

E78  
Y8  
O433  
1956  
C.1

**Old Crow : general information**

Department of DIAND

[S.l. : s.n.], 1956-1973. 14 p.

Claims and Historical Research Centre: K.60

RESERVE GENERAL REGISTER

PROVINCE YUKON TERRITORY

AGENCY ~~YUKON~~ YUKON # 86 (eff 1-1-64) RESERVE OLD CROW INDIAN SETTLEMENT

BAND

DATE ESTABLISHED

AUTHORITY TITLE DEED

ORIGINAL SURVEY

ORIGINAL AREA

GENERAL REMARKS Old Crow Band of Indians

S.R. & CO. LTD. NO. N 114368

ITEM NO.	INSTRUMENT	NUMBER	DATE	GRANTOR / GRANTEE	LAND	ACREAGE	PRESENT RESERVE AREA	FILE NO.	REMARKS
1	Letter	5-1-56	Director, Northern Administration and Lands Branch, Department of Northern Affairs and National Resources, to Director, Indian Affairs.	Lot 1, Group 1302, lat. 67° 34' Long. 139° 50', Plan 42622.	112.8			166/30-10-0	Reserved in the name of the Indian Affairs Branch.
	Letter	17765	1970	Alaska Northern Communities Branch, Alaska State Department of Community Development	350 sq. miles roughly outlined on Old Crow			94/130-10-10	Small of land reserved for use over land for hunting, trapping and fishing purposes.

13 9561334084.843  
CROW  
(99.4 #414)  
570



FILE 8-3-1302-10-10  
O'Brien 1



ANADA

NORTHERN ADMINISTRATION  
AND LANDS BRANCH

DEPARTMENT

OF

NORTHERN AFFAIRS AND NATIONAL RESOURCES

OFFICE OF THE DIRECTOR

EJ/PH

PLEASE QUOTE  
FILE 8-3-1302-1

Ottawa, 5 January, 1956.

Colonel H.M. Jones,  
Director,  
Indian Affairs Branch,  
Dept. Citizenship & Immigration,  
Ottawa, Ontario.

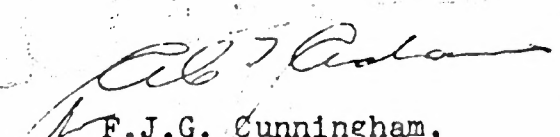
Dear Colonel Jones:

Old Crow Indian Reserve.  
Your file: 166/30-10-C (R.7)

I am pleased to attach two copies  
of Plan No. 42622 which covers Lot 1, Group 1302, Y.T.  
This has now been reserved in the name of the Indian  
Affairs Branch.

If additional copies of the plan  
are required, will you please advise me accordingly.

Yours very truly,

  
F.J.G. Cunningham,  
Director.

*Arranged with  
Land Secretary  
Entered in Schedule  
13/6/56 m.c.*

R7

APPLICATION TO RESERVE TERRITORIAL LANDS

WE, The YUKON INDIAN AGENCY being the duly authorized agent of the

FEDERAL GOVERNMENT OF CANADA

INDIAN - ESKIMO BUREAU

hereby make application to have reserved in the name of (INDIAN AFFAIRS BRANCH.)

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, OTTAWA.

a parcel of land in the OLD CROW District comprising 350 sq. miles

~~more~~ more or less, which parcel is described as follows: A rectangular parcel of land (20 miles x 17.5 miles) roughly centred on Old Crow. From a point A (due East of Tack Lake) 67°30' North Lat., 139°30' West Long; thence due West to a point B (on the Porcupine River) at 67°30' North Lat., 140°15' West Long; thence due North to a point C (beyond Old Crow Mt.) at 67°45' North Lat.; 140°15' West Long; thence due East to a point D (on the edge of Old Crow Flats) at 67°45' North Lat., 139°30' West Long; thence due South to the point of commencement at point A (Tack Lake). (N.B.: All land presently held privately or reserved for other Government Departments is considered excluded from this proposed reserve.  
For the purpose of land set aside for the use of Indians.

The parcel ~~has~~ has not been marked on the ground with posts.

A sketch on the reverse (or attached hereto) shows as nearly as possible the position of the parcel applied for (with reference to a known survey monument or topographical feature), the dimensions of all boundary lines, and the manner in which it has been marked out on the ground (if applicable).

The said n/a is the sole owner of all buildings and other improvements situated in whole or in part within the boundaries of the parcel. These improvements, at the date of application, consisted of n/a

This application is submitted in the firm belief that the land involved is not occupied by any individual, corporation, or Government Department for any purpose whatsoever and is not patented land.

Dated at WHITEHORSE, Yukon Territory  
this 3rd day of February 1970

Original signed by  
L.S. Wilson

Authorized Agent,  
INDIAN SUPERINTENDENT  
YUKON AGENCY

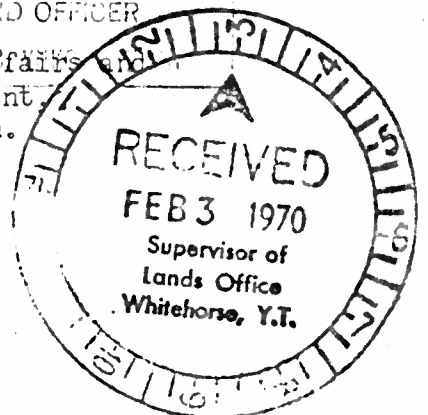
NOTE: This form should be completed in five copies. Forward the original and duplicate to your headquarters for approval and submission to the Department of Indian Affairs and Northern Development at Ottawa. Two copies must be forwarded to the Land Agent for the district in which the parcel is situated, and the fifth copy should be retained on your file.

COMMENTS/CONCURRENCES

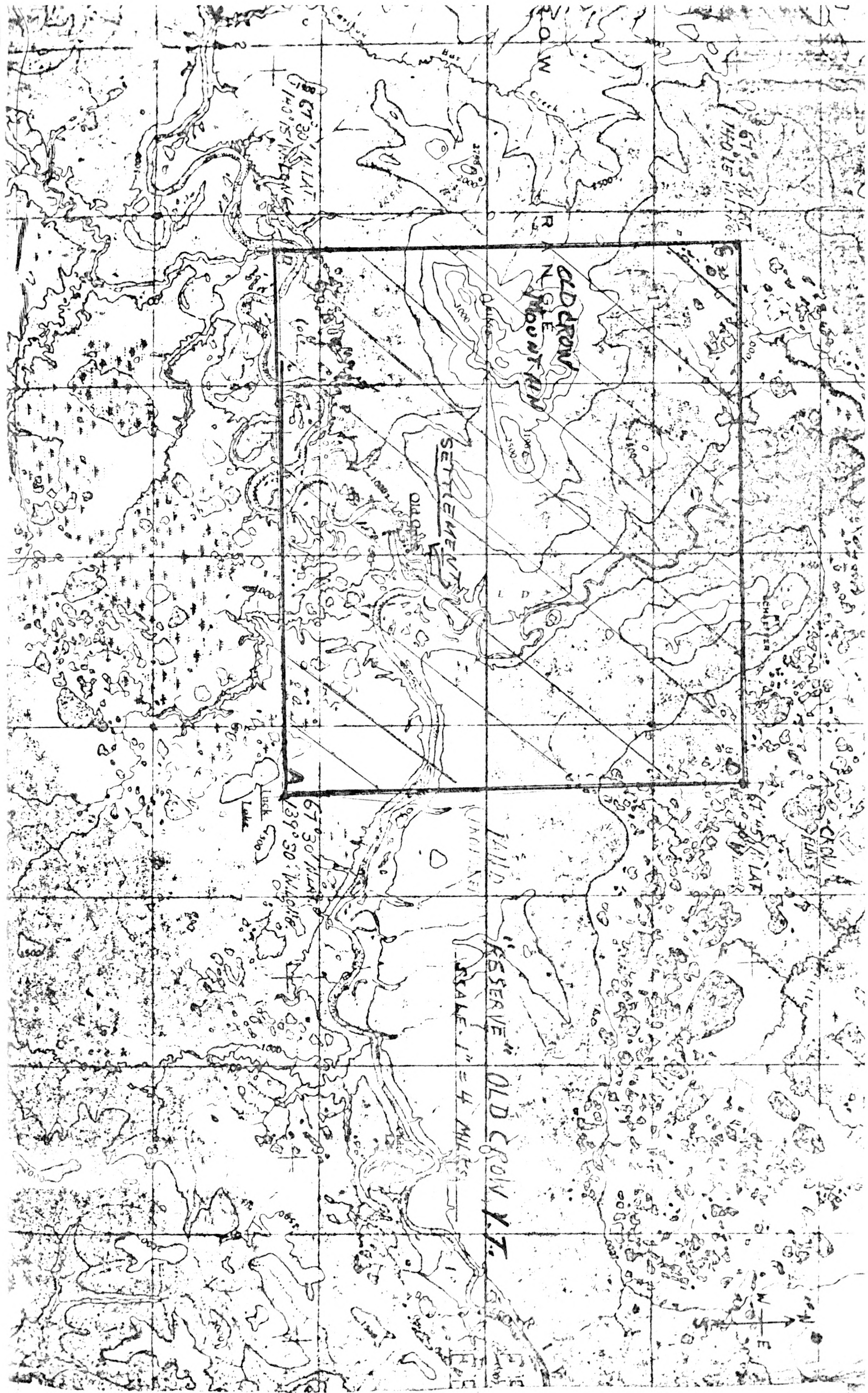
Date: 12<sup>th</sup> February 1970.

Date:

For applicant's headquarters  
RECOMMENDED  
LAND OFFICER  
REGIONAL Director of Indian Affairs and  
Northern Development  
Development Branch.







67° 15' N. LAT.  
140° 15' W. LONG.

67° 30' N. LAT.  
140° 15' W. LONG.

OLD CROW  
N. MOUNTAIN

SETTLEMENTS

OLD CROW

67° 30' N. LAT.  
139° 30' W. LONG.

RESERVE  
OLD CROW Y.T.  
SCALE 1" = 4 MILES

67° 45' N. LAT.  
140° 30' W. LONG.







Acting Director,  
Indian - Eskimo Development Branch.

Ottawa 4, March 12, 1970.

our file/notre dossier 8-3-1302-C-5.

your file/votre dossier 991/30-10-10 (ALS2).

Reservation of Territorial Lands  
Old Crow Band of Indians,  
Old Crow, Yukon Territory.

This will acknowledge receipt of your memorandum dated February 24, 1970 in which you requested that a parcel of land at Old Crow be reserved in the name of your Branch for the use of the Old Crow Band of Indians.

I am pleased to advise you that the parcel of land outlined in red on the sketch accompanying your memorandum and comprising 350 sq. miles roughly centred on Old Crow, has been reserved in the name of the Indian - Eskimo Development Branch for use of the Old Crow Band of Indians for hunting, camping and fishing purposes.

Humphreys/jm

*A.B. Yates*  
A.B. Yates,  
Acting Director,  
Northern Economic  
Development Branch.





W.K. DUFF

Volume 2

Chronological No. - Numéro consécutif

71-288 1971/72-K-7

H.Q. Reference - N° de réf. du b. pr.

BAND COUNCIL RESOLUTION  
RÉSOLUTION DE CONSEIL DE BANDE

NOTE: The words "From our Band Funds" must appear in all resolutions requesting expenditures from Band Funds.  
NOTA: Les mots "des fonds de notre bande" doivent paraître dans toutes les résolutions portant sur des dépenses à même les fonds des bandes

THE COUNCIL OF THE LE CONSEIL DE LA BANDE INDIENNE	OLD CROW INDIAN BAND	Capital balance Solde de capital	\$
AGENCY AGENCE	YUKON REGION	Committed - Engagé	\$
PROVINCE	YUKON TERRITORY	Revenue balance Solde de revenu	\$
PLACE NOM DE L'ENDROIT	OLD CROW	Committed - Engagé	\$
DATE	31 December AD 19 71 DAY - JOUR MONTH - MOIS YEAR - ANNÉE		

DO HEREBY RESOLVE:  
DÉCIDE, PAR LES PRESENTES:

WHEREAS the Old Crow Flats is the home of many animals considered very valuable to the livelihood of the Old Crow Indians, and

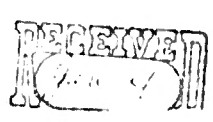
WHEREAS the encroachment of Oil Companies on these flats represents a threat to their livelihood,

BE"IT HEREBY RESOLVED that all oil companies be banned from exploitation on these flats.



