

Court File No. 16-70862

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Kitigan Zibi Anishinabeg and
Jean-Guy Whiteduck,

on their own behalf and on behalf of all other members of the Algonquin Anishinabe Nation

PLAINTIFFS

-and-

Attorney General of Canada,
National Capital Commission, and
Her Majesty the Queen in Right of Ontario

DEFENDANTS



STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date DEC 07 2016

Issued by M. Altmah
Local Registrar

Address of Court Office: Ottawa Courthouse
161 Elgin St., 2nd Fl.
Ottawa ON K2P 2K1

- TO: Attorney General of Canada
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8
- TO: National Capital Commission
202-40 Elgin Street
Ottawa ON K1P 1C7
- TO: Her Majesty the Queen in Right of Ontario
Attorney General of Ontario
720 Bay Street, 11th Floor
Toronto, Ontario M7A 2S9

STATEMENT OF CLAIM

I. FACTS

A. PARTIES

1. Plaintiffs and Represented Group

1. The plaintiff Kitigan Zibi Anishinabeg (“**Kitigan Zibi**”) is a “band” under the *Indian Act*.
2. The plaintiff Jean-Guy Whiteduck is a registered Indian under the *Indian Act*, a member of Kitigan Zibi, and the duly elected chief of Kitigan Zibi.
3. The “**Algonquin Anishinabe Nation**” is an historic and present-day people and group. Its members are the represented group in this proceeding, and specifically:
 - a. Jean-Guy Whiteduck is a member of the Algonquin Anishinabe Nation;
 - b. Kitigan Zibi is comprised of, a continuation of, or a successor to one or more community or local group within the Algonquin Anishinabe Nation; and,
 - c. the plaintiffs bring this action on their own behalf and as representatives on behalf of all other members of the Algonquin Anishinabe Nation.

2. Defendants

4. The defendant Attorney General of Canada is the representative of Her Majesty in right of Canada (“**Canada**”) and is named in these proceedings pursuant to s 23(1) of the *Crown Liability and Proceedings Act*.
5. The defendant National Capital Commission (the “**NCC**”) is a corporation continued pursuant to s 3 of the *National Capital Act*. The NCC is an agent of Canada for all purposes of the *National Capital Act* pursuant to s 4, including when exercising those powers enumerated under s 10(2).
6. The defendant Her Majesty the Queen in right of Ontario (“**Ontario**”) is named in these proceedings pursuant to s 9 of the *Proceedings Against the Crown Act*, RSO 1990, c P.27.

B. ALGONQUIN ANISHINABE NATION ABORIGINAL TITLE TO THE KICHI SIBI LANDS

7. The Algonquin Anishinabe Nation is and was an aboriginal people, nation or group at the assertion of Crown sovereignty over what is now the province of Ontario in 1763

(“**Sovereignty**”).

8. At Sovereignty, the Algonquin Anishinabe Nation exclusively occupied the islands in and uplands adjacent to *Kichi Sibi*, also known as the Ottawa River, including: Chaudière Island; Albert Island; Victoria Island; and, the adjacent shoreline of the city of Ottawa, Ontario; and in particular those lands shown in the map attached as **Schedule “A”** and as further described in the tables attached as **Schedule “B”** (the “**Kichi Sibi Lands**”).

9. The Algonquin Anishinabe Nation physically occupied the Kichi Sibi Lands in a variety of ways, including without limitation, regular use for:

- a. fishing and as fishing stations;
- b. hunting and trapping;
- c. meeting and as camp sites;
- d. farming and cultivation;
- e. gathering berries and medicinal plants;
- f. trade and as trading stations;
- g. sacred areas and burial sites; and,
- h. travel routes and trails.

10. The Algonquin Anishinabe Nation had the intention and capacity to retain exclusive control over the Kichi Sibi Lands. In particular and without limitation:

- a. the Algonquin Anishinabe Nation had a system of rules and laws aimed at confirming and enforcing exclusive ownership of their lands, including the Kichi Sibi Lands;

- b. the Algonquin Anishinabe Nation controlled passage on the Ottawa River (*Kichi Sibi*) in the vicinity of the Kichi Sibi Lands through a system of permissive access;
- c. the Algonquin Anishinabe Nation controlled occupation and use of their lands, including the Kichi Sibi Lands, through a variety of means which included arrangements for temporary possession, but also, in the absence of an arrangement, sanctions of increasing severity up to and including death to any invader; and,
- d. in their capacity as exclusive owner of their lands, including the Kichi Sibi Lands, the Algonquin Anishinabe Nation entered into a number of agreements with other aboriginal and European nations, all of which confirmed the Algonquin Anishinabe Nation's right to possess and control their lands, including the Kichi Sibi Lands.

