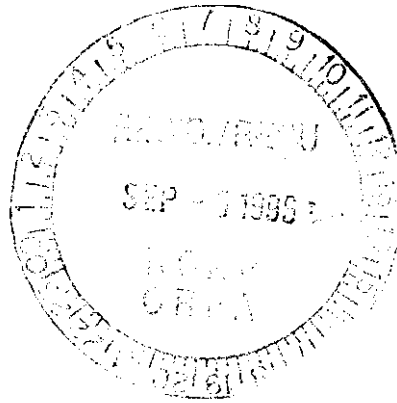


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**THE ROBINSON TREATIES OF 1850:**  
**A CASE STUDY**

Prepared for  
**THE ROYAL COMMISSION ON ABORIGINAL PEOPLES**  
Treaty and Land Research Section

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## **1. PREFACE.**

This case study deals with the two agreements - now known as the Robinson-Huron and Robinson-Superior Treaties - negotiated at Sault Ste Marie and Penetanguishene (Ontario) in September of 1850 between agents of the Crown and representatives of the Ojibway Nation of northern Lakes Huron and Superior.

Because the two treaties are in effect one agreement with two sub-parts, this report treats them as a unit. In keeping with the methodology developed by the Treaties team, this report provides an overview of the historical context, a discussion of the treaty negotiations themselves and a detailed review of the treaty provisions from the perspective of both parties. It concludes with an elaboration of current issues facing the treaty beneficiaries.

The last section, however, deals primarily with those First Nations belonging to the Robinson-Huron Treaty - who, unlike their counterparts on Lake Superior, are represented by a single political organization. Given time and budget constraints, it proved necessary to limit consultation to the Grand Council of the Robinson-Huron Treaty. Nevertheless, many of the conclusions apply equally to the Lake Superior First Nations.

The author would like to thank for their assistance (then) Grand Chief Pat Madahbee, the chiefs, elders and others who participated in the discussions, as well as Nelson Toulouse of the Union of Ontario Indians, who acted as coordinator. He also thanks elder Ernest Debassige of West Bay, Professor Robert J. Surtees of Nipissing University and the third anonymous reviewer who vetted the draft manuscript as part of the Royal Commission's peer review process. Many of their comments and suggestions have been incorporated in this final draft.

## 2.INTRODUCTION.

The Robinson treaties take their name from William Benjamin Robinson, the provincial politician appointed in early 1850 to serve as Commissioner. To the extent that historians have studied these treaties, they see them as part of an orderly progression of agreements with aboriginal people in what is now Ontario. These agreements - which conformed to the Royal Proclamation of 1763 and subsequent Imperial regulations - had begun in the period following the American Revolution, and had been designed to provide settlement lands for American Loyalists and other immigrants to Canada.<sup>1</sup> Thus, it was "by treaty with the Indians" - as former Premier John Robarts wrote in his introduction to the centennial history of the Department of Lands and Forests - that the Crown had obtained title to "the lands, the waters, the forests and their fish and wildlife populations" of Ontario.<sup>2</sup> This *wise practice*, historians argue, ensured that Ontario never had the type of angry settlement frontier that plagued the United States of America.<sup>3</sup>

The Robinson treaties are also seen as pivotal in the entire treaty-making process - linking these earlier agreements with the post-Confederation *numbered* treaties covering northern and western Canada.<sup>4</sup> There is, of course, good historical evidence for such a conclusion. W.B. Robinson certainly believed he had been acting in accordance with previous practice. And Alexander Morris, the Manitoba Lieutenant-Governor who negotiated several of the numbered treaties, afterwards claimed that the 1850 agreements had both served as forerunners to these later treaties and "shaped their course". What he meant was that the main features of the Robinson treaties - "annuities, reserves for the Indians, and liberty to hunt and fish on the unconceded domain of the Crown" - were specifically incorporated in the post-1867 agreements.<sup>5</sup>

But while such interpretations are broadly correct, they attribute a kind of inevitability to the Robinson Treaties which is far from justified. There are many reasons, in fact, to see those agreements, not as the continuation of some earlier wise practice, but as a new



beginning - for they were the direct result of conflict between Indian people and the government of the Province of Canada over two related issues. One was the perceived need, on the part of the provincial government, to regularize settlement in the northern border regions of Canada West (now Ontario) and to assert British jurisdiction against American incursions there. The second was the settler government's decision to encourage mineral exploration and development on the north shores of Lakes Huron and Superior.

In both cases, aboriginal people became the unwilling victims of settler power. Two decades of continuous population growth and its accompanying social and political ferment had transformed Upper Canada from a Loyalist backwater to a settler society that increasingly resembled its American counterparts. Agitation for what was called *responsible* government had convinced the Imperial government to devolve political power from the Governor and his unelected advisors to settlers and their representative institution, the Legislative Assembly. Thus, by the mid-1840's, members of the Executive Council were being chosen from the majority party in the Assembly, rather than appointed at will by the Governor. As settlers and their representatives increased their control over lands and resources in the colony, it became clear that they were quite prepared to disregard aboriginal rights.

In doing so, colonial politicians advanced many of the same arguments used today to counter Native land claims. Echoing the views of many - though not all - of their constituents, they characterized aboriginal people as uncivilized nomads whose lifestyle was an impediment not only to agricultural settlement but to the new activities of resource development. They therefore demanded that Indian people be removed from the path of settlement - in this case, to the great *Indian reserve* of Manitoulin Island in Lake Huron which had been created in 1836. When this approach was rejected, local politicians came up with a new strategy. They argued that Native people must prove their descent from the aboriginal inhabitants of the lands in question, and that their society must be *organized* in a fashion acceptable to Europeans. Neither of these arguments had ever been advanced before. In the end, the Ojibway people were able to satisfy these criteria. But had it not been for their lengthy protests and the resulting intervention of Governor-General Lord

Elgin - who was intent on upholding the honour of the Crown - it is probable that the Robinson Treaties would not have been made at all.

The Ojibway protests were led by several charismatic *ogemuk* or chiefs, including Peau de Chat from Fort William, Kewakonce from St. Joseph's Island, and, above all, Shingwakonce and Nebenaigoching from Sault Ste Marie. The latter were in turn assisted by *métis* spokesmen such as Pierre Lesage and Charlot Boyer. Displaying longer memories than their settler adversaries, these Native leaders stressed the important role that Ojibways had played as British military allies. They also reminded the government of the Crown's solemn promises to their ancestors which had been enshrined in the Royal Proclamation of 1763 and the resultant treaty-making process - promises, they said, which had never previously been violated.

These Ojibways were not just attempting to protect a traditional way of life from the impact of a new resource-based economy. Chief Shingwakonce, for one, argued that Indian people as a whole should be entitled to benefit from the new sources of wealth - the timber and mineral resources - which the Great Spirit had placed on their lands. In asserting these views, he and his associates found allies among the clergy as well as among Tories of Loyalist descent - many of whom had been closely linked to aboriginal people since the American Revolutionary War. As can be seen from newspapers at the time, these more conservative elements of settler society sympathized with an aboriginal view which placed collective rights above the liberal individualism of a growing manufacturing and resource-based economy.

In their negotiations with W.B. Robinson - himself a Loyalist Tory, though appointed by a Reform (Liberal) administration - the aboriginal parties did not obtain everything they wanted. The Sault Ste Marie leaders in particular ended up effectively isolated - in part because government officials were able to take advantage of internal differences on the Native side. Most obviously, the interests of the Sault Ste Marie communities - who were facing the direct impact of lakefront resource development - were not necessarily the same

as the interests of those Lake Superior or eastern Lake Huron groups who were more involved in the fur trade, and who continued to spend much of the year in the interior. Nevertheless, the Ojibways succeeded in negotiating two very significant agreements.

Given the context in which they were negotiated, the Robinson treaties can even be considered a victory for the Ojibway side. One important result was that they effectively ended Canadian flirtation with U.S.-style removal policy. Contemporary American treaties had stipulated that, after a certain period, the Native beneficiaries would be obliged to move to new lands west of the Mississippi River. In Canada, by contrast, the Robinson treaties officially acknowledged that Native and non-native people would continue to co-exist on the territory covered by treaty - and that aboriginal people could expect to benefit from resource development. This was an historic accomplishment, not simply the continuation of a previous practice.

It is also clear that the Robinson treaties provided more to their beneficiaries than all subsequent agreements up to - and in some respects including - recent comprehensive claims settlements. Unlike the *numbered* treaties, for example, the Robinson treaty annuities were not fixed. If resource revenues went up, then so too would the annuity payments. Continued Ojibway harvesting rights over the territory covered by treaty were defined broadly enough to include commercial as well as subsistence harvesting - and such rights were not made subject to government regulations. Nor were reserves limited in size to an arbitrary formula imposed by the Crown. Indeed, some of the reservations identified under the 1850 treaties were as large or larger than any created before or since. This is because the Native delegates - particularly those from Lake Huron - endeavoured to select lands which would be sufficient for the future needs of their communities.

One group of aboriginal people, however, derived very little benefit from the treaties. These were the *métis*, whose settlements, in 1850, dotted the upper great lakes region. If it was better to be Ojibway in Canada than in the United States - in that the British were no longer considering any kind of removal - it was far worse to be a *halfbreed*. In the

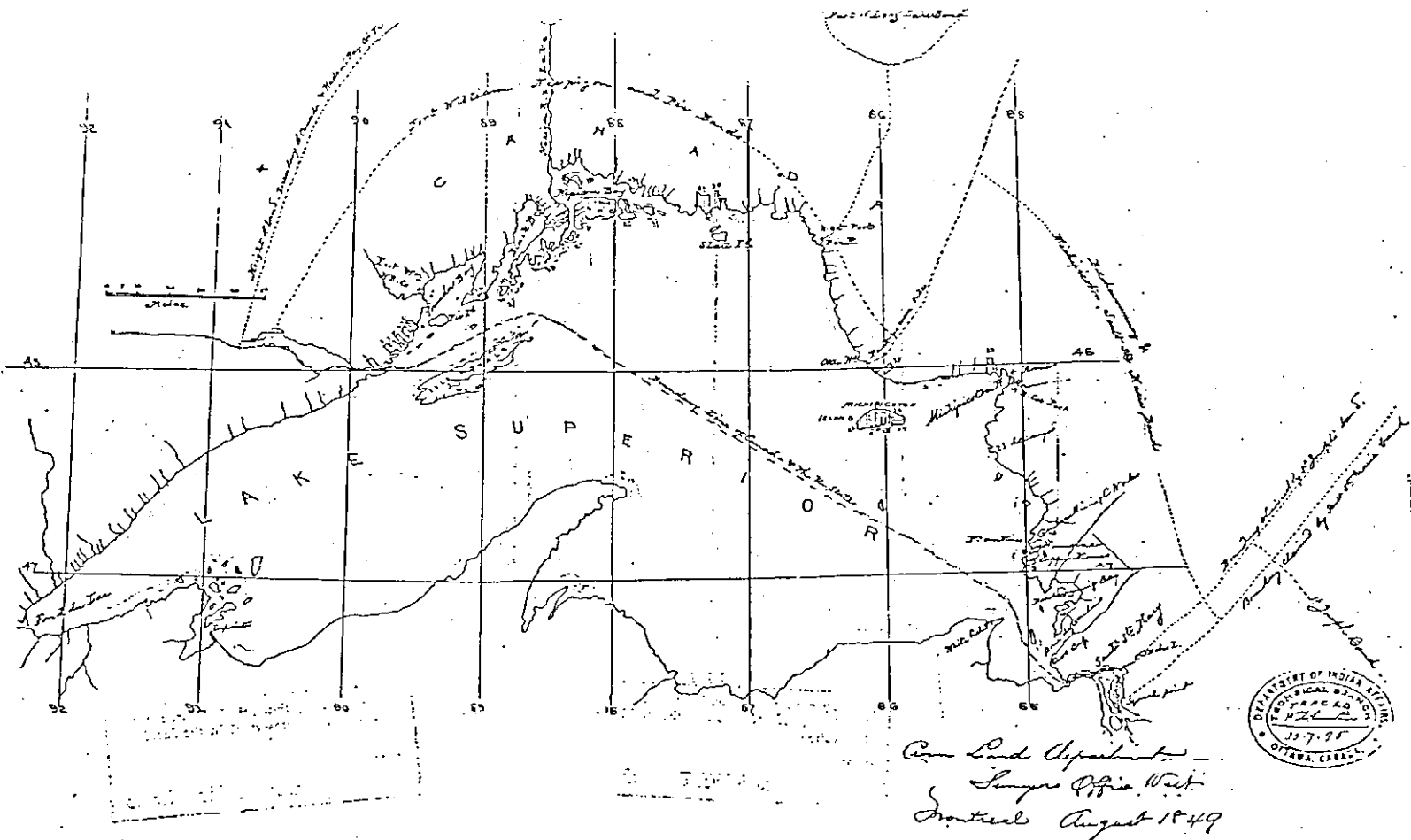
frontier societies of Michigan, Wisconsin and Minnesota, the *métis* played a powerful social and political role. They obtained both financial and property benefits from the Indian treaties, and some of them even served as mayors, councillors and representatives to the U.S. Congress. The contrast with the British side of the St. Mary's River could not be more marked. At the treaty council, W.B. Robinson refused to deal with those he called *halfbreeds*, arguing that he was empowered to treat with *Indians* only. He told Shingwakonce and the other chiefs that they might, if they wished, give treaty money to this class of claimants, but there would be no recognition of *métis* property claims as such. Many *métis* did indeed become Indians - as a glance at the current band lists for Lakes Huron and Superior will show. Those who decided to take their chances in the emerging northern society of Canada West found that property, civil and political rights were principally designed for people of British descent. As their relatives in Red River would find out two decades later, the great lakes *métis* were too Indian, too Catholic and too French.

Although the Robinson treaties did in fact serve as a model for the post-Confederation numbered treaties, it was a model severely circumscribed by government. Like some of their northern and western neighbours, Robinson treaty beneficiaries became trapped in constitutional wrangling after 1867 - particularly between Canada, Ontario and Quebec - over the cost and content of treaties. This dispute led both federal and provincial governments to unilaterally reinterpret the Robinson treaties. With respect to augmented resource revenues, for example, the annuities were increased once in the 1870's - but never again - and Ontario and Quebec fought for more than twenty-five years to avoid paying any arrears. At the same time, the provinces insisted that the Treaty paylists be purged of as many annuitants as possible. Some reserves - particularly those on Lake Huron - were improperly surveyed, so that their size was much smaller than anticipated. Within a decade of the treaty, many bands were being coerced into parting with all or most of their reserve lands as part of modified *removal* policy.

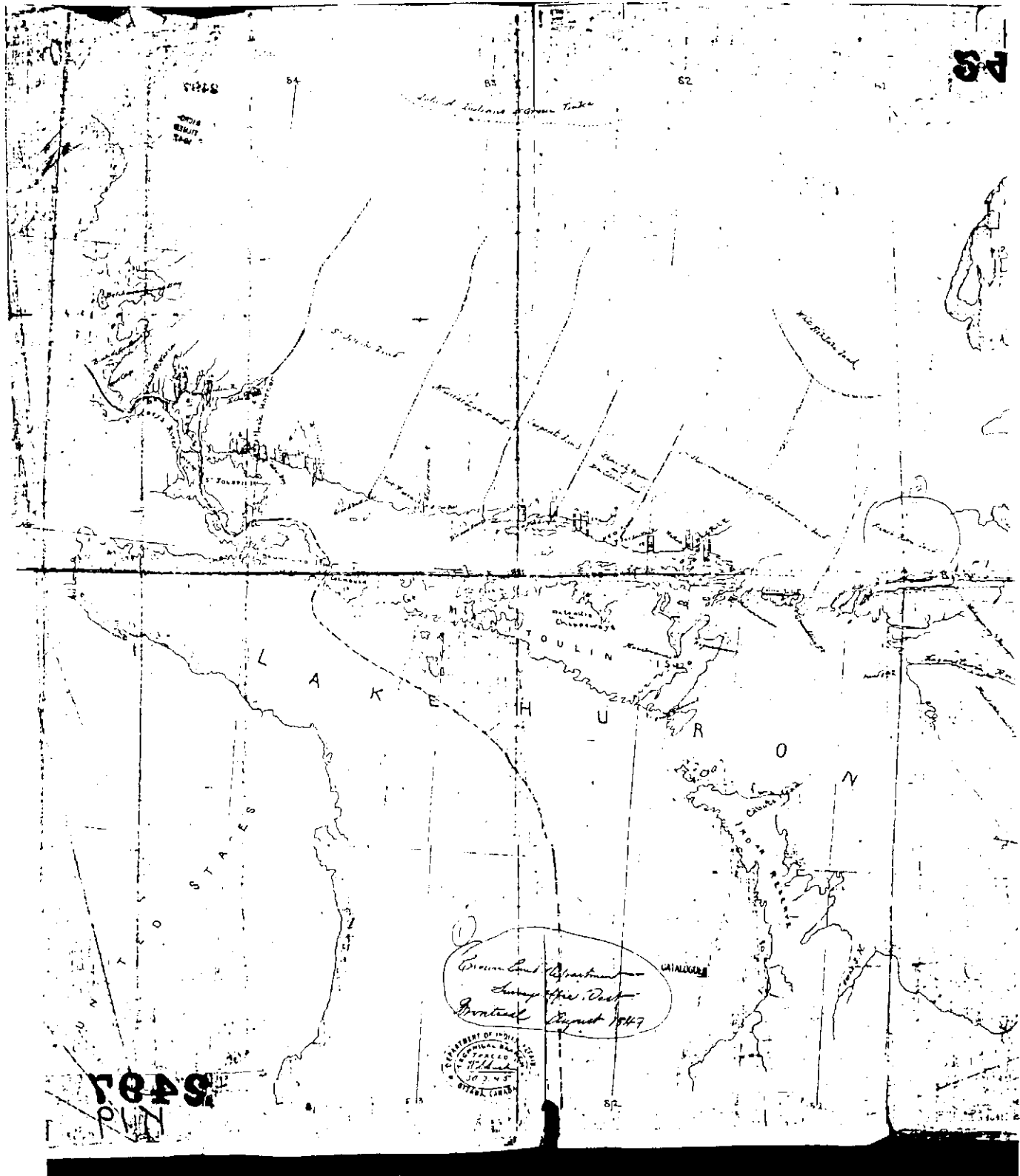
As for harvesting, the fisheries department of the province of Canada had begun, despite protests from the Indian Department, to limit treaty fishing rights by the late 1850's. The new province of Ontario followed suit, and by the turn of the century, Robinson treaty beneficiaries were being consistently fined or jailed - and having their equipment confiscated - for exercising their treaty rights to hunt and fish on unoccupied Crown lands and waters. After the First World War, Ontario took the position that, regardless of the strict wording of the treaties, Native harvesting rights applied only on reserve. One longterm consequence of this provincial policy - which did not change until the 1970's, when aboriginal political organizations began defending Native harvesters - has been its impact on the broader society. Recreational hunters and anglers, for example, continue to argue that aboriginal people do not have - or should not have - any *special* harvesting rights.

The Ojibways of northern Lakes Huron and Superior did not remain silent in the face of such treatment. Their representatives continuously protested that both levels of government were ignoring their rights. As this case study will demonstrate, some of the problems stemmed from differing perceptions of the treaty - about rights to islands, for example, or to timber harvesting on Crown lands. But in contrast to many of the post-Confederation agreements, the disputes were not primarily a question of *outside promises* or of cultural misunderstanding. Fundamentally, the Ojibways were asking governments to honour what they saw as a promise of co-existence. That promise is spelled out in the English text of their treaty. It is no surprise, therefore, that many of the current issues identified by the Grand Council of the Robinson-Huron Treaty were first being raised well over a century ago.

**Map of Lake Superior**  
**Showing Band Territories and Mining Licenses**  
 Vidal-Anderson Report, 1849



Map of Lake Huron  
 Showing Band Territories and Mining Licenses  
 Vidal-Anderson Report, 1849



### **3. HISTORICAL BACKGROUND.**

The Robinson treaties of 1850 were the product of more than five years of intense negotiations between aboriginal people and representatives of both the Imperial government and Canadian settler society. These negotiations - which passed through stages of petition, protest and actual armed confrontation - deserve full treatment because they prefigure so much of the subsequent history of northern and western Canada. The Robinson treaties, for example, were the very first to take place against a backdrop of large-scale resource development. And most importantly, they were the first to take place after settlers had wrested effective control of colonial lands and resources from their Imperial masters.

#### **3.1 Settlement in Canada West.**

The Robinson treaties of 1850 involved territory in what was then the Province of Canada, and is now the province of Ontario. Although the British colonies of Upper and Lower Canada had been reunited in 1841 - as part of the fallout from the Rebellions of 1837 - the union was far more at the level of policy than of administration. For example, Canada West (formerly Upper Canada) and Canada East (formerly Lower Canada) maintained their pre-existing legal systems as well as their separate systems of public lands administration. Thus, there was an Attorney-General East and an Attorney-General West, as well as a Solicitor-General East and a Solicitor-General West. And if the Commissioner of Crown Lands came from Canada West, the Assistant Commissioner came from Canada East and vice versa. It is important to remember, then, that the application of the Robinson treaties was limited to the province's western half.

In 1841, the generally accepted northern boundary of Canada West (now part of Ontario) extended along the height of land above Lakes Huron and Superior from the vicinity of present-day Thunder Bay and the international frontier eastward to Lake Temiskaming, which had marked the boundary between Upper and Lower Canada. Beyond lay Rupert's



Land, the Charter territory of the Hudson's Bay Company. Most residents of the province, however, would have been only dimly aware of these northern regions. In the early 1840's, the main frontier of European agricultural settlement was several hundred kilometers to the south, having just reached the edge of the Bruce Peninsula and the southeastern parts of Georgian Bay. To the east, lumbering - then the principal resource development activity in the Canadas - had advanced only a little further, extending into the upper portions of the Ottawa River valley.<sup>6</sup> In fact, most contemporary maps of Canada West did not show the whole province, covering instead only a small portion of what is now northeastern Ontario.<sup>7</sup>

The pressure on arable lands in what is now southern Ontario had increased significantly by the mid-point of the nineteenth century. As part of the same process which saw a flood of immigrants to western New York, Ohio and the Michigan Territory, the population of Canada West was exploding. The province had had only 158,000 inhabitants in 1825 - the majority of them descended from Loyalist refugees or those subsequent emigrants from the United States known euphemistically as *late Loyalists*. Massive immigration from Great Britain and Ireland, especially during the early 1830's and mid-1840's, would swell the population to 952,000 by 1851. In the process, urban areas of the province were also greatly enlarged. Toronto would grow from a village of 2000 people in 1825 to a sizeable city of 30,000 in 1851 - though it remained dwarfed by both Montreal (58,000) and Quebec City (42,000). While a small number of the male immigrants were tradesmen or skilled artisans, the vast majority were farmers or rural and urban labourers. After working for a period as casual or seasonal workers in the agricultural or lumber industries, they and their families sought land for their own farms - and, in the process, pushed European settlement to the edge of the Canadian shield.<sup>8</sup>

### 3.2 Public Lands.

In contrast to the pattern of American colonization, however, very few of these settlers were squatters. In fact, if the dates of first surveys in various parts of southern Ontario are compared with the dates of first farm creation, it can be seen that Crown survey invariably

preceded settlement.<sup>9</sup> There were good reasons for this. In those western portions of the province of Quebec which, in 1791, became the province of Upper Canada, British officials followed the colonial American practice of making treaties with the Native inhabitants before allowing settlement. Rules governing such treaties had been formally restated in the Royal Proclamation of 1763, which had created the province of Quebec out of territory claimed by France. By 1841, a series of these agreements blanketed what is now southern Ontario. Styled in most cases as contracts for the sale of land, they provided the Native signatories - usually constituent parts of the closely-related *Mississauga* or *Chippewa* (Ojibway) Nations - with payment in goods or specie, and later, annuities.<sup>10</sup>

Because of the treaty-making practice, prescriptive title - known colloquially as *squatters' rights* - was a legal impossibility in Upper Canada. This was because lands did not become *waste lands of the Crown* - that is, lands available for disposition to settlers (now known as *public lands*) - until after a treaty with their aboriginal inhabitants.<sup>11</sup> The Royal Proclamation of 1763 had spelled out this rule very clearly. In 1792, for example, Upper Canada Lieutenant-Governor John Graves Simcoe had advised a military officer petitioning for a grant along the north shore of Lake Ontario that he could not have the lands he wanted because they were "not purchased from the *Mississague Nation*, and that the King's Proclamation in 1763, totally prohibits any of His Majesty's subjects from settling on Indian lands, or the Governors in this Country from granting therein warrants of survey".<sup>12</sup> Such a contrast between *Indian Territory* - lands for which there were no treaties - and *Lands belonging to the Crown* - lands available for settlement - continued to be given expression in government reports and maps from the 1830's.<sup>13</sup>

So long as the Imperial Crown directly controlled both land policy and the disposal of public land in the province, it had been possible - again in contrast to the United States of America - to maintain a more or less orderly frontier. The major change in the early 1840's, however, was the achievement of effective provincial control over land and resources. Settlers' land grievances - the setting aside of 2/7 of every township as crown and clergy

*reserves*, as well as the large quantities of arable land still held by the Indian tribes - had helped spur the 1837 Rebellion in Upper Canada. Though the Rebellion was crushed, the Crown did try to eliminate some of its contributory causes.

As far back as 1835, the British Colonial Secretary had pledged that the Canadian land system would be made subject to local legislation. In 1837, the Crown had assented to the first Public Land Act of Upper Canada. Under the Act of Union in 1841, the Crown surrendered control of land revenues to the provincial legislature in exchange for a *civil list* - that is to say, payment of the salaries and benefits of judges and other officials - though it required acts relating to the Crown lands to be reserved for royal assent. The latter stipulation would finally be dropped in 1854.<sup>14</sup>

### 3.3 Indian Affairs.

Until the 1840's, the Imperial Crown had basically functioned as referee between the often incompatible interests of aboriginal people and settlers. In Upper Canada, neither settlers nor their representative institution, the Legislative Assembly, had played any direct role in Indian Affairs - which remained a matter for the Royal prerogative. The line of authority flowed from the Crown through colonial Governors or Commanders in Chief, to their appointed subordinates in the Indian Department. The reporting relationship from these officials back to their Imperial masters was generally through the Colonial Secretary in London. By the mid-1840's, the Superintendent-General (administrative head) of Indian Affairs was the Governor-General's Civil Secretary - who was usually a member of the Governor's personal or family circle. At the time of the Robinson treaties, for example, the Civil Secretary and Superintendent-General was Lt.Colonel the Hon. Robert Bruce, brother of Governor-General Lord Elgin.

Governors would occasionally seek the advice of their Executive Council - a body appointed from among the colonial elite - on Indian matters, but were not obliged to take it. And while the Assembly occasionally passed legislation dealing with aboriginal issues, such laws

were designed, not to interfere in the internal workings of Native society, but to protect Indian people from the degradations of whites - from selling them liquor, for example, or from encroaching on their lands. These kinds of prohibitions had a long history in North America.

By the 1840's, this pattern had begun to change, thanks in part to what was then called *responsible* government. Although there was no common definition of the term, what all of its proponents shared was the belief that the Executive Council should no longer be appointed at will by the Governor, but should be chosen instead from the party (or parties) which had majority support in the Legislative Assembly. By fits and starts - and with varying support from successive Governors - this process actually occurred over the course of the decade. This too, as shown below, would have a major impact on land and resource policy.

### 3.4 The Great Lakes Region.

If the southern parts of Canada West were becoming, by 1841, ever more English-speaking and agricultural in focus, the stretch of country between Penetanguishene on Lake Huron and Fort William on Lake Superior remained part of a much older reality. For this region was a remnant of the once extensive *middle ground* of upper great lakes culture - the core of a constantly expanding world which French-speakers knew as the *pays d'en haut*. After two centuries of trade, military and diplomatic relations between Europeans and aboriginal people, the dominant languages of the upper great lakes were still *anishnabe* and French, not English, and the region's inhabitants were linked economically, not to Toronto, but to the old fur trade capital of Montréal and to American cities like Detroit and Chicago.<sup>15</sup>

The historic centre of this world was Michilimackinac, at the straits between Lakes Huron and Michigan, where first the French, then the British, and now the Americans, maintained military and trading posts. After 1796, the former British garrison had migrated down northern Lake Huron, with stops at St. Joseph's and Drummond Islands, before removing to Penetanguishene in 1828. At all of these posts - as, after 1835, at Manitowaning on

Manitoulin Island - the Imperial government distributed *presents* of items such as clothing, twine, powder and shot to thousands of aboriginal people from both sides of the international border. This was not (at least to aboriginal people) charity, but a token of the special relationship between the *ogimaquay* - or Great Queen across the sea - and her Native *children* who had fought as allies against the *Kitchi Mokoman*, or American *Big Knives*, in both the Revolutionary War of 1775-83 and the War of 1812-14.<sup>16</sup>

### 3.5 The Anishnabeg.

On a series of maps of Upper Canada dating from the 1820's and 1830's, the region between eastern Lake Superior and Georgian Bay is marked simply as *Chipeway Hunting Country*.<sup>17</sup> This was a reference to the Native inhabitants of these northern parts, who spoke various dialects of *anishnabemowin* - the language of the *Anishnabeg* or "real" (i.e. aboriginal) people.<sup>18</sup> This self-designation was shared with other groups known historically to Europeans as Algonquin, Mississauga, Odawa and Potawatami - as well as by a variety of other tribal and group names. In 1841, there were Odawas, and smaller numbers of Potawatomis, resident on Manitoulin Island. But most aboriginal people along the two northern lakes were known generally as Ojibway (or its variants Chippeway or Chippewa). French-speakers continued to call them *Saulteaux* or people of the rapids, after the *Pawatingwach Inini* - the original *anishnabe* inhabitants of Sault Ste Marie.<sup>19</sup>

#### 3.5.1 Political and Social Organization.

Canada West was only a small part of the *Anishinabeg* world. According to *Kahkewaquonaby* - alias the Reverend Peter Jones (1802-1856) - a Methodist Missionary from the Credit River whose history of his people was published posthumously in 1861, the *Ojebway nation* could be found "scattered in small bodies" throughout the entire country between the St. Lawrence River, the great lakes, and the headwaters of the Mississippi. Within this vast region, he noted, each band or community had its own chiefs, and managed

its own affairs within the limits of its territory, "quite independently of other tribes of the same nation".<sup>20</sup>

As will be shown at greater length in a later section, *Kahkewaquonaby's* conclusions about socio-territorial organization proved to be true for the northern shores of the upper lakes. The maps at the beginning of this report - from an 1849 report by T.G. Anderson and Alexander Vidal, government commissions who had been appointed to investigate native claims in the region - display individual band territories on both Lakes Huron and Superior. At the time of the treaty in 1850, W.B. Robinson gave Ojibway numbers as 1240 for Lake Superior and 1422 for Lake Huron and Georgian Bay.<sup>21</sup> Although these numbers actually excluded many Ojibways on Manitoulin Island and underrepresented the lakeshore and interior bands, they do highlight the relative population densities of northern and southern Canada.

### 3.5.2 Lake Superior.

Though by the early 1840's, Indian people on the upper lakes were still tied to a fur trade-based regional economy which was of nearly two centuries duration, certain fundamental changes in labour practices were then underway. On Lake Superior, most Ojibways left for the interior just before freezeup - between late October and mid-November - and spent the winter hunting and trapping. Shortly after breakup - usually between mid-April and late May - they came out to Lake Nipigon and the Lake Superior shore to trade furs and meat with the Hudsons Bay Company or its competitors. In the hinterland towards Rainy Lake, which lay west of Fort William, some Ojibways also harvested wild rice, which they brought to the posts to trade.

Between the late spring and fall, members of the various bands returned several times to the *Kitchi Gami* (the *great lake* or Lake Superior) to fish for trout, whitefish, herring and similar species, working either in the bays along the shore or from the islands opposite the mouths of the Pigeon, Nipigon, Pic and Michipicoten Rivers. The large bays on eastern

Lake Superior - Batchewana and Agawa - were particularly productive. In late June and early July, the Ojibways speared or netted sturgeon in many of these rivers flowing into Lake Superior.<sup>22</sup> Such resources were taken both for personal consumption and for exchange. During the 1830's and 1840's, many Ojibways also took part in commercial fisheries operated by the American Fur Company at Grand Portage - on the international boundary - and by the Hudsons' Bay Company along the north shore. The fisheries could be lucrative - in 1840, the HBC's Michipicoten post alone provided 800 barrels of salted fish (containing about 200 lbs per barrel) for the American market, through its distributor in Cleveland.<sup>23</sup>

By 1840, a smaller number of Ojibways had begun to work seasonally for the trading companies as canoemen and freight haulers. After the Hudson's Bay Company's merger with the Northwest Company in 1821, furs from Lake Superior were no longer carried down the lakes to Montreal, but were hauled northward by canoe brigade, via the Albany and Moose Rivers, to James Bay and then to England. This created particular demand for Native labour at the Hudson's Bay Company's Michipicoten, Pic and Nipigon posts. As a result, certain families began spending more of the early summer camped nearby, while they waited for their men to return from canoe trips. These people made convenient targets for the missionaries - Methodist and Roman Catholic - who began travelling the north shore in the early 1840's. Under their influence, some Ojibways took up rudimentary agriculture and spent ever increasing periods of time at the lakeside settlements.<sup>24</sup>

### **3.5.3 Lake Huron and Georgian Bay.**

While broadly similar, the economy of those Ojibways who lived along the north channel of Lake Huron and northeastern Georgian Bay had certain basic differences. For one, these Ojibways were already more sedentary. They had been practicing slash and burn agriculture for centuries - raising corn, beans and squash at gardens located near the mouths of such rivers as the Whitefish, Spanish and Mississauga as well as on islands in the lake.<sup>25</sup> Living at the northern edge of the transitional forest zone, they also produced enormous quantities

of maple sugar in the springtime, both for personal consumption and for sale - much of it to the Hudson's Bay Company's Lake Huron posts, which in turn supplied the company's entire Lake Superior district with sugar.<sup>26</sup> In the Sault Ste Marie area, large quantities were exported to the United States, where it was a cheap and reliable alternative to refined sugar.<sup>27</sup>

Ojibway people had always manufactured birchbark canoes, which - as well as leather and bark handicrafts - were sold to the traders or other individuals. But a transportation revolution provided several new opportunities. Steamers of various descriptions had started to ply the American route between Detroit and Sault Ste Marie in the later 1830's. The first steam vessels on the British side of the lake were the *Kaloola* and the *Sir Francis Gore*, which started servicing Georgian Bay and the north Channel in the mid-1840's. The *Gore* - basically a tug - was owned by Charles Thompson, a merchant from Penetanguishene.<sup>28</sup> By the end of the decade, Ojibways were selling firewood to the steamers at various locations; individual *anishnabe* were also hired as pilots to guide the vessels through the island labyrinth along the north shore.<sup>29</sup>

This is not to say that there was no hunting of game or fur-bearing animals. Competition for pelts was intense along Lake Huron - involving not only the American Fur and Hudson's Bay Companies, but numerous independent traders from the U.S. and from Penetanguishene, Newmarket and other locations in the province of Canada.<sup>30</sup> Many groups - such as the Whitefish Lake, and the French River and Lake Nipissing bands - did spend the late fall and winter hunting and trapping north and northeast of Lake Huron. But, in contrast to their kin on the upper lake, the eastern Ojibways spent much more of the spring and summer season near the lakeshore.<sup>31</sup> According to the Ojibways themselves, trapping had been declining since the end of the War of 1812. Competition for furs was depleting the supply of pelts - and, as a result, many of them were withdrawing altogether from the fur trade.<sup>32</sup>



Like the Lake Superior bands, the eastern Ojibways relied very heavily on the productive lake fisheries - particularly of Whitefish, sturgeon, trout and pickerel - which aboriginal people had been utilizing steadily since prehistoric times.<sup>33</sup> Seventeenth and eighteenth century records, for example, document the bountiful whitefish supply at the rapids in the Saint Mary's River which supported so many *Sauteur* people. There were also important sturgeon fisheries at the mouth of the Mississauga and Spanish Rivers, and the mouth of the aptly named Sturgeon River on Lake Nipissing.<sup>34</sup> Between May and October, especially during the spawning seasons for each species, both the rivermouths and the hundreds of islands in the foreshore served as fishing stations and family encampments. Fish were netted, as well as speared at night with the aid of birchbark torches.<sup>35</sup>

These fisheries were not just exploited for personal consumption - the surplus, as historical records make clear, was also bartered or sold.<sup>36</sup> By the 1820's, both the Hudson's Bay Company and independent traders on Lake Huron were purchasing large quantities of trout, whitefish, toulibie (cisco) and other species from Ojibway people, which were salted and, if not used for domestic consumption, exported to Detroit and other American markets. The traders also purchased fresh, dried or smoked sturgeon and sturgeon oil, as well as isinglass - a product derived from the swim bladders of sturgeon.<sup>37</sup>

One of the main items of the fishing trade was liquor - which had both social and ceremonial uses among the Ojibways. The apparently pernicious effects of the liquor trade were frequently noted by Indian Department officials, as well as by the various Catholic, Methodist and Anglican missionaries who travelled Lake Huron from the 1830's on.<sup>38</sup> Part of the rationale for settlements like the Anglican Mission at Manitowaning on Manitoulin Island - which, after 1835, attracted a number of Ojibways from the northern and eastern Lake Huron - was to keep Indian people away from the *whisky traders*.<sup>39</sup>

**Ojibway Camp on Island in Lake Huron, 1845**  
Painting by Paul Kane



### 3.6 The Métis.

The *anishnabeg* were not the only fishers in these northern regions. Such species as whitefish, lake trout and sturgeon were also a primary resource for *métis* people, whose settlements, by the mid-nineteenth century, dotted the entire arc of the upper great lakes from eastern Georgian Bay to the headwaters of the Mississippi River. These people of mixed European and Native ancestry served the various fur trading companies, military and government settlements and mission stations along the lakes not only as fishermen but as skilled tradesmen, *voyageurs* and boatmen, camp traders, interpreters and guides.<sup>40</sup>

#### 3.6.1 Self-Identification.

The extent to which the great lakes *métis* formed a self-conscious entity independent of either their aboriginal or European ancestors - like their more famous kin from the Red River and Canadian Northwest - is still a matter of debate. Many prominent individuals on the upper lakes who were of mixed descent - such as the Manitoulin Island Indian Superintendent George Ironside (*Shawnee* and *Huron* on his mother's side) - clearly thought of themselves as white men.<sup>41</sup> By contrast, the Lake Nipissing Chief Michel *Dokis* - a signatory to the Robinson-Huron Treaty - always considered himself *anishnabe*, even though one of his parents was French-Canadian.<sup>42</sup> There is no question, however, that from the late eighteenth century on, outside observers were referring frequently - and usually derogatorily - to a class of individuals on the upper lakes they variously called *halfbreeds*, *chicots* or *bois brûlés*.<sup>43</sup>

On Lake Superior, some *halfbreeds* were partly of English, Scottish or Irish descent - due to the impact of both Hudson's Bay Company and Northwest Company traders - as were certain prominent individuals on Lakes Michigan and Huron, like the Johnston siblings from Sault Ste Marie. But the overwhelming majority of great lakes *métis* could trace their

European ancestry to the French. There had been French-speaking settlements - such as Détroit, Michilimackinac, and Cahokia-Kaskaskia in the Illinois country - in the North American interior since the turn of the eighteenth century. One of the reasons that the boundaries of the British province of Quebec had been extended to the Mississippi River in 1774 was to provide civil government for such locales - which had retained familial, linguistic and cultural ties with the *Canadien* heartland on the St. Lawrence River.<sup>44</sup> Like similar communities in Central and South America - but unlike Anglo-American ones - all of these communities were as *amerindian* as they were European, the result of fur trade employees marrying Native women and taking up subsistence farming along with their other duties.<sup>45</sup> In that sense, the Imperial government could be said to have (even if unwittingly) sanctioned the existence of *métis* settlements a century before Red River.

In this context, self-identification was a matter of culture, not race, and the *métis* should be seen as an incipient ethnic group, not a racial category.<sup>46</sup> Within the territory eventually covered by the Robinson treaties, there were four settlements which could be classed as actually - or incipiently - *métis*. That is to say, their residents used both the French and *anishnabe* languages, had kinship and cultural ties to aboriginal societies (as well as to similar *métis* communities in Michigan, Wisconsin, Minnesota and the Red River) but were individualistic, rather than tribal, in their socio-political structure.

### 3.6.2 Penetanguishene.

The historic Franco-Ontarian community on eastern Georgian Bay has predominantly *métis* roots. When the British garrison was transferred from Drummond Island to Penetanguishene in 1828, some seventy-five families of *voyageurs* - between three and four hundred people - who had then been living on the island removed as well. Most of the heads of families - with surnames like Boucher, Cadotte, Corbière, Labatte, Langlade and Sylvestre - had been born at Michilimackinac or Drummond Island, of mixed French and *anishnabe* parentage. Many of the men had fought in the War of 1812 as members of the

Michigan Fencibles, assisting the British in the capture of Michilimackinac and Green Bay. As compensation for their abandoned homes, the British government allotted them lands on Penetanguishene Bay, where they settled on twenty and forty-acre lots. By the early 1840's, the majority of the new arrivals were still working for the garrison in a variety of occupations, though some were trading for furs and fish along the coast of Georgian Bay.<sup>47</sup>

### 3.6.3 Killarney.

Along the north channel of Lake Huron to the east of Manitoulin Island is a small fishing and tourist village called Killarney. In the early nineteenth century, this community was known as *Sheboanahning* - the *anishnabe* term for "narrow channel", an accurate description of its geographical location. The village had been founded in 1820 by Etienne de Lamorandière, a *canadien* who traded furs on Georgian Bay from his base at Michilimackinac, and later Drummond Island. Married to an *anishnabekwe* from Michilimackinac, Lamorandière and his ten children were joined at Killarney by several related families of mixed descent - Roque, Proulx and Solomon being prominent surnames.<sup>48</sup> In 1851, Jesuit Father Dominique du Ranquet noted that there were some ten houses of *bois brûlé*, as he called them, in the village. "In every house", he wrote, "you hear three languages spoken - English, French and Indian. I believe that they generally try to speak French but in fact the only language they all understand is Indian. Practically all of the women wear at least some items of native clothing, such as a blanket and leggings, but you notice everywhere the tendency of native women to adopt the dress of the mixed population - and those here that of the whites".<sup>49</sup> Etienne de Lamorandière and his sons - particularly Charles and Alexis - traded in the furs, maple sugar and fish harvested by local *anishnabe* and *métis*. Acting through French-speaking merchants in Sault Ste Marie, Michigan, they also sold these commodities in Detroit and other American markets.<sup>50</sup>

### 3.6.4 St. Joseph's Island.

During the 1840's, some of the Lamorandière family's best customers lived at the *métis* village of *Gachkiwang* (also known as Pembroke), at a rocky point on the north side of St. Joseph's Island.<sup>51</sup> This community of about one hundred people supported themselves almost entirely from the fishery resources of the north channel, St. Mary's River and straits of Mackinac - though they did have household gardens situated inland from the shore of the island. Most of the heads of families were former voyageurs, who had been employed by the Hudson's Bay Company and other traders to *courir la dérrouine* - a Canadian French term for the practice of visiting Native camps in the bush in order to secure their furs. Though visiting Jesuit missionaries characterized these *métis* as good Catholics, they, like most observers of the period, accused them of displaying the faults of their Native ancestry. That is, they were seen as *idle*, as lacking in *perseverance* and *industry*, and as being *addicted to spirituous liquors*.<sup>52</sup>

### 3.6.5 Sault Ste Marie.

Most families on St. Joseph's Island - such as the Thibaults - were closely linked to the larger *métis* community at Sault Ste Marie, which inhabited both the American and British sides of the St. Mary's River, including Sugar Island in Lake George.<sup>53</sup> In 1847, there were as many as 1500 people of European descent at the Sault - although more than 1200 of them lived around Fort Brady on the American shore. Of this total population, at least two-thirds were *métis* or French-Canadian.<sup>54</sup> Their houses and farms, in the colonial French ribbon style, stretched along the river for a considerable distance.<sup>55</sup> On the Canadian side, there were some fifty families - in all about 250 people - who had houses and fenced-off land between the head of the old Hudson's Bay Company portage (near the international bridge in what is now downtown Sault Ste Marie) and the mouth of the Root River.<sup>56</sup> Most of the French-Canadians - such as the Miron, Labattes, Boissenaults and Cyrettes - had arrived from Lower Canada after the War of 1812 to work for the fur trade companies.

