

WALPOLE ISLAND RESERVE BOUNDARIES  
VOLUME I

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OTTAWA

Walpole Island

July 1984

VOLUME I

WALPOLE ISLAND RESERVE BOUNDARIES

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## INTRODUCTION

### I. PURPOSE

The object of this 3 volume report is to clarify the historical circumstances surrounding the Walpole Island reserve and its boundaries as well as clarify the state of negotiations involving Canada, Ontario and Walpole Island so as to revive and expedite those negotiations.

The balance of this Volume contains the textual components of the various studies undertaken by the different parties, namely:

1. "Chenal Ecarte Boundary-Walpole Reserve", R. B. Simison, November 3, 1977 (DIAND).
2. "Research Report on the Location of the Boundaries of Walpole Island Indian Reserve #46, David T. McNab, May, 1980 (MNR).
3. "The Historical Foundation for the Walpole Island Reserve Boundary Question", John L. Taylor, May 3, 1983. (Walpole).
4. "A Supplement to 'The Historical Foundation for the Walpole Island Reserve Boundary Question'", John L. Taylor, April 12, 1984 (Walpole); and
5. "An Historical Over view of the Walpole Island Indian Reserve to 1876", Dean M. Jacobs and John L. Taylor, April 1984 (Walpole).

Volume II consists of all pertinent documentation which substantiates the historical use and occupancy of the lands and waters of the Reserve by the band members and their ancestors as well as correspondence relevant to the boundary of the reserve. This documentation, with the exception of that which points to historical use, is in chronological order and is subdivided into selected time periods. Volume II concludes with the relevant maps.

Volume III contains two broader research papers on the Royal Proclamation of 1763 by Professor Douglas Leighton of the University of Western Ontario and Professor Brad Morse of the University of Ottawa. These papers are included as they were commissioned by the Walpole Island Band, at the behest of the Association of Iroquois and Allied Indians, in part to address the application of the Royal Proclamation of 1763 to this boundary dispute.

The position of the Walpole Island Band has been clearly and forcefully stated on numerous occasions during the last decade, an example of which is contained in a brief to the Minister of Indian Affairs of July 12, 1980 attached as Appendix A to this Introduction. A visual presentation of this position is evident in the map annexed hereto.

Although there have been meetings held sporadically over the last 7 or 8 years involving Canada, Ontario and the Band on this subject, little progress has been made other than a sharing of research information. It is hoped that this collection can provide a new starting point in which serious and active discussions can occur.

July 1984

APPENDIX A

Walpole Island Council Brief to the  
Honourable John Munro,  
Minister of Indian Affairs  
July 12, 1980



# Walpole Island Council

R. R. No. 3, WALLACEBURG, ONTARIO  
N8A 4K9  
PHONE (519) 627-1481



## WALPOLE ISLAND BOUNDARIES BRIEF TO THE HONOURABLE JOHN MUNRO MINISTER OF INDIAN AFFAIRS

INDIAN PEOPLE ARE THE ORIGINAL INHABITANTS OF NORTH AMERICA AND HAVE LIVED HERE FROM TIME IMMEMORIAL.

PRIOR TO THE ARRIVAL OF THE EUROPEAN IN NORTH AMERICA, INDIAN PEOPLE ENJOYED THE USE OF THE ENTIRE CONTINENT. THIS USE WAS LIMITED AND CONFINED ONLY BY THE STRICT INDIAN ADHERENCE TO LIVING COMPATIBLY AND IN HARMONY WITH THE UNIVERSE.

INDIAN NATIONS OCCUPIED SOUTHWESTERN ONTARIO SHORTLY AFTER THE ICE MELTED. THE INDIAN NATIONS MAINTAINED A SELF SUFFICIENT EXISTENCE AS PRESCRIBED BY THE EARTHS SEASONAL CHARACTERISTICS. THE SURVIVAL OF INDIAN PEOPLE IN NORTH AMERICA CAN BE ATTRIBUTED TO OUR CREATIVE ABILITY FOR ADAPTATION, STRONG INSTENTINAL FORTITUDE AND OUR CAPCITY FOR MENTAL AND PHYSICAL ENDURANCE .

OUR RIGHT TO EXIST AS WE CHOOSE TO IS COMMONLY REFERRED TO AS ABORIGINAL RIGHTS. THE BRITISH CROWN CONFIRMED INDIAN RIGHTS IN THEIR FAMOUS 1763 ROYAL PROCLAMATION. THE PROCLAMATION ONLY RECOGNIZES OUR RIGHTS AS THESE RIGHTS WERE ESTABLISHED BY INDIAN PEOPLE WELL BEFORE THE EUROPEAN LANDED IN NORTH AMERICA.

THE ROYAL PROCLAMATION PROVIDED UNDISTURBED POSSESSION FOR INDIAN NATIONS, TO LANDS RESERVED TO THEM AS THEIR EXCLUSIVE HUNTING GROUNDS. ESSENTIALLY THE ROYAL PROCLAMATION SAID THESE INDIAN LANDS COULD BE OPENED TO NON-INDIAN OCCUPATION ONLY AFTER EXISTING INDIAN RIGHTS TO THE LANDS WERE EXTINGUISHED.

IN SOUTHWESTERN ONTARIO, BEGINNING IN 1790, OUR "CO-EXISTING WITH NATURE" CONCEPT COLLIDED HEAD ON WITH THE EUROPEAN "CONQUERING/EXPLOITATION OF NATURE" CONCEPTS.

BETWEEN THE YEARS 1790 AND 1827 A LITTLE MORE THAN AN AVERAGE HUMAN GENERATION, THE BRITISH CROWN ACQUIRED SETTLEMENT PRIVILEGES TO OVER 4 MILLION ACRES IN SOUTHWESTERN ONTARIO.

THE INDIAN NATIONS NOW RESIDING ON THE WALPOLE ISLAND INDIAN RESERVE REQUEST THAT YOU MR. MINISTER PERSONALLY ASSIST AND ACTIVELY SUPPORT THE WALPOLE ISLAND BAND OF INDIANS BY RECOGNIZING AND PROTECTING WHAT LITTLE LAND AND RESOURCES WE HAVE LEFT IN SOUTHWESTERN ONTARIO.

OUR MAIN CONCERN IS TO PROTECT OUR RIGHTS TO THE LANDS AND RESOURCES WITHIN OUR RESERVE BOUNDARIES SO THAT WE AND OUR FUTURE GENERATIONS WILL BE ABLE TO BENEFIT FROM THEM.

YOUR DEPARTMENT'S OFFICES IN OTTAWA ARE FULLY AWARE OF THE WALPOLE ISLAND BAND'S POSITION CONCERNING OUR RESERVE BOUNDARIES APPENDED FOR YOUR INFORMATION IS THE BAND'S POSITION AND SELECTED DOCUMENTS.

THE WALPOLE ISLAND RESERVE EXTERIOR BOUNDARY HAS NEVER BEEN RESOLVED. WE THEREFORE REQUEST YOUR ASSISTANCE ON OUR BEHALF TO;

1. MAKE AVAILABLE TO THIS BAND THE INFORMATION AND TECHNICAL ASSISTANCE THAT EXISTS WITHIN YOUR MINISTRY
2. SUPPORT OUR BAND'S POSITION CONCERNING OUR BOUNDARIES
3. ACTIVELY PERSUADE THE PROVINCE OF ONTARIO AND ITS AGENTS TO RESPOND MORE FULLY AND EXPEDITOUSLY TO OUR CONCERNS SO AS TO PROMOTE A SATISFACTORY RESOLUTION AS SOON AS POSSIBLE.
4. ASSIST THIS BAND TO ENFORCE OUR JURISDICTION WITHIN OUR

BOUNDARIES SO AS TO PROTECT OUR PRECIOUS WILDLIFE, LAND  
AND WATER RESOURCES.

PRESENTED BY THE

WALPOLE ISLAND CHIEF AND COUNCIL

JULY 12, 1980

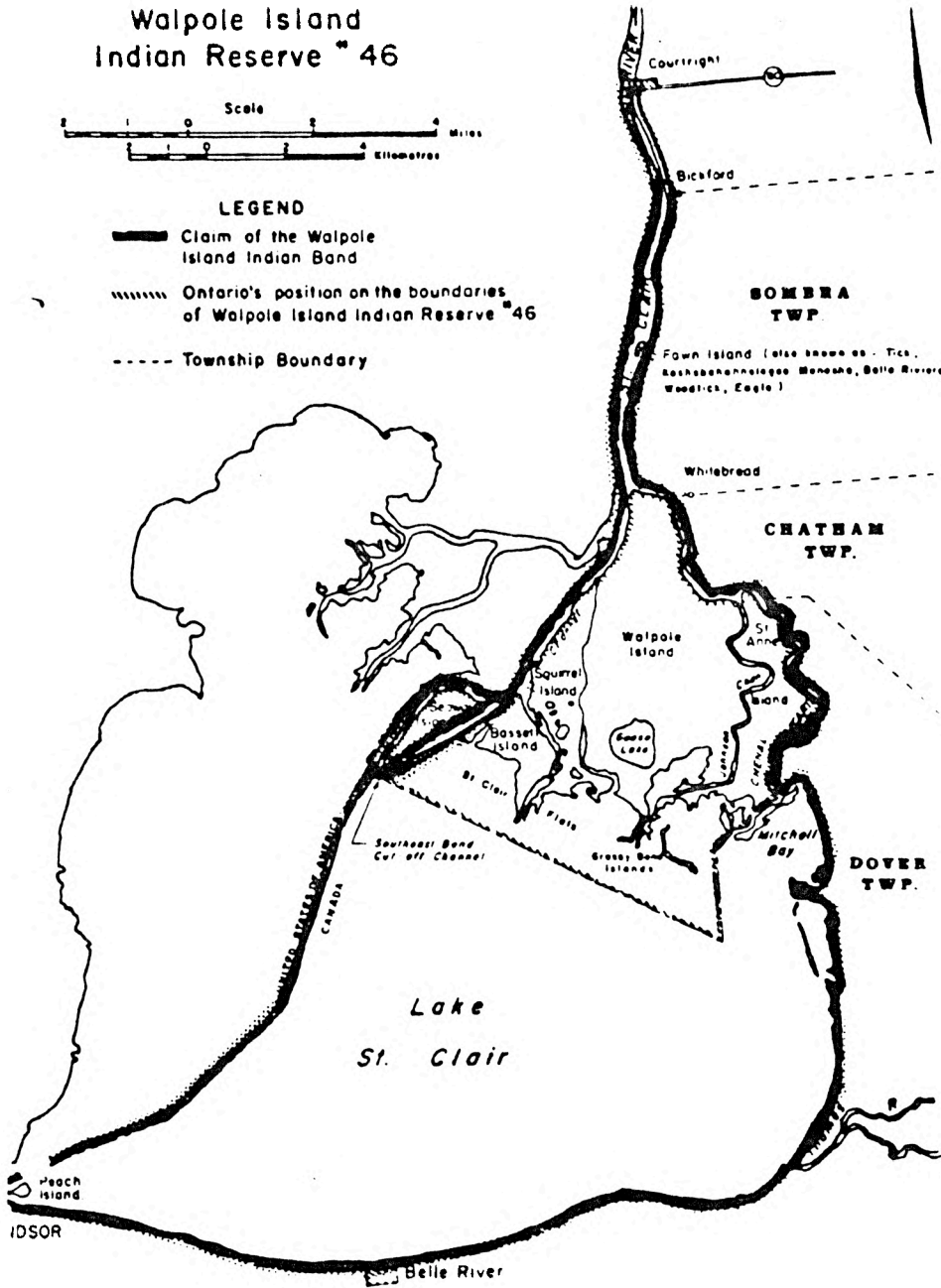


# Walpole Island Indian Reserve # 46



## LEGEND

- Claim of the Walpole Island Indian Band
- Ontario's position on the boundaries of Walpole Island Indian Reserve # 46
- Township Boundary



OTTAWA, Ontario K1A 0M1  
November 3, 1977.

O.F. 471/30-7-46

Chenal Ecarte Boundary  
Walpole Island Reserve

The question of the precise easterly limits of the Walpole Island reserve along the Chenal Ecarte river has been raised by the Surveyor General, E.M.R., in his letter of June 24, 1977. The Ontario Ministry of Natural Resources feels that the bounds of the reserve extend only to the west bank of the Chenal Ecarte and the Walpole Island Band Council believe the boundary should extend to the east bank encompassing all of the bed of the river within the reserve.

In researching this matter it has become clear that reliance on the historical record is insufficient to settle the question of the boundary. Because the records indicate that a clear and precise definition of the east boundary agreeable to both Band and Province has never been made, the prime onus remains with both parties to reach an agreement. IAND, and E.M.R. for that matter, can facilitate such an agreement by bringing both groups together and providing survey or land expertise, but it doesn't seem the proper course to decide the question to either the expense or dissatisfaction of the Band or the Province.

A summary of the limited references relevant to the Chenal Ecarte boundary follows together with my comments:

May 19, 1790 - Chiefs of Ottawa, Chippewa, Pottawatomy and Huron Nations granted to the Crown a large area of south-western Ontario '... running Westward along the border of Lake Erie and up the Streight to the mouth of a river known by the name of Chennail Ecarté and up the main branch of the said Chennail Ecarté to the first fork on the south side, then a due east line...' (See Map, Attachment No. 1) This description does not make it clear whether the area surrendered covers the east or west bank of the river.

September 7, 1796 - The Chippewa Indians granted to the Crown a tract of land 'lying on or near to the said River Chenail Ecarté ... from the River St. Clair to the first fork on the south side Pakeitchewanse and from the said fork on the north side Wapissejunktissycawpowa, beginning at the said first fork where the Ottawa Village now stands and where the east line of the lands purchased (in 1790) commenced and following the several windings of the said river up the stream to the River St. Clair....' (See Map, Att. No. 2) The map attached to the surrender shows the bounds of the grant, north of the Chenail Ecarté.

November 8, 1850 - Proclamation extending the trespass provisions of Indian Protection Act of Aug. 10, 1850 to the land reserved for the occupation of the Myandotts including 'Walpole Island, St. Anns Island, Squirrell Island, Stag Island and Eagle Island lying in and at the mouth of the River St. Clair, in the United Counties of Kent and Lambton, or all the Islands at the mouth of the River St. Clair, lying between Chenail Ecarte and the boundary line of the Province, together with the Islands in the said River'. This description seems to limit the land set aside to the islands alone and excludes the beds of rivers. It should be considered however that this is a general rather than precise description of the reserve to which the trespass provisions were extended. It seems probable that the context of this

Proclamation as well as the agreements of 1790 and 1796, all prior to modern survey techniques and current Departmental concerns for precise boundaries, were such that no one at the time considered the beds of rivers as relevant to the definition of the reserve limits. The river itself as a natural visible boundary line was likely all that was considered and it is very doubtful whether the Indians or the Crown officials ever gave any thought to the boundary being the west shore, middle tread or east shore. The overall accuracy of the 1850 Proclamation with respect to Walpole is also questionable because of the apparent error in referring to the land at Walpole as reserved for the occupation of the Wyandotts. By 1850, Chippewas, Ottawas and Pottawattamies were occupying Walpole Island reserve and the Wyandotts occupied the Huron reserve in the Township of Anderdon south of Lake St. Clair.

1858 - Special Commissioner's report, Pg. 55 - 'Walpole Island at the lower end of the River St. Clair has never been surveyed, but is estimated to contain 10,000 acres.'

April 13, 1894 - O.C. Scott re division of Treaty and non-Treaty Indians at Walpole: 'The island has never been surveyed...but it would be desirable to have it surveyed in order that location tickets could be issued.' (Vol. 2666, RG 10, PAC)

Plans - All C.L.S.R. plans showing the Chenal Ecarte river were checked.

The following include the Chenal Ecarte but do not show the reserve limits:

T749, 913, 934, T1094, T1094A, T1295, 3007, F4335, T777A, T972, 2061, T110, T467, 489, R02815, 58864, 51428, 55126, 52020, 59817, 59818, 51287, 59820, 52289, T913, 58950, M3205.

F3090, compiled reserve plan of 1945 and T110-A, tracing from 1927, both specify that the Chenal Ecarte is the east boundary of the reserve but do not indicate which side of the river is the boundary.

#### Files Checked

471/32-7-46-7 Vol. 12 - nothing relative to Chenal Ecarte

471/32-7-46-7 Vol. 13 - nothing relative to Chenal Ecarte

471/30-1 Vol. 1, 1936-1960, same as 27007-1 Vol. 2, nothing relative to Chenal Ecarte.

471/30-1 Vol. 2, 1938-1954, same as 27040-1 Vol. 3

April 12, 1944 - Ontario Surveyor-General to Dept., 'Does your Dept. desire to proceed any further with establishing the limits of these islands as between the Indians and the Crown in right of the Province?'

April 17, 1944 - Dept. replies that staff shortages prevent speedy reply and they will reach decision some time in future.

July 5, 1948 - Minute of Band Council, 'that a survey of establishing a boundary line all around the island to determine our legal water rights.' (attachment #3)

July 6, 1948 - R.J. Smallwood, Agent to Dept., 'it is desired to have a survey to establish a definite boundary that could be marked, not only at the south of the island facing the Lake St. Clair, but also along the St. Clair and Chenal Ecarte River margins'. (attachment #4)

October 25, 1948 - report by J. Raichman on boundaries (att. #5)

November 31, 1955 - N. Ogden to Bethune re boundaries (att. #6)

471/30-1 Vol. 4, 1956-61

- \* July 27, 1956 - Surv.-Gen. Thistlethwaite to Bethune: sends copy of legal description for south boundary dated July 26th. (att. #7 & 8)
  - \* (Note that this legal description goes to the center line of the Chenal Ecarte. This determination of the boundary is based on Plan 4296 C.L.S.R. which is the same U.S. Chart #42 which was used to indicate the south boundary as approved by the Band Council in 1956 under Plan F4335 C.L.S.R. The extent to which 4296 (and therefore the legal description of the centre line of Chenal Ecarte) could be viewed as showing the agreement of the Band Council in 1956, is somewhat doubtful because 1) F4335 shows the agreed boundary line and F4296, though on the same base chart, only shows the green-circled area to be used in the legal description. The file does not indicate whether the Band Council had agreed on the boundary starting point circled in green on F4296. 2) The purpose of the Band Council signatures on F4335 was to show that they agreed with the line designated as the new south boundary, and not necessarily the location of the east boundary.

What is significant about this legal description is its later acceptance by the Province.

September 11, 1956 - Dept. to Macdougall, Ontario Dept. of Lands and Forests, - sends copy of Surveyor-General's legal description of July 26, 1956 for their approval.

September 17, 1956 - Province acknowledges Dept.'s letter, - 'if it is decided to have the line confirmed by order in council we will advise you.'

April 25, 1957 - Surveyor-General Thistlethwaite to Ont. Surv.-Gen. Beatty, - forwards copy of 1942 report by W.R. White, O.L.S. on the boundaries of the reserve. 'It is believed that the lands placed under the protection of the Indian Act in 1850, as marginally marked in red on the above copy of the report, constitute the Indian reserve.' (Unfortunately this report is not legible on this file which was damaged in the 1969 flood of IAND basement records. The original report by White should be available in E.M.R. records under their File No. 21545 (L6).)

July 18, 1958 - Dept. to MP Murphy concerning dispute over fishing in Mitchell Bay: 'the boundary of the Reserve in the vicinity of Mitchell Bay runs in a north-south direction from the westerly point of Chenal Ecarte.

July 18, 1958 - Bethune to Walpole Agency: 'the boundary in this area being a straight line running north and south from the westerly end of Chenal Ecarte. (att. #9)

March 18, 1960 - Surv.-Gen. Thistlethwaite to Bethune: - sends revised description of South boundary to be passed to Province for their approval. Legal description again runs to the centre line of Chenal Ecarte. (att. #10 & 11)

\* April 19, 1960 - Beatty to Bethune - 'It would appear that the distance from Turning Point 174 in the International Boundary did not enter the considerations respecting the southwest angle of the reserve when its location was agreed to by the Department in 1956 (see description dated July 26, 1956 - L.L. Anderson, Acting Chief of Legal Surveys), and it is difficult to see why the matter of the location of this boundary is presented by your Department for reconsideration.' (att. #12) (This clearly shows that Ontario agreed with Anderson's first description of the south boundary, a description which runs to the middle thread of the Chenal Ecarte.)

471/30-1 Vol. 6, 1968 to present - nothing relative to Chenal Ecarte

471/30-7-46 Vol. 1, 1959-63 - nothing on Chenal Ecarte

471/30-7-46 Vol. 2, 1964-68

April 29, 1966 - Surv. Gen. to Vergette - E.M.R. adopts the ordinary high water mark as the boundary along the Chenal Ecarte and asks Dept. what the official boundaries are. (att. #14)

June 21, 1966 - report by T. Vergette on boundaries of reserve with map showing reserve boundary west of the Chenal Ecarte, and east of St. Clair River, with Basset, Chematogen and Johnson Channels not part of the reserve. (att. #13)

February 22, 1967 - Vergette to Legal Advisor (att. #15) - attaches previous legal opinions concerning the status of Walpole Island waterways from 1952 (att. #16A & B) and 1955 (att. #17A & B) and asks for opinion re status of Bassett, Chematogan and Johnston channels. (Note that no mention is made of Chenal Ecarte in this request for legal advice)

April 18, 1967 - Vergette to Surv.-Gen. E.M.R., - advises that Ontario had not yet agreed on position of south boundary (based upon revised legal description) and that 'the question of ownership of the lands underlying the Chenail Ecarte, Johnston, Chematogan and Basset channels has been referred to the Department of Justice...' (att. #18) (Note that the request for advice of Feb. 22, 1967 did not include the Chenal Ecarte)

September 12, 1967 - Legal Adviser Fischer to Vergette - suggests that 'since the channels are completely contained within the boundaries of the reserve the Band would have the power to control fishing in the channels,' and that they are subject to the general rule (expressed in the 1952 opinion) that 'the owner of the land adjoining a river also owns the river to midstream.' (att. #19) (Note again that Chenal Ecarte is not mentioned in the opinion. It is not a channel 'completely contained within the boundaries of the reserve', it is not part of the seaway waterway navigation system, and it is apparently navigable, as shown by the method of Stretton's survey in 1971.)

September 18, 1967 - Vergette to Surv.-Gen., E.M.R. - states that legal adviser has suggested that Basset, Chematogan and Johnson channels are governed by the rule 'that the owner of land adjoining a river also owns the river to midstream'.... 'As for the Chenal Ecarte, the same rule would appear to apply and the Band has control to the middle of the stream.' (att. #20)

471/30-7-46 Vol. 3, 1968-71 -

October 2, 1967 - IAND to Ontario Lands and Forests - re south boundary, attaches copy of plans and legal description and seeks Provincial transfers of lands designated. (att. # 21) (the legal description is not attached to the copy of the letter on this file but it presumably was Anderson's revised second description of 1960 which, as with his first description of 1956, goes to the middle thread of Chenal Ecarte.)

November 4, 1968 - Hyslop, Ont. L & F to IAND - (att. #22) attaches copy of their own legal description dated Dec. 18, 1967 (att. #23) 'which Ontario is in agreement' and asks Dept. for a complete boundary for the reserve. (Note that Ontario's legal description, as with Anderson's of 1956 and 1960, runs to the centre line of Chenal Ecarte.)

November 18, 1968 - Vergette to SG, E.M.R. - asks for plan of complete boundary together with suitable legal description for purpose of the south boundary transfer. (no reply to this letter is on file)

July 25, 1969 - Ferguson, Law Branch (for Ontario?) to Registrar of Oeeds, Chatham - encloses OC 2862/69, July 17, 1969 vesting in Crown Canada part of the bed of Chenal Ecarte in front of Lot A, Conc. 1, Gore of Chatham Twp. and in front of Lot 71, 51428 C.L.S.R., 1.575 acres, Water lot CL993. (There is nothing further about this transfer on file and 51428 C.L.S.R. does not show a water lot in front of Lot 71.)

November 8, 1971 - Faulkner, District Supervisor, London to RO, Ontario, - the O.H.W.M. on the Chenal Ecarte of course is the eastern boundary of the Reserve in this area.'

November 16, 1971 - Stratton's survey report to E.M.R. re Chenal Ecarte, '...central problem is defining the centre thread of the stream...dry land ceases to exist altogether and the channel is defined by reeds standing in three or four feet of water.'

471/30-7-46 Vol. 4, 1967-73

July 5, 1972 - H.R. Phillips to District Supervisor - asks for Band approval of Plan 57494 C.L.S.R. (which defines exterior boundaries to middle thread of Chenal Ecarte.)

May 14, 1973 - Band Council Motion re provisional plan of exterior boundaries - asks why the boundaries of the reserve have reduced in size.

May 30, 1973 - Band Administrator forwards May 14 BCR to District and advises that the Council 'feel that the area shown on the Provisional Plan is not as originally laid out for our Reservation, especially along the St. Clair River Channel.'

December 17, 1973 - District Supervisor to IAND Surveys re. exterior boundary approval:- 'During a recent telephone conversation with...(the Band Lands Officer)... it was indicated that one point of concern involved the eastern boundary of the Reserve along the Chenal Ecarte, which appears difficult to interpret when compared with previous surveys.'

471/30-7-46 Vol. 5, 1973-74

January 8, 1974 - E. Bill, IAND Surveys to District - 'Chenal Ecarte appears...identical on the new and old plans'. - suggests that Band indicate on a print of present plan specific parts of external boundaries which they feel are incorrect. (att. #24)

January 21, 1974 - Ryan to Dean Jacobs - provides report on history of Walpole Isld., copies of surrenders etc.

March 12, 1974 - E. Bill to District - still awaiting Band Council's reply.

April 3, 1974 - A.J. Soney, Band Administrator to District - 'exterior boundary survey (will not be approved by Council) until our land claims are settled. We have a researcher, Mr. Dean Jacobs, working on possible land claims and it is felt that when this claim or claims are settled by the Claims Commission, then the Council could re-consider this plan.'

August 2, 1974 - E. Bill to District re Prov. Plan 57494 (exterior boundaries) - suggests that Band Council accept the plan with wording in BCR that 'acceptance in no way jeopardizes or affects future land claims in this area.'

October 17, 1974 - D. Macdonell, Asst. Reg. Surveyor, E.M.R. to E. Bill - 'The Chief says that he has a plan showing the reserve boundary on the east shore of the Chenal Ecarte and therefore all of the Chenal Ecarte should be inside the reserve. We asked him to forward a copy of this plan to us.' (att. #25)

November 7, 1974 - E. Bill to Region - asks them to confirm with Band that they have no other objections to Prov. Plan 57494 other than those raised already.

February 25, 1975 - Morton to Band Administrator - summarizes Band Council's objections to the boundary plan and asks for their confirmation by letter. 'I believe the Chief feels that all of the Chenal Ecarte should be inside the Reserve.'....'It will not be possible to proceed with negotiations with the Province to obtain agreement to the straight line south boundary of the Reserve and ownership of the bed of Lake St. Clair to that boundary, until we have a finalized plan of the Reserve.' (att. #26)

May 22, 1975 - M. O'Reilly, IAND Surveys to K. Allen, IAND land research - asks whether further research is necessary. J. Byrne replies that, without new evidence, boundaries, as shown, are correct.

