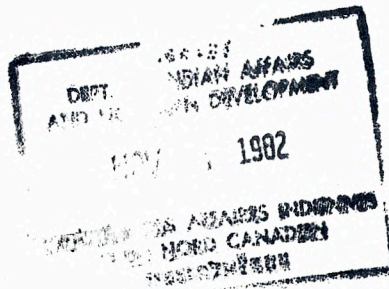
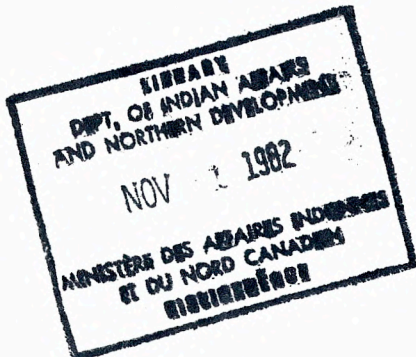


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ARE ON OFFICE OF NATIVE  
CLAIMS FILES



INDIAN LAND ADMINISTRATION AND POLICY IN ONTARIO

(UPPER CANADA)

1791-1867

Researched and Written by

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with the Assistance of

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Submitted to the Office of Native Claims in Conformity with the requirements of Contract No. ONC 79-1 (September 1979). The views expressed herein are those of the contractor and do not represent the views of the Office of Native Claims.

STUDY PLAN ON INDIAN  
LAND POLICIES AND  
ADMINISTRATION IN UPPER CANADA

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Objective:

To provide a descriptive compilation of facts relating to early Indian land policies and administration in Canada, with particular emphasis in Upper Canada.

I. Brief general insight into, and comparison between, French policy of New France and its implications in administration of Lower Canada and British policy as reflected in Upper Canada, concerning the overall administration of Indian Affairs.

II. Highlights of British policy in Upper Canada and its implications on the administration of Indian lands, by periods.

a) Departments responsible for Indian Affairs and related matters:

- 1 - Brief historical sketch (1796-1867)
- 2 - Flowchart showing the evolution of each administrative responsibility through the following departments: Military Office, Colonial Office, Surveyor General, Indian Affairs Department, Crown Lands Department, etc.
- 3 - Organization chart of each responsible Department:
  - . its goals and implications on administration of Indian Affairs, and achievements.
  - . list of officers, rank and duties.
  - . list of agencies, districts with location and function.
- 4 - Early maps showing distribution of districts, agencies, etc.

b) Indian policy (overall administration and impact on Indian lands).

- 1 - General aspect (trusteeship and relations with Indians)
- 2 - Programs
  - . Advancement schemes through religion, schools, isolated reserves, integration into white society, purchase of individual lots,...
  - . Settlement programs (Coldwater, Manitoulin and St. Clair experiments).
- 3 - Lands
  - . Public lands
  - . Indian reserves
  - . Clergy and Crown reserves
  - . Indian land tenure (on reserves and wild state)
  - . Custody, control and ownership of public and Indian lands
  - . Land granting system and settlement duties
  - . Patent deeds, licences of occupation, location tickets, ...

c) Enquiries into Indian Affairs:

- 1 - Legislative Committee reports
- 2 - Royal Commissions
- 3 - Special Commissions
- 4 - Others

Information needed (dates, officers, purpose and structure of enquiry, findings, conclusions and recommendations).

### III. Indian reserve lands: administration, policy, and definition (by period).

a) Legislative structures:

- 1 - Acts
- 2 - Proclamations
- 3 - Orders in Council
- 4 - Others

b) Setting apart of lands for Indians:

- 1 - Administrative requirements and application
- 2 - Surveys and issue of plans
- 3 - Confirmation requirements

c) Protection of Indian lands:

- 1 - Surveys and demarcations of Indian lands
- 2 - Encroachment
- 3 - Illegal sales and leases
- 4 - Relevant legislation
- 5 - Administrative rules
- 6 - Application of judicial and administrative mechanisms

d) Disposal of Indian lands (requirements, process, authorities):

- 1 - Surrenders and other forms of releases for sales and leases
- 2 - Sales and leases
- 3 - Resource exploitation
- 4 - Sale price valuation (appraisal and comparative tables of land values by geographical areas)
- 5 - Patent deeds or other documents
- 6 - Cut offs, rights of ways, easements for roads, railways, canals, telegraph and military use.
- 7 - Disputes and major problem cases

e) Compensation for damages and losses

- 1 - Conditions
- 2 - Administrative mechanisms and application
- 3 - Major claims (historical aspect)

- f) Control and administration of financial assets (annuities, sale proceeds, trust funds and other benefits).
- 1 - Responsibility and accounting
  - 2 - Adequacy of documentation
  - 3 - Pooled funds and segregated accounting
  - 4 - Indian complaints' and comments (defalcations, etc.)
  - 5 - 1858 - 1868 scheme for Indian land administration (use of Band funds).
- g) Compilation of definitions of terminologies (Public lands, Indian reserves, Indian lands, lands reserved for Indians) as per court cases discussions on their meaning,
- 1 - in 1763 Proclamation
  - 2 - in miscellaneous acts
  - 3 - in BNA Act.

Basic references

Land Settlement in Upper Canada (Patterson)  
Pioneer Public Service (Hodgetts)  
Land Policies of Upper Canada (Gates)  
The Development of Federal Indian Policy in Canada,  
1840-90 (Leighton)  
St. Catherines Milling Case (1st Case)

Forward

This study was commissioned by the Office of Native Claims, to provide a survey of a subject which is basic to many specific claims being brought against government by Indian peoples.

It was intended to provide a starting point for researchers involved in reviewing such claims. It was not intended to be a definitive study or to argue any one interpretation of the historical facts.

Ms. LaForest was selected to carry out the project because of her training in history and in law, and because of her previous experience in conducting historical research into Indian and administrative matters. Her report is being made available to interested parties in the hope that it will be useful to others, will facilitate claims research generally and will promote historical studies pertaining to Indians Peoples and their unique relationship with government.

The views expressed, throughout are those of the author.

Office of Native Claims  
Ottawa,  
January, 1980.

## Preface

This report, "Indian Land Administration and Policy in Upper Canada, 1791-1867" was prepared to provide the reader, with a general overview, and to serve as an aid to understanding this complex subject. The project originated with a proposal formulated by the Office of Native Claims, to compile an overview, and to answer certain questions pertaining to claims presented by Indian bands. Previously, such knowledge was acquired by researchers working in the claims field but it had never been organized and presented in any consistent, written format; one which could be readily transmitted to others. Thus this report was prepared and is to be made available to those with an interest in, or need to know about this field. It is intended to provide researchers with background plus the leads to commence more detailed research on many of the varied facets and elements of this broad topic.

There are a number of valuable reports and official papers that focus on certain aspects at the subject, and on the time period considered in the report. These include the 1839 MacCauley Report, the 1842 Royal Commission appointed to report on Indian Affairs in Canada, and the 1858 Report of the Special Commissioners appointed to investigate Indian Affairs in Canada. These reports and others were adopted, or quoted quite extensively in this study. This approach was taken for two reasons, one being the limitations on the time required to produce the report, the second being the fact that the earlier reports were extensively researched for their authors, and today's research cannot significantly improve on this work.

Several aspects of the contract proposal, primarily the financial policy and practices of managing land sales funds could not be adequately researched and compiled within the time available, and were by mutual agreement deferred. I understand that the financial aspect may be pursued further, and if done in survey form, may be added as a chapter to this report.

It is to be hoped that this report will first serve as a useful introduction to an area which is little known in its totality; and secondly will stimulate further research and writing in this field.

It should be noted that any views expressed in this paper are those of the author and do not necessarily reflect the views or positions of either the Office of Native Claims or the Department of Indian and Northern Affairs.

M. LaForest

December, 1979.



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INDIAN LAND POLICIES AND  
ADMINISTRATION IN UPPER CANADA

001

INTRODUCTION

The study of relations between Indians and the colonial governments in Upper Canada cannot naturally be broken up into the same time periods as the political history. Administrative and statutory changes which occurred in 1763, 1774, 1791 and 1841 had little significance for Indian Affairs. The year 1867 simply marked a changeover in heads of responsibility, rather than any alteration in policy toward the native people.<sup>1</sup>

For the study of Indian land policy in Upper Canada, the year 1830 marks the significant time division. Before that date the system of dealing with the Indians was essentially military. For a long time they were under the head of the military department and were considered and treated as military allies or stipendaries.<sup>2</sup>

By 1830, the fear of constant war had subsided and the Government began to pursue a more enlightened policy with the "civilization" of the "Noble savage" as the highest ideal. Implicit in the concept of civilizing the Indians, was the notion that they must become like their white brethren.<sup>3</sup> To the British officials this meant first of all that the Indians should be settled on the land. In addition, but tied to the notion of settlement was the belief that the Indians should be educated in the white man's ways and converted to Christian practices.

Up to Confederation this policy remained unchanged and in the years following, it was not altered but merely expanded to meet the needs of the greater territories.

From the time of the first British settlement in New England, the title of the Indian to lands occupied by them was conceded and compensation was paid to them for the surrender of their hunting grounds. The Crown always reserved to itself the exclusive right to treat with the Indians for the surrender of their lands, and this rule which was confirmed by the Royal Proclamation of October 7, 1763 guided British dealings with the Indians.

In 1670, during the reign of Charles II, instructions were given to the governors of the colonies, which among other matters, directed that Indians who desired to place themselves under the British, should be well received and protected.

For nearly a century the Indians most intimately associated with the British were the Five Nations. These were known as the Iroquois League and at first comprised the Mohawks, Oneidas, Cayugas, Onondagas and Senecas. In 1715, the Tuscaroras from North Carolina were admitted to this league, which from that time has been known as the "Six Nations".

There are still of record, numerous agreements and treaties, dating back as far as the year 1664 and made by the British with the Indians of New England, while Canada was still under French Government.<sup>4</sup>

In contrast to the above, it is virtually impossible to contain complete documentation concerning Indian Band policy under the French regime. There are many conflicting interpretations surrounding the issue of French recognition or non-recognition of the Indian title. The most persuasive opinions appear to support the latter view.

Certainly, no treaties were ever concluded for territory either in New France or Acadia. All lands in the colony were claimed for the Crown by right of discovery and conquest. As to the French settlers, so to the Indians, land was given by Imperial grace. However the Crown, instead of granting such tracts to the native people, gave them in trust to the Jesuits and other religious orders, to promote a more sedentary life, which was believed to be necessary for the native's religious conversion, a primary objective of France's Indian policy.

On occasion, these lands were granted to the Indians for their use with the stipulation that they could not be alienated without the permission of the religious order. The first Indian "reserve" of this type was that established at Sillery in 1651.

A number of other such reserves were established in subsequent years. Those created were to meet with very limited success due to the Indians reluctance to cooperate with France's plans of conversion and assimilation.

Aside from these few tracts of land, no other grants of land were made to the Indians by the French. In regard to the question of Indian land policy under the

French regime the historian G.F.G. Stanley offers an interesting analysis:

"At no time was there any recognition on the part of the French Crown of any aboriginal proprietary rights in the soil. The French settler occupied his lands in Canada without any thought of compensating the native. There were no formal surrenders from the Indians, no negotiations, and no treaties such as marked the Indian policy of the British period. The lands which were set aside for the Indians were granted, not of right but of grace, not to the Indians themselves but to the religious orders who cared for them. The nearest approach to any grant to the Indians themselves was the Sillery grant of 1651. Whatever rights the Indians acquired flowed not from a theoretical aboriginal title but from the clemency of the Crown or the charity of individuals."<sup>5</sup>

II. HIGHLIGHTS OF BRITISH POLICY IN UPPER CANADA AND ITS  
IMPLICATIONS FOR THE ADMINISTRATION OF INDIAN LANDS

A) Departments responsible for Indian Affairs and  
related Matters

1. Brief Historical Sketch of the Indian Department.

The first management of the Indian Department was military in its character, the Commander of the Forces having the chief control and the officers at the various posts acting as Superintendents or agents.<sup>6</sup> The policy of the Government toward the Indians was directed to securing their services in time of war rather than in assisting and encouraging them in the adoption of the habits and arts of civilization.<sup>7</sup>

In the spring of 1755, it was determined that the sole control of Indian Affairs should be placed in the hands of a single individual. On April 15, 1755, Sir William Johnson was appointed Superintendent of Indian Affairs for the Northern Department by General Braddock under authority of King George the Second, with the rank of Major General. As superintendent he was possessed of full authority and responsibility for all Indian relations in "the principal theatre of war on the border of New England, New York and Pennsylvania".<sup>8</sup>

It can be said with some authority that Johnson's methods of dealing with the Indians moulded the whole policy and practice of the Indian Department for almost a century.<sup>9</sup> At the Treaty of Paris

there existed a strong Indian administration upon which the vast conquered territory could be grafted.

Johnson extended the northern district and with the assistance of his agents he carried out the management of Indian Affairs for almost twenty years. In assessing Johnson's achievements it must be remembered that at all times he was considered a servant of the military. Thus the Commander in Chief in North America possessed the ultimate control over the Indian Department and the money to be spent for its management. For many years a recurring and plaguing problem arose between the military and the Indian Department regarding the nature of the control exercised over the tribes by the Indian Department.<sup>10</sup>

When Sir William Johnson died he was succeeded by Colonel Guy Johnson, his son-in-law, who was appointed temporarily by General Gage and who was confirmed in the position on the 8th September 1774. During the important period of the American Revolution he was in charge of the Indian Department, and held the position until February 1782 when he was suspended. It is certain that the Department required re-organization as irregularities had led to Sir Guy's suspension. He was succeeded by Sir John Johnson, son of Sir William Johnson, who by Royal Commission was appointed Superintendent General and Inspector General on the 14th March 1782. Johnson continued to be the head of the Department, although he was frequently absent from duty, until the 25th June 1828 when the office was abolished.<sup>11</sup>



A "General Order" dated the 20th September 1792 directed that in Sir John Johnson's absence, the Officers, Agents or Deputy Agents of the Indian Department in Upper and Lower Canada, were to transmit to the office of the Superintendent General at Montreal all accounts, requisitions, reports and transactions of their respective districts, to be examined, recorded, and countersigned by the Secretary of the General Indian Department and by him forwarded in the usual manner to Headquarters for the information and approbation of the Commander in Chief or the General Commanding the Forces.<sup>12</sup>

The business of the Department was transacted in this way until the 26th December 1794, when the office of Deputy Superintendent was created and Colonel Alexander McKee was appointed to that position with authority to take charge of the Department in the absence of the Superintendent General. Colonel McKee held the position of Deputy Superintendent General till the time of his death on 15 January 1799.<sup>13</sup>

On December 15th 1796, Royal Instructions were issued to the Lieutenant Governor of Upper Canada investing him with administrative authority over Indian Affairs in Upper Canada. These read as follows:

"Whereas we judge it to be conducive to the better Regulation of our concerns with the Indian Nations within our Province of Upper Canada that the same should be conducted by the person exercising the Government of our said Province for the time being, it is therefore our will and pleasure, that you do take upon you the conduct and management of our concerns with the said Indians within the Province of Upper Canada, and that you do from time to time give to all persons, whom it may concern, such directions for the due execution of these, our

instructions as occasion may require, such directions nevertheless to be subject to any special orders directed to you from such persons as shall at any time be constituted and appointed by us to be Governor General of our Provinces in North America. And it is Our Will and Pleasure, that all persons holding commissions in the Indian Department within our Provinces of Lower and Upper Canada, so far as the same relates to the Province of Upper Canada shall follow such Orders and Directions, as they shall from time to time receive from you in the Execution of our instruction, anything in the said Commissions to the contrary notwithstanding, and you are in case of any vacancy in any office or place in the said Indian Department within our Province of Upper Canada, to transmit to us by the first opportunity through one of our principal secretaries of state, the name of such person, with an account of his character, and services, as you shall esteem to be best qualified for fulfilling the duties of such office, for our further directions therein."<sup>14</sup> (Similar instructions were provided for Lower Canada in 1800.)

These instructions appear to have had little substantial effect as the arrangement proposed did not make any alteration in the mode of paying the expenses of the Indian Department in Upper Canada. The military still controlled the money-bags and as such maintained ultimate control of the Indian Department.<sup>15</sup> Such was the state of confusion between the military office and the Indian Department that in 1799 when Colonel McKee died a controversy arose over the appointment of his successor, owing to a dispute as to whether the patronage of the department was under civil or military control. Both the civil and military authorities appointed a successor. The military eventually won the battle with their appointee, Colonel William Claus. He held the position of Deputy Superintendent General until his death in 1826.<sup>16</sup>

A general order of August 13, 1816 directed by command of the Secretary of State for the Colonies, that the superintendent and chief control of the

Indian department and of all Indian Affairs be transferred to the military commander of the North-West provinces.<sup>17</sup> Thereafter the administration was military in character; the officers had military rank and were entitled to wear a uniform which was established by order in 1823. Until 1832 officers of the Indian Department were paid from the military chest provided for the use of the Army Extraordinaries; after that date from the imperial grant for the Indian department.<sup>18</sup>

On the 1st of December, 1826, the following "General Order" was issued:-

"His Lordship, the Commander of the Forces has been pleased to appoint Major General Darling to be Deputy Superintendent General of Indian Affairs, vacant by the death of Colonel Claus and with a view to relieve the Superintendent General, Sir John Johnson, on account of his age from the laborious duties of the correspondence and general charge of the Department, Major General Darling will remain stationed at Headquarters.

The duties hitherto performed by Colonel Claus will be assumed until further orders by Lieut. Col. Givins being the officer next in seniority and resident at the Headquarters of Major General Sir Peregrine Maitland in Upper Canada. Lt. Col. Napier, will take charge of the duties particularly incident at Montreal.

All the correspondence, intended for the Head of the Department will be addressed direct to Major General Darling at Quebec, who will receive his orders and instructions from his Lordship the Commander of the Forces."

(Sgd.) C. Foster, Lt. Col.,  
Acting Deputy Adjt.  
General.<sup>19</sup>

A subsequent General Order was issued on the 2nd August 1828. It reads as follows:

Agreeable to instructions received from His Majesty's Secretary of State in a Dispatch dated 27th April last, the appointment of "Superintendent General of the Indian Department and Inspector General of Indian Affairs" will cease from the 25th June last, from which date the Department will be placed under a "Chief Superintendent". The Commander of the Forces is pleased to appoint Major General Darling to this situation with the salary of £600 Stirling per annum, and contingent charge for travelling expenses.

Sir John Johnson will be borne on the Pension List of the Department from 25th June last, His Garrison allowance will cease from the date of the receipt of this order at Montreal.<sup>20</sup>

General Darling left for England on the 11th September 1828. Lt. Col. Napier was appointed to act for him during his absence and continued to act as resident Agent and Secretary of Indian Affairs at Montreal until the 13th April 1830. Then, by order of His Majesty's Government, the Indian Department in Upper Canada was separated from that of Lower Canada, the former being placed under the Lieutenant-Governor, Sir John Colbourne with Colonel James Givins as Chief Superintendent of the Province.

The Department in Lower Canada was placed under the control of the Military Secretary at Quebec, who at that time, was Lieut. Col. Couper. Lieut. Col. D.C. Napier was removed to the Military Secretary's Office to act as Secretary with the pay and allowance of a Superintendent.<sup>21</sup>

Colonel Givins continued to act as Chief Superintendent for Upper Canada until 12th June, 1837 when he retired from the service and Samuel P. Jarvis was appointed to succeed him on the 13th June, 1837.

By a proclamation, dated the 5th of February 1841, the reunion of Upper and Lower Canada was declared, terminating the office of Lieutenant-Governor in these provinces. The union was known as the "Province of Canada" and the former Upper and Lower Canada became "Canada West" and "Canada East". However the old names continued to be used, perhaps more often than not, even in official documents.

On the 10th of February Lord Sydenham, the first Governor General of the Province of Canada, took the oath of office and Kingston was made the capital of Canada.

Lord Sydenham died on the 19th of September 1841 and was succeeded in office by Sir Charles Bagot on the 12th of January 1842.

After 1841 the head office of the Department of Indian Affairs continued to be at the seat of government, which under the old Province of Canada was moved from one place to another.

On the 10th of October 1842, Messrs. R.W. Rawson, T. Davidson and W. Hepburn were appointed by His Excellency the Governor General Sir Charles Bagot to report on Indian matters generally, and to recommend any changes that, in their opinion should be made in the manner of conducting the business of the Indian Department. Their report under date the 22nd January 1844 recommended among other things:-

1<sup>st</sup> That the Management of the Indians be placed under the Civil Secretary with the view of its being brought more immediately under the notice of the Governor General.

2<sup>nd</sup> That the two branches of the Department be united and the records be kept in one office. That the correspondence and central business be conducted at the seat of government under the superintendence of a Chief Clerk.

3<sup>rd</sup> That an accountant be appointed to assist the Chief Superintendent.

4<sup>th</sup> That the office of Chief Superintendent in Upper Canada, and the establishment of local officers be reduced and that in lieu thereof three Indian Visitors be appointed with an allowance to be fixed for travelling expenses.

5<sup>th</sup> That the province be divided into three districts according to the locality of the Settlements, and that each Visitor be charged with the Superintendence of a Separate district - Lower Canada would form one; the Tribes under the separate charge of the Chief Superintendent in Upper Canada would be united with the second, and the remainder formerly under charge of five resident Superintendents into a third.<sup>22</sup>

These recommendations were partially carried into effect on the 15th May 1844, the Chief Superintendent being informed by letter of 25th April, of that year, that as the 15th of May had been fixed on for closing the public offices at Kingston preparatory to their removal to Montreal, the Governor General had directed that from that date the following changes would take place in the Management of the Indian Department:-

That the correspondence and central business of the Department will be conducted at the Seat of Government, under the orders of the Civil Secretary assisted by Mr. George Vardon, the present Clerk in the Indian Office, who will be attached for this purpose, to the Indian Branch of the Secretary's office. The Chief Superintendent will deliver over to Mr. Vardon the records of the Department as he will be charged with the preparation of the various accounts, estimates, requisitions, money warrants etc. which will relieve the Superintendent from that onerous portion of his duties and admit of his devoting more time to the moral, intellectual, and physical improvement of the Indians under his superintendence.<sup>23</sup>



The Chief Superintendent was further informed that the Resident Superintendents would be instructed to correspond directly with the Civil Secretary upon all matters connected with their District and when it was thought necessary the Civil Secretary would refer the matter to the Chief Superintendent for the benefit of his opinion.

The tribes under the charge of the Chief Superintendent would continue under his immediate Superintendence. He would be directed by the Governor General when circumstances required it, to visit the other settlements, and to report upon any points on which particular information might be wanted.

Further changes were carried into effect on the 1st July 1845; Mr. Jarvis being informed by the Civil Secretary, on the 16th April 1845, that Her Majesty's Secretary of State, acting on the recommendation of Messrs. Rawson, Davidson and Hepburn had decided to abolish the office of Chief Superintendent and that his duties would cease from the 30th June following. The services of three Resident Superintendents in Upper Canada and two in Lower Canada were at the same time dispensed with.<sup>24</sup>

Until 1860 the Imperial Government was responsible for the Management and expense of Indian Affairs but in that year it was decided that the Province of Canada should assume the charge.

By the Act 23, Vict., Cap. 151 entitled "An Act respecting the Management of the Indian Lands and Property" the Management of Indian Affairs was



brought under the control of the Crown Lands Department from 1st July 1860, the Commissioner of Crown Lands being from that date Chief Superintendent of Indian Affairs.<sup>25</sup>

In 1867 the Province of Canada and the Provinces of Nova Scotia and New Brunswick were confederated and became the Dominion of Canada, under the British North America Act (an Imperial Statute 30-31 Vict. Cap. 3) and the old Province of Canada was again divided into two provinces, which were named Ontario and Quebec.

By this Act the administration of Indian Affairs, which had been under the management of the several provinces came under the control of the Dominion of Canada.

## 2. Organization of the Indian Department

As the early dealings of the Government with the Indians had almost exclusive reference to the cultivation of their friendships and alliance in times of war, the constitution of the Indian Department was for many years entirely of a military character. For a long time it was under the control of the Commander of the Forces. The Superintendents had military rank, were entitled to wear a uniform, and received the same rates of pay and allowances, during the war as the officers of corresponding rank in the regular army. Up to the year 1832 they were paid from the Military Chest, and provided for out of the army extraordinaries. Their duties were confined "principally to the conveying of the presents to the Indians and attending at the different stations where they assembled to receive them" with as much military pomp and display as the occasion would admit.<sup>26</sup>

In 1830 Sir George Murray put an end to this system. He separated the Department into two branches for the two sections of the Province and placed them under the control of the Civil Government in each. He adopted as the policy of the Government "the settled purpose of gradually reclaiming the Indians from a state of barbarism, and of introducing amongst them the industries and peaceful habits of civilized life".<sup>27</sup> This necessarily opened a new field for the exertions of the officers of the Department, at least in Upper Canada where civilization aided by the encouragement and funds of

the Government made rapid progress. At four stations located at York, Amherstburg, Penetanguishene and Grand River,<sup>28</sup> local superintendents were called upon to induce the Indians to settle and to adopt the customs of civilized life; to aid them in erecting houses; to purchase stock and farming implements for them, and to encourage and direct them in their early attempts at civilization. The military character of the Department was thus changed and civil duties were imposed upon the Officers although the organization of the Department remained the same.

In the early 1840's the Indian Department in Upper Canada consisted of the following Officers:

- 1 Chief Superintendent
- 1 Clerk
- 4 Superintendents\*
- 2 Assistant Superintendents\*
- 4 Interpreters
- 3 Missionaries
- 2 School Masters
- 1 Surgeon<sup>29</sup>

A Secretary in Lower Canada was appointed to act for the Department in both parts of the Province, but his duties in connection with the Upper Province were confined to the transmission of the Estimates through the Commissariat to England. In the same manner the duties of the Chief Superintendent were limited to Upper Canada.<sup>30</sup>

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\* These Officers were then located at Colbourne, Amherstburg, Brantford, Manitoulin, River St. Clair and Walpole Island.

The pay and lodging money of these officers was paid by the Department and were charged to the Parliamentary grant. A remnant of the military organization of the Department remained, as rations were charged against the Military Chest.

The duties of these Officers were described by the Chief Superintendent of the Department in the following manner:

It is the duty of the Chief Superintendent to attend to all matters which concern the Indian Tribes generally or individually, and more particularly the affairs of those Tribes which have been collected together and settled upon lands. To visit them frequently in their village, and to endeavour by all possible means to stimulate them to exertion and persuade them to devote their attention to the cultivation of the soil. To advise and council with them on their former condition and position in society as contrasted with their present prospects of improvement and to point out to them the absolute necessity that exists for their becoming civilized, of having fixed and permanent places of residence, and adopting the habits and customs of white people as a means to prevent their utter extinction. To impress on their minds the deep and lively interest which the British Government has always felt for the improvement of their moral, religious and social condition which can only be effected by a hearty co-operation on their part.

To see that each tribe is provided with suitable houses, with cattle, farming implements and such other things as may be necessary to conduce to their comfort and promote their civilization. To point out to them the advantages of education and of becoming Christians. To take care that they are provided with proper Ministers of the Gospel, and convenient places of worship. To establish schools among them; to take care that proper teachers are appointed, and that proper books are used in such schools. To protect their lands from the intrusions of white settlers. To superintend the disposal of such of the lands as may be sold for their benefit and cause the proceeds to be safely invested for their use. To ascertain annually the numerical strength of the several tribes; and prepare the estimates of presents to be distributed, and to be present and certify to such distribution. To keep the books and accounts of the Indian annuities, of all sales of property and all investments made on their

account. To conduct the general correspondence of the Department and be the channel of communication between the Government and the Indian tribes, in all matters either civil or political.

The duties of the several Superintendents are much the same as those of the Chief Superintendent with the exception that their sphere of action is confined altogether to the tribes over which they have been respectively appointed to superintend, and that their correspondence on Indian matters is carried on through the head of the Department.

The duty of the Interpreters is to explain to the Indians any communication that may be made to them by the Government, or by the Officers of the Department; to be present at all councils and to interpret in English the speeches of the Chiefs to the Superintendents and their replies to those speeches in the Indian language. To accompany the Superintendents, at the seasons they make their circuits among the Indians; and to attend at all terminal proceedings against the Indians, when duly summoned so to do, and interpret under oath the evidence between the Crown and the prisoner.

The duties of the missionaries are to watch over the morals of their respective flocks; to inculcate the principles of the revealed religion, to marry, to baptize and to perform all the rites of their holy calling, as would be the case if appointed to any Parish within the Province.

The Surgeon at Manitoulin Island attends to the health of all the Indians settled there, and to all such others as may from time to time visit the island to consult him, and to the officers and workmen of the establishment.

The school masters at the island of Manitoulin have each a daily school which is kept open from 9 to 12 a.m. and from 2 to 5 p.m.<sup>31</sup>

In addition to his duties belonging to his office in the Department, the Chief Superintendent was trustee of the Six Nations Indians. In this capacity it was his duty to undertake the management of their lands, to conduct the surveys and valuation of the tracts surrendered to the Crown, to receive and determine claims connected with the lands and generally to act as their agent in such matters.<sup>32</sup>

In the late 1840's, the Indian Department was reorganized. Following the recommendations of the Royal Commission of 1844, the Civil Secretary became ex officio Superintendent General of Indian Affairs, a post which he held until the transfer to the Crown Land Department was completed in 1860. The system of resident superintendencies was also abolished at this time. They were replaced by a system of visiting superintendencies which it was hoped would reduce the administrative costs considerably. However, the general duties of those officers appear to have remained substantially unchanged. In 1858 the Special Commissioners appointed to investigate Indian Affairs simply reiterated the description of duties earlier outlined. There were, however, a few differences:

The Superintendent General [was] assisted at Headquarters by a Chief Clerk and an Accountant. The former of these officers performed the usual duties of a corresponding clerk drafting the routine letters and filing all documents which came into his office. The duties of the latter were properly restricted to his own branch exclusively, namely the keeping of the various accounts opened with the different tribes, with the Commissariat and on account of the General fund. The accounts with the tribes included those for their annuities as well as their land funds. These latter were two-fold in their character, embracing not only the balance sheet with the tribes, but also the accounts with the purchasers of all the sales of Indian lands; the accountant had to keep all those, examine the payments, transfers and assignments, and compute the interest and when the land was paid for in full. The accountant had to make out the reference to the Crown Land Department for the Patent deed. He was also charged with making out all the warrants for the Governor General's signature which were drawn upon Indian monies. He also conducted part of the correspondence relating to land matters, and examined the accounts and pay lists of the local Superintendents.<sup>33</sup>

To carry out the business of the department throughout the country, the province was divided into five districts, each under the charge of a local superintendent. These districts were described by the Special Commissioners in this manner:



The first of these embraces the whole of Eastern Canada and a small section of the upper province. The second stretches from the Western limit of the former district to the head of Lake Ontario; it also comprises the territory of the Saugeen, as well as all the Indian lands about Lake Simcoe, and some of the islands in Lake Huron, and is confided to Captain Anderson. The affairs of the Six Nations on the Grand River and those of the Mississaugas in the township of Tuscarora occupy the exclusive attention of Mr. Thorburn who acts as a third superintendent. The tribes resident throughout the western peninsula of Canada are under the charge of Mr. Talfourd, while to the care of Captain Ironsides, the remaining officer, are committed all the bands occupying the Manitoulin Islands. He also visits from time to time the tribes on the northern shore of Lakes Superior and Huron, but this does not form part of his regular duties, which are confined to the island of Manitoulin of which he is local superintendent. The assistance of a clerk is allowed both to Captain Anderson and Mr. Thorburn, while Mr. Bain further lightens the labours of the latter by acting as warden of the timber of the Six Nations. The frequent trespasses on the Tyendinaga reserve have led to the appointment of a ranger of their forests also.