(Councillor - conseiller)	<i>Chief</i> (Chief - Chef)	(Councillor - conseiller)
(Councillor - conseiller)	<i>...</i> (Councillor - conseiller)	(Councillor - conseiller)
<i>...</i> (Councillor - conseiller)	<i>Lazarus Charlie</i> (Councillor - conseiller)	(Councillor - conseiller)
<i>...</i> (Councillor - conseiller)	<i>Edith Price</i> (Councillor - conseiller)	(Councillor - conseiller)

FOR HEADQUARTERS USE ONLY - RÉSERVE AU BUREAU PRINCIPAL					
1. TRUST ACCT COMPTE DE FIDUCIE	2. CURRENT BALANCES - SOLDES COURANTS		3. Expenditure Dépenses	4. Authority - Autorité Indian Act - Sec Art. de la Loi sur les Indiens	5. Source of Funds Source des Fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue Revenu
	A. Capital	B. Revenue - Revenu			
\$		\$	\$		
6. Recommended - Recommandé					
Date			Assistant Deputy Minister - Sous-ministre adjoint		
Authorized Officer - Fonctionnaire autorisé					



BAND COUNCIL RESOLUTION  
RÉSOLUTION DE CONSEIL DE BANDE

Chronological No. - Numéro consécutif

H.Q. Reference - N° du réf. du b. pr.

NOTE: The words "From our Band Funds" must appear in all resolutions requesting expenditures from Band Funds.  
NOTA: Les mots "des fonds de notre bande" doivent paraître dans toutes les résolutions portant sur des dépenses à même les fonds des bandes

THE COUNCIL OF THE LE CONSEIL DE LA BANDE INDIENNE	OLD CROW BAND	Capital balance Solde de capital	\$
AGENCY AGENCE	YUKON	Committed - Engagé	\$
PROVINCE	YUKON TERRITORY	Revenue balance Solde de revenu	\$
PLACE NOM DE L'ENDROIT	OLD CROW, YUKON	Committed - Engagé	\$
DATE	26 October AD 1971 DAY - JOUR MONTH - MOIS YEAR - ANNÉE		

DO HEREBY RESOLVE:

DÉCIDE, PAR LES PRÉSENTES:

Whereas the BAND has approved the NATIVE BROTHERHOOD ABORIGINAL RIGHTS POLICY we herein state that all LANDS draining into the PORCUPINE RIVER east of Alaska are hereditary possession of the OLD CROW BAND, That all rights in these lands lie with us.

In order that the integrity of our lands and Settlement be protected from further encroachment until a treaty is negotiated, we ask the Minister Indian Affairs and Northern Development to recognize our land as held by us in Quasi-Reserve Status as far as disposal of resources and rights are concerned. Also so that our Band Affairs be properly managed we ask an in interim partial payment for lease of Land for Airstrip Constructed within Old Crow Settlement, and for oil exploration permit on our land; 200,000 yds (a) \$.25 cubic yards of gravel removed from our land for constuction of airstrip.

We demand a payment of \$25,000. yearly as partial compensation until such time as a treaty is negotiated.

Also since our settle is now cramped between airstrip and river we ask that no more land be leased within perimeter of five miles radius centered at bench mark on R.C.M.P. COMPOUND.



Chief C. Abel  
(Chief - Chef)  
Abraham Peter  
(Councillor - conseiller)

(Councillor - conseiller)

(Councillor - conseiller)

(Councillor - conseiller)

(Councillor - conseiller)

Togarus Charles  
(Councillor - conseiller)

(Councillor - conseiller)

(Councillor - conseiller)

(Councillor - conseiller)

(Councillor - conseiller)

(Councillor - conseiller)

FOR HEADQUARTERS USE ONLY - RÉSERVÉ AU BUREAU PRINCIPAL				
1. TRUST ACCT COMPTE DE FIDUCIE	2. CURRENT BALANCES - SOLDES COURANTS		3. Expenditure Dépenses	4. Authority - Autorité Indian Act Sec Art. de la Loi sur les Indiens
	A. Capital	B. Revenue - Revenu		
\$	\$	\$		5. Source of Funds Source des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue
6. Recommended - Recommandé				
Date			Date	
Authorized Officer - Fonctionnaire autorisé			Assistant Deputy Minister - Sous-ministre adjoint	



Department of  
Indian Affairs and  
Northern Development



Ministère des  
Affaires indiennes et  
du Nord canadien

FEB 24

Indian and Eskimo Affairs,  
Room 1177 Federal Building,  
Whitehorse, Y.T.

February 22, 1972.

our file/notre dossier 30-1-10 (RD)  
your file/votre dossier

Land Administrator,  
Indian and Eskimo Affairs,  
Ottawa.

Land Reservation, Old Crow Airstrip

On January 27, 1972, I forwarded a memorandum to your office concerning a number of resolutions that had been obtained from the Old Crow Indians by individuals unknown to this office and which had been sent, we understand, to the Prime Minister's Office some time last summer. This office still does not have any copies of the so-called resolutions and we are therefore unable to confirm what the requests actually were, however, we are sure that such resolutions do exist.

For your information, I am now attaching a clipping from the local Whitehorse Star which is still keeping the Band requests for compensation active and in my estimation, doing the Indian Band little or no particular good. It is quite obvious that the individuals pushing this claim do not have their facts straight and I would appreciate receiving a reply to my memorandum of January 27th in which some attempt should be made to clarify the position of lands reserved in the name of Indian and Eskimo Affairs, usually with conditions attached, such as the present area at Old Crow which states that the area will be used for hunting, fishing and trapping. //

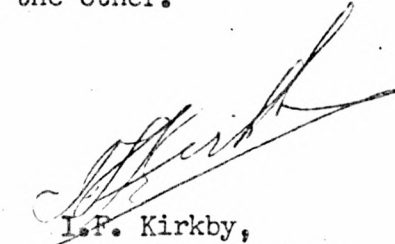
In the case of the Old Crow airstrip, a great deal of confusion exists as to who in fact does have jurisdiction over the area adjacent to Old Crow and many individuals believe that our application of February 3rd 1970 covers the entire area excluding a few lots along the Old Crow River bank. This in fact is not so and once the decision was made to put in the Old Crow airstrip, the Yukon Territorial Government Engineers requested and received a gravel pit reserve prior to our hunting and trapping reserve request. This gravel pit reserve was obtained specifically for the purpose of providing fill for the airstrip and for future maintenance therefore Indian requests for compensation for gravel, etc., are not in my estimation based on prior land reservation rights.

...2

The gravel for a portion of the runway was obtained from sand bars of both the Porcupine and Old Crow Rivers and it is my understanding that rivers remain within the jurisdiction of the Department and are automatically excluded from reservation rights. As the gravel bars in question are adjacent to the Yukon Territorial Government's gravel pit reservation, they must in fact be considered part and parcel of this area.

The article in the Whitehorse Star refers specifically to a number of programs which this office is providing to Old Crow, however, the implication of the \$7,000 for relief wood and the \$14,000 for sanitation are only a very small portion of the total Indian Affairs Budget expended in Old Crow and have no bearing on the present claim or in many cases, the misinterpretation by Indian advisors as to what Federal funds are being expended for. The fact that Band business and programs are discussed all in one meeting may or may not cause confusion in the Indians' minds, however, any claims at Old Crow should be based on the interpretation of the Land Reserve Policy being followed by our Department with no other consideration being valid.

It does appear that extension of the airstrip over Lot 1 in the original Old Crow settlement is still a major point of contention and will eventually have to be reconciled one way or the other.



I.F. Kirkby,  
Regional Director.

Attachments



Mr. J. Ciaccia,  
Assistant Deputy Minister,  
(Indian and Eskimo Affairs)

8107  
OTTAWA, Ontario K1A 0H4  
July 7, 1972

801/31-3-10 (LM2-2)

P.A. →

**Revised Policy re Right-of-Way  
over Land Reserved for Indian  
Use and Occupation  
Territorial Lands Act - Old Crow, Y.T.**

I understand that you recently discussed with Mr. A. D. Hunt, the question of Indian rights and interests in those lands reserved under the Territorial Lands Act for hunting, fishing and related purposes at Old Crow, Y.T. At Old Crow an area of 350 square miles was withdrawn from disposal and "reserved in the name of the Indian-Eskimo Economic Development Branch, for use of the Old Crow Band of Indians for hunting, camping and fishing purposes" excluding any areas already preempted for other uses (e.g., Old Crow Village, the Airport, etc.). This was confirmed in a memorandum dated March 12, 1970, signed for the Acting Director, Northern Economic Development Branch. (Copy attached)

Where lands are reserved for Indian occupation and use it has been our practice to obtain the consent of the Band whenever non-Indians sought to obtain rights and privileges in the area. A copy of the October 6, 1971 memorandum outlining our position is attached. Based on this, the Old Crow Band Council was advised to negotiate with the Yukon Electrical Co. the payment of compensation for inconvenience and discomfort resulting from the granting of rights of way over the lands at Old Crow.

When an application was received from Yukon Electrical for a sub-station site, and a power line within this area, it was assumed that the reservation of the land for the use of the Old Crow Band should be dealt with in accordance with our usual practice. This assumption was strengthened when, on December 29, 1971, the Director, Northern Economic Development Branch, concurred in our suggestion that the Indian-Eskimo Economic Development Branch "undertake direct negotiations with applicants as required regarding compensation payments for any inconvenience suffered by the Indians."

July 7, 1972

The Band agreed to the right-of-way subject to annual payment of \$25.00 each for the inconvenience caused by the substation and the power line right-of-way. These payments were considered to be for "inconvenience to the beneficial occupant of the land."

I understand that the NED Branch now takes the position that the granting of rights to hunt and fish over land does not constitute beneficial use and therefore does not entitle the Band to compensation for inconvenience. The Branch agrees that this was not clear in the December 29, 1971 memorandum to us. The "reservation" for hunting and fishing purposes is now deemed to place these lands in a category different from other land reservations for Indian occupation and use.

The Band economy has for years depended largely upon the regular harvesting of local game and fish resources. Band members have a low level of education and little hope of large scale permanent wage employment after the proposed pipeline is completed.

Since the Old Crow Band has agreed to accept responsibility for game management and control in the adjacent Arctic Wildlife Range area, it would appear advantageous for the perpetuation of these renewable resources at Old Crow to be under their supervised management. I also note that there is an overlap between the existing Reserve and a proposed extension southerly to the Porcupine River of new Arctic Wildlife Range. This extension was agreed to in principle at the Canadian Northern Pipeline Research conference Whitehorse, held on February 2-4, 1972, which was attended by Chief Alfred Charlie of the Old Crow Band.

The right to hunt, fish and camp under such limited circumstances as envisaged by Northern Programs represents no more than a casual periodic privilege to a wage oriented urban dweller rather than the renewable resource harvesting engaged in by the Band. The availability of Band members to participate in management and patrolling of the protected Arctic Wildlife Range area could be of benefit in resolving the conflicting points of view. I understand that Mr. Hunt has explained the NED view that the "reservation" of the 350 square mile area was intended only to confer a minor privilege.

