

THE HISTORICAL BACKGROUND OF INDIAN
RESERVES AND SETTLEMENTS IN THE
PROVINCE OF QUEBEC

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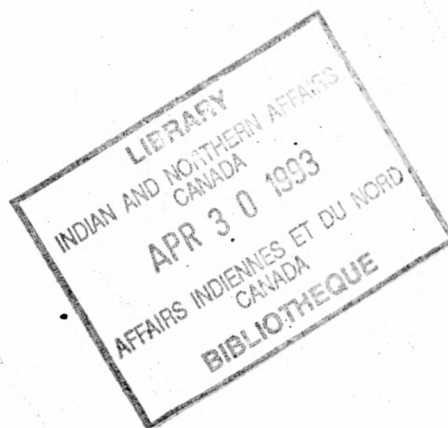
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SETTLEMENTS IN THE PROVINCE
OF QUEBEC



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Historical Background of Indian Reserves
and Settlements in the Province of Quebec

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I The First Indian "Reserve" in Canada

The first Indians the French missionaries encountered in Canada were the Algonkian tribes who generally led a semi-nomadic pattern of life, living and hunting in small family groups. The Jesuits realized that before the teaching of the Christian religion could commence these Indians had to be encouraged to abandon their nomadic way of life and settle into an agricultural pattern. In order for this to occur the Algonkians would have to be shown that agriculture would produce more food than hunting and fishing. However, before this project could be undertaken the Jesuits realized that they had to seek financial assistance (in order to establish an Indian settlement of the proportions planned). Fortunately this assistance came from Noel Brulart de Sillery, a Knight of Malta and a member of the Company of the Hundred Associates (who had been ordained a priest but was now dedicating his life to economic pursuits in New France).

The first contingent of workers arrived from France in 1637 to begin construction of the Indian settlement which was to be named after the benefactor, St. Joseph de Sillery. In the beginning Sillery developed rapidly with the Indian inhabitants making a concerted effort to till the soil. However, despite the enthusiasm of the inhabitants the Sillery mission failed to reach its prime objective. The Jesuits were impeded by the lack of funds after the death of M. de Sillery; the poverty of the Indian inhabitants; the political turmoil in France after the death of Louis XII, and the failure of the Indians themselves to adapt to an agricultural way of life. To further add to these problems, in the first years the Indians were faced with poor crops resulting in a meagre return for their labour.

In order to save the mission from complete collapse the Company of New France in 1651 granted the Indians title to the land at the seigneurie of Sillery under the direction of the Jesuits, as well as fishing rights in the St. Lawrence River opposite the lands. Unlike other grants to Indians, the lands in question would be owned by the Indians, although under the letters patent,

the Indians were forbidden to sell the land or allow any fishing and hunting by outsiders without the written consent or authority of the Jesuits. The seignury of Sillery can therefore be regarded as the first Indian "reserve" in Canadian history.

II French Policy vis-à-vis the Indians

In the beginning France's main policies vis-à-vis the Indian were to ensure a flourishing fur trade, create alliances to prevent Indian attacks on white settlements, and secure Indian support during colonial wars. The French however, did not recognize or acknowledge aboriginal title to the land. One can regard the conquest theory as the prime reason behind France's refusal to recognize any aboriginal proprietary interest in the land. "Unlike the British the French did not admit the Indians had any title to lands but claimed them for the Crown by right of discovery and conquest."¹ Lands that were set aside were never granted out of right but always by grace to the missionaries who cared for the Indians. The only exception was land given to the Indians in the Sillery grant of 1651.

There are however, some important factors which made the non-recognition of Indian title by the French different from other colonies. Since the settlement of New France was comparatively slower than the British seaboard colonies, the Indians were less suspicious of French settlers threatening their lands. Secondly the Algonkian tribes which lived near the St. Lawrence possessed no real tribal organization and were generally scattered throughout the area. With a situation like this a small organized group could enter their lands without any resistance. Furthermore the Algonkian tribes were nomadic and never made intensive use of land nor could they claim a long history of occupancy to any one area.

Culture was also another important factor contributing to the differences between New France and other colonies. The French disposition towards the Indians was characterized by a more friendly and cordial attitude than was the

1. Evidence of Mr. R.A. Roay, Director of Indian Affairs Branch, to the Joint Committee of the Senate and House of Commons on the Indian Act; May 30, 1946 Minute No. 1, p. 31.

case with the English. Indeed the French fur traders contributed more than any other group to cementing closer and friendly ties between the French and the Indians.

The French did not look down on the Indians or other non-whites as racially inferior, an attitude which was often characteristic of the English. The Jesuit evangelist remained among the Indians as spiritual leader and political adviser. Some even appear to have acted as military advisers. This religious attachment made it feasible for political ends to be served through their personal influence.

By the early decades of the seventeenth century the Indians, especially along the upper St. Lawrence, had developed strong economic and military ties with the French. The French hoped to capitalize on this relationship by assimilating the Indian into the French culture. Education was to be the prime tool by which this was to be done. Plans were formulated by which children were removed from their parents to be schooled in either New France or France itself (since the Jesuit felt that the parents of these children were a bad influence on their Christian upbringing). However, their efforts proved to be ineffective in bringing about the hoped for changes.

A second phase was instituted in the 1660's in yet another attempt to assimilate the Indians. The main goal was to unite French and Indian under one law and one government to make them one people. A seminary for boys was founded in Quebec City under the authority of Bishop Laval. This was the foundation of Laval University. However within twenty years, interest by the French in this project began to wane. By 1700, the government came to accept the idea that any formal effort to change the Indians had to be left to the Jesuits. To achieve this the Jesuits decided to create Christian villages with the Indians as the occupants and priests as the educators.

Since France did not recognize an aboriginal title the English as successors in 1760 were therefore under no obligation to recognize the native title in the region where the French had given small land grants to the Indians (in particular along the St. Lawrence River).

III British Indian Policy

The British, unlike the French, acknowledged (for policy reasons) an Indian interest in the land, for when Indian lands were ceded to the English they were done so formally in the shape of treaties or agreements. The British realized that the Indian had to be dealt with in a coordinated and comprehensive way so they began early to appoint officers to administer Indian Affairs in the area of the 13 colonies. For example A.C. Veile was made special commissioner to the Five Nations in 1689. By the year 1739, 30 commissioners were responsible for Indian Affairs in New York. In 1755 Sir W. Johnson became superintendent of the Indians of the northern colonies. He felt that the Indians should be treated as friends, however they could never be trusted. He also suggested that the Indians be given gifts to appease them, and civilized through education, religion, and contact with the British. In one of his reports Johnson informed his superiors that "such we may make them at a reasonable expense, and thereby occupy our outposts and carry on a trade in safety, until in a few years we shall become so formidable throughout the country as to be able to protect ourselves and abate of that charge"²

From 1763 until the 1830's, British Indian policy was mainly related to issues of land and military alliances. The English believed that if the Indian could be treated in a just and fair manner he could be depended on during colonial wars. However, when fear of war faded away after 1814, the army began to question the value of Indians. "It seemed that there were simply no more wars for them to fight."³

As the first settlers entered the wilderness they did not look upon the Indian as a potential ally, nor did they seek his support. Indeed the settler was "not overly scrupulous in respecting reserved land".⁴ Consequently further laws restricting encroachment on Indian land were totally useless, since public opinion was weighted against the Indian whom they felt refused to do anything

2.. The First Peoples in Quebec. Volume 1, p. 37. First Print July 1973, Thunderbird Press. Prepared at the Native North American Studies Institute for Indians of the QueLec Assoc. Directed by G.W. Craig.

3. Charles Johnson. "The Valley of the Six Nations" (Toronto, 1964) p. 285-267 (G17, G18)

4. "Development of an Indian Reserve policy in Canada". R.J. Surtees, Ontario Historical Society Journal. Vol. LX 1 June 1969.

with the land except hunt, fish, and collect his presents and annuities promised him by the British Government. However this same land could not be taken from the Indians, except by officials of the British Government who forbade their direct purchase by any British subject by the Proclamation of 1763. The Proclamation required that "... all persons whatsoever who have wilfully or inadvertently, seated themselves upon any lands ... which had not been ceded to, or purchased by us ... forthwith to remove themselves from such settlements".⁵ The British Government was continuously being besieged by complaints and criticisms about the treatment of native peoples throughout the British Empire. There was the growth of humanitarian ideals put forward by people like William Wilberforce and the Chapham Sect., who expressed concern for the Indians in British colonies. Meanwhile in North America groups of people and individuals had begun to look upon the Native people not as a social nuisance or evil warrior, but as a "noble savage",⁶ who could be rescued from his plight. Religious groups such as the Jesuit who worked among the Hurons and Iroquois and Sulpician and Spiritan fathers who preached during the French Regime were among many organizations which had made efforts to civilize the Indians.

Finally, after 1830 the Imperial Government itself, beset by pressures and events described join the crusade. A new philanthropic attitude towards the Indians and the British Government decided to:

1. "Collect the Indians in considerable numbers, and settle them in villages with due portion of land for their cultivation and support."
2. Make provision for their religious improvement, education and instruction in husbandry, as circumstances may from time to time require.
3. Afford them such assistance in building their houses, rations and in procuring such seed and agricultural implements as may be necessary, where practical, a portion of their presents for the latter".⁷

5. Report on the Affairs of the Indians in Canada J.L.A.C. 1844-45, appendix E.E.E. Sectional History of the Relations between the Government and the Indians.

6. S.E. Morling (ed) The Jesuit Relations and Allied Documents (Toronto 1962) and Henry J. Keren. Knaves or Knights? (Pittsburg, 1962).

7. P.A.C. R.G. 10. Volume 5. Memo to Colbourne, May 16, 1829.

These suggestions provided the essence of the Indian reserve policy which marked the great transformation in the colonial Indian department in 1830. At this time the official policy of Britain was transformed from a "utilitarian plan" of using Indians as allies to a plan of moulding the Indian into a civilized Christian, equipped with all the social skills. The end result was a benevolent reserve programme for Indians, which was created by the passing of the Act of 14-15 Victoria. Chap. 106 in 1851.

IV : Development of Indian Reserve System in Quebec

In Quebec or Lower Canada, as it was known prior to Confederation, Indian reserves comprised; i) lands given by the Jesuit fathers, or lands granted to the Jesuits by the French Crown in trust for the Indians; ii) lands were also granted by private individuals to Indians; iii) lands claimed by the Indians as their habitat of which they had never been dispossessed by the Crown.

By 33-34 Vic., Cap. 32, all lands or property in Lower Canada which were appropriated for the use of any tribe or group of Indians were held in trust for such tribe or body by the Commissioner of Crown Lands for Lower Canada, who had the authority to cede, lease, or charge these lands, subject to instructions for the Governor, to whom he was accountable for all monies received.

At the time of Confederation (1867) there were some 20 Indian Reserves which had been set apart by the Province of Lower Canada. In addition, a number of reserves were established by grants from private persons and religious orders. Indians also occupied lands at Oka, the title to which was vested in the Ecclesiastics of the Seminary of St. Sulpice of Montreal. In 1945, Canada purchased these lands, but has not as yet formally declared them to be a reserve.

By Chapter 42 of the Acts of the Dominion, passed in 1868, it was provided by the 26th Section that the Secretary of State should be substituted for the Commissioner of Indian lands for Lower Canada, and that he should have all the powers and duties of the Commissioner, except that the lands theretofore vested in the said Commissioner would henceforth, be vested in the Crown, and be under the management of the Secretary of State.

Following Confederation there was no Statute passed by Quebec vesting Indian Reserves in the Federal Crown. It appears to have been assumed that after the passing of the British North America Act, and the Act of 1868 (until the Privy Council decision in the Star Chrome Case) the title to these reserves had passed to the Crown Canada.

In the Star Chrome Case, the Privy Council held that the title to the Reserves in question remained in the Provincial Crown; that the Commissioner was only given such an interest therein as would enable him to exercise the powers of administration and that, while by virtue of having the exclusive right to legislate in respect of Indians and lands reserved for Indians, and having succeeded to the powers conferred upon the Commissioner, Canada had authority to accept, on behalf of the Crown, a surrender by the Indians of their lands in the reserves.

However, Canada had no power or authority to take away from the Province the interest in the lands given to it by Section 109 of the British North America Act and that, following a surrender, the entire title in the surrendered lands was vested in the Province, free from the trust theretofore existing in favour of the Indians.

Except for one reserve, no agreement has been negotiated with Quebec and it is therefore not possible to take a surrender of reserves in this Province without loss to the Indians.

Since Confederation, Canada has purchased and set apart a number of reserves in the Province of Quebec. As to these, the title of the Federal Crown is absolute, and on a surrender of the Indian interest, Canada can dispose of the lands by sale or otherwise.

V Establishment of Reserve Lands in Quebec

Reserves in Quebec were established in a number of different ways. For example some reserves were created by statute then further parcels of land were added through purchase, while other reserves were established by statute then later modified by another statute.

Seven categories of reserves were created and are listed below:

1. Province of Canada Act of 14-15 Victoria, Chapter 106 (1851) provided 230,000 acres in Quebec for the establishment of reserves. The eight reserves created under this Act were established in 1851. If the land was surrendered it had to be returned to the province.
2. The Quebec Lands and Forests Act (1922) permitted the use of 330,000 acres for the creation of Indian reserves. From this Act a total of nine reserves were established by Order in Council. If a reserve was surrendered the land reverted to the province.
3. Other reserves were created by a grant to Indians from a religious order who had originally received the land from the king to establish their mission. Six reserves like these existed prior to 1851. If the land was surrendered it was to be returned to the federal government.
4. In other cases reserves were created by transferring the title of land to the federal government from the province by Letters Patent issued by Quebec. The federal government then issued an Order in Council declaring the land a reserve. Eight reserves were established by means of Letters Patent. In case of reserve land surrender, the federal government retained title to the land.
5. Another system of setting up a reserve was the purchase of private land by the federal government. Orders in Council would then be issued designating the land as reserve land with the federal government having the right of return.

6. Another type was where a private party had leased land for the use of the Indians. The province however has the right of return in this instance.
7. There were also a large number of Indian settlements which had never been recognized as reserves. These were classified as territory simply occupied but belonging to the province of Quebec. There are 12 settlements like this in Quebec.

VI Legal Status of Indian Reserves and Settlements

1. Reserve Created under the Act of 1851

- | | |
|-----------------|---------------------|
| 1 - Betsiamites | 6 - Pointe - Bleue |
| 2 - Coucoucache | 7 - Restigouche |
| 3 - Boncaster | 8 - Sept. - Îles |
| 4 - Maniwaki | 9 - Weymontachingue |
| 5 - Manouane | |

2. Reserve created under the Lands and Forests Act

- | | |
|----------------|-------------------|
| 1 - Eastmain | 6 - Obedjiwan |
| 2 - Lac Rapide | 7 - Schefferville |
| 3 - Lac Simon | 8 - Sept. - Îles |
| 4 - Mingan | 9 - Waswanipi |
| 5 - Mistassini | |

3. Territory under lease: - Longue - Pointe

4. Territory simply occupied

- | | |
|------------------------|--------------------------|
| 1 - Fort George | 7 - Némiscau |
| 2 - Fort Rupert | 8 - Neoskweskau |
| 3 - Grand-Lac-Victoria | 9 - Nitchequon |
| 4 - Hunters Point | 10 - Nouveau - Comystoir |
| 5 - Kipawa | 11 - Poste-de-la-Baleine |
| 6 - Lac Doré | 12 - Saint - Augustin |

5. Cases of Absence of Property Rights in Favour of Quebec

Reserve existing before 1851:

- | | |
|-----------------|---------------|
| 1 - Bétancour | 4 - Maria |
| 2 - Caughnawaga | 5 - Odanak |
| 3 - Lorette | 6 - St. Régis |

6. Reserve Transferred directly from Quebec to Canada

- 1 - Natashquan
- 2 - Romaine

7. Reserve where Quebec has renounced its rights

- 1 - Temisamingue

8. Reserve purchased from a private party

- 1 - Amos
- 2 - Cacauna
- 3 - Escoumains
- 4 - Lorette
- 5 - Malioténam
- 6 - Maria
- 7 - Oka

Amos

The Amos reserve was created by the purchasing of a number of privately owned lots totalling approximately 130.26 acres by the federal government, beginning in April 1945, on behalf of the Abitibi Dominion Band of Indians. The land was then established as a reserve by an Order-in-Council P.C. 1958-1387 on October 10, 1958. In case of abandonment by the Indian occupants, title to the land would revert back to the federal government. Present area of reserve is 129.20 acres.

Bécancour

In 1708 the seignior of Port Neuf, Pierre de Rolirceau, granted all of the seignior of Bécancour totalling 2,000 acres to the Abenakis so long as the Jesuit mission remained there. However in 1760 the band sold approximately 1,800 acres of their land except for 148 acres which they kept as their reserve. The federal government describes the reserve under the schedule of reserves established by the Act of 1851. In 1894 they surrendered a 20 foot right-of-way for the construction of a bridge. This tract of land has since been given back to the Indians to form part of their reserve. Presently the Bécancour reserve encompasses an area of 148.0 acres. The title to the land in the lease of surrender for sale or abandonment by the Abenakis is held by Crown Canada.

Bersimis

In 1851 the Statutes of the Province of Canada 14-15 Vict. Chap. 106 authorized the establishment of Indian reserves on a total of 230,000 acres of land. In 1861 the Bersimis Reserve was created by exchanging the lands of the Manicouagan Reserve for a total of 63,100 acres of reserve land. Since that time none of the reserve has been surrendered. The Band however surrendered the timber rights to the reserve in 1918.

Since 1861 a number of permits have been given for road and power line rights-of-way and for persons to occupy areas on the reserve. This reserve forms a part of a particular group of provincial land that was set aside for the use of the Indians before Confederation; the right of return to the province was established by a judgment of Privy Council (Star Chrome Co. vs. Thompson.) The present acreage of this reserve is approximately 63,100 acres.

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Cacouna

The Cacouna Reserve was purchased by Crown Canada in 1891 from a private party. It comprises approximately 0.44 acres of reserve land. The province of Quebec does not have any right to this land since it was obtained by the Federal Government through a private purchase. This "reserve" is actually not a reserve within the meaning of the Indian Act. It has never been set apart as a reserve.

Coleraine

In 1851 under the Statutes of the Province of Canada 14-15 Vict. Chap. 106 (Act of 1851) authority was granted for the establishment of the Coleraine Reserve totalling 27,225 acres of land. In 1882 all the reserve land was surrendered and accepted by O.C. on April 3, 1882 and later sold in 1901. The monies received for the land were to be used for the benefit of the Indians. This reserve no longer exists. The surrender and sale gave rise to a court action which was finally resolved by the Judicial Committee of the Privy Council in their Judgment delivered November 23, 1920. This case is referred to as the "Star Chrome Case".

Crespieul

The Crespieul reserve was also created by the Act of 1851. In 1853, a total of 8,374.85 acres were distributed to the Indians at Crespieul. The land was later surrendered for sale December 21, 1910 and sold in 1911 by the Department of Indian Affairs for \$15,100.

Doncaster

The Doncaster Reserve was established by the Act of 1851 by which 18,500 acres of land was granted for the benefit of the Caughnawaga and Oka bands. One-third of the reserve belongs to the Oka Indians while the remaining two-thirds belongs to Caughnawaga. At the present time the bands have only one Indian occupying the Doncaster Reserve. It is mainly used as a timber lot which is worked by the Indians. The reserve is encumbered by a right of return to the Province since it was part of the territory of Lower Canada which was set aside for Indians before Confederation.

Eastmain

The Eastmain Reserve was created by the province under the Lands and Forests Act of 1922 with a total of 13.8 acres of land. On February 10, 1952 this settlement like the Waswanipi Reserve was transferred to the Federal Government by the

Province under an Order in Council, No. 242, February 13, 1962. The land on the reserve reverts back to Quebec if the Indians ever decide to abandon it.

Escoumain

In 1892 the federal government purchased a lot totalling 97 acres of land from a private party for the use and benefit of the Montagnais of Escoumain. In 1904 the Indians surrendered 187 acres of land to the Provincial Government for the building of a road. In case of abandonment by its Indian occupants, title to the land on the reserve would revert back to the Federal Government. It has however, never been formally set up as a reserve for the said Band.

Lac Simon

In 1961 the establishment of a reserve at Lac Simon was requested by the Band Council. It was created under the authority of the Lands and Forests Act of Quebec, 1922. The reserve was allotted a total of 672 acres including an additional 46 acres in the form of a lease held for them by the Crown. The reserve land would revert back to the Provincial Government if abandoned by the Indians.

Lorette

The initial reserve at Lorette was created in 1794 when the Jesuit Fathers granted 26.75 acres of land to the Huron Indians. In 1870 a Proclamation was issued by the Federal Government, confirming the title of the land. In 1953 and 1968 additional areas of land were purchased for the Indians by the Crown in right of the Government of Canada.

Maliotenam (Sept.-Iles)

In 1947 the Maliotenam Band Council passed a resolution requesting that a new reserve be purchased. Subsequently the Federal Government under the authority of a Privy Council suggestion purchased a total of 1,262 acres from a private party to create the Maliotenam Reserve. Since this was a purchase by the Crown in right of the Canadian Government, this land would be considered as federal land and therefore not liable to return to the province.

Manicouagan

The Manicouagan Reserve was established by virtue of the Act of 1851. In 1853 the Indians received a total of 70,000 acres on the west side of the Outardes River. This reserve was later exchanged for the one now known as the Berسيمis Reserve in 1861.

Maniwaki

The Maniwaki Reserve was established under the provisions of the Act of 1851. In 1853 a total of 45,750 acres were granted to the Indians at Maniwaki. The band surrendered many parcels of land between 1873 and 1917 for sale and lease. However in 1947 the federal government began to return portions of the surrendered lands back to the Indians. This reserve is encumbered by a right of return to the Province which was determined by the Privy Council.

Manowan

The Manowan Reserve was created by virtue of the Act of 1851. In 1853 there was a scheduling of the reserve. The reserve totalling, 1,906 acres of land was transferred to the Federal Government by the Province in 1906 by an Order in Council. The right of return to the Province in case of abandonment has been provided in the law.

Maria

The establishment of the Maria Reserve cannot be adequately determined since there is no accurate record of when the Indians were granted title to the land. They have relied on the Royal Proclamation of 1763 for their title. Originally the Reserve was composed of 376 acres of land later increased by the purchase of an additional 40 acres in 1940. Nevertheless, according to the federal list of Indian Reserves for 1962, concerning status of Indian Lands the Maria Reserve, it was secured to the Indians partly through gifts made long ago and partly through land purchases made by the Federal Government.

Metabetchouan

The reserve at Metabetchouan was established under the authority of the Act of 1851. Lands totalling 4,000 acres were set aside in 1853. However in 1855 the Metabetchouan Reserve was exchanged for the Pointe-Bleue Reserve.

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Mingan

The Mingan Reserve was created by the Provincial Government by virtue of the Lands and Forests Act of 1922. In 1943 a total of 4,340 acres was distributed to the Indians at Mingan. This reserve was transferred by the Province to the Federal Government on April 30, 1963 by an Order-in-Council. In case of abandonment the title to the land reverts back to the Provincial Government.

Mistassini

The Mistassini Reserve was established by the transfer of 5,821 acres of land to the Federal Government from the province of Quebec by authority of the Lands and Forests Act of Quebec 1922. This transfer of land took place in 1962, by an Order in Council. Should the Indians abandon the land, the Provincial Government assumes title.

Natashquan

In 1949 the lands composing Natashquan Reserve was purchased by the Federal Government from the Provincial Government by Letters Patent. This was undertaken in this manner because the transfer was to be effected from lands of the same Crown in right of the province. This territory was transferred in three lots, the first in 1952, was composed of 20.5 acres, the second in 1954 of 15.3 acres and in 1970 another 15.98 acres was added giving the reserve a total of 51 acres. The title to this reserve is not liable to return to the province since the land was sold outright to the Federal Government by a Letters Patent. (No. 1864).

Obedjiwan

In 1944, the Quebec government by virtue of the Lands and Forests Act transferred 2,290 acres of land to the Federal Government for the formation of the Obedjiwan Reserve. On March 21, 1950 this territory was made an Indian reserve by a decision of the Privy Council (No. 1458). If this Reserve should be abandoned or no longer used, title to the land would revert back to the Province.

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Odanak

In 1700 and 1701 the Abenakis Indians of St. François-du-Lac were granted two parcels of land with a total of 1,538.5 acres from the territory of the old Seigniories at Pierreville and St. François-du-Lac respectively. This area of land was named the Pierreville Reserve by the Indians. In 1962 an official change of name from Pierreville Reserve to Odanak Indian reserve took place. Most of this territory however, has since been surrendered to numerous individuals and companies. For example in 1868 a large portion was sold to Her Majesty the Queen in order that these lands could be sold and their interests used for the benefit of the Abenakis Indians. The Federal Government retains title to the land in case of abandonment by its Indian occupants.

Pointe-Bleue

The Pointe-Bleue Reserve was originally established by virtue of the Act of 1851, comprising two tracts of land. One of 16,000 acres was situated on the Peribonka River north of Lake St. John, while the other consisting of 4,000 acres was on the west side of the Metabetchouan. It was occupied by the Montagnais tribe of St. John and Tadoussac. However in 1856 the larger part of the territory was exchanged by the Indians for another parcel of land situated on Lake St. John which totalled 23,000 acres. Later on large tracts of land were surrendered in 1869 and 1895. According to the Dorion Report the present day acreage of the reserve is 3,773 acres. This reserve is encumbered by a right of return to the Province since it was set apart for Indians before Confederation.

Peribonka

The Peribonka Reserve was created under the authority of the Act of 1851 encompassing a total of 16,000 acres, which was distributed to the Montagnais Indians of Lake St. John in 1853. In 1856 however, the Indians at Peribonka wanted to exchange their present reserve for another parcel of land situated at Pointe-Bleue. The offer was accepted by the Federal Government and ratified the same year. As of 1856 the Peribonka Reserve ceased to exist. The title of land reverted back to the province of Quebec.

Quarante-Arpents

The Quarante-Arpents Reserve was granted to the Huron Indians by the Jesuit Fathers in 1742. In 1794 they received an additional tract of land in the village of Lorette and another parcel which was to be used in common. The Hurons at Lorette were the owners of three reserves. The first was the village reserve itself totalling 40 acres of land, upon which most of the band resides. The second was the Quarante-Arpents Reserve containing 1,600 acres. The third, the Rockmont Reserve comprising 15 square miles which was never occupied by the Hurons. The Quarante-Arpents Reserve was inhabited by only six families, while the remainder of the Band resided in the village of Lorette. In 1904 the Indians decided to surrender their rights to all their reserve land. The territory was subsequently sold in public auction by the Federal Government.

Rapid Lake

The Rapid Lake Reserve was created by authority of the Lands and Forests Act of Quebec (1922). A total of 70 acres of land were transferred by the Province to the Federal Government on September 17, 1961. The land comprising the Reserve would be returned to the Provincial Government if abandoned by its Indian occupants.

Restigouche

The Restigouche Reserve was set apart for the Indians by the Act of 1851. In 1853, a total of 9,600 acres was distributed to the MicMac Indians for the establishment of this Reserve. Since then 6.9 acres of this reserve land has been surrendered to the Federal Government together with a number of rights-of-way. The right of return of the reserve land in case of abandonment by its occupants is in the Province.

Romaine

Similar to the acquisition of the Natashquan, the Romaine Reserve was acquired by the Crown Canada according to a special procedure (since the territory being transferred was provincial Crown land). In March 1955 a Letters Patent was issued by authority of a 1949 Order-in-Council by which the Provincial Government

transferred this parcel of land to the Federal Government for the formation of this Reserve. In 1956 the land was set aside under the authority of the Indian Act. The title of the land would revert back to the Federal Crown if the Indians decided to abandon their Reserve.

Roquemont

The land at Roquemont Reserve was set aside by virtue of the Act of 1851. The reserve which amounted to 9,600 acres was abandoned and later sold in 1904.

Schefferville

In 1960 the Schefferville Reserve was established by virtue of the Lands and Forests Act of Quebec (1922). This reserve was created by a transfer of the reserve land from the Provincial Government to the Federal Government (by Order in Council), with the right of return to the province. Under this authority the Indians were granted 58.07 acres. In 1968 an additional 37 acres were added to the original reserve giving Schefferville Reserve a total area of 95.07 acres.

Sept. Iles

The Sept. Iles Reserve was created under the authority of the Act of 1851. In 1906 the Provincial Government of Quebec transferred 91.3 acres of land to the Federal Government for the establishment of a reserve. On July 5, 1925 the Indians surrendered all their reserve land except for one small portion in exchange for other land. A few months later there was an exchange of lots at Sept-Iles between Ottawa and the province of Quebec whereby the Federal Government transferred to Quebec all the reserve lands that the Indians at Sept-Iles had surrendered a few months earlier (88.8 acres) and in return the Province passed a ministerial order constituting as a reserve, tracts of land in Letellier Township which form an area of 255.5 acres. The Reserve is encumbered by a right of return to the Province. This right of return is based on the fact that these lands were either obtained by Ottawa under Statute 14-15 Victoria, Chapter 106 (1851) or later transferred by the Province to the Federal Government.

. . .

Timiskaming

The Timiskaming reserve which originally covered a large area was established under the provisions of the Act of 1851. In 1853 the Algonquin Indians received a total of 38,400 acres near Lake Timiskaming. During the following years a total of 40 surrenders were made to various individuals and companies reducing the total acreage. In this particular case the right of return to the Province, which was determined by a judgment of the Privy Council, was declared void due to an agreement by which Quebec transferred the Timiskaming Reserve to the Federal Government in 1940, with a special clause of renunciation of any right of recovery. In January 1940 the Province ratified that transfer of territory to the Federal Government. This renunciation clause only covers the portion of reserve which remained after the surrender of the major part of the territory to the Province on June 24, 1939.

Viger

The Viger Reserve was established by virtue of the Act of 1851. However, the Malécite Indians abandoned the land in 1859 and it was later sold by the Federal Government.

Waswanipi

By authority of the Lands and Forests Act of Quebec the Waswanipi Reserve was established. In 1962, the Provincial Government transferred 620 acres of reserve land to the Federal Government. Most of the Indians however, are now living off the reserve although a few continue to hunt and fish there. The Indians are seeking to exchange their reserve land for a new territory located at Miquelon. The Band still continues to have rights to this reserve. If the reserve was totally abandoned by the Indian occupants, the title would revert back to the Province.

