

THE DORION REPORT AND ITS IMPLICATIONS
FOR THE ESKIMOS OF NEW QUEBEC

(Translation)

by

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November 1972.

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Introduction

In the last few months a whole sequence of events has developed with regard to the future status of native Indians and Eskimos living in the province of Quebec. On February 24, 1971, at a press conference held in Quebec City, the leaders of 17 Eskimo community councils in New Quebec agreed in principle to a Quebec government proposal for the creation of a regional government that would enable them to work out, in co-operation with the Quebec government, the pattern of their political future (LE DEVOIR, Feb. 25, 1971). A few days earlier, Mr. Henri Dorion, chairman of the Commission of Inquiry on the Integrity of the Quebec Territory, had delivered to the Premier the six-volume fourth instalment of the Commission's report, dealing with the "Indian domain". The day after the report came out, the Quebec Indians Association, (to which group must be added some 3,500 New Quebec Eskimos who, for the purpose of their claims, the Indians identify as part of their own group) let it be known, through its secretary treasurer, that the association was satisfied with part of the report (that recognizing to Indians certain rights to the

major part of Quebec territory) but rejected outright that part of the report which dealt with their political future (LA PRESSE, March 27, 1971).

A few months before the filing of the report, the Quebec Department of Natural Resources had set up a Board of negotiation of Indian Affairs, appointing as its chairman the former secretary of the Dorion Commission (LE SOLEIL, Aug. 13, 1970). Last March, according to Mr. Max Gros-Louis, the Quebec premier recognized the Quebec Indians Association as privileged spokesmen in any negotiations with the provincial government in matters relating to Quebec Indians (LE DROIT, March 3, 1971).

A first negotiation meeting between representatives of the Quebec government and the Indians took place September 27, 1971 (LE DEVOIR, Sept. 30, 1971). Meanwhile the Quebec premier announced the launching of the James Bay project, as a result of which a fairly large number of Indians would leave the area. The Eskimos of New Quebec are likewise keenly interested in this whole question of their territorial rights. In fact, at a conference of the Canadian Eskimo Association (Innuït Tapirisat of Canada) held last August at Pangnirtung, N.W.T., the members decided that a study in depth be undertaken of this matter of territorial rights. Only a few days ago (September 1972) the newspaper CANADA NORTH OF THE 60th announced that the Department of Indian Affairs and Northern Development had made a \$100,000 grant to the Innuït Tapirisat of Canada for research into Eskimo matters, particularly into this question of territorial rights.

Under the circumstances it becomes apparent that the Dorion Report, because of its findings and recommendations, rates as a significant factor in the whole picture, hence the utmost importance that its implications be made known both to

the Quebec Eskimo people and to the various governments concerned.

Mandate of the Dorion Commission

In 1966 the province of Quebec had to deal with boundary problems either with the federal administration or with neighbouring provinces regarding such matters as the national Capital, the Quebec-Labrador boundary lines, or the ownership of Quebec offshore islands. So was it that, at that time, in order to secure legal and other information on those matters, and to properly determine its territorial rights, the Quebec government, on November 24, 1966, passed an order in council establishing the Commission of Inquiry on the Integrity of Quebec Territory, whose mandate was as follows:

"collect all relevant data, carry out all necessary research, gather suggestions from groups, specialists or the general public, and make such recommendations as it shall deem advisable to enable the government to ensure the integrity of the Quebec territory",

On page 7, Vol. 4.1, of its report the Commission points out that, in addition to being instructed to study the outer dimensions of the territory (the boundary problems), its mandate prescribed it to look into the territory's inside dimensions, in other words the problems of allocating jurisdictions within the Quebec territory. Among its other assignments, the Commission was asked to consider the problem of federal properties and territorial rights within the province of Quebec. It was for these reasons that the Commission had to report on problems arising out of the presence of Indian reservations on Quebec Land, inasmuch as the federal government has territorial rights within the province. At the same time,

the Commission states its awareness of problems connected with the possible existence of territorial rights of Indian or of Eskimo aborigines to certain parts of Quebec territory.

On reading the Commission's mandate, and the Commissioners' own interpretation of it, we find that their reasons for looking into the matter of the territorial rights of Indians and Eskimos was the fact that the federal government has territorial rights over parts of Quebec territory. Now what the Commission was primarily required to do was to study the territorial rights of the federal government and not those of the aborigines. We are of course perfectly aware that the Commission could hardly by-pass the subject of the territorial rights of the Indians, for it is in a way coupled with that of the territorial rights of the federal government. It should be observed that the Commission repeatedly deplores the limited scope of its mandate. However, the Commission saw fit to go far beyond an exclusive inquiry into the territorial rights of Indians and also went into the matter of the territorial rights of Eskimos. Now nothing justified the Dorion Commission's venture into that sector for, if we accept its view, as far as the Eskimos are concerned the federal government has no territorial rights in the province of Quebec but solely a justidictional right as conferred by the Supreme Court of Canada in 1939.