An agent too has been appointed to carry on the land sales in part of Captain Anderson's district. He is also Crown Agent for that section of the country and receives no payment from the Indian Department.<sup>34</sup>

In 1860 the Crown Lands Department took over the affairs of the Indians as a branch of their main business; the Commissioner of Crown Lands becoming Chief Superintendent of Indian Affairs. His duties appear to be similar to his predecessors. Perhaps the only real change under this officer was an improvement in the records and financial accounts of Indian Affairs. This was made possible because of a strengthened central office and the ability of that office to work with the surveys, sales and timber branches of the Crown Lands Department.<sup>35</sup>



### 3. Other Departments Responsible for Indian Affairs

While it was customary to refer to the "Indian Department" in Upper Canada and while permanent directing heads were early appointed in the province, it is erroneous to believe that there existed any permanent central nucleus for Indian Affairs Administration. In fact so many departments, Imperial and colonial shared responsibility for making vital decisions that the Department of Indian Affairs remained a shadowy and reorganized apparatus until Confederation.<sup>36</sup>

Major Indian problems sought solutions from too many sources. Robert Surtees describes the situation as one where "there were too many Chiefs and not enough Indians."<sup>37</sup>

#### The Imperial Connection

The administration of Indian Affairs was one of the last of the Imperial Government's responsibilities to be transferred to the United Provinces. The official transfer took place in 1860 when the Commissioner of Crown Lands became the Chief administrator of Indian Affairs. In his book Pioneer Public Service<sup>38</sup> J.E. Hodgetts describes the role of Imperial authorities in the administration of Indian Affairs in this manner:

In the mother country three major departments shared in the direction of Indian Affairs in the colonies. The Colonial Secretary appears to have been the most concerned with major policy

issues, as, for instance, authorizing the General Order of 1828 which carried out an important reorganization of the Department or in the introduction of the new policy of civilizing the Indians. He also approved the appointment of Indian agents recommended by the Lieutenant-Governors and channelled through to the Treasury the requisition for the annual presents to the Indians. The Treasury also appears to have worked in conjunction with the Colonial Secretary right through the whole period of Imperial control, settling such personnel questions as the kind of tenure to be enjoyed by a newly appointed Chief Superintendent. The third Imperial Department concerned with managing the Indians was the Army Commissariat, for it was through the local agents of this Department that the annual supply of presents was issued. For this purpose - the major administrative purpose so long as military views predominated - an extremely devious procedure had been worked out. The Superintendents of Indian Affairs estimated their needs eighteen months to two years in advance. The Governor General transferred these estimates to the Commissariat Department in England, which ordered the necessary supplies. These supplies were then transferred to local depots of the Commissariat in Canada. The chief Indian officer requisitioned the presents from the stores of the depots and the Indian Department was debited with the cost when the goods were forwarded to the local Indian agent. The Imperial Treasury received these accounts which it then transferred to the Audit Office, at that time one of its subordinate branches. This bewildering arrangement presumably continued until 1860 when the Imperial government stopped issuing presents.<sup>39</sup>

#### Other Provincial Departments Responsible for Indian Affairs

This subject is dealt with in some depth in the section entitled "Disposal and Management of Indian Lands". At this point it is sufficient to note that a number of other provincial departments were involved in Indian Affairs work, most importantly the Crown Lands Office and the office of the Surveyor General.

#### 4. Early Administrative Maps

There does not appear to be any extant map showing the regional responsibilities of the various superintendents of the Indian Department in Upper Canada. A possibility exists that no such map has ever existed. The Report of the Royal Commission on Indian Affairs 1844 submitted by Rawson, Davidson and Hepburn to Governor Bagot seems to imply that the superintendencies were not thought of as regional or geographical, but tribal. Individual superintendents had responsibilities not over an area, but over specific people: "The duties of the several superintendents are much the same as those of the chief superintendent, with the exception that their sphere of action is confined altogether to the Tribes over which they have been respectively appointed to superintend."

The investigation for relevant material concentrated on the following sources:

- i) Personal papers of Governors. The papers of Governors closely associated with Indian Affairs were examined. a) Haldimand, b) Maitland, c) Bond Head, d) John Colborne. None of these papers seemed to contain reference to an organizational map of the department.

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1) Commission of Indian Affairs, 1844, MG 11, vol. 515, p. 445.

ii) Military "C" Series (RG 8 "I" 1759-1871)

This series contains the records of the Commander of the Forces. Indian Affairs in the early period was administered through the military and possibly an organizational map had been made. There does not seem to be any extant copy.

iii) The Macaulay Report (RG 10, vol. 719)

The Macaulay report contains within its front cover a series of maps, none of which show any organizational divisions. These maps appear to be early surveyor's sketches of the various Indian Reserves referred to in the Report. For the provenance of the sketches see the letter of D.C. Scott, 20th November 1914 to the Dominion Archivist.

iv) The map division of the Public Archives houses a number of relevant maps to Indian Affairs. A project is underway which will eventually produce a chronological atlas of Indian surrenders and reserves in Upper Canada. Such an atlas already exists for British Columbia. The connection is accessed through a book catalogue indexed by region and author. No relevant material was found.

v) The Sessional Papers of Great Britain. The Lt.-Governor occasionally submitted a report on Indian Affairs which would then be published as a sessional paper. These reports contain maps of surrenders and reserves, but not an organizational map.

B) Indian Policy

1. Trusteeship and Relations with Indians

The Indian in Upper Canada was essentially a legal minor; his landed property was held in trust by the Crown, and the Indian Fund was administered by officials. This essentially paternalistic policy was motivated by self-interested military considerations, but also especially later, by the need to protect the unsophisticated Indian from abuse at the hand of the colonists. Not only were the Indians military allies, first against France, then against the rebelling American colonies and finally against the United States during the War of 1812, but they posed in the early days of the colony, a not inconsiderable potential threat to the well being of the colonists; indeed disorder amongst the Indians was something of a hazard in certain areas. With the expansion of settlement in the colony, the military significance of the Indians declined and a need arose to protect Indian rights from the influx of loyalist settlers. This protective attitude in Indian policy during the later period lead naturally to attempts at cultural assimilation through the provision of education and religion. The Indian however remained a child, a legal ward of the state.

The establishment of a policy of Indian Land rights in Upper Canada is rooted in the history of the Haldimand Grant to the Six Nations of Indians. In 1784 General Haldimand granted lands in the Grand River area to these Indians in compensation for

lands lost during the American Revolution. These lands were occupied and some were leased to non-Indian settlers who had fought with the Indians. When the new colony was established by the Constitutional Act, 1791, Governor Simcoe, confirmed the Haldimand Grant, but with one important difference. The Simcoe grant prohibited any alienations of the land by the Indians. This action resulted in a long dispute with the Six Nations Indians who had some idea that their land might be settled by non-Indians, thus providing the Indians with an income, as well as agricultural knowledge. The Indians made repeated efforts to alienate some of their lands to non-Indians in return for a mortgage. The government, apparently for military considerations intervened and established a trusteeship which managed the affairs of the Six Nations Indians.

This trusteeship was maintained in private hands until 1838 when it was incorporated with the other duties of the Indian superintendent. While the Trusteeship was in private hands, the Government had established one important fact; the Indian could not be responsible for his own legal interests.

The Indian might hold land in one of three ways. Indians might still remain in original occupation of the land, or they might surrender their lands to the Crown and receive a parcel of the surrendered land, held in trust by the Crown for their use as a reserve. Finally an Indian might hold a licence of occupation which entitled him to the use of the land which he occupied, but he could not be granted a patent as that would allow him to alienate the

property. The general policy of trusteeship meant that any legal transaction between Indian and non-Indian must be conducted on behalf of the Indian by the department. Thus examples where settlers paid Indians for their improvements and then applied for a land patent always resulted in the council's denial of the petition. Likewise any legal obligation by an individual Indian to a non-Indian settler would not be recognized by the Council and no compensation would be paid from the Indian fund.



## 2. Programs

Indian Policy in Upper Canada can be broken up into two main periods. The year 1830 may be fixed as the limit of the first régime in Indian Affairs. Before that date, the policy of the Government toward the Indians was directed rather to securing their services in times of war than encouraging them in the adoption of the habits and acts of civilization. With this view they were for many years placed under the superintendence of the military authorities in the province.<sup>40</sup>

After 1830 a more enlightened policy was pursued under instructions of the Secretary of State and much was done in Upper Canada both by the Government and various religious bodies to promote their civilization.<sup>41</sup> Unfortunately this system, although an improvement from the former had a tendency to keep the Indians in a state of tutelage and materially retard their progress. Much has been written about the various advancement schemes and settlement programs which were initiated by various authorities in order to promote the cause of Indian civilization. In particular Robert Surtees', thesis entitled "Indian Reserve Policy in Upper Canada" directs a considerable amount of attention to these schemes. As such this report will only glance over the subject.

a) Settlement Programs

The first Indian settlements in Upper Canada were initiated not by the Government, but by religious orders. One of the most successful of these early settlements was the Indian village situated on the Credit River. Under the guidance of the Wesleyan Methodist Missionaries a "wandering and dissolute" band of Mississauga Indians had completed a transformation into a contented and progressive community. The expenditure had been made from their own funds; the proceeds of lands surrendered to the Crown at an earlier date.

It was the success of this modest experiment that first sparked the government's interest and eventually led to the adoption of a progressive settlement policy for all the Indians in the province.<sup>42</sup> In a letter of May 7, 1829 Lieutenant-Governor Colbourne drew the attention of Sir James Kempt to the success of this private endeavour:

A very beneficial change has been produced among the Indians along the River Credit. If the order and regularity which has been established among them can be extended to the other tribes in his province and a fund created for their future support by authorizing their lands to be leased, and in some cases to be sold, the system which has involved H.M. Government in an enormous expense may be discontinued.<sup>43</sup>

Urged on by Colbourne's strong recommendation, Governor Kempt forwarded to the Lords of the Treasury and the Secretary of State, a number of suggestions which he felt would ameliorate the condition of the Indians.<sup>44</sup>

These suggestions read as follows:

1<sup>st</sup> To collect the Indian in considerable numbers, and to settle them in villages. With a due portion of land for their cultivation and support.

2<sup>nd</sup> To make such provision for their religious improvement, education and instruction in husbandry as circumstances may from time to time require.

3<sup>rd</sup> To afford them such assistance in building their houses; rations; and in procuring such seed and agricultural implements as may be necessary, commuting when practicable, a portion of their present for the latter.

4<sup>th</sup> To provide active and zealous missionaries for the Indians at the Bay of Quinte and Guillimbury, and to send Wesleyan Missionaries from England to counteract the antipathy to the established church, and other objectionable principles which the methodist missionaries from the United States are supposed to instill into the minds of their Indian converts.<sup>45</sup>

These suggestions were approved by the authorities but they unfortunately did not match their enthusiasm with an adequate money allotment.<sup>46</sup>

Undaunted, Colbourne continued to work on his settlement policy financing various programs through annuity money.<sup>47</sup> Under his supervision a number of settlements were speedily formed including those at Coldwater and on Lake St. Clair. The results of the first few years were gratifying. However these establishments were doomed to failure for various reasons including the lack of money and officers, and the stubborn refusal of the Indians to become properly "civilized".

In 1836, the arrival of the new Lieutenant-Governor, Sir Francis Bond Head marked a new direction in the governmental approach towards the Indians. Having swiftly determined that the Indians were a dying race and that continuing contact with the white man would prove fatal to them he decided to segregate them.<sup>48</sup> As a result on August 7, 1836 he met

with the Sachems, and Chiefs of the Ottawa and Chippewa tribes and convinced them through showy rhetoric that the Indians would derive great benefit from his Manitoulin scheme. Shortly thereafter all the islands in the Georgian Bay were surrendered to the Crown on the condition that the land would be used solely for the benefit of the Indians in Upper Canada. A similar agreement was signed with the Saugeen tribe at the same time for a similarly vague consideration.<sup>49</sup>

Bond Head's great expectations for Manitoulin Island, and the Indians naive belief in them were not well founded. The great reserve of Manitoulin Island proved to be a dismal failure. Various reasons can be cited for the failure of this great experiment. The Indians did not move to the island in the massive numbers that had been anticipated and there was a feeling that farmland on the island was inferior to the land they already occupied.<sup>50</sup>

Those who came, were repelled by the formal village with its automatic subsidized labour and monotonous tasks. The experiment was not repeated until the modern policy of instruction in farming was instituted by the Government of the Dominion and spread to the Western tribes in 1879.<sup>51</sup>

b) The Missionaries

When the settlement of Upper Canada began, greater attention was at first paid to the religious instruction and education of the Indians than to like service for the white population. The first school in the province was for the Mohawks who settled on the shores of the Bay of Quinte; the first church erected was on the Grand River Reservation of the Mohawks. Missionaries of the Gospel were active in the Villages of the Chippewas and Mississaugas.<sup>52</sup>

After 1830 and the announcement of a new policy, many more missionaries came to work with the Indians\* and through their influence many tribes took up permanent residence and were converted and given the opportunity to go to schools. Certainly they had more success at Indian settlement than the Colonial authorities with their ill-conceived schemes at Manitoulin and Coldwater. Often, however the missionaries work was undermined through petty jealousies and lack of cooperation with other authorities working with the Indians. For example, at the Coldwater Settlement, a controversy arose between the Department officials, who were considered representatives of the Church of England,

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\* For an indication of the various missionaries and religious orders involved with the various tribes see the 1845 Report of the Affairs of the Indians in Canada. Part I and the 1858 Report of the Special Commissioners appointed to investigate Indian Affairs in Canada.

and the Methodist missionaries. They simply did not co-operate on matters of religion. In his thesis "Indian Reserve Policy in Upper Canada 1830-45" Robert Surtees made the following comments about this unfortunate situation:

This religious controversy affected both the white man charged with the task of carrying Christianity to the Indians, and the Indians themselves. In the case of the former, it meant that these men lost sight of their primary objective, and this of course hurt their cause; in the case of the latter the result was more serious, because the Indians could not separate Church and state in any way. They could not distinguish between the spiritual life and material wealth as represented by the missionaries and the establishment, but seemed to feel that both had to be entirely right or entirely wrong. Thus if the Churchmen gave faulty advice about farming etc.; it meant that their theology was also faulty. Hence this division had --- a most detrimental effect on their conduct, their labour, their attitude toward whites and Indians of other denominations, and toward their schools. In short, the varying creeds confused them and the unfriendly relation between Methodist, agent and priest and the advice given by each served only to augment this confusion.<sup>53</sup>

Similar problems were to crop up at other times and other places. The religious controversy at Manitoulin Island might just as well have been planned. The division of the island into two sectors - for Protestants and Catholics created an immediate problem, each religion claiming to have a monopoly on conversion. It can only be assumed that here, as at Coldwater such animosity served to confuse the Indians and retard their progress toward Christianity and towards civilization.<sup>54</sup>



### 3. Lands

#### a) Public Lands

Before the British occupation of Canada all land was held by seigneurial tenure.

In 1763 the Governor in Council was instructed to bestow Crown Lands on residents, particularly "such reduced officers as have served in North America or shall be disbanded in America".<sup>55</sup> The instructions to Governor Murray dated December 7, 1763 were to form the basis for later land regulations in Upper Canada. They read as follows:

And whereas great inconveniences have arisen in many of our colonies in America from the granting of excessive quantities of land to particular persons, who have never cultivated or settled it, and have thereby prevented others more industrious from improving the same; in order therefore to prevent the like inconveniences for the future, you are to take especial care, that in all grants to be made by you, by and with the advice and consent of our council, to persons applying for the same, the quantity be in proportion to their ability to cultivate; and you are hereby directed to observe the following directions and regulations in all grants to be made by you; Viz.-

That one hundred acres of land be granted to every person being master or mistress of a family, for himself or herself, and fifty acres for every white or black man, woman or child, of which such person's family shall consist, at the actual time of making the grant, and in case any person applying to you for grants of land shall be desirous of taking up a larger quantity than the actual number of persons in his or her family would entitle such person or persons, such further quantity of land as they may desire, not exceeding one thousand acres over and above what they are entitled to by the number of persons in their respective families; - Provided it shall appear to you, that they are in a condition and intention to cultivate the same; and provided also, that they do pay to the Receiver of our quit rents, or to such other officer as shall be appointed to receive the same, the sum of five shillings only for every fifty acres, so granted, on the day of the date of the grant.

That all grantees be subject to the payment of two shilling's sterling for every hundred acres, to commence at the expiration of two years from the date of such grant, and to be paid yearly and every year, or in default of such payment, the Grant is to be void.

That every grantee, upon giving proof that he or she has fulfilled the terms and conditions of his or her grant, shall be entitled to another grant, in the proportion and upon the conditions above mentioned;

That for every fifty acres of land accounted plantable, each patentee shall be obliged, within three years after the date of his patent, to clear and work three acres at the least in that part of his tract which he shall judge most convenient and advantageous; or else to clear and drain three acres of swampy or sunken ground, or drain three acres of Marsh, if any such be within the bounds of his grant;

That for every fifty acres of land accounted barren, every patentee shall be obliged to put and keep on his land, within three years after the date of his grant, three neat cattle which number he shall be obliged to continue on his land, until three acres for every fifty be fully cleared and improved;

That if any person shall take up a tract of land wherein there shall be no part fit for present cultivation without measuring and improving the same, every such grantee shall be obliged within three years from the date of his grant to erect on some part of his land one good dwelling house, to contain at least twenty feet in length, and sixteen feet in breath, and also to put on his land the like number of three neat cattle for every fifty acres;

That if any person, who shall take up any stoney or rocky grounds not fit for planting or pasture, shall within three years after the passing of his grant, begin to employ thereon and so continue to work, for three years next ensuing in digging every stone quarry or other mine, one good and able hand for every hundred acres of such tract; it shall be accounted a sufficient cultivation and improvement;

That every three acres, which shall be cleared and worked, as aforesaid, and every three acres, which shall be cleared and drained, as aforesaid, shall be accounted a sufficient seating, planting, cultivation and improvement, to save forever from forfeiture fifty acres of land in any part of the tract contained within the same patent; and the patentee shall be at liberty to withdraw his stock, or forbear working in any quarry or mine, in proportion to such cultivation or improvement, as shall be made upon the plantable lands, or upon the swamps, sunken grounds and marshes, which shall be included in the same patent;



That when any person, who shall hereafter take up and patent any lands, shall have seated, planted, and cultivated, or improved the said land, or any part of it, according to the directions and conditions above mentioned, such patentee may make proof of such seating, planting, cultivation and improvement in the general court or in the court of the county, district or precinct, where such lands shall lie, and have such proof certified to the Registrar's Office, and there entered with the record of the said patent, a copy of which shall be admitted at any trial, to prove the seating and planting of such land.

And lastly, in order to ascertain the true quantity of plantable and barren land contained in each grant hereafter to be made within our said province, you are to take especial care that in all surveys hereafter to be made, every surveyor be required and enjoined to take particular notice according to the best of his judgement and understanding how much of the land so surveyed as plantable, and how much of it is barren and unfit for cultivation and accordingly to insert in the survey and plot by him to be returned into the Register's Office, the true Quantity of each kind of land.

And it is our further will and pleasure, that that in all grants of land to be made by you, as aforesaid regard be had to the profitable and unprofitable acres so that each grantee may have a proportional number of one sort and the other; as likewise that the breadth of each tract of land, to be hereafter granted, be one third of the length of such tract; and that the length of such tract do not extend along the banks of any river, but into the mainland that hereby the said grantees may have each a convenient share of what accommodation the said river may afford for navigation or otherwise.<sup>56</sup>

From 1763 to 1771, the French Settlers objected to any changes to their former custom of land-holding. As a result, a double system of land-holding was practiced for some time. In 1771 a reversal of land policy took place with the issuance of instructions which reestablished the fief and seigneurial system.

By 1781 a wave of United Empire Loyalist emigration had set in and a greater need for land arose. In 1781 the first survey of the district above the Ottawa was begun. Land sub-divided for those early settlers was in the form of blocks called "Seigneuries" or "Fiefs".

In July of 1783 additional instructions were given to General Haldimand providing for the influx of Loyalists and also covering officers and men of His Majesty's forces serving in Quebec and there disbanded. These instructions read as follows:

Whereas many of our loyal subjects inhabitants of the colonies and provinces, now in the United States of America, are desirous of retaining their allegiance to us, and of living in our Dominions, and for this purpose are disposed to take up and improve lands in our province of Quebec; and we being desirous to encourage our said loyal subjects in such their intentions, and to testify our approbation of their loyalty to us, and obedience to our Government by allotting lands for them in our said province; and whereas we are also desirous of testifying our approbation of the bravery and loyalty of our forces serving in our said province and who may be reduced there, by allowing a certain quantity of land to such of the non-commissioned officers, and private men of our said forces, who are inclined to become settlers therein. It is our will and pleasure, that immediately after you shall receive this our instruction; you do direct our Surveyor-General of Lands for our said Province of Quebec, to admeasure and

lay out such a quantity of land as you with the advice of our Council shall deem necessary and convenient for the settlement of our said loyal subjects, the non-commissioned officers and private men of our forces which may be reduced in our said Province, who shall be desirous of becoming settlers therein; such lands to be divided into distinct Seigneuries or Fiefs, to extend from two or four leagues in front, and from three to five leagues in depth, if situated on a navigable river, otherwise to run square, or in such shape and in such quantities as shall be convenient and practicable - and in each seigneurie a glebe to be reserved and laid out in the most convenient spot, to contain not less than 300 nor more than 500 acres; the propriety of which Seigneuries and Fiefs shall be and remain vested in US, our Heirs and Successors, and you shall allot such part of the same as shall be applied for by any of our said loyal subjects, non-commissioned officers and private Men of our forces reduced as aforesaid in the following proportions; that is to say;

To every Master of a family, one hundred acres, and fifty acres for each person of which his family shall consist.

To every single man fifty acres.

To every non-commissioned Officer of our forces reduced in Quebec two hundred acres.

To every private man reduced as aforesaid one hundred acres.

And for every person in their family fifty acres.

The said lands to be held under US, Our Heirs and Successors, Seigneurs of the Seigneurie or Fief in which the same shall be situated, upon the same terms, acknowledgements and services, as lands are held in our said province under the respective seigneurs holding and possessing seigneuries or fiefs therein; and reserving to US our Heirs and Successors, from and after the expiration of ten years from the admission of the respective tenants, a quit rent of one half penny an acre.<sup>57</sup>

Supplementary instructions, dated August 7, 1783, authorized the governor-in-chief to allot to every field officer one thousand acres, to every captain seven hundred acres, and to every subaltern, staff or warrant officer five hundred acres, and he was advised to intersperse these allotments with those of the non-commissioned officers and privates of their own corps, with the object "that the several settlements may be thereby strengthened and united and in case of attack be defended by those who have been accustomed to bear arms and serve together". Members of the organization known as the Associated Loyalists were placed on the same footing as those of other corps. Applicants were required to take the oaths of allegiance, supremacy, abjuration and declaration before receiving their certificates, and grants were to be made within twelve months, providing that they actually settled upon their lands.<sup>58</sup>

Instructions of August 20, 1786 to Lord Dorchester, who succeeded Haldimand as Governor-in-Chief, regarding the land grants were the same as those to Haldimand, but exception was made in the case of the officers and men of the 84th Regiment who wished instead to settle on lands in Canada or Quebec, as it was then called.<sup>59</sup> The cause of this exception was to fulfill a promise to all who would enlist, made in instructions to the governors of New York and North Carolina on April 3, 1775. The amount granted was as follows:

To Field Officers	5,000 acres
To Captains	3,000 acres
To Subalterns	2,000 acres
To Non-Commissioned Officers	200 acres
To Private	50 acres <sup>60</sup>

In 1787 the allotment to non-commissioned officers was increased to 400 acres, with 300 acres to private soldiers and 200 acres additional to the head of a family who had settled and improved his grant.

In the same year the United Empire Loyalists petitioned for the right to be given free-hold tenure but the Committee of the Council enquiring into population, agriculture and settlement, advised against the proposal.<sup>61</sup>

On July 24, 1788, it was proclaimed by Lord Dorchester on the advice and consent of the council that the part of Quebec west of the eastern boundary of the township of Lancaster be divided into four districts called Lunenburg, Mecklenburg, Nassau and Hesse, covering the area from the Ottawa River through Gananoque to Lake St. Clair.<sup>62</sup>

While those lands remained under the French law, in practice the occupants treated the licence to occupy as a free title to the land, and exchanged, sold or divided it without reference to the Custom of Paris.

Land boards and courts were organized in each district. Each board advertized and received applications for land. Approved applicants were then given 200 acres by the Surveyor-General. The land board continued to grant land in such manner to

loyalists who continued to enter the province until nearly the end of the century. Those who came in later were called "late loyalists" and were subjected to some annoyance unless they came from some of the eastern provinces. By instructions of Lord Dorchester on June 2, 1787, these boards were authorized to grant, two hundred acres of land to all who had improved their former grants and two hundred acres to all new applicants who could establish their claim as Loyalists. Surveyors were given instructions to lay out interior townships with town plots in each. Eight lots of 200 acres each were left as Crown Reserves in the east corner of each Township.

In November, 1789, it was decreed at the Council for the Province of Quebec that all United Empire Loyalists were to be registered by the Land Boards and in future were to have special benefits and privileges. The Board were authorized to assign 200 acres lots to the children of those registered United Empire Loyalists.<sup>64</sup>

Up to the year 1791, settlement in Upper Canada was spasmodic and slow-moving. Although United Empire Loyalists had settled along the Upper St. Lawrence, the Bay of Quinte, the Niagara Frontier and the Detroit River, no grants had yet been made in the Toronto district, Long Point on Lake Erie or in the territory between the Grand and Thames Rivers.

In 1791 the Constitutional Act came into force dividing the Province of Quebec into Upper Canada and Lower Canada. The most important provisions relating to land were sections 43 to 45 which



decreed that "all lands which shall be hereinafter granted within the province of Upper Canada shall be granted in free and common socage...".<sup>65</sup>

Further directions relating to land granting were received by Lord Dorchester in his Instructions as Governor of Upper Canada.<sup>66</sup> Here, he was instructed to limit grants to the Master or Mistress of a family to farm lots of 200 acres. Persons of this description, however, might receive further quantities of land not exceeding 1,000 acres. No expense was to be attached to the securing of land other than the fees payable to the officers of the land department. No grant was to be made until the land was surveyed by the Surveyor-General in order that Crown reservations might be made of masting or other timber fit for the use of the Royal Navy. Similar reservations were made for land containing coal, gold, silver, tin, iron and lead.<sup>67</sup>

Late in 1791, a slight change was made in the regulations covering the granting of land. The change involved in part a reversion to the old method whereby grants could be made up to 1,200 acres. To remove the objections of the old method and to secure additional revenue for the Government, fees were raised.

Early in 1792 Lord Dorchester issued a proclamation, the first clause of which announced the Crown's intention to grant lands in the form of parts of townships of the usual size, the second clause specified in each township a reservation of 1/7 part thereof for the support of a Protestant clergy and one other seventh part, thereof, as a Crown reserve. Clause eight promised freedom from all expense save



official fees of the land department.<sup>68</sup> An exception to this clause was later made in connection with disbanded soldiers and United Empire Loyalists, namely, that in such cases the Government was to pay half of the fees usually paid by the settler to the respective land officers.\*

In the same year the practice began of obtaining grants in groups through the agency of influential persons known as leaders. The professed object of this system was to enable a number of associated settlers to obtain grants of land in the same locality. The idea was good enough when properly carried out, but unfortunately left much room for glaring abuses. Adam Shortt describes some of the problems inherent in this system in volume four of the series Canada and its Provinces.

This system being once introduced, its speculative possibilities in the hands of resourceful manipulators enjoying the necessary political favour were soon recognized. In the first place, immediate settlement was gradually evaded. Then the associates were mere tools of the leaders through whose political influence alone they could hope to share in the public lands. The associates were to receive equal shares in the grants, but they agreed when signing the memorial to accept, but a small share of the allotments, deeding the remainder to the organizers. Thus a grant of 1,200 acres to a leader and to each of his associates frequently resulted in the associates

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\* It should be noted that such an exception was not extended to the Indian lands. For many years, the Surveyor General made a deduction for Clergy and Crown reserves from the lands for sale on account of the Indians. Questions arose about the applicability of these provisions in the case of the lands surrendered by the Indians. The matter was in 1840 referred to the law officers of the Crown who gave their opinion that the appropriation of the reserves for the Clergy was unnecessary although not for the Crown. The Royal Commission of 1844 denounced such appropriations for the clergy and recommended the discontinuance of the practice.<sup>69</sup>

obtaining 200 acres each and the leader his own 1,200 acres and 1,000 acres from each of the associates. Still later the associates were simply dummies, who for a small gratuity agreed to act the part of associates and to transfer the whole of their shares to the leader. In this way various leaders had managed to obtain from 12,000 to 48,000 acres, or from a quarter to the whole of a township.<sup>70</sup>

On October 15, 1792 the famous chequered plan devised by D.W. Smith was adopted by the Land Committee of Upper Canada with the approval of Lieutenant-Governor Simcoe.<sup>71</sup> The former idea of a town plot in each township was abandoned, except where circumstances strongly favoured it. In this new township plan seven lots in each concession, making 91 in the township were reserved by the Government to cover the usual 1/7 crown reserves and 1/7 clergy reserves.

