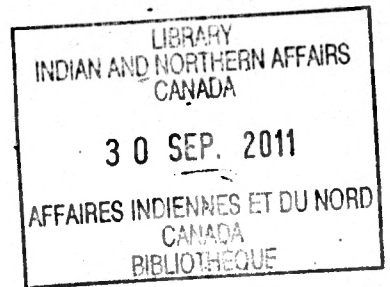


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**The treaty question in Northern Québec  
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[S.l.] : Indian Assets Directorate, 1970. 54 p.

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INDIAN TREATY AND  
PROPERTY RIGHTS,  
INDIAN ASSETS DIRECTORATE,  
17 FEBRUARY, 1970.

## THE TREATY QUESTION IN NORTHERN QUEBEC

The Royal Proclamation signed on October 7, 1763, by King George III, set the boundaries for Quebec in the following manner:

"The Government of Quebec bounded on the Labrador Coast by the River St. John, and from thence by a line drawn from the Head of that River through the Lake St. John, to the South end of the Lake Nipissim; from whence the said line, crossing the River St. Lawrence, and the Lake Champlain, in 45 Degrees of North Latitude, passes along the High Lands which divide the Rivers that Empty themselves into the said River St. Lawrence from those which fall into the Sea; and also along the North Coast of the Baye des Chaleurs, and the Coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the Mouth of the River St. Lawrence by the West End of the Island of Anticosti; terminates at the aforesaid River of St. John." 1

The Proclamation then proceeded to deal with those lands outside the jurisdiction of the Quebec Government.

"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, and also all the Lands and Territories lying to the Westward of the Sources to the Rivers which fall into the Sea from the West and North West as aforesaid..." 2

It was further cautioned that people who had inadvertently settled on lands reserved to the Indians, outside the boundaries of Quebec, or on lands not purchased from Indians, were to remove themselves forthwith.

In terms of the present province the result of the Proclamation was the establishment of three distinct areas; the Government of Quebec, the "Indian Country" and the area under Charter to the Hudson's Bay Company known as Rupert's Land. The first comprised roughly the drainage area of the St. Lawrence as far as Cornwall, plus a narrow strip from there to the present day site of North Bay, Ontario, on the south shore of the Ottawa River. The second area included all the territory between the north boundary of Quebec and the height of land which marks the dividing line between the St. Lawrence and the Coast of Labrador on the one side and Hudson Bay on the other. The third area comprised the drainage basin of Hudson Bay, which in 1670 had been granted to the Hudson's Bay Company by Charles II.

The first change in the Boundary of Quebec came into effect in 1774, under the Quebec Act. According to the terms of this Act:

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1. R.S.C. (1952) p. 6127

2. I.B.I.D. p. 6130



"... all the Territories, Islands and Countries in North America, belonging to the Crown of Great Britain, bounded on the South by a line from the Bay of Chaleurs, along the High Lands which divide the Rivers that empty themselves into the River Saint Lawrence from those which fall into the Sea, to a Point on forty-five Degrees of Northern Latitude, on the Eastern Bank of the River Connecticut keeping the same Latitude directly West, through the Lake Champlain, until, in the same Latitude, it meets the River St. Lawrence, from thence up the Eastern Bank of the said River to Lake Ontario; thence through the Lake Ontario, and the River commonly called Niagara, and thence along by the Eastern and South-eastern Bank of Lake Erie, following the said Bank, until the same shall be intersected by the Northern Boundary, granted by the Charter of the Province of Pennsylvania in case the same shall be so intersected; and from thence along the said Northern and Western Boundaries of the said Province, until the said Western Boundary strike the Ohio: But in case the said Bank of the said Lake shall not be found to be so intersected, then following the said Bank until it shall arrive at that Point of the said Bank which shall be nearest to the North-western Angle of the said Province of Pennsylvania, and thence, by a right line, to the said North-western angle of the said Province; and thence along the Western Boundary of the said Province, until it strike the River Ohio; and along the Bank of the said River, Westward, to the Bank of the Mississippi, and northward to the Southern Boundary of the territory granted to the Merchant Adventurers of England, trading to Hudson's Bay..." 3

In addition all "Territories, Islands and Countries" belonging to the Government of Newfoundland were annexed to the Quebec Government.

After 1774, Quebec's jurisdiction was extended westward to the junction of the Ohio and Mississippi Rivers and from there in a straight line northward to the southern boundary of the lands given by charter to the Hudson's Bay Company.

There was no specific reference to Indians, in the Quebec Act, however Section 3 stated that previous "Right, Title or Possession" derived from any grant or conveyance was not to be made void.

Instructions were subsequently sent to Governor Sir Guy Carleton in 1775 for the future management of Indian Affairs in North America. 4 This 43 point plan reiterated and outlined in greater detail the provisions of the Royal Proclamation of 1763. Essentially, these instructions were designed to protect the interests of trader and Indian alike, by establishing a blue print of trading practices. Articles 41 to 43 however, prohibited the purchase of lands from the Indians when these lands were outside the limits of the Colony. It was also proposed that the exact boundaries of Indian lands be determined by survey.

In 1783, the Treaty of Paris, which recognized the existence of the United States

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3. I.B.I.D. p. 613/4

4. Appendix A .





to those lands which had been termed Indian territory by the 1763 Proclamation. It also added teeth to the Instructions issued in 1775 to Sir Guy Carleton which had outlined fair trade practices for those conducting commercial enterprises with the Indian people.

In 1840 when Upper and Lower Canada were united to form the Province of Canada there was no specific mention of Indians but the original instructions to Governor Carleton which had authorized a plan of management for Indian Affairs were given statutory effect by article 59. 8 *in article 59.*

There were no alterations to the boundaries of Quebec nor change in jurisdiction over Indians and their lands from 1840 to 1867. However on July 1, 1867, legislative responsibility for "Indians and Lands reserved for Indians" was placed under the aegis of the new federal government, by Section 91, head 24, of the British North America Act.

After Confederation became a reality the process of rounding out the Dominion in territorial terms began. For the purposes of this paper, only the acquisition of Rupert's Land from the Hudson's Bay Company will be dealt with. In 1670, King Charles II through letters patent had granted a group known as "The Governor and Company of Adventurers of England trading into Hudson's Bay" certain rights and privileges over lands forming the drainage area of Hudson's Bay. In 1774 the northern boundary of Quebec was extended so that it bordered on Rupert's Land, the name given to lands owned by the Hudson's Bay Company.

In 1868, the Imperial Government passed the Rupert's Land Act (31-32 Victoria, C.105) and thereby acquired title to these lands formerly held by the Hudson's Bay Co. On June 23, 1870, an "Order of Her Majesty in council admitting Rupert's Land and the North-Western territory into the Union" was signed at Windsor. Article 14 of this Order in Council stated:

"Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian government in communication with the Imperial government, and the company shall be relieved of all responsibility in respect of them." 9

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8. R.S.C. (1952), p. 6184

9. Appendix C.



The boundaries of Quebec remained unchanged from 1867 until 1898 when an act entitled "An Act respecting the north-western, northern and north-eastern boundaries of the province of Quebec" was passed by the Quebec legislature. According to the provisions of this Act, Quebec's northern boundary was to be:

"Commencing at the head of lake Temiscamingue thence along the eastern boundary of the Province of Ontario due north to the shore of the part of Hudson's Bay commonly known as James Bay; thence northeasterly following upon the said shore to the mouth of the East Main river, thence easterly ascending along the middle of the said river up to the confluence of the branch thereof flowing from Patamisk lake, thence ascending along the middle of the said branch up to Patamisk lake; thence along the middle of the said lake to the most northerly point thereof, the said point being about fifteen miles south from the Hudson's Bay Company's post on lake Nichigun, and approximately in latitude fifty-two degrees, forty-five minutes north, and longitude seventy degrees, forty-two minutes west of Greenwich; thence due east along the parallel of latitude of the said point to the intersection of the river discharging the water of lake Ashuanipe, which river is known under the names of Hamilton or Ashuanipé or Great Esquimaux river; thence descending along the middle of the said river through Menikek, Marble, Astray and Dyke lakes to the most southerly outlet of Dyke lake; thence along the middle of the said outlet to Birch lake, and thence along the middle of the south channel of the Hamilton river to Flour lake ... thence to Hamilton river, thence along the middle of Hamilton river to Hamilton Inlet ... until it strikes the western boundary of the jurisdiction of Newfoundland; thence along the southern boundary ... to the point where it strikes the north shore of Anse Sablon in the gulf of St. Lawrence." 10

Despite the fact that this boundary extension included almost half of the Rupert's Land area, no mention was made of Indians in any of the act's provisions.

The final stage in the northward expansion of Quebec was the extension of 1912 which included the mainland area between the 1898 boundary and Hudson Strait - the old District of Ungava. Unlike previous acts which had extended Quebec's boundaries, this one made specific mention of Indian rights. Section 2 (c), (d) and (e) of "The Quebec Boundaries Extension Act, 1912" stated:

2. (c) "That the province of Quebec will recognize the rights of the Indian inhabitants in the territory above described to the same extent, and 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;
- (d) That no such surrender shall be made or obtained except with the approval of the Governor in Council;
- (e) That the trusteeship of the Indians in the said territory, and the management of any lands now or hereafter reserved for their use; shall remain in the Government of Canada subject to the control of Parliament." 11

10. R.S.O. (1906), p. 16

11. 2 George V, Chapter 45, STATUTE OF QUEBEC.



In the preliminary negotiations prior to the 1912 extension, assurance was sought from Quebec that she would sign a treaty with the Indians in the lands to be added (456,000 square miles). The Order in Council stated this principle as follows:

"The Province of Quebec to perfect its title to this domain should adopt the established practice and agree with the Dominion upon the terms and conditions of a Treaty with the Indians for the formal cession of their title in the lands. The Indian population of this vast tract may approximately be stated at 2,000 or 2,500 tributary to Fort George, Rupert's House, Fort Chimo and at other trading posts. It seems fair to suggest that the Province should consider granting the same terms and conditions as those granted by Ontario under Treaty No. 9, namely, - a fixed annuity of \$4.00 per capita; reserves of the area of one square mile to each family of five; the Dominion assuming the same obligations with reference to negotiations, administration, schools etc. Neither in the case of Ontario nor Quebec would it be proposed to immediately extinguish this title throughout the territory but to proceed gradually as may be dictated by the needs of the Indian tribes or by the progress of settlement, prospecting, railway construction or general development throughout the territory." 12

The Government of Quebec replied that while not opposed to a treaty being made with the Indians, they did not believe it necessary to have the treaty before the transfer, as the interests of the Indians could be safeguarded in the laws to be adopted by Canada and the Province.