Under the Commission's mandate, the matter of federal territorial rights was considered as a problem of intergovernmental (Canada-Quebec) relations, but the Commission ran against another problem closely related to the first, i.e. that of the territorial rights of Indians. The first had obvious repercussions upon the second, but the latter could not be considered without due regard for other

dimensions, including socio-economic factors. The Commission recognizes that a significant part of the "Indian problem" was beyond its compass and, in order to make up in some measure for the inadequacy of its mandate, it declared itself forces to revert to the "Indian problem" in terms of the contemplated solutions. Those solutions (recommendations), it says, were sought within the wider framework of an integrated and more all-embracing policy. We shall again dwell upon this point when considering the report's recommendations and elaborate then on what we believe to be one of the major errors of the Commission.

Before going any further, it should be clearly stated that the subject which the Dorion Commission had to consider was not the same as that of the Hawthorn-Tremblay Commission. The latter, at the request of the Department of Indian Affairs and Northern Development, was required to study the social, educational and economic status of Canadian Indians, whereas the Dorion Commission's mandate, as stated in its own interpretation of that mandate, was limited to an inquiry into the territorial rights of Indians.

Eskimo participation in the proceedings of the Commission

There was no change made in the membership of the Dorion Commission for its study of the question of the "Indian domain". The only action taken by the Indians was to present a brief, and then discuss the matter with the commissioners. As for Eskimo participation, it is practically nonexistent, and the Commission takes the view that, for the purposes of their claims, the Eskimos of New Quebec are members of the Canadian Indians Association. It seems that those chiefly interested in this whole matter were only more or less involved in the work of the Commission.

Historical data concerning the status of Eskimos in Quebec

It is felt by the Dorion Commission that the inclusion of its report of a chapter dealing with the historical background of the Amerindian in Quebec is justified because the problem could not satisfactorily be encompassed by a strictly scientific and synchronic approach. According to the Commission, a general survey is required of the development of territorial occupation by aboriginal people (Indians and Eskimos) and by neo-American whites. Tracking back original contacts on a given territory will enable us to understand in what ways certain types of relations might have created or modified certain human, political or legal ties or bonds (a) between the two groups and (b) between each of the groups and the territory (Vol. 4.1, p. 17 and foll.).

In the first instance, we fully agree that an historical account of the territorial occupation in the area cannot fail to introduce new features into the study of the problem of the territorial rights of Amerindians. In the matters of planning and of local problems, the Commission seems prepared to take Eskimos into account, but in developing its arguments and presenting facts, there is practically no reference to them. The Commission supplies only a very sketchy description of the territory's occupation by Eskimos, and fails to show any socio-territorial patterns of the Eskimo population, or areas covered by the various groups, etc. Only the barest of details are given regarding the coming of the whites among the Eskimos of New Quebec. The Commission merely states that the federal and the Quebec governments both play a role in it, and that is all. Briefly, the chapter dealing with the historical account of the status of Eskimos in Quebec province can be considered as nonexistent.

The territorial rights of the Eskimos according to the Dorion Commission

We do not propose at this point to determine whether New Quebec Eskimos do have territorial rights, nor attempt to describe the nature or extent of any such rights: we merely wish to report the views of the Dorion Commission in this regard.

It is stated in the Dorion Commission's report that, unlike the Indians, New Quebec Eskimos received no kind of territorial guarantee. Does this justify the inference that, for this reason, Eskimo settlements should therefore be looked upon as merely "tolerated" developments, by reason of having no legal recognition? Not at all, promptly says the Commission, adding that we must not lose sight of the fact that, so far, legal authorities have not recognized any "Eskimo entitlement" to northern lands and that, in this respect the approach to the problem is not the same for Eskimos as for Indians (Vol. 4.1, p. 220). Moreover, while the 1912 legislation regarding the extension of Quebec boundaries applies to an area inhabited both by Eskimos and by Indians, it does define or confirm Quebec government obligations towards Indians, but apparently not towards Eskimos (Vol. 4.1 p. 149).

Yet the Commission's findings (Vol. 4.1, p. 389), especially Nos. 2 and 3 provide, and I quote:

2. "Indians and Eskimos have secured recognition of certain rights over parts of Quebec territory";
3. Such rights are based on different clauses, according to the Quebec territories concerned";

There seems to be some inconsistency, or at least some ambiguity, in the report. Let us leave this problem to the jurists, for the time being.