Around this time a number of problems arose relating to land holding. Although a number of years had passed since the first allotments of land in the province scarcely any had been ratified. As a result, there ensued a number of disputes over land and related controversies. To further confuse the issue the problem of Squatters confronted the executive council. In order to relieve some of those problems an order was issued in May 1794 which decreed that all temporary certificates be turned in and permanent patents issued in place of them. In 1795 an act establishing registry offices throughout the province was passed, thus paving the way for the general issue of patents; local magistrates acting as intermediaries.

From 1791 to 1796 land policy in Upper Canada reflected the extensive and somewhat unrealistic plans of Lieutenant Governor Simcoe. An indication of land problems under the Simcoe administration can be found in the Smith papers:

Lieutenant-Governor Simcoe's administration ended in July 1796. He had inaugurated a vigorous policy of settlement. His faults had been mainly those of overhaste. To encourage the Chief men of the province to bring in settlers he made a number of large grants, but with very disappointing results. Hasty and bad surveys made in his time were to cause trouble later on. Many of the men to whom he gave liberal grants left their lands unimproved and in time those were to present a serious obstacle to settlement. On the other hand Simcoe's paternalism often proved a decided boon to poor or unknown settlers.<sup>72</sup>

Peter Russell became Administrator of Upper Canada on Simcoe's departure. He inherited all the tangled problems relating to the Crown lands from Simcoe and during his short term of office had little success in dealing with them.

In August of 1799 Lieutenant-Governor Hunter replaced Russell, the latter reverting to his position of Receiver General, the former remaining as Chief Administrator until 1806 when he was replaced by Sir Francis Gore. Russell had been very lavish in the granting of land and Hunter's comments regarding this practice were as follows:

Mr. Russell is avaricious to the last degree and would certainly, as far as depended upon him, have granted lands to the devil and all his family (as good Loyalists) provided they could have paid the fees.<sup>73</sup>

In 1801 an order-in-council was passed which abolished township grants and in its place regulations were adopted to cover the renting of Crown and Clergy reserves, for periods of twenty-one years. During the same year that township grants

were abolished, a special grant of 600 acres was given to each and all persons who in their respective districts raised the greatest amount of hemp.

In 1803 the Talbot settlement bordering on Lake Erie was begun. For thirty-four years Talbot engaged in a settlement program during which time he placed permanently on the land over 30,000 settlers, receiving on their account over 302,000 acres. This probably was the most successful individual attempt at land settlement ever undertaken in Upper Canada.

In 1804 a large number of Scottish Highlanders, including disbanded soldiers were settled in what was later called Glengarry County. Their leader received 1,200 acres and every family 200 acres, on the same terms as military claimants, save that they were subject to patent and survey fees.

In 1815 a number of British emigrants settled along the lower end of the Rideau River. Land grants to these settlers were reduced to 100 acres.

Before leaving Canada in the summer of 1817 Gore left on record his opinion of the system of free grant:

The greatest blessing the King could have conferred on the colony of Upper Canada after giving it being would have been to put an end to all gratuitous grants of land after the original settlers had been rewarded. The long perseverance in granting lands for the mere fee had diminished to the sum of that fee the value of the gratuitous grant to the Military Claimant and Loyalist, and has introduced a dangerous population and afforded no revenue. ... It is however needless to complain because it is too late to afford a remedy for the past. The sooner a stop is put to future grants the sooner will the Crown and Clergy reserves bear an increased rent and afford a revenue worthy collecting.<sup>74</sup>

At a Council meeting in December 1818 it was ordered "that newly purchased tracts and all unsurveyed lands be surveyed by contract, the Surveyor-General to give public notice that he would receive tenders. Payment was to be in land and applicants must state the percentage wanted. A concomitant to this decision was another of January 13, 1819 announcing "that settlement duties no longer would be required and that land might be sold within three years after location". The first tender for surveying which was accepted by Council specified a percentage of four-and-a-half. The results of the system scarcely need to be told. The surveys already made in the province were by no means precise in accuracy and those made under the new regulations were proportionately worse because of the greater incompetency of the contractors.

Lord Durham's Report censured severely the confusion and errors which resulted. Lots were granted which had no existence on the map; lots which in the Surveyor-General's office appeared regular and of equal dimensions really were of varied form and unequal size. An attempt was made by Council to distribute as uniformly as possible the percentage lands selected by surveyors; they were ordered to be described in such a manner that the Crown should pay for only one patent in each township. But the superior knowledge of the country possessed by the Contractors often enabled them to choose the best lots in a given area, and "surveyor's script" was notoriously a good investment for speculators. Naturally as the facts became known, popular criticism grew in volume. There appear to have been other grounds for criticism. Maitland upon his

arrival in Upper Canada seems to have found considerable slackness in the work of the Executive Council as a Land Board.<sup>75</sup>

Perhaps the most unsatisfactory feature of the whole system of free grants, once the associated companies had disappeared was the evasion of settlement duties by the ordinary settler. Enforcement of the duties was cumbersome and rarely employed.

The year 1822 marked the end of the first period of twenty-one years under which the Crown reserves had been leased. The Government accordingly increased the rents uniformly throughout the province, as anticipated in the original plan. Perhaps twelve hundred 200-acre lots had been leased during this first period, aggregating a revenue of about £4,000 per annum. Unfortunately this rental was paid so irregularly as to make the amount of actual receipts much smaller. It was estimated that a total of about ten thousand lots were available for leasing, but comparatively few were taken up because of the ease of acquiring freeholds. Being unoccupied the others were a distinct hindrance to progress in a settlement, and a plan to overcome the difficulty was proposed by John Beverly Robinson and approved by Maitland. Its main feature was the granting to leaseholders permission to purchase their lots at any time they wished. A minimum price was set, varying with the changing value of other land; the rent paid to be considered as part of the purchase money, but only on condition of its being paid regularly and promptly. A report by the Surveyor-General in this connection showed that the actual number of Crown reserves in the province were 7,144



of which only 706 were under lease. The Home and Newcastle districts boasted a high percentage of leased reserves, while in the London district there was a very large proportion of unleased. In reviewing the whole situation, Robinson admitted that under existing conditions the rents in arrear did not cover the cost of their collection.<sup>76</sup>

In 1823 there were a number of attempts to settle large numbers of emigrants in Upper Canada. Over 2,000 Irish settlers were settled in Ramsay township under the leadership of Peter Robinson. Each male under 45 years of age was given 70 acres. On this 70 acres after the first five years a quit rent of one (1) penny per acre was payable to the government half yearly, with the proviso that the settler might acquire ownership by paying in one sum the amount of twenty years quit rents. An additional 30 acres was set aside for purchase at a later date, the price being £10. A quit rent of one penny per acre was also paid on this additional acreage until it was paid for.

In February 1824, John Galt proposed to Lord Bathurst a scheme of colonization which would, while proving a profitable investment to the capitalists interested, rapidly extend the settlement of the province and provide a respectable revenue for the public treasury. A company to be known as the "Canada Company" was to be formed for the purchase and settlement of all the Crown reserves and one half of the clergy reserves in the townships surveyed which were not sold, leased or occupied on March 1, 1824. A specially appointed commission



made a thorough canvass of the surveyed townships and found that the Canada Company was entitled to 1,384,013 acres of Crown reserves and 849,430 acres of clergy reserves. The commission was unanimously of the opinion that 35.6d currency per acre was a reasonable price to pay for the lands. A unanimous protest, however was raised from the Canadian clergy who saw in this proposal a scheme to rob them of their property. The price set for the reserves seemed very low, yet the commissioners were unanimous in proposing it. The case of the province and of the clergy were forcibly stated by John Beverly Robinson, and Lord Bathurst decided to postpone the sanctioning of the contract with the company. The clergy reserves in particular required delicate management since they had been established by act of the imperial parliament, and could be alienated only on the same authority. The crown reserves on the other hand were created by the order of the sovereign and could be altered without reference to parliament. While proceedings were in process, Lord Bathurst, reviewing the finding of the Commission, decided to retain the clergy reserves and to offer other lands of equal value. This proposal fell in with the interests of the Canada Company as a compact area of land could be administered more profitably than the scattered reserves. In May 1826 Dr. John Strachan, representing the Canadian clergy and John Galt on the part of the company reached a new basis of agreement. In lieu of the clergy reserves a block of land consisting of one million acres, and subsequently known as the "Huron Tract" was granted to the Company. One-third of the purchase money of the Huron tract was to be expended in public

improvements subject to the approval of the lieutenant-governor in council in Upper Canada. In return the company paid the provincial government a sum slightly exceeding three hundred thousand pounds sterling in annual installments, covering a period of sixteen years. The purposes of government were profitably served by this agreement. The civil establishment, the university, the Roman Catholic Clergy, and the Presbyterian Ministers, each shared in the proceeds of the sale.

In its work of settlement and colonization, the Canada Company wrought a marked transformation in Upper Canada, and in particular in the western section. The towns of Guelph and Galt and the districts surrounding them were the first to attract settlers. In time the counties of Lambton, Huron and Bruce were opened and settlers much superior to the average immigrant were brought out by the company. The obstacles to settlement presented by the clergy reserves were not encountered by the Canada Company while the necessity of spending a very considerable amount on public improvements ensured attention to the general interests of the community.<sup>77</sup>

In 1824 permission was given to a company to construct the Welland Canal. In this connection the company was given a grant of some 13,000 acres.<sup>78</sup> In the following year a grant of 10,000 acres was made to a Mr. Hayes in recognition of his efforts to establish an iron industry in the Midland district.

In 1826 a new land disposal system went into effect called the "New South Wales System". This new sales policy was based on the rules which had been worked out for new South Wales and Van Dieman's Land, modified to respect the rights of the United Empire Loyalists and militia men. The new regulations provided that after January 1, 1826, no more land was to be granted except to the U.E. Loyalists, militia men, and military claimants entitled to grants under the existing regulations. Military claimants who were officers continued to be entitled to Free grants until 1831 when they were allowed a remission on their purchases of Crown land. Before patent they were required to prove that they had resided in the province for two years and that a resident settler had been established for two years upon some part of their land. Non-commissioned officers and discharged soldiers continued to be entitled to free grants on condition of residence and cultivation until 1834, when the privilege was limited to men discharged in the province. The Land Act of 1837 set January 1, 1843, as the terminal date for preferring claims under these regulations.

Under the new sales system, land would be purchased from the Crown in quantities not less than 100 acres and not exceeding 1,000 acres. A ten percent discount was to be allowed for cash. Payment might be extended over one year or five, but in the latter case legal interest would be charged. Settlers who had not the capital to buy land might obtain as much as 200 acres without purchasing, provided they would agree to reside on their land and improve it, and as much as 1,200 acres, if they could show that they had the capital to improve it. After seven years, a quit rent of 5 per cent of the value of the land at the time of the grant would become payable.

No uniform sales price was established. Instead valuations were made of the Crown land based on soil, situation, and the price obtained for private land sold on several year's credit. The members of the legislature, the surveyors, the Grand Jury Men, the Magistrates in Quarter Sessions, and Colonel Talbot all were asked to estimate land values. In June 1826 the following prices were approved: in the Home District, townships south of Lake Simcoe were valued at 5s. and 6s. an acre, west of the lake at 5s. and north of it at 4s.; townships on Trent Waterway in the Newcastle District were valued at 5s, those in the rear of the midland district at 4s. and 5s.; those on the Ottawa and Rideau Rivers at 5s.; the townships in the District of Bathurst, excluding those that formed part of the military settlement and the marshy township of the Western District were valued at 4s.; three townships in the London district were valued at 10s. and two or three in the Gore district at 7s.6d<sup>79</sup>

Peter Robinson who had been in charge of the Irish immigration of 1823 and 1825 was appointed the first Commissioner of Crown Lands. His instruction's dated July 18, 1827, made two changes in the recently established sales system: the lots were to be offered at auction on the terms outlined above, at an upset price sanctioned by the Lieutenant-Governor, and those who elected to take them on a quit rent of 5 per cent per annum of the price at which they were sold were to be required to pay rent from the outset and in advance. This privilege was to be restricted to purchasers of not more than 200 acres.<sup>80</sup>

In 1831 regulations were passed which ordered that in future all military officers and men must buy their lands. In lieu of the former free land grant they were given monetary compensation by the British Government according to their rank.

In 1830 and 1831 Colbourne inaugurated a settlement scheme whereby immigrants on coming to Canada could arrange to work as labourers for a time before buying land for themselves. A new set of land payment regulations were put in effect containing no quit rent clauses. In addition it stipulated that anyone purchasing in unsurveyed sections must pay for the surveys.<sup>81</sup>

A rather serious state of affairs in the office of the Surveyor-General was brought to Colbourne's attention in 1832. It appeared that certain of the clerks had been privately engaged by outsiders as confidential agents for the purchase of lands. The result of this discovery was an Order-in-Council dated November 24th, 1831 appraising heads of departments that in future no clerk in their respective offices was to transact any business connected with the granting of lands or to receive any memorials whatsoever respecting land patents or locations.<sup>82</sup>

From an early date speculators had dealt in Loyalist land rights. A regulation passed in 1832 allowed the granting of locations to purchasers of Loyalist rights only upon condition of settlement in person or by deputy. As a means of preventing speculation this measure failed dismally; speculators used it as a means of obtaining location tickets for the rights

they already had purchased. A further measure was passed in 1833 to further curb speculation in rights by providing that parties found entitled to these rights must remain on the land two years before the deed could be issued.

Early in the year 1837 a circular dispatch from the Secretary for the Colonies was laid before the Executive Council of Upper Canada. It drew attention to certain defects in the regulations governing the purchase of land by instalments. The collection of these instalments was expensive, and the recovery of interest on the unpaid portion was virtually impossible. Although forfeiture was entailed for neglect of the established conditions of sale, "the nature of the case procluded a resort to so extreme a remedy". Hence the tendency of the system was to lead settlers to buy more land than they required, and consequently to disperse them over a wider extent of country than they could beneficially occupy.

The effect on timber land was still more injurious; persons bought land by paying the first instalment, then stripped it of timber and later abandoned it, leaving merely wild land as a result of their occupation.

The despatch proposed as the most direct remedy for these evils a system of ready money payments. Head was instructed to issue in Upper Canada a notice to the effect that from and after June 1 of that year, all purchasers of Crown Lands would be required to lay down at the time of sale ten per cent on the whole value of the purchase, and the balance within



fourteen days from that date. Until the whole price was paid, the purchaser would not be put in possession of the land, and in the event of payment not being made within the prescribed period the sale would be considered void and the deposit forfeited.<sup>83</sup>

In May, 1838, Royal Assent was given to an Act, passed in the Assembly of 1837, by which control of the public lands of Upper Canada virtually passed into the lands of the people's representatives. This Act entitled "An Act to provide for the disposal of the Public Lands" largely repeated the existing land regulations, but with some minor, ineffective changes.

Free grants in future were to be limited strictly to U.E. Loyalists, their children or other such persons as named in the existing instructions from Britain. But a grant of this nature might be transferable, and the assignee might obtain a patent. Necessary precautions respecting the endorsement and registration of free claims were enjoined. If the situation of the particular land bestowed were accounted undersirable, a cash allowance might be granted in lieu thereof at the rate of four shillings per acre, in the purchase of any other public lands sold at auction. The rights of military officers and other persons entitled to a remission of purchase money were to be recognized. In all cases save those specified, lands were to be offered for sale at public auction only. But if lands so offered were not sold, the Lieutenant-Governor in Council might direct their sale privately at the upset price already announced at auction.



To encourage actual settlement on lands so purchased, the Lieutenant-Governor in Council might order reservations made of lands adjoining those to be sold, which would be granted free to purchasers of original lots after five years residence thereon, together with improvements. These adjoining lots were not to exceed fifty acres in area and residence must take place within ten years of the original purchase.

The Act was to continue in force for two years only. Eventually in 1839, it was extended for another five years. In sanctioning it, Glenelg, Secretary of State for the Colonies pointed out two clauses which he considered defective. The first was that which authorized the Lieutenant-Governor to direct reservations of land adjacent to lands about to be sold. The second was that which enabled him to make private sale to any person liable to injury by the public sale. Both were open to the same general abuse; they would invest the Executive Government with the power of dealing with this part of the public property in such a manner as to gratify individual persons and convert into a source of favour an administration which should be conducted "upon the most rigid principles of open and impartial dealing". The Council was requested, pending a change in the bill to abstain from exercising their rights in the ways considered thus objectionable.<sup>84</sup>

It began by pointing out the necessity to new countries of a good system of land granting. "The disposal of public lands in a new country", it ran "has more influence on the prosperity of the people than any other branch of government".

The principal requirements for such a system were definitiveness, uniformity and fairness. In practice, a true system would provide a constant and regular supply of new land to meet the need of an increasing population.

Over against the failure to provide for such a system in Canada, Durham placed the success attendant on the working of the system existing in the United States; in this connection he estimated the number of people who had emigrated from Upper Canada to that country since 1829 as being equal to more than half the number entering the province in the same period. In only one respect could any uniformity of method be claimed for the North American Colonies - in the profusion and waste which had everywhere prevailed. At the time of the Report, sixteen - seventeenths of all the land in Upper Canada had been alienated from the Crown, but only one-tenth actually was occupied. The enormous disproportion between the granted and the cultivated land was obvious to the most casual observer; increase in population appeared to have led merely to an extension of the limits of settlement, rather than to the occupation of unsettled land in the midst of old holdings. There were other faults almost as serious; surveys had been inaccurate, needless delays had beset the applicant for grant or patent and there had been favoritism as well. The truth of these charges could not be doubted, for the witnesses upon whose testimony they were based had been drawn from all parties, ranks and districts.

The practice of granting land as a reward for service was scored; "the Province of Upper Canada appears to have been considered by the Government as a land fund to award meritorious servants". Durham showed that nearly half the surveyed lands in the province had passed for rewards, and of this quantity less than one-tenth had come under cultivation. Moreover much land had been locked up in Crown and Clergy reserves.

The improvidence of the local government was dealt with in turn. Perhaps the most striking example was the fact that from 1763 to 1825, when the population grew slowly to 150,000 the quantity of land granted or engaged to be granted was over 13,000,000 acres. During the next thirteen years the population increased to 400,000 but the quantity of land granted and sold, including clergy reserves, was less than 600,000 acres.

At the time of the Report the amount of unsurveyed lands totalled approximately 17,653,544 acres. The clergy reserves amounted to 2,395,687 acres. The area granted and appropriated was 13,660,838 acres. About 1,147,000 acres remained to be granted.<sup>85</sup>

Following the tabling of the Durham Report, the Reform party made an attack upon the administration of Crown Lands in the following manner:

The systems of sales, designed to remedy the evils of free grants, in its turn had been found wanting. Speculators continued to obtain possession of large areas. All sales were by auction and the quantity sold was limited by order of the Lieutenant-Governor; the result to

Nevertheless instructions to the Governors contained clauses governing the granting of lands as late as 1861.

In 1852 the method of disposing of Crown Lands in new settlements by sale to actual settlers only was adopted. No more than 200 acres were to be sold to any one person.<sup>89</sup>

An Act respecting the sale and settlement of public lands (Chap. CLIX., 16th Vict. Statutes of Canada) was assented to on the 14th of June 1853. It provided:

Licences of occupation could be granted to settlers which had the same weight and effect in law against trespassers as a patent.

Free grants of 100 acres could be made to settlers along public roads in new settlements.

One-fourth of the proceeds of school lands and one-fifth of the proceeds of unappropriated Crown lands were to be reserved as a fund for public improvements in the countries... .

In 1854 provision was made (Chap. 11, 18th Vict. Statutes of Canada) for the final disposition, by sale of the Clergy reserves, and, after setting aside a fund for the clergymen who had acquired vested interests in the income arising from them, the balance was divided among the municipalities in proportion to population.

In 1856 a report from the Commissioner of Crown lands gives some indication of the problems then relating to the administration of lands:

The object of the land sale regulations put into effect in 1852 was to procure the more speedy settlement of the wild lands of the Crown by enabling industrious actual settlers to obtain them on the easiest terms without the

the purchaser was a restricted freedom of choice. Obviously the settler himself would be the better judge of location and quality. True a purchaser could request that a certain lot be put up for sale, but in that case he would have to wait until it was advertised in the usual way, and then at the sale might be overbid by another person whose interest had been awakened by the special advertisement. The practice of payment by instalments, so unreservedly condemned by the Home Government in 1837 had induced many settlers without the necessary ability or capital to buy lands they could not retain.<sup>86</sup>

In 1839 a Commission was drawn up to investigate the public departments in Upper Canada. The Commissioners reporting on the Crown Lands Department summarized their report in the following manner:

The system upon which our lands have been granted was the greatest prostitution of the Sovereign's bounty ever practiced in any country. The interests of the Sovereign ... were wise and guarded, but the system pursued was corrupt; actual settlement was required ... but the influence of interest obtained for individuals whose claims would not exceed 200 acres large grants to themselves and families; dead parents as well as infants who have never lived to walk out of their cradles had Orders-in-Council passed in their names and their families eventually obtained the lands.<sup>87</sup>

In 1840 control over Crown lands was acquired by the province in exchange for the civil list.

Instructions given to Governor Sydenham in 1841 contained the following clause.

It is our will and pleasure that you do strictly conform to the provisions of any law for the regulation of such matters which is or shall be in force in the said Province of Canada, or any part thereof, or if there shall be no such law then to such instructions in this respect as you may from time to time receive from US under our Signet or Sign Manual or through one of our principal Secretaries of State.<sup>88</sup>

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disadvantage of intervening blocks being held by speculators, without roads or improvements ... in many cases lands have been clandestinely taken up by a mere nominal payment ... the lands in some new townships have been sold without condition of actual settlement .... whenever the system of sale or granting of public lands admitted of it, abuse was practised largely to the injury of licensed lumberers, by parties obtaining the best timbered lots within the limits of their licenses under the fictitious pretence of becoming actual settlers, but solely with the intention of cutting the timber.

The purchasing of land under the fictitious pretence of settling on it, but really for the purpose of lumbering and speculation, is injurious to the public interest as well as to the lumberer working in good faith under licence from the Crown.

The lands one obtained under a false pretence for purposes for which they were not intended, and on advantageous terms, designed for the encouragement of actual settlers only; and even these advantageous terms are not complied with. The lots purchased are the best timbered, which would yield Government more in duty on the timber than the price even if finally paid would amount to.

The speculator pays Government less than the licensed lumberer, while he obstructs the settlement of the country infinitely more by taking up the lands to the injury of the actual settler; whereas the licensed lumberer cannot obstruct settlement at all the lots included in his license being at all times open for sale and settlement.

Claims against Government can now be made good for deficiencies found in the actual quantities of lands granted, however long ago.... Consequently exorbitant quantities of land now to be obtained in compensation for insignificant deficiencies in old grants, present undue encouragement for the exercise of ingenuity in searching up and exaggerating claims that otherwise never would have been raised.

A degree of irregularity had arisen and practices had grown up in the internal organization and management of the Crown Land Office which greatly impaired the efficiency of the Department.... All the office work of importance had fallen into the hands of two or three individuals. No important business could be expedited but by them. They had always done everything of the kind, which was accordingly always left to them; while the others employed in the office never having any responsible duty to perform were from want of practice comparatively incapable.



Speculators were afforded indiscriminate access to important documents such as field notes..... The records of the office being thus accessible to them, such land speculators with the advantage of the superior local information which from the nature of the business they possess were enabled to acquire the most valuable vacant lands in a very objectionable manner ... in this way the original intention of the Government in favour of the individual holding the right was defeated, he, by a species of imposition, receiving only a trifle in lieu of the benefit intended for him. The actual settler was injured by being obliged to pay a high price to the speculator and the latter was enabled to obtain the land without paying an equivalent for it either to the Government or any one else.

Previously to the adoption of the system of requiring all payments for lands to be made into the banks any agent who was so disposed could refrain from rendering account of any number of the instalments paid to him, and make use of the money for his own benefit.

Several cases of very serious defalcation, resulting from long continued malpractice were of late brought to light, not by any check existing in the system, but by the over-speculation and blundering of the parties concerned, thus showing that where the same lack of integrity was combined with greater caution and capacity, there was no security for the public.<sup>90</sup>

In 1860 An Act respecting the Sale and Management of Public Lands<sup>91</sup> was enacted, the main provisions of which were the same as the Public Lands Act of 1853.

In 1867, by the terms of the Confederation of the North American provinces, the management of public lands and timber was relegated to the several Provincial administrations.

b) Indian Title to Lands

Although the British Crown claimed the territorial state and eminent Dominion in Canada, from the earliest of times it conceded to the Indians a special right of occupancy upon their old hunting grounds, and their claim to compensation for its surrender reserving to itself the exclusive privilege of dealing with them for the surrender or purchase of any portions of the land. This was distinctly laid down in the Proclamation of 1763 and the principle was generally acknowledged<sup>92</sup>. In the case of St. Catherine's Milling and Lumber Co. v. the Queen Mr. Justice Taschereau gave some indication of the nature of the special title of the Indians:

For obvious political reasons, and motives of humanity and benevolence it has, no doubt, been the general policy of the Crown... to respect the claims of the Indians. But this, though it unquestionably gives them a title to the favourable consideration of the Government, does not give them any title in law, any title that a court of justice can recognize as against the Crown.<sup>95</sup>

Taschereau concludes that any other interpretation of the Title would lead to the deduction, "that all progress of civilization and development in this country is and always has been at the mercy of the Indian race". The Indians were and would be entitled to just consideration of their claims, not because of any legal obligation to do so, but as a sacred political obligation.

The general acknowledgement of their rights by government however did not always serve to protect the Indian interest. The history of Indian lands in

Upper Canada is riddled with instances of dishonest agents and officers appointed by the Crown, taking undue advantage of tribes surrendering and the terms of surrender<sup>93</sup>. The early white pioneers were not overly scrupulous in respecting Indian land and were not hesitant to squat on their lands notwithstanding Government laws and restrictions to the contrary. The Indians themselves, either through ignorance or avarice often disposed of their lands to white settlers, creating great confusion and conflicting claims<sup>94</sup>.

Notwithstanding these problems, the Government policy as set out in the Proclamation and later documents may have been the best and only way to protect the Indian lands. In the Royal Commission of 1842 the Commissioners made the following remarks about the Government policy relating to Indian lands:

If the Government had not made arrangements for the voluntary surrender of the lands, the white settler would gradually have taken possession of them without offering any compensation whatever; it would have been at that time as impossible to resist the natural laws of society, and to guard the Indian territory against the encroachment of the whites as it would have been impolitic to have attempted to check the tide of immigration. The Government therefore adopted the most humane and most just course, in inducing the Indians by offers of compensation to remove quietly to more distant hunting grounds, or to confirm themselves within more limited reserves, instead of leaving them and the white settlers exposed to the horrors of a protracted struggle for ownership.<sup>96</sup>

#### Indian Title and the Surrender of Lands

As the settlement of Upper Canada advanced, it became necessary to make successive agreements with the Indians for a peaceable surrender of portions of

their hunting grounds. The terms were sometimes for a certain quantity of presents once delivered or for an annual payment in perpetuity, either in money or more generally in similar presents. One of the earliest of these agreements was made with the Mississauga Tribe on the Grand River in 1784, by which the Crown purchased 670,000 acres to be again ceded to the Six Nations on their retirement from the United States, at the close of the War of Independence.<sup>97</sup>

These agreements were mostly drawn up in general terms; they do not appear to have been recorded, and some of them are missing. They sometimes contained a reservation of part of the land for the future occupation of the tribe. In other cases, separate agreements for such reservations had been made; or the reservations had been established by their being omitted from the surrender, and in those instances the Indians held upon their original title of occupancy.

In all those cases and in the Grants of purchased lands, which, on several occasions the Government had made for the settlement of certain tribes, the power of alienation was distinctly withheld from the Indians and reserved to the Crown.<sup>98</sup>

In a few instances the Indians purchased land for themselves, with the proceeds of their annuities.

On many occasions large tracts of land had been surrendered to the Crown in trust for the purpose of being sold for the benefit of the Tribe concerned.<sup>99</sup>

c) Tenure of Land

Owing to the peculiar title under which the Indians held their lands and their incapacity to alienate them, they held the land for the most part in common.

Every member had an equal right with the sanction of the Chiefs to choose and mark off a plot of land for himself in any unoccupied part of the reserve and to occupy as much as he could cultivate.<sup>100</sup>

In their wild state they usually cultivated one large field in common but in most of the settlements in Upper Canada each individual cultivated his own field or farm. They were generally allowed to dispose of it during their lifetime to other members of the tribe.

In a few instances Indians became land owners by the purchase or leasing of lands from whites. For the most part, however, this practice was not encouraged as it was thought that the Indians would thereby be exposing themselves to taxation, to the loss of their lands for debt and to the designs of fraudulent whites.<sup>101</sup> While most administrators agreed that absolute title should eventually be given to the Indians they wanted to postpone this emancipation until they became sufficiently "civilized".<sup>102</sup>

C) Enquiries into Indian Affairs

No department needed investigation more than the Indian Department and none was more thoroughly examined in the period between 1839 and 1858. Justice J.B. MacCauley had studied the Department in 1839 and had been a member of Committee #4 which assessed the Department in 1840. From 1842 to 1844 the Department was further investigated by a Royal Commission instructed to report on the affairs of the Indians. Finally in 1858 a group of Special Commissioners were appointed to investigate Indian Affairs in Canada. The following is a summary of those enquiries into Indian Affairs, their purposes, findings, conclusions, and recommendations.

1839 - Report on Indian Affairs

(see P.A.C., RG 10, vol. 718).

Officer

Mr. Justice J.B. MacCauley

Purpose

MacCauley was given a number of official papers respecting the Indians settled in Upper Canada, for examination with a view to reporting on the present condition and future management of the Indian tribes, their property and affairs, and also the state of the department under whose superintendence they were placed.

Structure of Enquiry

MacCauley directed his attention to, and reported on the following aspects of Indian Affairs:

- 1) Presents given to resident and visiting Indians;
- 2) Civilization of the Indians;
- 3) Indian title to land;
- 4) Statistics and Separate Tribes;
- 5) The Indian Department.

Findings and Recommendations

- 1) With regard to the system of distributing presents, MacCauley recommended that the practice of giving presents to resident Indians should continue until they were capable of gaining a comfortable subsistence from their lands. However, he suggested the discontinuance of present-giving to visiting Indians. MacCauley disapproved of a money commutation. He suggested that the Government could best help the natives by supplying them with useful supplies such as clothing, ammunition and food.
- 2) With regard to the practice of civilizing the Indians, MacCauley saw no reason why the Indians could not be civilized to the standards of the white men. The first step he felt was to induce them to settle in fixed residences close to white settlements. In order to civilize the Indians, MacCauley saw the necessity for:



- a) An efficient Indian Department;
- b) Christian Missionaries;
- c) Schoolmasters;
- d) Instructors in husbandry and trade; and
- e) Arrangements for the regular supply of food and clothing.

