Stake?$
The judge, the lawyers and the experts involved in this case are well paid for their services. The number of lawyers involved is at least ten. The number of experts brought in by all parties is about six with frequent reference to other experts' papers and reports. These experts or academics are historians often with posh jobs at various universities. Their price for their time as experts in courtrooms is pretty steep, somewhere in the order of $300/hour or more.

It gets even worse. The well known activist, Kevin Annett works to expose the crimes of the Canadian government and the Churches who are responsible for the residential school atrocities. He says of one of the expert witnesses, John Milloy for the Plaintiffs, "he is an idiot, [Canada's] Official Say Nothing Expert". Annett knows well of whom he speaks. Milloy is a Director on Canada's Whitewash, the Truth and Rconciliation Commission TRC. (See Kevin's article and more on the "experts" in the endnotes.)

So then how is Milloy "helping" the Grassy Narrows Anishnaabek???

We still have to ask, where does the money come from to pay all these people?! The Ancestors were with us when we encountered yet another related long legal document.

In 2006, "Secret Agent" Spies ruled that MNR had to pay all the Plaintiffs' court costs regardless of the trial outcome. That makes the bill 100% going to you, the taxpayer which by the way includes Indigenous people too. This may be news to some but we Indigenous pay all kinds of taxes including income tax.

This judge also made another important ruling regarding the liability of the Plaintiffs in the event things in the end are ruled against them. The entire community of Grassy Narrows is on the line in this case. The judge stated, "*...I am not prepared to add a term to the Representation Order that Grassy Narrows be jointly and severally liable with the plaintiffs for any award of costs that may be made against the plaintiffs in favour of the defendants". She also made it clear that this could be reversed in the future, "This order does not preclude the defendants from moving at a later date for an order that Grassy Narrows should be responsible for costs..."*

Keep in mind, this is what Ontario and Abitibi were demanding the Judge *"...should order that Grassy Narrows be jointly and severally liable with the plaintiffs for any award of costs that may be made against the plaintiffs in favour of the defendants. Counsel for the MNR advised that the intention is to bind the assets of Grassy Narrows as an entity, not the assets of individual members...[They] argue that such an order is necessary in that it is really the Band Council that is in control of this action..."*

In simple terms, the Superior Court Justice has the authority to steal the reserve right out from under an entire community of 1200 Indigenous people, Treaty or no Treaty.

As an example, anti uranium mining protests took place at the Robertsville mine site near Sharbot Lake in 2007 in unceded nonTreaty Nishnaabe Algonquin territory. The uranium developer, Frontenac Ventures Corporation (George White et al) sued the Algonquins and some individuals for $70million in damages for their loss of profits for a mine that hadn't even started. They had staked a claim and were about to begin drilling. Later they withdrew the case. However, there is reason to suspect that some private settlement was made whereby FVC got recompensed for their role in the protest theatrics which included scenes in the Kingston courthouse.

We weren't at the Keewatin trial so we dont' know what all went on. However, Sanderson only makes reference to ONE Nishnaabe witness. Where are all the Nishnaabe witnesses, the Elders who have the knowledge of their own history and lives??? OK, so the Plaintiffs have some friendly professors onside but it isn't the same thing. This trial went on in Toronto, 1500 kilometres from Grassy Narrows. Just how many Nishnaabe people were actually able to be in the courtroom?

Hunting and Fishing in Treaty 3
When examing intent we must look at words and more importantly, outcome. What is the result/reality today of the limitations on hunting and fishing rights. It definitely looks pretty grim. Everybody is aware of how industry and development are destroying the

land, water and air and threatening the survival of animals on which we depend for hunting and fishing. Many people are looking to Indigenous people to save the world. We are acutely aware of our duty to protect the land for future generations. Everyone has a responsibility to do the Right Thing.