11. The Algonquin Anishinabe Nation has never surrendered its title to the Kichi Sibi Lands.

C. INTERFERENCE WITH TITLE

1. Canada and NCC

12. Canada and/or its agent NCC, without the consent of the Algonquin Anishinabe Nation:
- a. holds and occupies certain parcels of land, identified within Schedule "B" as the "**Federal Kichi Sibi Lands**";
 - b. has purported to grant interests in the Federal Kichi Sibi Lands to others;
 - c. has purported to make other decisions (in addition to those listed above) concerning the use, management, enjoyment, possession, and occupancy of the Kichi Sibi Lands or portions of them to the exclusion of the Algonquin Anishinabe Nation, or has permitted others to do so; and,
 - d. has economically benefitted from the Kichi Sibi Lands, or portions of those lands, or has permitted others to do so, without transferring those benefits to the Algonquin Anishinabe Nation.

(collectively, the "**Federal Interferences**").

13. Canada and/or its agent NCC have never compensated the Algonquin Anishinabe Nation for any of the Federal Interferences, either fairly or at all.

2. Ontario

14. Ontario, without the consent of the Algonquin Anishinabe Nation:

- a. has purported to grant or permit the granting and registering of fee simple interests to land located within the Kichi Sibi Lands;
- b. has purported to grant or permit the granting and registering of other interests to land located within the Kichi Sibi Lands;
- c. has purported to make other decisions (in addition to those listed above) concerning the use, management, enjoyment, possession, and occupancy of the Kichi Sibi Lands or portions of them to the exclusion of the Algonquin Anishinabe Nation, or has permitted others to do so; and,
- d. has economically benefitted from the Kichi Sibi Lands, or portions of those lands, or permitted others to do so, without transferring those benefits to the Algonquin Anishinabe Nation.

(collectively, the “**Provincial Interferences**”).

15. Ontario has never compensated the Algonquin Anishinabe Nation for any of the Provincial Interferences, either fairly or at all.

II. LEGAL BASIS

1. The Algonquin Anishinabe Nation has aboriginal title to the Kichi Sibi Lands within the meaning of s 35(1) of the *Constitution Act, 1982*. That title confers upon the Algonquin Anishinabe Nation the following rights, without limitation:

- a. the right to control the Kichi Sibi Lands and decide how they will be used;
- b. the right to enjoy and occupy the Kichi Sibi Lands;
- c. the right to economically benefit from the Kichi Sibi Lands; and,

- d. the right to proactively use and manage the Kichi Sibi Lands.
2. Canada has infringed the Algonquin Anishinabe Nation's aboriginal title to the Kichi Sibi Lands, by conducting itself as described at Part I paragraph 12 (the Federal Interferences).
 3. Ontario has infringed the Algonquin Anishinabe Nation's aboriginal title to the Kichi Sibi Lands, by conducting itself as described at Part I paragraph 14 (the Provincial Interferences).

III. RELIEF SOUGHT

The plaintiffs seek the following relief:

1. An order authorizing this proceeding as a representative proceeding and appointing the named plaintiffs as representatives of all other members of the Algonquin Anishinabe Nation;
2. A declaration that the Algonquin Anishinabe Nation has aboriginal title to the Kichi Sibi Lands, or in the alternative, to any portion of these lands;
3. With respect to Canada and/or the NCC, declarations that:
 - a. each of the Federal Interferences constitutes an unjustified infringement of the Algonquin Anishinabe Nation's title to the Kichi Sibi Lands;
 - b. the Algonquin Anishinabe Nation is entitled to the Federal Kichi Sibi Lands or any portion of them;
 - c. in the alternative to paragraph 3(b), Canada and/or the NCC holds the Federal Kichi Sibi Lands or any portion of them as a constructive trustee for the Algonquin Anishinabe Nation, which includes the plaintiffs; and,
 - d. in the further alternative to paragraph 3(b), Canada has a fiduciary duty to negotiate in good faith with the Algonquin Anishinabe Nation, which includes the plaintiffs, for reconciliation of aboriginal title to the Federal Kichi Sibi Lands or any portion of them.

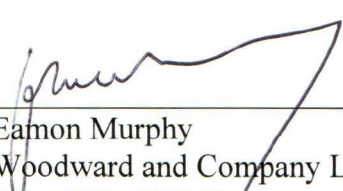
4. With respect to Ontario, declarations that:
 - a. each of the Provincial Interferences constitutes an infringement of the Algonquin Anishinabe Nation's title to the Kichi Sibi Lands;
 - b. as against Ontario, the Algonquin Anishinabe Nation is entitled to the Kichi Sibi Lands or any portion of them; and,
 - c. Ontario has a fiduciary duty to negotiate in good faith with the Algonquin Anishinabe Nation, which includes the plaintiffs, for reconciliation of aboriginal title to the Kichi Sibi Lands with each of the Provincial Interferences.
5. Costs; and,
6. Such further, equitable, and other relief that this honourable Court deems just.