They had intermarried both with local *Anishnabeg* and with second and third generation French-speaking *métis* families such as the Cadottes, Nolins and Biron.<sup>57</sup>

### 3.7 Regularizing Settlement.

Small as it was, Sault Ste Marie was the only place on the upper lakes in the early 1840's which could remotely be considered a part of the Canadian settlement frontier. Apart from the *Canadien* and *métis* families, the British Sault was dominated by the Hudson's Bay Company - whose officers considered themselves the elite of local society. Because the Sault was south of the height of land (and therefore their Chartered territory) the Honorable Company had no formal jurisdiction in the region. Since this was a border area, state power was represented by Her Majesty's customs collector, George Wilson, a Scottish immigrant and former Navy officer who had arrived in 1843. Wilson occupied a large stone mansion - originally built in 1814 - belonging to the former Nor'Wester Charles Oakes Ermatinger, who had since moved to Montreal.<sup>58</sup> The only other new structures at the Canadian Sault were the Roman Catholic church and the church and outbuildings belonging to the Church of England Mission. The Anglican clergymen, however - the Reverend Thomas McMurray and his successor Frederick Augustus O'Meara - had not been sent to minister to the tiny white population, but to establish a mission among the *Anishnabeg*.<sup>59</sup>

#### 3.7.1 Pawating.

In addition to the large Ojibway population on the U.S. side of the St. Mary's River, there were two settlements of Ojibways on the Canadian side - one at the rapids, and the other located nine miles below the Sault at Garden River. In 1850, the two linked villages would number about 160 and 210, respectively.<sup>60</sup> The smaller was headed by the hereditary Chief Nebenaigoching, also known as Joseph Sayer (1811-1899). He was the son of Wa-be-che-chake (the White Crane) - who had been killed during the War of 1812 - and grandson of Undajosi, another prominent chief.<sup>61</sup> Like most of the Ojibway leaders on the U.S. side, Nebenaigoching belonged to what the former American Indian Agent Henry Rowe

Schoolcraft called the "old Crane Band", meaning members of the Crane *dodem* or clan. These were the aboriginal inhabitants of the St. Mary's River rapids, which was known as *Pawating* in the *anishabe* language. It was with Crane *ogemuk* or chiefs that Daumont de Saint-Lusson, on behalf of the French king, had made a formal treaty at Sault Ste Marie in 1671.<sup>62</sup> Most of the Ojibway chiefs who signed a 1798 treaty with the British for St. Joseph's Island were Cranes - as were the Chippewa chiefs who signed an 1820 Treaty with U.S. government representatives at Sault Ste Marie.<sup>63</sup>

### 3.7.2 Shingwakonce.

Indian Agent Schoolcraft had encountered another of the British Ojibway leaders in August of 1822. "A chief of a shrewd and grave countenance", he wrote, "visited me this morning, and gave me his hand, with the ordinary salutation of Nosa (my father). The interpreter introduced him by the name of Little Pine, or *Shingwalkonce*, and as a person of some consequence among the Indians, being a meta, a wabeno, a counselor, a war chief, and an orator or speaker".<sup>64</sup> Though the Pine's residence was stated to be on the British side of the river, he told Schoolcraft that he had been born on the United States side of Lake Superior. He too claimed descent from the "old Crane Band" - and in fact, he had signed the 1820 Sault Ste Marie Treaty under his French name of Augustin Bart.<sup>65</sup>

Shingwakonce and his fellow chiefs would remind the Governor-General of Canada in 1847 that they had always considered those lands to be part of the British dominions - and that they had enlisted, and some of them been wounded, while fighting the American *Kitchi Mokoman* during the War of 1812.<sup>66</sup> Shingwakonce himself had fought all along the Niagara frontier; in August of 1849, he received a Royal medal for his conduct during the battle for Detroit in August of 1812.<sup>67</sup> According to the Chiefs, they had removed their village to the British side of the rapids in 1814, upon the express invitation of the commandant at Michilimackinac, the island garrison at the straits between Lakes Michigan



**Sault Ste Marie, 1836**  
Ermatinger House (left foreground); *Canadien* and *métis* houses  
Fort Brady (opposite shore)  
*Watercolour by George Catlin*



and Huron.<sup>68</sup> The commandant had advised them that the "lands of their birth and the graves of their ancestors" were thenceforth to be considered as part of American territory.<sup>69</sup>

### 3.7.3 Garden River.

By 1834, Shingwakonce and his followers were planting crops down the St. Mary's River at *Kitigan Sipi* or Garden River - a place, he said, "where our Fathers did cultivate and where they raised abundance" - though they continued to fish with their relations at the head of the rapids.<sup>70</sup> In subsequent years, the Indian Department, encouraged by the Anglican missionary at the Sault, tried to persuade these Ojibways to move to Manitoulin Island, which had been set apart in 1836 - by agreement with the Odawa and Ojibways of northern Lake Huron - for all Indian people who chose to relocate there.<sup>71</sup> The Pine and his people were assured, however, that, by moving, they would not lose their rights at the Sault. If the Crown required any part of their lands - so the Governor of Canada advised Shingwakonce in 1841 - "it will not be taken without paying for it".<sup>72</sup> The Pine refused the government's offer, as his young men were already building houses at *Kitigan sipi*, and he expected the Crown's representative to provide them with assistance at that location.<sup>73</sup>

### 3.7.4 Lumbermen and Squatters.

The principal reason advanced by Anglican missionary Frederick O'Meara for encouraging Ojibwa people to leave the Sault was their proximity to the Americans - and to the *métis* and French-Canadian *squatters*, all of them Catholics. Both were accused of supplying liquor to the Indian people.<sup>74</sup> In 1834, O'Meara's predecessor Thomas McMurray had tried, apparently with Shingwakonce's approval, to have the squatters evicted.<sup>75</sup> Four years later, at Manitowaning on Manitoulin Island, Shingwakonce protested to the Chief Superintendent of Indian Affairs that the *white people* were constantly cutting and taking away large quantities of pine and other timber from *off his lands* and selling it to the Americans. He

claimed he had received "much abuse and ill usage" from these trespassers, and wanted the Government to intervene on his behalf.<sup>76</sup>

Such lumbering both by *squatters* and by United States citizens had apparently been going on for more than twenty years. Collector of Customs George Wilson claimed in late 1843 that timber for all of the public and private buildings on the American shore had been taken from the British side of the St. Mary's River. He too wanted the Executive Council to put a stop to the practice.<sup>77</sup> The following May, Wilson came upon a *half breed* named Johnston and six others from the American Sault taking a batteau load of cedar rails across the river. Johnston, a brother-in-law of American Indian Agent Henry Schoolcraft, was quite defiant. He knew full well - so Wilson informed the Commissioner of Crown Lands - that there was no British magistrate available to stop him.<sup>78</sup>

### 3.7.5 Aboriginal Claims.

Lacking resources of its own, the provincial government asked the Royal Navy for assistance. During the summer of 1845, Her Majesty's steam vessel *Experiment*, commanded by Navy Lieutenant James Harper, was despatched to Sault Ste Marie and other places on Lake Huron to investigate the complaints brought forward by Wilson and others.<sup>79</sup> At the same time, the government appointed Joseph Wilson, son of the Customs collector, as Crown Lands Agent at Sault Ste Marie, with directions to sell licenses to cut timber and otherwise protect the *public property* at that place.<sup>80</sup> Unfortunately for Shingwakonce and the Ojibways of Sault Ste Marie, one of Wilson's first public actions was to order them to stop cutting timber for their own use. This they protested.<sup>81</sup>

The problem, as the government soon discovered, was finding out how much *public property* there actually was at the Sault. Lieutenant Harper had reported back in September, advising the survey of a Town Plot. This, however, the Executive Council could not as yet

Shingwakonce and (4th) wife Ogahbageyhegoqua, c.1845  
Frost, *Sketches of Indian Life*



recommend, "being uninformed as to the right of disposal by the Crown of the Land on the north shore of Sault Ste Marie".<sup>82</sup> What had given the Council pause was a section of Harper's report, which had pointed out that the Ojibways were claiming the land:

Secondly, not one individual on the British side (with the sole exception of the Hudson's Bay Company) own one foot of soil or land - their Houses are built and their little gardens planted under the fear that they may be ordered off at any moment and lose all - no title deeds can be got as the Indians here claim the land, and the Government I am told has not yet admitted their claim to it.<sup>83</sup>

Wanting further information, the Executive Council referred Lieutenant Harper's report to Captain Thomas G. Anderson, the former Indian Superintendent on Manitoulin Island and Drummond Island, who had more than thirty years experience on the upper lakes. "The Indian Title to the Land on the North shores of Lake Huron on the route from Penetanguishene to the Sault Ste Marie", Anderson advised, "has never been extinguished". On the other hand, he added, it might be difficult to determine "the true descendants from the old stock" because though the lands belonged to the *Chippewas* living on both sides of the water at Sault Ste Marie, many new chiefs had been created in times past and many of the original claimants had either died or moved to other tribes. Nevertheless, the Superintendent made an assumption of continuity:

Presuming then that the Indians are the owners of the soil, grants of it could not be made by the Government and this I believe is the cause that a Mr. Ermatinger of Montreal, who many years since built a large stone house on the British side, at the present time occupied by Mr Wilson, not having it in his power to give a title for the land, cannot sell the building. The poor (French) Canadians and half-breed settlers who are not very numerous may be termed squatters as many of them located themselves without other authority than a permission from the Natives who, notwithstanding the Territory is said to be theirs, cannot sell or give title to any but the British government.

The French-Canadian and *métis*, Anderson added, had been promised by different commanding officers at Drummond Island and St. Joseph's Island that "when the Government should extinguish the Indian title, they would have a pre-emption right and their claim be confirmed by the Government".<sup>84</sup>

### 3.7.6 Crown Surveys.

On October 10, 1845, the Executive Council advised the Governor-General to authorize the survey of a Town Plot and Park Lots at the Sault, provided that "none of the Indians in that quarter can be regarded as descendants of the Original Tribes who inhabited the country in question, and do not possess authority to cede their title to the Crown".<sup>85</sup> On October 15, the Governor's Civil Secretary officially requested that Commissioner of Crown Lands Denis B. Papineau cause the proper surveys to be made, and that the occupants be given titles to such lots as they appeared to possess. Pencilled in the margin of the letter, presumably in the Civil Secretary's hand, is an interesting question: "You will perceive that the order in Council has a proviso inserted. Is it to be understood that the Indians have no claim to the land?".<sup>86</sup> The answer, it seems, was yes. On December 4th, Provincial Land Surveyor Alexander Vidal was given official instructions and sent to the Sault.<sup>87</sup>

Why, one might ask, would the Civil Secretary - who was also administrative head of the Indian Department - be asking the settler government for advice? The answer lies in the political situation at the time. Although the Governor of Canada, Sir Charles Metcalfe, retained prerogative power over Indian matters, he was dying of cancer and had devolved all responsibility to the Tory-conservative Executive Council, headed by Attorney-General W.H. Draper - and to his Civil Secretary and close personal friend, James Macaulay Higginson. In October of 1845, Metcalfe was almost blind, could barely talk or eat, and there was a gaping hole in his cheek.<sup>88</sup> It is doubtful that he saw any of the pieces of paper that were being proffered for his information and signature. Higginson himself was an Irishman who had arrived in Canada with Metcalfe in early 1843, and had only been Superintendent-General of Indian Affairs since May of 1844.<sup>89</sup> Having no personal knowledge of aboriginal people, it is hardly surprising that he would rely on local politicians for information.

The timing of the provincial government's actions, however, is interesting. The Executive Council Minute referring to Captain Anderson's report is dated October 10th, 1845; the

order given the Commissioner of Crown Lands to cause a survey of Sault Ste Marie is dated October 15th. Five days seems an unusually short time to determine that *none* of the aboriginal people on Lake Huron - to quote the original Order in Council - could be regarded as "the descendants of the original tribes who inhabited the Country in question". Certainly no attempt was made to ask any of them.

It is easy to conclude, therefore, that the Draper ministry - a mixture of moderate conservatives (like Draper himself), English-Speaking ultra Tories, and strong French-Canadian nationalists like D.B. Viger and D.B. Papineau<sup>90</sup> - was less than enthusiastic about the concept of aboriginal title. There are several possible reasons for this. Though the *wandering* tribes of the upper lakes - as the Bagot Commission of Inquiry into Indian Affairs had characterized them in its 1844-45 Report - were the only ones in Canada West with whom treaties had not yet been made, they lived on the furthest frontiers of the Province. Persuading them to move onto Manitoulin Island might obviate the need for any future treaties.<sup>91</sup>

Negotiating a purchase would also have involved the expenditure of money, something which the local government was reluctant to do. Provincial politicians had already protested vociferously when the Imperial government insisted that the annuities due to Indian people for earlier purchases - which had been inadvertently omitted from the 1841 legislation giving the Province of Canada control over territorial revenues - were to be paid out of provincial funds.<sup>92</sup> But there is another very important reason for the Executive Council's eagerness to deny aboriginal title. Such claims would have interfered with the mining boom then getting underway along the north shores of Lakes Huron and Superior.

### 3.8 The Discovery of Minerals.

Europeans had known for two centuries that copper and other minerals were to be found on the upper great lakes. In the 1730's, the Sieur Denys de la Ronde had tried with limited success to mine several islands in Lake Superior under a charter from the French King<sup>93</sup>.

The Anglo-American fur trader Alexander Henry and his partners had attempted a similar venture in 1773 at Pointe aux Mines on Mica Bay, just north of Sault Ste Marie, but it failed because their English investors declined to put in any further funds.<sup>94</sup> Knowledge of these deposits had been obtained from Ojibway people, who had been using native copper for centuries before the Europeans arrived. In August of 1834, for example, *Kewekumegiscum* - an Ojibway from the north shore of Lake Huron - sent the Lieutenant-Governor of Upper Canada samples of *yellow metal* (native copper) he had found on St. Joseph's Island, advising that there was a great deal more of it both there and on the mainland opposite. The Anglican missionary at Sault Ste Marie reported that, though the deposit had been reputed for many years, this particular individual had had no inclination until recently to make it known.<sup>95</sup>

### 3.8.1 The Influence of American Mining.

Given the relatively weak state of the Canadian economy, little would probably have been done with such discoveries, had it not been for the success of mining activity on the American side of the lakes. Prospectors had flocked to the south shore of Lake Superior in the early 1840's, following the publication of a favorable report from the Michigan state geologist. By 1845, important copper mines were being worked at Ontonagan, Copper Harbor, Eagle River and other locations in northern Michigan and Wisconsin.<sup>96</sup> American, British and Canadian investors, therefore, began turning their attention to the known deposits in the remote regions of the Province of Canada.

The first formal expression of interest in Canadian mining privileges came in August of 1845, when John Prince and A.D. McLean - both residents of the Sandwich (Windsor) area - and Ohio resident Platt Card applied to the Executive Council to lease mining areas on Lake Superior.<sup>97</sup> The Draper ministry responded with an initial series of mining regulations in the fall of 1845, at the same time as the future of the *public property* at Sault Ste Marie was being discussed. The regulations took the form of licenses of exploration, entitling the discoverers of valuable minerals to further tenure of such tracts of land "for



such period and under such terms as the Government may see fit".<sup>98</sup> Applications were received immediately.<sup>99</sup> In the spring of 1846, Reform member Robert Baldwin accused the Draper government of using the mining permits as part of its arsenal of patronage; he noted that of the 22 licenses given out, six had already gone to members of the Legislature.<sup>100</sup>

### 3.8.2 Patronage.

Some of these legislators, certainly, were Tory supporters of Draper. One was the Hon. William Benjamin Robinson, M.L.A. for Simcoe, who had been Inspector-General (Finance Minister) until the spring of 1845. He would again serve the Draper ministry, in 1846, as chief commissioner of public works.<sup>101</sup> In November of 1845, Robinson and four others - including his nephew William Henry Boulton, M.L.A. (and Mayor) for Toronto and a fellow Compact Tory<sup>102</sup> - applied for a mining tract on the north shore of Lake Superior. Though Robinson paid a deposit of £150 on this location in August of 1847, he assigned his claim to the Montreal Mining Company - which had been incorporated by Act of the Legislature in July of 1847<sup>103</sup> - in the fall of the same year.<sup>104</sup> W.B. Robinson and his colleagues later applied for another tract on the north shore of Lake Huron near LaCloche.<sup>105</sup> One of the leading promoters of the Montreal Mining Company was George Moffat, a prominent Montreal Tory and member of the Executive Council. Two successive Queens Printers, Stewart Derbishire and George Desbarats, were also licence holders on the north shore of Lake Huron.<sup>106</sup>

Other mining companies received their articles of incorporation in the years 1846 and 1847, among them the Huron Copper Bay Mining Company - which had holdings near Thessalon - and the Quebec and Lake Superior Mining Company, with holdings on eastern Lake Superior north of Sault Ste Marie. This company's principal shareholders were a coalition of lumbermen from the lower St. Lawrence River and businessmen from the Hamilton area in Canada West.<sup>107</sup> The Executive Council did its best to ensure security of tenure to the incipient mining industry. In October of 1846, the new Governor-General, Lord Cathcart,

approved the report of a Council committee recommending that licence holders be allowed to work the mines under the authority of the existing licences. The Order in Council also gave license holders the option, at any time within two years, of purchasing locations of ten square miles at a price of four shillings per acre. When all existing licenses had been located, the lands on Lakes Superior and Huron were to be opened for sale at the same minimum price of four shillings per acre, in ten square mile blocks to be designated by Provincial surveyors.<sup>108</sup> This decision was taken in the full knowledge that Indian people were already protesting that the lands were theirs.

### **3.9 Years of Native Protest and Petition.**

Provincial surveyor Alexander Vidal, who had arrived at Sault Ste Marie on the first northbound vessel in the spring of 1846, found he had a problem on his hands. He had immediately been visited, so he informed Commissioner of Crown Lands Papineau on April 27th, by the Indian chief residing in the neighbourhood "called Shingwak" (Shingwakonce), in company with "the young hereditary chief Nabna-ga-ghing (Nebenagoching) and several other Indians for the purpose of claiming all the land here as their own". They protested that the government had never purchased the land from them, and were indignant that Vidal had been sent to survey it - and more particularly at the government having licenced parties to explore for minerals without consulting them in any way. Chief Shingwakonce added that, were they not so few in number, they would have stopped the exploration party which had just gone past them. Vidal promised to make their complaints known to the government, and suggested that they would either be written to or an Agent would be sent up to discuss the matter with them. With this, Vidal said, they appeared to be satisfied and allowed him to proceed with his survey.<sup>109</sup>

#### **3.9.1 The Test of Aboriginality.**

The Commissioner's instructions to Vidal, however, were anything but conciliatory. "The Indians about Sault Ste Marie", said Papineau, "are not considered as having any claim to

the lands which they occupy, having emigrated from the United States". He ordered Vidal to carry on with his survey without any regard to the Indian representations and "should they offer any sign of resistance...we will of course repel the same at once".<sup>110</sup>

If Papineau was postulating a test of *aboriginality* - that Indians inhabiting unceded lands prove their descent from the "original tribes who inhabited the country in question" - then most previous land surrender agreements in the Province had been made with the wrong nations or tribes. What is now southern Ontario was acquired from *anishnabe*-speaking people, not from the Iroquoian groups (Huron, Neutral, Petun) who had inhabited these lands at the time of European contact.<sup>111</sup> The only test the Crown ever applied, in fact, was to deal with those tribes found in possession of lands at the time the Crown wanted to acquire them.

On the other hand, the Commissioner's statement raises several interesting points. If he was arguing that the Crown would not recognize the title of Nations or tribes who had come from areas under foreign jurisdiction - unless it had authorized them to take up the lands in question, having first purchased those lands from the Indian people then in possession - then there is at least some support for his position. In 1784, for example, colonial officials had purchased tracts of land on the Grand River and the Bay of Quinte from the Mississauga-Ojibway for the resettlement of the Loyalist Six Nations who had been driven from their original homeland in New York State.<sup>112</sup> And in 1795 - a year after the American army defeated the confederated Nations of the great lakes region at the Battle of Fallen Timbers<sup>113</sup> - the Crown acquired from the *anishnabeg* some land near present-day Sarnia, Ontario, "for the residence of such of the Western Indians as might wish to settle within the line of the King's Provinces".<sup>114</sup>

This practice of providing a home for Native refugees from the American settlement frontier had continued well into the nineteenth century. For example, American Indian Agent Henry Schoolcraft had noted, in June of 1839, the *migration* of seventy-nine *Chippewas* from Cheboigan, Michigan to the British Manitoulin Islands.<sup>115</sup> Once lands had been assigned

to the emigrants, however, they were entitled to the protection of the same rules regarding the surrender of Indian lands - as the example of the Six Nations Reserve well shows.<sup>116</sup> And when much of Manitoulin Island was covered by treaty in 1862, no distinction was drawn between the British-born and American-born participants.<sup>117</sup>

There are additional difficulties with the position advanced by Commissioner Papineau. In the report cited earlier, Superintendent T. G. Anderson had stated that the lands near Sault Ste Marie belonged to the "Chippewas, residing on the American, as well as the British side of the water". The mere fact of residence on one side of the international boundary had not, in the past, prevented nations or tribes from asserting their title to lands on the other. In terms of aboriginal territorial organization, European boundaries were meaningless. There were several precedents. In 1790, the Crown had acquired the aboriginal title to the north shore of Lake Erie from the "Ottawa, Chippewa, Pottawatomy and Huron Indian Nations of Detroit", who had lands and villages on both sides of the Detroit River.<sup>118</sup> The same nations took part in the Treaty of Greenville in 1795, surrendering the other side of the river to the United States.<sup>119</sup> And the Ottawa Chiefs who signed the agreement with Lieutenant-Governor Bond-Head in August of 1836, allowing Manitoulin and surrounding islands to become a place of Indian refuge, had until recently been living in northern Michigan.<sup>120</sup> Five months earlier, they had been among the Ottawa signatories to the American Treaty of Washington.<sup>121</sup> The claims of American-born "Chippewas" now living on the British side of the St. Mary's River, therefore, were far from unusual.

### **3.9.2 Removal Policy.**

The Ojibways of Sault Ste Marie continued to protest the government's actions. In June of 1846, Shingwakonce addressed a petition to the Governor-General Cathcart, alluding to his own loyal service on the Niagara frontier during the War of 1812, and reminding Lord Cathcart of the promises of support once made by his predecessor Sir John Colborne. Now, the Pine added, "I see men with large hammers coming to break open my treasures to make themselves rich":

Great Father - The Indians elsewhere get annuity for lands sold, if ours are not fit in most places for cultivation they contain what is perhaps more valuable & I should desire for the sake of my people to derive benefit from them.

The Governor-General had clearly been listening to the advice of his Executive Council, for he advised the Ojibwa of Sault Ste Marie to remove to Manitoulin Island. Only there would they be safe from the white man, and only there would the government be able to help them.<sup>122</sup>

As we have already seen, the idea of moving aboriginal people from the path of settlement was not a new one. Here, as in much else, Canada had been influenced by American examples - although the British colonies were consistently a decade or two out of phase with social experiments being carried out south of the border. Following the War of 1812, the United States had at first advocated a *civilization* policy for the resident Indian tribes. By this they meant a rapid, government-sponsored acculturation which would encourage the tribes to adopt American language, customs and economic behaviour - including the private ownership of property - in order to become *useful* members of the general society. As in Canada a decade later, the government also supported various missionary attempts to Christianize the tribes.<sup>123</sup>

When the tribes proved reluctant - or unable - to change their culture overnight, the United States began to contemplate their outright removal. At first, this simply meant a movement beyond the frontier of settlement, such as to northern Wisconsin. But in 1825, President James Monroe formally broached the idea of the eastern tribes moving voluntarily to lands west of the Mississippi River. There the U.S. would organize a government for them which would "preserve order, prevent the intrusion of whites, and stimulate civilization". With the election of Andrew Jackson - Indian fighter and settler politician *par excellence* - promises became threats. An 1830 U.S. law stipulated that no Indian tribe could have political jurisdiction within state boundaries. Tribal members must either become citizens (i.e.

*civilized*) or move beyond state lines. If they refused, their property would be taken and they would be moved, by force if necessary, to lands west of the Mississippi.<sup>124</sup>

In much of the eastern U.S., particularly the southern states, this happened - despite Supreme Court decisions in favour of the tribes. The well-known *Trail of Tears* was the result. In the north, subsequent treaties negotiated by the United States government - such as that of 1836 with the Ottawas and Chippewas of Michigan - stipulated that, after a stated interval, the tribes in question would move to the west.<sup>125</sup> Over the following decade, advance parties of Ottawas and Chippewas, accompanied by American Indian agents, travelled to what is now Kansas to check the suitability of the terrain. Although some would eventually move, most tribal members used a variety of stratagems that would enable them to remain in northern Michigan or to find a safer haven across the international boundary. For example, several of the Ottawas who came to the Catholic mission settlement at Wikwemikong on Manitoulin Island in the late 1830's and early 1840's had earlier been to Kansas.<sup>126</sup>

### 3.9.3 Reminders of the Treaty-making practice.

It was not just Indian people from the Sault who were concerned about the inroads of prospectors and developers. The Indian Superintendent at Manitowaning, George Ironside, had been approached in September of 1846 by a number of local Ojibways from Manitoulin and its adjacent islands on the north shore of Lake Huron. They had brought specimens of copper ore and of coal - something, Ironside his superiors, they "have a very high idea of the value of" - and they asked him to beg the Governor-General "that any mines which may be discovered shall not be subject to the enterprise of private individuals". They wanted the government to control such activities so that they themselves would receive some of the benefits.<sup>127</sup>

It is clear that the Draper ministry (still in power under Metcalfe's successor) was quite prepared to ignore any legal basis for native claims. The Report of the Bagot commission

on Indian Affairs, which had been delivered to Governor Metcalfe in January of 1844, had acknowledged that Indian people had a "right of occupancy" to the lands they claimed as their own. And the Commissioners had noted that, pursuant to His Majesty's Proclamation of October 7th, 1763 - which they quoted at some length - the Crown had not felt entitled to dispossess the Indians of any lands "without entering into an agreement with them and rendering them some compensation". They then proceeded to list a number of these treaties in their report.<sup>128</sup>

It was this practice which Captain T.G. Anderson had meant when he advised the government in September of 1845 that, if the Indian people of the Sault were recognized as "owners of the soil, grants of it could not be made by the Government".<sup>129</sup> And it was the violation of this practice which so outraged the Sault Ste Marie chiefs. In a petition which they sent to the new Governor-General, the Earl of Elgin, in July of 1847, Chiefs Shingwakonce, Nebenagoching and others reminded the government that when *the English* had wanted the Island of Michilimackinack and, later, St. Joseph's Island, they had purchased them from their forefathers in public council "and got a parchment written on to that effect which no doubt you have with you too".<sup>130</sup> This was a reference to agreements which had been made with the Ojibways of the Sault Ste Marie region in 1781 and 1798.<sup>131</sup>

Most of the signatories to the 1798 St. Joseph's agreement had belonged to the *Crane Band* at the Sault - from which both Shingwakonce and his son-in-law Nebengagoching were descended.<sup>132</sup> Fur traders of the Northwest Company had also attempted in 1798 to get a deed from the very same Ojibway people for the north side of the St. Mary's River.<sup>133</sup> One would assume that if their title to the British side of the river was considered valid in 1798, it should still have been valid a half-century later.

The Ojibways were aware that treaties had been made throughout Upper Canada. "There are a great many lands of our tribe settled nearer to Your Excellency than we are", the Chiefs had continued in their 1847 petition - mentioning the *Chippewas* (Ojibways) of Saugeen, Owen Sound, Penetanguishene, Rama, Rice Lake and River Credit. They had all

"sold their lands to the government and are now, every band that has sold, in the enjoyment of annuities arising from the sale". In fact, "there is not yet an instance of the British Government occupying the Lands of any of our tribes or parts of tribes without the consent and payment of the Indians found in possession". Knowing of "no deer skin or other treaty" existing to suggest that they had parted with their lands, the Chiefs asked the Governor-General to meet them at Montreal or some other location to make a treaty "in the same form and manner as has been always the custom between our nation and the British Government on all similar occasions". Far from being incipient rebels, the Ojibwa of Sault Ste Marie were acting as aggrieved Loyalists - and the Reverend Doctor O'Meara of Manitowaning, their former Anglican missionary, knew this, since he had translated their petition.<sup>134</sup>

Hardest for the Chiefs to accept was that some of their land had already been given to the miners. Worse than that, Superintendent George Ironside had recently come up from Manitoulin Island to tell them not to interfere with the gentlemen who were already taking possession of their gardens and village sites at *Kitigan Sipi* and elsewhere about Sault Ste Marie.<sup>135</sup> Though the highest concentration of mining locations was near the Sault, these particular Ojibways were not the only ones affected. By 1848, there were locations all along the north shores of the two lakes, from Pigeon River on the west, to the mouth of Whitefish River on the east.<sup>136</sup> Those locations are shown on the two maps at the beginning of this report.

#### 3.9.4 Rejection of Native Claims.

The mining companies were themselves concerned about the potential for violence if Native claims were not settled. In May of 1847, George Desbarats of the Montreal Mining Company reported for the Governor General's information that one of the exploring parties had already been driven off by the Indians. He wanted to know how the government was planning to deal with the problem.<sup>137</sup> The newly-arrived Governor-General, who was taking a more active interest than his predecessors in the supervision of Indian Affairs - in



1849, he would appoint his younger brother, Colonel Robert Bruce, as Superintendent-General<sup>138</sup> - asked the Executive Council for a report on the matters raised in Desbarats' letter.<sup>139</sup>

Elgin had inherited the Tory-Conservative ministry, now led by Henry Sherwood, so the report which came back in November was signed by D.B. Papineau, the Commissioner of Crown Lands. At first glance, the content seems favourable to the *anishnabeg*. "The region of country bordering on the North Coast of Lakes Huron and Superior", the Report begins, "has not been marked off on the Maps of this Office as having been ceded by the Indians to the Crown". As it was desirable that "the Indians should be protected in the possession of any lands which they hold and occupy", provincial surveyors should be requested to collect as much information as possible on Indian settlements in these areas, showing the "nature and extent of the areas claimed, the Tribes claiming, and the circumstances upon which their claims rest".<sup>140</sup>

The final part of the report, however, proceeded in advance to dismiss any such claims completely - on the grounds that the claimants had migrated eastward from the Mississippi, replacing the original *Algonkin* inhabitants - the remnants of whom were said to be living at the Lake of Two Mountains near Montreal. The claimants, therefore, had no right to the land, firstly "because they are not the original proprietors of the soil; secondly, because being only a small tribe they do not form a Nation and therefore cannot claim the Territory".<sup>141</sup>

The second part of this argument was entirely new. Practically all land surrender agreements in Upper Canada had been made with the same *Nation* - the Ojibway or Mississauga-Ojibway - as those on the north shores of the two upper lakes. At the same time, the Crown had consistently recognized that it was dealing with smaller units than the *Nation* as a whole. The 1798 agreement for St. Joseph's Island, for example, and another with the *Chippewa* the same year for lands near Penetanguishene, were signed by entirely

different Chiefs and principal men.<sup>142</sup> And an agreement dated 10 July 1827, which covered parts of southwestern Ontario, had been signed by certain named "Chiefs and Principal Men of *that part* (emphasis added) of the Chippewa Nation of Indians inhabiting and claiming the territory or tract of land hereinafter described".<sup>143</sup>

Papineau's argument about the eastward migration of the Ojibway had been copied in large part from a Report sent to him in March by Provincial geologist W.E. Logan, who was in charge of investigating the mineral potential of the north shores of the upper lakes. Logan, in fact, was referring to the estimated six or seven thousand Ojibwa living between Sault Ste Marie and the American boundary past Fort William.<sup>144</sup> By using this argument - the reverse, as it happens, of the traditions of the Ojibway people themselves<sup>145</sup> - Papineau was impugning the title, not just of these people, but of all the Ojibways who then inhabited the north shore of Lake Huron.

This is somewhat surprising, because only a decade earlier, Upper Canada Lieutenant-Governor Sir Francis Bond Head had secured the signatures of seven Lake Huron Ojibway chiefs - representing groups living between the French River and St. Joseph's Island - to his agreement setting aside Manitoulin and surrounding islands as an Indian refuge.<sup>146</sup> No one had then questioned their right to make the agreement. In fact, in a Report on Indian Affairs which Mr. Justice J.B. Macaulay presented the Lieutenant-Governor in 1839, then Chief Superintendent of Indian Affairs S.P. Jarvis had advised that the various *Chippawas* then living between Penetanguishene and the Mississagi River "consider themselves the lawful possessors of the vast extent of country in which they range as hunters". And, said Jarvis, the Ojibways of Sault Ste Marie claimed the lands on the British side of the St. Mary's River as their own.<sup>147</sup>

### 3.9.5 Lower Canadian Opinions on Aboriginal Title.

D.B. Papineau's Report concluded by stating that there should be no objection "to offer the Indians tracts or township lands for actual settlement and subject to the laws of the land and

for agricultural purposes".<sup>148</sup> This particular suggestion would actually be carried out in Canada East in 1851, when the Indian tribes of what is now Québec were allotted lands by statute - without a specific surrender of or reference to their aboriginal claims.<sup>149</sup> This fact, plus the reference to Lake of Two Mountains, strongly supports the conclusion that the negative comments in this Report were the personal work of D. B. Papineau himself.

Why, then, would Papineau have been so hostile to these Ojibway claims? The most obvious possibility is that, as a strong French-Canadian nationalist, like his older brother, the *Patriote* and former rebel Louis-Joseph Papineau, Denis-Benjamin sympathized with the plight of the French-speaking Canadian and métis *squatters* at Sault Ste Marie.<sup>150</sup> But there appear to have been other reasons. For one, the Papineau family seigneurie on the Ottawa River at Petite Nation was itself subject to an aboriginal land claim. This estate - which Denis-Benjamin had managed until his brother's return from French exile in 1845 - was just upriver from the Sulpician Mission to the Algonquins and Nipissings at Lake of Two Mountains (Oka). Since at least the late eighteenth-century, these Indian people had been pressing the Crown for recognition of their aboriginal claim to all the land on either side of the Ottawa as far as Lake Nipissing.<sup>151</sup> In March of 1847, the Governor-General - presumably on Papineau's advice - had recommended that the Algonquins and Nipissings move to Manitoulin Island.<sup>152</sup>

There was also no love lost between Native people and the Lower-Canadian rebels of 1837 and 1838, the latter having invaded Indian villages at Oka and Kahnawake in search of arms.<sup>153</sup> Papineau's relative and former colleague in the Draper ministry, Denis-Benjamin Viger - imprisoned from 1838 to 1840 for his alleged role in the Rebellion - had originally hoped that the Indians would join the rebels. Instead, they had played an active role in hunting the insurgents down.<sup>154</sup> So D.B. Papineau's 1847 Report might also be seen as a form of long-term revenge.

### 3.9.6 Upper Canadian Opinions on Aboriginal Title.

The apparent contradiction with the first part of the Papineau report is easily explained. That portion of the draft is in the handwriting of William Spragge, then chief Clerk in the Crown lands office.<sup>155</sup> As a resident of Upper Canada (Ontario), Spragge - who would become Deputy Superintendent-General of Indian Affairs in 1860 - was obviously familiar with the treaty-making process in that province. Interestingly, his draft had contained a sentence recommending that, as well as the provincial surveyors, "the Superintendents of Indian Affairs be required to obtain & furnish such particulars for the information of the Government as they can procure, adapted to show clearly the nature and extent of the claims of the Indians, the Tribes claiming, and the circumstances upon which their claims rest." That reference was deleted from the final report, presumably because Papineau and his colleagues did not want Indian Department employees - who, unlike the provincial surveyors, were not under their control - to be advising the Crown's representative.<sup>156</sup>

### 3.9.7 The Government Investigates.

The new Governor-General, however, seems to have suspected the Executive Council's motives. Lord Elgin reported to the Colonial Secretary in 1849 that he had found Papineau's report "not entirely satisfactory", and it is obvious from his later actions that he was referring to the second part.<sup>157</sup> Elgin profoundly disliked the Draper ministry - "Metcalf's government of jobbers" he later called them<sup>158</sup> - and following the change of administration in the spring of 1848, he brought the subject to the attention of the new Reform (Liberal) ministry of Robert Baldwin and Louis H. Lafontaine.<sup>159</sup> What had prompted Elgin's action was a report which had just been received from Alexander Vidal, then surveying mining locations at the Sault. Vidal warned that a tract lying on both sides of the outlet of Garden River to the northward of St. George or Sugar Island - assigned in May of 1847 to B.H. Lemoine - actually encompassed an Indian settlement. And he pressed the strong moral claim which the Ojibway people had to favourable consideration.<sup>160</sup>

On April 26th, the new Commissioner of Crown Lands, James Hervey Price, reported back to the Governor in Council on Vidal's letter. This report (actually written by Chief Clerk William Spragge) repeats Spragge's earlier observation that the line of coast and Country on the north shore of the two lakes "does not appear from any Instrument on record in the office of this Department to have been ceded by the Aborigines or other Indians to the Crown"; and urges that the claims of the Indians be investigated and arranged "before Patents in favor of the parties who applied for them issue". Although several companies and individuals had already paid the purchase price set out in the October 1846 Order-in-Council, no mining lands had yet been patented. The Report also suggests that the investigation be carried out either by the Indian Department or by means of a separate Commission sent to treat with the Indians.<sup>161</sup>

### 3.9.8 The First Anderson Commission, 1848.

Late that same spring, a delegation of Chiefs headed by Shingwakonce and Nebenagoching arrived at the seat of government in Montreal to press their grievances directly with the Governor-General. It was both as a result of their direct pressure and of the Price-Spragge report that, on July 30th, Elgin ordered Indian Superintendent Thomas G. Anderson to travel to the upper lakes and "examine into these Indian claims".<sup>162</sup> What the Chiefs did not know, however, was that the Council had already disregarded William Spragge's advice. By Order in Council of 17 June 1848, they authorized the issuing of a Patent to the Montreal Mining Company for its north shore location opposite St. Joseph's Island, on the grounds that the Company had met the various conditions set out in earlier Orders in Council.<sup>163</sup> Presumably, more such patents could be expected.

Anderson spent the latter part of August at Sault Ste Marie. Shingwakonce was one of the first to see him, complaining again that miners had occupied the site of the houses and flourishing gardens at the mouth of *Kitigan Sipi*. The Ojibways had been hoping to build a church for their Anglican Minister as well as a schoolhouse at Garden River. "We therefore beg", the Pine told Anderson, "that our Great Father would supply us with the means of

doing these things, or at once purchase our Land - we would then be able to accomplish these objects with our own money".<sup>164</sup>

On the 18th and 19th of August, Anderson held a general council at Sault Ste Marie. Present were not only members of the two local groups, but representatives of Ojibway bands from both the north shore of Lake Superior and from the north shore of Lake Huron as far east as the Mississagi River. Five Anglican clergymen attended, including Bishop John Strachan of Toronto, Dr. F.A. O'Meara of Manitowaning, and Anderson's own son, the Reverend Gustavus Anderson, who was the missionary at Garden River. Also present were Collector of Customs Joseph Wilson, Allan McDonell - described as a Licence holder in the Quebec Mining Company - and "late American Indian Agent" George Johnston.<sup>165</sup> The latter - probably the same *half breed* named Johnson who was observed helping himself to Canadian timber four years earlier - would later serve as interpreter at the Robinson Treaty. In this instance, his services were superfluous, since T.G. Anderson spoke Ojibway fluently.<sup>166</sup>

### 3.9.9 Shingwakonce's Speech.

Anderson opened the Council by noting the complaints received by government that "many white people had taken possession of your lands, not only of the mineral which they consider valuable, but also of your Farming land, your Hunting Grounds, and over the farms which you have cultivated and the houses you live in". He then asked them not only to document these complaints, but "to prove on what authority you claim these lands, secondly whether you have given permission to the whites to occupy them". The Ojibwa response was eloquent. "You wish to know why we call this our Land", Chief Shingwakonce began, "we think the answer is very plain":

The Great Spirit placed us on this land long before the Whites crossed the Great Salt Lake. Our ancestors then lived in happiness - there being plenty animals for food, at that time we had everything we could desire - the animals supplied us with food, the skins were taken from their backs and placed on ours for covering.

"Look here", the Chief added, holding some ancient relics in his hand, "these are proofs that our ancestors inhabited the country before the Whites. Here is a bone for a spear, clay for pipes and clay used for kettles and ornaments - these are the remains of what were in use before the whites came to this country".

### 3.9.10 *Peau de Chat's Speech.*

These sentiments were echoed by Chief Joseph *Peau de Chat*, spokesman for the Ojibways of Fort William on Lake Superior. "You white people well know, and the Red Skins know how we came in possession of this land - it was the Great Spirit who gave it to us - from the time my ancestors came upon this earth it has been considered ours". Chief *Peau de Chat* objected to the implication that the whites could claim the land, simply by coming upon it:

After a time the whites living on the other side of the great salt lake, found this part of the world inhabited by the red skins - the whites asked us Indians, when there were many animals here - would you not sell the skins of these various animals for the goods I bring - our old ancestors said Yes I will buy your goods, they the whites did not say any thing more, nor did the Indians say anything - I did not know that he said come, I will buy your land, everything that is on it under it etc etc he the whites said nothing about that to me, and this is the reason why I believe that we possess this land up to this day.

Both *Peau de Chat* and *Shingwakonce* reminded Anderson of the service the Ojibwa had rendered the English, first in fighting the French, then in combating the Americans. When the war was over, said *Peau de Chat*, "the English did not say, I will have your land, nor did we say you may have it - and this father you know, this is how we are in possession of this land".

*Shingwakonce* presented Anderson with a bundle of papers, representing correspondence he had received over the years from government officials who had promised them compensation if their lands were wanted for settlement. "When you wanted to make a strong place on our Island (St. Joseph's)", the Chief pointed out, "you called a Council of all the Indians concerned and bought the Island from us:

the English promised our Fathers that they would never take any land from them without purchasing it - we believed their words - and have not as yet been deceived - whenever the English have required any of our lands, they have held councils and purchased such lands as they required from us - for these reasons we consider the land to be ours and were not a little astonished to find that the money (mineral) on our lands has been taken possession of by the White Children of our Great Mother, without consulting us. we rested on the belief that it was only a preparatory step taken by the Governor to fix a value on it and then purchase from us.<sup>167</sup>

### 3.9.11 Damage Claims.

Anderson fully accepted the Indian claims. There "does not appear a doubt", he advised the Governor-General, "but what the present race are the proprietors of the vast mineral beds and unceded Forests, from Grande Bateure (now Bright Point) near Missisaugeeng River on Lake Huron, to the Boundary line at Pigeon River on Lake Superior, throughout which region numerous Locations have been granted". Their claim, said the Superintendent, "continued unmolested from time immemorial to the present day. They do not admit that it can be owned by any power under pretext of the right of conquest".<sup>168</sup>

In answer to Anderson's question about the damages sustained to their land, both Chiefs had cited the fires set by the miners, which had destroyed timber and driven away the game. Shingwakonce reiterated that, at Garden River, the limits marked out by the miners included Indian farms and houses; and Company officials were telling the Ojibwa people they could no longer cut hay or timber on any of the staked lands. In his covering letter, Anderson confirmed these allegations. The Indians at Garden River, he said, had forty acres under cultivation in potatoes, corn and other crops and had built fifteen houses themselves, but all of their improvements were within the mining locations marked to Messrs Clark, Elliot, Lemoine and Simpson.

As for damages, the gentlemen of the Quebec Mining Company corroborated the Indian complaints. Any fires caused on occasion by the Indians themselves were as nothing "compared to the damage done by the burning of the Forest and blasting of the Rock by the



mining companies who have purchased sixty or seventy Locations at intervals comprising a distance of 300 or 400 miles on Lake Superior". The Superintendent then delivered a direct rebuke, for the Governor-General's benefit, to the policies of the previous administration, warning of the potential for further trouble:

I may here add, that not only the Indians but possessors of locations and every individual with whom I have conversed on the subject consider the sale of these locations oppressive, and in the spring of 1847 when a Mr. Bristol began to explore their land at Garden River, the Indians successfully opposed him until Mr. Superintendent Ironsides assured them he was acting by order of the Government and though the Indians are incapable of openly opposing the forced occupation, there is no doubt in my mind but what they will give serious annoyance until their rights be extinguished.<sup>169</sup>

### 3.9.12 Anderson's Recommendations.

Superintendent Anderson recommended that the Government "extinguish the Indian right, by a treaty granting to the Aborigines an equitable remuneration for the whole country, which as far as the natives are concerned would be most to their benefit in a perpetual annuity, making such reserves to the Indians as may be necessary for them to cultivate hereafter". By "whole country", Anderson clearly meant more than the mining tracts alone. Might it not be worthy of consideration, he suggested, "at once to extinguish the Indian Claim to all the unceded Lands north and west of the Midland, Newcastle, Home and Simcoe Districts as far as the Ottawa or Grand River and following the height of Land or the Hon(ourabl)ble Hudson's Bay Company Boundary line north of Lakes Huron and Superior, until it strikes the Frontier line between Lac Le Pluie and the mouth of Pigeon River".<sup>170</sup>

Anderson's letter provides the first real indication that Indian people inhabiting the remaining unceded parts of Canada West might also be asked to surrender their aboriginal rights. Though the various tracts licensed or sold to mining concerns extended no further east than the mouth of the Whitefish River on Lake Huron, the provincial government had also been receiving pressure to open for settlement and development the lands between

northeastern Georgian Bay and the back parts of the settled districts of Canada West. In June of 1845, for example, surveyor David Thompson had written to Commissioner Denis Papineau from Montreal, urging the survey of all the country between the Muskoka and French Rivers. Only by ascending the various unsurveyed rivers and streams along this impenetrable coast, he argued, would it be possible to ascertain the true extent of good land available for settlement - which might, in his estimation, amount to two million acres. With mill privileges, that could bring the Crown as much as £400,000.<sup>171</sup>

### 3.9.13 The Settler Government's Response.

The idea of treating for a larger area of land, however, was at first rejected. The Governor-General had received Anderson's Report on the 2nd of October, and immediately referred it to the Executive Council.<sup>172</sup> The Commissioner of Crown Lands' subsequent report of the 16th October - again from the pen of William Spragge - simply recommended that, "for the present", the government reserve to the Indians the lands they had actually improved and built upon, together with the adjacent lands to the distance of a mile and a half on each side by five miles in depth.

However, Spragge also noted that these Indian claims were the first which had arisen "since the Casual and Territorial Revenue became transferred by the Imperial Government to the Colonial Authorities & Legislature of the Province" - that is, since the provincial government had gained control over the revenue from Crown lands.<sup>173</sup> Every so subtly, William Spragge was telling the Council that the fears so often expressed by British authorities were true - settler governments could not be trusted to protect the land rights of aboriginal people. As a select committee of the British House of Commons had warned in June of 1837, the "settlers in almost every Colony, having either disputes to adjust with the native Tribes, or claims to urge against them, the Representative body is virtually a party, and, therefore, ought not to be the judge in such controversies". The Committee had wanted aboriginal affairs to remain in the hands of colonial Governors.<sup>174</sup>

### 3.9.14 The Governor's Response.

Lord Elgin's own reaction to T. G. Anderson's 1848 Report was that (as he later explained to the Colonial Secretary) while favourable to the Indians, the information the Indian Superintendent had collected "was not sufficiently complete to enable the Government to propose terms to the Indians".<sup>175</sup> This suggests that Lord Elgin was already thinking of making some sort of arrangement to settle native claims. In late November of 1848, certainly, the Commissioner of Crown Lands wrote to Anderson, asking him to provide for the information of his Excellency in Council, particulars of "all the Settlements and Posts occupied by Tribes or divisions of Tribes on the borders of Lakes Superior and Huron; the population of each place (classed), the period they came there, from whence; whether they desire to remain and a reservation of Land to be made, the quantity or extent of country which they claim etc.". <sup>176</sup>

Superintendent Anderson replied on December 2nd that the task would be impossible without him visiting the different localities and "collecting the Tribes at their different places of resort" to classify and take their numbers, at the same time making the appropriate enquiries about their origins. He also pointed out that because the country had not been surveyed, the distances of each claim along the lake shores could only be calculated by the supposed number of miles allowed by voyageurs travelling from one point to another. As for the distance each tribe might claim interior from the Lakes, if the Government wanted to avoid the enormous expense of survey, they could obtain maps drawn by the Indians themselves. This, however, would require at least one to three days with each Tribe.

Anderson also advised that there were *claimants* in the interior near various inland lakes - the principal ones, so he had been told, being Lakes Nipigon, Nipissing, Temiskaming and Whitefish Lake. Their population, however, was said to be very small, and "nothing in comparison to the extent of country over which they roam in quest of game, and I believe the majority of the inhabitants resort, during the summer season, to the shores either of

Lakes Superior or Huron." The Superintendent, therefore, repeated his earlier observation about the expediency of treating for as much territory as possible:

hence it appears to me the cost to secure the whole unsurveyed country, would be little more than to extinguish their title to a strip round the Borders of the Main Lakes, and certainly it would obviate all after dispute on the subject which experience has proven would be important.<sup>177</sup>

### 3.9.15 Further Ojibway Petitions.

The government had by this time been receiving requests from other Ojibwa bands along the Lake Huron shore, who were asking not only for reservations of land, but also for the preservation of their access to resources. Provincial geologist Alexander Murray reported in December of 1847 that, while surveying the Bruce mining location, two local chiefs named *Keo-konse* and *Naw-e-go-bo* had pressed him - despite his objections - to make their case to the Indian Department for a six-mile Reserve along the coast between the Thessalon River and the Grande Batture (Bright Point), which they required for habitation and for a *fishing ground*.

