

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

FRONTENAC VENTURES CORPORATION

Plaintiff/Defendants by Counterclaim

- and -

ARDOCH ALGONQUIN FIRST NATION,
SHABOT OBAADJIWAN FIRST NATION,
ROBERT LOVELACE, PAULA SHERMAN, DOREEN DAVIS,
RANDY COTA, HAROLD PERRY, JANE DOE, JOHN DOE
and PERSONS UNKNOWN

Defendants / Plaintiffs by Counterclaim
and Crossclaim

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
the MINISTER OF ABORIGINAL AFFAIRS FOR ONTARIO
and THE MINISTER OF NORTHERN DEVELOPMENT AND MINES FOR ONTARIO

Defendants by Crossclaim

THE ATTORNEY GENERAL OF CANADA and
the MINISTER OF INDIAN AND NORTHERN AFFAIRS CANADA

Defendants by Crossclaim

- and -

THE ALGONQUINS OF ONTARIO

Intervener

**AMENDED STATEMENT OF DEFENSE, COUNTERCLAIM and CROSS CLAIM
of the DEFENDANTS SHABOT OBAADJIWAN FIRST NATION and DOREEN DAVIS**

1. The defendants in this amended statement of defense, counterclaim and crossclaim are the Shabot Obaadjiwan First Nation (SOFN) and its duly elected Chief, Doreen Davis.

2. These defendants admit the allegations contained in paragraphs 4, 6, 7, 8, 9, 10, 11, 12, 31, 38, 71, the first sentence of paragraph 13, all but the first sentence of 39, and the first sentence of 44, of the Statement of Claim.
3. These defendants have no knowledge of the allegations contained in paragraphs 2, 3, 15, 17-26, other than the last sentence of 26 which is denied, 27, other than the last sentence of 27, which is denied, 28, 29, 43, 48-51, other than the last two sentences of 51, which are denied, and 52 of the Statement of Claim.
4. Except as expressly set out in this Statement of Defense, these defendants deny each and every allegation contained in the Statement of Claim and put the plaintiff to the strict proof thereof.
5. The Shabot Obaadjiwan First Nation (SOFN) is part of the broader Algonquin Nation and like other Algonquin First Nation communities, is comprised of extended families which share a common connection to the land where they live. The traditional territory of the Algonquin in Ontario is within the eastern part of province in the area known as the Ottawa Valley.
6. Doreen Davis is the duly elected Chief of the Shabot Obaadjiwan First Nation. The SOFN Community is comprised of approximately 2000 members. She has been the Chief of the SOFN since 1999.
7. The SOFN state that they hold Aboriginal rights and title to their traditional territory. This territory includes all of the so-called Exploration Property described in the Statement of Claim.
8. Many members of the SOFN follow a traditional way of life, harvesting animals, fish, plants and medicines from the land. The SOFN have lived in harmony with their land since time immemorial and their culture and their existence is based on their relationship with the land.

9. These defendants state that the Exploration Property is in the very heart of their traditional territory. These defendants use impugned lands for traditional harvesting activities, trapping, hunting and fishing as did their ancestors before them since long before non-Algonquins ever came to this land.
10. Like most other Algonquin First Nation communities in the Ottawa Valley Watershed area, these defendants do not have a reserve under the *Indian Act (Canada)* and are not recognized under the *Indian Act* as status Indians.
11. They have, however, maintained, protected and defended their culture and laws since time immemorial.
12. Since they are not registered as Bands under Canada *Indian Act* the SOFN does not receive any funding from either the Provincial or Federal governments and their members do not enjoy any of the tax exemptions or other benefits and services available to so-called status Indians.
13. The SOFN has adopted an electoral system to elect its leadership. The Shabot Obaadjiwan Council is comprised of a Chief and 5 elected counselors.
14. Neither the Algonquin Nation nor SOFN have ever been a party to any treaty with Canada or the British Crown and they have never sold or surrendered any of their lands or resources.
15. These defendants state that they have full Aboriginal title to their land, including the sub-surface minerals. Canada and Ontario were aware of the defendant's assertion that they have Aboriginal rights and title in their land at all material times.
16. In 1983, the Algonquins of Golden Lake (now known as the Algonquins of Pikwakanagan) submitted to both Canada and Ontario, through Indian and Northern Affairs Canada (INAC) and the Ontario Secretariat for Aboriginal Affairs respectively, a comprehensive land claim on behalf of the Algonquins of Ontario (the AOO). The claim asserts that the AOO have Aboriginal title to their traditional territory, including the impugned Exploration Property.

