

Submission by D. Scott in support of Thomas St-Jean dit Laguarde



Sophie St. Jean (b. 1830) Francis Xavier Turcotte
with their daughter + grandchildren (b. 1817)

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IN THE MATTER OF a Preliminary Draft Comprehensive Land Claim Agreement-in-Principle;
among the Algonquins of Ontario; the Province of Ontario; and the Government of Canada

AND IN THE MATTER OF a protest by Clifford Joseph Meness to remove Thomas St. Jean dit
Laguarde from the Preliminary List of Algonquin Ancestors

AND IN THE MATTER OF a hearing being conducted pursuant to section 15.7.9 of the
Preliminary Draft Agreement-in-Principle

AND IN THE MATTER OF a hearing held at Pembroke, Ontario, on February 11, 2013

APPEARANCES:

Ben Mills, counsel to the Review Committee

Joan Holmes, Enrolment Officer

Chief Clifford Bastien, the Algonquin Negotiation Representative for Mattawa/North Bay, on
behalf of the affected parties

Clifford Meness, Councilor with the Algonquins of Pikwakanagan First Nation, the Protester

Cheryl Fitzgibbons, affected party

Shirley White, affected party

Connie Mielke, affected party

Helen Turcotte Moore, affected party

Ronald Berndard, Councilor with the Algonquins of Pikwakanagan First Nation, on behalf of the
Protester

Chief Patrick Glassford, the Algonquin Negotiation Representative for Greater Golden Lake, on
behalf of the affected parties

BEFORE: The Honourable James B. Chadwick, Q.C.
Member of the Review Committee

DECISION

PREAMBLE

[1] I appreciate how sensitive these matters are for the parties and their families. They are
all very proud of their native heritage.

[2] In dealing with the protests to remove a name from the Preliminary Voters List and
applications to add Algonquin Ancestors, I must apply the provisions of the Preliminary Draft
Agreement-in-Principle.

[3] These hearings are conducted by me as a member of the Review Committee. In dealing with protests to remove a name, section 15.7.9 sets forth the procedure I must follow. It reads in part:

... The Review Committee shall not overturn a decision of the Ratification Committee to accept or reject an Applicant approved by the Ratification Committee in the absence of a palpable and overriding error by the Ratification Committee or an Appeal Board that determined that an ancestor of the Applicant was an Algonquin ancestor, fraud in any application, or new evidence that was not available to the Ratification Committee or the Appeal Board that determined that an ancestor of the Applicant was an Algonquin Ancestor.

[4] With reference to applications to add a person as an Algonquin Ancestor schedule 15.5 sets forth my jurisdiction. In order to be added as an Algonquin Ancestor, chapter 1 provides:

“Algonquin Ancestor” means a person who was born on or before July 15, 1897 and identified in an historic record or document dated on or before December 31, 1911, in such a way that it would be reasonable to conclude that the person was considered to be an Algonquin or Nipissing, or a full sibling of such a person. A preliminary list of Algonquin Ancestors agreed to by the Parties is included in Appendix 3.1. In this definition, a “full sibling” of a person is a sibling having the same natural mother and natural father as that person.

[5] I have no jurisdiction or discretion outside of the provisions of the Preliminary Draft Agreement-in-Principle.

ISSUES

[6] There are two matters to be dealt with.

[7] The first matter is the protest that Thomas St. Jean dit Laguarde is not of Algonquin Ancestry and therefore should not be on the Preliminary List of Algonquin Ancestors. The protester asks that this name be removed from the Preliminary List of Algonquin Ancestors. The consequence of doing so is that individuals who rely solely on Thomas St. Jean dit Laguarde to establish their Algonquin ancestry will be removed from the Preliminary Voters List (UPDATED) and will not be able to vote on the ratification of the draft Agreement-in-Principle.

[8] The second matter is an application to add ancestors to the list of Algonquin Ancestors. The ancestors are Marguerite dite Brien and Emilie Carriere. This matter will be adjourned until April 2, 2013, at 10.00 a.m. The hearing will be held in the Best Western Conference Centre, Pembroke, Ontario. My determination as whether Marguerite dite Brien and Emilie Carriere should be added to the Preliminary List of Algonquin Ancestors will be addressed in a separate decision.