The Chiefs told Murray that their Band's ancient territory had extended from the *Paw-ka-sa-ka-se-gon* (Echo) River on Lake George to the Grande Batture; and that the Thessalon River and chain of lakes beyond it were the highway to their hunting grounds.<sup>178</sup> Their statements certainly corroborate Superintendent Anderson's observation that most of the bands returned from the interior to the lakeshore in the spring and summer. And the Indian Department - which had received Murray's letter in late January of 1848<sup>179</sup> - thus had further evidence that the north shore Ojibway were claiming their lands on the basis of aboriginal title.

Chiefs *Keokonse* and *Naoquaho* - both of whom later took part in the Robinson-Huron Treaty<sup>180</sup> - professed their loyalty to the Crown and told the surveyor that they wanted to live "in good fellowship with their white neighbours". They hoped to receive title to enough

lands for the maintenance of themselves and their children so that they "could never again be interfered with". Alexander Murray, however, cautioned the government that the lands the Chiefs wanted reserved were valuable for other purposes. Copper veins had been found on either side of the Thessalon River, and he fully expected that further deposits would be discovered.<sup>181</sup>

### **3.10 The Rule of Law.**

Until T. G. Anderson's visit to Sault Ste Marie, the Ojibwa had followed the practice - as Indian people had always been urged to do - of communicating directly with the Crown's representative in Canada through the medium of the Indian Department. On occasion they had even brought their complaints to the attention of provincial government officials. In the fall of 1848, however, apparently frustrated by the lack of attention shown their grievances, they sought outside advice. On the 9th of October, Superintendent Anderson wrote an urgent letter to the Civil Secretary, advising him of important information he had just received from his son at the Sault. "It appears", he warned, "that the Indians have lately taken the opinion of a Mr. McDonald, an attorney in Toronto, on the subject of their Lands".<sup>182</sup> It was a significant action, and the first of its kind.

#### **3.10.1 Banning the Removal of Timber.**

Anderson enclosed the copy of a public notice which the lawyer had drafted for Shingwakonce's signature, though it had not as yet been executed. It warned mining companies not to remove timber from these lands, because the Ojibway people intended to reserve them for their own use.<sup>183</sup> Anderson urged the Governor General to write these people immediately on the subject of their claims for, not being "under the influence of civilized control", they were prey to ideas emanating from the American side. They should be told, said the Superintendent, that the matter was under consideration and that a full answer would be sent to them in the spring; in the meantime, they should be warned to "treat the whites kindly and not allow the voice of bad birds to enter their ears".<sup>184</sup>

The Governor-General referred Anderson's letter immediately to the Executive Council<sup>185</sup>. It is clear, however, that the Council disregarded the Superintendent's advice about an immediate reply, because the following spring, the lawyer for the Sault Ojibways wrote directly to the Governor's Secretary, urging the provincial government to quiet his clients' minds by telling them they would not be disturbed in the possession of their lands.<sup>186</sup> Superintendent Anderson seems not to have realized that he had already met this *lawyer McDonald*, for the same gentleman had attended the Council with the Ojibwa at the Sault in August of 1848. Allan Macdonell - identified by Anderson as a "licence holder in the Quebec Mining Company" - was a former law partner of the ultra-Tory politician Sir Allan Napier MacNab. He had been a member of the Upper Canada Bar since 1832.<sup>187</sup>

### 3.10.2 Enforcing Aboriginal Title.

In his letter of April 21st, Allan Macdonell repeated for the government's benefit that he had been engaged by the Chiefs of the Ojibway tribe of Indians "to remonstrate against the occupancy by whites of certain portions of country claimed by them". These people, he reported, were particularly anxious about the Lemoine and Simpson locations which encompassed their gardens and buildings. Many of them sold their produce at the village on the American side of the St. Mary's River, and because the planting season was fast approaching, they were concerned about their lack of tenure. By "selling locations to individuals before having had some treaty with the Indians", Macdonell noted, the government had "created much discontent". He also questioned whether the location tickets for the tracts in question were actually valid, as Messrs Lemoine and Simpson had not yet made any attempt at mining.<sup>188</sup>

Macdonell was actually in Montreal, then the seat of government, when he delivered his letter. His arguments about the validity of the location tickets were not new, for he had made them on a visit to the city the preceding November for the purpose of bringing the actions "of the late Administration under the notice of the new". The Baldwin-Lafontaine ministry, he later claimed, readily admitted the injustice of what had previously taken place,

but preferred to do nothing about it, even though he had pointed out how easily they could remedy the situation. The original mining location tickets had stipulated that if installments were not paid, or if work had not commenced within eighteen months, the locatees would forfeit their £150 deposit money. Not only had Messrs Simpson and Lemoine failed to comply with these conditions, he argued, but so had at least sixty-five other locatees along the lakes. Instead of cancelling the tickets and paying the forfeited money to the Indians - since, Macdonell said, it in effect belonged to them - the government had perpetuated the wrong by extending the period in which the locatees would be allowed to meet their conditions.<sup>189</sup>

Unsuccessful in pressing his clients' case, Macdonell apparently returned to Lake Superior in May, where he found that the Ojibways had lost all patience with the government and were proposing "to drive the miners out of the country". He was able to dissuade them from resorting to force only by promising to accompany a delegation of Chiefs back down to Montreal with an address for His Excellency the Governor-General urging a speedy settlement of their claims.<sup>190</sup>

### 3.10.3 The Sault Chiefs Visit Montreal.

The delegation from Sault Ste Marie, which included Shingwakonce, Nebenagoching and Macdonell himself, arrived in Montreal in late June of 1849. Their presence created quite a stir in the capital. Shingwakonce and Nebenagoching, for example, had their portraits painted by the prominent local artist Cornelius Krieghoff.<sup>191</sup> On July 7, the *Montreal Gazette* published the address which the Chiefs had presented a few days before to Lord Elgin, describing it as a "very characteristic and eloquent appeal from the Chippewa Indians to the British Government".

In more flowery language than their previous submissions, the Ojibwa repeated their request for a treaty. "Listen, Father, to the voice of a people who are now but the remnant of a nation once numerous and powerful", their address began, "of a nation, whose seats were

large while yours were small. Of the nation which, in times past, England's sovereign sought as allies". After reminding the English of their help in time of war, the Chiefs referred to recent pressure for resource development:

you have hunted us from every place as with a wand, you have swept away all our pleasant land, and like some giant foe you tell us "willing or unwilling" you now must go from amid these rocks and wastes, I want them now! I want them to make rich my white children, whilst you may shrink away to holes and caves like starving dogs to die. Yes Father! your white children have opened our very graves to tell the dead, even they shall have no resting place.

The Crown, they said, had promised them compensation for the lands occupied by the miners, but nothing had yet been done in the years since the miners had first arrived among them. "Last summer you caused a council to be called; when we learned of this our hearts rejoiced, for we then hoped that you meant to treat with us for our lands, when we found no mention made respecting that, our disappointment was great". In fact, the Governor's representative (Anderson) had even asked them by what right they claimed these lands:

Father - Can you lay claim to this land? If so, by what right? Have you conquered it from us? You have not; for when you first came among us your children were few and weak, and the war cry of the Chippewa struck terror to the heart of the pale face. But you came not as an enemy, you visited us in the character of a friend. Have you purchased it from us, or have we surrendered it to you? If so, when? and how? and where are the treaties?

The Great Spirit, said the Chiefs, had originally stocked their lands with animals for clothing and food, but now these were gone. However, the Great Spirit had foreseen that this would happen "and placed these mines in our lands, so that the coming generations of his red children might find thereby the means of sustenance". Their address closed by entreating the Governor to "call a council of our nation as speedily as possible, to enter into some treaty with us for our lands, so that no bad feelings shall exist between your red children and your white children".<sup>192</sup>

According to the newspaper report, Lord Elgin had replied to the Chiefs in equally formal language, thanking them for their reminder of the performance of his *Red Children* in aiding



his *White Children* in time of war. "The lands taken from you, of which you complain", he assured them:

were sold before I assumed the Government of this Province. I will use every exertion in my power to the end that no injustice shall be done to you. In the meantime, let me advise you to return to your homes, leaving Mr. Macdonell, who is your friend, to attend to your matters here.<sup>193</sup>

After the Chiefs had returned to the Sault, Macdonell did remain behind in Montreal. On July 19th, he received a letter from Commissioner of Crown Lands J.H. Price, which offered his clients the assurances Superintendent Anderson had wanted delivered the preceding fall. Price told Macdonell he had brought "the claims of the Indians upon Lake Superior whom you represent" to the attention of the Government, and he had been directed to get these claims adjusted as speedily as possible. Macdonell was to assure the Ojibwa that Price would "lose no time in bringing the matter to a close, by a treaty between themselves and the Executive Government".<sup>194</sup>

#### 3.10.4 The Vidal-Anderson Commission.

The Commissioner of Crown Lands' apparent promise of an immediate treaty seems curious, because less than three weeks later, the government launched yet another voyage of investigation. By Order in Council of August 4th, 1849, Superintendent T. G. Anderson and Provincial surveyor Alexander Vidal were appointed commissioners to "visit the Indians on the north shores of Lakes Huron and Superior, for the purpose of investigating their claims to the territory bordering on those lakes, and obtaining information on various points relative to their proposal to surrender their lands to the Crown, with a view to the final action of the Government on the subject".<sup>195</sup>

One view of Price's behaviour is that he was simply seeking answers to the series of questions he had posed to Anderson the previous November. Indeed, the Governor-General himself wrote the following year that Anderson had been sent up to the lakes again in the summer of 1849 - this time with Mr. Vidal - to complete his enquiries begun in 1848.

However, there is also considerable evidence that the government wanted to prevent the Ojibways from taking any further actions of their own, at least until the government's own delegation could reach them. This would explain the promise of a treaty. It is very clear, moreover, that the government wanted no dealings whatsoever with Macdonell himself.

### 3.10.5 Allegations of Misconduct.

On July 3rd 1849 - at virtually the same moment that the Ojibways were meeting with the Governor-General - the Commissioner of Crown Lands had received a letter from James Cameron, a Baptist Missionary at the Sault, reporting on a Council meeting at Garden River which he had attended on the 16th of June.<sup>196</sup> Allan Macdonell (Cameron calls him McDonald) had apparently told the Ojibways that the Government had a large sum of money which it had received for the "various and numerous" mining locations on the north shores of Lakes Huron and Superior, money which Macdonell "openly stated to them as belonging to the Indians". Macdonell had advised them to send a delegation to Montreal to urge the Government to make an immediate treaty "and to request the Governor General to commission someone to call a general council for that express purpose".

Cameron also claimed that Macdonell had already drawn up a memorial for presentation to Lord Elgin, which was interpreted to those present by Lewis Cadotte, a local *half breed*. After it had met with their approval, Cameron added, the Reverend Gustavus Anderson gave in the names of the chiefs whose names were to be attached to the memorial, and a copy of it was then handed to the Collector of Customs, Joseph Wilson.<sup>197</sup> Since one of Shingwakonce's sons later told Vidal and Anderson that Macdonell had written the address given to Lord Elgin, there is no particular reason to doubt the Reverend Cameron's statement.<sup>198</sup> This would certainly explain the style of this particular address, which was much more flowery than earlier submissions to the government. On the other hand, there is nothing particularly surprising about a lawyer drafting documents for a client's signature. Indeed, in terms of content, Macdonell's memorial included nothing the Chiefs had not said themselves over the preceding three years.

The Baptist missionary, however, also made some rather more serious allegations. He claimed that at the same meeting, Macdonell had also obtained the chiefs' signatures to several leases - one for Michipicoten Island in Lake Superior, one for a mining location in the vicinity of Pointe aux Mines, with another adjacent to the last - "as a remuneration for his services to the Indians". Macdonell apparently stated that he had already paid the British government £150 for one of these locations. Then, said Cameron, after Macdonell had accomplished his object, the Reverend Mr. Anderson had also obtained a lease from the Chiefs for a tract of land at the mouth of Garden River, apparently for two hundred acres. That amount, though the "Indians do not suspect" it, would nearly take up their whole village.<sup>199</sup>

The Chiefs themselves confirmed the truth of Cameron's statements when they met with Messrs Vidal and Anderson at Sault Ste Marie in October. They had loaned the land at Garden River to Mr. Gustavus Anderson for the use of his Mission. They had also loaned lands to Allan Macdonell for the purposes of mining. These were lands which they intended to reserve for themselves in their Treaty with the government. The Commissioners, who saw one of the leases, noted that it was for 900 years, 5 years being allowed for commencing operations. To them it appeared that the Ojibwa people had been seriously deceived by Mr. Macdonell.<sup>200</sup>

So was Macdonell simply another unscrupulous white man out to fleece the Indian people? The government certainly thought so. In a report of July 10th, 1849, dealing with the substance of Cameron's letter, William Spragge - over Commissioner Price's signature - concluded that, in any arrangements for the settlement of the Indian claims, Macdonell was obviously "not the medium through which it would be judicious to attempt the effecting of that object".<sup>201</sup> The Reverend Cameron had actually offered his own services. Despite his criticisms of the lawyer's conduct, the missionary urged the government to make an immediate treaty, or at the very least take some active steps "to keep the Indians within the bounds of good behaviour". As he spoke the Ojibway language and was in fact "a relative

of the Indians in this region" - Cameron was the son of an *anishnabekwe* and a Scots fur trader from Lake Nipigon - the missionary felt he had the proper credentials.

These people, he said, no longer had any confidence in government Indian agents, because they had been told that the Agents "will study to promote the interests of Government and not theirs".<sup>202</sup> This was obviously too much for the government to swallow. While endorsing Cameron's general observations, Spragge recommended that "some special Agent of the Government" be entrusted to determine both their numbers and the localities which the Indians wanted permanently reserved. Only then could compensation be definitely arranged.<sup>203</sup> It is very likely that Spragge himself wrote the letter for Commissioner Price of July 19th, which told Macdonell he should return to the Sault and assure his clients a treaty would soon be made.<sup>204</sup> Spragge's report was one of the documents considered by the Executive Council when it decided to send Vidal and Anderson on their tour of the upper lakes.<sup>205</sup>

### 3.10.6 T.G. Anderson's Disgrace.

That T. G. Anderson was made junior Commissioner to the much younger Alexander Vidal (which the Superintendent resented) almost certainly related to his missionary son's behaviour in obtaining a lease from the Ojibwa. Such leases, Vidal and Anderson would warn the Indian people at the Sault in October, were not sanctioned or allowed by the government and were therefore "of no value to their holders". They were cautioned against entering into similar engagements with any but persons authorized by the Government to treat with them.<sup>206</sup> This caution, which had been part of the Commissioners' instructions, was another of William Spragge's recommendations. Persuading Indian people to grant leases of tracts of land, he had informed the Executive Council on July 3rd:

is a proceeding which from an early period has been prohibited by the Provincial and Imperial authorities both upon the ground that the Crown alone has authority to sanction the conveyance of land (which has not been granted by Patent) over which it has the power of exercising Territorial jurisdiction - and also with the object of

preserving its Indian subjects from being fraudulently practised upon by designing men.<sup>207</sup>

### 3.10.7 Allan Macdonell.

Spragge made particular reference to Allan Macdonell's partnership in the Quebec and Lake Superior Mining Company as yet another reason for questioning his advisory role with the Ojibwa, in effect alleging that the lawyer had a conflict of interest.<sup>208</sup> It is true that the tracts Macdonell had ostensibly obtained on leases from the Ojibways - especially the one at Mamainse north of Sault Ste Marie - now belonged to the Quebec Company, which had recently commenced operations at Mica Bay, just above Mamainse.<sup>209</sup> Macdonell had broken with his former partners, allegedly over their financial mismanagement, and seems to have been bitter that the Location he brought into the Company - "easily the most valuable on the Lake" - was no longer his, even though he had paid the £150 deposit fee on it.<sup>210</sup> This supports Spragge's allegations that the lawyer was exploiting the Ojibways.

On the other hand, the Reverend Cameron felt it only fair to point out that Allan Macdonell had told the Ojibways at the June council meeting "that he would return the leases to them providing the Government would allow them more than he has promised to do to them".<sup>211</sup> Macdonell also intended to hire Indian people to clear land and supply fish to the mines. And he was prepared to train them to operate drills so that they could conduct their own mining operations in future.<sup>212</sup> None of the other mining companies had even considered such proposals.

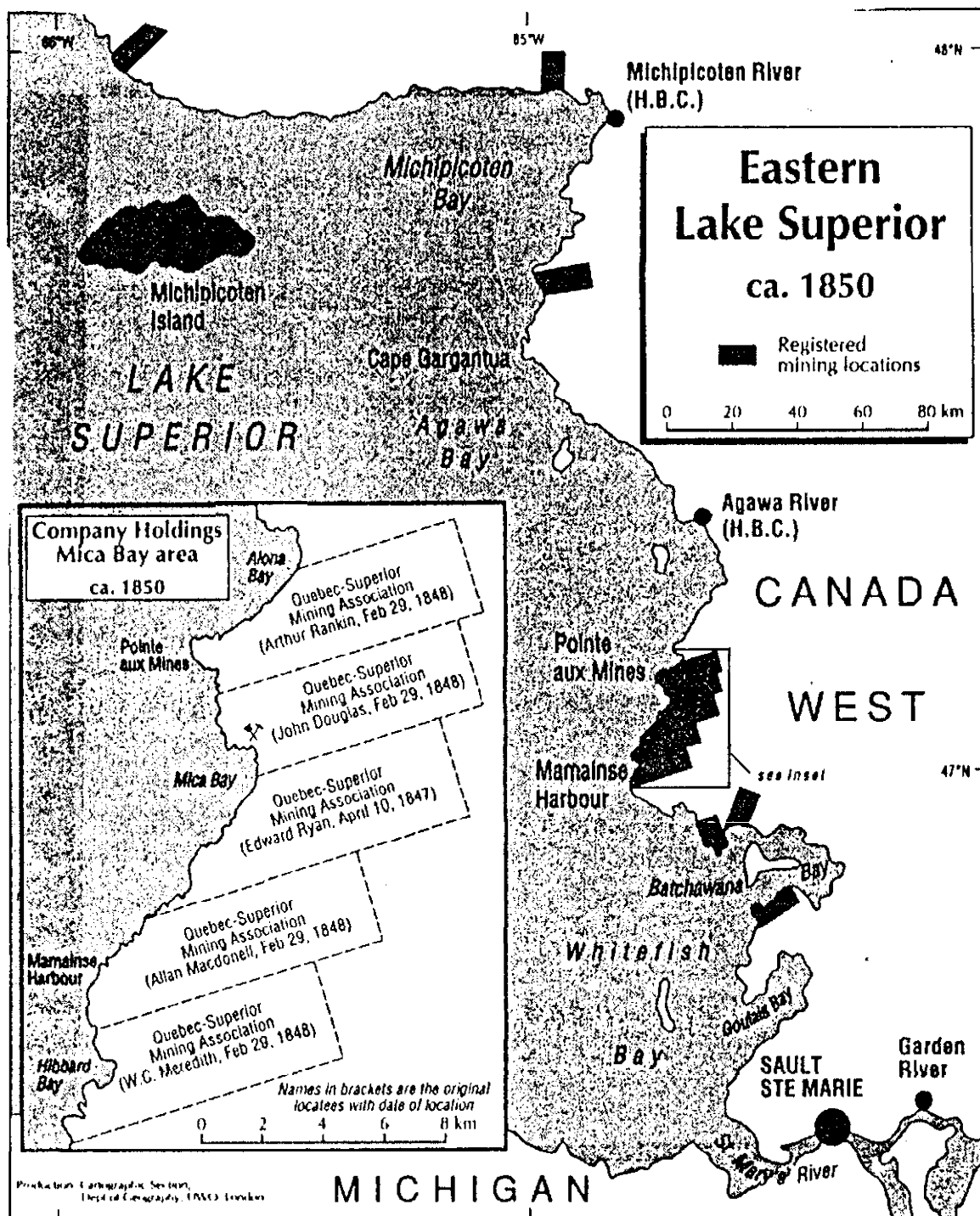
When the Commissioners met with the Ojibways in October, Macdonell elaborated on the supposed basis for his power to make agreements on his own. He argued, according to Vidal and Anderson, that "the Government had no power over the land, that the Indians had a perfect right to work the mines, cultivate the land or employ any Agent or servant to do it for them:

that they were partners with him, that he had good legal advice on the subject, and the Indians were not regarded as minors in law, and that he would hold his lease and maintain the right of the Indians to give it, in spite of the Government.<sup>213</sup>

Since Macdonell's interpretation of the law was so diametrically opposed to Spragge's, it is worth examining the matter a little more closely. Spragge had in effect invoked the Royal Proclamation of 1763, which, to prevent *frauds and abuses* committed by whites, had forbidden all private purchases from Indian people. But did this restriction on alienation also extend to leases? Here the answer is not so clear. In the latter part of the eighteenth century, for example, the Mohawk leader *Thayandanege* (more commonly known as Joseph Brant) had leased large portions of the Six Nations Reserve along the Grand River to white people who, Brant had felt, would not only provide ongoing income to the Six Nations but would also serve as a source and model of agricultural and industrial expertise. Many of these leases had been for terms of 999 years.<sup>214</sup> Though the provincial government strenuously objected to Brant's conduct, the Crown ended up confirming the leases in 1835.<sup>215</sup>

Allan Macdonell likely had Brant's model in mind, for he had known the Six Nations people all his life. His father Alexander Macdonell had grown up on Sir William Johnson's estates in the Mohawk Valley and had helped Joseph Brant lay waste the American frontier settlements during the Revolutionary war. Alexander later served as an Assistant Secretary of Indian Affairs at Niagara.<sup>216</sup> Allan himself, when Sheriff of the District of Gore, which surrounded the Six Nations Reserve, had recruited Indian people to help put down the 1837-38 Rebellion in the Niagara Peninsula.<sup>217</sup> Given his impeccable Loyalist and Tory background, it would have been logical for Macdonell to put himself forward as the defender of Indian interests.

It was at least in part because of Allan Macdonell that the Legislature passed an Act a year later, in August of 1850, specifically disallowing the type of leases he had secured from the Ojibways. Article II of the statute, designed to protect the Indians in Upper Canada "in the



unmolested possession and enjoyment of the lands and other property in their use and occupation", had provided a £200 fine and/or a jail term for persons who, without the express consent of Her Majesty:

shall in any manner or form, or upon any terms whatsoever, purchase or lease any lands within Upper Canada of or from the said Indians, or any of them, or make any contract with such Indians, or any of them, for or concerning the sale of any lands therein, or shall in any manner, give, demise, convey or otherwise dispose of such lands, or any interest therein, or offer to do so, or shall enter on, or take possession of, or settle on any such lands, by pretext or color of any right or interest in the same, in consequence of any such purchase or contract made or to be made with such Indians, or any of them...<sup>218</sup>

The statute, however, raises an interesting question. Would not the Ojibwa people of the upper lakes have been fully entitled to the Crown's protection from **all** mining companies - particularly the ones they **did not** want on their lands? Allan Macdonell had in fact raised this issue himself the previous fall, when he first began to act for the Ojibways of Sault Ste Marie, and the essential validity of his argument explains not only the government's initial delay in dealing with the Indian claims, but their August decision to launch the Vidal-Anderson commission of inquiry.

The notice which Macdonell had drafted in September of 1848 for Shingwakonce's signature had been straightforward. "On the part and behalf of the Band of Chippewa's owning and inhabiting this portion of the country", it had warned the mining adventurers:

I hereby give you notice that the Lands now attempted to be occupied by you have never been surrendered to the Crown, and I hereby forbid you or any others entering thereupon for the purpose of occupation or for the purpose of cutting down or removing timber therefrom, inasmuch as the above named band are determined not to sell or surrender any portion of said Lands upon any terms whatsoever; And being so resolved to reserve their Lands solely for their own use and occupation they will resist any attempt on the part of others to occupy or possess the same.<sup>219</sup>



### 3.10.8 The Nature of Indian Title.

The lawyer for the Ojibways of the Sault had revealed an awkward legal problem: namely, that the government had granted mining privileges *before* extinguishing the Indian title. Such a practice had been expressly forbidden by the Royal Proclamation of 1763. The Commissioner of Crown Lands' report of 16 October 1848 had in effect agreed. Until the allotment of mining tracts on the shore of the lakes, William Spragge had written on the Commissioner's behalf, "it had not been the practice of the Provincial Government to assume the control over and disposal of lands in Upper Canada until the Interests & rights of the Indians had been extinguished, and the same had been formally ceded to the Crown".<sup>220</sup> What Spragge described as the *practice of the Provincial Government* had actually been part of the common law of Ontario since the period of Loyalist settlement in the early 1780's.

More recent authority, however, for Spragge's comment to the Executive Council - and for Macdonell's warning to the miners - was an 1839 Upper Canada Statute for the *Protection of the Lands of the Crown in this Province from Trespass and Injury*. That act made it penal for any person or persons to illegally possess themselves of any lands within the Province "for the cession of which to Her Majesty no agreement hath been made with the Indian tribes occupying the same, and who may claim title thereto". Section IV of the Act had provided fines or jail terms for anyone convicted of "having unlawfully cut down or removed any timber or trees, or for having quarried upon, or removed any stone or other materials from the Lands aforesaid".<sup>221</sup> Though perhaps intended to apply only to lands in what is now southern Ontario - an 1843 legal case, for example, involved a tract on Walpole Island near Sarnia<sup>222</sup> - the enactment is very broadly worded. Allan Macdonell had realized this fact (having had, as he would later explain to Vidal and Anderson, "good legal advice"<sup>223</sup>) and was clearly prepared to enforce it against the government.

### 3.10.9 Responsible Government.

So long as the Governor of Canada controlled both the acquisition of Indian lands, and the subsequent grant of those lands to settlers, abuses had been theoretically impossible. Unfortunately for the aboriginal people of the Canadas, the 1840's was the decade of *responsible government*. This was the principle - expressed most strongly by the various Reform (Liberal) politicians - that the provincial executive should be officially answerable to the majority party in the Legislature, rather than to the Governor. With the arrival of Lord Elgin in 1847, this principle became formally enshrined in colonial practice.<sup>224</sup> Though Elgin retained responsibility for relations with aboriginal people, including the making of treaties, it was much more difficult for him to interfere in the disposal of Crown lands.

Nevertheless, would it not have been a simple matter - as Allan Macdonell had himself suggested to the government in November of 1848 - simply to cancel the various mining location tickets for non-performance of their conditions and then set about compensating the aboriginal people?<sup>225</sup> The difficulty was that, by 1849, two mining companies had already started operations: the Quebec Mining Company at Mica Bay on Lake Superior, and the Montreal Mining Company at Bruce Mines on Lake Huron. Both Companies had also applied for their Crown patents, on the grounds that they had met the conditions contained in their original licenses.<sup>226</sup> And, as we have seen, by Order in council of June 1848, the Council had already authorized the issuance of a patent to the Montreal Company. On this issue, William Spragge was unjust to accuse Allan Macdonell of a conflict of interest, because the Executive Council was in an infinitely greater position of conflict.

### 3.10.10 Mining Patents.

It was not just Tory supporters of the 1845-46 Draper administration who had taken out mining licenses. William Hamilton Merritt, the President of the Executive Council in the Reform administration of 1848-50, was an original license holder in the Montreal Mining

Company.<sup>227</sup> So was Francis Hincks, the Inspector-General or Finance Minister.<sup>228</sup> Hincks, in fact, had been one of the most active mining adventurers on the upper lakes, acting both as agent for a number of Montreal investors and as Secretary and Treasurer of the Lake Huron Silver and Copper Mining Company.<sup>229</sup> His own mining location on the north shore of Lake Huron, jointly owned with the Huron Copper Bay Mining Company, was immediately adjacent to the Montreal Mining Company's Bruce Mines operation, which had started up in the winter of 1847-48.<sup>230</sup> The Huron Copper Bay Company had also started preliminary workings at the same time.<sup>231</sup> So Hincks and Merritt, at the very least, would have been financially affected by any decision to delay mining operations while Native claims were being settled. This would explain the administration's reluctance to consider Allan Macdonell's submissions to them in November of 1848.<sup>232</sup> What seems to have changed their mind was the legal difficulty of issuing a patent without first making a treaty with the aboriginal people.

Although the Council had approved a patent for the Montreal Mining Company in 1848, the relevant documents had been submitted to the law officers of the Crown for their approval. In his Memorandum on the subject dated July 11, 1849, the Solicitor-General, William Hume Blake, raised several objections to the patent. One was that it was unclear from the original location tickets whether it was intended to grant the land or only the minerals. In any event, he concluded, the "surrender from the Indians would seem indispensable". This opinion was shared by the Attorney-General (and co-head of the government) Robert Baldwin. He refused to issue the *fiat* for the Montreal Mining Company patent, on the grounds that the Indian claims had not been extinguished. Both opinions were part of the material the Executive Council considered in its decision to launch the journey of Alexander Vidal and T.G. Anderson.<sup>233</sup>

#### 4. THE VIDAL-ANDERSON REPORT.

The oddly-matched commissioners - at 70, T.G. Anderson could have been the 30-year old Vidal's grandfather - arrived separately at Sault Ste Marie in mid-September of 1849. Visiting Joseph Wilson's house, where Anderson was staying, Vidal encountered Allan Macdonell for the first time. Not only was the latter "remarkably civil", Vidal later reported, but he provided them with information about "the wishes of the Indians". Macdonell also offered the commissioners the use of his recently-purchased schooner, *The Falcon*, warning them against trying to travel Lake Superior in a canoe at such a late season.<sup>234</sup> Although this solution appealed to Vidal, the government emissaries decided instead to load their North canoe on the American steamer *Napoleon*, which was leaving shortly for Fort William. From there, they would make their way by canoe back down the 700 miles of Lake Superior and Huron coast to Penetanguishene.<sup>235</sup> The entire trip would take them a month. In their official report to the government, dated December 5th, Messrs Vidal and Anderson summarized what they were able to learn about Ojibway socio-territorial organization, about the nature of their claims, and about Native expectations as to the form and content of a treaty.

##### 4.1 Representation.

The commissioners had intended to meet and converse with "all the Chiefs and as many of the Indians as could conveniently be assembled". For a number of reasons, this proved to be impossible. As T.G. Anderson had learned on his voyage to the Sault, cholera had broken out at the Bruce Mines. 24 people had already died and many more were ill. The steamer *Gore*, on which Anderson was travelling, had been unable to land there on its way up the lake. Certain of the Lake Superior bands had actually come to Sault Ste Marie, expecting that a treaty would be made that year - but alarmed by reports of the cholera epidemic, they had immediately returned to their lands. In addition, because the commissioners' instructions had arrived too late to allow them to notify many of the Ojibways, some groups had already left the lakeshore for their winter hunting grounds in the

interior. Messrs Vidal and Anderson were therefore obliged to call in "at all the places where the Indians usually resort", holding conferences with the local chiefs and as many members of their respective bands as could be collected. In this way, they reported, they had been able to speak with sixteen of the twenty-two Chiefs "among whose bands the entire territory is divided, and have been thus enabled to form a tolerably good idea of the general desires and expectations of the whole."<sup>236</sup>

The names of these twenty-two chiefs are listed in Appendix B to the Vidal-Anderson report. With one or two exceptions, these same individuals would take part in the treaty the following year as either *chiefs* or *principal men*. Exceptions included *Pawtosseway*, chief of the Mississaga Band on Lake Huron, who died - probably of cholera - during the winter of 1849-50<sup>237</sup>, and the two chiefs at Pic River - *Shongshong* and *Louison*, who, for reasons discussed below, did not travel to Sault Ste Marie with the other Lake Superior representatives. The commissioners did not actually meet the latter individuals. They were given the names by the Hudson's Bay Company post master at the Pic, who also provided other details about the Pic, Long Lake and Nipigon groups.<sup>238</sup> In the case of only one Band - Batchewana - did the commissioners state that there was no chief. The Batchewana chief, *Wawbindebai*, had died between 1848 and 1849 and apparently not been replaced.<sup>239</sup> At the treaty, the Batchewana people would be represented by Chief Nebenaigoching of Sault Ste Marie.

#### 4.2 Socio-Territorial Organization.

From his half-century's experience on the upper lakes, T.G. Anderson already had considerable familiarity with Ojibway society. Alexander Vidal had also collected a great deal of information from the American *half breed* George Johnston, whose brother-in-law Henry Rowe Schoolcraft had been working for years on a massive study of the Ojibways.<sup>240</sup> Their report reflects this knowledge. Vidal and Anderson began by noting that the tract along the north shores of the two lakes, bounded on the west and north by the Hudson's Bay Company territory, and on the east by the Ottawa River and the surveyed lands:

is now, together with its adjacent Islands, the only territory within the limits of Canada West to which the Indians title or right of occupancy has not been either extinguished or specially reserved to them by treaty with the British government. The claim of the present occupants of this tract derived from their forefathers who have from time immemorial hunted upon it, is unquestionably as good as that of any of the tribes who have received compensation for the cession of their rights in other parts of the Province; and therefore entitles them to similar remuneration, should the Government require the surrender of the whole or any portion of the lands.<sup>241</sup>

The Commissioners then remark that, with respect to aboriginal rights, the Crown has always claimed "The Territorial Estate and Eminent Dominion" in and over the soil. They point out, however, that although in Canada West and its predecessor colonies "the surrender of the right of hunting and occupancy has been purchased from the Indians, in other parts of British North America it appears not to have been regarded". They then offer comments on the socio-territorial structure of the Ojibways:

This conceded right of occupation which is general and common to all, being admitted, the tribal or individual interest in it becomes the subject of consideration: long established custom, which among these uncivilized tribes is as binding in its obligations as Law in a more civilized nation, has divided this territory among several bands each independent of the others; and having its own Chief or Chiefs and possessing an exclusive right to an control over its own hunting grounds; - the limits of these grounds especially their frontages on the Lake are generally well known and acknowledged by neighbouring bands; in two or three instances only, is there any difficulty in determining the precise boundary between adjoining tracts, there being in these cases a small portion of disputed territory to which two parties advance a claim.

The commissioners identify seventeen bands within the territory in question - fourteen along the lakeshore and three in the interior, along with "two bands having their hunting grounds partly in the Hudson's Bay Company's territories and partly within the limits of the Province whose boundaries cannot be accurately determined".<sup>242</sup>

The localities of the various bands and description of their boundaries are set out in Appendix B to the Report, along with marks signifying the chiefs to whom the

commissioners had actually spoken. Maps of Lake Superior and Lake Huron are also included, showing in sketchy fashion the boundaries alluded to. The fourteen named lakeshore bands include at least one - Pic - whose representatives did not attend the treaty. The three named *interior* bands are those of Nepigon, Whitefish Lake and Lake Nipissing, whose representatives did attend at the Sault. The two bands whose territories were said to straddle the Rupert's Land boundary were Long Lake and "Inland Indians about Green Lake", the latter being near the headwaters of the Mississagi and Spanish Rivers. Neither of these bands attended the treaty council, although the Long Lake people would be paid cash and annuities under the Lake Superior treaty.

The commissioners refer to "two or three instances" of disputed territory among bands, thus implying that boundaries were not entirely fixed. However, the only example specifically set out in the report or maps concerned an area immediately east of Sault Ste Marie. The Sault Ste Marie chiefs - Shingwakonce and Nebenaigoching - claimed lands as far as Squash (Pumpkin) Point; the adjoining St. Joseph's and Thessalon Band, whose Chief was Kewakonce, claimed as far west as the Echo River, which is a few kilometers beyond Pumpkin Point. The reason for the overlap can be explained. The Ojibways of Echo River and Pumpkin Point, whose chief was Naoquagabo, had basically been a subgroup of the St. Joseph's band.<sup>243</sup> But by the late 1840's, Shingwakonce had persuaded many of them to join his people at the Garden River settlement - which lay, in fact, just west of their traditional hunting grounds. At the treaty and subsequent annuity distribution, therefore, Naoquagabo's band was treated as a subgroup of the Garden River band.<sup>244</sup>

#### 4.3 Treaty Proposals.

With respect to the proposed treaty, the Commissioners claimed that there was a "general wish expressed by the Indians to cede their territory to the government provided they are not required to remove from their present places of abode, their hunting and fishing not interfered with and that the compensation given to them be a perpetual annuity; but some diversity of opinion exists as to the amount and mode of payment desired". It is clear that

the bands wished to secure reservations for their own use. In Appendix D to their report, Vidal and Anderson listed such Reserves, which were generally "of limited extent":

The reservations selected by the Indians for themselves seem to be generally chosen by a regard either to the capabilities of the soil for cultivation, or to the convenience of the position for fishing; they are all convinced that their hunting grounds afford a most precarious supply of animals either for food or furs, and say that they expect in a few years there will be none, as they have been gradually diminishing in number for the last forty years or more: on this account the greater part express a desire for learning how to cultivate the land, and for receiving aid from the Government, that they may obtain food for their children.<sup>245</sup>

As to terms, the commissioners argued that "the Indians themselves are quite incompetent to negotiate them - confessedly ignorant of the value of the lands and having no proper idea of large sums of money". Vidal and Anderson also claimed that the chiefs did not know how the payments should be made to their maximum advantage. Although "some had judgement enough to consent to an appropriation of a portion of any payment they might receive to education, instruction in agriculture and the purchase of farming stock and implements, some would prefer getting it all in money". Thus, while this "incapacity on their part" made it necessary for the government to fix the terms, the Indians were entitled to "the most liberal consideration and a scrupulous avoiding of any encroachment upon their rights". The commissioners themselves doubted whether lands so "sterile" and valueless would ever produce much revenue - apart from the revenue from mining locations and the sale of surveyed lands at Sault Ste Marie. They recommended that the Ojibways receive a small initial payment in cash, distributed with the greatest secrecy to avoid the recipients being defrauded by liquor traders. Subsequent payments should be made in the form of goods.<sup>246</sup>

The Ojibways, however, were not as unskilled and ignorant as the commissioners suggest. Vidal and Anderson, in fact, divided them into three groups. The first group - encompassing the bands from Penetanguishene to St. Joseph's - were apparently quite willing to let the government, in its paternalistic fashion, set the terms of the treaty, provided their basic



conditions as to reserves and non-interference with harvesting were met. Other bands, however, had been "influenced by the counsels of designing whites". Those on Lake Superior, they said, had "been led to form most extravagant notions of the value of the lands, and advised to insist upon unreasonable terms". However, said the commissioners, if the government gave these bands an ultimatum - "paying due regard to their wishes in reference to reserves" - they would probably accept a treaty.<sup>247</sup>

The comments about Lake Superior were mainly directed at the Fort William and Michipicoten bands. During the council with the Ojibways at Fort William, Chief Peau de Chat had asked for "thirty dollars a head (including the women and children) every year to the end of the world, and this should be in gold, not merchandise". The Chief had also wanted the Government to pay the expenses of a schoolmaster, a doctor, a blacksmith, a carpenter, and instructor in agriculture and a magistrate. Because of their connections with the Grand Portage band, Peau de Chat and many local Ojibways had taken part in the contemporary American treaties at La Pointe and Fond du Lac in 1838 and 1847. The terms they were suggesting were virtually identical to those offered south of the border. It was these which the commissioners called *unreasonable*.<sup>248</sup> The *designing whites* to whom Messrs Vidal and Anderson refer in their report were apparently Fathers Nicolas Fremiot and Jean-Pierre Choné from the Lake Superior mission of the Jesuit Fathers. Vidal - a devout Presbyterian layman - and Anderson - a Protestant of Irish descent - were typical of many of their counterparts in Canada West in being extremely hostile to Catholics in general and Jesuits in particular. As Anderson noted in his diary, the Ojibways had been accompanied to the council by "a Jesuit named Frimeault and finding he meddled with our business I could not forgo the pleasure of informing him, he had no business to interfere with them etc - but still he did not move his body though his tongue was less busy":

The Jesuit here as well as elsewhere tries to influence the Indians with his way of thinking not only as regards his erroneous creed, but also as regards the duties of our mission, not because he is familiar with our object but because he fancies he can direct the Indians and thus influence the Government into what he considers a good bargain for the natives and ultimately that he might gain their cash to the exclusive benefit of his Priest craft, but of this the Government must be on their guard.<sup>249</sup>

#### 4.4 Broken Promises?

If the commissioners were contemptuous of the Jesuits, they were even more hostile towards the advisers to Chiefs Shingwakonce and Nebenaigoching. "The Sault Ste Marie band alone", they wrote in their report, "appears to assume a position in which it would be impossible to treat with them". They explained that the band had refused to communicate with them except through "a Mr. Allan Macdonell" and acting under his advice, "insisted on reserving for their own use tracts of land embracing no less than nineteen of the mining locations for which the Government has already issued location tickets". These "simple-minded Indians", they added, had been led to believe that Macdonell was better able than the government to protect their interests and promote their welfare "and that he can set it at defiance and maintain their right to dispose of their lands as they see fit". The commissioners told the Sault Ste Marie representatives that insisting upon such an Agency "is virtually a rejection of the government and might prevent them from participating in the benefits of a treaty, should one be made with other bands". Vidal and Anderson expressed a hope that they might "see the folly of opposing the plans of the Government for the improvement of their condition" and decide to accept the terms which might be offered to them.<sup>250</sup>

Included with the commissioners' report is a brief summary of the council at Sault Ste Marie on October 15-16, which indicates just how heated the meeting had actually been. The first day's proceedings had gone well, with the commissioners asking questions about the nature and extent of their claim, the number and origin of the band, their means of subsistence and similar subjects "all of which were readily answered". But then the commissioners questioned the lease which Allan Macdonell had received from the chiefs for Michipicoten Island, as well as the 200-acre lease they had given to T.G. Anderson's son Gustavus, the Anglican missionary at Garden River. The Government, said the commissioners, "would not sanction or allow such transactions":

Mr. Macdonell then rose, and said that the Government had no power over the land, that the Indians had a perfect right to work the mines, cultivate the

land or employ any Agent or servant to do it for them, that they were partners with him; that he had good legal advice on the subject and the Indians were not regarded as minors in Law, and that he would hold his lease and maintain the right of the Indians to give it, in spite of the Government.

On the second day of the council, after further questions about their transactions, Shingwakonce insisted that he and his compatriots would no longer speak directly to the commissioners. His responses indicate the frustration the chiefs clearly felt after four years of continuous protests about the mining activities and government's disregard for their claims:

Shinguakouse said "The Governor has sent you up to see what is going on here, we have appointed Macdonell to arrange our affairs and have told him all our desires; hear him for us - you do not understand what we say, you understand one another; we will not make replies; talk to Macdonell". They were asked if they thought Mr. Macdonell would act more justly or liberally, or prove a better friend to them than the Government - to which Augustin [Shingwakonce's son] replied that they did think so.

Shinguakouse again spoke and after complaining of the treatment they had received, continued "I know nothing of the value of my lands; we thought of our ignorance and employed Macdonell; we wish you to hear him and do not think it right in you to put him aside"; turning to Mr. Macdonell he said "come my friend get up and speak".

The commissioners then pointed out that they were sent "to speak with the Indians, not with the Whites". The chiefs, they said, could give their answers as easily to the commissioners as to Mr. Macdonell. When the latter began to speak, Alexander Vidal closed the council and walked out, leaving T.G. Anderson as a spectator while "Mr. Macdonell continued to address the Indians in a most inflammatory style".<sup>251</sup> Allan Macdonell, it should be remembered, was a lawyer as well as a mining promoter. By refusing to allow him to speak, the commissioners were in effect telling the Ojibways they could not be represented by legal counsel.

The commissioners did advise that at least one grievance of the Sault Ste Marie bands was well founded - namely, that a mining location had been granted covering the village site at Garden River. Although this had several times been represented to the government, they

reminded the Commissioner of Crown Lands that "no relief has yet been afforded". They also urged that a treaty be made as soon as possible, warning that the long delay in treating the Ojibway claims "has given rise to suspicions in the minds of the Indians, and caused them to listen the more readily to those who tell them they may look in vain for justice to be awarded to them by a Government which has heretofore paid so little attention to their rights".<sup>252</sup> On this fact, the commissioners were perfectly accurate. As we saw earlier, the Ojibways of Sault Ste Marie and Lake Superior, at least, had believed that Vidal and Anderson had been sent up to make a treaty, not to conduct yet another voyage of investigation. Macdonell himself claimed that, after the October council at Garden River broke up, it was the commissioners who made an inflammatory statement - namely, that there would be no treaty:

At the Sault Ste Marie, a number of Chiefs had been expecting [the commissioners]; the day after their arrival there, a Council was held - the result has already been made known. The Indians insisting that Mr. Macdonell should negotiate for them - Mr. Vidal insisting that he should not; the Council was dissolved and the Commissioners admitted that they were not authorized to offer one shilling for the Indian lands. After the Council had thus broken up, Mr. Vidal, in my hearing, addressed himself to a most intelligent and respectable halfbreed, by the name of Canosh, said *now the Indians shall not receive anything for their Lands*; and this language was used subsequently upon other occasions by the Commissioners, who likewise stated that the halfbreeds should not receive anything.<sup>253</sup>

It was shortly after the breakup of the October council meeting that the Ojibways and *halfbreeds* from Sault Ste Marie decided on a form of direct action.

## 5. AN INDIAN UPRISING.

*Shingwaukonc* topped the miners. That was after the War of 1812. No treaties were coming the way they should have been. The treaties were promised. The Ojibway nation helped the British who were losing the war until then. *Shingwaukonc* topped the miners because there were no treaties. Elder Dan Pine, Garden River, 1990<sup>254</sup>

While members of the Executive Council met in hurried conclave on the morning of November 19th, 1849, Toronto was already buzzing with rumours of an Indian rising on the

upper lakes. The message had arrived with Captain Fraser of the steamer *Gore*, who had rushed overland from Penetanguishene the previous day bearing urgent letters from several of his passengers for the Governor-General and for Attorney-General Robert Baldwin.<sup>255</sup>

### 5.1 Rascally Whites.

On the 9th of November, according to the Reverend Doctor F.A. O'Meara, Anglican Missionary on Manitoulin Island, a "party of half breeds accompanied by two chiefs from our side of the river namely *Shengwakonse* and *Nabenagoching* and a Chief from the American side who was accompanied by a number of United States Indians" - in all, about one hundred people - had left Sault Ste Marie for the Quebec Mining Company location at Mica Bay, up the Lake Superior coast. Their intention, so the Reverend gentleman stated, was of "forcibly dispossessing the agent of that company of the works and premises and obliging them to leave".

With them, apparently, were three white men - Mr Allan Macdonald, "late sheriff" of the district of Gore; his brother Angus and a person of the name of Medcalf "who are known to have victualled and armed the party and are universally believed by the white inhabitants of both sides of the river to be the instigators of the whole proceeding". Dr. O'Meara expressed his hope that the Governor General "will see that those poor people have been duped by interested white men and not visit them with the just consequences of the foolish part they acted at the late visit of the commissioners to them. They are in all respects children and require to be dealt with as such".