By 1919, Quebec had not taken any steps towards fulfilling either the provisions of the 1912 Boundaries Extension Act, or the terms of the Order in Council (P.C. 2626) of 17 January, 1910. Consequently, Arthur Meighen, then Secretary of the Interior, wrote Sir Lomer Gouin, Premier and Attorney-General of Quebec on 28 February 1919, calling his attention "to the urgent necessity of a treaty being entered into with the Indians resident on the eastern side of James Bay." 13 According to this letter Indians from Rupert's House, East Main and Fort George including others from the Nottaway River to Little Whale River were to be included.

On March 20, 1919, Gouin replied to Meighen's letter and raised the question of the payment of monetary obligations arising out of a treaty of surrender. Gouin cited the St. Catherines Milling Case (1888) which had decided that the province of Ontario bore sole responsibility for payment of money obligations undertaken by the Crown. However, since that decision, the Judicial Committee of the Privy Council in the case of the Attorney-General of Canada v. Ontario (1910) had rendered a new verdict wherein it was held that in making Indian treaties, the Dominion Government

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12. Appendix D.

13. Appendix E.

acted for distinct and important interests of their own and that the provinces were in no way bound to pay the financial charges stipulated by treaty. Couin concluded his letter stating:

"This of course, destroys the ground upon which the Governments of Canada and of Quebec based their decision to have the indemnity paid by the province. There is, no doubt, a statutory obligation on our part to pay; however, in view of the foregoing, do you not believe that this Province should be relieved of that part of its obligations consisting in payment of the yearly dues on its setting apart as a reserve a territory agreed upon by both governments and the Indians." 14

The matter appears then to have been dropped until early 1927 when George Morrow, Fort George, Quebec, wrote Duncan Campbell Scott reporting that the Indians at Fort George were anxious to sign a treaty. 15

On 24 January, 1927, Charles Stewart, Minister of the Interior, wrote Premier Taschereau of Quebec, referring to the 1919 correspondence and the need for a treaty. Charles Lanctot, Attorney-General of Quebec replied on 8 March 1927, stating that:

"In the absence therefore of any statutory obligation, I do not see how this Province can be asked to enter into a treaty and assume the obligations on the bases of the Order in Council of the Governor General of the 2 May, 1900 in respect of the territory aforesaid." 16

Mr. Lanctot was of course referring to the case of the Attorney-General of Canada v. Ontario (1910) A.C., 637, which he felt removed any legal obligation on the Province to bear the burden of a surrender taken by the Dominion.

In reply, Duncan Campbell Scott, Deputy Superintendent General, informed Mr. Lanctot on the 23 May 1927 that:

"...the Province is not being asked to bear the burden of any surrender taken by the Dominion. No surrender has been taken by the Dominion from the Indians of any area of lands within the territory added by either of the two Statutes above referred to. (2 George V C. 45 and 61 Vict. C. 3)\* These territories are accordingly still encumbered with the Indian title.

It has always been the policy and practice of the Dominion Government to take surrenders from the Indians of their title or interest in lands held by the Crown in the right of the Dominion and to make provision for the setting apart of reserves for the various bands for the payment of any annuity to each and every Indian and for other benefits as contained on the various treaties. When the Dominion Government, by Statute 2 George V Chapter 45, gave to the province of Quebec the territory included within the boundaries set forth in the said Statute, it was expressly provided that the

14. Appendix F.

15. Appendix C.



Province should recognize the rights of the Indians within this territory to the same extent as the Government of Canada had been in the habit of doing. It is true that the Statute of 61 Victoria Chapter 3 does not contain any such provision. The territory, however, included in this extension is still encumbered with the Indian title and it is a question as to how the Province proposes to deal with this title. I should suppose that as the Indian title is the same in respect of each of the territories added by the above mentioned Statutes that the treatment should be the same in each case." 17

\* These statutes extended Quebec's boundaries in 1912 and 1898.

Lanctot took exception to some of the statements made by Scott in his letter of 23 May. Writing on 12 July, Lanctot claimed that the lands (Rupert's Land) taken in by the boundary extension acts of 1898 and 1912 were exempt from the burden of Indian title as they were formerly Hudson Bay Company lands. Lanctot concluded:

"I need not remind you that Quebec has never recognized the Indian title and as the Dominion has never taken any surrenders within these territories it has perhaps not done so either.

Quebec has acted in the past with all proper liberality towards the Indians within the Province and doubtless will continue to do so in the future but the consideration of any such action would seem to be better postponed until any legal questions involved are cleared up." 18

It would appear from an examination of Departmental files that pressure from Ottawa on Quebec was eased after 1929. No doubt the Depression and Second World War were important factors in diverting Ottawa's attention from this matter. Although the Indians of Quebec continued their pressure, no significant steps were taken on this question until recently when, based on the draft memorandum appending, the Department of Justice was asked by this Department to provide a legal opinion on matters arising out of the situation in northern Quebec. 19

The recent appointment of a Claims Commissioner to receive and study greivances put forward by the Indian people respecting their treaties and agreements (along with considerations concerning the administration of their lands and funds) will serve to focus attention on the claims of Quebec's Indian population.

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17. Appendix I.

18. Appendix J.

19. Appendix K.



By His Majesty GEORGE THE FOURTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith:

A PROCLAMATION.

WHEREAS divers breaches of the peace and acts of force and violence having been committed within those parts of the Continent of North America, commonly called and known by the name of the INDIAN TERRITORIES:—We, for the suppression and prevention of all such breaches of the peace and acts of force and violence, in the name and on the behalf of Our late Royal Father, of glorious memory, did issue Our Royal Proclamation under the Great Seal of our Province of Lower Canada, bearing date the third day of May, in the fifty-seventh year of the Reign of Our said Royal Father. And whereas it appears to Us expedient so to do, We have thought fit to renew, and hereby do renew the prohibitions, commands, and provisions in Our said Proclamation contained, and each and every of them as fully to all intents and purposes as if the same were herein again set forth and repeated; hereby calling upon all persons carrying on trade and commerce in the said Indian Territories, under the names of the Hudson's Bay Company and the North-West Company, respectively, and upon each and every of them, and upon all other persons, their servants, agents or adherents, and generally all persons whomsoever, and each and every of them, to desist from every hostile aggression or attack, and from every act of force and violence, or trespass whatsoever.

And we do hereby further strictly warn all parties that any infringement of Our former Proclamation, or of this Our present Proclamation, whether by seizing the property or persons of the traders, by obstructing the rivers and portages by which their trade is carried on, or by any incitement of the Indians or others to acts of violence or hostility, or by any other manner whatsoever, will not fail to be visited with Our severest displeasure, and to draw down upon the parties themselves and the persons under whose authority they act, the heaviest penalties.

In faith and testimony wherof We have caused the Great Seal of Our Province of Lower-Canada to be hereunto affixed: Witness Our trusty and well-beloved SIR PEREGRINE MAITLAND, Knight, Commander of the Most Honorable Military Order of the Bath, Major-General Commanding Our Forces in Our Provinces of Upper and Lower-Canada, President and Administrator of the Government of Our said Province of Lower-Canada, at Our Castle of St. Lewis, in Our City of Quebec, in Our said Province, this twelfth day of May, in the year of Our Lord one thousand eight hundred and twenty, and in the first year of Our Reign.

(Signed) J. READY, Actg. Prov. Secy.

Province of  
Lower Canada }

Signed P. MAITLAND.

be ready to provide that the legal rights of any corporation, company or individual within the same shall be respected, and placed under the protection of Courts of competent jurisdiction.

And furthermore that, upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

All which we humbly pray your Majesty to take into your Majesty's Most gracious and favourable consideration.

The Senate, Tuesday, December 17th, 1867.

(Signed), JOSEPH CAUCHON, Speaker.

House of Commons, Monday, December 16th, 1867.

(Signed), JAMES COCKBURN, Speaker.

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SCHEDULE (B).

1. *Resolutions.*

May 28th, 1869.

*Resolved*,—That the Senate and Commons of the Dominion of Canada during the first session of the first Parliament of Canada, adopted an Address to Her Majesty, praying that Her Majesty would be graciously pleased, by and with the advice of Her Most Honourable Privy Council, under the provisions of 140th section of The British North America Act, 1867; and on the terms specified in the Address, to unite Rupert's Land and the North-west Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government, and assuring Her Majesty of the willingness of the Parliament of Canada to assume the duties and obligations of government and legislation as regard those territories.

*Resolved*,—That the Joint Address of the Senate and Commons of Canada was duly laid at the foot of the throne, and that Her Majesty, by despatch from the Right Honourable the Secretary of State for the Colonies, to the Governor General of Canada, under date of the 23rd of April, 1868, signified Her willingness to comply with the prayer of the said Address; but She was advised that the requisite powers of government and legislation could not, consistently with the existing charter of the Hudson's Bay Company, be transferred to Canada without an Act of Parliament, which Act was subsequently passed by the Imperial Parliament, and received Her Majesty's Assent on the 31st July, 1868.

*Resolved*,—That by despatch dated 8th August, 1868, from the Honourable Secretary of State for the Colonies, the Governor General was informed, that in pursuance of the powers con-

ferred by the Act for the surrender of the Hudson Bay Territories to Her Majesty, he proposed to enter into negotiations with the Company as to the terms of such surrender, whereupon, under authority of an order of the Governor-General in Council of the 1st October, 1868, the Honourable Sir George Et. Cartier, Baronet, and the Honourable William MacDougall, C.B., were appointed a Delegation to England, to arrange the terms for the acquisition by Canada of Rupert's Land, and by another Order in Council of the same date, were authorized to arrange for the admission of the North-west Territory into union with Canada, either with or without Rupert's Land, as it might be found practicable and expedient.

*Resolved*,—That the Delegates proceeded on their mission to England and entered into negotiations with his Grace the Duke of Buckingham and Chandos, the Secretary of State for the Colonies, and afterwards with the Right Honourable Earl Granville, his successor in office, for the acquisition by Canada of the territorial and other rights claimed by the Hudson's Bay Company in Rupert's Land, and in any other part of British North America, not comprised in Rupert's Land, Canada, or British Columbia. That terms of agreement were conditionally assented to by the Delegates on behalf of the Dominion, and on their return to Canada were submitted with a Report dated 8th May, 1869, which was approved by His Excellency the Governor in Council, on the 14th day of the same month.

