

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O.
1998, c. 15, Schedule B;

AND IN THE MATTER OF an application by Hydro One Networks
Inc. for an Order granting leave to construct new transmission lines and
facilities for the Lower Mattagami reinforcement Project.

EVIDENCE OF THE INTERVENER MÉTIS NATION OF ONTARIO AFFIDAVIT OF DOUG WILSON

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EVIDENCE OF THE MÉTIS NATION OF ONTARIO AFFIDAVIT OF DOUG WILSON

I, DOUG WILSON, MAKE OATH AND SAY AS FOLLOWS:

1. My name is Doug Wilson. I am a Métis person who lives in Ottawa, Ontario. I am presently the Métis Nation of Ontario's ("MNO") Chief Operating Officer.
2. In my capacity as the MNO's Chief Operating Officer, I have personal knowledge of the matters to which I hereinafter depose, except where stated to be on information and belief, and as to these last said matters, I verily believe them to be true.

The Métis Nation in Ontario

3. The Métis within Ontario have a long history with historic settlements that are a part of interconnected regional communities located throughout the province. Many of these settlements are located along the freighting waterways and watersheds of the province, around the Great Lakes, in close proximity to historic fur trade posts as well as near First Nation communities.
4. Métis people within this province have long struggled to maintain their identity and have their rights recognized and respected by the Ontario government. From the bounty placed on Louis Riel's head by the Ontario legislature in 1872 to the ongoing denial of the Métis existence and our rights by successive governments, Métis have faced and overcome many challenges to sustain Métis group identity, culture and communities.
5. In the early 1990s, it became apparent that Métis in Ontario needed to have their own Métis-specific representative body in order to move forward on their self-government agenda. Therefore, in 1994, Métis leaders from over 100 Métis settlements across Ontario were brought together at a meeting in Toronto. At this meeting, direction was provided to establish a Métis government to represent the distinct and unique interests of the Métis Nation within Ontario called the MNO.

6. Based on this mandate, the MNO developed a governance structure in order to democratically represent the interests of Métis people in Ontario at the local, regional and provincial levels. The MNO also joined the Métis National Council, as the national representative body of the Métis Nation. Through its participation within the MNC, Ontario Métis are presented at the national and international levels.

The Métis Population in Ontario and the MNO's Registry

7. The 2006 Census identified Ontario as having the second largest Métis population in Canada, with over 74,000 individuals self-identifying as Métis in the province. It is important to note that these Census numbers are based on individuals self-identifying as Métis. The Census does not require documented proof of Métis ancestry or community acceptance in order to be identified as Métis. The MNO estimates that in total there are approximately 60,000 to 80,000 Métis people (adults and children) within the province.
8. A central objective in the formation of the MNO was to establish a credible form of identification for Ontario Métis. Therefore, a centralized Registry was established for MNO citizens. Since 1994, Métis people within Ontario have made applications for citizenship to the MNO Registry, which is based in Ottawa. All successful applicants must meet the Métis Nation's criteria for citizenship and have a completed file of documentation demonstrating their Métis ancestry prior to the MNO issuing them a MNO citizenship card.
9. To date, the MNO has received over 18,500 applications for citizenship within the MNO. From these applications, close to 13,500 MNO citizenship cards have been issued to adults over the age of 16 years of age. Currently, the MNO does not issue citizenship cards to Métis under the age of 16 years due to a lack of resources to do so. Based on Statistics Canada's estimates that there are 2.1 children for every Canadian adult, the MNO estimates that the MNO's Registry includes over 40,000 Métis adults and children living in Ontario.