Charles Thompson, a Penetanguishene merchant and owner of the steamer *Gore*, added the news - obtained from certain storekeepers at the Sault - that the Macdonalds had purchased muskets and scalping knives, whiskey and provisions. The Clerk of the Steamer also relayed what he called reliable information that the Indians had been stealing powder from the Echo Lake Mining Co. for the previous year, and that they had made off with two cannons from the Hudson's Bay Company's fort. To Superintendent T.G.Anderson, who was just

returning from his investigative tour of the upper lakes, the government's course seemed regrettable, but clear. If immediate steps were not taken to "arrest such proceedings and to intimidate the Indians and half breeds, they will be likely to suppose that Mr McDonald has overawed the Government and the consequences may be most lamentable".<sup>256</sup>

## 5.2 War Measures.

Because of the lateness of the season, as well as the fact that the Governor General, Lord Elgin, was absent in Drummondville<sup>257</sup>, Canada East, the Executive Council took the unusual step of ordering troops - on its own initiative - to proceed to Sault Ste Marie. One hundred men of the Toronto Rifle Brigade, Captain Astley Cooper commanding, set off on the afternoon of the 19th November for Nottawasaga Bay, where the *Gore* was waiting to carry them back up Lake Huron.<sup>258</sup> On the same day, the Council also issued special commissions as Justices of the Peace to several individuals resident on the upper lakes - including Hudson's Bay Company officers, mining company representatives, the collector of customs at the Sault, Joseph Wilson, and George Ironside, Indian Superintendent at Manitoulin<sup>259</sup> - the latter being ordered to head at once for the site of the supposed insurrection, in case his services were needed.<sup>260</sup>

The troops, as it turned out, never made it to Mica Bay, their vessel being turned back by ice above the Sault, so they busily barricaded themselves in at the Hudson's Bay Company store for the winter.<sup>261</sup> In the meantime, all but one of the alleged ringleaders voluntarily presented themselves to George Ironside - who had them immediately arrested on informations laid by John Bonner, the Resident Superintendent for the Quebec Mining Company, with Joseph Wilson acting as witness.<sup>262</sup> By the beginning of December, Chiefs Shingwakonce and Nebenaigoching, the two Macdonell brothers, and Pierrot Lesage and Charlot Boyer - two prominent *métis* - were all in Toronto, having been denied bail at the Sault. Charged with riot and forcible entry, they were bound over to take their trial at the York Assizes in the spring.<sup>263</sup>

What actually took place at Mica Bay will probably never be known. Rival Toronto newspapers printed wildly divergent accounts of the proceedings from both John Bonner and the brothers Allan and Angus Macdonell. Bonner claimed that he had opened his office door in answer to threats:

When I entered my sitting room I found it full of Indians and half-breed, armed and smeared with paint. Mr. Macdonell stood on one side of the table with a naked [scalping] knife in his belt [...] Wharton Metcalfe stood on the other with a pistol in his hand, the muzzle pointing toward me. Mr. Macdonell made a speech informing me that the Indians had resumed possession of their lands for which the Government had not paid them and concluded by stating that he had accompanied them to prevent violence and bloodshed.<sup>264</sup>

According to the superintendent, he feared for the safety of his employees and their families because the Indians and halfbreeds were all drunk. Angus Macdonell denied virtually every point of the allegations - particularly that the participants had been drinking - and accused Bonner of having decamped from the mine in order to set up a claim of compensation against the government.<sup>265</sup>

From Bonner's version of events, he had offered to go to see Lord Elgin - who was known to be sympathetic to the Indians - and work out a settlement, provided the invaders allowed the mine to continue operations for the winter. Allan Macdonell countered that the Ojibways would lease Bonner the property, so that the mine could continue - but this the manager refused. Macdonell's plan was apparently to hold and operate the mine under Indian supervision until their claims were recognized and a treaty signed. On the 10th of November, by agreement between the two sides, the women and children left the mine site on the American schooner *Chippewa*; it took another week to evacuate the men and equipment. Wharton Metcalfe remained behind to lock up the property, while most of the Ojibways and *métis* travelled back to the Sault with the Macdonells in the *Falcon*.<sup>266</sup>

No violence had actually taken place, which only confirmed Lord Elgin's impression of the Indian people. They were, he assured the Colonial Secretary, "a docile people and cognizant of the steps which the Government is now taking to ascertain and satisfy them". There could be little doubt, he concluded, "that they are seduced into violent courses by the evil

counsels of unprincipled white men".<sup>267</sup> In a private letter to Earl Grey, Elgin blamed the Conservative administration of his predecessor Lord Metcalfe for the problems. "Metcalfe's Gov(ernmen)t of Jobbers", he wrote on November 21st, "gave licences to certain mining Companies in that quarter without making arrangements with the Indians, and I have been occupied for the last two years in getting some compensation for them. We had finally settled with them as we supposed when some blackguard whites as it appears induced some of them to attack one of the mines. I have been obliged to send up a detachment of soldiers to protect the miners".<sup>268</sup>

But the provincial government did not just want to protect the miners, it intended to arm them. The Montreal Mining Company had immediately asked for several stands of arms, to be delivered to the Company's workings at Bruce Mines. This the administration agreed to do, once the arms had been obtained from the ordnance department.<sup>269</sup> It is difficult not to see in all of this the hand of Francis Hincks and W.H. Merritt who - as shareholders in the Montreal Company - had an obvious interest in protecting their own property. Merritt had presided at the meeting of the Council which ordered up the troops to Sault Ste Marie; Hincks, generally acknowledged to be the real power in the government<sup>270</sup>, was present as well.<sup>271</sup>

### 5.3 Political Factions.

It is also important to recognize the role of political factionalism in the Council's decisions. The Councillors knew the identity of the alleged perpetrators of the assault on Mica Bay and they proceeded, I believe, to settle some old scores. Tory ultras from the Hamilton area, the Macdonell brothers were associate members (Roman Catholic wing) of the Family Compact; both had attended Bishop John Strachan's Grammar School, that breeding ground for the colonial elite.<sup>272</sup> During the Rebellions of 1837-38 they and Wharton Metcalfe - an English immigrant<sup>273</sup> - had distinguished themselves as officers in Allan MacNab's "Men of Gore", aiding in the seizure of Dunmore's followers and taking part in the capture of Navy Island.<sup>274</sup>



Allan Macdonell, who had articulated with Henry John Boulton, was also MacNab's former law partner, and his friend and associate had secured him an appointment as Sheriff of the Gore (Hamilton) District.<sup>275</sup> Using that platform, Macdonell had done his best to harass reformers of all persuasions.<sup>276</sup> The lawyer, and radical Reformer, Charles Durand, exiled for his own alleged role in the Rebellion, nursed a lifelong hatred for "limping Sheriff Macdonell", as he called him, who had headed the gang of Tory bullies who invaded his home in Hamilton in 1837 and arrested his wife.<sup>277</sup> Macdonell may also have been responsible for the 1837 arrest and incarceration of the Lesslie brothers, who were close personal friends and business associates of Francis Hincks.<sup>278</sup> In 1843, the then Baldwin ministry secured Macdonell's dismissal as Sheriff of Gore, on the grounds of alleged financial misconduct<sup>279</sup>, and replaced him with a well-known Reformer from Hamilton. Francis Hincks was said to have been personally responsible for the firing.<sup>280</sup>

The criminal prosecutions against the Macdonells, Shingwakonce and the others must be seen against this background. Skeffington Connor, the government's lawyer, had immediately advised Attorney General Baldwin that the informations against the ringleaders in the Mica Bay affair would be unlikely to succeed in Court.<sup>281</sup> This proved to be correct when, in early December of 1849, Chief Justice John Beverley Robinson (head of the local Tory elite) threw them out on procedural grounds. Baldwin then had the informations refiled on the evidence of the Mine superintendent at Mica Bay, Dr. John Newton.<sup>282</sup> On May 7, 1850, the trials were put off to the fall assizes in October.<sup>283</sup> Allan Macdonell believed that this postponement was deliberate<sup>284</sup>, and there is some support for his belief. By January of 1850, the government had established a commission to make a treaty. Since that treaty was to take place later in the year, the leading trouble-makers would still be facing criminal charges. The troops were also to remain at the Sault. If nothing else, their presence would remind all Ojibways of the fate in store for them if they created any further difficulty.

#### 5.4 Instigators.

Virtually every outside observer remarking on the Mica Bay incident accused white people of being responsible. The comments throughout this narrative from Indian Department officials, missionaries, traders and others were typical in assuming that Ojibway people were incapable of forming hostile designs on their own, or of taking direct action unless provoked by outside agitators. The inherent paternalism of such comments was clearly wrong - at least in the case of the Sault Ste Marie Ojibways. Shingwakonce and Nebenaigoching, for instance, had threatened to repel mining adventurers in 1846, two years before Allan Macdonell came on the scene. And oral tradition about the Mica Bay incident does not mention white involvement at all. Garden River elder Dan Pine (1900-1992), who was Shingwakonce's last surviving grandson, remembered that it was the Pine who "stopped the miners because there were no treaties".<sup>285</sup>

It is clear that part of the strategy had been to convince the government that there were many people involved in the attack on the mine - a strategy which, judging from press reports, succeeded, although it led to the arrival of troops. In the 1950's, Garden River elder Joe Lesage - a descendant of the *métis* Pierre Lesage - recited tradition that "the Indians built huge bonfires on several points on Lake Superior's shore to give the authorities the idea that there were hundreds of Indians concerned in the matter". Interviewed at the same time, elder John Boissoneau stated that there had been no more than 35 or 40 people in all involved in the Mica Bay affair.<sup>286</sup>

Shingwakonce himself was in his mid-70's in November of 1849. He had lived through the arrival of the American settlement frontier in the upper lakes - and was perfectly familiar with the rough and tumble of frontier life. That he preferred the British connection did not mean that he was as deferential to authority as those *anishnabeg* who had grown up on the Canadian side of the upper lakes. The Ottawas and Chippewas from upper Michigan had learned the art of politics. Despite the wording of their treaties, they had managed - by a series of stalling manoeuvres - to avoid removal to lands west of the Mississippi.<sup>287</sup>

Shingwakonce, ironically, was accusing the Canadian settlers of behaving, for the first time, like Americans. And it is ironic that, when Canadian officials accused the Sault Ste Marie chief of being an *American Indian*, they meant that he was as American as he was Indian.

## 6. TREATY PRELIMINARIES.

### 6.1 The Governor-General's Orders.

It was the Governor-General of Canada who forced a reluctant provincial government to make a treaty with the Ojibway people of the upper lakes. Although he approved the Executive Council Minute of 19 November 1849, sanctioning the dispatch of troops to Lake Superior "for the protection of lives and property", Lord Elgin had included a lengthy endorsement which stipulated the actions the Council would have to take:

It is probable, however, that this necessity would not have arisen if, before concessions of mining privileges had been made in the District in question, the claims of the Indians had been fully investigated and adjudicated upon in the liberal and conciliatory spirit by which the British Government has been always motivated in its dealings with the aboriginal Tribes of North America. I consent to the employment of the coercive measures recommended by the Council on the understanding that the steps which have been already taken for an immediate and equitable adjustment of all Indian claims on the territory in question will be promptly followed up by the Provincial Government.<sup>288</sup>

### 6.2 Choosing a Commissioner.

The provincial government waited until the arrest and temporary imprisonment of the alleged ringleaders in the Mica Bay affair before taking any of the further steps recommended by Lord Elgin. Chiefs Shingwakonce and Nebenagoching had remained in Toronto after the warrants against them were refiled in the second week of December 1849, seeking financial assistance so that they could return to Sault Ste Marie.<sup>289</sup> With no response forthcoming from the government, the Chiefs and their legal advisor - and fellow

arrestee - Allan Macdonell, approached Macdonell's contacts among the opposition in the Legislative Assembly. On January 10, 1850, one of these opposition members - the Honourable William Benjamin Robinson - wrote the Superintendent General of Indian Affairs, explaining that he had spoken with the Chiefs, who were anxious for some arrangement "respecting their lands which have been or may hereafter be disposed of to Mining Companies". Robinson told Colonel Bruce he was ready to mediate, "if you think I can in any manner expedite the settlement of existing difficulties".<sup>290</sup>

### 6.3 The Commission.

The members of the Executive council obviously welcomed the offer.<sup>291</sup> Meeting on 11 January 1850, a Committee chaired by W.H. Merritt recommended that a sum not exceeding £100 be advanced to the chiefs to enable them to return home and that "Mr. Robinson be authorized on the part of the Government to negotiate with the several Tribes for the adjustment of their claims to the Lands in the vicinity of Lakes Superior and Huron, or of such portions of them as may be required for mining purposes".

The Committee of Council further advised that W.B. Robinson be instructed to inform the Tribes of his appointment and that he would come to Lake Superior at the time most convenient for meeting with the Chiefs. The Council obviously wanted compensation to be as limited as possible, because they also recommended that Robinson "impress on the minds of the Indians that they ought not to expect excessive remuneration for the partial occupation of the Territory heretofore used as Hunting Grounds, by persons who have been engaged in developing sources of wealth which they had themselves entirely neglected".<sup>292</sup> This argument - that native people should not be allowed to stand in the way of resource development - was being put forward by economic liberals like George Brown, editor of the *Globe* newspaper, who at the time was a strong supporter of the Baldwin-Lafontaine ministry.<sup>293</sup>

Finally, in a message directed at Allan Macdonell, the Council recommended that Mr. Robinson "should warn the Indians against listening to the Counsels of any one who may advise them to resort to criminal proceedings, which will not only render the parties participating in them amenable to the laws of the Province, but likewise entail expense which will necessarily diminish the Fund from which alone the means of affording compensation can be obtained". The Minute of Council was approved by Lord Elgin that same day.<sup>294</sup>

#### 6.4 The Commissioner.

*Bill Robinson, poor Bill, Bill,  
You may go down to town,  
And let the Family Compact know,  
Your colours were pulled down,  
By sturdy old Reformers,  
United they have been,  
To trample on your orange Bill,  
And hoist the white and green.*

Reform election song, Simcoe County, 1841.<sup>295</sup>

The selection of the Honourable William Benjamin Robinson (1798-1875) as treaty commissioner proved to be controversial. Younger brother of Chief Justice John Beverley Robinson, he belonged to one of the most powerful families in what is now Ontario. Although still Member of the provincial Legislature for Simcoe County (1830-41; 1844-57), Robinson had lost his job as public works commissioner - and his Executive Council (cabinet) membership - with the formation of the Baldwin-Lafontaine *Reform* ministry in March of 1848.<sup>296</sup> Supporters of the new administration, therefore, demanded to know why such a well-known Tory was being appointed. Charles Lindsey, son-in-law of the 1837 rebellion leader William Lyon Mackenzie, called Robinson "the most obnoxious of the old family compact" and suspected Bishop John Strachan and Chief Justice John Beverley Robinson of pressuring Lord Elgin to give work to the Chief Justice's "starving brother".<sup>297</sup>

**William Benjamin Robinson**  
Hunter, *History of Simcoe County, I*



Hon. W. B. Robinson, M.P. for Simcoe, 1830-57,  
(except 1841-44).

It appears that W.B. Robinson had lost considerable money from his business investments in the Welland Canal and other ventures. Government leader Robert Baldwin had recently refused to make him assistant commissioner of public works - despite requests from Lord Elgin and Bishop Strachan to help Robinson out of his well-known financial difficulties - because it violated Baldwin's principle of only giving patronage to his own supporters.<sup>298</sup>

Robinson's appointment also raised eyebrows within the Indian Department. Superintendent Thomas G. Anderson, who had reported on the Ojibway land claims only a month before, grumbled that he had been overlooked.<sup>299</sup> And other departmental officials noted that Robinson was the brother-in-law of Samuel Peters Jarvis, the disgraced former Chief Superintendent of Indian Affairs who had been charged with embezzling Indian funds.<sup>300</sup>

But from the Reform administration's point of view, Robinson's appointment made perfect sense. Most importantly, he had been intimately involved in the fledgling mining industry on the upper lakes - and the protection of that industry was the government's primary motive for making a treaty. Not only was Robinson a former mining license-holder himself, but in March of 1848, shortly after he had lost his job as public works commissioner, he had gone to work for the Montreal Mining Company as Resident Superintendent of its new operation at Bruce Mines. So Robinson had in effect already been working for W.H. Merritt and Francis Hincks, the two Executive Council members who were shareholders in the Montreal Company.<sup>301</sup>

The fact that the treaty commissioner already knew Chief Shingwakonce was also an obvious benefit to the administration. Robinson had dealt frequently with Garden River people, and Ojibways from Thessalon and St. Joseph's Island, during his stint at the Bruce Mines.<sup>302</sup> The Executive Council undoubtedly knew that these were not Robinson's only ties to the Ojibway people of eastern and northern Lake Huron, for, during the 1820's and early 1830's, he and his older brother Peter had conducted a fur trading business out of Newmarket with the native people of the Muskoka and Georgian Bay regions.<sup>303</sup> And

although Robinson had never been an employee of the Indian Department, he was familiar with the practice of native land cessions in Upper Canada. In November of 1836, he had taken part in an Indian council meeting at Toronto, whereby the Ojibways of Lake Huron and Simcoe had surrendered their reserve at Coldwater to the Crown. And in 1843, he and his wife had deeded lands to the Crown which became a Reserve for the Ojibways of Lake Simcoe.<sup>304</sup>

Symbolically, then, this scion of the family compact represented the one segment of settler society, Tories of Loyalist descent, which had maintained close ties with aboriginal communities since the American Revolutionary War. Tory propaganda which painted Reformers of all persuasions as seditious *Americans*<sup>305</sup> had always found a receptive audience among native people, who despised the land-grabbing *Kitchi Mokoman* or Big Knives.<sup>306</sup> It is no accident that the 1837 rebels in Upper Canada were terrified that "Tories and Indians" would combine against them.<sup>307</sup> In many parts of the province, this happened. In Simcoe County, for example, Ojibway people joined Thomas G. Anderson, W.B. Robinson and the Loyalist militia in hunting down active or suspected rebels.<sup>308</sup> Both the Governor-General and the Baldwin-Lafontaine ministry seem to have been astute enough to realize that the appointment of a Loyalist Tory as treaty commissioner would have been far more acceptable to the Ojibway people than that of a Reformer, particularly when another Loyalist Tory - Allan Macdonell - had been acting as the chiefs' advisor.

### 6.5 The Instructions.

Before setting out for Sault Ste Marie in mid-April of 1850, W.B. Robinson asked for elaboration of the instructions set out in his commission. On Monday, April 15th, the Commissioner of Crown Lands advised the Council that Robinson had asked about the amount of money on hand. How much of it would the Government pay to the Indians, and would it be in cash or in presents? Robinson also wanted to know if the government would prefer purchasing the whole northern Coast of the two Lakes for an annuity, "if to be had on fair terms". Or would the government give a fixed sum, "say £10 to £20,000 for the



northern Coasts running ten miles back, payable in goods?". According to Commissioner of Crown Lands Price, there was then about £7,500 available to the credit of the mining locations.<sup>309</sup>

Robinson's request was heard by the Executive Council on Tuesday, 16 April and the Order in Council of that date constitutes Robinson's official instructions for the two treaties which bear his name. Those instructions should be read in the context of the questions to which they provided an answer. The Commissioner was told that the total amount of money circulable for the purposes of the negotiations would be about £7500 - that is, the amount already received for the mining locations - and that it was not considered expedient to pay out any of this compensation in presents. The most desirable mode of remuneration, said the Council, would be by perpetual annuities. Any sum paid in cash, which ought not to exceed £5000 - and which, "in view of the interests of the Indians", should be as small a sum as possible - would constitute a deduction from the capital sum, of which the annuities would be the interest. Mr. Robinson was to consider himself limited to a capital sum not to exceed £25,000, the interest of which payable as a perpetual annuity would be £1500. The number of claimants should be at least 600, and if reduced below that number, a deduction of £2.10.0 per head should be made.

Regarding the area to be treated for, the Executive Council was primarily interested in the disputed mining locations on Lake Superior, though if more was offered, the Commissioner should try to obtain it. "Mr. Robinson", the Council advised, "should endeavour to negotiate for the extinction of the Indian title to the whole territory on the North and North Eastern Coasts of Lakes Huron and Superior:

And that in case that be unattainable that he should obtain a cession of the territory as many miles inland from the coast as possible, and if it should be found impracticable to obtain a cession of the entire coast in the terms prescribed that Mr. Robinson should negotiate for the North Eastern Coast of Lake Huron and such portion of Lake Superior Coast as embraces the location at Mica Bay and Michipicoton where the Quebec Mining Company have commenced operations.<sup>310</sup>

### 6.6 Setting a Date.

W.B. Robinson's first task was to organize the council meeting at which the treaty would be negotiated. The Commissioner reached Sault Ste Marie at the end of April, and on May 1st, he travelled by boat to Garden River, where he held discussions with various Chiefs. Robinson showed them the official letter of January 11th he had received from Colonel Bruce and told them that although he was "prepared to enter upon the business intrusted to me, I could not proceed unless all the Chiefs interested were present: this they at once acknowledged".<sup>311</sup>

From the signatures, it appears that Robinson's audience included only the Chiefs from the immediate vicinity of the Sault - such as Shingwakonce and Nebenagoching - along with some 50 men "of their tribes". The Commissioner explained that he could not meet them in late June or early July because he had to attend the Legislature session, but that if they insisted, the government would send up someone else. When they replied that they preferred to deal with Robinson himself, he explained that he could meet them on Manitoulin Island in August when they got their government presents. There was no objection to the time, but they "thought the Lake Superior Indians (or Chiefs rather) would think the Island too far, and that Garden River would be a more convenient place for all parties". Because Robinson knew there would be a large number of Indian people at Manitoulin Island "who had no interest in the matter, but might interfere nonetheless" - meaning, presumably, those Ottawas and Ojibways who had returned to the Island from northern Michigan in the early 1830's<sup>312</sup> - he agreed to their request. He then "took a Memorandum of what occurred and got their names to it":

The Chiefs and others, having been informed of the object of Mr. Robinson's coming to see them at this time, it was agreed to, by both parties, that the Chiefs interested in the surrender of the Lands on the Northern side of Lake Huron and Superior and the Islands therein shall meet the Agents on the part of the Government at Garden River immediately after issuing their presents next summer - and that notice to that effect shall be sent to all absent Chiefs.<sup>313</sup>

## 7. TRADITIONAL GOVERNANCE AND DECISION-MAKING.

In summoning a variety of delegates to a treaty council, Robinson was obviously following some sort of historical practice - both in terms of the meeting itself and in terms of his assumptions about the political organization of the native participants. What, then, were the rules for conducting treaty councils? And did Robinson's assumptions about Ojibway governance and decision-making - namely, that there were chiefs and/or principal men who could bind their people to such an agreement - conform to the reality?

### 7.1 Treaty-making.

The Royal Proclamation of 1763 had required purchases from any of the Nations or tribes in North America to be made "at some publick Meeting or Assembly of the said Indians". This rule was elaborated in subsequent directions and instructions to colonial officials - the most important of which were the *Dorchester Regulations* of December, 1794, which would govern land acquisition policy in British North America during the first three decades of the nineteenth century. Article 3 of those regulations stipulated that "all purchases are to be made in public council with great solemnity and ceremony according to the ancient usages and customs of the Indians, the principal Chiefs and Leading men of the Nation or Nations to whom the lands belong being first assembled".<sup>314</sup>

### 7.2 Principal chiefs and leading men.

There was a very good reason for holding *public councils* with the Indian Nations - namely, that decisions in Ojibway society were reached by consensus. The *ogemuk* or chiefs were simply first among equals. They had no independent decision-making powers. In his history of the Ojibway Nation, *Kahkawequonaby* (the Reverend Peter Jones) notes that, although they were scattered over a vast section of country, "there is no person among them recognized as king". He goes on to describe their system of government in terms that would

have been familiar to a nineteenth-century non-Native audience raised on stories from the Bible, or from Greek and Roman history:

The Indian form of government is patriarchal, after the manner of the ancients. The chiefs are the heads or fathers of their respective tribes; but their authority extends no further than their own body, while their influence depends much on their wisdom, bravery, and hospitality. When they lack any of these qualities they fall proportionably in the estimation of their people. It is, therefore, of importance that they should excel in everything pertaining to the dignity of a chieftain, since they govern more by persuasion than by coercion. Whenever their acts give general dissatisfaction their power ceases. They have scarcely any executive power, and can do but little without the concurrence of the subordinate chiefs and principal men.<sup>315</sup>

## 8. PARTIES TO THE TREATY.

The wording of W.B. Robinson's May Memorandum ties the extent of territory to be covered by the eventual treaty to the "absent Chiefs" who would be asked to attend. This makes it important to determine how and to whom the actual notices were sent. As he would make clear in his official account of the treaty, Robinson was able to rely on the 1849 Vidal-Anderson report as a general guide.<sup>316</sup> That report had listed most of the Ojibway chiefs on the northern lakes "whose personal sanction and signatures it would be necessary to obtain in order to make a treaty that would be generally approved of".<sup>317</sup> With the exceptions noted earlier, these chiefs were in fact invited to the councils at Sault Ste Marie and Penetanguishene.

### 8.1 Lake Superior representatives.

Although some of the Lake Superior people came to Manitoulin Island for presents, they were not in regular contact with the Indian Department. This meant that Robinson had to depend on fur traders and missionaries to pass the word up the lake. In his diary for May 7th, he states that he crossed over to the American side and spoke to *Pères Kohler & Menai* - a reference to Jesuit missionaries Auguste Kohler and Jean-Baptiste Menet<sup>318</sup> - "who will

see Upper Lake Indians & exhort them to order etc".<sup>319</sup> On the Canadian side of the river, he spoke to Baptist missionary Dougald Cameron - son of an Ojibway woman from the Nipigon and a Scots-Canadian trader<sup>320</sup> - who promised to do all he could "with the Nipigon Indians".<sup>321</sup> And on 13 May, 1850, Robinson advised Colonel Bruce that he had written to all the Agents of the Hudson's Bay Company:

explaining what had taken place at Garden River, sent copies of the Memorandum herewith enclosed, and requested them to give the necessary notice to the Chiefs residing between the Sault and Fort William of the time of meeting and also to impress upon them the necessity of abstaining from any acts hostile to the proceedings of the Mining Companies. This I am sure the Gentlemen will do, and I have no doubt that the chiefs whom I saw will take care also that the requisite notice is given.<sup>322</sup>

While not all of these letters have survived in the Hudson's Bay Company Archives, there is enough evidence to show that Robinson's letters were received by company traders at Fort William, Nipigon and Michipicoten and that they in turn gave the "requisite notice" to at least some of the groups with whom they were in regular contact.<sup>323</sup>

#### 8.1.1 Fort William.

Chief Trader John MacKenzie reported to Robinson on June 10th that he had held two meetings with the Indian people at Fort William Post, at which he had eventually persuaded them that "since they had been for years back desirous of selling their lands, they would be fools" if they did not take part in the proposed treaty. According to MacKenzie's journal for 23 July, "about 15 of the principal Indians" had left the previous morning for the Sault "to meet Mr. Robinson the person appointed by Government to negotiate a Treaty for the sale of their Lands & who is to be at Garden River by the 15th August".<sup>324</sup> Five members of this delegation can be identified. *Peau de Chat* and *John Ininway* (or *L'Illinois*), the two Fort William chiefs named in the Vidal-Anderson report, would eventually sign the Robinson-Superior Treaty. They were accompanied by *Michel Shebagishick*, *Amutchiwagabow* and *Jacob Wassaba*, who signed the treaty as principal men.<sup>325</sup>

### 8.1.2 Nipigon.

Many of the Ojibway people who traded at the Nipigon post of the Hudson's Bay Company also appear to have received Robinson's message about the treaty, although the direct role of the Company in promoting the agreement is less clear. In mid-September of 1850, the trader on Lake Nipigon, Peter McKenzie, reported to Governor George Simpson that about two-thirds of the hunters who regularly came to his post had already left for the winter. "The remaining third", he added, "are yet out on Lake Superior waiting the return of their deputies sent to the council to treat for their lands".<sup>326</sup> How many deputies in all went from Lake Nipigon to the Sault is unknown, but they definitely included *Mishimuckqua* - named as the Nipigon chief by Vidal and Anderson - and *Manitoushainse*. The first signed the Robinson-Superior Treaty as a chief, the second as a principal man.<sup>327</sup>

### 8.1.3 Michipicoten.

Although the Ojibway people who traded at Michipicoten post were also notified about the planned treaty, they were at first reluctant to take part. On July 24, 1850, Governor Simpson told W.B. Robinson that these people had only agreed to travel to the Sault "on condition that their trader Mr. Swanston should accompany them". Simpson explained to the Commissioner that he had arranged for Chief Trader John Swanston to attend the treaty because his knowledge of and influence over the Lake Superior tribes - he had been at Michipicoten for 25 years - would be of considerable use.<sup>328</sup> Even so, Swanston seems to have had difficulty rounding up delegates. He advised Simpson on August 21st that, as W.B. Robinson would soon be arriving at Sault Ste Marie, he proposed setting out the next day "with the few Indians I can muster to attend the meeting".<sup>329</sup> These few, who arrived at the Sault on August 27th, included *Totomenai* and *Chiginans* - who Messrs Vidal and Anderson had named as the Michipicoten chiefs in 1849. Both men signed the Robinson-Superior Treaty, the latter as a principal man.<sup>330</sup>

#### 8.1.4 Absentees.

There were some conspicuous absentees among the Lake Superior delegation at Sault Ste Marie. Alexander Vidal and T.G. Anderson had reported in 1849 that there were bands at Pic, with a summer village at the mouth of the Pic River on Lake Superior, and at Long Lake in the interior. The hunting territories of the latter group were said to straddle the height of land.<sup>331</sup> Robinson seems to have included their numbers in his overall statement of Lake Superior population for annuity purposes, but representatives of neither band attended the treaty.<sup>332</sup> Recorded tradition suggests that the Pic chief, at least, had been invited, probably by Chief Trader Swanston of Michipicoten. In 1880, Pic band members told a Roman Catholic bishop that their chief "did not go to Sault Ste Marie at the time of the Robinson Treaty, but made for the woods, fearing to be imprisoned".<sup>333</sup> This fear, which would have been based on the arrests of Chiefs Shingwakonce and Nebenaigoching for the Mica Bay affair, may also explain the reluctance of many Michipicoten people to attend the treaty.

#### 8.2 Lake Huron Representatives.

If the names attached to the Treaty are compared with government present lists for the period 1846-52, it is apparent that W.B. Robinson had invited the recognized leaders of the various north shore Ojibway bands who habitually came to Manitoulin Island for presents.<sup>334</sup> As with Lake Superior, Robinson seems to have relied on several individuals to pass on the message about the treaty. According to his diary for May 8th, 1850, Robinson wrote "to Ironside about Ind(ian) affairs". And on May 9th, he wrote "Mr. Campbell & Lamorandiere of the arrangement made with the Indians for meeting in Aug(ust)".<sup>335</sup> George Ironside, the Indian Superintendent for Manitoulin Island and northern Lake Huron, would have been an obvious choice for sending out the notices. "Mr. Campbell" is probably Archibald H. Campbell, who had succeeded W.B. Robinson as Superintendent of the Montreal Mining Company location at Bruce Mines.<sup>336</sup> He was conceivably being asked to inform the local Ojibway bands near Thessalon and Blind River. The "Mr.

Lamorandiere" in question was probably Charles Lamorandière, a *métis* who - as we saw earlier - ran a successful fishing business out of *Sheboanahning* (Killarney), a small port in the north channel east of Manitoulin Island. Lamorandière's father had worked for the Indian Department at Drummond Island, and Charles later served as Indian Department interpreter on Manitoulin. Robinson was likely asking him to relay information about the treaty to bands on the northeastern shore of Georgian Bay and Lake Huron, since these people often traded at Killarney.<sup>337</sup>

### 8.2.1 The role of George Ironside.

Superintendent George Ironside's role, at least, can be confirmed from recorded tradition. In 1887, Mongowin, Chief of the Whitefish Lake Band near present-day Sudbury, told an Ontario government official that "I was at the Robinson treaty with my father, we went there on the invitation of Captain Ironsides the Indian Agent at Manitowaning. My father and I were the only persons that went to the treaty from Whitefish Lake".<sup>338</sup> The signature of the father, Chief *Shawenakeshick*, appears on the Robinson-Huron Treaty, along with Mongowin's - there known as *Shenaoquin* - as a principal man.<sup>339</sup>

### 8.2.2 Numbers of Delegates.

In his official report, W.B Robinson explains that, during the treaty negotiations at Garden River, "there were twenty-one chiefs present, about the same number of principal men, and a large number of other Indians belonging to the different Bands".<sup>340</sup> This would indicate that more than just the chiefs and principal men had attended. But Robinson's diary, as well as the subsequent treaty accounts, show that these numerous "other Indians" were mostly from the Sault Ste Marie area bands.<sup>341</sup> The remaining Lake Huron delegates had arrived at Sault Ste Marie from Manitowaning on September 2, 1850 on board the steamer *Gore*, accompanied by Superintendent Ironside.<sup>342</sup> According to the financial accounts, a total of 47 Indian people made that boat trip.<sup>343</sup> In keeping with Chief Mongowin's memory



of events, therefore, this particular delegation would have consisted of little more than Chiefs and principal men, and possibly their wives.

### 8.2.3 French River and Lake Nipissing.

It is also apparent that some chiefs and principal men who had not originally been invited to Sault Ste Marie had arrived with the Lake Huron chiefs on the *Gore* and asked to be included in the agreement. This can be seen from the final paragraph of the treaty text, which states that "in consequence of the Indians inhabiting French River and Lake Nipissing having become parties to the Treaty, the further sum of one hundred and sixty Pounds Provincial Currency shall be paid".<sup>344</sup> Exactly when these people found out about the proposed treaty is unknown - although it was probably in August, when they were at Manitoulin Island for their annual presents.<sup>345</sup> At the very least, the group included Chief *Shabokeshick*, whose reservation (#10) under the treaty was scheduled for Lake Nipissing; and Chief *Dokis*, who obtained a reservation (#9) on the upper French River "near Lake Nipissing".<sup>346</sup>

### 8.2.4 Eastern Georgian Bay.

At some point after his May meeting with the chiefs at Garden River, Robinson decided to hold a separate council at Penetanguishene with what are now the *Shawanaga* and *Wasaksing* (Parry Island) bands of eastern Georgian Bay. This meeting would eventually take place on September 16, 1850, and the result constitutes an internal adhesion to the Robinson-Huron Treaty.<sup>347</sup> But there is nothing in the government records to indicate when Robinson changed his mind about inviting the Chiefs of these two bands - *Muckatamishaquet* and *Mekis* - to Sault Ste Marie. He had stopped at Penetanguishene on August 15th, on his way back up the lake, so it is possible that this is when the message was sent.<sup>348</sup> On the other hand, the Shawanaga and Parry Island bands did not, in contrast to previous years, travel to Manitoulin Island for presents in the summer of 1850.<sup>349</sup> Since

the presents were already being given out in early August, these people may have already known that Robinson intended to meet them at Penetanguishene on his return from the Sault.<sup>350</sup> Because the treaty council was held in Penetanguishene, which was near their traditional lands, a significant number of band members attended.<sup>351</sup>

#### 8.2.5 Absentees.

With respect to the bands on Lake Huron, Messrs Vidal and Anderson had reported the existence in 1849 of an inland group "about Green Lake". Like the Long Lake band north of Lake Superior, their territories appear to have straddled the height of land.<sup>352</sup> Representatives of this band, however, did not participate in the treaty, nor is there evidence that they were invited. The absentees also included the *Teme-augama anishnabai*, or Temagami band, from north of Lake Nipissing. Almost fifty years later, Chief Dokis - one of the treaty signatories - explained to Ontario government representatives that Temagami chief *Nebenegwune* did not go to Sault Ste Marie because he had not been invited.<sup>353</sup> This would be consistent with a late decision by Dokis and other French River and Lake Nipissing chiefs to attend the treaty themselves. However, *Nebenegwune* and one or two other Temagami band members did receive part of the initial payment when Robinson distributed the treaty money at Manitowaning on September 13th.<sup>354</sup> Based on this and other documentary evidence, in 1990 the Supreme Court of Canada upheld lower court findings that the Temagami band had adhered, at some point after 1850, to the Robinson-Huron Treaty.

### 9. TREATY PROTOCOL.

Article 3 of the 1794 Dorchester Regulations had required all purchases to be made "with great solemnity and ceremony according to the ancient usages and customs of the Indians". This phrase clearly indicates the extent to which treaty-making was a cross-cultural exercise, one which blended Anglo-American property law with native customary law.<sup>355</sup> Since we

have already looked at the identity of the Ojibway participants, we will now examine the ceremonial aspects of the Sault Ste Marie council.

### 9.1 Interpreters.

The difficulties of cross-cultural communication were a well-known feature of treaty negotiations. Translation was therefore not simply a linguistic problem. It required far more than a working knowledge of Aboriginal and European languages to convey radically different assumptions about such matters as governance or the ownership and management of lands and resources. If these cultural factors were not properly understood, there could be no communication even if there was conversation and an eventual agreement.<sup>356</sup> As we will see later in this report, there were a number of problems which arose in the decades following the Robinson Treaties because the Ojibways disagreed with the Crown's interpretation of the treaty relationship. But in contrast to the later numbered treaties (1870-1930), where persons with a limited knowledge of native languages were occasionally pressed into service<sup>357</sup>, the interpreters at the 1850 treaty council, both official and unofficial, were a genuine part of the multicultural world of the upper great lakes. All had considerable experience as cultural brokers.

Article 6 of the Dorchester Regulations had required the use of "such interpreters as best understand the language of the nation or nations treated with".<sup>358</sup> The Ojibway representatives at Sault Ste Marie spoke dialects of the *anishnabe* language. While English had made considerable inroads among their tribespeople in what is now southern Ontario, there is no evidence that any of these Ojibway chiefs or principal men spoke that language, with the exception of Chief Nebenaigoching, also known as Joseph Sayer<sup>359</sup>, and John Bell, a *principal man* from Garden River, who was partly of Scottish descent.<sup>360</sup> Several of them, however, like Chief Dokis from Lake Nipissing, could speak French, which was still the dominant European language in the region<sup>361</sup>.

### 9.1.1 Cultural Arbiters.

Commissioner W.B. Robinson himself, as a former fur trader in the Muskoka and Georgian Bay region, knew some *anishnabe*; many years later, one of Chief Shingwakonce's sons stated that Robinson had spoken privately to the delegates in the Ojibway language.<sup>362</sup> And Robinson's fellow Tory Allan Macdonell, who witnessed the Lake Huron treaty, also spoke some Ojibway.<sup>363</sup> What individuals like Robinson and Macdonell spoke, however, was probably not the full version of the language but a simplified version of *anishnabe* which had been a trade language on the upper great lakes for over a century. That trade version lacked the vocabulary which would have been necessary to properly translate the treaty relationship, both as expressed in the treaty document and as understood by the Ojibway delegates.<sup>364</sup>

Nevertheless, apart from the military officers, most of the people who formally witnessed the treaty signings at Sault Ste Marie and Penetanguishene knew enough of the language to be able to follow the proceedings without much difficulty. Chief Trader John Swanston from Michipicoten, for example, who took part in the Robinson-Superior Treaty council and subsequently witnessed the distribution of the money, was prized by the Hudson's Bay Company for his linguistic prowess.<sup>365</sup> And while Manitoulin Indian Superintendent George Ironside Jr (died 1863), who was of Shawnee and Huron descent on his mother's side, had only an "imperfect" knowledge of *anishnabe*<sup>366</sup>, he was accompanied to the treaty council by his assistant Jean-Baptiste *Assiginack* (c1768-1866), an Odawa war chief who had served the Indian Department as an interpreter since the War of 1812.<sup>367</sup> Both of these men, Robinson later stated, were of "essential service" to him during the treaty proceedings.<sup>368</sup>

### 9.1.2 George Johnston.

The official interpreter during the council was George Johnston (1796-1861), a resident of the U.S. side of the St. Mary's River (and brother-in-law of the famous American Indian

Agent Henry Rowe Schoolcraft) who had interpreted for the American Indian department in various places on Lakes Michigan and Superior.<sup>369</sup> Because his maternal grandfather, *Waubojeeg* or the *White Fisher* (c.1748-1793), had been a prominent civil and war chief of the Lake Superior Ojibways, Johnston enjoyed considerable prestige on both sides of the lake and was well known to Chiefs Shingwakonce, Nebenaigoching and their compatriots from the British Sault.<sup>370</sup> In the fall of 1849, he had furnished T.G. Anderson and Alexander Vidal with some of the social and political information on the Ojibways which they incorporated into their report.<sup>371</sup> This was probably why the Commissioner, who had met the American during his tenure as manager at the Bruce Mines, had chosen Johnston as interpreter. Robinson would pay him a total of £25 for his services during the treaty period.<sup>372</sup>

### 9.1.3 John William Keating.

In his diary for September 7th, 1850, Commissioner Robinson notes that the draft treaty had been carefully read over and translated to the Lake Superior Chiefs by both George Johnson and a "Mr. Keating", who had "made them fully comprehend all the provisions of it".<sup>373</sup> This second interpreter was J. William Keating, a mining promoter and government surveyor from Chatham who witnessed the signing of both treaties and helped Robinson disburse the money afterwards.<sup>374</sup> Keating was the son of a British military officer (and former comrade in arms of J.B. Assiginack and Thomas G. Anderson during the War of 1812) who had served as garrison adjutant at Drummond Island and Penetanguishene. William had worked for the Indian Department among the Ojibway, Odawa and Potawatomi people of the St. Clair River and reportedly spoke *anishnabe* and French fluently.<sup>375</sup> He had been asked by Lt. Col. Bruce, the Deputy Superintendent-General of Indian Affairs, to record the speeches made by the leading chiefs at the Treaty council.<sup>376</sup> Unfortunately, as will be noted below, these important documents have disappeared without a trace in the Indian Affairs records.

#### 9.1.4 T.G. Anderson/William Solomon.

During his adhesion meeting with the Shawanaga and Parry Island Bands at Penetanguishene on September 16th, 1850, W.B. Robinson appears to have relied for translation on both Visiting Superintendent Thomas G. Anderson of the Indian Department and on the latter's official interpreter William Solomon.<sup>377</sup> Anderson spoke both French and *anishnabe* and had translated for the his fellow Commissioner Alexander Vidal during their tour of the lakes the previous fall.<sup>378</sup> Solomon, who was of Jewish and Ojibway descent, was married to one of George Johnston's sisters, and had earlier served with Anderson (and Adjutant James Keating, father of J. William) as government interpreter on Drummond Island.<sup>379</sup>

#### 9.1.5 Louis Cadotte.

Not all of the interpreters at the treaty council were there on the government's behalf. The Lake Huron Treaty was also witnessed by Louis Cadot (or Cadotte), a prominent local *métis* who had for many years been *anishnabe* interpreter to the Rev. Abel Bingham's Baptist mission in Sault Ste Marie, Michigan.<sup>380</sup> Louis Cadot translated for Shingwakonce's Band - for which they paid him \$50 - and he and his family were formally registered as Garden River Band members during the disbursement of monies on Sept.11th, 1850.<sup>381</sup>

#### 9.2 Miskokonaie: Redcoat soldiers.

The treaty ceremonies and the resultant documents were witnessed by Captain Astley P. Cooper and Lieutenant T.M. Balfour of the Toronto Rifle Brigade.<sup>382</sup> The presence of the military, as the Dorchester Regulations make clear, was an important part of treaty protocol, since it signified the longstanding alliance between the Crown and the Indian Nations against the American *Big Knives*. Even in the mid-nineteenth century, according to the *anishnabe* historian Kahkewaquonaby (Peter Jones), the Ojibways still admired the

military prowess of British soldiers, who they called *miskokoniae* or redcoats.<sup>383</sup> At the end of his journey around the upper lakes in 1849, Captain T.G. Anderson had delivered presents to the Ojibways of Owen Sound and Saugeen with a typical speech reminding them of their common ties. "Mr friends", he orated. "Very many years ago when the English first took you by the hand and smoked the pipe of friendship with your ancestors they were told that so long as the sun would shine the *Red Coats* would be your friends and they the *Red Skins* should be their children".<sup>384</sup>

The military also had a policing role at treaty councils, which was usually directed at unscrupulous whites. As Lord Dorchester had enjoined in 1794, Crown officials were obliged "to prevent the pernicious practice of introducing strong liquors among the Indians".<sup>385</sup> In this respect, the Robinson Treaties can be considered the forerunner of the post-Confederation numbered treaties - which would feature the presence of military and/or Northwest Mounted Police officers during the council ceremonies.

The policing role the military performed at the Sault in 1850 was at least partially intended not to protect, but to intimidate, the Ojibways. The troops had originally been sent up to guard the lives and properties of the miners, and it was Captain Cooper and his men who had supervised the arrests of the two Chiefs and their colleagues after the Mica Bay incident.<sup>386</sup> There is little doubt that the Executive Council members wanted to convince Shingwakonce and Nebenaigoching that by asserting their property right to the mines, they were committing a criminal offence. Certainly, the fact that the two Sault area chiefs were still facing criminal charges at the time of the September treaty council must have had an intimidating effect. Those charges were only stayed in May of 1851, after the chiefs had formally asked Her Majesty's forgiveness for their actions.<sup>387</sup>

On the other hand, not all participant Chiefs had supported the actions of the *Pawating* leaders. In December of 1849, Indian Superintendent George Ironside, the arresting Justice of the Peace, had engaged one of the Chiefs from the Anglican mission at Manitowaning, along with two of his warriors, to accompany him to Sault Ste Marie, where they joined the

Rifle Brigade in rounding up the alleged ringleaders. This particular Chief, *Mishequongai*, later signed the Robinson-Huron Treaty.<sup>388</sup> His own views, and probably those of many other Ojibways from eastern Lake Huron, can be sensed from a speech he made in 1864 to another council meeting on Manitoulin Island. "The Queen is our monarch", *Mishequongai* said at that time. "She has authority over us".<sup>389</sup> To chiefs such as this, the presence of military officers at the Sault treaty council would have been a reminder of their traditional relationship with the Crown.

For their part, the officers of the Rifle Brigade tried to remain as neutral as they could in the dispute between the Ojibways and the mining companies. "The few Indians and halfbreeds living here", Captain Cooper had reported to his superior officer in February of 1850, "are as tame and well disposed a people as any in the world and have neither cause nor inclination to fight with anyone". Cooper had more trouble with his own troops, a few of whom deserted to the American side of the river, while others got involved in drunken brawls with their U.S. counterparts.<sup>390</sup> The military task was made much easier after W.B. Robinson's meeting at Garden River in May of 1850, when, in light of the promised treaty council, the local chiefs promised not to interfere any further with mining operations.<sup>391</sup>

The military also understood that they were acting on behalf of the Imperial government, not the settler administration. As soon as the treaty was concluded in September, the military Commander, Major General Charles Gore, asked the Governor-General's permission to withdraw the troops, as their presence was no longer needed.<sup>392</sup> Then the local government was handed the bill. Despite outraged protests from the Clear Grits - the radical wing of the Reformers - both Lord Elgin and the Colonial Secretary insisted that the provincial government would have to pay the sizeable costs of sending the troops to Lake Superior. As Earl Grey put it, the settlers had created the problem themselves in the first place by permitting the mining operations.<sup>393</sup>



### **9.3 Opening Ceremonies.**

Although W.B. Robinson did not begin his substantive negotiations with the Ojibways until September 5th, the actual treaty council can be said to have started several days earlier, with the arrival of the different delegations from Lakes Superior and Huron and the delivery of formal greetings from the Governor-General of Canada.