*Resolved*,—That the Senate will be prepared to concur in accepting the transfer of the territorial and other rights of the Hudson's Bay Company in Rupert's Land, and in any other part of British North America, not comprised in Rupert's Land, Canada or British Columbia, on the terms conditionally agreed to on behalf of the Government of Canada, by the Hon. Sir George Et. Cartier, Baronet, and the Hon. William MacDougall, C.B., and on behalf of the Hudson's Bay Company, by Sir Stafford H. Northcote, Governor of that Company, and approved by His Excellency in Council as aforesaid, which terms are set forth in a letter from Sir Frederic Rogers, Under-Secretary of State for the Colonies, of the 9th March, 1869, communicated to the Delegates by Direction of Earl Granville, and in two subsequent Memorandums dated respectively 22nd and 29th March, 1869, containing a modification of such terms, and are in the words and figures following:—

*"Terms, as stated in the Letter from Sir Frederic Rogers, of March, 1869.*

"1. The Hudson's Bay Company to surrender to Her Majesty all the rights of Government, property, etc., in Rupert's Land which are specified in 31 & 32 Vict., cap. 105, sec. 4; and also all similar rights in any other part of British North America, not comprised in Rupert's Land, Canada or British Columbia.

"2. Canada is to pay to the Company 300,000*l.*, when Rupert's Land is transferred to the Dominion of Canada.



"3. The Company may, within twelve months of the surrender, select a block of land adjoining each of its stations, within the limits specified in Article 1.

"4. The size of the blocks not to exceed \_\_\_\_\_ acres in the Red River Territory, and the aggregate extent of the blocks is not to exceed 50,000 acres.

"5. So far as the configuration of the country admits, the blocks are to be in the shape of parallelograms, of which the length is not more than double the breadth.

"6. The Hudson's Bay Company may, for fifty years after the surrender, claim in any township or district within the Fertile Belt in which land is set out for settlement, select grants of land, not exceeding one-twentieth of the land so set out. The blocks so granted to be determined by lot, and the Hudson's Bay Company to pay a rateable share of the survey expenses, not exceeding \_\_\_\_\_ an acre.

"7. For the purpose of the present agreement, the Fertile Belt is to be bounded as follows:—On the south by the United States' boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.

"8. All titles to land up to the 8th March, 1869, conferred by the Company, are to be confirmed.

"9. The Company is to be at liberty to carry on its trade without hindrance, in its corporate capacity and no exceptional tax is to be placed on the Company's land, trade or servants, nor any import duty on goods introduced by them previous to the surrender.

"10. Canada is to take over the materials of the electric telegraph at cost price, such price including transport but not including interest for money, and subject to a deduction for ascertained deteriorations.

"11. The Company's claim to land under agreement of Messrs. Vankoughnet and Hopkins to be withdrawn.

"12. The details of this arrangement, including the filling up the blanks in Articles 4 and 6, to be settled at once by mutual agreement."

**"MEMORANDUM**

*"Details of Agreement between the Delegates of the Government of the Dominion, and the Directors of the Hudson's Bay Company.*

"1. It is understood that, in surrendering to Her Majesty, all the rights, etc., of the Company in any part of British North America not comprised in Rupert's Land, Canada or British Columbia, the Company are to retain the posts they actually occupy in the North West Territory.

"2. It is understood that it will be a sufficient act of selection under Article III, that the Company should, within twelve months, name the number of acres which they will require

adjoining each post. The actual survey to be proceeded with, with all convenient speed.

"3. It is understood that in the Red River Settlement, the size of the blocks to be retained round Upper Fort Garry shall not exceed (10) acres; and that round Lower Fort Garry shall not exceed (300) acres.

"4. It is understood that a list of the stations round which the Company will require blocks of land, with the size of the blocks they will require, shall be made out forthwith, and communicated to the Canadian Ministers.

"5. It is understood that Article V, shall be construed to mean that the blocks shall front the river or road, by which means of access are provided, and shall be approximately in the form of parallelograms, of which the frontage shall not be more than half the depth.

"6. It is understood that the Company may defer the exercise of their right of claiming their proportion of each township for not more than ten years after it is set out; but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.

"7. It is understood that the Blank in Article 6 shall be filled up with 8 cents (Canadian).

"8. It is understood that any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government, in communication with the Imperial Government, and that the Company shall be relieved of all responsibility in respect of them.

(Signed.) "STAFFORD H. NORTHCOTE.

"G. E. CARTIER.

"W. MACDOUGALL.

"March 22, 1869.

*"Memorandum of a further Agreement between Sir Geo. Et. Cartier and Sir Stafford Northcote.*

"Inasmuch as the northern branch of the Saskatchewan River is the northern boundary of the Fertile Belt, and therefore any land on the northern bank is not within the territory of which the Company are to have one-twentieth part, it is understood that, in forming the townships abutting on the northern bank, the Company shall be at liberty to take their one-twentieth of any such townships, giving up to the Canadian Dominion an equal quantity of the portion of lands coming to them of townships established on the southern bank.

"It is understood that the townships on the northern bank shall not for the above purpose extend more than five miles inland from the river.

"It is understood that, in laying out any public roads, canals, &c., through any block of land reserved to the Company, the Canadian Government may take, without compensation, such land as is necessary for the purpose, not exceeding one-

twentyfifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, or which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or as a frontage to any river or lake, they shall pay the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

"It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause shall be appropriated for public purposes.

(Signed.) "GEO. ET. CARTIER.  
"STAFFORD NORTHCOTE.

"London, March 29, 1869."

*Resolved*,—That this House learns with satisfaction, by letter from the Under-Secretary of State for the Colonies, of 9th March last, that, in fulfilment of the expectations held out in Mr. Cardwell's despatch of 17th June, 1865, Her Majesty's Government will be prepared to propose to Parliament that the Imperial guarantee be given to a loan of 300,000*l.*, the amount which is proposed to be paid over by Canada on the transfer of the Company's rights.

*Resolved*,—That the Senate will be ready to concur with the House of Commons in an Address to Her Majesty, that she will be graciously pleased, by and with the advice of Her Most Honourable Privy Council, under the 146th clause of The British North America Act, 1867, and the provisions of the Imperial Act, 31 & 32 Vict., cap. 105, to unite Rupert's Land on the terms and conditions expressed in the foregoing Resolutions, and also to unite the North-Western Territory with the Dominion of Canada, as prayed for by, and on the terms and conditions contained in the joint Address of the Senate and the House of Commons of Canada, adopted during the first session of the first Parliament of Canada, and hereinbefore referred to.

*Resolved*,—That upon the transference of the territories in question to the Canadian Government, it will be the duty of the Government to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer.

*Resolved*,—That the Governor in Council be authorized and empowered to arrange any details, that may be necessary to carry out the terms and conditions of the above agreement.

*2. Address.*

To the Queen's Most Excellent Majesty.

*Most Gracious Sovereign,*

WE, your Majesty's most dutiful and loyal subjects, the Senate and Commons of the Dominion of Canada in Parliament assembled, humbly approach your Majesty for the purpose of representing:—



That, during the first session of the first Parliament of this Dominion, we adopted an Address to your Majesty, praying that your Majesty would be graciously pleased, by and with the advice of your Majesty's Most Honourable Privy Council under the provisions of the 146th Section of the British North America Act, 1867, and on the terms specified in that Address, to unite Rupert's Land and the North-West Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government, and assuring your Majesty of the willingness of the Parliament of Canada to assume the duties and obligations of Government and legislation as regards those territories.

That our joint Address was duly laid at the foot of the Throne, and that your Majesty, by despatch from the Right Honourable the Secretary of State for the Colonies to the Governor General of Canada, under date of the 23rd April, 1868, signified your Majesty's willingness to comply with the prayer of the said Address, but that your Majesty was advised that the requisite powers of government and legislation could not, consistently with the existing charter of the Hudson's Bay Company, be transferred to Canada without an Act of Parliament, which Act was subsequently passed by the Imperial Parliament, and received your Majesty's assent on the 31st July, 1868.

That by a despatch dated 8th August, 1868, from the Honourable the Secretary of State for the Colonies, the Governor General was informed that in pursuance of the powers conferred by the Act for the surrender of the Hudson's Bay territories to your Majesty he proposed to enter into negotiations with the company as to the terms of such surrender, whereupon, under authority of an Order of the Governor-General in Council, of the 1st October, 1868, the Honourable Sir George Et. Cartier, Baronet, and the Honourable William MacDougall, C.B., were appointed a delegation to England to arrange the terms for the acquisition by Canada of Rupert's Land, and by another Order in Council of the same date, were authorized to arrange for the admission of the North West Territory into union with Canada either with or without Rupert's Land, as might be found practicable and expedient.

That the delegates proceeded on their mission to England, and entered into negotiations with his Grace the Duke of Buckingham and Chandos, then Secretary of State for the Colonies, and afterwards with the Right Honourable Earl Granville, his successor in office for the acquisition by Canada of the territorial and other rights claimed by the Hudson's Bay Company in Rupert's Land, and in any other part of British North America not comprised in Rupert's Land, Canada or British Columbia, on the terms conditionally agreed to on behalf of the Government of Canada by the Honourable Sir George Et. Cartier, Baronet, and the Honourable William MacDougall, C.B., and on behalf of the Hudson's Bay Company by Sir Stafford H. Northcote, Governor of that Company, and approved by His Excellency in Council as aforesaid, which terms are set forth in a letter from Sir Frederic Rogers, Under-Secretary of State for the Colonies, of the 9th March, 1869, communicated to the delegates by direction of Earl Granville,

and in two subsequent Memorandums dated respectively 22nd and 29th March, 1869, containing a modification of such terms, and are in the words and figures following:

*"Terms, as stated in the Letter from Sir Frederic Rogers of 9th March, 1869.*

*(These terms as set forth on pages 146, 147 supra are here recited at length.)*

**"MEMORANDUM.**

*"Details of Agreement between the Delegates of the Government of the Dominion and the Directors of the Hudson's Bay Company.*

*(This memorandum as set forth on pages 147, 148 supra is here recited at length.)*

*"Memorandum of a further Agreement between Sir Geo. Et. Cartier and Sir Stafford Northcote.*

*(This memorandum, also above set forth, is here recited at length.)*

That we learn with satisfaction by letter from the Under-Secretary of State for the Colonies, of the 9th March last, that, in fulfilment of the expectations held out in Mr. Cardwell's despatch of the 17th of June, 1865, your Majesty's Government will be prepared by propose to Parliament that the Imperial guarantee be given to a loan of 300,000*l.* the amount which is proposed to be paid over by Canada on the transfer of the Company's rights.