In view of this position we appear to have the following courses of action open:

- a) Explain to the Band that the hunting and fishing reservation was a casual privilege in no way bestowing a beneficial interest in the land. This would mean that the negotiations would have to be discontinued and the money returned to Yukon Electrical. This action would result in serious opposition by the Band and strong pressure from the Indian Unions and Brotherhoods.


. . . 3




July 7, 1972

- b) Upon receipt of the Band Council's acceptance of the revised Yukon Electrical letter offering compensation for inconvenience, we would advise Northern Programs of this agreement and that we approve of the issue of appropriate documentation under the Territorial Lands Act.
- c) In view of the proposed Arctic Wildlife Range and the inland petroleum products pipeline project we could request the granting of exclusive rights to hunt, fish and camp seasonally throughout the protected area for all Old Crow Band members, subject to compatibility with ecological preservation especially of endangered species and with economic resource development.
- d) The principle might now be agreed upon that specific areas of the Yukon be made available for exclusive hunting, trapping, fishing and camping privileges upon Band request. (ii) The Territorial Government at Whitehorse would grant these exclusive rights to use suitable areas for these privileges subject only to resource development and public requirements. (iii) In return we might agree not to request further withdrawals from disposal of Crown lands through NED Branch in Ottawa. (iv) At the same time the Old Crow Band would be approached to agree to that portion of the lands "reserved" for their exclusive hunting and fishing privileges north of the Porcupine River becoming part of the "Arctic Range" and in exchange be granted an equivalent acreage reservation of their secondary caribou hunting grounds south and east of the Porcupine River from the present reservation limits. (v) They would also formally be offered the management and administration of the Arctic Wildlife Range Yukon.

In view of the approaching transfer of day to day administration of Crown Lands in the Yukon to the Yukon Government, rapidly increasing Northern Resource Development demands and the defining in the near future of Northern Ecology Protection areas, I would like to have your direction in this matter.



P. B. Lesaux,  
Director,  
Indian-Eskimo Economic  
Development Branch.



PENNEFATHER/ny



Department of  
Indian Affairs and  
Northern Development



Ministère des  
Affaires indiennes et  
du Nord canadien

Room 211  
Federal Building  
Whitehorse, Yukon  
January 8, 1973

Indian Eskimo Affairs  
Room 115 Federal Building  
Whitehorse, Yukon

our file/notre dossier 307-2  
your file/votre dossier

Dear Sirs:

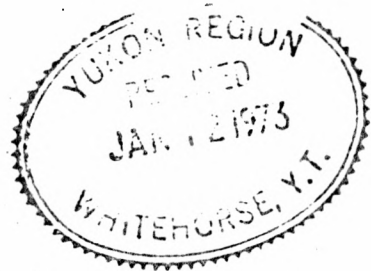
We refer to your application of August 30, 1972 for a parcel of land adjoining Lot 1 and part of Lot 4 as shown on the attached sketch.

This reservation has not been approved. The Yukon Territorial Government stated that it is not necessary to place a reservation on this portion of land since the Territorial Government does the maintenance of the road and already have a reservation for this purpose.

They are also concerned that the proposed reservation will restrict the use of land by non-status natives of Old Crow.

Therefore this reservation has been cancelled in our records.

  
B. J. Trevor  
Regional Director of Resources



1122 011/20  
Volume 2

Department of  
Indian Affairs and  
Northern Development



801/30-10-1

Ministère des  
Affaires indiennes et  
du Nord canadien

Ottawa, Ontario K1A 0H4  
August 22, 1972.

PA

Assistant Deputy Minister  
(Indian and Eskimo Affairs)

1.18.2.415  
991/30-10-10

Attention: H.T. Vergette

Reservation of Territorial Lands  
Old Crow Band of Indians  
Old Crow, Y.T.

Mr. Vergette, in his memorandum of July 18, asked for our opinion as to whether certain steps taken by officials of this department have had the result of making 350 square miles of land occupied by this Band a reserve within the meaning of the Indian Act. I do not think that these various steps taken by departmental officials have resulted in making this land a reserve within the meaning of the Indian Act.

*James B. Beckett*  
J.B. Beckett,  
(for) Director, Legal Services.

Mr. Koyar  
Mr. McKim  
Mr. Hunt  
Mr. Murray  
Mr. Davidson  
Mr. Yates  
Mr. Stevenson  
Mr. McLaughlin

distributed on 31 Aug 1972

*[Signature]*

✓



in Council.

Ref. 5,4

AT THE GOVERNMENT HOUSE AT OTTAWA.

Thursday, the 23rd day of January, 1930.

PRESENT:

HIS EXCELLENCY THE GOVERNOR  
GENERAL IN COUNCIL

ga.

resp.

le

THE AND OTHERS

v.

THE ECCLESIASTICS OF THE SEMI-  
NARY OF ST. SULPICE OF MONTREAL.

DELIVERED BY  
THE LORD CHANCELLOR.

LONDON:

PRINTED BY EYRE AND SPOTTISWOODE, LTD.  
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1912.

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Angus Corinthe and others v. The Ecclesiastics of the Seminary of St. Sulpice of Montreal, from the Court of King's Bench for the Province of Quebec (Appeal Side); delivered the 19th July 1912.*

---

PRESENT AT THE HEARING:

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD ATKINSON.

LORD SHAW.

SIR CHARLES FITZPATRICK.

[DELIVERED BY THE LORD CHANCELLOR.]

---

For upwards of a century a controversy has existed concerning the title to the Seigniorship of the Lake of Two Mountains. The Ecclesiastics of the Seminary of St. Sulpice of Montreal, on the one hand, have claimed it under grants from the King of France, and under Statutes passed later on by the Canadian Legislature. Their assertion has been that they hold the Seigniorship in the full proprietary title, and that the Indians residing within the limits of the Seigniorship have no individual title to it, nor any right, competent to them as individual beneficiaries, to control the administration of the land. The Indians belonging to the band resident upon the Seigniorship have, on the other hand, contended that they possessed proprietary rights, or at all events indefeasible rights of occupation, by virtue of either an unextinguished aboriginal title, or occupation sufficient on which to found a

prescriptive title, or by virtue of an obligation created by the grants, statutes and other documents relating to the Seigniory.

The Appellants brought an action on the footing that they were the duly elected chiefs of a band of Indians residing on the land in question. By their declaration they claimed possession of the Seigniory, or at all events of certain common lands comprised in it, or alternatively, that if the Defendant Ecclesiastics had a title to the Seigniory, such title was subject to a trust for the benefit of the Plaintiffs and those whom they represented, such that the latter were entitled to the free use of the common lands free from interference.

Among the important documents in the case are certain grants from the King of France in 1717 and 1718, and in 1733 and 1735. These grants, which were made to predecessors of the Respondents, purport to convey to them land forming part of the Seigniory, with a full proprietary title, but on the condition that they should alter the situation of a certain mission they had founded among the Indians in the neighbourhood, and build a church and a fort for the security of the latter. The circumstances under which these grants were made, and the events which occasioned them, appear in detail in the Judgment of the Superior Court, and their Lordships do not think it necessary to refer to them in detail.

In 1841 the Legislature of Lower Canada passed an Act with a preamble referring to a controversy about the title of the Ecclesiastics of the Seminary, not relating, however, to the questions involved in the issues raised here. By Section 1 they were declared to be a Corporation. By Section 2 their title to the Seigniory was confirmed, and it was enacted that the Corporation should hold as fully as their predecessors, but



C o p y.

unoccupied by, the Oka Indians in the Township of Gibson; it being assumed that such of the Indians as do not remove thereto within four years will have given up all intention of doing so, and thereafter as land occupied by Indians becomes vacant, the Government shall repay the Seminary the sum of fifty cents per acre thereon, without interest.

7. The Indian Department shall represent the Indians in all money transactions with the Seminary.

All respectfully submitted,

SGD: John A. Macdonald

Superintendent General of  
Indian Affairs.

Ottawa, 7th November, 1899.

IN RE LANDS IN THE TOWNSHIP OF GIBSON

By Grant, dated 17th October, 1717, there was given and ceded to the Sieurs Ecclesiastics of the Seminary of St. Sulpice established at Montreal a tract of land of an extent of three leagues and a half frontage beginning at a brook which runs into a Great Bay of the Lake of Two Mountains and descending along the said Lake of Two Mountains into the River St. Lawrence, by three leagues in depth to the use of the said Sieurs Ecclesiastics in their successors and assigns forever even if the Mission therein mentioned should be taken away from thence, on the condition that they should bear the whole expense necessary the removal of the Indian Mission then established at Sault au Recollet and also cause Church and Fort to be built of stone at their own cost as provided in the said grant. On 26th September, 1733, a further concession was made enlarging the grant.

Evidently a number of individual Christian Indians settled in the neighborhood of the Mission and were allowed by the Ecclesiastics to occupy and cultivate each his own separate piece of land; but there was no particular tract of land set aside for such Indians as a class to hold in common. Each individual held at the will of the Ecclesiastics. The Indians so settled at the Lake of Two Mountains or Oka were members of several tribes or nations. According to report of special Commissioners in 1858 there were then heads of families at Oka, 41 Nipissingues, 85 Algonquins, 68 Iroquois.

Up to 1853 and it would seem up to the removal to Gibson, hereafter referred to, it could be certainly said that the Indians at Oka neither owned nor were interested in any reserve or Indian lands in common or shared alike in the distribution of any annuities or interest moneys for which the Government was responsible. Under 14-15 Vic. Cap. 106, reserves were set aside by Order in Council of 11th August, 1853, including the present Doncaster Reserve of 16,000 acres for "Iroquois of Couchichewagon and Two Mountains;" and reserves at Lake Temiscamingue and Maniwaki for Nipissingues Algonquins and others. Some of the Algonquins at Two Mountains removed to Maniwaki and possibly Temiscamingue. Others remained. No Indians removed to the Doncaster Reserve; but the proceeds of timber have been placed in the books of the Department to the credit



of the Caughnawaga and the Oka Indians. The credit to the Oka Indians generally would appear to be a Departmental error, as the Iroquois at Oka allied to the Iroquois at Caughnawaga are alone entitled to share with the latter in the Doncaster Reserve. It is doubtful if it can be said that the Oka Indians share alike in the Distribution of interest moneys because the interest on the sum at their credit is devoted to such purposes as the relief of destitute Indians at Oka. The files of the Department show that with the above exception (if such) the Indians at Oka have not been treated as a band within Section 2 of the Indian Act.

In 1877 the Indians living on the Seignior of Two Mountains claimed ownership in the lands of the Seignior, and the Honourable Mr. Laflamme, then Minister of Justice dealing with this question expressed the opinion that "there is nothing in the provisions of the original grants which could be construed as giving any right in the property in favour of the Indians, except the advantage of having a Mission. However strictly examined, it is impossible to extract from the title any other obligation imposed on the grantees and that of transferring the Mission as it existed at Sault au Recollet and of erecting a church on the territory ceded by the Crown." (Vide also the opinion of the Hon. the Solicitor General, dated 15th December, 1897).

In 1880 a number of the Oka Indians expressed to the Government a desire to be allowed to send a deputation to the district of Muskoka, Ontario, with the object of selecting a suitable tract of land for location of as many as might be disposed to reside there. The Government and the Seminary alike encouraged this project with a view to quieting the claims of the Indians upon which they insisted although without foundation. An Agreement was accordingly entered into between the Seminary of St. Sulpice on the one hand and Sir John Macdonald, the Superintendent General of Indian Affairs on the other, the conditions of which were as follows:

1st The Reverend Gentlemen of the Seminary of St. Sulpice shall pay the purchase money of the new reserve of 25,582 acres at 50¢ per acre, \$12,791.00

2nd The Indians removing shall be allowed land in the proportion of 100 acres per family on adjoining lots.

3rd The Seminary shall pay to the Indian Department for the Indians, the value of their immovable improvements at Oka such as buildings, fences, &c., as already assessed.