He suggested that such an arrangement could be paid for through 1) the parliamentary grant, 2) profits arising from Indian lands sold, and 3) casual and territorial revenues.

3. With regard to the issue of Indian title to their lands, MacCauley made the following recommendations:

- a) The Chief Superintendent should keep a land book in which there should be an entry for every reserve and all unconceded tracts, with accurate descriptions and copies of all orders-in-council, patents and other memorandas relating to the same - also a statement of every surrender or contract showing the whole nature of the transaction and containing all explanatory information of importance;
- b) All sales should be entered with the Superintendent-General;
- c) The Indian families should gradually be induced to settle on separate farms and become holders in fee simple in their own individual right. In the meantime they should be settled, but absolute titles should be withheld;

- d) The Government should be deprived of the power of reclaiming the reserves to be sold for any other purpose than the use of those tribes to whom they respectively belonged.
- 4) With regard to statistics and separate tribes, MacCauley suggested that nominal lists of the resident Indians should be obtained for Government information.
- 5) Under the final heading entitled "Indian Department" MacCauley made the following recommendations:
  - a) The Government should decide definitely upon the department to be maintained and then the Chief Officer should take measures for distributing and assigning the duties to be placed under him;
  - b) The Chief Superintendent should be given a clerk to assist him in his office duties;
  - c) The Chief Superintendent should visit all the stations at least once a year to make himself acquainted with the actual state of each, of its prosperity and wants, the better to enable him to assign the duties of local supervision.

1840 - Commission appointed to investigate into the business, conduct, and organization of the various public Departments of the Province of Upper Canada.

(See P.A.C., RG 10, vol. 720-721, and Appendix #1,

1842 Royal Commission Report.)

#### Officers

R.S. Jameson, J.B. MacCauley, W. Hepburn.

### Purpose

The Committee who were given the investigation of the Affairs of the Indians were instructed to consider the present condition morally and politically of the different tribes forming the Indian population, and what lands or annuities of any kind they possessed. Secondly, they were to consider what alteration and amendment might be beneficially introduced in the mode of conducting the Indian Department.

### Structure of Enquiry

The Committee directed their attention to, and reported on the following aspects of the Indian Department:

- 1) The system adopted in paying the annuities to the Indian tribes and whether it was susceptible of improvement;
- 2) The mode of taking care of the Indian reserve lands, and whether alterations might be effected to the advantage of the Indians;
- 3) The course to be adopted with respect to squatters upon Indian lands, whether squatting altogether without authority, or under colour of recognized title obtained from individuals amongst the Indians. In addition, to make an assessment of the act relating to such trespassers entitled An Act for the protection of lands of the Crown from trespass and injury;

- 4) Alterations which might be made in the mode of handing out presents;
- 5) The course of conducting the business of the Indian Department and possible alterations;
- 6) The system of paying monies on account of the Indians by warrant of the Governor, directed to the Commissariat Department alone, without any check on the part of any other Department of the Government and whether some system of check could not be beneficially introduced;
- 7) The sufficiency of salaries allowed in the Department.

#### Findings and Recommendations

- 1) With regard to the system of paying the annuities, the Committee was not prepared to recommend any change at that time. The members were of the opinion that the mode of paying them in commodities ought to be continued.
- 2) As to the mode of taking care of the Indians' lands, and whether great alterations and improvements might not be affected to the advantage of the Indians, the Committee members were of the opinion that so entire a change not only in the preservation but in the appropriation of the wild lands must be effected before any material improvement in the social condition of the Indians could be hoped for, that they avoided recommending any partial alterations;
- 3) As to the course to be adopted with respect to squatters upon Indian land, the Committee divided these into two classes. The first to be considered were those who had taken illegal possession of the land, either under some

pretended licence from individual Indians, or without even such a color of title, for the sole purpose of farming and who had cultivated and built upon the land. Of this class the Committee said that because they had made valuable improvements on the land, they were more likely to be able to pay the Indians full compensation for their temporary usurpation. As such the Committee recommended that their cases be postponed.

The second class of squatters were those whose illegal possession was accompanied by circumstances of a still more objectionable nature - such as cutting and plundering the valuable timber, keeping houses for the sale of spirituous liquors and otherwise disseminating the vices into which the Indians were likely to fall and were the real source of much of their destitution.

The Committee felt that this class should be entitled to no consideration, and that the Commissioner appointed under the Act for the protection of the Indian Reserves, ought to be instructed promptly to enforce the law against them.

- 4) As to any alterations in the mode of distributing annual presents, the Committee suggested that if the course of conducting the business by means of the Commissariat was to be continued the Chief Superintendent should recommend presents of a nature that would contribute to their domestication and cultivation of the land.
- 5) As to the course of conducting the Indian Department, the Committee was convinced that the machinery of the office was totally inadequate to effect any good. The Committee made several recommendations for the possible improvement of that office:

- a) With regard to the office of the Chief Superintendent, it was suggested that arrangements should be made which would allow him to attend more to the statesman's duties of the office instead of confining him exclusively to those services which might be equally well performed by a clerk and would enable him to know the real state of the Indians' funds without waiting to be enlightened from another Department. In addition, such a change would allow a better organization of the office so as to render it fit for the more efficient discharge of its more extended duties. To produce this efficiency it was suggested that the Superintendent be assisted by a Chief Clerk and a bookkeeper;
- b) It was next proposed that a transfer take place whereby the Chief Superintendent would have the responsibility for the management of all sales of Indian lands ordered to be sold for their benefit, and the settling of conflicting claims;
- c) It was next suggested that the Head of the Department should be allowed to act without the intervention of the Commissariat;
- d) It was further recommended that the Chief Superintendent should be given more discretion in his attempts to provide for the Indians;
- e) In the conduct of his office it was suggested that the Chief Superintendent should be obliged to keep:
- i) A correspondence book,
  - ii) A debtor/creditor account book in respect of each tribe,

- iii) A book of accounts of all monies received and paid on account of sales of land,
- iv) A bank account showing the receipts and payments made on account of each tribe separately.

In addition, it was suggested that the Chief Superintendent should make an arrangement by which the Bank of Upper Canada should become Treasurer of the Department and that all payments to be made by purchasers of Indian lands should be made by deposit in the Bank directly.

- 6) It was also suggested that all drafts or cheques, given by the Chief Superintendent for any of the said monies, be counter-signed and that the purpose for which the cheques were given should be clearly stated; and that half-yearly on every first day of April and first day of October, a general account of all monies received and paid by him should be rendered on oath and submitted, duly vouched like other public accounts to the Inspector General, or to the Board of Audit; that on the annual account being made up, and the balance struck, a certificate by the cashier of the bank, where such account was kept should be required, stating that the balance was correct.
- 7) Finally it was recommended that all evidence of title to property conveyed to the Indians should be first examined and approved by the law officer of the Crown, previous to the execution of any deed of conveyance.



1842 - Royal Commission appointed to report on the Affairs of the Indians in Canada.

(Presented in the form of two reports, Vols. I and II in 1845, Vol. III in 1847. See Journals of the Legislative Assembly, Province of Canada, 1845 and 1847).

#### Officers

W. Rawson, J. Davidson, W. Hepburn

#### Purpose

The Commissioners were required to inquire into the application of the annual grant of money made by the Parliament of Great Britain for the benefit of the Indians in Canada together with other relevant matters connected with the Affairs of the Indians resident in or visiting Canada and to report upon the said several matters. In addition, they were required to determine whether any changes should be made in the manner of conducting the business of the Indian Department or in the application of the funds placed at its disposal.

#### Structure of Enquiry

The general findings were submitted under the following heads:

- 1) History of the relations between the Government and the Indians;
- 2) Past and present condition of the Indians;

- 3) Present mode of conducting Indian Affairs; under their several heads, with recommendations for its amendment;

Under this third head the Commissioners directed their attention to the mode of conducting the Affairs of the Indians and described their findings under the following headings:

- 1) Presents;
- 2) Lands;
- 3) Annuities;
- 4) Department;
- 5) Miscellaneous.

#### Findings and Recommendations

##### General Recommendations:

- 1) That as long as the Indian tribes continued to require the special protection and guidance of the Government they should remain under the immediate control of the Representatives of the Imperial Crown within the Province and not under that of the Provincial authorities;
- 2) That measures should be adopted to introduce and confirm Christianity among all the Indians within the Province and to establish them in settlements;
- 3) That the efforts of the Government should be directed to educating the young, and to weaning those advanced in life from their feelings and habits of dependence;
- 4) That for that purpose, schools should be established, and missionaries and teachers be supported at each settlement and that their efficiency should be carefully watched over;

- 5) That in addition to common schools, as many manual labour, or Industrial Schools, should be established as the funds applicable to such a purpose would admit;
- 6) That the co-operation of the various religious societies, whose exertions had already proved very beneficial among the Indians, should be sought in carrying out the measures of the Government, particularly among tribes which did not belong to the Church of England;
- 7) That every practicable measure be adopted to familiarize the adult Indians with the management of property, with the outlay of money, and with the exercise of such offices among themselves as they were qualified to fill such as Rangers, Pathmasters and other offices, for ordinary township purposes;
- 8) That the Indians be employed as far as possible, in the erection of buildings, and in the performance of other services for their own benefit;
- 9) That Institutions calculated to promote economy such as Savings Banks be established among them.

After stating these general recommendations the Commissioners then went on to describe their findings and recommendations under the five headings earlier mentioned.

Under the heading of presents the Commissioners made the following recommendations:

- 1) The practice of present giving should be continued until the Indians acquired the knowledge and habits necessary to enable them to dispense with that bounty;

For the time being the efforts of the Government should be directed to raising their social position and increasing their knowledge of the acts of civilized life;

- 2) Money should not be substituted for presents to the resident Indians in the Province;
- 3) The issuance of presents should be gradually limited and eventually abolished;
- 4) The nature of the presents should be that which was most useful and conducive to their gradual civilization;
- 5) The system of obtaining supplies of presents through the Commissariat Department was the best arrangement;
- 6) The distribution of the presents should be conducted in the most beneficial, convenient and economic manner possible.

Under the second heading entitled "Lands" the Commissioners made the following recommendations:

Recommendations relating to:

- 1) That all the title deeds for Indian Lands should be recorded in the office of the Provincial Registrar and be open as any other public documents to inspection;
- 2) That where no title deed existed they should be supplied and recorded;

- 3) That those title deeds so recorded should be considered by the Government as equally binding with any other similar document, and should preclude all power of resumption, without the consent of the Indians concerned;
- 4) That when the reserve had not been surveyed, or any doubt existed as to its proper limits, steps should be taken to supply the information, which was to be kept in the Indian Office for inspection with diagrams of the reserves;
- 5) That the several tribes should be encouraged to divide their reserves among themselves and to appropriate a portion, not exceeding 100 acres to each family or member surrendering to the Government the remainder in trust to be sold for their benefit;
- 6) That in all instances of such division a limited title deed should be granted giving the power to transfer or devise the same to any member of the tribe, but not to a white man. Such land would be protected in the event of any surrender of the reserve by the rest;
- 7) That the Government should be prepared to entertain any application for the exchange or sale of these licences in favour of any Indian belonging to another Tribe but not in favour of a white;
- 8) That upon a report from an officer of the Department that an Indian was qualified by education or customs of civilization to protect his own interests, and to maintain himself as an independent member of the general community, the Government should be prepared to grant him a patent for the land in his actual cultivation or occupation;

- 9) That a competent person be appointed to examine and report on the nature and extent of the property held by the several tribes of Indians throughout Canada; the amount and mode of payment annually due to them and of arrears; the security for the due collection of the money, and the solvency of the agents; and that measures be taken to collect such payments regularly for the future, and to secure the punctual rendering of annual accounts by each agent and the settlement of balances;
- 10) That the management of the survey and sales of all Indian lands be conducted by the Surveyor General and Commissioner of Crown Lands;
- 11) That the accounts of past sales be examined, audited and passed in Council so as to conclude and close past transactions;
- 12) That for future sales, separate accounts should be kept by the Commissioner of Crown Lands;
- 13) That as the service that was rendered by the Crown Land Department was of a variable amount, and as it bore a very small proportion to that performed on account of the Crown and Clergy Lands, an arrangement was suggested by which the fair proportion to be paid by the Indian lands might be raised by a percentage upon the monies actually received. By that means the Indians would bear their own proportion of the expense and the remainder might then be divided between the Crown and clergy lands in such proportions as were equitable;
- 14) That if this commutation was impractical the percentage to be charged to the Indian Lands would be reduced from 10 to 5 per cent;

- 15) That charges for surveying, valuing, and local collections be conducted economically;
- 16) That all monies received by the Commissioner of Crown Lands be paid over to the Receiver General and lodged in a fund separate from the Provincial monies;
- 17) That all monies received from the sale of lands be invested by the Receiver General for the benefit of the several tribes who would be entitled only to receive the annual interest;
- 18) That all such investment be recorded in the Indian Office;
- 19) That the balances in the hands of the Receiver General be not allowed to exceed £200;
- 20) That no money be drawn out of this fund, except upon a warrant from the Indian Office;
- 21) That an account be rendered annually to the Governor General, showing the receipts, disbursements, and investments on account of each tribe;
- 22) That a copy of the accounts of each tribe, be rendered annually to the Chiefs, a duplicate copy to be filed in the Indian Office;
- 23) That all monies and debentures from landed sales and rents in the hands of the Chief Superintendent be transferred to the Receiver General and paid into the fund above proposed;



- 24) That the Chief Superintendent and any other officer who had received and disbursed monies on behalf of the Indian be called upon to account for the same;
- 25) That a list should be obtained of squatters, the value of the land squattered upon, and the extent and value of improvement upon the land;
- 26) That a title be given to those who were allowed to stay [see report of 1840] and that prompt and efficient measures be taken to remove all others;
- 27) That all Indian reserves containing an excessive amount of land for future needs, be surrendered;
- 28) That such land be divided in order to give them an individual and personal lot;
- 29) That Indians should be appointed to watch and inspect the reserves and to report any attempt at intrusion to the local agents;
- 30) That Indians unlawfully selling their lands to whites be penalized;
- 31) That officers encouraging squatters be dismissed;
- 32) That agents of the Commissioner of Crown Lands be appointed to act as Commissioners under the act relating to the protection of Indian reserves.

Under the third heading entitled "Annuities" the Commissioners made the following recommendations:

1. That the intervention of the Commissariat in the payment of annuities be dispensed with;
2. That all payments on account of the annuities be made by the Receiver General upon a Warrant signed by the Governor-General;
3. That the Commissioner of Crown Lands pay over to the Receiver General from the monies first accruing from the Crown Revenues in each year the total amount of the annuities to which the Indians might become entitled during the year;
4. That the Receiver General open an account, separate from the Provincial monies to be called the "Indian Annuity Fund" and that he also keep separate accounts of the several annuities;
5. That past transactions be closed and that balances due to each tribe be credited to its account by the Receiver General;
6. That the Commissioner of Crown Lands pay over the amount of these balances to the Receiver General;
7. That at the beginning of each year the Receiver General credit each tribe with the annuity due for that year; and that he credit the above general fund with all monies actually received from the Commission of Crown Lands, on account of annuities;

8. That in ordinary cases the Receiver General should not make advances to any Tribe beyond the amount of its balance on his books; but that upon a special order attached to a warrant, he be empowered to make such advance from any balance of a past year belonging to any other tribe remaining uninvested in his hands;
9. That the Receiver General invest separately, any balances of sufficient amount remaining at the close of the year, for the benefit of the several tribes to which they belonged, unless he received a contrary notice from the Indian Department;
10. That the Indian Department be bound to give this information to the Receiver General within the first month of each year and that the Receiver General inform the Indian Department from time to time of the date, nature, and amount of all investments made by him;
11. That the investments made as above be not permanent, but that the tribe to which they belonged, might at any time, with the sanction of the Governor-General require them to be realized and carried to their annuity account;
12. That the annual interest be carried to the Annuity Account of each tribe;
13. That if necessary, the faithful management of the monies belonging to the Indians be among the obligations inserted in the bond given by the Receiver General and his sureties;
14. That all warrants be prepared in the Indian Office by the Accountant - that they be accompanied by a requisition signed by one or more Chiefs, or by the

Resident, or one of the visiting officers of the Department, with an explanation of the reasons for dispensing with the requisition - that such requisition explain fully the object of the intended expenditure and be signed by the Chief resident officer of the Department - that such warrants, with the requisition attached to them be submitted to the Governor-General for signature, and then be countersigned by the Civil Secretary;

15. That whenever a requisition be made by an Officer of the Department without previous communication with the tribe, a full explanation be forthwith given to the Chiefs of the intended application of the money;
16. That the present Chief Superintendent be required to account for the monies which he had received from the annuities of the Tribes;
17. That no Officer of the Indian Department should be allowed to receive Indian monies except for immediate disbursements, or in repayment of advances already made, and that in all such cases he be required to submit for examination and record in the Indian Office the vouchers for the expenditure of the monies so received;
18. That no power of attorney be held by any officer of the Indian Department, except for a definite sum therein expressed at the time of signature, and that in all cases in which he received monies upon such powers of attorney, the warrants be drawn in the form of an imprest, and be especially noted as such in the books of the Receiver General - that each officer be held responsible for the amount so received until he produced the vouchers of his payments for the full amount to the

Receiver General - that the Receiver General make a half-yearly account of all such imprests, acquitted and outstanding;

19. That accounts of the receipts and disbursements on account of the annuities be kept in the Indian Office, in the same form as in the Office of the Receiver General;
20. That an account of the receipts, disbursements, and balances of the several tribes be annually furnished by the Indian Office to the Head Chief; and that in cases where the annuity was divided among detached bands, living apart, a separate account in lieu thereof be furnished to the Head Chief of each band - and if the Head Chief be entitled to claim any authority over the expenditure of the separate bands, an aggregate account composing the several separate accounts be furnished to him;
21. That for this purpose the shares of each band be ascertained according to its numbers, and definitely apportioned to them;
22. That an account as above described, be furnished to each tribe from the close of 1836 to the time of the presentation of this report, (1847) and after having received the signature of the Chiefs be filed in the Indian Office;
23. That on the annual visit to be paid to each tribe by an officer of the Indian Department, these accounts and the future annual accounts, be explained and signed by the Chiefs in token of acquittance and of their satisfaction with such accounts;

24. That the terms of the annuities as to the amount for which the Government was liable be strictly adhered to, and that when the proposed census be taken, any reduction required by the tenor of the deeds be made;
25. That the Order-in-Council for the payment of £1,250 a year to the Saugeen tribe, in compensation of the tract surrendered by them to Sir Francis Head, made in 1840 be revised when the census was made and adjusted to the number found to be so entitled;
26. That until the condition of the Indians be materially advanced, no payments be made to them for distribution in cash, except under special circumstances, and that in such cases due precaution be taken to secure the proper application of the money;
27. That measures be adopted, through the intervention of the resident missionary or other local agent, to prevent the Indians from running into debt - that when immediate purchases were necessary on account of the tribe they might be made with the cognizance and assistance of such officer and be immediately reported to the Indian Officer. That all chiefs or other Indians incurring debts without the above permission, be punished by the stoppage of their presents for one year in the first instance, for a longer period in the second and by degradation and loss of future presents for a subsequent offence;
28. That the first opportunity be taken to make legal provision for the recognition of the annuities as a permanent charge in the nature of a public debt, upon the Provincial Funds, and for establishing the priority of such charge.

Under the fourth heading entitled "Indian Department" the Commissioners made the following recommendations:

1. That the management of the Indians be placed under the Civil Secretary with the view to its being brought more immediately under the notice of the Governor-General;
2. That the two branches of the Department be united and the records kept in one office - that the correspondence and central business of the office be conducted at the Seat of Government under the superintendence of a Chief Clerk;
3. That an accountant be employed under him, who would be specially charged with the management of the various accounts of the Department connected with the estimates, requisitions, annuities, sales of land, etc.;
4. That the Office of Chief Superintendent in Upper Canada and the establishment of local officers be reduced, and that in lieu thereof three Indian Visitors be appointed;
5. That the province be divided into three districts according to the locality of the settlements, and that each Visitor be charged with the superintendence of a separate district - Lower Canada would form one - the tribes then under the separate charge of the Chief Superintendent in Upper Canada would form the second, and the remainder then under the charge of five resident Superintendents would form the third;
6. That missionaries and school teachers should be appointed in each settlement.



Under the fifth heading entitled "Miscellaneous" the Commissioners confined themselves to general views with regard to the future management of the Indians. The most important observation under this heading relates to the issue of Clergy Reserve lands. Here the Commissioners stated that it was not the intention of the Government that this appropriation should be made from the land surrendered in trust by the Indians. They therefore recommended that the reserve for the clergy, on account of the Indian surrenders, should be set apart out of any lands which might be at the disposal of the Crown, or that an equivalent should be given to the Indians in lieu of the lands so taken from them.

September 8, 1856\* - Report of the Special Commissioners to Investigate Indian Affairs in Canada - report submitted in 1858. (See Journals of the Legislative Assembly of the Province of Canada 1858.)

#### Officers

R.T. Pennefather (Superintendent General of Indian Affairs for the Province of Canada), F. Talfourd, T. Worthington.

#### Purpose

The Commissioners were instructed to inquire into and report upon 1) the best means of securing the future progress and civilization of the Indian tribes in Canada and 2) the best mode of so managing the Indian property as to secure its full benefit to the Indians, without impeding the settlement of the country.

### Structure of Inquiry

The Commissioners took the report of Rawson, Davidson, and Hepburn as their starting point and adopted the same division of the subject.

### Findings and Recommendations

- 1) That it was not possible to defray all the expenses connected with the management of the Indian Department out of the revenues of the tribes under its charge;
- 2) That as the Indians had an equitable claim on England for continued aid, a limited sum of £2000 should be given annually for 10 years for the benefit of the Indians;
- 3) That if the English cabinet deemed it inexpedient to entertain this proposal, the responsibility must fall back on the province - the Commissioners made the following recommendations by which an arrangement might be entered into:
  - a) The provincial government should engage to meet during a period of 10 years all the expenses of the Indian management, which could not be covered by the proceeds of the percentage appropriated to this object from the land sales;
  - b) It should also guarantee a sum of \$2,000.00 annually for the same period - this money should be devoted to the advancement of the aborigines in civilization and to preparing them by improved education for ultimately abandoning the isolated position which they held in the midst of the white settlers, and becoming an integral portion of the population of Canada;

- c) The Government should assume the payment of the pensions which had been asked for from the Imperial authorities in the event of the latter refusing to comply with the request - a number of older officers who had been released from their duties had a valid claim to some recognition of their services;
- d) If the Canadian Executive agreed to undertake these payments, the Commissioners recommended the following arrangement:
  - That the Patronage of the Department should be in the hands of the Colonial Government and that the appointments to the several posts connected with it should be made by the Governor in Council, as was the case with other provincial offices. If the aid afforded by the Imperial Government be withdrawn its control over the Department should cease likewise;
- e) As under this scheme a considerable portion of the expenditure of the Indian Department would be defrayed for some time from the Provincial Revenues, the accounts at the office should be annually submitted to the inspection of the Provincial Auditor, and examined by him - this was a further precaution against any peculation or defalcation by the Officers of the Department;
- f) The Indians in their turn should at once cede at a fair valuation to the province, such land as the Government decided was unnecessary for their own use - in those cases when the Indians refused any terms of surrender, they should be forced to remove to other tracts of land;

4. A mixed system of settlement should be implemented adopting both the separatist system and that in which the Indians could be located with the white population;
5. Where a final location of a band was determined each head of a family should be allotted a farm not exceeding 25 acres in extent;
6. In all cases where bands were so located, a small portion of their annuity should be reserved as a fund to meet the expense of erecting houses;
7. Small, scattered bands should eventually be located in a few agricultural locations;
8. A permanent head superintendent should be appointed to the Indian Department;
9. Local agents should be appointed to reside among each of the more considerable bands in Upper Canada;
10. More clear records should be kept whereby information might be at once obtained respecting:
  - a) The lands at any period under control of the Indian Department, including a detailed catalogue of the several treaties with the Indians, and a synopsis of their important stipulations;
  - b) Such lands that were sold with particulars as to their locality;
  - c) Lands sold on which installments were due with all details of each transaction;

11. A system of bookkeeping should be adopted as would show the situation of every account without the need for further research;
12. More complete statistical returns were required relating to such matters as census lists, lands under cultivation and other particulars about the Indians;
13. No further changes should be made regarding Legislative Enactments respecting the Indians beyond the consolidation of the existing laws.

### III. INDIAN RESERVE LANDS: ADMINISTRATION, POLICY, AND DEFINITION

#### A) Legislative Structures

##### 1. Acts

- 1801      An Act to Regulate the Statute Labour to be done upon the Roads in the tract occupied by the Huron Indians in the County of Essex in the Western District.  
S.U.C. 1801, C. 10 (41 Geo. III).
- May 11,      An Act for the Protection of the lands of  
1839      the Crown in this Province, from Trespass and Injury. S.U.C. 1839, C. 15 (2 Vict.).
- April 25,      An Act to explain and Amend an Act of the  
1849      Parliament of the late Province of Upper Canada passed in the second year of Her Majesty's reign entitled "An Act for the protection of the Lands of the Crown in this Province from Trespass and Injury" and to make further provision for that purpose.  
S.C. 1849, C.9 (12 Vict.).
- 1849      An Act to authorize the formation of joint Stock Companies for the Construction of Roads and other works in Upper Canada.  
S.C. 1849, C. 84 (12 Vict.).
- August 10,      An Act for the Protection of the Indians in  
1850      Upper Canada from inposition, and the property occupied or enjoyed by them from trespass and injury. S.C. 1850, C.74 (13 and 14 Vict.).

- 1850      An Act Respecting Railways. C.S.C. 1850,  
C. 66, see S. 11 (30).
- 1851      An Act to Consolidate and regulate the  
General Clauses relating to Railways.  
S.C. 1851, C. 51, see S. 11 (22).
- June 14,  
1853      An Act to Amend the Law for the Sale and  
Settlement of the Public Lands. S.C. 1853,  
C. 159 (16 Vict.).
- 1853      An Act to make better provision for the  
Administration of Justice in the  
unorganized tracts of country in Upper  
Canada. S.C. 1853, C. 56 (16 Vict.).
- 1853      The Consolidated Assessment Act of Upper  
Canada. S.C. 1853, C. 182 (16 Vict.).
- 1853      An Act to amend and consolidate the several  
Acts for the formation of joint Stock  
Companies for the Construction of roads and  
other Works in Upper Canada. S.C. 1853,  
C. 190 (16 Vict.).
- June 10,  
1857      An Act to encourage the gradual  
civilization of the Indian tribes in this  
province and to amend the laws respecting  
Indians. S.C. 1857, C. 26 (20 Vict.).
- 1859      An Act respecting the sale and management  
of the Public Lands. S.C. 1859, C. 22  
(22 Vict.).



- 1859      An Act to authorize the formation of joint Stock Companies to construct works necessary to facilitate the transmission of Timber down the Rivers and Streams in Upper Canada. S.C. 1853, C. 191 (16 Vict.).
- 1859      An Act respecting joint Stock Companies for the Construction of Roads and other Works in Upper Canada. C.S.U.C. 1859, C. 49 (22 Vict.).
- 1859      An Act to prevent trespasses to Public and Indian Lands. C.S.U.C. 1859, C. 81 (22 Vict.).
- 1859      An Act respecting the administration of justice in unorganized tracts. C.S.U.C. 1859, C. 128.
- April 23, 1860      An Act respecting the Sale and Management of the Public Lands. S.C. 1860, C. 2 (23 Vict.).
- May 19, 1860      An Act to amend the ninth Chapter of the consolidated statutes of Canada, entitled "An Act Respecting the Civilization and Enfranchisement of certain Indians". S.C. 1860, C. 38 (23 Vict.).
- 1860      An Act Respecting the Management of the Indian Lands and Property. S.C. 1860, C. 151 (23 Vict.).
- August 15, 1866      An Act to confirm the Title to Lands held in trust for certain of the Indians resident in this province. S.C. 1866, C. 20 (29 & 30 Vict.).

2. Orders-In-Council Affecting Indian Affairs

\* Denotes unknown status of entries (i.e., minute or order)

## Sources:

- (1) RG 10, Vol. 119 (microfilm C-11-479;  
C-11-480) 1796-1876
- (2) RG 10, Vol. 710, 1793-1845
- (3) RG 10, Vol. 711, 1834-1873

These volumes originated from some 19th century Indian Affairs administrator (probably Matheson in early 1900's who collected from the existing orders-in-council those which he felt were applicable to the Indian Office). The volumes overlap and there is no clear distinction between minutes and orders.

- |                   |  |
|-------------------|--|
| April 1,<br>1793* | [Copied 5 February 1866] Report Re the boundaries of the Mohawk Indian reserve on the Bay of Quinte. (RG 10, Vol. 711, p. 23).                         |
| July 10,<br>1793  | Order granting to the Moravians a tract of land (RG 10, Vol. 711, p. 27).  |
| Oct. 10,<br>1796  | Order establishing clergy reserves in the Six Nations reserve (RG 10, Vol. 711, p. 31).  |
| Feb. 5,<br>1798*  | Discussions of Capt. Joseph Brant's surrender on behalf of the Five Nations on the Grand River of a portion of their grant (RG 10, Vol. 711, p. 37-9). |

Sept. 21,     Advises that clergy reserve in Township of  
1837           Alnwick be set apart for the Mississagua  
                Indians. (RG 10, Vol. 119, p. 64).

June 15,  
1838

Order-in-

Council:     The Grand River Navigation Company had been  
                established, largely on the basis of the  
                investment of funds from the Six Nations.  
                The Company had fallen into debt and the  
                Executive Council of Upper Canada  
                determined that the Six Nations fund was  
                libel for the debt in proportion to their  
                stock in the Company. The original  
                investments had been made by trustees  
                working as representatives of the Six  
                Nations, and independent of the Government  
                with close to 50% of all stock belonging to  
                the Six Nations. (RG 10, Vol. 119, p. 87).