That upon the transference of the territories in question to the Canadian Government it will be our duty to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer, and we authorize and empower the Governor in Council to arrange any details that may be necessary to carry out the terms and conditions of the above agreement.

We therefore most humbly pray that your Majesty will be graciously pleased, by and with the advice of your Most Honourable Privy Council, under the 146th clause of the British North America Act, 1867, and the provisions of the Imperial Act 31 and 32 Vict. cap. 105, to unite Rupert's Land on the terms and conditions expressed in the foregoing resolutions and also to unite the North-Western Territory with the Dominion of Canada as prayed for by and on the terms and conditions contained in our joint Address adopted during the first session of the first Parliament of this Dominion, and hereinbefore referred to.

The Senate, Monday, May 31, 1869.

(Signed,) JOSEPH CATCHON, *Speaker.*

House of Commons, Ottawa, May 29, 1869.

(Signed,) JAMES COCKBURN, *Speaker.*



## SCHEDULE (C).

The Governor and Company of Adventurers of England trading into Hudson's Bay to HER MAJESTY QUEEN VICTORIA.

## DEED OF SURRENDER.

To all whom these presents shall come unto, or concern, the Governor and Company of Adventurers of England, trading into Hudson's Bay, send greeting.

WHEREAS the said Governor and Company were established and incorporated by their said name of "The Governor and Company of Adventurers of England, trading into Hudson's Bay," by Letters Patent granted by His late Majesty King Charles the Second in the twenty-second year of his reign, whereby His said Majesty granted unto the said company and their successors the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks and sounds in whatsoever latitude they should be, that lay within the entrance of the straits commonly called Hudson's Straits together with all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid that were not already actually possessed by, or granted to, any of His Majesty's subjects, or possessed by the subjects of any other Christian Prince or State, and that the said land should be from thenceforth reckoned and reputed as one of His Majesty's Plantations or Colonies in America, called Rupert's Land; and whereby His said Majesty made and constituted the said Governor and Company and their successors the absolute lords and proprietors of the same territory, limits and places aforesaid, and of all other the premises saving the faith, allegiance and sovereign dominion due to His said Majesty, his heirs and successors for the same; and granted to the said Governor and Company and their successors, such rights of Government and other rights, privileges and liberties, franchises, powers and authorities in Rupert's Land as therein expressed. And whereas ever since the date of the said Letters Patent, the said Governor and Company have exercised and enjoyed the sole right thereby granted of such trade and commerce as therein mentioned, and have exercised and enjoyed other rights, privileges, liberties, franchises, powers, and authorities thereby granted; and the said Governor and Company may have exercised or assumed rights of Government in other parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia. And whereas by the British North America Act, 1867, it is (amongst other things) enacted that it shall be lawful for Her present Majesty Queen Victoria, by and with the advice and consent of Her Majesty's most Honourable Privy Council, on address from the Houses of Parliament of Canada, to admit Rupert's Land and the North Western Territory or either of them into the Union of the Dominion of Canada on such terms and conditions as are in the Address expressed, and as Her Majesty thinks fit to approve, subject to the provisions of the said Act. And whereas, by the Rupert's Land Act, 1868, it is enacted (amongst other things) that for the purposes of that Act the term "Rupert's



Land" shall include the whole of the lands and territories held or claimed to be held by the said Governor and Company, and that it shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty, by any instrument under Her Sign Manual and Signet to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers and authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, upon such terms and conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company; provided, however, that such surrender shall not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from the Houses of the Parliament of Canada, in pursuance of the 146th Section of the British North America Act, 1867, and that upon the acceptance by Her Majesty of such surrender, all rights of Government and proprietary rights, and all other privileges, liberties, franchises, powers and authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, and which shall have been so surrendered, shall be absolutely extinguished, provided that nothing in the said Act contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land or elsewhere trade and commerce. And whereas Her said Majesty Queen Victoria and the said Governor and Company have agreed to terms and conditions upon which the said Governor and Company shall surrender to Her said Majesty, pursuant to the provisions in that behalf in the Rupert's Land Act, 1868, contained, all the rights of Government and other rights, privileges, liberties, franchises, powers and authorities, and all the lands and territories (except and subject as in the said terms and conditions expressed or mentioned) granted or purported to be granted by the said Letters Patent, and also all similar rights which have been exercised or assumed by the said Governor and Company in any parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia, in order and to the intent that, after such surrender has been effected and accepted under the provisions of the last-mentioned Act, the said Rupert's Land may be admitted into the Union of the Dominion of Canada, pursuant to the hereinbefore mentioned Acts or one of them. And whereas the said terms and conditions on which it has been agreed that the said surrender is to be made by the said Governor and Company (who are in the following articles designated as the Company) to Her said Majesty are as follows (that is to say):—

1. The Canadian Government shall pay to the Company the sum of 300,000*l.* sterling when Rupert's Land is transferred to the Dominion of Canada.

2. The Company to retain all the posts or stations now actually possessed and occupied by them or their officers or agents whether in Rupert's Land or any other part of British North America, and may within twelve months after the acceptance of the said surrender select a block of land adjoining

each of their posts or stations, within any part of British North America, not comprised in Canada and British Columbia in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the annexed schedule. The actual survey is to be proceeded with, with all convenient speed.

3. The size of each block is not to exceed in the Red River Territory an amount to be agreed upon between the Company and the Governor of Canada in Council.

4. So far as the configuration of the country admits, the blocks shall front the river or road by which means of access are provided, and shall be approximately in the shape of parallelograms, and of which the frontage shall not be more than half the depth.

5. The Company may, at any time within fifty years after such acceptance of the said surrender, claim in any township or district within the fertile belt in which land is set out for settlements, grants of land not exceeding one-twentieth part of the land so set out; the blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding 8 cents Canadian an acre. The Company may defer the exercise of their right of claiming their proportion of each township or district for not more than ten years after it is set out, but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.

6. For the purpose of the last article the fertile belt is to be bounded as follows:—On the south by the United States' boundary; on the west by the Rocky Mountains; on the north by the Northern Branch of the Saskatchewan River; on the east by Lake Winnipeg, the Lake of the Woods and the waters connecting them.

7. If any township shall be formed abutting on the north bank of the northern branch of the Saskatchewan River, the Company may take their one-twentieth of any such township, which, for the purpose of this article, shall not extend more than five miles inland from the river, giving to the Canadian Dominion an equal quantity of the portion of land coming to them of townships established on the southern bank of the said river.

8. In laying out any public roads, canals or other public works, through any block of land reserved to the Company, the Canadian Government may take without compensation such land as is necessary for the purpose, not exceeding one-twentieth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or as a frontage to any river or lake, the said Government shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

9. It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause, shall be appropriated for public purposes.



10. All titles to land up to the eighth day of March, one thousand eight hundred and sixty-nine, conferred by the Company, are to be confirmed.

11. The Company is to be at liberty to carry on its trade without hindrance in its corporate capacity; and no exceptional tax is to be placed on the Company's land, trade or servants, nor any import duty on goods introduced by the said Company previously to such acceptance of the said surrender.

12. Canada is to take over the materials of the electric telegraph at cost price; such price including transport, but not including interest for money, and subject to a deduction for ascertained deterioration.

13. The Company's claim to land under an agreement of Messrs. Vankoughnet and Hopkins is to be withdrawn.

14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them.

And whereas the surrender hereinafter contained is intended to be made in pursuance of the agreement, and upon the terms and conditions hereinbefore stated.

Now know ye, and these presents witness, that, in pursuance of the powers and provisions of the Rupert's Land Act, 1868, and on the terms and conditions aforesaid, and also on condition of this surrender being accepted pursuant to the provisions of that Act, the said Governor and Company do hereby surrender to the Queen's Most Gracious Majesty, all the rights of Government, and other rights, privileges, liberties, franchises, powers and authorities, granted or purported to be granted to the said Governor and Company by the said recited Letters Patent of His late Majesty King Charles the Second; and also all similar rights which may have been exercised or assumed by the said Governor and Company in any parts of British North America, not forming part of Rupert's Land or of Canada, or of British Columbia, and all the lands and territories within Rupert's Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the said Governor and Company by the said Letters Patent. In witness whereof, the Governor and Company of Adventurers of England trading into Hudson's Bay, have hereunto caused their Common Seal to be affixed, the nineteenth day of November, One thousand eight hundred and sixty-nine.

THE SCHEDULE ABOVE REFERRED TO

Northern Department, RUPERT'S LAND

District	Post	Acres of Land
English River	Isle à la Crose.....	50
	Rapid River.....	5
	Portage La Loche.....	20
	Green Lake.....	100
	Cold Lake.....	10
	Deer's Lake.....	5
		say 16 acres each end of portage.
		100 acres in English River District

## Rupert's Land and the N.-W. Territory.

Northern Department. RUPERT'S LAND—Continued

District	Post	Acres of Land
Saskatchewan.....	Edmonton House.....	3,000
	Rocky Mountain House.....	500
	Fort Victoria.....	3,000
	St. Paul.....	3,000
	Fort Pitt.....	3,000
	Battle River.....	3,000
	Carlton House.....	3,000
	Fort Albert.....	3,000
	Whitefish Lake.....	500
	Lac La Biche.....	1,000
	Fort Assiniboine.....	50
	Lesser Slave Lake.....	500
	Lac St. Anne.....	500
	Lac La Nun.....	500
	St. Albert.....	1,000
	Pigeon Lake.....	100
	Old White Mud Fort.....	50
Cumberland.....	Cumberland House.....	100
	Fort La Crosse.....	3,000
	Pelican Lake.....	50
	Moose Woods.....	1,000
	The Pas.....	25
	Moose Lake.....	50
	Grande Rapid Portage.....	100 50 acres at each end of portage.
		4,325 acres in Cumberland District.
Swan River.....	Fort Pelly.....	3,000
	Fort Ellice.....	3,000
	Qu'Appelle Lakes.....	2,500
	Touchwood Hills.....	500
	Shoal River.....	50
	Manitobah.....	50
	Fairford.....	100
		9,200 acres in Swan River District.
Red River.....	Upper Fort Garry and Town of Winnipeg.....	
	Lower Fort Garry (including the farm the Company now have under cultivation).....	
	White Horse Plain.....	
		{ Such number of acres as may be agreed upon between the Company and the Governor of Canada in Council.
Manitobah Lake.....	Oak Point.....	50
Portage La Prairie.....		1,000
		1,050
Lake La Pluie.....	Fort Alexander.....	500
	Fort Frances.....	500
	Eagle's Nest.....	20
	Big Island.....	20
	Lac du Bonnet.....	20
	Rat Portage.....	50
	Shoal Lake.....	20
	Lake of the Woods.....	50
	Whitefish Lake.....	20
	English River.....	20
	Hungry Hall.....	20
	Trout Lake.....	20
	Clear Water Lake.....	20
	Sandy Point.....	20
		1,300 acres in Lac La Pluie District.
York.....	York Factory.....	100
	Churchill.....	10
	Severn.....	10
	Trout Lake.....	10
	Oxford.....	100
	Jackson's Bay.....	10
	God's Lake.....	10
	Island Lake.....	10
		250



Rupert's Land and the N.-W. Territory.