4th The Seminary shall pay for the transport of the Indians and their effects from Oka to Gibson and for their maintenance on the way, and for a fortnight after their arrival.

5th The Seminary shall erect substantial log houses 13 x 24 on each 100 acres for each family, divided into two rooms with a loft above and a stair and a window and a door to each room.

6th At the end of four years from the 1st January, 1882, the Government shall repay to the Seminary the purchase money of fifty cents per acre without interest, for any portion of the lands purchased for, but then unoccupied by the Oka Indians in the Township of Gibson, it being assumed that such of the Indians as do not remove thereto within four years will have given up all intention of doing so, and thereafter as lands occupied by Indians become vacant, the Government shall repay the Seminary the sum of fifty cents per acre there on without interest.

7th The Indian Department shall represent the Indians in all money transactions with the Seminary.

On 14th May, 1881, an application was made to the Commissioner of Crown Lands of Ontario by the Department for the purchase of a tract of land for the Indians then residing at Oka who desired to take up land for farming purposes. On 16th May, 1881, the Assistant Commissioner replied stating the terms on which the land would be sold. These were inter alia (a) That the quantity of land which the Indian Department should be allowed to purchase should be in accordance with the number of heads of families (each to have 200 or 300 acres) (b) That each head of a family should enter into bona fide possession, and at once commence settlement duties. (c) That such duties should be those set forth in the "Free Grant and Homestead Act". (d) That the pine timber should not pass, but the actual settler should be allowed to cut what he required, for building on the same terms as applied to Free Grant Land.

On the 6th June, 1881, Deputy Superintendent General replied that as a number of young men would require land, 25,200 acres would not be more than sufficient, that the Department had no objection to each head of a



to \_\_\_\_\_

family entering into bona fide possession of his holding and commencing settlement duties thereon; that the Department did not object to such settlement being such as would constitute settlement duties on Free Grant Lands, provided that in case of failure on the part of the Indian occupant to complete such duties the land would not be forfeited to the Ontario Government; and that the condition as to the exemption of pine timber was agreed to provided no dues were charged the Indians, inasmuch as the land was not Free Grant but was to be paid for.

By report of the Commissioner of Crown Lands to Executive Council of Ontario, dated 17th June, 1881, approved, the terms set out in the Assistant Commissioner's letter of 18th May, 1881 were practically embodied, and no recognition was given by Ontario of the provisions (particularly as to exemption from forfeiture on failure in performance of settlement duties). There is of record on file a telegram of 30th June, 1881, from A. Choquette, Solicitor for the Ecclesiastics of St. Sulpice, saying that the Deputy Commissioner stated to him that no forfeiture was to take place as the land was paid for.

On 27th September, 1881, His Excellency in Council upon a memorandum of the Superintendent General stating that the terms upon which the land at Gibson might be purchased were embodied in the Commissioner's report above referred to, approved the removal of the Indians from Oka to Gibson upon the conditions assented to by the Seminary.

In accordance with Agreement the Seminary paid for 25,582 acres at 50¢ per acre, and on 15th October, 1881, a cheque for \$12,791.00 was transmitted to the Assistant Commissioner of Crown Lands by the Deputy Superintendent General of Indian Affairs.

By a letter of 13th October, 1887, Ontario was asked if there was any objection to issue of letters patent of land at Gibson to the Superintendent General in trust. On 30th December, 1889, the Assistant Commissioner of Crown Lands by letter referred to conditions of settlement and stated that it had been decided to send an officer to Gibson to report as to the fulfilment of the conditions. By letter of 6th June, 1891, the Assistant Commissioner stated that the Indians objected to inspection by an officer of Ontario, and he suggested a joint inspection. By letter of 6th July, 1891, the Deputy Superintendent General urged that in view of the payment for the land at a rate

On 2nd August, 1898, the Dominion Government according to the Agreement entered into in 1881, paid to the Ecclesiastics of the Seminary of St. Sulpice \$14,696.05 principal \$10,604.50 at the rate of 50¢ per acre for 21,209 acres unoccupied in the Township of Gibson and interest there on. This re-payment was authorized by Order in Council of 1st July, 1898.

The land purchased at Gibson has never been declared by Dominion Order in Council to be a reserve within the Indian Act. Such a declaration is not to be implied from approval of 27th September, 1881, of Sir John Macdonald's recommendation of the conditions agreed to by the Seminary which conditions contain the words "new reserve".

The Indians at Gibson have gradually become known as the Tatha Band. There is in the books of the Department a capital account showing approximately \$500.00 to the credit of the "Gibson Indians". This sum is money paid by the Muskoka Milling Company for damages arising from flooding land part of the 25,582 acres purchased unoccupied by Indians. Money paid by the Muskoka Milling Company for damages to occupied lands was paid through the Department to the individual occupant. It can be said that in practice the Indians at Gibson do not share alike in the distribution of any annuities or interest moneys; and that the entry of the capital sum named is at most an error in bookkeeping if it should be held that the few Indians occupying land at Gibson are not a band interested in common in the 21,209 acres unoccupied. No patents for the occupied lands have been issued to the individual occupants by Ontario.

In view of the foregoing there appears to be ground for the contention that the land purchased at Gibson or any part of it does not constitute a reserve within Section 2, Clause K. of the Indian Act inasmuch as it has not been set apart or granted to a particular "band" of Indians within the meaning of Clause D. of the same Section because though the legal title to the land is vested in the Crown the Indians are not interested in the lands in common and because the Indians do not share alike in any annuities or interest moneys for which the Government of Canada is responsible. In relation to this contention it would appear proper to consider whether the Indians could be said to be interested, in common, in lands vested in the Crown as public lands of Ontario dealt with in accordance with the approved report of the Commissioner of Crown lands,

BEYOND that required from settlers a patent should issue without performance of settlement duties; but no reply has been received. By a letter 18th March, 1897, the Superintendent General asked the Commissioner of Crown Lands whether the Ontario Government would<sup>not</sup> be willing to waive settlement duties and issue a patent with a reservation of the pine timber for a term of years. No reply beyond acknowledgement has been received.

The lands at Gibson located by location ticket and occupied are reported to be 3,985 acres. Those located but unoccupied are 180 acres. Lands occupied but not located 200 acres. There are, therefore, 21,209 acres unoccupied.

Notwithstanding the conditions of sale the purchase had come to be treated departmentally as a regularly constituted reserve, and location tickets have been issued under the Indian Act. Although so far back as 10th June, 1886, the then Deputy Superintendent General, in a memo of that date, pointed out that it would be desirable to induce scattered Indian families in Ontario and Quebec who had not resided at Oka for years to settle upon the land at Gibson; yet the Department in March, 1893, assured Chief Decaire, of Gibson, that before any portion of the "reserve" would be disposed of by the Department the consent of the "band" would be obtained under Section 38 of the Indian Act.

By letter of 17th February, 1897, from the then Deputy Superintendent General of Indian Affairs to the Deputy Minister of Justice the latter was asked to advise as to the course which this Department should pursue in regard to a seizure of timber on the (so called) Watha Indian Reserve in the Township of Gibson. The information then furnished to the Deputy Minister of Justice appears to have been incomplete and therefore possibly misleading. On 22nd February, 1897, he stated in reply "I see no reason to doubt that the tract of land in question is a reserve within the meaning of the Indian Act (R.S.C. c 43, s 2 (k)) It has been set apart for the use of the band of Indians who occupy it, and the legal title to it is in the Crown. If there is any right in the Ontario Government to cancel the sale, it has not yet been exercised and until it is, the rights of the Dominion Government, as purchaser, are not affected by the failure of the Indians to comply with the conditions of settlement."



dated 17th June, 1881, which seems quite open to the construction that public land was being dealt with by sale under R.S.O. 1877, Cap. 23 Sections 11 and 12, which allowed the imposition of conditions both in relation to price and settlement duties even to the extent of incorporating the duties of the Free Grant and Homestead Act as part of the conditions of sale under the Public Lands Act, that forfeiture could take place under the Public Lands Act (although the telegram from Mr. Choquette referred to appears to indicate that as a matter of good faith between the Governments it was not the desire of Ontario to insist on forfeiture) and that patents were to issue, possibly to persons who performed the settlement duties.

It is a matter of great importance for the Department to be fully and definitely advised in relation to the questions herein stated, because:

- a) Many difficulties have arisen between the Governments of the Dominion and Ontario in relation to the administration of Indian lands; and in this case the action of Ontario appears to indicate an intention to allow the Indians an opportunity of proving that they were qualified to hold land in severalty by performing the same settlement duties as those imposed upon white men; rather than an intention to acquiesce in the creation of another Indian reserve in Ontario.
- b) If the Indians of Gibson are a band, under Section 140 of the Indian Act as enacted by 58-59 Vic. Cap. 35, they might be able to veto the admission of any other Indian.
- c) If the whole tract purchased should be held to be for the benefit of the Indians now at Gibson they would enjoy much more land than the Dominion Government or the Seminary contemplated that they should possess.
- d) The question of the law applicable to the tenure and descent of their lands is affected by the questions now raised.
- e) Such questions also affect the general administration of their affairs particularly in regard to the distribution of money.
- f) The opinion of the Department of Justice of 22nd February 1897 can hardly be considered as final in view of the nature of the submission.

The following are the matters upon which the opinion of the Deputy Minister of Justice is desired:

1. Whether the Indians at Gibson constituted a band within the meaning of the Indian Act at the time of their removal.
2. Whether such Indians have since acquired the status of a band.
3. Whether the whole or any portion of the tract of land acquired from Ontario is a reserve within the meaning of the Indian Act.
4. Whether the land located at Gibson constitutes a reserve or in other words whether the several scattered holdings of the Indians at Gibson do in the aggregate form a reserve.
5. Whether the land at Gibson is subject to forfeiture to the Crown for the purpose of the Province.
6. Whether the Dominion Government can dispose of the unlocated land at Gibson for the benefit of Indians generally or for any purpose for which the Dominion Government shall direct in view of the fact that payment therefore has been made by the Dominion Government through the re-payment to the Seminary.
7. Whether the land located at Gibson can without patent from Ontario granted in the name of the Superintendent General of Indian Affairs be now constituted a reserve either as to the part located or the part unlocated or the whole thereof.
8. Whether the Ontario Government could refuse to issue a patent except to an individual Indian for the land in respect of which he had performed settlement duties.
9. Whether the Dominion Government can grant a patent or otherwise legally part with the ownership of the land at Gibson either by surrender and sale or by the issue of a patent to an Indian on enfranchisement, particularly, in the event of the Indians there being held to be a band within the meaning of the Indian Act.
10. Generally any other questions of law necessary for the determination of the above questions or arising from the case as above stated.

SGD: Reginald Rimmer  
Law Clerk

25,582 acres, and communication on the subject of the purchase of said lands having been opened up by the Department of Indian Affairs with the Department of Crown Lands for Ontario the terms upon which the same may be purchased for the Indians will be found set forth in the attached copy of a Report dated the 17th June, 1881, from the Commissioner of Crown Lands to the Executive Council of the Province of Ontario.

That the number of Indian families who have up to the present time made known their wish to remove to the location selected by the deputation is 44 comprising about 176 souls, but inas much as it is altogether probable that the remainder of the Indians residing in the Seigniory aforesaid will at an early date also decide to remove to the location in the Muskoke District selected by the deputation, it was considered prudent to apply for sufficient land to accommodate all of the Indians now resident at the Lake of Two Mountains who number about 504 souls distributed among some 120 families and the Seminary of St. Sulpice having through the Agent of the Seminary agreed to the conditions set forth in the said memorandum hereto attached, he the Minister recommends the adoption of the same and that steps be taken to effect the removal to Gibson Township of the Indians and their families, who are prepared to leave Oka for that locality.

The Committee submit the above recommendation for approval.

CERTIFIED

SGD: J. O. Cote  
Clerk P.C.