Should the Eskimo be equated with the Indian for the purposes of government policy?

This question, as raised by the Dorion Commission, is, in our estimation, fraught with consequences regarding the future status of Eskimos in New Quebec. We shall see in the chapter dealing with the report's recommendations what concrete proposals are made by the Dorion Commission regarding the future position of the Eskimos.

According to the Commission, we should ask ourselves whether the term Indian applies to the Eskimo group. In its view, the law's provisions in this respect are inconsistent. The problem now is that, treated separately and differently under the law, Indians and Eskimos are now jointly presenting claims to the Quebec government. This problem of identity is likely to be all the more complex by reason of the fact that, in the Commission's view, it will be a basic requirement to establish whether the policies that Quebec will develop with regard to the rights of the aborigines will apply differently to Indians and to Eskimos who until now, have been treated differently by the federal government.

The Commission adds:

"Inescapable because of the law and of the way in which the problem of the Indian domain is stated, the question of determining whether the Eskim is distinguishable from the Indian (a view which, incidentally, is supported affirmatively by the facts) should eventually be one that need not come up at all because the aboriginal populations should be treated equally among themselves and, in the final analysis, be on an equal footing with the whites, albeit

enjoying a privileged status once the governments, that of Quebec in particular, shall have fulfilled their recognized obligations towards the Amerindian peoples.

It is by virtue of those higher principles, rather than on the basis of the legal definition of 1939, that Indians and Eskimos should to some extent be likened to each other and, in the application of policies relating to the aborigines, be referred to as Amerindians.

(Vol. 4.1, p. 154)

On the strength of those higher principles of equality among peoples, and because Indians and Eskimos are now jointly presenting claim, the Commission is attempting to justify the indistinguishability of those two groups for the purposes of policies applying to the aborigines.

We are prepared to agree with the Commission that peoples must be considered as equals among themselves, but to infer therefrom that identical policies should apply to those groups is to stretch the point. The fact that Eskimos and Indians have formed a united front to present their claims must be construed merely as a strategic move on their part and must not lead to the conclusion that their problems are in the main identical. They may be so, but in that case this should be demonstrated by means of relevant study and research. The Eskimos have particular problems and undoubtedly share with Indian problems of a similar nature. The Commission's pleas in favour of a singly policy for Quebec aborigines are not based on a thoroughgoing investigation of things as they are, but perhaps purely and simply on considerations of administrative efficiency.

The findings of the Dorion Commission

Out of the 50 findings of the Commission, we shall quote here only those of direct application to the Eskimo population of New Quebec.

2. "Indians and Eskimos have secured recognition of certain rights over parts of Quebec territory";
3. "Such rights are based on different clauses, according to the Quebec territories concerned";
15. "As regards the area annexed to Quebec by the legislation of 1912, the rights of the Indians are mentioned once again and with greater precision, especially with regard to their mode of termination;"
16. "The 1912 legislation does indeed place upon Quebec the obligation to acknowledge the rights of Indians to that territory and to obtain release thereof";
17. "Those rights of Indians (and of Eskimos) were never granted official or legislative acknowledgement by Quebec after that date";
19. "...the fact remains that Quebec is still under obligation to acknowledge those rights and to obtain release thereof";

For comment on those various findings with regard to the acknowledgement of territorial rights in favour of the Eskimos of New Quebec, the reader is referred to page hereof entitled: "The territorial rights of Eskimos according to the Dorion Commission.

35. "The Eskimo can be likened to the Indian on the basis of somatic and cultural criteria; he has to be so likened under the constitutional act but has hitherto been differentiated from the Indian in terms of federal legislation";

36. "For the purpose of global policy, including the settlement of territorial matters, it seems logical and realistic to consider the Indian and the Eskimo as being alike."

For comment as to whether the Eskimo is an Indian for the purposes of government policies, the reader is referred to page hereof, dealing with this topic.

The recommendations of the Dorion Commission

On the basis of its 50 findings, the Commission of inquiry on the integrity of the Quebec territory has presented to the Quebec government 33 recommendations. There are of two types: some dealing directly with the recognition of territorial rights, others having to do with the political future of the Indian and Eskimo populations of Quebec.

As regards the recognition of territorial rights of Indians and Eskimos, the Commission recommends that the Quebec government take immediate steps to honour its obligations (Recommendation No. 1) and that the agreement be recognized as settling all debts of any nature whatsoever, individual or collective, of the Quebec government to Indians and Eskimos (Recommendation No. 4).