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Northern Department, RUPERT'S LAND—Concluded

District	Post	Acres of Land
Norway House.....	Norway House.....	100
	Berens' River.....	25
	Grand Rapid.....	10
	Nelson's River.....	10
		145
Total in Northern Department.....		42,170 acres.

Southern Department, RUPERT'S LAND

Albany.....	Albany Factory.....	100
	Martin's Falls.....	10
	Osnaburg.....	25
	Lac Seul.....	500
		635
East Main.....	Little Whale River.....	50
	Great Whale River.....	50
	Fort George.....	25
		125
Moose.....	Moose Factory.....	100
	Hannah Bay.....	10
	Abitibi.....	10
	New Brunswick.....	25
		145
Rupert's House.....	Rupert's House.....	50
	Mistassing.....	10
	Temiskamag.....	10
	Weswonahey.....	10
	Meckiskun.....	10
	Pike Lake.....	10
	Nitchequou.....	10
	Kamapiscan.....	10
		120
Kinogumiesce.....	Matawagamique.....	50
	Knckatoosh.....	10
		60
Total in Southern Department.....		1,055 acres.

Montreal Department, RUPERT'S LAND

Superior.....	Long Lake.....	10
	Kakababegino.....	10
		20
Labrador.....	Fort Nascoptic.....	75
	Outposts, ditto.....	25
	Fort Chimo (Ungava).....	100
	South River, outposts.....	30
	George's River.....	50
	Whale River.....	50
	North's River.....	25
	False River.....	25
		380
Total in Montreal Department.....		400 acres.

Northern Department, NORTH WEST TERRITORY

Athabasca.....	Fort Chippewyan.....	10
	Fort Vermilion.....	500
	Fort Dunvegan.....	50
		560

Rupert's Land and the N.-W. Territory.

Northern Department, North West Territory—Concluded

District	Post	Acres of Land
Athabasca	Fort St. John's	20
	Forks of Athabasca River	10
	Battle River	5
	Fond du Lac	5
	Salt River	5
McKenzie's River	Fort Simpson	100
	Fort Liard	300
	Fort Nelson	200
	The Rapids	100
	Hay River	20
	Fort Resolution	20
	Fort Rae	10
	Fond du Lac	10
	Fort Norman	10
	Fort Good Hope	10
	Peel's River	10
	Lapierre's House	16
Fort Halkett	100	
		900 acres in McKenzie's R. District.
Total in North West Territory		1,505 acres.

RECAPITULATION

	Acres
Northern Department, Rupert's Land	42,170
Southern " "	1,085
Montreal " "	400
Northern Department, North West Territory	1,505
	<u>45,160</u>



ORDER OF HER MAJESTY IN COUNCIL ADMIT-  
TING RUPERT'S LAND AND THE NORTH-  
WESTERN TERRITORY INTO THE  
UNION.<sup>(112)</sup>

At the Court at Windsor, the 23rd day of June, 1870.

PRESENT

The QUEEN'S Most Excellent Majesty.

Lord President.  
Lord Privy Seal.  
Lord Chamberlain.  
Mr. Gladstone.

WHEREAS by the British North America Act, 1867, it was (amongst other things) enacted that it should be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union on such terms and conditions in each case as should be in the Addresses expressed, and as the Queen should think fit to approve, subject to the provisions of the said Act. And it was further enacted that the provisions of any Order in Council in that behalf should have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland:

And whereas by an Address from the Houses of the Parliament of Canada, of which Address a copy is contained in the Schedule to this Order annexed, marked A, Her Majesty was prayed, by and with the advice of Her Most Honourable Privy Council, to unite Rupert's Land and the North-Western Territory with the Dominion of Canada, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government upon the terms and conditions therein stated:

And whereas by the Rupert's Land Act, 1868, it was (amongst other things) enacted that it should be competent for the Governor and Company of Adventurers of England trading into Hudson's Bay (hereinafter called the Company) to surrender to Her Majesty, and for Her Majesty, by any Instrument under Her Sign Manual and Signet to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers, and authorities whatsoever, granted or purported to be granted by certain Letters Patent therein recited to the said Company within Rupert's Land, upon such terms and conditions as should be agreed upon by and between Her

<sup>(112)</sup> See notes to section 146 of the B.N.A. Act, 1867, also notes to section 2 of the B.N.A. Act, 1871 (in Part I), and also notes to the Manitoba Act, 1870, in Part III.

Majesty and the said Company; provided, however, that such surrender should not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land should be admitted into the said Dominion of Canada should have been approved of by Her Majesty and embodied in an Address to Her Majesty from both the Houses of the Parliament of Canada, in pursuance of the 146th Section of the British North America Act, 1867.

And it was by the same Act further enacted that it should be competent to Her Majesty, by Order or Orders in Council, on Addresses from the Houses of the Parliament of Canada, to declare that Rupert's Land should, from a date to be therein mentioned, be admitted into and become part of the Dominion of Canada;

And whereas a second Address from both the Houses of the Parliament of Canada has been received by Her Majesty praying that Her Majesty will be pleased under the provisions of the hereinbefore recited Acts, to unite Rupert's Land on the terms and conditions expressed in certain Resolutions therein referred to and approved of by Her Majesty, of which said Resolutions and Address copies are contained in the Schedule to this Order annexed, marked B, and also to unite the North-Western Territory with the Dominion of Canada, as prayed for by and on the terms and conditions contained in the hereinbefore first recited Address, and also approved of by Her Majesty:

And whereas a draft surrender has been submitted to the Governor General of Canada containing stipulations to the following effect, viz.:—

1. The sum of 300,000*l.* (being the sum hereinafter mentioned) shall be paid by the Canadian Government into the Bank of England to the credit of the Company within six calendar months after acceptance of the surrender aforesaid, with interest on the said sum at the rate of 5 per cent per annum, computed from the date of such acceptance until the time of such payment.

2. The size of the blocks which the Company are to select adjoining each of their forts in the Red River limits, shall be as follows:

	Acres.
Upper Fort Garry and town of Winnipeg, including the inclosed park around shop and ground at the entrance to the town..	500
Lower Fort Garry (including the farm the Company now have under cultivation)..	500
White Horse Plain.....	500

3. The deduction to be made as hereinafter mentioned from the price of the materials of the Electric Telegraph, in respect of deterioration thereof, is to be certified within three calendar months from such acceptance as aforesaid by the agents of the Company in charge of the depots where the materials are stored. And the said price is to be paid by the Canadian Government into the Bank of England to the credit



of the Company within six calendar months of such acceptance, with interest at the rate of 5 per cent per annum on the amount of such price, computed from the date of such acceptance until the time of payment:

And whereas the said draft was on the fifth day of July, one thousand eight hundred and sixty-nine, approved by the said Governor General in accordance with a Report from the Committee of the Queen's Privy Council for Canada; but it was not expedient that the said stipulations, not being contained in the aforesaid second Address, should be included in the surrender by the said Company to Her Majesty of their rights aforesaid or in this Order in Council.

And whereas the said Company did by deed under the seal of the said Company, and bearing date the nineteenth day of November, one thousand eight hundred and sixty-nine, of which deed a copy is contained in the Schedule to this Order annexed, marked C, surrender to Her Majesty all the rights of government, and other rights, privileges, liberties, franchises, powers and authorities granted, or purported to be granted to the said Company by the said Letters Patent herein and hereinbefore referred to, and also all similar rights which may have been exercised or assumed by the said Company in any parts of British North America not forming part of Rupert's Land, or of Canada or of British Columbia, and all the lands and territories (except and subject as in the terms and conditions therein mentioned) granted or purported to be granted to the said Company by the said Letters Patent:

And whereas such surrender has been duly accepted by Her Majesty, by an instrument under Her Sign Manual and Signet, bearing date at Windsor the twenty-second day of June, one thousand eight hundred and seventy:

It is hereby Ordered and declared by Her Majesty, by and with the advice of the Privy Council, in pursuance and exercise of the powers vested in Her Majesty by the said Acts of Parliament, that from and after the fifteenth day of July, one thousand eight hundred and seventy, the said North-Western Territory shall be admitted into and become part of the Dominion of Canada upon the terms and conditions set forth in the first hereinbefore recited Address, and that the Parliament of Canada shall from the day aforesaid have full power and authority to legislate for the future welfare and good government of the said Territory. And it is further ordered that, without prejudice to any obligations arising from the aforesaid approved Report, Rupert's Land shall from and after the said date be admitted into and become part of the Dominion of Canada upon the following terms and conditions, being the terms and conditions still remaining to be performed of those embodied in the said second address of the Parliament of Canada, and approved by Her Majesty as aforesaid:—

1. Canada is to pay to the Company 300,000<sup>l</sup>, when Rupert's Land is transferred to the Dominion of Canada.

2. The Company are to retain the posts they actually occupy in the North-Western Territory, and may, within twelve months of the surrender, select a block of land adjoining

each of its posts within any part of British North America not comprised in Canada and British Columbia, in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the Schedule of the aforesaid Deed of Surrender. The actual survey is to be proceeded with, with all convenient speed.

3. The size of each block is not to exceed [10] acres round Upper Fort Garry, [300] acres round Lower Fort Garry; in the rest of the Red River Territory a number of acres to be settled at once between the Governor in Council and the Company, but so that the aggregate extent of the blocks is not to exceed 50,000 acres.

4. So far as the configuration of the country admits the blocks shall front the river or road by which means of access are provided, and shall be approximately in the shape of parallelograms, of which the frontage shall not be more than half the depth.