IV. STATUTES & REGULATIONS RELIED UPON

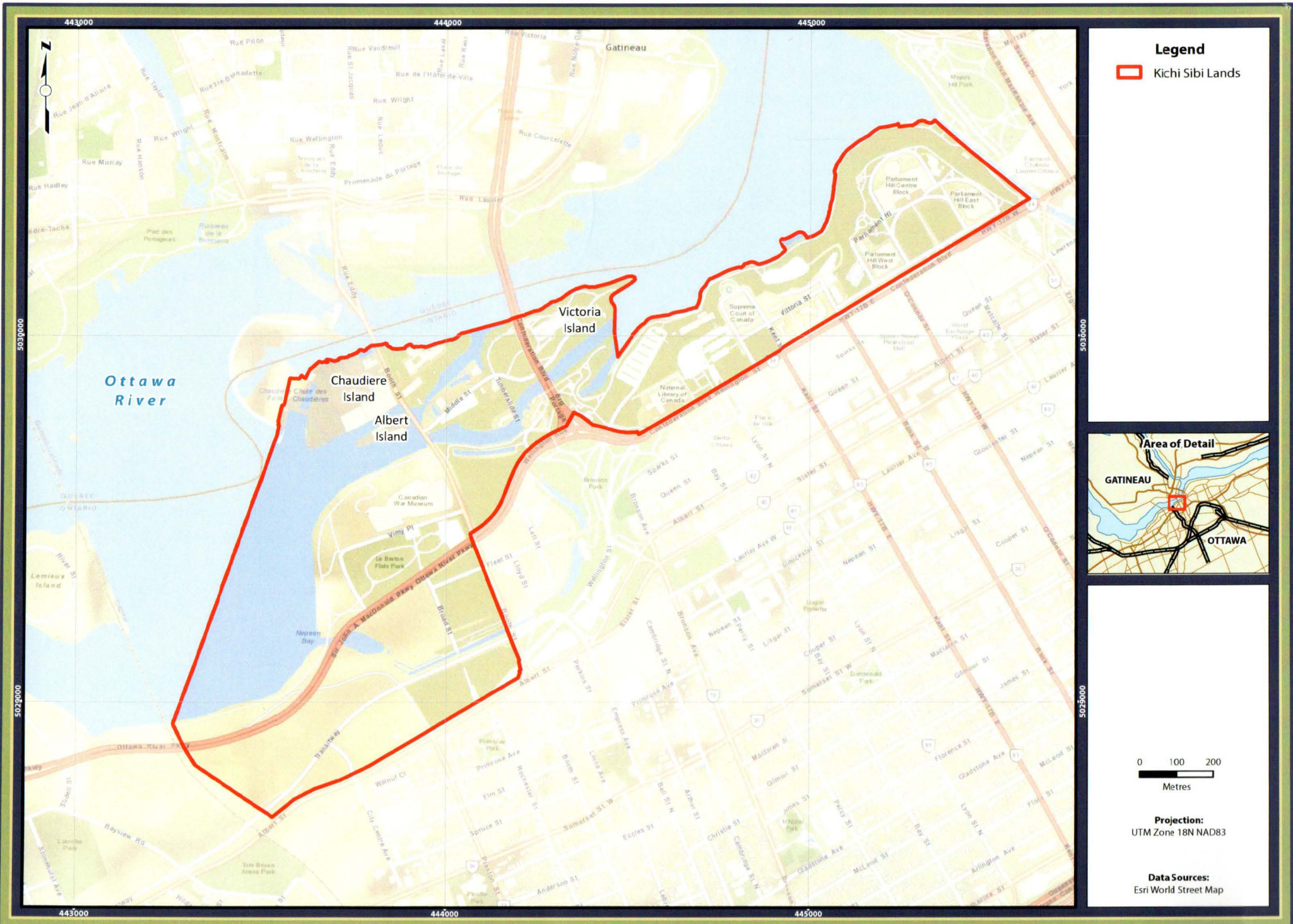
1. *Constitution Act*, 1982;
2. *Indian Act*, RSC 1985, c I-5;
3. *Crown Liability and Proceedings Act*, RSC 1985 c C-50;
4. *National Capital Act*, RSC 1985, c N-4;
5. *Proceedings Against the Crown Act*, RSO 1990, c P.27;
6. *Rules of Civil Procedure*, RRO 1990, Reg 194; and,
7. Such further and other enactments as counsel may advise.