- June 13, 1975 - O'Reilly to Region - 'If we receive no valid objection to 57494 by July 31, 1975, we shall assume it is acceptable and we shall proceed with its finalization.'
- July 29, 1975 - Chief Issac to H.R. Phillips re 57494 - refers to BCR of July 21, 1975 - 'this Band Council strongly objects to the plan on the exterior boundary of Walpole Island...All of the Chenal Ecarte should be inside the reserve.'
- August 13, 1975 - Phillips to Chief Issac - states that the non-navigability principle has also been applied to the Chenal Ecarte thus making the boundary along the centre of that watercourse. (att. #27)
- October 17, 1975 - Phillips to Slessor, E.M.R. - suggests that 57494 be finalized. Since plan was originally intended to facilitate South boundary transfer from Province, 57494 should be sent to Province first for their review.
- 471/30-7-46 Vol. 6, 1975-77
- January 13, 1976 - Browns to SG, E.M.R. - 57494 still being looked at by Provincial Lands Division.
- May 5, 1976 - Slessor to O'Reilly - 'At request of Ont. officials, we are having a new plan of 57494 prepared to be complete about July 1, 1976.'
- March 26, 1976 - Code, Ont. SG to Slessor - cursory examination of 57494 conducted. 'The plan may be compiled from aerial photographs with the natural boundaries being labeled i.e. water's edge, middle thread of Chenal Ecarte.'
- August 27, 1976 - Slessor to Code - 'When we receive the results of your inspection of this plan and notification from Indian Affairs that the plan meets their requirements we will then have the SG of Canada approve and sign the plan.'
- October 21, 1976 - Slessor to Code - sends copies of amended plan 57494 to Province and IANO for their comments.
- January 12, 1977 - Slessor to Code - asks for progress on Prov. scrutiny of plan. Plan must be finalized before DPW transfer can proceed.
- January 27, 1977 - Code to Slessor - Plan has received tentative approval of Surveys & Mapping Branch and has been passed to Lands Administration for their comments.
- 471/30-7-46 Vol. 7 - 1977
- June 1, 1977 - J.R. McGinn to Slessor - feels that westerly bank should be boundary, not middle thread. 'This Ministry has traditionally carried out Ministry programs (Land, Fish and Wildlife) on the entire Chenal Ecarte River and we have no knowledge of any dispute over or claims by, the Walpole Indians to the river itself.'
- June 24, 1977 - Slessor to Phillips, IAND Lands - passes along J. McGinn's letter and asks for review of the matter.



Public Archive Records

The following are recorded here for future reference, if necessary, but were not searched for the purpose of this report because of the previous search conducted in 1948 (att. #5) which indicates that specific definition of reserve boundaries only began in the 1940's.

Vol. 571, RG 10, PAC - 1841 to 45 - letterbooks of Resident Agent, Walpole Isld.

Vols. 1759, 1760, RG 10, PAC - Minutes of Indian Council 1902 to 1919

F. 27040-1 Vol. 1, (Vol. 7756) RG 10, PAC - Surveys and Reserves 1905-38

F. 20740-1 Vol. 2, (Vol. 7756) RG 10, PAC - Surveys and Reserves 1938-1943

Vol. 2666 RG 10 PAC - Dept. correspondence 1880's, 90's.

Summary

The records indicate that the boundary of the reserve along the Chenal Ecarte river has never been clearly defined. Indian Affairs has taken the view that the boundary is the middle thread which seems a reasonable compromise in the absence of historical evidence between the west bank which the Province apparently now favours and the east bank which the Band favours. The Province seems to have given tacit approval to the middle thread approach on several occasions over the years by approving E.M.R. legal descriptions or their own legal descriptions of the south boundary which all terminate at the middle thread of Chenal Ecarte. While there is no evidence prior to the preparation of Plan 57494 that the Band claimed only to the west bank or the entire river bed to the east bank, their present claims are presumably based upon long-term use of the river adjacent to the reserve for navigation and hunting or fishing activities. This use of the river, if true, would balance the Province's argument of traditional Ministry use for Land, Fish and Wildlife programs. An investigation of the relative degree of traditional use of the river by the Band and the Province (or public) for hunting, fishing or navigation purposes is one method to determine where the boundary should lie. It seems likely though that some degree of use by all parties could be shown.

Another method is to rely strictly on legal opinion. The records show that previous opinions have not been specific to Chenal Ecarte and a new opinion from Justice would be necessary if this method were used. It would be necessary to clarify three areas: 1) the ownership of the bed of the river 2) the right to hunt or fish in the river, (a right presumably tied to the right of ownership of the river bed) 3) the public right of navigation. Judging from previous opinions a legal evaluation would likely rest on the question of navigability of the river. The method of Stretton's survey in 1971 shows that the river is navigable by at least a small boat however he does suggest that the channel is defined by reeds standing in three or four feet of water (In St. Regis reserve the Department has supported the Band in the view that marshes adjacent to reserve land are of reserve status.) In the letter of August 13, 1975 Chief Isaac was told that the non-navigability principle applied to Chenal Ecarte making the boundary the middle thread. These conflicting items of information concerning the navigability of the river and past Departmental positions in similar situations would have to be sorted out if further legal advice was sought.

A third option in settling the question was mentioned at the beginning of this report i.e. mutual agreement by Province and Band facilitated by IAND and E.M.R. The records seem to suggest that not enough contact with the Band has been made to see exactly why they feel the reserve should extend to the east bank rather than the middle thread.

as IAND suggests, or the west bank, as the Province has suggested. Macdonell's letter of October 17, 1974 quotes the Chief as saying he has a plan showing the reserve on the east shore of Chenal Ecarte and therefore all of the river should be inside the reserve. No such plan is recorded in C.L.S.R. and there is no record on file of the Chief forwarding a copy of his plan to the Department as Surveyor Macdonell had suggested. Perhaps IAND could facilitate an eventual agreement by following up the mention of this plan with the Band Council, advising them of the Province's view as expressed by Mr. McGinn and inviting their comments on how this problem can be resolved.

It should be borne in mind that the Band is unlikely to agree on a settlement of the east boundary on a separate basis from their objections to Plan 57494 summarized by Mr. Morton's letter of February 21, 1975 (att. #26) i.e. the St. Clair River boundary and the St. Clair cut-off. In the case of the St. Clair River the existing legal opinions suggest that this boundary would remain at the O.H.W.M. rather than the middle thread due to the International navigation of the river for seaway purposes. With respect to the St. Clair cut-off, I would think the answer would rest with a determination of exactly what was transferred by the cut-off transaction.



R.B. Simison,  
IAND Land Entitlement Section.

RESEARCH REPORT ON THE LOCATION OF THE BOUNDARIES  
OF  
WALPOLE ISLAND INDIAN RESERVE #46

David T. McNab  
Senior Indian Land Claims Researcher  
Office of Indian Resource Policy  
Ministry of Natural Resources  
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I INTRODUCTION

There has been no agreement by the Governments of Canada and Ontario, ratified by formal executive authority, concerning the location of the boundaries of Walpole Island Indian Reserve #46. Ontario and Canada have recognized that the western boundary of the Indian Reserve should be located on the western shore of the islands which have usually been regarded as Indian Reserve lands. The Walpole Island Band has claimed that the western boundary extends to the International Boundary between Canada and the United States. The location of the southern and eastern boundaries, between the marshlands and the deep water of Lake St. Clair and on the Chenail Ecarte respectively, are also issues which are still outstanding. The southern boundary has been placed tentatively along an arbitrary line between the marshlands and the deep water of Lake St. Clair. Recently, the Walpole Island Indian Band has claimed that the land under the water of Lake St. Clair is also part of their Indian Reserve. The location of the eastern boundary is in doubt. The Government of Ontario has administered the water and the land under the water of the Chenail Ecarte because the eastern boundary of the Indian Reserve extends only to the shoreline of the islands comprising this Indian Reserve. The Walpole Island Indian Band has claimed that the land under water of the Chenail Ecarte is also part of their Indian Reserve. In the past the Government of Canada has stated that the eastern boundary should be the "middle thread" of the Chenail Ecarte. The northern boundary has also not been

defined. However, the Governments of Ontario and Canada have recognized that the northern boundary is located on the shoreline of the Islands which have been regarded as Indian Reserve lands. The Walpole Island Indian Band has recently claimed that the northern boundary extends north to include part of the bed of the St. Clair River.

## II HISTORICAL BACKGROUND

### (a) The Royal Proclamation of 1763

Prior to the issuance of the Royal Proclamation in 1763, the lands, presently claimed by the Walpole Island Indian Band, were inhabited by the southeastern Ojibwa, the Ottawas and the Wyandots (the latter were also referred to as the Hurons). Before 1720 the southeastern Ojibwa, the Ottawas and the Wyandots began to occupy and use the Lake St. Clair area and its resources including the islands which have been recognized as part of Walpole Island Indian Reserve #46. The southeastern Ojibwa people supported themselves by hunting, fishing, making maple syrup and by gathering wild rice.<sup>1</sup>

These Indian people occupied the Lake St. Clair area before 1763 and these lands were in fact part of the "Indian Territory" as specified in the Royal Proclamation. This document formally established a policy by which Indian lands in the "Indian Territory" could only be purchased after they had been ceded by the Indian people through the British Crown.<sup>2</sup>

The Lake St. Clair area was also inhabited by the Potawatomi. The Potawatomi were latecomers to what is now southwestern Ontario and they were allies of the French Government before 1763. After 1763 the Potawatomi were allies of the British Government. They came from the Lake Michigan area to Upper Canada in various migrations between the 1790's and the 1850's. By the mid-nineteenth century they were scattered over the area now known as southwestern Ontario. In the nineteenth century the Potawatomi joined with the southeastern Ojibwa, the Wyandots and the Ottawas to form the Walpole Island Indian Band.<sup>3</sup>

(b) Cession #2, May 19, 1790

On May 19, 1790 the "principal Village and War Chiefs of the Ottawa, Chippawa, Pottawatomy and Huron Indians Nations [sic] of Detroit" ceded to the British Crown their lands in the "Province of Quebec". This "tract of land" did not include the islands now referred to as part of Walpole Island Indian Reserve #46. This land cession stated that the boundaries of the ceded lands included:

... and from thence running Westward along the border of Lake Erie and up the Streight [sic] to the mouth of a River known by the name of Channail Ecarte and up the main branch of the said Channail Ecarte to the first fork on the south side ....<sup>4</sup>

By this cession document it is not clear whether the Indian people had ceded the bed of the Chenail Ecarte.

(c) Cession #7, September 7, 1796

Unlike many Indian cessions in British North America in the late eighteenth and early nineteenth centuries, the purpose of Cession #7 was to provide land for Indian people, primarily the Potawatomi, who migrated to Upper Canada from the United States. The Indian people, who were allies of the British Government, were defeated by American military forces in the battle of Fallen Timbers in 1794. After the signing of Jay's Treaty in the same year, the Indian Department made "arrangements" for the settlement of these Indian Allies in Upper Canada. John Graves Simcoe recommended that 12 square miles of land, then known as Shawanoe Township (now Sombra Township) be given to these Indian allies. Shawanoe Township was ceded to the British Crown by "Principal Chiefs, Warriors and people of the Chippawa Nation for and in consideration of the sum of eight hundred pounds Quebec currency value in goods estimated according to the Montreal price now delivered to us, ...." The southern and western boundaries of this tract of land were to be located "on and near to the said River Chenail Ecarte" and the St. Clair River respectively.<sup>5</sup> Apparently, fewer Indian people than were expected came and settled on this land and it was eventually sold to non-Indian settlers.<sup>6</sup>

(d) Treaty of Ghent, 1814-1817

The purpose of the Treaty of Ghent was to restore relations in North America between the United States and Britain as they had existed prior to the War of 1812-1814. A commission was appointed by both



Governments to define the international boundary from the St. Lawrence River through the Great Lakes to Lake Superior. The commission led to a permanent settlement of this boundary, and the boundary was defined as specified in the commission's report of June 18, 1817. By this permanent settlement the international boundary was placed through Lake St. Clair and the St. Clair River, where it is presently located.<sup>7</sup>

(e) Provisional Agreement #27½, April 26, 1825

By Cession #27½ the "Chiefs and Principal Men of the Chipawa Nation of Indians" inhabiting southwestern Ontario ceded to the British Crown lands immediately north and east of Cession #7, including Moore Township. Excepted from this Provisional Agreement were "tracts of land" described as:

Four miles square at some distance below the rapids of the River St. Clair, one mile in front by four deep, bordering on the said River St. Clair, and adjoining to the Shawanoe Township; two miles square at the River aux Sable, which empties into Lake Huron, and two miles at Kettle Point, Lake Huron, containing twenty-three thousand and fifty-four acres, more or less, ....<sup>8</sup>

Subsequently, these "tracts of land" became recognized by the British Government as Indian lands.

(f) Cession #53½, 1843 and Cession #59, 1849

In 1843 the "Principal Chiefs of the Ojibwa Indians of the River St. Clair and Chenail Ecarte" ceded to the British Crown the "Lower Indian Reserve", which had been the first "tract of land" excepted from the Provisional Agreement #27½ (1825):

all that certain tract of land situated in the Western District of this Province, in the Township of Moore, being one mile in extent along the edge of the river and extending four miles back, and being bounded on the south side by the town line between Sombra and Moore, known as the Lower Indian Reserve, and containing two thousand six hundred and seventy-five acres ....<sup>9</sup>

By Cession #53½ the "Ojibewa Indians at the St. Clair River and the Chenail Ecarte" ceded their lands to the shoreline of the St. Clair River, and north of the line between Moore and Sombra Townships and four miles back from the shoreline. This cession did not include any reference to the bed of the St. Clair River.

On August 18, 1849 by Cession #59 the Indian people again ceded the "Lower Indian Reserve" to the British Crown.<sup>10</sup> This cession did not include any reference to the bed of the St. Clair River.

(g) Lord Elgin's Proclamation Concerning Indian Lands in Upper Canada, November 8, 1850

On August 10, 1850 the Province of Canada passed an Act for the "protection" of the "property occupied or enjoyed" by the Indian people in Upper Canada "from Trespass and Injury". Section X of this Act stated that:

the provisions in this and the two following sections of the Act contained, shall extend and be construed to extend to such Indian lands only as the Governor of this Province for the time being shall from time to time, by Proclamation under the Great Seal thereof, think fit to declare and make subject to the same, and so long only as such Proclamation shall remain unrevoked and in full force.<sup>11</sup>

After quoting this passage from the Act Lord Elgin's Proclamation stated:

And whereas it has been deemed expedient by Our Governor of Our said Province, that the said provisions should be extended to the following lands, that is to say: ....

The Indian lands, those islands which subsequently became known as part of Walpole Island Indian Reserve #46, were included among the lands specified in this Proclamation. Under the section "Reserved for the occupation of the Wyandotts" the Proclamation stated:

Also, - Walpole Island, St. Anns [sic] Island, Squirrel Island, Stag Island and Eagle Island lying in and at the mouth of the River St. Clair in the United Counties of Kent and Lambton, or all of the Islands at the mouth of the River St. Clair lying between Chenail Ecarté and the boundary line of the Province, together with the Islands in the said 12  
River.

The last phrase "in the said River" probably refers to the St. Clair River. Significantly, the Proclamation referred to these Indian lands as islands.

Prior to 1867 these Indian lands did not appear to include the marshlands adjacent to the islands, the bed of Lake St. Clair, the bed of the St. Clair River and the bed of the Chenail Ecarte. There is also no evidence that, with the exception of Stag Island, Fawn Island and Peach Island, these islands and the land under the water have ever been ceded by the Indian people who inhabited the Lake St. Clair area.

(h) Cession #80<sup>1</sup>, Stag Island, January 19, 1857

On January 19, 1857 the "Chief and Principal Men of the Tribe of Chippewa Indians, claiming to be the possessors of a certain island in the River St. Clair, called Stag Island, containing sixty acres more or less" ceded Stag Island to the British Crown. The cession document also stated that the Crown granted this Island to David McCall, "of the Town of Sarnia". This cession was formally executed by an Order-in-Council on January 28, 1857.<sup>13</sup>

Stag Island is located in the St. Clair River, immediately west of Corunna in Moore Township.

(i) Cession #85, Peach Island, 1857

On July 21, 1857 the "Chiefs and Principal Men of the Chippewa Tribe of Indians residing on Walpole Island" ceded Peach Island, also known as Pêche Island, to the British Crown. Between 1870 and 1873 the Department of Indian Affairs sold Peach Island piecemeal to William G. Hall for \$3,000.<sup>14</sup>

(j) Cession #86, Keshebahahnelegoo Menesha, Fawn Island, 1857

On July 21, 1857 the "Chiefs and Principal Men of the Chippewa Tribe of Indians residing on Walpole Island" ceded an island "called Keshebahahnelegoo Menesha" to the British Crown. "Keshebahahnelegoo Menesha" or Eagle Island, and also known as "Belle Riviere", "Tick", "Woodtick" and "Fawn" Island, is located in the St. Clair River, south of Stag Island, in Sombra Township. On March 28, 1882 the Department of Indian Affairs sold Fawn Island, at 50 acres, to Samuel Whiteley.<sup>15</sup>

(k) The British North America Act, 1867

In 1867 The British North America Act was passed by the British Government, thereby establishing the Dominion of Canada. The Government of Canada assumed responsibility for "Indians and Lands reserved for the Indians" of the Government of the Province of Canada (Section 91:24) and any liabilities which the Province of Canada had to the Indian people. Thus, all the Indian lands specified in Lord Elgin's Proclamation of 1850 were placed under the administrative control of the Government of Canada.

The British North America Act also stated that the Provinces had control over all other lands within the boundaries of each Province (Section 109).<sup>16</sup> Although not specified, these lands probably included the water and the lands under water. These constitutional provisions, in the context of the Province of Ontario, were clarified in the judgment of the Judicial Committee of the Privy Council in the St. Catherine's Milling Company Case in 1888. By this judgment, lands not designated as Indian lands, and under the control of the Crown (Canada) would be under the control of the Crown (Ontario). The beneficial interest in all lands in Ontario would be in the Crown (Ontario).<sup>17</sup>

(l) Cession #144 (1875) and Cession #296 (1882), Lease of Marshlands adjacent to Walpole Island and St. Anne Island for Sporting Purposes

On June 17, 1875 the Indian people of Walpole Island ceded for lease "the lower or southern portion of our said island, which may be described as follows, namely:

All that is bound on the west by the St. Clair River, on the east by the Shewetagan Creek or Channel (Chemotogan Channel), and on the south by the Lake St. Clair, which portion is commonly known as Squirrel Island; thence from the southern mouth of the Shewetagan Channel or Creek along the shore to the mouth of Johnson's Lake, and thence in a northerly direction to Goose Lake; from thence westerly along the eastern edge of the swamp or marsh known as Grassy Bend until Shewetagan Channel is reached.

The purpose of this cession was to allow the Department of Indian Affairs to lease this area "for sporting or shooting or shooting purposes" and to provide for "the preservation of our game from unlicensed trespassers". The cession was also "... conditional, however, on the full reservation to ourselves and our people [Walpole Island Indian Band] of the right to trap muskrat and take fish over the said described territory." The entire revenue from the rent would be distributed to the Indian people of Walpole Island.<sup>18</sup> The area was subsequently leased to a "Shooting Club". The description in this cession document implied that the Department of Indian Affairs believed that the southern boundary of Walpole Island Indian Reserve #46 was to be defined somewhere between the marshlands and the "deep water" of Lake St. Clair.

On February 6, 1882 the "Chiefs and principal men and Warriors of the Chippewa & Pottowattomie Indians of Walpole Island" ceded for lease "all that certain parcel or tract of Land and Marsh, situated in the Province of Ontario, and County of Kent, bounded by the Chenail Ecarté, Johnston's Channel, and the navigible waters of Lake St. Clair; and which may be described and known as

St. Ann's Island, and the marshes adjacent thereto.

The purpose of this cession was to allow members of the St. Ann's Shooting Club to shoot and fish on St. Anne Island and the marshlands adjacent to this Island. The description in this cession document implied that the Indian Band and the Department of Indian Affairs considered the marshlands adjacent to St. Anne Island to be part of Walpole Island Indian Reserve #46.<sup>19</sup>

(m) Cession #209, Lease for Mill and Dock Purposes, 1883

On December 26, 1883 the Indian people of Walpole Island Indian Reserve #46 agreed to a cession which would enable George Tennant to lease land for five years "for mill and dock purposes". Its purpose was to let George Tennant take the timber from the Island according to the terms of his licence, dated 1883. This area was described as:

Commencing at the north-west corner of James Elgin's farm at the water's edge of the St. Clair River, running south-east along James Elgin's line fence three hundred feet; thence at right angles north-east four hundred feet; thence at right angles north-west four hundred and fifty feet to the water's edge of the said St. Clair River; thence along the said river bank in a southerly direction four hundred and twenty feet to the place of beginning; the road across the said lot to be kept open and free from all obstructions.<sup>20</sup>

This cession document implied that the Department of Indian Affairs recognized that the western boundary of Walpole Island Indian Reserve to be the shoreline of the Islands adjacent to the St. Clair River.<sup>21</sup>

(n) Cession #248, Lease of Marshlands adjacent to  
Walpole Island, 1888

On January 5, 1888 the Indian people of Walpole Island Indian Reserve #46 ceded for lease all the marshland which had not been previously ceded for lease, i.e. 4,000 acres "on the south part of Walpole Island".

This area was described in the cession document:

Bounded on the east by the stream known as Johnson's Channel, on the south by the deep water of Lake St. Clair, on the west by the marsh now leased to the St. Clair Flats Shooting Company, and on the north by the high dry lands of Walpole Island, to be leased for sporting and shooting purposes for the term of ten (10) years, reserving to the Walpole Island Indians and them only, the right to fish, trap muskrats, or other fur-bearing animals, and to shoot ducks or other water-fowl on the said marshes.<sup>22</sup>

This description was imprecise. However, in this document the marshlands were considered by the Indian Band and the Government of Canada to be part of Walpole Island Indian Reserve #46, although they had not been specified as such in Lord Elgin's Proclamation of 1850. Thus, in the late nineteenth century the location of the southern boundary of this Indian Reserve was considered by the Department of Indian Affairs to be to the "deep water of Lake St. Clair".

(o) Patent Issued by the Government of Ontario for  
Marshland in the Flats at the Mouth of the St. Clair River

On July 6, 1892 the Government of Ontario sold 391.95 acres comprising part of the "Flats at the mouth of St. Clair River" for \$489.00 and issued a patent to G.J. Leggatt and R.F. Sutherland. There is no evidence that Aubrey White, Assistant Commissioner of Crown Lands, or



any other member of the Department of Crown Lands, investigated the status or ownership of these marshlands before the patent was issued. However, the patent was issued with the following condition:

... accepted by the grantees upon the condition and understanding that should any claim be made or preferred to or in respect of the above premises or any part thereof by or on behalf of the Government of Canada its grantee or lessee involving the validity of this grant or the title to said premises or otherwise the grantees hereof or therein assigns shall not be entitled to claim compensation or indemnity from Her Majesty as representing the Province or from the Government of this Province by reason thereof or of this grant.<sup>23</sup>

Three years later, on February 19, 1895, Hayter Reed, Deputy Superintendent General of Indian Affairs, wrote to Aubrey White concerning the issuance of this patent because it covered the same area which had been ceded for lease and then leased by the Department of Indian Affairs in 1882 (Cession #296):

This Department has been advised of the issue of a Grant by your Department to Messrs Gordon Joseph Leggatt and Robert Franklin Sutherland of a portion of the marsh land belonging to Walpole Island, in the River St. Clair. I beg to inform you that this Island and the marshes adjacent thereto are under the control of this Department for the benefit of the Cheppewa [sic] Indians resident on the Island, and no Surrender has ever been made by them of any portion of this Island for sale, but upon your signifying your willingness to hand over to this Department the money received from Messrs Leggatt and Sutherland for the land in question, the Indians will be asked for a Surrender of the same, in order that a sale may be made thereof by this Department to those Gentlemen.<sup>24</sup>

On July 3, 1895 Aubrey White replied to this letter and stated that the Ontario Commissioner of Crown Lands

directed him

to say that it is not understood by this Department that the lands granted form any part of Walpole Island but comprise territory entirely distinct from that island. Possibly there may be some difficulty in determining whether the lands granted are such as the Indians or the Indian Department has any claim to. Should it however at any time be determined that these lands are Indian lands, the Commissioner is quite willing to intimate that the consideration moneys received by the Department for this particular land will be held for or handed over to the Indian Department.<sup>25</sup>

Hayter Reed responded ten days later and stated that "all the Islands, marsh lands and marshes adjacent to, or in the immediate vicinity of Walpole Island, including the portion of land and marsh in question, have long been dealt with by this Department as Indian Lands particularly, belonging to the Indians of Walpole Island and the rents therefrom have been regularly placed to their credit."

Hayter Reed also noted that these lands were

in the same position as Bois Blanc Island, Fighting Island, Turkey Island and all others in the waters of the St. Clair River, Lake St. Clair and the Detroit River, which this Department has constantly sold, leased or otherwise administered for the benefit of the Indians; and by reference to the surrender of 19th May 1790 [Cession #2] it will be seen that the lands in question were not included in the surrender. There should therefore apparently be no doubt whatever as to the fact that the lands in question are Indian lands and under the control of this Department.<sup>26</sup>

In 1896, however, the Department of Indian Affairs unsuccessfully attempted to get the Walpole Island Band to cede this marshland in order to sell it to

G.J. Leggatt and R.F. Sutherland.<sup>27</sup>

In 1904 G.B. Kirkpatrick, the Director of Surveys, Ontario Department of Crown Lands, wrote a memorandum describing the "protests" of the Department of Indian Affairs and concluded by stating that the Commissioner of Crown Lands had "declined to accede to the requests" of the Department of Indian Affairs.<sup>28</sup> There is no evidence that any further action was taken by either Government concerning this patent, which is apparently still in good standing.

(p) Survey of Part of Walpole Island Indian Reserve #46 into Lots, 1900-1907

In the 1890's the Department of Indian Affairs decided to survey the islands comprising part of Walpole Island Indian Reserve #46 into lots to facilitate requests for enfranchisement from some Walpole Island Band members. Any Band member who wished to become enfranchised, as specified by The Indian Act, 1880,<sup>29</sup> would receive a location ticket from the Department of Indian Affairs. Title to the land would be granted and the Band member would become enfranchised after improvements were made to the land for which the location ticket was issued. Before any location tickets could be issued, the Department of Indian Affairs had to survey any land into lots which had not previously been surveyed. In 1900 the Department of Indian Affairs decided to survey into lots the interior of the islands comprising part of what the Department considered to be this Indian Reserve. It did so, and could do so legally, without the consent of a majority of the Band members, by Section 70 of The Indian Act, 1880. When asked by

the Department of Indian Affairs to consider the matter a majority of the Band members voted against proceeding with the survey because they objected to its cost, which had been estimated by the Department to be \$3,000. The cost of the survey was to be taken from Band funds held in trust by the Department of Indian Affairs. The Department of Indian Affairs, however, authorized by a Federal Order-in-Council issued on December 22, 1900, began to survey into lots the islands comprising part of what the Department considered to be Walpole Island Indian Reserve #46.

Work on the survey lasted seven years, and even in 1908, when work was suspended, it was incomplete. This survey remained incomplete because of various unusual factors: the death of the Indian Agent from illness due to overwork, the dilatoriness and eventually the death of the first surveyor in 1906, the outbreak of smallpox in 1907 and the drunken conduct of the second surveyor assigned by the Department to the project.<sup>30</sup> A partial plan of the Indian Reserve was completed in 1907.<sup>31</sup> No further proposal or attempt to survey Walpole Island Indian Reserve #46 was made until the 1940's.

(q) Conditions since 1908

Prior to and since 1908 no agreement has been reached, which has been formally executed by the Governments of Canada and Ontario, nor has an agreement been made with the Indian people, concerning the location of any of the

boundaries of Walpole Island Indian Reserve #46. The Indian people and non-Indians in southwestern Ontario have expressed particular concern over the location of the southern boundary because the marshlands are valuable for their game and fish resources.