The MNO's Governance Structure

10. The citizens of the Métis Nation within Ontario mandate the MNO through democratic and transparent governance structures and institutions. Métis people within Ontario view the exercise of their collective inherent right of self-government to be through the MNO's governance structures and institutions.
11. For administrative purposes, the province was divided into 9 MNO Regions in order to ensure Métis from all parts of Ontario are effectively represented within the MNO's governance structure. A copy of a map which outlines the MNO's regions is attached to this my affidavit as **Exhibit "A"**.
12. Every 4 years, all MNO citizens have the right to vote in a province-wide ballot box election for the Provisional Council of the Métis Nation of Ontario ("PCMNO"), which represents them at a regional and provincial level for a three year term. The PCMNO is

the 19 member governing body of the MNO and includes: an Executive which consists of a President, Chair, Vice-Chair and Secretary-Treasurer and one of four Senators who are appointed to the PCMNO; 3 Senators; 9 Councillors elected respectively by the citizenship living in each of the MNO's 9 Regions; the President of the Métis Nation of Ontario Youth Council and a Post-Secondary Representative. As well, a Women's Representative is appointed from amongst the women who hold elected positions on the PCMNO.

13. MNO citizens are also represented at the local level through MNO Chartered Community Councils, which have been established throughout the province. Through Community Charter Agreements entered into between the MNO and democratically elected Community Councils, the MNO mandates its Councils to represent the interests of MNO citizens within a specific geographic area, as well as, administer various programs and services to Métis people within that area. Currently, there are over 26 MNO Chartered Community Councils throughout Ontario. A copy of a map with some of the locations of the MNO's Community Councils is attached to this my affidavit as **Exhibit "B"**.

The MNO's Harvesting Policy & Harvesters Certificate System

14. One of the goals of the MNO was to have Métis rights recognized by the Ontario Government. In particular, the MNO has pushed for the recognition of the constitutionally-protected harvesting rights of Métis in order to ensure Métis communities are able to sustain themselves, their culture and their collective identity as an Aboriginal people.
15. Despite the inclusion of the Métis in the *Constitution Act, 1982* and despite the protection of the Aboriginal and Treaty rights of the Métis in s. 35 of the *Constitution Act, 1982*, until the Supreme Court of Canada's decision in *R. v. Powley* in September of 2003, the Ontario Government refused to recognize that the Métis were a full fledged rights-bearing Aboriginal peoples, whose Aboriginal and Treaty rights needed to be recognized and respected.
16. In 1995, the Ontario Government made its position on this issue very clear in a letter to a MNO citizen. The Honourable Chris Hodgson, who was then the Ontario Minister for Natural Resources, wrote, "[a]t the present time, the Ontario Government does not recognize Métis people as having any special access rights to natural resources." This government position influenced all of the province's dealings with Métis prior to 1995 and up until the Supreme Court of Canada's decision in *R. v. Powley*. A copy of this letter is attached to this my affidavit as **Exhibit "C"**.
17. In light of the importance of harvesting and access to resources to Métis communities in the province, the MNO implemented its own Harvesting Policy in 1995. The MNO Harvesting Policy is a management system based on regional Captains of Hunt who oversee Métis harvesting in their respective traditional Métis harvesting territories and sets out conservation and safety rules for the Métis harvest.

18. Central to the MNO Harvesters Policy are Harvesters Certificate (also known as "Harvesters Cards") system. The reason for establishing the Harvesters Card system was two-fold. First, to identify Métis harvesters and their traditional territories. Second, to implement a basic reporting and enforcement mechanism for the Métis harvest.
19. The MNO Harvesting Policy identifies 12 Métis traditional territories where MNO Harvesters Cards are issued based on genealogical information available at this time that has been gathered through the MNO Registry as well as historic research. There are some areas of the province where the MNO issues no Harvesters Cards. This is because, at this time, the MNO has insufficient evidence that Métis in these areas meet the legal test established in *Powley*. A map of the MNO's Métis traditional territories is attached to this my affidavit as **Exhibit "D"**.