However, our prime interest lies in the recommendations having to do with the future of the Eskimo population. What the Commission is proposing in substance is a global policy for the aboriginal populations of the province of Quebec. There may be merit in the desire to set up an integrated policy but it is our belief that not only did the Commission go beyond the limits of its mandate (and therefore beyond the type of problem that needed to be solved) but went so far as

to make recommendations based on no investigation or research whatsoever. The Commission has created a "weapon" whose range it certainly failed to appreciate. The Commission may have given some people the impression nay, the illusion, that if its recommendations are carried out, the "Indian problem" would be solved. Admitting its awareness that the Quebec government had not in the first place requested it to make recommendations regarding an eventual overall provincial policy applying to Amerindian communities, the Commission did not therefore feel called upon to go deeply into questions relating to the personal status of the Indians, nor in matters having to do with the allocation of federal and Quebec jurisdictions over Indians and Eskimos. The Commission declares itself perfectly aware of the fact that its mandate was very narrow, admits that only part of the subject has been gone into and hopes that qualified agencies of the Quebec government will again take up the matter from the angle of the solutions considered in this report.

Even with due regard for the wishes expressed by the Commission, we strongly hold the view that the Commission should have dealt exclusively with the territorial question OR suggested that its mandate be extended or modified so as to admit the possibility of considering the whole matter of the Amerindians, OR request the creation of some other agency to inquire into matters other than territorial. . Moreover, Indian and Eskimo participation would have been much more significant.

In closing this chapter we shall quote the report's principal recommendations that bear directly on the political future of New Quebec Eskimos. Incidentally, throughout its recommendations the Commission uses the word "Amerindians", a term which we assume to include Eskimos as well as Indians, and the Commission thus seems to advocate the same recommendations for both aboriginal groups of Quebec.

The Commission's recommendations are here re-summarized under six headings:

1. TRANSFER OF JURISDICTION

The Commission recommends that jurisdiction over Indians and Eskimos revert to the Quebec government; it also advocates the establishment of Quebec legislation governing Amerindians (Recommendations Nos. 5 and 6).

2. ECONOMIC DEVELOPMENT

The Commission recommends the creation of an Amerindian Development Fund for the social, economic and cultural promotion of Amerindian communities (Recommendations Nos. 7, 8, 9 and 10), which would also entail abolition of existing tax privileges (Recommendations Nos. 22 and 23).

3. AMERINDIAN MUNICIPALITIES

That the reservation system be replaced by the creation of Amerindian municipalities enjoying, in addition to the rights and privileges of other Quebec municipalities, certain protective measures (Recommendations Nos. 11 and 12). Certain provisions are put forward regarding property rights (Recommendations Nos. 13, 14, 15, 16, 17, 18 and 20).

4. HUNTING AND FISHING RIGHTS

That hunting and fishing rights be guaranteed to Amerindians by the Quebec government. Suggested by the Commission, however, is the issuance of special permits (Recommendations Nos. 24, 25, 26 and 27).

5. AMERINDIAN CIVIL RIGHTS

That Quebec Amerindians be subject to the provisions of civil law, civil status, registration and other Quebec laws and regulations,

and be entitled to social welfare legislation on the same basis as all other Quebec citizens (Recommendation No. 28).

6. REPRESENTATION

That Amerindians be granted adequate representation in the Amerindian Development Fund organization (Recommendation No. 29) and be entitled to elect a representative to the Quebec National Assembly (Recommendations Nos. 30, 31 and 32).

Conclusions

By way of conclusion we merely wish to emphasize that, because of the narrowness of its mandate, the Commission of inquiry on the integrity of the Quebec territory could not study "the Amerindian question", something which, incidentally, the Quebec government had not required it to do. Instead of accepting the fact that its mandate was not broad enough to allow a study of the "Amerindian question" and then asking the government to make the necessary changes in that mandate, the Commission preferred to go beyond its mandate to the extent of making recommendations which not only exceeded the limits of that mandate but had no serious basis whatsoever. In the final analysis the Commission tried to settle the "Amerindian problem" by an overinterpretation of its mandate and an inadequate approach. It tried to make a camel go through a needle's eye. This action on the part of the Commission had probably given certain people the mistaken impression that implementation of its recommendations would solve the "Amerindian problem".

For those various reasons, we recommend to the authorities that are concerned with the administration of the Eskimo population of New Quebec to defer application of the recommendations of the Commission of inquiry on the integrity of the Quebec territory until such time as evidence has come forth in support of the merits of those recommendations, and until word has been heard from the New Quebec Eskimos, who are primarily concerned in this whole matter.