Weymontachie

The Weymontachie Reserve totalling 7,408 acres was created under the authority of the Act of 1851. A few years later, the Indians decided to abandon the reserve. They have shown an interest in a new territory near La Croche parish, which is located ten miles north of La Tuque. They are presently squatters in the Saguenay locality, opposite the Weymontachie Reserve. The right of return

to the Province was determined by the Privy Council.

Whitworth

In 1876 an Order in Council from the Privy Council authorized the Federal Government to purchase land for the establishment of an Indian reserve at Whitworth from the government of Quebec. The land reserved to the band of Malecite Indians comprised 399 acres. At present the reserve is unoccupied and is now being used as a timber lot worked by the Federal Government for the Indians. Crown Canada has the right of title to the reserve lands at Whitworth.

The following is a list of "settlements" which are merely occupied by Indians. As they were not transferred to the Crown, in right of the federal government, they cannot be considered as official reserves. Therefore, they cannot claim a title to those lands within the interpretation of the law.

1. Fort George	122.5 acres
2. Grand Lac Victoria	30 acres
3. Great Whale River	30 acres
4. Hunteres Point	10 acres
5. Kipawa	15 acres
6. Lac Dore	20 acres
7. Long Point	93.5 acres (lease by Oblates for use of Indians)
8. Nemaska	18.5 acres (abandoned)
9. Neoskweskaw	? acres (only used during winter months)
10. Nitcheqon	70 acres (occupied only during winter)
11. Paint Hills	75 acres
12. Rapert House	127 acres
13. Saint-Augustin	10 acres (only area of land which is exclusively administered by the Quebec Government.)

These lands simply occupied by Indians still remain the property of the province since they were already part of the property of the Crown provincial before the Indians became occupants of these lands.

Source: Native North American Studies Institute - "The first Peoples in Quebec" - Prepared for Indians of Quebec Association. First Printing July 1973 - Thunderbird.

THE OKA INDIANS

Oka Indians

The Indians now known as the Oka Indians came from three tribes; the Nipissings; the Algonquins; and the Iroquois (Mohawk tribe). These Indians were settled around the mission of the St. Sulpician priests of Montreal when Canada was still under the French Regime. Because of the relative ease with which the Indians were acquiring alcoholic intoxicants, the Sulpicians decided to move their mission to Sault-au-Recollet in 1701. However, this did not solve the problem, for intoxicants were also freely available there. In 1717 the priests decided again to move, this time to the lands at the Lake of Two Mountains. They had asked and obtained from the Governor and from the Intendant of the Colony the concession of the Seigniorship of The Lake of Two Mountains in order that they could transfer their mission. This concession was renewed in 1718 by the King of France who granted the land to the Seminary for their eternal use, on the stipulation that they should bear the whole expence necessary for the removal of the Indian Mission at Sault au Recollet and assume the necessary costs for the building of the Church at the Fort. This concession and ratification were registered in 1719 with the Superior Council of Quebec, again with the office of the Registrar at Quebec in June 1765, and in the registry of "Foi et Hommage."

On the 26th of September 1733, a further concession was granted to the Seminary enlarging the original grant. In 1735 this new concession was ratified by the King, and this concession and ratification were registered with the Superior Council of New France in 1745, and later enregistered in the office of the registrar of Quebec in 1765, and also the registry of "Foi et Hommage." These tracts of land constituted the Seigniorship of the Lake of Two Mountains. "These grants of land which were made and confirmed in 1718 and 1735 to the Indians were not made as an Indian reserve to be managed by the Seminary of St. Sulpice but were made to the Seminary for the purpose of protecting, maintaining and giving religious instructions to the Indian and French inhabitants who placed themselves under their care."⁸

8. Memorandum of E. St. Louis, Archivist, Ottawa.
May 26th, 1947 - Dept. of Mines and Resources - Indian Affairs Branch.

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In 1822 the Algonquin and Nipissingue Indians residing at the Lake of Two Mountains laid claim to lands on both sides of the Ottawa River as far as Lake Nipissing under the Proclamation of 1763, which had confirmed to the Indian tribes the lands occupied by them as their "hunting grounds". They also complained that these lands were being intruded upon and requested that the Department intervene on their behalf.

On the 5th of October 1827, Major General Darling was asked to attend a council meeting at Caughnawaga in order to convey the decision of the Governor General on their claim, presented to the government in 1822. Major General Darling informed the Okas that their claim could not be recognized. He refused to interfere to prevent the settlement of the lands in question, declaring that these lands were not the exclusive property of the Lake of Two Mountain Indians, but that other tribes had an equal right to hunt upon them. He informed them however, that "a small portion of land will be granted to each family, for the purpose of Agriculture, but he cannot grant any tract of land to be kept in a wild state as Hunting grounds."⁹ In a report to the Executive Council in 1836, the Earl of Gosford, Governor General of Canada stated:

"The Claim of these Indians comprises a tract of country on each side of the Ottawa River ... There appears no reason to doubt that under the French Government the hunting grounds ... may have covered the whole extent which they now describe, and that their right so to use it was as little disputed and as well defined as any of the Territorial Rights of the other Indian Tribes. These Petitioners now appeal the terms of the Royal Proclamation of 1763 and it appears to the Committee that as that act of state has been considered sufficient to guarantee the Iroquois of St. Regis the possession of their present reservation to which it is stated that they had no other right than as part of their Ancient hunting grounds ... their right to compensation was at least in one instance distinctly admitted by Lord Dorchester. Viewing in this manner the claim now made by the tribe in question - The Committee recommended that a sufficient tract of land should be set apart in the rear of the present range of Townships on the Ottawa River, and that such of them as may from time to time despised to settle on land should be located there."¹⁰

On June 11th, 1839, the Superior of the Seminary of Montreal offered certain propositions to the Indians which were accepted by them. The propositions were:

1. The Indian can still maintain his cultivated fields; lots, houses and dependencies. They also have the right to transmit or lease them to their families or even to sell them to another Indian at the Mission without the payment of any colonial duties or fees.

9. Smith W. Chalmers - Report to Executive Council, 12th June, 1837
Public Archives, Indian Affairs (R. 10, Volume 10021) p. 78-79.

10. Ibid. p. 79.

2. They are allowed to add to their fields or obtain more land if they wish to cultivate themselves; however it will be at the option of the missionaries alone to choose the additional lands in order to prevent disputes.
3. No white person will be allowed to live with the Indians or be employed to cultivate the fields without the permission of the missionary.
4. The Indians have the right to build houses on their cultivated land.
5. The Seminary will continue to provide the Indians with fire wood they may consume, wood for building and repairing their houses and fences. This wood may be cut only where the missionaries may point out.¹¹

In order to put an end to the question of ownership of the lands at the Lake of Two Mountains, an Act was passed by the Government in the year 1840 and confirmed by "Her Majesty" in 1841. It stated that the Ecclesiastics of the Seminary of St. Sulpice of Montreal were confirmed in their title to the Fiefs and Seigniority of the Island of Montreal, Lake of Two Mountains and St. Sulpice. It would also provide for the gradual removal of Seigniorial Rights and Dues within the limits of the Fiefs and Seigniories.

In view of the decisions mentioned and the Ordinance of 1840, the Government can be said to have recognized the title of the Seminary to the lands granted to them by the French Crown.

On the 19th of June 1846, the Iroquois Chiefs and warriors of the Iroquois Tribe of the Lake of Two Mountains submitted a Petition to the Government which claimed:

1. "That the Iroquois Tribe is treated with contempt and harshness by the Roman Catholic Clergy.
2. That they are deprived, through the gentlemen of the St. Sulpice Seminary, of a scholastic and religious education, in accordance with the progress of civilization, and that they are only taught to read and write the Iroquois language.
3. That the gentlemen of the St. Sulpice Seminary have always refused to concede to the Iroquois Indians, lands for agricultural purposes within the limits of the Seigniority of Lake of Two Mountains.
4. That the said gentlemen refused to them the right to cut wood for fuel for their own use.
5. That the said gentlemen have caused in 1864, a large quantity of wood to be cut and sold against the will and to the prejudice of the Iroquois Indians.
6. That the said gentlemen have refused to allow the Iroquois Indians to cut timber for building or improvement purposes, whilst they have allowed a white man to have a large quantity of the same for a large sum of money.
7. That the said gentlemen have deprived an Iroquois Indian, named J. Ste. Lacoppre of a canoe he had made himself.
8. That the said gentlemen exact titles from the Iroquois Indians without the right to do so.
9. That one of the said gentlemen has in the name of the others, deprived an Iroquois women of land she had, and has given her but \$15., whilst she was offered \$30., by a white man.
10. That the Iroquois Indians are proprietors of the land, but the gentlemen of St. Sulpice deprive them of their rights.
11. That the Iroquois Indians wish to be educated in French and English."

11. Ibid p. 79-81

12 Report to Privy Council by H.L. Langevin, Secretary of State and Superintendent General of Indian Affairs dated 9th October, 1868, Report No. 40, p. 101, Ottawa. Public Archives Indian Aff. (RG 10, Vol. 10024)

After having read the Petition of the Iroquois Indian Chiefs, Mr. H.C. Langevin, Secretary of State and Superintendent General of Indian Affairs, made the following statement (in his Report to the Privy Council on October 9th, 1868):

"I have no doubt that, as in the case of the Algonquin, the Iroquois Chiefs are altogether in error."¹³ He went on to state that the Seigniory of Two Mountains was still the absolute property of the Seminary of St. Sulpice of Montreal as was shown by the grant of the 27 April 1718; by the grant of the 1 March 1735; by one of the clauses in the Treaty of Paris of 1763, which gave the Seminary the right to sell the Seigniories and bring back the proceeds from their sale to France if they so desired; by the 3rd and 4th Victoria, Chap. 30 (now Chapter 42 of the Consolidated Statutes of Lower Canada) and lastly by the Seigniorial Act of 1859. Because of these reasons Langevin felt that the Iroquois Indians had never had any right to the property at the Seigniory of the Lake of Two Mountains.

In answer to petition complaints nos. 1, 2, 8 and 11, Mr. Langevin informed the Chiefs, that:

"the people at the Seminary have always been kind to the Iroquois by providing for their spiritual and temporal wants in the most ample and liberal manner, giving them a good education, teaching them the French language ... and expending every year for their spiritual wants a much larger sum than that derived from the Indians and French Canadians put together. That the Indians contribute a small sum annually, for the expense of the church, is not denied by the gentlemen of the seminary, but it is considered by the return of the revenue and expenditure, that the Indians receive a much larger sum than they pay."¹⁴

With regard to the remaining complaints, Langevin stated that since the religious people at the Seminary were the proprietors they had the right to set conditions as regards the cutting of wood. In addition the experience of a century and a half was there to show that the Algonquins and Iroquois, who were under the care and influence of the people at the Seminary, had always been treated with paternal care. As a result of this the Indians had increased in number while at the same time had become good and religious people.

In conclusion he felt that the Indian Chiefs should also be informed "that by an Order-in-Council of the 9th August, 1853, 16,000 acres of land in Dunrobin, North River, in near of the Township of Wexford, were set apart for the Iroquois of Caughnawaga and Two Mountains and that therefore they might settle there if they wished. The Government in that case, would see that aid could be given them, and

13. Ibid. p. 102

14. Ibid. p. 103

should those lands be too small in extent, some other locality would be found where they might settle if they wished."¹⁵

On the 31st of July 1868, the Algonquins of the Lake of Two Mountains presented another Petition which claimed the following:

1. That the Seminary of St. Sulpice had no rights to the land or wood which belonged to the Indians.
2. That the Seminary refused to give the Indians wood in order that they could construct their houses.
3. Certain islands in the Ottawa River were taken by the Government for public work purposes 36 years ago and which no compensation was paid for their islands.
4. That certain equipments which were paid to the Indians have now stopped.
5. The Indians should enjoy the same privileges as the white person.

Mr. H.L. Langevin Secretary of State replying on the 26th of October 1868 to the Petition of the Algonquin stated that he had:

"no doubt that the Algonquin Indians were altogether in error and that the comparison established by Mr. Spragge between the land at Sault St. Louis is quite wrong in every way the tenure of both being quite different because the land at Caughnawaga had reverted back to the Crown while the land at the Lake of Two Mountains was the absolute property of the Seminary of St. Sulpice of Montreal as was showed by the title or grant of the 27th April, 1718; by that of the 1st March 1735; by the permission granted to the Seminary by the Treaty of Paris to sell these Seigniories and bring the proceeds back to France if they had wished to; by the 3rd and 4th Vict., Chap. 30 (now Chap. 42 of the consolidated Statutes of Lower Canada), and by the Seignorial Act of 1859."¹⁶

Therefore Mr. Langevin concluded that the Indians had no right of property to the Seignior of Two Mountains, but had a right to remain at the mission where they were as long as they wished. They would however, have to behave in a peaceful manner and respect the rights of the Seminary at St. Sulpice.

On the second point of the petition, Langevin was positive that the Seminary did not allow the Indians to cut wood for sale, however they allowed them timber to build with and cord wood for their own use. On the third point he observed that:

"By the Act, 14 and 15 Vict., Chap. 106 a large tract was set apart for the use of certain Indian tribes in Lower Canada and that, by an Order-in-Council of the late Province of Canada, dated 9th August 1853, and passed in accordance with, and under this last mentioned Statute, 45,750 acres of land in the Township of Maniwaki (River Desert) were set apart especially for the Tetes de Boule, Algonquins, and Nipissingue Indians, being the tribes hunting on the territory between St. Maurice and Gatineau, principally residing at the mission of Lake of Two Mountains. Compensation has, therefore been given to the

¹⁵ Ibid, p. 104.

¹⁶ Report to Privy Council from H. Langevin Secretary of State and Supt. General of Indian Affairs. 26 October 1868 No. 39 Indian Affairs (RG 10, Vol. 10024).

Algonquin Indians that may have been appropriated by the Government on the Ottawa River."¹⁷

With respect to the fourth point he stated that the government for a long time had provided certain equipment, however, they had stopped doing this and were now replacing it with blankets, seed, grain and other necessities for old and infirmed Indians. On the last point Langevin declared that the Indians could not have the same privileges as a white person so long as the law remained as it was. Consequently the department planned to submit a scheme by which Indians under certain conditions could obtain their emancipation and become citizens like the white men. However, before this could be approved the Indians must not break the law or impede it in any way. The Oka Indians were not willing to accept the validity of these decisions (that the Seigniory belonged to the Seminary of St. Sulpice) for they asked the department that they be given possession of these lands.

On the 9th of January 1878, the Minister of Justice, Mr. Laflamme after carefully considering the case, concluded:

"The subject of the Indian rights in the Seigniory has already undergone the investigation of the Government of this Dominion within a few years and they were pronounced groundless. On the 24th of May, 1869, a petition of the same parties, the Algonquin and Iroquois Indians of the Lake of Two Mountains, setting forth the same pretensions as those asserted in the Petitions now submitted ... questioning also the right of the Seminary to the land and wood in the former Seigniory (Two Mountains) ... His Excellency in Council approved of a Report made on such claims to the effect that the Indians had no right in the Seigniory of the Two Mountains, and that the said Seigniory was the absolute property of the Seminary of St. Sulpice, who had complied with all of their charter."¹⁸

Later on May 7th 1878 another opinion was given by Judge Badgley of the Counsel of the Quebec Bar in which he stated:

"That the title of the Corporation of the Seminary of Montreal had conferred upon the Body the sole absolute owners of the property known as the Seigniory of the Lake of Two Mountains. Consequently the Oka Indians have not and never had any lawful proprietary claim in the property of the said Seigniory. It can therefore be seen from the above decisions as well as from the opinions expressed by the highest authorities in the land that the Seminary of St. Sulpice have the absolute right to the property in the Seigniory of the Lake of Two Mountains, and that the Indians have no proprietary rights in this land."¹⁹

17. Ibid p. 100.

18. Laflamme Hon. Mr. Report of January 9th, 1878 to the Privy Council. p. 105. Public Archives (RG 10, Vol. 10024) p. 105.

19. McGirr J. Indian Agent, Oka Que. Memorandum Department of Interior 23 March, 1878 Public Archives (RG 10, Vol. 10024) p. 106.

In 1881, to avoid litigation and legal costs, the St. Sulpice Seminary and the Indians agreed to settle their dispute by finding a new location for the Indians at Oka. Therefore on September 27, 1881 an Order-in-Council was signed for the removal of Indians who desired to leave Oka for a tract of 25,282 acres of land in the township of Gibson, in the province of Ontario. The conditions of the agreement with the Seminary were that:

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

The Indians who moved went voluntarily. Some years later a few Indians who had already moved to Gibson returned to Oka. In 1908 three Oka Chiefs acting on behalf of the land instituted proceedings against the Sulpicians with respect to the title of the Seminary at Oka. The Superior Court (Q.R. 38 S.C. 268 Hutchinson J.) on the 17 of March, 1910 dismissed the action on the grounds that "The evidence addressed by the plaintiffs does not show that they occupied any lands of the said seigniory as proprietors. The evidence of the defendant establishes the contrary."²⁰ The Oka Indians appealed to the Privy Council in 1912 but the title of the Seminary was upheld and the appeal dismissed. The Privy Council held that the land belonged to the Seminary and not to the Indians, however it suggested that there might be a trust relationship which it was not able to examine in the case as presented. A second action was never instituted by the Oka Indians.

In 1945 the Federal Government bought lands from the Seminary to protect the Indians since the Seminary had been selling land previously occupied by the Indians.

In 1958 the Minister of Citizenship and Immigration informed the Indians at Oka that their lands were not Indian reserve lands. "These lands do not comprise an Indian Reserve. For many years they were under the control of

20. Superior Court Judgment No. 2601, Prov. of Quebec, District of Montreal 7th March 1910, Mr. Justice Hutchison.

the priests of Saint Sulpice, but were acquired by Canada to protect the interest of the Indian occupants. The right to occupy the individual parcels became involved over the years, and the Indian Affairs Branch has been attempting to straighten these matters out. The work is nearing completion. When it is finished a decision will be given as to the future status of the lands. It is not desired to reach this decision at the present time."²¹

In 1961 the Oka Indians made a request regarding the status of their lands: "The Oka Joint Committee on Indian Affairs, op. cit, page 15, Indians wish that the Oka lands be given the status of a reserve. It has all the characteristics of it, with a resident agent of the Department, but it has not the legal status that would enable the bands to have a perpetual use vested in it for their enjoyment and that of their children and descendants".²²

21. Joint Committee on Indian Affairs, op. cit., p. 15.

22. Ibid.

THE ST. REGIS INDIANS

ST. REGISEstablishment of St. Regis

The St. Regis Indians were actually an "offshoot" of the Indians of Caughnawaga who migrated to their present village around the year 1755. There are contrasting viewpoints as to the reason why the Indians moved from Caughnawaga; however, there is no doubt as to the fact. Among the Haldimand Papers (Archives Vol. B. 114, P. 307) is a memorandum of Col. Claus dated the 11th March, 1784, in where Père Gordon is reported to have said that "drunkenness and disorder had become so common at Caughnawaga on account of the disturbed condition consequent upon the war between France and England that the mission grew to be of very little use."²³ Consequently Père Gordon, who was of the order of the Jesuit Fathers, felt that it would be in the best interest of some of the Indians if they and their families removed themselves from the settlement at Caughnawaga. He obtained the consent of General Vaudreuil to leave and a promise of a land grant of any tract of unceded lands on the St. Lawrence River above Sault St. Louis.

"Upon which he left Caughnawaga with the families that determined to follow him and fixed upon the spot St. Regis Village is now established."²⁴

Title to Land

Père Gordon because of the problems that arose with the 7 year war, was unable to obtain at that time a deed for the land at St. Regis. When the French Regime came to an end in 1760, the Indians found themselves with nothing but squatters title, a title which was, however, confirmed by the 40th Article of the Capitulation (1760) which stipulated that:

"the savages or Indian allies of His Most Majesty shall be maintained in the land they inhabit if they choose to remain there and by the Royal Proclamation of 1763 which provides that the Indians should not be molested or disturbed in the possession of such parts of our Dominion and Territories as, not having been ceded to or purchased by us, are reserved to them as their hunting ground."²⁵

23. Memorandum. Dr. Claus, Agent for Six Nations, March 11, 1784 "Respecting a claim of the St. Regis Indians".

24. Ibid.

25. Memorandum, J.A.J. McKenna, Secretary to Supt. General of Indian Affairs 13 October, 1896, "Respecting claim of St. Regis to the Thousand Islands".

However Père Gordon wanted to insure that the Indians did obtain a clearly defined title to a specific reservation. According to an Indian agent he applied to the British authorities for a parcel of land which would extend from the River des Raisins (vicinity of present reserve) to the foot of the Long Sault, six leagues deep on each side of the river. This application was refused on the grounds that the land registers did not show that a

"grant was ever made of the lands in question to the Indians, Père Gordon or any other person whatsoever in their behalf".²⁶

However, Sir Frederick Haldimand the then Governor directed that the Indians be allowed to remain

"in possession of the quantity of land specified (which it is understood included the present reserve)"²⁷

on the understanding that this permission must not be

"regarded in any other light than as a matter of indulgence pending the signification of the King's pleasure, no part of it having been granted to them as property."²⁸

The Indians however, came in time to be recognized as the owners of their lands for according to a report written by D.C. Napier, Quebec Superintendent of Indian Affairs, in 1829:

"The Iroquois of St. Regis possess the undermentioned lands and islands in Upper and Lower Canada which were allotted for their use and benefit by the late Sir Frederick Haldimand and, soon after the Peace of 1783, in lieu of the lands previously occupied by them. Twenty-one Concessions of land situated in Eastern District of Upper Canada and lying between the counties of Stormont and Glengarry. Nine Islands in the River St. Lawrence in front of the Townships of Charlottenburgh, Cornwall, Osnaburgh, and Edwardsburg, in Upper Canada: Eight concessions in the Reservation called Dundee, L.C., and between the Salmon River and the Township of Godmanchester; also the Reservation commonly denominated the Parish of St. Regis, forming the tract of land between the Salmon River and the Village of St. Regis."²⁹

In addition an executive Council Report dated 13th of June, 1837, stated:

"The Indians of St. Regis belonging to the same Iroquois Tribe but numbering only three hundred and eighty-one souls, occupy a tract in that vicinity of about twenty-one thousand acres of excellent soil, and also possess a large reservation on the opposite shore of the St. Lawrence in Upper Canada, and several islands in the river, the whole amounting to about fifty thousand acres. To these tracts they have no other title than their

26. Haldimand Papers, Archives Vol. B63 pp. 128-131.

27. Ibid. Vol. B63 pp. 215, 216.

28. Author Unknown. Archives File No. 220,270 Red Series Date April 24th, 1907, p. 2.

29. Memorandum, J.A.J. McKenna, Sec. to Supt. General of Indian Affairs 13 October, 1886.

ancient occupancy of them as a part of their former hunting grounds. The greater part of the tract in the Province appears to have been leased by the Indians, with the sanction of the government for periods varying from thirty to ninety-nine years and at low rents."30

In a Report of the Commissioners Rawson, Davidson and Hepburn, on the Affairs of the Indians in Canada, dated March 20, 1845, the territorial possessions of the St. Regis Indian people were thus defined:

"These Indians occupy a tract of land intersected by the boundary line of the Province, on the parallel of 42° N. latitude, so that the southern portion of the tract belongs to the State of New York, and the Indians occupying it are American subjects."

"The portion of land occupied by the British Indians is of a triangular form, extending from the Peninsula of St. Regis, on which the village is situated, about twelve miles along the shore of the River St. Lawrence, and Lake St. Francis, by which it is bounded on the north; along the boundary line on the south, it extends nearly fourteen miles; on the east it is bounded by the Township of Godmanchester. Its area is about 21,000 acres."

"Besides the land at St. Regis, those Indians are also proprietors of the nine Islands in the River St. Lawrence, and of a reservation of land, called Natfield, in the Eastern District of the Upper Province, lying between the counties of Stormont and Glengarry, and containing 30,690 acres."

"These lands form but a small portion of the hunting grounds of the once powerful Iroquois Nation, and are supposed to have been occupied by this tribe since the first settlement of Canada. Their title was originally a mere occupancy for the purpose of hunting; but it was recognized and acknowledged by the Government of France before the conquest, and was subsequently secured to them by that of England, in common with all similar titles existing at the time of the conquest."31

Thousand Islands

The Executive Council Report of 1837, however had made no recognition of any ownership on the part of the St. Regis Indians to the Thousand Islands. In 1845, the Report of the Commission on Indian Affairs stated that the St. Regis Indians were the owners of nine islands on the River St. Lawrence in addition to their possessions on the mainland. However some manuscript records have shown that the St. Regis Indians claimed many more islands than were recognized as theirs. For instance H. McDonell, the Deputy Surveyor, stated on the 15 August 1793, that the Indians of St. Regis and Oswegatchie (near Ogdensburg, N.Y.) did lay claim to the islands from the River Ganaroque downwards, except for the

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30. McKenna, J.A.J. Secretary to Supt. General of Indian Affairs. Memorandum respecting claim of St. Regis to the Thousand Islands, 13 October 1845.
31. Rawson, Davidson and Hepburn Report on "The Affairs of Indians in Canada" March 20, 1845.

islands that the Indians had surrendered to the government. Further to this is a record of a petition addressed to Lord Elgin on the 5 February 1850 by the St. Regis Indians, which declared that they had been deprived of certain islands by the survey which delimited the boundary between Canada and the U.S. under the Treaty made at Ghent in 1814. This petition stated that:

"the St. Regis Indians have possessed and exercised ownership over all the islands in the River St. Lawrence (excepting Ogdens Island) between Coteau de Lac and the head of Gallop Rapids (fifty in number) . . . The Oswegatchie Indians who have merged into the St. Regis tribes, possessed among others those called Grindstone Wells and Grenadier Islands, situated between Prescott and Gananoque."32

A few years later in 1856, representations by two St. Regis chiefs were made in a memorandum which asserted the ownership of the Thousand Islands by the St. Regis Indians. In June of that same year Mr. R.T. Pennefeather, Superintendent General of Indian Affairs, wrote back to the chiefs at St. Regis stating that:

"His Excellency does not admit an unqualified right on the part of the Indians to all the islands, nor does he know as yet the extent of their rights as hitherto acknowledged, but he will make enquiry on this head. In the meantime he wishes the Indians to furnish him with proof of the exercise of their rights, showing the islands over which such rights are exercised and the alleged extent of such rights; and further His Excellency desires them to state what they deem to be the value of such rights."33

Mr. Colquhorn, the Agent at St. Regis, replied on behalf of the St. Regis Chiefs on 7 July 1856 -

"That in 1806 the Iroquois and Oswegatchie tribes united. That before that union the Iroquois Indians had and exercised the right of leasing the islands east of Prescott to Point au Beaudet and the Oswegatchies those west of Prescott to Gananoque; and that both before and after the above mentioned union many of the Islands were leased by the Indians and that upon many of them the rent has been regularly paid up to this time."34

Mr. Colquhorn then went on to list the islands to which the Indians laid claim. There is however, no record of any direct claim set forth by the St. Regis Indians as to their ownership of the Thousand Islands.

On the 29th June 1855, the Mississaguas of Alnwick surrendered "all and singular those islands lying and situated in the Bay of Quinte on Lake Ontario, Weller's Bay and the River St. Lawrence."35 This surrender was accepted by the Government with the stipulation that:

32. McKenna, J.A.B. Secretary to Supt. General of Indian Affairs, Memorandum respecting claim of St. Regis to the Thousand Islands, 13th October 1896. p. 5

33. Ibid. p. 5

34. Ibid. p. 6

35. Ibid. p. 7

"the covenant as to the investment of the proceeds for the benefit of the Mississaguas of Alnwick should be held binding only so far as the title of that band shall be found to be good, but that they shall be considered as having now waived all right hereafter to raise claims for their surrendered lands, this cession being considered final as regards them".³⁶

One can surmise from this that Colquhorn's statement had the effect of making the government doubt the right of the Mississaguas to the Islands which they surrendered and provided also for the admission of claims from other parties.

As previously stated in Mr. Colquhorn's reply, the St. Regis Indians were asserting ownership to the islands between Gananoque and Lac St. Francis.

This assertion was based on the union made between the St. Regis Indians and the Oswegatchies, who according to the said statement, were the sole owners of the islands between Gananoque and Prescott prior to 1806.

The Oswegatchie Indians were a part of the Iroquois tribe who left

"La Presentation" in 1749 to move to the vicinity of Johnston in 1793

(which was located on the Ontario side of the river in Upper Canada). They

later moved to a point opposite on the south shore known as Indian Point.

By 1807 the twenty-four remaining families were removed to Onondaga and

St. Regis where they were absorbed into the population of each Indian community

There is however, nothing in the record in regard to the claim (1850) by the St. Regis Indians and the Oswegatchies which disclosed the grounds upon which the right of the present owners of the Thousand Islands, the Mississaguas of Alnwick, is based, who seemed to be:

"regarded as the owners rather from the want of a thorough canvassing of Indian claims to Ownership than as the result of a careful enquiry." ³⁷

The department therefore decided to withhold an opinion as to their title until a more exhaustive search was made to ascertain the nature and extent of the title of the Mississaguas to islands in the River St. Lawrence. However, even with the results of this search the department could not make a commitment on the St. Regis claim to the islands until yet another enquiry could be made on the history of the Oswegatchies and their claim to islands (which is alleged the state of New York recognized and gave compensation to the Indians in 1856).

36. Ibid. p. 8

37. Ibid. p. 8

St. Regis

Godmanchester Boundary Dispute

The Godmanchester Boundary dispute initially commenced in 1822 when the limits of the Township of Godmanchester were defined in which "4000 arpents" were taken from the Easterly boundary of the Reserve, by running a line from Lake St. Francis to the American Border, on a course of S 330° East instead of S 38° East, as laid down by the Surveyor T. McCarthey in 1809. This resulted in a total of 5 degrees of land being omitted from the Reserve. During that same year the Indians were declared to be the rightful possessors of the Triangular tract of land encompassing the U.S. border, the River St. Lawrence and the Township line. From the difference in the surveys the direction of the easterly limit has been in question and the "Gore of Land" described on the maps represents the area in dispute.