In its quest to Conquer Nature and the Indigenous people who dwell close to Nature, the colonial entities always had the intent to make farmers out of those wild Indians who roamed freely about the bush and depended on no one but their own skills. In Treaty 3 itself and the report on the Negotiations, for what it's worth, the word "fish" or "fishing" is mentioned 5 times; the word "hunt" or "hunting", 4 times while the word "farm" or "farming" is mentioned 14 times with numerous other references to it.

Here are some examples in the words of the Lead Negotiator/Commissioner Alexander Morris, *"I have put into their hands the means of providing for themselves and their families... I think we should do everything to help you by giving you the means to grow some food... Some are farming, and I hope you will all do so."*

Promises were made to supply farm implements, seed and livestock sometime in the future. Most of the territory of Treaty 3 is not suitable for farming. This was well known at the time of the Treaty making.

No wonder we describe the colonial strategy as "Assimilate or Die".

We must pause here and ask, Did Sanderson ever read Treaty 3??

In her review of the experts' credibility, she stated, *"If it were intended to suggest that the Commissioners expected these Ojibway to forsake hunting and rely on agriculture after the Treaty was signed, I reject it."* (KJ, p.141)

We quite simply disagree with her but what do we know? We have no lawyers here at the Eagle Watch. We look at outcome when considering intent. It looks to us like the Commissioners didn't give a damn if the Ojibway lived or died, their "commission" was clear to them to conciliate or pacify the Indians.

Honour of the Crown
Let's Assume Santa Claus is for Real

Justice "Assuming" Sanderson makes reference to the Honour of the Crown. She includes an entire section on it. She evidently believes in it.

In her comments on "*Principles of Treaty Interpretation*", Sanderson refers to *Haida Nation*, *"...In making and applying treaties, the Crown must act with honour and integrity...It is always assumed that the Crown intends to fulfill its promises (Badger). This promise is realized and sovereignty claims reconciled through the process of honourable negotiation. It is a corollary of s.35 that the Crown act honourably in defining the rights it guarantees and in reconciling them with other rights and interests."*

It is evident to us that the Crown does not and never did have any Honour. There are endless examples to support this point of view. If you start from a false statement like, "the Crown has Honour", what happens then to the Truth??

Sanderson refers to another case, *Secession of Quebec*, *"...Consistent with this long tradition of respect for minorities, which is at least as old as Canada itself, the framers of the Constitution Act, 1982 included in s.35 explicit protection for existing Aboriginal and treaty rights...The "promise" of s.35, as it was termed in Sparrow, recognized not only the ancient occupation of land by Aboriginal peoples, but their contribution to the building of Canada and the special commitments made to them by successive governments. The protection of these rights...reflects an important underlying constitutional value."*

We find this reference to be simply Lip Service. We know many of you are grabbing your barf bags now.

Mary Ann goes on and on. She states, "...*in Mitchell...The sections of the Indian Act relating to the inalienability of Indian lands seek to give effect to this protection by interposing the Crown between the Indians and the market forces, which, if left unchecked, had the potential to erode Indian ownership of these reserve lands....An obligation arose to treat Aboriginal peoples fairly and honourably and to protect them from exploitation."*

The problem here, as we see it, is that the Crown being an Oligarchy IS the "*market forces*". They are indeed "*unchecked*" and seeking to "*erode Indian ownership of the reserves*" themselves as we write. Patrick Brazeau, now a Canadian Senator, has repeatedly called for the elimination of the reserves, ie Indigenous communities. The Crown "protecting" Aboriginal rights is like the proverbial fox guarding the henhouse.

For Sanderson, it would be next to impossible to seriously view our concerns. She says she's trying to get the Ojibwe perspective. However, she has a lifestyle and a powerful position to maintain, all based on exploitation and assimilation of Indigenous people. She knows very well she cannot go too far out on a limb no matter how she sympathizes with the Indigenous.