July 12,  
1838

Order-in-

Council:     A review of the Six Nations investment in  
                the Grand River Navigation Company revealed  
                a debt of £ 6,500. It was affirmed by  
                this Order that Six Nations' band funds  
                would be used to repay this amount, but the  
                Executive Council stated it would not use  
                such funds in future to repay any debts  
                incurred through independent investment  
                without prior Government approval. This

- Oct. 28, 1806 Order granting to Thomas Clark Esq. lands from the Indians at Grand River (RG 10, Vol. 711, p. 56).
- Oct. 24, 1828 Order that the surrender of land by Six Nations be accepted (Grand River 220 acres) (RG 10, Vol. 119, p. 14).
- Oct. 17, 1835 Minute concerning location tickets for United Empire Loyalists and militia claimants for Indian lands (RG 10, Vol. 119, p. 36-38).
- Nov. 24, 1836 Order denying an Indian the right to sell a tract of land in payment of a debt to a white settler (RG 10, Vol. 711, p. 96).
- April 5, 1837 Minute: That Indians should be paid for their improvements on surrendered lands from the money raised in the sale (Individuals should be paid and not the tribe) (RG 10, Vol. 119, p. 73-74).
- April 6, 1837  
Order-in-Council: This Order-in-Council stated that survey costs for surrendered Indian lands at Amherstburgh, Coldwater, and the Narrows, be charged to the revenues of the Crown, but "The Council would however suggest that the expenses of the survey...ultimately be borne out of the proceeds of the land, the same being first advanced out of the Crown herewith." (RG 10, Vol. 119, p. 58).

was a first step towards protecting Indian band funds from improper use. (RG 10, Vol. 119, p. 97).

Aug. 2, 1838\* Orders removal of Chippawas Indians from the East side of Lake Simcoe to the mouth of the Severn River. (RG 10, Vol. 119, p. 98).

Oct. 11, 1838 Ordered a grant for a Brant lease in the Midland district. RG 10, Vol. 119, p. 111-112).

April 17, 1839

Order-in-

Council: On a recommendation from John Macaulay, the Governor-in-Council decided that the Reverend Saltern Givens should receive £ 100 out of "Indian funds arising out of lands now in the course of sale as a remuneration for the benefits he has rendered the Indians." (RG 10, Vol. 119, p. 135).

June 22, 1839

Order-in-

Council: The Executive Council of Upper Canada stated its objection to independent investment schemes such as the Grand River Navigation Company. In future, the Government would manage all Indian funds. Since the Six Nations had accrued their debt through a previous trustee's investment, they had to pay a debt of some £ 1,836 out of their own funds. (RG 10, Vol. 119, p. 149-51).

June 27,

1839

Order-in-

Council:

This Order-in-Council stated that no further debts would be paid from Indian funds for investments made without the approval of the Governor-in-Council. (RG 10, Vol. 119, p. 160).

July 1,

1839\*

Report of Committee Re. Indians of Abenakis Nation of St. Francis and their inability to alienate land. (RG 10, Vol. 711, p. 164).

Nov. 26,

1839

Order-in-

Council:

Once more the Governor-in-Council approved a sum, in this case £ 10-55, 4d., for the expenses of George Vardon, who was employed as a surveyor on the Six Nations Reserve. The charge was made to their band funds. (RG 10, Vol. 119, p. 210).

Jan. 4,

1840\*

A discussion which mentions that Capt. Brant an agent of the Six Nations granted leases for 999 years on tracts of the Grand River. These leases the government recognized and issued grants-in-fee simple to the holders. (RG 10, Vol. 711, p. 102-106).

Feb. 30,

1840

Minute recommends an Indian on the River St. Clair be given a license of occupation. (RG 10, Vol. 119, p. 510, Microfilm C-11-480).

- Mar. 2,  
1840 Minute discussing a petition for non-surrendered lands. States that no land should be alienated without Indian consent (RG 10, Vol. 119, p. 523, Microfilm C-11-480).
- Mar. 19,  
1840\* Recommendation that Lot No. 10 East of Toronto St., Port Credit be sold and the money "charged as having been paid to the use of the Indians." (RG 10, Vol. 710, p. 16).
- June 4,  
1840 Minute Re annuity for surrender of lands by Saugeen Indians is objected to by Council. (RG 10, Vol. 119, p. 242-3).
- June 16,  
1840 Order approving the sale of Indian lands in Township of "Inniskil" to two white settlers; George Moore and James Read. (RG 10, Vol. 711, p. 116-7).
- June 18,  
1840 Minute discussing proposal to sell lands for Indian fund which were "abandoned" by the Indians at Lake Huron. (RG 10, Vol. 119, p. 290-1).
- Oct. 15,  
1840 Minute: That payment by white settlers to an Indian for improvements made on Indians' lands does not give to the settler any right to title. (Microfilm C-11-479 328-331).



Nov. 27, 1840\* A submission concerning the sale of surrendered lands with a series of recommendations about valuation of improvements, squatters etc. (RG 10, Vol. 710, p. 30-35).

No date \* Discussion of a piece of property for the New England Co. (for the education and instruction of Indians) on the Grand River reserve which had been bought from Indians Discussion of Indians inability to sell their improvements. (RG 10, Vol. 710, p. 36-9).

May 2, 1841  
Order-in-Council: By this Order the Moravian Indian band funds were charged £ 150 to pay the cost of building the Post Road through a part of their reserve. (RG 10, Vol. 119, p. 257).

Jan. 21, 1842  
Order-in-Council: To improve the road between Coldwater and the Narrows on Lake Simcoe a sum of £ 68-16-11, was forwarded by the Commissioner of Crown Lands to the Indian Department, this was in addition to a previous sum of £ 300 which had already been forwarded to Chief Superintendant Jarvis. This amount was to be charged to "Indian funds arising from the sale of

lands on the Portage Road." (RG 10,  
Vol. 118, p. 372).

Jan. 28,

1842

Order-in-

Council: An orderly system for surveying Six Nations lands had been introduced by Col. Jarvis in November, 1840. This Order-in-Council extended the system "to all Indian lands within the Province". This was a step towards establishing a uniform system of surveys and valuation procedures for Indian lands. (RG 10, Vol. 119, p. 190).

May 12,

1842

Minute: Recommendation that Patent be issued for land in Grand River (Township of Cayuga) since held by Brant lease. (Microfilm C-11-479, p. 407-08).

No date

Minute allowing release of patent to Rev. Ryerson for tract of land for mission in Six Nations reserve. (Microfilm C-11-479, p. 414-6).

Feb. 3,

1843

Minute concerning the payment of Indian annuities by the new Union colonial government. (RG 10, Vol. 710, p. 7-9).

Feb. 7,

1843

Order-in-

Council: Since the Act of Union (1841) had failed to make provision for funds to operate the Indian Department, this Order-in-Council

was designed to fill the void. Indian annuity payments were considered not to be in any way connected with the Commissioner of Crown Lands Office. These annuities were not placed in accounts at the Office of the Receiver-General. These accounts were to be reviewed twice a year and reported on by the Receiver-General and the Inspector-General. In this way annuity payments were separated from those expenses associated with Crown Lands Office.  
(RG 10, Vol. 710, p. 7-9).

- May 26, 1843      Order accepting the surrender of land by Mohawk Indians at Bay of Quinte.  
(Microfilm C-11-479, p. 431).
- July 29, 1843\*      Committee suggests that redress be made to the Indians of the Saugeen Reserve in respect to a dispute over the reserve boundaries. (Microfilm C-11-480, p. 480-491). Plan of Mohawk Institution lots at Mohawk Village, Grand River.  
p. 488-491.
- Aug. 3, 1843\*      Committee report on an address of grievances (land, timber, surrenders) of the Six Nations Indians at Grand River with recommendation Report approval by Governor-in-Council 4th October 1843.  
(RG 10, Vol. 710, p. 42-55).
- Aug. 8, 1843\*      Committee report concerning claims of the family of John Claus on the Grand River Indian Reserve (RG 10, Vol. 710, p. 39-41).

- Sept. 8, 1843 Ordered acceptance of surrender by Indians on the Lower Indian Reserve on the River St. Clair. (Microfilm C-11-480, p. 495).
- March 21, 1844 (1) Petition of Indian from Lake of Two Mountains for protection in his occupation of land. Order-in-Council grants a license of occupation. (RG 10, Vol. 710, p. 1).
- (2) Order for a survey of the Indian tract at River Credit so that it could be sold to Frederick C. Casreole for the benefit of the Credit Indians. (RG 10, Vol. 710, p. 10)
- (3) Order that a lot of land 4 7/100 acres at Caledonia be subdivided and offered for sale even though the property had been settled by Thomas Bryant.
- July 18, 1844\* Discussion of status of clergy reservations on the Mohawk Tract. (RG 10, Vol. 710, p. 5-6).
- Sept. 27, 1844 Minute of Council concerning instructions for the management of sales of Indian lands. (RG 10, Vol. 710, p. 3-4).
- April 9, 1845 Minute on a petition for a patent by an Indian of the Mohawk Tract. Recommended he be given a lease rather than a grant-in-fee. (RG 10, Vol. 710, p. 15).
- April 15, 1845 Minute concerning the management of Indian lands. The rights of Indians to sell or lease land denied. The obligation of the

home government to administer Indians discussed. Establishment of a provincial department for Indian Affairs. (RG 10, Vol. 710, p. 14-15).

June 23, 1845      Order to stop District Council of the Western District from building a road on unsurrendered land at the Indian reserve at Amherstburgh. (RG 10, Vol. 710, p. 19).

Aug. 22, 1845      Order denying that property purchased by a mission for the Indians at Sault St. Marie was official. Decided purchase was not to be paid from Indian funds but by the mission. (RG 10, Vol. 710, p. 20).

Nov. 14, 1845      Order concerning the surveying of the border between Indian Reserve and Crown Lands at the Saugeen reserve. Shared cost between the Crown Lands Department and the Indians. (RG 10, Vol. 710, p. 23).

Nov. 18, 1845      Order granting a lease of property at Stag Island. (RG 10, Vol. 710, p. 24).

Jan. 9, 1846

Order-in-

Council:      By this Order-in-Council, the previous reports of Col. Jarvis concerning the "...necessity of certain amendments to the 1836' Act...for the protection of Indian lands", were forwarded to:

...the Commission of Enquiry respecting Public Lands, with a suggestion to report, in any Act improving the present system, clauses for the protection of all ungranted lands and the timber growing therein, and for the summary punishment of offenders" (RG 10, Vol. 119, Part 2, p. 1-2).

Sept. 30, 1846 Council ordered that lands of the Iroquois of St. Regis in Glengarry County be "resumed" by the Government. (RG 10, Vol. 711, p. 169).

Mar. 19, 1847 Ordered that land occupied by an Indian petitioner not be disposed of while he is in possession. The Council refused to grant him a lease with nominal rent (Long Island in River St. Francis) (RG 10, Vol. 711, p. 170).

Aug. 17, 1847 Order concerning the Mohawk's request for compensation due them because of the clergy reserves within their own Indian reserve. The order contains the legal opinion of the Attorney-General, request denied. (RG 10, Vol. 710, p. 58-60).

Aug. 7, 1849\* Recommends investigation of Indian lands and instructs the Commissioner of Crown Lands to set off lands on the Ottawa River for Indians. (RG 10, Vol. 711, p. 173).

Oct. 6, 1849\* Denies Indian petitioner the ability to purchase ungranted Crown lands in the Townships. (RG 10, Vol. 710).

- April 16, 1850 A minute concerning the negotiations with the Indians on Lake Superior and Lake Huron for the surrender of their lands. (RG 10, Vol. 710, p. 61-62).
- Sept. 24, 1850\* Letter transmits the treaty and negotiations which established the surrender by Indians of lands on northern shore of Lakes Huron and Superior. (Mentions parts which were not surrendered by the Indians). (RG 10, Vol. 711, p. 490-99).
- Nov. 1850\* Recommendation that treaties of surrender by the Indians of the Northern shore of Lakes Huron and Superior be accepted, accompanied by the surveyor's request. (RG 10, Vol. 711, p. 58-62).
- Jan. 11, 1851 Order refusing to recognize a white settler's right to a grant based on a lease given him by the Indians of Lake Superior. (RG 10, Vol. 711, p. 142).
- Jan. 29, 1853\* Recommends compensation for land lost to the railways by the Iroquois Indians at Caughnawaga. (RG 10, Vol. 711).
- Feb. 7, 1853\* Concerning Col. Claus and related land claims (RG 10, Vol. 710, p. 62-4).
- April 18, 1853\* Concerns surrenders at Township of "Inniskil" and East Hawkesbury. (RG 10, Vol. 711, p. 145).



Dec. 3,  
1853\*  
Proclama-  
tion            Re: annexation of the zone owned by the  
                 Saugeen Indians to Grey County. (RG 10,  
                 Vol. 711, p. 342-4).

April 28,       Memorandum advising that the sections of  
1854\*           "the Act to amend the law for the sale and  
                 settlement of Public Lands" are applicable  
                 to Indian land sales. (RG 10, Vol. 711,  
                 p. 150).

Jan. 31,  
1855\*           Transmission to Council from the Indian  
                 Superintendent of the surrenders Re. land  
                 in Grey County on northeast shore of Lake  
                 Huron (Saugeen Reserve), (RG 10, Vol. 711,  
                 p. 146).

Sept. 10,  
1855\*           Committee recommends acceptance of  
                 surrender by Indians on lands at Gros Cap  
                 on Lake Superior. (Microfilm: C-11-480,  
                 760-1).

Sept. 25,  
1855\*           Memorandum from Superintendent General  
                 Re: The plan and boundaries of the Indian  
                 reserve of the Saugeen. (RG 10, Vol. 711,  
                 p. 146-7).

Nov. 27,  
1855\*           Transmission of surrender by Indians of  
                 Sarnia Reserve. (RG 10, Vol. 711, p. 230).

Feb. 21,  
1856\*           Letter from Home government to governor  
                 Sir Edmund Head Re. imperial policy towards

Indians and decision to cease payment of annuities after 1858. (RG 10, Vol. 711, p. 151-56).

July 12,

1856\*

Order-in-

Council: (1) Recommends acceptance of surrenders by Chippawas Indians of land on Lakes Couchiching, Simcoe, and Huron. (RG 10, Vol. 711, p. 261).

Order-in-

Council: (2) This Order-in-Council set up the Indian Land Management Fund "...to defray the future expenses of management and control of the lands and other property held by the Crown in trust for the Indians." A "percentage on sales" would be charged and invested to the credit of the fund. Lands not on the market for sale would be charged a percentage in proportion of its probable value".

The percentage charge was set at 10% on all revenues from land sales. This money would then be invested "in Provincial debentures at 6%". A record would be kept of each sale and of each charge to such revenues for the Land Management Fund. The total "principal and interest" of the fund would be used "...to defray the general cost of management of Indian

property in Canada, whether Upper or Lower".

Indian Lands protected by the Crown but not for sale would be charged once every seven years "at 12 per cent on the capital supposed to be represented by such actual proceeds..." The Order-in-Council concluded by stating "That any arrears due on account of a particular Tribe would be charged at the same rate". (RG 10, Vol. 10020, p. 220-221).

- July 14, 1856\* Two transmissions of surrenders (1) by the Mississagua Indians of Rice and Mud Lakes: and ii) Mississagua Indians of Alnwick. (RG 10, Vol. 711, p. 231-34).
- Feb. 9, 1857\* Submission from Superintendent General recommending acceptance of the surrender by Indians (Chippewas) of land in Owen Sound area. (RG 10, Vol. 711, p. 148).
- Feb. 19, 1857\* Concerns the surrender of certain lands on the Thames River occupied by the Moravian Indians. (RG 10, Vol. 711, p. 144-5).
- June 3, 1857\* Committee recommendation to accept surrender by Delaware Nation of Indians of the reserve known as the Moravian Reserve, Oxford Co. (RG 10, Vol. 711, p. 180).
- June 15, 1857\* Recommendation that Indians of the Batchewanna Bay Reserve on Lake Superior be moved and compensated. (RG 10, Vol. 711, p. 181).

- Aug. 28, 1857\* Re. Surrenders of lands in River St. Clair and River Detroit. (RG 10, Vol. 711, p. 182).
- Jan. 19, 1858\* Committee recommends that the license to occupy issued to Hudson's Bay Co. be withdrawn as it was an encroachment on Indian lands on Manitoulin Island. (RG 10, Vol. 711, p. 190-2).
- June 29, 1858\* Committee recommends that an erroneous patent be cancelled and a new one issued to the Great Western Railroad Co. for lands giving right-of-way through the Sarnia Indian Reserve. (RG 10, Vol. 711, p. 211).
- Aug. 17, 1858\* Committee recommends that the Order-in-Council of 28th April 1854 be amended to enable the superintendent-general to issue as before licenses of occupation. (RG 10, Vol. 711, p. 213-214).
- April 23, 1859  
Order-in-Council: After receiving a letter from P.M. Vankoughnet the Commissioner of Crown Lands, with information as to "...placing the collection of the Indian Timber Revenue and the management of the Woods and Forest Branch of the Crown Lands Department", this Order-in-Council stated that the Indian

Department was "...too small as at present constituted to grant licenses to protect the Timber on the several classes of Reserves and collect dues for Timber which may be cut thereon".

This is noteworthy because in the "Annual Reports of Indian Affairs", after 1868, such dues and rents for Timber are recorded as revenue of the Indian Land Management Fund. By this Order-in-Council this revenue is placed directly in the hands of the Receiver-General with the Crown Lands Office retaining, "...six per cent out of all amounts collected for the Indian Revenue", part of which was to cover the expenses of the Woods and Forest Branch. (RG 10, Vol. 711, p. 362-5).

May 14,

1859

Order-in-

Council: This Order-in-Council gave further details explaining the purpose for the transfer of Timber licensing and collection of such "rents and dues" to the Woods and Forests Branch, Crown Lands Department. (RG 10, Vol. 711, p. 388-9).

June 21,

1859\*

Committee report on the surrender and sale of Indian lands on the Huron and Superior lakes: i) Batchewannamny Bay  
ii) Garden River  
iii) Thesalon River with conditions of sale.

(RG 10, Vol. 711, p. 293-5).

July 22, Committee recommends acceptance of  
1859\* surrender by Chippewa Indians of a part of  
Indian reserve at Fort William (RG 10,  
Vol. 711, p. 212).

Nov. 22,  
1859  
Order-in-

Council: To complete the process of the Provincial  
Government assuming direction and  
management of all Indian Affairs accounts,  
the provincial Receiver-General was  
instructed to take over the responsibility  
of accounting for all Indian funds.  
Accounts would be kept separately by fund  
and by band, and all investments of these  
funds would be a 6% per annum in Provincial  
banks. (RG 10, Vol. 2498, File 102,  
986-6).

Sept. 10, Discussion by committee of the Great  
1861\* Manitoulin Island and recommendation that  
lots be granted to Indians. Includes a  
memorandum on the conflicting claims to the  
Island and its failure as an Indian  
settlement (RG 10, Vol. 711, p. 43-45).

Sept. 12,  
1861  
Order-in-

Council: Re: Report of a Meeting of the Board of  
Audit - this Executive Council Report  
adopted a Board of Audit Memorandum,

"containing certain suggestions respecting the future method of keeping the books of the Indian Funds and property, and rendering accounts of receipts of expenditures...in consequence of the assumption of the management of the Indian Funds by the Province." The Board of Audit decided that the Crown Lands Department would "...assume the management of the lands and of the fund generally". Payment of expenses would be made only "...upon special warrants upon the application of the Commissioner of Crown Lands." In the case of the Land Management Fund, it was decided:

The present Management Fund - to be retained to the end of the year, as one of the Subsidiary Accounts, for the purpose of ascertaining how far it meets those expenses, the same expenses to be charged against it as heretofore but the interest on the whole of the cash balances to be credited to the several tribes and other special accounts. (RG 10, Vol. 711, p. 216-18).

Sept. 24,

1861

Order-in-

Council:

A Board of Audit memorandum was "approved and adopted" as the suggestions submitted on September 12 were considered "...necessary in



consequence of the assumption of the management of the Indian Fund by the Provincial Government". (RG 10, Vol. 2498, File 102, 986-6).

Sept. 24/25,  
1861  
Order-in-  
Council:

With reference to a previous Order-in-Council of 16 January 1861 a suspended account was revealed to have accumulated \$2,000 interest a year in revenue for the Indian Department. This Order-in-Council reviewed the account considering that the proposal to close it altogether would place the burden of producing the lost revenue upon the Indian Land Management Fund. (RG 10, Vol. 2498, File 102, 986-6).

Sept. 12,  
1862

Order to negotiate the surrender of Indian lands on Manitoulin Island. (RG 10, Vol. 711, p. 315).

Nov. 14,  
1862

Ordered that agreement with Indians on Manitoulin Island surrender be ratified. (RG 10, Vol. 711, p. 317).

May 15,  
1863\*

Committee recommends acceptance of the surrender of Turkey Island in the Detroit River by Wyandott Indians (RG 10, Vol. 711, p. 332).

Oct. 30  
1863\*

Committee recommends acceptance of surrender by Indians of Sarnia Reserve

of land for right-of-way.  
(RG 10, Vol. 711, p. 340).

Jan. 24,  
1864\*

Committee recommendation that a  
surrender at Sarnia be accepted.  
(RG 10, Vol. 711, p. 424).

Jan. 29,  
1864\*

Committee recommends that a number of  
half-breed Indians be given patents  
for lands upon which they are  
squatters. (RG 10, Vol. 711,  
p. 417-18).

Dec. 18,  
1865\*

Recommendation that surrender be  
accepted of lands on the Mississagua  
River in northwest shore Lake Huron.  
(RG 10, Vol. 711).

Apr. 9,  
1866\*

Committee recommendations of the  
condition for sale of Manitoulin  
Island. (RG 10, Vol. 711, p. 223-4).  
Memorandum and regulations for issue  
of licenses for oil wells on Indian  
lands. (RG 10, Vol. 711,  
p. 225-28).

May 4,  
1866\*

Recommended regulations for sale of  
lands on great Manitoulin Island.  
(RG 10, Vol. 711, p. 401-2).

May 23,  
1866\*

Legal opinion Re: recommendations  
concerning patents for Indian lands  
adjoining Public Waters. These  
patents should reserve a free access.  
(RG 10, Vol. 711, p. 415).

June 9,  
1866\*

Council recommends that squatters at  
Point Pelee Island be given grant.  
(RG 10, Vol. 711, p. 163).

April 12,  
1867\*

Recommends a surrender by Six Nations  
Indians of lands in Township of Towns-  
end be accepted. (RG 10, Vol. 711,  
p. 425-6).

May 23,  
1867\*

Recommends acceptance of surrender by  
Ojbiway Indians at White Fish River  
Reserve north of Lake Huron.  
(RG 10, Vol. 711, p. 426-7).

3. Proclamations, Notices, and others

Saturday, 30 December 1797 - Proclamation Re:

depredations committed by  
white settlers on the land  
of the Mississagua  
Indians. (The Upper  
Canada Gazette. Vol. III  
#156, PAC, Microfilm:  
N-10189).

Saturday, 1 January 1803 - Notice: "No leases which

have been granted by or  
under the authority of any  
Indian nation will be  
admitted or allowed of."  
(The Upper Canada Gazette,  
Vol. XII, #86, P.A.C.,  
Microfilm: N-10190).

Wednesday, 12 February 1812 - Proclamation Re: Indians

on the Grand River. (The  
York Gazette, Vol. XXI,  
No. XXXI. P.A.C.,  
Newspaper Section,  
Microfilm N-10191).

Thursday, 29th June 1820 - Proclamation Re: "Breaches

of the peace in Indian  
territories." "Whereas  
diverse breaches of the  
peace having been  
committed..." (Upper Canada  
Gazette, Vol. IV, No. 26.  
P.A.C., Newspaper section,  
Microfilm No. N-10192).

Thursday, 7 September 1820 - Order-in-Council Re:

Indian land and road  
allowances. "His  
Excellency Lt. Governor-  
in-Council is pleased to  
direct that a location of  
100 acres..." (Upper  
Canada Gazette, Vol. IV,  
No. 30. P.A.C., Newspaper  
Section, Microfilm No.  
N-10192).

Monday, 29 October, 1821 - Notice "Credit Reserves"

land sale Re: land on River  
Credit. (P.A.C. Newspaper  
section, Microfilm No.  
N-10192)

24th February, 1825 - Article 'Indian Tribes' - "It is  
impossible to read Mr. Buchanan's  
Plan for the amelioration and  
civilization of the British North"  
American Indians...". (Weekly  
Register Vol. IV, No. 6. P.A.C.,  
Newspaper Section, Microfilm  
No. N-10193).

Saturday, 24 June, 1826 - "His Excellency the

Lt. Governor, desirous that  
it may be publicly known,  
that the case of the  
conviction of an Indian...",  
(Weekly Register Vol. 1,  
No. 4, Reel No. 10194  
1825-1828).

Thursday, 5 July, 1832 - Notice - 'Commissioner of  
Crown Lands Office, York,  
1st December, 1831.

"The following summary of the  
rules established by  
H.M. Government for  
regulating the disposal of  
lands... (Reel No. N-10196, 5  
Jan. 1832 - 25 Dec. 1834).

Thursday, 12 February, 1835 - Notice from Indian  
Office Toronto  
1st February, 1835 "To  
claimants of Lands of the  
Six Nation's Indians on  
the Grand River",  
(Upper Canada Gazette,  
Vol. IX, No. 39, Reel  
No. N-10197).

7 May, 1835 - Act: - "An Act the better to protect the  
Mississagua Tribe." (Upper Canada  
Gazette, Vol. IX, No. 51, Reel  
No. N-10197).

15 Oct., 1836 - Proclamation "Whereas depredations  
having been heretofore frequently  
committed on the Indian Reservation..."  
(Upper Canada Gazette, Vol. XI,  
No. 22, Reel No. N-10197).

Thursday, 26 July, 1838: Act: "Whereas it is highly  
expedient and  
desirable that the  
disposal of the  
extensive tracts of  
Waste Lands, the

property of the  
Crown..." (Upper Canada  
Gazette, Vol. XIII, No.  
11, Reel No. 10198).

Thursday, 20 February, 1840 - Act Re: Strong Drink and  
Indians "An Act to amend  
and make permanent an act  
passed in the 5th year of  
William IV entitled: 'An  
Act to prevent the sale  
of spirituous liquors to  
Indians.'" (Upper Canada  
Gazette, Vol. XIV, No. 41,  
Reel No. N-10199).

Saturday, 11 November, 1848 - Proclamation Re: Grand  
River Indians. "Whereas  
the Tribes of the Six  
Nation's Indians have at  
all times been...".  
(No. 372, Microfilm: 35  
COPS G-23, 27 March 1847  
- 24 Feb. 1849).

Saturday, 16 November 1850 - Proclamation Re: Indian  
lands. "Whereas in and by  
an Act... An Act for the  
protection of the Indian  
in Upper Canada." (No.  
491, Microfilm: 35 COPS  
G-25, 30 March 1850-29  
March 1851).

Saturday, 22 November, 1851 - Proclamation Re:  
Reserves for the  
Mississagua Indians.



(No. 545, p. 11678,

Microfilm: 35 COPS

G-26, 5 April 1851 - 24

April 1852).

Saturday, 18 February, 1854 - Proclamation Re: Indian reserves on Lakes Huron and Superior... (No. 7, p. 286-7, Microfilm: 35 COPS G-28, 23 May 1853 - 8 April 1854).

Saturday, 22 March 1856 - Proclamation Re: Reserves at Lake Huron and Owen's Sound. (Canada Gazette No. 12, Vol. XV, p. 514, Microfilm: 35 OPS CG-31, 22 March 1856 - 3 Jan. 1857).

Saturday, 27 June 1857 - Act "An Act to encourage the gradual civilization of the Indian Tribes in this Province and to amend laws respecting Indians." (p. 1606-9. Microfilm: 35 COPS G-32, 10 Jan. 1857 - 9 Sept. 1857).

Thursday, "October, 1860 - Royal proclamation proclaiming that the bill "An Act respecting the management of the Indian Lands and Property" received special confirmation from

the Queen-in-Council.

Journals of the Legislative  
Assembly of Upper Canada.

Saturday, 13 October, 1860 - Proclamation Re: An Act  
respecting the management  
of Indian - lands and  
property." (Canada Gazette  
No. 41, Vol. XIX, p. 308,  
Microfilm: 35 COPS G-38,  
2 June 1860 - 1 Dec.  
1860).

Saturday, 10 March 1866 - Proclamation Re: Manitoulin  
Islands and Chippewas Indians.

(Canada Gazette No. 10, Vol.  
XXV, p. 831, Microfilm 35  
COPS G-49, 25 Nov. 1865 - 31  
Mar. 1866).

B) Land Surrenders and Compensation

From the earliest times the British Government acknowledged the title of the Indian tribes of Canada to the lands which they occupied. The Crown conceded to the Indian a special right of occupancy upon their old hunting grounds and their claim to compensation for its surrender, reserving to itself the exclusive privilege of treating with them for the surrender and purchase of any portions of the land. But detailed records of the various treaties and surrenders are not always available. For many years those agreements were drawn up in general terms; the business being carried on by military officers who kept scarcely a record or an account book.<sup>103</sup>

Perhaps the most important document relating to the Indian title and the British policy relating to their possessions was the Proclamation of 1763. It is important therefore that considerable space be given to a statement of that policy:

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom we are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as, not having been ceded to or purchased by us, are reserved to them, or any of them, as their Hunting Grounds. We do, therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretense whatever, to grant Warrants of Survey, or pass any Patents for lands beyond the Bounds of their respective Governments, as described in their Commissions; as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by us as aforesaid, I reserve to the said Indians, or any of them.

And we do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid;

And we do hereby strictly forbid on Pain of our Displeasure, all our living Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our special leave and License for that Purpose first obtained.

And, we do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by us, are still reserved to the said Indians as aforesaid forthwith to remove themselves from such Settlements.