According to the Special Commissioners Report of September 8th, 1856:

"the St. Regis Indians cannot claim the land itself inasmuch as the "Remainder" only of the land after laying out the Township was allotted to them; But since they have been deprived of a certain tract by the fault in the first instance of the Crown Land Surveyor in running those lines, we are of opinion that they are equitably entitled to compensation for the tract which has been subsequently taken from them. There is another argument which may be advanced in support of their claim, namely that the original line of 1809 is parallel to those bounding the adjacent Parishes below the Reserve. Had the direction of their latter been adhered to in the Second Survey, the Indian claim would not have been interfered with". 38

Dundee Lands

The territory in question, the township of Dundee, was surveyed about the year 1809 and almost immediately settlement began in which Indians for the first time, granted leases with the assistance of their agents to white settlers within these reserve bounds. Subsequently during 1819, thirty-six leases were granted for a period of 99 years; in 1820 five leases of a similar character were also granted. In 1821 eighteen more were granted, however they were renewable up to 999 years; in 1822, another one, and in 1823 three more leases. These long term leases were granted on the sole responsibility of the Indian agents who acted as the representatives of the Indians. However the attention of the authorities was called to this for on the 12th of February 1822, in a letter to the Honourable Sir John Johnson, Superintendent General of Indian Affairs H.C. Darling, Military Secretary stated:

38. Report of the Special Commissioners on 8th Sept. 1856: "To Investigate Indian Affairs in Canada" p. 23, 4th para. Toronto, Printers-Stewart Desobry & G. Lebaron. 1856.

"In reply to Mr. Chesley's inquiries as to how far His Lordship's determination not to extend the term of leases beyond thirty years, is intended to affect those persons who have taken land for the term of ninety-nine years His Lordship might deem it, not to confirm any leases that may have been obtained under terms of disadvantage" and ... that there would be some objective to close an investigation of what has taken place, as great difficulties might present themselves, in the adjustment of the differences that might arise ... For these reasons, His Lordship will not interfere with the past, particularly as Mr. Chesley reports that the persons holding leases under these circumstances are, with very few exceptions, regular in the payment of their respective rents, but on the contrary, I am to convey to you his authority for confirming all such existing leases ... to grant the same."39

The short leases for thirty years appear to have been granted for the first time in 1824. Some were approved according to the above instructions, however many others were not approved in the manner and form required by the instructions of 1822.

In 1841 the Legislature of Lower Canada by an Act, 1st William IV, Chap. 39, declared:

"That the tract of land heretofore known by the name of the Indian Reservation of St. Regis and Dundee on the Indian Lands, that is to say, all that tract of country included between Lake Francis, the Province Line and the Township of Godmanchester, shall be hereafter known and designated by the name of the Township of Dundee, etc."40

However by the year of 1856 the settlers holding leases in the Township of Dundee, desired to obtain ownership of these lands. They could not do so until terms could be agreed on by which the Indian interest in Dundee lands could be sufficiently recognized. To add to the problem many of these leases were irregular while many others were forfeited by non fulfilment of the covenants. There was also a considerable number of them that had expired and were never renewed.

In 1864 the parliament of Canada by an Act 27-28, Vict. Chap. 68 undertook to settle the tenure of these settlers:

39. Report on Dundee Land Question - Hon. Justice Burbridge, Hon. W.W. Lynch Q.C. and A. Dingman Esq. October 7, 1887, p. 12

40. Ibid. p. 15 3rd para.

"The township of Dundee in Lower Canada was set apart for the use and benefit of the Indians of the tribe of Iroquois and St. Regis at an early period by the government of Canada, as an Indian Reservation; and whereas the said Indians have ... leased all their rights in such lands for fixed ground units, and have given up possession of the same; And whereas doubts have arisen respecting the legality of the leases ... that all such doubts should be removed and the said Indians duly compensated, and that the purchases and lessees should have the right of redemption of such lands."41

In 1871, the parliament of Canada again legislated on the same problem by creating an Act 34th Vict. Chap. 27 (1871) which was assented to on April 14th, 1871. Its prime objective was:

"To prolong, for a certain time, the term allowed for the redemption of rents reserved on certain Indian lands in the Township of Dundee." 42

On February 16, 1888 the St. Regis Indian Band surrendered twenty thousand acres of land in the Township of Dundee, in the county of Huntingdon (Province of Quebec), which were under lease to people other than the Indians, to the Government of Canada, in order that the Government could sell these lands, for their benefit. This was duly accepted by an Order-in-Council (317) of the Privy Council on 22 February 1888.

In 1927 the St. Regis Islands Act (George V Chap. 37) was passed to provide for special control of some islands in the St. Lawrence River which form part of the St. Regis Indian reservation. The Act declared that the Superintendent General of Indian Affairs would have full power to deal with certain islands in the event that their leases were declared by the courts to be null and void.

41. Act of Parliament, 27-28, Vict. Chap. 68, 1864.

42. Act of Parliament, 34th Vict. Chap. 27, April 14, 1871.

THE CAUGHNAWAGA INDIANS

X Caughnawaga

In 1647 the Jesuits of the St. Francois Xavier Mission received a tract of land at La Prairie de la Madeleine from Sieur de Lauxon, a Royal Councillor of the Parliament of Bordeaux, to establish a small mission as a resting point for their travelling Missionaries. However, the Jesuits became fearful that the:

"good disposition professed by their converts might quickly evaporate under other influences, these Indians were prevailed upon to abandon their own country, and make a new settlement around the Mission called "Kentake" by the Indians."⁴³

Thus in 1668 a missionary centre was founded at La Prairie to be used as a refuge for the Huron, Erie, Algonquin, Oneidas, and Cayuga Indians - just as Lorette and Sillery had been established for the Hurons and the Algonquins a few years earlier. A prime requirement for membership was also established - baptism or acceptance of the leadership of the Roman Christian Church instead of a blood relationship. The following year in 1669 provision of intoxicants to Indians was forbidden, however it was never efficiently or effectively controlled for it continued to be a source of much trouble.

By the year 1680 the Indian Mission at La Prairie became over-crowded with French settlers. To alleviate these difficulties and problems, Louis XIV granted a tract of land to the west of and adjoining La Prairie, having a frontage of two leagues on the lake (deed signed at Versailles on the 29th of May 1680). It was later confirmed in 1682 by Frontenac, the Governor of New France. A further grant of land was also given by Louis de Brude at Quebec, on the 31st of October 1680, on the condition that the land would revert to the Crown if the Indians ever abandoned the land. These grants of land formed the new settlement called "Kohnawakon" meaning "in the Rapids".

To meet rapidly changing conditions and the increasing demands of the authorities, and to satisfy the requirements of the mission, a third transfer of the mission was made in 1696 to a site further up stream opposite Devil's Island (just above the Rapids). This new settlement was to be called "Kanatakwenke", which meant "above the Rapids".

43. Taggart C.H. Commissioner Report to the Minister of the Department of Mines and Resources on "Caughnawaga Indian Reserve" 1943 p. 3

With New France being the scene of Indian wars and wars against the British in the early 1700's, the French authorities realized that increased protection was necessary for the fledgling colony at Montreal. In order to achieve this the authorities requested that a fort be constructed at the head land on the lower end of Lac St. Louis, within the Jesuit land grant and a short distance above the top of Lachine Rapids at Sault St. Louis. They also requested that the Mission and Indian settlement be permanently established there as an outpost against attack from the West. The Jesuits were first opposed to this since they feared the influence of the garrison soldiers, however, after some pressures from the government the Jesuits finally gave in to their demands. In 1717 the fourth and final move to three miles west of La Susanne on the river front was made, where a missionary residence was built between 1717-1721 and a church in 1721. It was not until 1754 that the building of the stone Fort began along the river front; the west side, and part of the south side which enclosed an area large enough to accommodate the population in time of emergency. This new settlement was called Sault St. Louis by the French, and "Kanawake" by the Indians.

Prior to the advent of the British in 1760, the priests at Caughnawaga considered themselves as the government and means of control to the Indians for they had presumed to be in the category of a Seigniorship allocating tracts of land to French settlers under the French system. By 1762 however, the Indians began to realize that they did not have ownership of the land the King of France had granted to them back in 1680 because the Jesuits were now claiming these lands as their own under the Seigniorship system.

For example, there was no official boundary between the Seigniorship of La Prairie de la Magdelaine (1647) and the Seigniorship of Sault St. Louis (1680). The Jesuits claimed a tract of land which measured thirty-seven acres wide by four league in depth from the river to the rear line of the Seigniorship of Laprairie. The ill-defined boundaries which separated the two seigniorships involved title to that same strip of land. In order to resolve this dispute the British Government decided to establish an auxiliary court presided over by General Gage. The court examined the provisions of the land grant to the Jesuit which resulted in the Gage Judgment of 1762. This is the only documentary obligation which is applicable to these

Indians since no treaties were ever made with the Indians at Caughnawaga. General Gage declared in the Judgment that the wording in the Land Grants gave no rights to the Jesuits to use the Seignior system, and that the assumption by the Jesuits of the right to dispose of their lands or collect dues as seigniors was illegal. The Land Grants prohibited French settlers from settling on these lands for they were for the sole benefit of the Indians who would settle there. In addition General Gage declared that all of the undisposed land in the areas that were owned by the Indians would belong to them as a community to be held for their sole benefit and that all buildings and other improvements held by the Jesuits and situated on their lands would belong to the Indians. Lastly surveys were to be made in order to define the boundaries of these lands.

The Seignior continued under the superintendence and management of the Jesuit priests until the 15th April 1762, when a Commissioner for Indian Affairs was appointed by the British. Thus was removed all responsibility for government and control from the Society of Jesus who for almost a hundred years had held absolute power. The Indian lands were placed in the hands of the Crown who would hold the fee simple for the benefit of the Indians. The Community was now designated a Band and called "the Iroquois of Caughnawaga". However, the victory the Indians experienced over the Jesuits was of a very short duration. The ownership of the Seignior of St. Louis was maintained by the Indians although its eastern boundary line was changed again. In September 1762 owing to "circumstances relative to the patent which the Jesuits claimed from Louis XIV",⁴⁴ General Gage re-examined his decision on the limits of the two Seigniories and ordered the surveyor Mr. Péladeau to restore the posts on the boundary line where they had initially stood - "où les anciennes avait été plantées",⁴⁵ since he had discovered that this land had been given by the King of France to the Jesuits for their own use. He therefore gave them back the strip of land which he had previously taken from them six months previously when he had judged that it did not belong to them.

44. Doc'ts. Colon. Hist. N.Y. Vol. VII, p. 550.

45. Colonial Office Records. Ser. Q. Vol. 139, p. 79.

In 1769 Sir Guy Carleton ordered the deputy surveyor general, Mr. J. Collins to fix the boundaries of Laprairie and Sault St. Louis Seigniories which resulted in the Jesuits continuing ownership of their present property.

"The Caughnawaga Indians claimed again, on a false pretence that the governor had promised to return the land to them as soon as the last Jesuit had disappeared".⁴⁶

On August 29, 1794 Governor Carleton, by letter ordered Sir John Johnson to initiate a new enquiry into the right of the Caughnawaga Indians to the land which they claimed. He informed the Indian deputies that:

"Upon the principle that the King does not take the land of one description of his children to give to another, I cannot now give an answer to what you ask concerning the Jesuits' lands. I must enquire to whom the right belongs". (Caugh. Arch.)

In 1798, the Crown on behalf of the Caughnawaga Indians sued the Jesuits for this strip of land which was returned to the Jesuits in 1762 by General Gage. The Jesuits represented by Father Casot lost their case before the Court of the King's Bench that same year, however, the Jesuits appealed the decision of this court in 1799 and were successful. With the death of Father Casot a few months later who was the last survivor of the Jesuit Order to supervise the Missions in Lower Canada and in the west, the Government inherited the estates of the Jesuits. It was now left to the Indians to call upon Governor Carleton's successors to redeem the promise they claimed that he had made them.

In 1807 the Indians of Caughnawaga sent a delegation to England to discuss their claim with Lord Castlereagh, Secretary of the Colonies who wrote:

"The Iroquois must clearly understand that he (Sir James Craig) could not take upon himself to alter the boundaries of seigniories so long made and so formally established to the mutual satisfaction of all the parties who were concerned."⁴⁷

In 1820 Lord Dalhousie was also against their claim since he declared that the land in question had never belonged to the Indians -

"having been held and enjoyed by the late Order of Jesuits as seigniors in possession".⁴⁸

46. Maguire R. "Land Title at Caughnawaga" report, Treaty and Property Rights, May 1970 p. 4.

47. Canadian Archives: Kempt Report

48. Ibid.

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Even with these repudiations, the Indians were still determined to continue their grievance for in 1828, Governor Kempt had hardly been in office when another delegation of Indians made their claim. They insisted that when the Jesuits were planning to construct a grist-mill on the disputed territory they had first secured the permission of the Indians, thus admitting that this tract of land belonged to the Indians. Father Marcoux who was acting as the Indian intermediary said:

"To destroy this tradition positive proofs are required to the contrary. Indian traditions, although they may not have been written, have a degree of responsibility like those of other peoples, and it does not suffice to give them an offhand denial".⁴⁹

However, Governor Kempt reminded the delegation that the accuracy of the boundary lines which had been made by the sworn surveyors of Lord Dorchester had been accepted by the king's attorney-general and the courts.

Undaunted by their setback the Indians decided to meet the King in person, however they were informed that the King was "living a retired life in the country and that no expectation could be held out that he would be able to receive them".⁵⁰ The delegation then presented their case to the Colonial Secretary Sir George Murray who on January 15, 1830 gave them little hope of redress. "Legal decisions had been pronounced against their pretensions and he did not feel at liberty nor in fact was he able, to disturb what had already been decided by law. Besides, the home government could not interfere in matters which solely concerned the colonial administration".⁵¹ Although the delegation failed in their mission to restore the strip of land to the Caughnawaga Indians it did receive a promise of a church-bell and a sum of money to repair their church and presbytery.

The Commissioners appointed to inquire into the affairs of Indians in Canada in 1844 reported concerning the claim of the Iroquois of Caughnawaga:

"The Roman Catholic Missionary, Mr. J. Marcoux, in his answer to the queries of the Commissioners, renews a claim which has been frequently put forward by these Indians to a portion of the Seignior of La Prairie de la Magdelaine, adjoining their lands at the Sault. This claim has been repeatedly investigated by the officers of the Crown, and in the Courts at Law. It was very fully reported upon by Sir James Kempt in 1830, who showed that it had been rejected by three several judgments of the law courts of Lower

49. Canadian Archives: Indian Correspondence C. 269, p. 132

50. Devine E.J. "Historic Caughnawaga" Messenger Press, Montreal 1922, p. 344.

51. Ibid p. 344.

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Canada, and by three Governors of that Province. The question having been again revived, the line of boundary as established against them, was verified by an order of Lord Sydenham, dated 15th April 1840, upon an approved Report of the Executive Council of that part of the Province, of the 11th September 1839, and your Commissioners Conceive that this decision should be considered final".⁵²

St. Lawrence Seaway Land Dispute

A certain amount of land forming part of the Caughnawaga Indian Reserve was required for the St. Lawrence Seaway navigation canal. The St. Lawrence Seaway Authority was given approval by the Governor-in-Council to acquire these Indian lands under the Expropriation Act. Pursuant to Order-in-Council P.C. 1955-1416 dated 16th September 1955, a certain portion of the land in question measuring 1260 acres were authorized to be expropriated and accordingly the plans and description were duly deposited in the office of the Registrar of Deeds at Laprairie in the province of Quebec, as well as with the Superintendent General of Indian Affairs, and in the Department of Lands and Forests of the Province of Quebec.

However the St. Lawrence Seaway Authority was still subject to the payment of compensation for these lands and

"holding thereon of such amounts as might be agreed upon between the Caughnawaga Band of Indians, the occupants of the lands on the Caughnawaga Reserve, the Minister of Citizenship and Immigration and the St. Lawrence Seaway Authority as well as with all other persons having an interest therein as their respective interest may appear."⁵³

On March 30th, 1955 a meeting was held by the elected council in which a referendum was called whereby the majority of the members voted against the surrendering of any lands. Mr. Couture the legal advisor for the Department of Justice who had consented to advise the Caughnawaga Indians in this matter informed the Band that their Reserve was Crown Land and if the Indians requested court action to dismiss the expropriation of their lands they would be wasting their time and money.

Since the Band at Caughnawaga refused to surrender these lands an action was instituted against them by the Attorney General of Canada, in the

52. Report on the Affairs of the Indians in Canada. 20 March 1845, Section VI Miscellaneous #1 (Appendix T, 1847)

53. Ghobashy O.Z. "The Caughnawaga Indians and the St. Lawrence Seaway, Devin Adair-Co. (New York 1961) p. 65.

53

Superior Court, District of Montreal. During the course of the proceedings the Indians argued that the petition for a warrant for possession and eviction be dismissed with costs and that the Court declare that: section 35 of the Indian Act, and sections 10 and 18 of the St. Lawrence Seaway Authority Act, and Orders-in-Council and regulation purported to authorize the taking by force if necessary of these reserve lands, were "ultra vires" and therefore null and void. On January 18th 1957, the Superior Court rejected the argument put forward by the Indians and consequently affirmed the request of the Attorney General. This case had been decided by a judge designate and were therefore not appealable. The only recourse left for the Indians was by a sort of "declaratory judgment in the Exchequer Court, under paragraph (g) of section 18 of the Exchequer Court Act"⁵⁴ on the constitutionality of the laws and statutes which were used to expropriate these lands. However, the Indians, remembering the Tuscaroras decision in the U.S. Supreme Court (Federal Power Commission vs. Tuscaroras Indian Nation, 28 Law Week 4173 March 9th, 1960) did not want to risk an adverse decision in the Exchequer Court which might result in the taking of more lands from them. Some Indians even strongly believed that this court would refuse to make a declaratory judgment of this type of dispute where land was taken in the name of the Crown. The Indians thought that they could reach an amicable settlement with the Government in which their rights would be respected, their legal entity recognized, and the authority of their Indian Band accepted. However, no serious offer of compensation or any important steps were ever taken by the Government since the decision by the Superior Court in 1959.

On December 21st, 1959 Chief Lazare, Chief Councillor of the Caughnawaga Indian Band submitted a petition to the Secretary General of the United Nations and to the Human Rights Commission stating that "the Canadian authorities have deprived and continue to deprive, our people of their inherent rights of possession of their land and property by confiscating real and personal property without due process of law and without just, adequate and prompt compensation, in connection with the opening of the St. Lawrence Seaway and other public projects.

54. R.S.C. 1952, Chapter 98 - The Exchequer Court has exclusive original jurisdiction to hear and determine questions of law and fact.

The method of Confiscation is accomplished by brutal force which is unnecessary and unreasonable...⁵⁵ According to U.N. procedure this petition was referred to the Canadian Government.

On March 30th, 1960 Mr. H.M. Jones, Director of Indian Affairs submitted a memorandum to the Canadian Under Secretary of State for External Affairs in which he makes the following statements:

1. The government was not aware of any treaty between the Crown and the Caughnawaga Indians that had been violated in any way in connection with the St. Lawrence Seaway.
2. The necessary land required for the Seaway was expropriated in conformity with the laws of Canada as provided by the Expropriation Act, Chap. 106, Revised Statutes of Canada, 1952, the St. Lawrence Seaway Authority Act. Chap. 149, Revised Statutes of Canada, 1952.
3. The Compensation paid and offered to the Caughnawaga Indians was on the same scale as that paid to non-Indian land owners. Compensation settlements were made with over 93% of the individual Indians involved.
4. A small group of Indians began action in the courts for an injunction and a judgment declaring the lands of Caughnawaga Reserve were not subject to the expropriation.
5. The court judged that the St. Lawrence Seaway Authority had a legal right to expropriate the land.

On September 27, 1960 Mr. Lazare who received a copy of Mr. Jones memorandum wrote to the Secretary General of the United Nations stating that: "Contrary to the allegation of the Canadian Government in its reply to the petition.... the Government did not settle with the Band Council which is the sole authority in the Reserve with whom the Government can make a legal settlement in conformity with existing laws and treaties. No settlement was made for Band Land. The Canadian authorities did not offer any reasonable compensation for Indian land and the scale of compensation offered as a small fraction of the value of land in the area as set forth by Canadian appraisers.... The decision to confiscate Indian Reserve Land ... is part and parcel of the plan to evict the Indians from their Reserve and force them to abandon their way of life, culture and traditions.

55. Giblin, C. Z. "The Caughnawaga Indians and the St. Lawrence Seaway. Soviet-American Co. (New York 1961) p. 58.

56

Our people are subject to hardships, humiliations and abuse ... It is unfortunate that the Canadian reply omitted to mention the Band Funds which are held by the Canadian Government which refuses to release them to the duly elected representatives of the Caughnawaga Indians. ... We hope that the civilized nations of the world will persuade Canada to reverse its policy of depriving us of our sacred Reserve which is the only thing of value left to us, and to pay us the fair market value of property taken in connection with the St. Lawrence Seaway and to refrain from further encroachment on our land and infringement of our rights".⁵⁶

XI Proclamation of 1763

The Proclamation of 1763 was basically a political document. Its section on the Indians was designed primarily to allay the fears of the western Indians (in the Ohio Valley region) to the encroachment of settlers upon their lands. In order to achieve this objective the Proclamation created an "Indian Country" outside the borders of the colonies. This land would lie between the newly established border of Quebec and the border of the Hudson Bay Co. territory known as Rupert's Land. The extent to which the Proclamation recognizes aboriginal title to ungranted lands within the bounds of old Quebec however is less clear, since the old province of Quebec is excluded from the Indian territory set up by the Proclamation. However the common law theory of aboriginal rights does apply to the areas of old Quebec not extinguished by French land grants. One can therefore say that the English common law of native rights does apply to areas in which the Indian title was not extinguished by French land grants.

The Proclamation also established a detailed procedure of purchase of Indian lands (their "Hunting Grounds") which were within the territory of any proprietary government such as the Hudson Bay Company. Thus while the "Indian Country" provisions of the Proclamation did not apply to the old province of Quebec, the land purchasing procedure did. In addition the application of the British procedure for the purchasing of Indian lands situated within the colonies can be constituted as an implicit recognition of Indian title to those lands. However, the Proclamation failed to identify which lands were reserved to the Indians within those areas of the colonies in which white settlement was allowed.

56. Ghobashy O.Z. "The Caughnawaga Indians and the St. Lawrence Seaway". Devin - Adair Co. p. 59-60.

A large portion of the Proclamation was devoted to Indian land rights within the colonies and also in areas beyond the boundaries. It guaranteed the rights of Indians to continue living on any land within the territory of the British Colony, which had not been ceded or purchased by the Crown or was reserved for the Indians. In many cases these lands were later officially made into reserves and came under federal jurisdiction.

The meaning of the Royal Proclamation of 1763 was to some extent clarified by the royal directive given to Governor J. Murray on the 7th of December 1763 which made the following provisions for the territories inhabited by the Indians.

- 60. - To appoint a person to assemble the Indians in order that they could assure them of Britain's friendship and protection.
- 61. - The Indians are not to be disturbed or molested in the possession of the lands they now occupy or possess.
- 62. - Forbid any person from purchasing or taking possession of any lands reserved for the Indians without the permission of the government.

The promulgation of the Proclamation of 1763 and the issuance of royal directives to the Governor-General at that time seems to indicate that there was an awareness of the existence of an "Indian domain" within the territory conquered by the British in 1760, both within Quebec and outside its boundaries. However even though the change of regime in 1760 did not create a fundamental change in White-Indian relations it must be acknowledged that certain measures were adopted which gave certain rights to the Indians and placed certain obligations on the Whites with regard to the Indians.

XII The Quebec Act of 1774

In 1774, the Quebec Act enlarged the boundaries of the province in order to take in the land known as "Indian Territory". The northern boundary of Quebec now met the southern boundary of the Hudson's Bay Company land. It also guaranteed the rights of the Indian. Article III stipulated that no sections or provisions in the Act would void any title or possession the Indian had in any lands within the province that existed prior to the Act.

XIII Instructions to Governor Carleton

On January 3rd 1775 King George III sent instructions to Governor Carleton whereby measures were to be taken to define the precise boundaries of the areas

57. Shortt, Adam and Doughty, A.G. "Documents Relating to the Constitutional History of Canada, 1763-1791". 1918 King & Printer p. 209.

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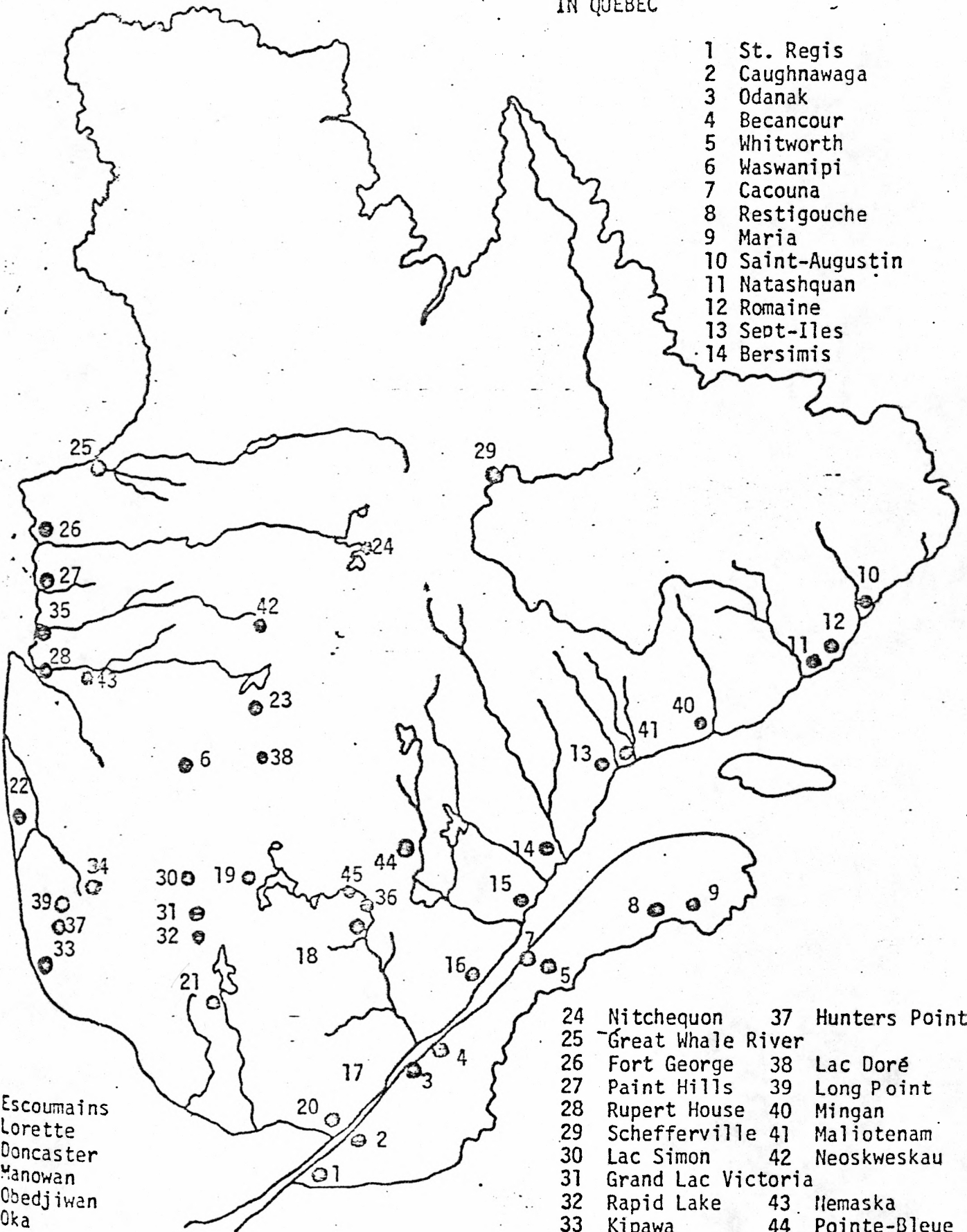
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9

INDIAN RESERVES AND SETTLEMENTS
IN QUEBEC

10

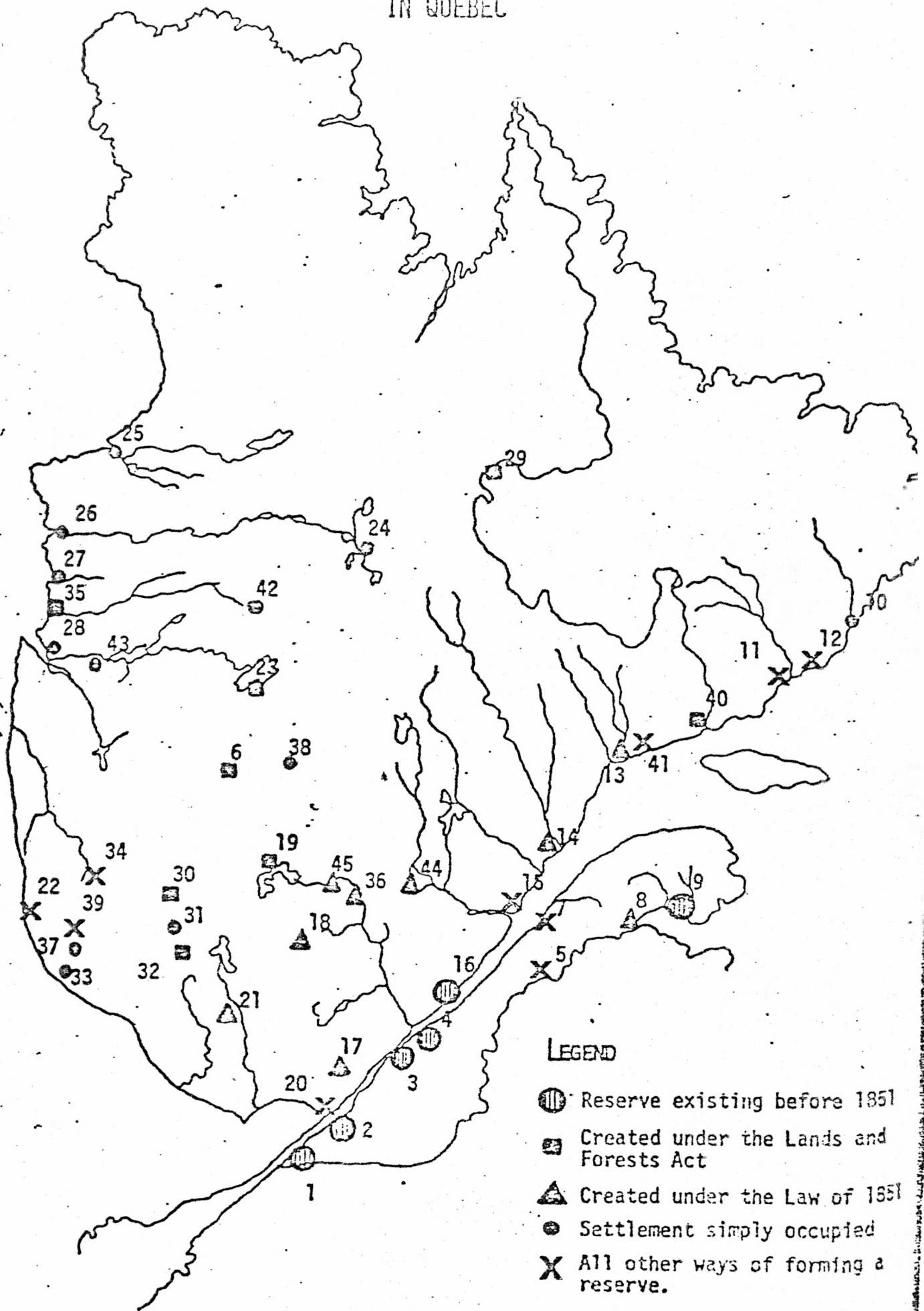
- 1 St. Regis
- 2 Caughnawaga
- 3 Odanak
- 4 Becancour
- 5 Whitworth
- 6 Waswanipi
- 7 Cacouna
- 8 Restigouche
- 9 Maria
- 10 Saint-Augustin
- 11 Natashquan
- 12 Romaine
- 13 Sept-Iles
- 14 Bersimis