COPY OF A REPORT OF A COMMITTEE of the Honourable the Privy Council approved by the Deputy of His Excellency the Governor General in Council on 27th September, 1881.

On a memorandum dated 26th September, 1881, from the Honourable the Superintendent General of Indian Affairs reporting that last Autumn his Department was advised by its Agent at Oka that a number of Indian families resident upon lands in the Seignior of the Lake of Two Mountains had expressed a desire to be allowed to send a deputation to the District of Muskoka in the Province of Ontario, with the object of selecting a suitable tract of land in that District as a location for as many of them as might be disposed to remove there.

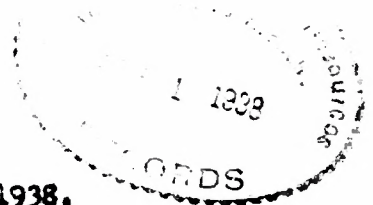
That as is generally well known the Indian claims to the lands in the Seignior of the Lake of Two Mountains at present occupied by them are disputed by the Seminary of St. Sulpice and in view of the long delay and heavy expense which would be attendant upon litigation were it resorted to in order to clear up the question as well to the uncertainty as to the issue of legal proceedings if taken in respect to said claims, and that the Seminary of St. Sulpice having expressed its willingness to pay the Indians for their improvements if they would remove from the lands occupied by them at the Lake of Two Mountains and to advance an amount sufficient to pay for the lands selected elsewhere by the Indians as well as to bear the cost of removing them to and establishing them in part on such location he the Minister considered it advisable in the interest of the Indians concerned to encourage the movement on their part.

That in the month of April last one of the chiefs and three other Indians of the Oka Band accompanied by the resident Indian Agent, with the sanction of the Department visited the Muskoka Country calling on their way thither on the Commissioner of Crown Lands for the Province of Ontario who caused them to be furnished with information relative to the lands in the said District.

That the deputation having proceeded to the locality eventually selected a tract of land in the Township of Gibson the area thereof being

The Honourable  
The Superintendent General  
of Indian Affairs

8946-7 2013



Ottawa, March 29, 1938.

MEMORANDUM:

Deputy Minister.

I have to refer to Mr. Pratt's memorandum of March 24 in which it was stated that the Minister might require information in connection with the Oka Indians.

The Government of Canada has entered into no treaty or agreement with the Lake of Two Mountains Band of Indians situated at Oka, Quebec.

The lands occupied by these Indians may be described as a special reserve, as the fee is not in the Crown for the benefit of the Indians but in the Seminary of Saint Sulpice. The Seminary obtained title to these lands through grants made by the King of France, 1716-1735. These grants conveyed to the Seminary a full proprietary title subject to the condition that they should alter the situation of the Indian mission and build a fort for the security thereof. In 1841 Lower Canada passed an Act whereby the Seminary became a corporation and confirmed their title, subject to the cure of souls within the parish, the Mission of the Lake of the Two Mountains, for the instruction and spiritual care of the Algonquin and Iroquois Indians, the support of a College at Montreal, the support of schools for children in the parish, and of the poor, invalids and orphans, the support and maintenance of the members of the corporation, its officers and servants, and the support of such other religious, charitable and educational institutions as may, from time to time, be approved by the Governor of the Province, and for no other objects, purposes or intents.

From the earliest - - - -

Apr 1/25

EDUCATIONAL FACILITIES.

There are two Day Schools — Oka Village and Oka Country Schools. The enrollment for the quarter ended December 31st, 1937 at the Oka Country School was 28 and at the Oka Village School 33.

Tuition grants have been allowed to enable children from this Reserve to attend either College Saint Paul, Varennes, Quebec, or Institute Francais at Pointe aux Trembles, Quebec.

Orphan or neglected children are placed either in one of the Indian Residential Schools or in some institution near Montreal.

RELIEF:

Relief furnished to the Indians of Oka during the period April 1, 1937, to February 28, 1938, cost \$19,094.46 as compared with \$11,435.89 for the same period of the previous fiscal year.

Relief distribution to the Indians of Oka is made twice monthly in the form of rations composed of certain quantities of staple groceries, lard and meats.

In cases of illness, milk, eggs, butter, fresh fruits, vegetables, etc., are provided on the recommendation of the local Doctor, in addition to the regular rations. In some instances, as much as 3 quarts of milk per day, and 2 dozen eggs per week, are also supplied.

Large quantities of clothing have been supplied for the grown-ups during the past year from clothing taken over from the Department of National Defence, Ordnance Stores, Quebec, in addition to outfitting all needy school children. Clothing furnished as emergency measures by the Agent cost on an average of \$125.00 per month, a much greater amount than is spent in any other Reserve in Eastern Canada for this purpose.

BAND FUNDS:

Band funds to the credit of these Indians consist of Capital \$8,030.21, and Interest \$2,498.64.

*Handwritten signature*



From the earliest times the Indians have claimed that the lands were theirs. They appealed to the Privy Council in 1912 but the title of the Seminary was upheld and the appeal dismissed. A certain faction of the Indians are not willing to accept the finality of the judgment of the Privy Council.

By Order in Council of September 27, 1881 approval was given for the removal of such Indians as elected to go to a tract of 25,282 acres in the township of Gibson, province of Ontario. The conditions of the agreement with the Seminary were:

1. That the Seminary should pay the purchase price of the land.
2. That the Indians removing should be allowed 100 acres per family.
3. That the Seminary pay for the value of immovable improvements at Oka.
4. That the Seminary pay for the transportation of the Indians from Oka to Gibson.
5. That the Seminary erect substantial log houses on each 100 acres.

The Indians who removed went at their own wish. The present population of the Gibson Band, being descendants of these families, is 254.

The situation has been aggravated since the disposal of land by the Seminary to the Belgium Agricultural Corporation. The Indians are hostile to the Belgians for encroachment on what they consider their rights.

Negotiations have been instituted with the Sulpician Order for the purchase from them of lands occupied by the Indians. The Department is also endeavouring to obtain for the Indians certain of the lands now occupied by the Belgium Corporation. The latter transaction would be in the nature of exchange rather than purchase and the Corporation has signified its wish to arrive at a mutually satisfactory agreement.

EDUCATIONAL FACILITIES - - - - -

175.3 / 89467  
COPY

CAP. XXX.

Extract from Ordinance of 1840 relating to the Seignior of the Lake of Two Mountains.

.....

II. And be it further Ordained and Enacted by the authority aforesaid, that the right and title of the said Ecclesiastics to the Seminary of Saint Sulpice of Montreal, in and to all and singular the said Fiefs and Seigniories of the Island of Montreal, of the Lake of the Two Mountains, and of Saint Sulpice, and their several dependencies, and in and to all Seigniorial and Feudal rights, privileges, fees, and duties arising out of and from the same, and in and to all and every the Domains, Lands, Reservations, Buildings, Messuages, Tenements, and Hereditaments within the said several Fiefs and Seigniories, now held and possessed by them as proprietors thereof, and also in and to all monies, debts, hypothèques, and other real securities, arrears of lods et ventes, cens et rentes, and other Seigniorial dues and duties, payable or performable by reason of lands holden by censitaires, tenants, and others, in the said several Fiefs and Seigniories, goods, chattels, and moveable property whatsoever, now due, owing, belonging, or accrued to the said Ecclesiastics of the said Seminary of Saint Sulpice of Montreal, or which may hereafter

become due and owing, or accrue and belong to them, or to the said Ecclesiastical Corporation hereby constituted, or their successors, by reason of any lands and tenements holden in the respective censives of the said several Fiefs and Seigniories, with all and every the rights, privileges, and appurtenances thereunto respectively belonging or in any wise appertaining, shall be, and they are hereby confirmed and declared good, valid, and effectual in the law, and the Corporation hereby constituted, shall and may have, hold and possess, the same as proprietor thereof, as fully, in the same manner, and to the same extent, as the Ecclesiastics of the Seminary of Saint Sulpice of the Fauxbourg of Saint Germain Les Paris, or the Seminary of Saint Sulpice of Montreal, according to its constitution, before the eighteenth day of September, which was in the year one thousand seven hundred and fifty-nine, or either or both of the said Seminaries, might or could have done, or had a right to do, or might or could have held, enjoyed, or applied the same, or any part thereof, previously to the last mentioned period; and to and for the purposes, objects and intents following, that is to say: the cure of souls within the Parish (la desserte de la Paroisse.) of Montreal; the Mission of the Lake of the Two Mountains, for the instruction and spiritual care of the



Algonquin and Iroquois Indians; the support of the Petit Seminaire or College at Montreal; the support of Schools for children within the Parish of Montreal; the support of the poor Invalids and Orphans; the sufficient support and maintenance of the Members of the Corporation, its officers and servants; and the support of such other religious, charitable and educational institutions as may from time to time be approved and sanctioned by the Governor, Lieutenant Governor, or person administering the Government of the Province, for the time being, and to or for no other objects, purposes, or intents whatsoever.

(Extract from the Registers of the Superior Council  
of Quebec.)

Considering the Petition presented this day in this Council, by the superior, procurator and ecclesiastics of the Seminary of St.Sulpice, established at Montreal, the purport of which is that the Council may be pleased to order the registration of the Deed of Ratification granted by His Majesty, on the 1st day of March last, to the sieurs ecclesiastics of the Seminary of St.Sulpice of Paris, of a concession made to them by Messieurs the Governor General and Intendant of this country, on the twenty-sixth day of September, one thousand seven hundred and thirty-three, of a certain tract of land situated in the said country, and lying between the line of the seigniorie belonging to the representatives of the late Sieurs Langloiserie and Petit, and that of the seigniorie of the Lake of Two Mountains, belonging to the said seminary, and in the front extending about two leagues by the said lake, the said tract of land abutting on an angle formed by the two above mentioned lines, together with the ungranted islands and islets and beaches adjoining the said tract of land:-  
considering the said Deed of Ratification, dated as above, signed Louis, and lower down Phillipeaux, with sign manual, by which His Majesty has ratified and confirmed the said concession of the Lake of Two Mountains, and has added to that of 1718, an extent of three leagues in depth:- having heard the King's Procureur-Général, the Council has ordained and ordains that the said Deed of Ratification be registered in the registers of the said Council, to have and to hold the said sieurs ecclesiastics of the Seminary.

of St.Sulpice of Paris, as a fief and seigniory, on the terms, provisions, and conditions therein contained.

Done at Quebec, at the said Superior Council, on the Monday, the 12th day of December, 1735.

(Signed,) Daine.



Copy.

Superior Court.

Canada

Province of Quebec  
District of Montreal  
No. 2601:-

On the 7th March 1910.

Present:-

Mr. Justice Hutchison.

-----

Angus Corinthe, Baptiste Gaspé and Peter Oka, all  
three of the village of Oka, in the district of Terrebonne,  
suing herein as well personally as in their quality of three  
chiefs duly elected to the Band of Indians residing in and  
about the village of Oka in the said district of Terrebonne,  
Plaintiffs,

-VS-

The Ecclesiastics of the Seminary of St. Sulpice of Montreal,  
a body corporate having its head office and principal place  
of business in the city and district of Montreal,

Defendant,

-----O-----O-----O-----O-----O-----O-----O-----O-----O-----

THE COURT, having heard the parties by their respec-  
tive counsel, and having examined the evidence and proof of  
record and deliberated.

(1) Whereas the Plaintiffs in their declaration  
allege that they were born in the Village of Oka, in the  
District of Terrebonne, and have always resided there and form-  
ed part of the band of Indians residing in and about the said  
Village of Oka.

(2) The Plaintiffs were duly elected chiefs of the  
said band of Indians and now hold that office, and as such  
performed the duties attached to the duties of chief, and among  
other things they represent and act for the said band of Indians  
in all matters and things in which the said band of Indians,  
as a whole, have any rights or interests.