The location of the southern boundary became an issue in 1941. On November 11, 1941 G. S. McGarvin, Secretary of "The Kent County Sportsmen's Association", wrote to Allan Ferguson, Chief, Division of Lands, Lands Branch, Department of Lands and Forests, inquiring about the location of the southern boundary because the St. Anne's Club, holders of the lease for the marshlands since 1888 (Cession #248), had placed stakes to mark the boundaries of their leased area. In his opinion these stakes were placed incorrectly and encroached upon marshlands open to the public.<sup>32</sup> Allan Ferguson replied the next day and told G. S. McGarvin to take the issue up with the local Overseer for the Ontario Department of Game and Fisheries.<sup>33</sup> On November 13th G. S. McGarvin wrote again to Allan Ferguson stating that they had been in contact with the local Overseer but that the latter had no authority to act in the matter.<sup>34</sup> Later that month Allan Ferguson asked J.L. Morris, Inspector of Surveys, to make inquiries concerning this issue.<sup>35</sup> J.L. Morris wrote to the Honourable T.R. Crerar, Minister of Mines and Resources, asking for information concerning the lease on November 26, 1941.<sup>36</sup>

On February 19, 1942 Harold McGill, Director, Indian Affairs Branch, Department of Mines and Resources, replied to J.L. Morris' letter of November 26, 1941, and wrote that St. Anne Island:

... still remains part of the Walpole Island Reserve, was surrendered by the Indians on February 6, 1882, for leasing purposes and was described in the surrender at that time as follows:

"All that certain parcel or tract of land and marsh, situated in the Province of Ontario, and County of Kent, bounded by the Chenail E'Carte, Johnston's Channel and the navigable waters of Lake St. Clair, and which may be described and known as the St. Ann's [sic] Island and the marshes adjacent thereto."

Immediately following surrender, the marsh lands in front of St. Ann's Island were leased as a hunting preserve and this lease is now held by the St. Ann's Island Shooting and Fishing Club of the City of Toronto. It may be added that another part of this island at the rear of the St. Ann's Island Shooting and Fishing Club lease is also now under lease to the James Cooper Estate of the Town of Wallaceburg.<sup>37</sup>

In his report of Allan Ferguson, J.L. Morris stated that the "boundary of the marsh" could only be ascertained "by the Indians, who made this Surrender 60 years ago, and who can point out the marsh referred to and what area it took up, making allowances for the marsh that has since grown, and the then navigible waters of Lake St. Clair, known as the St. Anns [sic] Island and the marshes adjacent thereto."<sup>38</sup> No action was taken by staff of the Government of Ontario on J.L. Morris' suggestion.

On April 29, 1942 F.A. MacDougall, Deputy Minister, Department of Lands and Forests, instructed C. H. Fullerton, Surveyor-General, Ontario, to "work out whatever arrangement

were necessary to decide this boundary." After a meeting in Toronto on July 22, 1942 with representatives of the Department of Indian Affairs, staff of both Governments agreed to examine the problem on the spot and then "decide roughly where the boundary line should be."<sup>40</sup> In a formal statement to F.A. MacDougall, Charles Camsell, Deputy Minister, Department of Mines and Resources, Canada, on July 22, 1942, stated that:

It appears to this office that from the practical viewpoint the long and virtually undisputed possession by the Indians of the islands and marshes, coupled with the fact that there has been no surrender of the aboriginal Indian claims and supported by the enclosed documents, establishes pretty definitely the Indian claim to ownership of the lands we claim for them. We need not repeat the value to both this Department and your Department of having the boundaries definitely and finally fixed.<sup>41</sup>

Two years passed without any further action. In 1944 the Surveyor-General for Ontario, in a memorandum to the Deputy Minister of Lands and Forests stated that the Government of Ontario "could hardly surrender the bed of Lake St. Clair; which lies below the high watermark [sic] " and that "it is simply a question of deciding at what elevation the high water mark is on that Lake."<sup>42</sup>

Between 1944 and 1967 both Governments were primarily concerned with the location of the southern boundary. In 1955 the location of the southern boundary became a primary concern when the St. Lawrence Seaway was under construction. At that time no decision was made by either Government to designate formally the location of the southern boundary. However, it should be noted that, in 1955 to facilitate construction of the St. Lawrence Seaway, the Walpole Island Band surrendered the land under

water of the Southeast Bend Cut-off Channel to Canada.<sup>43</sup>

In the 1960's staff of the Governments of Canada and Ontario, in the context of the meetings relating to the 1924 Canada-Ontario Indian Lands Agreement, discussed the issue of the location of the southern boundary. Between 1960 and 1967 accurate surveys were prepared relating to the location of the southern boundary which had been proposed by the Government of Canada.<sup>44</sup>

In 1967 staff of both Governments agreed that the Government of Ontario would issue an Order-in-Council which would define the location of the southern boundary<sup>45</sup> and thereby "transfer to the Crown Canada, for the use and benefit of the Walpole Island Band of Indians, all the rights of Ontario between the line so established and the shore of Walpole Island."<sup>46</sup> However, this proposal was submitted by the Lands and Survey Branch to G.H. Ferguson, Chief, Law Branch, Department of Lands and Forests, on October 23, 1968, Ferguson recommended:

If you refer to Mr. Battle's letter, you will note that he suggests that the procedure should be the establishment of a legal boundary and a transfer of control and administration of an area to Canada. Of course, you cannot transfer the administration and control of an area if you only have knowledge of one boundary. Accordingly, I would suggest that, in the event that it is desirable to carry out this intention, you provide us with a complete boundary for the reserve and we will prepare a recommendation to council under section 2 of The Public Lands Act, a copy of which might be forwarded to Mr. Battle for his approval, indicating that insofar as such is not now the case, the administration and control shall be vested in the federal government for the use and benefit of the Walpole Island band of Indians subject, of course, to the agreement respecting Indian Reserves or any amendment thereof.<sup>47</sup>



Since 1968 no agreement has been reached by staff of the two Governments on the location of any of the boundaries of Walpole Island Indian Reserve #46.<sup>48</sup>

(r) Position of the Walpole Island Indian Band, 1980

The most recent position of the Walpole Island Band on the boundaries of Walpole Island Indian Reserve #46 is contained in a letter from Donald Isaac, Chief, Walpole Island Band Council, to the Honourable James A.C. Auld, Minister of Natural Resources, on February 15, 1980.

The Walpole Island Reserve limits are outlined in Red ink on the attached maps numbered 1 and 2 and described as follows:

1. Beginning at the point marked A on the attached map being the highwater mark on the east side of Chenal Ecarte and the St. Clair River extending northerly to the north limit of the lands in Sombra Township, then in an easterly direction to the southwest corner of Lot 1, in the Front Range of Moore Township, then in a northerly direction to the northwest corner Lot 7, in the Front Range of Moore Township, Lambton County,
2. The limit of the Reserve will run due west from the north limit of lands in Moore Township referred to in 1, to the International Boundary.
3. The westerly limit of the Reserve will be the International Boundary, running southerly from its intersection with the line referred to in 2. above, down the St. Clair River and through Lake St. Clair to the point where Lake St. Clair and the Detroit River meet.

4. The boundary of the Reserve will run from the point on the International Boundary where Lake St. Clair and the Detroit River meet, at right angles to the Boundary in a southeasterly direction to a point on the highwater mark of the south shore of Lake St. Clair.
5. The boundary of the Reserve will run from the point referred to in 4. along the highwater mark of the southerly and easterly shores of Lake St. Clair to the point marked B on the attached map.
6. The boundary of the Reserve will run from the point marked (B) on the attached map, following the highwater mark of the east bank of Chenail Ecarte to the point marked (A) on the attached map.
7. All lands, including islands and lands under water and all oils, minerals, and deposits other resources [sic] under the lands and lands under water and in the water are the property of the Walpole Island Band.<sup>49</sup>

### III SUMMARY

1. With the exception of Stag Island, Fawn Island, Peach Island and the land under water of the Southeast Bend Cut-of Channel, there is no evidence that any of the lands, including the islands, marshlands and the beds of the St. Clair River and Lake St. Clair, presently claimed by the Walpole Island Indian Band, were ever ceded by the Indian people. The status of the bed of the Chenail Ecarté is unclear because of the imprecise wording of Cession #2 (1790).
2. In 1850, by Lord Elgin's Proclamation, the British Crown designated as Indian lands: "Walpole Island, St. Anne Island, Squirrel Island, Stag Island, Eagle Island, or all of the Islands at the mouth of the River St. Clair lying between Chenail Ecarte and the boundary line of the Province, together with the Islands" in the St. Clair River. These Islands

gradually became recognized by the Department of Indian Affairs as Indian Reserve land, comprising part of Walpole Island Indian Reserve #46.

3. In the late nineteenth century the Walpole Island Indian Band ceded for lease all the marshlands south of Walpole Island and St. Anne Island. At this time the Department of Indian Affairs believed that these marshlands were part of Walpole Island Indian Reserve #46.
4. In 1892 the Government of Ontario patented 391.95 acres of marshland in the St. Clair River between the International Boundary and the shoreline of the lands which are known as Walpole Island Indian Reserve #46. One condition of this patent was that, if the Crown (Canada) owned the marshlands then the grantees could not "claim compensation or indemnity" from the Government of Ontario. In the 1890's the Department of Indian Affairs stated that these marshlands were Indian lands and that the Government of Ontario had no right to sell those lands. However, no action was ever taken by either Government and the patent is apparently still in good standing.
5. In the 1890's the Department of Indian Affairs decided to survey part of Walpole Island Indian Reserve #46 into lots. The survey was authorized by an Order-in-Council issued by Canada on December 22, 1900, and was only partially completed when it was terminated in 1907.

6. The location of the boundaries of Walpole Island Indian Reserve #46 appears not to have received much attention between 1908 and 1941. Between 1941 and 1967 the main issue was the location of the southern boundary, specifically whether the marshlands south of the Islands, which were recognized by the Department of Indian Affairs as comprising part of this Indian Reserve, were in fact part of this Indian Reserve. Since 1968 the location of all the boundaries have been under review by both Governments.

NOTES

1. E.S. Rogers, "Southeastern Ojibwa", 760-761; E. Tooker, "Wyandot", 398-406; Johanna E. Feest and Christian F. Feest, "Ottawa", 772-786 in Handbook of North American Indians, Vol. 15, Northeast, Bruce G. Trigger (editor), Washington, 1978.
2. "Royal Proclamation of 1763" in Documents relating to the Constitutional History of Canada, 1759-1791, A. Shortt and A.G. Doughty (editors), Ottawa, 1918, 163-167.
3. J.A. Clifton, "Potawatomi", in Handbook of North American Indians, Vol. 15, 725-742; A Place of Refuge for all Time: Migration of the American Potawatomi into Upper Canada, 1830 to 1850, Ottawa, 1975.
4. Canada, Indian Treaties and Surrenders, 1680-1890, Ottawa, 1891, Vol. 1, 1-3.
5. Ibid., 19-22.
6. R. Horsman, Matthew Elliott, British Indian Agent, Detroit, 1964, 110-118.
7. For the Treaty of Ghent, 1814 and the Commission's Report, see F.L. Israel (ed.) Major Peace Treaties of Modern History, 1648-1967, New York, 1967, Vol. 1, 697-712.
8. Canada, Indian Treaties and Surrenders, Vol. 1, 65-67.
9. Ibid., Vol. 1, 128-129.
10. Ibid., Vol. 1, 147.
11. 13-14 Victoria, Ch. 74, 1850, An Act for the Protection of Indians in Upper Canada from Imposition, and the Property Occupied or Enjoyed by them from Trespass and Injury, August 10, 1850.
12. Public Archives of Canada, RG 68, Registrar General, Proclamation by Lord Elgin concerning Indian Lands in Upper Canada, November 8, 1850.
13. Canada, Indian Treaties and Surrenders, Vol. 1, 211.
14. Ibid., Vol. 1, 220-221.
15. Ibid., Vol. 1, 220-221; Ministry of Natural Resources Lands File 6145, "Fawn Island"; J. Hutcheon, Inspector of Surveys, Department of Lands, Forests and Mines, "Memo. for Mr. Grigg", August 1, 1917. Attached to this Memorandum is a copy of the land transactions concerning Fawn Island.
16. 30-31 Victoria Ch. 3, An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith, March 24, 1867.

17. Ontario Archives, Irving Papers, Package 41, "Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of the St. Catherine's Milling and Lumber Company v. the Queen on the Information of the Attorney General for the Province of Ontario: delivered 12 December 1888.
18. Canada, Indian Treaties and Surrenders, Vol. 2, 7-8.
19. Canada, Indian Treaties and Surrenders, Ottawa, 1912, Vol. 3, 30-31.
20. Canada, Indian Treaties and Surrenders, Vol. 2, 145-146.
21. PAC RG 10 (Red Series) Vol. 2063, File 10,072.
22. Ibid., Vol. 2, 221-223.
23. MNR Titles Section, "Crown Land Sale" to Gordon Joseph Leggatt and Robert Franklin Sutherland, November 17, 1892. A copy of the patent is in MNR Indian Lands File 127544, "Walpole Island Indian Reserve #46".
24. MNR Indian Lands File 127544, Hayter Reed, Deputy Superintendent General of Indian Affairs to Aubrey White, Assistant Commissioner of Crown Lands, February 19, 1895. See also PAC, RG 10 (Red Series) Vol. 1919 File 2835.
25. Ibid., Aubrey White to Hayter Reed, July 3, 1895.
26. Ibid., Hayter Reed to Aubrey White, July 13, 1895.
27. PAC, RG 10 (Red Series) Vol. 1919, File 2835.
28. MNR Indian Lands File 127544, George B. Kirkpatrick, Director of Surveys, Ontario, "Memo for Mr. Bastedo re marsh lands of Lake St. Clair", November 8, 1904.
29. 43 Victoria, Ch. 28, Section 70, The Indian Act, 1880, May 7, 1880.
30. PAC, RG 10 (Red Series), Vol. 2549 File 112,064. The Order-in-Council #2679 and other correspondence concerning this survey is contained in this File.
31. MNR Survey Records, "Plan of Part of Walpole Island Indian Reserve, Ontario, Surveyed by Wm. Mackenzie, O.L.S., 1907".
32. MNR Indian Lands File 127544, G.S. McGarvin, Secretary, The Kent County Sportsmen's Association to Allan Ferguson, Chief, Division of Lands, Lands Branch, Department of Lands and Forests, November 11, 1941.
33. Ibid., Allan Ferguson to G.S. McGarvin, November 12, 1941.
34. Ibid., G.S. McGarvin to Allan Ferguson, November 13, 1941.
35. Ibid., Allan Ferguson to G.S. McGarvin, November 26, 1941.
36. Ibid., Allan Ferguson to the Honourable T.R. Crerar, Minister of Mines and Resources, November 26, 1941.

37. Ibid., Harold McGill, Director, Indian Affairs Branch, Department of Mines and Resources to Allan Ferguson, February 19, 1942.
38. Ibid., J.L. Morris to C.H. Fullerton, Chief, Division of Surveys, Department of Lands and Forests, February 28, 1942.
39. Ibid., F.A. MacDougall, Deputy Minister, Department of Lands and Forests, to C.H. Fullerton, Surveyor-General, Ontario, April 29, 1942.
40. Ibid., Notice of Meeting in Ottawa, July 22, 1942, attended by staff of the Department of Indian Affairs and the Department of Lands and Forests.
41. Ibid., Charles Camsell, Deputy Minister, Department of Mines and Resources to F.A. MacDougall, Deputy Minister, Department of Lands and Forests, July 22, 1942.
42. Ibid., C.H. Fullerton "Memorandum Re Walpole Island Indian Reserve, St. Anne's Club" to F.A. MacDougall, April 12, 1944.
43. Ibid. Surrender #2222, October 14, 1958 (619.35 acres), accepted by Order-in-Council, P.C. 1958-1600, November 27, 1958.
44. Ibid., R.F. Battle, Assistant Deputy Minister, Department of Indian Affairs and Northern Development, to G.H.U. Bayly, Deputy Minister, Department of Lands and Forests, October 2, 1967.
45. Ibid., G.H.U. Bayly to R.F. Battle, October 16, 1967.
46. Ibid., R.S. Hyslop, Supervisor, Lands Sections to G.H. Ferguson, Chief, Law Branch, January 4, 1968; R.F. Battle to G.H.U. Bayly, October 2, 1967.
47. Ibid., G.H. Ferguson to Acting Chief, Lands and Surveys Branch, Department of Lands and Forests, October 23, 1968.
48. Ibid., D.R. Slessor, Surveyor General and Director, Legal Surveys Division, Department of Energy, Mines and Resources Canada to Robert G. Code, Surveyor-General, Ontario, August 27, 1976; Robert G. Code, "Memorandum to File", December 7, 1978.
49. Ibid., Donald Isaac, Chief, Walpole Island Band Council to the Honourable James A.C. Auld, Minister of Natural Resources, February 15, 1980.

THE HISTORICAL FOUNDATION FOR THE

WALPOLE ISLAND RESERVE BOUNDARY QUESTION

Prepared by John L. Taylor

May 3, 1983



Preface

The following paper is the result of a study of the Walpole Island boundary dispute written under the terms of a contract with the Walpole Island Band Council dated April 8, 1983. Copies or transcriptions of the research materials used were for the most part supplied to me by the Band's Director of Research. They consist of both primary and secondary sources. Besides making use of this material, I have researched some additional sources in the National Library and the Public Archives of Canada.

In this paper I have described the nature of the Walpole Island Reserve boundary question and the positions taken by each of the three parties to the dispute (Chapter 1). The first approach to the question (Chapters 2 and 3) begins with Indian occupancy of the territory and leads through the Royal Proclamation of 1763 and the land cessions to the conclusion that the area in dispute is unceded Indian land. The second approach explores the evidence for the existence of a reserve at Walpole Island and the relevance of Lord Elgin's Proclamation of 1850 to its foundation and to the present boundary issue (Chapters 4 and 5). Finally, I have tried to relate these two threads to each other and to the boundary problem (Chapter 6).

List of Materials Examined

Supplied by the Director of Research:

1. The contents of the following files:
  - a) file 10 - 14 Exterior Boundaries 1763 - 1960
  - b) file 10 - 15 Boundaries of W. I. 1960 - 1974
  - c) file 10 - 13 W. I. Exterior Boundaries 1975 - 79
  - d) W. I. Exterior Boundaries 1979 -
2. "Report of the Special Commissioners to Investigate Indian Affairs in Canada, 1858."
3. "Report on the Affairs of the Indians in Canada, 1847. Commissioners' Report, 1844."
4. file of legal cases.
5. file of Indian speeches.
6. Dean Jacobs, "Indian Land Surrenders".
7. Dean Jacobs, Walpole Island Land Claims-  
a working paper.
8. Letterbook of William Jones.
9. Letterbook of J. W. Keating.

Researched at Public Archives:

10. Statutes of Canada 13 - 14 Vic. (1850) Cap. 74.
11. Statutes of Canada 23 Vic (1860) Cap. 151.

Researched at National Library:

12. J. B. Macaulay, "Report to Sir George Arthur regarding the Present Condition and Future Management of the Indian Tribes, their Property and Affairs. . . . 1839."
13. Terry Platana, "Legislation Affecting Indian Reserve Lands", Ottawa, 1971.
14. Robert S. Allen "A History of the British Indian Department in North America (1755-1830)", National and Historic Parks Branch, 1971.
15. Robert J. Surtees, "Indian Reserve Policy in Upper Canada", M.A. thesis, Carleton, 1966.
16. "The Historical Development of the Indian Act," Treaties and Historical Research Centre, 1978.

List of Exhibits

1. Lake St. Clair Area showing  
Walpole Island Indian Reserve #46.
2. Memorandum to file (1973 12 07).  
Robert G. Code, Surveyor General of Ontario.
3. Band Council Resolution No. 23 of  
December 18, 1978.
4. Walpole Island Council Brief to the  
Honourable John Munro, Minister of  
Indian Affairs.
5. Attachment to a letter, F. J. Singleton,  
Acting Director, Lands Branch, to Chief  
Tooshkenig, July 10, 1981 containing  
Indian Affairs' arguments for east and  
west boundaries.

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## 1. The Boundary Dispute

### Origins:

The precise boundaries of the Walpole Island Reserve #46 have never been authoritatively defined or surveyed to the satisfaction of the Band, the Government of Canada, and the Government of Ontario. The two governments have tended to rely on the general description of reserve lands set forth in Lord Elgin's Proclamation of 1850. The Band, relying on aboriginal right in unceded territory, believe that their reserve is much larger than either government has so far admitted. In the absence of specific documentary evidence which would settle the matter directly, arguments have had to be built up indirectly using the evidence at hand.

In the early 1940s a concern over a precise reserve boundary arose through a letter from a sportsmen's club to the provincial government. Nothing was settled. Concern arose again in the mid-1950s when construction for the Seaway was planned. A southern boundary was drawn up, but attempts to get tripartite agreement led directly into the larger boundary question. This resulted in a further delay. Although the Band had been aware of a problem surrounding the boundary, it is only recently that they have been able to develop a comprehensive position on the question.

The Band's Position:

At a Special Band Council meeting held on January 31, 1980,  
the following resolution was passed:\*

That this Band Council approves the following  
as the limits of the Walpole Island Reserve  
#46:

1. Beginning at the point marked A on the attached map being the highwater mark on the east side of Chenal Ecarte and the St. Clair River extending northerly to the north limit of the lands in Sombra Township, then in an easterly direction to the southwest corner of Lot 1, in the Front Range of Moore Township, then in a northerly direction to the northwest corner Lot 7, in the Front Range of Moore Township, Lambton County,
2. The limit of the Reserve will run due west from the north limit of lands in Moore Township referred to in 1, to the International Boundary.
3. The westerly limit of the Reserve will be the International Boundary, running southerly from its intersection with the line referred to in 2. above, down the St. Clair River and through Lake St. Clair to the point where Lake St. Clair and the Detroit River meet.
4. The boundary of the Reserve will run from the point on the International Boundary where Lake St. Clair and the Detroit River meet, at right angles to the Boundary in a southeasterly direction to a point on the highwater mark of the south shore of Lake St. Clair.

\* See map (Exhibit 1).

5. The boundary of the Reserve will run from the point referred to in 4. along the highwater mark of the southerly and easterly shores of Lake St. Clair to the point marked B on the attached map.
6. The boundary of the Reserve will run from the point marked (B) on the attached map, following the highwater mark of the east bank of Chenal Ecarte to the point marked (A) on the attached map.
7. All lands, including islands and lands under water and all oils, minerals, and deposits other resources [sic] under the water are the property of the Walpole Island Band.

None of the foregoing is intended to limit any claim which the Walpole Island Band may make alone or in concert with other Bands to rights in respect of the islands in and/or of the lands under the waters of the Detroit River, Lake Erie, Lake Huron and Georgian Bay.

Ontario's Position:

The most detailed Government of Ontario document on the Reserve boundaries is a letter to file (1978 12 07) from Robert G. Code, Surveyor General, which has been included here as Exhibit 2. This position was expanded in a series of correspondence with the Band which had the support of the then Minister of Natural Resources, James A. C. Auld. Basically, Ontario's position derives from the Proclamation of 1850.\*

\*Both the Band's and Ontario's views on the boundaries are illustrated by the map included as Exhibit 1.



That document referred to an area "Reserved for the occupation of the Wyandotts"\* which was described as follows:

Walpole Island, St. Anns [sic] Island, Squirrel Island, Stag Island and Eagle Island lying in and at the mouth of the River St. Clair in the United Counties of Kent and Lambton, or all of the Islands at the mouth of the River St. Clair lying between Chenail Ecarte and the boundary line of the Province, together with the Islands in the said River.1

Ontario's position also stands on what it calls "the negotiated southern boundary". This refers to a straight boundary line drawn across the marshes to the south of the islands in an attempt to obtain a clear southern boundary to reserve property. The straight line boundary was accepted by band council resolution in 1956 which has since been rescinded.Ø The southern boundary was never formally approved by either government involved.

Also included in Ontario's position is the provincial government's interpretation of the significance of the "larger area". All of these points were made in a letter from the Minister of Natural Resources to Chief William Tooshkenig of the Walpole Island Band dated July 14, 1980.

\* That was an error.

Ø See Exhibit 3.

Our position is, as set out in the letter dated April 9, 1980 from Mr. E. G. Wilson to Mr. Dean Jacobs, that the Walpole Island Reserve comprises several islands, i.e., those listed in Lord Elgin's Proclamation of 1850, excepting therefrom any island or part thereof that may have subsequently been surrendered or otherwise legally disposed of by the appropriate Governments. Walpole Island Reserve is considered to comprise each of these islands, except as noted above, extending to the normal high water mark together with adjacent marshes as have been or may be subsequently agreed upon by Ontario such as the negotiated southern boundary.

Ontario recognizes that there is a larger area adjacent to the islands which we consider to comprise the Walpole Island Reserve that may not have been included in any treaty or similar agreement between the Crown and the Indian people. This larger area probably includes all or most of the area shown as Indian Reserve on the maps attached to Chief Donald Isaac's letter to me dated February 18, 1980. It is our position that any interest in that area is different from the interest of Indian people in the Walpole Island Reserve as set out in Lord Elgin's Proclamation of 1850. Although we have not taken a position on what the different interest is, if any, it would likely be related to the Indian interest referred to in the Royal Proclamation of 1763.

A few months later, the Minister replied to a letter from Chief Tooshkenig:

We are prepared to negotiate with the Band with the objective of reaching agreement on the extent of the rights of the Band to use the resources of Lake St. Clair, i.e. the usufructary [sic] right as stated [sic] in the Royal Proclamation of 1763, and the degree of applicability of the laws of the Province of Ontario to the Indian people of the Walpole Island Band while using those resources.

We do not recognize that Walpole Island Band 'owns this property.' It is our position that it is owned by the Crown and is under the administration and control of the Government of Ontario.<sup>2</sup>

Chief Tooshkenig dealt with both the southern boundary and the "Indian interest" issue in his reply to the Minister. He denied that there is a negotiated southern boundary of the Walpole Island Reserve. He pointed out that a band council resolution cannot effect a surrender and that the Band Council Resolution of 1956 relied upon by the Minister had since been rescinded. Chief Tooshkenig also asked the Minister to "clarify and define" his statement regarding an Indian interest in the larger area and to share with the Band the research that led to that conclusion.<sup>3</sup>

In his response the Minister defended the existence of a southern boundary on the basis of the conduct of "most people" and the presence of stakes and signs. He declined to "clarify and define" his statement on the Indian interest and said nothing about any research. Instead, he asked the Chief to explain his position on Lake St. Clair falling back on Lord Elgin's Proclamation of 1850.<sup>4</sup>

Further correspondence was exchanged between the Province and the Band without materially changing either the Province's or the Band's positions. Development in this area has been left to negotiations. James Auld's successor as Minister of Natural Resources, Alan W. Pope, wrote recently, "I agree, as proposed by Mr. Auld, that we should continue tripartite negotiations on this matter."<sup>5</sup>

The Position Taken by Indian Affairs:

In a brief to the Honourable John Munro, Minister of Indian Affairs, the Walpole Island Chief and Council requested his Department's assistance in supporting the Band's position on the boundary question and to persuade Ontario to help bring about a satisfactory resolution.+

The Minister and his officials have responded to the concerns raised in the brief. Generally, Indian Affairs is prepared to support the Band's position with respect to the International Boundary as the Reserve boundary on the west and to the east bank of the Chenal Ecarte as the eastern boundary. With regard to the northern and southern boundaries, Mr. Munro replied, "I cannot, however, extend the same support to your claims to the Canadian portion of Lake St. Clair and the St. Clair River at this time because limited historical documentation puts this matter beyond clear and reasonable expectations."<sup>6</sup>

In response to a request by the Band for a clarification of his statement, Mr. Munro re-stated this position a year later.