- 15 Escoumains
- 16 Lorette
- 17 Doncaster
- 18 Manawan
- 19 Obedjiwan
- 20 Oka
- 21 Maniwaki
- 22 Timiskaming
- 23 Mistassini

- | | |
|-----------------------|------------------|
| 24 Nitchequon | 37 Hunters Point |
| 25 Great Whale River | |
| 26 Fort George | 38 Lac Doré |
| 27 Paint Hills | 39 Long Point |
| 28 Rupert House | 40 Mingan |
| 29 Schefferville | 41 Maliotenam |
| 30 Lac Simon | 42 Neoskweskau |
| 31 Grand Lac Victoria | |
| 32 Rapid Lake | 43 Nemaska |
| 33 Kipawa | 44 Pointe-Bleue |
| 34 Amos | 45 Weymontachie |
| 35 Eastmain | |
| 36 Coucoucache | |

LOCATION AND CREATION OF RESERVES IN QUEBEC



Population Distribution by Reserve

Reserve or Settlement	Electoral District or Territory	Acres	Tribe	Inscribed Population	Actual Population
Amos	Abitibi-Est	130.25	Algonquin	291	220
Becancour	Nicolet	135.00	Abenaki	40	21
Betsiamites	Saguenay	63,100.00	Montagnais	1,506	1,482
Cacouna	Rivière-du-Loup	0.44	Malecite	93	1
Caughnawaga	Napierville-Laprairie	12,478.73	Iroquois	4,439	3,196
Coucoucache	Champlain	12.00			
Doncaster	Terrebonne	18,500.00			
Eastmain	Mistassini	13.80	Cree	251	246
Escoumains	Saguenay	97.00	Montagnais	102	94
Fort George	Nouveau-Québec	122.50	Cree	1,202	1,171
Grand Lac Victoria	Pontiac	30.00	Algonquin	240	240
Great Whale River	Nouveau-Québec	30.00	Cree	293	291
Hunters Point-Wolf Lake	Témiscamingue	10.00	Algonquin	54	48
Kipawa	Témiscamingue	15.00	Algonquin	108	108
Lac Doré	Abitibi-Est	20.00	Cree		100
Lac Simon	Abitibi-Est	672.00	Algonquin	297	150
Long Point	Témiscamingue	93.50	Algonquin	244	223
Lorette	Chauveau	263.75	Huron	1,018	550
Mallotenam	Duplessis	1,241.05	Montagnais	706	658
Maniwaki	Gatineau	42,008.32	Algonquin	926	656

Population Distribution by Reserve
(Continued)

Reserve or Settlement	Electoral District or Territory	Acres	Tribe	Inscribed Population	Actual Population
Manowan	Maskinongé	1,906.00	Têtes-de-Boule	673	657
Marla	Bonaventure	416.00	Micmac	370	287
Mingan	Duplessis	4,340.00	Montagnais	228	225
Mistassini	Mistassini	5,821.00	Cree	1,284	1,004
Natashquan	Duplessis	36.00	Montagnais	318	315
Nemaska	Mistassini	18.50	Cree	168	165
Neoskweskau	Mistassini	10.00			
Nitchequon	Nouveau-Québec	10.00			
Obedjiwan	Abitibi-Est	2,290.00	Têtes-de-Boule	759	722
Odanak	Yamaska	1,495.00	Abenaki	572	123
Oka	Deux Montagnes	2,300.00	Iroquois	766	495
Paint Hills	Nouveau-Québec	75.00	Cree	512	440
Pointe Bleue	Roberval	3,779.00	Montagnais	1,516	1,194
Rapid Lake	Pontiac	70.00	Algonquin	207	100
Restigouche	Bonaventure	8,869.42	Micmac	1,350	1,040
Romaine	Duplessis	100.00	Montagnais	361	330
Rupert House	Mistassini	127.00	Cree	822	645
Saint-Augustin	Duplessis	10.00	Montagnais	116	116
St. Regis	Huntingdon	7,379.67	Iroquois	1,873	1,250

Population Distribution by Reserve
(continued)

Reserve or Settlement	Electoral District or Territory	Acres	Tribe	Inscribed Population	Actual Population
Schefferville - Fort Chimo	Duplessis	95.07	Montagnais Naskapi	705	664
Sept-Iles	Duplessis	261.27	Montagnais	352	328
Timiskaming	Témiscamingue	6,034.00	Algonquin	401	239
Waswanipi	Abitibi-Est	620.00	Cree	572	
Weymontachie	Laviolette	7,408.00	Têtes-de-Boule	419	
Whitworth	Rivière-du-Loup	427.00		93	

Source: Annuaire du Québec, 51^e édition, 1972, Table 25.

according to the Laws of Canada, or according to the Forms prescribed by the Laws of England.

Criminal Law of
England to be
continued in the
Province

"XI. And whereas the Certainty and Lenity of the Criminal Law of England, and the Benefits and Advantages resulting from the Use of it, have been sensibly felt by the Inhabitants, from an Experience of more than nine Years, during which it has been uniformly administered; be it therefore further enacted by the Authority aforesaid, That the same shall continue to be administered, and shall be observed as Law in the Province of Quebec, as well in the Description and Quality of the Offence as in the Method of Prosecution and Trial; and the Punishments and Forfeitures thereby inflicted to the Exclusion of every other Rule of Criminal Law, or Mode of Proceeding thereon, which did or might prevail in the said Province before the Year of our Lord one thousand seven hundred and sixty-four: any Thing in this Act to the contrary thereof in any respect notwithstanding; subject nevertheless to such Alterations and Amendments as the Governor, Lieutenant-governor, or Commander in Chief for the Time being, by and with the Advice and Consent of the legislative Council of the said Province, hereafter to be appointed, shall, from Time to Time, cause to be made therein, in Manner hereinafter directed.

His Majesty may
appoint a
Council for the
Affairs of the
Province

"XII. And whereas it may be necessary to ordain many Regulations for the future Welfare and good Government of the Province of Quebec, the Occasions of which cannot now be foreseen, nor, without much Delay and Inconvenience, be provided for, without intrusting that Authority, for a certain Time, and under proper Restrictions, to Persons resident there: And whereas it is at present inexpedient to call an Assembly: be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for his Majesty, his Heirs and Successors, by Warrant under his or their Signet or Sign Manual, and with the Advice of the Privy Council, to constitute and appoint a Council for the Affairs of the Province of Quebec, to consist of such Persons resident there, not exceeding twenty-three, nor less than seventeen, as his Majesty, his Heirs and Successors, shall be pleased to appoint; and, upon the Death, Removal, or Absence of any of the Members of the said Council, in like Manner to constitute and appoint such and so many other Person or Persons as shall be necessary to supply

XI. «Et comme la clarté et la douceur de loix criminelles d'Angleterre, dont il resulte des bénéfices et avantages que les habitant ont sensiblement ressenti par une expérience de plus de neuf années, pendant lesquelles elles ont été uniformement administrées, il est, à ces causes, aussi Etabli par la susdite autorité, Qu'elles continueront à être administrées, et qu'elles seront observées comme loix dans la dite province de Québec, tant dans l'explication et qualité du crime que dans la maniere de l'instruire et de le juger, en conséquence des peines et amendes qui sont par elles infligées, à l'exclusion de tous autres réglemens de loix criminelles, ou manières d'y procéder qui ont prévalu, ou qui ont pu prévaloir en ladite province, avant l'année de notre Seigneur mil sept cens soixante quatre, nonobstant toutes choses à ce contraires contenues en cet acte à tous égards, sujets cependant à tels changemens et corrections que le Gouverneur, Lieutenant Gouverneur ou Commandant en Chef, de l'avis et consentement du Conseil Legislatif de la dite province qui y sera établi par la suite, sera à l'avenir, dans la maniere ci-après ordonnée.

XII. «Comme il pourra aussi être nécessaire d'ordonner plusieurs réglemens pour le bonheur futur et bon gouvernement de la province de Québec, dont on ne peut présentement prévoir les cas, et qu'on ne pourrait établir, sans courir les risques de beaucoup de retardement et d'inconvéniens, à moins d'en confier l'autorité pendant un certain tems, et sous des limitations convenables, à des personnes qui y résideront: et qu'il est actuellement très désavantageux d'y convoquer une Assemblée: Il est à ces causes, Etabli par la susdite autorité, Qu'il sera et pourra être loisible à sa Majesté, ses héritiers et successeurs, par un ordre signé de leur main, de l'avis du Conseil Privé, d'établir et constituer un Conseil pour les affaires de la province de Québec, composé de telles personnes qui y résideront, dont le nombre n'excèdera point vingt trois membres, et qui ne pourra être moins de dix-sept, ainsi qu'il plaira à sa Majesté, ses héritiers et successeurs, de nommer; et en cas de mort, de démission, ou d'absence en quelques-uns des membres du dit Conseil, de constituer et nommer en la même manière telles et autant d'autres personnes qui seront nécessaires pour en remplir les places vacantes: lequel Conseil ainsi constitué et nommé, ou la majorité d'icelui, aura le pouvoir et autorité de faire des Ordonnances pour la

which Council
may make
Ordinances
with consent of
the Governor

the Vacancy or Vacancies; which Council, so appointed and nominated, or the major Part thereof shall have Power and Authority to make Ordinances for the Peace, Welfare, and good Government, of the said Province, with the Consent of his Majesty's Governor, or, in his Absence, of the Lieutenant-governor, or Commander in Chief for the Time being.

[NOTE: Repealed by The Constitutional Act, 1791, 31 Geo. III. c. 31 (U.K.) (No. 3 infra).]

The Council are
not empowered
to lay Taxes

XIII. Provided always, That nothing in this Act contained shall extend to authorize or empower the said legislative Council to lay any Taxes or Duties within the said Province, such Rates and Taxes only excepted as the Inhabitants of any Town or District within the said Province may be authorized by the said Council to assess, levy, and apply, within the said Town or District, for the Purpose of making Roads, erecting and repairing public Buildings, or for any other Purpose respecting the local Convenience and Economy of such Town or District.

public Roads
or Buildings
excepted

Ordinances
made to be laid
before his
Majesty for his
Approval

XIV. Provided also, and be it enacted by the Authority aforesaid, That every Ordinance so to be made, shall, within six Months, be transmitted by the Governor, or, in his Absence, by the Lieutenant-governor, or Commander in Chief for the Time being, and laid before his Majesty for his Royal Approval; and if his Majesty shall think fit to disallow thereof, the same shall cease and be void from the Time that his Majesty's Order in Council thereupon shall be promulgated at Quebec.

Ordinances
touching
Religion not to
be in Force
without his
Majesty's
Approval

XV. Provided also, That no Ordinance touching Religion, or by which any Punishment may be inflicted greater than Fine or Imprisonment for three Months, shall be of any Force or Effect, until the same shall have received his Majesty's Approval.

These
Ordinances are
not to pass by
a Majority

XVI. Provided also, That no Ordinance shall be passed at any Meeting of the Council where less than a Majority of the whole Council is present, or at any Time except between the first Day of January and the first Day of May, unless upon some urgent Occasion, in which Case every Member thereof resident at Quebec, or within fifty Miles thereof, shall be personally summoned by the Governor, or, in his absence, by the Lieutenant-governor, or Commander in Chief for the Time being, to attend the same.

Police, le bonheur et bon gouvernement de la dite province, du consentement du Gouverneur, ou en son absence, du Lieutenant Gouverneur, ou Commandant en Chef.

[NOTE: Abrégé par l'Acte Constitutionnel de 1791, 31 Geo. III. c. 31 (R.-U.) (No 3 infra).]

XIII. A condition toutefois, que rien de ce qui est contenu dans cet Acte ne s'étendra à autoriser et à donner pouvoir au dit Conseil Législatif, d'imposer aucunes taxes ou impôts dans la dite province, à l'exception seulement de telles taxes que les habitants d'aucunes villes ou districts dans la dite province seront autorisés par le dit Conseil de cotiser et lever, applicables à faire les chemins, élever et réparer les bâtimens publics dans les dites villes ou districts, ou à tous autres avantages qui concerneront la commodité locale et l'utilité de telles villes ou de tels districts.

Le Conseil
n'aura point
pouvoir
d'imposer des
taxes

les chemins
publics et
bâtimens
exceptés

XIV. Pourvu cependant, et il est Etabli par la susdite autorité, que toutes les Ordonnances qui s'y feront, seront dans l'espace de six mois, envoyées par le Gouverneur, ou en son absence par le Lieutenant Gouverneur ou le Commandant en Chef, pour être présentées devant sa Majesté, afin d'avoir son approbation Royale; et que si sa Majesté juge à propos de les desapprouver, elles n'auront point de force, et seront annulées du moment auquel l'ordre de sa Majesté en Conseil sera à cet effet publié à Québec.

Les
Ordonnances
seront présentées
devant sa
Majesté pour
avoir son
approbation

XV. Pourvu aussi, Qu'aucune Ordonnance concernant la Religion, ou autre par laquelle il pourrait être infligée une peine plus forte qu'une amende, ou un emprisonnement de trois mois, ne sera d'aucune force ni effet, jusqu'à ce qu'elle ait reçue l'approbation de sa Majesté.

Les ordonnances
concernant la
religion n'auront
point de force
sans
l'approbation de
sa Majesté

XVI. Pourvu encore, qu'il ne sera passé aucune Ordonnance dans aucune assemblée du dit Conseil qui sera composé de moindre nombre que de la majorité des membres de tout le Conseil, et en aucun autre tems qu'entre le premier jour de Janvier et le premier jour de Mai, à moins que ce ne soit dans quelques cas urgents; auxquels cas tous les membres du dit Conseil qui résideront à Québec, ou dans l'espace de cinquante miles de la dite ville, seront personnellement sommés de s'y trouver, par le Gouverneur, ou en son absence, par le Lieutenant Gouverneur, ou le Commandant en Chef.

Lorsque les
Ordonnances
seront passées
par la majorité

Nottingham.
Général de la
Majesté
constitue
Courts of
Criminal, Civil
and
Ecclesiastical
Jurisdiction

XVII. And be it further enacted by the Authority aforesaid. That nothing herein contained shall extend, or be construed to extend, to prevent or hinder his Majesty, his Heirs and Successors, by his or their Letters Patent under the Great Seal of Great Britain, from creating, constituting, and appointing, such Courts of Criminal, Civil, and Ecclesiastical Jurisdiction within and for the said Province of Quebec, and appointing, from Time to Time, the Judges and Officers thereof, as his Majesty, his Heirs and Successors, shall think necessary and proper for the Circumstances of the said Province.

All Acts
formerly made
are hereby in
force within the
Province

XVIII. Provided always, and it is hereby enacted, That nothing in this Act contained shall extend, or be construed to extend, to repeal or make void, within the said Province of Quebec, any Act or Acts of the Parliament of Great Britain heretofore made, for prohibiting, restraining, or regulating, the Trade or Commerce of his Majesty's Colonies and Plantations in America; but that all and every the said Acts, and also all Acts of Parliament heretofore made concerning or respecting the said Colonies and Plantations, shall be, and are hereby declared to be, in Force, within the said Province of Quebec, and every Part thereof.

XVII. Il est de plus Etabli par la susdite autorité, que rien de ce qui est contenu dans cet Acte, ne s'étendra, ou s'entendra s'étendre, à empêcher ou priver sa Majesté, ses héritiers et successeurs, d'ériger, constituer et établir, par leurs Lettres Patentes, délivrées sous le Grand Sceau de la Grande Bretagne, telles cours qui auront juridictions criminelles, civiles et ecclésiastiques, dans la dite province de Québec, et de nommer en tout tems les juges et officiers d'icelles, ainsi que sa Majesté, ses héritiers et successeurs, les jugeront nécessaires et convenables aux circonstances de la dite province.

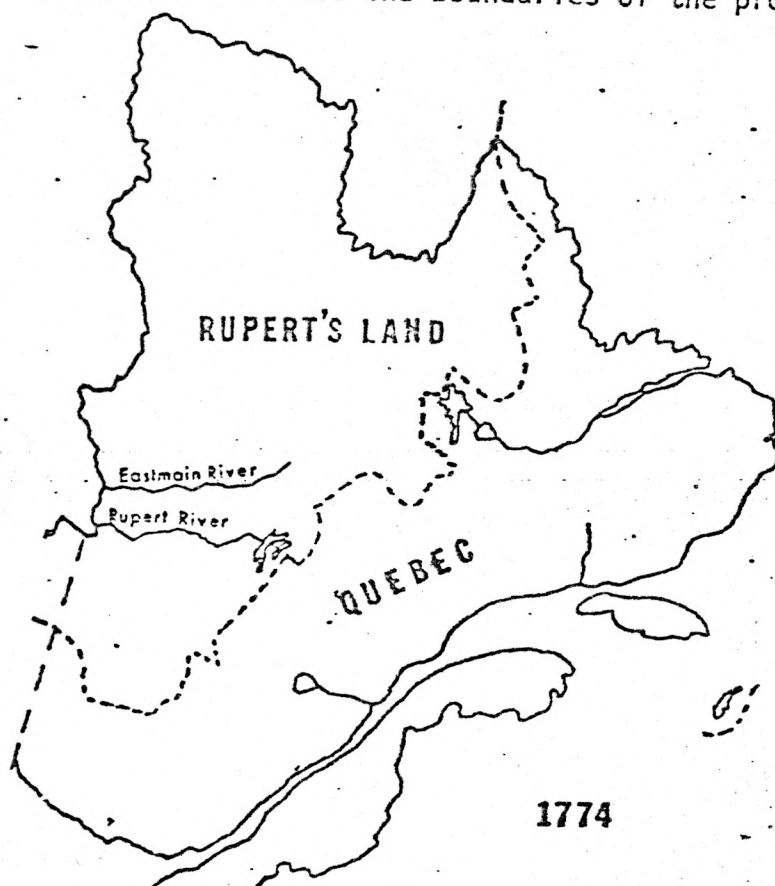
XVIII. Pourvu toutefois, et il est par ces présentes Etabli, que rien de ce qui est contenu dans cet Acte ne s'étendra, ou ne s'entendra s'étendre à infirmer ou annuler dans la dite province de Québec tous Actes du Parlement de la Grande Bretagne, ci-devant faits, qui prohibent, restreignent ou reglent le commerce des colonies et plantations de sa Majesté en Amérique, et que tous et chacun des dits Actes, ainsi que tous Actes de Parlement ci-devant faits, qui ont rapport, ou qui concernent les dites colonies et plantations seront, et sont par ces présentes, déclarés être en force dans la dite province de Québec, et dans chaque partie d'icelle.

Tous Actes
devant la
sont par le
présent
force dans
Province

Traduit par ordre de Son Excellence,
F. J. Cugnet S.F.

The Quebec Act of 1774

In 1774, the Quebec Act extended the boundaries of the province of Quebec



Source: IQA 1969.

6-7 EDWARD VII., A. 1907

"protection of the English laws, in so far as related to personal property ;
 "and that their liberty may be ascertained according to their ancient
 "constitutional rights and privileges heretofore granted to all his majesty's
 "dutiful subjects throughout the British empire.

"And your petitioners, as in duty bound, will ever pray.

"Quebeck, 11th Nov. 1774."

INSTRUCTIONS TO GOVERNOR CARLETON, 1775.¹

George R.

[L.S.]

Instructions to Our Trusty and Welbeloved Guy Carleton
 Esquire, Our Captain General and Governor in Chief in, and
 over Our Province of Quebec in America and of all Our
Territories dependent thereupon. Given at Our Court at
 St James's the Third Day of January 1775. In the Fifteenth
 year of Our Reign.

First, With these Our Instructions you will receive Our Commission under
 Our Great Seal of Great Britain, constituting you Our Captain General

¹ Canadian Archives, M 230, p. 116. There are several memoranda among the Dartmouth Papers, giving suggestions or draughts of various parts of the new Instructions for the Governor of Quebec. Most of these are without name or date. Some of them are referred to in connection with the articles of the instructions to which they relate. Among them is one endorsed, "Minutes of Quebec Instructions," which indicates some of the chief points to be considered in framing the Instructions. It is as follows:—(the numbers of the articles in the Instructions which embody the features indicated are given within brackets after each head):

"Quebec—Habeas Corpus writ (13).

"Supreme Court of criminal Jurisdiction called K^e Bench. 2 Districts, Quebec & Montreal C. of Com. Pleas in each for civil suits 3 Judges in each. 2 Nat. Born & 1 Canadian. 1 C. of K's B. in each of the 5 out Ports. 1 Judge, & 1 Canad. Assessor in Treason murder or Cap. Felony only to have power to commit Council to be Court of appeal where above £10 final to £500, above appeal to K. in Council, all Commissions, during pleasure. (15).

"Gov^t not to displace officers without representation. (17).

"No ecclesiast. Jurisd. to be exercised without Licence. No person to be ordained without Licence. (21, sec. 2).

"Prot. Tythes to be paid to Rec^d Gen^l for support of Protestant Clergy. (21, sec. 5).

"Seminaries of Qu. & Monr. to remain.—(21, sec. 11).

"All other Communities (except Jesuits) to remain as at present—not to fill up except Nuns." (21, sec. 12). M. 385, p. 372.

On Dec. 3, 1774, the Board of Trade submitted to the King the draught of a new Commission for Governor Carleton with such formal changes only, as compared with the last, as were required by the terms of the Quebec Act. On Dec. 22nd the Board of Trade laid before the King the draught of the General Instructions for Governor Carleton. "This draught," they say, "contains not only such Instructions as are usually given to other governors, so far as the same are applicable to this Province under its New Constitution of Government; but also such other directions for the establishment of Judicature; the reform and regulation of Ecclesiastical matters; and the arrangements proper to be made in respect to the Coast of Labrador, and the interior Country, as appear to us to be necessary in consequence of the Act passed in the last Session of the late Parliament; it also contains an appointment of the Council conformable to that Act, and directs the provisions to be made for the support of the Civil Establishment of Government.

"We also humbly beg leave to lay before your Majesty a draught of such Instructions to your Majesty's Governor of Quebec as are usually given to the governors of your Majesty's other Colonies respecting the observance and the execution of the Laws for regulating the Plantation Trade.

"All which is most humbly submitted, Whitshed Keene, C. F. Greville, Soame Jenyns, W. Joliffe." Q 18 B., p. 108.

On Jan. 7th, 1775, Dartmouth sent a despatch to Carleton enclosing his Commission and Instructions. After repeating the statements of the Board of Trade, given above, he adds, "These documents contain such arrangements, in consequence of the Act of the 14th of his present Majesty, for providing for the more effectual Government of the Province of Quebec, as were necessary to accompany the new Commission, & also the outlines of that System of Judicature, & general Regulation of Ecclesiastical Affairs, which the King thinks fit should be provided for by Ordinances of the Legislative Council. Q 11, p. 59.

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and Governor in Chief in, and over Our Province of Quebec in America, and all Our Territories thereunto belonging, as the said Province and Territories are bounded and described in, and by the said Commission. You are therewith to take upon you the Execution of the Office and Trust We have reposed in you, and the Administration of the Government, and to do and execute all things in due manner, that shall belong to your Command according to the several Powers and Authorities of our said Commission under Our Great Seal of Great Britain, and these Our Instructions to you, or according to such further Powers and Instructions, as shall at any time hereafter be granted or appointed you under Our Signet and Sign Manual, or by Our Order in Our Privy Council; and you are to call together at Quebec, (Which We do hereby appoint to be the place of your ordinary Residence, and the principal Seat of Government,) the following persons whom We do hereby, with the Advice of Our Privy Council, constitute and appoint to be Our Council for the Affairs of Our said Province of Quebec, and the Territories thereunto belonging; Viz. Hector Theophilus Cramahé Esquire, Our Lieutenant Governor of Our said Province or Our Lieutenant Governor of Our said Province for the time being, Our Chief Justice of Our Province for the time being, Hugh Finlay, Thomas Dunn, James Cuthbert, Colin Drummond, Francis Les Vesques; Edward Harrison, John Collins, Adam Mabeau,—De Lery.—St Ours, Picody de Contrecoeur, Our Secretary of Our said Province for the time being, George Alsopp,—De La Naudière, La Corne St Luc, Alexander Johnstone, Conrad Guty,—Belletres,—Rigauville, and John Fraser Esquires; All and every of which Person and Persons shall hold and enjoy his & their Office and Offices of Councillor or Councillors for Our said Province of Quebec, for and during Our Will and Pleasure, and his or their Residence within Our said Province, and not otherwise.

2. It is Our further Will and Pleasure, that any five of the said Council shall constitute a Board of Council for transacting all Business, in which their Advice and consent may be requisite, Acts of Legislation only excepted, (in which Case you are not to act without a Majority of the whole,) And it is Our further Will and Pleasure, that the Members of Our said Council shall have and enjoy all the Powers, Privileges, and Emoluments enjoyed by the Members of Our Councils in Our other Plantations; and also such others as are contained and directed in Our said Commission under Our Great Seal of Great Britain, and in these Our Instructions to you; and that they shall meet together at such time and times, place and places, as you in your discretion shall think necessary, except when they meet for the purpose of Legislation, in which Case they are to be assembled at the Town of Quebec only.

3. And You are with all due and usual Solemnity to cause Our said Commission to be read and published at the said Meeting of Our Council, which being done, you shall then take and also administer to each of the Members of Our said Council, (not being a Canadian, professing the Religion

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of the Church of Rome,) the Oaths mentioned in an Act passed in the first year of the Reign of His Majesty King George the first, intituled, "An Act for the further Security of His Majesty's Person, and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants; and for extinguishing the hopes of the pretended Prince of Wales, and his open and secret Abettors," as altered and explained by an Act passed in the sixth year of Our Reign, intituled, "An Act for altering the Oath of Abjuration, and the Assurance; and for amending so much of an Act of the seventh year of Her late Majesty Queen Anne, intituled, An Act for the Improvement of the Union of two Kingdoms, as, after the time therein limited, requires the delivery of certain Lists and Copies, therein mentioned, to persons indicted of High Treason, or Misprision of Treason;" as also make and subscribe, and cause them to make and subscribe the declaration mentioned in an Act of Parliament made in the twenty fifth Year of the Reign of King Charles the second, intituled, "An Act for preventing Dangers, which may happen from Popish Recusants;" and you and every one of them are likewise to take an Oath for the due Execution of your and their Places and Trusts, with regard to your and their equal and impartial Administration of Justice; and you are also to take the Oath required by an Act passed in the seventh and eighth years of the Reign of King William the third, to be taken by Governors of Plantations to do their utmost, that the Laws relating to the Plantations be observed.

4. And Whereas by an Act passed in the fourteenth year of Our Reign, intituled, "An Act for making more effectual provision for the Government of the Province of Quebec in North America," it is enacted and provided, that no person, professing the Religion of the Church of Rome, and residing in the said Province, shall be obliged to take the Oath of Supremacy required by an Act passed in the first year of the Reign of Queen Elizabeth, or any other Oaths substituted by any other Act in the place thereof; but that every such Person, who by the said Statute is required to take the Oaths therein mentioned, shall be obliged, and is thereby required, under certain Penalties, to take and subscribe an Oath in the form and Words therein prescribed, and set down; It is therefore Our Will and Pleasure, that you do administer to each and every Member of Our said Council, being a Canadian, and professing the Religion of the Church of Rome, and cause each of them severally to take and subscribe the Oath mentioned in the said Act passed in the fourteenth year of Our Reign, intituled; "An Act for making more effectual provision for the Government of the Province of Quebec in North America;" and also cause them severally to take an Oath for the due Execution of their places and Trusts, and for their equal and impartial administration of Justice.

5. And that We may be always informed of the Names and Characters of Persons fit to supply the Vacancies, which may happen in Our said Council, You are from time to time to transmit to Us, by one of Our Principal Secretaries of State, the names and Characters of such persons, Inhabi-

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tants of Our said Colony, whom you shall esteem the best qualified for that Trust ; And you are also to transmit a duplicate of the said Account to Our Commissioners for Trade and Plantations, for their Information.

6. And if it shall at any time happen, that by the death or departure out of Our said Province, of any of Our said Councillors, there shall be a Vacancy in Our said Council, Our Will and Pleasure is ; that you signify the same to Us by one of Our principal Secretaries of State, and to Our Commissioners for Trade and Plantations, by the first Opportunity, that we may by Warrant under Our Signet and Sign Manual, and with the Advice of Our Privy Council, constitute and appoint others in their stead.

7. You are forthwith to communicate such and so many of these Our Instructions to Our said Council, wherein their Advice and Consent are mentioned to be requisite, as likewise all such others from time to time, as you shall find convenient for Our Service to be imparted to them.

8. You are to permit the Members of Our said Council to have and Enjoy Freedom of Debate and vote in all Affairs of Public Concern, that may be debated in Council.