17. The Algonquin land claim has been accepted for negotiation by Canada and Ontario and negotiations have been ongoing since 1992.
18. These defendants are part of the AOO and have been actively engaged in the land claims negotiations since on or about 1995. Chief Doreen Davis has been involved as the representative of the SOFN at the negotiating table since 1997.
19. One of the central objectives of the land claim negotiations is to reconcile Aboriginal rights, including Aboriginal title with the Governments of Canada and Ontario. Other objectives include provisions for land use and resource management, economic development opportunities and to establish self-governance for the Algonquin Nation and the individual Algonquin Communities as the case may be.
20. Throughout their history, the Algonquin have generally welcomed non-Algonquin settlers and the culture, ideals and economic development that they contribute to their communities.
21. For the most part the settlers in the defendant's territory have respected Algonquin laws and customs and treated the defendant's land respectfully.
22. These defendants are not opposed to economic development. In fact, they encourage self-reliance and entrepreneurial initiative because they do not want their people to become dependent on welfare and government handouts. These defendants support the economic development initiatives currently being negotiated and proposed at the land claims negotiations.
23. In early 2007 these defendants learned that a company called Frontenac Ventures Corporation (FVC) had staked mineral claims within their territory and had begun blasting rock, removing trees, rock and overburden and building roads in preparation for extensive exploratory drilling. By the time they had learned of these activities by FVC, considerable damage had already been done to the land, including damage to wetlands, the habitats of protected animals and fish which they have managed, cared for and harvested since long before European settlement of their land.

24. These defendants were alarmed to learn that, not only had FVC staked mineral claims, they were planning “an aggressive exploration and development program” during the summer of 2007 on the Exploration Property.
25. These defendants learned from the FVC website that the land where they had staked their claims disclosed a large uranium find and that FVC was exploring the potential for an open-pit operation on these lands.
26. These defendants state, and the fact is, that they were never consulted in any way regarding the staking of their land and the registering by Ontario of FVC’s mineral claims on their lands. These defendants state, and the fact is, that they were never consulted regarding FVC’s plans for an aggressive exploration and development program on their lands.
27. These defendants state that uranium exploration and mining will disturb and pollute their territory.
28. These defendants also learned that FVC holds a mining lease within which many of its claims have been staked. This twenty-one year lease began on August 1, 1987 and expired on July 31, 2007. At no time were these defendants consulted regarding the application for, issuance of or renewal of said lease.
29. Since first becoming aware of the staking of their land and exploration by FVC, these defendants attempted to engage both FVC and the provincial and federal governments in consultations.
30. The Ontario *Mining Act* purports to allow the staking of Crown land and recording (registering) of mineral claims on Crown land without any consultation with First Nation communities, even when the government is fully aware that First Nations claim title, ownership, rights and jurisdiction over the very same land. This is also true, even when First Nations communities are actively engaged in land claim negotiations to resolve some of these exact issues.