#### **9.3.1 Feasting.**

From the time of Sir William Johnson's Northern Indian Superintendency in the 1750's, it was understood by both sides that Crown officials would provision native emissaries throughout a treaty council. The proceedings at the Sault conformed to this practice. W.B. Robinson arrived on the evening of August 18th, and took up lodgings on the American side of the river. He then arranged for the Hudson's Bay Company to supply the various Ojibway delegates with food. The first arrivals, apart from the local groups, were Chief Peau de Chat and the representatives from Fort William and Nipigon, who saw Robinson on the 21st.<sup>394</sup> Between that date and September 9th, when the Lake Huron treaty was signed, the Company distributed several hundred pounds of flour, rough corn and pork, as well as tobacco, maple sugar, and tallow.<sup>395</sup>

#### **9.3.2 Beginning the Council: Lake Superior.**

Preliminary details for the council meeting were arranged both by Robinson and by the Superintendent-General of Indian Affairs, Colonel Robert Bruce, who had arrived on August 25th. Both men spent until the 30th visiting the Lake Superior and Sault Ste Marie chiefs, at which point Colonel Bruce departed. That very same day, the Colonel's brother, Governor-General Lord Elgin, had arrived at the Sault on the Royal Navy steamer *Mohawk*. On the 31st, Robinson met with Elgin, who apparently approved his intentions regarding the proposed treaty.<sup>396</sup>

The treaty proceedings were formally initiated by the Governor-General on Sunday, September 1st. After Church services that morning on the American side, Lord Elgin and W.B. Robinson crossed the river in a north canoe<sup>397</sup> and met with the Lake Superior chiefs at the lodge of Chief Peau de Chat, who was too ill to leave his bed. With George Johnston interpreting, the chief addressed the Governor-General, expressing his disapproval of the proceedings at Mica Bay and professing "much respect and attachment to the Queen and her representatives". Lord Elgin replied that he had left full power with W.B. Robinson to settle the matter, which apparently satisfied Peau de Chat and the other chiefs. The treaty commissioner and the Governor-General then returned to their lodgings.<sup>398</sup>

### 9.3.3 Beginning the Council: Lake Huron.

Lord Elgin performed the same ceremony two days later with the various Lake Huron delegates. These chiefs and principal men, who had been at Manitoulin Island for government presents, arrived at Garden River on the evening of September 2nd on board the steamer *Gore*. Lord Elgin travelled down to Garden River the following day on the *Mohawk*, where he was joined by Robinson, and the Governor-General convened the delegates at Chief Shingwakonce's house. His Excellency was addressed by both Shingwakonce and Chief Tagawinini, who stated that they had perfect confidence in "Mr. Robieson" and would settle their differences with him. According to Robinson, Lord Elgin then "expressed his satisfaction at their declaration of attachment to the Queen and government and bade them farewell". The assembled delegates had saluted him with musket fire both coming and going; the steamer *Mohawk* replied by firing two of its big guns as it departed.<sup>399</sup>

### 9.3.4 A Change in Venue.

As soon as the Governor-General had left, W.B. Robinson addressed the Sault Ste Marie and Lake Huron delegates in council, explaining to them that Chief Peau de Chat was too ill to come to Garden River. It was then agreed that the council would take place the

following day at noon in the Hudsons' Bay Company warehouse at the north end of the St. Mary's River portage. But because of heavy rain, the meeting would be postponed a further day. The Lake Huron delegates, who had all made the nine-mile journey back upriver on the steamer *Gore*, were allowed to camp in the Company storehouse overnight, under the supervision of George Ironside and J.B. Assiginack. There they were joined by Peau de Chat and the Lake Superior Chiefs. At eleven o'clock on the morning of Thursday, September 5th, the rain still pouring down outside, W.B. Robinson opened the substantive discussions on the treaty.<sup>400</sup>

#### 9.4 Ojibway Council Traditions.

Missing from the bald summary of events in W.B. Robinson's diary, and in much of the surrounding documentation, is any sense of the rich cultural traditions which governed Ojibway behaviour at council meetings. That these traditions played a part in the Robinson treaties is undeniable. But they can only be gleaned by inference from the surviving records - which is in itself evidence that the documentary record is by no means exhaustive.

##### 9.4.1 *Opwagan*: the Calumet.

One particular tradition on which the records are relatively silent is the pipe ceremony which was an invariable part of council protocol. In the *anishnabe* language, the *opwagan* - the pipe or calumet - is an animate object, which highlights its crucial role in Ojibway culture.<sup>401</sup> The initial rite of all religious and ceremonial occasions was the smoking of tobacco, accompanied by a prayer to the waiting spirits.<sup>402</sup> And tobacco smoking by both parties was an essential part of the making of a treaty.<sup>403</sup> In 1840, to give one example, the proceedings of a general council held at the Credit River Mission on Lake Ontario had begun with the Native delegates smoking the pipe of peace with the Chief Superintendent of Indian Affairs.<sup>404</sup> Given these facts, it is obvious that the various proceedings initiated by Lord Elgin and W.B. Robinson could not have begun or ended without a pipe ceremony. Yet the only hint of such a proceeding is the fact that Robinson purchased ten pounds of

plug tobacco from the Hudson's Bay Company store in Sault Ste Marie.<sup>405</sup> To observers like Robinson, George Ironside or Thomas G. Anderson, such ceremonials were probably so much a part of everyday experience as to be not worth mentioning. Even the American Indian Agent Henry Rowe Schoolcraft, who published a detailed memoir of his many years at Sault Ste Marie, rarely discusses the calumet. One of the exceptions came in October of 1826, when Chief Shingwakonce visited his office with a number of his followers. After the chief had spoken, Schoolcraft reports, one of his party "then lighted a pipe and handed it to me to smoke in the usual manner".<sup>406</sup>

#### 9.4.2 The Council Fire.

There would have been a fire burning in the Hudson's Bay Company warehouse in Sault Ste Marie on September 5th, to warm the participants in the treaty council both literally and metaphorically. Formal discussions among the various native Nations in northern America - and between them and the Euro-Americans - always took place around a council fire.<sup>407</sup> In 1850, the British fire for the upper great lakes was at Manitowaning on Manitoulin Island, where the Nations travelled to receive their government presents. Thirteen years earlier, Shingwakonce had tried to have this principal council fire removed to the St. Mary's River.<sup>408</sup> Henry Schoolcraft had lighted the comparable American council fire on his arrival at Sault Ste Marie in 1822; in 1826, Chief Shingwakonce expressed his pleasure that the fire had been kept burning there, "that the Indians might come and warn themselves by it".<sup>409</sup>

W.B. Robinson had agreed at his meeting with the Sault area chiefs in May of 1850 that the treaty council would be held at Garden River, rather than at Manitowaning. The chiefs' stated reason for requesting the change was that the Lake Superior representatives would find the island too far.<sup>410</sup> While this is certainly plausible, there was a more important reason. What they had done was remove the gathering from the government council fire on Manitoulin to the home fire of the Sault Ste Marie Ojibways. This meant that Chiefs Shingwakonce and Nebenaigoching would be hosts to the Native delegates and would enjoy

precedence at the council. This would give them considerable influence over the proceedings.<sup>411</sup> It may also explain why Chief Peau de Chat, according to the trader at Fort William, was upset by the change in locale.<sup>412</sup>

The unexpected transfer of the treaty council, because of Peau de Chat's illness, from Garden River to the H.B.C. warehouse actually benefitted the Lake Superior chief, because it affected this order of precedence. Although both Garden River and the rapids were part of the traditional territory of the Sault Ste Marie Ojibways, the Hudson's Bay Company buildings were neutral ground.<sup>413</sup> Shingwakonce and Nebenaigoching, therefore, would not necessarily have had the right to speak first. Nevertheless, they continued to act as hosts. It was one of Shingwakonce's sons who came to Robinson on the 4th and told him the Lake Huron chiefs were too wet from their trip upriver to meet that day.<sup>414</sup> It is also likely that Shingwakonce and Nebenaigoching kindled, at least symbolically, the fire in the warehouse with ashes from the council fire at Garden River. It is from this fire that all of the delegates would have lit their pipes.<sup>415</sup>

#### 9.4.3 Wampum.

Council ceremonies throughout the upper great lakes had involved the ritual reading and exchange of wampum strings or belts. When treaties were transacted, these served as parallel records to the English text. It is not clear, however, that wampum was in active use on the upper lakes at the time of the Robinson treaties. In what is now southern Ontario, belts were still being read at contemporary Iroquois and *anishnabe* council meetings.<sup>416</sup> But on Manitoulin Island, one of the few people still capable of reading wampum belts was Chief Tagawinini from Wikwemikong.<sup>417</sup> This chief, of course, did attend the treaty at Sault Ste Marie. And from Henry Rowe Schoolcraft's writings, we know that Chief Shingwakonce regularly *spoke* with wampum.<sup>418</sup> In August of 1828 the American Agent actually refused a string of wampum with which Shingwakonce had concluded a speech - though Schoolcraft smoked and shook hands with him "and accepted his tenders of friendship by re-pledging the pipe".<sup>419</sup> The following year, at St. Joseph's Island,

Shingwakonce *spoke* again during the annual delivery of presents from the British Crown. "The Greater Master of Life gave us pipes and Wampum for the purpose of conveying our ideas from man to man", he told Lieutenant-Colonel Mackay, the Indian Superintendent.<sup>420</sup>

#### 9.4.4 Orators.

As with the ancient Romans, speaking ability was honoured in Ojibway society. Although most chiefs would give speeches at council meetings, selected individuals with oratorical abilities would often deliver major statements on behalf of the various parties. In *anishnabe*, these people were known as *ogima kukedo* - literally, "chief speaker" - or *gay-gee-doo-inini*, "talking man".<sup>421</sup> In some, though not all, cases, they were civil or war chiefs themselves. Chief Peau de Chat, for example, who prided himself on his abilities as a public speaker<sup>422</sup>, told Robinson he had been appointed by the Lake Superior tribes to speak on their behalf.<sup>423</sup> And Shingwakonce, in addition to being a war chief, was an "orator, or speaker", according to Henry Schoolcraft.<sup>424</sup> Tagawinini, then living on Manitoulin Island - although far from the most important Lake Huron chief to attend the treaty - was also a gifted speaker, having acted as the "orator" of the Roman Catholic mission at Wikwemikong.<sup>425</sup> There were good reasons, therefore, why these three addressed the Governor-General during the treaty preliminaries on September 1st and 3rd.<sup>426</sup>

### 10. NEGOTIATIONS.

The main sources of information on the treaty negotiations are W.B. Robinson's diary and report. These, of course, represent the views of only one of the parties, so they must be used with caution. It is clear that Robinson does not discuss all details of the negotiations. There are some surviving documents from Indian Affairs and other records which record traditions of certain Ojibway signatories with respect to various treaty provisions. These can be used to evaluate Robinson's interpretation of events - and are referred to at various points in this narrative. The most useful source of material on the negotiations, however, has not been found.

### 10.1 Chiefs' Speeches.

In June of 1858, W.B. Robinson sent to R.T. Pennefather - then head of Indian Affairs - copies of the "speeches made by the leading chiefs to me at the Treaty in 1850". He said they had been prepared by "Mr. Keating" at the request of Colonel Bruce, the then Superintendent-General of Indian Affairs. He added that they might be of use to the Department "in case the proceedings then had are called in question".<sup>427</sup> From departmental records, it appears that J.W. Keating had originally sent these papers to Colonel Bruce on 26 September 1850 - and that Bruce had forwarded them to Robinson on October 9th of the same year.<sup>428</sup> Unfortunately, these documents were at some point separated from Robinson's covering letter to Pennefather and have vanished - either into the mass of Indian Affairs files or, perhaps, Pennefather's personal papers.

### 10.2 The Council Begins.

According to his diary, Robinson began the council at 11 A.M. on September 5th by explaining his appointment to the delegates, then proposed to pay them \$16,000 (£4,000) down in cash and a perpetual annuity of £1,000 (\$4,000). He outlined the benefit of a perpetual annuity instead of a percent payment only. He also told the chiefs that they could make *reasonable* reservations for their own use for farming or other purposes and that "they could still have the free use of all the territory ceded to Her Majesty to hunt and fish over as heretofore, except such places as were sold to white people and others by the government and occupied in a manner to prevent such hunting etc".<sup>429</sup>

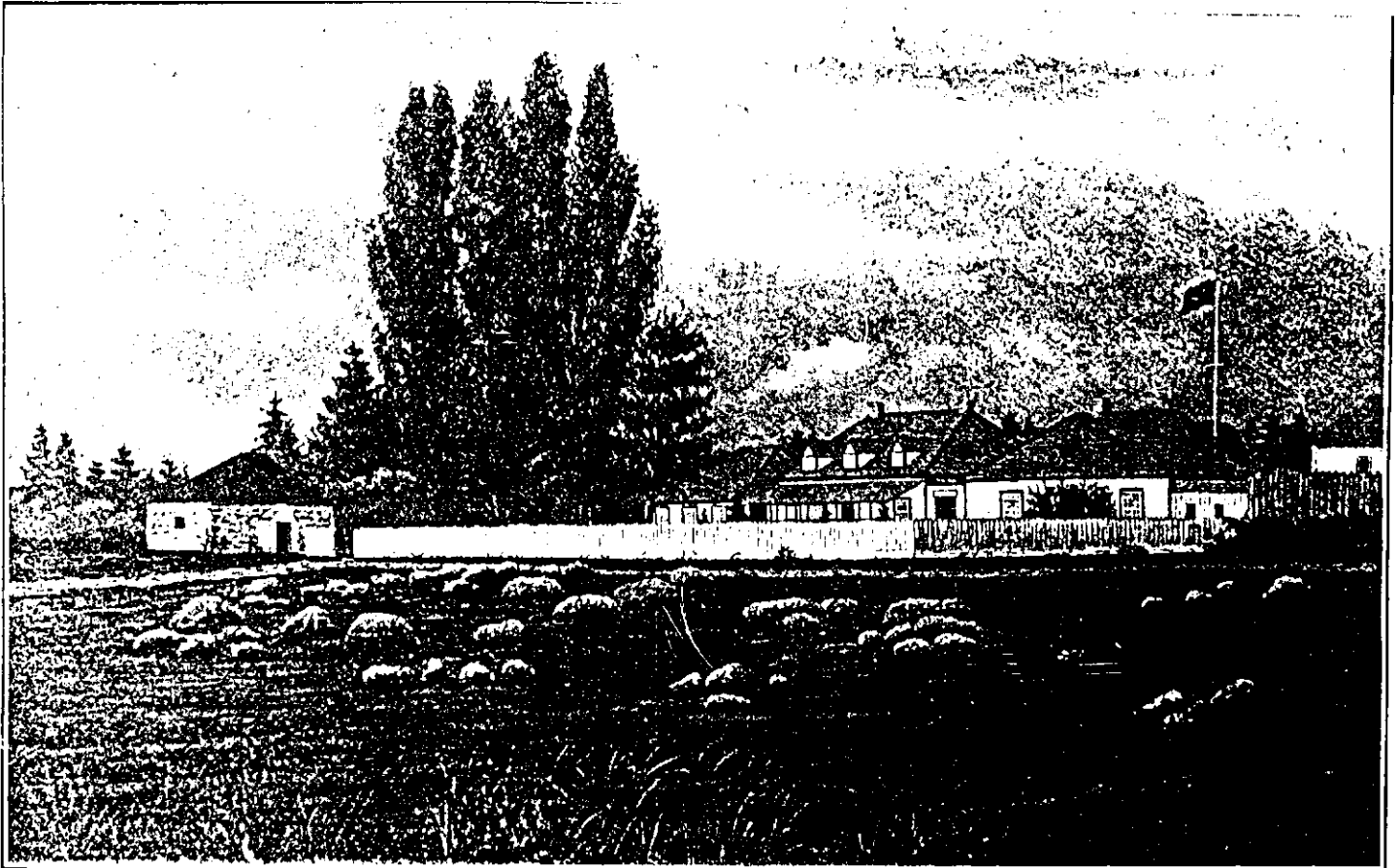
From the surviving records of the treaty council, Robinson's strategy seems clear. He hoped to drive a wedge between the Sault Ste Marie Chiefs and their followers, who he considered the most intransigent, and those from Lake Superior, on the one hand, and eastern Lake Huron, on the other. Chief Peau de Chat apparently replied first to the commissioner, stating that he was satisfied with what he had heard and was willing to treat. However, he said he would speak further the next day (Friday). He wanted half of the money for the Lake Superior bands, but made no other demands. Totomenai, the Michipicoten chief, then

spoke briefly, indicating that he would not consent to give Michipicoten to the whites who asked for it - probably a reference to Allan Macdonell and his associates - "but would cede it to the Queen". Finally, Shingwakonce spoke, stating that the business was important and asked Robinson to allow him to reply to the proposition the following day. The Commissioner, who agreed to the request, would have known that this was standard council protocol. Because of the consensus rule, there had to be time for discussion and reflection; decisions were never taken immediately. After making arrangements for Captain Ironside to provide the delegates with provisions, Robinson returned to his lodgings at 4 p.m.<sup>430</sup>

By indicating agreement with Robinson's financial terms, Peau de Chat had retreated significantly from his position the year before, when he had asked Commissioners Vidal and Anderson for an annuity of thirty dollars a head for the members of his band, plus various services (schoolmaster, doctor, blacksmith etc) to be provided at the government's expense.<sup>431</sup> The constant attention he had received since his arrival at the Sault from Lord Elgin, W.B. Robinson and Chief Factor John Swanston, among others, was obviously having the desired impact. This was not the case with Shingwakonce. When the council reconvened on the morning of Friday, September 6th, the chief presented Robinson with his terms. These included a reserve of 15 miles frontage from Partridge Point downriver to Garden River and then Echo Lake, as well as a perpetual annuity of \$10 per head.<sup>432</sup> Although this amount was much less than that first mooted by the Fort William chief in 1849, it was still far more than the \$1 to \$2 per head that Robinson was offering. The Commissioner knew that he would have difficulties with the financial offer. "The Indians had been advised by certain interested parties to insist on such extravagant terms as I felt it quite impossible to grant", he wrote in his report. This was another reference to Allan Macdonell, who was attending the treaty council. Robinson knew full well, however, that such *extravagant* provisions had been part of other treaties. Because "the American government had paid very liberally for the land surrendered by their Indians on the south side of Lake Superior" and because "our own in other parts of the country were in receipt of annuities much larger than I offered", Robinson had - as he later explained - "some difficulty in obtaining the assent of a few of the chiefs to my propositions".<sup>433</sup>



**H.B.Co Post, Sault Ste Marie**  
*Capp, Annals of Sault Ste Marie*



HUDSON'S BAY COMPANY'S POST  
 1842

In his diary, Robinson writes that he told Shingwakonce he could not agree to his demand for such a large annuity and again explained to all of those present that they would have the "same privilege as ever of hunting & fishing over the whole territory & to reserve a reasonable tract for their own use".<sup>434</sup> From his report, it is clear that he said far more than this. For one thing, he tried to paint the Sault Ste Marie chiefs as unreasonable. He noted that, when they had been in Toronto during the winter, they had only asked for the amount which the Government had received for the mining locations, after deducting the expenses connected with their sale. This amounted to about £8000, which the Government would either pay as a lump sum - "without annuity or certainty of further benefit" - or one-half down, with an annuity of about £1000 for each lake. According to the commissioner, the forty or so chiefs and principal men present all preferred the second option, although Shingwakonce and Nebenaigoching insisted on a larger annuity.<sup>435</sup>

Robinson could have increased the initial cash payment had he so desired. The government had given him £5000 in all - although only £4000 was in specie (coin) - and Robinson would eventually use £160 of the extra money to pay some unexpected attendees from French River and Lake Nipissing. Nevertheless, he retained a surplus of £800 (\$3200), which he handed in to the Receiver-General on his return to Toronto.<sup>436</sup>

As another argument in favour of a lower annuity, Robinson explained to the chiefs in council "the difference between the lands ceded heretofore in this Province, and those then under consideration":

they were of good quality and sold readily at prices which enabled the Government to be more liberal, they were also occupied by the whites in such a manner as to preclude the possibility of the Indian hunting over or having access to them: whereas the lands now ceded are notoriously barren and sterile, and will in all probability never be settled except in a few localities by mining companies, whose establishments among the Indians, instead of being prejudicial, would prove of great benefit as they would afford a market for any things they may have to sell, and bring provisions and stores of all kinds among them at reasonable prices.

Nor, Robinson apparently added, did the British Government "contemplate the removal of the Indians from their present haunts to some (to them) unknown region in the far West, as had been the case with their brethren on the American side".<sup>437</sup>

Since removal had been broached on several occasions during the preceding five years, the commissioner's official statement that it was no longer an option must have had considerable impact - particularly for those Lake Huron bands east of Sault Ste Marie. They lived close to the *great Indian reserve* of Manitoulin Island - a handful of delegates, in fact, actually resided there - and knew that both Catholic and Anglican missionaries had been trying for a decade to persuade many of them to relocate. Now Robinson was telling them that they could not be moved against their will. Moreover, for the first time in the history of the province, Native participants were being assured that they would have continued use of all of the lands to be covered by treaty - with the possible exception of small tracts needed for mining. The new white arrivals, then, would be expected to co-exist with aboriginal people, rather than try to displace them.

Even if Robinson's narrative of the council is incomplete, it does indicate that he was able to take advantage of divisions on the Native side. Apart from his own knowledge of the situation, he was presumably getting continuous advice about these differences from Superintendent Ironside, Chief Factor Swanston, J.W. Keating and others attending the council. It is clear that the Sault Ste Marie-area bands, who were the ones most threatened by resource development and, ironically, the ones most prepared to participate in its benefits, were holding out for higher cash payments and very large reservations. These were the provisions of the proposed treaty which would be of maximum benefit to them. On the other hand, although they depended heavily on fish, they did not hunt or trap to nearly the same extent as their northern and eastern neighbours. By contrast, for those Lake Superior and eastern Lake Huron Ojibways who were heavily involved in the fur trade, a guarantee of continued hunting and fishing rights, and the promise that they could keep their usual planting grounds or village sites as reservations, would have had far more resonance than the dollar amount of the treaty annuity.

### 10.3 The Lake Superior Treaty.

This apparent divergence in interest is borne out by what happened next. According to Robinson's report, after he had outlined his criticisms of Chief Shingwakonce's position, the chiefs from Lake Superior "desired to treat separately for their territory and said at once in council that they accepted my offer". The commissioner therefore told them that he would have the treaty ready for their signatures on the following morning.<sup>438</sup> This is not quite how Robinson explains matters in his diary, however. There, he indicates that his message had been directed to all of the delegates. He told them that, as a large majority of the Chiefs present were "in favour of the settlement on the basis of a perpetual annuity, I should prepare the treaties with that view & bring them back on the morrow for signature". Robinson then met *separately* with the Lake Superior chiefs, who agreed to sign a treaty for Lake Superior as soon as it was ready.<sup>439</sup> This suggests that the idea of a distinct agreement for Lake Superior was Robinson's, not the chiefs'. Here again, his strategy seems to have been to isolate the Sault Ste Marie delegates.

Robinson spent the evening of the 6th drafting the proposed Lake Superior treaty, and part of the morning of the 7th making two fair copies. Crossing over to the British side of the river, he met with Peau de Chat and the other Lake Superior delegates at the former's lodge - not in open council - and had the treaty "carefully read over & translated to them" by George Johnston and J.W. Keating in order to make them fully understand the terms. According to the commissioner, "they were all perfectly satisfied & said they were ready to sign it". Only then, at 11:30 a.m., did Robinson reconvene the full council, with all of the delegates from both lakes present. According to Robinson's diary, Peau de Chat then made a short speech, acknowledging that he understood the treaty and that the "amount he was to receive made no difference to him; he was ready to obey the wishes of his Queen now, as he had always been:

Did not wish to dictate to the Chiefs of the other Lake how they were to act. Was appointed by the tribes of Lake Superior to settle the business & had done what he thought for the best.<sup>440</sup>

Peau de Chat and three other chiefs and five principal men then signed the two copies of the treaty in open council, in the presence of Messrs Johnston and Keating, Capt. Astley P. Cooper of the Toronto Rifles, Superintendent George Ironside of the Indian Department, and Chief Factor John Swanston of the Hudson's Bay Company. Robinson presented Peau de Chat with "his copy" of the treaty, telling him the other would be kept at the Indian Office in Toronto and "copied into a Book where all the Indians could at any time see it". He also told the chief he would report his good conduct to his "Great Father the Governor General" and to Colonel Bruce, the Superintendent-General - who would be pleased to hear it.<sup>441</sup>

#### 10.4 The Lake Huron Treaty.

Having succeeded in detaching one broad group from the common pool of delegates, Robinson then turned his attention to the Lake Huron chiefs, who had all been present during the signing. He told them, so he later reported to Colonel Bruce, that he would have a similar treaty ready for their signature the next morning, "when those who signed it would receive their money; and that as a large majority of them had agreed to my terms I should abide by them".<sup>442</sup> What Robinson makes clear in his diary, however, is that he had actually issued a not very subtle ultimatum. Immediately after the Lake Superior treaty signing, Shingwakonce had apparently addressed the commissioner "at some length, repeating his former language" - attempting, presumably, to continue negotiating about both the annuities and the reservations. Robinson insisted that he would not change his mind:

and as the majority of the Chiefs were in favor of my proposition I should prepare the treaty & bring it over on Monday, that those who choosed might sign it. I would not press anyone to sign. Those who signed would get the money for their tribes & those who did not sign would get none & I should take the remainder of the money back to Toronto, give it to the Government & take no further trouble about the matter.<sup>443</sup>

While the commissioner's statement can be seen as simply a hard-nosed bargaining tactic, it is important to remember the context. Mines were already operating along the north

shore of both lakes, and more such developments were being contemplated. Shingwakonce, Nebenaigoching and their comrades were still facing criminal charges for evicting the miners from Mica Bay the previous fall. By stating publicly that there would be no money for those who did not sign, Robinson really meant that they would get no treaty benefits. And the unspoken threat behind his remarks was that, even if certain bands decided not to participate, the government would still consider the agreement binding on them because "a majority of the chiefs were in favor". Thus, the lands would be opened for development whether or not the Sault Ste Marie chiefs agreed to sign.

After the council meeting on Saturday adjourned in mid-afternoon, Robinson spent the rest of the day in the Hudson's Bay Company office writing up the Lake Huron treaty - a task he continued for all of the following day. On the morning of Monday, September 9th, he went over early to the council room with the treaty document ready for signature.<sup>444</sup> How many copies Robinson had drafted is unclear, but there were at least two.<sup>445</sup> He explained the contents of the treaty to all of the chiefs present, who "were satisfied & ready to sign".

Shingwakonce and Nebenaigoching, however, did not arrive at the council until much later in the day, and repeated their demand for ten dollars per head as an annuity. They also refused to sign unless Robinson pledged the government to give some sixty *halfbreeds* - whose names were on a list they handed to the commissioner - a free grant of 100 acres of land each. Robinson refused both demands, and then had the Treaty "again read out aloud to them all & explained". The other chiefs immediately came forward to sign the document. Upon seeing this, Robinson later reported, "the two who had resisted up to this time also came to the table and signed first, the rest immediately following".<sup>446</sup> Despite serious misgivings, then, Shingwakonce and Nebenaigoching had exercised their prerogative as hosts of the council and ensured that there was a formal consensus with respect to the treaty.

As Robinson indicates, the signatures of the two Sault Ste Marie chiefs appear first on the treaty document, followed by those of the other chiefs and principal men. The agreement was witnessed by Captain Cooper and Lt. Balfour of the Rifle Brigade, by the Interpreter

George Johnston, as well as by Superintendent George Ironside, J.W. Keating and the Ottawa war chief - and sometime Indian Department employee - J.B. Assikinack. Two members of the party associated with the Sault Ste Marie *faction* also signed as witnesses - the Garden River interpreter, Louis Cadot, and the lawyer Allan Macdonell. The final signatory as witness was Joseph Wilson, the customs collector and Crown lands agent.<sup>447</sup>

The remaining task at the Sault was the distribution of Treaty money. Robinson had placed the £2000 for Lake Superior in the care of Chief Factor Swanston, who was to accompany the chiefs to Michipicoten on the HBCo schooner *Whitefish* and disburse the money there. This had apparently been done to keep the money out of the hands of American *whisky traders*. On the 10th, Robinson himself paid Nebenaigoching's band at the Hudson's Bay Company store.<sup>448</sup> On the 11th, he proceeded to Garden River, and paid out the money to Shingwakonce's band, as well as to the bands of Kewekonce - the Thessalon and St. Joseph's Island Chief - and Naoquagabo, the chief from Pumpkin Point. Robinson described them all as "well satisfied with their treaty" and he gave Shingwakonce a copy of the document.<sup>449</sup>

### 10.5 Fire Water.

Robinson left Garden River at 8 p.m. and crossed over to Payment's hotel on Sugar Island. This large island in the St. Mary's River was less than a hundred yards away, though it was in American territory. The commissioner seems to have had trouble sleeping, because he notes in his diary that the people at Garden River were partying all night on whiskey brought down from the Sault. In the afternoon of the 12th, the steamer *Gore* picked up Robinson at Sugar Island for the return passage to Manitoulin Island; the boat was already carrying George Ironside, J.B. Assikinack and many of the remaining Lake Huron delegates.<sup>450</sup>

The drinking party at Garden River seems to have continued on board the steamer. The Superior of the Roman Catholic Mission on Manitoulin Island, Father Nicolas Point, provides a vivid description of the *Gore's* arrival at Manitowaning just before noon on September 13th. At least ten people were carried off the boat dead drunk, some dragged by the heels into the water. Father Point blamed Captain Peck of the *Gore* for the debacle.<sup>451</sup> Peck, a former fur trader, was married to Josephette Lamorandière from Killarney and lived at the *métis* settlement on St. Joseph's Island.<sup>452</sup> His proximity to Lake George and the St. Mary's River would have given him easy access to American whisky, which could be conveniently transported up and down the lake by steamer. It is quite conceivable, therefore, that he had supplied the party at Garden River as well.

W.B. Robinson had presumably been privy to the beginnings of the celebration on board the boat, yet he says nothing about it in either his diary or report. Given his earlier remarks about the drinking at Garden River, this seems curious - especially since Father Point makes it clear that the commissioner, along with Superintendent George Ironside, actually witnessed the *disgusting spectacle* at Manitowaning. The missionaries were frustrated that no charges were laid - even though there were sanctions at the time against the sale or distribution of alcohol to Indian people.<sup>453</sup>

Such sanctions were of long standing. The introduction of alcohol at treaty councils had been expressly forbidden, for example, in the 1794 Dorchester regulations and many earlier laws in colonial North America. This particular drinking bout, of course, had taken place after, not during the treaty negotiations, so at most it was a petty infraction of the rules. Interestingly, however, Father Nicolas Point also accused Captain Peck of supplying liquor to the Lake Huron delegates on the way *up* to the treaty council.<sup>454</sup> This was a far more serious charge. Robinson, as we saw earlier, did not accompany the chiefs on that journey, so it is not surprising that he says nothing about it in his diary. But Superintendent George Ironside, who did travel with the delegates both to and from Sault Ste Marie, has left no record of any such incident in his correspondence with the Indian Department.<sup>455</sup>



Father Point, however, had travelled with the delegates on the *Gore* all the way to Sault Ste Marie - where he had attempted to obtain an audience with the Governor-General. So he must have witnessed the drinking first hand.<sup>456</sup> Over the following years, Father Point and his colleagues constantly accused Ironside of being in league with the *whisky peddlers* - such as Captain Peck and his cronies - and of refusing to enforce restrictions on alcohol, despite his capacity as a magistrate on Manitoulin Island. They also suggested that Ironside was himself overfond of the bottle.<sup>457</sup> Could Ironside, therefore, have been trying to put the Lake Huron delegates in a proper frame of mind for the treaty council? One counterargument is that such allegations may have simply been part of the ongoing battle between the Jesuit missionaries and the Superintendent - who, like T.G. Anderson before him, clearly favoured the Anglican settlement at Manitowaning over the Catholic missions at Wikwemikong and other locations on the island.<sup>458</sup>

It is also worth noting that, although the *Gore* had arrived at the Sault on September 2nd, the actual treaty negotiations did not begin until the 5th. While the delegates may have had hangovers, there is no evidence that there was constant drinking throughout the intervening three-day period. Nor is there evidence from the military, the Hudson's Bay Company, or from recorded traditions of the participants, about the presence of alcohol during the council meeting itself. Had there been, one would have expected a witness like Allan Macdonell, who was so hostile to the government, to have said something about it. Nevertheless, given the statements by Father Point and his colleagues, there may have been far more going on behind the scenes both before, during and after the treaty council than is contained in W.B. Robinson's matter-of-fact report of proceedings.

### 10.6 Distribution.

There were a large number of people waiting for the commissioner at Manitowaning on September 13th - members of various bands whose chiefs had attended the treaty. Robinson states in his diary that he began paying out the money at noon and continued until 10 p.m., disbursing \$3500.00 (£875) in all, or just under half of the total funds available for the Lake

Huron treaty. He then boarded the steamer just before midnight and left for Owen Sound.<sup>459</sup>

According to his payment vouchers, Robinson distributed money to the bands of Pamequonaishcung (Magnetewan River, Reservation No.1)<sup>460</sup>; Mashinquonga (Pickerel River, Reservation No.13) and Shawinassawa (Whitefish River, No.4)<sup>461</sup>; Wagemake (Henvey Inlet, No.2) and Kitchepossegun (Beaverstone, No.3)<sup>462</sup>; Shawenekishick (Whitefish Lake, No.6)<sup>463</sup>; Namassin and Naoquagabow (Spanish River, No.5)<sup>464</sup>; Windawtegoinini (Serpent River, No.7) and Bonekeosh (Mississagi River, No.8)<sup>465</sup>; Tagawinini (Wanapitae, No.11) and Dokis (French River, No.9)<sup>466</sup>; and Shabokeshick (Lake Nipissing, No.10).<sup>467</sup> All of these chiefs had signed the Robinson-Huron Treaty, except Shawinassawa, who had been represented by his son Wabakekek.<sup>468</sup>

From the evidence of the vouchers, not all members of the above bands were paid at Manitowaning. A comparison with the present lists for 1849 and 1850 shows that half the members, or less, of many bands had actually waited on the island for the two weeks between the present distribution and the conclusion of the treaty.<sup>469</sup> This is not surprising, since the more distant groups would not have wanted to wait into the early fall for their money. According to Voucher No. 12, for example, Robinson paid only three of the listed thirteen heads of families from Lake Nipissing.<sup>470</sup> On this and many of the other vouchers, the words "by chief" are marked opposite the names of certain individuals - indicating that the money had been entrusted to their chief for future delivery. And many lists also contain the entry "for families not present" - with amounts from \$8.00 to \$40.00 being given to the chief for subsequent distribution.<sup>471</sup>

Robinson acknowledges some of these difficulties in his report. "The number paid, as appears on the pay list", he wrote to Colonel Bruce, "does not show the whole strength of the different bands, as I was obliged at their own request to omit some members of the very large families". He stated that he had annexed to his report the names of the chiefs, their localities, "and number of souls in each band as recognized by me in apportioning the

money, thinking it will be useful when paying the annuity hereafter".<sup>472</sup> Unfortunately, those lists - which are not the same as the vouchers - have not survived in the Indian Affairs records.

### 10.7 The Penetanguishene Adhesion.

The final act of W.B. Robinson's treaty tour was to secure the adhesion of certain bands on Georgian Bay. He arrived at Penetanguishene, via Owen Sound, on the morning of Sunday, September 15th. At the Military and Naval Fort, he "saw the Indians who are waiting for their payment" as well as Captain T.G. Anderson, and arranged the details for the following day's proceedings. On the morning of the 16th, Robinson returned to the Fort, where the delegates had assembled, along with Superintendent Anderson and his interpreter William Solomon. The commissioner "explained the treaty to the Indians and got the description of their reservations". He then took until noon paying out \$702 (£175.10) to the various beneficiaries.<sup>473</sup>

Two chiefs and three principal men of the *Ojibway Indians* signed the Robinson-Huron Treaty at Penetanguishene. Robinson, who had left space in the document in anticipation of their names, identified them as "Chiefs Muckutamishoquet and Mekis, and Mishoquetto, and Asa Waswanay and Pawiss".<sup>474</sup> Their signatures were witnessed by T.G. Anderson, W.B. Hamilton - who was Anderson's brother-in-law<sup>475</sup> - and by William Simpson and Alfred A. Thompson. The last three individuals, all of them merchants in Penetanguishene, had been closely connected with the Drummond Island and Michilimackinac fur trade.<sup>476</sup>

Chief Muckutamishoquet and principal man Pawiss represented what is now the Shawanaga First Nation.<sup>477</sup> As a reservation, they chose "a tract of land, on the east side of the Naishcouteong River near Pointe aux Barils, three miles square"; as well as another small tract of the same extent in "Washauwenega (Shawanaga) Bay now occupied by a part of the Band".<sup>478</sup> Chief Mekis and principal men Mishequetto and Asa Waswanay represented what is now the Parry Island First Nation. They chose to reserve a tract of four miles

square on the mainland opposite Wasaquesing (Sandy Island), where some of them resided at the time.<sup>479</sup>

## 11. RATIFICATION.

*A longtime ago, the Indians could not write, so they used an X for their signature. Chi-dahng-Nee-Gay-Min means "Signing Big Contract". "I'm Letting It Go" is Bug-in-Ee-gah. This term relates to signing a contract or treaty.*

Elder Fred Pine, Garden River, 1990

The treaty texts were drafted by Commissioner Robinson himself, in the English language.<sup>480</sup> It is these texts which were submitted for ratification by the Crown. In the absence of wampum or other such record, it is a much more difficult process to analyze the way in which the treaties were ratified by the Ojibways.

### 11.1 Ratification by the Crown.

Upon his return to Toronto, W.B. Robinson reported first to the settler government and not to the Indian Department. This fact alone symbolizes the increasing role of settlers in the management of Indian Affairs. On the morning of 19 September, Robinson handed the treaty documents to Louis H. Lafontaine, co-leader of the government, and spoke with Commissioner of Crown Lands J.H. Price about his successful journey to the upper lakes.<sup>481</sup> In a letter that same day to Robert Baldwin, the other government leader, Robinson explained that he had as yet had no time to prepare his report. This document, he said, would be ready in "a day or two". Baldwin must have seen the two agreements, because he returned them to Robinson on 20 September.<sup>482</sup>

On 24 September, 1850, Robinson submitted his official report to Colonel Bruce, the Superintendent General of Indian Affairs. After setting out the details of his mission, he asked the Superintendent-General to "lay the two treaties accompanying this Report before His Excellency, and trust they may meet with his approval".<sup>483</sup> The documents were

forwarded, by Colonel Bruce, to the *Land* Committee of the Executive Council, where they were approved by the Governor General in Council on 12 November 1850.<sup>484</sup>

On 29 November, the two agreements made on the 7th and 9th of September were presented to the full Executive Council, meeting on matters of State. According to the words of the Order in Council, His Excellency the Governor General "was pleased by and with the advice of the Council to approve thereof; and to order, as it is hereby ordered, that these several Agreements be, and the same are herein declared to be, ratified and confirmed". The Robinson-Superior and Robinson-Huron treaties were then ordered to be registered in the office of the Provincial Registrar.<sup>485</sup>

The registry copies of the treaties are now at the National Archives of Canada, in the Registrar-General's records.<sup>486</sup> Originals of the two treaty documents are also at the Archives, among the Indian Affairs records.<sup>487</sup> What became of the other copies of the treaties is unclear. According to his diary, W.B. Robinson had given a "fair" copy of the Robinson-Superior treaty document to Chief Peau de Chat from Fort William, and a copy of the Robinson-Huron document to Chief Shingwakonce from Garden River. These copies appear to be no longer in the possession of either group.

### 11.2 Ratification by the Ojibways.

Although the names of the Ojibway signatories to the two Robinson agreements are indicated at the bottom of each document, each signature is in fact an X. Robinson had probably taken contemporary American agreements as a model - the *anishnabe* chiefs who signed the 1836 Treaty of Washington, for example, also used an X.<sup>488</sup> Indeed, this was standard nineteenth-century practice when one of the parties to a contract was illiterate in English. According to the late Fred Pine, a Garden River elder - and great-grandson of Shingwakonce - the concept of using an X on European documents was familiar to Ojibway people. The *anishnabe* phrase *Chi-Dahng-Nee-Gay-Min* means "Signing a Big Contract". *Ndoh-Zhi-Dohn-Bee-Agun* means "My writing" or "My Mark".<sup>489</sup>

The latter phrase, however, does not refer only to an X. It can also refer to a *dodem* signature. In fact, on all previous treaties with the *anishnabe* in what is now Ontario, the signatories had endorsed the agreements with their clan or *dodem* mark, usually an animal, bird or fish.<sup>490</sup> Thus, on the 1836 Bond-Head Treaty for Manitoulin Island, the signatures of Chiefs Kewuckance, Paimauqueshcam and Waugemauquin appear as a crane, a caribou and a beaver, respectively.<sup>491</sup> These three, who later took part in the Robinson-Huron Treaty, and the other chiefs from the upper lakes habitually used their *dodem* mark in their documented dealings with the government both before and after 1850. Paimauqueshcam, for instance, would sign the 1862 Manitoulin Treaty with a caribou.<sup>492</sup>

The Robinson treaties, therefore, represent an interesting departure from existing Canadian treaty-making practice - one which would be followed in the post-Confederation numbered treaties, where the Native signatures are also marked by an X. Does the lack of *dodems* on the Robinson treaty documents have any significance for the treaty-making process in general? According to Garden River elder Fred Pine, when *dodems* appeared on a treaty, they represented "the consent from all the heads of families":

The Indians had meetings between the heads of families before the leader went and passed the treaty. Everybody had to raise their hands up, then it passed. Everything will be legal that way. Won't be like today where a couple of Indian guys can sell off the reserve. Gather the whole tribe and put the question to them. "This is coming up", they told their people. "Who wants it?", they asked. If the idea got a majority, it passed. The decision was made before the leader left home.<sup>493</sup>

There is recorded tradition to show that this process of prior authorization - and, in effect, prior ratification - did take place, at least with respect to the proposed Lake Huron treaty. The Whitefish Lake people, for example, held just such a meeting. In 1888, then Chief Mongowin, who himself attended the treaty, explained to Mr. Justice Ferguson of the Ontario High Court:

Shawenakichick was my father and the chief before me. I remember my father getting a message to go to the Sault to see about a reserve for the band...I remember my father calling a council in consequence of getting the message. The meeting was

held where I now live at the Whitefish Lake. I was present at the meeting. My father told the people or asked the people: "shall I reserve so much", and they answered "Yes".<sup>494</sup>

Such comments shed an interesting light on the treaty negotiations. They would explain why, according to W.B. Robinson's diary, both the Lake Superior and the eastern Lake Huron bands had expressed their willingness to make an immediate agreement with him. These groups had received *prior* authorization from their members to make a treaty on certain terms, which included selection of reserves and, presumably, the payment of annuities. Both subjects had been discussed by Messrs Vidal and Anderson during their tour of the lakes the year before. It is worth noting, of course, that the full terms of the proposed treaties were not known until W.B. Robinson made his proposals at the council meeting. Had the terms proven contentious, these particular chiefs and principal men would have been unable to sign an agreement. This is because the various members of the Lake Superior and eastern Lake Huron bands were not present at the council, which was being held in Sault Ste Marie.<sup>495</sup> As we have just seen, Chiefs could not bind their Band members without their consent.

In the case of the groups from Batchewana and Sault Ste Marie, Garden River, and Thessalon/St. Joseph's Island, the situation was different. Many, if not all, members of these bands were actually present at the council.<sup>496</sup> Thus, when Shingwakonce and Nebenaigoching rejected the Commissioner's initial proposals and made a series of counter-proposals of their own, they were able to consult continuously throughout the process. And when the two chiefs came forward to sign the Robinson-Huron Treaty on September 9th, their membership would have been there to see them do it.

## 12. TREATY PROVISIONS.

*An open contract is called Chi-dehbahk - (In) - Nee-Gayr Wa Big Trial in the Ojibwa language. An open contract means we will add something to it. Well the government did not add on it like they were supposed to.*

Elder Fred Pine, Garden River, 1990

This section examines the various provisions of the Robinson treaties as understood by both parties. For that reason, it is important not to focus solely on the written treaty text. While the province of Canada and its successor governments would continue to insist that the text was definitive, this was not the view of the Native participants. Indeed, over the decades following the treaty, there were many recorded statements from Ojibway signatories which questioned the government's interpretation of the treaty provisions, and which put forward the contrary *anishnabe* view. In some instances - as with reservation boundaries - governments did make certain concessions. In other cases - such as disputes over the territory covered by treaty - they either dismissed or ignored the Native position. And in some instances, especially the guarantee of continued harvesting rights, governments overtly violated the very written text on which they themselves placed so much reliance. These differences of interpretation are discussed below.

### 12.1 The Territory Covered.

The first and most obvious question about the Robinson treaties of 1850 is their territorial extent. In marked contrast to both earlier and later agreements in Canada, the metes and bounds of the area covered by treaty are defined in terms of the signatories, not in terms of the territory itself. Thus, the named signatories to the Lake Superior Treaty of 7 September 1850 are described as chiefs and principal men of:

the Ojibway Indians inhabiting the Northern Shore of Lake Superior, in the said Province of Canada, from Batchewanaung Bay to Pigeon River, at the western extremity of the said lake, and inland throughout the extent to the height of land which separates the territory covered by the charter of the Honorable the Hudson's Bay Company from the said tract. And also the islands in the said lake within the boundaries of the British possessions therein.

According to the written text, the participant Ojibways are said to "fully, freely, and voluntarily surrender, cede, grant, and convey unto Her Majesty, her heirs and successors for ever all their right, title and interest in the whole of the territory above described", except for certain reservations set out in the annexed schedule.<sup>497</sup>



The wording of the Lake Huron Treaty, as signed on September 9th, is very similar. Again, the signatories are identified as chiefs and principal men of the Ojibeway Indians:

inhabiting and claiming the eastern and northern shores of Lake Huron from Penetanguishene to Sault Ste Marie and thence to Batchewanaung Bay on the northern shore of Lake Superior together with the islands in the said lakes opposite to the shores thereof, and inland to the Height of Land which separates the territory covered by the Charter of the Honourable Hudson Bay Company from Canada, as well as all unconceded lands within the limits of Canada West to which they have any just claim.