The Powley Case

20. At the same time as the MNO established its own Harvesting Policy, the leadership of the MNO decided there was a need to use the courts in order to fulfill the promise of s. 35 of the *Constitution Act, 1982* to the Métis people in Ontario.
21. Steve and Roddy Powley, were charged with hunting without a license in 1993. *R. v. Powley* began at trial in 1998. All levels of court from trial (1998) to appeals at the Ontario Superior Court of Justice (2000), the Ontario Court of Appeal (2001) and the Supreme Court of Canada (2003) found that there was a Métis community in and around the Sault Ste. Marie region and that this community holds a harvesting right that is protected by s. 35 of the *Constitution Act, 1982*.
22. Following the release of the Supreme Court of Canada's decision in *R. v. Powley* and consistent with the MNO's approach of always preferring negotiations over litigation and confrontation, the MNO engaged in formal negotiations with the newly elected McGuinty Government beginning in January 2004.
23. Based on these negotiations, on July 7th, 2004, the MNO President, on behalf of the Métis Nation, and, the Ontario Minister for Natural Resources, on behalf of the Ontario Government, discussed and agreed on four points that would be an interim harvesting agreement between the MNO and MNR ("*Interim Agreement*"). A copy of the *Interim Agreement* is attached to this my affidavit as **Exhibit "E"**.
24. Based on asserted Métis rights and credible Métis harvesting rights claims outside of the Sault Ste. Marie region, the Ontario Government, through the *Interim Agreement*, recognized the MNO's Harvesting Policy (i.e., MNO Harvester Cards) and accommodated Métis harvesting customs, practices and traditions in the MNO's identified Métis traditional territories, while the MNO and the MNR work on a joint review of the MNO's Harvesters Card system and collaborative research. This collaborative work between the MNO and the MNR pursuant to the *Interim Agreement* is ongoing.

25. In July 2007, in *R. v. Laurin, Lemieux and Lemieux*, the Ontario Court of Justice upheld the *Interim Agreement* as not only “legally defensible”, but “highly principled” in light of the Supreme Court of Canada’s decisions on the Crown’s duty to consult and accommodate Aboriginal rights (i.e. the *Haida Nation*, *Taku River* and *Mikisew Cree* cases). The *Laurin* case was not appealed by the MNR and the *Interim Agreement* remains in place today.

Regional Rights-Bearing Métis Communities in Ontario

26. In Ontario, there are regional rights-bearing Métis communities that are made up of interconnected settlements throughout various regions of the province. These regional Métis communities have extensive kinship connections between various settlements and share common traditional territories. Simply put, Métis communities in Ontario are not limited to specific settlements, villages, towns or cities. Further, the Métis have always been and continue to be a mobile people. Therefore, the Métis concept of “community” integrates and reflects historic and contemporary Métis characteristics. For example, members of rights-bearing Métis communities may live in and move throughout their traditional territory, but, wherever they live in their traditional territory or even if they live outside of their traditional territory, they remain equal members of that regional rights-bearing Métis community.
27. It is also important to note that while MNO Community Councils may represent MNO citizens in a defined geographic area based on their Charter Agreements with the MNO, these Councils do not define or limit regional rights-bearing Métis communities. For example, several MNO Community Councils may collectively represent a regional rights-bearing Métis community within an identified Métis traditional territory. Further, there may be members of the rights-bearing Métis community who are citizens of the MNO, but are not specifically represented by a MNO Community Council. These citizens are represented through other components of the MNO’s governance structure (i.e., through elected regional representatives).

The Regional Rights-Bearing Community At Issue

28. The MNO asserts that there is a regional rights-bearing Métis community that lives in, uses and relies on the James Bay/Abitibi Temiscamingue traditional territories. This contemporary Métis community is a continuation of a historic rights-bearing Métis community that lived in, used and occupied this region. In both historic and contemporary times, this Métis traditional territory has been shared with First Nations.
29. Both the Ontario Government as well as the Government of Canada have commissioned research on the historic presence of Métis in the James Bay/Abitibi Temiscamingue traditional territories. A copy of the report prepared for Ontario by PRAXIS Research Associates is attached to this my affidavit as **Exhibit “F”**. A copy of the report prepared for Canada by PRAXIS Research Associates is attached to this my affidavit as **Exhibit “G”**.