9. And Whereas by the aforesaid Act passed in the fourteenth year of Our Reign, intituled, "An Act for making more effectual Provision for the "Government of the Province of Quebec in North America," It is further enacted and Provided, that the Council for the Affairs of the said Province, to be constituted and appointed in Manner therein directed, or the Major Part thereof, shall have power and Authority to make Ordinances for the peace, Welfare, and good Government of the said Province with the Consent of Our Governor, or, in his absence, of the Lieutenant Governor, or Commander in Chief for the time being ; provided, that no Ordinance shall be passed, unless upon some urgent Occasion at any Meeting of the Council, except between the first day of January and the first day of May. *(And Whereas the State and condition of Our said Province do require, that immediate provision should be made by Law for a Great Variety of Arrangements and Regulations essentially necessary to the Government thereof ; It is therefore Our Will and Pleasure, that you do within a convenient time issue Summons for the Assembling of our said Council in their Legislative Capacity either on the first day of April next, or as soon after as may be convenient, in Order to deliberate upon, and frame such Ordinances, as the Condition of Affairs within Our said Province shall require, and as shall, in your and their Judgement, be fit and necessary for the Welfare of Our said Province, and the Territories thereunto belonging.)¹

10. You are nevertheless to take especial Care,

That no Ordinance be passed at any Meeting of the Council, where less than a Majority of the Council is present, or at any time, except between the first day of January and the first day of May, as aforesaid, unless upon

* The latter part of this section (in bracket) omitted in the instruction to Haldimand.

¹ The first session of the Legislative Council was convened 17 August, 1775. Two other brief meetings were held Sept. 2nd and 5th but no legislative results were accomplished before Jan., 1777, when the Council resumed its sessions.

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some urgent Occasion ; in which Case every Member thereof resident at Quebec, or within fifty Miles thereof shall be personally summoned to attend the same.

That no Ordinance be passed for laying any Taxes or Duties, such Rates and Taxes only excepted, as the Inhabitants of any Town or District may be authorized to assess, levy, and apply within the said Town or District, for the making Roads, erecting and repairing public Buildings, or for any other purpose respecting the Local Convenience and Oeconomy of such Town or District.

That no Ordinance touching Religion, or by which any punishment may be inflicted greater than Fine or Imprisonment for three Months, be made to take effect, until the same shall have received Our Approbation.

That no Ordinance be passed relative to the Trade, Commerce, or Fisheries of the said Province, by which the Inhabitants thereof shall be put upon a more advantageous footing, than any other His Majesty's Subjects either of this Kingdom, or the Plantations.

That no Ordinance respecting private property be passed without a Clause suspending its Execution, until Our Royal Will and Pleasure is known ; nor without a saving of the Right of Us, Our Heirs, and Successors, and of all Bodies politic and corporate, and of all other persons, except such as are mentioned in the said Ordinance, and those claiming by, from, and under them ; And, before such Ordinance is passed, proof must be made before you in Council, and entered in the Council-Books, that public Notification was made of the Party's Intention to apply for such Ordinance in the several Parish Churches, where the Lands in Question lye, for three Sundays at least successively, before any such Ordinance shall be proposed ; and you are to transmit and annex to the said Ordinance a Certificate under your Hand that the same passed through all the Forms abovementioned.

That no Ordinance shall be enacted for a less time than two years, except in Cases of imminent Necessity, or immediate temporary Expediency ; and you shall not reenact any Ordinance, to which Our Assent shall have been once refused, without express leave for that purpose first obtained from Us, upon a full Representation by you to be made to Us by one of Our Principal Secretaries of State, and to Our Commissioners for Trade and Plantations, for their Information, of the Reasons and Necessity for passing such Ordinance ; nor give your Assent to any Ordinance for repealing any other Ordinance, which hath passed in your Government, and shall have received Our Royal Approbation, unless you take Care, that there be a Clause inserted therein suspending and deferring the Execution thereof, until Our Pleasure shall be known, concerning the Same.

That in all Ordinances imposing Fines, Forfeitures, or Penalties, express Mention be made, that the same is granted or reserved to Us, Our Heirs, and Successors for the public Uses of the said Province, and the Support of the Government thereof, as by the said Ordinance shall be directed ; and that a Clause be inserted declaring, that the Money, arising by the Operation

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of the said Ordinance, shall be accounted for unto Us in this Kingdom, and to Our Commissioners of Our Treasury for the time being ; and audited by Our Auditor General of Our Plantations, or his Deputy.

That all such Ordinances be transmitted by you within six Months after their passing, or sooner, if opportunity offers, to Us by One of our Principal Secretaries of State, and Duplicates thereof to Our Commissioners for Trade and Plantations, for their Information ; that they be abstracted in the Margents, and accompanied with very full and particular Observations upon each of them, that is to say, whether the same is introductive to a new Law, or does repeal a Law then before in being ; and you are also to transmit in the fullest manner the Reasons and Occasions for enacting such Ordinances, together with fair Copies of the Journals of the proceedings of the Council, which you are to require from the Clerk of the said Council.

11. In the Consideration of what may be necessary to be provided for by Law within Our said Province, as created and established by the aforesaid Act, intituled, "an Act for making more effectual Provision for the "Government of the Province of Quebec in North America," a Great Variety of important Objects hold themselves forth to the Attention of the Legislative Council.

12. The Establishment of Courts, and a proper Mode of administering Civil and Criminal Justice throughout the whole Extent of Our Province, according to the Principles declared in the said Act "for making more "effectual Provision for the Government thereof," demand the greatest Care and Circumspection ; for, as on the one hand it is Our Gracious purpose, conformable to the Spirit and Intention of the said Act of Parliament, that Our Canadian Subjects should have the benefit and use of their own Laws, Usages, and Customs in all Controversies respecting Titles of Land, and the Tenure, descent, Alienation, Incumbrances, and Settlement of Real Estates, and the distribution of the personal property of Persons dying intestate ; so on the other hand, it will be the duty of the Legislative Council to consider well in framing such Ordinances, as may be necessary for the Establishment of Courts of Justice, and for the better Administration of Justice, whether the Laws of England may not be, if not altogether, at least in part the Rule for the decision in all Cases of personal Actions grounded upon Debts, Promises, Contracts, and Agreements, whether of a Mercantile or other Nature ; and also of Wrongs proper to be compensated in damages ; and more especially where Our natural-born Subjects of Great Britain, Ireland, or Our other Plantations residing at Quebec, or who may resort thither, or have Credits, or Property within the same, may happen to be either Plaintiff or defendant in any civil Suit of such a nature.

¹ This and the following article with reference to the writ of Habeas Corpus, form the first step in that piecemeal process of impairing the complete restoration of the French Canadian civil law granted by the Quebec Act, particularly the 8th clause of it. As may be seen from several subsequent documents, this was the basis of continued conflict in the Council and in the Courts until 1791, when the controversy took another turn. In a document in the Dartmouth Papers, endorsed "Extract from the Instructions to the Governor of Quebec, so far as relating to the Establishment of Courts of Law," this clause appears in the following form:—The Legislative Council are to frame the Ordinances for the Establishment of Courts of Justice.

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13. Security to personal Liberty is a fundamental Principle of Justice in all free Governments, and the making due provision for that purpose is an object the Legislature of Quebec ought never to lose Sight of ; nor can they follow a better Example than that, which the Common Law of this Kingdom hath set in the Provision made for a Writ of Habeas Corpus,¹ which is the Right of every British Subject in this Kingdom.

14. With Regard to the Nature and number of the Courts of Justice, which it may be proper to establish, either for the whole Province at large, or separately for its dependencies, and the times and places for holding the said Courts, no certain Rule can be laid down in a Case, in which the Judgement must in many Respects at least be altogether guided by Circumstances of local Convenience and Consideration.

15. In General it may be proper, that there should be a Superior or Supreme Court of criminal Justice and Jurisdiction for the Cognizance of all Pleas of the Crown, and for the Trial of all manner of Offences whatsoever; to be held before the Chief Justice for the time being at such times and places, as shall be most convenient for the due and speedy Administration of Justice, and the preventing long imprisonments ; the said Court to be called and known by the name of the Court of King's Bench ; That for the more orderly establishment and Regulation of Courts of Civil Jurisdiction, the Province of Quebec, as limited and bounded by the aforesaid Act of Parliament "for making more effectual Provision for the Government of the Province of Quebec in North America," be divided into two Districts by the names of Quebec and Montreal, each district to be limited and bounded in such manner, as shall be thought best adapted to the Object of the Jurisdiction to be established therein ; That there be established in each of the said Districts a Court of Common pleas to be held at such times and places, as shall be judged most convenient, and to have full power, Jurisdiction and Authority to hear and determine all Civil Suits and Actions cognizable by the Court of Common Pleas in Westminster Hall, according to the Rules prescribed by the said Act of Parliament "for making more effectual Provision for the Government of the Province of Quebec in North America," and according to such Laws and Ordinances, as shall from time to time be enacted by the Legislature of the said Province in manner therein directed ; That there be three Judges in each of the said Courts of Common Pleas, that is to say, two of Our natural-born Subjects of Great Britain, Ireland, or Our other Plantations, and one Canadian ; and also one Sheriff appointed for each district ; That besides the foregoing Courts of Criminal and Civil Jurisdiction for the Province at large, there be also an Inferior Court of Criminal and Civil Jurisdiction in each of the Districts of the

and for the administration of Justice, so as that the Laws of England, if not altogether, may be as nearly as possible the Rule of Decision in all personal Actions, grounded upon Debts, Contracts, &c. and especially where the natural-born subjects are concerned." M 385, p. 485.

¹ Yet when this was most vigorously contended for at the passing of the Quebec Act it was absolutely denied by the Government. In the document referred to in the previous note, this article reads as follows.—"Security to personal Liberty to be provided for: And the Writ of Habeas Corpus, as a part of the criminal Law, to be adopted in its full Extent." M 385, p. 195.

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Illinois, St Vincenne, Detroit, Missilimakinac, and Gaspée, by the Names of the Court of King's Bench for such district, to be held at such times, as shall be thought most convenient, with Authority to hear and determine in all Matters of Criminal Nature according to the Laws of England, and the Laws of the Province hereafter to be made and passed ; and in all Civil matters according to the Rules prescribed by the aforesaid Act of Parliament "for making more effectual Provision for the Government of Quebec in North America ;" That each of the said Courts shall consist of one judge, being a natural-born Subject of Great Britain, Ireland, or Our other Plantations, and of one other Person, being a Canadian, by the name of Assistant or Assessor, to give advice to the Judge in any Matter, when it may be necessary ; but to have no Authority or Power to attest or issue any Process, or to give any Vote in any order, Judgement, or decree ; That the said Judges, so to be appointed, as aforesaid, for each District, shall have the same power and Authority in Criminal Cases, as is vested in the Chief Justice of Our said Province ; and also the same Power and Authority in Civil Cases, as any other Judge of Common Pleas within Our said Province, excepting only that, in Cases of Treason, Murder, or other Capital Felonies, the said Judges shall have no other Authority, than that of Arrest and Commitment to the Goals of Quebec, or of Montreal, where alone Offenders in such Cases shall be tried before Our Chief Justice ; That a Sheriff be appointed in each of the said Districts for the Execution of Civil and Criminal Process ; That the Governor and Council (of which, in the absence of the Governor and Lieutenant Governor, the Chief Justice is to be President,) shall be a Court of civil Jurisdiction for the hearing and determining all Appeals from the Judgement of the other Courts, where the matter in dispute is above the value of Ten Pounds ; That any Five of the said Council, with the Governor, Lieut^e Governor, or Chief Justice, shall constitute a Court for that purpose ; and that their Judgement shall be final in all Cases not exceeding the value of £500 sterling, in which Cases an Appeal from their Judgement is to be admitted to Us in Our Privy Council. It is however Our Will and Pleasure, that no Appeal be allowed, unless security be first duly given by the Appellant, that he will effectually prosecute the same, and answer the Condemnation, as also pay such Costs and Damages, as shall be awarded by Us, in case the Sentence be affirmed ; Provided nevertheless, where the matter in question relates to the taking or demanding any Duty payable to Us, or to any Fee of Office, or annual Rents, or other such like matter or thing, where the Rights in future may be bound, in all such Cases appeal to Us, in Our Privy Council is to be admitted, tho' the immediate sum or value appealed for be of less value.—And it is Our further Will and Pleasure, that in all Cases, where Appeals are admitted unto Us in Our Privy Council, execution be suspended until the final determination of such Appeal, unless good and sufficient security be given by the Appellee to make ample restitution of all, that the Appellant shall have lost by means of such decree or judgement, in case, upon the determination

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of such Appeal, such decree or judgement should be reversed, and restitution awarded to the Appellant. Appeals unto Us in Our Privy Council are also to be admitted in all cases of Fines imposed for misdemeanors ; Provided the fines, so imposed, amounted to, or exceed the sum of £100 sterling. the Appellant first giving good Security, that he will effectually prosecute the same and answer the Condemnation, if the sentence, by which such Fine was imposed in Quebec, be affirmed.^{1*}

16. It is Our Will and Pleasure, that all Commissions to be granted by you to any person or persons to be judges or justices of the peace, or other necessary Officers, be granted during pleasure only.

17. You shall not displace any of the Judges, Justices of the peace or other Officers or Ministers without good and sufficient cause, which you shall signify in the fullest and most distinct manner to Us by one of Our principal Secretaries of State, and to Our Commissioners for Trade and Plantations, for their information.

18. And whereas frequent complaints have heretofore been made of great delays and undue proceedings in the Courts of Justice in several of Our Plantations, whereby many of Our good Subjects have very much suffered ; and it being of the greatest importance to Our Service, and to the welfare of Our Plantations, that Justice be every where speedily and duly administered ; and that all disorders, delays, and other undue Practises in the administration thereof be effectually prevented ; We do particularly require you to take especial Care, that in all Courts, where you are or shall be authorized to preside, justice be impartially administered ; and that in all other Courts established, or to be established within Our said Province, all Judges, and other Persons therein concerned do likewise perform their several Duties without any delay or partiality.

19. You are to take care, that all Writs be issued in Our Name throughout the Province under your Government.

20. The establishment of proper regulations in matters of ecclesiastical concern is an Object of very great importance, and it will be your indispensable duty to lose no time in making such arrangements in regard thereto, as may give full satisfaction to Our new Subjects in every point, in which they have a right to any indulgence on that head ; always remembering, that it is a toleration of the free exercise of the religion of the Church of Rome only, to which they are entitled, but not to the powers and privileges of it, as an established Church, for that is a preference, which belongs only to the Protestant Church of England.

21. Upon these principles therefore, and to the end, that Our just Supremacy in all matters ecclesiastical, as well as civil, may have its due scope and influence, it is Our Will and Pleasure,——

* An additional article inserted in Haldimand's instructions. See page 697.

¹ The greater part of this article of the Instructions is based upon the "Epitome of the proposed Ordinance for establishing Courts of Justice in the Province of Quebec," referred to in note 2, p. 584, and given in full below at p. 637. The paper endorsed "Extract from the instructions" &c., M 385, p. 485, covers this field also, but its lines are not followed. However, the last few clauses in it are again taken up in the succeeding four articles, Nos. 16-19.

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First, that all Appeals to, or correspondence with any foreign ecclesiastical jurisdiction, of what nature or kind so ever, be absolutely forbidden under very severe Penalties.

Secondly, That no Episcopal or Vicarial Powers be exercised within Our said Province by any Person professing the Religion of the Church of Rome, but such only, as are essentially and indispensably necessary to the free exercise of the Romish Religion; and in those cases not without a Licence and Permission from you under the Seal of Our said Province, for, and during Our Will and Pleasure, and under such other limitations & restrictions, as may correspond with the spirit and provision of the Act of Parliament, "for making more effectual provision for the Government of the Province of Quebec : " And no person whatever is to have holy Orders conferred upon him, or to have the Cure of Souls without a License for that purpose first had or obtained from you.

Thirdly, That no person professing the Religion of the Church of Rome be allowed to fill any ecclesiastical Benefice, or to have and enjoy any of the Rights or Profits belonging thereto, that is not a Canadian by birth, (such only excepted, as are now in possession of any such Benefice,) and that is not appointed thereto by Us, or by, or under Our Authority, and that all Right, or claim of right in any other Person whatever to nominate, present, or appoint to any vacant Benefice, other than such as may lay claim to the patronage of Benefices, as a Civil Right, be absolutely abolished. No Person to hold more than one Benefice, or, at least not more than can reasonably be served by one and the same Incumbent.

Fourthly, That no person whatever, professing the Religion of the Church of Rome, be appointed Incumbent of any Parish, in which the Majority of the Inhabitants shall solicit the appointment of a Protestant Minister ; in such case the Incumbent shall be a Protestant, and entitled to all Tythes payable within such Parish ; But nevertheless the Roman Catholics may have the use of the Church for the free exercise of their Religion at such time, as may not interfere with the Religious Worship of the Protestants : And in like manner the Protestant Inhabitants in every Parish, where the Majority of Parishioners are Roman Catholics, shall notwithstanding have the use of the Church for the exercise of their Religion at such times, as may not interfere with the Religious Worship of the Roman Catholics.

Fifthly, That no Incumbent professing the Religion of the Church of Rome, appointed to any Parish, shall be entitled to receive any Tythes for Lands, or Possessions occupied by a Protestant ; but such Tythes shall be received by such Persons, as you shall appoint, and shall be reserved in the hands of Our Receiver General, as aforesaid, for the support of a Protestant Clergy in Our said Province to be actually resident within the same, and not otherwise, according to such directions as you shall receive from Us in that behalf. And in like manner all growing Rents and Profits of a

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vacant Benefices shall, during such vacancy, be reserved for, and applied to the like uses.

Sixthly, That all Persons professing the Religion of the Church of Rome, which are already possessed of, or may hereafter be appointed to any ecclesiastical Benefice, or who may be licensed to exercise any Power or Authority in respect thereto, do take and subscribe before you in Council, or before such Person as you shall appoint to administer the same, the Oath required to be taken and subscribed by the aforesaid Act of Parliament passed in the fourteenth year of Our Reign, intituled, "An Act for making more effectual Provision for the Government of the Province of Quebec in North America."

Seventhly, That all Incumbents of Parishes shall hold their respective Benefices during good behaviour, subject however, in cases of any Conviction for criminal Offences, or upon due proof of seditious Attempts to disturb the Peace and Tranquillity of Our Government, to be deprived, or suspended by you with the Advice and Consent of a Majority of Our said Council.

Eighthly, That such Ecclesiasticks, as may think fit to enter into the holy state of Matrimony, shall be released from all Penalties, to which they may have been subjected in such Cases by any Authority of the See of Rome.

Ninthly, That freedom of Burial of the Dead in Churches and Church yards be allowed indiscriminately to every Christian Persuasion.

Tenthly, That the Royal Family be prayed for in all Churches and Places of Holy Worship, in such manner and form, as are used in this Kingdom; and that Our Arms and Insignia be put up not only in all such Churches and Places of holy Worship, but also in all Courts of Justice; and that the Arms of France be taken down in every such Church or Court, where they may at present remain.

Eleventhly, That the Society of Romish Priests, called the Seminaries of Quebec and Montreal, shall continue to possess and occupy their Houses of Residence, and all other Houses and Lands, to which they were lawfully intitled on the 13th of September 1759; and it shall be lawful for those Societies to fill up Vacancies, and admit new Members according to the Rules of their Foundations, and to educate Youth, in order to qualify them for the Service of Parochial Cures; as they shall become vacant. It is nevertheless Our Will and Pleasure, that not only these Seminaries, but all other Religious Communities, so long as the same shall continue, be subject to visitation by You Our Governor, or such other Person or Persons, as you shall appoint for that purpose, and also subject to such Rules and Regulations, as you shall, with the Advice and Consent of Our Council, think fit to establish and appoint.

Twelfthly, It is also Our Will and Pleasure, that all other Religious Seminaries and Communities (that of the Jesuits only excepted) do for the present and until We can be more fully informed of the true State of them,

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and how far they are, or are not essential to the free exercise of the Religion of the Church of Rome, as allowed within Our said Province, remain upon their present establishment; but you are not to allow the admission of any new Members into any of the said Societies or Communities, the Religious Communities of Women only excepted, without our express orders for that purpose. That the Society of Jesuits be suppressed and dissolved, and no longer continued, as a Body corporate and politic, and all their Rights, Possessions and Property shall be vested in Us for such purposes, as We may hereafter think fit to direct and appoint; but We think fit to declare Our Royal Intention to be, that the present Members of the said Society, as established at Quebec shall be allowed sufficient stipends and Provisions during their natural Lives;—That all Missionaries amongst the Indians, whether established under the Authority of, or appointed by the Jesuits, or by any other ecclesiastical Authority of the Romish Church, be withdrawn by degrees, and at such times and in such manner, as shall be satisfactory to the said Indians, and consistent with the Public Safety; and Protestant Missionaries appointed in their places; That all ecclesiastical Persons whatsoever, of the Church of Rome, be inhibited, upon Pain of Deprivation, from influencing any Person in the making a Will, from inveigling Protestants to become Papists, or from tampering with them in matter of Religion, and that the Romish Priests be forbid to inveigh in their Sermons against the Religion of the Church of England, or to marry, baptize, or visit the sick, or bury any of Our Protestant Subjects, if a Protestant Minister be upon the Spot.

22. You are at all times and upon all occasions to give every Countenance and Protection in your Power to such Protestant Ministers, and School Masters, as are already established within Our said Province, or may hereafter be sent thither, to take Care, that such Stipends and Allowances, as We may think fit to appoint for them, be duly paid; that the Churches already appropriated, or which may hereafter be appropriated to the use of Divine Worship according to the Rites of the Church of England, as by Law established, be well and orderly kept; and, as the Number of Protestants shall, by God's Blessing, increase, to lay out new Parishes in convenient Situations, and set apart and appropriate proper Districts of Land therein for the Site of Churches, and Parsonage Houses, and for Glebes for the Ministers and Schoolmasters.

23. You are to take especial Care, that God Almighty be devoutly and duly served in all Protestant Churches and Chapels throughout Our said Province, in which Divine Service is performed according to the Rites of the Church of England; the Book of Common Prayer, as by Law established, be read each Sunday and Holiday; and the Blessed Sacrament duly administered.

24. You are not to prefer any Protestant Minister to any ecclesiastical Benefice in the Province under your Government, without a Certificate from the Right Reverend Father in God the Lord Bishop of London, of his

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being conformable to the Doctrine and Discipline of the Church of England, and of a good Life and Conversation ; and if any Person hereafter preferred to a Benefice shall appear to you to give Scandal either by his doctrine or manners, you are to use the best means for his Removal.

25. You are to give orders forthwith, that every Protestant Minister within your Government, be one of the Vestry in his respective Parish ; and that no Vestry be held without him, except in case of Sickness, or, after Notice of a Vestry summoned, he omit to come.

26. And to the end, that the ecclesiastical Jurisdiction of the Lord Bishop of London may take place in Our Province under your Government, as far as conveniently may be : We do think fit, that you give all Countenance and Encouragement to the exercise of the same, excepting only the collating to Benefices, granting Licenses for Marriages, and Probates of Wills, which We have reserved to you Our Governor, and to the Commander in Chief of Our said Province for the time being.

27. And We do further direct, that no School-master, who shall arrive in Our said Province from this Kingdom, be henceforward permitted to keep School without the Licence of the said Lord Bishop of London ; and that no other Person now there, or that shall come from other Parts, shall be admitted to keep School in your Government without your Licence first obtained.

28. You are to take especial Care, that a Table of Marriages, established by the Canons of the Church of England, be hung up in all places of public Worship according to the Rites of the Church of England.

29. And it is our further Will and Pleasure, that, in order to suppress, as much as in you lies, every species of Vice and Immorality, You forthwith do cause all Laws already made against Blasphemy, Prophaneness, Adultery, Fornication, Polygamy, Incest, Profanation of the Lord's day, Swearing, and Drunkenness, to be vigorously put in execution in every part of your Government ; and that you take due Care for the punishment of these and every other Vice and Immorality by presentment upon Oath, to be made to the Temporal Courts by the Church Wardens of the several Parishes at proper times of the Year to be appointed for that purpose ; And for the further discouragement of Vice and encouragement of Virtue and good Living, (that by such Examples the Infidels may be invited and perswaded to embrace the Christian Religion.) You are not to admit any Persons to public Trusts and Employments in the Province under your Government, whose ill fame and conversation may occasion Scandal.

30. The Extension of the Limits of the Province of Quebec necessarily calls forth your Attention to a Variety of new Matter and new Objects of Consideration ; The protection and control of the various Settlements of Canadian Subjects, and the regulation of the Peltry Trade in the upper or interior Country on the one hand, and the protection of the Fisheries in the Gulph of St. Lawrence, and on the Labrador Coast on the other hand, point to Regulations, that require deliberation and despatch.

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31. The institution of inferior Judicatures with limited Jurisdiction in Criminal and Civil Matters for the Illinois, Poste St Vincenne, the Detroit, Missilimakinac, and Gaspée has been already pointed out, and the Appointment of a Superintendent at each of these Posts is all, that is further necessary for their Civil concerns ; But it will be highly proper, that the Limits of each of those Posts, and of every other in the interior Country should be fixed and ascertained ; and that no Settlement be allowed beyond those Limits ; seeing that such Settlements must have the consequence to disgust the Savages ; to excite their Enmity ; and at length totally to destroy the Peltry Trade, which ought to be cherished and encouraged by every means in your Power.

32. It is Our Royal Intention, that the Peltry Trade of the interior Country should be free and open to all Our Subjects, Inhabitants of any of Our Colonies, who shall, pursuant to what was directed by Our Royal Proclamation of 1763, obtain Licences from the Governors of any of Our said Colonies for that purpose, under penalties to observe such Regulations, as shall be made by Our Legislature of Quebec for that purpose ; Those Regulations therefore, when established, must be made public throughout all Our American possessions, and they must have for their object the giving every possible facility to that Trade, which the nature of it will admit, and as may consist with fair and just dealing towards the Savages, with whom it is carried on. The fixing stated times and places for carrying on the Trade, and adjusting modes of settling Tariffs of the prices of Goods and Furs, and above all the restraining the Sale of Spirituous Liquors to the Indians will be the most probable and effectual means of answering the ends proposed. These and a variety of other regulations, incident to the nature and purpose of the Peltry Trade in the interior Country, are fully stated in a Plan proposed by Our Commissioners for Trade and Plantations in 1764, a copy of which is hereunto annexed,¹ and which will serve as a Guide in a variety of cases, in which it may be necessary to make provision by Law for that important Branch of the American Commerce.

33. The Fisheries on the Coast of Labrador, and the Islands adjacent thereto are objects of the greatest Importance, not only on account of the Commodities they produce, but also as Nurseries of Seamen, upon whom the Strength and Security of Our Kingdom depend.

34. Justice and Equity demand, that the real and actual property and possession of the Canadian Subjects on that Coast should be preserved intirely; and that they should not be molested or hindered in the exercise of any Sedentary Fisheries they may have established there.

35. Their Claims however extend to but a small District of the Coast, on the greatest part of which District a Cod Fishery is stated to be impracticable.

36. On all such parts of the Coast, where there are no Canadian Possessions, and more especially where a valuable Cod Fishery may be carried

¹ The plan is given below, following these Instructions; see p. 614.

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40. And whereas it appears from the Representation of Our late Governor of the District of Trois Rivières that the Iron Works at Saint Maurice in that District are of great consequence to Our Service. It is therefore Our Will and Pleasure, that no part of the Lands, upon which the said Iron Works were carried on, or from which the Ore used in such Works was procured, or which shall appear to be necessary and convenient for that Establishment, either in respect to a free passage to the River Saint Lawrence, or for producing a necessary supply of Wood, Corn, and Hay, or for Pasture for Cattle, be granted to any private person whatever. And also that as large a District of Land, as conveniently may be, adjacent to, and lying round the said Iron Works, over and above what may be necessary for the above purposes, be reserved for Our Use, to be disposed of in such manner as We shall hereafter direct and appoint.

41. And it is Our further Will and Pleasure, that you do consider of a proper and effectual method of collecting, receiving, and accounting for Our Quit rents, whereby all Frauds, Concealments, Irregularity, or neglect therein may be prevented, and whereby the receipt may be effectually checked and controlled. And if it shall appear necessary to pass an Act for the more effectually ascertaining, and the more speedily and regularly collecting Our Quit rents, you are to prepare the heads of such a Bill, as you shall think may most effectually conduce to the procuring the good ends proposed; and to transmit the same to Us by one of Our principal Secretaries of State for Our further Directions therein. And you are also to transmit a Duplicate thereof to Our Commissioners for Trade and Plantations for their information.

42. You are to use your best endeavours in improving the Trade of the Province under your Government by settling such Orders and Regulations therein, with the advice of Our said Council, as may be most acceptable to the generality of the Inhabitants; And It is Our express Will and Pleasure, that you do not upon any pretence whatever, upon pain of Our Highest Displeasure, give your assent to any Law or Laws for setting up any Manufactures, and carrying on any Trades, which are hurtful and prejudicial to this Kingdom; and that you do use your utmost endeavours to discourage, discountenance, and restrain any attempts, which may be made to set up such Manufactures, or establish any such Trades.

43. And it is Our Will and Pleasure, that you do not dispose of any Forfeitures or Escheats to any person, until the Sheriff or other proper Officer have made enquiry by a Jury upon their Oaths into the true value thereof; nor until you have transmitted to Our Commissioners of Our Treasury a particular account of such Forfeitures, and Escheats, and the Value thereof; and you are to take care, that the produce of such Forfeitures and Escheats, in case We shall think proper to give you directions to dispose of the same, be duly paid to Our Treasurer or Receiver General of Our said Province; and a full account transmitted to Our Commissioners of

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on, it will be your Duty to make the Interests of Our British Subjects going out to fish there in Ships fitted out from Great Britain the first object of your care, and, as far as circumstances will admit, to establish on that Coast the Regulations in favour of British fishing Ships, which have been so wisely adopted by the Act of Parliament passed in the Reign of King William the Third "for the encouragement of the Newfoundland Fishery;" and you are on no account to allow any possession to be taken, or sedentary Fisheries to be established upon any parts of the Coast, that are not already private Property, by any persons whatever, except only such as shall produce annually a Certificate of their having fitted out from some Port in Great Britain.

37. We have mentioned to you the Fisheries upon the Coast of Labrador, as the main object of your attention; but the Commerce carried on with Savages of that Coast, and the state and condition of those Savages deserve some regard; The Society of Unitas Fratrum, urged by a laudable Zeal for promoting Christianity, has already, under Our Protection, and with Our Permission, formed Establishments in the Northern parts of that Coast for the purposes of civilizing the Natives, and converting them to the Christian Religion. Their success has been answerable to their Zeal: and it is Our express Will and Pleasure, that you do give them every countenance and Encouragement in your power, and that you do not allow any Establishment to be made, but with their consent, within the limits of their possessions.