Contemporary and Historical Context
In a future article we will delve into the historical context of the Treaty making and the lack of contemporary context in the Keewatin Judgement. Where is the information concerning similar struggles of Indigenous communities facing logging and mining? Instead of endlessly interpreting treaties in courtrooms, how about reviewing and updating them?? Or even making some new Treaties involving real and sincere people and full public participation.

It's time to stop leaving it up to Ma Queenie and her Sugar Daddies. We need to get out of the victim mindset and free ourselves by dealing with the Truth. Walk the Truth, talk the Truth and then see the Truth. Live by Ancient Ways of Knowing.

Kittoh
<kittoh@storm.ca>

We welcome your feedback! Forward, post and consider printing for your cyberphobic friends and relatives.

The Eagle Watch Newsletter is sent to interested individuals, both Indigenous and nonNative, politicians especially the Canadian ones and an assortment of English language media.

Notes, Sources and Contact Info

Judges like Mary Ann Sanderson are not easily accessible. You can send her snail mail at:
Osgoode Hall, 130 Queen Street West, Toronto, ON M5H 2N5

Lawyers involved in the Keewatin Trial:
Robert J.N. Janes, Karey Brooks, Barbara Harvey for the Plaintiffs
Michael R. Stephenson, Christine Perruzza, Peter Lemmond for the Defendant Minister of Natural Resources
Christopher J. Matthews for the Defendant Abitibi Consolidated Inc.
Gary Penner, Michael McCullough, Barry Ennis for the Third Party.

Experts paid to expound at the Keewatin Trial:
1. Dr. Joan Lovisek, for the Plaintiffs, anthropologist and ethnohistorian, has her own business, Lovisek Research, acting as a consultant/expert/researcher. Her main clients are the Government, Department of Justice, Oceans and Fisheries, Indian Affairs, etc. and the Ontario Ministry of the Attorney General, Ontario Native Affairs Secretariat (ONAS). Occasionally, she represents First Nations.

Joan A. Lovisek, Ph.D. M.E.S.
14965 25A Avenue

SURREY, BRITISH COLUMBIA. V4P 1N7
TEL: (604) 541-7921 FAX: (604) 541-9221
EMAIL: lovisek@telus.net

"Ph.D. (Anthropology/Ethnohistory)
McMaster University-1991
M.E.S. (Masters of Environmental Studies)
York University-1979
University of Toronto-1976
(Archaeology)
B.A. (Anthropology)
York University-1974
over 20 years experience in First Nation issues. Most of her consulting contracts over the last ten years addressed treaty/aboriginal rights, land claims, aboriginal land use and loss of use, and federal/provincial government policy."
http://faculty.arts.ubc.ca/menzies/documents/lovisek.pdf

2. Dr. Alexander Von Gernet for Ontario or/and Canada
http://www.utm.utoronto.ca/7802.0.html
University of Toronto at Mississauga
Alexander von Gernet, BA, MA, PhD (McGill)
Archaeology / Cultural Anthropology
Room tba HSC
(905) 569-4888
alex.vongernet[at]utoronto[dot]ca

http://www.fraserinstitute.org/author.aspx?id=15362&txID=3264

Alexander von Gernet is Professor of Anthropology at the University of Toronto at Mississauga where, for ten years, he has been teaching courses relating to Aboriginal studies. He is one of a few Canadian scholars who have published contributions in archaeology, ethnohistory, as well as oral historiography. His main interest is in reconstructing Aboriginal pasts by using various sources of evidence in methodological conjunction. He is in considerable demand as a consultant for both government and First Nations clients and has served as an academic advisor and expert witness in numerous Aboriginal litigations in Newfoundland, Québec, Ontario, Alberta, British Columbia and New York State. He was one of the contributing authors of the Report of the Royal Commission of Aboriginal Peoples and was the Editor-in-Chief of Ontario Archaeology. Professor von Gernet is currently writing a book on oral traditions as evidence in Aboriginal litigation.