[9] The reason for the adjournment of the second matter is the late filing of the application and to give the parties an opportunity to respond to the Enrolment Officers Report of February 5, 2013.

HISTORY OF PROCEEDINGS

[10] Joan Holmes, the Enrolment Officer, in her report dated June 2012 sets out the history these proceedings:

An applicant applied in February 1999. As he could not show direct descent from an ancestor on Schedule A, his application was referred to a Board for a decision. The Board sat on March 6, 1999 and he was accepted based on “primary, secondary and oral presentations” and the applicant was so informed.

The enrolment of this applicant and other family members enrolled in the same line were appealed by two letters dated May 28 and June 3, 1999.

A new Board was convened to hear the appeal against these enrolments on January 22, 2000. The minutes from the January 22, 2000 appeal stated that because the appeal period has passed Kirby Whiteduck appealed the referral of the application to the Enrolment Review Board on the basis that the application should not have gone to the Board because the census records of 1871 which was relied upon were misinterpreted. According to the notes, the board determined that the 1871 census record was from West Algoma (near Lake Superior) not Algona which is near Golden Lake. The 1871 census was said to show Thomas St. Jean dit Laguarde as Indian; there was no other documentation before the Board that showed that any of the ancestors were Algonquin. The January 22 Board found that the enrolment was not supported and upheld the appeal of Kirby Whiteduck. The applicant was informed that he was removed from the enrolment list.

The applicant came forward with new evidence and was granted another interview with the Algonquin Enrolment Board on April 15, 2000. The April 15, 2000 Enrolment Board decided to accept the enrolment of the applicant. The minute of decision of the Board cites two pieces of evidence:

1. “Baptismal records for Sophie St. Jean’s brother Joseph St. Jean showing parents to be the same (Laguarde)”;
2. “Census Records in 1871 for West Algoma shows Joseph St. Jean Laguarde worked for Hudson Bay Company and was of Aboriginal descent”.

The Board accepted the new evidence and the applicant was so informed.

REVIEW COMMITTEE HEARING JUNE 2011

[11] In June 2011 the Review Committee made a preliminary assessment of the April 2011 protest against the descendants of Thomas Laguarde dit St. Jean. The protester presented a summary of their protest and the current Enrolment Officer described the case that was before the Enrolment Board in 2000. The Review Committee found that this protest required a full hearing into the facts.

HISTORICAL EVIDENCE

[12] Joann McCann was retained by the Algonquins of Pikwakanagan. She is an experienced historian and researcher and conducted an extensive review of the historical documents and traced the ancestry of Thomas Laguarde. It is noted that there are many different spellings of the name in historical documents. She sums up her research findings at page 6 of her report, as follows:

- Thomas's parents, Paul and Marguerite married in 1793 and their marriage record and the birth records of their children do not indicate that they are Aboriginal or Algonquin.
- The parents of both Paul and Marguerite Lagarde have French Canadian surnames.
- In most documents, they are referred to as French, farmers and in some cases, "artisans".
- Thomas's siblings take up farming in the St. Eustache and St. Scholastic parishes of Lake of Two Mountains.
- Thomas is referred to as "Fr Can artisan" likely meaning a French Canadian artisan.
- Thomas's wife, Sophie Carriere is from St. Eustache and has parents with French Canadian surnames.
- Their marriage record of 1827 does not refer to either being Aboriginal or a tribal affiliation, namely Algonquin.
- When Thomas and his family move to the Pontiac, his adult children in various censuses are referred to as Catholic and French.
- When son, Jules St. Jean moves out west to Manitoba, he does not self-identify as Aboriginal or Métis despite the enumerator's awareness of the designation of Métis.
- Sophie St. Jean, daughter of Thomas marries Xavier Turcot/Turcotte and his parents have French Canadian names.
- He is not identified as Aboriginal or Algonquin in the marriage record or various censuses.

