

**AFN BRIEFING NOTE**  
**ALGONQUINS OF BARRIERE LAKE (ABL)**

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**PURPOSE:**

1. To come to an agreement with Min. Strahl on a process to resolve the legal dispute between ABL and DIA regarding DIA's decision to place ABL in third party management (TPM).
2. To fix relations between ABL and DIA to enable cooperation in addressing dire social conditions recently documented film-maker Richard Desjardin in *The Invisible Nation/Le peuple invisible*.
3. To find an urgent solution to re-open the ABL School, that has been closed by ABL parents due to opposition to the TPM.

**LEGAL DISPUTE AND EFFORTS TO FIND A RESOLUTION**

**Summary of Dispute**

DIA made a decision to put ABL into TPM in July 2006 based on an alleged financial deficit. The ABL Elders Council challenged this decision in Federal Court in August 2006. The Elders argue that DIA acted unfairly, without proper consultation and contrary to its own policies by moving ABL from co-management to TPM.

**Dispute Connected with DIA's Failure to Fulfill Agreements with ABL**

The Elders also claim DIA's failure to fulfill the following agreements breach the honour of the Crown, breach fiduciary obligations and have adversely affected ABL's financial position, which disentitles DIA from appointing a TPM:

1. **Special Provisions** – In this agreement, signed originally in 1997, DIA acknowledged that ABL's financial situation was adversely affected by DIA's decision in 1996 to impose an Interim Band Council and a TPM on the First Nation. Furthermore DIA committed to engage in a process with ABL to address these financial issues and clarify its financial position.
2. **Memorandum of Mutual Intent (MOMI)** -- In this agreement, signed in October 1997, DIA committed to a new relationship with ABL based on mutual respect; and it committed to working with ABL on a Global Proposal to Rebuild the Community.
3. **Trilateral Agreement** – This agreement signed with Canada and Quebec in 1991 basically establishes a consultation and accommodation framework to address the rights and interests of ABL in its traditional territory.

ABL acknowledges it lacks the capacity for financial management and is therefore willing to accept some co-management arrangement on a without prejudice basis, until the issues related to the above three agreements are resolved.

## **Alternative Dispute Resolution (ADR) Efforts to Date**

Around the National Day of Action on June 29<sup>th</sup>, DM Michael Wernick started discussions with ABL on an ADR process. ABL was looking for a process to negotiate all outstanding issues, including DIA's failure to honour the above agreements. The discussions concluded in September with the appointment of Marc Perron, as Special Ministerial Representative. His mandate was fuzzy: it was to fact-find, enter into discussions and report back to the Minister on further negotiations. Despite reservations, ABL tried to make the process work. The Federal Court proceedings were suspended by agreement between ABL and DIA in October 2, 2007, to allow ADR. Unfortunately, the process with Mr. Perron has not worked-out. The community is fed-up with the TPM overall, but is particularly frustrated with the TPM's unilateral manner in running the ABL School. As a result, a majority of the parents forced the closure of the School around the end of November. ABL sent a letter to Min. Strahl on November 26<sup>th</sup> to find an alternative.

### **ACTION REQUIRED/OPTIONS:**

**Simplest Option:** Keeping the same mandate, find a suitable replacement for Mr. Perron, with the input of ABL and AFN.

**ABL Preferred Option:** Appoint a new Ministerial Rep with a full mandate to negotiate all issues outstanding in Federal Court. Consider using a Federal Court Judge to mediate or facilitate negotiations.

### **BACKGROUND:**

#### ***ABL Customs***

ABL's governance is according to custom. Its Council is, and has always been, selected under custom and not the *Indian Act*. There are divisions in the community as in most other communities, which have been exacerbated by ABL's extremely poor social conditions.

#### ***Social Conditions***

Despite the fact that ABL has unsundered Aboriginal title to its traditional territory, the First Nation has been squeezed on to a 59 acre reserve at Rapid Lake, where its people live in run-down, mould-laden and over-crowded houses. Unemployment rates run to 80%. Construction of new homes is not possible because the reserve is too small and the community is not connected to the hydro grid. These conditions are leading to removal of children by Youth Protection Services. ABL's territory has generated wealth and jobs for the regional economy through forestry, tourism and hydro development; but, ABL has received nothing of these benefits. The marginalization of ABL and other Algonquin First Nations in Quebec was recently documented by noted Quebec filmmaker Richard Desjardin, in an NFB film entitled *The Invisible Nation/Le peuple invisible*. The NFB called the film an "alarming indictment".

### ***Trilateral Agreement***

ABL signed a *Trilateral Agreement* with Canada and Quebec in 1991 in an effort to gain some benefit as well as control in the management and development of resources within its territory. The federal government unilaterally withdrew from that agreement in 2001. The Quebec Cabinet is currently considering a series of recommendations made jointly by ABL's Negotiator, Clifford Lincoln, and Quebec's Negotiator, John Ciaccia, for co-management of the territory, resource revenue sharing, expansion of the reserve and connection to the hydro grid. The Quebec Cabinet has delayed in approving the recommendations, which has caused ABL to suspend forestry operations in its territory in October. The Trilateral Agreement is the key to moving forward. Canada's absence at this table impedes progress and undermines ABL's position.

### ***Special Provisions and Memorandum of Mutual Intent***

The other two agreements in issue, the *Special Provisions* and *Memorandum of Mutual Intent*, date back to the dispute with DIA in 1996. In 1996, contrary to its own policies and the law, DIA interfered in ABL's customary governance and installed an Interim Band Council (IBC) made-up of a dissident faction within the community. In recognizing the IBC, DIA claimed to be acting on a petition and in accordance with an alleged "modern custom of leadership selection by petition". At the same time, DIA appointed a third party manager, in a manner which was also contrary to their policy at the time. The dispute caused hardship in the community including the closure of the school and suspension of federal funding and programs and services for 1 & 1/2 years. Many of these issues remain outstanding. The dispute was the subject of two Federal Court proceedings, which were not determined on the merits. Instead, the dispute was resolved outside of court through mediation and facilitation.

The mediation was undertaken by Justice Rejean Paul of the Quebec Superior Court – his findings in January 1997 confirm that ABL did not select its leaders by petition and therefore that DIA wrongly interfered in ABL's customary governance. Two Facilitators were appointed by DIA and ABL, Andre Maltais and Michel Gratton, to resolve the leadership issue and to address outstanding issues based on Judge Paul's Report. The Facilitators resolved the leadership issue in 1997, by overseeing the codification of ABL's customs and reaffirming ABL's Customary Council. DIA recognized the ABL Customary Council in April 1997.

Messrs Maltais and Gratton were also mandated to address outstanding issues – issues caused by DIA's improper intervention in 1996. They facilitated a resumption of DIA funded services to the reserve and the signing of a Contribution Agreement in 1997, which contained a Special Provision. This Special Provision has been in every Contribution Agreement signed since 1997 and commits DIA to engage in a process with ABL to address the financial issues related to DIA's interference with ABL's governance in 1996-97. DIA also signed a Memorandum of Mutual Intent with ABL, which had attached to it a Global Proposal to Rebuild the Community. DIA has fulfilled some aspects of the MOMI; however, it has totally refused to honour the Special Provisions.