The text then recites that they "surrender, cede, grant, and convey" to Her Majesty all of their title to the whole of the territory described, except for the scheduled reservations.<sup>498</sup>

#### 12.1.1 Northern and western Boundary.

The boundaries of the Lake Superior treaty are more easily defined than those for Lake Huron. The former agreement was bounded on the south by the lake (and its islands), on the east by the Lake Huron treaty, and on the west and north by the *height of land* - which was also to form the northern boundary of the Lake Huron Treaty. Robinson would have known at least something about the watershed divide between the hydrographic basins of the great lakes and Hudson Bay, since it was also the boundary between the Province of Canada and the Hudson's Bay Company's Charter colony of Rupert's Land. As A.W. Buchanan of the Company's Sault Ste Marie post explained to Governor George Simpson on September 11th, relaying to him news of the treaty, "the Indians [...] are to give up the whole of the country to the height of land".<sup>499</sup>

At the time of the treaty, however, this watershed boundary had never been accurately surveyed. Though provincial land and geological surveyors - such as Alexander Vidal - had done considerable work along the coast, no one had as yet proceeded inland up the various rivers which flowed into Lake Superior and Huron from the north. And only the international boundary surveyors (in the 1820's) had covered the rivers and lakes to the west of Lake Superior.<sup>500</sup> As a result, the height of land was not marked on contemporary

Canadian government maps, such as the two which accompanied the Vidal-Anderson Report of 1849 (see the maps at beginning of this report).

In fact, the only maps generally available in the province from which the northern *height of land* could be implied - in that they showed the sources of some of the rivers flowing to Hudson and James Bay - were produced in England, and were based largely on information obtained from the Hudson's Bay Company. This included various products of London mapmakers like the Arrowsmith brothers and James Wyld.<sup>501</sup> The Company's role is not surprising, since it had always had an interest in enforcing its southern boundary against *opposition* traders. Yet even the Company's maps were inaccurate - particularly with respect to the sinuousities of the watershed boundary in the vicinity of Lake Nipigon and Long Lake - north of Superior - and about the headwaters of the Spanish and Mississagi Rivers north of Lake Huron. Such problems in depicting the arctic watershed have continued to the present day. Successive maps of treaty boundaries prepared by the Department of Indian Affairs since the mid-1960's have continued to offer different versions of the northern and western boundaries of the Robinson treaties.<sup>502</sup>

To W.B. Robinson, of course, the exact location of the watershed divide would have been irrelevant, since the agreement he had negotiated extended to the defined northern and western limit of the Province of Canada, wherever that may have been. This was the maximum territory to the north of the lakes which he had been empowered to treat for. He obviously had no ability to make an agreement for the adjoining colony of Rupert's Land, even had he wanted to. Robinson also believed, as he had explained to the chiefs in council, that "the lands now ceded are notoriously barren and sterile, and will in all probability never be settled except in a few localities by mining companies".<sup>503</sup> Thus, there was little in the treaty provisions, apart from the identity of potential beneficiaries, which would have been affected by the exact location of the boundary. And even in the case of the beneficiaries, the boundary was not determinative. Robinson himself advised the government in 1851 that only 80 of the 216 people of Long Lake Post actually inhabited the territory covered by the Lake Superior treaty. The rest, he said, "reside beyond the 'Height

of Land' in the Hudson's Bay Territory". Nevertheless, all of the Long Lake people were included in the lists of annuitants.<sup>504</sup>

#### 12.1.2 Internal Boundary.

The internal divide between the two treaties, according to their texts, falls at Batchewana Bay on Lake Superior. Neither territorial description, however, defines which end of this large bay is to form the boundary. To answer this question, it is necessary to turn to the descriptions of the reservations. The lands set apart for Nebenaigoching and his Band (No.15) under the Lake Huron Treaty were to extend from just west of Gros Cap "to the boundary of the lands ceded by the Chiefs of Lake Superior, and inland ten miles throughout the whole distance, including Batchewanaung Bay".<sup>505</sup> This is somewhat ambiguous, since it implies that the Lake Superior boundary was to the west of the one defined in both treaties. Nevertheless, the whole of Batchewana Bay was apparently part of the territory covered by the Lake Huron, rather than the Lake Superior, agreement.

Various maps produced since the turn of this century to indicate the internal boundary between the two treaties show it extending, more or less in a straight line, from Batchewana Bay northeast to the height of land. In most cases, the maps appear to follow the Batchewana River, which bisects the bay.<sup>506</sup> Given the reserve description, such a line is not justified by the treaty text.

One of the reasons it is difficult to establish the exact boundary between the two treaties is that nothing turns on it. There is certainly no evidence that such a boundary was of any concern to either W.B. Robinson or the Ojibway delegates to the treaty council. Apart from the territorial description, the various provisions of the two agreements - annuities, reserves, augmentation clause, hunting and fishing rights - are identical. Indeed, the internal boundary was of so little import that the members of the Batchewana Band, whose territory was ostensibly within the Lake Huron Treaty, were paid their annuities for the first few years out of the funds for the Lake Superior Treaty.<sup>507</sup>

The only conceivable reason for distinguishing between the two agreements would have been to confine somehow the exercise of hunting and fishing rights to treaty limits. In the context of 1850, any such suggestion - and there are none in the records - would have outraged both the Ojibway people and the various traders who dealt in their fish, meat and furs. Ojibways from Michipicoten and Pic on Lake Superior traded at Sault Ste Marie and other places on Lake Huron; people from Batchewana Bay and Sault Ste Marie traded at Michipicoten.<sup>508</sup> The 1849 Vidal-Anderson Report, in fact, notes that the hunting grounds of the Batchewana, Sault Ste Marie and Michipicoten bands were held in common.<sup>509</sup> As Robinson indicates in his diary, he had secured to the Ojibways "the right of hunting and fishing over the ceded territory".<sup>510</sup> The word *territory* is singular, not plural.

Indeed, the Robinson treaties should properly be considered as one treaty with two sub-agreements - a fact which reflects their common origin. Until he arrived at Sault Ste Marie in late August, Robinson had fully intended to make only one agreement, covering the whole of the territory in question, a fact which was in accordance with his original instructions. It was the politics of the treaty council which caused him to divide his original draft. Once he had determined to treat separately with the Lake Superior chiefs, it was necessary to place the internal boundary somewhere.

Yet despite drafting two treaties, Robinson continued to use the singular in his dealings with the government. "I left *the Treaty* with Mr. Lafontaine", he explained to Robert Baldwin on 19 September, shortly after his return to Toronto.<sup>511</sup> Reporting officially to the Superintendent-General of Indian Affairs on 24 September, Robinson encloses "*the Treaty* which on the part of the government I was commissioned to negotiate with the tribes of Indians inhabiting the northern shore of Lakes Huron and Superior; and I trust that the terms on which I succeeded in obtaining *the surrender* of all the lands in question, with the exception of some small reservations made by the Indians, may be considered satisfactory".<sup>512</sup>

### 12.1.3 East and Northeast of Lake Huron.

One significant difference between the two treaty documents is that the territorial description of the Lake Huron treaty is vague to the east and northeast. The line simply follows the coast of Lake Huron from Penetanguishene to Batchewana Bay on Lake Superior and "inland to the Height of Land which separates the territory covered by the Charter of the Honourable Hudson Bay Company from Canada". Unlike the Lake Superior treaty, Robinson does not use the words "throughout the extent" to modify the word "inland". This rather suggests that he had originally intended the description to apply only to the tract between the north shore of Lake Huron - not the east coast of Georgian Bay - and the height of land.

For example, if a line is drawn due north from Penetanguishene to the height of land, then much of Lake Nipissing is excluded - even though the Lake Nipissing bands took part in the treaty. If the line is drawn to the east and northeast from Penetanguishene - in effect at right angles to Georgian Bay - it would strike the height of land in Canada East (Québec), somewhere to the north of the Ottawa River. The treaty document, however, applies only to Canada West, and there is nothing in the discussions leading up to the treaty to suggest that the government intended to cover lands in the neighbouring half of the province.

In later years, certainly, governments had considerable difficulty in defining the eastern boundary of the treaty.<sup>513</sup> In 1898, officials of the Department of Indian Affairs took the position that the region between Trout Lake and Mattawa - that is, those parts of the Ottawa River watershed from just east of Lake Nipissing to the Quebec border - were not included within the Robinson-Huron treaty area.<sup>514</sup> This opinion is embodied on a map produced by the Department at about the same time, which marks the treaty boundary curving around the eastern end of Lake Nipissing and following the Sturgeon River to the height of land. Excluded is the section of northeastern Ontario between the Mattawa River and the head of Lake Temiskaming.<sup>515</sup> As late as 1966, a departmental map of treaty boundaries was still showing much of this same area as excluded from the Robinson-Huron

Treaty.<sup>516</sup> It is only since 1977 that the Department has consistently shown the northeastern boundary extending all the way to the Ontario-Quebec border.<sup>517</sup>

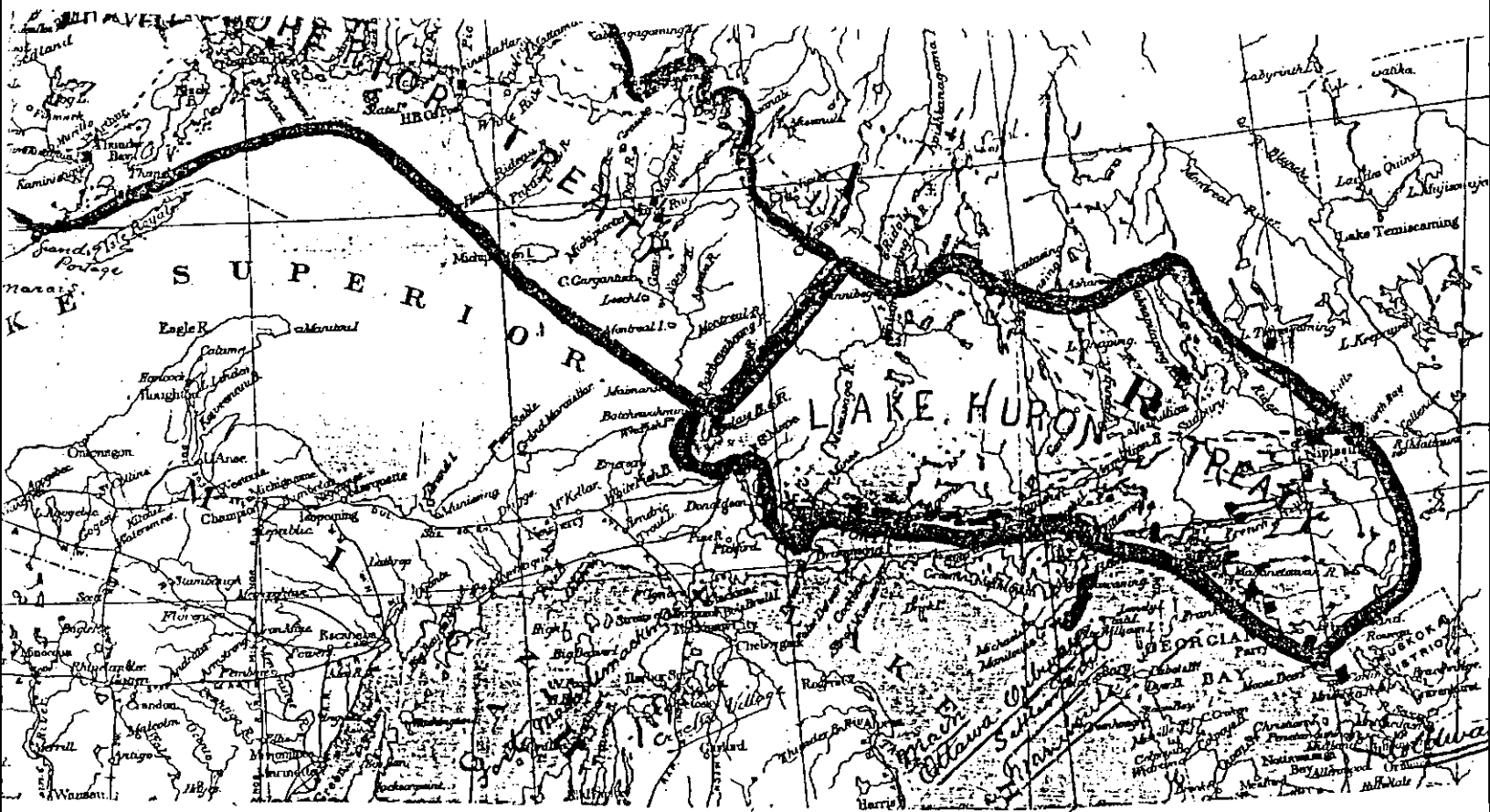
#### 12.1.4 Blanket Extinguishment.

It may have been in order to deal with just such difficulties that Robinson had added the phrase "as well as all unconceded lands within the limits of Canada West to which they have any just claim" to the Lake Huron agreement. He also added the words "and claiming" to the description of the Ojibway territory on the eastern lake. Thus, the named signatories are purportedly surrendering title to lands which they claim as well as inhabit. In this respect, the Robinson treaties can be considered forerunners to numbered treaties four through eleven, in which a so-called *blanket extinguishment* clause was inserted, covering off any other lands to which the signatories might have any claim.<sup>518</sup> In the case of the 1850 treaties, however, the blanket clause is limited to other lands in Canada West - and does not extend, for example, to lands in Canada East or Rupert's Land.

The additional words "and claiming" and "to which they have any just claim" are interlined above the hand-written text of the Lake Huron agreement.<sup>519</sup> This means that Robinson made the insertions after the Lake Superior Treaty had already been signed. But it is unclear whether the words were added prior to the 9th - when the Lake Huron agreement was first endorsed<sup>520</sup> - or whether they were inserted during the adhesion meeting with the Shawanaga and Parry Island Bands at Penetanguishene on the 16th. If the duplicate copy of the Lake Huron treaty Robinson gave to Shingwakonce had survived, it might be possible to give a definite answer.

Robinson had several possible reasons for defining the treaty as broad as possible. The entire phrase "together with all unconceded lands within the limits of Canada West to which they have any just claim" may have been designed to include the bands from the French River and Lake Nipissing who, as noted earlier, had not originally been invited to take part in the Lake Huron treaty, but who had agreed to become parties after showing up at Sault

Map of Robinson Treaty Boundaries  
Department of Indian Affairs, 1899



Ste Marie.<sup>521</sup> The traditional lands of these bands, according to the Vidal-Anderson report of 1849, lay to the northeast of Georgian Bay.<sup>522</sup> Without the additional phrase, therefore, these lands would not have been covered by the original territorial description contained in the Robinson-Huron Treaty.

On the other hand, it is conceivable that Robinson added the phrase when at Penetanguishene, in order to include the traditional territories of the Shawanaga and Parry Island Bands, which, according to Vidal and Anderson in 1849, extended back to the "surveyed lands" of Canada West.<sup>523</sup> As noted above, the 1850 treaty does not specify an eastern boundary, and the Commissioner would have had no easier way to define its extent to the eastward of Georgian Bay. Robinson may also have wished to avoid any potential conflict with the Ojibways from Lakes Simcoe and Couchiching, whose Chiefs had visited him at Penetanguishene on the 16th September to claim rightsto a small tract of land near the Severn River which they said was not included in any former treaty. The lands in question were due east of Penetanguishene, and therefore arguably within the bounds of the Lake Huron treaty, to which these chiefs were not signatories.<sup>524</sup>

#### 12.1.5 Islands.

According to the text of the treaties, the Ojibway signatories had surrendered all of their title to the islands *within the boundaries of British possessions* in Lake Superior and *opposite to the shores* of Lake Huron. Depending on how far the word *opposite* is considered to run, there are innumerable islands and islets which fall into this category. Along Georgian Bay, the so-called "Thirty thousand Islands" - now dotted with cottage and resort developments - extend from Penetanguishene to the mouth of the French River. And the hundreds of islands between Manitoulin Island and the north shore of Lake Huron have become part of one of the most popular boating destinations in North America. Though eventual recreational use was not contemplated by either side in 1850, the idea that islands had been included in the cession was immediately disputed by the Ojibways of Lake Huron and



Georgian Bay. That dispute, therefore, provides a classic demonstration of the difference between written and oral understanding of a treaty.

The express wording of the treaty respecting islands seems clear and unambiguous. And other portions of the text could be read as proof that islands were intended to be covered by the surrender. For example, the Robinson-Huron Treaty specifically exempts islands which were to form part of reservations. Thus, the Garden River reservation (No.14) was to include Squirrel Island in the St. Mary's River, and the Sault Ste Marie reservation (No.15) was to incorporate the small (Whitefish) island at the Sault used by Nebenaigoching's Band as a fishing station.<sup>525</sup>

On the other hand, islands are not mentioned in Robinson's commission or instructions. Nor does he refer to them in his official report. However, the subject was definitely discussed prior to the treaty council. The memorandum of Robinson's preparatory meeting at Garden River in May had specified that the chiefs from the north shore of the two lakes *and the Islands therein* would be invited to the treaty.<sup>526</sup> The primary reason for Robinson's interest in this topic - as with so much else - was mining. The maps attached to the Vidal-Anderson Report of 1849 indicate that several of the islands in Lake Superior, such as St. Ignace and Michipicoten Islands, already had claims on them, and exploration work was then underway.<sup>527</sup> Robinson was also well aware at the time of the May meeting that, as Messrs Vidal and Anderson had already pointed out, Allan Macdonell had secured a 900-year lease of Michipicoten Island from Chiefs Shingwakonce and Nebenaigoching. Those chiefs had told the 1849 commissioners that they wanted the island in question confirmed as part of their reservation.<sup>528</sup>

Since the island was in dispute, W.B. Robinson would have wanted it included in the treaty. His tacit instructions from the government had been to protect the mining locations - and to isolate the two principal Sault Ste Marie Chiefs and their advisor Allan Macdonell. But according to information provided to Vidal and Anderson, the entire Michipicoten area was held in common by the Michipicoten, Batchewana and Sault Ste Marie Ojibways.<sup>529</sup> It was

convenient for Robinson, therefore, that Peau de Chat and the other Lake Superior chiefs wished to treat separately. When they signed the treaty in open council on September 7th, Michipicoten Island became part of the cession.<sup>530</sup> The Sault Ste Marie chiefs seem to have acknowledged this fact. In November of 1850, Shingwakonce and Nebenaigoching petitioned the Governor-General to have their lease of Michipicoten Island confirmed to Allan Macdonell, as "in the general cession of the Country to the Crown the island referred to is included". That petition was denied.<sup>531</sup>

That Michipicoten Island was included in the treaty because of mining is consistent with oral tradition. In the fall of 1852, one of the Lake Huron treaty signatories - Chief Tagawinini - told the Jesuit missionaries on Manitoulin Island that "I only heard one Indian cede an island because of mines, it was Joseph Peau de Chat, but that was for Lake Superior". Tagawinini, however, denied that the Lake Huron chiefs made any such cession - the Queen, he said, "only asked us for the mainland and not the islands". The reason for the chief's concern was that stories were already spreading along the lake that the Ojibways no longer had the property of the islands in the north channel adjoining Manitoulin. Tagawinini claimed that, on 28 October 1852, he had asked Superintendent George Ironside and J.W. Keating - both of whom had attended at the Sault - "who it was that had heard him make such a cession at the time of the treaty". The two gentlemen had replied that "these were just rumours, that they were still masters of the islands".<sup>532</sup>

Other Lake Huron Ojibways appear to have had the same understanding. In the winter of 1883-84, a delegation of chiefs from Parry Island, Shawanaga and various Georgian Bay bands announced their intention to visit Ottawa in order to insist - among other matters - that islands had not been surrendered in the Robinson treaty. They wanted the government to appoint a commissioner and take evidence about these subjects while witnesses to the Robinson treaty still survived.<sup>533</sup> Two of those witnesses, William King and Pahbahmowatong, told the Department of Indian Affairs in 1887 that, during the treaty council at Penetanguishene, Robinson had explained that "the Queen does not ask you for your islands, but only for the main land". William King also insisted that, in 1858, he had

gone to see Robinson in Toronto about this and other matters, and that the Commissioner had confirmed his understanding of the treaty.<sup>534</sup> It is conceivable that it was this meeting which prompted Robinson, in June of 1858, to forward to the Indian Department the record - since vanished - of the speeches made by the leading chiefs at the treaty council.<sup>535</sup>

Oral tradition, therefore, points to a difference in treaty interpretation between the Sault Ste Marie Ojibways, on the one hand, and the Lake Huron and Georgian Bay Ojibways on the other. The difference probably had to do with the importance of islands to the traditional lifestyle and economy of the latter groups. Where soil was suitable, for example, the Lake Huron and Georgian Bay Ojibways had gardens on islands. They also collected edible berries and plants. And in the late spring and summer, the windswept islands provided a refuge from mosquitoes and other biting insects. But most importantly, the islands in the north channel and along northeastern Georgian Bay served as fishing stations.<sup>536</sup> For example, the records for the 1820's and 1830's of the Hudson's Bay Company post of La Cloche - on the north shore between the mouths of the Whitefish and Spanish Rivers - show that Ojibway people occupied Great La Cloche and its surrounding islands for several weeks between spring and fall. There they speared or netted thousands of pounds of trout, whitefish and other fish species.<sup>537</sup>

For all of these reasons, it seems unlikely that the Lake Huron and Georgian Bay Ojibways would have wished to share the islands opposite the lakeshore with anyone else. In fact, the spur to Chief Tagawinini's original complaint in 1852 was the suggestion that white people would be allowed to fish from the islands. This became a consistent theme over the following four decades, as *anishnabeg* from all over Lake Huron fought government decisions to award fishing licenses, and island stations, to non-natives. Indeed, as will be noted below, Tagawinini and his fellow chiefs insisted that the Robinson-Huron Treaty had guaranteed them the entire lake fishery. The Ojibways also believed that W.B. Robinson supported them in this view.<sup>538</sup>

## 12.2 The Ojibway Understanding.

If we are not to conclude that one of the parties to the treaty was being economical with the truth, then the only conceivable explanation for this difference between the text of the Robinson-Huron Treaty and its oral version is that the Ojibways of Lake Huron and Georgian Bay took the treaty absolutely literally. In *anishnabe*, the word *aki* carries the English sense of *land, country, or soil*. The various words for island, however, are all based on the root word *minis*.<sup>539</sup> Thus, when Chief Tagawinini - and, later, the Georgian Bay representatives - remembered that the Queen had only asked for the mainland, not the islands, they were indicating that Robinson and his interpreters had not specifically stated that the various *minis* in Lake Huron and Georgian Bay would be included in the treaty.

This dispute over islands raises an interesting question. What did the Ojibways themselves think *were* the boundaries of the Robinson treaties? The term *mainland* is very broad, and could be made to extend a considerable distance in all directions. Although the commissioner was carrying maps of Lakes Huron and Superior - namely, those attached to the Vidal-Anderson Report - there is no evidence that he showed them to the treaty delegates.<sup>540</sup> It would not have been hard, of course, for the translators to identify the various reference points along the coast which are mentioned in the treaty text. Even the westernmost delegates - those from Fort William (*Kaminitikwia*) - would have understood where the easternmost point - Penetanguishene - was, since government presents had been distributed there in the period 1830-35. But in all other respects, the maps are so sketchy that it would have been difficult to make sense of anything other than the coastline of the two lakes.

And regardless of how sophisticated the translators at the council actually were, certain terms from the English text cannot be rendered easily in *anishnabe*. There is, for example, no Ojibway word for *height of land*. People who spent as much time on the water as the Ojibways were certainly aware that rivers and lakes flowed in varying directions, and that

travel time depended on whether one was going upstream or downstream. But the idea that the arctic watershed formed some sort of continuous boundary, in the political sense intended by Canada and the Hudson's Bay Company, would have been meaningless. It was not marked by cutlines in the bush - like modern interprovincial boundaries - and it had none of the trappings of the international frontier, which Ojibways crossed regularly both at Sault Ste Marie and Pigeon River, encountering soldiers and officials of the *Long Knives*.

According to an August 1851 petition from Wagemake and Papasance - both of them treaty signatories - W.B. Robinson did not ask the delegates to define the boundaries of each band's traditional lands.<sup>541</sup> While the commissioner was probably relying on the Vidal-Anderson Report for evidence of internal boundaries, he seems to have made no special attempt at the treaty council to find out whether the delegates inhabited *all* of the lands - particularly to the north and west - which are set out in the treaty texts. Indeed, it is far more likely that George Johnston and his fellow translators referred simply to direction when setting out the metes and bounds of the treaty. They may even have included other geographical reference points. One of the signatories, Chief Dokis, says as much in an 1878 petition to the Department of Indian Affairs. "Our grandfathers told us all the lands in the country belonged to us", he wrote on behalf of a number of French River and Lake Nipissing people, "and we suppose the white people knew that as well as we did when they asked us to give away our rights to all lands as far as the Red River".<sup>542</sup>

### 12.3 Title surrendered.

According to the text of both treaties, the Ojibway people surrendered for ever, "all their right, title and interest to and in the whole of the territory", except for the reservations set out. But did the Ojibway people perceive this surrender as absolute? And, if they did, were there any rights which they were to retain for themselves? From subsequent statements by the Ojibways, it is not entirely clear what it was Robinson had asked them to surrender.

In 1887, the people of Parry Island addressed a petition to the Department of Indian Affairs, asking for a copy of the Treaty which was signed at Penetanguishene, which they insisted must have been different from the one signed at Sault Ste Marie. Two of the petitioners, William King and Pahbahmowatong, stated that they were present in 1850, when W.B. Robinson discussed the Treaty with Mukudameshaquod (Muckatamishaquet) and Mekis. They claimed that Robinson had threatened that the Americans would come and take their lands if they did not sign:

Robinson Esq said at Penetanguishene. "The Governor also the Queen ask you for your land". Chiefs Mukudameshuqod and Mekis sat quietly for a long time. Mr. Robinson then said, If you do not give up your land the Big Knife will take your land from you then you will get nothing for it. But if you give up your land to me, I will pay you well. You will not be in want for clothing and what you will eat on account of the money I will give you.

The chiefs then answered that they would do what their fellow Indians at Sault Ste Marie had done "because you would not stop asking us. You asked us to sell our land to you, so we sell you our land".<sup>543</sup>

Except for the threats, this version of events does correspond to the language of the Treaty text. On the other hand, there is evidence which indicates that the government and the Indian people may have understood different things by the phrase "our land". Only a year after the Treaty - in October of 1851 - Chiefs Mekis and Muckatamishaquet wrote to Indian Agent George Ironside at Manitoulin Island, asking him whether "the money what we have been received from him (Robinson) last summer is it for our Land or for the *Zheguhkoons* his Iron ore?".<sup>544</sup> Whoever rendered the letter into English had mistranslated the Indian word for copper (*ozawagons*, "yellow metal"), but the sense is clear. The Ojibways perceived a difference between the surface and sub-surface rights - being unclear as to whether the money received was for their land or just for the copper. Given that the government was so anxious to acquire mineral rights, the confusion is understandable.

## 12.4 Cash Payment.

According to both treaty documents, the financial consideration to be paid the Ojibways was "the immediate sum of two thousand pounds of good and lawful money of Upper Canada to them in hand paid" plus a perpetual annuity of £500 (Lake Superior) and £600 (Lake Huron). In the case of Lake Huron, a further £160 pounds was added to the cash payment because the *Indians inhabiting the French River and Lake Nipissing* had decided to become parties to the treaty.<sup>545</sup> In all, then, there was a total of £4,160 to be distributed to the treaty participants in 1850. The comparable dollar value of this amount - at the contemporary exchange ratio of 4:1 - was \$16,640.00.<sup>546</sup>

### 12.4.1 U.S. Examples.

As the discussions during the treaty council make clear, the amounts payable to the Ojibways of Lakes Huron and Superior were not as generous as those set out in contemporary American treaties. Some of the Ojibways from Fort William and Sault Ste Marie, for example, had been beneficiaries under the 1842 Treaty with the *Chippewas* of Lake Superior and the upper Mississippi River. By virtue of that agreement, the Chippewas were to receive annual payments - for 25 years - of \$12,500 in specie, \$10,500 in goods, \$2,000 in provisions and tobacco, plus \$2,000 for the support of two blacksmiths's shops, \$1,000 for the pay of two farmers, \$1,200 for the pay of two carpenters, \$2,000 for the support of schools and \$5,000 as an agricultural fund. The U.S. government would also pay \$75,000 to satisfy their debts to the traders.<sup>547</sup> Of course, as W.B. Robinson pointed out at the council, those Chippewas had also agreed to remove to lands west of the Mississippi - something the British government no longer contemplated. And he might have added that the payments were not in perpetuity, but for a fixed term of years.

#### 12.4.2 Form of Payment.

The form of the money to be *in hand paid* to the Ojibways is interesting. Among W.B. Robinson's accounts is a voucher for shipping charges on three packages, three kegs and one box - containing in all \$16,000 - to be conveyed from Toronto to Sault Ste Marie on Her Majesty's steamer *Mohawk*.<sup>548</sup> Rather than transport this large sum himself, Robinson had obviously entrusted it to the naval vessel bringing up the Governor-General, Lord Elgin, to the treaty council. It is clear that these various packages did not contain paper money. While Robinson was carrying a cheque for £933.6.8 drawn on the Bank of Upper Canada - which he could cash if necessary with the Hudson's Bay Company at Sault Ste Marie - he had also received a total of £4000 from the Receiver General of Upper Canada on August 14th, all of it in *specie* (coinage).<sup>549</sup> Although banks in the province of Canada issued their own notes - sometimes double denominated in dollars and shillings - neither the province itself nor the banks minted their own specie. Instead, they relied on a bewildering variety of British, American, Spanish, and even old French, gold and silver coins, which were assigned a variety of exchange values against the pound.<sup>550</sup> By 1850, however, much of the coinage in circulation in Upper Canada was American. Robinson, it is clear, made his payments to the Ojibways in American silver half-dollar coins.<sup>551</sup>

#### 12.4.3 Value.

It is not a simple matter to establish the relative value, in present-day terms, of the cash payment made to the treaty beneficiaries. If the £2000 for the Lake Superior bands is divided by their supposed population of 1240, which is set out in the treaty text, then each individual would have received about 32 shillings, or \$6.40. This is very close to the 31 shillings per person which was actually distributed at Michipicoten.<sup>552</sup> Although some large families consisted of as many as eight to ten people, the average family size on Lake Superior - based on Hudson's Bay Company figures - seems to have been about 5 persons.<sup>553</sup> The mean family remuneration under the treaty, therefore, would have been in the order of £8 or \$32.00.



On Lake Huron, the money was divided somewhat differently. For example, although there were no special payments to the Lake Superior chiefs, Robinson paid each of the chiefs on Lake Huron between \$20.00 and \$50.00, over and above the amount paid to their families. But because there were ostensibly more people on Lake Huron - 1422 according to the treaty - the individual shares were smaller, in the order of \$4.00 to \$5.00. This meant that the average amount per family was about £5 or \$20.00, or only 60% of the amount received on Lake Superior.<sup>554</sup>

In establishing comparative value, it is useful, first, to compare these sums with wages or salaries typical of the period. Manitoulin Indian Superintendent George Ironside, for example, was paid £225 or \$900.00 per annum; his more experienced counterpart T.G. Anderson received £315 or \$1260.00 a year. Francis Assikenack - son of the Ottawa war chief and interpreter J.B. Assikenack - had been hired as interpreter on Manitoulin Island in 1849 at an annual salary of £90 or \$360.00.<sup>555</sup> Further up the income scale, the Hon. W.B. Robinson had received £400 (\$1600.00) in annual salary as Resident Superintendent at Bruce Mines for the Montreal Mining Company.<sup>556</sup> On the other hand, an unskilled labourer in Toronto or Montreal could expect to earn at most 6 shillings a day. Even if he worked all year - an unlikely prospect - he would earn no more than £15 or \$60.00.<sup>557</sup> So the cash payment to the Ojibways of Lakes Huron and Superior could be said to represent half to a third of the annual wage for an unskilled labourer or one to two week's salary for a middle-class office-holder.

As for purchasing power, Robinson's own accounts provides the approximate cost of certain basic commodities on Lake Huron at the time of the treaty. The Hudson's Bay Company at Sault Ste Marie sold flour at 2.5 pence (3 cents) per pound, pork at 6 pence (10 cents) per pound, plug tobacco at 17 pence (24 cents) per pound and tea at 5 shillings (\$1.00) per pound. Maple sugar, which the Ojibways on Lake Huron produced themselves, sold for 6 pence (10 cents) per pound, and rough corn cost 5 shillings (\$1.00) a bushel. As for transportation, a round trip from Manitowaning to the Sault on the steamer *Gore* - undoubtedly a luxury for the *anishnabeg* - cost 10 shillings (\$2.00).<sup>558</sup>

## 12.5 Annuities.

According to the treaty text, the annuities for Lake Superior were to be paid "at a convenient season of every year, not later than the first of August" at the Hudson's Bay Company's Michipicoten and Fort William posts.<sup>559</sup> Although this suggests that the Company itself was to distribute the money - as it had the initial cash payment - this was not W.B. Robinson's original intention. He had assumed that a government employee, such as Indian Superintendent George Ironside, would actually bring up the money and make the distribution.<sup>560</sup> Governor Sir George Simpson, however, lobbied the government very strongly to have his Company hand out the annuity money, indicating that there would be no charge for either freight or distribution. The obvious economic incentive was that, if the Hudson's Bay Company made the payments, most of the money would be spent at its posts - something which did in fact happen. Simpson also argued that his employees would be able to prevent the Indians from being defrauded by *petty traders* from Lake Huron and the United States.<sup>561</sup>

### 12.5.1 Delivery.

The Governor-General officially accepted the Company's tender in late June of 1851.<sup>562</sup> However, because of the delay in replying to Sir George Simpson's offer, the distribution of annuities did not take place until late August.<sup>563</sup> This was itself a violation of the Lake Superior treaty, something Chief Factor John Swanston was quick to point out, having presumably received complaints from the beneficiaries who traded at his Michipicoten post.<sup>564</sup> Although records of the Lake Superior annuity distribution are not complete for the years 1851 to 1875 - when the Department of Indian Affairs took over - it appears that the Hudson's Bay Company continued to have difficulty distributing the annuities prior to August 1st.<sup>565</sup> In 1859, for example, annuities were paid at Michipicoten in July, but at Fort William at various times between August 2nd and September 5th.<sup>566</sup> Whether the beneficiaries complained about this continuing breach of the treaty is unclear.

The text of the Lake Huron treaty, by contrast, did not fix a date for distribution, stating only that the annuities would be "paid and delivered to the said chiefs and their Tribes at a convenient season of each year, of which due notice will be given, at such places as may be appointed for that purpose".<sup>567</sup> This clause apparently left scheduling and other aspects of the annuity payments to the discretion of government. Between 1851 and 1855, the *appointed places* were Manitowaning and Penetanguishene and the *convenient season* was July and August, at the same time as the Lake Huron bands were receiving their annual presents from the Imperial government.

The tie between presents and annuities was even more explicit than it might at first appear. As part of the strategy of keeping the Lake Huron bands away from the *petty traders* - who were accused of using alcohol as a trading device - the Indian Department decided to distribute the annuities in the form of goods purchased at wholesale prices in Toronto, rather than in cash. The goods were brought up at the same time as those earmarked as presents.<sup>568</sup> The various Bands, however, continually protested against this method of distribution, apparently because they did not accept the government's valuation of the goods delivered to them. Superintendent Ironside attributed the dissatisfaction to the "bad counsel" of the traders themselves - such as the Lamorandières from Killarney - "to which the Indians are, unfortunately, too prone to listen".<sup>569</sup> In April of 1855, the Governor-General agreed that the parties to the Lake Huron Treaty could "receive their Annuity in Money for the future to which the sale of their lands had entitled them".<sup>570</sup>

Despite the change in method of payment, some chiefs continued to object to the place of payment, indicating that they had a different understanding about what had been promised at the treaty. In June of 1864, the signatory Chief Michel Dokis complained to the Indian Superintendent at Manitowaning that his band was owed arrears of annuities for three years and that it was inconvenient for them to come to Manitoulin Island for their payment. "At the treaty at the Sault in 1850", he said, "we were promised that our money would be sent to us at the places where we were living". Dokis stated that he had been to see W.B. Robinson in the fall of 1862, and that the treaty commissioner had promised him that, at

the very least, his money would be sent in future to Penetanguishene, where the French River bands frequently traded.<sup>571</sup>

Some chiefs and their bands were more fortunate than others. Thus, beginning in 1856, Superintendent George Ironside travelled to Sault Ste Marie to pay the bands living between Thessalon and Batchewana Bay their annuity money.<sup>572</sup> As for Chief Dokis, he did receive his money between 1864 and 1868 at Penetanguishene. From 1869 until 1873, however, he was obliged to return to Manitowaning for the annuities. A departmental reorganization that year helped alleviate more of the Ojibway complaints. From 1874, Dokis and the other Lake Nipissing and Georgian Bay bands were paid by the new Indian Superintendent at Parry Sound - who later travelled to Lake Nipissing for the distribution to the more northerly bands. And the Bands between Batchewana Bay and Thessalon continued to be paid by the new Indian Lands Agent at Sault Ste Marie. Thereafter, only the Bands from the north shore of Lake Huron between Beaverstone and Mississagi River were required to travel to Manitoulin Island for payment.<sup>573</sup>

#### 12.5.2 Beneficiaries.

Using the population figures quoted in the treaty texts, each individual on Lake Superior should have received an annuity payment of about 8 shillings or \$1.60 (£500 divided by 1240). The comparable figures for Lake Huron and Georgian Bay were 8/6 or about \$1.70 (£600 divided by 1422). An average family of four to five people, then, would have received up to \$8.00 a year on Lake Superior and \$8.50 a year on Lake Huron. However, by 1856 - the first year in which the Lake Huron annuities were paid in cash - the value of an individual share under that treaty had dropped to about \$1.10, and by 1875 to between 92 and 95 cents. Within the same period, the Lake Superior annuities fell to just under a dollar per person.<sup>574</sup> Since the government paid out the annuities on the basis of population, the downward movement was obviously due to an increase in the number of treaty beneficiaries. It is worth asking, therefore, whether there had been a natural rise in population on the two lakes, or whether other individuals had been added to the lists.

In his original report of the treaty to Colonel Bruce, W.B. Robinson claimed that his population figures for Lake Superior were accurate, but that the census for Lake Huron "is not so perfect".<sup>575</sup> Indian Department officials were quickly made aware of this fact. Beginning in 1851, Superintendent Ironside had been continually notified by the Lake Huron chiefs that "many of the people justly entitled to share in the annuities arising from the sale of their Lands were not included at the time of the Treaty in 1850 and that great complaints were being made by the parties so left out". Colonel Bruce advised Ironside that it would not be appropriate to alter the lists at that time but that, after the fourth year's payment, a new census of each band could be drawn up. Ironside did so in the summer of 1856 - preparing a new and accurate census of all but two of the bands from near Lake Nipissing, who failed to arrive at the meeting in Manitowaning on time. The superintendent claimed that he had all of the chiefs "interested in the annuity" present as checks on each other in the renewal of the list "in order to guard against anything like fraud on the part of the representatives of the different bands".<sup>576</sup>

These new lists were in effect the first real paylists for the Robinson-Turon Treaty - no separate individual records having been kept of the 1851-55 goods distribution. Comparing the new numbers with those shown on Robinson's vouchers for the initial cash payment in 1850, it is apparent that the true strength of some - though not all - of the bands had been seriously underrepresented at the time of the treaty. For example, the 1856 lists for the Mississagi and Serpent River Bands showed 71 and 114 people, respectively - or a total of 185 - which was considerably more than the joint population of 109 registered on Robinson's 1850 Vouchers. During the same period, the numbers in the Thessalon Band rose from 65 to 121 persons. And the Whitefish Lake Band list increased from 62 persons in 1850 to 92 in 1856.<sup>577</sup>

The new names can be grouped in several categories. The first consisted of band members who had simply been omitted in 1850. Another group, however, was made up of people who were in effect claimants, rather than inhabitants, of the territory covered by treaty. For example, shortly before the 1851 annuities were given out, Superintendent Ironside received

a petition from three individuals named Abence, Charlo Toulouse and Eshkakogan, who were then living at *Mitchikiwatinong* (West Bay) and Wikwemikong on Manitoulin Island. They said that their ancestors were the aboriginal inhabitants of the Spanish River region - though they themselves had been brought up on Drummond Island, and that therefore they, not the Chiefs Namassin and Naoquagabo, should have represented the Spanish River Ojibways at the Treaty. On behalf of their compatriots, the three petitioners demanded, at the very least, a share in the treaty annuities.<sup>578</sup> It was largely on account of such claimants that the population of the Spanish River band had risen to 337 - an increase of 200 - by 1856. Similarly, the population of the Tagawinini Band (No.11) had increased by 176 on the 1856 payroll.<sup>579</sup> Most of the added members - like Chief Maisquaso, who actually signed the Lake Huron Treaty - had formerly lived in American territory on Drummond Island, though they had since removed to Manitoulin Island.<sup>580</sup>

The final category of new members of the various Lake Huron bands were the *métis*. In July of 1857, Superintendent-General Pennefather asked George Ironside to furnish him with lists of the Indians entitled under the Robinson Treaty to share in the annuities and occupy the reserves, "such list to specify any additions made thereto since, distinguishing the halfbreeds and noting those who claim participation through the Mother".<sup>581</sup> The lists Ironside sent in - which he had prepared by reworking the 1856 treaty paylists<sup>582</sup> - were for the information of the Commissioners appointed in 1856 to investigate Indian Affairs in the Canadas.<sup>583</sup>

### 12.5.3 The Métis.

Although the future status of the upper lakes *halfbreeds* was not specifically addressed in the treaty documents drafted by W.B. Robinson, the subject was indeed raised during the treaty council. In fact, given the evidence of Robinson's diary and report - as well as certain other documents - it is clear that the commissioner made some very specific undertakings with respect to *halfbreed* claims. As with many of the later numbered treaties, these undertakings

dealt both with *métis* participation in treaty benefits and with the fate of their existing land holdings throughout the region.

Many *métis* had expected to benefit financially from the proposed treaty with the Ojibways. During T.G. Anderson's visit to Sault Ste Marie in the fall of 1849, for example, he had been approached by William Ermatinger - who was *anishnabe* on his mother's side - about his claims on Lake Superior. There appear to have been many similar claims. Anderson noted the "great excitement which prevails on this subject at the Sault", as well as the "unbounded expectations of almost all classes to participate in the benefit of the Treaty money:

for they have persuaded themselves that a very large number of kegs containing \$1000 each will be distributed at this place and there will be fine pickings for the time being.<sup>584</sup>

This was only to be expected, since *métis* people living on the opposite side of the upper lakes had already received benefits under the terms of various treaties made with the American government. To give but one example, the 6th Article of the 1836 Treaty with the Ottawas and Chippewas of northern Michigan and Wisconsin had provided for the disbursement of \$150,000 in cash to various "half-breed relatives" of the Indian participants.<sup>585</sup>

On the British side of the lake, Chief Shingwakonce had attempted to use the incentive of a future treaty to persuade *métis* people to join him in his dispute with the government and the mining companies. In 1893, Joshua (Joachim) Biron remembered that, a few years before the treaty, the chief had called a council at Garden River to which the *half-breeds of Sault Ste Marie* were all invited. Shingwakonce told them, that if they would "join his Band and be his men or soldiers", that he would work for them, that "some day he might sell his land, and that if so, his claim should be our claim - and that we halfbreeds would have a right to a share of what he, the Chief, might get for it". Only four of them, however - Joshua and his brother Alexis Biron, John Bell and Louison Cadotte - agreed to join the band. "All the other half-breeds" Joshua remembered, "said that they were already Indians

enough without binding themselves to be under an Indian Chief, and they all left the council room."<sup>586</sup>

In his report of the treaty to Colonel Bruce, W.B. Robinson was emphatic in stating that there was to be no specific recognition of *métis* people as anything other than Indians. Instead, the initiative for dealing with any *métis* financial claims was to be left to the Chiefs of the various bands:

As the half-breeds of Sault Ste Marie and other places may seek to be recognized by the Government in future payments, it may be well that I should state here the answer that I gave to their demands on the present occasion. *I told them I came to treat with the chiefs who were present, that the money would be paid to them - and their receipt was sufficient for me - that when in their possession they might give as much or as little to that class of claimants as they pleased.* To this no one, not even their advisers, could object, and I heard no more on the subject.<sup>587</sup>

There is abundant evidence that *métis* people did participate in the cash distribution and subsequent annuity payments - and that such participation had the continuing approval of government. On Lake Superior, for example, the Hudson's Bay Company played a major role in interpreting Robinson's directive - and did so in a way that benefitted the *métis*. In the summer of 1850, Chief Factor John Swanston of Michipicoten had provided the commissioner with a population census for the Lake Superior posts; as Robinson notes in his report, that census had included 84 *halfbreeds*.<sup>588</sup> Swanston, whose own wife and children were *métis*, believed that all *halfbreeds* should be entitled to share in the treaty payments. This was because, "having been born and brought up on these lands", many of them had "much juster claims than the Indians". Swanston was referring specifically to Chief Shingwakonce's origins on the American side of the lake.<sup>589</sup> Since the Chief Factor was in charge of the cash distribution at Michipicoten, he was able to ensure that the *halfbreeds* there received the same share - 31/ per head - as everyone else.<sup>590</sup>

The Hudson's Bay Company was also given responsibility for distributing treaty annuities on Lake Superior. As a guide to the beneficiaries, the Company was to use the census lists



which John Swanston had given W.B. Robinson - and which included the *métis*.<sup>591</sup> Beginning with the initial annuity disbursement in 1851, the Company created and kept separate lists of the *halfbreed* beneficiaries at Michipicoten and Fort William, the two posts where the annuities were to be distributed. Although these were also the posts where the majority of the *métis* actually lived, the lists did include individuals - such as Charles Begg and Louis Denis de Laronde - who worked at the Pic, Nipigon and Long Lake posts in the Lake Superior district. All *halfbreeds* received the same shares as the *Indian* beneficiaries of the treaty.<sup>592</sup> On the copies of the annuity lists forwarded to the Indian Department in the later 1850's, however, the *halfbreed* names were usually added at the end without any particular notation.<sup>593</sup> By 1875, when the Indian Affairs department took over payment, the *Indian* and *halfbreed* names were being grouped together indiscriminately.<sup>594</sup>

On Lake Superior, it appears that the Hudson's Bay Company, rather than the chiefs, took the initiative in disbursing annuities to the *métis*. On Lake Huron and Georgian Bay, the situation was somewhat different. Chiefs Shingwakonce and Nebenaigoching, as they had promised, did explicitly ask that *métis* families be included in their bands. John Bell, for one, actually signed the Robinson-Huron Treaty as a principal man of the Garden River Band.<sup>595</sup> And W.B. Robinson's voucher for payments at Garden River on Sept. 11, 1850 shows that Louis Cadotte - the interpreter for Shingwakonce - Charles and Alexis Cadotte, Louis Corbier, and the brothers Alexis, Charles, Joseph and Joshua Biron all received money.<sup>596</sup>

As noted above, not all of the Sault Ste Marie *métis* had wanted to be classed as Indians - and, in fact, those who received payment in 1850 were only a fraction of the total *halfbreed* population of the Sault and St. Joseph's Island. It was only after the so-called *Pennefather Treaty* of 1859, by which the Garden River and Batchewana/Sault Ste Marie Bands surrendered well over half of their original Reservations to the Crown<sup>597</sup>, that many more of the local *métis* joined the two groups. This included families such as the Boissoneaus, Belleaus, Lesages, Perraults and Cyrettes.<sup>598</sup> As we will see below, they may have chosen

to do so because of the difficulty in securing land titles at Sault Ste Marie. Thereafter, their names appear on the Robinson Treaty annuity paylists.<sup>599</sup>

However, not all Lake Huron bands approved of the inclusion of *métis* people. In August of 1851, shortly after the first annuity distribution had taken place on Manitoulin Island, Wagemake and Papasance - both of them treaty signatories - sent a petition to the Governor-General. They argued that the annuities should not have been awarded in individual shares, but should have been given out in proportion to the land actually owned by each tribe or band. According to the petition, which had apparently been translated by surveyor J. William Keating, "Half Breeds and other Indians coming to reside on a tract either with or without leave cannot increase the right of a Chief to receive a larger sum than that which the size of the territory his people own entitle him and them to".<sup>600</sup>

This complaint was probably directed at the bands of Shingwakonce and Nebenaigoching, which included the greatest number of *halfbreeds*, as well as at the small French River band of Chief Dokis, which also included several *métis*.<sup>601</sup> However, it is worth noting that the Reserves belonging to the bands of Papasance (Beaverstone No.3) and Wagemake (Henvey Inlet No.2) lay to the east of the *métis* village of *Sheboanahning* or Killarney. It is clear that a number of residents of that village came to be included as members of Wagemake's Band. As the 1858 Report of the Commission on Indian Affairs indicates, the Henvey Inlet Band then included "13 persons of mixed blood claiming relationship through the Mother".<sup>602</sup> These were undoubtedly the extended families of Alexis de Lamorandière and of Henry Solomon (a son of the government interpreter at Penetanguishene) whose families were still on the Henvey Inlet annuity list in the 1870's. At that time, they numbered 28 people in all.<sup>603</sup> A handful of other *métis* people from Killarney and Penetanguishene ended up on annuity lists for the Dokis (No.9), Magnetawan (No.1) and Spanish River (No.5) bands.<sup>604</sup>

## 12.6 Resource Revenues.

The fact that the individual shares of annuity were diminishing steadily in the period 1856-70 led the Ojibways of Lakes Huron and Superior to invoke the most unique clause of their treaty. This was the provision that guaranteed the beneficiaries a share of any increased resource revenues from the surrendered lands. According to the text of both treaties:

should the territory hereby ceded by the parties of the second part at any future period produce such an amount as will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound Provincial currency in any one year, or such further sum as Her Majesty may be graciously pleased to order.<sup>605</sup>

### 12.6.1 The Commissioner's View.

In his official report, W.B. Robinson explained both to the Governor-General and the administration that the resource revenue clause had been intended to silence the "evil advisers" of the Indians - Allan Macdonell and his associates - who were trying to create dissatisfaction over the extensive territory covered by the agreement. Desiring to leave the Indians no just cause of complaint, said Robinson, "I inserted a clause securing to them certain prospective advantages should the lands in question prove sufficiently productive at any future period to enable the Government without loss to increase the annuity. This was so reasonable and just that I had no difficulty in making them comprehend it".<sup>606</sup> The Commissioner had probably lifted this idea from Alexander Vidal and T.G. Anderson, who in their report the year before, had suggested that "provision might be made if necessary for an increase of payment upon the further discovery and development of new sources of wealth".<sup>607</sup>

Robinson may have felt safe in doing so because of his strong belief, expressed elsewhere in his report, that the lands were relatively valueless and would probably never be settled.