- Sophie and Xavier Turcotte are not identified in subsequent censuses (1861, 1871, 1891 and 1901) as Aboriginal or Algonquin. They are noted as being either French, born in Quebec and R.C.
- Their adult children do not appear as Aboriginal or Algonquin on censuses.
- Concerning other Lagardes in North-western Ontario, the origins of their names are unknown.
- It is unlikely that Joseph Lagarde who worked for the H.B.C. and born in 1790 was descended from Paul Lagarde (Thomas's father) as Paul and Marguerite married in 1793.
- Also, this Joseph Lagarde was born in Ontario.
- He may be descended from another branch of the Jean Baptiste Lagarde family who were in New France by the early 1730s.
- It should be noted that these other Lagardes do not appear to be descended from Paul and Marguerite Lagarde (Thomas's parents), Thomas Lagarde, or his daughter, Sophie St. Jean and Xavier Turcotte.

[13] Thomas' parents, Paul and Margarite Laguarde married in 1793 and a marriage record and birth records of the children do not indicate that they were aboriginal or Algonquin.

[14] Joan Holmes in her evidence outlined her duties and responsibilities as Enrolment Officer. She has held this position since 2004. She pointed out that her job was to review the documentation that the applicants have filed in support of their application to prove Algonquin ancestry. She comments upon the authenticity of these documents and their weaknesses and strengths. In this case she reviewed the documents which were before the Review Committee in April 2000. These documents consisted primarily of historical marriage records, census records and some oral history.

[15] Joan Holmes also relied upon some additional research she conducted. Her summary, contained at page 6 of the report states as follows:

Summary

The facts regarding the protested ancestor Thomas Laguarde dit St. Jean, his parents Paul laggard dit St. Jean and Marguerite Poirier dite Dodge of St. Eustache; his wife Sophie Carriere also from St. Eustache and their children including Sophie St. Jean and Joseph St. Jean rely on a few documents and census records from the Pontiac where the family resettled around 1844.

None of the material supplied showed that this family was Algonquin or Aboriginal. The census records from the Lake Superior area that record Lagarde families identified as "Indian" do not appear to have any relationship with the ancestor's family as documented.

RESPONDENTS (AFFECTED PARTIES)

[16] Chief Clifford Bastien, the Algonquin Negotiation Representative for Mattawa/North Bay made submissions on behalf of the affected parties. He reviewed a number of exhibits relating to historical records, including marriage certificates and birth certificates. There are 3 documents in particular, which must be referred to; document number 3 is a notary document, dated 1837. It shows that Thomas Lagarde of St. Eustache was a Voyager who was in debt to Louis Langlois, a merchant in Headport (now known as Hawkesbury). There is no indication of the reason for the debt identified in the notary document, but history tells us that merchants would often provide advance payments in return for the laborers of Voyagers. As a Voyager, Thomas would regularly travel up the Ottawa River by canoe, possibly as far as Michilmackinac or the head of Lake Superior. Some researchers, such as the author of the Pioneer portrait mentioned in the enrolment of service reports, have suggested that Thomas was a farmer. These sources are incorrect.

[17] Document number 5 is a letter dated 1845 from the priest, Father Brunet to the Bishop of Montréal. More will be said about this document below.

[18] Cheryl Fitzgibbon gave evidence relating to the documents filed by the affected parties in support of their position. She is a researcher and also did research on her own family history. The research on her family history was commenced long before these applications. She even went to the extent of tracing and following the path of ancestors. She reviewed a number of documents, including the church records in correspondence between the priests and bishops, but also put great emphasis on oral history. She points out that in aboriginal culture oral history is of significance. She reviewed some of the documents that I have made reference to. She also talked about the life of Emmett Chartrand, who was a famous hunter and trapper in the area. She talked about how he used to poach beaver in Algonquin Park and subsequently became a Park Ranger.

[19] The materials filed by the affected parties also contains other documentation relating to oral history. In addition Shirley White spoke about her uncle Jack Turcotte, who was her mother's brother. When together, they spoke Algonquin. She asked her mother where they had learned to speak Algonquin, but was told that they would not discuss whether the family was Indian.

[20] Helen Moores, is 87 years of age and a daughter of Isidore Turcotte, who was born in 1886. The family home was in the Black Bay. She recalls her father trapping beaver, rabbit, muskrats, and hunting deer and moose. She described how her father would take her and her brother into Algonquin Park for months at a time where they lived off the land.