5. The Company may, for fifty years after the surrender, claim in any township or district within the Fertile Belt, in which land is set out for settlement, grants of land not exceeding one twentieth part of the land so set out. The blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding 8 cents Canadian an acre. The Company may defer the exercise of this right of claiming the proportion of each township for not more than ten years after it is set out; but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.

6. For the purpose of the last Article, the Fertile Belt is to be bounded as follows:—On the south by the United States boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.

7. If any township shall be formed abutting on the north bank of the northern branch of the Saskatchewan River, the Company may take their one-twentieth of any such township, which for the purpose of this article shall not extend more than five miles inland from the river, giving to the Canadian Dominion an equal quantity of the portion of lands coming to them of townships established on the southern bank.

8. In laying out any public roads, canals, &c., through any block of land reserved to the Company, the Canadian Government may take, without compensation, such land as is necessary for the purpose, not exceeding one twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, or which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or as a frontage to any river or lake, they shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.



9. It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause shall be appropriated for public purposes.

10. All titles to land up to the eighth day of March, one thousand eight hundred and sixty-nine, conferred by the Company are to be confirmed.

11. The Company is to be at liberty to carry on its trade without hindrance in its corporate capacity, and no exceptional tax is to be placed on the Company's land, trade or servants, nor any import duties on goods introduced by them previous to the surrender.

12. Canada is to take over the materials of the electric telegraph at cost price—such price including transport, but not including interest for money, and subject to a deduction for ascertained deterioration.

13. The Company's claim to land under agreements of Messrs. Vankoughnet and Hopkins to be withdrawn.

14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them.

15. The Governor in Council is authorized and empowered to arrange any details that may be necessary to carry out the above terms and conditions.

And the Right Honourable Earl Granville, one of Her Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

## SCHEDULES.

## SCHEDULE (A).

ADDRESS to HER MAJESTY the QUEEN from the Senate and House of Commons of the Dominion of Canada.

To the Queen's Most Excellent Majesty.

*Most Gracious Sovereign,*

We, your Majesty's most dutiful and loyal subjects, the Senate and Commons of the Dominion of Canada in Parliament assembled, humbly approach your Majesty for the purpose of representing:—

That it would promote the prosperity of the Canadian people, and conduce to the advantage of the whole Empire, if the Dominion of Canada, constituted under the provisions of the British North America Act, 1867, were extended westward to the shores of the Pacific Ocean.

That the colonization of the fertile lands of the Saskatchewan, the Assiniboine, and the Red River districts; the development of the mineral wealth which abounds in the region of the Northwest; and the extension of commercial intercourse through the British possessions in America from the Atlantic to the Pacific, are alike dependent on the establishment of a stable government for the maintenance of law and order in the North-Western Territories.

That the welfare of a sparse and widely scattered population of British subjects of European origin, already inhabiting these remote and unorganized territories, would be materially enhanced by the formation therein of political institutions bearing analogy, as far as circumstances will admit, to those which exist in the several Provinces of this Dominion.

That the 146th section of the British North America Act, 1867, provides for the admission of Rupert's Land and the North-Western Territory, or either of them, into union with Canada, upon the terms and conditions to be expressed in addresses from the Houses of Parliament of this Dominion to your Majesty, and which shall be approved of by your Majesty in Council.

That we do therefore most humbly pray that your Majesty will be graciously pleased, by and with the advice of your Most Honourable Privy Council, to unite Rupert's Land and the North-Western Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good Government; and we most humbly beg to express to your Majesty that we are willing to assume the duties and obligations of government and legislation as regards these territories.

That in the event of your Majesty's Government agreeing to transfer to Canada the jurisdiction and control over the said region, the Government and Parliament of Canada will



THE INDIAN ABORIGINAL INTEREST IN THE LAND OF NORTHERN QUEBEC

1. The policy and practice of the Crown was to recognize that the Indians had an aboriginal interest in the lands they used and occupied and that this interest must be surrendered to the Crown with compensation before being opened for settlement. Throughout the years this aboriginal interest was called the "Indian title" which had to be extinguished.

2. When Rupert's Land (all that part draining into Hudson Bay) was transferred by the Hudson's Bay Company to Canada in 1869, the deed of surrender provided that:

"Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government."

3. The speech from the Throne in 1970 contained the following reference:

"And furthermore, that upon the transference of the territory in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines."

4. In accordance with established policy, treaties were negotiated by the Crown Canada with the Indians in Manitoba, Saskatchewan, Alberta and part of Ontario in the 1870's whereby the Indian title was extinguished for consideration set out in each treaty and paid by Canada.

5. As a result of two Privy Council decisions in the 1880's, it was generally held that the burden of extinguishing the Indian title must be borne by the authority benefiting by it. This led to an agreement with Ontario which culminated in a treaty in 1905 with the Indians of northern Ontario (Treaty No. 9) which was negotiated by Joint Commissioners. It also provided that the Province must set aside land as reserves and pay the cost of the annuities; Canada to undertake the cost of education and administration of the treaty.

6. Following the proposal in 1903 to extend the boundaries of Manitoba, Ontario and Quebec, attention was given to the Indian claims on the territory proposed to be annexed to the provinces. The considerations that governed were set out in Order in Council (P.C. 2626) of January 17, 1910. In brief, it was considered that the provinces must ensure that the Indian title be extinguished as a condition of getting the land to be annexed.

(a) Manitoba posed no problem as the public lands were to be held under Federal control and "extinction of the Indian interest therein devolves upon the Government of Canada and has already been arranged for".

(b) In Ontario a guide toward the "probable terms and conditions of the cession by the Indians" of the territory to be added to the Province had already been established by Treaty No. 9 made in 1905 and jointly negotiated. The terms were:- reserves on the basis of one square mile to each family of five persons and a perpetual annuity of \$4.00 per capita to be met by the Province; Canada to bear the expense of negotiations, the cost of schools and subsequent administration of the Treaty. This has in effect been carried out.

(c) In Quebec to that date there had not been any extinguishment of the Indian title in any of the lands (456,000 sq. miles) to be added. The Order in Council states as follows:

"The Province of Quebec to perfect its title to this domain should adopt the established practice and agree with the Dominion upon the terms and conditions of a Treaty with the Indians for the formal cession of their title in the lands. The Indian population of this vast

tract may approximately be stated at 2,000 or 2,5000 tributary to Fort George, Rupert's House, Fort Chimo and at other trading posts.

"It seems fair to suggest that the Province should consider granting the same terms and conditions as those granted by Ontario under Treaty No. 9, namely,- a fixed annuity of \$4.00 per capita; reserves of the area of one square mile to each family of five; the Dominion assuming the same obligations with reference to negotiations, administration, schools, etc. Neither in the case of Ontario nor Quebec would it be proposed to immediately extinguish this title throughout the territory but to proceed gradually as may be dictated by the needs of the Indian tribes or by the progress of settlement, prospecting, railway construction or general development throughout the territory."

7. The Government of Quebec in reply indicated that while not opposed to a treaty being made with the Indians, they did not believe it necessary to have the treaty before the Transfer but the interests of the Indians could be safeguarded in the laws to be adopted by Canada and the Province.

8. The Quebec Boundaries Extension Act. 2 George V, Chap. 45, provides as follows:

"2(c) That the province of Quebec will recognize the rights of the Indian inhabitants in the territory above described to the same extent, and 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 expenditure in connection with or arising out of such surrenders:

(d) That no such surrender shall be made or obtained except with the approval of the Governor in Council;

(e) That the trusteeship of the Indians in the said territory, and the management of any lands now or hereafter reserved for their use, shall remain in the Government of Canada subject to the control of Parliament."

(An identical provision was included in the Ontario Boundary Extension Act (2 George V, Chap. 40.) The Quebec Act is 2 George V, Chap. 7.)

9. In 1919 Arthur Meighen wrote to Sir Lomer Gouin, Premier and Attorney General of Quebec, asking if the Province would enter into treaty negotiations with the Indians along the eastern side of James Bay extending from the Nottaway River to the Little Whale River and including the Indian residents along the coast such as Rupert House, East Main, Fort George, etc.

10. Gouin replied at length making two main points:

(a) That the province had no objection to carrying out the obligations assumed by statute.

(b) That the money obligations arising out of a treaty of surrender, which had been considered to be provincial, was actually federal by virtue of a later decision of the Privy Council.

He went on to say that this destroyed the ground upon which both governments had based their decision to have the indemnity paid by the province. He stated there was a statutory obligation to pay, but in view of the Privy Council decision felt that if they set apart land as a reserve as agreed upon with the Indians, they should be relieved of the annuity payments.

11. Meighen wrote back arguing against the contentions raised by Gouin and suggested arrangements for taking the treaty should be made for the summer of 1920.



12. The matter came up again in 1927 when a number of side issues were discussed, but no conclusive action was taken.

13. There is no indication that it was ever raised again, the last reference on file being a petition in 1929 on behalf of 300 Indians from East Main and Fort George for a Treaty similar to the one made in northern Ontario.

"COPY"

Appendix E.

Ottawa, February 28, 1919.

Dear Premier Gouin,-

My attention has been called to the urgent necessity of a treaty being entered into with the Indians resident on the eastern side of James Bay extending along the bay from the Nottaway River to the Little Whale River and including the Indians resident at points along the coast such as Rupert House, East Main, Fort George, etc.

It was stipulated in the Act, which enlarged the boundaries of Quebec, that the rights of the Indians in the territory would be respected by the Province, and that their rights would be properly ceded according to the usages of the Crown. The Act referred to is 2 George V., Chap.45, 1912, and it provides as follows:-

"(c) That the province of Quebec will recognize the rights of the Indian inhabitants in the territory above described to the same extent, and 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 expenditure in connection with or arising out of such surrenders;

"(d) That no such surrender shall be made or obtained except with the approval of the Governor in Council;

"(e) That the trusteeship of the Indians in the said territory, and the management of any lands now or hereafter reserved for their use, shall remain in the Government of Canada subject to the control of Parliament."

I shall be glad to be advised whether your Government would be willing to enter into treaty negotiations with the Indians within the area referred to on the basis indicated in the closing paragraph of memorandum of His Excellency in Council dated the 2nd May, 1910, a copy of which I inclose herewith.

Sincerely yours,

(sd) Arthur Meighen

n.Sir Lomer Gouin,  
Premier and Attorney-General,  
Province of Quebec,  
Quebec, P.Q.



477657

OFFICE OF THE PRIME MINISTER

PROVINCE OF QUEBEC

Quebec, March 20th, 1919.

521372

The Honourable Arthur Meighen,  
Minister of the Interior,  
Ottawa.