... While the reserve boundaries have never been clearly defined by survey or otherwise, the Department is prepared to support the Band in negotiations with Ontario aimed at reaching agreement that the international boundary and the east bank of the Chenal Ecarte should be considered to form the west and east boundaries of the reserve.

+ See Exhibit 4.

The Department cannot support the Band however, in its contention that St. Clair River north of Walpole Island and the Canadian portion of Lake St. Clair form part of the reserve. We have found no evidence to suggest that this is so. We are, however, prepared to enter into discussions with Ontario and the Band to try and define mutually acceptable north and south boundaries. We are also prepared to explore, with the Band and the Province, the possibility that these areas include unceded Indian lands in which the Walpole Island Band retains an interest and to try and convert this into concrete benefits for the Band. One possibility that could be explored with the province is the establishment of a joint wildlife management regime. If, however, the Band feels that the question of the reserve status of these lands must be clarified first, Mr. Clovis Demers, Executive Director of the Office of Native Claims, and his staff will be pleased to discuss this with you.7

After further negotiations, Mr. Harry LaForme, legal counsel for the Band, corresponded with E. G. Morton, Regional Director, reserves and trusts for the Department of Indian and Northern Affairs. In his reply Mr. Morton outlined Indian Affairs' position as follows:

Reserves and Trusts considers that the onus is on both the Federal Government and Ontario to show that all legitimate Indian interests have been extinguished in Law. However these interests are not necessarily identical with the Band's case for clarifying the Reserve limits.

Given that our traditional and present understanding of the general limits of the reserve is limited to the islands and marshes, we can't agree that the onus is on Ontario to show that the larger areas which the Band claims are not in fact reserve. We and the province have recognized that there may still be an Indian interest of some sort in these larger areas, but this does not make them reserve. These interests will have to be dealt with in some other forum - they are beyond the mandate of R & T. Generally speaking, to create a reserve there must be some specific agreement or act of the crown (e.g. an Order in Council), or a history of long-term administration by government. If the Band can provide such evidence we will be able to support them.8

Summary of the Three Positions:

A summary of the three positions was prepared in a "Walpole Island Boundaries Report" dated June 25, 1982 by Brad Morse.

After reviewing the latest federal response (letter from John Munro to Chief Tooshkenig, December 22, 1981) in answer to BCR 630-81, it appears that the other two governments have now clarified their positions on the band's boundaries. Therefore, the situation appears to be as follows:

| <u>Band</u>                                  | <u>DIAND</u>                      | <u>Ont.</u> |
|--|-----------------------------------|-------------|
| 1. East-all of Chenail<br>Ecarte             | All of Chenail<br>Ecarte          | None        |
| 2. West-up to inter-<br>national boundary    | Up to inter-<br>national boundary | None        |
| 3. North-St. Clair River<br>up to Moore Twp. | None                              | None        |
| 4. South-all of Lake<br>St. Clair in Canada  | None                              | None        |

The Band's position is based on the belief that its members are the descendants of the aboriginal inhabitants of the territory in question whose territorial rights were confirmed in the Royal Proclamation of 1763. They assert that they never surrendered the disputed tract. Furthermore, they have been subject to an Indian policy which has given them both benefits and disadvantages. That policy included a specific procedure for the surrender of Indian land and the practice of reserving some land specifically for Indian use.

The Band to-day occupies a Reserve, officially recognized as such, whose boundaries have never been determined. Both governments tend to rely on Lord Elgin's Proclamation to set general limits to the Reserve. The Band counters this claim with pertinent information drawn from the principles of British and Canadian Indian policy, the land surrenders of southwestern Ontario, and the foundation of their own Reserve. They deny the relevance of Lord Elgin's Proclamation to the current boundary dispute. Each of these subjects is dealt with in turn in the four following chapters.

2. Indian Land

The present members of the Walpole Island Band are the descendants of the aboriginal inhabitants, not only of the area comprising their Reserve as recognized to-day, or even the larger area in dispute, but of a much more extensive region. They moved throughout and settled from time to time at various locations in the course of making a livelihood and in pursuit of various political, military, and commercial objectives.

David McNab cites Rogers, Tooker, Feest and Trigger in stating that "Before 1720 the southeastern Ojibwa, the Ottawas and the Wyandots began to occupy and use the Lake St. Clair area and its resources including the islands which have been recognized as part of Walpole Island Indian Reserve #46. ... These Indian people occupied the Lake St. Clair area before 1763 and these lands were in fact part of the 'Indian Territory' as specified in the Royal Proclamation."9

McNab goes on to explain that the Lake St. Clair area was also inhabited by the Potawatomi.

They came from the Lake Michigan area to Upper Canada in various migrations between the 1790's and the 1850's. By the mid-nineteenth century they were scattered over the area now known as southwestern Ontario. In the nineteenth century the Potawatomi joined with the southeastern Ojibwa, the Wyandots and the Ottawas to form the Walpole Island Indian Band.10



As European settlement and the fur trade advanced into the North American continent, French and British rivalry climaxed in the Seven Years' War (1756-63). At the end of that war the British were the dominant European power in northern and eastern North America. Indian warriors had fought on both sides during the war. Indian military might was still a factor to be taken seriously after the war as Pontiac's rising and the Proclamation of 1763 made clear.

The need to garrison the hinterland, where Indian power was strong, led to the attempt to tax the North American colonies and to the American Revolution.

Within twenty years of the British victory over France, the North American territories were again divided. This time British power was left in the north, where the French had held dominion. The newly-independent United States of America began to form a united nation out of the colonies to the south. The international boundary created by the American Revolution proved to be permanent. This boundary cut right across the ancestral lands of the people who finally settled on Walpole Island.

The Royal Proclamation of 1763 had reserved their hunting grounds to the Indian inhabitants in the following words:

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them,\* as their Hunting Grounds...ll

The Proclamation forbade all subjects from making purchases or settlements "or taking possession of any of the Lands above reserved, without our especial leave and Licence for the Purpose first obtained." A reserve had been created by the Proclamation and a special executive act was required to alienate Indian land.

The Proclamation then described in general terms the procedure to be followed whenever Indian lands were to be alienated. No private person was allowed to make any purchase of land reserved to Indians.

... but that, if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie ...

\*Underlining is mine.

This general Proclamation procedure underlay British and Canadian policy and practice from that time onwards. Subsequent legislation right down to the present Indian Act has only confirmed and elaborated upon the principles set down in the Royal Proclamation of 1763.

### 3. Land Surrenders

While securing Indians in the occupation of their territories for the time being, the Proclamation foresaw the need for the British colonies to acquire Indian lands for settlement and had made provision for the Crown to do so. "Between 1790 and 1827, little more than an average human generation, the British crown acquired settlement rights to over 4 million acres in what is now southwestern Ontario."<sup>12</sup>

The first major land surrender in southwestern Ontario was that of 1790 (McKee Treaty). Alexander McKee, Deputy Superintendent of Indian Affairs, later Superintendent, negotiated this surrender with "the principal Village and War Chiefs of the Ottawa, Chippawa, Pottawatomy and Huron Indians [sic] Nations of Detroit".<sup>13</sup> The demarcation line of the surrendered territory began at a point on the northern shore of Lake Erie south-east of London, Ontario at the western limit of an earlier Mississauga surrender.

From there it followed the waterways around Lake Erie, the Detroit River and Lake St. Clair to "the mouth of a river known by the name of Channail Ecarte and up the main branch of the said Channail Ecarte to the first fork on the south side". Running due east until it intersected with the Thames River, it followed that watercourse to the north-west corner of the Mississauga cession. After following the western limit of that

cession, the line ran due south to the point where it began on Lake Erie.\*

The area described within the limits of this surrender does not include any of the territory now subject to dispute.

It should be noted that the line marking the surrender ran "Westward long the border of Lake Erie", and not through the middle of the lake, and from the mouth of the Chenal Ecarte "to the first fork on the south side". If this line did not follow a land boundary all the way from Lake Erie to the Thames and beyond, at what point was it projected into the water? If such an abrupt and unlikely change of course had been made, why is it not mentioned in the surrender document? The simplest answer is that such a change of course was never made. The line of demarcation continued, as it began, to follow a land boundary.

Hence the western limit of the surrender of 1790 appears to be the east bank of the Detroit River, the eastern shoreline of Lake St. Clair, and the east bank of the Chenal Ecarte. This would leave the land under the waters of Lake St. Clair and the Chenal Ecarte unceded Indian territory.

The next land surrender of significance to the boundary dispute was taken in 1796 from "the Principal Chiefs, Warriors and people of the Chippawa Nation of Indians".<sup>14</sup>

\*See Map (Exhibit 1).

This surrender is interesting because the surrendered land was intended "for the future residence of such of the western nations of Indians as have been driven from their Country by the army of the United States".<sup>15</sup> The American army had just overcome the efforts of the Indian inhabitants to resist American expansion into the Ohio country.<sup>16</sup> It was expected that five thousand Indians would cross the border and settle on the land provided by this surrender. Since only about two hundred actually did so, the plan to make a reserve in this location failed and the land was eventually patented to non-Indians. A claim to this tract as reserve land could still be made.

However, for the purpose of the boundary dispute, the territory within the limits described in the surrender document will be considered the same as any other surrendered land. That land is described there as being "all that parcel or tract of land lying on and near to the said River Chenail Ecarte". It is difficult to interpret these words in any sense which would signify an intention to extend the surrender beyond the river bank. It probably did not matter at the time. The document describes the boundaries of the tract until they reach the St. Clair River and ". . . thence up the said River St. Clair following the several windings thereof to a hickory tree marked with a broad arrow . . .". It is also reasonable to suppose that the hickory tree was on land and that the boundary line follows the bank of the river and not a middle course. It appears, therefore, that the land under the waters of the Chenal Ecarte and the St. Clair River is unceded Indian territory.

When the United States Government took a surrender on its side of the boundary, the land under the water was specifically included within the area surrendered under the terms of the Treaty of Detroit in 1807

The eastern boundary was described as following the boundary line between the United States and Upper Canada (Ontario). This means that the Indian title, to half of Lake St. Clair and half of the St. Clair and Detroit Rivers, was extinguished in 1807. Indian title to the other halves of these bodies of water, have never been surrendered by any Indian Nation.<sup>17</sup>

The unsurrendered territory on the Canadian side comprises at least the region included within the boundaries now claimed by the Band.

With the exception of Stag Island, Fawn Island, Peach Island and the land under water of the Southeast Bend Cut-off Channel, there is no evidence that any of the lands, including the islands, marshlands and the beds of the St. Clair River and Lake St. Clair, presently claimed by the Walpole Island Indian Band, were ever ceded by the Indian people.<sup>18</sup>

The status of this larger area as unceded aboriginal land has been admitted as at least a strong possibility by officials of both the federal and provincial governments.\* While the Band agrees with that view as far as it goes, they draw the further conclusion that the larger area is part of their Reserve. In taking this position the Band can rely on the support of both early and more recent testimony.

\*See Chapter 1. The Boundary Dispute.

The report of the Special Indian Commission of 1844 in reference to Walpole Island reads, "... the reservations [sic] have been established by their being omitted from the surrender and in those instances, consequently, the Indians hold upon their original title of occupancy."<sup>19</sup>

Almost one hundred years later, the Surveyor General of Canada made an identical statement.

It has always been held that Walpole Island and the marshes adjacent to it were not included in that surrender [1790] and that the Indians hold the aboriginal title to the lands in the island and in the marshes adjacent to it.<sup>20</sup>

In 1895, the Deputy Superintendent General of Indian Affairs, Hayter Reed, took a similar position but did so in terms which included the larger area. He listed some islands in the Detroit River, Lake St. Clair, and the St. Clair River which he described as having been administered by Indian Affairs. "... By reference to the surrender of 19th May 1790 [Cession #2] it will be seen that the lands in question were not included in the surrender. There should therefore apparently be no doubt whatever as to the fact that the lands in question are Indian lands and under the control of this Department."<sup>21</sup>

Reed, like the Band, bases his argument on the omission of the islands from the surrender. However, he draws the conclusion that they are "Indian lands and under the control of this Department". Since they are unceded they are not "Indian lands"



in the sense of surrendered lands for sale. What are reserve lands if not Indian lands under the control of Indian Affairs?

Surely the land under the water around the islands would enjoy the same status as the islands themselves. That land was never surrendered either since it lies beyond the limits of the cessions.

4. Walpole Island Reserve #46

Before the surrenders, the ancestors of the Walpole Island Band used the resources of a wide region to obtain game, fish, and maple syrup. The major land surrenders between 1790 and 1827 and the European settlement which followed reduced the size of the territory available for these traditional social and economic activities. As a result, the Indians too acquired a permanent settlement on or near Walpole Island which had always been a fishing camp. "From a society based on an extensive migratory hunting and fishing existence, the Indians were forced to turn to agriculture as their main source of livelihood . . . They were confined to one locality and were provided with the barest of farming implements and technical knowledge."22

Of course, the transition, imperfect as it was, spread over many years during which the Indians continued to use the resources of the unsettled areas in the vicinity of their home. This included the forests for game, maple syrup, and wood and the waters for fish and transportation. Thus the traditional activities were carried on over the waters of Lake St. Clair, the Chenal Ecarte and the St. Clair River as well as on the islands.

In the previous chapter the point was made that the Walpole Island Band hold their Reserve on the basis of aboriginal title. Both early and modern authorities have given support to this position. In addition, it appears from the evidence that a reserve based on Walpole Island was especially set aside for Indian use and that this had been done early in the nineteenth century, certainly before 1850. These two points will be examined in this chapter.

In 1838 J. W. Keating was appointed as Indian agent for Walpole Island. He immediately began to expel white squatters. "I felt naturally surprised that an Island which I had understood to be expressly appropriated to the settlement of Indians should be thus held entirely by whites ...".<sup>23</sup> The phrase "specially reserved" for Indian occupation was used by Samuel Jarvis, Chief Superintendent of Indian Affairs, in 1843.<sup>24</sup>

A report of 1845 states that "The settlement at Walpole Island was commenced at the close of the American War when Col. McKee called by the Indians 'White Elk', collected and placed upon the Island which lies at the junction of the River and Lake St. Clair, the scattered remains of some tribes of Chippewas who had been engaged on the British side."<sup>25</sup>

Keating also mentioned the McKee foundation when describing a request of the Walpole Island Indians to visit the Governor General in Kingston to get help in expelling the white squatters from their lands. He quoted the Indians as stating: "Our fathers were certainly to blame in ever allowing these men to set their feet upon the once happy Island on which the White Elk (Colonel McKee) had placed us ..."<sup>26</sup> They appear to be using the term "our fathers" in reference to an earlier generation or generations. This was written in 1843. Whatever the authority for the White Elk story, the use of the phrase "our fathers" suggests that the reserve's foundation was not recent even in 1843.

William Jones testimony at a trial in 1842 adds to the evidence for reserve status and an early foundation. "Mr. Jones, for the defendant, stated that Walpole Island had always been appropriated for the Indians; that he had known it since 1816; that he was a Government agent, and in that capacity leased Indian lands with the sanction of Government".<sup>27</sup>

A report of the Inspector of Indian Agencies and Reserves (1896) quotes the Special Commission on Indian Affairs of 1838 respecting the Chippewas of the St. Clair, "Another portion settled at Walpole Islands\* [sic], 30 miles lower down the St. Clair, which appears to have been, at the conclusion of the last war with the United States specially appropriated as a future home for the Indians ...".<sup>28</sup> Ø

\*Meaning much more than the actual island of that name itself. "At the outset it will be well to remark that the term 'Walpole Island' has latterly been so generally used to describe a territory which practically includes the whole of the St. Clair Flats on the Canadian side, and embraces both Squirrel and St. Ann's Islands ..." How much more might the term have meant in 1815 when it seems to have been set apart for a group of Indians living largely by the chase?

ØThis would explain its use as a home for the Pottawatomies and other "wandering" or "visiting" Indians from the United States when they migrated to Upper Canada in large numbers after 1837.

The same source refers to a Memorial where it is recorded "that Walpole Island, never having been surrendered could not have been set apart for any particular tribe, and that in fact 'it was, as was also Manitoulin Island specially set apart to be the home of Indians who might have forfeited their lands in the States for taking up arms with the British against that country.'"

The Inspector's report also quotes three bibliographic items, which appear to be printed books, and concludes that they seem to have used a common source. "... The accounts given sustain the position that Walpole Island was reserved by the Crown \* as a tract upon which to place Indians who desired to settle upon and work land".<sup>29</sup>

While much obscurity surrounds the founding of the Walpole Island Reserve two facts emerge clearly from the evidence. Those who could be expected to know believed that an Indian reserve had been set apart at Walpole Island and that this had been done long before 1850.

\* Underlining is mine.

5. Lord Elgin's Proclamation of 1850.

Relying on a description found in Lord Elgin's Proclamation of 1850 as an authoritative definition of the general boundaries of the Walpole Island Reserve, the Province of Ontario has not recognized lands under the waters of the St. Clair River, Lake St. Clair, or the Chenal Ecarte as part of the Walpole Island Reserve. The Proclamation mentions only islands. The most that has been accepted by representatives of the federal and provincial governments is that there may be an unextinguished (and undefined) "Indian interest" in the unceded territory.

E. G. Morton, Director of Reserves and Trusts, Ontario Region, for the Department of Indian and Northern Affairs wrote, "We and the province have recognized that there may still be an Indian interest of some sort in these larger areas, but this does not make them reserve."<sup>30</sup> Similarly, James Auld, then Minister of Natural Resources for the Province of Ontario, stated:

Ontario recognizes that there is a larger area adjacent to the islands which we consider to comprise the Walpole Island Reserve that may not have been included in any treaty or similar agreement between the Crown and the Indian people. This larger area probably includes all or most of the area shown as Indian Reserve on the maps attached to Chief Donald Isaac's letter to me dated February 18, 1980. It is our position that any interest in that area is different from the interest of Indian people in the Walpole Island Reserve as set out in Lord Elgin's Proclamation of 1850.<sup>31</sup>

In view of the abundance of evidence that a reserve existed at Walpole Island long before 1850, why has Lord Elgin's Proclamation been so universally accepted as the foundation document of the present Reserve and therefore as the authority on its boundaries? No definite answer can be given to this question. Neither the Proclamation nor the Act which it brought into force claimed to establish Indian reserves. Their purpose was not to reserve land for Indian use but to forbid trespass upon Indian land. The logical presumption is that the land in question had already been reserved for Indian use, trespass upon that land had denied its use to Indians, and the purpose of the legislation was to correct that situation.

That is the plain meaning of the Act's title, "An Act for the Protection of the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury". The same significance attaches to the words used in the Preamble of the Act, "... in the unmolested possession and enjoyment of the lands and other property in their use or occupation".<sup>32</sup> There is no section in the Act to bring new reserves into existence.

Furthermore, neither the Act or the Proclamation claims to be defining reserve boundaries. On the contrary, the Act states that its relevant sections "shall extend and be construed to extend to such Indian lands only as the Governor of this Province for the time being shall from time to time, by Proclamation under

the Great Seal thereof, think fit to declare and make subject to the same, and so long only as such Proclamation shall remain unrevoked and in full force." The Proclamation repeats this statement in similar words. There could well have been Indian lands which were not made subject to the Act.

Since the evidence is clear that the Walpole Island reserve existed long before 1850, while the Act and the Proclamation make no claim to establish reserves, the Proclamation cannot be the founding document.

There is one argument which has not yet been considered. Since the Act and the Proclamation of 1850 were designed to protect Indian land from trespass, it is reasonable to expect that the land described in the Proclamation pertaining to Walpole Island was in fact the Reserve as it existed in 1850. That seems a reasonable assumption unless one looks carefully at the land claimed by the band and then examines the purpose of the Act and the Proclamation. The land claimed by the band all lies under water while the purpose of the Act was to deal with trespass!

The only way in which a distinction has so far been made between the "reserve" land of Indian Reserve #46 and the larger



area in which the Band has merely some undefined "interest" is by reliance upon Lord Elgin's Proclamation of 1850 as the foundation document of the Reserve or at least as a document which authoritatively delimited reserve lands. This assumption has been shown to be incorrect.

A reserve based on Walpole Island does exist. Neither Lord Elgin's Proclamation of 1850 nor any other document has defined the boundaries of the Walpole Island Reserve, although we can trace the boundaries of the unceded aboriginal territory. On what documentary authority then can a distinction be drawn between "reserve" land and land in which an Indian "interest" remains unextinguished? The Proclamation of 1850, which has been relied upon to create that distinction, is clearly inadequate to do so.

6. Summary and Conclusions

The Walpole Island Band assert that their Reserve extends from the international boundary on the west to the east bank of the Chenal Ecarte and from a point on the St. Clair River on the north southwards across the Canadian portion of Lake St. Clair. This assertion is disputed by the Province of Ontario which holds to the description of the Reserve lands in Lord Elgin's Proclamation minus any surrendered portions. The Department of Indian Affairs is prepared to support the Band's position in negotiations with Ontario with regard to the western and eastern boundaries but not with respect to the northern and southern limits.

The ancestors of the members of the Walpole Island Band enjoyed aboriginal rights in the lands of south-western Ontario when those lands were reserved to them by the Proclamation of 1763. Although most of those lands were subsequently surrendered to the Crown, the band retained possession of an unceded territory at least to the extent of the area at present in dispute.

An Indian Reserve based on Walpole Island was in existence long before 1850. There is no authoritative documentary evidence to limit the boundaries of that Reserve to the lands described in Lord Elgin's Proclamation of 1850. The Band very naturally draws the conclusion that their Reserve is co-equal in extent with the aboriginal territory which has never been ceded by them and which lies outside the limits of the recognized land surrenders.

Endnotes

1. Public Archives of Canada, (PAC) RG 68, Registrar General, Proclamation by Lord Elgin concerning Indian Lands in Upper Canada, November 8, 1850.
2. James A. C. Auld, Minister of Natural Resources, to Chief William Tooshkenig, November 12, 1980.
3. Chief Tooshkenig to James Auld, January 8, 1981.
4. James Auld to Chief Tooshkenig, February 17, 1981.
5. Alan Pope to A. J. Soney, November 22, 1982.
6. John C. Munro to Chief Tooshkenig, December 5, 1980.
7. John C. Munro to Chief Tooshkenig, December 22, 1981.
8. E. G. Morton to H. LaForme, January 13, 1983.
9. David T. McNab, Senior Indian Land Claims Researcher, Office of Indian Resource Policy, Ontario Ministry of Natural Resources, "Research Report on the Location of the Boundaries of Walpole Island Indian Reserve #46", May 2, 1980, p. 3.
10. Ibid., 4. McNab cites J. A. Clifton as the source of this information.
11. "Royal Proclamation of 1763" in Documents Relating to the Constitutional History of Canada, 1759 - 1791, A. Shortt and A. G. Doughty (eds.), Ottawa, 1918, 163-67.
12. Dean Jacobs, "Indian Land Surrenders", 1.
13. Canada, Indian Treaties and Surrenders 1680 - 1890, Ottawa, 1891, I, 1-3.
14. Ibid., 19 - 22.

15. PAC, RG10, Indian Affairs (Red Series, Eastern Canada) Ottawa. RG10 V. 39, pp. 21652-58. Quoted in Jacobs Walpole Island Land Claims, 77.
16. See Robert S. Allen, "A History of the British Indian Department in North America (1755-1830)", National and Historic Parks Branch, Ottawa, 1971.
17. Dean Jacobs, Walpole Island Land Claims - a working paper, 171.
18. McNab, 23. The question of the bed of the Chenal Ecarte has already been dealt with in this chapter.
19. Department of Indian Affairs, Report of the Inspector of Indian Agencies and Reserves, November 4, 1896, p. 12.
20. F. H. Peters, Surveyor General and Chief, Hydrographic Service, to J. C. Caldwell, Chief, Reserves Division, March 2, 1939.
21. Reed to Aubrey White, July 13, 1895. Quoted in McNab, "Research Report", 15.
22. "Walpole Island Farming History" in Jacobs Walpole Island Land Claims, 40.
23. Letterbook of J. W. Keating, November 22, 1844.
24. Jarvis to Sir Charles Bagot, March 8, 1843.
25. Extract from a Report on Indian Affairs laid before the Legislative Assembly on March 20, 1845.
26. Letterbook of J. W. Keating, July 21, 1843.
27. Brian Slattery, Canadian Native Law Cases, Saskatoon, 1980, I, Little et al v. Keating.
28. Indian Affairs, Report of the Inspector of Indian Agencies and Reserves, 12 - 13.
29. Ibid., 17.
30. January 13, 1983 to H. LaForme.
31. July 14, 1980 to Chief Tooshkenig.
32. Statutes of Canada, 13 - 14 Vic. (1850), Cap. 74.

A Supplement to  
"The Historical Foundation for the  
Walpole Island Reserve  
Boundary Question"

prepared  
by  
John L. Taylor  
April 12, 1984

## Summary

This supplement consists of an argument that the word "reserve" had no statutory definition prior to the 1876 Indian Act although the concept then defined as "reserve" had existed in practice at a much earlier period. This is evidenced by the fact that reserves which had come into being before 1876, and indeed, before Confederation, were accepted as reserves within the meaning of the Act without formal procedures, and continued to be administered as reserves as they had been before.

An argument will also be made that the Walpole Island Reserve #46, which was one of those reserves, had no formal creation at all. There is no documentary evidence of one. Yet the documentary evidence that we have tells a very credible story of Walpole Island becoming a reserve in a less formal way. It should not be surprising that in the early history of Upper Canada such things happened. Even yet there is no statutory method laid down in the Indian Act for setting aside new Indian reserves.

The tracing of an informal origin for the Walpole Island Reserve removes all difficulty in understanding how it could remain unceded Indian land and still be accepted as a reserve.

The main argument in the text is followed by Appendices A to F which add supporting evidence to that argument, illustrate the points made, or deal with related questions.

## Main Argument

The study to which this is a supplement demonstrated that the Walpole Island Reserve, including the disputed area, is unceded Indian land. This conclusion is based on its use since time immemorial, the Royal Proclamation of 1763 and its omission from land cessions. That study also pointed out that a reserve existed at Walpole Island prior to Lord Elgin's Proclamation of 1850. The problem is to connect these two facts, to show as clearly as the available information will permit that the full extent of unceded Indian land and Walpole Island Indian Reserve #46 are one and the same. To do this will require an investigation into the manner in which Walpole Island became a reserve. This is the purpose of this supplement.

First, it is necessary to point out that the word "reserve" itself did not receive statutory definition until the Indian Act of 1876. Yet prior to that date there did exist lands set apart for Indians which were administered by the Indian Department and which were accepted as "reserves" when the first consolidated Indian Act came into being.

Walpole Island is one of those reserves.\*

Since the Indian Act did not confer reserve<sup>status</sup> upon Walpole Island, but simply recognized that it already had that status, we have to look for its origins at an earlier date. A very extensive search by the Department of Indian Affairs in 1896\* failed to turn up any evidence of a deed of surrender to the Crown or of any specific act creating a reserve. More recent searches have been no more successful. In the light of the

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\* Annual Report of the Department of Indian Affairs for the year ended December 31, 1881, page Lii. "Walpole Island - Matters on this reserve...".

\* See the letters in Appendix F.

available evidence, the only conclusion that can be supported is that Walpole Island was not made a reserve by any act, treaty, order-in-council, or any other single and specific act of government. Its origins can be explained more simply. It was accepted as a reserve in 1876 because it had already been administered as a reserve by the Indian Department for at least forty years and perhaps for over a century. Reserve status was recognized in 1876, not because of a single act of creation but because of an accumulation of actions of government which, taken together, constituted towards Walpole Island treatment consistent with reserve status.