38. By Our Commission to you under Our Great Seal of Great Britain you are authorised and empowered, with the advice and consent of Our Council, to settle and agree with the Inhabitants of Our said Province of Quebec for such Lands, Tenements, and Hereditaments, as now are, or shall hereafter be in Our Power to dispose of. It is therefore Our Will and Pleasure, that all Lands, which now are, or hereafter may be subject to Our Disposal, be granted in Fief or Seigneurie, in like manner as was practiced antecedent to the Conquest of the said Province; omitting however in any Grant, that shall be passed of such Lands, the Reservation of any Judicial powers, or privileges whatever. And it is Our further Will and Pleasure, that all Grants in Fief or Seigneurie, so to be passed by you, as aforesaid, be made subject to Our Royal Ratification, or Disallowance, and to a due Registry thereof within a limited time, in like manner as was practised in regard to Grants and Concessions held in Fief and Seigneurie under the French Government.

39. It is Our Will and Pleasure however, that no Grants be made of any Lands, on which there is any considerable growth of white Pines fit for Masting Our Royal Navy, and which lie convenient for water carriage; But that you do cause all such Lands to be set apart for Our Use, and proper regulations made, and penalties inflicted, to prevent trespasses on such Tracts, and the cutting down, or destroying the Trees growing thereon.

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Our Treasury, or Our High Treasurer for the time being, with the names of the persons, to whom disposed.

44. And whereas Commissions have been granted unto several persons in Our respective Plantations in America for the trying of Pirates in those parts, pursuant to the Acts for the more effectual suppression of Piracy; and by a Commission already sent to Our Province of New York Our Governor there is impowered, together with others therein mentioned, to proceed accordingly in reference to Our said Province; Our Will and Pleasure is that you do use your best endeavours to apprehend all persons whatever, who may have been guilty of Piracy within your Government, or who, having committed such Crimes at other places, may come within your Jurisdiction, and until we shall think proper to direct the like Commission to be established for Our Government at Quebec, you are to send such Pirates, with what proofs of their Guilt you can procure or collect, to Our Governor of New York, to be tryed and punished under the authority of the Commission established for those parts.

45. And whereas you will receive from Our Commissioners for executing the Office of High Admiral of Great Britain and of Our Plantations a Commission, constituting you Vice Admiral of Our said Province; you are hereby required and directed carefully to put in execution the several powers thereby granted you.

46. Whereas great Inconveniences have happened heretofore by Merchant Ships and other essels in the Plantations wearing the Colours borne by Our Ships of War, under pretence of Commissions granted to them by the Governors of the said Plantations, and by trading under those Colours, not only among Our own Subjects, but also those of other Princes and States, and committing divers Irregularities, they may very much dishonour Our Service; For preventing thereof, you are to oblige the Commanders of all such Ships, to which you shall grant Commissions, to wear no other Colours, than such as are described in an Order of Council of the 7th of January 1730, in relation to Colours to be worn by all Ships and Vessels, except Our Ships of War.

47. And whereas there have been great Irregularities in the manner of granting Commissions in the Plantations to private Ships of War, you are to govern yourself, whenever there shall be occasion, according to the Commissions and Instructions granted in this Kingdom; But you are not to grant Commissions of Marque or Reprisal against any Prince or State, or their Subjects in amity with Us to any person whatsoever without Our special Command.

48. Whereas We have been informed, that during the time of War, Our Enemies have frequently got Intelligence of the State of Our Plantations by Letters from private persons to their Correspondents in Great Britain, taken on board Ships coming from the Plantations, which hath been of dangerous consequence; Our Will and Pleasure therefore is, that you signify to all Merchants, Planters, and others, that they be very cautious

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in time of War, whenever that shall happen, in giving any accounts by Letters of the public State and Conditions of Our Province under your Government; and you are farther to give directions to all Masters of Ships, or other persons, to whom you may entrust your Letters, that they put such Letters into a Bag with a sufficient weight to sink the same immediately, in case of imminent danger from the Enemy: And you are also to let the Merchants and Planters know, how greatly it is for their Interest, that their Letters should not fall into the hands of the Enemy; and therefore that they should give like Orders to Masters of Ships in relation to their Letters; and you are further to advise all Masters of Ships, that they do sink all Letters, in case of danger, in the manner before mentioned.

49. And whereas the Merchants and Planters in Our Plantations in America, have in time of War, corresponded and traded with Our Enemies, and carried Intelligence to them, to the great prejudice and hazard of Our said Plantations: you are therefore by all possible methods to endeavor to hinder such Trade and Correspondence in time of War.

50. Whereas it is absolutely necessary, that We be exactly informed of the State of Defence of all Our Plantations in America, as well in relation to the Stores of War, that are in each Plantation, as to the Forts and Fortifications there, and what more may be necessary to be built for the Defence and Security of the same; you are as soon as possible to prepare an account thereof with relation to Our said Province in the most particular manner; and you are therein to express the present State of the Arms, Ammunition, and other Stores of War belonging to the said Province, either in public Magazines, or in the hands of private persons, together with the State of all places either already fortified, or that you judge necessary to be fortified for the Security of Our said Province; and you are to transmit the said accounts to Us by one of Our principal Secretaries of State, and also Duplicates thereof to Our Commissioners for Trade and Plantations, for their information, and also a Duplicate thereof to Our Master General, or principal Officers of Our Ordinance, which accounts are to express the particulars of Ordinance, Carriages, Balls, Powder, and other sorts of Arms and Ammunition in Our public Stores, and so from time to time of what shall be sent to you, or bought with the public Money; and to specify the time of the disposal, and the occasion thereof; And you are half yearly to transmit a general account of the State of the Fortifications and Warlike Stores specified in the manner above mentioned.

51. And in case of any Distress of any other of Our Plantations, you shall, upon application of the respective Governors thereof unto you, assist them with what aid the condition and safety of Our Province under your Government can spare.

52. If any thing shall happen, which may be of advantage or security to Our Province under your Government, which is not herein, or by your Commission provided for, We do hereby allow unto you, with the advice and consent of Our Council, to take order for the present therein, giving

Indian Population by Decennial Census
(1871 - 1951), Departmental Censuses
(1949, 1954 and 1959) and Estimates
(1958 and 1960-66), in Quebec.

Year	Indian Population	Year	Indian Population	Year	Indian Population
1871	6,938	1941	11,863	1961 ⁴	21,793 ³
1881	7,515	1949	15,970	1962 ⁴	22,373
1891 ¹	13,361	1951	14,631	1963 ⁴	23,043
1901	10,142	1954	17,574	1964 ⁴	23,709
1911	9,993	1958 ⁴	20,127	1965 ⁴	24,446
1921 ²	11,566	1959 ⁴	20,543	1966 ⁴	25,083
1931	12,312	1960 ⁴	21,154		

1. Racial origin not taken in 1891; the figures have been taken from the report of Department of Indian Affairs.

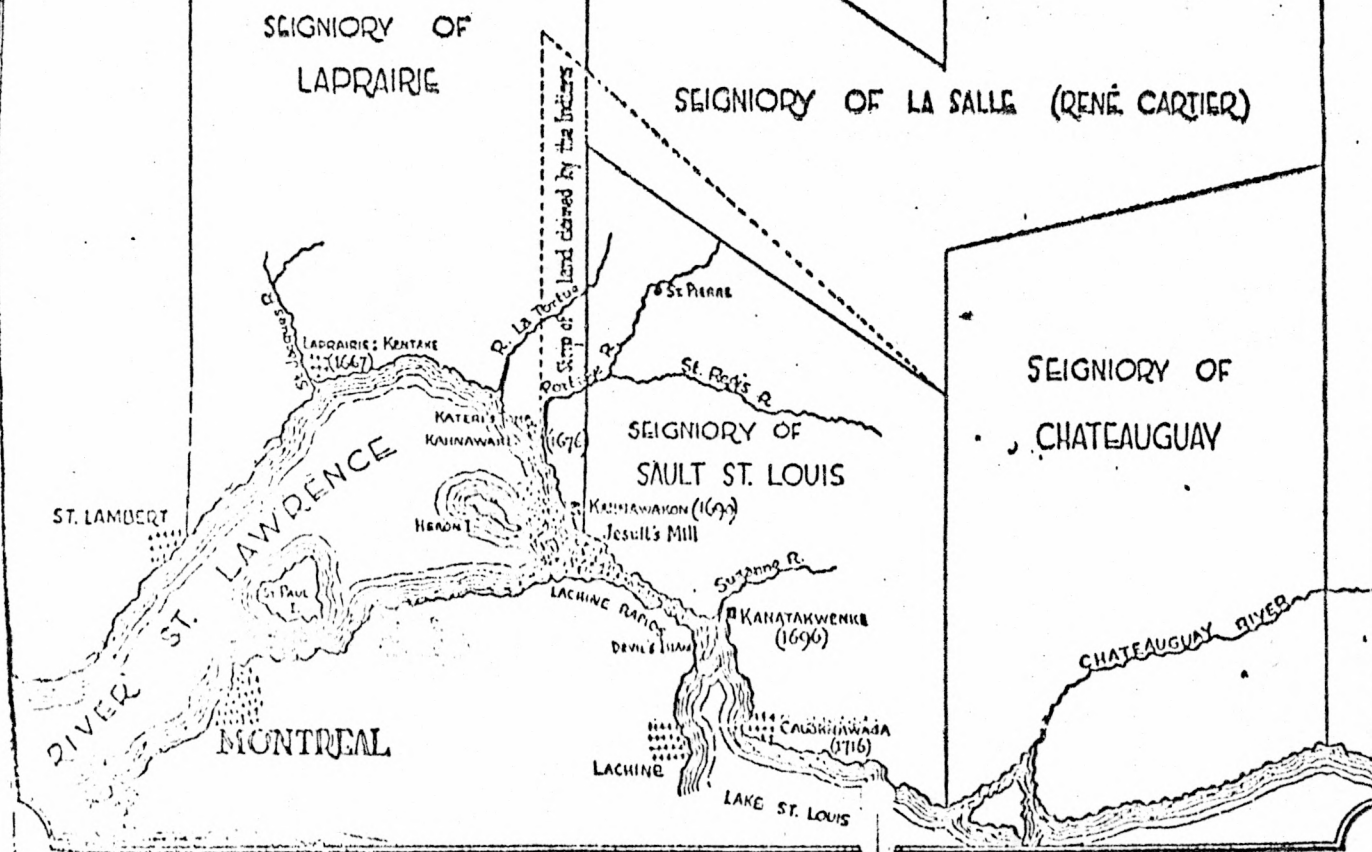
2. Extension of the boundaries of Quebec.

3. Figures corrected due to transfer of population of one band.

4. As at December 31, 1958-66.

Source: Annuaire du Québec, 51^e édition, Table 24, p.187.

MAP ILLUSTRATING
Historic Caughnawaga
1667-1890



DOCUMENTS RELATING TO THE CONSTITUTIONAL HISTORY OF CANADA

1759-1791

ARTICLES OF CAPITULATION, QUEBEC.¹

La Capitulation demandée d'autre part a été accordée par Son Excellence General Townshend Brigadier des armées de sa Majesté Britanique en Amerique de la Maniere & aux conditions exprimées cy dessous

Articles de Capitulation demandés Par M^r de Ramzay Lieutenant Pour Le Roy Commandant Les hautes et Basse Ville de Quebec Ch^r de L'ordre Royal & Militaire de S^t Louis à Son Excellence Monsieur Le General des troupes de Sa Majesté Britannique.

¹ The Articles of Capitulation of Quebec as here given are taken from a photographic reproduction of the original document, signed by Admiral Charles Saunders, Brigadier General George Townshend and M. de Ramsay, which was enclosed in Townshend's despatch to Pitt of the 20th Sept., 1759, giving the official account of the capture of Quebec. The despatch and the enclosed Articles of Capitulation are preserved in the Public Record Office, London, in Vol. 88 of the papers relating to "America and the West Indies." In his despatch General Townshend thus alludes to the Capitulation:—"The 17th at noon before we had any Battery erected or could have had any for 2 or 3 days, A Flag of Truce came out with proposals of Capitulation, which I sent back again to Town allowing them four Hours to capitulate or no farther Treaty. The French Officer returned at night with Terms of Capitulation which with the Admiral were consider'd, agreed to, and signed, at 8 in y^e morning y^e 18th instant. The Terms you find we granted will I flatter myself be approved of by his Majesty considering y^e Enemy assembling in our Rear, & what is far more formidable The very Whet & Cold Season which threatened our Troops with Sickness & the Feet with some Accident. It had made our Road so bad we could not bring up a Gun for some time, add to this y^e advantage of entering y^e Town with the walls in a Defensible State, and y^e being able to put a Garrison there strong enough to prevent all Surprise. These I hope will be deem'd a sufficient Consideration for granting y^e them. Terms I have the Honour to propose to you." Admiral Saunders, in a letter to Pitt at the same time, also states, "I enclose you a Copy of the Articles of Capitulation." Negotiations for the capitulation appear to have commenced immediately after the battle of the Plains on the 13th of September, as Montcalm addressed a letter to Townshend on that day, in which he acknowledged that he was compelled to surrender. On the 14th, M. de Ramsay received a communication from the British Commander referring to the arrangements for carrying out the truce; but the death of Montcalm which occurred on the same day seems to have interrupted the proceedings. There are several variations in the wording alike of the French text and of the English Translation, or version of the Articles of Capitulation, as given by different authorities. Some of these are from French sources, others from English. As indicative of the variations in British official sources we may take the following versions of the introductory clauses of the Capitulation: Articles de Capitulation demandées par M^r de Ramzay Lieutenant pour le Roy, Commandant les Hautes et Basses Villes de Quebec, Chevalier de l'Ordre Royal et Militaire de S^t Louis, à Son Excellence Monsieur le Général des Troupes de Sa Majesté Britannique: La Capitulation demandée d'autre Part a été accordée par Son Excellence General Townshend, Brigadier des Armes de Sa Majesté Britannique en Amerique, de la Maniere et aux Conditions exprimées cy-dessous: (Papers relative to the Province of Quebec, ordered to be printed 21st April 1791. Copied in Canadian Archives, Q. 62 A, Pt. 1, p. 103.)

ARTICLES DE CAPITULATION

Demandée par M. de Ramsay, Lieutenant pour le Roi, commandant les Hautes et Basse-villes de Quebec, Chef de l'ordre militaire de St. Louis, à son Excellence le Général des Troupes de Sa Majesté Britannique.—"La Capitulation demandée de l'autre part, a été accordée par son Excellence l'Amiral Saunders, et son Excellence le Général Townshend, &c. &c. de la Maniere et condition exprimée ci-dessous." (Capitulations and Extracts of Treaties Relating to Canada; with His Majesty's Proclamations of 1763, establishing the Government of Quebec. p. 3. Printed by William Vondenvelden, Law Printer to the King's Most Excellent Majesty, 1797.)

ADAM SHORTT
ARTHUR G. DOUGHTY

references to the sources
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as prepared by Miss M. Robertson

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(Translation)¹

ARTICLES OF CAPITULATION

Demanded by Mr. de Ramsay, the King's Lieutenant, commanding the high and low Towns of Quebec, Chief of the military order of St. Lewis, to His Excellency the General of the troops of His Britannic Majesty.—"The Capitulation demanded on the part of the enemy, "and granted by their Excellencies Admiral Saunders and General "Townshend, &c., &c., &c., is in manner and form hereafter expressed."

I.

Mr. de Ramsay demands the honours of war for his Garrison, and that it shall be sent back to the army in safety, and by the shortest route, with arms, baggage, six pieces of brass cannon, two mortars or howitzers, and twelve rounds for each of them.—"The Garrison of the town, composed of "Land forces, marines and sailors, shall march out with their arms and "baggage, drums beating, matches lighted, with two pieces of french cannon, "and twelve rounds for each piece; and shall be embarked as conveniently "as possible, to be sent to the first port in France."

II.

That the inhabitants shall be preserved in the possession of their houses, goods, effects, and privileges.—"Granted, upon their laying down their arms."

III.

That the inhabitants shall not be accountable for having carried arms in the defence of the town, for as much as they were compelled to it, and that the inhabitants of the colonies, of both crowns, equally serve as militia.—"Granted."

IV.

That the effects of the absent officers and citizens shall not be touched.—"Granted."

V.

That the inhabitants shall not be removed, nor obliged to quit their houses, until their condition shall be settled by their Britannic, and most Christian Majesties—"Granted."

¹ The French text of the Articles of Capitulation being the official one, there is no authoritative English version. The English text here given follows that contained in "Capitulations and Extracts of Treaties Relating to Canada," already cited, and which corresponds to the French text there given. This version, as regards the British concessions, is practically identical with that contained in Knox's "Historical Journal of the Campaigns in North America," Vol. II, p. 87, as also in the "Annual Register" for 1759, p. 247. The version contained in "Papers Relative to the Province of Quebec," of 1791, differs slightly from these.

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done to them, on any pretence whatever. They shall have liberty to keep, let or sell them, as well to the French as to the British; to take away the produce of them in Bills of exchange, furs, specie or other returns, whenever they shall judge proper to go to France, paying their freight, as in the XXVIth Article. They shall also have the furs which are in the posts above, and which belong to them, and may be on the way to Montreal; and, for this purpose, they shall have leave to send, this year, or the next, canoes fitted out, to fetch such of the said furs as shall have remained in those posts.—“Granted as in the XXVIth article.”

ARTICLE XXXVIII

All the people who have left Acadia, and who shall be found in Canada including the frontiers of Canada on the side of Acadia, shall have the same treatment as the Canadians, and shall enjoy the same privileges.—“The King is to dispose of his ancient Subjects: in the mean time, they shall enjoy the same privileges as the Canadians.”

ARTICLE XXXIX

None of the Canadians, Acadians or French, who are now in Canada, and on the frontiers of the colony, on the side of Acadia, Detroit, Michillimaquinac, and other places and posts of the countries above, the married and unmarried soldiers, remaining in Canada, shall be carried or transported into the British colonies, or to Great-Britain, and they shall not be troubled for having carried arms.—“Granted, except with regard to the Acadians.”

ARTICLE XL

The Savages or Indian allies of his most Christian Majesty, shall be maintained in the Lands they inhabit; if they chuse to remain there; they shall not be molested on any pretence whatsoever, for having carried arms, and served his most Christian Majesty; they shall have, as well as the French, liberty of religion, and shall keep their missionaries. The actual Vicars General, and the Bishop, when the Episcopal see shall be filled, shall have leave to send to them new Missionaries when they shall judge it necessary.—“Granted except the last article, which has been already refused.”

ARTICLE XLI

The French, Canadians, and Acadians of what state and condition soever, who shall remain in the colony, shall not be forced to take arms against his most Christian Majesty, or his Allies, directly or indirectly, on any occasion whatsoever; the British Government shall only require of them an exact neutrality.—“They become Subjects of the King.”

A PROCLAMATION OF 1763

George R.

Whereas We have taken into Our Royal Consideration the extensive and valuable Acquisitions in America, secured to our Crown by the late Definitive Treaty of Peace, concluded at Paris, the 10th Day of February last; and being desirous that all Our loving Subjects, as well of our Kingdom as of our Colonies in America, may avail themselves with all convenient Speed, of the great Benefits and Advantages which must accrue therefrom to their Commerce, Manufactures, and Navigation, we have thought fit, with the Advice of Our Privy Council, to issue this Our Royal Proclamation, hereby to publish and declare to all our loving Subjects, that we have, with the Advice of our Said Privy Council, granted our Letters Patent, under our Great seal of Great Britain, to erect, within the Countries and Islands ceded and confirmed to Us by the said Treaty, Four distinct and separate Governments, styled and called by the names of Quebec, East Florida, West Florida and Grenada, and limited and bounded as follows, viz.

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

Secondly--The Government of East Florida, bounded to the Westward by the Gulph of Mexico and the Apalachicola River; to the Northward by a Line drawn from that part of the said River where the Chatahouchee and Flint Rivers meet, to the source of St. Mary's River, and by the course of the said River to the Atlantic Ocean; and to the Eastward and Southward by the Atlantic Ocean and the Gulph of Florida, including all Islands within Six Leagues of the Sea Coast.

Thirdly--The Government of West Florida, bounded to the southward by the Gulph of Mexico, including all Islands within Six Leagues of the Coast, from the River Apalachicola to Lake Pontchartrain; to the Westward by the said Lake, the Lake Maurepas, and the River Mississippi; to the Northward by a Line drawn due East from that part of the River Mississippi which lies in 31 Degrees North Latitude, to the River Apalachicola or Chatabouchee; and to the Eastward by the said River.

Fourthly--The Government of Grenada, comprehending the Island of that name, together with the Grenadines, and the Islands of Dominico, St. Vincent's and Tobago.

And to the end that the open and free Fishery of our Subjects may be extended to and carried on upon the Coast of Labrador, and the adjacent Islands, We have thought fit, with the advice of our said Privy Council, to put all that Coast, from the River St. John's to Hudson's Straights, together with the Islands of Anticosti and Madelaine, and all other smaller Islands lying upon the said Coast, under the care and Inspection of our Governor of Newfoundland.

We have also, with the advice of our Privy Council, thought fit to annex the Islands of St. John's and Cape Breton, or Isle Royale, with the lesser Islands adjacent thereto, to our Government of Nova Scotia.

We have also, with the advice of our Privy Council aforesaid, annexed to our Province of Georgia all the lands lying between the Rivers Altamaha and St. Mary's.

And whereas it will greatly contribute to the speedy settling our said new Governments, that our loving subjects should be informed of our Paternal care, for the security of the Liberties and Properties of those who are and shall become Inhabitants thereof. We have thought fit to publish and declare, by this Our Proclamation, that We have, in the Letters Patent under our Great Seal of Great Britain, by which the said Governments are constituted, given express Power and Direction to our Governors of our Said Colonies respectively, that so soon as the state and circumstances of the said Colonies will admit thereof, they shall, with the Advice and Consent of the Members of our Council, summon and call General Assemblies within the said Governments respectively, in such manner and Form as is used and directed in those Colonies and Provinces in America which are under our immediate Government; and We have also given Power to the said Governors, with the consent of our Said Councils, and the Representatives of the People so to be summoned as aforesaid, to make, constitute, and Ordain Laws, Statutes, and Ordinances for the Public Peace, Welfare, and good Government of our said Colonies, and of the People and Inhabitants thereof, as near as may be agreeable to the Laws of England, and under such Regulations and Restrictions as are used in other Colonies; and in the mean Time, and until such Assemblies can be called as aforesaid, all persons Inhabiting in or resorting to our Said Colonies may confide in our Royal Protection for the Enjoyment of the Benefit of the Laws of our Realm of England; for which Purpose We have given Power under our Great Seal to the Governors to our said Colonies respectively to erect and constitute, with the Advice of our said Councils respectively, Courts of Judicature and public Justice within our Said Colonies for hearing and determining all Causes, as well Criminal as Civil, according to Law and Equity, and as near as may be agreeable to the Laws of England, with Liberty to all Persons who may think themselves aggrieved by the Sentences of such Courts, in all Civil Cases, to appeal, under the usual Limitations and Restrictions, to Us in our Privy Council.

We have also thought fit, with the advice of our Privy Council as aforesaid, to give unto the Governors and Councils of our said Three new Colonies, upon the Continent full Power and Authority to settle and agree with the Inhabitants of our said new Colonies or with any other Persons who shall resort thereto, for such Lands, Tenements and Hereditaments, as are now or hereafter shall be in our Power to dispose of; and them to grant to any such Person or Persons upon such Terms, and under such moderate Quit-Rents, Services and Acknowledgments, as have been appointed and settled in our other Colonies, and under such other Conditions as shall appear to us to be necessary and expedient for the Advantage of the Grantees, and the Improvement and settlement of our said Colonies.

And Whereas, We are desirous, upon all occasions, to testify our Royal Sense and Approbation of the Conduct and bravery of the Officers and Soldiers of Our Armies, and to reward the same, We do hereby command and empower our Governors of our said Three new Colonies, and all other our Governors or our several Provinces on the Continent of North America, to grant without Fee or Reward, to such reduced Officers as have served in North America during the late War, and to such Private Soldiers as have been or shall be disbanded in America and are actually residing there, and shall personally apply for the same, the following Quantities of Lands, subject, at the Expiration of Ten Years, to the same Quit-Rents as other Lands are subject to in the Province within which they are granted, as also subject to the same Conditions of Cultivation and Improvement; vis.

To every Person having the Rank of a Field Officer	5000 acres
To every Captain.....	3,000 acres
To every Subaltern or Staff Officer.....	2,000 acres
To every Non-Commission Officer.....	200 acres
To every Private Man.....	50 acres

We do likewise authorize and require the Governors and Commanders in Chief of all our said Colonies upon the Continent of North America to grant the like Quantities of Land, and upon the same conditions, to such reduced Officers of our Navy of like Rank as served on board our Ships or War in North America at the times of the Reduction of Louisburg and Quebec in the late War, and who shall personally apply to our respective Governors for such Grants.

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

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

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

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

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

And we do hereby authorize enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively as well those under our immediate Government as those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Reward, taking special Care to insert therein a Condition, that the Licence shall be void, and the Security forfeited in case the Person to whom the same is granted shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

And we do further expressly enjoin and require all Officers whatever, as well Military as those Employed in the Management and Direction of Indian Affairs, within the Territories reserved as aforesaid for the use of the said Indians, to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisions of Treason, Murders, or other Felonies or Misdemeanors, shall fly from Justice and take Refuge in the said Territory, and to send them under a proper guard to the Colony where the Crime was committed of which they stand accused, in order to take their Trial for the same.

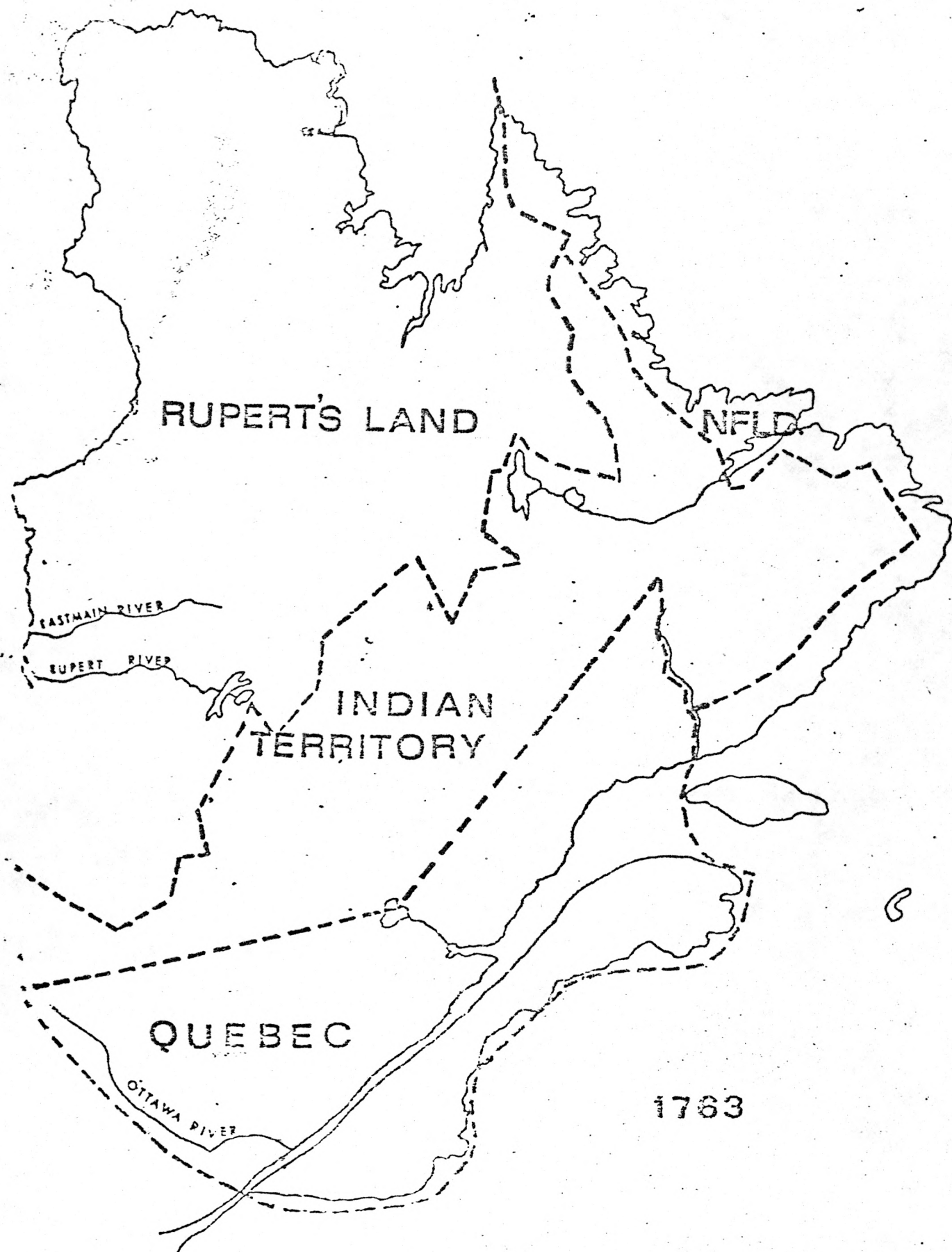
Given at our Court at St. James's the 7th Day of October 1763, in the Third Year of our Reign.

GOD SAVE THE KING

1. - Taken from the text as contained in the "Papers Relative to the Province of Quebec, 1791, in the Public Record Office. Copies in the Canadian Archives Q 62A, pt. I, p. 114

2. The attitude of the Home Government at this time, on the subject of immigration, the kind of immigrants to be favoured, and even the need of an outlet for surplus population on the part of some of the older colonies in America, may be gathered from a report of the Lords of Trade, Nov. 5, 1761, upon the proposal to transport a number of Germans to the American Colonies after the peace. They point out that as "regards colonies possessed before the war, the increase of population is such as scarce to leave room in some of them for any more inhabitants. The encouragement and advantages of the less populated southern colonies are such as to induce sufficient migration without burdening the public. Our own reduced sailors and soldiers would be more proper objects of national bounty, and better colonists, than foreigners, whose ignorance of the English language, laws, and constitution cannot fail to increase those disorders and that confusion in our Government, which the too great migration of people from Germany has already fatally introduced in some of our most valuable possessions.