Dear Sir,-

I have had under consideration your letter of the 28nd February ultimo, respecting the subject of a treaty to be entered into with the Indians of the eastern side of James Bay from the Nottaway River to the Little Whale River, and with the Indians residing at points along the coast such as Rupert House, East Main, Fort George, etc.

You ask whether the Government of this Province would be willing to enter into treaty negotiations with the Indians within this area on the basis indicated in the closing paragraph of a memorandum of His Excellency the Governor General of Canada in Council, dated the 2nd May, 1910, of which you enclose a copy. The paragraph of this Order in Council you refer to is the following:

"The Minister, therefore, recommends, as before, that the terms to be offered the Indians previously mentioned for a relinquishment of their rights and title to the territory described, as well as to any other parts of the Dominion, should be as set forth in the Order in Council of the 17th January, 1910; the Province of Quebec to bear the cost of the perpetual annuity at \$4.00 per head and to set apart reserves of the area of one square mile for each family of five, and that the agreement between the Dominion and the Province should be statutory, incorporated in the Act respecting the extension of the boundaries".

The treaty under which the rights are to be surrendered is authorized by the Act of this Province, 2 Geo. V, c.7, and we have no objection whatever to carrying out the obligations we there assumed.

However, before the treaty negotiations are begun, I would like to call your attention to that part of the Order in Council of the 2nd May, 1910, which enunciates the condition that this Province shall bear all charges and expenditures in connection with, or arising from the surrender of the Indian rights.

At the time, His Excellency the Governor in Council passed this Order, i.e. 2nd May, 1910, the question of the payment of the money obligations arising out of a treaty of surrender, was governed by the ruling in *St. Catharines Milling & Lumber Company v. the Queen*, which imposed such payment upon the province that benefitted by the surrender. The Order in Council obviously went on this ground and it carefully sets out the following part of the judgment in *St. Catharines Milling & Lumber Company*, upon which it based its conclusions embodied in the last paragraph to which you call our attention:

"The fact that the power of legislating for Indians, and for lands which are reserved to their use, has been entrusted to the Parliament of the Dominion is not in the least degree inconsistent with the right of the provinces to a beneficial interest in these lands, available to them as a source of revenue whenever the estate of the Crown is disencumbered of the Indian title".....  
"Seeing that the benefit of the surrender accrues to her, Ontario must, of course, relieve the Crown, and the Dominion, of all obligations, involving the payment of money, which were undertaken by Her Majesty, and which are said to have been in part fulfilled by the Dominion Government".

A few months after the Order in Council was passed, a different decision on the same subject was rendered by the Privy



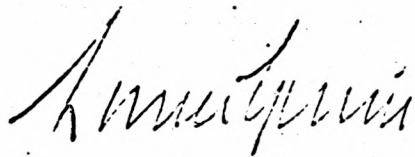
Council in Attorney General for Canada V. Ontario, wherein it was held that in making Indian treaties, the Dominion Government acted for distinct and important interests of their own and that the provinces were in no way bound to pay the pecuniary charges stipulated in such a treaty. I take the liberty of reproducing a material part of the dictum of Lord Loreburn, I.C.:

"If the opinions of Eubridge, J., and of the two dissenting judges in the Supreme Court are examined, it will be found that they rely almost entirely upon a passage in the judgment delivered by Lord Watson at this Board in the case of St. Catharines' Milling and Lumber Co., v. The Queen (14 App. Cas. 60, p. 390). It must be acknowledged that this passage does give strong support to the view of those who rely upon it, and their Lordships feel themselves bound to regard this expression of opinion with the same respect that has been accorded to it by all the learned judges in Canada. They consider, however, that Idington, J., and Duff, J., have stated conclusive reasons against adopting the dictum alluded to as decisive of the present case. The point here raised was not either raised or argued in that case, and it is quite possible that Lord Watson did not intend to pronounce upon a legal right. If he did so intend, the passage in question must be regarded as obiter dictum".

This, of course, destroys the ground upon which the Governments of Canada and of Quebec based their decision to have the indemnity paid by the province. There is, no doubt, a statutory obligation on our part to pay; however, in view of the foregoing, do you not believe that this Province should be relieved of that part of its obligation consisting in payment of the yearly dues on its setting apart as a reserve a territory agreed upon by both Governments and the Indians.

I will await further communication with you before doing anything in the matter.

Yours very sincerely,



"COPY"

Appendix G

477658

January 19, 1927.

Dear Sir,-

I am in receipt of your letter of December 6th with reference to the desire of the Fort George Indians to enter into treaty. Preliminary arrangements must be made with the Province of Quebec. I shall inform the provincial authorities that the Fort George Indians have requested that a treaty be entered into with them, but I cannot of course state what view the Quebec Government would take of the matter. I must thank you for bringing the matter to my attention.

Yours very truly,

Deputy Superintendent General.

George Morrow, Esq.,  
Fort George, James Bay,  
C/o The Hudson's Bay Company,  
Island Falls P.O.,  
Ont.



Presented to  
the Deputy Attorney General  
and refer to



P/M

QUEBEC, March 8th 1927.

The Honourable Charles Stewart,  
Minister of the Interior,  
Ottawa.

*John A. ...*

Sir,

With further reference to your letter of the 24th January last, I notice that the Honourable Arthur Meighen in his letter of the 28th February 1919 says that his attention has been called to the urgent necessity of a treaty being entered into with the Indians resident on the eastern side of James Bay extending along the bay from the Nottaway River to the Little Whale River. He proceeds to quote from the Statute 2 George V, Chap. 45 (1912) the provisions relating to Indians which are paragraphs (c) (d) and (e) of Section 2.

It was not however under this Act that the boundaries of the Province of Quebec were extended so as to include a great part of the area referred to but under the Act 61 Victoria, Chap. 5, which contains no such provisions as the later Statute.

In *Canada v. Ontario* (1910) A.C., 657, the decision of the Supreme Court of Canada, confirmed by the Judicial Committee of the Privy Council, was to the effect that there was no obligation legal or equitable on the Province to bear the burden of the surrender taken by the Dominion.

In the absence therefore of any statutory obligation I do not see how this Province can be asked to enter into a treaty and assume the obligations on the basis of the Order in Council of the Governor General of the 2nd of May 1910 in respect of the territory aforesaid.

DEPARTMENT OF THE ATTORNEY GENERAL

-2-

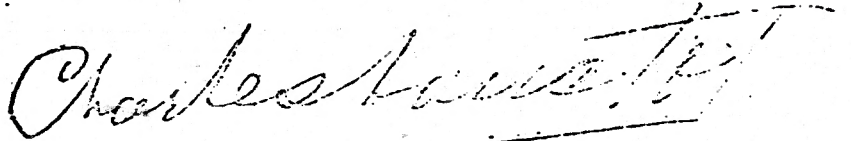
I shall be very glad to consider any further views which you may desire to present.

The matter having been allowed to stand over for the past eight years the need for action has probably not proved so urgently necessary as was thought in 1919.

I have the honour to be,

Sir,

Your obedient servant,

A handwritten signature in cursive script, appearing to read "Charles Stewart". The signature is written in dark ink and is positioned above the typed name of the signatory.

Deputy Attorney General.



22nd May, 1914.

Dear Sir,

I have your letter of the 26th March, addressed to the Honorable Charles Stewart, in further reference to the matter of treating with the Indians residing on the eastern side of James Bay extending along the Bay from the Nottaway River to the Little Whale River the southern area of which is situated within that portion of the Province which was added by Act 61 Victoria, Chap. 3, and the northern area of which is situated within that portion of the Province which was added by Act 2 George V, Chap. 45. I note your observation that the former Statute contains no such provision as the latter Statute.

I gather from your letter that you do not raise any question as to the obligations imposed upon the Province by Chapter 45, 2 George V but that as Chapter 3, 61 Victoria does not in terms impose any obligation on the part of the Province in respect of the Indians that the Province cannot very well be called upon to carry out within the territory added by this Statute, the obligations referred to in the Order in Council of the Governor General of the 2nd May, 1910. I note your reference to the decision of the Privy Council in Canada vs Ontario (1890) which was to the effect that there was no obligation, legal or equitable, on the Province to bear the burden of the Surrender taken by the Dominion.

In reply I have to say that the Province is not

Charles Lemoté, Esq., K.C.,  
Deputy Attorney General,  
Quebec,  
Que.

being asked to bear the burden of any surrender taken by the Dominion. No surrender has been taken by the Dominion from the Indians of any area of lands within the territory added by either of the two Statutes above referred to. These territories are accordingly still encumbered with the Indian title.

It has always been the policy and practice of the Dominion Government to take surrenders from the Indians of their title or interest in lands held by the Crown in the right of the Dominion and to make provision for the setting apart of reserves for the various bands for the payment of an annuity to each and every Indian and for other benefits as contained in the various treaties. When the Dominion Government, by Statute 2 George V, Chapter 45, gave to the Province of Quebec the territory included within the boundaries set forth in the said Statute, it was expressly provided that the Province should recognize the rights of the Indians within this territory to the same extent as the Government of Canada had been in the habit of doing. It is true that the Statute of 61 Victoria Chapter 3 does not contain any such provisions. The territory, however, included in this extension is still encumbered with the Indian title and it is a question as to how the Province proposes to deal with this title. I should suppose that as the Indian title is the same in respect of each of the territories added by the above mentioned Statutes that the treatment should be the same in each case.

I shall be glad to consider any representations that you may feel disposed to make in respect of this matter.

Yours truly,

Deputy Superintendent General.



Please reply to  
the Deputy Attorney General

and refer to  
No. 1010/27  
P/11



QUEBEC, July 12th 1927.

*Duncan C. Scott*  
Duncan C. Scott, Esq.,

Deputy Superintendent General,  
Department of Indian Affairs,

Ottawa.

Dear Sir,

I beg to acknowledge the receipt of  
your letter of the 23rd May last, no. 477658.

I observe that you say the whole of the territories,  
which by Statutes 61 Victoria, c. 3 and 2 George V, c. 45  
were added to the Province of Quebec, are still encumbered  
with the Indian title. I do not quite understand what is  
the Indian title to which you here refer. These territories,  
formerly known as Rupert's Land, were granted to the Hudson's  
Bay Company absolutely by the charter. By the Royal  
Proclamation of 1763 issued after the Conquest, vast  
territories including, I think, the North West Territories  
were reserved for the use of the Indians but the lands of the  
Hudson's Bay Company were expressly excepted from this  
reservation. Then in 1869, the Company surrendered their  
charter and all the lands and territories within Rupert's  
Land to the Queen and by the Queen's Order in Council of 1870,  
Rupert's Land was admitted into and became part of the Dominion  
of Canada on certain conditions therein stated of which no. 14  
reads:-

"Any claims of Indians to compensation for  
lands required for purposes of settlement shall be disposed  
of by the Canadian Government in communication with the  
Imperial Government."