(3) The said village of Oka is situated on the Ottawa River at the westerly end of the Lake of Two Mountains, forming part of a large tract of land fronting on the said Lake of Two Mountains for a distance of about nine miles from the said Village, and extending back from the said lake a distance approximately nine miles, the whole more or less, which said tract of land is commonly called "The Seignior of the Lake of Two Mountains."

(4) In the said Seignior there is included a tract of district of approximately square miles which is, and has always been held and enjoyed in common by the members of the band and by the public in general for the cutting of fire wood, the pasturing of cattle, &c., which portion of the Seignior has always been known as "The Common".

(5) The defendant Corporation pretends to the ownership of the whole of the said Seignior, and has assumed to sell lots therefrom to "whites", and to receive the purchase price thereof, and has continued to sell lots from the said common land, and other portions of the said Seignior to "whites", and has recently, within the past six months, both directly and through an arrangement entered into by it with the Municipal Council, fenced a large portion of the said "Common", and has prevented the plaintiffs and the other members of the band of - Oka Indians from enjoying the said "common" as heretofore.

(6) The plaintiff and the other members of the said band of Indians have from time immemorial enjoyed the use of the said "common" land, and have cut wood and pastured their cattle thereon as the same was necessary for the use of themselves and their families, and otherwise the same as in common ownership, and the defendant is, by means of its



agents and employees aforesaid forcibly preventing the plaintiffs and the other members of the band of Indians from exercising the rights which they have hitherto enjoyed, and in particular, has prevented them from cutting the wood which is necessary for their use.

(7) The Plaintiffs claim that they and the other members of the band of Indians residing on the said Seigniorie are the owners thereof, as well by reason of their being descendants of the aboriginal occupants as by reason of memorial use and occupation as proprietors, and if that should be necessary, invoke the prescription of thirty years.

(8) Without waiver in any manner of the foregoing title the plaintiffs allege alternately that if the defendant has any title whatsoever to the said Seigniorie it is as a trustee for the plaintiffs and the other members of the band of Indians there residing, and the plaintiffs and the other members of the band are and have always been the beneficial owners of the said Seigniorie, and the defendant had, and has no right whatsoever to sell or alienate any part of the said Seigniorie as they have assumed to do; and plaintiffs pray that it be declared (a) That they and the other members of the band of Indians are the owners of the said Seigniorie of the Lake of Two Mountains, and that the defendant be adjudged and condemned to deliver up the said Seigniorie with all the lands therein comprised and all the members and appurtenances thereof to the plaintiffs for themselves and for the band of Indians whom they represent; or (b) that it be declared that the plaintiffs and the band of Indians whom they represent are the owners of all the lands of the said Seigniorie and that the defendant be adjudged and condemned to deliver up to the plaintiffs for themselves and the band of Indians they represent all the



common lands with all the members and appurtenances thereof; or  
 (c) that if it be declared that the defendant has any title  
 whatsoever to the said Seigniory or any part thereof, the  
 same be merely a title in trust for the benefit of the  
 plaintiffs and the band of Indians whom they represent, and  
 that it be declared that the plaintiffs and the band of India  
 whom they represent are entitled to the free use of all the  
 common lands, that the defendants be ordered to remove all  
 fences or barriers, and to desist from interfering with the  
 plaintiffs and the band of Indians whom they represent in the  
 free use and enjoyment of the said common land.

And, whereas, the defendant by its plea denies all  
 the material allegations of Plaintiffs declaration, but admit  
 that the defendant pretends to be the proprietor of the whole  
 of the Seigniory, and that they have sold to "whites" lots for  
 which they have been paid, and that they continue to do so.

And defendant further alleges that it is the pro-  
 prietor of the said Seigniory, and that it holds the said  
 Seigniory for itself and not as trustee for the said Indians  
 who reside thereon.

✓  
 ↓  
 Originally there was no occupation of the seigniory  
 in question, and the right of original occupation never ex-  
 isted; that even supposing that originally there was such  
 occupation neither the plaintiffs nor the Indians residing  
 at present on the said Seigniory are descendants of those  
 original occupants; that the right of the original occupants  
 if any such right existed, has been lost by the discovery,  
 occupation and the possession of the said territory by the  
 King of France or in his name by title deeds of absolute  
 ownership, which he has given firstly, in favour of the  
 Company of One hundred Associates, at the same time that

the King disposed in their favour of the remainder of the territory of New France; and, later, the concession of the Company of One Hundred Associates to the Ecclesiastics of the Seminary of St. Sulpice of Paris, and the ratification thereof by the said King; and, further, the said right, if it ever existed, was lost in virtue of the Act of Capitulation of Montreal, and of the Treaty of Paris, and by the confirmation and recognition of the right of the defendant as proprietor of the said Seignior from the British Crown, and from the Government and Legislatures of Lower Canada, and of United Canada, and especially by the ordinances of Lower Canada, 2-Victoria, chap. 50, and 3-4 Victoria, chap. 30 and by statute 22 Victoria, chap. 48, and by chaps. 41 and 42 of the Consolidated Statutes of Lower Canada of 1861.

This right was never recognized by the King of France, nor by the Government, or the British Parliament, nor by the Governments, Legislatures or the Canadian Parliaments having had jurisdiction over the Province of Quebec; and, further, this right, if it existed, would be lost by prescription and the possession which the defendant and its auteurs have had continuously of the *Seignior* in question since the date of the original concession.

Besides, the Indians who are at present on the said Seignior cannot invoke this original occupation, especially against the Defendant.

Before 1717 a certain number of Indians, of different origins, and coming from different places, who were friends of the French Government, and desired to have the protection of the fortifications and of the garrisons

garrisons of Montreal, and at the same time to receive instructions, moral and religious, from the Ecclesiastics of the Seminary of St. Sulpice of Montreal, established themselves by tolerance of the said Ecclesiastics of the Island of Montreal, of which these ecclesiastics were the proprietors, and who maintained a mission for their benefit.

About 1718 it was found that there was a danger for those Indians in the vicinity of Montreal, and the said ecclesiastics asked and obtained from the Governor and from the Intendant of the Colony the concession of the Seigniorship of the Lake of Two Mountains in order to transfer their said mission; and this concession was renewed in 1718 by the King of France, but with certain modifications and in favour of the Ecclesiastics of the Seminary of St. Sulpice of Paris upon whom those in Montreal were dependant;

This concession and ratification were registered in 1719 with the Superior Council of Quebec, and they were enregistered also at the office of the registrar at Quebec in June 1765, and also in the registry of Foi et Hommage.

In 1735 the Governor and the Intendant of the Colony granted to the said Seminary an augmentation of territory for the said Seigniorship, and in 1735 this new concession was ratified by the King, and this concession and ratification were enregistered with the Superior Council of New France in 1743, and were enregistered in the office of the registrar of Quebec in 1765, and were also wnregistered in the registry of Foi et Hommage. The territories thus conceded constitute the Seigniorship of the Lake of Two Mountains in question in this cause.

The Indians above mentioned were transferred by the

said



been reserved by the said seminary, and all expenses and charges of the said property have been supported by it; and the said seminary has at all times acted as proprietor absolute of the said seignior, selling lots to strangers and receiving the price thereof, and the Indians have always recognized this right.

Under these circumstances neither the plaintiffs nor the other Indians mentioned by the plaintiffs are proprietors either of the whole of the said seignior or of any part thereof, either in virtue of a pretended right of original occupation, or in virtue of any other cause, and the seminary does not hold the said seignior as trustee for them, but is proprietor for itself.

Without admitting that the said seminary had no right to fence part of the seignior, the defendant alleges that the fences, which have been placed as alleged in the action, were not placed there by the seminary, but by the municipal council, which had the power to do what was done; and defendant prays for the dismissal of the action;

And whereas the plaintiffs deny each and all of the allegations contained in the said plea, except those which agree with the allegations of Plaintiff's declaration.

Whereas it is evident from the facts set forth in the pleadings, above mentioned, that reference must be had to the early history of the Island of Montreal, and the Seignior of the Lake of Two Mountains, and the title of these lands must be traced from the first settlement of this part of the Province. Without doubt the Province was first discovered, and possession taken of it, by, or in the name of the King of France, and, actuated by a desire to civilize and christianize the Indians inhabiting the Island of Montreal, this part of

said Seminary at its own expense to the new Seigniory, and the said Seminary built for them there a church and fort.

To conform with the cession of Canada to Great Britain, in 1764 the Seminary of St. Sulpice of Paris made a donation to the Seminary of St. Sulpice of Montreal, which had been incorporated by edict of the King of France in 1677, of all the property which the said Seminary of Paris possessed in Canada, and especially the said Seigniory.

This donation was made with the object of conforming to the provisions of the capitulation of Montreal and of the Treaty of Paris; and this donation was accepted in 1765 by the Seminary of Montreal, and was duly enregistered in 1786.

By the ordinances and statutes above mentioned the existence of the said Seminary of St. Sulpice of Montreal as a corporation was recognized and confirmed; its rights in all its property, and especially in the said seigniory of the Lake of Two Mountains were confirmed, and the Seminary of Montreal was declared to be the proprietor as fully and to the same extent as the Seminary of St. Sulpice of Paris, or of the Seminary of St. Sulpice of Montreal, or both had been in 1759.

Since the original concession the seminary has always consented that the Indians residing in the said seigniory should occupy by title "precaire" inalienable, save and in favour of other Indians, and revokable at will, lots of land defined for each family; and that the said Indians should always pasture their animals and cut firewood on the said property; provided the Indians should use such permission only until a new order should be given, and under the absolute control of the defendant; and which control has always been exercised.

That the rights of property or of enjoyment have been

of the Province was conceded by the French King to a company known as that of the Hundred Associates. The title given to them was the same as that granted to other parties respecting other portions of New France; but the Kings of France recognized no title in the Indians. Their mode of dealing <sup>with</sup> the Indians was to make Crown grants of land ~~do~~ for their subsistence.

Subsequently, to wit; on the 9th of March, 1683 this Company of persons, known as that of the Hundred Associates, granted by donation to the Seminary of St. Sulpice of Paris, the Island of Montreal. This donation was accepted and registered on the 20th of September, 1677, at Quebec. The consideration of this donation was (a) The conversion of the Indians of New France; (b) to pay all debts and charges of the donors incurred while conducting their operations on the Island of Montreal; (c) to celebrate every year, both in the church at Montreal and in the chapel in <sup>the</sup> the Seminary at Paris, a solemn Mass for the repose of souls of the donors deceased, and of all Associates of the said Company.

This donation, based on the consideration above mentioned, was given absolutely and in full ownership to the Seminary of St. Sulpice of Paris, the language used being: "Par donation pure, simple et irrevocable et entrevifs, pour eux et leurs successeurs".

In the month of May, 1677, there was established in the Island of Montreal under the authority of an ordinance of the King of France a community and seminary of ecclesiastics for the propagation of the faith and for the establishment of the Christian religion in New France in



conformity with the holy councils of the Church and ordinances of the Kingdom; and, further, this ordinance contained a special acte of approval of the said donation to the Seminary of St. Sulpice of Paris, mentioned above, bearing date the 9th of March, 1663. And it has been contended that this ordinance constituted the Seminary of St. Sulpice of Montreal an incorporated body, separate from the Seminary of St. Sulpice of Paris;

In conformity with this donation the Seminary of St. Sulpice of Montreal, established, or continued to carry on a mission, already established, for the conversion of the Indians near the Montreal Mountain. This mission was a purely religious undertaking. Somewhat later this mission was moved to the Back River, but still retained on the Island of Montreal.