Source: A Proclamation (1763) King George
Archives Report 1907, Constitutional Documents
1759-1791 p. 119.
Indian affairs (RG 10, Volume 10024)



RUPERT'S LAND

Nfld

EASTMAIN RIVER

RUPERT RIVER

INDIAN
TERRITORY

QUEBEC

OTTAWA RIVER

1763

No. 2

THE QUEBEC ACT, 1774

14 George III, c. 83 (U.K.)

An Act for making more effectual Provision for the Government of the Province of Quebec in North America.

"WHEREAS his Majesty, by his Royal Proclamation bearing Date the seventh Day of October, in the third Year of his Reign, thought fit to declare the Provisions which had been made in respect to certain Countries, Territories, and Islands in America, ceded to his Majesty by the definitive Treaty of Peace, concluded at Paris on the tenth day of February, one thousand seven hundred and sixty-three: And whereas, by the Arrangements made by the said Royal Proclamation, a very large Extent of Country, within which there were several Colonies and Settlements of the Subjects of France, who claimed to remain therein under the Faith of the said Treaty, was left, without any Provision being made for the Administration of Civil Government therein; and certain Parts of the Territory of Canada, where sedentary Fisheries had been established and carried on by the Subjects of France, Inhabitants of the said Province of Canada, under Grants and Concessions from the Government thereof, were annexed to the Government of Newfoundland, and thereby subjected to Regulations inconsistent with the Nature of such Fisheries:" May it therefore please your most Excellent Majesty that it may be enacted: and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all the Territories, Islands, and Countries in

No 2

ACTE DE QUÉBEC DE 1774

14 George III, c. 83 (R.-U.)

Acte qui règle plus solidement le Gouvernement de la Province de Québec dans l'Amérique Septentrionale.

«COMME Sa Majesté, a jugé à-propos, par sa Proclamation Royale, en date du septième jour d'Octobre, dans la troisième année de son règne, de déclarer les réglemens faits à l'égard de certains pays, territoires et isles en Amérique, qui lui ont été cédés par le traité définitif de paix, conclu à Paris le dixième jour de Février, mil sept cens soixante-trois: et comme par les arrangemens faits par la dite Proclamation Royale, une très grande étendue de pays, dans laquelle étaient alors plusieurs colonies et établissemens des sujets de France, qui ont réclamé d'y demeurer sur la foi du dit traité, a été laissée, sans qu'on y ait fait aucun règlement pour l'administration du gouvernement civil, et que certaines parties du territoire du Canada, où ont été établies et exploitées des pêches sédentaires par les sujets de France habitans de la dite province du Canada, sur des donations et concessions du gouvernement d'icelle, ont été jointes au gouvernement de Terre-neuve, et en conséquence soumises à des réglemens incompatibles avec la nature des dites pêches:» Si à ces causes votre très Excellente Majesté veut permettre qu'il soit Etabli, et il est Etabli par le Roi sa très Excellente Majesté, de l'avis et consentement des Seigneurs Spirituels et Temporels, et des Communes, assemblés en ce présent Parlement, et par l'autorité d'icelui, que tous les territoires, isles et pays, dans l'Amérique Septentrionale, appartenans à la couronne de la Grande Bretagne, bornés au Sud par une ligne prise de la Baïe des

Preamble

Les territoires, isles et pays dans l'Amérique Septentrionale appartenans à la Grande Bretagne

North America, belonging to the Crown of Great Britain, bounded on the South by a Line from the Bay of Chaleurs, along the High Lands which divide the Rivers that empty themselves into the River Saint Lawrence from those which fall into the Sea, to a Point in forty five Degrees of Northern Latitude, on the Eastern Bank of the River Connecticut, keeping the same Latitude directly West, through the Lake Champlain, until, in the same Latitude, it meets the River Saint Lawrence; from thence up the Eastern Bank of the said River to the Lake Ontario; thence through the Lake Ontario, and the River commonly call Niagara; and thence along by the Eastern and South-eastern Bank of Lake Erie, following the said Bank, until the same shall be intersected by the Northern Boundary, granted by the Charter of the Province of Pennsylvania, in case the same shall be so intersected, and from thence along the said Northern and Western Boundaries of the said Province, until the said Western Boundary strike the Ohio; But in case the said Bank of the said Lake shall not be found to be so intersected, then following the said Bank until it shall arrive at that Point of the said Bank which shall be nearest to the North-western Angle of the said Province of Pennsylvania, and thence by a right Line, to the said North-western Angle of the said Province; and thence along the Western Boundary of the said Province, until it strike the River Ohio; and along the Bank of the said River, Westward, to the Banks of the Mississippi, and Northward to the Southern Boundary of the Territory granted to the Merchants Adventurers of England, trading to Hudson's Bay; and also all such Territories, Islands, and Countries, which have, since the tenth of February, one thousand seven hundred and sixty-three, been made Part of the Government of Newfoundland, be, and they are hereby, during his Majesty's Pleasure, annexed to, and made Part and Parcel of, the Province of Quebec, as created and established by the said Royal Proclamation of the seventh of October, one thousand seven hundred and sixty-three.

annexed to
the Province
of Quebec

Not to affect
the Boundaries
of any other
Colony; nor to
make void other
Rights formerly
granted

II. Provided always, That nothing herein contained, relative to the Boundary of the Province of Quebec, shall in anywise affect the Boundaries of any other Colony.

III. Provided always, and be it enacted,

Chaleurs, le long des montagnes qui divisent les rivières qui se déchargent dans le fleuve St. Laurent, d'avec celles qui tombent dans la mer, à un point sous les quarante-cinq degrés de latitude Nord, sur les rives de l'Est de la rivière Connecticut; en gardant la même latitude directement à l'Ouest au travers du Lac Champlain jusqu'au fleuve St. Laurent dans la même latitude; de-là en suivant les rives de l'Est du dit fleuve au Lac Ontario, de-là au travers du dit Lac Ontario et de la rivière vulgairement appelée Niagara; et de-là le long des rives de l'Est et Sud-est du Lac Erié, en suivant les dites rives jusqu'à l'endroit où elles seront intersectées par les bornes Septentrionales accordées par la charte de la province de Pensylvanie, au cas qu'elles soient ainsi intersectées; et de-là le long des dites bornes Septentrionales et Occidentales de la dite province jusqu'à ce que les dites bornes Occidentales rencontrent l'Ohio; mais dans le cas où les dites rives du dit Lac ne se trouvent point ainsi intersectées, alors en suivant les dites rives, jusqu'à ce qu'on soit parvenu à une pointe des dites rives; qui sera la plus voisine au Nord-ouest de l'angle de la dite province de Pensylvanie, et de là par une droite ligne au dit angle au Nord-ouest de la dite province; et de-là le long de la borne occidentale de la dite province jusqu'à ce qu'elle rencontre la rivière Ohio et le long des rives de la dite rivière à l'Ouest, aux rives du Mississippi; et au Nord aux bornes Meridionales du pays concédé aux marchands d'Angleterre qui font la traite à la Baie de Hudson; ainsi que tous les territoires, isles et pays qui ont depuis le dixième jour de Février, mil sept cens-soixante-trois, fait partie du Gouvernement de Terre-neuve, sont, et ils sont par ces présentes durant le plaisir de sa Majesté, annexés et rendus parties et portions de la Province de Québec, comme elle a été érigée et établie par la dite Proclamation Royale du sept Octobre, mil sept cens-soixante-trois.

sont annexés
à la Province
de Québec

II. A condition toutefois, que rien de ce qui est contenu en ceci, concernant les limites de la province de Québec, ne dérangera en aucune façon les bornes d'aucune autre colonie.

Ne dérangera
pour les limites
d'aucune autre
Colonie

III. Pourvu aussi, et il est Etabli, que rien de ce qui est contenu dans cet Acte ne s'étendra, ou s'entendra s'étendre à annuler, changer ou altérer aucuns droits, titres ou

Ni n'annulera
aucuns droits
ou titres
d'avant accordés

That nothing in this Act contained shall extend, or be construed to extend, to make void, or to vary or alter any Right, Title, or Possession, derived under any Grant, Conveyance, or otherwise howsoever, of or to any Lands within the said Province, or the Provinces thereto adjoining; but that the same shall remain and be in Force, and have Effect, as if this Act had never been made.

Former
Provisions made
for the Province
to be null and
void after May
1, 1775

"IV. And whereas the Provisions, made by the said Proclamation, in respect to the Civil Government of the said Province of Quebec, and the Powers and Authorities given to the Governor and other Civil Officers of the said Province, by the Grants and Commissions issued in consequence thereof, have been found, upon Experience, to be inapplicable to the State and Circumstances of the said Province, the Inhabitants whereof amounted, at the Conquest, to above sixty-five thousand Persons professing the Religion of the Church of Rome, and enjoying an established Form of Constitution and System of Laws, by which their Persons and Property had been protected, governed, and ordered, for a long Series of Years, from the first Establishment of the said Province of Canada;" be it therefore further enacted by the Authority aforesaid, That the said Proclamation, so far as the same relates to the said Province of Quebec, and the Commission under the Authority whereof the Government of the said Province is at present administered, and all and every the Ordinance and Ordinances made by the Governor and Council of Québec for the Time being, relative to the Civil Government and Administration of Justice in the said Province, and all Commissions to Judges and other Officers thereof, be, and the same are hereby revoked, annulled, and made void, from and after the first Day of May, one thousand seven hundred and seventy-five.

Enacted at
the City of
Quebec
the 24th day of
May 1774
in the 1st Year
of the said
King's Majesty

"V. And for the more perfect Security and Ease of the Minds of the Inhabitants of the said Province," it is hereby declared, That his Majesty's Subjects, professing the Religion of the Church of Rome of and in the said Province of Quebec, may have, hold, and enjoy, the free Exercise of the Religion of the Church of Rome, subject to the King's Supremacy, declared and established by an Act, made in the first Year of the Reign of Queen Elizabeth, over all the Dominions and Countries which then did, or thereafter should

possessions, résultans de quelques concessions, actes de cession, ou d'autres que ce soit, d'aucunes terres dans la dite province, ou provinces y joignantes, et que les dits titres resteront en force, et auront le même effet, comme si cet Acte n'eut jamais été fait.

IV. «Et comme les réglemens faits par la dite Proclamation, eu égard au gouvernement civil de la dite province de Québec, ainsi que les pouvoirs et autorités donnés au Gouverneur et autres officiers civils en la dite province, par concessions ou commissions données en conséquence d'iceux, ont par l'expérience, été trouvés désavantageux à l'état et aux circonstances de la dite province, le nombre de ses habitans montant à la conquête à plus de soixante-cinq milles personnes qui professaient la Religion de l'Eglise de Rome, et qui jouissaient d'une forme stable de constitution, et d'un système de loix, en vertu desquelles leurs personnes et leurs propriétés ont été protégées, gouvernées et réglées pendant une longue suite d'années, depuis le premier établissement de la dite province du Canada;» Il est à ces causes, aussi Etabli par la susdite autorité, que la dite Proclamation, quant à ce qui concerne la dite province de Québec, que les commissions en vertu desquelles la dite province est à présent gouvernée, que toutes et chacune ordonnances faites pendant ce tems par le Gouverneur et Conseil de Québec, qui concernent le gouvernement civil et l'administration de la justice de la dite province, ainsi que toutes les commissions de juges et autres officiers d'icelle, sont, et elles sont par ces présentes infirmées, révoquées et annulées, à compter depuis et après le premier jour de Mai, mil sept cens soixante-quinze.

Premiers
réglemens faits
pour la Province
annulés et
infirmés après le
1er. Mai, 1775

V. «Et pour la plus entière sûreté et tranquillité des esprits des habitans de la dite province.» Il est par ces présentes Déclaré, que les sujets de sa Majesté professant la Religion de l'Eglise de Rome dans la dite province de Québec, peuvent avoir, conserver et jouir du libre exercice de la Religion de l'Eglise de Rome, soumise à la Suprématie du Roi, déclarée et établie par un acte fait dans la première année du regne de la Reine Elisabeth, sur tous les domaines et païs qui appartenaient alors, ou qui appartiendraient par la suite, à la couronne impériale de ce royaume; et que le Clergé de la dite Eglise peut tenir, recevoir et jouir de ses dūs et d'onts accoutumés, eu égard seulement aux personnes

Les habitans de
Québec peuvent
professer la
Religion
Romaine,
soumise à la
suprématie du
Roi, comme par
l'Acte du 1
d'Elizabeth

et le clergé
peut de
ses d'onts
accoutumés

and the Clergy
enjoy their
accustomed dues

Provision may
be made by his
Majesty for the
Support of the
Protestant
Clergy

No Person
professing the
Romish
Religion obliged
to take the Oath
of 1 Eliz. but to
take, before the
Governor, &c.
the following
Oath

The Oath

Persons refusing
the Oath to be
subject to the
Penalties by Act
1 Eliz.

belong to the Imperial Crown of this Realm; and that the Clergy of the said Church may hold, receive, and enjoy, their accustomed Dues and Rights, with respect to such Persons only as shall profess the said Religion.

VII. Provided nevertheless, That it shall be lawful for his Majesty, his Heirs or Successors, to make such Provision out of the rest of the said accustomed Dues and Rights, for the Encouragement of the Protestant Religion, and for the Maintenance and Support of a Protestant Clergy within the said Province, as he or they shall, from Time to Time, think necessary and expedient.

VII. Provided always, and be it enacted, That no Person professing the Religion of the Church of Rome, and residing in the said Province, shall be obliged to take the Oath required by the said Statute passed in the first Year of the Reign of Queen Elizabeth, or any other Oaths substituted by any other Act in the Place thereof; but that every such Person who, by the said Statute, is required to take the Oath therein mentioned, shall be obliged, and is hereby required, to take and subscribe the following Oath before the Governor, or such other Person in such Court of Record as his Majesty shall appoint, who are hereby authorized to administer the same; *videlicet*,

"I A.B. do sincerely promise and swear. That I will be faithful, and bear true Allegiance to his Majesty King George, and him will defend to the utmost of my Power, against all traitorous Conspiracies, and Attempts whatsoever, which shall be made against his Person, Crown, and Dignity; and I will do my utmost Endeavor to disclose and make known to his Majesty, his Heirs and Successors, all Treasons, and traitorous Conspiracies, and Attempts, which I shall know to be against him, or any of them; and all this I do swear without any Equivocation, mental Evasion, or secret Reservation, and renouncing all Pardons and Dispensations from any Power or Person whomsoever to the contrary. *So help me GOD.*"

And every such Person, who shall neglect or refuse to take the said Oath before mentioned, shall incur and be liable to the same Penalties, Forfeitures, Disabilities, and Incapacities, as he would have incurred and been liable to for neglecting or refusing to

qui professeront la dite Religion.

VI. Pourvu néanmoins, Qu'il sera loisible à sa Majesté, ses héritiers et successeurs, de faire telles applications du résidu des dits dîs et droits accoutumés, pour l'encouragement de la Religion Protestante, et pour le maintien et subsistance d'un Clergé Protestant dans la dite province, ainsi qu'ils le jugeront, en tout temps, nécessaire et utile.

VII. Pourvu aussi, et il est Etabli, Que toutes personnes professantes la Religion de l'Eglise de Rome, et qui résideront en la dite province, ne seront point obligées de prendre le serment ordonné par le dit acte, passé dans la première année du regne de la Reine Elisabeth, ou quelque autre serment substitué en son lieu et place par aucun autre acte; mais que toutes telles personnes, à qui par le dit statut, il est ordonné de prendre le serment qui y est contenu, seront contraintes, et il leur est ordonné de prendre et souscrire le serment ci-après, devant le Gouverneur, ou telle autre personne dans tel greffe, qu'il plaira à sa Majesté d'établir, qui sont par ces présentes autorisés à le recevoir, ainsi qu'il suit:

«Je A.B. promets sincèrement et affirme par serment, que je serai fidèle, et que je porterai vraie foi et fidélité à sa Majesté le Roi George, que je le défendrai de tout mon pouvoir et en tout ce qui dépendra de moi, contre toutes perfides conspirations et tous attentats quelconques, qui seront entrepris contre sa personne, sa couronne et sa dignité; et que je ferai tous mes efforts pour découvrir et donner connaissance à sa Majesté, ses héritiers et successeurs, de toutes trahisons, perfides conspirations, et de tous attentats, que je pourrai apprendre se tramer contre lui ou aucun d'eux; et je fais serment de toutes ces choses sans aucune équivoque, subterfuge mental, et restriction secrète, renonçant pour m'en relever à tous pardons et dispenses d'aucuns pouvoirs et personnes quelconques. *Ainsi DIEU me soit en Aide.*»

Et que toutes telles personnes qui négligeront ou refuseront de prendre le dit serment ci-dessus écrit encourront et seront sujettes aux mêmes peines, amendes, inhabilités et incapacités, qu'elles auraient encourues et auxquelles elles auraient été sujettes pour avoir négligé ou refusé de prendre le serment ordonné par le dit statut, passé dans la première année du regne de la Reine

Applications à
faire par sa
Majesté pour la
subsistance d'un
Clergé
Protestant

Toutes
personnes
professantes la
Religion
Romaine ne
seront point
obligées de
prendre le
serment du 1.
d'Elizabeth;
mais prendront
devant le
Gouverneur, &c.
le serment ci-
après

Serment

Les personnes
qui refuseront le
serment, seront
sujettes aux
peines de l'Acte
du 1.
d'Elizabeth

take the Oath required by the said Statute passed in the first Year of the Reign of Queen Elizabeth.

VIII. And be it further enacted by the Authority aforesaid, That all his Majesty's Canadian Subjects within the Province of Quebec, the religious Orders and Communities only excepted, may also hold and enjoy their Property and Possessions, together with all Customs and Usages relative thereto, and all other their Civil Rights, in as large, ample, and beneficial Manner, as if the said Proclamation, Commissions, Ordinances, and other Acts and Instruments, had not been made; and as may consist with their Allegiance to his Majesty, and Subjection to the Crown and Parliament of Great Britain; and that in all Matters of Controversy, relative to Property and Civil Rights, Resort shall be had to the Laws of Canada, as the Rule for the Decision of the same; and all Causes that shall hereafter be instituted in any of the Courts of Justice, to be appointed within and for the said Province by his Majesty, his Heirs and Successors, shall, with respect to such Property and Rights, be determined agreeably to the said Laws and Customs of Canada, until they shall be varied or altered by any Ordinances that shall, from Time to Time, be passed in the said Province by the Governor, Lieutenant Governor, or Commander in Chief, for the Time being, by and with the Advice and Consent of the Legislative Council of the same, to be appointed in Manner herein-after mentioned.

IX. Provided always, That nothing in this Act contained shall extend, or be construed to extend, to any Lands that have been granted by his Majesty, or shall hereafter be granted by his Majesty, his Heirs and Successors, to be holden in free and common Socage.

X. Provided also, That it shall and may be lawful to and for every Person that is Owner of any Lands, Goods, or Credits, in the said Province, and that has a Right to alienate the said Lands, Goods, or Credits, in his or her Life-time, by Deed of Sale, Gift, or otherwise, to devise or bequeath the same at his or her Death, by his or her last Will and Testament; any Law, Usage, or Custom, heretofore or now prevailing in the Province, to the contrary hereof in any-wise notwithstanding; such Will being executed either

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VIII. Il est aussi Etabli par la susdite autorité, que tous les sujets Canadiens de sa Majesté en la dite province de Québec (les Ordres Religieux et Communautés seulement exceptés) pourront aussi tenir leurs propriétés et possessions, et en jouir, ensemble de tous les usages et coutumes qui les concernent, et de tous leurs autres droits de citoyens, d'une manière aussi ample, aussi étendue, et aussi avantageuse, que si les dites proclamation, commissions, ordonnances, et autres actes et instruments, n'avoient point été faits, en gardant à sa Majesté la foi et fidélité qu'ils lui doivent, et la soumission due à la couronne et au parlement de la Grande Bretagne: et que dans toutes affaires en litige, qui concerneront leurs propriétés et leurs droits de citoyens, ils auront recours aux loix du Canada, comme les maximes sur lesquelles elles doivent être décidées: et que tous procès qui seront à l'avenir intentés dans aucune des cours de justice, qui seront constituées dans la dite province, par sa Majesté, ses héritiers et successeurs, y seront jugés, eu égard à telles propriétés et à tels droits, en conséquence des dites loix et coutumes du Canada, jusqu'à ce qu'elles soient changées ou altérées par quelques ordonnances qui seront passées à l'avenir dans la dite province par le Gouverneur, Lieutenant Gouverneur, ou Commandant en Chef, de l'avis et consentement du Conseil Legislatif qui y sera constitué de la manière ci après mentionnée.

IX. A condition toutefois, que rien de ce qui est contenu dans cet Acte ne s'étendra, ou s'entendra s'étendre, à aucunes des terres qui ont été concédées par sa Majesté, ou qui le seront ci après par sa dite Majesté, ses héritiers et successeurs, en franc et commun Socage.

X. Pourvu aussi, qu'il sera et pourra être loisible à toute et chaque personne, propriétaire de tous immeubles, meubles ou intérêts, dans la dite province, qui aura le droit d'aliéner les dits immeubles, meubles ou intérêts, pendant sa vie, par ventes, donations, ou autrement, de les tester et léguer à sa mort par testament et acte de dernière volonté, nonobstant toutes loix, usages et coutumes à ce contraires, qui ont prévalués, ou qui prévalent presentement en la dite province; soit que tel testament soit dressé suivant les loix, du Canada, ou suivant les formes prescrites par les loix d'Angleterre.

Les sujets Canadiens de sa Majesté (les Ordres Religieux exceptés) pourront de toutes leurs possessions, &c.

Et que dans toutes affaires en litige ils auront recours aux loix du Canada pour être décidées

Ceci ne s'étendra pas aux terres concédées par sa Majesté en Commun Socage

Les propriétaires de biens pourront les aliéner par Testament, &c.

s'il est dressé suivant les loix du Canada

unto Us, by one of Our principal Secretaries of State, speedy notice thereof that you may receive Our Ratification, if We shall approve the same. Provided always, that you do not by colour of any power or authority hereby given you, commence or declare War without Our Knowledge and particular Commands therein; and you are also to transmit a Duplicate of such notice, as aforesaid, to Our Commissioners for Trade and Plantations for their information.

53. And whereas We have by the first article of these Our Instructions to you directed and appointed, that your chief Residence shall be at Quebec, you are nevertheless frequently to visit the other parts of your Government, in order to inspect the management of all public affairs, and thereby the better to take care, that the Government be so administered, that no disorderly practices may grow up contrary to Our Service and the welfare of Our Subjects.

54. And whereas great prejudice may happen to Our Service, and the security of the Province by your absence from those parts, you are not upon any pretence whatsoever to come into Europe without having first obtained leave for so doing from Us under Our Sign Manual and Signet, or by Our Order in Our Privy Council; Yet nevertheless, in case of Sickness, you may go to South Carolina, or any other of Our Southern Plantations, and there stay such a space of time, as the recovery of your Health may absolutely require.

55. And whereas We have thought fit by Our Commission to direct, that, in case of your death, or absence from Our said Province, and in case there be at that time no person within Our said Province commissioned or appointed by Us to be Our Lieutenant Governor, or Commander in Chief, that the eldest Councillor, being a natural born Subject of Great Britain, Ireland, or the Plantations, and professing the Protestant Religion, who shall be at the time of your death or absence residing within Our said Province under your Government, shall take upon him the administration of Government, and execute Our said Commission, and Instructions, and the several powers and authorities therein directed; It is nevertheless Our express Will and Pleasure, that in such case the said President shall forbear to pass any Act or Acts, but what are immediately necessary for the Peace and Welfare of the said Province, without Our particular Order for that purpose.

56. And whereas We are desirous, that a proper provision should be made for the support of Our Government within Our said Province of Quebec, We do therefore hereby declare it to be Our Royal Intention, that the following annual Salaries and Allowances be discharged and paid out of any Revenues arising to Us within the same, or out of such other Monies, as shall be granted or appropriated to the Uses and Services of Our said Province of Quebec, that is to say,

PROFESSIONAL PAPER No. 18

To the Governor p Annum.....	10,000	0	0
To the Lieutenant Governor.....	5,000	0	0
To the Chief Justice.....	2,000	0	0
To six Judges of Common Pleas, £800 each.....	4,800	0	0
To the Attorney General.....	2,000	0	0
To the Clerk of the Crown and Pleas.....	1,000	0	0
To two Clerks at £100 each.....	200	0	0
To the Secretary and Register.....	1,000	0	0
To the Clerk of the Council.....	1,000	0	0
To the Surveyor of Lands.....	1,000	0	0
To the Surveyor of Woods.....	1,000	0	0
To the Commissary for Indians.....	1,000	0	0
To the Captain of the Port.....	1,000	0	0
To the Naval Officer.....	1,000	0	0
To the Receiver General of the Revenues.....	1,000	0	0
To twenty-three Councilors at £100 each.....	2,300	0	0
To the Lieutenant Governors or Superintendants			
At the Illinois			
Poste Saint Vincenne			
Detroit			
Mississimakinac			
Gaspée			
at £100 each.....	1,000	0	0
To one Judge of the inferior Courts of King's Bench and Common Pleas			
at each of the above five Posts at £100 each Judge.....	500	0	0
To an Assistant or Assessor at each Post at £50 p Annum.....	500	0	0
To a Sheriff at each District at £20 p Annum each.....	100	0	0
To a Grand Voyer.....	100	0	0
To a French Secretary.....	100	0	0
To four Ministers of the Protestant Church at £200 p Ann. each.....	800	0	0
To two Schoolmasters at £100 p Annum each.....	200	0	0
To an Allowance to the Person licenced to superintend the Romish			
Church.....	200	0	0
To Pensions to the Officers of a Corps of Canadians employed in the last			
War, and discharged without any Allowance, as follows, Viz:			
To Mons ^r Farquhar, the Commandant of said Corps.....	200	0	0
To five Captains £100 each.....	500	0	0
To ten Lieutenants £50 each.....	500	0	0
To the Commandant of the Savages.....	100	0	0
To Annual contingent Expenses.....	1,000	0	0
	£17,350	0	0

All which Salaries and Allowances are to commence on, and be payable from the first day of May next ensuing.¹

57. And whereas We are further willing in the best manner to provide for the support of the Government of Our said Province, by setting apart a sufficient Allowance to such, as shall be Our Lieutenant Governor, Commander in Chief, or President of Our Council for the time being within the same; Our Will and Pleasure therefore is, that, when it shall happen, that you shall be absent from Our said Province, one full Moiety of the Salary, and of all Perquisites and Emoluments whatsoever, which would otherwise become due unto you, shall, during the time of your absence from Our said Province, be paid and satisfied unto such Lieutenant Governor, Commander

¹ Among the Dartmouth Papers is an "Estimate of the Expence of the Civil Establishment of the Province of Quebec, and Its Dependencies." M 385, p. 494. In this a number of the salaries are rated at different amounts from those here given. Among the variations are the following—Lt. Governor, £800, Chief Justice, £1,200; the six Judges, £300 each, Commissary for Indians, £200. There are two additional offices, Judge of the Admiralty, £200, Register of the Court of Admiralty, £100. There was no provision for Schoolmasters, or for Contingent Expenses. From another document we find that the appointments to these positions were divided between Lord Dartmouth, the Treasury Board, and the Governor, as follows.—
 Lord Dartmouth—Lt. Governor, Chief Justice, Secy & Register, 3 Judges, Attorney General, Clerk of Crown, Commissary for Indian Affairs, Naval Officers, 5 Superintendants, 4 Ministers, 2 Schoolmasters.
 Treasury—Surveyor of Lands, Dir of Woods, Receiver Genl.
 Governor—Clerk of Council, Captain of ye Port, 2 Sheriffs, 5 Judges, 5 Assessors, 3 Sheriffs, Grand Voyer, French Secretary." M 385, p. 492.

6-7 EDWARD VII., A. 12

in Chief, or President of Our Council, who shall be, resident upon the place for the time being, which We do hereby order and allot unto him towards his Maintenance, and for the better Support of the Dignity of that Our Government.

G.R.

PLAN FOR THE FUTURE MANAGEMENT OF INDIAN AFFAIRS,
REFERRED TO IN THE THIRTY-SECOND ARTICLE OF THE
FOREGOING INSTRUCTIONS.

1. That the Trade and Commerce with the several Tribes of Indians in North America under the protection of His Majesty shall be free and open to all His Majesty's subjects, under the several Regulations and Restrictions hereafter mentioned, so as not to interfere with the Charter to the Hudson's Bay Company.

2. That for the better Regulation of this Trade, and the Management of Indian Affairs in general, the British Dominions in North America be divided into two Districts, to comprehend and include the several Tribes of Indians mentioned in the annexed Lists A. and B.

3. That no Trade be allowed with the Indians in the southern District, but within the Towns belonging to the several Tribes included in such District; and that in the Northern District the Trade be fixed at so Many Posts, and in such Situations, as shall be thought necessary.

4. That all Laws, now in Force in the several Colonies for regulating Indian Affairs, or Commerce, be repealed.

5. That there be one general Agent or Superintendant appointed by His Majesty for each District.

6. That the Agent or Superintendant for the Northern District shall be allowed three Deputies to assist him in the Administration of Affairs within his District; and that the Agent or Superintendant for the Southern District shall be allowed two Deputies.

7. That there shall be a Commissary, Interpreter, and Smith, appointed by His Majesty to reside in the Country of each Tribe in the Southern District, and at each Post in the Northern District.

8. That it be recommended to the Society for the propagation of the Gospel in foreign parts to appoint four Missionaries in each District, to reside at such places, as the Agent or Superintendant for each District shall recommend.

9. That the Commissaries, Interpreters, and Smiths in each District do Act under the immediate Direction and Orders of the Agent or Superintendant, who shall have a power of Suspending them in Case of Misbehaviour, and, in Case of Suspension of a Commissary, or of a Vacancy by Death, or Resignation, the Office shall be executed, until the King's pleasure is known, by one of the Deputies to the Agent or Superintendant.

ACT OF 14-15 VICTORIA CH. 106 (1851)

An Act to authorize the setting apart of Lands for the use of certain Indian Tribes in Lower Canada.