It is also clear that he, like many of his contemporaries, believed that the Ojibways were a declining race. Thus, according to the text of both treaties, the amount of any augmented annuities would be proportionally reduced if the number of beneficiaries fell below two-thirds of the numbers current in 1850.<sup>608</sup>

#### 12.6.2 The Ojibway View.

There is considerable agreement between the *anishnabe* interpretation of this particular clause and the way W.B. Robinson claimed he had explained it. In 1893, John Mashekyash - who had signed the Lake Huron Treaty as a principal man of the Batchewana Band - remembered how the discussion of augmented annuities had proceeded:

Mr. Robinson said that we would get five dollars per head. Mr. Robinson then also told us all that next year that we would get one dollar and a half per head and that for four years; and at the end of the four years when the government will have sold enough of the land you now have ceded to them to enable them to give you four dollars per head you will get that every year as a annuity. When you get the four dollars per head per year I now promise you then the goverment which I here represent will have fulfilled my promise I am now making to you. But if your great Mother the queen should think it right to give you more it will only be by her most gracious goodness towards you to do so. Then we all thanked Mr. Robinson, we got the five dollars and we were all pleased and satisfied. But the present government has not dealt with us Indians as Mr. Robinson promised they would do.<sup>609</sup>

This particular clause may also explain the Ojibway tradition that the Robinson treaty was an open contract - or *Chi-Debahk-(In)-Nee-Gay-Win* in the *anishnabe* language. According to the late Fred Pine (1897-1992), a great-grandson of Shingwakonce, "an open contract means we will add something on it". Interviewed in 1990, Mr. Pine echoed the words of John Mashekyash a century earlier. "Well the government did not add on it like they were supposed to. Take all the timber dues from wood cut in this country. The money was supposed to go to Indian Affairs for us. We signed that. But it never came out".<sup>610</sup>

### 12.6.3 Augmentation.

As John Mashekyash remembered it, the treaty commissioner had promised a regular increase in the annuities as land and resource revenues mounted. Such a phased augmentation never happened. As early as 1856, the Commissioners investigating the administration of Indian Affairs in the Canadas asked the Crown Lands Department whether the time had not come to raise the amount, but were told that "no increase in the annuity is yet warranted by the sums realised from the surrendered lands".<sup>611</sup> Nothing further seems to have been done about the issue prior to Confederation. By then, the treaty beneficiaries were forced to confront a new reality - namely, the relation between federal control of Indian affairs and provincial control of lands and resources.

In the fall of 1870, the chiefs from Lakes Huron and Superior petitioned the Governor-General of Canada, objecting that certain provisions of their treaty - the augmentation clause - had not been carried out. Their complaint was endorsed by cabinet, after which the Secretary of State (the federal cabinet member responsible for Indian Affairs) referred the issue to his provincial counterpart for discussion. Under Section 109 of the British North America Act, the provinces of the new Dominion of Canada had become responsible for *public* lands and resources within their boundaries. Since Ontario was the beneficiary of past and future land and resource development, Canada argued that Ontario was liable for payment of the increased annuities.<sup>612</sup>

Ontario took three years to reply to the request. The reason is not hard to find. The Liberal provincial government headed by Premiers Edward Blake and (after 1872) Oliver Mowat was involved in a series of protracted disputes with John A. Macdonald's federal Conservatives over a whole series of issues, such as liability for pre-1867 debts and the definition of the northern and western boundaries of Ontario. At the core of these disputes were fundamental differences over the meaning of Confederation. Macdonald was a committed centralist, who believed that the provinces were little more than glorified municipalities who were to be supervised by a strong federal government; Blake and Mowat

believed that the federal union was a compact among provinces which could not be amended without provincial consent. According to this reasoning - which came to dominate Canadian politics - the provinces and the federal government were sovereign in their respective spheres.<sup>613</sup> With respect to the annuities, therefore, Ontario denied that it could be liable for any debts of the former Province of Canada not previously acknowledged. Thus, as had been the case in the late 1840's, the Ojibways found themselves caught up by accident in the interplay of political faction.

Premier Mowat waited to answer the federal request until 1874, after the Macdonald government had been replaced by Alexander Mackenzie's Liberals. The Premier, who acted as his own Attorney-General, did acknowledge that the amount received before Confederation in respect of the lands on Lake Superior alone was about \$110,000 (though he did not have figures for eastern and northern Lake Huron). He even conceded that there had been enough revenue generated to entitle the Indians to the increased annuities they were claiming. But, citing Sections 109 and 111 of the B.N.A. Act, Mowat denied that the annuities constituted some sort of trust, or lien on the lands. "The so-called title of the Indians", he argued, "was one of courtesy only, and was by the treaties extinguished absolutely in order that these lands might be opened up for settlement, and that patents might be issued therefore to purchasers". The Premier challenged the federal government to meet him in Chancery (equity) court - which he had once headed - to argue the matter.<sup>614</sup>

Nevertheless, Ontario did provide figures on revenue derived from the lands covered by the Lake Superior treaty. In addition to the \$110,000 received by the Province of Canada West prior to confederation, Ontario had, between 1867 and 1874, received a further \$272,000 on account of mining locations, timber dues, and sales of land in the surveyed townships. It should be stressed that these figures covered rents, rather than the value of the timber and mineral resources themselves. The difficulty in establishing a similar estimate for Lake Huron and Georgian Bay was that Ontario could not determine the eastern and northeastern boundaries of the Lake Huron Treaty. As noted earlier, those boundaries were

vague - and were at most covered by the *blanket* clause relating to all other lands in Canada West. As late as December of 1875, the Ontario Commissioner of Crown Lands was asking the Indian Department to define the boundaries in question so that a proper estimate could be provided.<sup>615</sup>

In the meantime, Canada decided on its own initiative to increase the annuities to the maximum dollar figure (\$4.00) set out in the treaties. Although the treaties provided that the annuity could in fact be increased to "such further sum as Her Majesty may be graciously pleased to order", there is no evidence that the federal government ever considered going beyond that specific amount. In the summer of 1874, the Ojibways of Lakes Huron and Superior received their new \$4.00 payment for the first time.<sup>616</sup> The beneficiaries, however, were not as grateful as the federal government might have imagined. In November of 1877, E.B. Borron, the Liberal M.P. for Algoma, forwarded a petition to Ottawa signed by Chiefs Nebenaigoching, Agista (son of Shingwakonce) and other leading men from the two lakes. The chiefs objected to the fact that the annuity had only recently been raised, arguing that, since the signing in 1850, the territory covered by treaty had produced little short of \$1 million in revenue. In their view, they were entitled to full arrears for twenty-five years, including interest, of the difference between the amount of their original annuity and the \$4.00 they were now being paid.<sup>617</sup> Since 1850, the beneficiaries had received about \$105,600; by 1875, according to some calculations, there would already have been as much as \$240,000 still owing.<sup>618</sup>

The dispute went on for another twenty-five years. Although Canada continued to press the claim for arrears, the focus was more on alleged provincial liability than on the rights of the Ojibways as such.<sup>619</sup> In 1890-91, Canada, Ontario and Quebec agreed to arbitration to deal with unresolved matters - particularly the settlement of accounts - from the former Province of Canada and the resultant apportionment of financial responsibility at Confederation. One of the claims Canada submitted to the Board of Arbitrators involved the Robinson Treaty annuities. The federal government claimed (a) against the former Province of Canada arrears of augmented annuities from 1851 to 1867; (b) against the

provinces of Ontario and Quebec jointly, as successors to the province of Canada, \$95,200 arrears of augmented annuities from 1867 to 1873; and (c) against Ontario and Quebec jointly \$389,106.80 increased annuities actually paid by the Dominion to the Ojibways since 1874.<sup>620</sup>

The federal government argued, basically, that the *augmentation clause* in the treaties was either a trust burdening the surrendered lands and their proceeds within the meaning of Section 109 of the B.N.A. Act, or it had created an interest other than that of the old province of Canada in the same. Ontario gave the same defence that Premier Mowat had first advanced in the 1870's, while Quebec - hoping to avoid any liability at all - supported Canada, on the grounds that Ontario had received all benefit from the lands covered by treaty.<sup>621</sup> In their decision of February 3, 1895, the Arbitrators agreed with Canada. Though they did not award an amount, they found that the property covered by treaty had passed to Ontario under Section 109, subject to a trust to pay the increased annuities and to an interest of the Indians therein to be paid. Ontario appealed to the Supreme Court of Canada, which, by a three to two decision, overturned that part of the arbitrator's award. In the words of the Supreme Court, the "ceded territory mentioned became the property of Ontario under the 109th section of the B.N.A. Act 1867, absolutely and free from any trust, charge or lien in respect of any of the annuities, as well those presently payable as those deferred and agreed to be paid in augmentation of the original annuities upon the condition in the Treaties mentioned".<sup>622</sup>

Canada appealed to the Judicial Committee of the Privy Council - then the ultimate appeal court for the British Empire - which, in 1897, recommended that the Supreme Court decision be affirmed. "Their Lordships have no difficulty coming to the conclusion", write Lord Watson:

that, under the treaties, the Indians obtained no right to their annuities, whether original or augmented, beyond a promise and agreement, which was nothing more than a personal obligation by its governor, as representing the old province, that the latter should pay the annuities as and when they became due; that the Indians obtained no right which gave them any interest



in the territory which they surrendered, other than that of the province; and that no duty was imposed upon the province, whether in the nature of a trust obligation or otherwise, to apply the revenue derived from the surrendered lands in payment of the annuities.<sup>623</sup>

The two appeal decisions, however, had a paradoxical effect, in that - by virtue of the original Arbitrators' Award - they made Ontario and Quebec jointly liable for the increased annuities in the years in which they could be paid without incurring loss.<sup>624</sup> Therefore, insofar as the interests of the Ojibways were concerned - their right to benefit from the resource revenues of the lands covered by treaty - the arbitration had resolved nothing.

#### 12.6.4 Non-Transmissible Annuities.

In fact, it could be argued that Canada's claim against the provinces, in conjunction with the arbitration, actually made matters worse for the Ojibways, because it led both Ontario and Quebec to challenge the numbers of people entitled to share in the annuities. Both provinces had already done so on many occasions between 1875 and 1895, protesting, for example, that Canada was paying treaty money to "half breeds or quarter breeds".<sup>625</sup> Both provinces insisted before the Board of Arbitrators that payments should only be made to the descendants of those who fell within the definition of the term "Indian" at the time of the treaties.<sup>626</sup> In an Order dated 7 January, 1898, the Board of Arbitrators defined an Indian entitled to share under the treaties in just such a restrictive manner - basically excluding all non-residents and those of mixed descent - and directed that, with respect to the period before 1867, the onus of showing that the names of any individuals entitled to be paid had been improperly omitted should be on the Indians themselves or "those who act for them". With respect to the period after Confederation, the burden would be on Canada to show that any new names put on the lists had been properly added.<sup>627</sup>

Because of the matters raised in the arbitration hearings, the Department of Indian Affairs had already commissioned J.A. Macrae, the Inspector of Indian Agencies and Reserves, to go over the treaty payment lists in 1897 and 1898, and make recommendations with respect

to individual rights to continued payment. Macrae's working definition of entitled annuitants set out various categories, "provided they have not sacrificed title by continued foreign residence" under the 1876 *Indian Act*:

1st: Personsof Indianblood whobelongedto the bandsor tribesof chiefswhowerepartiesto the treatyprior to the timeof the treaty;and the lawfuledscendants of suchpersons.

2nd: Personsof Indianblood whooccupyand use the surrenderedtractsas Indiansand who belongedto bandsor tribesotherthanthose whosechiefswarepartiesto the Treatyprior to the timeof the treatyand the lawfuledscendants of suchpersons.

3rd: Persons who were intermarriedwithIndiansof the surrenderedtract, who themselves occupiedand usedthattract,as Indiansprior to the Treatyand wereattachedby residenceand commoninterestto anyIndiansocietyor communitywithinthattract;and the lawfuledscendants of suchpersons.

4th: Personswhowerereclassifiedas Indiansby the TreatyCommissioneand weretreatedwithas such;and the lawfuledscendants of suchpersons.

Andperhaps:

5th: personswwho intermarriedwithIndiansof the surrenderedtract and becameattachedby residenceand commoninterestto anyIndiansocietyor communitywithinthetractbetween the datesof the Treatyand of the Statuteof 1859 whichdefinedthe term "Indian"and the lawful descendantsof suchpersons

6th: Personswwho by the enactmentof 1859becameIndians;and the lawfuledscendants of such persons.<sup>628</sup>

The 1859 statute of Canada to which Macrae referred had basically included *métis* people in the definition of Indian. Thus, the Inspector's categories were broader than those given in the Board of Arbitrators' Award. Indeed, Canada did not accept that the Arbitrators' narrow definition of a treaty annuitant had any statutory support.<sup>629</sup> In his report to the Department in February of 1898, Inspector Macrae explained that he had used his discretion in suspending payments to doubtful categories of people. This was to avoid "turmoil and trouble" for the federal government. Macrae noted that the annual demand for payment under the treaty had risen to 5694 people - more than double the 2662 souls Robinson had originally estimated for the two lakes - and that annual payments now totalled \$22,776.00. This increase was "only to a very slight extent to be ascribed to the excess of births over deaths". Macrae grouped the 5694 annuitants and claimants on both lakes as follows<sup>630</sup>:

Persons whose title to the annuity has not been exposed to doubt (though in some areas it may be doubtful)...4096

Persons whose title is in my opinion so bad that I recommend it should not be deemed transmissible...369

Persons whose title is in my opinion so bad that I recommend that they should not again be paid [...]....723

Persons already struck off for suspended by myself as being U.S. citizens or clearly without title; payments made for persons dead or non-existent stopped etc....278

Persons whose claims are recommended for disallowance.225

Persons whose claims are recommended for allowance...3

It is worth noting that many of the people Macrae wanted struck off the lists or converted to non-transmissible title were *halfbreeds* or their descendants, including those on Lake Superior to whom the Hudson's Bay Company had begun paying annuities in 1851.<sup>631</sup> The "U.S. citizens" in question were Ojibways who lived in the border region near Sault Ste Marie and Pigeon River, and whose families were continually back and forth across the international frontier.<sup>632</sup> In 1898, for example, various Treaty beneficiaries still lived on Sugar Island in the St. Mary's River, which, though only yards offshore from the Garden River Reserve, was in American territory.

The reference to transmissibility of title was to a new administrative category which the Department of Indian Affairs had developed, ostensibly to avoid bringing hardship on longtime annuitants. Such people could continue to receive annuities themselves, along with their children born before 1898. Children born after 1898, however, would receive no money. When children born before 1898 reached the age of 21, they would be given new numbers on the payroll - but their title to annuities was not transmissible to their own children. Thus, on Robinson treaty paylists beginning in 1899, the words *non-transmissible* are stamped opposite a number of names.<sup>633</sup>

The issue of non-transmissible titles was a long-standing source of grievance to Treaty beneficiaries, and the Department received many complaints over the following two decades. In March of 1917, the Deputy Superintendent-General of Indian Affairs issued an administrative ruling abolishing the category altogether. Agents were instructed to pay the living children of those deemed non-transmissible. The wives and children of males would also be paid. Female children - because of the male descent rule in the *Indian Act* - would receive payment for themselves alone. No compensation was paid, however, for the missing years.<sup>634</sup>

#### 12.6.5 Settlement of Arrears.

Even though Canada had, by 1898, carried out its own revision of the treaty payment lists, Ontario and Quebec continued to challenge the identity of the remaining annuitants. The Department of Indian Affairs' legal advisers pointed out that it would be difficult to satisfy the burden of proof placed upon the government by the Arbitrators' 1898 order - and that this would further delay any adjustment of accounts between Canada and the provinces. To avoid unnecessary expense, therefore, they recommended in 1901 that the government seek a friendly settlement with the two provinces.<sup>635</sup> As it turned out, the settlement was far less than the amounts the Ojibways had been seeking twenty-five years earlier.

As part of the three-way litigation over liability for the annuities, Ontario had produced a series of accounts for the territory covered by the Robinson treaties. These showed, for example, that between 1867 and 1892, Ontario had received the sum of \$5,835,027.19 from lands and resources in the Lake Huron territory and \$609,614.73 from the Lake Superior territory - for a total of \$6,444,641.92. This total included receipts from the sale of land, and receipts from timber dues, bonus and ground rent. Against this, Ontario set off expenditures in the same period of \$2,267,328.09 for the Lake Huron territory and \$389,100.14 for Lake Superior - or a total of \$2,767,428.23. These expenditures covered such items as the cost of surveys and road-building, land and timber agents' salaries, wood ranging, fisheries

administration and the cost of collection. This still left Ontario with net cash revenue for the period 1867 to 1892 of \$3,768,213.69.<sup>636</sup>

Ontario, however, adopted a very particular interpretation of the augmentation clause of the treaties. That clause had stated that "should the Territory hereby ceded [...] at any future period produce such an amount as will enable the Government of this Province, *without incurring loss*, to increase the annuity", the payments would be increased. Ontario argued that the phrase *without incurring loss* implied a yearly calculation. Therefore, the province would only admit liability for payment in those years that receipts had actually exceeded expenditures. This turned out to be six of the seventeen years between 1851 and 1874 - namely 1853-54, 1856 and 1872-74. By 1899, Ontario was apparently prepared to pay a total of \$144,868 to settle arrears (with interest) under the Lake Huron treaty up to and including the year 1898, and \$17,229 to settle arrears for the same period under the Lake Superior treaty. The Department of Indian Affairs' Accountant, Duncan Campbell Scott, recommended that Canada accept these amounts as full settlement - and negotiate with Quebec for a similar amount covering its pre-Confederation obligations.<sup>637</sup> In 1904, the monies were disbursed to the annuitants at the same time as their regular treaty payments. On Lake Superior, the arrears amounted to \$9.00 per person.<sup>638</sup>

### 12.7 Reservations.

The Ojibways chose various reservations of land throughout the tract covered by treaty. In contrast to the later numbered treaties, however, these reserves were excepted from the recital of surrender, rather than regranted to them. Thus, the text of the treaties states that the Ojibways had ceded "all their right, title and interest to" the territory described, "save and except the reservations set forth in the schedule hereunto annexed; which reservations shall be held and occupied by the said chiefs and their Tribes in common, for their own use and benefit". In keeping with the main purpose of the treaties - to resolve the disputes over mining rights - both agreements contained a clause allowing the government to perfect title, with compensation, to the tracts included within reservation limits:

The parties of the second part also agree, that in case the Government of this Province should before the date of this agreement have sold, or bargained to sell, any mining locations, or other property, on the portions of Territory hereby reserved for their use; then and in that case such sale, or promise of sale, shall be perfected by the Government, if the parties claiming it shall have fulfilled all the conditions upon which such locations were made, and the amount accruing therefrom shall be paid to the Tribe to whom the reservation belongs.<sup>639</sup>

### 12.7.1 Rationale.

There were seventeen reserves identified under the Lake Huron treaty and only three under the Lake Superior agreement. In part, this variation in numbers is a comment on the somewhat more sedentary lifestyle of the Lake Huron and Georgian Bay Ojibways. As W.B. Robinson observed in his report, the participants had generally chosen "such tracts as they had heretofore been in the habit of using for purposes of residence and cultivation".<sup>640</sup> Messrs Vidal and Anderson had made a similar observation the year before, noting that the bands chose lands with regard "either to the capabilities of the soil for cultivation, or to the convenience of the position for fishing".<sup>641</sup>

In some cases, this fact is made explicit in the treaty text. Thus, Nebenaigoching and his band chose a reservation extending from Gros Cap to Batchewana Bay "as well as the small [Whitefish] island at Sault Ste Marie used by them as a fishing station". And Shabokishick and his band chose a reservation extending "from their present planting grounds on Lake Nipissing" to the Hudson's Bay Company post at the mouth of the Sturgeon River.<sup>642</sup> Even when the text is not explicit, the same conclusion can be drawn from other documents. In 1852, for example, the surveyors laying out the Shawanaga reservations (No.17) on Georgian Bay remarked that there was an excellent pickerel fishery at the mouth of the Shawanaga River, as well as off the islands near to the other reserve site at Pointe au Baril.<sup>643</sup>

Part of the reason, however, for the smaller number of reserves in the Lake Superior region had to do with the lack of representation at the treaty. As noted above, all of the chiefs and principal men who attended the council at the Sault were from Michipicoten, Lake Nipigon or Fort William, and this is where reservations were identified. But the chiefs of the Pic band, who had been identified in the Vidal-Anderson report, did not attend, nor did representatives of the Long Lake band, even though members of both bands later received cash and annuity payments.<sup>644</sup> In addition, there had been a traditional band associated with Pays Plat - west of Pic on the north shore of Superior - since at least the early eighteenth century.<sup>645</sup> And Lake Nipigon was apparently the focus for at least six traditional bands, not just the ones associated with Chief Mishimuckqua and Manitoshainse, the treaty signatories.<sup>646</sup>

From at least the 1870's on, the Department of Indian Affairs was aware of claims to reserves by various bands in the Lake Superior region. All were arguing that they had not been represented at the making of the treaty. These included Pic and Long Lake, as well as Pays Plat, Red Rock - at the mouth of the Nipigon River - and Jackfish Island and McIntyre Bay on Lake Nipigon. Although small parcels of land were surveyed for these groups in the late nineteenth century - and most of the parcels were eventually recognized as reserves - these claims of treaty reserve entitlement have never been completely satisfied.<sup>647</sup> The fact that few claims of this kind were ever advanced on Lake Huron is in itself proof that the traditional bands of that region had been properly represented at the treaty councils in Sault Ste Marie and Penetanguishene.

### 12.7.2 Selection and Size.

In making his opening remarks to the council delegates, W.B. Robinson stated that they might make *reasonable* reservations for their own use.<sup>648</sup> Although he says nothing about his method, the commissioner met privately with each set of delegates, and he seems to have been using the Vidal-Anderson report of 1849 as a guide. In the late 1880's, for example, Chief Mongowin of Whitefish Lake, who had attended the Treaty with his father

Shawenekishick, the then Chief, remembered that he and his father had had their private meeting with Robinson after the main ceremonies were over.<sup>649</sup>

The delegates were given considerable latitude in making their selections. Robinson seems to have made no attempt to set a formula - undoubtedly because, in the context of the territory as a whole, the areas set apart were minimal. As he explained in his report to the government, the Ojibways had selected *small* reservations.<sup>650</sup> Nevertheless, by comparison with the post-Confederation treaties, where the government would stipulate formulas of between 160 and 640 acres per family of five, the Robinson treaty reserves, particularly on Lake Huron, were very large indeed. In fact, many were larger than any set apart prior to the era of modern comprehensive claims settlements. The smallest reservation - at 1280 acres - was the tract for Mishequanga and his band (no.13) on the French River. The largest was the tract for the Batchewana and Sault Ste Marie band (no.15), which covered, by government reckoning, approximately 155,200 acres.<sup>651</sup>

If the reserves are calculated on the basis of population, the significance of the Robinson treaties becomes even more apparent. The reservation on Lake Nipissing selected by Chief Shabokishick (no.10) covered 80,640 acres. Given that Robinson assigned the Nipissing band a population of about 90 people in 1850, this works out to some 900 acres per person - or 4500 acres per family of five. The Dokis band, which had an apparent population of 25 at the time of treaty, selected 30,300 acres - or 6000 acres per family of five.<sup>652</sup>

Some of the reservations would have been even larger had the government accepted the Ojibway version of the area selected. According to testimony given in the *Francis* case during the 1880's, the Whitefish Lake Chief had attempted to set apart a major part of his band's hunting grounds - at least five or six times the size of the 44,000 acres eventually recognized as the Reserve.<sup>653</sup> It is certainly true that many of the descriptions were vague. They were apparently written down by Robinson, with J.W. Keating's assistance, after the delegates of the various bands had described their wishes.<sup>654</sup> While both men had some personal knowledge of north shore geography - and Keating spoke *anishnabe* - they were



probably checking the descriptions against the maps attached to the Vidal-Anderson report. Neither map offers the kind of geographical detail necessary for accurate description.

### 12.7.3 Surveys.

Most of these problems came out when the government began the process of surveying the reservations. On 14 June 1851, the Executive Council approved a report from the Commissioner of Crown Lands, which had recommended that the territory along the north shore of the two lakes "recently surrendered by the Indians" be organized by the government. The main purpose would be to raise funds to pay the Indian annuities. It was also important, said the commissioner, to survey the Indian reserves immediately, in order to prevent "the encroachment of squatters" and to allow the Crown Lands department to decide on applications for timber locations which it was already receiving. But the report also makes it clear that the descriptions set out in the treaty texts were only rough estimates of the location and size of the reservations; the exact boundaries were to be determined at the time of survey.<sup>655</sup>

Over the course of two field seasons, most of the reserves on Lake Huron and Georgian Bay were surveyed by John Staughton Dennis P.L.S., with the assistance of Indian Superintendent George Ironside (in 1851) and J. William Keating (in 1852).<sup>656</sup> In 1853, J.w. Bridgland P.L.S., also with Keating's assistance, surveyed the reserves on Lake Superior at Batchewana and Sault Ste Marie, Michipicoten and Fort William.<sup>657</sup> However, three of the inland reserves were omitted from the survey process both because of the difficulties of travel and complications with the surveyors' schedules. These were the Whitefish Lake (No.6) and Tagawinini (No. 11) reserves under the Lake Huron treaty and the Nipigon Reserve (No.4) under the Lake Superior Treaty.<sup>658</sup> In the case of the latter, the Commissioner of Crown Lands assured the Indian Department that no grant or lands would be made near Lake Nipigon Reserve before an actual survey had taken place.<sup>659</sup> There is no record of any similar assurance, however, with respect to the two Lake Huron treaty reserves. These would not be surveyed until the mid-1880's, by which time the Ontario

government had granted extensive timber rights to lands in and around the reserve sites.<sup>660</sup>

All of the reserves surveyed on Lake Huron and Georgian Bay in the period 1851-52 had their boundaries altered at the time of survey - changes which were subsequently approved by the Governor in Council in December of 1852.<sup>661</sup> In many cases, it proved impossible to follow the original treaty description, both as to geographical markers, and as to distance. One common misconception flowed from the unit of measure - the mile - used in the treaty text. A prime example, though not the only one, was the Shawanaga reservation on Georgian Bay. The Treaty document had described two tracts for the Band, each three miles square, at Shawanaga and Pointe au Baril. In the summer of 1852, Chief Muckutamishaquot and part of his Band met the surveyors on an island at the mouth of the Shawanaga River, with a plan of their own drawn out on bark. Their arguments persuaded the surveyors. J.W. Keating, who had witnessed the signing of the Lake Huron Treaty, told the government that the measures originally given were wrong, as "in all cases where the word mile occurs the Indians intended leagues, the only measurement known to the (French) Canadians from who they have derived what knowledge they possess of distances the word in their vernacular meaning simply a measure (*Tib e gan*)".<sup>662</sup> A French league was about 2.5 miles. The surveyors agreed to the changes suggested by the Shawanaga people and recommended that they be approved by government. The changes were reflected in the 1854 Proclamation placing the two Shawanaga Reserves under the Statute 13 & 14 Vic. Cap.74. As a result, the total area of the reservations increased from the 11,520 acres (18 square miles) set out in the treaty text to 19,648 acres or 30.7 square miles.<sup>663</sup>

The same thing happened when Dennis and Keating were surveying the Thessalon reserve (no.12) on the north shore of Lake Huron. The local Ojibways protested that they did not know what a mile meant, and Keating - arguing again from personal knowledge at the treaty council - agreed that they too had intended to estimate the distance in leagues.<sup>664</sup> As finally surveyed, therefore, the Thessalon Reserve contained about 24,000 acres, or more than double the 10,240 (16 square miles) set out in the original description.<sup>665</sup>

In the case of the Mississagi reservation, there was a similar confusion, although it did not then work to the local community's advantage. Robinson had written the description of the reservation set apart for Bonekeosh and his band (no.8) as "the land contained between the River Mississaga and the River Penebewabecong [Blind River], up to the first rapids".<sup>666</sup> When they arrived for their survey, Dennis and Keating had trouble determining either the distance between the Mississagi and Penebewabecong (Blind) River or the location of the first rapids. As a result, they claimed to have persuaded Chief Bonekeosh to accept a smaller area between the two rivers, with a northern boundary seven miles inland. This worked out to 9120 acres, and that is the size approved by Order in Council. In fact, however, the Chief had insisted that the northern boundary was at Chino Rapids or Red Rock Falls on the Mississagi - approximately 20 miles or seven *leagues* upriver from Lake Huron - which would have effectively tripled the size of the reservation. In 1892, the Chief and Council of the Mississagi Band complained to the Department of Indian Affairs - apparently because the adjacent townships had only been surveyed in 1890 - that the northern boundary of their reservation was actually much further inland. Although the Department conceded surveyor Dennis' error, Ontario refused to allow any further lands to be included in the reserve.<sup>667</sup> After almost a century of attempted negotiations - and in spite of vociferous protests from local non-Native residents - Ontario and the Mississagi First Nation have recently (1994) reached a settlement of the northern boundary issue.

#### 12.7.4 Surrenders.

Both Robinson treaty texts contain clauses stipulating how and to whom surrenders of reservation land are to take place:

And should the said Chiefs and their respective Tribes at any time desire to dispose of any part of such reservations, or of any mineral or other valuable productions thereon, the same will be sold or leased at their request by the Superintendent-General of Indian Affairs for the time being, or other officer having authority to do so, for their sole benefit, and to the best advantage.

And further on in the text, the chiefs agree "that they will not sell, lease, or otherwise dispose of any portion of their Reservations without the consent of the Superintendent-

General of Indian Affairs, or other officer of like authority, being first had and obtained".<sup>668</sup> This might be called the Allan Macdonell rule. Although such *restrictions on alienation* had appeared in legislation as far back as the Royal Proclamation of 1763 (and earlier), Robinson was evidently attempting to prevent any further leases such as the ones Macdonell had obtained from Shingwakonce and Nebenaigoching.

These clauses clearly state that the impetus for sale or lease was to come from the bands. If they were inclined to dispose of their lands or resources, then the Superintendent-General would do so *for their sole benefit*. The latter turned out to be a very elastic phrase. In fact, over the following half-century, virtually all of the initiative for sale or lease of reserve lands came from the government at the request of third parties. Thus, in February of 1857, Sault Ste Marie resident William Palmer addressed a letter to Froome Talfourd, one of the government commissioners appointed in 1856 to investigate the conduct of Indian Affairs in Canada. Palmer described all of the reserves on the north shore of the lakes as a "terrible nuisance and a regular drawback on the settlement of the country". He particularly objected to the size and location of the 300-square mile reserve covering Batchewana and Goulais Bays - which contained, he said, valuable timber, minerals and agricultural land. He wanted the valleys opening out into each bay "struck out" of the reserve and surveyed for the use of "white settlers".<sup>669</sup>

No less an authority than W.B. Robinson seconded Palmer's suggestion. "I certainly think it is very desirable", Robinson wrote Superintendent-General R.T. Pennefather in March, "to obtain the release to the Crown by the Indians of the locality mentioned - a reserve much larger than it was intended (sic) should be given to them by the Treaty".<sup>670</sup> It was such pressure which convinced the Indian Department to insist that, not only the Batchewana and Goulais Bay bands, but others with large reservations - such as the Garden River, Thessalon and Fort William Bands - should surrender large portions of their reservations for sale to incoming settlers.

In 1859, Superintendent-General Pennefather travelled to Lake Huron and, with the assistance of Superintendent George Ironside, made three virtually identical treaties. The Thessalon Band was to surrender all of its reserve and the Batchewana and Goulais Bay bands would surrender all of theirs, with the exception of Whitefish Island at Sault Ste Marie. For its part, the Garden River Band would surrender three-quarters of its 130,000 acres. All of the land was to be sold by the Department for their benefit, with payment of annual interest. The Batchewana and Garden River bands would receive an immediate cash payment of \$1200, the Thessalon Band \$500. Each family would then be allotted forty acres on the Garden River Reserve, under an individual right of occupation. And any family could, if desired, purchase eighty acres of the ceded land at the upset price established by Government. In July of the same year, S.Y. Chesley reached a similar agreement with the Fort William Band, by which they surrendered three-quarters of their 21,000 acre Reserve in trust for future sale.<sup>671</sup>

The Department's stated goal in effecting the surrenders was "concentration" of these "scattered tribes". In the case of Lake Huron, Pennefather expected that all of the bands on the north shore would surrender their reserves and move to the compact Garden River settlement.<sup>672</sup> Pennefather himself had headed the investigatory commission of 1856-58 on Indian Affairs in the Canadas of which Froome Talfourd was a member. One of the commission's recommendations had been that the scattered bands in various parts of the province should be re-established in regional centres like Manitoulin Island and Garden River, given allotments, and encouraged to become *civilized*. If the bands in question refused to surrender their reserves - even after inducements and special concessions - then they should be expropriated by the provincial government.<sup>673</sup> What Pennefather and his colleagues had in effect created was a modified version of the *removal policy* of the 1830's and 1840's. That such a policy would violate the terms of the Robinson treaties seems not to have been considered.

From his comments in 1857, W.B. Robinson had obviously had second thoughts about the treaties he had negotiated. However, his remark that he had not *intended* the original

Batchewana Reserve to be so large was in fact contradicted by his close associates at the treaty. The Batchewana Reserve had never been completely surveyed, and in order to establish the terms of the 1859 agreements, it was necessary to determine its actual size. According to the confirming Order in Council of 22 July 1859, "Mr. George Johnston, who interpreted for the Hon. W.B. Robinson in 1850, agrees with Mr. [J.W.] Keating in stating that he explained to the Batchewannay Indians that their reserve was to cover three hundred square miles". However, the government would not for the present admit that fact, "inasmuch as the Commissioner, the Honorable William B. Robinson, by whom the original treaty was made, disputes the accuracy and justice of this claim and the interpretation of the treaty as given by Messrs Johnston and Keating".<sup>674</sup> Curiously, Robinson seemed to be denying the description of Nebenaigoching's reservation which he himself had inserted in the treaty text. While that description can, like many of the others, be construed in several ways, it clearly included both Batchewana and Goulais Bays. Thus, the reservation was to extend from "west of Gros Cap to the boundary of the lands ceded by the Chiefs of Lake Superior, and inland ten miles throughout the whole distance, including Batchewanaung Bay".

As it turned out, the other bands on Lake Huron proved reluctant to surrender their reservations, and the government did not press the matter as far as outright expropriation. But other issues continued to arise. In the late 1870's, for example, surveyors had begun to explore for routes through various reserves on Lake Nipissing and the French River as part of preparations for the Georgian Bay branch of the Canadian Pacific Railway. The Ojibways of the region protested vociferously against this, having a petition to that effect delivered to the Governor-General on their behalf by Chief Dokis. Both Dokis and some of the other petitioners had attended the council in Sault Ste Marie:

When Mr. Robinson came to the Indians to make a Treaty for their lands, they were not willing to give up their lands and would not sign a Treaty. He then told them they need not be afraid to give up their rights because the Government would never do anything to make them suffer, he said you know yourselves where you have the best lands and there is where you can have your Reserves for yourselves and your Children and their children ever after.

He also said if at any time you have any grievance you can go to the Governor and he will see that you get all your rights or whatever you may ask.

The Chiefs asked that no further surveying be done and that the government have "the promises Mr. Robinson made to us carried out, that is to leave our Reserves for our children and their children".<sup>675</sup> Interestingly, Chief Dokis had brought the petition to Deputy Minister of the Interior John Staughton Dennis - the man who had originally surveyed their reserves - and it was Dennis who forwarded it to the Indian Department. This recommendation was to no avail. The Chiefs were urged to cooperate with the surveyors and told that the Department would get them full value for lands expropriated for railway purposes.<sup>676</sup> Over the following two decades, various reservation lands on Georgian Bay, Lake Nipissing and the north shore of Lake Huron would be expropriated for the purposes of the C.P.R. and Algoma Eastern Railways.

#### **12.8. Public Lands.**

The apparent dichotomy between W.B. Robinson's promises to the Ojibways at the treaty and government behaviour in the years following had a great deal to do with the logic of throwing open lands and resources within the territory covered by treaty. The registration of the Robinson treaties in November of 1850 had meant that the lands in question could be officially declared public lands. It was the Hon. W.B. Robinson himself who rose in the Provincial Legislature on 28 July, 1851, and moved a motion of address to the Governor-General, praying His Excellency to direct that "the Mineral and other Lands acquired by the recent Treaty with the Indians, on the north shores of Lakes Huron and Superior, be surveyed and offered for sale on terms as liberal as those established and exacted by the American government, on the south shore of Lake Superior". The House moved that the Address be presented to Lord Elgin by the Executive Councillors.<sup>677</sup>

W.B. Robinson did very well himself out of the Treaties which bear his name. On the 17th of December, 1850, the Executive Council recommended to Lord Elgin that Robinson receive £500 for his services, "over and above such necessary sums as he may have disbursed

in effecting the treaties".<sup>678</sup> That sum - considerably more than the £400 annual salary he had received as a Resident Superintendent with the Montreal Mining Company<sup>679</sup> - undoubtedly went a long way towards resolving his financial difficulties. When the former rebel William Lyon Mackenzie rose in the Legislature to question the payment to this notorious Tory, Francis Hincks sprang to his defence. The Honorable Member from Simcoe, said the Inspector-General, had been entrusted - "without any application on his part or that of his friends - with a difficult and an important duty with regard to the Indians". Hincks was "glad to have an opportunity to bear witness to the fact that the Hon. gentleman had discharged his duty in a manner highly honourable to himself, and highly advantageous to the public in settling the Indian difficulties." Although Mr. Robinson was "opposed to the Government", he had been chosen "because he was deemed well fitted for the duty, and the Government felt thankful to him for the manner in which it was done".<sup>680</sup>

Robinson continued to be involved - as he had been prior to the treaty - in many of the new resource development schemes planned for the region. In June of 1851, he had brought in a bill to provide for the building of a ship canal at Sault Ste Marie - a project in which he was opposing Allan and Angus Macdonell.<sup>681</sup> The Order in Council of 14 June 1851, which ordered that the territory along the north shore of the two lakes "recently surrendered by the Indians" be organized and the Indian reservations surveyed, had been designed in part to allow the Crown Lands department to decide on applications for timber locations which it was already receiving.<sup>682</sup>

There had been several such applications. On November 4th, 1850, Robinson himself applied to the Crown Lands Department for a timber license extending along the Spanish River for several miles back from the lakeshore - near the Reserve set apart for the Spanish River Band. And that very same month, J.W. Keating - who had assisted Robinson during the Treaty negotiations - applied for his own timber license on the Whitefish River. In February of 1851, Keating requested another license "within the limits of the territory ceded to the Crown last autumn", lying just west of the Indian Reserve No.3 at Beaverstone.<sup>683</sup> In his 1857 letter supporting William Palmer's complaints about Indian reservations



impeding development on the upper lakes, W.B. Robinson had found Palmer's comments about agricultural potential overly optimistic.<sup>684</sup> But Robinson and others clearly saw increasing resource development opportunities in the region - opportunities which would require the government to place the interests of the general society above those of the treaty beneficiaries.

### 12.9 Metis Land Rights.

The logic of settlement and resource development in the region covered by the treaties also had a major impact on the *métis*. The June 1851 Order in Council which had urged the necessity of surveying the Indian reservations, had mentioned the potential incursion of *squatters*.<sup>685</sup> While this was a legitimate fear in many parts of the province, the only "squatters" in the treaty territory in 1851 were the *canadien* and *halfbreed* settlers. It was their interests which would be most affected by the opening up of the country.

During the last day of the treaty council at Sault Ste Marie, Shingwakonce and Nebenaigoching had raised the issue of *métis* land rights - asking that W.B. Robinson give a free grant of 100 acres to some sixty *half-breeds* whose names were on a list they handed him.<sup>686</sup> Here again, there were American precedents - namely, the Treaty made with the Chippewas (Ojibwas) at Fond du Lac on Lake Superior in 1826. "It being deemed important", reads Article 4 of that agreement, "that the half-breeds, scattered through this extensive country, should be stimulated to exertion and improvement by the possession of permanent property and fixed residences", the Chippewa signatories - "in consideration of the affection they bear to these persons" - had granted 640 acres of land upon the islands and shore of the St. Mary's River to various individuals named in the annexed schedule, "being half-breeds and Chippewas by descent". As a partial acknowledgement of their European ancestry, these grants were to be "surveyed in the ancient French manner, bounding not less than six arpens, nor more than ten, upon the river, and running back in quantity". It was by virtue of this treaty that the interpreter George Johnston and his

siblings - through their *anishnabe* mother - had obtained their lands at the American Sault and on Sugar Island.<sup>687</sup>

Shingwakonce and Nebenaigoching - being related to most of the chiefs who had signed the 1826 Treaty - were obviously familiar with its contents.<sup>688</sup> Thus, they did not simply hand the commissioner a list of *métis* people - as Robinson's diary would have it - they also gave him the draft of a clause to be inserted into the treaty text. Prepared by Allan Macdonell, it is virtually identical to the clause from the Treaty of Fond du Lac:

It being deemed important that the halfbreeds scattered through this extensive country shall be stimulated to exertion and improvement by the possession of permanent property and fixed residences, the Odjibewa nation, in consideration thereof and the affection they bear these people and their children and the interest they feel in their welfare, grant to each of the persons described in the schedule hereto annexed, one hundred acres of land to be located upon some part of the lands ceded by this treaty, and that free patents for each hundred acres, shall be granted by the Government to the undersigned respectively and their heirs forever, so soon as the persons therein referred to, shall have made the location they desire respectively.<sup>689</sup>

It is evident that the Canadian government, unlike the American, was not prepared acknowledge any special status for *halfbreeds*. Giving the same response that he had delivered on the annuity question, Robinson repeated that he "had nothing to do with anybody but the Indians & could not make a promise of land. The Chiefs had kept a large reserve & might if they pleased give them locations". That is to say, to the extent that *halfbreed* claims were valid, they would be considered a subset of Indian claims - to be dealt with by the Indians themselves, not by the government. In any event, Robinson added, the government itself had "no power to give free grants".<sup>690</sup>

On the last point, the commissioner was referring to the fact that public lands in Canada West were now being sold, rather than granted. Except for very specific circumstances, this had been the case since 1837. In addition, there had all along been fees for lot surveys and preparation of patents.<sup>691</sup> Under existing land law, the *Canadiens* and *métis* - now that the

lands at the Sault were covered by treaty - were technically squatters, with at most a right of pre-emption to their possessions. To the extent that the *halfbreeds* considered themselves Euro-Canadians, however, the commissioner was prepared to do something for them. "I confirmed certain old residents in the free and full possession of their lands on which they now reside", Robinson notes in his diary for September 9th.<sup>692</sup> And in his report, he elaborates:

The (French) Canadians resident on the lands just surrendered at Sault Ste Marie are very anxious to obtain titles to the land on which they have long resided and made improvements; they applied to me after the treaty and I advised them to memorialize the government in the usual way, setting forth the manner in which they were put in possession by the military authorities of the time, and that I had little doubt that the Government would do them justice. I think the survey of the tract should be made so as to interfere as little as possible with their respective clearings and that those who can show a fair claim to the favorable consideration of the Government should be liberally dealt with.<sup>693</sup>

The overwhelming majority of these "old residents" were in fact *métis*. About a month after the treaty, they forwarded their *memorial* to Toronto, addressed to the Governor-General, and W.B. Robinson formally submitted it on their behalf on October 21st - soliciting the provincial government's "most favorable consideration". He had apparently spoken to Lord Elgin about the memorial already.<sup>694</sup> The most interesting aspect of the petition is that the signatories did not, despite Robinson's admonition, put the main emphasis on their military service. Nor did they describe themselves as *Canadiens*. They basically submitted a claim to aboriginal title in the female line. According to the wording of the document, the fifty-five petitioners, "with the exception of some five or six, are all of mixed Indian Blood and have been born upon the soil":

Each of them has held, occupied and cultivated the land, whereon they now reside for very many years, most of them having inherited their possessions from their mother, and the residue having purchased from half-breeds or Indians. That the five or six, first above referred to, came to the country some thirty or forty years since, and married Indian women, through whom they acquired the said possessions respectively, which they have occupied and cultivated ever since [...]<sup>695</sup>

With the petition was another memorial, signed by Shingwakonce, Nebenaigoching and two other chiefs. They referred to the petition by "what are termed 'halfbreeds', many of them the children of the sisters and the daughters of your memorialists". These people, said the chiefs, therefore had "an inheritance in the country equal to our own, and bound to it by as strong and heartfelt ties as we ourselves". Everyone was afraid that the Government "after having purchased the land of which these people also are equally the rightful and just owners, it would exact from them a purchase money far beyond that which the Government had paid to us".<sup>696</sup> The same fear - that they would not be able to afford to buy back their own lands - had been expressed in the *halfbreed* memorial. Both petitions therefore asked that the old residents not be disturbed "in their possessions, lines or boundaries" and that their properties be secured to them by free grants from the Crown.<sup>697</sup> As with the request for 100-acre free grants, Allan Macdonell had actually prepared a clause to this effect for insertion into the treaty - and Robinson had refused it.<sup>698</sup>

Attached to the *halfbreed* memorial was a schedule of the lands actually held by thirty-five named inhabitants of the Sault Ste Marie village. Except for Charles Oakes Ermatinger - owner of the famous stone mansion - whose 200-acre estate was 4 acres in front by 50 in depth, most of the properties were modest. Laid out along the river in the colonial French ribbon style, the average was about 2 acres front by 18 acres depth - or some 36 acres. This, for example, was the size of Joseph Boissoneau's holding. On the other hand, Chief Nebenaigoching and his son Henry both had smaller 18-acre properties. And Michel Sarette (Cyrette) had only 12 acres.<sup>699</sup>

Representatives of the entire *halfbreed* and *Canadien* population in the Sault region - fifty-five heads of families - signed the memorial to the government. However, not all of them appear on the list of properties. This is likely because some individuals were members of larger households, while others lived further down the channel towards Garden River. And not all of the people named as having properties at the Sault appear on the list for 100-acre grants which the chiefs had handed to W.B. Robinson. Exactly where Robinson got the figure of sixty names is unclear - a copy has survived and it contains only thirty-six names.