3. Dr. J.P. Chartrand, for Ontario, senior consultant and partner of PRAXIS Research Associates (Ottawa), a firm specializing in applied anthropological research focussing on Aboriginal issues in Canada; formerly Adjunct Research Professor of the Sociology and Anthropology Department at Carleton University;

http://www1.carleton.ca/socanth/faculty/jean-philippe-chartrand/
Jean-Philippe ChartrandAdjunct Research Professor
Degrees: MA Carleton
Phone: (613)830-7198
Office: Praxis Research Associates
Email: jp.praxis@rogers.com

The infamous Joan Holmes refers to Chartrand's writings in her reports to government. Holmes is in charge of verifying family histories for Algonquins seeking membership in bands involved in the AOO land claim. She also holds extensive files on Ongwehonweh people. It is said that she has a magic wand and can turn anyone into an Algonquin or a Mohawk. Since Holmes and Chartrand both work in Ottawa in the same line of work, it stands to reason that they would be well acquainted and may even work together at times.

4. Professor John Milloy, for Plaintiffs, Professor of Canadian Studies and History, Trent U
http://www.trentu.ca/history/publications_milloy.php

(705) 748-1011 x 6064 <jmilloy@trentu.ca>
John works with Paula Sherman of the Ardoch Algonquins. Uh-oh!!!
JohnBoy is director of Research, Historical Records and Report Preparation with the TRC Truth and Reconciliation Commission of Canada. He also wrote a big bestseller about the residential schools that swallowed up thousands of Indigenous children to "civilize" them.
The well known and outspoken Kevin Annett has this to say about JohnBoy:
http://itccs.org/2011/03/04/john-milloy-is-a-big-fat-idiot-and-other-reflections-on-canadas-truth-and-reconciliation/
John Milloy is a Big, Fat Idiot – and other Reflections on Canada's "Truth and Reconciliation", March 04, 2011
...[he's the]Official Say Nothing Expert since, let's face it, there's nothing messier and less Canadian than talk of the murder of children...he does have on his side the exalted Canadian academic tradition when it comes to Indians that I like to call No Name Research, of which Big John is a leading perpetrator.

Asked by an atypically daring journalist about children who died in Indian residential schools, Milloy replied glibly, "There's some talk of graves here and there, but we're leaving them pretty much undisturbed."

Meanwhile, as we write, children's bones and other evidence are being found using GPS at the Mohawk Residential School at Ohsweken. Kevin Annett is spearheading this effort that is long overdue.
Write to Kevin Annett at <hiddenfromhistory1@gmail.com>
You can also receive A Weekly Update on the Mohawk Inquiry from The International Tribunal into Crimes of Church and State (ITCCS) <genocidetribunal@yahoo.ca>

5. Professor Robert C. Vipond, for Canada on constitutions
http://www.ecommons.net/ccfpd/main51ef.phtml?city=to&show=to_vipond_biogr
He is a member of the CCFPD Canadian Centre for Foreign Policy Development.
Robert Vipond is Chair of the Department of Political Science and Director of the Centre for the Study of the United States at the University of Toronto.
http://www.ecommons.net/ccfpd/index.phtml

6. Professor Emeritus John Tupper (Jack) Saywell, for Ontario on federal and provincial relations
He died in April 2011. This is his obituary.
http://www.yorku.ca/yfile/archive/index.asp?Article=16915
Professor John Saywell, a pioneering figure at York [University in Toronto], dies at 82
...[among his many claims to fame] Prof. Saywell consulted for USAID, the World Bank, the United Nations Development Program, the Harvard Institute for International Development and the governments of Ontario and Canada, among others. From 1974 to 1980, he was director of the York University Kenya Project in Nairobi.
[We are catching a scent of Maurice Strong here]

Privy Council and privy
Oxford Dictionary defines "privy" as *"sharing in the knowledge of something secret"; "a toilet in a small shed outside a house".* [here it's called an "outhouse". what do you call it?]