Whereas it is expedient to set apart certain Lands for the use of certain Indian Tribes resident in Lower Canada: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That tracts of Land in Lower Canada, not exceeding in the whole two hundred and thirty thousand Acres, may, under orders in Council be made in that behalf, be described, surveyed and set out by the Commissioner of Crown Lands, and such tracts of Land shall be and are hereby respectively set apart and appropriated to and for the use of the several Indian Tribes in Lower Canada, for which they shall be respectively directed to be set apart in any order in Council, to be made as aforesaid, and the said tracts of Land shall accordingly, by virtue of this Act, and without any price or payment being required therefor be vested in and managed by the Commissioner of Indian Lands for Lower Canada, under the Act passed in the Session held in the thirteenth and fourteenth years of Her Majesty's Reign, and intituled, *An Act for the better protection of the Lands and Property of the Indians in Lower Canada*.

And be it enacted, that there shall be paid yearly out of the Consolidated Revenue Fund of this Province, a sum not exceeding One Thousand Pounds currency, to be distributed amongst certain Indian Tribes in Lower Canada by the Superintendent General of Indian Affairs, in such proportions amongst the said Indian tribes, and in such manner as the Governor General in Canada may from time to time direct.

Source: Statutes of Canada.



61 VICTORIA.

CHAP. 3.

An Act respecting the north-western, northern and north-eastern boundaries of the province of Quebec.

[Assented to 13th June, 1893.]

WHEREAS in and by *The British North America Act*, 1871, c. 23 (Imperial), 1871, it is enacted that the Parliament of Canada may, from time to time, with the consent of the legislature of any province, increase, diminish or otherwise alter the limits of such province, upon such terms and conditions as may be agreed to by the said legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any province affected thereby; and whereas it has been agreed between the Governments of the Dominion of Canada and the province of Quebec that the north-western, northern and north-eastern boundaries of the province of Quebec shall be those hereinafter described, and the Legislature of Quebec has, by chapter 6 of the statutes of 1898, expressed its consent that the Parliament of Canada should declare the said boundaries to be the north-western, northern and north-eastern limits of the said province: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, declares and enacts as follows:—

1. The north-western, northern and north-eastern boundaries of the province of Quebec are hereby declared to be the following:—Commencing at the head of Lake Temiscamingue, thence along the eastern boundary of the province of Ontario due north to the shore of the part of Hudson Bay commonly known as James Bay, and thence north-easterly following upon the said shore to the mouth of the East Main River, and thence easterly ascending along the middle of the said river up to the confluence of the branch thereof flowing from Patamisk Lake, and thence ascending along the middle of the said branch up to Patamisk Lake, and thence along the middle of the said lake to the most northerly point thereof, the said point being about fifteen miles south from the Hudson's Bay Company's

Boundaries described.

pany's post on Lake Nishigun, and approximately in latitude fifty-two degrees fifty-five minutes north, and longitude seventy degrees forty-two minutes west of Greenwich; thence due east along the parallel of latitude of the said point to the intersection of the river discharging the waters of Lake Ashuanipi, which river is known under the names of Hamilton or Ashuanipi or Great Esquimaux River, and thence descending along the middle of the said river through Menihék, Marble, Astray and Dyke Lakes to the most southerly outlet of Dyke Lake, and thence along the middle of the said outlet to Birch Lake, and thence along the middle of Birch and Sandgirt Lakes to the most southerly outlet of Sandgirt Lake, and thence along the middle of the southern channel of the Hamilton River to Flour Lake, and thence along the middle of Flour Lake to its outlet, and thence along the middle of the Hamilton River to the Bay du Rigolet or Hamilton Inlet, and thence easterly along the middle of the said bay or inlet until it strikes the westerly boundary of the territory under the jurisdiction of Newfoundland, and thence southerly along the said boundary to the point where it strikes the north shore of the Anse Sablon, in the Gulf of St. Lawrence, the said line being shown in red as far as Hamilton Inlet, upon the plan accompanying the copy of the Order of the Governor General in Council number two thousand six hundred and twenty-three, dated the eighth of July, one thousand eight hundred and ninety-six, transmitted to the Lieutenant Governor of Quebec, and now deposited among the archives of the Provincial Secretary of that province.

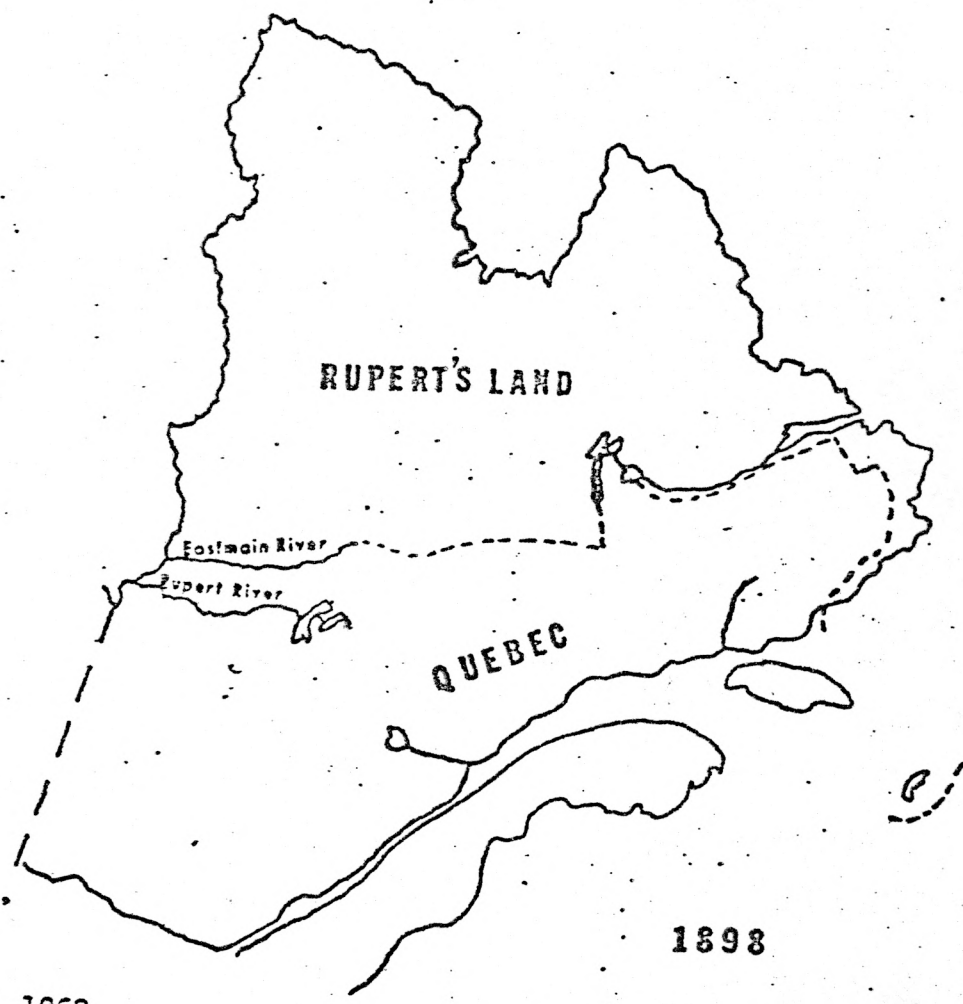
OTTAWA: Printed by SAMUEL EDWARD DAWSON, Law Printer to the Queen's most Excellent Majesty.

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follows:

1. The hundred forty-three bull sum was Account, eight hundred and that day of J on the b calculated after the and twenty as herein

2. The of July, or Governme dred and dollars ar which wo by the Do interest fr of the s of the s at Winni account, t VOL. 1



Source: IQA, 1969

THE QUEBEC BOUNDARIES EXTENSION ACT, 1912

2 GEORGE V, CHAPTER 45

An Act to extend the Boundaries of the Province of
Quebec⁽¹⁾

[Assented to 1st April, 1912.]

Preamble.

WHEREAS on the thirteenth day of July, one thousand nine hundred and eight, the House of Commons resolved that the limits of the province of Quebec should be increased by the extension of the boundaries of the province northwards so as to include the territory hereinafter described, as in the said resolution is more particularly set out, upon such terms and conditions as may be agreed to by the Legislature of Quebec and by the Parliament of Canada: Therefore, subject to the consent of the said Legislature, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short title.

1. This Act may be cited as *The Quebec Boundaries Extension Act, 1912*.

Boundaries
extended.

2. The limits of the province of Quebec are hereby increased so that the boundaries thereof shall include, in addition to the present territory of the said province, the territory bounded and described as follows: Commencing at the point at the mouth of East Main river where it empties into James bay, the said point being the western termination of the northern boundary of the province of Quebec as established by chapter 3 of the Statutes of 1898, intituled *An Act respecting the north-western, northern and north-eastern boundaries of the province of Quebec*; thence northerly and easterly along the shores of Hudson bay and Hudson strait; thence southerly, easterly and northerly along the shore of Ungava bay and the shore of the said strait; thence easterly along the shore of the said strait to the boundary of the territory over which the island of Newfoundland has lawful jurisdiction; thence south-easterly along the westerly boundary of the said last mentioned territory to the middle of the Bay du Rigolet or Hamilton Inlet; thence westerly along the northern boundary of the province of Quebec as established by the said Act to the place of commencement; and all the land embraced

1898, c. 3.

(1) See The B.N.A. Act, 1871 (referred to in the preceding note), also c. 3 of the Statutes of 1898, and also c. 6 of the Statutes of Quebec, 1872. See also 1915, c. 29, *infra*.

ly the said description shall, from and after the commencement of this Act, be added to the province of Quebec, and shall, from and after the said commencement, form and be part of the said province of Quebec upon the following terms and conditions and subject to the following provisions:

[(a) That the population of the territory hereby added to the province of Quebec shall be excluded in ascertaining the population of the said province for the purposes of any readjustment of representation of the other provinces consequent upon any census;

Population as affecting representation.

(b) That in the general census of the population of Canada which is required to be taken in the year one thousand nine hundred and twenty-one and in every tenth year thereafter the population of the territory hereby added to the province of Quebec shall be distinguished from that of the said province as heretofore constituted, and the representation of the said territory in the House of Commons shall be determined according to the rules enacted by section 51 of "The British North America Act, 1867," regulating the representation of the provinces other than Quebec;]⁽²⁾

Population under decennial census.

Paragraphs (a) and (b) repealed by 1946, c. 29.

B.N.A. Act, s. 51.

(c) That the province of Quebec will recognize the rights of the Indian inhabitants in the territory above described to the same extent, and will obtain surrenders of such rights in the same manner, as the Government of Canada has heretofore recognized such rights and has obtained surrender thereof, and the said province shall bear and satisfy all charges and expenditures in connection with or arising out of such surrenders;

Indian rights of new territory.

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

Surrenders.

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

Trusteeship.

3. Nothing in this Act shall in any way prejudice or affect the rights or properties of the Hudson's Bay Company as contained in the conditions under which that company surrendered Ruperts Land to the Crown.

Hudson's Bay Co. rights preserved.

4. This Act shall come into force on a day to be fixed by proclamation of the Governor in Council published in *The Canada Gazette*, but such proclamation shall not be made until after the Legislature of Quebec shall have consented to the increase of the limits of the province herein provided for, and agreed to the terms, conditions and provisions aforesaid.

Commencement of Act.

Consent of Quebec legislature.

(2) Paragraphs (a) and (b) of s. 2 have been repealed by s. 1 of c. 29 of the Statutes of 1946 which follows immediately.

106

THE QUEBEC BOUNDARIES EXTENSION ACT, 1912, AMENDMENT ACT

10 GEORGE VI, CHAPTER 29

An Act to amend The Quebec Boundaries Extension
Act, 1912⁽¹⁾

[Assented to 26th July, 1945.]

1912, c. 45.

HIS MAJESTY, by and with the advice and consent of the
Senate and House of Commons of Canada, enacts as follows:

Paragraphs
repealed.

1. Paragraphs (a) and (b) of section two of *The Quebec
Boundaries Extension Act, 1912*, chapter forty-five of the Statutes
of 1912, are repealed.

Coming
into force.

2. This Act shall come into force on a day to be fixed by
proclamation of the Governor in Council published in *The
Canada Gazette*, but such proclamation shall not be made until
the Legislature of Quebec agrees to the said repeal of paragraph
(a) and (b) of section two of the said Act.

(1) The paragraphs repealed read as follows:

- "(a) That the population of the territory hereby added to the province of Quebec shall be excluded in ascertaining the population of said province for the purposes of any readjustment of representation of the other provinces consequent upon any census;
- "(b) That in the general census of the population of Canada which is required to be taken in the year one thousand nine hundred twenty-one and in every tenth year thereafter the population of territory hereby added to the province of Quebec shall be distinguished from that of the said province as heretofore constituted and the representation of the said territory in the House of Commons shall be determined according to the rules enacted in s. 51 of "The B.N.A. Act, 1867," regulating the representation of the provinces other than Quebec;"



Source: IQA 1969.

QUEBEC LANDS AND FORESTS ACT CH. 37 (1922)

An Act concerning lands set apart for Indians.

65 The Lieutenant-Governor in Council may reserve and set apart, for the benefit of the various Indian tribes of this Province, the usufruct of public lands described, surveyed and classified for such purpose by the Minister of Lands and Forests. R.S. 1941, c. 93, s. 67 (part).

65 The extent of such public lands shall not exceed, in all, three hundred and thirty thousand acres in superficies. R.S. 1941, c. 93, s. 67 (part).

67 The usufruct of the lands described, surveyed and classified by the Minister of Lands and Forests shall be transferred, gratuitously and on such conditions as he may determine, by the Lieutenant Governor in Council to the Government of Canada to be administered by it in trust for the said Indian tribes.

Such usufruct shall be alienable, in whole or in part, and the lands subjected thereto shall return to the Government of this Province, without any formality whatsoever, from and after the date when the Indians to whom they have been assigned in usufruct by the Government of Canada cease to occupy them as usufructuaries.

Mining rights shall not be included in such concession, notwithstanding the absence of any mention to that effect.

Nor shall any such reserve be granted or taken out of any territory under license to cut timber, unless the consent of the license-holder shall be first obtained. R.S. 1941, c. 93, s. 67 (part).

Source: Statutes of Quebec.

THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC

AND OTHERS

Appellants

v.

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA

AND ANOTHER

Respondents

From

THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE

PRIVY COUNCIL, Delivered the 23rd NOVEMBER, 1920.

Present at the Hearing:

VISCOUNT HALDANE.

VISCOUNT CAVE.

LORD DUNEDIN.

MR. JUSTICE DUFF.

(Delivered by Mr. Justice Duff.)

By an order of the Governor of the late Province of Canada in Council, of the 9th August, 1853, pursuant to a statute of that province (14 and 15 Vict. c. 106), the provisions of which are hereinafter explained, certain lands, including those whose title is in question on this appeal, viz., Lots 6, 7 and 8, in the thirteenth range of the township of Coleraine in the county of Megantic, were appropriated for the benefit of the Indian tribes of Lower Canada, those particularly mentioned being set apart for the tribe called the Abenakis of Becancour. By an instrument of surrender of the 14th February, 1882, which was accepted by an order of the Governor-General of Canada in Council of the 3rd April, 1882, this tribe surrendered (inter alia) the lots above specified to Her Majesty the Queen; and on the 2nd July, 1887, the Dominion Government professed to

IS EXHIBIT

37

referred to in the *Appellants' statement*

of the Province of Quebec

made the _____ day of _____ A.D. _____

(Sgd.) _____

THIS IS EXHIBIT

W/10346

referred to in the *Respondents' statement*

made the 17th day of May A.D. 1919

(Sgd.) _____

grant then by letters patent to Cyrice Tetu, of Montreal, whose interest in them passed on his death to Dame Caroline Tetu.

On the 10th April, 1895, the lands in question, having been seized in execution by the sheriff of the district of Arthabaska, under a judgment against Dame Caroline Tetu, were sold by the sheriff to one Joseph Louchette, whose title was eventually acquired by the respondent Dame Rosalie Thompson. The appellants, the Star Chrome Mining Company, Limited, having purchased the property from the respondent Dame Rosalie Thompson, in February, 1907, the Company took proceedings against the vendor, claiming rescission of the sale and demanding repayment of the purchase money with damages, on the ground that the property was in the Crown in the right of the Province of Quebec, and that the vendor was consequently without title at the time of the sale.

The action of the appellants having come on for trial on the 4th June, 1909, the trial was adjourned, and on the 29th June, 1912, an order was made suggesting that the Dominion Government and the Government of Quebec should intervene for the purpose of determining the controversy touching the authority of the Dominion Government to dispose of the lands in question on behalf of the Crown. On the 2nd October, 1914, the appellant, the Attorney-General of Quebec, intervened, claiming by his intervention that the grant to Cyrice Tetu, of the 2nd July, 1887, was null and void, on the ground that the lands which the grant professed to dispose of were the property of the Crown in the right of Quebec; and on the 7th October, 1914, the respondent, the Attorney-General of Canada, met the intervention of the Attorney-General of Quebec by a contestation in which he maintained the validity of the grant to Cyrice Tetu. On the 7th May, 1917, the Superior Court pronounced judgment rejecting the intervention of the Attorney-General of Quebec, and the appeal from this judgment was dismissed by the Court of King's Bench on the 20th November, 1917, Mr. Justice Lavergne dissenting.

The first question which arises concerns the effect of the deed of surrender of the 3rd April, 1882--whether, that is to say, as a result of the surrender, the title to the lands affected by it became vested in the Crown in right of the Dominion, or, on the contrary, the title, freed from the burden of the Indian interest, passed to the Province under Section 109 of the British North America Act.

The claim of Quebec is based upon the contention that at the date of confederation the radical title in these lands was vested in the Crown, subject to an interest held in trust for the benefit of the

Indians, which, in the words used by Lord Watson, in delivering judgment in *St. Catherine's Milling and Lumber Company v. The Queen* (14 A.C. 46), was only "a personal and usufructuary right dependent upon the goodwill of the Crown." On behalf of the Dominion it is contended that the title, both legal and beneficial, was held in trust for the Indians.

In virtue of the enactment of Section 91 (No. 24) of the British North America Act, by which exclusive authority to legislate in respect of lands reserved for Indians is vested in the Dominion Parliament, it is not disputed that that Parliament would have full authority to legislate in respect of the disposition of the Indian title, which, according to the Dominion's contention, would be the full beneficial title. On the other hand, if the view advanced by the Province touching the nature of the Indian title be accepted, then it follows from the principle laid down by the decision of this Board in *St. Catherine's Milling and Lumber Company v. The Queen* (supra) that upon the surrender in 1882 of the Indian interest the title to the lands affected by the surrender became vested in the Crown in right of the Province, freed from the burden of that interest.

The answer to the question raised by this controversy primarily depends upon the true construction of two statutes passed by the Legislature of the Province of Canada (13 and 14 Vict. 1850 c. 42, and 14 and 15 Vict. 1851 c. 106). The last-mentioned statute is entitled, "An Act to authorise the setting apart of lands for the use of certain Indian tribes in Lower Canada," and, after reciting that it is expedient to set apart certain lands for such "use," it enacts that tracts not exceeding 230,000 acres may, under the authority of Orders in Council, be described, surveyed and set out by the Commissioner of Crown Lands, and that "such tracts of land shall be and are hereby respectively set apart and appropriated to and for the use of the several Indian tribes in Lower Canada, for which they shall be respectively directed to be set apart and the said tracts of land shall accordingly, by virtue of this Act.... be vested in and managed by the Commissioner of Indian Lands for Lower Canada, under" the statute first mentioned, 13 and 14 Vict. c. 42. This statute (13 and 14 Vict. c. 42) is entitled, "An Act for the better protection of the lands and property of the Indians in Lower Canada," and, following upon a recital that it is expedient to make better provision in respect of "lands appropriated to the use of Indians in Lower Canada," enacts (by Section 1) as follows:-

"That it shall be lawful for the Governor to appoint from time to time a Commissioner

of Indian Lands for Lower Canada, in which and in whose successors by the name aforesaid, all lands or property in Lower Canada which are or shall be set apart or appropriated to or for the use of any Tribe or Body of Indians, shall be and are hereby vested, in Trust for such Tribe or Body, and who shall be held in law to be in the occupation and possession of any lands in Lower Canada actually occupied or possessed by any such Tribe or Body in common, or by any Chief or Member thereof or other party for the use or benefit of such Tribe or Body, and shall be entitled to receive and recover the rents, issues and profits of such lands and property, and shall and may, in and by the name aforesaid, but subject to the provisions hereinafter made, exercise and defend all or any of the rights lawfully appertaining to the proprietor, possessor or occupant of such land or property."

and by Section 5:-

"That the said Commissioner shall have full power to concede or lease or charge any such land or property as aforesaid and to receive or recover the rents, issues and profits thereof as any lawful proprietor, possessor or occupant thereof might do, but shall be subject in all things to the instructions he may from time to time receive from the Governor, and shall be personally responsible to the Crown for all his acts, and more especially for any act done contrary to such instructions, and shall account for all moneys received by him, and apply and pay over the same in such manner, at such times, and to such person or officer, as shall be appointed by the Governor, and shall report from time to time on all matters relative to this office in such manner and form, and give such security, as the Governor shall direct and require; and all moneys and movable property received by him or in his possession as Commissioner, if not duly accounted for, applied and paid over as aforesaid, or if not delivered by any person having been such Commissioner to his successor in office, may be recovered by the Crown or by such successor, in any Court having civil jurisdiction to the amount or value, from the person having been such Commissioner and his sureties, jointly and severally."

The rival views which have been advanced before their Lordships touching the construction of these enactments have already been indicated.

In support of the Dominion claim it is urged that, as rivers' lands "appropriated" under the Act of 1851, the words "shall be and are hereby vested in trust for" the Indians, create a beneficial estate in such lands, which by force of the statute is held for the Indians, and which could not lawfully be devoted to any purpose other than the purposes of the trust, and indeed is equivalent to the beneficial ownership.

While the language of this statute of 1850 undoubtedly imports a legislative acknowledgment of a right inhering in the Indians to enjoy the lands appropriated to their use under the superintendence and management of the Commissioner of Indian Lands, their Lordships think the contention of the Province to be well founded to this extent, that the right recognised by the statute is a usufructuary right only and a personal right in the sense that it is in its nature inalienable except by surrender to the Crown.

By Section 3 the Commissioner is not only accountable for his acts, but is subject to the direction of the Governor in all matters relating to the trust; the intent of the statute appears to be, in other words, that the rights and powers committed to him are not committed to him as the delegate of the Legislature, but as the officer who for convenience of administration is appointed to represent the Crown for the purpose of managing the property for the benefit of the Indians. If this be the correct view, then, whatever be the nature or quantum of the Commissioner's interest, it is held by him in his capacity of officer of the Crown and his title is still the title of the Crown; and this, it may be observed, is apparently the view upon which the Dominion Government proceeded in accepting the surrender of 1882, the lands surrendered being treated (and their Lordships think rightly treated) for the purposes of that transaction as a "Reserve" within the meaning of the Act of 1882-- in other words, as lands "the legal title" to which still remained in the Crown (Section 2 (6)). It is not unimportant, however, to notice that the term "vest" is of elastic import; and a declaration that lands are "vested" in a public body for public purposes may pass only such powers of control and management and such proprietary interest as may be necessary to enable that body to discharge its public functions effectively (*Turnbridge Wells Corporation v. Baird*-- 1896 A.C. 434), an interest which may become devoted when these functions are transferred to another body. In their Lordships' opinion, the words quoted from Section 1 are not inconsistent with an intention that the Commissioner should possess such limited interest only as might be necessary to enable him effectively to execute the powers and duties of control and management, of suing and being sued, committed to him by the Act.

In the judgment of this Board in the St. Catherine's Milling Company's Case, already referred to, it was laid down, speaking of Crown lands burdened with the Indian interest arising under the Proclamation of 1763, as follows:-

"The Crown has all along had a present proprietary interest in the land, upon which the Indian title was a mere burden. The ceded territory was, at the time of the union, land vested in the Crown, subject to 'an interest other than that of the Province in the same,' within the meaning of Section 109, and must now belong to Ontario in terms of that clause, unless its rights have been taken away by some provision of the Act of 1867 other than those already mentioned."

and their Lordships said:-

"It appears to them to be sufficient for the purposes of this case that there has been all along vested in the Crown a substantial and paramount estate, underlying the Indian title, which became a plenum dominium whenever that title was surrendered or otherwise extinguished."

The language of the statutes of 1850 and 1851 must, therefore, be examined in light of the circumstances of the time and of the objects of the legislation as declared by the enactments themselves, for the purpose of ascertaining whether or not the Crown retained in lands appropriated for the use of an Indian tribe a "paramount title" upon which the Indian interest was a mere "burden" in the sense in which these phrases are used in these passages.

The object of the Act of 1850, as declared in the recitals already quoted, is to make better provision for preventing encroachments upon the lands appropriated to the use of Indian tribes and for the defence of their rights and privileges, language which does not point to an intention of enlarging or in any way altering the quality of the interest conferred upon the Indians by the instrument of appropriation or other source of title; and the view that the Act was passed for the purpose of affording legal protection for the Indians in the enjoyment of property occupied by them or appropriated to their use, and of securing a legal status for benefits to be enjoyed by them, receives some support from the circumstance that the operation of the Act appears to extend to lands occupied by Indian tribes in that

part of Quebec which, not being within the boundaries of the Province as laid down in the Proclamation of 1763, was, subject to the pronouncements of that Proclamation in relation to the rights of the Indians, a region in which the Indian title was still in 1850, to quote the words of Lord Watson, "a personal and usufructuary right dependent upon the good-will of the Sovereign." It should be noted also that the Act of 1851, under which the lands in question were set apart, is plainly an Act passed with the object of setting lands apart "for the use" of Indian tribes, and that by the same Act the powers of the Commissioner of Indian Lands under the Act of 1850 are referred to as "powers of management."

Their Lordships do not find it necessary to enter upon a consideration of the precise effect of the words of Section 3, investing the Commissioner with power to "concede," "lease" or "charge" lands or property affected by the statute. It is sufficient to say that, having regard to the recitals of the same statute and the language of the Act of 1851 just referred to, as well as to the policy of successive administrations in the matter of Indian affairs which, to cite the judgment of the Board in the St. Catherine's Milling Company's Case, had been

"all along the same in this respect, that the Indian inhabitants have been precluded from entering into any transaction with a subject for the sale or transfer of their interest in the land, and have only been permitted to surrender their rights to the Crown by a formal contract, duly ratified at a meeting of their chiefs or head men convened for the purpose,"

their Lordships think these words ought not to be construed as giving the Commissioner authority to convert the Indian interest into money by sale or to dispose of the land freed from the burden of the Indian interest, except after a surrender of that interest to the Crown.

It results from these considerations, in their Lordships' opinion, that the effect of the Act of 1850 is not to create an equitable estate in lands set apart for an Indian tribe of which the Commissioner is made the recipient for the benefit of the Indians, but that the title remains in the Crown and that the Commissioner is given such an interest as will enable him to exercise the powers of management and administration committed to him by the statute.

The Dominion Government had, of course, full authority to accept the surrender on behalf of the

Crown from the Indians, but, to quote once more the judgment of the Board in the St. Catherine's Milling Company's Case, it had "neither authority nor power to take away from Quebec the interest which had been assigned to that Province by the Imperial statute of 1857." The effect of the surrender would have been otherwise if the view, which no doubt was the view upon which the Dominion Government acted, had prevailed, namely, that the beneficial title in the lands was by the Act of 1850 vested in the Commissioner of Indian lands as trustee for the Indians, with authority, subject to the superintendence of the Crown, to convert the Indian interest into money for the benefit of the Indians. As already indicated, in their Lordships' opinion, that is a view of the Act of 1850 which cannot be sustained.

One further point remains. On behalf of the respondent Dame Rosalie Thompson it is contended that her title is validated by reason of the adjudication of the sheriff's sale. Their Lordships concur in the view which prevailed in *Les Commissaires d'Ecoles de Saint-Louis v. Price* (1 *Revue de Jurisprudence* 122), that Articles 399 and 2215 of the Code of Civil Procedure have not the effect of conferring upon the purchaser at a sheriff's sale a title to Crown property which has not been alienated by the Crown.

The appeal should, therefore, be allowed and the action remitted to the Superior Court to give judgment against the respondent Dame Rosalie Thompson for the amount of the purchase money and of the damages which, if any, she shall be found liable to pay to the appellants the Star Chrome Mining Company, and their Lordships will humbly advise His Majesty accordingly.

The respondent Dame Rosalie Thompson will pay the costs of the Star Chrome Mining Company here and in the Courts below. There will be no order as to the costs of other parties.

2-13-57

MINISTER OF JUSTICE: THE DEPUTY MINISTER
DEPARTMENT OF JUSTICE

Re: Oil and Gas Rights -
Matigon Island and Walpole Island.

631-
 OK

Certain important questions have arisen in relation to oil and gas rights in Indian Reserves located on Matigon Island and Walpole Island in the Province of Ontario. In this connection reference must first be made to certain decisions of the Judicial Committee of the Privy Council. They are dealt with in chronological order.

1. St. Catherine's Milling Case (1883) 14 A.C. 46.

The issue here was whether the Dominion or Ontario had the beneficial interest in a large tract of land in the southwest corner of the Province and consequently the right to sell or otherwise dispose of same. The land had been surrendered by the Indians on October 3, 1873, under what commonly referred to as the North-West Angle Treaty No. 3.

It was held that the legal title to the surrendered land had been in the Crown since the conquest subject to the "Indian title" granted under the terms of the proclamation of 1763. Per Lord Watson, p. 54:

"Whilst there have been changes in the administrative authority, there has been no change since the year 1763 in the character of the interest which its Indian inhabitants had in the lands surrendered by the treaty. Their possession, such as it was; can only be ascribed to the general provisions made by the royal proclamation in favour of all Indian tribes then living under the sovereignty and protection of the British Crown. It was suggested in the course of the argument for the Dominion, that inasmuch as the proclamation recited that the territories thereby reserved for Indians had never 'been ceded to or purchased by' the Crown, the entire property of the land remained with them. That inference is, however, at variance with the terms of the instrument, which shew that the tenure of the Indians was a personal and usufructuary right, dependent upon the good will of the Sovereign. The lands reserved are expressly stated to be 'parts of Our dominions and territories';".

It was also held that, subject to the Indian interest the land passed to the Crown in right of the Province at Confederation. This by operation of section 109 of the British North America Act. Per Lord Watson at pp. 53-4:

"The Crown has all along had a present proprietary estate in the land, upon which the Indian title was a mere burden. The ceded territory was at the time of the union, land vested in the Crown, subject to 'an interest other than that of the Province in the same,' within the meaning of sect. 109; and must now belong to Ontario in terms of that clause,".