Date: December 7, 2016

Issued by: _____


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SCHEDULE "A" - KICHI SIBI LANDS



Legend

Kichi Sibi Lands

Area of Detail

GATINEAU

OTTAWA

0 100 200
Metres

Projection:
UTM Zone 18N NAD83

Data Sources:
Esri World Street Map

SCHEDULE "B" – KICHI SIBI LANDS

A. VICINITY OF CHAUDIÈRE ISLAND

	Parcel Identification Number (PIN)	Federal Kichi Sibi Lands
1.	04097-0089	Federal Kichi Sibi Lands
2.	04097-0094	
3.	04097-0170 (partial)	Federal Kichi Sibi Lands
4.	04097-0206	
5.	04097-0207	
6.	04097-0208	
7.	04097-0211	Federal Kichi Sibi Lands
8.	04097-0212	Federal Kichi Sibi Lands
9.	04097-0213	
10.	04097-0214	
11.	04097-0215	
12.	04097-0216	
13.	04280-0007	Federal Kichi Sibi Lands
14.	04280-0039	Federal Kichi Sibi Lands
15.	04280-0040	
16.	04280-0041	
17.	04280-0042	
18.	04280-0043	Federal Kichi Sibi Lands
19.	04280-0067	
20.	04280-0138	
21.	04280-0139	Federal Kichi Sibi Lands
22.	04280-0144	
23.	04280-0147	Federal Kichi Sibi Lands
24.	04280-0148	
25.	04280-0149 (partial)	

B. VICINITY OF ALBERT ISLAND

	Parcel Identification Number (PIN)	Federal Kichi Sibi Lands
26.	04097-0086	Federal Kichi Sibi Lands
27.	04097-0087	
28.	04097-0090	
29.	04097-9508	

C. VICINITY OF VICTORIA ISLAND

	Parcel Identification Number (PIN)	Federal Kichi Sibi Lands
30.	04280-0008	Federal Kichi Sibi Lands
31.	04280-0009	Federal Kichi Sibi Lands
32.	04280-0011 (partial)	Federal Kichi Sibi Lands
33.	04280-0012	Federal Kichi Sibi Lands
34.	04280-0066	Federal Kichi Sibi Lands

D. VICINITY OF THE LEBRETON FLATS

	Parcel Identification Number (PIN)	Federal Kichi Sibi Lands
35.	04097-0059	Federal Kichi Sibi Lands
36.	04097-0061	Federal Kichi Sibi Lands
37.	04097-0062	Federal Kichi Sibi Lands
38.	04097-0075 (partial)	
39.	04097-0100	
40.	04097-0129	Federal Kichi Sibi Lands
41.	04097-0137	
42.	04097-0138	
43.	04097-0140	
44.	04097-0142	
45.	04097-0144	

	Parcel Identification Number (PIN)	Federal Kichi Sibi Lands
46.	04097-0146	
47.	04097-0148	
48.	04097-0150	
49.	04097-0151	
50.	04097-0152	Federal Kichi Sibi Lands
51.	04097-0153	Federal Kichi Sibi Lands
52.	04097-0155	Federal Kichi Sibi Lands
53.	04097-0156	Federal Kichi Sibi Lands
54.	04097-0157	
55.	04097-0158	
56.	04097-0159	
57.	04097-0160	
58.	04097-0161	
59.	04097-0165	
60.	04097-0173	
61.	04097-0184	Federal Kichi Sibi Lands
62.	04097-0186	Federal Kichi Sibi Lands
63.	04097-0188	Federal Kichi Sibi Lands
64.	04097-0193	
65.	04097-0194	Federal Kichi Sibi Lands
66.	04097-0195	
67.	04097-0196	Federal Kichi Sibi Lands
68.	04097-0198	Federal Kichi Sibi Lands
69.	04097-0199	
70.	04097-0200	Federal Kichi Sibi Lands
71.	04112-0001 (partial)	
72.	04112-0088 (partial)	
73.	04112-0173 (partial)	

	Parcel Identification Number (PIN)	Federal Kichi Sibi Lands
74.	04112-0175	Federal Kichi Sibi Lands
75.	04112-0178	Federal Kichi Sibi Lands
76.	04280-0079	
77.	04280-0083	
78.	04280-0085	
79.	04280-0104	
80.	04280-0143 (partial)	

E. VICINITY OF PARLIAMENT HILL AND THE SUPREME COURT OF CANADA

	Parcel Identification Number (PIN)	Federal Kichi Sibi Lands
81.	04280-0022	Federal Kichi Sibi Lands
82.	04280-0025 (partial)	
83.	04280-0026 (partial)	
84.	04280-0029	Federal Kichi Sibi Lands
85.	04280-0030	Federal Kichi Sibi Lands
86.	04280-0031	Federal Kichi Sibi Lands
87.	04280-0032	Federal Kichi Sibi Lands
88.	04280-0033	Federal Kichi Sibi Lands
89.	04280-0036 (partial)	Federal Kichi Sibi Lands

Ontario
Superior Court of Justice

PROCEEDING COMMENCED AT OTTAWA

STATEMENT OF CLAIM

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