"Privy Council" is *"a body of advisers appointed by a sovereign or a Governor General*".

Put the two together and what do you get??

http://freegrassy.org/2011/08/01/grassy-trappers-win-major-legal-victory/#more-2399
Grassy trappers win major legal victory!
Grassy Narrows has won a major victory in their more than decade long battle to stop clearcut logging in their traditional territory. Grassy Narrows Chief and Council welcome the decision of the Ontario Superior Court of Justice to protect the rights promised to the Anishinaabe from interference by Ontario. Madam Justice Mary-Anne Sanderson's decision, over 300 pages in length, finds that the Government of Ontario does not have the power to take away the rights in Treaty 3 by authorizing development including

logging and mining.

Some excerpts from Keewatin v. Ontario (Minister Of Natural Resources), 2006 CanLII 35625 (ON SC)
http://www.canlii.com/eliisa/highlight.do?text=janes&language=en&searchTitle=Ontario+-+Superior+Court+of+Justice&path=/en/on/onsc/doc/2006/2006canlii35625/2006canlii35625.html

Motion for Advance Costs

[7] This motion, for an order that the MNR pay the costs of the plaintiffs of this action, in advance, in any event of the cause, on a partial indemnity scale, is vigorously opposed by both defendants. The resolution of this motion must be determined by an application of the legal test that the plaintiffs must meet, as established by the Supreme Court of Canada in British Columbia (Minister of Forests) v. Okanagan Indian Band [2] to the evidence before me.

[8] For the reasons that follow, I order that the MNR pay the costs of the plaintiffs on a partial indemnity basis, in advance, and in any event of the cause, with respect to the plaintiffs' claim as set out in paragraph 1(b) of the Amended Statement of Claim. The order is limited to the cost of determining the issue of the interpretation of the "taking-up" provision of Treaty 3 including, if necessary, the plaintiffs' constitutional division of powers argument so that it can be decided whether or not the province of Ontario has the authority to take up the Keewatin Lands (as defined below) for forestry.

[10]...Paragraph 8 of the order will ensure that all decisions and findings made in this action will be binding upon Grassy Narrows, its Council and all of its members. The test as set out by Nordheimer J. in Ginter v. Gardon[3] for a representation order has been met and the order sought is appropriate.

Should the Grassy Narrows First Nation be jointly and severally liable for any costs ordered against the plaintiffs?

[11] The sole remaining issue is whether or not, as an additional term to the order sought, I should order that Grassy Narrows First Nation be jointly and severally liable for any costs ordered against the plaintiffs.

The Facts

[12] The facts relevant to this motion are not in dispute and are as follows.

[13] The plaintiffs are each members of the Grassy Narrows Trappers Council, a special interest group within the community, which acts as a support group for Grassy Narrows' trappers. Andrew Keewatin and Joseph Fobister are two of the organization's five elected "leaders". The plaintiffs' witness, Gabriel Fobister, is the president.

[14] The Trappers Council is composed of approximately 60 members and includes all registered Grassy Narrows trappers. As such, it represents approximately 5% of the community's 1200 members.

[15] The Grassy Narrows Council is the elected leadership of the Grassy Narrows. It speaks for the community and makes decisions on behalf of the community as a whole. Grassy Narrows does not have an alternative Band leadership, such as a hereditary chief or band council.

[16] The Chief of Grassy Narrows filed an affidavit on these motions and deposed that the Band Council decided that the named plaintiffs in this action should be members who are or have been very active trappers, rather than the Band

Council Chief and that they made this decision because it is the regular trappers whose way of life and livelihood is most directly affected by forestry activity.