31. Once a company has staked mineral claims it can begin aggressively exploring for minerals, even highly toxic minerals like uranium, without the need to apply for any land use permits, environmental assessments or other authorizations and without any consultation with First Nation communities. The exploration allowed by the *Mining Act* at this stage can involve the significant removal of trees, removal of rock, overburden, and damage to the habitats of fish and wildlife, all without any requirement to consult affected First Nation communities.
32. When it became clear to these defendants that their land was threatened and that the government of Ontario and Canada were unable or unwilling to do anything to protect their land, or even to exercise their common law and Constitutional duty to consult with them regarding the plans of FVC, these defendants appealed to Algonquin law, which requires that they must act to protect their land.
33. On June 28, 2007, these defendants acted to secure the so-called Exploration Property. These defendants established a camp at the main entrance to the site and posted observers at locations of potential entry to the area.
34. These defendants state that their protest is supported by many non-Algonquin peoples.
35. These defendants state that the claims by the plaintiff's that their employees have been intimidated by them are false. All of these defendants activities have been completely peaceful and they have never intimidated or threatened anyone.
36. These defendants deny that the plaintiff has suffered loss or damages, or will suffer loss or damages as alleged, and in the alternative state that such damages are excessive, exaggerated or remote and put the plaintiff to the strict proof thereof.
37. If the plaintiff suffered, or will suffer, damages as alleged, which is not admitted but specifically denied, the same were caused by the negligent or wrongful actions and omissions of the plaintiff which include:

- (a) Filing of false or incomplete information with the Ontario Securities Commission, including in respect of its claims and the existence of Aboriginal rights and title in the area of the Exploration Property;
- (b) Providing false or incomplete information to the plaintiff's investors, contractors, agents, and the Governments of Ontario and Canada, including in respect of its claims and the existence of Aboriginal rights and title in the area of the Exploration Property;
- (c) Improper or negligent use of the plaintiff's funding or financing designated for exploration activity;
- (d) Failing to adequately consult with these defendants, to listen to and learn about their concerns, culture, way of life and rights;
- (e) Failing to undertake the necessary studies or research to determine whether there are potential or actual impacts from exploration on ecologically sensitive areas, traditional harvesting areas, archaeological sites or artifacts;
- (f) Failing to undertake the necessary environmental studies or research to determine whether and to what extent there would be impacts from exploration on the lands, waters, air, plants, animals, persons, and peoples in the area;
- (g) Failing to exercise due care or reasonable business judgment, including failure to secure financing in such a manner so as to be able to undertake consultation and the necessary studies and research and to enable postponement of exploration until these steps had been completed;
- (h) Intimidating and provoking the defendants into believing that all or many of their rights and interests in respect of the Exploration Property area, were being or would be violated, abrogated, or denied by the activities of the plaintiff; and

(I) Failing to exercise due diligence in respect of the defendants rights and interests, and any encumbrance or limitation on FVC's purported interests as a result.

38. The plaintiff has failed to mitigate its damages by not securing adequate agreements with investors and/or obtaining proper financing and permission from Ontario to enable exploration and drilling to be undertaken at a later time if the plaintiff is otherwise legally entitled to do so.
39. These defendants have constitutionally protected Aboriginal title and Aboriginal rights, including harvesting rights and rights to a traditional way of life, in respect of the lands in the proposed exploration area.
40. These defendants plead and rely on section 35 of the *Constitution Act, 1982*, and state that the claims and extension orders in respect of these claims, leases and other forms of permission granted by Ontario to the plaintiff are invalid, as the *Mining Act*, R.S.O. 1990, c. M.14 and regulations thereunder (*Mining Act* regime) are unconstitutional for failure to provide priority to the exercise of Aboriginal and treaty rights, by subjugating such rights to the unilateral actions of private parties, or for failure to provide at virtually all stages of the mining process consultation with Aboriginal parties and accommodation of their rights and interests.
41. These defendants plead and rely on section 35 of the *Constitution Act, 1982*, and on the common law in respect of the Honour of the Crown, and state that the claims and extension orders in respect of these claims, leases and other forms of permission granted by Ontario to FVC are invalid, due to the failure of Ontario to consult with or accommodate these defendants in respect of same.
42. These defendants deny the causes of action alleged and pleaded by the plaintiff, and deny the underlying allegations, as follows.

(a) Negligence: These defendants do not owe a duty of care to FVC. In fact, FVC owes a duty of care to the defendants in respect of their Aboriginal title and harvesting rights and other rights in the lands at issue. In the alternative, these defendants deny the allegations purporting to comprise the breach, and deny that damages resulted from same.

