

## DISCUSSION AND DEBATE

### **AKIMISKI ISLAND, NUNAVUT, CANADA: A TEST OF INUIT TITLE**

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#### **Abstract / Résumé**

When Nunavut, Canada, was created on 1 April 1999, the islands of the western James Bay region not within Ontario were included in this Inuit-dominated territory. The Omushkegowuk Cree of Ontario, Canada, assert Aboriginal title to the western James Bay islands. In this paper, we examined if the western James Bay islands, specifically Akimiski Island, pass the common law test of Aboriginal title with respect to the Inuit. We found no evidence that supports Inuit title to Akimiski Island, Nunavut.

Lorsque le Nunavut (Canada) a été créé le 1<sup>er</sup> avril 1999, les îles occidentales de la baie James qui ne faisaient pas partie de l'Ontario ont été incorporées au territoire dominé par les Inuits. Les Cris Omushkegowuk de l'Ontario (Canada) revendiquent un titre ancestral sur les îles occidentales de la baie James. Dans l'article, l'auteur examine si les îles occidentales de la baie James, en particulier l'île Akimiski, soutiennent le test de common law en matière de titre ancestral pour les Inuits. Il n'a découvert aucun élément de preuve qui soutienne un titre inuit pour l'île Akimiski du Nunavut.

## Introduction

On 1 April 1999, “the islands in Hudson Bay, James Bay and Ungava Bay that [were] not within Manitoba, Ontario or Quebec” became part of the newly created Inuit territory of Nunavut, Canada (Nunavut Act S.C. 1993, c.28, Part 1, 3(b); Figure 1). It appears as if the inclusion of the said islands in Nunavut was based on the convenience of existing boundaries—Nunavut was created from the eastern portion of the Northwest Territories, which included the islands in Hudson Bay, James Bay and Ungava Bay—and not Aboriginal title. Indeed, the western James Bay Cree claim Aboriginal title to the western James Bay islands (including Akimiski Island) that have been part of their traditional territory since time immemorial (Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, 1999). The Cree assert that the western James Bay islands were never surrendered through treaty or any other lawful means (Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, 1999). The Cree claim that “there is no aboriginal title or right linkage between the Inuit and Akimiski [Island]” (Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, 1999:24).

The test for proof of Aboriginal title (*Delgamuukw v. British Columbia*, 1997) has evolved over time (see Denhez, 1982, and Hurley, 2000, for reviews). Indian and Northern Affairs Canada (INAC, 1993:5-6; INAC, 2008) describe the common law test of Aboriginal title as follows:

1. The Aboriginal group is, and was, an organized society.
2. The organized society has occupied the specific territory over which it asserts Aboriginal title since time immemorial. The traditional use and occupancy of the territory must have been sufficient to be an established fact at the time of assertion of sovereignty by European nations.
3. The occupation of the territory by the Aboriginal group was largely to the exclusion of other organized societies.
4. The Aboriginal group can demonstrate some continuing current use and occupancy of the land for traditional purposes.
5. The group’s Aboriginal title and rights to resource use have not been dealt with by treaty.
6. Aboriginal title has not been eliminated by other lawful means.

In this paper, we examine whether the Inuit of Nunavut fulfill the second and fourth criteria of the common law test of Aboriginal title with respect to Akimiski Island, Nunavut, Canada.

## Methods

### Study Area

Prior to 1999, Akimiski Island was part of the Keewatin Region of the Northwest Territories, Canada. The western tip of Akimiski Island is ~16 kms from the mouth of the Attawapiskat River in James Bay (NASA, 1994) and ~25 kms east of the Cree community of Attawapiskat First Nation (Figure 1). It is the largest island in James Bay and it is approximately 336, 700 hectares (Environment Canada, 2008).

### Literature Review

An extensive literature review was performed to gather any written/electronic material related to Inuit use of Akimiski (other common names Agamiski and Atimiski; less common names Agumiski, Akamiski, Kamanski and Viner's) Island. Databases and web sources were originally searched in 2002 and subsequently in 2004 and 2007; databases and web sources were last re-examined/accessed February 2009. Full details are available from the authors, upon request.