Walpole Island has been an Indian settlement for a long time, probably before there was an Indian Department.\* Its "administration" in a general sense began in 1763 when it was included in the territory reserved for Indian use by the Royal Proclamation. Indian Department officers were no doubt familiar with it between then and 1790 when it was omitted from the land cession of that year.

There is an often-quoted tradition that Colonel McKee set Walpole Island apart for the Indians. No supporting evidence has been found for this statement. Perhaps it originated from the intention to set apart a reserve for Indians coming into British territory from the United States. This intention was given effect by the setting aside of the Lower Reserve from the territory surrendered in 1796.\*

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\* See Appendix A.

\* See Appendix B.



Whatever truth may lie in that tradition, Colonel McKee certainly intended that Indians should continue to live in the vicinity of Walpole Island as this setting aside a reserve in 1796 indicates. It lies just across the Chenail Ecarte from Walpole Island. When few Indians from the United States settled on this reserve, there was an attempt in 1830 to have the Walpole Island Indians move there. When they did not, the matter was simply dropped.\*

The refusal of the Walpole Island Indians to move is significant because it demonstrates the acquiescence of the government in the continued Indian occupation of Walpole Island. This government acquiescence was reinforced in 1836 when the Walpole Island Indians were separated from the Sarnia Indians and became a separate band. A conclusive positive action followed in 1838 when the government appointed a separate Indian agent for Walpole Island. It is difficult to imagine, within the context of the time, how any more definite "creation" of a reserve could have been accomplished.\*

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\* See Appendix C.

\* After 1818 it was common practice to set reserves aside in land cession treaties. However, the land contiguous to the Walpole Island Reserve had been surrendered in 1790 and 1796 before that practice was usual.

The only further evidence required to demonstrate that Walpole Island was a "reserve"\* by 1838, at least, is to show that it was continuously administered as one. The succession of agents appointed to Walpole Island and the correspondence and reports found in the records of the Indian Department supply adequate evidence of continuous administration and acceptance as a reserve.

Since Walpole Island\* became a reserve in the manner outlined above, it is coextensive with the unceded Indian land which remained after the international boundary was determined and the land cessions concluded. To argue otherwise, it would be necessary to produce a document with the intention and the authority to limit the reserve to a lesser extent. Since Walpole Island owes its origin as a reserve to a more gradual kind of occurrence rather than to any one specific act of government, such a document is unlikely to exist.\*

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- \* Quotation marks are used only because the term itself did not have statutory or other official meaning until 1876. The concept which came to be defined as "reserve" in that year certainly did, and was applied to Walpole Island at this earlier period.
  - \* Used here as elsewhere in this supplementary paper to mean the reserve of that name and not merely one island.
  - \* Further confirmatory evidence for the existence of a reserve at Walpole Island prior to 1876 has been collected in Appendix D. The matter of the Pottawatomie arrivals and their bearing on the question is the subject of Appendix E. There is also the related question whether Walpole Island is unceded Indian land or Crown land. Appendix F disposes of that.

Appendix A

Settlement at Walpole Island

Indian settlement at Walpole Island has been from time immemorial. The study to which this paper is a supplement points out the historical occupation of the general territory in which Walpole Island is located. (Chapter 2) The attached pages\* offer evidence of residence on the present reserve by members of the Walpole Island Band going back before the war of 1812. This testimony was gathered in connection with the "treaty" and "non-treaty" dispute in the late nineteenth century.

One person testified that his father had lived on Walpole Island before the War of 1812. Another testified that his father had fought on the British side in the War of 1812 and then moved to Walpole Island to reside permanently in 1829. The reason he did so was that his grandfather lived on Walpole Island. Both of them died there and are buried there.

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\* From Public Archives of Canada, Record Group 10, Volume 2022, file 8520.

Appendix B

The Plan to Set Aside a  
Reserve for Indians Arriving  
from the United States - 1796

Pages 1 and 2\* of this Appendix describe the plan to set up a reserve for incoming Indians. Pages 3 to 7\* contain some of the correspondence in connection with this plan and a map of the reserve showing how close it was to Walpole Island. Pages 8 and 9 continue this correspondence from a different source.\*

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- \* From Reginald Horsman, Matthew Elliott, British Indian Agent, Wayne State University Press, 1964.
  - \* From E.A. Cruikshank (ed.), The Correspondence of Lieut. Governor John Graves Simcoe, Toronto, 1923.
  - \* From Blue Book No. VI.

Appendix C

The Attempt to Remove the  
Walpole Island Indians to  
the Mainland, 1830

There was an attempt in 1830 to get the Walpole Island residents to move to the Lower Reserve which had been created in Sombra Township by the 1796 land cession of the surrounding region. This reserve had originally been intended as a refuge for Indians crossing over from the United States after the Battle of Fallen Timbers and the evacuation of the British posts in accordance with Jay's Treaty. However, few Indians from the United States settled there. This failure probably explains the attempt to remove the people of Walpole Island from there to "some part of the Tract Eastward of the lower reserve near Sombra" which is chronicled in some correspondence of the year 1830 in the Secretary's Letter Book (of the Lieutenant Governor of Upper Canada). The descriptions used in this correspondence do not use the name Walpole Island but "their present habitations on the Islands at Chenail Ecarte", and "their favourite situations on the waters of the St. Clair". That the place meant was the island grouping referred to as Walpole Island was the conclusion reached by G.M. Matheson, the Indian Department officer in charge of records, in a memorandum dated January 31, 1923. Refuting a statement that the Chippewas first permanently settled Walpole Island in 1831, Matheson wrote, "This is not correct as there was a proposal to remove the Indians from this place in 1830 when Chief Shaweny-penincy and his band refused to leave the land on which they had been so long settled." \*

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\* G.M. Matheson, Memorandum, January 31, 1923.



As to the intended place of removal, William Jones wrote that he had spoken to "Shaweny Penincy the principal or senior Chief of the Islands, who seemed to be pleased with His Excellency's proposal to settle them on the lower Reserve".\* In spite of Jones' optimism, the move does not appear to have taken place. When Jones first raised the subject, the Chief asked several questions regarding the furnishing to them of farming equipment and instruction and whether an agent and storekeeper would be stationed there to issue their annual goods in their village. Although the Chief promised to use his influence in support of the proposal, he thought it would be "in vain to try to prevail upon the Indians to quit their favorite situations on the waters of the St. Clair".\* He was right. They did not go.

The following pages from Blue Book No. VI document the story of the attempted removal

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- \* Secretary's Letter Book (Lieutenant Governor of Upper Canada), Jones to Z. Mudge, August 13, 1830.
  - \* Ibid., William Jones to Henry Jones, June 24, 1830.

Appendix D

Further Confirmatory Evidence  
for the Existence of an Indian  
Reserve at Walpole Island  
Prior to 1850

The new agent for Walpole Island, J.W. Keating, appointed in December, 1838, certainly believed that he was in charge of an Indian reserve.\* Observing squatters on much of the land, Keating wrote, "I felt naturally surprised that an Island which I had understand to be expressly appropriated to the settlement of Indians should be thus held entirely by whites ...".\* He immediately began expelling the squatters under the authority of an anti-trespassing act of 1839.

William Jones, Indian agent at Sarnia, whose jurisdiction included Walpole Island until 1838, testified at a trial in 1842. "Mr. Jones, for the defendant, stated that Walpole Island had always been appropriated for the Indians; that he had known it since 1816; that he was a Government agent, and in that capacity leased Indian lands with the sanction of Government."\*

A copy of another document\* has been included in full in this Appendix because of its relevance to Walpole Island, its authorship (J.W. Keating) and date (1842). One statement from that document is particularly worthy of comment. Writing of Walpole Island, Keating states, "The farms they occupy are decided upon by the Chiefs or myself, and when once taken possession of, are theirs for ever." An Indian agent acting in this manner and making such a statement must have been doing so on a reserve.

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\* The use of the word "reserve" in reference to any time prior to 1876 cannot be precisely related to the definition provided in the Indian Act of that year.

\* Letterbook of J.W. Keating, November 22, 1844.

\* Brian Slattery, Canadian Native Law Cases. Saskatoon, 1980, I, Little et al v Keating.

\* Taken from Blue Book No. VI.

Appendix E

The Acquiescence of Government  
at the Settlement of Indians  
from the United States  
on Walpole Island

When Pottawatomies and other Indians began arriving in Upper Canada in considerable numbers from the United States in 1837, some of them settled at Walpole Island. Chief Indian Superintendent Jarvis wrote to the local agent William Jones, about this. "Walpole Island belongs to the Government and not to the Indians. The Lieutenant Governor is not willing that it should be occupied by Indians."\*

There are several points to be made about this statement. First, Jarvis is undoubtedly referring to the new arrivals and not to the resident Indians. Further correspondence from the same source indicates that government policy was to have the Pottawatomies and other fresh arrivals from the United States settle on Manitoulin Island. Of course, the lieutenant-governor was not willing that Walpole Island should be occupied by Indians. Sir Francis Bond Head's policy was to remove them, where possible, to Manitoulin Island. There was never any serious possibility, however, of the Walpole Island Indians moving there. They had already refused to move even across the Chenail Ecarte to Sombra Township.

As we shall see, the Pottawatomie Indians also refused to move from Walpole Island. Once again the government acquiesced in Indian settlement there in spite of the statement by Jarvis. That fact, taken in conjunction with everything else that we know, deprives his statement of any credibility.

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\* S.P. Jarvis to W. Jones, August 21, 1837, Blue Books, No. VI, page 1 of this Appendix.

There is a reference in a letter to Keating to "the Pottawattamie Indians who immigrated to this Province from the United States five years since and who do not appear to have made an advance towards earning their own livelihood"\*. Keating was told that since he reported them to be without food,\* that humanity forbids that they should starve. He was authorized to give them food but to inform them that it would be the last time. If the Pottawatomies wanted help from the government, they would have to prepare to move to Manitoulin Island.

Keating took the matter up with the Pottawatomies and replied the following June.

I laid before the Pottawatomie Indians assembled in Council the proposal of His Excellency the Governor General that they should this summer proceed to Manitowaning. They to a man objected - the reason they assign, and which is a true one, is that they have never been accustomed to canoes or fishing, living as they formerly did in extensive prairies where they always both hunted and journeyed on horseback. Not being able in consequence to avail themselves of the chief resource of the Island, they would actually starve.\*

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- \* J.M. Higginson, Civil Secretary's Office, Indian Department to Keating, December 12, 1844. From Blue Book, No. VI.
  - \* No doubt the depletion of game had left these hunters without resources.
  - \* Ibid., Keating to Higginson, June 4, 1845.

In spite of all the efforts to get them to remove to Manitoulin Island, many of the Pottawatomies remained at Walpole Island where their descendents live to this day as part of the Walpole Island Band. The government's acquiescence in the settlement of the Pottawatomies at Walpole Island strengthens the view that it was even then regarded as the contemporary equivalent of an Indian reserve.

Appendix F

The Question of Unceded Indian Land  
Versus Crown Land



It has been argued in the Boundary Study (1983) that Walpole Island is unceded Indian land in spite of its status as an Indian reserve. Such anomalies are not unknown when the legacies of the past are fitted into a new framework. Nevertheless, it has been necessary to make and support this argument because of a recurrent belief that Walpole Island is Crown land.

In 1837 Colonel Jarvis wrote, "Walpole Island belongs to the Government and not to the Indians. The Lieutenant Governor is not willing that it should be occupied by Indians."\* Taken in conjunction with what else we know about the status of Walpole Island at that time, this is a curious statement. There is absolutely no documentary evidence for the assertion that Walpole Island belonged to the government. We do know that the second statement is true. Sir Francis Bond Head did not want Indians settling anywhere except on Manitoulin Island. When the Pottawatomies began arriving at Walpole Island from the United States in the late 1830s, the government tried to get them to go to Manitoulin. Jarvis' statement must be considered within the context of this situation and the contemporary Indian policy.

The government's policy regarding Indians at the time is well known. But where did Jarvis get the idea that Walpole Island belonged to the government? While it can certainly be regarded now as a curious claim,

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\* Blue Book No. VI.

there is evidence that it was regarded in this light even at the time

In 1837 also, the Wesleyan Methodists of Upper Canada complained to Bond Head that "certain islands long held by the Indians, and leased by them, had been recently declared the property of the Crown, whereby the rents and future profits had become lost to them." "Walpole Island" is written in the margin of the report from which this statement has been taken.\*

Christina Boom wrote that Jarvis had been quick to argue that the 1839 anti-trespassing act did not apply to reserves in Upper Canada because all the territory in the Province had been surrendered to the Crown at one time or another.\*

The view that Walpole Island belongs to the government and not to the Indians seems at this early period, at least, to have been restricted to Colonel Jarvis. G.M. Matheson has recorded some evidence which suggests a very different situation.

In 1847 the Governor's Civil Secretary Col. Campbell, in a letter to Col. Clench regarding the proposal of certain Indians to move to Walpole Island said in part: -  
In reference to the Wyandottes, His Excellency has no objection to the proposed arrangement provided you ascertain that it is sanctioned by the Chippewas who own the land.\*

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- \* J.B. Macaulay's Report, 1839, p. 87.
  - \* J.C.M. Boom "A Brief Sketch of Indian Affairs in Central Canada, The British Period, Part I: 1760 to 1845," Indian Claims Commission, November, 1973, pp. 54-55.
  - \* Blue Book No. VI, Campbell to Clench, April 20, 1847.

The issue was raised again in 1896 because of a continuing dispute between those Walpole Island Indians who called themselves "treaty" and those whom they regarded as "non-treaty".\* In an attempt to settle the dispute, the Indian Department investigated the origins of Walpole Island. They were aware of the tradition that it had been set aside generally for Indians settling there rather than for any particular group. This interpretation was convenient because it would have destroyed the case of the "treaty" Indians who were making the complaints and thus settle the dispute. Unfortunately for the Department, they were unable to find the evidence they were seeking. Nor were they able to find any deed of surrender to the Crown. J.D. McLean, later Secretary of the Department, told the Deputy Minister in a memorandum, "the Indian title in Walpole Island has never been extinguished and no portion of this Reserve can be disposed of without the consent of the Indians owning the same in accordance with the provisions of the Indian Act."\*

Five days later Hayter Reed wrote to J.A. Macrae, Inspector of Indian Agencies and Reserves at Wallaceburg, telling him:

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- \* See Public Archives of Canada, Record Group 10, Volume 2666, file 133, 376 Pt. 1.
  - \* Ibid., July 18, 1896. His conclusion that no portion of the Reserve could be disposed of without the consent of the Indians is irrelevant to his other point since any surrender of reserve land required the consent of the band. The significant point here is his statement that the Indian title had not been extinguished and his phrase "the Indians owning the same".

I have to say that Walpole Island is not included in any surrender from the Indians to the Crown. It is evident however from papers on file in the Department that it was held to be a special Crown Reserve, and that it was set apart for Indian purposes; there are also allusions in the old correspondence to a deed to the Crown, and when the claims of white squatters on the Island were being considered their title was held to be invalid because the Indians [sic] leases were worded as follows: - "to be valid so long as the land belongs to the Indians and no longer", it being assumed at that time by the officer of the Department in charge at Walpole Island that the land did not belong to the Indians. \*

The belief that Walpole Island is Crown land seems, then and now, to be based entirely on assumptions in the absence of any confirmatory documentation. Reed went on to tell Macrae that "a further search which is now being conducted may make this point still clearer". Besides searching the Department's own files, Reed had the Departmental Secretary, Duncan Campbell Scott, write to the provincial Assistant Commissioner of Crown Lands in Toronto to ask "whether there are of record in your Department any papers with reference to the early history of Walpole Island". Reed wrote himself to D. Brymner, Dominion Archivist, asking the same question. Neither query uncovered anything relevant. A similar request directed to the Canadian High Commissioner in London - England was equally fruitless. The High Commissioner seems to have sent Reed a copy of Macaulay's 1839 report. A second letter from the Assistant Secretary in the High Commissioner's office was equally unsatisfactory.

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\* Ibid., Reed to Macrae, July 23, 1896.

The complete failure of this extensive search in 1896 to uncover additional information pertinent to the origins of the Walpole Island Reserve and of a surrender to the Crown strengthens still further the arguments made in this paper that Walpole Island is both unceded Indian land and an Indian reserve and has been a reserve since at least 1838.

"AN HISTORICAL  
OVERVIEW OF THE  
WALPOLE ISLAND INDIAN RESERVE  
TO 1876"

by  
Dean M. Jacobs  
and  
John L. Taylor

Walpole Island

April 1984

## Period I: Pre-Contact

Indian history and civilization does not begin with European contact. The importance of the period of European contact for Indian peoples lies in the fact that Europe had begun to move into the technological age at that time. Without putting a value judgement, one way or the other, on the technological society, it must be recognized that it has so far proven irresistible throughout the world. It has eroded indigenous cultures everywhere, not least in Europe itself where the people and their society were transformed from an agrarian, pre-industrial mode to something very different. Europeans in themselves or in their institutions were not superior to Indian people. It was technological man, not European man, who prevailed in North America.

Even so, in the early years Europeans depended on Indian knowledge, skill, and technology when they first tried to live in North America.

Beginning in the sixteenth century European peoples began to establish themselves in North America. In virtually all instances the Indians greeted the newcomers with friendship, guidance, and assistance. In certain circumstances the Indians served as actual protectors to their new neighbours. Donnacona's Iroquois people probably saved Cartier's party from complete extinction during the winter of 1535-36 by teaching the Frenchmen a cure for scurvy. In less dramatic incidents the Indians taught the Europeans how to hunt, to travel, to farm, and generally how to subsist in their new environment. As the European penetration of North America progressed, relations between the two races grew more complex. The European peoples came to recognize the importance of the Indians in economic and political matters.\*

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\* Robert J. Surtees, The Original People, Holt, Rinehart and Winston of Canada, Limited, 1971, p. ix.

Having put the significance of the contact period in perspective, it is now possible to look at Indian civilization prior to that time. Indian peoples had many centuries, in fact several millennia, of history prior to the arrival of Europeans. The period since contact is a comparatively short one. Archaeologists, using traditional archaeological methods of research combined with linguistic methods have been able to learn about Indian life in prehistoric times. Indian people have been identified as living in southern Ontario as long ago as 5,000 B.C. and possibly earlier.\*

Applying these concepts to Algonquian languages gives us a picture of what was occurring in prehistory, and the archaeological record can be interpreted accordingly. Beginning in southern Ontario, the proposed homeland region, we find the Laurentian tradition throughout the Archaic period [5,000 B.C. to 1,000 B.C.] existing in a stable environment, exploiting mammal foods in winter and fish, birds, turtle, and vegetable foods in summer. They had a sound economic base, and developed a fine copper and fishing technology and a religious system as reflected in the burial customs they practiced.\*

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\* See Pauleen MacDougall Seeber, "Eastern Algonquian Prehistory: Correlating Linguistics and Archaeology", pp. 135-146 in Margaret G. Hanna and Brian Kooyman (eds.), Approaches to Algonquian Archaeology, Proceedings of the Thirteenth Annual Conference, The Archaeology Association of the University of Calgary, 1982.

\* Ibid., p. 140.



Territorial migrations occurred in North America as in other parts of the world. The same people did not always inhabit exactly the same territory. Perhaps a different people moved into southwestern Ontario or perhaps the residents simply developed a new culture. In any case a distinct culture can be identified in which some long-standing patterns such as the use of agriculture and Algonquian-Iroquoian rivalry can be observed several centuries ago.

Somewhere around A.D. 500, a distinct culture arrived in the southwestern portions of southern Ontario. Distinctive ceramic styles, likely developed from earlier Hopewellian ceramics, appear in the archaeological record. It is probable that the first corn agriculture was introduced at this time and that northern sections of southern Ontario were abandoned. Perhaps hunters and gatherers moved north following game, and agriculturalists moved into southern sections due to an ameliorated climate. At any rate, by A.D. 900, the essentials for historic Iroquoian culture were to be found in southern Ontario. . . . If archaeologists are correct in their assessment of Iroquoian development in this area, then this is the logical cutting off point for the Eastern Algonquian languages from those west of the Iroquoian tribes. This separation may have occurred as early as 700 B.C. or somewhat later. It is known from historic records that Algonquian-Iroquoian relations were often hostile and the lack of early language borrowings indicate that this was not a recent situation.\*

In historic times it is known that peoples of an Iroquoian language and culture lived in southwestern Ontario and around Georgian Bay. These were the Hurons and the Neutral and Tobacco (Petun ) nations. They practised agriculture as well as engaging in hunting, fishing,

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\* Ibid., p. 141.

and gathering. Like other Indian peoples, they lived in harmony with nature. The land and the waters provided the necessities for their self-sufficient economy.

The fields were publicly owned, each family sowing and reaping for its own need. Work on the land was done mostly by the women with wooden, bone, and shell hoes. The chief crop was corn, sown by dropping nine or ten grains into a shallow circular hole, fertilized with fish. Earth was piled in mounds over the seed. Until recent years corn hills of the Hurons could be seen in undisturbed fields in Huronia.

Beans, squash, sunflower and tobacco were also grown, the squash being started in bark containers of rotted wood, placed over smoking fires, then transplanted.

Deer were hunted by organized parties. The Hurons drove the deer into rivers or triangular enclosures in the woods, or sometimes caught them by setting traps. The kill came by bow and arrow. Bears were snared and fattened over a period of two or three years. Beaver were captured in a number of ways, usually by nets, and in winter through holes in the ice. The dog, although domesticated and trained to aid in the hunt, was often eaten at feasts.

The Hurons fished both the rivers and the bay. Fish-hooks were made of sharpened bone barbs. Harpoons were carved from bone. In larger waters, nets, woven of nettles were used, some as long as 400 yards. They were set far out in the bay; in winter, through holes in the ice. Stones weighted the nets, and wooden sticks buoyed their position.\*

As a self-sufficient economy in prehistoric times, the Hurons traded mostly for luxury goods. Trade was also an important factor in the social and political system.\*

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\* Elsie McLeod Jury and Wilfred Jury, The Hurons, Midland, Ontario, 1960, p. 10. Other descriptions of economic activity may be found in Conrad Heidenreich, Huronia, McClelland and Stewart, 1971 and in Bruce G. Trigger, The Huron: Farmers of the North, Holt, Rinehart and Winston, 1969.

\* See Trigger, The Huron, pp. 36-41.

The average Huron wished above all to be loved and respected by his tribesmen and fellow villagers. His principal aim in acquiring wealth was to win affection by sharing it with others. Generosity was valued highly, and social status accrued to those who dispensed their possessions with an open hand. The acquisition of property was thus encouraged, although property was not accorded value as an end in itself.\*

The Hurons consisted of four tribes united in a confederacy called "Wendat", hence the name Wyandot. They traded with their neighbours, the Tobacco and Neutral people and with the Algonquian-speaking peoples. "The old group of Hurons and Upper Algonquians had held all the lands from east of Lake Huron west to Lake Michigan before the Iroquois had attacked and almost exterminated the Hurons".\*

The Hurons became middlemen between the French and other Indian nations in the fur trade and thus deepened their already existing rivalry with the Iroquois. After the Iroquois raids of 1648-49 had destroyed the Huron villages, the people fled to safety. One group lived with the Tobacco people until they too were attacked by the Iroquois, who did not want them to succeed to the Huron trade.

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\* Ibid., p. 40.

\* George E. Hyde, Indians of the Woodlands From Prehistoric Times to 1725, University of Oklahoma Press, 1962, p. 270.

. . . the survivors, about eight hundred in number, came to be known as the Wyandot, a corruption of Wendat, the former name for the Huron confederacy. For fifty years the Wyandot lived in the region of the Upper Great Lakes, and were divided into several bands, each containing only a few hundred people. During this period they had close contacts with the Ottawa, Potawatomi, and other Algonkian-speaking tribes who lived in this area, and their culture was much influenced by them. In 1701 the French persuaded the Wyandot to settle close to Fort Pontchartrain, which was being built near Detroit.\*

These Wyandots were the nation who participated in the land cession of 1790.\* They received two small reserves on the Detroit River which were soon surrendered. The people then moved to Walpole Island.

The nations of the Ottawa, Pottawatomie, and Ojibwa, with whom one branch of the Hurons took refuge, are the ancestors of the people of Walpole Island. The Pottawatomie did not settle on Walpole Island until after 1839. They were, however, one of the three Indian nations comprising the Council of the Three Fires along with the Ottawa and Ojibwa. The latter two nations (sometimes called Odawa and Chippewa) gradually moved into southwestern Ontario after the Hurons and their kinsfolk, the Tobacco and Neutral peoples, had been driven out by the Iroquois. This territory, both land and water, provided a living and a home for the people. Before most of the land was ceded by treaties and settled by Europeans, they occupied a wide range. (See map - Appendix A.)

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\* Trigger, The Huron, pp. 2-3.

\* See Chapter II.

The Ojibwe\* lived in a land of abundance. They occupied the land north and around the Great Lakes, where bear, moose, deer, rabbit, and numerous species of wild fowl inhabited the forests, or frequented the margins of the innumerable lakes. Except in unusually severe winters the Ojibwe rarely feared starvation before the white man's arrival. He was trained from childhood to observe nature in all her moods. He knew the places and feeding grounds of the animals in his district, knew the habits of the fish that bred in the lakes or migrated up the rivers and streams. He stored away in his mind without the aid of books the beneficial qualities of every plant and tree. His life depended upon his self-taught knowledge for he had no conception of the world that lay beyond and could not import food or clothing and, could not dress lumber or stone, or make bricks for building. Only from the woods and waters around him, and through his own efforts could he obtain food and clothing and a shelter to protect his family. He had a quick intelligence, and as long as the animals roamed the forests in abundant numbers, the fish abounded in the lakes and streams and the forests were untouched by fire, he generally succeeded in providing his family with the new demands of daily life.\*

Another description deals with other aspects of Ojibwa life.

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\* In this description "Ojibwe" includes Ottawa and Pottawatomie. See p. 9 of the source - "The Ojibwe nation can be separated into four distinct tribes - The Ojibwe, the Mississauga, the Odawa (Ottawa), and the Potawatomi".

\* Ernestine Buswa, Margaret Fox, and Patricia Ryan (eds.), Ojibwe-Odawa People Yesterday-Today, Ojibwe Cultural Foundation, 1978, pp. 3 and 5.

All the essential articles they used they made themselves, and all members of the group could perform the requisite tasks. Although they perhaps carried on some small trade, exchanging hides of moose and caribou for corn with neighboring farming peoples like the Iroquoian Huron, they were primarily self-sufficient and self-contained, shunning close contacts with all but near neighbors to whom they were related by marriage.\*

The Ojibwa developed sophisticated institutions with which to meet the challenges of human life. These institutions covered all departments of life, economic, political, social, and religious. Mother Earth provided the material wants of the people but was also believed to have a spiritual dimension.

The great Midewewin gathering of the Ojibway was held when the fruits and berries began to ripen in mid-summer. This was the time of initiation into the society of medicine men. Like the other great and populous groups the Ojibway had great national celebrations of which the Midewewin was by far the most important. The purpose of this great ritual was to worship the Great Spirit, to make life in this and in the future world secure, and to improve relations with the less important spirits. As with all secret societies everywhere, men or women would seek to improve their position in the band and tribe by increasing their rank in this powerful organization. Some would achieve the valued status of medicine-man and be conversant with the spirit that existed in each animate and inanimate object.\*

The Pottawatomie may be introduced through a fascinating excerpt from a paper by James A. Clifton.

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\* Harold Hickerson, The Chippewa and Their Neighbors: A Study in Ethnohistory, Holt, Rinehart and Winston, 1970, p. 16.

\* Fraser Symington, The Canadian Indian, McClelland and Stewart, 1969, p. 75.