[21] There were other people who made submissions, but they were not related to the matter in issue.

[22] Joan Holmes reviewed the documents that had been filed by the affected parties in her role as the Enrolment Officer. She found that the documents relating to baptism records were consistent.

[23] The one document, which she commented upon in detail, was a document at tab 5 being the letter from the priest Father Brunet to the Bishop of Montréal. As a document was in French she arranged for it to be translated, he states as follows:

The twenty third of June, 1845, you [directed or chose] [me] at community priest to evangelize in the distant regions of the North West from the... diocese of Saint Sulpice. I happened upon the little mission at Allumette Island in the fall the twenty second of September. With two young [Iroquois] Indians from Lake of Two Mountains, I [stayed] [secretly] with a voyager Tomas Lagarde dit St.Jean, [who is] a member of the Masons and also descended from Algonquins. He is a fugitive and has been condemned to death under the authority of the English at Montréal. I returned to Montréal with the voyager Urquet St. Jean of St. Francis of Templeton, and then returned among the Nipigon. We have the benefit of certain matters which I can discuss with you in depth soon.

ORAL HISTORY

[24] Much has been said about the use of oral history as it relates to aboriginal land claims. The courts have recognized that indigenous people did not write down their history, but rather passed it on from generation to generation by way of oral histories. The Supreme Court of Canada in *Mitchell v. Minister of National revenue* [2001] 1 S.C.R. 911 made the following comment at paragraph 27:

Aboriginal right claims give rise to unique and inherent evidentiary difficulties. Claimants are called upon to demonstrate features of their pre-contract society, across a gulf of centuries and without the aid of written records. Recognizing these difficulties, this Court has cautioned that the rights protected under s. 35(1) should not be rendered illusory by imposing an impossible burden of proof on those claiming this protection (*R. v. Simon*, [1985] 2 S.C.R. 387 (S.C.C.), at p. 408). Thus in *Van de Peet*, supra, the majority of this Court stated that “a court should approach the rules of evidence, and interpret the evidence that exists, with a consciousness of the special nature of aboriginal claims, and of the evidentiary difficulties in proving a right which originates in times where there were no written records of the practices, customs and traditions engaged in.

[25] In dealing with matters on this type of application it is somewhat different than in longstanding land claim. An oral history does have an important role to play along with the historical documentation. The oral history is offered to establish they are aboriginal and Algonquin. However oral history evidence must be weighed very carefully and evaluated. I have no doubt the presenters are giving their best recollection of stories that have been passed

down over the years. The oral history must be considered in conjunction with the primary and secondary documents.

[26] Joan Holmes gave an example of the dangers of accepting oral history as recited. In the documentation filed before the enrolment review board in April 2000 there was a two-page narrative by Gilbert Whiteduck that included a narrative provided by Joseph Lagarde that states, His [Joseph Lagarde's] ancestors were living on Calumet Island at the time of the massacre. While his great-grandparents and one other couple were away fishing at the far end of the island, the Iroquois came down the river and massacred every living person in the settlement. Only these four fishermen escaped the attack and survived to tell the tale.

[27] As Joan Holmes points out, these people cannot be identified nor can the year. It was at the end of the 16th century that the native groups were involved in conflict. In her view, this oral evidence is unreliable.

CONCLUSION

[28] In hearing this protest I am sitting as the judicial member of the Review Committee as provided for in section 15.7.4 of the AIP.

[29] My jurisdiction is clearly set out in section 15.7.9 of the AIP, which I have referred to in the preamble.

[30] Based upon all the evidence, and in particular the new evidence of correspondence between Father Brunet to the Bishop of Montréal dated 1845, which was not before the original Enrolment Board or before the Review Committee when it ordered a hearing into the facts, I am satisfied, on the balance of probabilities, that Thomas Saint Jean dit Laguarde is an Algonquin Ancestor. The protest is therefore rejected.

Dated at Ottawa this 31st day of March, 2013

James B. Chadwick, Q.C.

**The Honourable James B. Chadwick, Q.C.
Judicial Member of the Review Committee**

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DECISION

**The Honourable James B. Chadwick, Q.C.
Judicial Member of the Review Committee**

DATED: March 31, 2013