(b) Nuisance: These defendants deny that FVC has any interest in the lands at issue so as to be able to plead private nuisance; these defendants deny any obstruction, and deny that FVC suffered any damages, let alone special or particular damages, as a result of any actions of these defendants, so as to be able to plead public nuisance. In the alternative, these defendants deny the allegations purporting to comprise nuisance.

(c) Intimidation and Conspiracy: These defendants deny any behavior intended to be intimidating or to result in economic loss, deny any economic loss as a result of their conduct, deny that their conduct was unlawful or that there was any agreement among them to act unlawfully, and state that their actions are consistent with exercising their constitutionally protected rights in respect of the lands at issue, including accessing and monitoring lands to enable the exercise of harvesting and other rights thereon, and consistent with their constitutionally protected right to freedom of expression.

(d) Trespass to Chattels, Conversion, Detinue: These defendants deny the elements of this cause of action, including possession of chattel, dispossession, detention, conversion, and damage to chattel. These defendants state that FVC is responsible for any change in circumstances of chattels at its camp, through its own negligent or intentional conduct.

(e) Misfeasance in Public Office: These defendants deny that the individual defendants exercise a public office to which this tort applies or over which this Court has jurisdiction, deny that their conduct was unlawful and specifically plead that they were acting lawfully and with proper authority at all times consistent with exercising their

constitutionally protected rights in respect of the lands at issue and their right to freedom of expression, and deny that they had intent to injure the plaintiff or that the plaintiff was injured as a result of their conduct.

(f) Unlawful Interference with Economic Interests: These defendants deny any intention to injure FVC as alleged, deny any economic loss suffered by FVC as a result of conduct of these defendants, and deny any unlawful conduct of these defendants; these defendants were acting lawfully at all times, with the sole intent of protecting their rights in respect of the lands at issue and expressing their thoughts and beliefs.

43. The whole of the Statement of Claim is inflammatory, and is designed to or has the effect of further intimidating and denigrating the defendants, on top of the ongoing denigration, abuse and oppression they and their lands have suffered for hundreds of years.
44. These defendants state that the plaintiff claim should be dismissed with costs on a substantial indemnity basis.

AMENDED COUNTERCLAIM

45. These defendants counterclaim against the plaintiff FVC as follows:
- (a) General damages in the amount of \$10,000,000.
 - (b) Special damages the amount of which is not yet known but which will be made available at or before trial.
 - (c) A permanent injunction enjoining the FVC (including its directors, officers, servants, agents and contractors) and any person who has notice of the order, from proceeding with any exploration, drilling, mining or related activity on or in respect of the FVC mining claim area or any other part that these defendants define as their territory, without the express written consent of the defendants.

(d) Costs of defending the action and bringing this counterclaim on a substantial indemnity basis, including GST.

(e) Such further and other relief as this Honourable Court deems just and equitable.

46. FVC has breached or intends to or would breach, through its exploration, drilling and mining activity, the Aboriginal title and rights of these defendants, including harvesting rights, and rights to a traditional way of life
47. FVC has breached or intends to or would breach, through its exploration, drilling and mining activity, the rights of these defendants to select unencumbered lands to be settlement lands in any final agreement to settle the Algonquin land claim as reached through negotiations with Ontario and Canada.
48. These defendants rely on the allegations contained in their Statement of Defense in support of this counterclaim.

**AMENDED CROSSCLAIM AGAINST HER MAJESTY THE
QUEEN IN RIGHT OF ONTARIO, the MINISTER OF ABORIGINAL AFFAIRS
FOR ONTARIO and the MINISTER OF NORTHERN DEVELOPMENT
AND MINES FOR ONTARIO**

49. These defendants (plaintiffs by crossclaim) crossclaim as against the Defendant Her Majesty the Queen in Right of Ontario and seek the following relief:

(a) a declaration that the *Mining Act*, R.S.O. 1990, c. M.14 and *Regulations* thereunder are unconstitutional for failure to provide priority to the exercise of Aboriginal and Treaty rights, by subjugating such rights to the unilateral actions of private parties, and by failing to provide for, or even allow, consultation with Aboriginal rights and title holders before mineral claims are staked and registered in respect of lands where such rights or title are held, all contrary to section 35 of the *Constitution Act, 1982*;

(b) a declaration that Her Majesty the Queen in Right of Ontario has violated and continues to violate the equality rights of these defendants by refusing to consult with them regarding mineral staking and mineral exploration, on the grounds that the defendants communities are First Nation communities which are not recognized as bands under the *Indian Act (Canada)*, contrary to section 15 of the *Canadian Charter of Rights and Freedoms*;

(c) a declaration that Her Majesty the Queen in Right of Ontario has a Constitutional and common law duty to consult with these defendants regarding the mineral staking and mineral exploration activities of FVC and that consultation must occur before and/or contemporaneous with the staking and registering of any mineral claims ;

(d) a declaration that Her Majesty the Queen in Right of Ontario has breached its Constitutional and common law duty to consult with these defendants regarding mineral staking and mineral exploration activities on their lands;

(e) an Order quashing all claims, extension orders, leases and any and all other forms of authorization or permission granted by Her Majesty the Queen in Right of Ontario to the Plaintiff in respect of the so-called Exploration Property;

(f) in the alternative, a declaration of invalidity of same, because of the unconstitutionality of the *Mining Act and Regulations* and the violation of the defendants' rights under section 15 of the *Charter*;

(g) a declaration that Ontario has breached international laws and treaties including but not limited to the *United Nations Declaration on the Rights of Indigenous Peoples*;

(h) damages in the amount of \$500,000,000.00 for breach of constitutional and Aboriginal rights pursuant to s. 35 of the *Constitution Act 1982* and pursuant to section 24 of the *Charter of Rights and Freedoms* for breaches of the defendants' rights as guaranteed by section 15 of the *Charter of Rights and Freedoms*;

(I) damages in the amount of \$500,000,000 for breach of fiduciary duty and breach of the duty to consult;

(j) a declaration, pursuant to section 24 of the *Charter of Rights and Freedoms* and s. 52(1) of the *Constitution Act 1982* that Ontario has violated the constitutional rights of these defendants guaranteed by 15 of the *Charter of Rights and Freedoms* and s. 35 of the *Constitution Act, 1982*;

(k) punitive damages in the amount of \$30,000,000.00

(l) that a *mandamus* be issued as against the Minister of Aboriginal Affairs and the Minister of Northern Mines and Development ordering the respective Ministers to comply with the Constitutional and common law duty to consult with and accommodate the interests of these defendants

(m) special damages in an amount to be ascertained but which will be made available at or before trial;

(n) costs of this crossclaim on a substantial indemnity basis, inclusive of GST;

(o) such further and other relief that this Honourable Court deems just and equitable.

50. These defendants pleading herein rely on the pleadings contained in their statement of defense and counterclaim.

51. The defendant Her Majesty the Queen in Right of Ontario (hereinafter Ontario) is responsible for the implementation, enforcement and management of the *Mining Act* and *Regulation* thereunder.

52. The defendant the Minister for Aboriginal Affairs is, among other things, the responsible Minister of the defendant Ontario for all matters regarding Aboriginal peoples, communities, lands and resources in the Province of Ontario.
53. The defendant the Minister of Northern Development and Mines is, among other things, the responsible Minister of the defendant Ontario responsible for all mining and related matters in the Province of Ontario.
54. These defendants state that Ontario and the respective defendant Ministers have a constitutional duty to act with Honour toward them. Ontario and the respective defendant Ministers have a constitutional obligation to ensure that their Aboriginal rights and equality rights are not infringed, abrogated or denied.
55. These defendants state that the defendants Ontario and the respective Ministers have caused to create and implement law, namely the *Mining Act* and *Regulations* thereunder, that violates the constitutionally protected rights of these defendants.
56. The *Mining Act* and *Regulations* infringe the constitutionally protected rights of these defendants and other Aboriginal peoples and communities in Ontario, and are in their totality unconstitutional.
57. These defendants state, and the fact is, that the *Mining Act* and *Regulations* are unconstitutional for the following reasons, which include, but are not limited to the following:
- (I) They do not consider the priority of Aboriginal rights and title and claimed Aboriginal rights and title over private interests;
 - (ii) They conversely allow priority over constitutional rights, Aboriginal rights and claimed Aboriginal rights;