On the 17th of October, 1717, a petition was presented to Vaudreuil, the Governor General, and to Begon, the Intendant, by the Ecclesiastics of the Seminary of St. Sulpice of Montreal, setting forth that it would be advantageous to the Mission to the Indians at Sault aux Recollets on the Island of Montreal, which was under their care, that it should be transferred to above and beyond the Island of Montreal, and established on lands situated on the southwest side of the Lake of Two Mountains, which place would be more advantageous, not only for the conversion of the Indians (by reason of their being deprived of the opportunity of getting intoxicating liquors) but also to the colony, which by this means would be protected against the incursions of the Iroquois in times of war, and the petition prayed for a grant of land three leagues and a half in front,

to commence at the brook which runs into the great bay of the Lake of Two Mountains, ascending along the said Lake and River St. Lawrence by three leagues in dept in fief and seigniory, together with the right of superior, mean and inferior jurisdiction, and the privilege of hunting and fishing as well within the limits of the said land as on the said Lake and the said River St. Lawrence, on condition they should, as they offered to do, bear the whole expense of moving the mission, and that they should cause a church and fort to be built of stone on the place where the said mission should be transferred; whereupon the said Governor and Intendant, in virtue of the power entrusted to them, by His Majesty, granted and conceded unto the said Ecclesiastics of the Seminary of St. Sulpice of Montreal the said tract of land with the right to have and to hold the same for ever unto the said ecclesiastics, their successors and assigns, even should the said mission be taken away from thence, in full property under the title of fief and seigniory, with the right of superior, a mean and inferior jurisdiction and the privileges of hunting and fishing, &c., and on the condition above mentioned as to expense, and the building of a church and fort at their own costs. This concession was to be confirmed within one year by His Majesty the King, and in default thereof it should be null and void.

However, on the 27th of April 1718, (within a year) His Majesty the King duly confirmed the concession of the said territory, not to the Seminary of St. Sulpice of Montreal, but to the Seminary of St. Sulpice of Paris, their successors and ayant cause. (See D. 44 and admissions filed.)

On the 26th of September, 1733, Beauharnois, the Governor General and Nooquart, the Intendant, conceded and transferred to the Seminary of St. Sulpice of Paris a tract of land bounded on the one side by the Seigniorship belonging to the representatives of the late Sieurs de Langloiserie and Petit, and on the other side by the Seigniorship of the Lake of Two Mountains belonging to the Seminary, and in front extending about two leagues by the Lake of Two Mountains, the said tract of land forming a nearly equilateral triangle to have and to hold the said tract of land unto the said <sup>or</sup> Sieurs of the Seminary, their successors ~~and~~ assigns, henceforth as a fief and seigniorship, the whole subject to the confirmation of His Majesty the King within a year; and on the 1st of March, 1735, this concession was ratified and confirmed by the King, and duly registered at Quebec on the 12th December 1735. Under this concession full ownership of the tract of land above mentioned was conferred upon the Seminary of St. Sulpice of Paris. (See D. 46 and admissions filed). These lands form the Seigniorship in question.

The next step in the order of events was the capitulation of Montreal, the articles of which were signed and dated September, 1760. By article 27 the free exercise of the Catholic Apostolic and Roman Religion was granted, and by article 32 it was provided "The Committee of nuns shall be preserved in their constitution and privileges," but the following articles 33 was refused by General Amherst, commander-in-chief of the British troops and forces in North America, namely: "The preceding article (quoted above) shall likewise be executed with regard to the communities of Jesuits and Recollects and of the House of Priests of St. Sulpice of Montreal," &c.; further, by article 40 it was provided that



the latter acting by M<sup>re</sup> Etienne de Montgolfier, superior priest of the Seminary of Montreal, residing there usually, but accepting the concession at Paris for and on behalf of the said Seminary of Montreal. In this act of concession it is stated that in as much as Canada was then under the domination of the King of Great Britain, and in order to avoid confiscation of their property, and, further, with the object of continuing their mission to Christianize the Indians, as they were under obligation to do, in virtue of the concession to them by the said Company of One Hundred Associates, and its confirmation by His Majesty the King of France, this concession was made under the obligation to execute the charges and conditions imposed upon them as above mentioned by their donors.

The question subsequently arose as to the legality of this concession. In the first place it was contended that the Seminary of St. Sulpice of Montreal was never incorporated, and secondly, that the community of the Seminary of St. Sulpice of Paris was not recognized in the capitulation of Montreal and the Treaty of Paris. And from the documents above mentioned, and particularly the fact that the concession granted to the Seminary of St. Sulpice of Montreal, 17<sup>th</sup> October, 1717, which required to be confirmed by the King, and which was done on the 27<sup>th</sup> of April 1718, was not to the Seminary of Montreal but to the Seminary of St. Sulpice of Paris, it appears evident that the Seminary of St. Sulpice of Montreal was in reality only a branch or agent of the Seminary of St. Sulpice of Paris, and, in fact, no stipulation was made by the capitulation under which the members of the Seminary of St. Sulpice

"The savages, or Indian allies of His Most Christian Majesty shall be maintained in the lands they inhabit, if they chose to remain there; they shall not be molested on any pretence whatsoever for having carried arms and served His Most Christian Majesty; they shall have as well as the French liberty of religion and shall keep their missionaries."

The Treaty of Paris followed, dated the 10th day of February 1763, By article 6 it was provided that "His Britannic Majesty further agrees that the French inhabitants, or others, who have been subjects of the Most Christian King in Canada may retire with all safety and freedom wherever they shall think proper, and may sell their estates, provided it be to the subjects of His Britannic Majesty, and bring away their effects as well as their persons without being restrained in their emigration under any pretence <sup>so</sup> whatever excepting that of debts or of criminal prosecutions. The term limited for this emigration shall be fixed to the space of eighteen months, to be computed from the day of the exchange of the ratification of the present treaty."

Then there was the Royal Proclamation bearing date the 7th of October 1763 which provided among other things that the Indians should not be molested or disturbed in the possession of such lands as not having been ceded or purchased, were reserved to them as their hunting grounds.

On the 29th of April, 1764 the Seminary of St. Sulpice of Paris declaring itself to be the proprietor of the lands and seigniories of the island of Montreal, of the Cote of St. Sulpice, of the Lake of Two Mountains, and other landed properties, <sup>and</sup> ceded by donation these tracts of land and property to the Seminary of St. Sulpice of Montreal,

of Paris or of the Seminary of Montreal could claim a right to subsist as a corporation. Consequently the Lieutenant Governor of the Province of Lower Canada in 1804 asked for a report from Attorney General Sewall as what was the legal effect of this concession from the Seminary of St. Sulpice of Paris, and to whom the property belonged since the conquest of the country, and what right the Crown had, if any, in the properties mentioned in the said concession, and, later, the Governor General of Lower Canada and of the other provinces, then under his jurisdiction, in 182<sup>8</sup>, made the same request to Attorney-General Stuart, and about the same time the law officers of the Crown in England were asked to report upon the same matter. These reports are lengthy, but they are of the same tenor and to the same effect, namely: (1) That the Seminary of Montreal was not at the time of the conquest a body or community distinct from that of Paris, and that the priests which composed it did not constitute <sup>in</sup> themselves a body incorporated capable to take and hold estates in mortmain; that the priests of St. Sulpice of Paris, who, were residents of Montreal, were merely deputed agents for the Seminary of St. Sulpice of Paris, and, therefore, the whole of the said estates lapsed to His Majesty by right of conquest and acquired sovereignty as the property of a foreign ~~body~~ society, domiciled at Paris, and not in Canada at the time of the Conquest, and, (2) that the deed of cession of the 29th April, 1764, was inso facto null and void as the said estates had long before vested in His Majesty; and, (3) even supposing that the priests of St. Sulpice composing the Seminary of Montreal at the conquest really were entitled to hold and enjoy in their own right the said estates, this right could not be extended beyond the terms of their natural lives; and



"by this name they shall have perpetual succession by admitting  
 "and electing new members according to the rules of their  
 "foundation, and the practice by them heretofore followed.  
 "And, further, it was ordained that the right and title of the  
 "said Ecclesiastics of the Seminary of St. Sulpice of Mont-  
 "real, in and to all and singular the said fiefs and seignior-  
 "ies of the Island of Montreal -- of the Lake of Two Mountains-  
 "- and of St. Sulpice and their several dependencies, and in  
 "and to all Seigniorial and feudal rights, privileges, dues  
 "and duties arising out of and from the same, and in and to  
 "all and every the domains, lands, reservations, buildings,  
 "messuages, tenements, and hereditaments, within the said fiefs  
 "and Seigniories now held and possessed by them as proprietors  
 "thereof, with all and every the rights, privileges and appur-  
 "tenances thereunto belonging, or in any wise appertaining  
 "shall be and they are hereby confirmed and declared good and  
 "valid and effectual in law; and the corporation hereby con-  
 "stituted; shall and may have, hold and possess the same as pro-  
 "prietor thereof, as fully, in the same manner, and to the same  
 "extent, as the Ecclesiastics of the Seminary of St. Sulpice  
 "of Paris, or the Seminary of St. Sulpice of Montreal, accord-  
 "ing <sup>to</sup> its constitution before the 18th day of September,  
 "1759, or either or both of the said seminaries might or  
 "could have done, or had a right to do, or might or could  
 "have held, enjoyed or applied the same, or any part thereof,  
 "previously to the last mentioned period -- and to and for  
 "the purposes, objects and intents following, that is to say -  
 "the cure of souls within the parish of Montreal -- the mission  
 "of the Lake of Two Mountains, for the instruction and spirit-  
 "ual care of the Algonquin and Iroquois Indians -- the support

and the order of St. Sulpice quoad Canada would have died with them, as the Seminary of Montreal possessed no power to create priests of St. Sulpice of Paris. Besides the members of St. Sulpice of Paris being aliens were disqualified from becoming members of the Seminary of Montreal, and, also, were incapable of being members of a corporation.

These considerations appear to be conclusive; but notwithstanding these legal opinions it was generally felt to be desirable, and it was advised by the law officers of the Crown in England, that some compromise or amicable arrangement should be entered into by <sup>which</sup> His Majesty could be restored to his rights without having recourse to the process of law which might carry with it some appearance of hardship to the persons against whom it would be enforced, and, finally, a statute was passed by the Legislature of Lower Canada 3 and 4 Victoria, Chapter 30, the preamble of which is as follows:

"Whereas doubts and controversies have arisen touching the rights and title of the said Ecclesiastics of the Seminary of St. Sulpice of Montreal, in and to the several fiefs and Seigniories and their dependencies in which they have been in possession since the capitulation, and it has been contended that all and several of the said fiefs and Seigniories became by conquest of this province by British arms vested in the Crown. And, whereas, Her Majesty desires that all such doubts and controversies should be removed and terminated; it was therefore enacted as follows:

(1) That the members of the Seminary of St. Sulpice of Montreal (whose names are mentioned) and their successors be created an ecclesiastical corporation or body corporate and ecclesiastical in name and in deed by the name of the Ecclesiastics of the Seminary of St. Sulpice of Montreal, and that

"of the Petit Seminaire or college at Montreal - the support  
 "of schools for children within the parish of Montreal --the  
 "support of the poor, invalids, and orphans -- the sufficient  
 "support and maintenance of the members of the Corporation,  
 "its officers and servants - and the support of such other  
 "religious, charitable and educational institutions as may  
 "may from time to time be approved and sanctioned by the  
 "Governor, the Lieutenant Governor, or persons administering  
 "the Government of the Province for the time being - and to  
 "and for no other objects, purposes or intents whatsoever."

This statute was not disallowed by the Imperial Government, nor has it been repealed. On the contrary when the Statutes of Lower Canada were consolidated in 1848, this statute was accepted as forming part of the law of Lower Canada and was incorporated with the statutes in force in Lower Canada, and, subsequently, this statute was again accepted and made to form part of the Consolidated Statutes of Lower Canada in 1861.