[17] The Grassy Narrows Band Council Resolution No. 3050, dated January 24, 2006, resolved that the law firm of Cook Roberts is jointly retained by both the plaintiffs and the Grassy Narrows in this action to act as counsel and solicitors of record. It further resolves that Grassy Narrows has no objection to the plaintiffs acting as representative plaintiffs for the members of Grassy Narrows and that the law firm of Cook Roberts shall report to and take instructions on behalf of the First Nation through its Chief or Deputy Chief Councilor.

[18] The defendants do not take the position that Grassy Narrows must be formally added as a plaintiff to this action but do say that it is common practice in these types of actions that the Band, its Chief or a person of authority within the band be included as a party to the representative action. They argue that I should order that Grassy Narrows be jointly and severally liable with the plaintiffs for any award of costs that may be made against the plaintiffs in favour of the defendants. Counsel for the MNR advised that the intention is to bind the assets of Grassy Narrows as an entity, not the assets of individual members. In this regard I note that the members of Grassy Narrows may include persons who are not Indians within the meaning of the Indian Act[4] and therefore not members of the Grassy Narrows Band. Abitibi proposes, in the alternative, that I order that Grassy Narrows shall be considered a party for the purposes of any request for costs made by the defendants in this proceeding.

[19] The defendants argue that such an order is necessary in that it is really the Band Council that is in control of this action and such an order will encourage both the plaintiffs and the Council to litigate the action in a disciplined and efficient manner and with a high level of accountability to Grassy Narrows' members. They submit that the defendants should know from the outset who might be responsible for costs.

[32] For these reasons I am not prepared to add a term to the Representation Order that Grassy Narrows be jointly and severally liable with the plaintiffs for any award of costs that may be made against the plaintiffs in favour of the defendants or that Grassy Narrows be considered a party for the purposes of any request for costs made by the defendants in this proceeding.

[33] This order does not preclude the defendants from moving at a later date for an order that Grassy Narrows should be responsible for costs, if there is new evidence suggesting a proper basis for making such a request that has not been considered on this motion. Should that occur, the defendants must of course formally put Grassy Narrows on notice so that the issue can be fully argued.

http://www.ontariocourts.on.ca/scj/en/reports/
Superior Court of Justice
Annual Report 2008-2010
The Northwest Region is home to the Ojibway people. The area was opened to European settlement by the Northwest Company engaging in the fur trade. With the coming of the railway, shipping gained prominence. Western grain was transported by rail to the present location of Thunder Bay for shipment east on the Great Lakes. The region was settled by European immigrants and the forestry and mining industries flourished. More recently, Kenora, Fort Frances and Thunder Bay have developed as regional centres for education, medical
care, tourism, and legal and commercial activity.

The distances between the main centres of the Northwest Region and the rest of the province are vast. For example, Thunder Bay is as far from Toronto – nearly 1,400 kilometres – as Toronto is from Fredericton, New Brunswick. Within the region, the judicial centres are also far apart: Thunder Bay is 335 kilometres from Fort Frances and 490 kilometres from Kenora. There is no resident judge in Fort Frances, while Kenora has one supernumerary judge. Both of these centres are served by judges circuiting from Thunder Bay. Travel between Thunder Bay and Fort Frances or Kenora is usually done by

small aircraft, weather permitting. In addition, one judge from the Northwest is currently assigned to the Federal Government's Specific Claims Tribunal, which was created to deal with certain aboriginal land claims in an efficient and effective manner.

For general telephone inquiries, call the Ministry of the Attorney General at: Tel: (416) 326-4263.

http://www.attorneygeneral.jus.gov.on.ca/english/contact.asp
Phone, Fax, E-mail or Mail
Telephone toll free: 1-800-518-7901
Telephone Toronto: 416-326-2220
People who are hearing impaired may contact the ministry by Teletypewriter (TTY):
Teletypewriter (TTY) toll free:
1-877-425-0575
Teletypewriter (TTY) Toronto:
416-326-4012
Toll-free numbers
Fax: 416-326-4007
E-mail at attorneygeneral@ontario.ca
Mailing address:
Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, ON
M7A 2S9