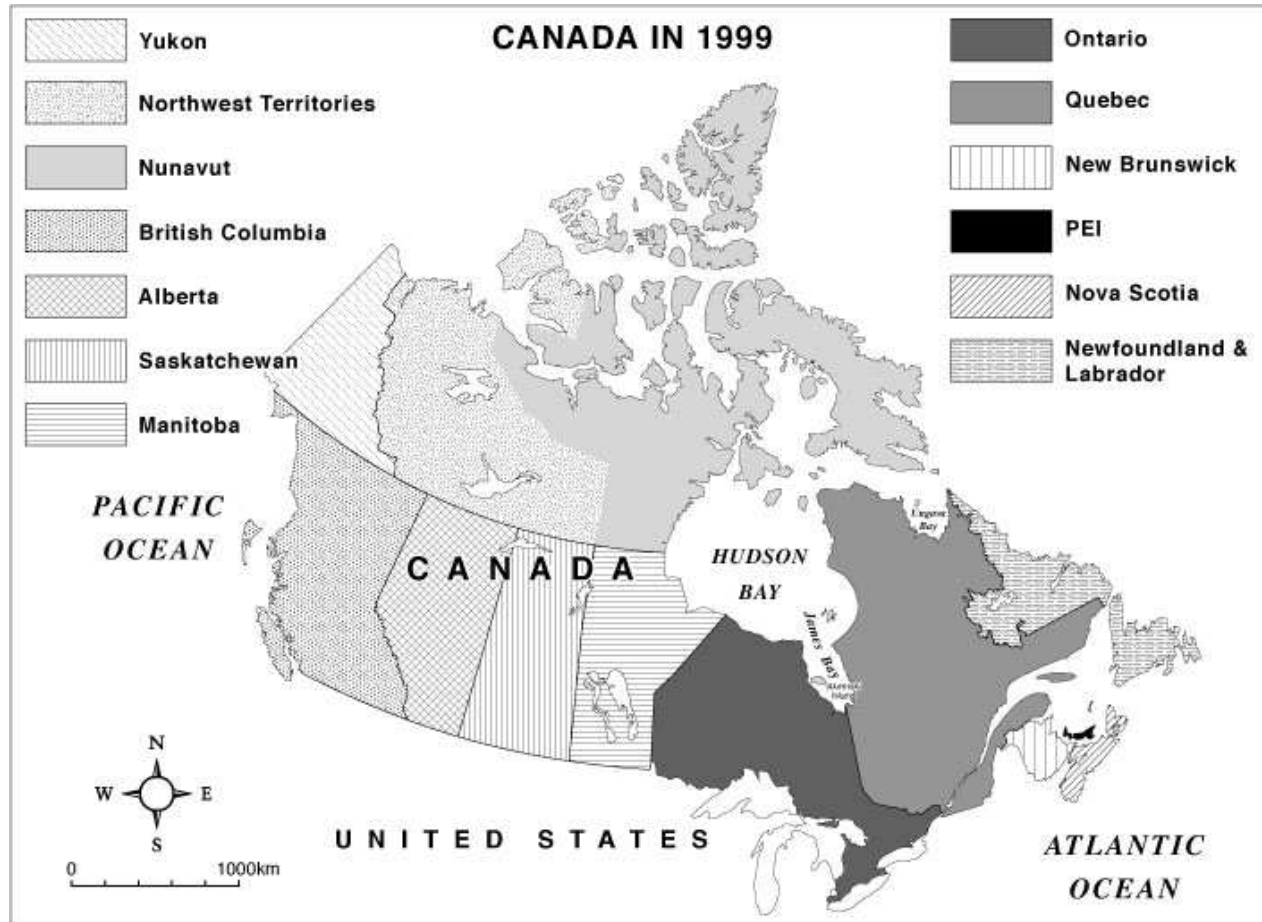
## Results and Discussion

In the *Inuit Land Use and Occupancy Project* (Milton Freeman Research Limited, 1976a, b, c), the authoritative record of Inuit land use and occupancy in the Northwest Territories of Canada (based on both written documents and Inuit oral history), there is no evidence of the Inuit having ever used or occupied any of the islands or coastal region in the western James Bay area of Ontario. Similarly, a search of academic databases (written record), Inuit databases/websites (written record and Inuit oral history), and books/documents (written record and Inuit oral history) did not reveal evidence of Inuit land use and occupancy in the western James Bay region. Nevertheless, Cree oral history indicates that "a long time ago" (no specific time period was given), the Inuit did occupy islands in the western James Bay region, including Akimiski Island (Bird, 2002: 7). Adding further, according to Cree oral history, the Cree did force the Inuit off Akimiski Island employing guns; however, it should be mentioned that the Cree Elder (Bird, 1999) has emphasized that he has heard this particular story only once. The Hudson's Bay Company Archives show divergence from the Bird (1999) story of no written record of Inuit use of Akimiski Island or any other islands in the western James region or a fierce battle between Inuit and Cree over Akimiski Island, after European contact (Lytwyn, 2002; HBCAa, 1919 – 1941; HBCAb, 1938 – 1940). As guns were used in the story (Bird, 1999)—this would indicate post-European contact—one would expect some record to have

survived of this fierce battle. Indeed, Lytwyn (2002) devotes a chapter (Chapter 4. *Distant Enemies: The Inuit, Chipewyan, and Iroquois*) in his book describing other conflicts and the animosity that existed between the Omuşkegowuk Cree and Inuit of the eastern and western Hudson Bay region; however, no mention of Inuit use of Akimiski Island was found in the Hudson's Bay documents examined by Lytwyn (2002). Perhaps, the Cree-Inuit battle for Akimiski Island was pre-European contact, without guns being involved.