Earlier depictions of the Potawatomi, by myself, Ruth Landes, Alanson Skinner, Robert Ritzenthaler and others have concentrated on the nature and fortunes of Potawatomi in the United States, principally the Wisconsin and Kansas populations. Very little was known of the Potawatomi of Canada, with respect to their culture, dialects or ethnohistory. Indeed, very little is known today about these very interesting populations since I have added hardly more than a few facts and hypothetical formulations. Yet it is of more than passing interest to know that until a very few years ago herds of wild Potawatomi horses roamed the fields of Walpole Island (Richardson 1924; Abraham 1924:33; Jacobs 1973), since these Potawatomi herds were descendents of ponies of Potawatomi "borrowed" from the Spanish frontier settlements in southwestern Illinois in the early 18th century. For although the Potawatomi moved on foot and by canoe into early lower Michigan and northeastern Wisconsin in the very early part of the 17th century as a small population fleeing before the scourge of returned eastwards two hundred years later they did so as mounted warriors, armed with percussion muskets, experienced in the fur trade, now horticultural in subsistence technique, with numerous successful political and military campaigns part of their traditional history.

These two centuries of experience of existence of the borders of New France, Upper Canada, the Old Northwest Territory, and the extreme northern Frontier of New Spain had radically transformed important aspects of Potawatomi society and culture. A small population of refugees clinging to an existence in the midst of their relatives the Ottawa and Chippewa in 1634 had been transformed into a widespread tribal organization with patrilineages and communities scattered from the buffalo lands of the Upper Missouri to Lake Simcoe in Ontario. For example, in the same years that some Wisconsin

Potawatomi were returning to Canadian lands, Billy Caldwell was busily occupied on the Upper Missouri organizing pan-tribal alliances against the Sioux, and carving out for the Prairie Band of Potawatomi a hunting territory in the buffalo lands.

The extent of Potawatomi geographic dispersal and the variety of their ecological and economic adaptations (from an island habitat and an horticultural economy to a high Plains buffalo hunting mode of subsistence) suggest an extremely flexible tribal political apparatus, one with a considerable capacity for expansion, migration, and accommodation to new circumstances.\*

Clifton describes how the Pottawatomie were acculturated both to other Indian models and to some aspects of European cultures. For example, some became Roman Catholics or Baptists.\* Political change also came about through European contact. The following passage describes the pre-contact political structure.

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\* James A. Clifton, "A Report on a Survey of Potawatomi Indian Groups in Canada", University of Wisconsin, July 24, 1973, pp. 8-9.

\* James A. Clifton, A Place of Refuge for All Time: Migration of the American Potawatomi into Upper Canada 1830 to 1850, National Museums of Canada, Ottawa, 1975, p. 14.



The Potawatomi ethos strongly emphasized egalitarian social relationships, although by 1820 this social ideal was breaking down in practice in both economic and political spheres. Traditionally, Potawatomi okamak (leaders) were relatively powerless, although individually more or less influential. The authority of an okama was largely limited to intra-group conflict resolution, to dealing with representatives of other groups under the close scrutiny of the clan elders and adults generally, and to presiding over councils where his power was symbolic. The okama of the dodem (clan) and/or odan (village) was the individual usually singled out and identified by Euro-Americans as the "civil chief".\*

Contact produced new leaders who claimed to speak for "clusters of clans, whole tribes and inter-tribal coalitions". These new leaders began to emerge as early as 1685. "Such men sometimes became petty satraps in a region, but much of their effective power was drawn from skill at manipulating relations with European powers, from whom they could draw wealth they could then redistribute to their cohorts".\*

Potawatomie acculturation to a prairie Indian type also occurred as they moved westwards. This affected economic activities and modes of transportation. The woodland Pottawatomie of the 1650's had been skilled birchbark canoemen. But they became horsemen and lost their skills with the canoe. For this reason, many of those who came to Upper Canada refused to go to Manitoulin Island where fishing was the major staple. They claimed they would starve there. They chose other locations instead, including Walpole Island, where they took their horses with them.

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\* Ibid., p. 12.

\* Ibid., p. 13.

While Pottawatomie settlement at Walpole Island may not have occurred before the great migrations of the 1830's and 1840's, they had certainly inhabited the adjacent territory and often mingled in residence with Chippewa and Ottawa people.

At one time the Ottawas, Chippewas and Pottawattamies were one tribe living in the vicinity of the Straits of Mackinaw. Keewagoushkum, an Ottawa Chief, who was an Indian historian, says in a speech, "The Chippewas, Ottawas and Pottawattomies were one nation. We separated from each other at Michillimackinac. We were related by the same blood, language and interests, but in the course of a long time we have forgotten".\*

Abraham also states that at the time of Pontiac's rising (1763) there was a Pottawatomie village on the banks of the Detroit River on what became the Canadian side. The Pottawatomie were allied with Pontiac. After his defeat and death in 1766, "a number remained and intermarried with the Ojibway Indians living there".\*

Clifton also makes reference to Pottawatomie residence in Upper Canada and explains how a post-1815 Pottawatomie migration into Upper Canada was overly simplified. "First, it became evident that some Potawatomi groups had established residence in what is now Ontario long before the war of 1812, and indeed likely well before the Revolutionary War".\*

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\* R.H. Abraham, "Pottawattamie Indians of Walpole Island", from Kent Historical Society Papers and addresses, Vol. 6, 1924, p. 32.

\* Ibid.

\* Clifton, "Report", p. 4.

The migration of some of the Pottawatomie nation to Walpole Island in the 1830's and 1840's has been described in Chapter IV. A short account is included in R.H. Abraham, "Pottawattamie Indians of Walpole Island" and a more detailed account in Clifton's, "A Place of Refuge for All Time".

Thus the four nations who now inhabit Walpole Island have had a long history together. They inhabited the same or adjacent territories. They enjoyed a similar way of life, living in harmony with nature, drawing sustenance from the earth and the waters, and respecting the source of their livelihood.

The Ojibwa, Ottawa, and Pottawatamie have a similar culture and cognate languages. They were connected politically in the Council of the Three Fires. Although the Hurons or Wyandots spoke an Iroquoian language and had an Iroquoian culture, they lived close to the other three nations who were also their trading partners and allies especially against the Iroquois Confederacy. After the Iroquois had decimated the Hurons and put an end to Huronia, some Hurons went to live amongst the three allies who gradually moved into the territory which they had vacated.

This living together in a shared territory by means of a self-sufficient economy of independent Indian nations established what are known today as aboriginal rights.

The Indian people had met challenges in the pre-contact period and had survived to build their own viable and valued civilizations. They were next to meet challenges from outside. These external forces would challenge their way of life and their aboriginal rights.

## Period II: 1763 Royal Proclamation

The beginning of European contact and some of its effects have already been touched upon in Chapter I. The earliest form of contact was the fur trade. Besides those Indians who traded directly with Europeans, others traded indirectly through Indian intermediaries, like the Hurons. Trade affected Indian life in innumerable ways. The economy and technology was obviously altered while social and political institutions underwent modification also as suggested in Chapter I.

In addition, Indian nations allied themselves to European nations in fur trade rivalry which grew into a wider political rivalry. While the Hurons and their Algonkian neighbours became allies of the French, the Iroquois traded with and allied themselves with the Dutch and British. The wars which ensued, using firearms and other modern technology were a very serious threat to Indian people.

An ultimately more dangerous threat was that posed to the land by European settlement and ideas on sovereignty.

Over the years, the French moved up the St. Lawrence past Champlain's Quebec settlement to Montreal (1642) and into the Great Lakes (1673). By erecting forts and trading posts, and by concluding trade agreements and alliances with the many Indian groups whom they encountered, the French eventually constructed a loose hegemony over the line of land from Gaspé to Lake Winnipeg. Inspired further by motives of empire as well as profit, by 1750 they had extended their sphere of influence from Lake Michigan, through the Ohio country and down the Mississippi to New Orleans and the Gulf of Mexico. The British had also built a large empire in North America by 1750. Following the first settlements at Jamestown in 1607 and Plymouth in 1620, they secured colonies by means of chartered

companies, trading companies, proprietorships, and conquest until they controlled the entire Atlantic seaboard from Newfoundland to Georgia. In the process the Dutch New Netherland colony was taken in 1664 and renamed New York.\*

The Indians who inhabited the frontier lands west of the British Thirteen Colonies were disturbed by colonial encroachments on their territory. The French had secured the Ohio but "these events were not sufficient to deter the stubborn aggressiveness of the British traders and the Ohio Company of Virginia which continued a declared policy of westward expansion through trade and settlement".\* The French, who were more interested in trade than settlement, attempted to prevent British westward expansion. Skirmishes were fought between the troops of these European powers even before the final war between them for control of North America. Their Indian allies were also involved.

Because of raids by the pro-French Indians against British settlements and because of the immanence of war, the British colonies agreed to meet in a general council or congress at Albany in 1754. One of the major difficulties in British colonial affairs generally had been the lack of planning and co-ordination between the various colonial governments, their officials, and Imperial officials. The colonial governments had been responsible for their own defence and relationships with Indians. The Albany Conference sought to remedy

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\* Robert J. Surtees, The Original People, Holt, Rinehart and Winston of Canada, Limited, 1971, p. 19.

\* Robert S. Allen, The British Indian Department and the Frontier in North America, 1755-1830, Canadian Historic Sites, No. 14, 1973, pp. 9-11.

that in part by agreeing upon some policy principles.

The Albany congress of 1754 condemned the private purchase of Indian lands as a principal cause of uneasiness and discontent among the tribes. The need for centralized control of western lands had long been apparent and the congress appealed to the king to create a colonial union to manage Indian trade, war and treaties, buy and settle Indian lands and temporarily govern such settlements which would ultimately become new colonies. . . . A suggestion was made to control expansion and limit existing colonies. The latter suggestion foreshadowed the Proclamation of 1763 and the British policy of establishing an Indian barrier state as a form of frontier defence.\*

Another historian of the period also saw early beginnings of the elements that were to comprise the Indian clauses of the Royal Proclamation.

The exact source of the plan to reserve a large block of interior American lands to Indian use is not clear. The roots of the idea certainly extended back for almost a decade prior to 1763. During negotiations between France and Great Britain before the start of the Seven Years' War, the suggestion had been made that both countries evacuate all the territory drained by the Ohio and its tributaries and that the land be returned to the Indians. Under this plan, trade and the free movement of non-military goods through the reserve would have been permitted. However, it would have prohibited all military installations and settlement in the region. While this plan, like all others put forward during the time, failed to prevent military conflict over the American boundaries of the two empires, the idea of an Indian "neutral" zone in the interior of North America persisted.

Following the end of hostilities, the idea of creating a reserved area was revived, but this time for different purposes. In general, it was thought that

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\* Ibid., p. 11.

by preserving a large territory at the back of the seaboard colonies, unregulated westward expansion of the colonies would be checked and new immigrants to North America would be encouraged to settle in the northern and southern extremes of an expanded British empire.\*

Shortly after the Albany Conference, France and Britain, together with their respective Indian allies, entered the final and decisive war for hegemony in North America. The Seven Years' War (1756-63) was fought around the world by the two European powers. To ensure Indian support the British appointed Sir William Johnson as the first Superintendent of Indian Affairs (1755) and negotiated the Treaty of Easton in 1758 by which Pennsylvania agreed to surrender its title to Indian lands west of the Appalachian Mountains. "This treaty temporarily pacified the Algonkian tribes of the Ohio valley. . . ."\*

Military success against the French, however, worked against the western Indians because it opened the way for settlers and traders. Military and Indian Department officials tried to prevent and even drive out settlement but failed.

The British interest in safeguarding Indian lands as exemplified by the Treaty of Easton was devised under the shadow of war, but never heartily approved of by any colonial assembly. Inspired by the news of a victorious peace with France, settlers and traders, eager

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\* Jack Stagg, Anglo-Indian Relations in North America to 1763 and an Analysis of the Royal Proclamation of 7 October 1763, Research Branch, Indian and Northern Affairs Canada, 1981, pp. 363-64. This publication provides a detailed account of the historical background to the Proclamation.

\* Allen, British Indian Department, p. 13.

for the acquisition of new lands or fortune, poured into the Indian country where they used 'Every Low Trick and Artifice to Overreach and cheat those unguarded ignorant People'.\*

By 1763 the British had achieved victory and the Treaty or Peace of Paris was signed in February of that year. Meanwhile, there was a concern in London about a possible war between Indians and settlers. With French power broken, there was no countervailing force against British expansion except the Indians themselves. Previous assurances and agreements had failed. Colonial and imperial interests were in conflict, the former generally favouring expansion, while the imperial authorities feared an Indian war. Secretary of State Lord Egremont, wrote on the subject to Sir Jeffrey Amherst, then commander-in-chief in North America.

The letter was prompted by reports received in England of a potential conflict arising between some Delaware Indians and a number of New England homesteaders who had settled on lands near the Susquehanna River in northern Pennsylvania. Egremont expressed his concern to Amherst about the dangers of any future conflict between the colonials and the Indians and asked the general to recommend orders for the prevention of an Indian war. He told him that the king wished to:

conciliate the Affection of the Indian Nation, by every Act of strict Justice, and by affording them... Protection from any Incroachments on the Lands they had reserved to themselves for their hunting Grounds

And, he added, 'a plan for this desirable End, is actually under Consideration'.\*

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\* Ibid., p. 16

\* Stagg, Anglo-Indian Relations, p. 288. Note the wording "they had reserved to themselves".



The groundwork for the Proclamation of 1763 was being laid down in London even before the treaty with the French had been formally signed. By that treaty Canada was ceded to Britain. "It had been retained to put an end to the French and Indian wars. . . . That such a peace would be the result of the cession of Canada was soon to prove a spurious hope".\*

In the spring, the Indians of the upper Ohio and the Great Lakes, who had been allied to France, refused to accept France's defeat and fought back in the rising which has been associated with the Ottawa chief, Pontiac. Almost certainly, many ancestors of members of the Walpole Island Band participated since it included a coalition extending from the Senecas of New York to the Ottawas, and Ojibwas of Sault Ste. Marie. They tried to clear the interior of the British but after three years had to admit defeat and enter a peace pact with them.

Pontiac's war, however, no doubt underlined the concern that had already been expressed in London over a general Indian war. With- in that context, the elements of the future Proclamation were being put together there. The "Pownall Sketch" was a report prepared by the Board of Trade\* on the question, "What new governments should be

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\* W.L. Morton, The Kingdom of Canada, McClelland and Stewart, Second Edition, 1969, p. 148.

\* John Pownall, secretary to the Board of Trade (ancestor of the Colonial Office) prepared the report together with Maurice Morgann, personal secretary to Lord Shelburne, President of the Board of Trade. See Stagg, Anglo-Indian Relations.

established in the countries ceded to your Majesty in America". The report went beyond this question. "Pownall attempted to link the nature and extent of the new colonies to be established with the necessity of providing a rational policy to govern future Indian-colonial relations".\* Pownall's suggestion was designed both to serve British mercantile interests and to keep the peace.

. . . if either old or new colonies were prohibited from expanding and making new settlements beyond 'the heads of rivers which flow into the Atlantic Ocean or Gulf of Mexico', colonial development would remain accessible to the importation of British manufactured goods; at the same time, no breach of trust would occur with the interior tribes of Indians, whose prime concern was encroachments on their hunting grounds.\*

Pownall's basic idea was incorporated into the Royal Proclamation signed by King George III on October 7, 1763. The Royal Proclamation established boundaries for the new British province of Quebec which cut off the western fur trade lands from its jurisdiction. This is where the western Indians were protesting the British takeover. Therefore, the west was not turned over to the British American colonies who claimed it, but, for the time being, it was reserved to the Indian inhabitants and no settlement was permitted.

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\* Stagg, Anglo-Indian Relations, p. 311.

\* Ibid., p. 312.

It should be noted that this was a Royal Proclamation signed by King George III and issued in his name. It is an early example of the direct connection existing between the Crown and Indian people who claim direct royal recognition and protection of their rights. This has subsequently led to many trips to the sovereign in London as well as to a claim on the attentions of the monarch while in Canada. The latest examples were trips made in connection with the Canadian government's constitutional proposals.

The Proclamation was not concerned solely with Indians as already suggested. It had three other major purposes; the disposition of the newly-acquired French and Spanish territories, the provision of governments for them, and the establishment of regulations for granting land to ex-soldiers of the late war. Nor was it entirely concerned with Indian land. It also regulated the Indian trade.

Historians often think of the Royal Proclamation of 1763 only or mainly in constitutional terms. However, the Proclamation did make a statement about Indian lands, and historians usually recognize this as well as its constitutional significance. "It was Pontiac's revolt and a desire to pacify the Indians, rather than a careful examination of the new problem of colonial government, which produced the Royal Proclamation of 1763".\*

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\* J.H. Stewart Reid, Kenneth McNaught and Harry S. Crowe, A Source-book of Canadian History, Longmans Canada Limited, Revised Edition, 1964, p. 49.

The Indian clauses of the Proclamation may be seen in Appendix A.\*  
One interesting and significant point about the wording has been made  
by Jack Stagg.

With particular regard to the type of lands the Proclamation sought to guarantee protection, the introductory paragraph of the Indian section states only that these be comprised of:

such Parts of Our Dominions and Territories  
as, not having been ceded to, or purchased  
by Us, are reserved to them, or any of them,  
as their Hunting Grounds....

It was, then, reserved hunting lands in the possession of Indians and situated within that part of North America over which Great Britain held sovereignty that were to be protected. Such lands were never to have been ceded to or purchased by Great Britain.

The wording in the introductory section is important in that, in spite of several apparent qualifications, the restrictions on what lands should receive protection from the Crown are really very minimal. In a final draft of the Proclamation, completed for approval by John Pownall before it went on the Privy Council, the lands to be protected were described as:

such Parts of Our Dominions and Territories,  
as are occupied by or reserved to them, as  
their Hunting Grounds....

*use of "the same" 1876*

Pownall changed the final wording as quoted above and incorporated into the final document which was signed by the king. If the original wording had been allowed to stand, the protection of Indian hunting lands would have apparently required a prior act of reservation - i.e., governors or the imperial government would have had to designate certain lands as 'reserved' lands before protection could have been provided. However, under the eventual wording, if lands were in the 'possession' of Indians, situated within British

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\* From Revised Statutes of Canada, 1970, Appendices, pp. 123-129.

territories and not previously ceded to or purchased by Great Britain, such lands would be considered 'reserved' and would automatically receive protection under Proclamation measures.\*

Many questions arise about the interpretation of the Royal Proclamation of 1763. They concern the extent and location of the territory\* subject to its provisions and the meaning of the clauses reserving their lands to the Indians. Do these clauses recognize title or only usufructuary right? Were the rights meant to be permanent or only temporary? Historians, lawyers, and the courts have dealt with these questions and a considerable bibliography exists on the subject.

This Royal Proclamation of 1763 has been called the Charter of Rights of the Indians since it provides statutory protection to aboriginal rights. It is important to note that the Proclamation recognized aboriginal rights. It did not create or establish them. Indian people did that themselves. Jack Stagg, an historian of the Proclamation has made this point.

No phrase or term within the introductory statement or in any other part of the Proclamation, for that matter, states or implies that the Proclamation in and of itself created this reserved status or established Indian rights in reserved lands that did not already exist.

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\* Stagg, Anglo-Indian Relations, pp. 358-59.

\* See Appendix B (map) from Peter A. Cumming and Neil H. Mickenberg (eds.) Native Rights in Canada, 2nd edition, 1972, p. 25. Walpole Island is clearly within the Proclamation territory.

Reserved lands already existed in North America by virtue of the presence in 1763 of territories which had never been "ceded to" or "purchased by" Great Britain. All the Proclamation purported to do was to outline measures to protect Indians from being disturbed in the quiet possession of those reserved lands.\*

The Proclamation did have a double edge, however. While providing protection to Indian lands, it also provided a mechanism whereby those lands might be alienated. At the time this provision was also a form of protection since it prevented private persons from acquiring Indian land. This could only be done by the Crown at an assembly of the Indians called for the purpose. However, Indian people to-day would say that they have lost a great deal of land through the application of that mechanism. It also created a Crown monopoly of Indian land and thus depressed values. Like other forms of protection, those provided in the Royal Proclamation of 1763 have also cut both ways.

For the first few years after the Proclamation, the problem was simply to have it obeyed at all. Because of encroachments, the Indian boundary line was extended westward to the Ohio in the Treaty of Stanwix in 1768.

By the Treaty of Fort Stanwix in 1768, Great Britain made a definite pledge that the Ohio River should be the frontier boundary forever. This promise gave the Indian tribes a sense of security against future aggressions, and for that reason won their neutrality.

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\* Stagg, Anglo-Indian Relations, pp. 373-74.

In the generation of Indian conflict that followed, tribal spokesmen never ceased to remind the British and Americans of the solemn pledge made by George III at Fort Stanwix. The boundary, agreed upon in 1768 and reconfirmed by American commissioners at the Treaty of Pittsburgh in 1775, was to become the major bone of contention in Indian affairs and was not finally abandoned by the tribes of the Ohio valley and Great Lakes region until the Treaty of Greenville in 1795.\*

The Indian people had survived the period of European rivalries and, because of the threat they posed to the colonies, had emerged with their lands protected in theory by the Proclamation. However, the growth of the Thirteen Colonies and the successful American Revolution would deprive them of most of the protection afforded and leave them to face the difficult treaty-making period which followed. One Indian spokesman outlined the strengths and resources with which they would meet those challenges.

Englishman, although you have conquered the French, you have not yet conquered us! We are not your slaves. These lakes, these woods, and mountains, were left to us by our ancestors. They are our inheritance: and we will part with them to none. Your nation supposes that we, like the white people, cannot live without bread - and pork - and beef! But you ought to know, that He, the Great Spirit and Master of Life, had provided food for us, in these spacious lakes, and on these woody mountains.\*

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\* Allen, British Indian Department, p. 20. The Treaty of Greenville was negotiated with the United States. See Chapter III.

\* Quoted in Allen, British Indian Department, p. 16.

### Period III - Treaty Making 1790-1827

Although the Royal Proclamation had reserved the lands held by Indians for their use, it also provided a means whereby those lands could be ceded to the Crown for subsequent sale to settlers or for other uses. The ancestors of the Walpole Island Band were amongst the earliest to cede lands in this way. "Between 1790 and 1827, little more than an average human generation, the British crown acquired settlement rights to over 4 million acres in what is now southwestern Ontario".\* To understand why this occurred when it did some background is necessary.

Over the years of European contact the Indian population declined in numbers as a result of warfare (battle deaths, starvation, and deprivation of trade goods) and diseases such as small pox which had been unknown to Indians. The decline in the Indian population due to war, famine, and disease coincided with a rapid increase in the white population. In 1763 Indians had still been sufficiently numerous to require the recognition made in the Royal Proclamation of that year. The ratio of Europeans to Indians, however, was rapidly shifting to the disadvantage of the Indian. To continue Surtees' explanation: "By 1770, the thirteen colonies contained 2,780,000 persons, and over 70,000 lived in the province of Quebec. By 1800, the young American republic had a population of over four million, and about 600,000 white persons lived in Upper and Lower

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\* Dean Jacobs, "Indian Land Surrenders", p. 1.



Canada. According to a report compiled by J. B. Macaulay in 1839, there were about 11,000 Indians associated with the province of Upper Canada which at that time had a white population of about 400,000. . . . In terms of population, therefore the Indians had become vastly outnumbered".\* This is the Indian demographic background to the events of this period. (See also Surtees, 1983, pp. 17-18.)

Of importance to the Indians of Upper Canada was not only the population ratio but the shifts in population. There was the trend to westward of the white population which was held back to some extent by the Proclamation line\* and by Indian resistance. The success of the American Revolution wiped out the Proclamation line in American territory and the Battle of Fallen Timbers (1794) effectively broke Indian resistance. The other population shift, a direct result of the successful revolution, was the migration of the Loyalists to British territory which took place from about 1784 onwards. This migration eventually merged with the westward flow of population. The later migrants were termed "Late Loyalists" since no one knew whether they were really Loyalists or just frontier people moving west.

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\* Robert J. Surtees, The Original People, Holt, Rinehart and Winston, 1971, p. 33.

\* How effective a block this was is doubtful. Indian resistance was probably more effective. (See Surtees, 1971, pp. 33-34.)

Western Ontario did not receive many settlers from the migration of the early Loyalists. The area did receive immigrants from the United States as part of the general movement of western land-seeking until this source was closed by the outbreak of war in 1812. This general westward movement of population spilling into the western region of Upper Canada is the other demographic feature forming the background to the Indian land surrenders.

These land cessions were arranged before the pressure of non-Indian immigration was felt in the far western country ceded by the ancestors of the people who now comprise the Walpole Island Band. Canadian historians generally agree that acquiring Indian land before settlement was the standard British and Canadian practice. While the practice no doubt made for a more peaceful relationship on the British side of the boundary, it also meant that the Indian parties to the land cessions were less able to know from experience the consequences of ceding away their land. Life did not change for Indian people immediately after the cession. They would continue to use the land ceded as they had done before. It was only gradually as settlement occurred that the real consequences became obvious. Forests were cleared and fields fenced off. More hunters pursued less game. Pressure was felt by the Indian people to settle in one place. That generally meant taking up farming for a living. Those who continued to try to live in the old way had to travel greater distances in search of game. This sometimes produced illness from exhaustion or exposure.

Because land cession took place before substantial settlement and because of the Proclamation provisions, it was not the settlers who dealt with the Indians for the land. "The negotiating was done by the officers of the Indian Department, or by military officials, who had had considerable experience in Indian affairs. . . . the people involved in the land surrenders were experienced and knowledgeable about Indians and about Indian methods of conducting business. They knew the protocol of Indian Councils".\* This circumstance whereby Indians treated with known and trusted Government liaison officers strengthens still further the argument that they did not knowingly deprive themselves of the land which was the foundation of their entire way of life.

With regard to the first Indian land cession in southwestern Ontario made in 1790, land had already been taken up in violation of the Crown's regulations against individuals acquiring unceded Indian land. Much of it had been acquired by military officers connected with the Indian Department, including Colonel McKee. They had selected choice locations on the opposite side of the river from Detroit.\* A land board had also been established in 1788 for the granting of settlement lands. Surtees attributed the making of the

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\* Robert J. Surtees, "Indian Land Cessions in Ontario, 1763-1862: The Evolution of a System", Ph.D. thesis, Carleton University, 1983, p. 23.

\* See Ernest J. Lajeunesse, The Windsor Border Region, The Publications of the Champlain Society, Toronto, 1960,

1790 treaty to the double motive of regularizing the lands already accepted from Indians and securing land for the land board.\*

In May, 1790, Cession #2 was negotiated on behalf of the Crown by Colonel Alexander McKee, an officer of the Indian Department, with the "Ottawa, Chippawa [sic], Pottawatomy and Huron Indians [sic] Nations of Detroit".\* This was the first major land surrender in what is now southwestern Ontario.

The treaty-making or land cession process itself followed the principles and procedure laid down by the Royal Proclamation of 1763 (Period II). In the chapter for Period II it was pointed out that the Proclamation contained both protection for Indian land and a mechanism whereby that land might be given up or surrendered.

Indian land was reserved to the Indian nations

. . . but that, if at any time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie . . . .\*

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\* Surtees, "Indian Land Cessions", p. 150.

\* The full text of the treaty is printed in Canada, Indian Treaties and Surrenders, Ottawa, 1905, Vol. I, pp. 1-5 and appended to this paper as Appendix A.

\* "Royal Proclamation of 1763" in Documents Relating to the Constitutional History of Canada, 1759-1791, A. Shortt and A.G. Doughty (eds.), Ottawa, 1918, pp. 163-67. See also Chapter II, Appendix A.