And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians; in order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, we do with the advice of our Privy Council strictly enjoin and require, that no private person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where we have thought proper to allow Settlement; but that, if at any time any of the said Indians should be inclined to dispose of the said lands, the same shall be purchased only for us, in our name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie; and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the use and in the name of such Proprietaries, conformable to such Directions and Instructions as we or they shall think proper to give for that Purpose; and we do, by the advice of our Privy Council, declare and enjoin that the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to trade with the said Indians do take out a License for carrying on such Trade from the Governor or Commander in Chief of any of Our Colonies respectively where such person shall reside, and also give Security to observe such Regulations as we shall at any time think fit by ourselves or by our Commissaries to be appointed for this purpose to direct and appoint for the Benefit of the said Trade;

And we hereby authorize, enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively, as well as those under our immediate Government as those under the Government and Direction of Proprietaries to grant such Licenses without Fee or Reward, taking especial Care to insert therein a condition, that such License shall be void, and the Security forfeited in case the Person to whom the same was granted shall refuse or neglect to observe such Regulations as we shall think proper to prescribe as aforesaid.<sup>104</sup>

In 1775, in order that no mistake be made regarding British intentions, Governor Carleton was given further instructions stressing this attitude toward the Indians. Section 43 of the instructions sets forth the method to be followed in purchasing their lands:

That no purchases of Lands belonging to the Indians, whether in the name and for the use of the Crown, or in the name and for the use of proprietaries of Colonies be made but at some general meeting, at which the principal chiefs of each tribe, claiming a property in such lands, are present; and all tracts, so purchased, shall be regularly surveyed by a sworn Surveyor in the presence and with the assistance of a person deputed by the Indians to attend such survey; and the said Surveyor shall make an accurate map of such tract describing the limits, which map shall be entered upon record, with the Deed of Conveyance from the Indians.<sup>105</sup>

It is clear, however that these instructions were generally neglected.<sup>106</sup>

In a letter dated at Quebec, the 26th April, 1784 addressed by Governor Haldimand to Lieutenant Governor Hay on his departure for Quebec to enter upon his government is the following paragraph defining his duty in relation to the Indians and their lands:

The mode of acquiring lands by what is called deeds of Gift is to be entirely discontinued, for by the King's instructions, no private person, society, corporation or colony is capable of acquiring any property in lands belonging to the Indians, either by purchase, or grant or conveyance from the Indians, excepting only where the lands lie within the limits of any colony, the soil of which has been vested in proprietaries or Corporations by grants from the Crown; in which cases such proprietaries or corporations only shall be capable of acquiring such property by purchase or grants from the Indians. It is also necessary to observe to you that, by the King's instructions, no purchase of lands belonging to the Indians, whether in the name of or for the use of the Crown, be made, but at some general meeting, at which the principal chiefs of each tribe claiming a property in such lands shall be present.<sup>107</sup>

Again in 1787 in the instructions to Sir John Johnson for the good government of the Indian Department, the following is found:

No person belonging to or employed in the Indian Department is to be permitted to trade directly or indirectly, or to have any share profit or concern therein.<sup>108</sup>

In 1764 the first permanent surrender into British hands of Indian lands in Upper Canada was concluded.\* By treaty a tract of land fourteen by four miles in area on both sides of Niagara was acquired.<sup>109</sup>

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\* For a complete list of surrenders see Appendix A.



Around the year 1785 a large area along the shore of Lake Ontario was purchased from the Mississaugas and by 1791 townships had been laid out and settlement begun. Further land along Lake Erie was bought from the Chippewas in 1790. A different type of purchase was made by Governor Haldimand in 1784.<sup>110</sup> At the termination of the American Revolutionary War, the Six Nations Indians of the Mohawk Valley, allies of Britain, had been driven out of their territories in what was now the United States. As they were entitled to some recompense for their war efforts, Haldimand purchased from the Mississaugas a fertile tract extending up the Grand River, from Lake Erie to near its headwaters, and presented it to the Six Nations as a permanent reserve upon which they might make their home. This grant was confirmed and its conditions defined by a Patent under the Great Seal issued by Lieutenant Governor Simcoe and bearing date 14<sup>th</sup> January, 1793.

The original extent of the Tract was 691,910 acres. The greater part of this was surrendered to the Crown in trust over the years to be sold for the benefit of the tribes and some smaller portions had been either granted by the Government in fee simple, to purchasers with the assent of the Indians, or had been alienated by the Chiefs upon leases which although legally invalid, the Government did not at that time consider it expedient to cancel.<sup>111\*</sup> This grant was to give more trouble

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\* Even at very early dates attempts to lease lands without authority appear to have been not uncommon. In 1802 the Lieutenant proclaimed that no leases granted under the authority of any Indian nation would be allowed. Even with such strong prohibitions the problem continued and was to plague the authorities for years.



to the provincial officers than any other part of the Indian lands and surrenders.

In 1794 there were still thirty six miles of Indian lands between York and Burlington Bay. In this year additional instructions were issued to the department covering the method of purchase of land from the Indians. No lands were to be bought save by the Superintendent-General or his deputy or a person specially commissioned by the Commander-in-Chief. When Indian land was wanted the person administering the Government of the Province was to make a requisition to the Commander and also the Superintendent with a sketch of the tract in view; the latter would then find out the price required "in goods the manufacture of Britain" which were to be brought out as soon as possible. All purchases were to be made in public council with great solemnity and in the Indian style the Chiefs and principal men being assembled for the purpose. Either the Governor of the province or two persons commissioned by him were to be present, while the Superintendent making the purchase was to be accompanied by two other persons of the Indian Department and from one to three or more military officers from the nearest garrison according to its strength. Proper interpreters were to be employed. No strong liquors were to be allowed and the Indians were to be kept sober. After explaining in full to the Indians the nature and extent of the bargain, regular deeds of conveyance (original, duplicate, and triplicate) were to be executed in public council by the principal chiefs and leading men on the part of the Indians and by the Superintendent and his assistants on the part of the Governor and were to be attested by the Governor or his deputies together with the officers and others present. Descriptive plans, signed and witnessed in the same manner were to be attached. One of these full conveyances was to be sent to the Governor, and one was to retained by the Indians.

All other matters being settled the goods agreed upon were to be given to the Indians in public council, with as much notoriety as possible. Their delivery was to be certified and witnessed in the same way as the deeds of conveyance.<sup>112</sup>

In 1796 the first of many problems relating to the lands of the Six Nations arose to plague the authorities. Joseph Brant acting as representative of the Six Nations began to negotiate for sales and leases of large tracts on the Grand River. Although it was clear that the original grant of the tract gave the Six Nations absolutely no power of transfer and alienation, the Colonial Government, somewhat confused about the nature of the Indian title agreed to confirm what lands had been sold. However, the authorities did insist that those lands which had been sold to private individuals be formally surrendered to the Crown by the Six Nations and a trustee board was set up "to receive Mortgages of the said lands that the said parties have done everything required of them and necessary to secure to the Five Nations and their posterity the stipulated annuities and considerations which they agreed to give for the same".<sup>113</sup> In this manner the Crown managed to act in accordance with the Proclamation of 1763, first requiring a surrender of lands to the Crown and then granting them to the private parties who bought them from the Crown. All subsequent transactions appear to have been governed by this principal.\*

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\* It should be noted that in these transactions the Superintendent of Indian Affairs, or local Indian agents appear to have been appointed as representatives of the Crown. The Chiefs and Principal men of the tribes represented the Indians.<sup>114</sup>

By 1797, of the entire frontage of Lakes Erie and Ontario only one small tract of some 85,000 acres remained as Indian Lands. In that year a special effort was made to secure this land from the Mississaugas. But the Mississaugas demanded what was considered an exorbitant price and the Government delayed action. In 1804 the Government finally decided to buy the land and a provisional agreement was made out in 1805. It was later discovered that the original plan in the 1805 agreement was defective, over 10,000 acres not being shown on it. The Surveyor General was ordered to make a special survey of the whole territory. This was done and the purchase was completed in September 1806.<sup>115</sup>

The War of 1812, resulted in a hiatus in the Upper Canada Land surrender process. No negotiations for Indian land were carried out until after the Treaty of Ghent in 1814. The various surrenders of land which were completed in the following years indicate the different ways in which Indians could receive the consideration offered for their lands. Some land were surrendered in trust. In 1835, for example the Mohawks of the Bay of Quinte surrendered 27,857 acres, in trust, to be disposed of for their benefit.<sup>116</sup> Other surrenders, such as the one involving the Chippewas in 1818 provided for an annuity of a specified amount payable in goods. Another treaty with the same tribe in 1822 was the first to provide for individual cash annuities for each man, women, and child of the tribe. Sometimes payment was a combination of annuity and ready cash, though annuities were preferred by the Government as affording a more permanent means of existence to so improvident a people. In 1829, Sir John Colbourne wishing to promote the settlement and civilization of the Indian people applied the annuities towards building houses and purchasing agricultural implements and stock for the several tribes

as were disposed to settle in the province. After 1829, the issue of goods in payment of annuities ceased; therefore it became necessary to credit each band with the amount of its annuity and to direct the expenditure of the money for its benefit.<sup>117</sup>

Occasionally a free grant was made; thus Colonel Claus, for thirty years trustee to the Six Nations, received from them a gift of 15,360 acres in Haldimand County.

In one particularly notorious case the Indians received no compensation for their surrender. Sir Francis Bond Head promising grand schemes for a huge reserve at Manitoulin Island convinced the Ottawa and Chippewa tribes to surrender all the islands in Georgian Bay on the single condition that the lands would only be used for the general good of all the Indians of Upper Canada. A similar agreement was signed with the Saugeen tribe for a similar vague consideration. The Manitoulin experiment was eventually pronounced a failure and the island except for the eastern portion was ultimately surrendered to be sold for the benefit of the Indians.<sup>118</sup>

The motives behind government purchases of Indian lands were not always the need for settlement lands or the demands of the Indian themselves. In the early days of the province the need for land was sometimes military in character. In later years there were sales or takings of rights of way for railway companies. An act entitled "An Act to Consolidate and regulate the General Clauses relating to Railways" (S.C. 1851, C. 51, S.11(2) contained a section providing for such cases. Section 11(22) stipulated that where railways passed through Indian lands compensation would be made to the Indians.

Similar statutes relating to roads and timber were passed in later years.\*

Sometimes the land was required for resource exploitation. For example, in the year 1850, in consequence of the discovery of minerals on the shores of Lakes Huron and Superior, the Honorable William Robinson was authorized by the Government of the Province of Canada to negotiate for the extinguishment of the Indian title to the lands on the eastern and northern shores of Lake Huron and on the northern shore of Lake Superior.

The negotiations resulted in two treaties being entered into, one known as the Robinson-Superior Treaty, and the other as the Robinson-Huron Treaty. The two treaties negotiated by Robinson exhibited several novel features which were to be adopted in future dealings in the west.

These features are summarized in the book Native Rights in Canada:

"First, the negotiation of the treaties was at an open and public meeting in accordance with the principles set out in the Proclamation of 1763, and further the lands could only be surrendered to the Crown and not to private individuals. Secondly, annexed to each treaty was a schedule of reserves which were to be "held and occupied by the said Chiefs and their tribes in common for the purposes of residence cultivation". Moreover, the Indians were denied all rights to "sell, lease or otherwise dispose of any portion of their reservations without the consent of the Superintendent General of Indian Affairs --- nor will they 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 to their Majesty --- a third feature of those Treaties was the system of annuities which was to be paid to each member of the band with the Chiefs and principle men of the tribe receiving greater amounts than the others. --- The final aspect common to these treaties was that the Indians were to retain 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 this 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 and occupied by them with the consent of the Provincial Government."<sup>119</sup>

\* See for example An Act respecting Joint Stock Companies to construct works to facilitate the transmission of timber down rivers and streams. S.C. 1859, C. 68, and An Act respecting Joint Stock Companies for the Construction of Roads and other works in Upper Canada. C.S.U.C. 1859, C.49 (22 Vict.).



In 1860 a statute entitled "An Act respecting the Management of the Indians lands and property" was enacted. In this act certain specific conditions for Indian land surrenders can be found. They are as follows:

No release or surrender of lands reserved for the use of Indians, or of any tribe or band of Indians, shall be valid or binding except on the following conditions:

Such release or surrender shall be assented to by the Chief, or if more than one Chief, by a majority of the Chiefs of the tribe or band of Indians, assembled at a meeting or Council of the tribe or band summoned for that purpose according to their rules and entitled under this Act to vote thereat, and held in the presence of an Officer duly authorized to attend such Council by the Commissioner of Crown Lands; provided always, that no Chief or Indian shall be entitled to vote or be present at such Council, unless he habitually resides on, or near the land in question.

The fact that such a release or surrender has been assented to by the Chief of such Tribe, or if more than one by a majority of the Chiefs entitled to vote at such Council or Meeting, shall be certified by the County Court Judge, or the Judge or Stipendiary Magistrate of the District or County within which the lands lie, and by the officer authorized to attend by the Commissioner of Crown Lands, and when so certified as aforesaid, shall be transmitted to the Commissioner of Crown Lands by such Judge or Stipendiary Magistrate, and shall be submitted to the Governor in Council for acceptance or refusal.

It shall not be lawful to introduce, at any Council or meeting of Indians held for the purpose of discussing, or assenting to, a release or surrender of lands, strong or intoxicating liquors of any kind; and any person who shall introduce, at such meeting, and any Agent or Officer employed by the Commissioner of Crown Lands, or by the Governor in Council, who shall introduce, allow or countenance by his presence the use of such liquors before, at, or after any such Council or meeting, shall forfeit two hundred dollars recoverable by action in any of the Superior Courts of Law, half of which penalty shall go to the informer.

Nothing in this Act contained shall make a release or surrender of lands necessary in cases in which such release or surrender would not have been necessary before the passing of this Act, or shall render valid any release or surrender other than to the Crown.<sup>120</sup>

For the most part these provisions show no real change. The introduction of the certification by the County Court Judge and the submission to the Governor-in-Council for approval seem to be provisions intended to further protect the Indians from unscrupulous agents who not infrequently took advantage of them.

C) Indian ReservesIntroduction

The word "reserve" has been employed frequently in this report in regard to lands, and requires some comment. It has been used to describe certain classes or categories of land usage and title; and more specifically as Crown reserves, clergy reserves, and Indian reserves.

The Oxford English Dictionary, 1933, Vol. VIII, defines reserve as it pertains to land as "a district or place set apart for some particular use or assigned to certain persons."

A reservation is:

- "The action or fact of reserving (for oneself or another) some right, power, privilege, etc.; a right, etc., thus reserved."
- "(U.S.) A tract of land set apart by government for some special purpose or for the exclusive use of certain persons, esp. of a native tribe."

The verb to reserve is:

- "To retain or secure (some right or profit) for oneself or another, by formal stipulation; to provide or stipulate that."
- "To set (a thing) apart for some purpose or with some end in view; to keep for some use."



It is further defined in the Concise Oxford Dictionary, Fourth Edition, 1951 at page 1038 as:

"2. Secure or retain possession or control of esp. by legal or formal stipulation (for or to oneself or another; ...); (pass.) be left by fate for, fall first or only to.

"3. Set apart, destine for some use or fate..."

Reservation at the same place is defined as:

"...(Law) right or interest retained in estate being conveyed, clause retaining it; tract of land reserved esp. for exclusive occupation by native tribe; ...".

The Legal dictionaries speak in a similar vein.

Blacks Law Dictionary, 4th ed. 1968.

Reservation:

- "A tract of land more or less considerable in extent, which is by the public authority withdrawn from sale or settlement, and appropriated to specific public uses: such as parks, military posts, Indian Lands etc."

Reserved Land:

- "Public land that has been withheld or kept back from sale or disposition."

Strouds' Judicial Dictionary, 1953.

Vol. 2 - Indian Reserve:

- "An infringement of the proprietary rights of the Province."

As one might imply from the selected definitions given above, "reserves" featured prominently in the opening and settlement of British North America, where acquisition of Indian hunting grounds by the Crown was a condition precedent to surveying, opening, and alienating the Crown lands, less the lands reserved, to promote commerce between the settlements and the Mother Country.

The best known of the reserves in 19th century Canadian history are the Clergy Reserves, lands set apart on a systematic basis throughout Upper Canada, as revenue producing assets to be used for the maintenance of the protestant clergy.

Indian reserves, were less formally designated, were not systematically spread throughout the province, and were generally viewed as a means or instrument to isolate the Indians and to prepare the Indian peoples for entry into a resource exploitive commercial economy and society.

Clergy and Crown Reserves were considered as public lands set aside for some special use. The fact that they were public lands however automatically distinguished them from those lands known as Indian reserves. This distinction was maintained in several acts of the Legislature of the Province of Upper Canada, viz. 4 and 5, Vict. ch. 100; 16 Vict. ch. 22; Consolidated Statutes of Canada ch. 22; 23 Vict. ch 2; and 23 Vict. ch. 151. In this last act, entitled An Act Respecting the Management of the Indian Lands and Property a clear distinction between public lands and Indian lands is evident. It was enacted that,

The Governor in Council may, from time to time, declare the provisions of the act respecting the sale and management of "the public lands" passed in the present session, or of the twenty-third chapter of the Consolidated Statutes of Canada entitled: An Act respecting the sale and management of the timber on public lands or any of such provisions, to apply to Indian lands or to the timber on Indian lands, and the same shall thereupon apply and have effect as if they were expressly recited or embodied in this act.<sup>121</sup>

By distinguishing between Indian lands and public lands the Legislature was simply acknowledging the special nature of the Indian lands, which had always been recognized. Their lands were not like other lands, in that it could not be taken from them without their agreement and without compensation.

Having determined that Indian reserves are different from other types of reserves, it is necessary to consider the meaning of the words Indian reserves. Perhaps the best discussion of the matter can be found in the case of St. Catherine's Milling and Lumber Co. v. R. There the Lords of the Privy Council were asked to determine the meaning of the words "lands reserved for the Indians" as found in s.91(24) of the British North America Act.

It was their determination that the words were "according to their natural meaning, sufficient to include all lands reserved, upon any terms or conditions for Indian occupation."<sup>122</sup> They did not, however determine whether the words "Indian reserves" had an equal or more restricted meaning than "lands reserved for the Indians." However, at the Supreme Court level, both Mr. Justice Gwynne and Mr. Justice Strong found no clear distinction between the words "Indian reserves", "lands reserved for the Indians" or "Indian lands",<sup>123</sup> as used in the statutes.

It is beyond the scope of this paper to determine what may or may not have been included within the words, Indian reserves as used in the pre-Confederation statutes. The remainder of this section will deal with Indian reserves in a narrower sense, that is as lands set aside by the Government for the use or benefit of a particular band of Indians, of which the legal title is in the Crown but which is unsurrendered.

As settlement progressed, it became necessary to establish or recognize certain tracts of land for permanent Indian residence and to this end, tracts of various sizes were set aside or recognized through usage as Indian reserves. Sometimes these reserves were part of the land surrendered for the future occupation of the tribe. In other cases, separate agreements for such reservations had been made or the reservations had been established by their being omitted from the surrender. In those latter instances consequently the Indians held upon their original title of occupancy.<sup>124</sup>

In all these cases and in the Grants of purchased lands which the Government had on a number of occasions made for the settlement of certain tribes, the power of alienation was distinctly withheld from the Indians and reserved to the Crown.<sup>125</sup> Such reserves were placed in the care of trustees who often were Government officials or Clergymen or else private citizens of more than ordinary standing. One such example was a grant issued for the benefit of the Mississaugas of Rice Lake. In April 1834, 1120 acres were granted to trustees "in trust to hold the same for the benefit of the Indian tribes in the Province and with a view to their conversion and civilization".<sup>126</sup>

In a number of instances the Indians had purchased land for themselves with the proceeds of their annuities.<sup>127</sup>

In 1838 for example, the Chippewas of Rama purchased 1600 acres of land, at a cost of £800 paid out of their annuities.

In a few instances Indians had become land owners by the purchase or leasing of lands from whites. For the most part this was not encouraged because it was feared that the Indians could lose these lands through the designs of fraudulent white settlers.

## APPENDIX A

## INDIAN TREATIES, ONTARIO - LOCATED IN

INDIAN TREATIES AND SURRENDERS,VOLS. I, II (1905) and III (1912)

Michilimackinac	12th May,	1781	Vol. 1, Page 1
Lakes Erie & St. Clair	19th May,	1790	Vol. 1, Page 1
Lakes Ontario & Erie	7th December,	1792	Vol. 1, Page 5
Bay of Quinte	1st April,	1793	Vol. 1, Page 7
North Shore Lake Ontario	24th October,	1795	Vol. 1, Page 8
Grand River	14th January,	1793	Vol. 1, Page 9
Grand River	20th May,	1796	Vol. 1, Page 10
Penetanguishene	22nd May,	1798	Vol. 1, Page 15
Islands Nottawasaga Bay	19th May,	1795	Vol. 1, Page 16
River Thames	7th September,	1796	Vol. 1, Page 17
St. Clair River	7th September,	1796	Vol. 1, Page 19
Burlington Bay	21st August,	1797	Vol. 1, Page 22
Joseph Brant	15th January,	1798	Vol. 1, Page 23
Joseph Brant	5th February,	1798	Vol. 1, Page 25
St. Joseph Island	30th June,	1798	Vol. 1, Page 27
Huron Church Reserve	11th September,	1800	Vol. 1, Page 30
Bay of Quinte	23rd September,	1787 (Blank)	Vol. 1, Page 32
River Etobicoke	1st August,	1805	Vol. 1, Page 34
River Etobicoke	2nd August,	1805	Vol. 1, Page 35
Mississauga Tract	5th September,	1806	Vol. 1, Page 36
River Credit	6th September,	1806	Vol. 1, Page 37
Hawkesbury	14th November,	1809	Vol. 1, Page 40
Chippewas	17th November,	1815	Vol. 1, Page 42
Chippewas	18th November,	1815	Vol. 1, Page 43
Thurlow	5th August,	1816	Vol. 1, Page 45
Thurlow	6th August,	1816	Vol. 1, Page 46
Chippewas	17th October,	1818	Vol. 1, Page 47
Mississagas	28th October,	1818	Vol. 1, Page 47
Chippewas	5th November,	1818	Vol. 1, Page 48



Chippewas	9th March,	1819	Vol. 1, Page 49
Mississagas	28th February,	1820	Vol. 1, Page 50
Mississagas	28th February,	1820	Vol. 1, Page 53
Six Nations Bay of Quinte	20th July,	1820	Vol. 1, Page 54
River Thames	8th July,	1822	Vol. 1, Page 58
Innisfil, Wm. Claus	14th October,	1822	Vol. 1, Page 60
Mississagas	31st May,	1819	Vol. 1, Page 62
Mississagas	28th November,	1822	Vol. 1, Page 63
Chippewas	26th April,	1825	Vol. 1, Page 65
Hawkesbury, Wm. Claus	12th April,	1826	Vol. 1, Page 67
Grand River	4th August,	1826	Vol. 1, Page 69
Huron Tract	10th July,	1827	Vol. 1, Page 71
Wentworth County	19th April,	1830	Vol. 1, Page 76
Haldimand Co.	19th April,	1831	Vol. 1, Page 79
Hawkesbury	6th June,	1831	Vol. 1, Page 80
Innisfil	6th June,	1831	Vol. 1, Page 82
Hawkesbury	6th June,	1831	Vol. 1, Page 84
Huron Reserve	13th August,	1833	Vol. 1, Page 88
Big Island Bay of Quinte	18th November,	1833	Vol. 1, Page 89
London District	5th February,	1834	Vol. 1, Page 90
Grand River	8th February,	1834	Vol. 1, Page 91
Grand River	26th March,	1835	Vol. 1, Page 94
Grand River	2nd April,	1835	Vol. 1, Page 96
Thurlow	15th December,	1835	Vol. 1, Page 99
Tyendinaga	23rd December,	1835	Vol. 1, Page 100
Hastings Church & Glebe	20th January,	1836	Vol. 1, Page 101
Huron Reserve	2nd February,	1836	Vol. 1, Page 103
Alnwick	10th March,	1836	Vol. 1, Page 104
Otonabee	9th April,	1836	Vol. 1, Page 109
Bedford	25th May,	1836	Vol. 1, Page 111
Manitoulin	9th August,	1836	Vol. 1, Page 112
Port Huron Reserve, Malden	20th September	1836	Vol. 1, Page 113
River Thames	25th October,	1836	Vol. 1, Page 115
Part Lake Simcoe Tract	26th November,	1836	Vol. 1, Page 117
New England Co. Smith	3rd April,	1837	Vol. 1, Page 117



Wahboose Island	15th June,	1838	Vol. 1, Page 119
Grand River	18th January,	1841	Vol. 1, Page 122
Tyendinaga	15th April,	1843	Vol. 1, Page 123
Cartwright	3rd November,	1843	Vol. 1, Page 124
Hawkesbury	3rd June,	1844	Vol. 1, Page 125
Moore	18th August,	1843	Vol. 1, Page 128
Alnwick, Otonabee & Rama	20th February,	1845	Vol. 1, Page 129
Otonabee	29th April,	1845	Vol. 1, Page 132
Tyendinaga	11th July,	1846	Vol. 1, Page 133
Glengarry	1st June,	1847	Vol. 1, Page 136
Rama	12th February,	1848	Vol. 1, Page 138
Tyendinaga	12th January,	1847	Vol. 1, Page 140
Caradoc Industrial School	13th February	1849	Vol. 1, Page 143
Caradoc Industrial School	13th February	1849	Vol. 1, Page 144
Caradoc Church & School	13th February	1849	Vol. 1, Page 145
Caradoc Church & School	13th February	1849	Vol. 1, Page 146
Moore	18th August,	1849	Vol. 1, Page 147
Robinson Treaty, 1	7th September,	1850	Vol. 1, Page 147
Robinson Treaty, 2	9th September,	1850	Vol. 1, Page 149
Grand River	18th May,	1831	Vol. 1, Page 152
Southwold	4th January,	1843	Vol. 1, Page 156
Orillia	17th June,	1852	Vol. 1, Page 159
Anderdon	18th January,	1848	Vol. 1, Page 160
Orillia	6th March,	1851	Vol. 1, Page 162
Orillia	4th February,	1852	Vol. 1, Page 165
Orillia	17th June,	1852	Vol. 1, Page 167
Saugeen Tract	2nd September,	1851	Vol. 1, Page 169
Tyendinaga	8th November,	1850	Vol. 1, Page 170
Townsend & Tuscorora	10th August,	1849	Vol. 1, Page 173
Sarnia Reserve	28th June,	1852	Vol. 1, Page 176
Sarnia Reserve	25th August,	1852	Vol. 1, Page 177
Innisfil, Hawkesbury & Haldimand	3rd December,	1852	Vol. 1, Page 178
Sandwich	19th July,	1853	Vol. 1, Page 192
Sarnia	10th May,	1854	Vol. 1, Page 193

Saugeen Peninsula	13th October,	1854	Vol. 1, Page 195
Otonabee	19th April,	1834	Vol. 1, Page 197
Gros Cap	10th April,	1855	Vol. 1, Page 199
Sandwich	28th April,	1854	Vol. 1, Page 200
Otonabee,	31st January,	1856	Vol. 1, Page 201
Islands in Lake Simcoe &			
Couchiching & Georgian Bay	5th June,	1856	Vol. 1, Page 203
Island in Bay of Quinte			
Weller's Bay and River			
St. Lawrence	19th June,	1856	Vol. 1, Page 205
Islands in Newcastle &			
Colborne Districts including			
Rice Lake	24th June,	1856	Vol. 1, Page 206
Nawash, Owen Sound	9th February,	1857	Vol. 1, Page 208
Colpoy's Bay	16th January,	1857	Vol. 1, Page 209
Stag Island, St. Clair River	19th January,	1857	Vol. 1, Page 211
Tyendinaga	4th July,	1856	Vol. 1, Page 212
Nawash, Owen Sound	9th February,	1857	Vol. 1, Page 213
Moravian Reserve, Zone &			
Orford	9th April	1857	Vol. 1, Page 215
Moravian Reserve, Zone &			
Orford	15th May,	1857	Vol. 1, Page 217
Otonabee	21st August,	1839	Vol. 1, Page 218
Peach Island, Detroit River	21st July,	1857	Vol. 1, Page 220
Island in St. Clair River	21st July,	1857	Vol. 1, Page 221
Rama	29th November,	1843	Vol. 1, Page 222
Alnwick	17th May,	1842	Vol. 1, Page 224
Alnwick	3rd August,	1842	Vol. 1, Page 225
Alnwick	12th July,	1843	Vol. 1, Page 226
Batchewananny & Gurlais Bay	9th June,	1859	Vol. 1, Page 227
Garden River	10th June,	1859	Vol. 1, Page 229
Thessalon River	11th June,	1859	Vol. 1, Page 231
Kaministagua River	5th July,	1859	Vol. 1, Page 232
Colpoy's Bay	17th August,	1861	Vol. 1, Page 233
Manitoulin Island	6th October,	1862	Vol. 1, Page 235

Timber on Chippewa Reserve,		
Carradoc	26th September, 1862	Vol. 1, Page 238
Anderdon	18th January, 1848	Vol. 1, Page 238
Fighting Island, Detroit		
River	27th February, 1863	Vol. 1, Page 240
Timber, Sarnia & Bosanquet	6th November, 1862	Vol. 1, Page 241
Grand River	3rd August, 1826	Vol. 1, Page 241
Enniskillen	13th March, 1841	Vol. 1, Page 244
Enniskillen	8th March, 1842	Vol. 1, Page 246
Mississaga River,	16th August, 1865	Vol. 1, Page 247
Tuscarora Church	21st September, 1865	Vol. 1, Page 248
Tuscarora Road	21st September, 1865	Vol. 1, Page 250
Grand River	25th October, 1788	Vol. 1, Page 251
Sarnia Reserve	13th December, 1866	Vol. 1, Page 252
Townsend	26th March, 1867	Vol. 1, Page 253
Whitefish Reserve	19th August, 1865	Vol. 1, Page 255
Detroit River & Tract &		
Island	15th May, 1786	Vol. 1, Page 272
Alnwick,	8th November, 1841	Vol. 1, Page 274
Christian Island Lighthouse	26th June, 1866	Vol. 1, Page 276
Grand River (Mouth)	13th March, 1809	Vol. 2, Page 107
Delaware grant to		
Wm. Gilkinson	2nd May, 1806	Vol. 2, Page 110
Delaware surrender to H.M.	7th October, 1840	Vol. 2, Page 111
Grand River, part	21st February, 1840	Vol. 2, Page 115
Grand River, part	29th August, 1837	Vol. 2, Page 117
Delaware surrender	21st July, 1841	Vol. 2, Page 173
Delaware surrender	9th October, 1840	Vol. 2, Page 175
Delaware surrender	14th September, 1841	Vol. 2, Page 177
Delaware surrender	26th November, 1840	Vol. 2, Page 179
Delaware surrender	8th March, 1844	Vol. 2, Page 181
Delaware surrender	2nd June, 1844	Vol. 2, Page 182
Delaware surrender	20th December, 1848	Vol. 2, Page 187
Delaware surrender	12th March, 1842	Vol. 2, Page 191
Delaware grant	8th March, 1867	Vol. 2, Page 191
Bosanquet, part	27th September, 1855	Vol. 2, Page 256
Thames River	9th May, 1820	Vol. 2, Page 281