(iii) They establish a free entry mining and mineral exploration regime in which anyone who pays a small fee can virtually and automatically gain significant rights or interests, which include prospector licenses, mining claims, mining leases and patents, to or in respect of lands wherein Aboriginal rights or title exist, are claimed or are under negotiation;

(iv) They fail to require consultation with Aboriginal peoples and communities and, on the contrary, do not permit any consultation with affected Aboriginal communities before mineral claims are staked and registered, giving the mineral claim holder substantial rights to explore for, and ultimately own and extract minerals;

(v) They fail to require any accommodation for or with Aboriginal peoples and communities that are affected by the operation of the *Act* and *Regulations*.

58. These defendants rely on section 15 of the *Charter of Rights and Freedoms* and section 35 of the *Constitution Act, 1982*.

59. These defendants rely on International law and in particular the *United Nation Declaration on the Rights of Indigenous Peoples*.

60. These defendants state that Ontario and the respective Ministers have refused to consult with them, as is required by section 35 of the *Constitution Act, 1982*, and the common law.

61. These defendants state that Ontario and the respective Ministers refusals to consult with them is part of a pattern of systemic discrimination by Ontario and the respective Ministers against Aboriginal communities which are not recognized as bands under the *Indian Act (Canada)*, including denial of constitutionally protected harvesting rights and the refusal to negotiate land claim agreements which include the reconciliation of Aboriginal rights and title with them.

62. These defendants state that Ontario and the respective Ministers have failed to accommodate them in any way despite having a legal and moral duty to do so. In this regard, Ontario and the respective Ministers have breached their duty to accommodate them and are therefore liable to these defendants for the damages they have suffered and may suffer as a result thereof.
63. The fact that Ontario and the respective Ministers have allowed for the staking of claims and the issuance of licenses and permits in relation thereto has an adverse impact on the constitutional rights and Aboriginal rights of these defendants.
64. These defendants state that this Honourable Court can issue declaratory relief as against the defendants Her Majesty the Queen in Right of Ontario and the respective defendant Ministers pursuant to the provisions of the *Proceedings Against the Crown Act* R.S.O. 1990 chapter P. 27
65. These defendants state that it is incumbent upon this Honourable Court to issue the declaratory relief as plead herein because of the actual and admitted breaches of the section 35 rights of these defendants by Ontario and her respective Ministers.
66. This Court also has the jurisdiction to issue the prerogative writ of *mandamus* against the Minister of Aboriginal Affairs and the Minister of Northern Development and Mines.
67. The impugned Ministers, as Ministers of the Crown carry out the duties and functions of the Crown. In this regard, the impugned Ministers are discharged with implementing the Crown's legal duty to consult.
68. The Minister of Northern Development and Mines has been designated as the lead agency regarding this dispute. The Minister of Aboriginal Affairs is the Ministry responsible for Aboriginal affairs in Ontario. Both Ministries have a common law and constitutional duty to implement the duty to consult. This duty finds its grounding in section 35 of the *Constitution Act, 1982*.