It does not seem to me that this term and condition  
is by any means clear on the subject of the Indian title.

-2-

Indian title, a very uncertain title which the Privy Council in the St. Catherine's Milling case considered it unnecessary to enquire into and define.

It would I suppose be premature to consider if any distinction is to be made between the extension of the Province of Quebec made by the Acts 61 Victoria, c. 3 and 2 George V, c. 45, <sup>respectively</sup> in carrying out the obligations referred to in the Order in Council of the Governor General of 2nd of May 1910 until any question as to the legal title and status of the Indians in these territories is ascertained.

I note that you say no surrenders have ever been taken by the Dominion within these territories and I assume that you are referring to the past and not any surrenders contemplated in the future when you say that the Province is not being asked to bear the burden of any surrender taken by the Dominion.

I need not remind you that Quebec has never recognized the Indian title and as the Dominion has never taken any surrenders within these territories it has perhaps not done so either.

Quebec has acted in the past with all proper liberality towards the Indians within the Province and doubtless will continue to do so in the future but the consideration of any such action would seem to be better postponed until any legal questions involved are cleared up.

Yours very truly,

*Charles Spence*  
Deputy Attorney General.

D R A F T

Mr. D.S. Maxwell,  
Deputy Minister,  
Justice Department,  
Justice Building,  
Wellington St.,  
Ottawa, Ontario.

Dear Mr. Maxwell:

This Department has a continuing concern with the question of the aboriginal interest of the Indians to lands in the Provinces of Canada and in obtaining, in so far as it is possible, an interpretation of the various treaties, surrenders and other agreements by which the Indian interest was extinguished by the Crown.

One of the principle areas of concern is the Province of Quebec. As no formal treaties or agreements were entered into with the Indians in that Province there is a presumption that the aboriginal interest of the Indians has not been extinguished. Certain aspects of the question have been considered at various times in former years. However, in so far as I am aware, the question has not previously been considered in its entirety. Recent events indicate an early need to ascertain whether there is a subsisting aboriginal interest in the lands now included within the boundaries of the Province of Quebec and where such interest is found, or presumed to exist, to determine the responsibility in law for extinguishing it.

The problem is complex due to the fact that the present Province of Quebec is the product of a territorial nucleus to which areas of Crown land were added over the years by legislative action. The dimensions of the problem can best be seen by examining it in terms of the original Province and the various territorial additions.



(1) The Original Province of Quebec

This area was created and described by the Royal Proclamation of 1763 and included the original French territory. The Proclamation was in two parts and this area was exempted from the operation of the second part which dealt with the rights of Indians. This exclusion was presumably based on the assumption that the original Indian interest had been extinguished by the French during their 200 year occupation of the area.

Question

- (a) Can we assume that there is <sup>no</sup> subsisting aboriginal interest in this area?
- (b) If the answer to (a) above is no then on whom rests the responsibility for extinguishing the interest.

(2) Indian Hunting Lands

This area as described in the Royal Proclamation of 1763 comprised the land lying between the original French Colony and the territory to the north held by the Hudson's Bay Company under its Royal Charter. The Proclamation reserved the territory to the Indians as their hunting lands and provided that the land could only be purchased by the Indians from the Crown at a public meeting held with the Indians for that purpose.

This area was added to the Province of Quebec by the Quebec Act of 1774 which although it did not make direct reference to Indian rights, provided that the Act would not derogate any previous right, title or grant. Nor is there any reference to the Indian

title in the Constitutional Act of 1791 or the Act of Union of 1840 both of which affected the area in question.

Question

- (a) Is there a subsisting Indian interest in the "Indian Hunting Lands" as described in the Royal Proclamation?
- (b) If the answer to question (a) is in the affirmative then on whom rests the responsibility for extinguishing it.

(3) Rupert's Land

This area comprised the water shed of James and Hudson's Bay. Originally, included in the Hudson's Bay Charter it was acquired by Canada from the Company and admitted to Canada by an Imperial Order in Council under the Rupert's Land Act of 1868 subject to addresses from the Senate and House of Commons under Section 146 of the British North American Act in which the Imperial Government sought and Canada gave assurances that with respect to Indian claims in the area British principles would be continued. The Deed from the Hudson's Bay Company provided that "any claims to Indians for compensation to lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government". The speech from the Throne in 1870 contained the following reference "and furthermore, that upon the transference of the territory in question to the Canadian Government the claims of

the Indian tribes to compensation for lands required for settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealing with the aborigines".

In accordance with this policy treaties were negotiated by the Crown of Canada in the 1870's with respect to the former Charter area with Indians in Manitoba, Saskatchewan, Alberta, and part of Ontario.

However, no similar action was taken in respect to the Quebec part of the Charter area, presumably because the lands were not in demand for settlement.

Subsequent events require that the question of the Indian interest in the Quebec portion of Rupert's Land be considered in relation to two specific areas.

A. That portion of the former Rupert's Land area lying south of the East Main River was added to Quebec in 1896 by the Act of 61 Victoria, Chapter 3. The statute contains no reference to Indians or an Indian interest in the land.

Question

(a) Is there a subsisting Indian interest in this area?  
(b) If the answer is yes then on whom rests the responsibility to extinguish it?

B. That part of the Rupert's Land area lying north of the East Main River was added to the Province of Quebec in 1912 by the Quebec Boundaries Extension Act, 2 George V, Chapter 45, thus extending the Province to its present northern limits.



This action stemmed from proposals made in 1908 for the extension of the northern boundaries of Manitoba, Ontario and Quebec.

Attention was given to the question of Indian claims to the area proposed to be annexed to the Provinces and the considerations that governed were set out in Order in Council (P.C. 2626) of January 17, 1910. In brief it was considered that the Provinces must ensure that the Indian title be extinguished as a condition of getting the land to be annexed. In relation to Quebec the Order in Councils states as follows:

"The Province of Quebec to perfect its title to this domain should adopt the established practice and agree with the Dominion upon the terms and conditions of a treaty with the Indians for the formal cession of their title in the lands. The Indian population of this vast tract may approximately be stated at 2,000 or 2,500 tributary to Fort George, Rupert's House, Fort Chimo and at other trading posts.

"It seems fair to suggest that the Province should consider granting the same terms and conditions as those granted by Ontario under Treaty No. 9, namely,- a fixed annuity of \$4.00 per capita; reserves of the area of one square mile to each family of five; the Dominion assuming the same obligations with reference to negotiations, administration, schools, etc. Neither in the case of Ontario nor Quebec would it be proposed to immediately extinguish this title

throughout the territory but to proceed gradually as may be dictated by the needs of the Indian tribes or by the progress of settlement, prospecting, railway construction or general development throughout the territory".

The Government of Quebec in replying to the considerations as set out in the Federal Order in Council indicated that while not opposed to a treaty being made by the Indians it did not believe it necessary to have the treaty before the transfer. It suggested that the interests of the Indians could be safeguarded in the laws to be adopted by Canada and the Province. The subsequent Quebec Boundaries Extension Act provides as follows:

"2(c) That the Province of Quebec will recognize the rights of the Indian inhabitants in the territory above described to the same extent and 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 expenditure in connection with or arising out of such surrenders.

(d) That no such surrender shall be made or obtained except with the approval of the Governor in Council.

(e) That the trusteeship of the Indians in the said territory and the management of any lands now or hereafter reserved for their use shall remain in the Government of Canada, subject to the control of Parliament".

Despite the provisions of the Act and subsequent attempts by Canada to have Quebec fulfil the conditions of the transfer there has been no extinguishment of the Indian interest in the territory in question. The negotiations between Canada and the Province broke down in each instance over the question of responsibility for paying indemnity to the Indians. The Province felt that the Court decisions on which the considerations were based had been superseded by later decisions. It took the position that setting apart land as reserves would be a sufficient discharge of the Province's obligation and that the responsibility for paying compensation by way of annuity payments or otherwise rested elsewhere.

Question

- (a) Does the fact that the Province has not complied with the conditions of the transfer constitute a flaw in the provincial title?
- (b) What means if any are available to --
  - (i) The Indian Bands occupying this area or,
  - (ii) The Federal Government to compel the Province to extinguish the Indian interest recognized at the time of the transfer.

In summary, the issue in Quebec appears to resolve itself into a number of related questions as follows:

- (1) Is there a subsisting Indian interest in the original Province of Quebec (The French Territory) as described in the Royal Proclamation of 1763?



- (2) Is there a subsisting Indian interest in the "Indian Hunting Lands" as described in the Royal Proclamation and added to the Province of Quebec by the Quebec Act of 1774?
- (3) Is there a subsisting Indian interest in that portion of Rupert's Land added to the Province in 1828?
- (4) If the answer to any or all of 1 - 3 is in the affirmative then on whom rests the responsibility for extinguishing the interest?
- (5) What remedy is open to the Indian Bands of Quebec or the Federal Government to compel the province to negotiate a treaty with the Bands pursuant to the terms of conditions 2 (c), (d), (e) of the Quebec Boundaries Extension Act?

Although the province has not entered into treaties with the Indians in Quebec it has, in fact, set aside lands for their use. This will explain in part why up to now there has been no great pressure from the Indians in respect to their aboriginal rights. The Act 14 and 15 VIC. Chapter 105, set apart reserves for such Bands as Seven Islands, Resigouche, Timiskaming, Maniwaki, Berthois, Heymontachi, etc. Since that date, land had been made available for other Bands by Provincial Order-in-Council while other Bands such as those living along the borders of James and Hudson's Bays occupy designated areas at the pleasure of the province.

It cannot, therefore, be said that Quebec has refused to recognize an obligation to provide Indians with land generally. What has

brought the problem into focus at this time is the fact that some Bands are seeking additional lands or wish to relocate to areas with better economic opportunity coupled with the fact that Quebec has recently advised the French that it has no intention of making additional Provincial Crown-lands available for Indian reserves as defined in the Indian Act. This new policy appears in complete variance with the obligation assumed by the province under the Quebec Boundaries Extension Act.

I would appreciate your advice in respect to the problems identified herein.

E. A. Côté,  
Deputy Minister.