AFTER CONFEDERATION

Garden River Mill	7th July,	1868	Vol. 1, Page 257
Garden River Mill	9th July,	1867	Vol. 1, Page 260
Maganattawan Timber	17th May,	1869	Vol. 1, Page 262
Nipissing Timber	14th August,	1868	Vol. 1, Page 273
Sarnia Reserve	5th May,	1871	Vol. 1, Page 275
Islands in Lake Erie	20th January,	1870	Vol. 1, Page 278
Caradoc, C.S. Ry.			
right of way	18th January,	1872	Vol. 1, Page 294
Delaware C.S. Ry.	17th January	1872	Vol. 1, Page 296
right of way			
Sarnia Indian Mission Lot	1st May	1872	Vol. 1, Page 298
South Algoma, Patent, <u>Ont.</u>	17th September,	1873	Vol. 1, Page 300
Garden River Mission	20th May,	1873	Vol. 1, Page 301
N.W. Angle Treaty	3rd October,	1873	Vol. 1, Page 303
Alnwick	5th December,	1870	Vol. 1, Page 325
Garden River	25th November,	1874	Vol. 2, Page 1
Little Turkey Island,			
Anderdon	27th November,	1874	Vol. 2, Page 2
Sarnia Reserve	14th January,	1875	Vol. 2, Page 5
Walpole Island, part	17th June,	1875	Vol. 2, Page 7
Anderdon	20th August,	1875	Vol. 2, Page 10
Rama, Railway Lands	26th August,	1873	Vol. 2, Page 11
Alnwick	29th September,	1875	Vol. 2, Page 26
Fox Island Lighthouse,			
Lake Simcoe	24th March,	1874	Vol. 2, Page 29
Caradoc Church & Burying			
ground	31st August,	1876	Vol. 2, Page 30
Rama	18th January,	1877	Vol. 2, Page 33
Rama	10th February,	1876	Vol. 2, Page 50
Rama	5th May,	1876	Vol. 2, Page 51
Parry Island Timber	24th September,	1871	Vol. 2, Page 63
Chinguacouse Saw Mill	17th April,	1872	Vol. 2, Page 63
(Garden River)			

Victoria Mining Co. Road	15th November, 1877	Vol. 2, Page 65
Anderdon	21st December, 1877	Vol. 2, Page 66
Sarawak Graveyard	29th March, 1879	Vol. 2, Page 71
Scugog	9th May, 1878	Vol. 2, Page 74
Anderdon Water Lot	7th May, 1879	Vol. 2, Page 83
Anderdon Water Lot	7th May, 1879	Vol. 2, Page 85
Anderdon Water Lot and Grass Island	7th April, 1880	Vol. 2, Page 87
Caradoc & Colbourne Village	6th October, 1881	Vol. 2, Page 94
Mississaga Reserve, Part	27th July, 1881	Vol. 2, Page 96
Otonabee, Trust Deed,	28th January, 1881	Vol. 2, Page 98
Shawanaga, O.C.	21st December, 1877	Vol. 2, Page 106
Serpent River Reserve, C.P. Ry., right of way	30th January, 1882	Vol. 2, Page 113
Anderdon	25th April, 1882	Vol. 2, Page 118
Garden River	6th September, 1882	Vol. 2, Page 119
Oneida Reserve, Right to shoot	18th August, 1882	Vol. 2, Page 121
Scugog	15th December, 1882	Vol. 2, Page 122
Thames Moravian Church Lot	13th November, 1882	Vol. 2, Page 124
Caradoc,	21st December, 1882	Vol. 2, Page 125
Caradoc, Shooting right	25th July, 1883	Vol. 2, Page 139
Ojibway Reserve, Timber	31st May, 1883	Vol. 2, Page 142
Tyendinaga	8th May, 1883	Vol. 2, Page 143
Walpole Island, mill and dock	26th December, 1883	Vol. 2, Page 145
Caradoc Reserve, part	28th September, 1883	Vol. 2, Page 146
Rice Lake Reserve, part	24th December, 1883	Vol. 2, Page 148
White Cloud Island, Colpoy's Bay	14th January, 1885	Vol. 2, Page 150
White Cloud Island, Colpoy's Bay	17th January, 1885	Vol. 2, Page 152
Anderdon Water lot	7th May, 1879	Vol. 2, Page 154
Anderdon Water lot	7th May, 1879	Vol. 2, Page 156
Rama, part	14th September, 1885	Vol. 2, Page 160
Caradoc, part	29th September, 1885	Vol. 2, Page 162

## Horse Island, Lake

Couchiching	4th November,	1885	Vol. 2, Page 164
Islands in Georgian Bay			
and Lake Huron	7th October,	1885	Vol. 2, Page 165
Islands in Georgian Bay			
and Lake Huron	15th October,	1885	Vol. 2, Page 167
Tyendinaga, part	12th May,	1885	Vol. 2, Page 168
Griffith's Island Georgian			
Bay	18th July,	1886	Vol. 2, Page 170
Griffith's Island Georgian			
Bay	5th July,	1886	Vol. 2, Page 171
Anderdon, part	16th December,	1886	Vol. 2, Page 192
Delaware part Grant, Ont.	11th June,	1887	Vol. 2, Page 205
Sarnia, Timber, part	10th July,	1885	Vol. 2, Page 207
Garden River, part	27th April,	1887	Vol. 2, Page 209
Walpole Island	5th January,	1888	Vol. 2, Page 221
Otonabee, Lease	24th October,	1887	Vol. 2, Page 225
Sarnia, Lease	6th May,	1885	Vol. 2, Page 227
Otonabee, Deed of Trust	6th July,	1888	Vol. 2, Page 244
Otonabee, Part	18th January,	1889	Vol. 2, Page 251
Heron Island, Lake			
Couchiching	27th December,	1888	Vol. 2, Page 253
Deseronto High School	17th May,	1889	Vol. 2, Page 256
Rat Portage, 38 B	6th June,	1889	Vol. 2, Page 258
Anderdon	26th June,	1889	Vol. 2, Page 261
Sarnia E. & H. Ry. Right of			
Way	4th June,	1889	Vol. 2, Page 262
Sarnia E. & H. Ry. Right of			
Way	4th June,	1889	Vol. 2, Page 264
Caradoc	31st July,	1889	Vol. 2, Page 267
White Fish River	18th March,	1890	Vol. 2, Page 279

Supplemental, not in volume, Supreme Court Judgement in N.W.

Angle Treaty Case, 12th February, 1909.

James Bay Treaty, 12th July, 1905.

Agreement 3rd July, 1905.



D. Disposal and Management of Surrendered Lands

By 1840 a large area in what is now southwestern Ontario had been ceded by the Indians to the Crown. Still at that late date there was a great divergence of opinion as to the manner in which lands surrendered by the Indians should be sold for their benefit. Indeed no one could quite decide who should be responsible for the disposal of these lands. The 1840 report on the Indian Department directed a good deal of attention to these questions. The following extract from that report gives some indication of the method by which land was disposed of, the officers involved and the problems inherent in that system.

"The disposal of lands surrendered by the Indians to be sold by the Crown for their benefit, is one of the most important services connected with the Indians' interest, and it is performed by the Surveyor General and Commissioner of Crown Lands. This duty the Chief Superintendent is of opinion ought to be transferred to the Indian Office, together with the rest; and zealous, doubtless for the interests of the Indians, he complains with some warmth of the unnecessary, and, as it certainly appears, expensive interposition of other Departments, and the consequent uneconomical administration of the Indians' affairs, He says: -

"There appears really a desire on the part of other Departments to participate in the onerous duties of the Indian Office. A clerk in the Receiver General's Office is made the Accountant of the Six Nations Indians. The Surveyor General surveys the Blocks of Indians' Lands designed to be sold; the Commissioner of Crown Lands has the selling of them, and is both Auctioneer and Accountant. The Surveyor General's Office has, I believe, a percentage or charge in some shape or other



for surveying - the Commissioner of Crown Lands, another for selling - for receiving the instalments - for keeping the accounts - in fact for doing what should be the most important part of the duty of the Chief Superintendent, and yet hitherto that Officer has not been allowed even a Clerk to assist him in the daily necessary duties of the Department, although sums of money have been taken and expended from the Indian Funds in percentages, and in rewarding the services of other Departments - Quite sufficient, and I believe more than sufficient, to have placed and maintained the Indian Office on a most respectable and efficient footing."

"The most serious consequences to the Indians have resulted from this system, and which is the more to be regretted as they are now irremediable. Vast sums which, from time to time, have been realized, from sales of Blocks of their Lands, (especially reserved for the use of them and their posterity,) instead of being invested in conformity to the trust, and the interest only paid over to the claimants, have, on the contrary, been from time to time divided and distributed among them, and are consequently lost to those for whose benefit and advantage they should have been safely invested, and inviolably preserved. Had the system of conducting the Indian Department been different from what it has been, and indeed to what it still is - had the Head of it, and he alone, been invested with certain discretionary powers, to propose and carry out measures, which, in his judgement, he thought beneficial, and been held responsible for those measures, as well as for the performance of the ordinary duties of his office, I am bold to say, that the interests of the Indians would have been better consulted."

"Upon certain points, so strongly animadverted upon by the Chief Superintendent, especially the sale of the Indians' lands, and the imputed want of economy connected therewith, your Committee examined the Commissioner of Crown Lands, who explains the nature of such sales, and gives very fully his reasons why the conduct thereof cannot, in his opinion, with any propriety, be removed from the Department of the Surveyor General, or any material alternation made therein.

"The principal sales of Indian lands, made by this Office, have been at auction, under the authority of His Excellency the Lieutenant Governor, for the time being. The terms of sale are: one-fourth of the purchase money down, or within a month, the remainder in three equal annual instalments with interest upon each instalment as it becomes due, or in other words until it is paid."

"It has not been found that regularity in making those payments has been the result of the credit given, nor has it hitherto been considered expedient to resort to measures more compulsory than a notice in the Gazette, calling upon the purchasers of Indian lands to comply with the terms of sale, the lands and improvements thereon being subject to the debt and accruing interest, no doubt can be entertained of the security as to final payment. It has been suggested to me, by persons of much experience, that great general benefit would arise, if Indian Lands were sold by private contract by the several Agents in their respective Districts, in like manner as Crown Lands, and under the same regulations, pursuant to the Act of the Provincial Parliament for the disposal of public lands, promulgated on the 17th May, 1838. I am not prepared to agree with this opinion to the extent expressed as regards Indian lands, for the following reasons: - In the first place, I am confident that if U.E. Militia, and Military claims, were received in payment for Indians' lands, as for Crown and Clergy, that they, in connection with the two former, would be of far larger amount than the receipts in money for Crown Lands, which would render it impossible for me to pay to the Indians the amount due to it by the Crown Fund, (now in arrears). I therefore think it impracticable at present, to receive these claims in payment of Indian Lands."

"2ndly. - The proceeds of Indian Lands are, I have no doubt, enhanced by the system of a credit sale, a higher price being obtained in consequence, without a loss of interest; and although I do not advocate a credit system for the disposal of Public Lands generally, yet, under the present distressed state of the monied interests in this Province, and in the neighboring Republic, I cannot see that any benefit would result publicly, or the particular service, by change at this crisis from a partial credit to a cash sale."

"It appears evident to me, however, that the power to sell by private contract, Lands upon which a fixed price has been placed, and its correctness as to the value tested by competition at Auction, where the lands have been withdrawn unsold, must have a beneficial tendency upon the interest particularly affected, inasmuch as no opportunity is lost of making sales to actual settlers, who are generally the class of persons likely to seek for such purchases from the resident Agents in the Districts where the lands are situated, and who by their occupation and improvement of the lands so bought, raise the value of the unsold portion, or at least make it saleable, though of inferior quality.

"That a system tending to facilitate the disposal of Public Lands, by giving the person desirous to settle an opportunity of at once purchasing, and laying out on the improvement of his land a portion of his capital, which is otherwise spent in support of his family, waiting upon periodical sales at Auction, as a public benefit, cannot be denied.

"The upset prices of land thus sold may be varied periodically, should circumstances call for increased value, the propriety of which may be at

once tested by a sale at Auction. In all sales of Public Lands made at present a deposit in money is paid down, and is liable to be forfeited should the purchase not be completed. This plan has been found completely to obviate an evil which gave rise to a very just complaint, namely, the bidding off of Public Lands by persons not having a bonafide desire to purchase, upon the speculation of selling the interest acquired by the bid at Auction to some person desiring to purchase the land."

"In regard to concentrating within the Indian Office, and subjecting, as far as may be, to its exclusive jurisdiction, all the affairs connected with the Indians, and the administration of their property, your Committee have carefully examined the reasons for and against the proposition of transferring to it the sale of Indian Lands, from the Office of Commissioner of Crown Lands.

"The reasons against this measure are strongly urged by the Commissioner of Crown Lands himself.

"It appears to me, he says, that the original or copies of the documents upon the authority of which the different surrenders have been made by the Indians to the Government, ought properly to be lodged in the Surveyor General's Department, which is the office of reference to every transaction connected with land, which affects the interests of the Government therein; and as no patents, under existing regulations, can issue but through that office, it ought to have amongst its records the power or authority under which the Crown undertakes to complete a grant. That the sales being made by Agents of the Department, and at their respective localities by private contract, is most beneficial to the Indians' interest, and that the concentration of the management of the sales of the different Public Lands in one Department, has a beneficial effect upon the whole, if properly managed. That thereby the expense to each interest is lessened - the facility to the public of obtaining general information upon local affairs increased - the power of adopting the principle upon which the sales are conducted, in accordance with the wishes and wants of the purchaser, is facilitated by the general correspondence on land affairs going through one channel, and whereas at present, Agents are appointed in every District for the disposal and management of Public Lands, arrangements can be made by one Head with greater propriety than by more. He is therefore of opinion, that the removal of documents connected with the Indian landed property to the Indian Office, would not be practicable nor beneficial to the interests of the Indians.

"Notwithstanding the respect due to the opinion above quoted, your Committee are convinced that it would essentially benefit the Indians' interests, without in any way interfering with the principle respecting the Surveyor General's Department, if the contracting for sales of such portions of the Indians' Reserves as are set apart for that purpose, were left entirely to the Chief Superintendent.

"His certificate of the sale and payment of the purchase money, would be a Warrant to the Surveyor General to issue the description and Patent just as a similar certificate from Colonel Talbot, or other person entrusted with the sale and settlement of Crown Lands. While, in respect of facility of search, there is no reason why the public might not have equal opportunity in the office of the Chief Superintendent as that of the Surveyor General or Commissioner of Crown Lands; and, on the other hand it is to be supposed that the Superintendent, from his constant intercourse with the Indians, will be possessed of more accurate information concerning the value and local peculiarities of each particular lot, than the Commissioner of Crown Lands, and feel greater interest in making advantageous agreement than can be expected from ordinary Agents for the sale of Wild Lands of the Crown; add to which, a portion at least of the heavy charges now attaching upon the purchase money of Indians' Lands would be saved, the business now so costly, forming part of the general services of the Indian Office.

"The charges against the proceeds of the sales of Indians' Lands, which are made by the Surveyor General's Department, are remonstrated against by the Chief Superintendent as onerous and unnecessary. They are explained by the Surveyor General; and so long as the sales are conducted by the Officer of that Department, and the services of the Clerks devoted to the Indians' Affairs, in common with the general business of the Government, it is not unreasonable that they should pay their proportion.

"The Surveyor General states the amount of remuneration to be less than the strict proportion, and your Committee, have no doubt that it is so; but they cannot divest themselves of the conviction, that the duties now done by the Clerks in the Surveyor General's Office, and paid for out of the Indians' Funds, as extra services, might be performed in the Indian Office without any such extra payments, and the Clerks of the Surveyor General left more uninterruptedly to their other duties.

"The sums, he says, debited by me for Clerks' salaries to the Indian Accounts, have been charged upon the principle that the Indians were, in justice, liable to a share of the office expenditure, proportional to the services rendered to them, based upon receipts of their Funds. The business of the Indians, as well as that of all other services in this Department, is transacted not by the appropriation of the time of one or more Clerks to its individual interests, but by the united efforts of all and each of the different Departments of the office which he fills. I had, on many occasions, answered applications for an allowance for extra work by the Clerks, by saying that I admitted the claim, and would take the first opportunity of making the allowance. This I did on Mr. Steers leaving the office; and the general Indian Fund being free of any charges upon it, I thought the sum might be justly charged against that Fund. The amount is so small as to bear no proportion whatever to the extra services of the



Clerks, as such services are remunerated in other Departments and it is given as remuneration for the services of three years, during almost the whole of which time the Clerks worked in the office long after official hours."

"In proportion of salaries to receipts paid by Crown Lands from 14th July, 1836, to 30th November, 1839, in round numbers, £1,708 - the whole Indians, including the Six Nations, should have paid £1,088. The stationery charged is not in greater proportion. The sum charged for Mr. Burwell, was for surveying Six Nations Indians' Lands, under entire tract, which was a very laborious undertaking, and has been finished with much accuracy and ability. I find, upon inquiry, that they belong to Mr. Turquand's accounts."129

In 1842 by Order-in-Council, the provisions of an Order-in-Council of November 27, 1840 were extended to all Indian lands in the Province. This Order-in-Council dealt with methods of disposal for both surrendered and unsurrendered land. This Order-in-Council can be found in this report in its entirety under the section "Protection of Indian lands" (See Part III, Section E).

In 1844 a new Commission was instructed to investigate the Affairs of the Indians in Canada. Again the disposal and management of the Indian lands was considered an item of predominant importance. The following is an extract from that report:

"The Management of the sales is conducted by the Commissioner of Crown Lands. The Lands on being surrendered are surveyed and opened for sale in the same manner as Crown Lands, except, that as in the case of the Clergy Reserve Lands, of which the sale is also conducted by the Commissioner of Crown Lands, the Government conceiving itself bound, as Trustee, to obtain the highest amount for the Land without reference to general public interests, has authorized a system of receiving payment in annual instalments, instead of requiring the immediate payment of the whole sum.

"The Commissioner of Crown Lands has received the payments which after deducting the expenses of management, he has either disbursed in the acquittal of warrants of the Governor for Indian services, or has paid over in cash or debentures to the Chief Superintendent. For some time past the receipts have not been sufficient to meet the charges for management, and the warrants presented for payment out of this fund, and consequently the Department is an advance to the Indian Department £2139. 17s. 2d. and of which £1989. 9s. 3d. is on account of the Six Nations Indians.

"Your Commissioners are of opinion, that the system of management hitherto observed, has been throughout defective and injurious to the interests of the Indians, and also they are unable to concur in the views of the Chief Superintendent, already noticed .... as to the sufficiency of these Lands to supply the place of the present Parliamentary grant, they consider that much may be done to render them more productive and available for the improvement of the Tribe.

"The Chief defects are:

"1st. Neither the Commissioners of Crown Lands, nor the Chief Superintendent, has hitherto kept any account of sales, which would show the amount accruing to each tribe.

The Six Nations alone have a separate account; all others are classed under the head of "Sundry Tribes". In 1842 upon a representation of the Chief Superintendent, accounts were prepared for the sales in each reserve, from which your Commissioners have endeavoured to prepare a statement of the sums received from each Tribe. Much pain has been bestowed upon this abstract, but as the particulars of several transactions have not been recorded, it can only be offered as the nearest approximate statement that can be furnished up to the date at which it was prepared.

"2nd. The cost of management has been excessive, and from the peculiar mode in which it is charged, has fallen most unequally upon the several Tribes. The business of the Indians, as well as that of all other services, in the offices of the Commissioner of Crown Lands and the Surveyor General, is transacted not by the appropriation of time of one or more Clerks to its individual interests, but by the united efforts of all and each in the different Departments of the office which he fills. Hence in 1841, when the late Lord Sydenham arranged the present Crown Land Department, he directed that the general disbursements of the office should be charged upon the several services conducted in it in the following proportions:

Crown Lands,	50 per cent.
Clergy Reserves,	40 per cent.
Indian Lands,	10 per cent.

Upon examining the data upon which this division was founded, it appears clear to your Commissioners, that the proportion for which the Indians are justly liable, does not exceed five per cent.

"But further, the charge is unequal and most oppressive in its operation. It has no relation to the service actually performed during the current year, nor the monies received. Hence in any single year, the charge for which the whole of the Indian sales are liable, may fall upon one or more Tribes, whose Lands may happen to be then productive, while in the next year, although the Lands of the other Tribes may be equally productive, the former derive no exemption on account of their payment in the previous year, but have to pay again in the same proportion as the others. Again, it may not unfrequently happen that the charge may exceed the whole receipts, as was the case in the half year ended December 1842, when the amount collected for the Six Nations was £145. 8s. 8d., and the charge against them as their proportion of the disbursement for the half year carried forward until there should be funds, was £221. 2s. 1d.

"To this charge, which only covers, the expenses of the central officers of this Department, is added 3 per cent, paid to District Agents for all collections made on their account, and also the whole expense of surveys and inspections. Within the first eighteen months after the present regulation came into force, the Indians were charged with £1492. 17s. 10d. currency, as their proportion of the current expenses and £1290. 10s. 6d. currency, for surveys and inspections, making a total sum of £2783. 8s. 4d. currency; while their receipts, during the same period, amounted only to £5479. 18s. 11d. currency."

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#### Recommendations

- "1. That a competent person be appointed to examine and report on the nature and extent of the property held by the several Tribes of the Indians throughout Canada; the amount and mode of payment annually due to them, and of arrears, the security for the due collection of the money, and the solvency of the Agents; and that measures be taken to collect such payments regularly for the future, and to secure the punctual rendering of annual accounts by each Agent, and the settlement of balances. As this service is entirely for the benefit of the Indian funds, they should bear the expense which may be incurred.
- "2. That the management of the survey and sales of all Indian Lands be conducted by the Surveyor General and Commissioner of Crown Lands.



- "3. That the accounts which your Commissioners have prepared of past sales be examined, audited, and passed in Council, so as to conclude and close past transactions.
- "4. That for the future distinct accounts be kept by the Commissioner of Crown Lands, for each of the Tribes separately interested in the sales.
- "5. That as the service rendered by the Crown Land Department in the sale of Indian Lands is of a variable amount, and as it bears a very small proportion to that performed on account of the Crown and Clergy Lands, an arrangement should be made by which the fair proportion to be paid by the Indian Lands might be raised by a per centage upon the monies actually received. By this means the Indians, and each Tribe separately, would bear their own proportion of the expense, and the remainder might then be divided between the Crown and Clergy Lands in such proportions as might appear equitable.
- "6. That if this commutation be impracticable, the per centage to be charged to the Indian Lands should be reduced from 10 to 5 per cent.
- "7. That due precaution be taken that the other charges for surveying, valuing, and local collections, be conducted with strict economy.
- "8. That all monies received by the Commissioner of Crown Lands be paid over to the Receiver General, and lodged in a fund separate from the Provincial Monies, "To the account of the Governor General in Trust for the Indians", and that they be credited by the Receiver General to the several Tribes entitled to them. That notice of such payments be given at the same time to the Indian Office, and that they be similarly entered in that Office.
- "9. That all monies received from the sale of Lands form a Capital Stock, to be invested by the Receiver General for the benefit of the several Tribes, who shall be entitled only to receive the annual interest, except under special circumstances, and the authority of an Order in Council.
- "10. That all investments be reported to the Governor General, and be recorded in the Indian Office.
- "11. That the balances in the hands of the Receiver General be not allowed to exceed £200, unless by the special authority of the Governor General upon a representation of the circumstances which may render it desirable to retain a larger balance.
- "12. That no money be drawn out of this Fund, except upon a warrant from the Indian Office, signed by the Governor General or the Civil Secretary - "by command".

- "13. That an account be rendered annually to the Governor-General, showing the receipts, disbursements and investments on account of each tribe, and that this account be countersigned by the Commissioner of Crown Lands.
- "14. That a copy of the accounts of each Tribe, taken from this document, be rendered annually to the Chiefs, and that a duplicate copy signed by them be filed in the Indian Office as an acknowledgement of acquittance.
- In Lower Canada the annual accounts of the Agents are read in Council, signed by the Chiefs, and then printed; but the latter practice, unless required by the Indians themselves, appears to create an unnecessary expense. In Upper Canada, also, the accounts of the Six Nations Indians are rendered by the Treasurer annually, and printed.
- "15. That all monies and debentures arising from landed sales and rents now in the hands of the Chief Superintendent, or of any other officer of the Indian Department, be transferred to the Receiver General, and paid into the Fund above proposed, and that in future all payments on account of the Indians be made to that latter Officer, whose acknowledgement alone shall be deemed a valid proof of receipt.
- "16. That the Chief Superintendent and any other Officer who may have received and disbursed monies on behalf of the Indians, be called upon to account for the same."<sup>130</sup>

In April of 1854 the Superintendent General of Indian Affairs recommended that a number of provisions found in the act entitled "An Act to amend the Law for the Sale and Settlement of the Public Lands." (16 Vict. Cap. 159) should be extended to apply to all Indian lands open for sale under the management of the Chief Superintendent of Indian Affairs. The suggestion was approved by an Order-in-Council on the 28th of April 1854. The Act was later repealed, while the provisions embraced in the sections were embodied in various sections of Cap. 22 of the Consolidated Statutes of Canada. These sections were also extended to Indian lands. The following are the applicable sections:

"XV. It shall be lawful for the Governor in Council from time to time, as he shall deem expedient, to declare that the provisions of this act, or any of them, shall extend and apply to the Indian lands under the management of the Chief Superintendent of Indian Affairs, and the said Chief Superintendent shall, in respect to the lands

so declared to be under the operation of this Act, have and exercise the same powers as the Commissioner of Crown Lands may have and exercise in respect to Crown Lands."

"VI. It shall be lawful for the Commissioner of Crown Lands to issue, under his hand and seal, to any person wishing to purchase and become a settler on any public land, an instrument in the form of a License of Occupation, and such settler may take and occupy the land therein mentioned and described, subject to the terms and conditions specified in such License, and may maintain actions or suits in Law or Equity against any wrongdoer or trespasser as fully and effectually as he could or might do under a Patent from the Crown, and the said License of Occupation shall be prima facie evidence of possession by the settler or his recognized Assignee for the purpose of any such action or suit; and every settler or his assignee, upon the fulfilment of the terms and conditions of his License, shall be entitled to a deed in fee for the land comprised therein, which deed shall, upon his application, be transmitted to him free of expense."

"XI. It shall be lawful for the Governor in Council, if he shall be satisfied that any such settler, or his recognized Assignee, has been guilty of fraud, or has violated any of the terms or conditions of his License of Occupation, to revoke such License, and resume the land therein mentioned and dispose of the said land as if such License has never been issued; and no claim in Equity by any settler, or the Assignee of any settler shall be pleadable in any Court against a forfeiture and revocation under this Act, but the settler shall be deemed and taken to be as against the Governor in Council, or Commissioner of Crown Lands, or any person claiming under the said Commissioner a mere tenant at will.

"XII. When any settler or other person shall refuse or neglect to deliver up possession of any land after the revocation by the Governor in Council of the License of Occupation as aforesaid, it shall be lawful for the Commissioner of Crown Lands to make or cause to be made an application to the County Judge of the County, or to a Circuit Judge in the Circuit in which the land lies, for and Order in the form of a Writ of Ejectment or of Habere facias possessionem; and the said Judge, upon proof to his satisfaction that the land in respect of which the application is made was held under a License of Occupation, and that such License has been revoked by the Governor in Council, shall and may grant an Order upon the settler or person, or persons in possession, to deliver up the same to the Commissioner of Crown Lands, or his Agent, and such order shall have the same force and effect as a Writ of Habere facias possessionem, and the Sheriff shall and may receive such order and execute the same in like manner as he would receive and execute the said Writ in an action of Ejectment or Petitory Action.

"XIII. In all cases where claims to locations of land have been forfeited under any Order in Council, or which may hereafter be declared



forfeited by Order in Council, it shall and may be lawful for the Crown to resume such land under this Act, in manner and form aforesaid; and such land when so resumed, shall be subject to the provisions of this act, and be disposed of accordingly; provided always, that the Governor in Council may, upon the special merits of any case, extend a right of preemption to the original locatee, his heirs or assignees, upon such terms and for such price as to him may seem just under the circumstances of the case, or when such forfeiture shall be discovered to have been on an erroneous report, then it shall be lawful to regrant such lot to the original locatee, his heirs or assigns."

"XVIII. Whenever a Patent has been or may hereafter be erroneously issued or which shall contain any clerical error, misnomer or wrong description of the land thereby granted or intended to be granted, the Governor in Council may, upon the Report of the Commissioner of Crown Lands, (there being no adverse claim) direct the defective Patent to be cancelled and a correct one to be issued in its stead, which said corrected Patent shall relate back to the date of the one so cancelled, and shall have the same legal effect as if it had been issued at the date of such cancelled Patent."

"XXVI. That in any application for a Patent by the heir, assignee or devisee of the original nominee of the Crown, it shall be lawful for the Commissioner of Crown Lands to receive proof in such manner as he may direct and require in support of any claim for a Patent when the original nominee is dead, and upon being satisfied that the claim has been equitably and justly established, to report the same to the Governor in Council, and if approved, the Patent may issue to the party named in the Order in Council founded on such report or to his assignee; any thing in the Act passed in the eighth year of Her Majesty's Reign, and chaptered eight, to the contrary notwithstanding; Provided always, that nothing in this clause contained shall limit the right of the party claiming a Patent to make his application at any time to the Commissioners appointed under the Act last cited."

"XXIX. All Licenses of Occupation, certificates or receipts heretofore granted by the Commissioner of Crown Lands, for money received by him on the Sale of Indian, Crown, School or Clergy Lands, or any location ticket, shall have the same force and effect, and shall ensure to the benefit of the party to whom the same was granted, or to his assignee, in the same manner and to the same extent, as the Instrument in the form of a License of Occupation mentioned in the sixth Section of this Act."

By 1856, the Imperial authorities had given notice that in 1860 the Imperial Grant for the management of Indian Affairs would cease. Accordingly, the Colonial officers set out to discuss the most advisable way of making the Indian lands defray all expenses connected with their

management. It was finally concluded that the most advisable mode of making the lands defray all expenses connected with their management, was to implement two changes: 1) in all sales of Indian lands 10% of the net proceeds of these sales should be set apart and carried to a separate fund to be called the land fund, and 2) lands not surrendered for sale or not to be sold would be assessed and 12% of their value would be contributed every seven years to the land fund.