69. Her Majesty the Queen in Right of Ontario has admitted on the Court record that they have a duty to consult with the defendants but have not consulted. Accordingly, the respective Ministers are therefore in breach of section 35 of the *Constitution Act, 1982*.
70. This Court has the jurisdiction to issue a *mandamus* to compel the impugned Ministers to consult with the Shabot Obaadjiwan First Nation because they are legally obligated to do so pursuant to section 35 of the *Constitution Act, 1982*.
71. The prerogative writ of *mandamus* may issue against a Minister of the Crown for failure to fulfill his or her legal duties.
72. These defendants state that Ontario and the respective Ministers have a public duty requiring them to consult with and accommodate these defendants.
73. In this particular instance, Ontario has admitted that it owes these defendants a duty to consult with them and to accommodate them.
74. These defendants state that the duty to consult is not discretionary and is mandated by section 35 of the *Constitution Act, 1982*.
75. These defendants have demanded that the respective Ministers perform their duty to consult and the respective Ministers have refused to perform this duty.
76. These defendants state that pursuant to the facts and circumstances as plead herein, a *mandamus* may issue against Ontario and the respective Ministers.
77. These defendants propose that this crossclaim be heard with the main action and counterclaim herein at the City of Kingston.

CROSS CLAIM AGAINST THE ATTORNEY GENERAL OF CANADA
and the MINISTER OF INDIAN AND NORTHERN AFFAIRS CANADA

78. These defendants crossclaim as against the Defendant the Attorney General for Canada and the Minister of Indian and Northern Affairs and request the following relief:

(a) a declaration that Her Majesty the Queen in Right of Canada as represented by the Attorney general and the Minister of Indian and Northern Affairs Canada have a Constitutional and common law duty to consult with these defendants regarding the impugned mineral staking and mineral exploration activities of FVC;

(b) a declaration that Her Majesty the Queen in Right of Canada as represented by the Attorney General and the Minister of Indian and Northern Affairs Canada have breached their Constitutional and common law duty to consult with these defendants regarding mineral staking and mineral exploration activities on their lands;

(c) a declaration that Her Majesty the Queen in Right of Canada as represented by the Attorney General and the Minister of Indian and Northern Affairs Canada have breached international laws and treaties including but not limited to the *United Nations Declaration on the Rights of Indigenous Peoples*;

(d) damages in the amount of \$500,000,000.00 for breach of constitutional and Aboriginal rights pursuant to s. 35 of the *Constitution Act 1982* and pursuant to section 24 of the *Charter of Rights and Freedoms*;

(e) damages in the amount of \$500,000,000 for breach of fiduciary duty;

(f) punitive damages in the amount of \$30,000,000.00;

(g) that a *mandamus* be issued as against the Minister of Indian and Northern Affairs Canada ordering the Minister to comply with his Constitutional and common law duty to consult with and accommodate the interests of these defendants;

(h) special damages in an amount to be ascertained but which will be made available at or before trial;

(I) costs of this crossclaim on a substantial indemnity basis, inclusive of GST;

(j) such further and other relief that this Honourable Court deems just and equitable.

79. These defendants pleading herein rely on the pleadings contained in their statement of defense and counterclaim and in the cross claim as against Her Majesty the Queen in Right of Ontario, the Minister of Aboriginal Affairs and the Minister of Northern Development and Mines unless expressly stated herein.

80. These defendants state that Her Majesty the Queen in Right of Canada (hereinafter Canada) and the Minister of Indian and Northern Affairs Canada have a duty to consult with them which duty is mandated by section 35 of the *Constitution Act* and in the common law.

81. These defendants further state that it is trite that Canada owes a fiduciary duty to them.

82. Along with Ontario and the Minister of Aboriginal Affairs, Canada and the Minister of Indian and Northern Affairs are currently engaged in a comprehensive land claim negotiation with the Algonquins of Ontario. These negotiations include the negotiation of claims made by the SOFN and the AOO to Aboriginal title of the lands that are impugned in this matter.

83. The SOFN and the AOO have never signed a treaty with Canada or Ontario nor have they surrendered or sold any of their lands, waterways and airspace including all resources, surface and subsurface rights to these lands, waterways and air space.

84. These defendants state that the lands that are the subject of their comprehensive claim, which include the impugned Exploration Lands are lands that are subject to the provisions of the *Royal Proclamation, 1763*.