30. Specifically, the PRAXIS report prepared for Canada recognizes a Métis presence in the region as early as the late 1700s and a sustained presence well up to the early 1900s:

The data base of mixed-ancestry individuals and families appended to this report documents eight prominent mixed-ancestry families who lived at Moose Factory from two to four generations. Of the 300 individuals listed in the database, 169 (56%) belong to one of these eight families. Of the 108 mixed-ancestry persons enumerated in the 1901 Census, almost all (98-99%) are the immediate relatives of one of these eight families. Twenty-seven individuals (25%) are connected by birth to the Moore, McDonald or Turnor families whose mixed-ancestry origins at Moose Factory can be traced to the 18th century. Another 40 individuals (37%) are related to the Linklater, Morrison and Swanson families whose mixed ancestry origins can be traced to the early 19th century. The remainder (35%) are members of the McLeod and Udgaarden extended families. (PRAXIS Report for Canada, p. vi)

The annual district report in 1823 indicates that "halfbreeds" were known also to be skilled "Winter messengers or Packetters." The period of inland expansion with its requirement for additional men correlates with the emergence of a recognition that mixed-ancestry offspring were integral but distinct parts of the fur trade society. (PRAXIS Report for Canada, p. vii)

Beginning in at least the first quarter of the 19th century, the historical record shows that HBC mixed-ancestry men were building separate dwellings for their families on Moose Factory land and with Company time, manpower and equipment. For example, in 1817-1818 George Moore built a house for himself and his family. In 1822 Charles Beads built a "small House" with the help of two fellow mixed-ancestry men (George Moore and Thomas Richards). By 1827, Chief Factor Christie noted there were several "people who have Families and live in detached houses." (PRAXIS Report for Canada, p. x)

The site map of Moose Factory dated 1901 and building descriptions contained in the 1895 District Report may indicate the existence of a mixed-ancestry 'neighbourhood' on the northeast side of the fort where 27-28 separate dwellings are shown. Eleven dwellings were Company houses occupied by servants, and 16-17 belonged to "homeguard" Cree families. Triangulation with the 1901 Census suggests that the mixed-ancestry families enumerated in buildings 114-131, correspond with the buildings marked on the northeast side of the fort site plan, where separate family dwellings and garden plots had been established beginning in the 1820s. (PRAXIS Report for Canada, p. x)

Demographic analysis concludes that the post community essentially evolved into a mixed-ancestry community. By 1830 the complement of HBC men at Moose Factory was over 30% mixed-ancestry, growing to over 50% by 1890. The 1881 Census enumerations indicate that over 65% of the post population was mixed ancestry, and a decade later, the 1901 Census confirmed that Moose Factory was almost 85% mixed-ancestry. (PRAXIS Report for Canada, p. xi)

The 1901 Census is the earliest possible indicator of self-ascription by mixed ancestry individuals at Moose Factory. Enumerators were instructed to record the "colour" and "origin" of persons as self-identified, but the extent to which enumerators imposed their own codes cannot be known. However, that some members of the same extended families (eg., Turnor) identified differently – some "Métis Ecossaie" (mixed-ancestry) and others "Rouge" (Indian) – supports the notion that at least some degree of self-identification was exercised in the 1901 Census. (PRAXIS Report for Canada, p. xii)

Research by Brown and by Reimer and Chartrand on mixed-ancestry populations in these districts demonstrate the interconnection of family names throughout James Bay and inland area, the result of HBC expansion, transfer of servants, and intermarriage. Names such as Moore, Thomas, Linklater, Richards, Vincent, Knight, Beads and Polson are documented not only at Moose Factory, but also at Fort Albany and inland posts such as Abitibi House, Kinogammissi, Matawagamingue, New Post, etc. These authors conclude that an important characteristic of what Brown terms "fur trade endogamy," is the connection between families in the region as a whole. (PRAXIS Report, p. 30)