It will thus be seen that whatever rights were reserved to, and conferred upon the Indians in occupation of the lands at the Lake of Two Mountains, under article 40 of the capitulation of Montreal, were entirely ignored by this statute, except the right to claim from the Seminary instruction and spiritual care. This statute was, moreover passed under the authority of the Constitutional Act of 1791 and when assented to by the Crown had the same force and effect as an Imperial Statute. Further, these rights were not based on original occupation, or any Indian title, but were conferred on the Indians as an Act of bounty from the Crown with the right to the Crown to alter or annul them. And as Mr. Justice Story has said, and quoted with approval by Sir



Sir W. J. Ritchie, C. J., in giving judgment in the St. Catharines Milling case (vo.13 p.599, S. C. R.) "It is to be deemed a right exclusively belonging to the Government in its sovereign capacity to extinguish the Indian title and to perfect its own dominion over the soil, and dispose of it according to its own good pleasure."

The question of prescription has been raised as vesting title in the Indians occupying a part of the said Seignior of the Lake of Two Mountains, Article 2193 of the Civil Code stipulates as follows: "For the purposes of prescription the possession of the person must be continuous, and uninterrupted peaceable, public, unequivocal and as proprietor".

The evidence adduced by the plaintiffs does not show that they occupied any lands of the said seignior as proprietors. The evidence of the defendant establishes the contrary. (See exhibits of defendant D"1" to D"13" and D. 23, D. 24, D. 25 and D. 26; also see deposition of Raphael Charest, secretary of the corporation of Oka, P. 174 who states that it was always the defendant who paid the taxes on the lands occupied by the Indians and maintained the roads and sidewalks.

When the mission was transferred from the Island of Montreal to the Lake of Two Mountains the Indians were induced to remove thither, the object being to bring them under the influence of the Roman Catholic Religion, and also to protect them from the incursions of warlike Indians from a distance, and not to grant them what is known as an Indian reservation.

It will be seen, however, from the statute 3 and 4 Victoria that the Seminary of St. Sulpice of Montreal has been placed under the obligation of promoting and continuing the said mission of the Lake of Two Mountains for the instructions and spiritual care of the Algonquin and Iroquois Indians.

This obligation must of necessity include the right of residence in the said Seigniory, on such lots and places as the defendant may designate, but within easy distance of the church, and taking into consideration the primitive condition of the Seigniory when the said statute was passed, and well-known habits of the Indians, this obligation also includes the right to cut wood on the seigniory for the building, repairing and heating of the dwellings of the Indians, and the right to pasture their horses and cattle in the said seigniory, but all within such limits as the defendant may fix and determine.

By reason of the foregoing considerations ~~and~~ the actions and demand of the said plaintiffs is dismissed with costs, subject to the right of the said plaintiffs, and the Indians represented by them, to demand and received from the said defendant instructions and spiritual care, and consequently the right to reside on the said seigniory on such lots and places as the defendant may designate, within easy distance of the church, and to erect dwellings thereon, and sheds for their horses and cattle, and also to cut and use wood on the said seigniory for the building, repairing and heating of their dwellings, and the right to pasture on the said seigniory, their horses and cattle, all within such limits as the defendant may fix and determine.

(SIGNED) M. HUTCHISON,

J. S. C.

MESSRS. OF THE SEMINARY OF SAINT SULPICE, AT MONTREAL.

Philippe De Rigaud, &c.

Michel Begon, &c.

On the petition presented to us by Messieurs the Ecclesiastics of the Seminary of St. Sulpice established at Montreal, by which they state that it would be advantageous to the mission of the Indians of the Sault au Recollet in the Island of Montreal, which is under their care, that it should be immediately transferred above the said island and established on the lands which are situated on the north west side of the lake of Two-Mountains, which said mission would be advantageous not only for the conversion of the Indians, who being there more distant from the city, would also be deprived of the opportunity of getting intoxicated, but also to the colony which by those means would be protected against the incursions of the Iroquois in times of war; praying us that we would grant them for the said mission a tract of land of three leagues and a half in front, to commence at the brook which runs into the great bay of the Lake of Two Mountains, ascending along the said lake and the River St. Lawrence, by three leagues in depth, in fief and seignior, together with the right of superior, mean and inferior jurisdiction (*haute, moyenne et basse justice*), and the privilege of hunting and fishing as well within the limits of the said land as on the said lake and the said river St. Lawrence, on condition that they shall, as they offer to do, bear the whole expense of removing the mission, and that they shall cause the church and fort to be built of stone on the place where the said mission shall be transferred; in consideration thereof.

We, in virtue of the power jointly entrusted to us by His Majesty, have given, granted and conceded, and by these presents do give, grant and concede unto the said Sieurs Ecclesiastics of the Seminary of St. Sulpice, established at Montreal, a tract of  
land



land of three leagues and a half in front to commence at the brook which runs into the great bay of the Lake of Two Mountains, ascending along the said lake and the River St. Lawrence, by three leagues in depth, to have and to hold the same for ever unto the said Sieurs Ecclesiastics, their successors and assigns, even should the said mission be taken away from thence, in full property, under the title of fief and seigniory, with the right of superior, mean and inferior jurisdiction and the privilege of hunting and fishing as well within as opposite the said concession on the said lake and river St. Lawrence, on condition that they shall bear the whole expense necessary for removing the said mission, and also cause a church and fort to be built there of stone, at their own cost, for the security of the Indians, according to the plans thereof which shall immediately be exhibited to us by them, to be by us approved, and that the said buildings shall be finished within the space of two years, subject also to the condition of fealty and homage (foi et homage) which the said Sieurs of the Seminary, their successors and assigns shall be held to perform at the Castle of St. Lewis in Quebec, of which they shall hold under the customary duties and dues and agreeably to the Custom of the provostship and viscounty of Paris followed in this country, and that the appeals from the decisions of the judge who may be established at the said place shall lie before the judges of the royal jurisdiction of Montreal; that they shall keep and cause to be kept house and home (feu et lieu) on the said concession; that they shall preserve the oak timber fit for ship-building which may be found within the limits of the land which the said Sieurs of the Seminary shall have set aside for their principal manor house, and that they shall also stipulate the reserve of such oak timber within the extent of the private concessions made or to be made to their tenants, which said oak timber His Majesty shall be free to take, as well as the said tract of land or any portion thereof,

when

when required, without being held to pay any indemnity; also that they shall give notice to the King or to the Governor and Intendant of this country, of the mines, ores and minerals if any be found within the limits of the said fief, and leave the necessary roadways and passages; that they shall concede the said lands under the simple title of a rent (redevance) of twenty sols and a capon (chapon) for each and every arpent of land in front by forty arpents in depth, and six deniers of cens, and that there shall not be inserted in the said concessions any sums of money or any other charge than that of the simple title of rent (redevance) according to the intentions of His Majesty, by whom they shall be held to have these presents confirmed within one year from this date, in default whereof the present concession shall be null and void.

In testimony whereof we have signed these presents, and caused the same to be sealed with our seals at arms and countersigned by our Secretaries.

Done and given at Quebec, the seventeenth day of October, one thousand seven hundred and seventeen.

Signed,                    VAUDREUIL, and  
BEGON.

And further down,

By command of Mylord,  
DE LESTAGE.

And, By command of Mylord,  
BARBEL.

The undersigned begs leave to report to the Committee of Council that he has had under consideration the application of the Dominion Government to purchase a block of land in the Township of Gibson in the District of Muskoka in order to settle thereon a number of families of the Oka Indians now residing in the Province of Quebec, and thereby terminate the long existing dispute between the Seminary of Montreal and the said Indians. The block of land selected by the Dominion Government is that portion lying east of the division line between lots Number Twenty and Twenty-one in the said Township, consisting of about twenty-five thousand, five hundred and eighty two acres. The number of families which it is desired and intended to remove from Oka where they now reside, and settle upon the said lands is about one-hundred-and-twenty, comprising in all about five hundred persons. The undersigned has seen some of the said Indians and has had an interview with them upon the subject of settling upon the said lands, and has made inquiry so far as possible, into their character and habits, and the capacity they possess for settling and clearing land, and has arrived at the conclusion that they will make reasonably good settlers and recommends that the said lands be sold to the Dominion Government at fifty cents per acre cash for the purpose of settling the said Indians thereon, upon the following conditions:-

1. That each head of a family shall, so far as it is practicable and reasonable, enter into bona fide possession of from one to three hundred acres of land, the exact quantity not exceeding three hundred acres to be decided upon and fixed by the Dominion Government, and shall at once commence settlement duties upon the said lands, with a view and for the purpose of making a home for himself and family thereon.

2. Settlement shall be such as would constitute settlement duties on Free Grant Lands under the Free Grant and Homestead Act, and the Dominion Government shall undertake that such settlement duties shall be begun and carried on to completion.

3. The pine timber upon the lands shall not pass under the sale, but shall be reserved to the Crown for the benefit of the Province, with the right at all times and seasons to grant licenses authorizing the cutting of the said timber, and with the further right of the Crown or the licensee at all times to enter into and upon the said lands, make roads,



and cut and carry the said timber away provided however that the actual settler shall have the right, in addition to what he may require for building and fencing purposes, to cut such pine trees as may be necessary in the bona fide process of clearing his land for cultivation, upon the same terms and conditions as are provided for the cutting and disposing of pine timber in the process of clearing on the Free Grant Lands.

4a. In case the Indians shall at any time require assistance to enable them to carry out such settlement, or shall at any time require provisions or assistance to aid in their support or maintenance, the Dominion Government shall provide all such provisions or assistance, and the Province shall not at any time be required or called upon to furnish the same.

5a. Should it be found upon close examination hereafter that any of the lots included in the said block of twenty-five thousand, five hundred and eighty two acres are occupied by squatters with improvements, or that any of the lots have been bona fide improved upon by any person with a view of settling upon the same, then in case the Dominion Government does not or cannot settle with the squatters or parties who have made such improvements so as to induce them to withdraw their claims to the lots so squatted upon or improved, then the said lots shall be reserved and shall not be sold.

6a. Upon the Dominion Government paying into the Department the price of the said lands at the rate aforesaid and passing an Order in Council agreeing to and accepting the foregoing conditions, the Indians may immediately take possession of and settle upon the said lands.

SGD: T.B. Pardee

Commissioner, Crown Lands.

TORONTO, 17th June, 1881.

of the Caughnawaga and the Oka Indians. The credit to the Oka Indians generally would appear to be a Departmental error, as the Iroquois at Oka allied to the Iroquois at Caughnawaga are alone entitled to share with the latter in the Doncaster Reserve. It is doubtful if it can be said that the Oka Indians share alike in the Distribution of interest moneys because the interest on the sum at their credit is devoted to such purposes as the relief of destitute Indians at Oka. The files of the Department show that with the above exception (if such) the Indians at Oka have not been treated as a band within Section 2 of the Indian Act.

In 1877 the Indians living on the Seignior of Two Mountains claimed ownership in the lands of the Seignior, and the Honourable Mr. Laflamme, then Minister of Justice dealing with this question expressed the opinion that "there is nothing in the provisions of the original grants which could be construed as giving any right in the property in favour of the Indians, except the advantage of having a Mission. However strictly examined, it is impossible to extract from the title any other obligation imposed on the grantees and that of transferring the Mission as it existed at Sault au Recollet and of erecting a church on the territory ceded by the Crown." (Vide also the opinion of the Hon. the Solicitor General, dated 15th December, 1897).

In 1880 a number of the Oka Indians expressed to the Government a desire to be allowed to send a deputation to the district of Muskoka, Ontario, with the object of selecting a suitable tract of land for location of as many as might be disposed to reside there. The Government and the Seminary alike encouraged this project with a view to quieting the claims of the Indians upon which they insisted although without foundation. An Agreement was accordingly entered into between the Seminary of St. Sulpice on the one hand and Sir John Macdonald, the Superintendent General of Indian Affairs on the other, the conditions of which were as follows:

- 1st The Reverend Gentlemen of the Seminary of St. Sulpice shall pay the purchase money of the new reserve of 25,582 acres at 50¢ per acre, \$12,791.00
- 2nd The Indians removing shall be allowed land in the proportion of 100 acres per family on adjoining lots.