85. These defendants state that by operation of the *British North America Act, 1867*, the lands that are the subject of the comprehensive claims and the impugned Exploration Lands came within the legal jurisdiction of the Government of Canada. At that time, Canada also assumed jurisdiction over all aspects of the *Royal Proclamation, 1763*. Canada also assumed jurisdiction over Indians and lands reserved for Indians.
86. Since these defendants never surrendered or sold their lands to anyone, including but not limited to any colonial or other government, the lands are still subject to the provisions of the *Royal Proclamation* which has since been assumed, but not subsumed, by the Government of Canada. Accordingly, these defendants state that the entire land claim area including the impugned Exploration Lands are within the jurisdiction of Canada and not Ontario by operation of the *Royal Proclamation, 1763* and the *British North America Act, 1867*.
87. These defendants state that pursuant to the provisions of the *Royal Proclamation, 1763* they [Indians] could not be molested on their hunting grounds and could only sell their lands to the Crown after conferring in a public council specifically called for that purpose. Furthermore, their lands, including the impugned Exploration lands could not be sold and patented until they had been ceded by them [the Indians]. These defendants never ceded their lands through sale, patent or any other means. Accordingly, the lands remain under the auspice of the *Royal Proclamation, 1763*.
88. These defendants state that Canada owes a fiduciary duty to them to ensure that their Aboriginal rights are not infringed, abrogated, or denied. The fact that Canada has allowed FVC to engage in exploration activity on their lands and to cause damage to these lands without consulting with them is a breach of its fiduciary duty.
89. Canada owes a further fiduciary duty to the SOFN as the lands that are the subject of the activities of FVC are currently the subject of land claims negotiations for, among other things, Aboriginal rights and title. Canada therefore has a fiduciary obligation to protect these lands and the Aboriginal rights and title to them.. Canada is in breach of its fiduciary duty by failing to protect lands that are currently the subject matter of negotiation and which have been and will continue to be damaged by the exploration activities of FVC.

90. Canada and the Minister of Indian and Northern Affairs has a constitutional duty to act with Honour toward these defendants. Canada and the Minister have a constitutional obligation to ensure that the Aboriginal rights and equality rights of these defendants are not infringed, abrogated or denied.
91. These defendants state that the Ontario *Mining Act* and *Regulations* infringe their constitutionally protected rights and are in their totality unconstitutional for the reasons as already plead herein.
92. These defendants state that the *Mining Act* allows Ontario to violate their Constitutionally protected rights. In this regard, these defendants state that Canada has a fiduciary obligation to ensure that Ontario does not breach their Constitutionally protected rights through the operation of the unconstitutional provisions of the *Mining Act* and *Regulations*. As such, Canada is liable for the actions of Ontario.
93. These defendants further state that Canada and the Minister of Indian and Northern Affairs have a constitutional and common law duty to consult with them with regard to the exploration activities by FVC on their lands.
94. These defendants state that defendant Canada and the Minister of Indian and Northern Affairs have refused to consult with them, as is required by section 35 of the *Constitution Act, 1982*, and the common law.
95. These defendants rely on section 15 of the *Charter of Rights and Freedoms* and section 35 of the *Constitution Act, 1982*.
96. These defendants rely on International law and in particular the *United Nation Declaration on the Rights of Indigenous Peoples*.

97. These defendants state that the defendant Canada and the Minister of Indian and Northern Affairs' refusal to consult with them regarding the issues in this litigation is part of a pattern of systemic discrimination by Canada against Aboriginal communities which are not recognized as bands under the *Indian Act (Canada)*, including denial of constitutionally protected harvesting rights and the refusal to negotiate land claim agreements with them.
98. These defendants state that Canada and the Minister of Indian and Northern Affairs has failed to accommodate them in any way despite having a legal and moral duty to do so. In this regard, Canada and the Minister of Indian and Northern Affairs has breached its duty to accommodate these defendants and is liable for the damages they have suffered and may suffer as a result thereof.
99. These defendants (plaintiffs by cross claim) propose that this crossclaim be heard with the main action, counterclaim and crossclaim herein at the City of Kingston.

Date: March 17, 2008

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