Among them are Joshua (Joachim) Biron and his brothers, Louison Cadotte, Francis Boisseneau, Pierre Lesage and Charles Boyer. Since the latter were all closely connected to the Sault chiefs - Lesage and Boyer, for example, having been arrested for participation in the Mica Bay incident the year before - it is possible that Shingwakonce and Nebenaigoching had wanted to single out their particular friends for a special reward.<sup>700</sup>

The government apparently intended to investigate these petitions before responding. In March of 1851, Commissioner of Crown Lands Price told Joseph Wilson - who had come down from the Sault for the trials of Shingwakonce and his associates - that Wilson and Alexander Vidal would be commissioned to "settle the half breed and other claims" as well as survey more land "and plant the boundaries of the different Indian Reserves". Vidal, however, was busy elsewhere and Wilson never received his commission - possibly because he was notoriously hostile to the *canadiens* and *métis*.<sup>701</sup> It was John S. Dennis who was sent up, in the summer of 1851, to survey the Indian reservations. His instructions, however, did not include any analysis of *halfbreed* claims.<sup>702</sup>

A report on the merits of the *memorial* from Sault Ste Marie was eventually submitted to the Executive Council in late November of 1851 by Commissioner of Crown Lands John Rolph. Prepared by Chief clerk William Spragge, it appears to have been based on Spragge's own knowledge of the situation at the Sault, which dated back to 1845-46. The report notes that the acts governing the "disposal of the Public Lands" did not authorize "grants without purchase", except for 50-acre free grants "upon new leading roads designed to open up the interior Country". The Commissioner therefore recommended that the petitioners be given just such 50-acre grants - but at the "nominal rate" of one shilling per acre, which would help defray survey costs and patent fees. Full payment of the £2.10.0 would be required before the applicants could be put in possession of their locations, and they would have to become actual settlers within a year of the lands being open to them. In the case of each allotment, an adjoining 50 acres would be reserved for a further two years - giving the settlers, presumably, the option of doubling the size of their property at a future date.<sup>703</sup>

The report, then, was a response to both *métis* requests - for security of tenure as well as for new 100-acre grants. Spragge actually doubted whether the Village and park lots at Sault Ste Marie - which had been surveyed by Alexander Vidal in 1846 - or the immediately adjoining area, contained enough land "fit for cultivation". But if the applicants were able to point out a suitable tract - and pay half the charge for their 50-acre lots as a deposit - he would recommend that the government authorize the survey of another township for their benefit. The Land Committee of the Executive Council endorsed the report on February 20, 1852 and it was approved by the Governor-General the same day.<sup>704</sup>

An 1855 map of the town of Sault Ste Marie shows the first concession divided into narrow riverfront lots in the French manner, with dots marking the existing *canadien* and *métis* holdings.<sup>705</sup> It appears, however, that few *métis* obtained patents. By the time the first Registry Office for Algoma District opened in 1858, the first Concession - now part of downtown Sault Ste Marie - was already the focus of intense property speculation. And between 1858 and 1871, when the municipality of Sault Ste Marie was created, there were 114 property transactions in the first Concession. *Métis* people were involved in only 18 of them - in all cases as seller or mortgagee. Only a half dozen *métis* still owned property in Sault Ste Marie by 1900, by which time their holdings had been reduced to the size of a standard municipal lot.<sup>706</sup>

With the Pennefather treaties in 1859, there was further incentive for *métis* people to move to the Garden River village. Many of them had had lots along the river in the townships around Sault Ste Marie which were surrendered by the Garden River and Batchewana bands. Although, like the Ojibways, they too were eligible to buy back their own properties at the price fixed by government, many chose to take up 40-acre lots on the reduced Garden River reserve.<sup>707</sup>

What happened at the other *métis* settlements in the region is less clear. At the fishing village of *Sheboahnahning* or Killarney, the various Lamorandières, Roques and Solomons

must have obtained title to their properties. Many of their descendants, certainly, were still occupying the village a century later.<sup>708</sup> As for St. Joseph's Island, at least some of the local *métis* seem to have blended into the settler population. In July of 1856, W.B. Robinson had forwarded to the Commissioner of Crown Lands a petition asking that the Island be surveyed and opened for settlement. The list of signatures was headed by E.B. Borron - Resident Superintendent at the Bruce Mines, and later M.P. for Algoma - and the remaining names, all of them English or Scottish, were presumably mine employees. The Commissioner of Crown Lands recommended that the survey take place, and that the lands be sold at public auction "after first setting apart as temporarily reserved the lots upon which improvements have been made". This would have protected the *métis* residents of *Gachkiwang* or Pembroke.<sup>709</sup> That village, however, no longer exists. In 1955, members of the Rousseau family - related to the Lamorandières and Solomons - were recognized as the oldest residents of St. Joseph's Island. And it appears that other descendants of *métis* families were then living near Desbarats on the north shore.<sup>710</sup>

#### 12.10 State Power.

As at Red River two decades later, the incentive in the early 1850's for creating permanent political and legal institutions on the frontier came from advocates of the *British connection*. At Sault Ste Marie, this party included customs collector Joseph Wilson, who had been lobbying since 1851 for the creation of a judicial district in the region. Influenced in part by the events at Mica Bay in 1849, Wilson wanted to ensure that *canadien* and *métis* settlers at the Sault - as well as unruly Americans from the opposite shore - felt the full force of English criminal and property law.<sup>711</sup> In 1870, Sir John A. Macdonald - who had helped draft legislation creating the provisional district of Algoma - remembered that Wilson and his associates had also argued that "that Country would not be settled until it had Judicial Institutions and Tribunals which would protect life and property".<sup>712</sup>

The bill in question had been passed by the Legislative Assembly in June of 1853 and was entitled *An Act to Make Better Provision for the Administration of Justice in the Unorganized Tracts of Country of Upper Canada*. It allowed the government to provide for courts, judges, magistrates, sheriffs and associated facilities within the territories recently covered by treaty. Part of the new act, however, was aimed at a very particular target. According to Section Nine, "any person inciting Indians or half-breeds frequenting or residing in such tracts of country [...] to the disturbance of the public peace [...] shall be guilty of a felony, and upon conviction thereof, shall be sentenced for not more than five years nor less than two years in the Provincial penitentiary".<sup>713</sup> The recipient of the government's attention was not amused. "It appears to me", Allan Macdonell wrote George Brown with reference to the draft bill, "that it would have been more appropriately entitled an Act to procure the conviction of Allan Macdonell charged with certain misdemeanors in unorganized tracts of Country in Upper Canada".<sup>714</sup>

Although the government had brought witnesses and principals down to Toronto through several criminal Assize sessions between the spring of 1850 and the fall of 1852, no one had actually been brought to trial for any offence resulting from the altercations north of Sault Ste Marie in November of 1849.<sup>715</sup> Shortly after the spring Assizes in May of 1851, Shingwakonce, Nebenaigoching, Charlot Boyer, Pierre Lesage and several other *anishnabeg* had been taken on a tour of Niagara Falls, treated with great ceremony by the Indian Department - and then asked to apologize for their part in the Mica Bay affair.<sup>716</sup> When they begged their *Great Father* the Governor's forgiveness, the Superintendent-General replied in writing that Lord Elgin did forgive them, but that "as you have been guilty of a great violation of the Queen's laws by which you have incurred your Great Mother the Queen's serious displeasure - and for which without her Royal pardon you might at any time hereafter be indicted by the Mining Company or their Agents, His Excellency will take the necessary steps to procure for you Her Majesty's pardon also".<sup>717</sup>

Since Colonel Bruce was a layman, he could perhaps be excused for so seriously misrepresenting Anglo-Canadian criminal law. The chiefs and their associates had not been



found guilty of anything - nor could the mining company bring some sort of private criminal prosecution against them, whether or not there was some prior Royal pardon. The strangest aspect of the letter to the chiefs, however, is that it had actually been drafted by Attorney-General Robert Baldwin, who would have known full well that the threats it contained were nonsense.<sup>718</sup> It is clear that Baldwin and the government wished to focus their efforts on the Macdonell brothers and Wharton Metcalfe, who remained charged with conspiracy, riot, and forcible entry.<sup>719</sup>

Allan Macdonell did not see the confession, but told George Brown in April of 1853 that "the Indians can not explain to this day what they signed". Baldwin had apparently tried twice - in the fall of 1850 and again in 1851 - to get Macdonell himself to apologize, but he had declined. Macdonell had appeared five times for trial, but each time the Crown had refused to proceed. Unable to attend the fall Assizes in 1852, he had signed a recognizance agreeing to appear again in Toronto "or at an Assize to be held on Lake Superior should provision be made at the ensuing Session [of the Legislature] for holding an Assize there". So Allan Macdonell was not being paranoid in concluding that Attorney-General Baldwin had bided his time - and was changing the law in order to secure a conviction. Macdonell believed that the government required some sort of finding of guilt in order to justify to the Colonial Office the expence of sending Imperial troops to quell the alleged disorder.

Section Ten of the new Act also troubled Macdonell, in that it would exempt a sheriff or magistrate in remote districts from the provisions of the Upper Canada Jurors Act. He concluded, probably rightly, that this would allow "corrupt" individuals in the north to pack juries in order to secure convictions - particularly his. Although Macdonell approved in general of providing courts of law for the upper lakes, he could not understand why the act did not also extend the privileges of the municipal act of Upper Canada to this remote region. In his view, the inhabitants of Sault Ste Marie and St. Joseph's Island were every bit as capable of exercising municipal privileges as those of the Bruce (Saugeen) peninsula and other newly settled parts of the province. The difference, of course, was that the latter were

for the most part British and Irish immigrants, while the former were mostly *métis* or French-Canadian.<sup>720</sup>

Allan Macdonell was never tried under the new legislation, probably because the Reform ministry which included Robert Baldwin was replaced in 1854 by a liberal-conservative coalition headed by Macdonell's old patron and former law partner, Sir Allan Napier MacNab. John A. Macdonald was now Attorney-General.<sup>721</sup> When Macdonald finally appointed a Judge and associated officials for the provisional judicial district of Algoma, and extended the provisions of the municipal act in the process, Macdonell's fears about the fate of the *métis* were realized. All of the new officials - Judge John Prince, Sheriff Richard Carney, Crown Attorney John McPherson Hamilton, Registrar John Savage, and Police Constable Andrew Hynes - were British immigrants. They arrived in the Sault between 1858 and 1861 to establish the Registry Office, jail and courthouse. Thenceforth, the political, legal, commercial and social elite of Sault Ste Marie would be Anglo-Canadian and protestant.<sup>722</sup>

The contrast with the American Sault could not have been more marked. In the frontier societies of Michigan, Wisconsin and Minnesota, both *canadiens* and *métis* exercised a major social and political influence. As we have already seen, the *métis*, in contrast to their treatment by the British, had been able to obtain both financial and property benefits from the Indian treaties with the U.S. government. Pierre (Peter) Barbeau, a *canadien*, was the most prominent businessman in Sault Ste Marie, Michigan. The first mayor, the first sheriff and one of the first magistrates in the American Sault were *métis* - and other *canadien* and *métis* would serve across the region as public officials - even as representatives to the U.S. Congress. If, in terms of a frontier society, it was arguably better to be Ojibway in Canada West, then it was clearly better to be *métis* in the United States of America.<sup>723</sup>

### 12.11 Harvesting Rights.

The arrival of the settlers and with them, the apparatus of the Anglo-Canadian state, would also have an impact on aboriginal harvesting. The parties to the Robinson treaties had been guaranteed continued hunting and fishing rights over the territories covered. As drafted by Commissioner Robinson, the wording is identical for both agreements:

And the said William Benjamin Robinson of the first part, on behalf of Her Majesty and the Government of this Province, hereby promises and agrees [...] to allow the said Chiefs and their tribes the full and free privilege to hunt over the territory now ceded by them, and to fish in the waters thereof as they have heretofore been in the habit of doing, saving and excepting only such portions of the said territory as may from time to time be sold or leased to individuals, or companies of individuals, and occupied by them with the consent of the Provincial Government.<sup>724</sup>

This clause is very broadly worded. Unlike the later numbered treaties, these hunting and fishing rights are not made subject to government regulation. And the only places they do not apply is on lands "sold or leased to individuals or companies of individuals". Later treaties would place much more extensive restrictions on the locus of harvesting, by exempting - as in Treaty #3 of 1873 - "such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes".<sup>725</sup> A similar clause appears in treaties 4 through 11 (1874-1930). Lands, of course, can be required or taken up by many lesser forms of tenure than the patents or leases stipulated by the Robinson treaties. And the phrase *other purposes* would later be used by governments to exempt many categories of Crown land - such as parks - from treaty coverage.

#### 12.11.1 Exceptions for Resource Development.

It is apparent from the historical background to the treaty that, by *individuals or companies of individuals*, W.B. Robinson largely meant mining. The very next sentence of the treaties, for example, indicates that the Ojibway parties will not "at any time hinder or prevent persons from exploring or searching for minerals or other valuable productions in any part of the territory hereby ceded".<sup>726</sup> And, as noted earlier in the section dealing with the negotiations, Robinson had commented to the chiefs that the lands in question were

"notoriously barren and sterile, and will in all probability never be settled except in a few localities by mining companies".<sup>727</sup>

This is not to say that Robinson did not have other resource development activities in mind when he referred to "other valuable productions" of the territory in question. By 1850, lumbermen had spread up the Ottawa valley as far as the Mattawa River - to the east of Lake Nipissing - and were already cutting pine on southeastern Georgian Bay.<sup>728</sup> Robinson himself, as we noted above, would apply shortly after the treaty - along with his associate J.W. Keating - for timber rights on Lake Huron.

But based on his personal acquaintance with the upper lakes, the Treaty commissioner believed that the region covered by treaty was inhospitable to agriculture. This was a distinct contrast to what is now southern Ontario, where, as Robinson had explained to the chiefs, lands previously ceded by the Indians had been "occupied by the whites in such a manner as to preclude the possibility of the Indian hunting over or having access to them". This idea - that resource development could be compatible with traditional harvesting, and that therefore the rights of both Native and non-Native people could co-exist on the same tracts of land - was an innovation of the Robinson treaties. In future, government commissioners for many of the post-Confederation numbered treaties would adopt the same kind of language as W.B. Robinson, assuring Native delegates that their traditional way of life would in no way be affected by participation in the agreements.<sup>729</sup>

At least in 1850, there can be little doubt that W.B. Robinson saw the terms of the treaty as a guarantee that the traditional Native economy would continue to be viable. This wasn't altruism on his part - he was trying to save the government money. By allowing the Ojibways to retain reservations for their own use, he explained in his report, and by securing to them "the right of hunting and fishing over the ceded territory, they cannot say that the Government takes from their usual means of subsistence and therefore have no claims for support, which they no doubt would have preferred, had this not been done".<sup>730</sup>

### 12.11.2 Commercial Harvesting.

W.B. Robinson's reference to the Ojibways' "usual means of subsistence" should be linked to the clause of both Treaties establishing the right of the beneficiaries to hunt and fish "as they have heretofore been in the habit of doing". Given his allusion to past practice - thus the word *heretofore* - the Commissioner must have had some empirical knowledge of how Ojibway people were supporting themselves at the time of the treaty. And he must have assumed that the government officials to whom he was reporting would also know what the applicable phrase actually meant.

Robinson does not mention the potential barter and sale of such resources. It could therefore be argued that, by using the word "subsistence", he - and the government - intended to limit the Ojibways to hunting and fishing for personal consumption only. But in the same passage, Robinson notes that Native subsistence would also depend on the products of the soil - the reservations, he said, being tracts which had *heretofore* been used by the Ojibways for residence and *cultivation*. And in promoting the treaty at the council, he had highlighted the benefits which might be brought by the white people. The "Lands now ceded", he stated, "are notoriously barren & sterile, and will in all probability never be settled except in a few localities by mining companies":

whose establishments among the Indians instead of being prejudicial would prove of great benefit, *as they would afford a market for any thing they may have to sell & bring provisions and stores of all kinds among them at reasonable prices* (emphasis added).<sup>731</sup>

Robinson's words are an uncanny echo of comments made a year earlier by J.W. Keating, who had been prospecting along the north shore of the lakes. Writing in August of 1849, Keating outlined the potential benefits of resource development to the Ojibways:

The advent of the miner is to them a matter of benefit, and ought to be one of gratulation, and if they choose to plant potatoes and corn on a few fertile spots on the islands and flats of the Thessalin, they might from their sale and that of their fish, both good and abundant, derive a certain and comfortable subsistence.<sup>732</sup>

When referring to potential markets for Native people, however, Robinson was undoubtedly speaking from his own experience. Operating out of Newmarket, he and his older brother Peter had traded furs along Georgian Bay throughout the 1820's and 1830's.<sup>733</sup> For almost two centuries, as we saw in an earlier section of this report, traders on the upper lakes had been bartering European goods with Indian people - not just for furs, but for items of Native manufacture such as canoes and snowshoes, as well as all types of country food - meat, fish, berries, corn and maple sugar.<sup>734</sup> In this context, it would have been impossible to make a distinction between goods produced for domestic consumption, and those produced for exchange. Nor did contemporary observers attempt to do so.

The Ojibways were always prepared to trade a surplus. During their passage down Lake Superior in the fall of 1849, T.G. Anderson and Alexander Vidal bought fish from Ojibways they encountered near the mouths of the Pic and Pukaskwa Rivers.<sup>735</sup> W.B. Robinson must have had many similar experiences during his residence, in 1848, as Superintendent of the Montreal Mining Company's operation at Bruce Mines.<sup>736</sup> Though detailed records for this operation have not survived, it is apparent that the several hundred employees - and presumably Robinson himself - had been acquiring country food directly from the local Ojibways of the nearby St. Joseph's Island, Thessalon and Mississagi River Bands.<sup>737</sup> Just three months after the Treaty, Jesuit missionary Auguste Kohler reported that there were several Indian families living near the Bruce Mines. From them, the miners were acquiring fish which these people had speared on summer nights by the light of birchbark torches. In the winter, the same Ojibways were trading fish which they had taken through holes in the ice.<sup>738</sup>

### **12.11.3 Fisheries Regulations.**

Within a year of the treaty, however, the Lake Huron Ojibways were in conflict with the government over fishing rights. In 1851, they tried to persuade the government to take action against non-native commercial fishermen who were trespassing on their fishing grounds. When the Chiefs requested that the Governor-General provide them with a

written statement showing that they had not agreed to give up their fishing rights, Lord Elgin declined. But he promised that non-Natives would be restricted from using the shorelines of their reservations for fishing or any other purpose.<sup>739</sup>

Although the treaties are silent on the subject, the Ojibways apparently believed that they had retained exclusive rights to the lake fisheries and similar resources. According to the Jesuit Fathers in 1852, Chief Tagawinini claimed that, at the treaty council, Chief Shingwakonce had proposed to give up half the fishery to the whites, but that Robinson had dissuaded him:

"You are not being sensible, Mr. Robertson [Robinson] told him, if you give up half of the fishery to the Whites, they will end up with all of it, and what will you live on? It [the fishery] was therefore reserved exclusively for the Indians. If the Treaty contains anything else, those who have written it are forgers." Thus spoke Atagewinini [Tagawinini].<sup>740</sup>

From the surviving evidence of Shingwakonce's behaviour at the council, the *whites* referred to were probably the *canadien* and *métis* settlers who fished in the St. Mary's River alongside the local Ojibways. If so, then Robinson's rejection of their claims would make sense. Once again, however, the commissioner says nothing in his diary or report about any such exchange of views.

As part of the growing panoply of state power in the colony - and of settler control over resources - the Legislative Assembly passed the first Upper Canada *Fishing Act* in 1857. Revised the following year as *The Fishery Act*, it gave the Commissioner of Crown Lands the power to lease fishing stations on all "vacant public lands still belonging to the Crown". Because of the potential conflict with treaty fishing rights, the Superintendent-General of Indian Affairs reached an agreement with the Commissioner of Crown Lands which would

give Native fishermen the right of first refusal on fishing leases located in front of "inhabited Indian lands". Other Native fishing grounds, however, would be open to commercial lease.<sup>741</sup>

In 1859, the Commissioner of Crown Lands appointed William Gibbard - an English immigrant who had settled in the Collingwood area in the 1840's<sup>742</sup> - as the first fisheries overseer for Georgian Bay, Lake Huron and Lake Superior. Of the 97 leases Gibbard issued during his first season, 71 went to *practical fishermen*, 14 to the Hudson's Bay Company and only twelve to "Indian Bands". Over the following four years, the number of Native leases dwindled to almost none. Gibbard was not fond of aboriginal people. He recommended restrictions on spearing and trolling by Native fishers and made derogatory references to them in many of his reports to government. Gibbard managed to antagonize virtually every aboriginal group on the upper lakes, especially the *anishnabeg* living on and around Manitoulin Island, who referred to him as the *eshkamegwanokwe* or "collector of fish guts".<sup>743</sup>

In protest, these *anishnabeg* began destroying nets and other equipment of non-Native commercial fishermen, which only reinforced the views of Gibbard and his associates that Native people needed to be brought under control. In the letters section of the *Globe*, however, J.W. Keating defended Native fishing rights in a debate with the overseer, citing the honour of the Crown. "I am at a loss to know", Keating wrote in March of 1862, "upon what grounds it becomes necessary for the Indians to procure licenses to cast their nets



round an island [Manitoulin] secured to them, if not by the parchment usual among ourselves, by a title equally sacred to all right thinking men - the pledged word of Her Majesty's representatives". The next year, following the controversial 1862 Treaty for Manitoulin Island which the Hon. William McDougall negotiated with some of the *anishnabeg*, the Chiefs from the eastern side of Manitoulin organized the destruction of fishing stations on the nearby islands. Gibbard arrived with a posse of constables from Toronto, but was driven back when he tried to land at Wikwemikong.<sup>744</sup>

Proceeding up the lake in the steamer *Ploughboy*, Gibbard arrested one of the *ringleaders* - an Odawa named Osawanemekee (Yellow Thunder) - at Bruce Mines, and tried unsuccessfully to have him incarcerated in the jail at Sault Ste Marie. On the trip back down, Gibbard disappeared overboard near Killarney and his body was found in the channel east of Manitoulin a few days later. A public inquest in Collingwood found that he had been murdered. Suspicions were raised about Osawanemekee and Jesuit Father Auguste Kohler from Wikwemikong - both of whom had been on board the *Ploughboy* - but no charges were every laid.<sup>745</sup>

#### 12.11.4 Food Fishery.

The Gibbard incident sparked action on the part of the provincial government. Between 1860 and 1867, the Department of Indian Affairs was part of the Crown Lands Department. Following an 1865 legal opinion from the Solicitor General that no *private person* could

assert any exclusive fishing right, and that the Crown could lease fishing stations on unoccupied Crown lands, the Commissioner was given the power by statute to "appropriate and lease" waters where Indians could "fish for their own use as food" in the manner and at the times set out in the lease, and "may permit spearing in certain locations". This was the culmination of a trend to limit Native fishing to subsistence purposes only. In 1866, the Fisheries Branch of the Department was given control over all fisheries around islands and "fronting the mainland belonging to Indians". Indian Department officials were now powerless to defend aboriginal and treaty rights, even had they wanted to.<sup>746</sup>

At Confederation, both Indian Affairs and fisheries on navigable waterways became a federal responsibility, with Crown Lands remaining under provincial control. Despite the division, policy remained unchanged. In December of 1875, the Department of Marine and Fisheries published a circular stating that "Indians enjoy no special liberty as regards the place, times or methods of fishing. They are entitled only to the same freedom as White men, and are subject to precisely the same laws and regulations. They are forbidden to fish at unlawful seasons and by illegal means, or without leases or licenses".<sup>747</sup> Although Indian Department officials argued against the policy, it was rigorously enforced against all Indians - including beneficiaries under the Robinson Treaties. In November of 1888, for example, the Chief of the Spanish River Band complained to the Indian Superintendent at Manitowaning that three of his fishing party had had their boats seized while laying in their supply of fish for the winter. "Now we have nothing to eat", said the Chief - nor, he added, did they have the money to redeem their boats. The Deputy Minister of Fisheries replied

to his counterpart at Indian Affairs that, according to the local Fishery Overseer, "the Indians were going to Mudge Bay to sell their fish". This was "such a palpable violation of the fishery laws, he could not allow it to pass unnoticed".<sup>748</sup>

#### 12.11.5 Hunting and Trapping.

A similar encroachment on treaty hunting rights, as we will see shortly, took place during the latter part of the nineteenth century. However, one curious aspect of the Robinson treaties is that the texts - unlike the later numbered treaties - make no mention of trapping. This might lead to an argument that only hunting and fishing had been protected by the agreements. Given the number of trading posts on the upper lakes, as well as the fact that *anishnabeg* throughout the region were trapping furs for barter or sale, this would obviously be an absurd proposition. The reason W.B. Robinson did not mention trapping as a separate activity is quite simple. The word itself was not then in general use, because most Native people were still using snares and deadfalls, not steel traps. In the journals of the Hudson's Bay Company's La Cloche Post on the north shore of Lake Huron for the period 1827-36, the word *trap* is rarely used. Instead, the term *hunting* was employed to encompass the harvesting of wild fur.<sup>749</sup> Indeed, in the various regulatory schemes introduced by government up to the end of the century, *hunting* was the usual term for all wildlife harvesting.

As with the fisheries, it was the introduction of state power into the northern lakes region which led to a clash with treaty rights to hunt and trap. And it was doubly unfortunate for the *anishnabeg* that the first Judge of the provisional District of Algoma was Colonel John Prince. The Colonel (1796-1870) was an Englishman from a privileged background who had settled in Sandwich (Windsor) in 1833, later representing Essex County for many years in the Legislative Assembly and Legislative Council. Prince had been involved as a license-holder and shareholder in most of the early mining activity on Lakes Huron and Superior. As a passionate hunter and fisherman, Prince promoted most of the fish and wildlife legislation introduced in Canada West between 1845 and 1860. In his reforming zeal, he can be considered a precursor to the wealthy *sportsmen's* lobby groups of the early twentieth century. Like them, Prince opposed the use of particular hunting and fishing techniques. Thus, during the Assembly debate on the 1857 *Fishing Act*, Prince had attacked the use of spears:

There was no skill requisite to use the spear; it was a dastardly and mean thing to hold a torch at the surface of the water, waiting until the fish came up, and then to stick it with a fork. It was as bad to do this as to follow the practice of some individuals who go out into the woods with hounds, and hunt the poor deer into the lake, and then take a canoe, paddle over to the poor animal, and shoot it. No sportsman would follow such a discreditable sport. He himself would rather take a deer on the bound, or cast a fly at the fish he wished to capture.<sup>750</sup>

As Prince knew full well, all of the above techniques were used by the nearby Chippewas of the St. Clair and Thames Rivers. Indeed, they were general among Native people, as well as among rural settlers who took fish and game for support, not sport.

Prince had arrived to take up his judicial position in 1861. He was consulted frequently on Indian matters by George Ironside's successor as Indian Superintendent, Charles Dupont,

who had been appointed in late 1863. In March of 1864, Prince advised Dupont, in answer to a question on the subject, that the Indians (and, of course, the *métis*) were subject to the Game Laws of the Province like anyone else. His letter does not mention the Robinson treaties, but since Prince had been involved in drafting these laws, he had an obvious interest in their enforcement. The Judge wanted Dupont to dissuade the Indians from hunting altogether and have them "attend to agriculture". In Prince's view, hunting should only be the right of *gentry* like himself.<sup>751</sup>

Judge Prince died in 1870, shortly after the Algoma District had become part of the new Province of Ontario, but his attitude lived on. The attempt by provincial game overseers to enforce seasons, bag limits, and restrict the use of dogs attracted protests from the *anishnabeg*. In 1878, the Chiefs of the Lake Nipissing District, through Chief Dokis, reminded the government that "Mr. Robinson told the Indians [...] that they would always have the right to their hunting grounds to hunt whenever they liked, and that it would make no difference if farmers came in and mills were built, they would still have the right to hunt all round them and would have the same rights as their Fathers and Grandfathers before them had had".<sup>752</sup>

The main focus of later provincial laws was to legitimize sport hunting. This was due to the sportsmen's lobby and the profound influence of theories of *scientific* conservation. However, the Ontario *Game Protection Act* of 1892 did recognize the subsistence needs of *settlers* and *Indians* in certain parts of the province, though it provided sanctions against *market hunting*. Thus, by section 12:

The provisions of the game laws of this Province shall not apply to Indians or to settlers in the unorganized districts of this Province with regard to any game killed for their own use for food only and for the reasonable necessities of the person killing the same, his family, and not for the purposes of sale and traffic.

Though this section would benefit Ojibways living on northern Lake Huron and Superior - which areas were still *unorganized* - it was of little use to those Treaty beneficiaries living

in organized districts near Parry Sound. Due to pressure from the federal government, however, Ontario did include a disclaimer which exempted treaty and aboriginal rights:

And nothing herein contained shall be construed to affect any rights specially reserved or conferred upon Indians by any treaty or regulations in that behalf made by the Government of the Dominion of Canada with reference to hunting on their reserves or hunting-grounds or in any territory specially set apart for the purpose; nor shall anything in this Act contained apply to Indians hunting in any portion of the Provincial territory as to which their claims have not been surrendered or extinguished.<sup>753</sup>

It is clear that Ontario game wardens simply disregarded that clause. Basically, they took the position that neither the Robinson Treaties of 1850 nor any other agreement gave Indian people the right to hunt or fish on public lands without authority of Ontario law. As a result, many *anishnabeg* were fined or went to jail for activities which they believed were protected under their treaties. The federal government was unwilling or unable to defend them.<sup>754</sup> In March of 1911, a council of Chiefs met at Parry Sound, and forwarded a resolution to the Department of Indian Affairs asking for redress. They stated that "all the Chiefs residing under the Robinson-Huron Treaty and the Chiefs on the Manitoulin Island, together with their respective people do claim one voice as being deprived of their privileges of fishing, hunting and trapping rights according to understanding under the Robinson-Huron Treaty and other treaties of earlier dates, thus taking away the means of their livelihood". The Chiefs also noted that, because of the enforcement of game and fish laws, "many of our people have suffered the penalty thereof not only in fines but also in imprisonment".<sup>755</sup>

Details of one typical incident have survived. In October of 1914, Moses Commanda and his son Barney - Ojibways of the Nipissing Band - appeared before Ontario High Court Justice Frank Latchford at the Sudbury Criminal Assizes. One had been charged with wounding a police officer and the other with wounding with intent. In the spring, two Game wardens had come on to their Reserve, and finding a beaver and some beaver skins, had charged the two men with taking animals in the closed season. Their rifles had also been seized. Justice Latchford was outraged to find out that, in June, the local magistrate had

sentenced the two men to a year's imprisonment for possession of the beaver skins, and had also bound them over for trial on the criminal charges. On the facts adduced before him, Justice Latchford found that the shooting had in fact been begun by one of the game wardens "and the only wounding that took place resulted from the fact that when one of the wardens had his revolver pointed at the younger Commanda, the father struck down the revolver with a birch stick, slightly injuring the game warden's hand".<sup>756</sup>

Though the two men were acquitted by the jury, they were immediately returned to jail on the previous conviction. Justice Latchford appealed to the Attorney-General of Ontario to have them released, and wrote to the Superintendent-General of Indian Affairs to protest the "gross injustice" which had been done. He suggested that the Department should consider entering a claim for compensation on the Commandas' behalf against the government which had wrongfully imprisoned them. "Under the Robinson-Huron Treaty", wrote the Judge, "which should be as sacred as any treaty, Shabokishick and his band to which the Commandas belonged - and other Indians inhabiting French River and Lake Nipissing - were accorded the full and free privilege to hunt over the territory which they ceded, in the same manner that they had heretofore been in the habit of doing":

There seems to be no possible doubt as to the meaning of the Treaty in regard to the district in which the Commandas were hunting; and yet I find that the representatives of His Majesty, in violation of the Treaty made with His Majesty's predecessor, Queen Victoria, have interfered with the rights guaranteed by that Treaty and incarcerated the Indians for doing what they were given the right to do.<sup>757</sup>

The following spring, the Sudbury lawyer who had defended the Commandas free of charge chastized the Department of Indian Affairs for "assuming your own wards to be guilty without hearing anything from them". J.A. Mulligan argued that the Department had a duty to provide for their defence. "If you listen only to the side of the prosecution for information", he argued, "you will not often be called upon to spend money in the defence of your wards".<sup>758</sup> The Commandas were eventually released by Order in Council. But not

all Robinson Treaty beneficiaries would be as lucky in finding an obliging lawyer and a sympathetic judge.<sup>759</sup>

The basic problem for Native people was that Ontario laws were being written by recreational hunters and anglers. The Ontario Game and Fisheries Commission of 1909-11 which recommended further legislative changes had been headed by Kelly Evans, a professional engineer who was head of Ontario's main *sportsmen's* lobby group. Evans only consulted his fellow hunters and anglers, tourist outfitters and government officials when preparing his recommendations. All of these groups blamed Native people and rural settlers - who were not represented at the hearings - for the decline in wild game and fish populations. No contrary evidence - about the cumulative impact of sports hunting and fishing, for example, or about pollution of Ontario's lakes and waterways - was ever offered.<sup>760</sup>

Ontario's game and fish laws were changed in 1914 to reflect the Commission's recommendations. The clause exempting treaty and aboriginal rights from the operation of the statutes was dropped. From then on, Ontario would aggressively prosecute Indian people - whatever the wording of their treaties - for hunting, fishing and trapping "*at all seasons of the year on Crown lands or water without the limits of their reservations*".<sup>761</sup> Exemptions for settlers in remote districts (such as *métis* people) lasted only slightly longer. The 1914 law limited settlers and their families to one deer for personal consumption - but that provision was eventually dropped in the 1920's.

From the First World War on, Ontario had a leniency policy with regards to hunting and fishing by aboriginal people in the most remote areas of the province - basically those living north of the National Transcontinental (later C.N.) Railway line between Cochrane and Sioux Lookout. But elsewhere, such as in the areas covered by the Robinson treaties, the game and fish laws were rigorously enforced. Ontario's introduction, in the 1930's, of trapping licenses and the formal registration of traplines during and after the Second World War brought unremitting protests from treaty beneficiaries. Thus, at a joint Council



Meeting of the Robinson Huron and Robinson Superior Treaty Indians held in Sudbury in 1948, the delegates proposed a number of resolutions for submission to the Department of Indian Affairs and to Parliament. Their basic position was that the "hunting and fishing rights of the Indians as provided in the Robinson Huron and Superior treaty" must be enforced. "For a great many years", began one resolution, "the Indians of this Province of Ontario and other Provinces in the Dominion have been prosecuted and sentenced to jail terms for taking wild game and fish for their livelihood. The complaint generally throughout the country is that the Dominion government has betrayed the Indians in the olden days into promises which the Government never intended to carry out".<sup>762</sup>

Many of the delegates to the meeting had brought individual complaints. Chief Ellis Desmoulin of the Pic-Mobert Band on Lake Superior stated that the township system of traplines was not acceptable to the Indians in Thunder Bay district. Chief Peter Moses of Pic-Heron Bay complained that few, if any, traplines were available to members of his Band. Members of the Spanish River band at Sagamok complained that the Game Warden was watching them so closely that they could not set nets in front of their own Reserve, and they were not even being allowed to take fish for their own use. And Charles Missabi of the Pickerel River Band on Georgian Bay complained that three Ojibways who had been hunting near his Reserve without a license had been apprehended by Game Wardens and fined in Parry Sound Police Court.<sup>763</sup>

The response of the Department of Indian Affairs on the last complaint is indicative of its general acquiescence before provincial policy. Parry Sound Indian Superintendent Samuel Devlin had consulted the local Game Overseer and discovered that the three men in question had been found, in his words, "hunting illegally on Crown lands". They had been fined \$10 each and costs, and their guns had been confiscated. It was Superintendent Devlin's opinion that the men had been "properly convicted" and that there was no point in approaching the provincial government - other than to have the guns returned as a matter of clemency. Devlin did note that "these Indians hunt largely for food for their own use during the winter months and are all strongly of the belief that they should be permitted to

hunt either on or off their Reserves". In fact, all three men were Robinson-Huron Treaty members from the Lake Nipissing and Henvey Inlet Bands. If Superintendent Devlin had actually read the text of the Robinson treaties, he gives no indication of it.<sup>764</sup>

In fact, federal officials appear to have felt that they had no obligation to uphold the terms of treaties with respect to game and fish legislation. In 1954, J.P.D. Ostrander, the Department's Superintendent of Welfare, wrote to Regional Supervisor Fred Matters in North Bay about an Ojibway named Fred Blackbirch who had been arrested near Temagami for possession of a high-powered rifle without a license. Ostrander considered the charge a trivial one, since there had been no violation of what he called the basic principles of conservation - "no wastage of meat, no hunting beyond his immediate needs or any hunting at all for that matter". According to the Superintendent, carrying a firearm without a permit was "not an offence for a Treaty Indian and any Indians who have taken out such permits have done so without adequate knowledge of their rights". However, Ostrander wanted Matters to discuss the subject quietly with provincial officials in order not to disturb "any arrangement that might have been made to control the take of deer or other game animals in the area":

It is not the desire of the [Indian Affairs] Branch to inform Indians fully concerning their Treaty rights because conservation and management could be defeated by so doing. At the same time it would be a neglect of duty if the Ontario authorities were not advised of the weakness of their position both legally and morally.<sup>765</sup>

It was only in the early 1970's that Ontario began to back away from its insistence that Treaty hunting and fishing rights applied only on Reserve. This was not because of pressure from the Department of Indian Affairs, but because organizations representing Treaty Indians were both defending individuals charged with breaches of provincial legislation and bringing political pressure to bear on both levels of government. Nevertheless, a century of criminalization of activities which Robinson Treaty beneficiaries believed had been guaranteed to them by treaty has had a major impact on both government and the general society. The corporate memory of provincial Conservation Officers - if not of the Ontario

Ministry of Natural Resources as a whole - is that aboriginal and treaty rights do not exist. And it is no accident that groups such as the Ontario Federation of Anglers and Hunters continue to maintain that "Treaty Indians do not possess any exclusive claims to Crown land or resources within the geographic boundaries of Ontario, with the exception of their Reserves".<sup>766</sup>

13. **Epilogue.** "Wherever Mr. Macdougall has had anything to do with the Indians", concluded the letter to a Toronto newspaper, "there he has created discord and strife, where all had been peace before". The writer, who used the Indian name *Nebenoukha*, was among the many voices protesting the Macdonald government's appointment of the Honourable William Macdougall - Clear Grit and godfather to the Canada First movement - as Lieutenant-Governor of the North-West Territories. The most serious charge against the new Lieutenant-Governor was that he had acted illegally during the negotiation of the 1862 Manitoulin Island Treaty with the Ottawa and Ojibwa tribes of northern Lake Huron.<sup>767</sup> When, claimed the author of the letter, Mr. Macdougall had responded in the House of Commons to these attacks on his conduct as Treaty commissioner, no "Indian was present to tell of his mis-statements nor no co-legislator who might call him to account". Macdougall had simply branded his opponents as American Indians, badly misled by the priests they had brought with them to the Canadian side of the upper lakes.<sup>768</sup>

In one sense, of course, the Honourable William Macdougall did account for his words and deeds. In October of 1869, as his Canadian government party arrived in the Northwest to bring state power - and the values of protestant Ontario - to the former Hudson's Bay Company dominions, they were turned back at the border of the Red River colony by an armed party of *métis*.<sup>769</sup> Earlier in that same year, the Ojibways of Rainy Lake - which lay along the route from Canada to the northwest - had also served notice that their rights needed to be acknowledged, stopping government representatives and presenting them with a list of non-negotiable demands for Treaty terms.<sup>770</sup>

Three years later, when the same Ojibway bands persisted in their refusal to treat with the Canadian government, the Deputy Superintendent-General of Indian Affairs offered members of the federal Cabinet a brief history lesson. Precious metals had been discovered within their territory, wrote William Spragge in September of 1872, and the Indians were threatening to expel the miners, who were being given titles by the government of Ontario. Such behaviour, noted Spragge, had its peculiar precedent. "The Government of the Province of Canada had, it will be remembered, issued in 1846 & 1847 Mining Licences for Mineral lands on Lakes Huron & Superior, and without first taking a surrender from the Indians. They with Chief Chinguaconse at their head remonstrated against this invasion of their rights, and assembled in considerable numbers, to compel the Miners to desist from their operations". Eventually, however, the Honourable W.B. Robinson had held two General Councils, "at which in September 1850, the two Treaties which bear his name were concluded".<sup>771</sup>

The course pursued with the Ojibwa of Lakes Huron and Superior, Spragge pointed out, "but corresponds with that invariably followed, up to the date of those Treaties, with respect to the extensive Districts which now form the Western portion of the Province of Ontario"; and he reminded Cabinet that a similar policy in the Province of Manitoba and neighbouring region had led to the recent signing of Treaties One and Two. In his view, by selling mineral lands within unsundered Indian territory, Ontario was violating not only this longstanding practice, but the *Indian Act* as well.<sup>772</sup>

There was some irony in the Deputy Superintendent-General making his presentation to this particular group of Privy Councillors. Francis Hincks, for example, had been a member of the Reform administration which had reluctantly agreed to the making of the 1850 Robinson Treaties. Both he and Spragge - who had been chief clerk in the Crown Lands Office during the period in question - knew full well that the settler government had come very close to denying Native title any recognition whatsoever. Indeed, Hincks himself very much supported the latter position. It was not the *benevolence* of the local government, therefore, but rather the direct action of one particular "American Indian" - Chief Chinguaconse - and

his companions, which compelled the Governor-General to intervene and uphold the honour of the Crown.

Once that Treaty policy was firmly in place, settler politicians did their best to pervert it. Such, at least, was the opinion of our newspaper correspondent with the Indian name. When the inhabitants of Manitoulin Island, wrote *Nebenoukha*, refused William Macdougall's propositions at their General Council meeting in 1862, the Commissioner had threatened individual Chiefs that their lands would be taken from them by force, unless they agreed to sell. Without calling a Council, Macdougall had then - so *Nebenoukha* claimed - obtained the signatures of a minority of the Chiefs for a surrender of the Island, "a proceeding in direct violation of the pledge made in the Royal Proclamation of 1763, the Magna Charta (sic) of the Indian rights, which declares that no lands shall be taken from an Indian tribe except by their own consent in a General Council, openly and freely given".<sup>773</sup>

William Spragge, if not Francis Hincks, had undoubtedly read this particular letter. Spragge would have been especially interested in the subject, since, as Deputy Commissioner of Crown Lands, he had helped negotiate the 1862 Treaty. From the way the letter was worded, both gentlemen, as well as William Macdougall, would have known immediately that the man behind the pseudonym was no Indian. And they might even have guessed that *Nebenoukha* was actually an old adversary of theirs, a lawyer and sometime promoter named Allan Macdonell.<sup>774</sup>

Throughout the 1850's and 1860's, Macdonell had joined with other Canadian *Expansionists* in attacking the Charter rights of the Hudson's Bay Company. The Company, in turn, accused the expansionists of "stirring up [...] the half breed population and the Indians" of the Red River colony. As with his involvement on Lake Superior, there was a considerable amount of self-interest in Allan Macdonell's defence of aboriginal rights in the Northwest. Not only was he the first person to propose a railway link between Lake Superior and the Pacific Ocean, he helped found the North West Transportation, Navigation and Railway Company in 1858, which had immediate plans to link Toronto with the lands beyond the

upper lakes.<sup>775</sup> But, unlike the Canadian and Ontario governments in the period immediately after Confederation, Macdonell had proposed to make treaties with the aboriginal people every step of the way.<sup>776</sup>

But the Native people of the Red River and what is now northwestern Ontario did not need Allan Macdonell to serve as a messenger. The *anishnabeg* of Rainy Lake traded at Fort William and were in regular contact with other *anishnabeg* from all over the upper lakes. Louis Riel and the other *métis* of Red River had relatives at Rainy River, Sault Ste Marie and as far east as Penetanguishene on Lake Huron. The message they were hearing from the east was a simple one. The governments which were beginning to assert authority over the Northwest could not be trusted to honour treaty and aboriginal rights.

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