



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER P-630**

**Appeal P-9300178**

**Ontario Native Affairs Secretariat**



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# ORDER

The Ontario Native Affairs Secretariat (ONAS) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a 15-page settlement proposal received by the provincial government on August 26, 1988 between the Algonquins of the Golden Lake First Nation (AGL), and the Government of Canada (Canada) and the Government of Ontario (Ontario).

ONAS denied access to this document pursuant to sections 15(a) and (b), 17(1)(a), (b) and (c), 18(1)(c), (d), (e) and (g), and 19 of the Act. The requester appealed ONAS's decision.

Mediation was not successful and notice that an inquiry was being conducted to review the decision was sent to the appellant, ONAS, AGL and to Indian and Northern Affairs Canada.

Representations were received from Indian and Northern Affairs Canada and ONAS. In its representations, ONAS specifically relies only on section 15(a) of the Act.

The sole issue remaining in this appeal is whether the discretionary exemption provided by section 15(a) of the Act applies to the record. Section 15(a) reads:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;

and shall not disclose any such record without the prior approval of the Executive Council.

For a record to qualify for exemption under section 15(a) ONAS must establish that:

1. disclosure of the records could give rise to an expectation of prejudice to the conduct of intergovernmental relations; **and**
2. the relations which it is claimed would be prejudiced must be intergovernmental, that is relations between an institution and another government or its agencies; **and**
3. the expectation that prejudice could arise as a result of disclosure must be reasonable.

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For a record to be exempt under this section, each element of the three-part test under section 15(a) must be satisfied.

The record in this appeal is a settlement proposal from AGL, concerning their extensive land claims in Ontario. This proposal was forwarded by AGL to Ontario and Canada in 1988. The proposal forms one of the bases upon which both Ontario and Canada entered into land claim negotiations.

ONAS submits that these land claim negotiations are unique for two main reasons: the land claim is based upon unextinguished aboriginal title; and the extent of the land involved.

ONAS submits that Ontario and Canada have expressed the strong desire to settle these land claims through negotiations, rather than through litigation. Such negotiations further the goal of co-operative relations with Ontario's aboriginal people. The terms of a negotiated settlement would be agreed upon by the various parties, rather than a court-imposed settlement which may displease one or more of the litigants. However, should negotiations fail, costly and complex litigation would likely result. All parties to these negotiations have endorsed the concept of resolution through negotiations.

### **Part One**

ONAS submits that it is very important to Ontario that Canada be actively involved in the resolution of AGL land claims. Canada has primary responsibility for aboriginal peoples, pursuant to the Constitution Act of 1867. Canada's involvement is therefore crucial in developing and contributing to any complete settlement package negotiated among the parties.

ONAS states that disclosure of the AGL settlement proposal would jeopardize the integrity of Ontario's negotiations with Canada and AGL, which gives rise to a reasonable expectation of prejudice to the conduct of intergovernmental relations. All parties to the negotiations consider the process sensitive and confidential. ONAS, as well as Indian and Northern Affairs Canada, state that release of the settlement proposal would have a chilling effect upon the negotiation process presently underway. Previous documentation supplied by AGL to ONAS supports this position.

In the Indian and Northern Affairs Canada representations, Canada's assistant negotiator submits that co-operation, including the flow of information between Ontario and Canada, is necessary in order to settle the land claims in Ontario. Should the settlement proposal be released, Canada would be less willing in the future to share information with Ontario which relates to negotiations in this and other land claims.

In my view, ONAS has met the requirements of part one of the test for section 15(a) of the Act. I am satisfied that release of the settlement proposal could give rise to a reasonable expectation of prejudice to the conduct of intergovernmental relations.

### **Part Two**

ONAS submits that relations conducted in the negotiations between Ontario and Canada are intergovernmental in nature. Land claims are of national as well as provincial import. Resolving these land claims is high on the agendas of both governments.

After reviewing the representations of ONAS and Indian and Northern Affairs Canada, I am satisfied that ONAS has met the requirements of the second part of the test and that the relations at issue are intergovernmental in nature, as contemplated under the Act.

**Part Three**

Considering the sensitive and complex nature of the negotiations as described above, the extent of the land claims themselves and the importance of a satisfactory and amicable resolution, I am persuaded that the expectation of prejudice to these proceedings, should the settlement proposal be disclosed, is reasonable.

It is my view, therefore, that ONAS has satisfactorily met all three parts of the test and that the records at issue are properly exempt under section 15(a) of the Act.

Section 15(a) is a discretionary exemption. After carefully reviewing the representations, I find nothing improper in the manner ONAS has exercised its discretion and I would not alter it on appeal.

**ORDER:**

I uphold ONAS's decision.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ February 11, 1994