In 1858 the Special Commissioners appointed to investigate Indian Affairs in Canada made a number of comments with respect to the above-mentioned plan. While approving in principle they also outlined the weaknesses inherent in the plan. The following is an extract from that report:

"One of the points to which our attention has been most particularly directed, is the practicability of defraying all the expenses connected with the management of the Indian Department out of the revenues of the tribes under its charge.

"Viewing, as we do, the Indian territory in the light of a private estate, rather than of a public domain we believe the principle to be a just one. Several schemes, based on this footing, have been mooted at intervals ever since 1837, if not from an earlier period. The difficulties, however, attendant on the practical working out of any such plan have hitherto prevented any of them from being carried into execution. We have given this subject our most earnest consideration, and we have arrived at the conclusion, that any such plan, if put in force at once, would be fraught with great hardship to the Indians. We have studied the various projects which have been devised with the object of rendering the Indian management self sustaining. Most of them are so vague as to amount to little more than a suggestion, that such a deduction of the Indian vote from the English estimates would be a proper economical measure. The first time that any scheme was elaborated in detail, seems to have been by Mr. Oliphant in this report of 1854.

"The weak points of this scheme have been so ably pointed out by Viscount Bury in his examination of it, that we need not here enter at large on the objections to which it is liable; we would only remark that if it was difficult on that footing to raise a revenue sufficient to meet the necessary expenditure, much more is it difficult at present, when the Secretary of State has expressed his opinion that the establishment on the Manitoulin

Island has no special claim to be provided for from Imperial funds. Mr. Oliphant had left the expenses connected with that settlement out of his calculations, with the idea that the British Government would meet the charges consequent upon its continuance. But it has been now decided that the Indian funds are to be saddled with this burden also, making on its present footing an additional sum of £3,855. to be defrayed from a revenue already insufficient for the purpose to which it was to be applied.

"In consequence of the increased rate of salaries to the Accountant and Chief Clerk in the office at Head Quarters, the expenditure under that head is larger than was contemplated by Mr. Oliphant. An addition has also been made to the allowance to the Deputy Receiver General which was not foreseen at the date of the report in question.

"We confess too that we are unable to see in what way Mr. Oliphant arrived at the sums included in his table given as "The Expenditure, not including the charge for presents on account of the Indian tribes of Upper Canada, for the year ending 31st March, 1854:

To Contingencies .....	£347	4	9	
Salaries .....	1,612	4	11	
Pensions .....	138	1	0	
Pensions to wounded Indians ...	15	3	4	
	£2,112	14	0	Stg.
	£2,570	9	1	Cy."

"We presume, though it is not very clear, that this is intended to represent the expenditure for Upper Canada only, and we see that the amount required for the support of the Head Quarters is intentionally not included. We do not find that the charges on the Imperial grant coincide with the statement of salaries given above, and if the expenditure of the Six Nations, from their own funds for the support of their officers be considered, Mr. Oliphant's figures are far below the real amount which we have to meet.

"The plan approved by Your Excellency in Council of levying a per centage on the proceeds of the property, we acknowledge to be perfectly equitable, but we fear that it will be for some time wholly inadequate to discharge the claims which would have to be made upon it.

"The Indian Revenues are derived from three sources:

- A. Perpetual Annuities for lands ceded to the Crown.
- B. Interest on the sales of land invested for the benefit of the Trust.
- C. Rents arising from lands leased to private Individuals.

"Besides these funds appertaining to particular tribes, there is another source of revenue common to them all, called:

- D. The General Fund.

"It is derived partly from the sale of land surrendered "for the benefit of Indians generally"; partly too from the proceeds of timber seized, as having been illegally cut. The sums realized from this course are only carried to this fund, when it is found that the tribe occupying the reserve on which the trespass was committed, were accessories to the offence. The principal source however of this fund, is the interest on the uninvested floating capital of Indian moneys in the hands of the Receiver General.

"We do not consider the annuities to be properly taxable, because the Crown is pledged to them, as payments "in perpetuity", and consequently any deduction from the amount so guaranteed would be a breach of faith towards the Indians. Besides, it has been stipulated in many of the treaties, that the sums payable under those instruments are to be calculated "per capita" and would thus vary with the strength of the tribe. No fixed amount could then be reckoned upon annually from this source. Thirdly. - The distribution of these moneys, per se, involves so little the necessity of an Indian department, that it would be hardly just to saddle with such a charge a sum already inadequate as an equivalent to what was bartered for it.

"We do not think that the lands leased to private individuals can be relied on as a source of permanent revenue, inasmuch as the payments of such rents is always more or less uncertain in this country. The rents themselves too may vary, which would introduce another element of fluctuation into the calculations. We except from this category the lands leased under the new system in the Townplot of Brooke, as these are nearly equivalent to a sale on a long credit, from which the Indians receive the full interest at once. 1/10 of that interest may therefore be applied to the general management. There remain then the invested Land Funds and the General Fund. The former of these funds amounts according to the last returns to \$1,019,699.  
25/100

"The rate proposed to be levied from this sum is 10 per cent, a rate which we believe to be as high as is consistent with justice towards the Trust concerned. It is true that this percentage is double to what is usually exacted in this country for the management of private estates; but it must be remembered that the duties of the officers of the Indian Department are not simply those of agents for the sale and management of the land under their control.

"They are expected to act also as guardians of the Trust which has been confided to the Crown. It is their business to check any trespass, and to watch vigilantly that the enactments prohibiting the sale of spirituous liquors to the Indians are not violated. They must also devote much of their time to giving advice and assistance in cases when they are applied to by individuals of the Tribes under their superintendence.

"It is but just that these considerations should be weighed in fixing the amount to be deducted for the



cost of management from the Indian funds; we therefore unhesitatingly assent to the rate recommended by the Order in Council."

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"The Superintendent General is assisted at Head Quarters by a Chief Clerk and an Accountant; The Former of these Officers performs the usual duties of a Corresponding Clerk, drafts the routine letters, and files all documents which come into the office; His salary is at present \$1,200. The duties of the latter should be properly restricted to his own branch exclusively, namely; the keeping of the various accounts opened with the different Tribes, with the Commissariat, and on account of the General Fund. The accounts with the Tribes include those for their Annuities, as well as their land funds. These latter again are twofold in their character, embracing not only the balance sheets, with the Tribes, but also the accounts with the purchasers of all the sales of Indian Lands; The accountant has to keep all these, examine the payments, transfers, and assignments, and compute the interest, and when the land is paid for in full, he has to make out the reference to the Crown Land Department for the Patent Deed. He is also charged with making out all the warrants for the Governor General's signature which are drawn upon Indian Moneys. He also conducts part of the correspondence relating to land matters, and examines the accounts and Pay Lists of the Local Superintendents. The accountant gives security to the amount of \$8,000.

"As no money for land is properly receivable by the Indian Department under the present system, the Deputy Receiver General receives a salary of \$400. from the Indian funds, for the services rendered by him in keeping the books of this branch in the Receiver General's Office."131

In 1860 by virtue of an act entitled "An Act respecting the Management of the Indian Lands and Property", the Commissioner at Crown Lands became the Chief Superintendent of Indian Affairs. Besides making provision for surrenders the act also provided for the extension of certain laws to Indian lands. As well it provided for the investment of moneys arising from such lands. Essentially nothing was terribly new. The only great change under the Commissioner of Crown Lands was an improvement in the records and Financial accounts of Indian affairs. This was made possible because of a strengthened central office and the ability of that office to work with the surveys, sales and timber branches of the Crown Lands Department.132

E. Protection of Indian Lands

The problem of dealing with intruders upon Indian lands was a subject which for many years occupied the attention of the Government. On all the Indians reservations these people caused considerable perplexity. Perhaps the most troublesome to the government were those ignorant settlers who had purchased supposed rights from the Indians themselves and who had occupied that land for a number of years.<sup>133</sup> Although it was recognized that an unqualified dispossession of these lands might not be an act of justice the government had attempted with all possible means available to prevent such intrusions. For years the Government had been careful in issuing and distributing in all districts, Proclamations emphatically cautioning all persons against trespassing or making such illegal contracts with Indians either collectively or separately and warning all parties thereto that such contracts would never be confirmed or recognized. This particularly applied to the Grand River Tract inhabited by the Six Nation Indians. This tract was more susceptible to the problem because of two circumstances - first the vast extent and exceeding desirableness of the land and secondly from the difficulties which arose out of those numerous alienations in the form of leases for 999 years granted by Joseph Brant under the sanction of the Government for the benefit of the Indians. After the disposal of all the bonafide leases from Brant and the derivative titles thereunder, it was found that vast numbers of persons (not distinguishing or pretending not to distinguish between leases, which, being authorized by the Government established an equitable claim against the Crown and pretended lease, from particular individual Indians---) were and had for years been in possession of some of the finest locations within this tract.<sup>134</sup>

In September of 1840 the Executive Council of Upper Canada met to discuss and make recommendations concerning an equitable solution to the problem of intrusion on the Grand River Tract. The following is an extract from that council meeting:

"To His Excellency Sir George Arthur, K.C.B.

"May it please Your Excellency, The Executive Council have read and carefully considered the Report of John W. Gwynne, Esqre. employed by the Superintendent General of Indian Affairs, to inspect the territory assigned to the Six Nations upon the Grand River.

"And as regards the expectations of intruders upon the Indian Lands, and the encouragement which they are said to have received from Government or its functionaries to take possession with a view of purchase whenever the land should be opened for sale; the Council without pretending to define, or account for the expectations said to have been held out by Lieutenant Governor Sir John Colborne, respectfully disclaim all and every act of this nature since the arrival of Sir Francis Head.

"And with respect to the cessation of regular sales of Indian Land during the years 1838, 37, 38, 39 and the present year, the Council beg to remark that the state of the province from political agitation, cessation of emigration, commercial and monetary distress - Rebellion and Invasion - has been such, that it would have been extremely unwise for the Government to force sales, when it was well known that property in the hands of private individuals, was unsaleable, and when sales to any considerable extent must have been completed to the great deterioration of the property held by the Government in strict trust for the benefit of the Indian Tribes.

"The number of intruders upon the Indian Lands without authority and the desperate recklessness of men who risked all they had as well as their future industry, on the faith of illegal agreements with Indians, or on the prospect of their being permitted to purchase on favourable terms, shows most clearly the impracticability of preserving lands from intrusion in favorable situations and the necessity of disposing of the lands according to some simple mode so soon as it can be done for the benefit of the trust.

"The subject before the Council naturally divides itself into two branches - first as regards the lands surrendered for the purposes of sale, and secondly as related to the unsurrendered Territory.

"And the Council are respectfully of opinion that the surrendered lands should be brought into the Market without delay.

"The Council most entirely concur in the opinion expressed by Mr. Gwynne against the system of

auction sales. In all cases within the knowledge of the Council they have produced combinations amongst purchasers, impeded settlement, and thrown difficulties in the way of acquiring lands without in the slightest degree producing the intended effect of equal competition, or adding to the proceeds of land sold in this manner.

"The Council have disclaimed all right arising from settlement, or compact with the officers, or pretended functionaries of the Government and having expressed a very decided opinion against sales of Indian Lands by auction, think that it will not be necessary to enter into any nicety of distinction between one claimant to the surrendered land and another; and without reference and refusing to have reference to any peculiar circumstances, regarding supposed understandings which in no event ought to affect the Indian Interests injuriously - they are disposed to recommend:

"1st. That a competent inspector be immediately directed to visit and set a value upon each lot in the surrendered tract.

"2nd. That this valuation should be the full value of the land (without improvements) at the present time without any reference to former upset prices, or alleged expectations on the part of - claimants; the value being the present value in the improved circumstances of the Tract - only excepting the value of improvements on the individual lot valued.

"3rd. That buildings and improvements be separately valued, not at any supposed rate of cost, but at the minimum rate which they are supposed to add to the value of each lot or half lot in the market.

"4th. That all the lots be open for sale to the first applicant at the price set upon the same by the appraiser after the same shall have been approved by the Superintendent General and by Order in Council.

"5th. That all persons reported as resident settlers, up to the date of the present Order in Council be considered as the first applicants and entitled to preemption for the space of six calendar months hereafter, at the rate fixed upon the land without paying for the value of improvements.

"6th. That if such persons having the right of preemption aforesaid shall not within the time allowed pay the first Instalment and complete the purchase thereby, the land shall be considered open for sale to the first applicant who pays the first instalment on the land with the whole value appraised for the improvements.

"7th. That the sums so received for improvements shall be paid to the persons equitably entitled to the same in Indian Lands at the appraised value or not at all.



"8th. And for the purpose of preventing timber speculations that 1/3 of the value of the land (with the whole value assessed upon the improvements) be paid down without which payment the applicant shall be considered as having no claim whatever. The remaining instalments amounting to 2/3rd of the purchase money may be made payable in four annual instalments with interest.

"If these stipulations be rigidly and faithfully carried into effect, it is plain the trust funds cannot suffer, as the full marketable value will be placed upon the land. And speculators cannot find it in their interest to purchase land at a price which it is only worth in the hands of the actual settler, and therefore there can be no necessity for complicated limitations to purchases - stipulations of settlement (with which the fund has nothing to do) or for the expensive surveillance contemplated by Mr. Gwynne's Report, or which to say the least would be necessary to carry it into full effect.

"The Council respectfully conceive that no further regulations are necessary for the disposal of the surrendered lands, unless they should be found to interfere with the canal, in which case lands should be carefully reserved and marked as such before any sales are permitted to take place.

"And as regards the unsurrendered lands the Council are of opinion that very great difficulties will be found in any medium course between the expulsion of all intruders, or non interference. Experience has shown that with all the anxiety to do justice, possessed by the Government; and with all the care exercised to prevent injury to Indian Interests, and reasons for complaint amongst claimants, the interference of the Indians themselves, continually have created new difficulties to which there seems to be no end, and the Government is expected to compromise its own character by adjudging what is rightly and wisely recommended by the Indians, or what on the other hand may be capriciously or corruptly counselled by them. Perhaps there can be no remedy found for the continuance of this unsatisfactory and embarrassing state of affairs - while the lands remain general property under circumstances in which, it is no reproach to the Indians to say that they cannot manage the estate for the general interests of the Tribes.

"The Council think that it would be very much for the interests of the Indians to surrender the whole Tract with the exception of such part as they may choose to occupy as a concentrated body - so that the same may be disposed of by Government, in which case the few simple rules already applied to the Townships already surrendered would apply to the new surrender.

"The Council have insuperable objections to the leasing system proposed by Mr. Gwynne - the reasons for which objections they think are obvious but not necessary to be entered into unless Your Excellency should desire them to be fully set forth.

"As respects the Indian Investment in the Stock of the Navigation Company of the Grand River, although the Council feel that they never would or could have advised the investment of Indian funds in a commercial speculation - yet these funds are involved to the amount of three fourths of the Stock, the Indian interests are not represented in the direction, and there is no resource open but the payment of Instalments on the Stock, until the whole shall be called in.

"For these reasons the Council are of opinion that most probably the purchase of the whole outstanding stock by the Indians would be for them a beneficial operation as they will unquestionably be in funds to complete the navigation and to make it profitable if it ever can become so, and at all events the affairs of the Company can thereafter be managed with an exclusive view to the interests of the Indians.

"Before the operation which would in itself imply an intention of completing the navigation, the Council would recommend an inspection and report upon the work and its probable results, by a competent and disinterested Engineer, and if Mr. Killaby can be induced to undertake the task, the Council would prefer his report on this point.

"The Council will be prepared to enter into detail if it should be required on any division of the subject before them; but they have adopted general principles of action, after much consideration and they conceive it useless to enter further into detail unless the principles humbly recommended by them shall meet with approval.

"The Council conclude by disclaiming any intention even the most remote of inducing the Indians to remove from the Grand River Settlement - on the contrary, they wish to see the Indians collected with as much land as they can beneficially occupy, and to see the Funds of the Tribes made available for the comforts of their members, and for the purpose of placing as far as possible on terms of equality with white settlers and with all the advantage of the paternal care and favour of the Government".\*135

In 1844 the Commissioners appointed to report on the Affairs of the Indians of Canada directed their attention to the notion of protecting the Indian reserves from intruders. They were of the belief that the complete protection of Indian property could only be realized by assimilating the Indians with people accustomed from infancy to the idea of separate and individually appropriated property, where each is under the law the

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\* On the 28th of November, 1854, by Order-in-Council, this minute was extended to apply to all Indian lands.

protector of his own possessions. However until such an ideal was realized they felt it necessary to adopt some plan relating to squatters.<sup>136</sup> As such they adopted the plan first suggested by the earlier Indian Commission in 1840. Squatters were to be divided into two groups - first, those who although in illegal possession of the land were unobjectionable occupants, and had improved the land by clearing, cultivating, and building on it; and secondly those whose illegal possession was accompanied by circumstances of still more objectionable nature such as cutting the timber, selling liquors and plundering and encouraging vice among the Indians. The first, they felt were entitled to some consideration. They would be allowed to buy their land at a fixed Government price. The second class they considered as not entitled to any consideration. It was determined that the Commissioners appointed under the Act for the Protection of Indian reserves should be instructed promptly to enforce the law against this second group of squatters.<sup>137</sup>

In concluding their report the Commissioners expressed doubt about the possibility of excluding whites entirely from the reserves. In this assessment they were



far-seeing. Throughout the years following the report there was no lack of additional suggestions, legislation\* and rules, but various obstacles appear to have arisen which prevented those benevolent and judicious projects from being carried out properly.<sup>138</sup>

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\* Note the relevant provisions in such pieces of Legislation as An Act for the Protection of the lands of the Crown in this Province from trespass and injury. S.U.C. 1839, c. 15, 2 Vict., An Act to Explain and Amend an Act of the Parliament of the late province of Upper Canada passed in the second year of Her Majesty's reign entitled "An Act for the protection of the lands of the Crown in this Province from trespass and injury and to make further provision for that purpose. S.C. 1849, c. 9, 12 Vict. An Act for the Protection of the Indians in Upper Canada from Imposition and the property occupied or enjoyed by them from trespass and injury. S.C. 1850, c. 74, 13 & 14 Vict. An Act to encourage the gradual Civilization of the Indian Tribes in this Province and to amend the Laws respecting Indians. S.C. 1857, c. 26, 20 Vict. An Act to Prevent trespasses to Public and Indian Lands. C.S.U.C. 1859, c. 81, 22 Vict. An Act Respecting the Management of the Indian Lands and Property. S.C. 1860, c. 151, 23 Vict.

F. Indian Land Claims in Canada - A Legal Background\*

Until recent years, Indian land claims were little known to the general public. Still their genesis goes back to the early years of the European settlement of this continent. In the early colonization of Canada the title of the original occupants of the country, the Indians, was largely unrecognized. Under English law, all ungranted lands in a settled colony belong to the Crown.<sup>139</sup> The French appear to have had a somewhat similar legal regime when Canada was first settled.<sup>140</sup> Consequently in 1763 when France surrendered to Great Britain all her rights over Canada, full title to the territory ceded became vested in the British monarch.<sup>141</sup> However, attempts to take the land without regard for the native interest led to frequent wars and uprisings. As a result, over time, the British developed a more liberal and humane method of dealing with the Indians, which included the recognition of the Indian title.

The Indian title is an interest in lands owned by the Crown by virtue of the settlement or conquest of this country. It takes its root in the policy of the British government of protecting the property and possessions of the Indians. The most important official recognition of this title was the Royal Proclamation of 1763 which was largely intended to organize the new territories acquired following the Seven Years War.<sup>142</sup> Lands were also reserved to the Indians under various deeds as well as grants made by the

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\* Note: The author did not have access to B. Slattery, The Land Rights of Indigenous Canadian People, as Affected by the Crown's Acquisition of Their Territories. PhD. Thesis, 1979, or The Hamlet of Baker Lake et al v. The Minister of Indian Affairs and Northern Development et al, F.C.T.D. Decision given November 15, 1979, in preparing this Chapter.

French before the Conquest. However there has been a strong tendency to interpret the Indian title in the same manner as under the Proclamation whatever its legal source. Thus an understanding of this document is essential.

As was established by the Privy Council in the case of Campbell v. Hall<sup>143</sup> the Proclamation has the force of a statute, for the king has the power to legislate for the newly conquered country by virtue of his prerogative. Under the Proclamation a large tract of land was reserved "for the present" for the king's Indian allies.<sup>144</sup> In summary the Proclamation makes the following provisions regarding the land it reserves for the Indians: the Indians are to be left undisturbed in the possession of such lands, the colonial governors were restricted from granting these lands, private persons were forbidden from settling on or purchasing them, the lands could only be transferred to the Crown "at some public meeting or assembly of the said Indians" to be held for that purpose by the Governor where the land was located.<sup>145</sup>

#### When Proclamation Applied

It is difficult to describe with precision the lands reserved for the Indians under the Proclamation of 1763. The Proclamation conveys to the Indians all the lands and Territories "not included within the limits of the colonies of Quebec and East and West Florida, or within those lands granted to the Hudson's Bay Company, and all the territories lying to the westward of the sources of the rivers that fall into the Atlantic Ocean from the West and Northwest".<sup>146</sup> From this and earlier documents on which the Proclamation was based, it would seem that the lands reserved cover a strip stretching from Labrador on the east, the colony of Quebec on the south and the lands

of the Hudson's Bay Company on the north and northwest. These Indian lands then extended around the Great Lakes and finally southward into the United States.<sup>147</sup>

In all likelihood this was all the land comprehended within the document. The Proclamation dealt only with those lands surrendered by the Treaty of Paris, the Indians referred to were those "with whom we are connected". i.e., the Six Nations occupying the Great Lakes region and separate provision was made for the Maritime Provinces. The language of the Proclamation, however, is imprecise and there have been some judicial statements, notably that of Mr. Justice Hall of the Supreme Court of Canada that the "proclamation followed the flag", i.e., it moved wherever British settlers moved.<sup>148</sup> This view, however, has not been the predominant one in Canada and seems to have been derived from American precedents.

Prior to Confederation, some large tracts of land reserved by the Proclamation were surrendered by the Indians. The main part, however, still remained subject to the Proclamation. Section 91 (24) of the B.N.A. Act assigns exclusive legislative responsibility over "Indians and Lands reserved for the Indians" to the Federal Government. However, section 109 reserves to the provinces all ungranted lands and minerals, subject to any existing trusts or interests.<sup>149</sup> These two provisions were to shape the roles of the Federal Government and the provinces in relation to Indian lands.

#### Nature of Title

The nature of the Indian title and the respective rights of the Federal Government and the provinces were most clearly defined in the Privy Council case of St. Catherine's Mining

and Lumber Co. v. Reg. in 1889. Here the Indian title was described as "a personal and usufructuary right, dependent upon the good will of the Sovereign".<sup>150</sup> The Crown was vested with a substantial and paramount estate underlying the Indian title which became a plenum dominum whenever that title was surrendered or otherwise extinguished".<sup>151</sup> The exact nature of this usufructuary right has never been fully described. But various definitions of usufruct given in Native Rights in Canada gives some idea of the nature of the Indian right. These definitions can be summarized in part as follows:

"A usufruct is "a right to use property belonging to someone else, and to enjoy its fruits and profits without in any way impairing or affecting the substance of the thing itself". Its chief function was to provide maintenance for an individual person... It was a personal right, in that it ended with the death of the holder. The right was inalienable: the holder could not transfer it. It was a real right, a right in property...<sup>152</sup>

The use that the Indians may make of the land seems to be related to the traditional Indian habits and mode of life.<sup>153</sup> This title is not an ordinary ownership; the Indians are not authorized to sell, lease or otherwise dispose of their interest except to the Crown.<sup>154</sup> The Crown then, has the paramount title underlying the Indian title.

The administration and control of land reserved under the Proclamation is in the Federal Government. This was also settled by the St. Catherine's Milling case. The case also determined the question whether the Federal Government or the provinces had the beneficial interest in the Crown's title. The Privy Council decided that the provinces were

entitled to Indian lands by virtue of section 109 of the B.N.A. Act.

In summary, "the underlying title to lands reserved for the Indians under the proclamation is vested in the Crown for the benefit of the province". The Federal Government is empowered to accept the surrender of that title, but once ceded, the province has the complete beneficial interest in the lands.<sup>155</sup> Today, however, by virtue of various federal - provincial agreements, in most provinces (except Quebec) the Federal Government has the beneficial title in surrendered Indian lands or power to sell or otherwise dispose of it and use the proceeds for the benefit of the Indians.

The lands reserved under the 1763 Proclamation comprise only a portion of the territory reserved for the Indians in Canada. The Proclamation does not apply to the territory then held by the Hudson's Bay Company, or to the area comprising the old colony of Quebec; nor did it apply to the Maritimes or Newfoundland. Whether the document applied to British Columbia and the portion of the territories outside the Hudson's Bay lands is very much an open question. In areas not covered by the Proclamation reserves were established under various other instruments, statutes, deeds and grants. In addition there have been claims that an aboriginal right existed from immemorial use apart from grant, the Proclamation simply asserting the right. This was the issue in the 1970 Calder case dealing with the claim of the Nishga Indians of British Columbia, when the view was accepted by three of seven judges of the Supreme Court of Canada.<sup>156</sup> To date, however, in most cases where there has been judicial acceptance of an Indian land claim, there was some kind of grant giving the Indians rights to the land.



There has been a strong tendency on the part of the courts to recognize an intention to create an Indian title in areas not settled by the white man, and to interpret such titles in the same manner as under the Proclamation. This can be seen from their treatment of Indian titles in the former Hudson's Bay Company territories.

These lands comprised the vast territories drained by the rivers flowing into Hudson's Bay, including what is now northern Ontario and Quebec, the Prairie Provinces, and much of the Territories. As mentioned, these lands were specifically excluded from those reserved by the Proclamation. But under the constitutional instrument by which Rupert's Land and the Northwest Territories were ceded to Canada in 1870, it was provided that "claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government..." Under this, the courts have held that the Canadian Government legally obligated itself to compensate the natives for lands in this territory required for settlement in the same manner as under the Proclamation. The attitude of the courts is well expressed in the Alberta case of R v. Wesley as follows:

"...the Indian inhabitants of these Western Plains were deemed to have or at least treated by the Crown as having rights, titles and privileges of the same kind and character as those enjoyed by those Indians whose rights were considered in the St. Catherine's Milling case because it is a matter of common knowledge that the Dominion has made treaties with all of the Indian tribes of the North West within the fertile belt in each of which they have given recognition to and provided for the surrender and extinguishment of the Indian title."<sup>157</sup>

A similar line of thought has been adopted in respect of lands reserved under other instruments in various parts of the country, in New Brunswick<sup>158</sup>, Quebec and Ontario, and there are pronouncements that a similar situation prevailed in British Columbia and the Territories.<sup>159</sup>

#### Surrender by Treaties

As mentioned in the Proclamation of 1763, the Indians may surrender their title to the Crown. Many cessions were concluded under a network of treaties. The impetus was usually the desire on the part of the Government to free land for settlement and development.

Before Confederation, treaties had been made covering much of what is now southern Ontario.<sup>160</sup> This process was continued after Confederation. Between 1870 and 1921 eleven treaties were concluded comprising territories covered by the Proclamation and various other instruments so that today cessions have been made in respect of virtually all of Ontario, the Prairie Provinces, the westerly portions of the Northwest Territories comprising nearly half of the mainland, the southwest corner of the Yukon, and the Northeastern corner of British Columbia and some parts of Vancouver Island. In those areas the only lands not ceded are the ordinary reserves.

In return for these surrenders the Indians were granted compensation, usually consisting of 1) once-for-all settlements, 2) annuities 3) reserves and 4) guarantees concerning hunting and fishing.

It should be noted that the land rights of native people have been by no means treated uniformly. For instance, it has been strongly argued that in treaties concluded prior

to Confederation, inadequate compensation was given. With respect to both Treaty 8 (covering the Athabaska district) and Treaty 11 (covering the MacKenzie delta) questions have arisen as to the actual cession of native land rights.

It has been declared in a number of cases, notably Dominion of Canada v. Province of Ontario<sup>161</sup> that lump sum payments and annuities promised in consideration of a surrender of Indian lands are the responsibility of the Federal Government, but since the provinces are the beneficiaries of the land, federal-provincial agreements have been entered into under which the provinces have assumed some of these responsibilities. Claims can flow from the non-fulfillment of such obligations, as occurred for example in respect of a claim for ammunition or compensation by Alberta Indians under the terms of a treaty.

In some treaties there has in effect been a reservation of a part of the usufructuary right. For example in the treaty discussed in the St. Catherine's case there is a provision that "the Indians are to have the right to preserve their avocation of hunting and fishing throughout the surrendered territory, with the exception of those portions of it which may from time to time, be required or taken up for settlement, mining, lumbering or other purposes". Many other treaties have such provisions. It is certainly conceivable that such qualified privileges of hunting and fishing are unsurrendered portions of the usufructuary right of the Indian lands reserved for them, and consequently that it is a trust or interest other than

that of the province in such land. In any event the provinces are bound to respect these rights by virtue of the Indian Act.\*

#### The Situation in Ontario and Quebec

In Ontario and Quebec the Indian lands are of several types. The Old Colony of Quebec was specifically excepted from the Proclamation of 1763. In the area which comprised the former colony, some reserves arise from pre-Confederation grants, still others were formed by grants stemming from the governor's executive power. By the Quebec Act of 1774 part of the lands covered by the Proclamation were added to the colony.

In 1791 the colony of Quebec was divided into Upper and Lower Canada, which later became the province of Ontario and Quebec. As a result, Indian land in these two provinces consist of those lands covered by the Proclamation and others owing their existence to other instruments. The situation was made more complex by boundary extensions. In 1898 Quebec's northern boundary was extended by statute to the Eastmain River. Then the 1912 Boundary Extension Acts<sup>162</sup> added to Ontario and Quebec further land covered by the Proclamation in addition to former Hudson's Bay land. In these areas, it was provided that the governments of the provinces would recognize the rights of native people in this territory and

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\* Note: The author did not have access to Pawis, McGregor et al v. The Queen, F.C.T.D. Decision given 20 July 1979 at the time of preparing this report.

"will obtain surrenders of such rights in the same manner as the Government of Canada has heretofore recognized such rights and has obtained surrender thereof and the said province shall bear and satisfy all charges and expenditures in connection with or arising out of such surrenders."<sup>163</sup>

Ontario has, as already mentioned, discharged its responsibilities under the terms of the Ontario Boundaries Extension Act. Quebec on the other hand, did not fulfill the stipulation of the Act in recognizing and obtaining surrenders of the rights of its native inhabitants. The 1971 Dorion Commission made that clear and acknowledged such an obligation on the part of the province.

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