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17. "Those rights of Indians (and of Eskimos) were never granted official or legislative acknowledgement by Quebec after that date";
19. "...the fact remains that Quebec is still under obligation to acknowledge those rights and to obtain release thereof";

For comment on those various findings with regard to the acknowledgement of territorial rights in favour of the Eskimos of New Quebec, the reader is referred to page hereof entitled: "The territorial rights of Eskimos according to the Dorion Commission.

35. "The Eskimo can be likened to the Indian on the basis of somatic and cultural criteria; he has to be so likened under the constitutional act but has hitherto been differentiated from the Indian in terms of federal legislation";

36. "For the purpose of global policy, including the settlement of territorial matters, it seems logical and realistic to consider the Indian and the Eskimo as being alike."

For comment as to whether the Eskimo is an Indian for the purposes of government policies, the reader is referred to page hereof, dealing with this topic.

The recommendations of the Dorion Commission

On the basis of its 50 findings, the Commission of inquiry on the integrity of the Quebec territory has presented to the Quebec government 33 recommendations. There are of two types: some dealing directly with the recognition of territorial rights, others having to do with the political future of the Indian and Eskimo populations of Quebec.

As regards the recognition of territorial rights of Indians and Eskimos, the Commission recommends that the Quebec government take immediate steps to honour its obligations (Recommendation No. 1) and that the agreement be recognized as settling all debts of any nature whatsoever, individual or collective, of the Quebec government to Indians and Eskimos (Recommendation No. 4).

However, our prime interest lies in the recommendations having to do with the future of the Eskimo population. What the Commission is proposing in substance is a global policy for the aboriginal populations of the province of Quebec. There may be merit in the desire to set up an integrated policy but it is our belief that not only did the Commission go beyond the limits of its mandate (and therefore beyond the type of problem that needed to be solved) but went so far as

to make recommendations based on no investigation or research whatsoever. The Commission has created a "weapon" whose range it certainly failed to appreciate. The Commission may have given some people the impression nay, the illusion, that if its recommendations are carried out, the "Indian problem" would be solved. Admitting its awareness that the Quebec government had not in the first place requested it to make recommendations regarding an eventual overall provincial policy applying to Amerindian communities, the Commission did not therefore feel called upon to go deeply into questions relating to the personal status of the Indians, nor in matters having to do with the allocation of federal and Quebec jurisdictions over Indians and Eskimos. The Commission declares itself perfectly aware of the fact that its mandate was very narrow, admits that only part of the subject has been gone into and hopes that qualified agencies of the Quebec government will again take up the matter from the angle of the solutions considered in this report.

Even with due regard for the wishes expressed by the Commission, we strongly hold the view that the Commission should have dealt exclusively with the territorial question OR suggested that its mandate be extended or modified so as to admit the possibility of considering the whole matter of the Amerindians, OR request the creation of some other agency to inquire into matters other than territorial. Moreover, Indian and Eskimo participation would have been much more significant.

In closing this chapter we shall quote the report's principal recommendations that bear directly on the political future of New Quebec Eskimos. Incidentally, throughout its recommendations the Commission uses the word "Amerindians", a term which we assume to include Eskimos as well as Indians, and the Commission thus seems to advocate the same recommendations for both aboriginal groups of Quebec.

The Commission's recommendations are here re-summarized under six headings:

1. TRANSFER OF JURISDICTION

The Commission recommends that jurisdiction over Indians and Eskimos revert to the Quebec government; it also advocates the establishment of Quebec legislation governing Amerindians (Recommendations Nos. 5 and 6).

2. ECONOMIC DEVELOPMENT

The Commission recommends the creation of an Amerindian Development Fund for the social, economic and cultural promotion of Amerindian communities (Recommendations Nos. 7, 8, 9 and 10), which would also entail abolition of existing tax privileges (Recommendations Nos. 22 and 23).

3. AMERINDIAN MUNICIPALITIES

That the reservation system be replaced by the creation of Amerindian municipalities enjoying, in addition to the rights and privileges of other Quebec municipalities, certain protective measures (Recommendations Nos. 11 and 12). Certain provisions are put forward regarding property rights (Recommendations Nos. 13, 14, 15, 16, 17, 18 and 20).

4. HUNTING AND FISHING RIGHTS

That hunting and fishing rights be guaranteed to Amerindians by the Quebec government. Suggested by the Commission, however, is the issuance of special permits (Recommendations Nos. 24, 25, 26 and 27).

5. AMERINDIAN CIVIL RIGHTS

That Quebec Amerindians be subject to the provisions of civil law, civil status, registration and other Quebec laws and regulations,