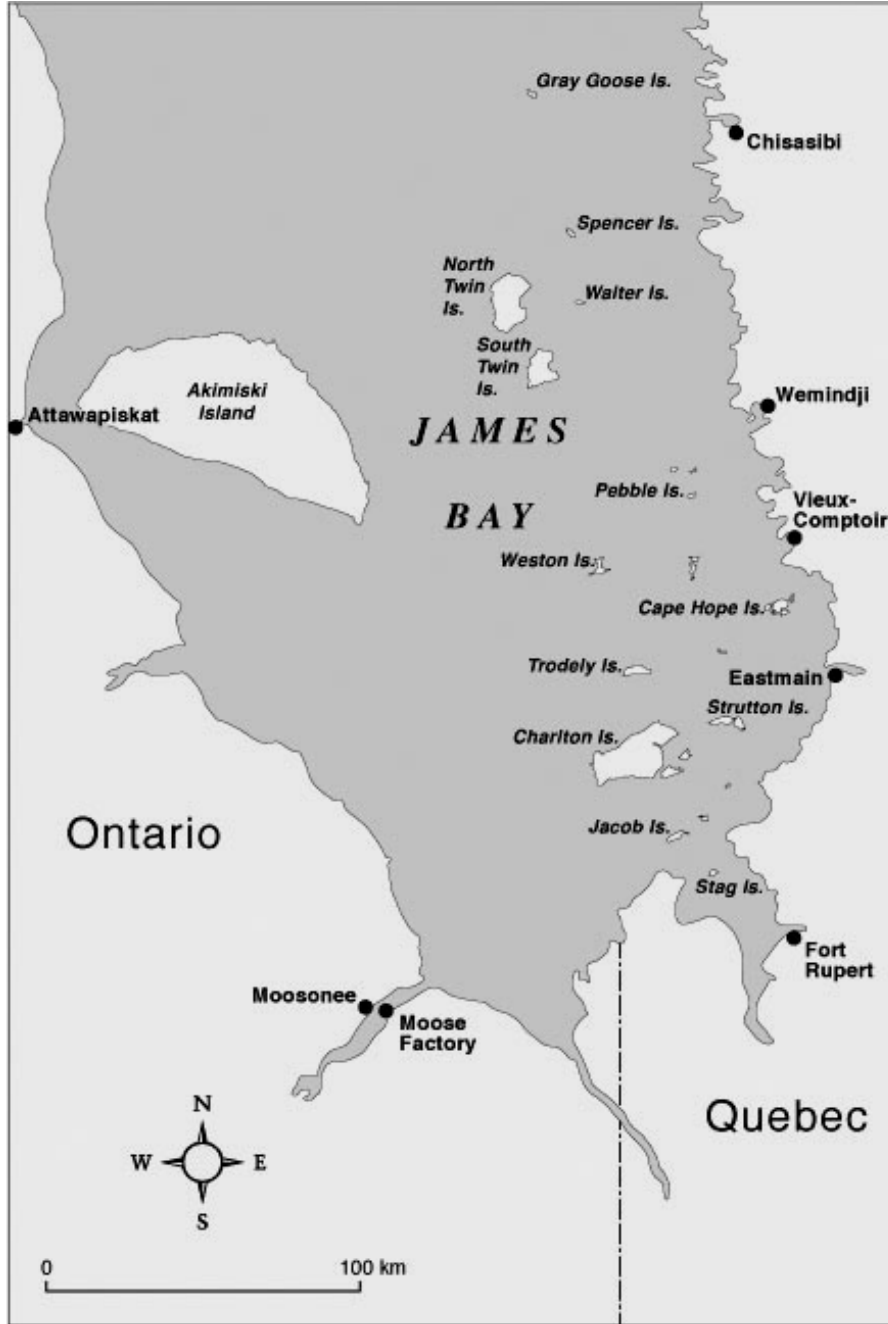
Allowing for the fact that there is some evidence based on Cree oral history that the Inuit have used Akimiski Island in the past, there are some timeline issues that need to be resolved. Nevertheless, it is evident that when both the written and oral record (Inuit and Cree) are taken as a whole, the Inuit of Nunavut do not fulfill the second and fourth criteria of the common law test of Aboriginal title with respect to Akimiski Island, Nunavut, Canada. Indeed, we could not verify that Inuit traditional use and occupancy of Akimiski Island was "sufficient to be an established fact at the time of assertion of sovereignty by European nations" (INAC, 1993:5; INAC, 2008); likewise, our research does not supply evidence that Inuit "demonstrate some continuing current use and occupancy of the land [Akimiski Island] for traditional purposes" (INAC, 1993:5; INAC, 2008). Perhaps this is the reason why the Inuit did not assert Aboriginal title to Akimiski Island and the other islands of the western James Bay region in the *Nunavut Land Claims Agreement*, as these islands were not included in the Nunavut Settlement Area (Nunavut Land Claims Agreement, 1993:1). Specifically, the Nunavut Settlement Area was "based on their [Inuit] traditional and current use and occupation of the lands, waters and land-fast ice..." (Nunavut Land Claims Agreement, 1993:1). It is somewhat puzzling that while the Inuit did not claim Aboriginal title to the islands of the western James Bay region, the Canadian federal government included these islands in Nunavut as all the islands in James Bay that were not within Ontario became part of Nunavut (Nunavut Act S.C. 1993, c.28). In closing, we agree with Senator Lorna Milne who has stated that "many of the complaints [boundary and Aboriginal title issues] were originally with the Nunavut Act itself. That is when they should properly have been addressed. Unfortunately, they were not addressed at that time. You [First Nations representatives] are quite right, the [Canadian] government did not do its job" (Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, 1999:33).

Figure 1



Canadian provincial and territorial boundaries as of 1997 (and Akimiski Island). This map is based on hc1999trty\_e (INAC, 2007).

Figure 2



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