The area surrendered can best be seen on the map (Appendix B). "The demarcation line of the surrendered territory began at a point on the northern shore of Lake Erie southeast of London, Ontario at the western limit of an earlier Mississauga surrender. From there it followed the waterways around Lake Erie, the Detroit River and Lake St. Clair to 'the mouth of a river known by the name of Chennail Ecarte and up the main branch of the said Chennail Ecarte to the first fork on the south side'. Running due east until it intersected with the Thames River, it followed that watercourse to the north-west corner of the Mississauga cession. After following the western limit of that cession, the line ran due south to the point where it began on Lake Erie".\*

Most likely the treaty was regarded by the Indians as a pact of friendship and alliance. The Indian parties to the treaty were allies of the British in trade and war. They were accustomed to receiving goods from the military officers as a consequence of this alliance. To the extent that they understood that their land was involved in the treaty, they most likely thought of the agreement as a sharing of the use of the land. They could never have fully imagined the numbers of Europeans who would eventually come to settle nor their own exclusion from most of the territory.

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\* John L. Taylor, "The Historical Foundation for the Walpole Island Reserve Boundary Question", pp. 15-16.

The loss of land, the selling or ceding of land, was an alien concept to the Indian mind. Under the influence of capitalist ideas and practices from the later Middle Ages onwards, Europeans had come to regard land largely as a commodity. As a commodity, it could be bought and sold and held in exclusive ownership by one proprietor. Indians had certainly recognized territorial boundaries pertaining to Indian nations. Wars had been fought over territory and control over territory had passed from one Indian nation to another. However, no Indian nation regarded land as a commodity. The general Indian concept of land, as contrasted with that held by Europeans, was held by all Indian peoples. Land with the waters, trees, plants, and animals has a spiritual dimension. Through that spiritual dimension human beings live in relationship with the land that supports them. Land was often referred to as a 'mother'.\* There was an obligation to care for the land which nurtured the people as a child grows up and cares for its mother.

The land could not be separated from the self-sufficient economy which Indian people had built up over the centuries. When the land was gone, the Indian economy went too and with it many of the inter-related social, religious and political institutions which had sustained Indian life.

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\* See The Spirit of the Alberta Indian Treaties, edited by Richard Price, Toronto, 1979, where Indian elders views are given. Also see Dean Jacobs, "Indian Land Surrenders".

In 1790 that was still to come. The Indian signatories to Cession #2 did not understand the agreement in the same way as the Government. Surtees\* explains this difference in understanding. Indians he points out

had had sufficient contact with Europeans to understand that individual settlers did build permanent homes and did cultivate small farms; and on the whole, they respected such arrangements when they encountered them. But it was a long intellectual leap from such confined holdings to a township or district. It is unlikely that any of the Indians who agreed to sell land in this early period understood, then, the true nature and meaning of the land cession agreements. There is evidence to suggest that when the Mississaugas\* agreed to the land cessions they were in fact of the judgement that they were simply agreeing to sell the use of the land, and not its total and final loss.

The Government regarded the treaty-making as a legal act to cede land forever. Indians saw it as a treaty of friendship in which they agreed to share the land and its resources with the newcomers.\* They could not have known how many newcomers were yet

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\* Surtees, "Indian Land Cessions", pp. 22-23.

\* Surtees was describing a treaty with the Mississaugas but the principle is the same. cf. the elders' views in The Spirit of the Alberta Indian Treaties.

\* Since Indian nations held land in common, the concept of sharing its use was familiar to them.

to arrive nor could they have foreseen the effects of the technological age which was only just dawning in Europe itself. The combined effect would deprive Indians of all but small portions of their former territory, destroy the viability of their traditional way of life, and expose them both to contempt for their apparent helplessness and to pressure to assimilate to the settler society in order to survive at all.

In the Government view Indian rights to the ceded territory had been "extinguished". A communal and traditional system had been replaced by individual land proprietorship using the Crown as intermediary. This would eventually result in Indian exclusion from most of the ceded territory and to the replacement of Indian standards and values by those of another society.

Doug Sanders has described Cession #2 as "a true 'beads and blankets' treaty" by which he means that what the Indians received was insignificant in comparison with what in fact they gave up no matter how they might have understood the meaning of the proceedings.\*

"The Indians received 1,680 blankets, bolts of scarlet cloth, penknives, ivory combs, horn combs, ribbons, silk handkerchiefs, laced hats, looking glasses, plus rum and tobacco". The cession stipulated that the Indian nations were to receive £1,200 in merchandise. Since the area surrendered consisted of 1,344,000 acres, Dean Jacobs has

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\* Doug Sanders, "Land Claims: A Special Page, Part 3: The Treaties in Ontario and the Prairies", in Nesika, March 1975. A complete list of what was given can be found in Indian Treaties and Surrenders, pp. 3-4. The value of the goods was intended to equal £1,200.



calculated the value at .214 pence per acre.\* It should be noted also that this was a lump sum payment, not an annuity.

There is a double significance to this land cession. First it is the beginning of territorial restriction in southwestern Ontario and therefore the opening of the modern era of Indian life for the people affected. Secondly, the territorial base of those people (or a part of them) was simultaneously defined by what the cession left out. The islands now making up the Walpole Island Reserve (and several other islands) and the beds of the rivers and lakes adjacent were not included in the cession.\* Through Cession #2 in May, 1790, the ancestors of the people of Walpole Island lost a major portion of their territory and, at the same time, had their modern territorial base or "reserve" defined or partially defined. Later land cessions would also leave Walpole Island intact and in Indian hands.\*

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\* "Indian Land Surrenders", p. 5.

\* See Taylor, "The Historical Foundation for the Walpole Island Reserve Boundary Question".

\* Indian reserves were not generally provided for in land cessions or treaties until 1818. In Cession #2 two tracts of land were provided which were claimed exclusively by the Wyandot nation. These reserves have not survived. See Dean Jacobs, "Indian Land Surrenders", p. 5.

The Indian people had survived early challenges to their self-sufficiency. They had accommodated to the European trading system and to European diplomatic and military alliances. By 1790 a new challenge was facing them, the greatest of all, the loss of most of their land to European settlement. With the land base left to them at Walpole Island, they survived this challenge too.

The next land surrender was taken in 1796 from "the Principal Chiefs, Warriors and people of the Chippawa [sic] Nation of Indians".\* The land surrendered was intended "for the future residence of such of the western nations of Indians as have been driven from their Country by the army of the United States".\*

There is considerable background to this situation. Some of that should be provided at this point.

The boundary line negotiated in the Treaty of Paris in 1783 not only left white Loyalists in the territory of the new United States but placed the Indians west of the Ohio within that jurisdiction as well. Many of them had been allies of the British and resented the boundary. Their policy was to contain American settlement east of the Ohio and many of them were prepared to go on fighting to do so. There was even a suggestion of establishing an Indian buffer state in the Ohio Country.

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\* Canada, Indian Treaties and Surrenders 1680-1890, Ottawa, 1891, I, pp. 19-22.

\* PAC, RG 10, Indian Affairs (Red Series, Eastern Canada), Vol. 39, pp. 21652-58. Quoted in Jacobs, Walpole Island Land Claims, 77.

The British, above all, wanted peace. They had had enough war and did not want to be drawn into an American-Indian conflict. However, they could not disregard their late allies. British policy was therefore equivocal. Britain retained and garrisoned the border posts which were now within United States territory but gave no real military support to those Indians who went on fighting. They did, however, blow hot and cold leaving the Indians at the time unsure whether they would be supported in making war.\* In the end, they were not. Indian resistance to American westward expansion was broken at the Battle of the Fallen Timbers in 1794. At that battle were Indians of the "three fires", Ottawa, Chippewa, and Pottawatomie.\* The military defeat of the Indian nations by the United States Army under General Anthony Wayne ended serious military opposition to American expansion in this area. The following year, at a six-week peace conference, the Treaty of Greenville was signed between the Indian nations and the United States. Meanwhile Jay's Treaty between Britain and the United States had been signed in November, 1794. Under its terms, Britain agreed to evacuate the Northwest posts by 1796.

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\* See S.F. Wise, "The Indian Diplomacy of John Graves Simcoe", Canadian Historical Association. Annual Meeting, 1953: Report with Historical Papers: pp. 36-44.

\* Seventy white Canadian rangers under an old Loyalist also fought on the Indian side.

All of these events led the authorities on the British side of the line to expect an influx of Indian migrants from south of the Great Lakes.

It had been decided after Fallen Timbers that arrangements should be made for the settlement in Upper Canada of any Indians who desired to move from the United States. The spot chosen for their settlement was an area twelve miles square just north of Lake St. Clair, where the Chenail Ecarté River ran into the River St. Clair from the east. Simcoe recommended this location to Dorchester in December 1794, and in July 1795, McKee was ordered to discover how many Indians might want to settle there. He was also to purchase the area from the Indians who claimed it. McKee travelled north of the Thames River in September to find out whether the Chippewas would cede the area at Chenail Ecarté. McKee had little difficulty. The Chippewas, who were the only claimants of the lands, readily agreed to the sale in exchange for goods to the value of £800 Quebec currency. The sale would be consummated when the goods arrived for distribution. McKee estimated in October 1795 that perhaps two or three thousand Indians might want to take advantage of the British offer to give them land on which to settle. He hoped that the greatest part of the Indians who had been at Swan Creek, together with the Ottawas from the River Raisin, would take part in the move. Some of the Ottawas had gone with McKee when he went to arrange the purchase, and they were very pleased with the area, which was suitable for hunting as well as for cornfields and villages. They wanted the sale to be completed in time for them to move there and plant in the spring. Although this settlement never flourished as hoped, Great Britain had thus taken steps to maintain her influence over the western Indians in spite of Wayne's victory and the agreement to withdraw from the posts.\*

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\* Reginald Horsman, Matthew Elliott, British Indian Agent, Wayne State University Press, 1964, pp. 113-14.

These arrangements can be followed in the correspondence printed in Cruikshank's Simcoe Papers, which has been attached as Appendix C. A map is included with them showing the precise location of the intended reserve.

The removal of those Indians who wanted to leave the United States was a slow process. Although Dorchester approved the idea of the purchase of Chenail Ecarté in January 1796, he could not send the necessary supplies until the opening of navigation, and even then they were delayed. The Indian Department fretted at the delay, since it meant that they could not relocate the Indians in time for early spring planting. The Department maintained that this would have enabled them to reduce the consumption of provisions, and also to open communication with the nations westward to the Mississippi. By the time the Indian Department was able to complete preparations for the removal to Chenail Ecarté, the Indians themselves delayed the operation. They had planted corn at the foot of the rapids, and they did not want to move until they had harvested it. Eventually, rather than the thousands of Indians forecast by McKee in the previous fall, it appears that only hundreds moved to British territory. Some of the Shawnee under Blackbeard and Captain Johnny moved to Bois Blanc, opposite to Elliott's, in July, and there were scattered bands of other tribes, but it was not until 1797 that the Indians actually moved to Chenail Ecarté. There was no great exodus from American territory, in spite of the preparations of the Indian Department.\*

Since so few Indians came, the plan to make a reserve in this location failed and the land was eventually patented to non-Indians.

The third land cession involving the people of Walpole Island concerned a tract of land running eastward from the St. Clair River and the shoreline of Lake Huron. (See map in Appendix D.) A provisional agreement was made on April 26, 1825 with the "Chippawa

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\* Horsman, Matthew Elliott, pp. 115-16.

[sic] Nation of Indians inhabiting and claiming the territory or tract of land as hereinbefore described" and that nation was said to consist of 440 individuals. Some of these people lived at Walpole Island or later settled there. This group was to be paid the yearly sum of £1,100 "to be paid in goods at the Montreal price". Provision was made for a reduction of the amount should the number of people decrease but no provision was made for an increase in the amount. This omission probably reflects a common view at the time that Indians were a "dying race".

This provisional agreement was confirmed by a treaty or "indenture" as it was termed, on July 10, 1827. The text stated that His Majesty wished to appropriate "to the purposes of cultivation and settlement" the tract of land and referred to the provisional agreement made in 1825. The text also mentioned that the tract had been surveyed and that it was now possible to define "certain small reservations expressed to be made by the said Indians from and out of the said tract for the use of themselves and their posterity". Reserves were a usual provision of land surrender treaties made after 1818. The ancestors of some Walpole Island Band members were parties to this treaty. Although they did not live on the reserves provided, they did share in the annuity. It was this annuity which led to the "treaty" versus "non-treaty" dispute which arose in 1879 and dragged on beyond the turn of the century.

While this document mentions the £1,100 and the provisions for a decrease, it includes a new proviso. "There shall be no reduction of the said annuity by reason of any decrease of numbers, so long as

the said Indians or their posterity equal in number one-half of the number entitled to claim by the last preceding numeration". In this agreement also there is mention of posterity which did not occur in the provisional document. The full text of these agreements is found in Appendix E.

Period III, the time of land surrenders, was a period when the foundation was laid for territorial loss and for a very different life on a "reserve". This was the next challenge which the people of Walpole Island would have to face. Its effects were not felt very much during the period of land surrender itself but came shortly after.

During the land surrender period (1790-1827) Indian people suffered the shock of division and uncertainty about their response to western settlement in the United States, the military defeat of the militant faction by the United States Army, the final boundary settlement and the loss of the British posts as provided for in Jay's Treaty. They experienced the War of 1812 in which many of them fought on the British side with considerable loss of life. Finally, they found themselves settling on "reserves" since their former territory had been ceded by treaty and was being settled.

Period IV: 1827-1867 Civilization Projects  
and Assimilation Policies

Following the land cessions of the preceding period, the Indians who settled at Walpole Island found themselves restricted more and more to the area in the immediate vicinity of their home. They were encouraged to take up agriculture as the only available substitute for their once self-sufficient economy. Moreover, it was hoped that in time they would assimilate as indicated by legislation of 1857 under the title of "Act to encourage the gradual Civilization of the Indian Tribes in this Province. . .".\* During this period too the Church of England and the Methodist Society sent missionaries to establish Indian congregations at Walpole Island and schools were opened there as well.

The activities of Government and Church and the policies of reserves, settlement, and agriculture were all connected by a changing attitude towards Indians. Prior to about 1830 Indians had been regarded as organized into various nations inhabiting specific territories. They were trading partners and military allies. While traders dealt with them commercially, diplomatic and military relationships were in the hands of the Governors who performed their duties personally and through military officers, often especially appointed to the Indian Department such as Colonel Alexander McKee. By 1830 several factors had changed this situation. The loss to Britain of the old north-west south of the Great Lakes and its settlement by

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\* Statutes of Canada, 20 Vic., 1857, Cap. 26.



white Americans had displaced the Indian residents and destroyed the British fur trade of the region. The southern portion of Upper Canada was being similarly settled. Nor were Indian allies for war deemed as important as they had been. Consequently, their relationships with Government were taken out of the hands of the military and put under civilian control.

To the settlers, Indians looked like the remnants of a once-proud people as they settled on their various reserves within a territory that had once been entirely theirs. Some settlers held them in contempt while to most they were at best irrelevant to the settlement and development that was occurring throughout Upper Canada in the nineteenth century.

At home in Britain changes in attitude towards the native peoples of the Empire were occurring too. These were often at variance with those of the settler populations of the colonies but had their representatives there especially amongst some of the missionaries. The 1830's witnessed several religious movements amongst several Christian denominations which reflected an increasing concern for the welfare of native peoples. One organization specifically devoted to the purpose and inspired by these movements was the Aborigines Protection Society founded in 1837. Representatives of these views were also found in high places in the Colonial Office.

These changing conditions in Upper Canada and the changing outlook upon native peoples led to new approaches towards Indian policy. These approaches were not entirely unified, however. They were divided on two important points. One view, represented by Lieutenant

Governor Sir Francis Bond Head, held that Indians could not survive modern conditions and would eventually die out. Many people disagreed, believing that Indians could and should assimilate to European ways of life. Another difference concerned the best way of dealing with Indians. Sir Francis Bond Head thought they should all be sent to Manitoulin Island where they could continue the traditional life as long as they survived with a minimum of harm from settlers. His policy also had some self-interest. Removing Indians to Manitoulin Island would vacate some valuable land for settlement and development. One area for which Bond Head took a surrender specifically to remove the Indians to Manitoulin Island was the Saugeen Tract. In this he met some opposition from religious groups.

Sir Francis was convinced that the Indians could never become 'civilized', i.e. farmers, and 'the greatest kindness we can perform towards these intelligent, simple-minded people, is to remove and fortify them as much as possible from all communication with the whites . . . .\*

Contrary views were held by Justice James Buchanan Macaulay who in 1839 was asked by Lieutenant Governor Arthur (who had replaced Head) to prepare a report on the Indians of Upper Canada.

Predictably enough, Macaulay, as a believer in racial amalgamation, disagreed with Head. The Indians should not be isolated from those whom they were expected to imitate, viz: white settlers. Hence, he opposed the modification of Manitoulin to a centre for Indians

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\* J.C.M. Boom, "A Brief Sketch of Indian Affairs in Central Canada, The British Period Part I: 1760 to 1845", Indian Claims Commission, 1973, p. 31.

already comfortably settled elsewhere, though he admitted its suitability for those 'wandering' tribes whose 'rise to civilisation' must needs be gradual. \*

Arthur wanted to remove to Manitoulin the "wandering" Canadian Indians and "those American Indians at present at Walpole Island and Chenail Ecarté".\*

Surtees commented on the attitude towards Indians and the Indian policy of the period generally:

To white observers, therefore, the Indians simply did not fit in. The answer to this dilemma was to change the Indian, to make him fit in, so a benevolent, paternalistic reserve system was adopted. In effect, the Indians became special protégés of a white society, which would use the Indian Department to "civilize and Christianize" the Indians so that these native peoples would be "useful" citizens. It also served as a means of salving the white man's conscience for this policy was regarded as a great mission, and negative action was replaced by positive action. Instead of simply taking lands from the Indians in order to permit progress, Whites now saw themselves as giving the Indians the benefits of civilization. Unfortunately, the new protégés were expected to give up their past and their traditions. They were also expected to grasp gratefully and quickly at this opportunity.\*

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\* Ibid., p. 45.

\* Ibid., p. 48.

\* Robert J. Surtees, The Original People, p. 38.

"Before the surrenders, the ancestors of the Walpole Island Band used the resources of a wide region to obtain game, fish, and maple syrup. The major land surrenders between 1790 and 1827 and the European settlement which followed reduced the size of the territory available for these traditional social and economic activities".\* Dean Jacobs has further described this transition. "From a society based on an extensive migratory hunting and fishing existence, the Indians were forced to turn to agriculture as their main source of livelihood. . . . They were confined to one locality and were provided with the barest of farming implements and technical knowledge".\*

The transition, of course, spread over several years. During that time the people continued to use the resources of unsettled areas for the traditional purposes: hunting, fishing, gathering, maple syrup collecting and wood-cutting. Nevertheless, the territory available steadily and rapidly diminished in the face of settlement and development. By the 1840's, the Superintendent, J.W. Keating reported that, "The game has almost disappeared in the neighbouring hunting grounds".\* Keating clearly regarded the loss of game a benefit to

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\* John L. Taylor, "The Historical Foundation for the Walpole Island Reserve Boundary Question", May 3, 1983, p. 21.

\* "Walpole Island Farming History" in Jacobs, Walpole Island Land Claims, p. 40.

\* Canada, Province of. Legislative Assembly. Report on the Affairs of the Indians in Canada Laid Before the Legislative Assembly, March, 1845 (By R.W. Rawson, J. Davidson and W. Hepburn), p. 34.

the Indians since they would not seriously devote themselves to agriculture while they could hunt instead. This opinion was shared by the Anglican missionary, the Rev. James Coleman.\*

It had been forcefully expressed in the 1840 Report:

As to the destruction of game within their hunting grounds, encircled as they are by agricultural settlements of the European race, it is hardly worth the inquiry; for if the whole people within the several reservations had to depend upon this source of subsistence, they would speedily become extinct. It continues just plentiful enough to keep alive their ancient propensities, and furnish a pretext for continuing the habits of savage life--but certainly nothing commensurate with the requisite subsistence of the Tribes. As regards the game, therefore, perhaps its entire extinction or disappearance might be ultimately more beneficial to the Indians, than its most rigid preservation for their use.\*

While the prevailing opinion was that the Indian future would have to be based on agriculture, Lieutenant Governor Sir Francis Bond Head was skeptical even of that. "Yet it should be kept in mind that no matter how important and valuable the rich soil is for the White man . . . this same land is useless to the Indians for they do not and cannot use it properly . . . . Thus as soon as the game is exhausted or frightened off, the land, however rich, is useless to him, and in this state, much of the Indian property in Upper Canada at present exists . . . . For instance, I found sixteen or eighteen

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\* Ibid., pp. 136 and 171.

\* Reports on the Executive Council and Indian Department in Upper Canada, Toronto, 1840, p. 35.

families of Moravian Indians living on a vast tract of rich land, yet from absence of game almost destitute of everything . . . ."\*

This is a picture of a people in the transitional stage between two ways of life, the old going, the new, not yet acquired. These problems resulted from the increasing number of settlers and the consequent destruction of the traditional means of livelihood.

(See Appendix A.) By 1836, the population of Upper Canada had become 375,000, with an estimated additional Indian population of 28,000.\*

In the ten years between 1823 and 1833, the Western District grew from 6,952 to 11,788, an increase of 4,836. Boom commented that the cholera epidemics of the 1830's struck the Indians more than the rest of the population. It was then that the squatter problem on Indian land became most acute.\*

Chief Superintendent Jarvis reported in 1840:

There are no tracts of land belonging to Indians within the settled or surveyed portions of the Province, which produce game sufficient for the maintenance and support of the Tribes to which they belong; and if they abounded in game, the severest penal Statutes would scarcely prevent the white inhabitants from killing it. And it would be unfair to make the killing of game by white

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\* Quoted in Robert J. Surtees, "Indian Reserve Policy in Upper Canada, 1830-1845", M.A. thesis, Carleton University, 1966, p. 43.

\* Robert M. Martin, History, Statistics, and Geography of Upper and Lower Canada, London, 1838, pp. 218-19.

\* Boom I, p. 5.

people on Indian reservations penal, when the Indians themselves are permitted to hunt over the estate of every white man in the country, without meeting with interruption; the game to be found on the Indian reservations is, at the present day, quite a secondary consideration.\*

Jarvis considered that the protection of Indian fisheries, timber, and land (from squatters) as of far more importance than the depletion of game.

The reservations being now completely surrounded by white settlements, it follows, as a consequence, that the game with which they at one period abounded, and which it was contemplated would suffice for food, has either been destroyed, or it has fled to places more remote from the habitation of man. \*

Consequently, the old ways of living and making a living became less and less viable. Those who could adjust had to learn new ways of doing things and those who could not suffered deprivation. For all, however, it was a period of loss and shock. It was made all the worse by the treatment received from many of the settlers including the contempt with which they were often regarded. Settlers saw Indians, not as the self-sufficient people they had been before the massive immigration of Europeans, but as a people suffering shock and the other effects of the loss of their economy and the institutions based on it. They had lost their mother, the earth, and were now confined to a small portion of it.

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\* Reports on the Executive Council and Indian Department in Upper Canada, Toronto, 1840, p. 35.

\* Ibid.

Even that small portion was in danger of being lost. The belief was common that possession of territory implied use in the European way, cutting down forests, cultivating the soil, and raising flocks and herds. The 1845 Report questioned aboriginal right in this way.

There is another celebrated question to which the discovery of the new world had principally given rise. It is asked whether a nation may lawfully take possession of some part of a vast country in which there are none but erratic nations, whose scanty population is incapable of occupying the whole? We have already observed in establishing the obligation to cultivate the earth, that these nations cannot exclusively appropriate to themselves more land than they have occasion for, or more than they are able to settle and cultivate. Their unsettled habitation in those immense regions, cannot be accounted a true and legal possession, and the people of Europe, too closely pent up at home, finding land of which the savage had no particular need, and of which they made no actual constant use, were lawfully entitled to take possession of it and to settle it with Colonies. The Earth, as we have already observed, belongs to mankind in general, and was designed to furnish them with subsistence. If each nation had from the beginning resolved to appropriate to itself a vast country, that the people might live only by hunting, fishing and wild fruits, our globe would not be sufficient to maintain a tenth part of its present inhabitants. We do not, therefore, deviate from the views of nature, in confining the Indians within narrower limits.\*

While this line of thought was used to justify European settlement and the land cessions, it could also be applied to the Indians' remaining land base. This happened in three ways. One was to take further land surrenders of the remaining reserve land. Another was to exchange an area wanted for settlement or development for land

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\* Quoted in Robert J. Surtees, M.A., pp. 37-38.



somewhere else. The surrender of the Saugeen Tract and Manitoulin Island are the best-known examples of this in Upper Canada. Thirdly, was the unregulated activity of squatters. Walpole Island has experienced all three of these forms of attack upon the Band's land base.

There was an attempt in 1830 to get the Walpole Island residents to move to the Lower Reserve which had been created in Sombra Township by the 1796 land cession of the surrounding region. This reserve had originally been intended as a refuge for Indians crossing over from the United States after the Battle of Fallen Timbers and the evacuation of the British posts in accordance with Jay's Treaty. However, few Indians from the United States settled there. This failure probably explains the attempt to remove the people of Walpole Island from there to "some part of the Tract Eastward of the lower reserve near Sombra" which is chronicled in some correspondence of the year 1830 in the Secretary's Letter Book (of the Lieutenant Governor of Upper Canada). The descriptions used in this correspondence do not use the name Walpole Island but "their present habitations on the Islands at Chenail Ecarte", and "their favourite situations on the waters of the St. Clair". That the place meant was the island grouping referred to as Walpole Island was the conclusion reached by G.M. Matheson, the Indian Department officer in charge of records in a memorandum dated January 31, 1923. Refuting a statement that the Chippewas first permanently settled Walpole Island in 1831, Matheson

wrote, "This is not correct as there was a proposal to remove the Indians from this place in 1830 when Chief Shaweny-penincy and his band refused to leave the land on which they had been so long settled".\*

As to the intended place of removal, William Jones wrote that he had spoken to "Shaweny Penincy the principal or senior Chief of the Islands, who seemed to be pleased with His Excellency's proposal to settle them on the lower Reserve".\* In spite of Jones' optimism, the move does not appear to have taken place. When Jones first raised the subject, the Chief asked several questions regarding the furnishing to them of farming equipment and instruction and whether an agent and storekeeper would be stationed there to issue their annual goods in their village. Although the Chief promised to use his influence in support of the proposal, he thought it would be "in vain to try to prevail upon the Indians to quit their favorite situations on the waters of the St. Clair".\* He was right. They did not go.

In the end, the Lower Reserve did not become a home for many Indians and even those who had gone there were moved. Matheson wrote, "In 1831 the Indians of Chenail Ecarté (Township of Sombra) were moved to Sarnia where houses were built for them together with a church and school house".\*

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\* G.M. Matheson, Memorandum, January 31, 1923.

\* Secretary's Letter Book (Lieutenant Governor of Upper Canada), Jones to Z. Mudge, August 13, 1830.

\* Ibid., William Jones to Henry Jones, June 24, 1830.

\* Ibid., G.M. Matheson, Memorandum.

Five years later the Indians of Walpole Island requested "to have the lower Reserve exchanged for land on Little Bear Creek, in Dover, that they wish to be a distinct Band from these of this place [Sarnia], and to remain on the Island and receive their goods separately from the Indians here--complaining much of the unfair distribution of the land payments".\* In 1848 the request for a separation from Sarnia was granted. Walpole Island became a separate band with its own share of the 1827 annuities.