31. At pages 100-106, in the Praxis report prepared for Canada, the authors discuss the 1905 petition of the "Halfbreeds" from Moose Factory for their claims and interests to be addressed, since these Métis were excluded from James Bay – Treaty No. 9 because the Treaty Commissioner had no mandate to deal with Halfbreed claims.
32. I have been informed by the MNO Registrar and verily believe that as of April 30, 2008, the MNO represents over 1,000 Métis citizens in MNO Region 3, which encompasses the James Bay/Abitibi Temiscamingue traditional territories. The following are just some of the locations these Métis citizens live: Belle Vallee, Chapleau, Chaput Heights, Charlton, Cobalt, Cochrane, Connaught, Elk Lake, Englehart, Foleyet, Fredrick-House, Gogama, Gold Centre, Gowganda, Haileybury, Hearst, Iroquois Falls, Kapusaking, Kenabeek, Kirkland Lake, Latchford, Matachewan, Matheson, Mattice, Monteith, Moose Factory, Moosonee, New Liskeard, North Cobalt, Porcupine, Ramore, Shillington, Sooth Rock Falls, South Porcupine, Sultan, Temagami, Timmins, Tunis, Val Cote.
33. Further, I have been informed by the MNO Registrar and verily believe that many of the descendants of the Moore, Thomas, Linklater, Richards, Vincent, Knight, Beads and Polson families as well as other historic Métis family names mentioned in the PRAXIS reports and known to the MNO are registered on the MNO's Registry and continue to live throughout the region.
34. The Crown has also recognized Métis rights claims in this region. As mentioned above in paras. 23-25 of my affidavit, the Ontario Government has accommodated Métis harvesting rights within the James Bay/Abitibi Temiscamingue traditional territories. Currently, there are over 150 MNO Harvester Card holders that support themselves, their extended families and the regional community through hunting, fishing, trapping and gathering throughout the region.
35. The regional rights-bearing community has also executed a Consultation Protocol for the James Bay/Abitibi Temiscamingue traditional territories. A copy of this Protocol is attached to this my affidavit as **Exhibit "H"**.
36. Métis communities have deep connections – social, cultural, spiritual, economic – to their traditional territories. These connections lie at the core of Métis identity and culture. The health and well-being of this territory directly correlates with that of the Aboriginal community whose history and future is tied to it.

37. To date, the Ontario Government has not provided any support for the Métis community that lives in, uses and relies on the James Bay/Abitibi Temiscamingue traditional territories to conduct a traditional land use or traditional knowledge study within its traditional territory. As well, Ontario Power Generation has refused to support this type of work by the potentially affected Métis community in relation to the overall Lower Mattagami Hydroelectric Project.
38. I have been informed by legal counsel and verily believe to be true that the MNO has not been engaged in any consultations on the overall Lower Mattagami Hydroelectric Project or the Transmission Reinforcement Project (which is the subject of this leave to construct application) directly with the Ontario Government. Any information or engagement related to the abovementioned projects have been with Hydro One Networks Inc. or Ontario Power Generation. Presently, the MNO is unaware of any agreement or arrangement where procedural aspects of the Ontario Crown's duty have been delegated to Ontario Power Generation or Hydro One Networks Inc. in relation to the project that is the subject of this application before the Board or the overall Lower Mattagami Hydroelectric Project.
39. I have been informed by MNO's leadership and verily believe to be true that the MNO is extremely supportive of the business partnership Ontario Power Generation has developed with the Moose Cree First Nation with respect to the Lower Mattagami Development Project. The MNO believes similar partnerships should be developed between proponents, First Nations and Métis communities throughout the province. The MNO's interest in this intervention is to ensure that the Crown's duty to consult and accommodate the regional rights-bearing Métis community within the James Bay/Abitibi Temiscamingue traditional territories has been met. As they have been historically, the Métis community's interests are aligned with those of the Mushkegowuk people who value their relations to the environment, each other and other peoples.
40. I make this affidavit as evidence for the MNO in the application by Hydro One Networks Inc. for an order granting leave to construct new transmission lines and facilities for the Lower Mattagami Reinforcement Project.

SWORN BEFORE ME

in the city of Toronto,
in the Province of Ontario
on this 7th day of July, 2009.


A Commissioner in Ontario.



Doug Wilson