Walpole Island also suffered from squatters. It was a long, difficult struggle to expel them and get the land back in the hands of the resident Indians. One of the reasons for the difficulty in expelling squatters was the ambivalence of the government and the public towards them. Upper Canada was a settler society whose government was encouraging people to farm the land. Indians were not yet farming much of their land.\* Consequently, some squatters, at least, were regarded as useful settlers. To be fair, some had purchased the land in good faith from speculators, not knowing that these people held no title.\*

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\* Ibid., William Jones to Col. James Givins, March 6, 1836.

\* As long as squatters were doing it for them, they were not likely to, so it was a vicious circle.

\* See the 1845 Report, p. 131.

To remove these people in a body from the lands they occupy, would be to inflict absolute ruin upon many hundred industrious inhabitants. From information which I have received, I am persuaded, that a great many persons have been advised, and in some instances, induced by persons in the employment of Government, to settle upon Indian Lands, and have had held out to them the prospect that at no very distant day, the lands thus acquired, would be confirmed by patents under the Great Seal of the Province.\*

In 1839 an "Act for the protection of the Lands of the Crown in this Province, from Trespass and Injury" was passed.\* It provided some legislative authority to expel squatters from Indian lands. The following year, an official inquiry into the Indian Department examined the question of "intruders upon Indian lands", which it described as a subject which had occupied the attention of the government for many years. The Report expressed hope that something could be done:

While your Committee are impressed with the belief, that complete protection of such property can only be looked for, as the result of that change which shall assimilate the Indians with people accustomed from infancy to the idea of separate and individually appropriated property, where each is, under the law, the protector of his own possessions, yet they are under the conviction that much may even now be done, by a firm and prompt administration of the law, as it stands, to remove many of those causes of waste and depreciation, which have, for a long series of years, and do still affect the possessions of this race, within the organized limits of the Province.\*

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\* Answers of Samuel P. Jarvis To Questions Put By Committee No. 4 on the Indian Department, 1840, p. 10. See Boom II, pp. 74-76.

\* 2nd Vic., 1839, Cap. 15.

\* 1840 Report, p. 35.

When J.W. Keating was appointed in December 1838, as the first Indian agent with responsibility exclusively for Walpole Island, he remarked on the extent to which non-Indian squatters had taken over the Indian reserve. "I felt naturally surprised that an Island which I had understood to be expressly appropriated to the settlement of Indians should be thus held entirely by whites. . . ."\* Keating began to expel the squatters under the authority of the act passed in 1839 to protect Crown lands from squatters. His authority was frequently challenged by the squatters both on the Island and in the courts. "Keating further was twice arrested and taken to court by disgruntled Walpole Island squatters, who demanded he reimburse them for their losses. Contrary to the provisions of the 1839 Act, the resident superintendent here was obliged to pay the court costs himself".\*

The 1840 Report catalogued the evils affecting the reserves, including squatting:

The evils chiefly complained of are, first, the unauthorised destruction of Game within the Indian Reserves, by the surrounding inhabitants. Secondly, the cutting and lawless removal of Timber; and, thirdly, the illegal occupation of lands by trespassers, under pretended sales or licences from some individual Indians, or under no title whatever.\*

In spite of the difficulties he faced, Keating claimed considerable success in expelling squatters:

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\* Letterbook of J.W. Keating, November 22, 1844.

\* Boom I, p. 56.

\* The 1840 Report, p. 35.

When I came among them there was hardly a foot of arable land they could call their own; but thanks to a recent Act of Parliament, I was enabled to expel many of the most audacious intruders, and place their farms at the disposal of the Indians. Since then, they have been gradually acquiring the regular and industrious habits of the farmer, and many have totally forsaken the chase, to yield all their attention to husbandry. The farms they occupy are decided upon by the Chiefs or myself, and when once taken possession of, are theirs for ever. They of course have not formed villages, but the farms are adjacent, as with the white settlers of the neighborhood.\*

A description of agriculture as practised at Walpole Island at this time has been appended as Appendix B, since it contains valuable and interesting detail about farming and life there in the 1840's. Some particularly important points taken from this Report are included in this paper, below.

When Keating first arrived, the Walpole Island people did not have oxen or ploughs but cultivated only with hoes. This probably reflected the fact that they did not have much land to cultivate.\* By the end of 1842, they had nine ploughs and nine yoke of oxen "of which they are considerably careful".\* Besides the oxen, there were a large number of pigs and horses and the Chief had two cows. Keating estimated the extent of land being cultivated in 1842 at about 600 acres "and it is annually on the increase". He predicted that, should they succeed in getting rid of all the squatters, it would not fall far short of one thousand acres.

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\* The 1845 Report, p. 131.

\* It is also possible that Keating exaggerated in order to enhance his own achievements.

\* This and all the following information in this section has been

The staple article of Indian produce is the maize, which they grow in great abundance, and of a very fine quality, the land being rich black sandy loam. They also plant large quantities of potatoes, some oats, buckwheat, and a few peas. They have not yet attempted wheat, but would this autumn, had I been able to procure good fall seed, which I could not; although not a very profitable crop when flour is so cheap. I have advised them to it in order that they should, as nearly as possible, assimilate to us in our farming; spring wheat is too uncertain, but next autumn I expect they will grow from 20 to 30 acres as an experiment.

Keating seemed pleased with the results and noted that the methods of farming were the same as those used by non-Indian farmers.

I am not aware of any difference between the modes of Agriculture they pursue and those of the whites, save that the latter of course excel people who have but so lately turned their attention towards it. Their aptitude is great, and now that they are possessed of the means, they will rapidly improve.

However, they did differ in their social organization, perhaps a happy example of a people adapting technique to their own values and social structure. At the beginning, as it has now become again at Walpole Island, farming was a community activity.

There are five inferior Chiefs amongst the Ojibeways, who are always surrounded by their own immediate relations, their connections by marriage, and the young men who, though under the control of the Head Chief, recognize especially their own leader. These, on the expulsion of the squatters, met together and selected the localities, or rather subdivided the arable land according to their numbers, taking in one, two, or more farms as they required them. Thus each separate band cultivates in one vast enclosure, each person according to his means or industry, planting more or less land, and the most perfect harmony

prevails among them. Fewer rails are thus required, and where so many are concerned, greater care of course is taken to keep out all cattle or pigs which would destroy their crops. In the spring, however, if I can achieve the total expulsion of the squatters, I intend to run out each field in parallel lines, perpendicular to the St. Clair on one side, and to the Cheniel Ecarté on the other.

A view which generally prevailed throughout this period was that individual land-holding should replace communal ownership "the better to encourage individual industry and independence". This view was shared by Colonial Secretary Lord Glenelg and by Governors Metcalfe and Elgin.\* It was also proposed by Judge Macaulay and by the commissioners who reported in the 1840's. Communal land-holding not only discouraged industry but "preserved traditions and customs which on the contrary ought to be eradicated".\*

One outcome of Macaulay's Report to Lieutenant Governor Sir George Arthur in April, 1839 seems to be the predecessor of a provision which is still in the Indian Act. Macaulay had recommended that Indians be protected from unwise contracts. "This was the subject of an Order in Council, dated 27 June 1839, which asserted that the government would no longer, as had hitherto been the practice, pay debts 'incurred by the Indians, without express authority, out of Indian Funds [i.e. annuities] or otherwise'."\* While protecting, this provision prevented Indian farmers and other businessmen from getting credit from ordinary sources.

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\* Boom II, p. 21.

\* Boom I, p. 66.

\* Boom I, p. 47 and II p. 17.



A major occurrence at this time was the influx of a large number of Indians from the United States to Walpole Island. The American Government adopted a policy of removal of Indians from the regions south of the Great Lakes to large reservations west of the Mississippi. About the same time, in 1837, the Government on the British side of the line gave notice that the annual "presents" that had been given at various border posts to "visiting" Indians would no longer be provided. After 1839, they would only be given to Indians resident on the British side.\* Since many of the Indians in the United States affected by the policy of removal did not want to move west, there was a migration into Upper Canada of Pottawatomies, Chippewa, and Ottawa. Many of these people settled at Walpole Island. Keating's report (1842) shows a total population of 1,140 of whom only 319 are listed as "Ojibeways (old residents)". Of the newcomers, he identifies 197 as Ojibways who had arrived within one year, 507 as Pottawatomies and Ottawas from Michigan, and a further 117 who were on their way to settle.

All of these people had to be absorbed at the very time when the older residents of Walpole Island were trying to expel the remaining squatters, protect their timber, and learn an agricultural way of life.

In one sense this influx might have been easier because the newcomers were hunters and did not take immediately to agriculture. Consequently, there was no need to accommodate immediately a fresh population three times the size of the existing one on the available

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\* See Jarvis to Jones, August 21, 1837 from Letter Book No. 4, 1837, p. 31.

farmland. Also because they were hunters, they put a new and excessive pressure on the game in the surrounding area.

Christina Boom wrote that Walpole Island was a natural sanctuary for them, being so close to the international boundary, yet their presence created problems. "The reserve was not equipped to handle them. On the other hand, the Indians refused to move to Manitoulin, where, they claimed, the weather was cold, the land barren, and everything so isolated".\*

Something of the attempt to get the Indians from the United States to settle at Manitoulin Island can be seen in the correspondence contained in Letter Book No. 4. In 1837 Jarvis wrote to Jones with reference to "three hundred Indians lately arrived in your neighbourhood". He recommended that they should go immediately to Manitoulin Island and establish themselves there permanently.\* There must have been a suggestion that they should remain at Walpole Island since it is in this context that Jarvis made his much quoted statement, "Walpole Island belongs to the Government and not to the Indians. The Lieutenant Governor is not willing that it should be occupied by Indians".\*

By June, 1839, the government of Upper Canada planned to use some of the proceeds from the sale of the Saugeen land to remove to

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\* Boom I, p. 33.

\* Letter Book No. 4, Jarvis to Jones, August 21, 1837.

\* Ibid.

Manitoulin Island the American Indians at Walpole Island and Chenail Ecarté.\* Over the next three or four years, a compromise was worked out between resident superintendents William Jones (Sarnia), William Keating (Walpole Island) and the Indian leaders. Some were allowed to remain at the St. Clair, occupying land donated them by the St. Clair Chippewas; others settled in scattered locations in the reserved northern portion of the Saugeen tract, while some consented to go to Manitoulin. Not a few returned to the United States to join their relatives in the Indian Territory.\*

There is a reference in a letter of December, 1844 to Keating to "the Pottawattamie Indians who immigrated to this Province from the United States five years since and who do not appear to have made any advance towards earning their own livelihood".\* Keating was told that since he reported them to be without food,\* that humanity forbids that they should starve. He was authorized to give them food but to inform them that it would be the last time. If the Pottawatomies want help from the government, they must prepare to move to Manitoulin Island.

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\* Boom I, p. 48.

\* Ibid., pp. 33-34.

\* J.M. Higginson, Civil Secretary's Office, Indian Department to Keating, December 12, 1844.

\* No doubt the depletion of game had left these hunters without resources.

Keating took the matter up with the Pottawatomies and replied the following June.

I laid before the Pottawatomie Indians assembled in Council the proposal of His Excellency the Governor General that they should this summer proceed to Manitowaning. They to a man objected - the reason they assign, and which is a true one, is that they have never been accustomed to canoes or fishing, living as they formerly did in extensive prairies where they always both hunted and journeyed on horseback. Not being able in consequence to avail themselves of the chief resource of the Island, they would actually starve.\*

In spite of all the efforts to get them to remove to Manitoulin Island, many of the Pottawatomie remained at Walpole Island where their descendents live to this day as part of the Walpole Island Band.

Keating reported that, "They have been kindly received by the resident tribes, and allowed to settle on their lands; but their roving habits render them averse to settling. . . ."\* Keating described the Pottawatomies on arrival as skilful hunters who have long depended solely on the chase and as being very different in character and habits from the resident Chippewas. "The fondness for hunting and

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\* Keating to Higginson, June 4, 1845.

\* 1845 Report, p. 34.

fishing is very much on the decrease among the Chippewas, who seldom indulge in either, except during the winter".\*

The 1858 Report made the following comment. "The Pottawatomies live in perfect harmony with the Chippewas, and are generally industrious and honest".\*

A description of the state of farming from the 1858 Report has been appended as Appendix C. The Report made the general comment that, "The Indians of Walpole Island devote more of their annual income to the purchase of useful grain and farming materials of all sorts than any other Tribe in Western Canada".\* Other comments in this Report with respect to farming and other economic activity are:

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\* Ibid. The Pottawatomies appear to have been accepted into the Walpole Island Band as it then was. At some time, however, separate bands were made for Pottawatomies and the rest each with its own Chief and council. It has not yet been determined when this division was made. A letter of June 6, 1896 from the Deputy Superintendent General to Macrae discusses a proposed division of the band, "the creation of two bands out of the present one". (RG10 Vol. 2666, file 133, 376 Pt. 1.) The division then must have been after 1896. It ended in 1940 when the two bands were amalgamated into the present Walpole Island Band.

\* 1858 Report, p. 56.

\* Ibid., p. 57.

In the planting, hoeing, and gathering the corn and potatoes, the women assist. The young men generally take their fair share of the remainder of the farm work. They are not so regular either at their work or their meals as the white settlers, and they usually rest longer in the middle of the day. Their fondness for the chase has not greatly diminished, but the Settlement of the Country compels them to travel so far from home that many have almost given up hunting. . . The bands settled on the River Thames and St. Clair, catch a considerable quantity of fish in the spring and autumn.\*

Crops grown were listed as corn, wheat, oats, potatoes, and hay.\* There were thirty yoke of oxen of which twenty had been raised and trained to labour by the Indians themselves.\* The twenty represent almost the total increase since 1842 when nine were reported. Walpole Island was reported to be far in advance of the Sarnia Band in agriculture because less labour was needed to clear the land and because wage employment was not available in the vicinity.\* Farming became a necessity for livelihood. Walpole Island "continued to be highlighted as an ideal civilization centre".\*

In addition to agriculture, the people of Walpole Island were encouraged to learn new ways in other respects. Blacksmithing, carpentry, and other practical trades were considered appropriate and

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\* Ibid., pp. 194-95.

\* Ibid., p. 194.

\* Ibid., p. 191.

\* Ibid., p. 56.

\* Boom II, p. 44.

formed the subject of enquiry.\* It was reported that several framed barns had been erected by Indian labour and that "All the houses on the Island, with very few exceptions, have been put up by the Indians".\*

In this period also churches and schools were introduced to Walpole Island. By 1842 a Church of England clergyman (The Rev. James Coleman) was working at Walpole Island. He did not speak Ojibwa and had difficulty obtaining competent interpreters. Keating did not think him suitable for the situation and asked the Bishop of Toronto to send a replacement. At this early period Keating wrote:

None of the Indians under my superintendence are Christians, although about twenty families have applied for religious instruction. The start has been given; they find the great disadvantages under which they labor from being heathens, not being heard in a Court of Justice, and often wrongfully despoiled in consequence.\*

Coleman's replacement was the Rev. Andrew Jamieson of whom the 1858 Report states, "The success which has attended his labours, although not great, is yet of a very permanent character".\* A frame church and parsonage were built in 1844. Jamieson had the same difficulty obtaining interpreters but by 1858 was reported to be competent in the language himself. Since Jamieson had no success

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\* 1858 Report, p. 153.

\* Ibid., pp. 56 and 192.

\* 1845 Report, p. 132.

\* 1858 Report, p. 55.

amongst the Pottawatomies, the Methodist Society sent in a missionary about 1858 and erected a church and school. The chief joined the Methodists.\* The religious affiliation of the Walpole Island Band was reported as follows:

|                                       |      |
|---------------------------------------|------|
| Members of the Church of England..... | 230  |
| Methodists.....                       | 53   |
| Roman Catholics.....                  | 19   |
| Pagans.....                           | 522* |

Schools were also started in connection with the churches. The Methodist Society supported the teacher as well as the missionary. At least one teacher was a member of the Band who had been educated at the Muncey Industrial School. The Report complained of irregularity in attendance.

"The attendance of the Children at the Common Schools is very irregular, which is caused principally by their following their parents whenever they leave home for the purpose of hunting, picking cranberries, &c., or sugar-making.

They are also kept from School to assist in planting, hoeing and gathering the Corn and Potatoe crop".\*

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\* Ibid.

\* 1858 Report, p. 56.

\* Ibid., p. 196.



The school system and the books used were stated to be the same as in non-Indian schools. Schools were regarded as very important in the "civilization" programme. "It had long been felt that education would be the catalyst to prepare Indian children for their role in white society".\*

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\* Boom II, p. 21.

Period V: 1867-1876 Legislative Constraints  
(B.N.A. Act and the Indian Act)

Besides adapting to the loss of territory and restriction to a smaller land base through agriculture, the people of Walpole Island have also survived various government policies devised to assimilate them. They resisted attempts to move them in a body to Manitoulin Island and, in spite of enfranchisement legislation, retained their Indian identity and status.

In 1867 the United Province of Canada (the southern portions of Ontario and Quebec previously called Upper and Lower Canada or Canada West and Canada East) united with the maritime colonies of New Brunswick and Nova Scotia in a confederation called the Dominion of Canada. This was accomplished through an act of the Imperial Parliament in London known as the British North America Act. The B.N.A. Act, as it is often called, came into force on July 1, 1867.

The new Dominion was given a federal system in which the powers of government were divided between the Dominion (more recently for some reason called the "federal government") and the provinces. The sections of the Act which specify the division of powers are sections 91 and 92. Section 91 states that the "Queen, by and with the Advice and Consent of the Senate and House of Commons" may make laws in relation to all matters not assigned exclusively to the provinces. However, "for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section", certain subjects are enumerated as falling within the "exclusive Legislative Authority of the Parliament of Canada". Within this general provision, sub-

section 24 reads: "Indians, and Lands reserved for the Indians".\* Hence the exclusive authority of the Parliament of Canada in Indian Affairs stems from section 91 (24) of the B.N.A. Act.

At the time of Confederation in 1867, the constituent colonies of British North America had passed various pieces of legislation relating to Indians. Some of these have been mentioned in previous chapters. Upper Canada had passed acts against trespassing on Indian lands in 1839 and 1850. An 1850 act relating to Canada East (Quebec) provided the first statutory definition of an Indian. Similar legislation had been passed in Nova Scotia and New Brunswick.\*

Before 1850, Indian legislation had been incomplete, enacted piecemeal and virtually unenforceable. After 1850, two objectives emerged: 1) protection of Indians from destructive elements of "white" society until Christianity and education raised them to an acceptable level and 2) protection of Indian lands until Indian people were able to occupy and protect them in the same way as other citizens. To these ends, the 1850 Land Acts and the 1857 and 1859 Civilization and Enfranchisement Acts were carefully framed. Their main provisions, in intent if not always in letter, formed the foundation for subsequent Indian legislation after 1867.\*

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\* Revised Statutes of Canada, 1970, Appendices, pp. 214-16.

\* For a description of pre-Confederation Indian legislation in the various jurisdictions, see John Leslie and Ron Maguire, The Historical Development of the Indian Act, Treaties and Historical Research Centre, Research Branch, Corporate Policy, Indian and Northern Affairs Canada, 2nd edition, 1978, Chapters Two and Three.

\* Ibid., p. 1.

Government administration of Indian affairs did not undergo great change at Confederation. In fact, there was not a great deal of it. What there was, occurred locally through the activities of Indian agents. Local personnel and methods of the various colonies were continued as before under the direction of the headquarters staff in Ottawa. This staff comprised about a dozen people who had held the same positions in the Department under the former Province of Canada.

By 1876, it had been decided to consolidate the various pieces of Indian legislation into one. A new Indian bill was prepared and introduced in the House of Commons. The Minister of the Interior (and Superintendent General of Indian Affairs), David Laird, stated that many of the provisions of the existing Indian legislation were "in some respects entirely opposed to the well understood and reasonable wishes of the Indians themselves".\* Laird criticized the existing legislation on the grounds that it was "a dead letter" insofar as enfranchisement was concerned. The new act was intended to remedy that situation. He told the House of Commons that the principal feature of the new bill concerned the enfranchisement of Indians.\*

However, the Indian Act of 1876 was not revolutionary.

It was much more a consolidation and amendment of existing legislation than the grand new departure suggested by the Ministers. As in the previous Acts, provision was made for the management of

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\* Canada, Sessional Papers, 1876, No. 9.

\* Canada, Debates of the House of Commons, 1876, p. 342.

Indians lands, timber, and moneys and for Indian band councils. Legal safeguards were provided for reserves and for the protection of Indians from certain kinds of exploitation. There was nothing fundamentally new in any of this.\*

Nevertheless, the bill passed through Parliament and became the "Act to amend and consolidate the laws respecting Indians".\* It is this piece of legislation which is regarded as the first Indian Act. Amended and revised several times, it is the Indian Act which is the instrument through which the Government of Canada exercises its jurisdiction in Indian matters.

"The drafters of the 1876 Act created a framework of Indian legislation which remains fundamentally intact today".\* Moreover, the Act "contained few radical departures from previous policies or legislation".\*

The Indian Act is amended from time to time as required. However, its last thorough revision was in 1951. It is the 1951 Act which is in force today. Even so, revision does not mean that everything is changed. Many of the basic provisions of the Indian Act (membership or definition of an Indian, protection of reserves, enfranchisement) have had a long continuous history. Change occurs slowly.

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\* John Leonard Taylor, "The Development of an Indian Policy for the Canadian North-West, 1869-79", Ph.D. thesis, Queen's University at Kingston, 1975, p. 170.

\* Statutes of Canada, 39 Vic., 1876, Cap. 18.

\* Leslie and Maguire, Historical Development of the Indian Act, p. 60.

\* Ibid., pp. 60-61.

Most of the changes in the Indian Act during the Post-Confederation period derived from a belief that Indians could be integrated with the majority community. Legislative changes reflected the prime interests of "white" society, rather than those of Indian people.\*

The Enfranchisement Act of 1869\* had instituted a system of individual property holding through "location tickets".\* Another innovation of the 1869 Act was a clause (6) stipulating that, if an Indian woman married a non-Indian, neither she nor her off-spring would be considered Indians within the meaning of the Indian Act. These provisions were included in the 1876 Act and have been major aspects of Indian policy throughout the post-Confederation period.

Until 1876 various terms had been used to describe Indian lands which had been reserved to them. Section 3 (6) used the term "reserve" and defined it:

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\* Ibid., p. 51.

\* Statutes of Canada, 31 Vic, 1869, cap. 42.

\* "Since 1830 there had been a wide-spread belief that Indians would not improve their lands until they received registered titles to individual plots. Demands at that time by the Mississaugas were reiterated by the General Council in 1872. The Indian Act of 1876, through clauses four to ten, addressed these requests by providing for issuance of location tickets for individual land parcels on reserves. In addition, clause nine ensured that property of a deceased Indian would remain within the family first, and ultimately with the band." Leslie and Maguire, Historical Development of the Indian Act, p. 62.

The term "reserve" means any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted to a particular band of Indians, of which the legal title is in the Crown, but which is unsurrendered, and includes all the trees, wood, timber, soil, stone, minerals, metals, or other valuables thereon or therein.

A suggestion was made during debate on the Indian Bill that the clause against taking chattel mortgages on goods purchased by Indians for use on a reserve be withdrawn. The proposed bill, like legislation already in force at the time, prohibited that practice. "It would prevent any one from selling to Indians on credit, and there were times when they required implements, cattle, etc., for which they were not able to pay cash, but on which they would be glad to give a chattel mortgage".\* To the Minister's suggestion that the Indians could purchase all the implements they needed with their annuity money, Mr. William Paterson, a member for Brant, said that was all nonsense. "This clause would inflict serious injury on the Indians. Instead of this Bill being in advance in this respect of previous legislation, it was retrogressive".\* Nevertheless, the clause was passed and has been part of the Indian Act in some form ever since.

Other important clauses concerned enfranchisement. Any Indian could apply to an agent for enfranchisement. If he qualified, he received a ticket for land on the reserve. The Superintendent General (Minister) would then appoint "some competent person" to report whether or not the applicant "from the degree of civilization

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\* Canada, Debates of the House of Commons, 1876, p. 931. The origin of this provision was mentioned in Chapter IV.

\* Ibid.

to which he or she has attained, and the character for integrity, morality and sobriety which he or she bears" was qualified to become a proprietor of land in fee simple. After three years, if the applicant was suitable, a patent for the land could be issued. After a further three years, the applicant could apply and be given his or her share of the band's funds. At this point, the applicant would be "enfranchised" and cease to be an Indian for purposes of the Indian Act.

A more startling clause provided for enfranchisement of university graduates. Any graduate or one who may be admitted to practise law or to be a notary public, or who may enter Holy Orders or be made a Minister of the Gospel by any Christian denomination, "shall ipso facto become and be enfranchised under this Act".

It should be noted also that compulsory enfranchisement became a feature of the Act in 1920. The section was changed in 1922, after a change of government, in order to remove the compulsory feature but compulsory enfranchisement was put into the Act again in 1933 where it remained until the 1951 revision. Compulsory enfranchisement was introduced to speed up the process of assimilation.\*

At this point, having looked at the general development of Indian legislation and its consolidation into the Indian Act of 1876, it is necessary to depart from the strict time period, 1867-1876, to look at various Indian Act provisions over the years.

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\* See John Leonard Taylor, Canadian Indian Policy During the Inter-war Years, 1918-1939, Indian and Northern Affairs Canada, 1984, Chapter 10. Only 65 families, consisting of 102 persons, were enfranchised between Confederation and 1918.



The Indian Act of 1876 contained a definition of an Indian for the purposes of the Act. The present Act still does (Section 2 (1)). Hence, the Parliament of Canada decides who does and does not fall under its exclusive authority as provided in section 91 (24) of the B.N.A. Act (retroactively re-named the "Constitution Act").

Many prohibitions were contained in the 1876 Act or were later placed there by amendment. Some, discussed above, are still there. Others remained until the 1951 revision. Indians were prohibited from engaging in Indian festivals including the Sun Dance and Potlatch, or exhibiting themselves in aboriginal costume. (See Appendix A.)\* Indian women were not voters in band elections. (Appendix B.) A 1927 amendment to the Indian Act (section 141) prohibited anyone, Indian or non-Indian, from soliciting funds from Indians for the prosecution of a claim without the written consent of the Superintendent General. (Appendix C.)

The 1876 Act included amongst its definition that for a "person". By some unfortunate lack of sensitivity, the definition which was written into the Act read, "The term 'person' means an individual other than an Indian, unless the context clearly requires another construction". (Appendix D.) Undoubtedly, this was done to facilitate the legal construction of other sections of the Act and was not meant to be construed literally. For example, the definition of an Indian

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\* All appendices are taken from the 1927 Act which remained in force until 1951. The prohibitions often came into effect much earlier by amendment as this one did in 1884.

in the same Act reads, "Any male person of Indian blood reputed to belong to a particular band".\* If meant literally, these definitions would contradict each other. Nevertheless, both definitions remained in the Act until 1951. The apparent definition of an Indian as a non-person has been widely regarded by the Indian community as a grievous insult, wounding the feelings of those who were not even born before 1951 when it was in effect.

Perhaps the most serious disadvantage in the Indian Act is the degree of power accorded to the Superintendent General (Minister) as opposed to the power recognized in the Indian people. Throughout the Indian Acts, both past and present, are references to the powers of the Minister to do this or that. Most of these powers devolved upon departmental officials which, in the past, often meant the local Indian agent. Thus, these people had enormous powers of control over the lives of Indian people.

Although seen from this perspective, the Indian Act is an instrument of constraint, the people of Walpole Island have used it constructively as an instrument to assist them in protecting and developing their identity as a self-governing band with a territorial base and a developing economy.

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\* Underlining is not in the original.

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A Research Resource Reference Paper

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